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Just Kids: Establishing a Minimum Age of Jurisdiction in Maine's Juvenile Court

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ABSTRACT

In Maine, there is no such thing as a child too young to be prosecuted. Maine's Juvenile Code grants the juvenile court jurisdiction over a child of any age, even one who would have been considered too young to prosecute in the fifteenth century. As of 2024, just over half of states in the country have rejected this approach and established minimum ages of jurisdiction for their juvenile courts. These minimum age laws protect the youngest, least culpable, and least competent children from prosecution, and generally require states to respond to young children through services rather than punishment.

This Comment argues that Maine should join this growing movement and establish a minimum age of jurisdiction in its juvenile courts. It begins by charting the development of the separate juvenile justice system in the United States and the three core principles that underlie that system. Next, it explores the policy justifications set forth by proponents of minimum age statutes, the different types of minimum age laws across the country, and the ways that states with such laws respond to young children accused of violating the law.

This Comment then turns to Maine, exploring the history of Maine's approach to juvenile justice. This Comment concludes that Maine's legislature originally intended for children suspected of crimes to receive a state response informed by both corrections and social services. This Comment addresses Maine's current sole mechanism for excluding young children from its juvenile court: the due process requirement of competence to stand trial. This Comment then evaluates Maine's current approach in light of the interests of the State, children, and families.

Ultimately, this Comment concludes that both the underlying purpose and history of Maine's Juvenile Code and a modern analysis of the interests of the State, children, and families all indicate that Maine and its children would be better served by adopting a minimum age of jurisdiction. This Comment proposes the age of

* J.D. Candidate, University of Maine School of Law, Class of 2025. My deepest gratitude to my incredible mentors, Professor Jill Ward of the Center for Youth Policy and Law and Professor Sarah Branch of the Youth Justice Clinic, for continually inspiring and supporting me in my study of youth justice. Thank you to Professor John Nidiry, Jenn Thompson, and Professor Jill Ward for your generosity of time and spirit reading and giving me your honest feedback on this Comment, and to the entire staff of the Maine Law Review. You have made this work endlessly better. Thank you to Professor Chris Northrop for creating Maine Law's Youth Justice Clinic, and to Dean Caroline Wilshusen for encouraging me to apply to law school. My deepest thanks to my incredible wife, Natalie Bornstein, for constantly challenging, supporting, and loving me. I could not do any of this without you. Thank you to my community in Lewiston for believing in me. Finally, thank you to each and every young person who has trusted me to work with them throughout my career. I aspire to your resiliency, good humor, and honesty. Thank you for inspiring me to pursue a career in law.

fourteen, sets forth the policy justifications for that age, and recommends that children thirteen and younger be referred to the Department of Health and Human Services for services instead. Finally, this Comment explores potential barriers to implementation and suggests solutions to those barriers. Maine has just committed to significantly expanding its services for children in need. This Comment urges Maine to seize this opportunity to reimagine its approach to young children accused of offenses by adopting a minimum age of juvenile court jurisdiction, which will better serve the interests of children, their families, and the State itself.

INTRODUCTION

When is a child too young to be prosecuted by the State? While they still believe in Santa Claus? Before they learn to read or write their name? Before they get their first adult tooth? In Maine, the answer is: never.

Unlike Maine, the majority of states have established minimum ages of jurisdiction for their juvenile courts.[1] These states generally respond to children below that age who are accused of offenses through social services and child welfare systems rather than prosecution.[2] Over the past ten years, the number of states with such minimum age statutes has increased significantly, from one-third of states in 2014 to just over half of states as of 2024.[3] This national movement towards a minimum age of jurisdiction is rooted in three core principles that shape the governmental response to children accused of violating the law.

First, because they are developmentally less able to understand the consequences of their actions, young children are less culpable than their older counterparts.[4] Instead, their conduct is more likely to signal unmet behavioral health or social needs[5] that are not adequately addressed through a prosecutorial response. Second, when young children come into contact with the juvenile justice system, it *increases* the likelihood that they will engage in future crime—the opposite of rehabilitation.[6] The younger the child, the more pronounced this effect.[7] Finally, modern juvenile courts have become adversarial and quasi-criminal.[8] Young

1. NAT'L JUV. JUST. NETWORK, BRIEF: CHARTING U.S. MINIMUM AGES OF JURISDICTION, DETENTION, AND COMMITMENT 1 (2023), https://nyjn.org/wp-content/uploads/UPDATED-February-2024_Minimum-Age-Laws-for-Juvenile-Court-Jurisdiction-and-Confinement.pdf. These age standards vary from state to state, from ages seven to thirteen. *Id.*

2. NAT'L GOVERNORS ASS'N, AGE BOUNDARIES IN JUVENILE JUSTICE SYSTEMS 3 (2021), https://www.nga.org/wp-content/uploads/2021/08/Raise-the-Age-Brief_5Aug2021.pdf.

3. *Compare* NAT'L JUV. JUST. NETWORK, *supra* note 1, at 1 (26 states), *with* Elizabeth S. Barnert et al., *Setting a Minimum Age for Juvenile Justice Jurisdiction in California*, 13 INT'L J. PRISONER HEALTH 49, 51 (2017) (18 states).

4. This has been understood since at least the fifteenth century, when the common-law defense of infancy flatly prohibited State prosecution of any child under seven and limited prosecution of children under fourteen. J. ERIC SMITHBURN, CASES AND MATERIALS IN JUVENILE LAW 1 (2d ed. 2014).

5. Destiny G. Tolliver et al., *Addressing Child Mental Health by Creating a National Minimum Age for Juvenile Justice Jurisdiction*, 60 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 1337, 1338 (2021).

6. Barnert et al., *supra* note 3, at 52.

7. *Id.*

8. *See* Travis Watson, *From the Playhouse to the Courthouse: Indiana's Need for a Statutory Minimum Age for Juvenile Delinquency Adjudication*, 53 IND. L. REV. 433, 438, 440–41, 458–59 (2020).

children are developmentally unable to understand or benefit from this system[9] and are extremely unlikely to be competent to stand trial.[10] Children's constitutional rights to due process are violated if they are put on trial or plead to an offense while they are not competent to understand the proceedings against them.[11] These principles, and the interrelated developmental and public safety considerations that they express, have led states across the country to conclude that young children are simply inappropriate targets for prosecution.

In light of these considerations, Maine should join its neighbors in New England[12] and across the country by adopting a minimum age of jurisdiction for its juvenile courts. Maine should set this age at fourteen, as recommended by the American Academy of Child and Adolescent Psychiatry,[13] the American Bar Association,[14] and the United Nations.[15]

This will, of course, require Maine to develop a new strategy to respond to youth aged thirteen and younger who are accused of offenses. This comes at a challenging but opportune time. Maine is at a turning point. The State's youth-serving systems are in crisis,[16] and Maine just entered a settlement agreement with the United States

9. Blake R. Hills & Cassidy A. Hiné, *Diapers and Detention: Should There Be a Minimum Age Limit for Juvenile Delinquency in Utah?*, 32 UTAH BAR J., Jan.–Feb. 2019, at 24–25.

10. Jay D. Blitzman, *Let's Follow the Science on Late Adolescence*, 37 CRIM. JUST., Fall 2022, at 12, 15.

11. Trying, convicting, or sentencing a defendant who is not legally competent to stand trial violates that defendant's constitutional rights to due process. Haraden v. State, 2011 ME 113, ¶ 7, 32 A.3d 448, 450. A person being prosecuted by the State must also be competent in order to plead guilty to an offense. Godinez v. Moran, 509 U.S. 389, 400 (1993). This is "because incompetence interferes with the person's right to be heard," *Haraden*, 2011 ME 113, ¶ 7, 32 A.3d at 450–51, which is "one of the most fundamental requisites of due process," Schroeder v. City of New York, 371 U.S. 208, 212 (1962). Children, like adults, have a right to due process. *In re* Gault, 387 U.S. 1, 13 (1967) ("[N]either the Fourteenth Amendment nor the Bill of Rights is for adults alone.").

12. Maine is one of only two states in New England without a minimum age of jurisdiction for its juvenile courts. NAT'L JUV. JUST. NETWORK, *supra* note 1, at 4 (Maine and Rhode Island). Maine is one of only three states in the entire country that administers its juvenile justice system through an adult agency—adult corrections—and grants that system jurisdiction over children of any age, including extremely young children. *Juvenile Justice Services*, JUV. JUST. GEOGRAPHY, POL'Y, PRAC. & STAT., http://www.jjgps.org/juvenile-justice-services (last visited Dec. 6, 2024) (showing only ten states—California, Indiana, Kansas, Maine, Minnesota, Montana, North Carolina, North Dakota, South Dakota, and Wisconsin—administer juvenile justice services through adult corrections); NAT'L JUV. JUST. NETWORK, *supra* note 1, at 1 (showing only three of those ten states—Indiana, Maine, and Montana—do not have a minimum age of juvenile court jurisdiction). The vast majority of other states administer their juvenile justice system through some kind of specialized, youth-serving agency: an independent juvenile corrections agency (eighteen states), a family or child welfare agency or division (eleven states), or a broad human services agency (twelve states). *Id.*

13. *Policy Statement on the Jurisdiction of the Juvenile Court System*, AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY (May 2023), https://www.aacap.org/AACAP/Policy_Statements/2023/Policy_Statement_Policy_Statement_Jurisdictio_Juvenile_Court_System.aspx [https://perma.cc/28J9-2HFM].

14. Amanda Robert, *ABA House Addresses Treatment of Children and Youths in Pair of Resolutions*, A.B.A. (Aug. 10, 2021), https://www.abajournal.com/news/article/resolutions-505-and-506-aba-house-addresses-treatment-of-children-and-youth-in-pair-of-resolutions.

15. Tolliver et al., *supra* note 5, at 1337.

16. *See, e.g.*, Callie Ferguson, *'Shame on Us': How Maine Struggles to Handle Troubled Youth*, N.Y. TIMES (Feb 1, 2024), https://www.nytimes.com/2024/02/01/us/maine-prison-juvenile-justice.html;

Department of Justice in which it committed to overhauling its services for vulnerable youth.[17] These challenges are not an obstacle—they are an opportunity to do better by Maine's children, families, and the public. Maine should seize this opportunity to develop the community-based continuum of care that its leaders have long known the State needs.[18] Maine should build that continuum with the capacity to respond to youth below its new minimum age of jurisdiction who are accused of offenses and should refer those youth to the Department of Health and Human Services (DHHS) to connect to that continuum. This will not only better serve Maine's interests in child welfare and public safety, it will also honor the original intention of Maine's Juvenile Code.[19] If Maine persists with its current approach, it will harm youth, decrease public safety, and fail to meet the fundamentally rehabilitative purpose of Maine's Juvenile Code.[20]

I. JUVENILE JUSTICE OVER THE YEARS

Since at least the fifteenth century,[21] the law has recognized that children—even those accused of violating the law—"cannot be viewed simply as miniature adults."[22] The developmental gulf between children and adults justifies applying modified legal approaches and standards to children as a class.[23] The law's understanding of the developmental difference between children and adults, and the degree of departure from adult legal standards in juvenile delinquency proceedings that this difference warrants, has evolved over time to encompass three modern principles that shape the governmental response to children accused of breaking the law. First, youth are less culpable for their actions than adults. Second, youth are more capable of rehabilitation than adults. Third, while these distinctive characteristics of childhood justify treating children differently under the law, children nevertheless have a right to due process in delinquency proceedings, and state law must be

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Randy Billings, *Maine's Child Protection Staff: 'We Work Within a Broken System'*, PORTLAND PRESS HERALD (Nov. 9, 2023), https://www.pressherald.com/2023/11/08/child-protection-staff-we-work-within-a-broken-system.

17. *Governor Mills Announces Settlement of U.S. DOJ Lawsuit*, STATE OF ME. OFF. OF GOVERNOR JANET T. MILLS (Nov. 26, 2024), https://www.maine.gov/governor/mills/news/governor-mills-announces-settlement-us-doj-lawsuit-2024-11-26; *see also* Settlement Agreement, United States v. Maine, No. 1:24-cv-00315-SDN (D. Me. Nov. 26, 2024), https://www.justice.gov/crt/media/1378291/dl. The Department of Justice filed suit in September 2024 alleging that Maine was violating the Americans with Disabilities Act (ADA) by failing to adequately serve vulnerable youth. *See* Complaint at 1, United States v. Maine, No. 1:24-cv-00315-SDN (D. Me. Sept. 9, 2024), https://www.justice.gov/crt/media/1366626/dl; Letter from U.S. Department of Justice, Civil Rights Division, to Governor Janet Mills and Attorney General Aaron Frey (June 22, 2022) [hereinafter DOJ Letter], https://www.justice.gov/d9/press-releases/attachments/2022/06/22/2022.06.22_maine_kids_lof.final_.accessiblepdf_0.pdf.

18. State v. J.R., 2018 ME 117, ¶ 29, 191 A.3d 1157, 1166 (Saufley, C.J., concurring) (noting the "unfortunate gap in services and placements available to Maine's children and youth who . . . have found themselves in trouble with the law").

19. *Infra* Section III.A.1.

20. *See* ME. REV. STAT. tit. 15, § 3002(1)(A)–(F) (2024).

21. SMITHBURN, *supra* note 4, at 1.

22. J.D.B. v. North Carolina, 564 U.S. 261, 274 (2011).

23. *Id.* at 272–74 (establishing a custody analysis for youth that includes consideration of their age when the analysis for adults does not).

sufficient to protect this right. "[N]either the Fourteenth Amendment nor the Bill of Rights is for adults alone."[24]

In alignment with these principles, each state in the United States now has a juvenile justice system, separate from its adult criminal system, that responds to youth suspected of violating the law[25] and must afford those youth due process when doing so.[26] In theory, this separate juvenile system differs from the adult criminal system by focusing on treatment, supervision, and rehabilitation rather than punishment.[27] While adult criminal law seeks to dissuade unlawful behavior by punishing criminal offenders, juvenile law purportedly "disavows punishment" as a means of crime prevention and emphasizes rehabilitation instead.[28] The juvenile justice system has evolved significantly over the years, and its faithfulness to these rehabilitative ideals—both at its inception and throughout its history—is the subject of considerable debate.[29]

The Section below charts the development of a separate justice system for youth in the United States and the ways that system has changed over time. This history spans three eras and illuminates the gradual emergence of the three core principles identified above amidst growing social, legal, and developmental understandings of childhood. This evolution culminates in the modern movement towards minimum ages of jurisdiction in juvenile courts. A growing majority of states across the country have now concluded that these principles, considered in light of the adversarial and punitive nature of the modern juvenile justice system,[30] show that prosecuting young children simply does not serve the child or the public. In response, these states have adopted statutory minimum ages of jurisdiction[31] that establish a minimum age boundary on the State's ability to prosecute a child—a boundary that predated,[32] and disappeared during,[33] the development of a separate juvenile justice system.

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24. *In re* Gault, 387 U.S. 1, 13 (1967).

25. *See, e.g.*, Watson, *supra* note 8, at 436–440 (charting development of this system).

26. *In re Gault*, 387 U.S. at 28 ("In view of [the consequences of juvenile delinquency proceedings], it would be extraordinary if our Constitution did not require the procedural regularity and the exercise of care implied in the phrase 'due process.' Under our Constitution, the condition of being a boy does not justify a kangaroo court.").

27. Barbara Margaret Farrell, *Pennsylvania's Treatment of Children who Commit Murder: Criminal Punishment Has Not Replaced* Parens Patriae, 98 DICK. L. REV. 739, 740 (1994).

28. *Id.*

29. *See, e.g.*, ASHLEY NELLIS, A RETURN TO JUSTICE: RETHINKING OUR APPROACH TO JUVENILES IN THE SYSTEM 19 (2015) (stating the juvenile justice system's vision of reform and rehabilitation was never intended for poor, nonwhite youth); Farrell, *supra* note 27, at 759 (noting that, post-*Gault*, juvenile systems in many jurisdictions have moved away from a focus on treatment and rehabilitation in favor of emphasizing punishment).

30. *See* Watson, *supra* note 8, at 438, 440–41, 458–59; *see also In re Gault*, 387 U.S. at 36.

31. *See, e.g.*, Watson, *supra* note 8, at 458–59 ("Courts and legislators often forget that juvenile courts now resemble adult courts more than ever, and most juvenile courts do not have a lower age limit. Indiana should join the twenty-one other states as well as other countries by enacting legislation to further protect children from the dangers of the juvenile justice system.").

32. *See* SMITHBURN, *supra* note 4, at 1 (stating that the common law defense of infancy was recognized as early as the fifteenth century and conclusively excluded children under seven from prosecution by the State).

33. Farrell, *supra* note 27, at 742.

A. Children's Reduced Culpability: The Common Law Era (pre-1899)

The "common law era" defined juvenile law in the United States until the country's first juvenile court was established in 1899.[34] Throughout this era, children accused of offenses were treated differently from adults based on the principle that children are less culpable for their actions. This different treatment manifested as the defense of infancy, which shielded children who were considered too young to be criminally culpable from prosecution.[35] This defense, also known as the "Rule of Sevens," [36] limited the State's capacity to prosecute children under the age of fourteen and was a staple of the common law since at least fifteenth-century England.[37]

Under the infancy defense, children under the age of seven were "conclusively presumed incapable of forming criminal intent" and could not be found guilty of crimes.[38] This presumed lack of criminal culpability was irrebuttable.[39] Children aged seven through thirteen were still presumed incapable of forming criminal intent, but this presumption could be rebutted by showing that the particular child knew the difference between right and wrong[40] and understood the wrongfulness of their acts.[41] Children fourteen and older were presumed capable of forming criminal intent and were punished as if they were adults, including by death.[42] The American Colonies largely inherited this common law approach from England.[43] While there

34. Emily R. Mowry, *When Big Brother Becomes "Big Father": Examining the Continued Use of* Parens Patriae *in State Juvenile Delinquency Proceedings*, 124 DICK. L. REV. 449, 504 (2020); NELLIS, *supra* note 29, at 7, 11–12.

35. SMITHBURN, *supra* note 4, at 1.

36. Christopher M. Northrop, Jill M. Ward, Jonathan J. Ruterbories & Jess N. Mizzi, *What's My Age Again?: Adolescent Development and the Case for Expanding Original Juvenile Court Jurisdiction and Investing in Alternatives for Emerging Adults Involved in Maine's Justice System*, 74 ME. L. REV. 243, 247 (2022).

37. SMITHBURN, *supra* note 4, at 1.

38. *Id.*

39. Farrell, *supra* note 27, at 741.

40. SMITHBURN, *supra* note 4, at 1.

41. Farrell, *supra* note 27, at 741.

42. SMITHBURN, *supra* note 4, at 1.

43. Northrop et al., *supra* note 36, at 247 (identifying "three general sources of ethos" that created the foundation of American law: "(1) the importation of English folk-law or common law; (2) the 'norms and practices that developed on this side of the Atlantic . . . that had no English counterpart'; and (3) the general norms and practices that were developed because of who the colonists were, namely Puritans"). The American approach had some harsh modifications from the English common law. *Id.* Notably, the Massachusetts Bay Colony abandoned the irrebuttable exemption from criminal culpability for children under seven, SMITHBURN, *supra* note 4, at 1, though the defense of infancy remained broadly available in the United States until the development of a separate juvenile justice system in the twentieth century, *see* RESTATEMENT OF CHILD. & L. § 13.10 (AM. L. INST., Tentative Draft No. 4, 2022) ("Before the creation of juvenile courts, a youth charged with a crime was adjudicated in criminal court. In criminal court, a youth was entitled to an infancy defense relieving her of responsibility for a crime committed before reaching the age of seven . . . . After juvenile courts were established, a youth within the jurisdiction of the juvenile court who committed an act that would be considered a crime if committed by an adult was adjudicated in the juvenile court instead of the criminal court. A finding of delinquency in juvenile court was not considered equivalent to a criminal conviction, and the declared aim of juvenile court intervention was rehabilitative rather than punitive. Therefore, the youth's alleged incompetence for adjudication did not bar a delinquency adjudication, and the infancy defense was not available to a youth in a delinquency

were fewer death penalty offenses in the Colonies than in England, American children who did not successfully assert an infancy defense could be put to death for actions that were not criminal at all for adults, such as "curs[ing] or smit[ing] their natural father or mother" or failing to obey their parents.[44]

The infancy defense recognized and expressed the first of the three modern principles of juvenile law: that age impacts, and even negates, children's capacity for criminal culpability. Until the reform movement of the nineteenth century, however, there was no legal recognition of the second of these principles: that children's age also impacts their capacity for rehabilitation.[45] The common law era's exclusive focus on culpability created an all-or-nothing approach to children suspected of violating the law.[46] Essentially, a child could either be found too young to be criminally culpable at all, or could be found criminally culpable to the same extent as an adult and punished as if they were an adult.[47]

The idea that children have significant rehabilitative potential and are more amenable to treatment than adults emerged in force during the nineteenth century movement to reform the juvenile justice system.[48] This reform movement was particularly concerned with the practice of incarcerating children alongside convicted adults and the presumed harmful influence adult criminal offenders had on incarcerated youth.[49] Accordingly, reformers sought to remove youth from adult prisons and jails by creating separate facilities for youth that purportedly focused on rehabilitation.[50] Their efforts led to the establishment of youth-only Houses of Refuge in many states; the Houses emphasized rehabilitation[51] and were seen as non-punitive, educational institutions.[52] Because they were "not a prison, but a school," with "reformation, and not punishment," as their goal, courts began to uphold the detention of children in such institutions—even against the wishes of their parents—as a function of the State's *parens patriae* power[53] to protect children.[54]

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proceeding."); *see also* Farrell, *supra* note 27, at 742 ("The common-law defense of infancy met its demise with legislative recognition that children should be handled outside the jurisdiction of criminal courts.").

44. SMITHBURN, *supra* note 4, at 2–3. Noncriminal acts that are considered violations of the law for children but not adults, such as truancy and running away, are referred to as "status offenses." *See* STATUS OFFENDERS, OFF. JUV. JUST. & DELINQ. PREVENTION 1 (2015), https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/status_offenders.pdf.

45. *See* SMITHBURN, *supra* note 4, at 5.

46. *See* Farrell, *supra* note 27, at 742.

47. *See id.*

48. SMITHBURN, *supra* note 4, at 5.

49. *Id.*

50. *Id.*

51. *Id.*

52. *See Ex parte* Crouse, 4 Whart. 9, 11 (Pa. 1839) ("The House of Refuge is not a prison, but a school.").

53. This is the power the State exercises when it acts in its "capacity as provider of protection to those unable to care for themselves." *Parens Patriae*, BLACK'S LAW DICTIONARY (12th ed. 2024).

54. *Ex parte Crouse*, 4 Whart. at 10–11 (upholding the detention of a child in a House of Refuge under the State's *parens patriae* power against the wishes of the child's parent when that parent is "incapable or unwilling to exercise the proper care and discipline over such incorrigible or vicious infant").

The reform movement of the nineteenth century was the beginning of the end of the common law era, which would soon give way to the *parens patriae* era with the establishment of the nation's first juvenile court.[55]

B. Children's Rehabilitative Potential: The Parens Patriae *Era (1899 – 1967)*

The *parens patriae* era dawned amidst an evolving legal understanding of the first two of the three modern core principles of juvenile justice: children's diminished culpability, reflected for centuries through the infancy defense,[56] and a growing focus on children's increased capacity for rehabilitation, as emphasized throughout the nineteenth century reform movement.[57] The *parens patriae* era began in earnest in 1899, when the nation's first juvenile court was established in Chicago.[58] Change was rapid: by 1917, all but three states had separate juvenile courts.[59] These emerging juvenile systems justified treating children differently than adults based on (i) children's diminished culpability for criminal acts and (ii) the State's interest in their successful rehabilitation.[60]

The newly-established juvenile courts were given significant authority, control, and discretion to intervene in the lives of children in the name of rehabilitation.[61] The key question before juvenile courts was not whether a child was guilty of a crime, but whether the State and the child would benefit from the child being taken into state custody for an indeterminate period of time.[62] Proceedings were informal and private,[63] with judges analogized to doctors who worked to cure delinquent children.[64] Determinations of guilt or innocence were therefore deemed irrelevant.[65] So too were distinctions between criminal and noncriminal acts, and definitions of delinquency and "pre-delinquent behavior" were correspondingly broad, including ill-defined violations such as "vicious or immoral behavior," "incorrigibility," and "profane and indecent language."[66]

Unsurprisingly, this new framework for juvenile justice sounded the death knell for the common law defense of infancy, which was abandoned as unnecessary and even counter-productive.[67] The infancy defense was rooted in children's lack of

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55. NELLIS, *supra* note 29, at 11.

56. *See* Watson, *supra* note 8, at 436.

57. *See* SMITHBURN, *supra* note 4, at 5.

58. NELLIS, *supra* note 29, at 11.

59. *Id.* at 15. Maine was one of the holdout states; its first juvenile court was not established until 1931. H.P. 1425, 85th Legis. (Me. 1931) ("An Act to Extend the Jurisdiction of Municipal Courts in Certain Cases.").

60. *See* NELLIS, *supra* note 29, at 11.

61. *See id.* at 15.

62. *Id.* at 14.

63. *Id.* at 12–13.

64. *Id.* at 13–14.

65. *Id.* at 14.

66. *Id.* at 13.

67. *See* SAMUEL M. DAVIS, RIGHTS OF JUVENILES § 2.2 (2024 ed.) (citing the Florida Supreme Court's conclusion in the 1976 case *State v. D.H.* that infancy is not a defense in juvenile proceedings because "the defense was allowed at common law to protect children from the harshness of the criminal law, whereas today the juvenile court itself functions as a protective agency," and therefore the defense is

criminal culpability—and, at least ostensibly, youth were no longer being adjudicated in a *criminal* system.[68] Instead, youth were receiving assistance and guidance.[69] It was natural, therefore, to permit the State to prosecute—and thereby rehabilitate—a child of any age.[70]

However, the gap between theory and reality grew increasingly evident as juvenile courts emerged across the country and "fell far short of their lofty ideals."[71] Statutory definitions of offenses were "vague and unsystematic," and courts overwhelmingly heard prosecutions of children from poor, immigrant families for trivial offenses.[72] When a youth was found delinquent, institutionalization was the primary response, and youth were incarcerated at high rates, often for minor offenses.[73] Despite their branding as rehabilitative settings, the Houses of Refuge and reform schools that followed were in reality highly punitive institutions where abuse and neglect ran rampant.[74] These institutions were only available to youth deemed capable of rehabilitation, and many children—especially Black children—were considered irredeemable and continued to be confined in adult jails.[75]

The *parens patriae* era culminated in a system where, despite the law's recognition that youth were less culpable and more amenable to rehabilitation than adults, children were nevertheless sentenced to incarceration in punitive settings[76] by a court acting with broad discretion[77] for offenses that were trivial and often not even criminal in the first place.[78] All of this was carried out without the protections of due process[79] or the defense of infancy.[80] The country was headed for a reckoning.

*C. Children's Rights to Due Process: The Post-*Gault *Era (1967 – present)*

The third modern principle of juvenile justice arrived with a jolt in 1967, when the United States Supreme Court, in its landmark decision *In re Gault*,[81] recognized the quasi-criminal, punitive,[82] and adversarial nature of modern juvenile

not only no longer necessary, but is also counterproductive, because "the rehabilitative purpose of the juvenile court would be thwarted if the defense could be raised by a child in need of treatment").

68. *See* Farrell, *supra* note 27, at 740, 742 (outlining the differences between "juvenile law" and "criminal law" and noting that the "common-law defense of infancy met its demise with legislative recognition that children should be handled outside the jurisdiction of criminal courts").

69. NELLIS, *supra* note 29, at 13.

70. RESTATEMENT OF CHILD. & L. § 13.10 (AM. L. INST., Tentative Draft No. 4, 2022).

71. NELLIS, *supra* note 29, at 15.

72. *Id.* at 15–16 (quoting John R. Sutton, *The Juvenile Court and Social Welfare: Dynamics of Progressive Reform*, 19 LAW & SOC'Y REV. 107, 115 (1985)).

73. *Id.* at 16.

74. *Id.* at 9–10.

75. *Id.* at 10.

76. *See id.*

77. *See id.* at 15.

78. *Id.* at 13.

79. *Id.* at 14.

80. Watson, *supra* note 8, at 437.

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

82. *Id.* at 36.

proceedings[83] and announced, as a constitutional rule, that youth have a right to due process in such proceedings.[84] The country has been in the post-*Gault* era ever since.[85]

The post-*Gault* era represents the confluence of the three modern principles of juvenile justice. In addition to *Gault*'s broad mandate to afford children due process protections in delinquency proceedings, the Supreme Court has used modern developmental science to affirm, in a trio of cases, the law's longstanding recognition that children are less culpable for their actions and more capable of rehabilitation than adults.[86] Despite this continuing recognition of children's diminished culpability and enhanced capacity for rehabilitation, the juvenile justice system has nevertheless shifted away from the informal, rehabilitation-focused proceedings of the *parens patriae* era and towards a "more adversarial system focused on due process and punishment."[87]

This is the context in which the national movement towards a minimum age of jurisdiction has bloomed. Despite the ongoing legal understanding that children are less culpable than adults,[88] they are now subjected to increasingly punitive proceedings[89] that are analogous to adult criminal prosecutions.[90] Because the common law defense of infancy remains unavailable,[91] a child of any age can be prosecuted in this system unless the state has adopted a minimum age of jurisdiction[92]—even if that child would have been considered too young to prosecute in the *fifteenth century*. At the same time, modern research has shown that

83. Some scholars argue that *Gault* is responsible for shifting juvenile proceedings towards a more criminal and adversarial model. NELLIS, *supra* note 29, at 32; *see also* Farrell, *supra* note 27, at 759. Others recognize that *Gault* reflected and responded to, rather than created, the quasi-criminal nature of juvenile proceedings. *See, e.g.*, Watson, *supra* note 8, at 438 ("Public concern regarding the juvenile courts' ability to act fairly began to grow in the 1950s because juvenile judges acted with a high degree of discretion . . . . The increased amount of mistreatment of children in the juvenile justice system also became a prominent public concern at this time. In response to this concern, the United States Supreme Court decided a series of juvenile cases in the 1960s that recognized the shift in the juvenile justice system from the original parens patriae system to a system focused on punishment.").

84. *In re Gault*, 387 U.S. at 36 (noting that juvenile delinquency proceedings, "where the issue is whether the child will be found 'delinquent' and subjected to the loss of his liberty for years," are "proceedings *against* [the child]" that are "comparable in seriousness to a felony prosecution") (emphasis added); *see* Mowry, *supra* note 34, at 504–05; *see also* Watson, *supra* note 8, at 436.

85. Mowry, *supra* note 34, at 504–05.

86. Roper v. Simmons, 543 U.S. 551, 561, 570 (2005) (recognizing that, due to their age, children's conduct is "not as morally reprehensible as that of an adult" and that, because their identities are still developing and in flux, it is less likely that their behavior is evidence of "irretrievably depraved character"); Graham v. Florida, 560 U.S. 48, 68 (2010) (quoting and building upon the reasoning in *Roper*); Miller v. Alabama, 567 U.S. 460, 466–67 (2012) (quoting *Roper* and *Graham*).

87. Watson, *supra* note 8, at 436.

88. *Roper*, 543 U.S. at 561, 570; *Graham*, 560 U.S. at 68; *Miller*, 567 U.S. at 466–67.

89. *See* Watson, *supra* note 8, at 436.

90. *See In re* Gault, 387 U.S. 1, 36–37 (1967).

91. Farrell, *supra* note 27, at 742.

92. *See, e.g.*, Watson, *supra* note 8, at 433 (urging Indiana to adopt a minimum age of jurisdiction because without one, "a child under the age of eighteen, no matter how young . . . may be subject to the juvenile justice system"); Hills & Hiné, *supra* note 9, at 24 (urging Utah to adopt a minimum age of jurisdiction because "it is theoretically possible for a prosecutor to file a petition in juvenile court alleging that a child as young as four, two, or even a few months has engaged in delinquent conduct").

prosecuting young children not only fails to rehabilitate them, it actually increases the likelihood that they will engage in future criminal behavior, acting in direct opposition to the juvenile system's ostensible focus on rehabilitation.[93] Finally, children's due process rights in delinquency proceedings include the right to be heard[94]—which requires they be competent to stand trial,[95] and young children "lack the cognitive maturity to comprehend or benefit from formal juvenile justice processing."[96] Prosecuting children who are too young to understand delinquency proceedings thus violates their due process rights under *Gault.*[97]

This modern interaction between the three principles of juvenile justice has led state legislatures across the country to adopt minimum ages of jurisdiction for their juvenile courts.[98]

II. THE NATIONAL MOVEMENT TOWARDS A MINIMUM AGE OF JURISDICTION

As of 2024, over half the states in the country have established a minimum age of jurisdiction for their juvenile courts.[99] In 2014, only eighteen states had such legislation.[100] This national movement towards a minimum age of jurisdiction—from one-third of states to over half of states in just ten years—is informed by the three modern principles of juvenile justice and rooted in interrelated considerations of brain development, youth and public safety, and equity.

A. Policy Justifications

Advocates for minimum ages of jurisdiction point to three core groupings of policy considerations to justify minimum age statutes.

1. Young Children are Less Culpable and Less Competent to Stand Trial

The first set of policy justifications set forth by advocates for minimum age statutes invokes children's lack of culpability and their right to due process. Because

93. Barnert et al., *supra* note 3, at 52.

94. *In re Gault*, 387 U.S. at 30–31.

95. State v. Gerrier, 2018 ME 160, ¶ 7, 197 A.3d 1083, 1085–86 (stating that in order to be heard, a person "must be 'capable of understanding the nature and object of the charges and proceedings against him, [and] of comprehending his own condition in reference thereto'") (quoting Thursby v. State, 223 A.2d 61, 66 (Me. 1966)).

96. Hills & Hiné, *supra* note 9, at 25.

97. *See In re* Gault, 387 U.S. at 30–31; *Gerrier*, 2018 ME 160, ¶ 7, 197 A.3d at 1085–86.

98. *See, e.g.*, Brianna Hill, *Legislative Update: Massachusetts Raises Minimum Age of Criminal Responsibility*, 39 CHILD.'S LEGAL RTS. J. 168, 168–170 (2019) (reporting on a 2018 bill that raised Massachusetts' minimum age of jurisdiction from seven to twelve because (i) "if a child enters the system at a young age, they will be less likely to break free of the system as they approach adulthood," (ii) juvenile system processing at a young age "can cause substantial harm and can damage a child's development," and (iii) "children under the age of 12 may have difficulty comprehending the court process," among other reasons); S.B. 439, 2017–2018 Leg., Reg. Sess. (Cal. 2018), CAL. WELF. & INST. CODE § 601 (West 2024) (establishing a minimum age of jurisdiction of twelve in California); Hills & Hiné, *supra* note 9, at 25 (urging Utah to adopt a minimum age of jurisdiction because young children "lack the cognitive maturity to comprehend or benefit from formal juvenile justice processing").

99. NAT'L JUV. JUST. NETWORK, *supra* note 1, at 1 (26 states).

100. Barnert et al., *supra* note 3, at 49.

their brains are still developing, young children lack mental capacity, making them less able to appreciate the consequences of their actions. They are therefore less culpable for their conduct and less competent to stand trial than older youth. Subjecting these children to an increasingly punitive juvenile justice system where their liberty is on the line is inappropriate in light of their relative lack of blameworthiness and decreased ability to appreciate the implications of court proceedings.

There has been a "dramatic change in the philosophy of the juvenile justice system" since the first juvenile courts were established in the United States.[101] The once-informal, rehabilitation-based juvenile system has yielded to an increasingly adversarial approach that instead emphasizes punishment.[102] This shift "blurr[ed] the lines between adult and juvenile courts" and led states to "offer protections for young children by not allowing them to be subject to the juvenile justice system's jurisdiction."[103] This change in juvenile courts has been well-recognized by legal associations including the American Bar Association and the American Law Institute, both of which have urged states to adopt minimum ages of jurisdiction.[104]

The stakes in modern juvenile delinquency proceedings are high: juvenile courts frequently deprive children of their liberty.[105] This deprivation is particularly striking given that youth can face *longer* periods of incarceration than the maximum sentence permitted for adults convicted of the same conduct.[106] In states like Maine that both lack a minimum age of jurisdiction and authorize children's incarceration for an indeterminate period until they turn eighteen,[107] a nine-year-old could be adjudicated of an offense, incarcerated until they turn eighteen, and—upon release—have spent *half of their life* incarcerated, even if the maximum sentence for an adult convicted of the same conduct is only five years.[108]

States adopting minimum ages of jurisdiction emphasize that these extraordinarily high stakes and the increasingly punitive focus of juvenile proceedings make young children inappropriate targets for these proceedings

101. Watson, *supra* note 8, at 459.

102. *Id.* at 438, 440.

103. *Id.* at 440–41.

104. Robert, *supra* note 14 (urging states to adopt a minimum age of jurisdiction of fourteen); RESTATEMENT OF CHILD. & L. § 13.10 (AM. L. INST., Tentative Draft No. 4, 2022) (recognizing that, in contrast to juvenile courts' historical "rehabilitative rather than punitive" aim, the "modern purposes of delinquency adjudication include holding youth accountable for wrongdoing" and "formal state intervention may increase the likelihood of subsequent offending rather than reduce it"; urging a minimum age of jurisdiction of at least ten; and emphasizing that "proceedings in the juvenile justice system should be regarded as a last resort, especially for youth younger than 14").

105. RESTATEMENT OF CHILD. & L. § 13.10 (AM. L. INST., Tentative Draft No. 4, 2022).

106. State v. J.R., 2018 ME 117, ¶¶ 1, 23, 191 A.3d 1157, 1159, 1165 (recognizing that a child's indeterminate commitment to a juvenile facility up until age eighteen is a longer sentence than the maximum available for an adult convicted of the same conduct, and noting that the "goals of rehabilitation and treatment" in the juvenile system can "sometimes 'justify longer indeterminate sentences for juveniles'").

107. ME. REV. STAT. tit. 15, § 3316(2) (2024) (outlining standards for indeterminate commitments).

108. *See J.R.*, 2018 ME 117, ¶¶ 1, 23, 191 A.3d at 1159, 1165; ME. REV. STAT. tit. 17-A, § 1604 (2024) (defining a maximum of five years of imprisonment for class C crimes).

because they are less culpable for their conduct and less competent to stand trial than adults or older youth.[109]

In terms of culpability, modern brain science supports the "long-standing recognition that whole categories of youth may not even be able to form criminal intent" and aligns with the common law defense of infancy, which recognized that children under fourteen presumptively lack criminal capacity.[110] Advocates for minimum ages of jurisdiction urge that these statutes are necessary to ensure that only children who have the developmental capacity to recognize right from wrong are punished for offenses.[111]

In terms of competence, young children "lack the cognitive maturity to comprehend or benefit from formal juvenile justice processing."[112] Children who cannot comprehend the juvenile proceedings are not competent to stand trial.[113] Subjecting such children to formal juvenile court proceedings and depriving them of their liberty based on the results of those proceedings violates their right to due process.[114] Minimum age statutes guard against this constitutional violation by "reflect[ing] the realities of maturational competency—most youth below the age of 14 . . . are not competent to stand trial."[115]

2. Prosecuting Young Children Does Not Rehabilitate Them

The second grouping of policy considerations set forth by states adopting minimum ages of jurisdiction invokes children's capacity for rehabilitation and the State's interest in that rehabilitation. Prosecuting young children not only fails to rehabilitate them—it actually *increases* the odds they will engage in future criminal activity. The vast majority of young children who come into contact with the juvenile justice system have already experienced trauma, and court involvement furthers rather than mitigates these harms. Prosecuting young children therefore does not serve the State's interests in youth rehabilitation or public safety.

A juvenile justice system without a minimum age of jurisdiction takes children who are *not* a threat to public safety and, through formal adjudication, transforms them *into* a threat to public safety by making those children more likely to commit future crime.[116] States across the country that have adopted minimum ages of jurisdiction explicitly recognize that young children's rehabilitation is better achieved through non-prosecutorial responses.[117] For example, when considering the impact of legislation proposing a minimum age of thirteen, Washington State's

109. *See, e.g.*, Hills & Hiné, *supra* note 9, at 25.

110. Barnert et al., *supra* note 3, at 53; *see also* Hills & Hiné, *supra* note 9, at 24.

111. Mowry, *supra* note 34, at 528.

112. Hills & Hiné, *supra* note 9, at 25.

113. Barnert et al., *supra* note 3, at 53 ("[Competence] requires a youth to have a rational and factual understanding of the proceedings against [them] and be able to consult with [their] lawyer with a reasonable degree of rational understanding.").

114. *See id.* (observing that competence to stand trial is "perhaps one of the most basic and bedrock components of due-process safeguards in the justice system").

115. Blitzman, *supra* note 10, at 12.

116. Barnert et al., *supra* note 3, at 52.

117. *See, e.g.*, WASH. STATE BD. HEALTH, HEALTH IMPACT REVIEW OF S-6720.1 CONCERNING THE JURISDICTION OF JUVENILE COURT 2 (2021).

Board of Health found "very strong evidence that changing the procedural jurisdiction of juvenile court to 13 through 19 years of age will decrease juvenile recidivism."[118]

Rehabilitation is not simply a benevolent gesture by the State—it is the mechanism through which the State protects the public.[119] The State has intersecting interests in youth rehabilitation and public safety, and prosecuting young children fails to vindicate these interests. "Decades of research, including rigorous systematic reviews, have shown that formally processing youth in the juvenile system does not result in preventing future crime, but instead increases the likelihood of future criminal behavior."[120] The earlier in their life that a child comes into contact with the juvenile justice system, the more significant this impact.[121]

The anti-rehabilitative effect of prosecution on young children, and the resulting negative impact on public safety, is inextricably intertwined with the harms youth experience at the hands of the juvenile justice system. Youth who enter the juvenile justice system are exceedingly vulnerable.[122] Up to ninety percent have a history of trauma, and seventy percent meet the criteria for a mental health disorder.[123] Detention and confinement of these youth is likely contrary to their best interests,[124] and not only because formal processing of children increases their risk of future delinquency[125]—youth who come into the custody of the justice system are four times as likely to commit suicide as those who do not.[126] The harm to youth persists even when they are diverted from the system,[127] even if they are not detained,[128] and even if they are eventually found not competent to stand trial.[129]

The fact that formal justice system processing transforms young children into a greater public safety risk is particularly ironic when compared with the behaviors that bring young children into the justice system in the first place. Most crimes committed by young children are non-violent and do not pose significant public safety threats.[130] Even accounting for increased violence in schools, including school shootings, "[b]y far the great majority of crimes young children commit are very minor and rarely threaten public safety or endanger lives."[131] Moreover, when young

118. *Id.*

119. NAT'L DIST. ATT'Y ASS'N, NATIONAL PROSECUTION STANDARDS § 11, at 5 (2016), https://ndaa.org/wp-content/uploads/NDAA-Juvenile-Prosecution-Standards-Revised-11-12-2016-Final.pdf.

120. Barnert et al., *supra* note 3, at 52.

121. *Id.*

122. *Id.* at 4.

123. Watson, *supra* note 8, at 447.

124. Barnert et al., *supra* note 3, at 50.

125. *Id.* at 5.

126. Watson, *supra* note 8, at 447.

127. *See In re* Gault, 387 U.S. 1, 46 (1967) (recognizing the harms of interrogation alone, in which the "overpowering presence of the law . . . [may] crush" a "lad of tender years").

128. Watson, *supra* note 8, at 457 (noting that establishing a minimum age of detention "still leaves young children in the potential dangers of the juvenile justice system even if they avoid detention").

129. *Id.* at 455 ("By the time the child is able to assert a defense [of lack of competence], the child may have already been through several stages of the juvenile justice system, and often, the harm has already been done.").

130. *Id.* at 446.

131. *Id.*

children engage in criminalized behavior, those actions may "signal unmet behavioral health or social needs, such as food or housing insecurity."[132] Youth can be adjudicated in juvenile court for a broad range of behaviors, including "status offenses," broadly defined as behaviors that are criminalized for youth but not adults, such as truancy or running away from home.[133]

3. Minimum Age Statutes Protect Children from the Unpredictable Impact of Discretion

The third and final set of policy considerations supporting minimum ages of jurisdiction focuses on children's right to due process amidst the increasingly punitive nature of juvenile courts. Without minimum age statutes, the State can subject a child of any age—including one too young to understand what is happening—to proceedings that have extraordinary implications for their liberty. This leaves the questions of whether a young child is prosecuted,[134] whether they are found competent to stand trial,[135] and what kind of sentence they receive[136] entirely within the discretion of police, prosecutors, and judges.

As the Supreme Court recognized in *Gault*, "unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure."[137] Advocates for minimum ages of jurisdiction emphasize that the more discretion is conferred upon individual actors, the higher the odds that such discretion will be abused.[138] This discretion means that community pressures, personal and political concerns, and a child's race can all inappropriately impact the outcome of their engagement with the juvenile justice system.[139] Minimum age statutes guard against the racial[140] and geographic[141] inconsistencies that result from the exercise of this discretion,[142] and thereby "protect young children from the unpredictability of the juvenile justice system."[143]

This discretion is of particular concern in light of children's due process right not to be tried or plead to an offense unless they are legally competent[144] and the significant likelihood that children under fourteen are not competent to stand trial.[145] Minimum age advocates emphasize that the biases of individual actors create an

132. Tolliver et al., *supra* note 5, at 1338.

133. OFF. JUV. JUST. & DELINQ. PREVENTION, *supra* note 44, at 1.

134. Watson, *supra* note 8, at 452 (noting a "lack of uniformity for youth being arrested or charged with a crime").

135. Tolliver et al., *supra* note 5, at 1337 (reflecting that system actors, broadly, are more likely to consider Black children competent to stand trial).

136. Watson, *supra* note 8, at 452–53 (noting disparate access to programs available to Indiana youth from county to county and the resulting lack of uniformity regarding the options available to adjudicated youth).

137. *In re* Gault, 387 U.S. 1, 18 (1967).

138. Watson, *supra* note 8, at 452.

139. *Id.*

140. Tolliver et al., *supra* note 5, at 1337.

141. Watson, *supra* note 8, at 453.

142. *Id.* at 452.

143. *Id.* at 453.

144. *See supra* text accompanying note 11.

145. Blitzman, *supra* note 10, at 15.

unacceptable likelihood that young children who are not *in fact* competent to stand trial will nevertheless be *found* competent to stand trial and therefore subjected to prosecution.[146]

In juvenile justice systems across the country, including Maine's, discretion is vested in Juvenile Community Corrections Officers, prosecutors, and judges. These same actors—law enforcement officials, prosecutors, and judges—"tend to believe that Black children have more capacity to willfully commit a crime and are competent to stand trial."[147] This "adultification" of Black youth—the cognitive bias towards believing Black children are more culpable and more competent to stand trial than white children—"results in inequities at every stage of the carceral continuum."[148] In 2018, one in three prosecutions of children in the United States were of Black children, a wildly disproportionate rate of prosecution considering that Black children only account for one in fifteen children in the United States.[149]

Given that young children who engage in criminalized activities may do so because of unmet behavioral or basic needs,[150] it is particularly relevant that, compared to their white counterparts, Black children "have higher rates of unmet behavioral health needs" and experience "residential segregation, underresourced neighborhoods, concentrated poverty, and community violence."[151] Because the actors who exercise the most discretion in the juvenile justice system are more likely to view young Black children as appropriate targets for prosecution as compared to their white counterparts, Black children in states without a minimum age of jurisdiction are at higher risk of being prosecuted for behaviors that signal their own unmet needs.[152] Advocates therefore see minimum age laws as a key strategy to protect children from the "criminalization of childhood and race."[153]

Juvenile justice system outcomes also diverge along lines of class and geography. "The majority of children in the juvenile justice system come from poor families where poverty is prevalent."[154] When those children also live in less-resourced parts of a state, they face unpredictable and inconsistent outcomes compared to youth from families or areas that have more resources.[155] In Indiana, for example, advocates for a minimum age of jurisdiction emphasized that the state's juvenile justice system lacked uniformity across counties in terms of the programs available to youth.[156] When diversionary programs are available in some counties and not others, children experience disparate outcomes based on their county of

146. *See* Tolliver et al., *supra* note 5, at 1337.
147. *Id.*
148. *Id.*
149. *Id.*
150. *Id.* at 1338.
151. *Id.* at 1337.
152. *See id.*
153. *Id.* at 1338.
154. Watson, *supra* note 8, at 449.
155. *See id.* at 449.
156. *Id.* at 453.

residence,[157] a type of "justice by geography."[158] A minimum age of jurisdiction achieves greater uniformity and protects children from these inconsistent outcomes.[159]

These disparities along racial and geographic lines are not surprising in light of the racism and classism that has undergirded the juvenile justice system since its inception. The system was "designed . . . to discriminate—to Americanize immigrant children, to control the poor, and to provide a means with which to distinguish between 'our children' and 'other people's children'—an orientation that persists today."[160] From the beginning, officials responsible for identifying children who needed the "benevolence"[161] of the juvenile justice system "focused on low-income people of color."[162]

B. Types of Minimum Age Statutes

In light of these policy considerations, just over half of the states in the country have now adopted minimum ages of jurisdiction for their juvenile courts.[163] These statutes generally follow one of two approaches: (i) bright-line minimum age statutes, or (ii) minimum age statutes with offense-based exceptions.

1. Bright-Line Minimum Age

Nearly three-quarters of states with minimum ages of jurisdiction follow some variation of a "bright-line"[164] approach, which establishes an age below which children absolutely cannot be prosecuted, without exception.[165] Most states in this grouping follow a pure bright-line approach wherein the minimum age of jurisdiction is the same irrespective of offense.[166] This is the best fit for the culpability and due process-based policy justifications for a minimum age of jurisdiction: a child who lacks the requisite mental capacity to be culpable for their behavior or competent to stand trial continues to lack that capacity regardless of the underlying charge. Under this type of bright-line approach, age is the only determining factor in the juvenile

157. *See id.* at 452–53.

158. *Justice by Geography*, CITIZENS FOR JUV. JUST., https://www.cfjj.org/justice-by-geography [https://perma.cc/WSW8-NBW7] (last visited Dec. 6, 2024) (defining justice by geography as "the differential application of justice policies and practices across a state or region").

159. Watson, *supra* note 8, at 453.

160. NELLIS, *supra* note 29, at 18.

161. *Id.* at 19.

162. *Id.* at 17.

163. NAT'L JUV. JUST. NETWORK, *supra* note 1, at 1.

164. A bright-line rule is "[a] legal rule of decision that tends to resolve issues, esp[ecially] ambiguities, simply and straightforwardly, sometimes sacrificing equity for certainty." *Rule*, BLACK'S LAW DICTIONARY (12th ed. 2024). As used in this Comment, a bright-line standard is one that establishes a minimum age of jurisdiction as a *per se* matter and does not allow prosecution of children below that age regardless of any specific factual findings related to that particular child.

165. NAT'L JUV. JUST. NETWORK, *supra* note 1, at 4 (nineteen of the twenty-six states with minimum ages of jurisdiction follow this approach: Arizona, Colorado, Connecticut, Kansas, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Nebraska, Nevada, New York, North Carolina, North Dakota, Pennsylvania, South Dakota, Texas, Wisconsin, and Washington).

166. *Id.* (Arizona, Connecticut, Colorado, Kansas, Louisiana, Massachusetts, Minnesota, Mississippi, Nebraska, North Dakota, South Dakota, Pennsylvania, Texas, and Wisconsin).

court's jurisdiction as it relates to youth below the statutorily defined minimum age.[167] This approach yields predictable outcomes for justice system actors, children, and families: there is simply no prospect of prosecution for a child below the minimum age of jurisdiction. This does not mean that states are left without any means of responding to these youth, simply that prosecution is off the table.[168]

Five states that observe a bright-line minimum age of jurisdiction create exceptions where that age is lowered, but not removed, for particular offenses.[169] For example, Nevada has a general minimum age of jurisdiction of ten.[170] However, this is not the bright line: children aged eight and nine can still be prosecuted for certain, violent offenses.[171] Children under the age of eight, however, cannot be prosecuted at all.[172] Some states following this type of modified bright-line approach create rebuttable presumptions that youth of certain ages—even those over the minimum age of jurisdiction—are not capable of committing crimes.[173] In Nevada, youth up to age fourteen are presumed incapable of committing crimes; this presumption can be rebutted by clear proof that a particular child understood the wrongfulness of the underlying act.[174] Similarly, in Washington, the minimum age of jurisdiction is eight, but youth aged eleven and younger are presumed incapable of committing crimes; as in Nevada, this presumption can be rebutted by proof the child sufficiently understood the act and knew it was wrong.[175]

2. Minimum Age with Carve-Out Offenses

The remaining seven states with minimum ages of jurisdiction observe some type of offense-based exceptions; for these "carve-out" offenses, there is no minimum age of jurisdiction at all.[176] Generally, these carve-outs are for violent crimes including specified homicide and sexual assault offenses.[177] While most crimes committed by young children are non-violent offenses that do not pose a significant danger to public safety,[178] advocates for this type of carve-out approach cite the need to protect public safety and ensure accountability in the rare case where a young child commits an egregious and violent act.[179] Even in these cases, however, states would be well-advised to consider the age of the child in developing their response; as legal scholars have recognized for decades, "[t]he reality is that the

167. Watson, *supra* note 8, at 442.

168. *Infra* Section II.C.

169. NAT'L JUV. JUST. NETWORK, *supra* note 1, at 4 nn.3, 5–6, 10 & 12 (Washington, Nevada, North Carolina, New York, and Maryland).

170. *Id.* at 4.

171. *Id.* at 4 n.5.

172. *See id.*

173. *Id.*

174. *Id.*

175. *Id.* at 4 n.3.

176. *Id.* at 4 nn.2, 4, 7–9, 11 & 13 (Florida, Arkansas, Vermont, California, Delaware, Utah, and New Hampshire).

177. *See id.*

178. Watson, *supra* note 8, at 446.

179. *See, e.g.*, Hills & Hiné, *supra* note 9, at 26 (advocating for "a general minimum age for delinquency for the majority of offenses, but no minimum age for murder and serious violent and sexual offenses" in the name of "public safety" and "hold[ing] juvenile offenders accountable").

adjudication of a nine-year-old who has committed murder should not be the same as that for a fifteen-year-old who has committed the same crime."[180]

C. Treatment of Youth Below the Minimum Age of Jurisdiction

What becomes of young children in states with minimum ages of jurisdiction who are accused of offenses? Most states respond to these children through social service and child welfare systems.[181] Many have adopted other sources of statutory authority that bring children accused of delinquent acts within the court's jurisdiction in order to protect the child by ordering the provision of services.[182] These statutes are commonly called Child in Need of Services (CHINS), Child in Need of Protection or Services (CHIPS), or Family In Need of Services (FINS) statutes.[183] Under this type of jurisdiction, juvenile courts cannot incarcerate or otherwise impose delinquency sanctions on the youth, but can still intervene to address the underlying behavior by requiring the child and their family to engage in services.[184] These approaches are intended to create accountability for youth by requiring them to access treatment—just not through the delinquency system.[185] These proceedings focus on the behavior of the parents *and* the child;[186] this expanded scope of inquiry, and the court's capacity to order services for the child and the family, "further protect[s] children from the juvenile justice system and give[s] the child the best chance to rehabilitate and live a productive life."[187]

Not all states with a minimum age of jurisdiction have CHINS or other similar statutes.[188] For example, Delaware has a minimum age of jurisdiction of twelve, with a carve-out for certain serious and violent crimes.[189] Unless they are accused of one of these carve-out offenses, children under twelve cannot be prosecuted; however, they can be "referred to and required to participate in" diversionary programs administered by the state's Division of Youth Rehabilitative Services.[190] If a child is believed to be "abused, neglected, dependent or otherwise in need of services," they can be referred to any other appropriate state agency.[191] While Delaware does not have a standalone CHINS or similar mechanism, this statutory arrangement effectively guarantees the court a similar capacity to ensure that children who need services receive them.

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180. Farrell, *supra* note 27, at 762.

181. NAT'L GOVERNORS ASS'N, *supra* note 2, at 3.

182. *See* RESTATEMENT OF CHILD. & L. § 13.10 (AM. L. INST., Tentative Draft No. 4, 2022).

183. Watson, *supra* note 8, at 435, 443; RESTATEMENT OF CHILD. & L. § 13.10 (AM. L. INST., Tentative Draft No. 4, 2022).

184. *See* RESTATEMENT OF CHILD. & L. § 13.10 (AM. L. INST., Tentative Draft No. 4, 2022).

185. Watson, *supra* note 8, at 443.

186. *See id.* at 435 (noting a CHINS proceeding "investigate[s] both the parents and the child").

187. *Id.* at 458.

188. *See, e.g.*, DEL. CODE ANN. tit. 10, § 1002(b) (2023).

189. *Id.* § 1002(b)(1).

190. *Id.* § 1002(b)(2). Unlike Maine, Delaware's juvenile justice system is administered by its child welfare agency, the Department of Services for Children, Youth and Their Families. *Division of Youth Rehabilitation Services*, DEP'T SERVS. CHILD., YOUTH & THEIR FAMS., https://kids.delaware.gov/youth-rehabilitative-services (last visited Dec. 6, 2024).

191. DEL. CODE ANN. tit. 10, § 1002(b)(2).

III. MAINE'S APPROACH: COMPETENCE ONLY

Maine has no minimum age of jurisdiction for its juvenile courts.[192] A child can, however, be found not competent to stand trial based on many of the same age-related developmental limitations that have led other states to adopt minimum ages of jurisdiction.[193] This means that, in Maine, the due process requirement that a child be competent to stand trial serves as the functional "floor" of juvenile court jurisdiction.

The history[194] and text[195] of Maine's Juvenile Code demonstrate that its core intention is to rehabilitate youth.[196] As originally enacted, Maine's Juvenile Code entrusted this rehabilitation, and the responsibility for preventing youth from coming into contact with the juvenile system in the first place, to a hybrid agency with expertise in both corrections and mental health.[197] This history demonstrates that Maine always intended for the department now known as DHHS to play a role in responding to youth who are suspected of violating the law.[198] Establishing a minimum age of jurisdiction and referring children below that age directly to DHHS, which is better positioned to ensure their rehabilitation, therefore aligns with the original intent[199] and ongoing rehabilitative purpose of Maine's Juvenile Code.[200] And the time is ripe for change: Maine's current system for responding to vulnerable youth is in crisis, presenting a rare opportunity to reimagine Maine's approach and ensure better outcomes for youth and the public.[201]

A. A Brief History of Juvenile Justice in Maine

1. Early Maine Juvenile Courts & 1977 Adoption of Maine's Juvenile Code

Maine first established a separate juvenile court in 1931.[202] Like others across the country, Maine's early juvenile justice system was created with an eye towards

192. NAT'L JUV. JUST. NETWORK, *supra* note 1, at 4. Thanks to recent legislation, Maine does have one statutory age-related limitation on its juvenile justice system: a child under twelve cannot be committed to a Department of Corrections juvenile correctional facility nor detained in a secure detention facility for more than seven days, except by agreement of the parties. ME. REV. STAT. tit. 15, §§ 3314(1)(F), 3203-A(4)(G) (2024).

193. ME. REV. STAT. tit. 15, § 3318-A(6)(A); Larry Cunningham, *A Question of Capacity: Towards a Comprehensive and Consistent Vision of Children and Their Status Under Law*, 10 U.C. DAVIS J. JUV. L. & POL'Y 275, 282 (2006); Hills & Hiné, *supra* note 9, at 25.

194. *Infra* Section III.A.1–2.

195. ME. REV. STAT. tit. 15, § 3002(1)(A)–(F); State v. Gleason, 404 A.2d 573, 580 (Me. 1979).

196. *Gleason*, 404 A.2d at 580.

197. *Infra* Section III.A.1–2.

198. *Infra* Section III.A.1–2.

199. *Infra* Section III.A.1–2.

200. *Gleason*, 404 A.2d at 580.

201. *Infra* Section III.A.3.

202. L.D. 1031, 85th Leg., Reg. Sess. (Me. 1931) ("An Act to Extend the Jurisdiction of Municipal Courts in Certain Cases."). This legislation authorized the municipal court to act as the juvenile court for adjudications of youth under fifteen. *Id.* Maine was one of the last states in the country to establish a separate juvenile justice system. Katherine Lazarow, *The Continued Viability of New York's Juvenile Offender Act in Light of Recent National Developments*, 57 N.Y. L. SCH. L. REV. 595, 600 n.29 (2012).

rehabilitation.[203] In 1950, Maine's highest court stated that the purpose of Maine's juvenile justice system was to ensure that "the child who is not inclined to follow legal and moral patterns, may be guided or reformed to become, in his mature years, a useful citizen."[204] The goal of the juvenile court was to "carry out a modern method of dealing with youthful offenders, so that there may be no criminal record against immature youth," which would "cause detrimental local gossip and future handicaps because of childhood errors and indiscretions."[205] This overarching rehabilitative purpose was later codified into statute with the adoption of the Maine Juvenile Code in 1977.[206]

In the 1970s, in the wake of *Gault*'s insistence on due process protections for youth, Maine embarked upon a comprehensive review of its juvenile justice system[207] that culminated in the 1977 adoption of the Maine Juvenile Code.[208] Unlike Maine's laws governing juvenile justice up to 1977, which had evolved as needed from the two-page Act that created the juvenile court in 1931 to twenty-five pages of statutory text,[209] Maine's 1977 Juvenile Code was the product of an extensive and intentional review of the State's approach to juvenile justice over the preceding forty years.[210] The Code can therefore be viewed as a significant indicator of the legislative intent underlying Maine's approach to juvenile justice at the dawn of the modern, post-*Gault* era.

Maine's review of its juvenile justice system included commissioning numerous studies that evaluated that system from 1931 to the early 1970s from a variety of perspectives, including law enforcement, corrections, and child and family services.[211] In the wake of these studies and the recommendations they set forth, the Maine State Legislature appointed the Commission to Revise the Statutes Relating to Juveniles in 1975 "for the express purpose of proposing statutory changes in juvenile justice and related areas."[212] The final report of this Commission included a draft Juvenile Code, which was enacted, largely as proposed, as Maine's Juvenile Code in 1977.[213]

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203. *See* L.D. 1031, 85th Leg., Reg. Sess. § 1 (Me. 1931) (emphasizing, in the legislation that created Maine's Juvenile Court, that a juvenile adjudication is not a criminal conviction).

204. Wade v. Warden of State Prison, 73 A.2d 128, 131 (1950).

205. *Id.*

206. An Act to Establish the Maine Juvenile Code, ch. 520, sec. 1, 1977 Me. Laws 960, 960–83.

207. *See* D.W. MacDonald, Maine's New Juvenile Code: A Case Study in Juvenile Justice Reform 82 (Winter 1985) (Ph.D. dissertation, University of New Hampshire), https://scholars.unh.edu/cgi/view content.cgi?article=2468&context=dissertation.

208. An Act to Establish the Maine Juvenile Code, ch. 520, sec 1, 1978 Me. Laws 960, 960–83; MacDonald, *supra* note 207, at 2–3.

209. MacDonald, *supra* note 207, at 79.

210. *See id.* at 82.

211. *See id.* at 83. These studies included the 1971 Comprehensive Juvenile Delinquency Study, ordered by the Maine Law Enforcement Planning and Assistance Agency and completed by the University of Maine Cooperative Extension Service; a 1972 study of Maine's correctional system commissioned by the Department of Corrections from an external consulting firm; a 1973 report by the Governor's Committee on Children and Youth, "Children and Youth Caught in the Crunch"; and the 1974 report of the Governor's Task Force on Corrections, "In the Public Interest." *Id.*

212. *Id.* at 2.

213. *See id.* at 94, 96.

Maine's Juvenile Code, as originally adopted, entrusted the administration of juvenile justice to a state agency that possessed expertise in both mental health and corrections: the now-extinct Department of Mental Health and Corrections.[214] This Department's responsibilities included administering mental health facilities as well as juvenile institutions, along with other "charitable and correctional state institutions."[215] Under the Juvenile Code, the Department of Mental Health and Corrections was tasked with "ensuring the provision of all services necessary to (A) Prevent juveniles from coming into contact with the juvenile court; and (B) Support and rehabilitate those juveniles who do come into contact with the juvenile court."[216] This mandate included administering programs for adjudicated youth *and* ensuring that services were available to non-adjudicated youth and their families; part of the Department's role was to help communities "establish and provide necessary preventive and rehabilitative services for juveniles."[217]

2. Bifurcation of the Maine Department of Mental Health and Corrections

The Department of Mental Health and Corrections, with its dual areas of expertise, did not survive long past the 1977 enactment of Maine's Juvenile Code. In 1983, just six years after being entrusted with the administration of Maine's juvenile justice system, the Department of Mental Health and Corrections was dissolved, and its responsibilities were split between two agencies: the Department of Corrections (DOC) and an agency that would later become part of DHHS.[218]

This dissolution began in 1981, when the Legislature established the DOC to supervise correctional institutions and programs in Maine.[219] The DOC was charged with crafting its own legislation to "amend, repeal and rearrange statutes as necessary to reflect" the newly-formed Department's "powers, responsibilities and organization."[220] The resulting legislation, adopted in 1983, dismantled the Department of Mental Health and Corrections and split its responsibilities between the DOC and the newly-formed Department of Mental Health and Mental Retardation (DMHMR).[221] The DOC was given responsibility for directing and administering adult and juvenile correctional facilities and programs.[222] The DMHMR was charged with "planning, coordination, and development of mental

214. *See* ME. REV. STAT. tit. 34, §§ 1–8 (1964) (repealed).

215. *Id.* § 1.

216. An Act to Establish the Maine Juvenile Code, ch. 520, sec. 2, § 261, 1977 Me. Laws 960, 984.

217. *Id.* sec. 2, § 262(I)(B), 1977 Me. Laws at 984.

218. *See* An Act to Recodify the Statutes Relating to Corrections and Mental Health and Mental Retardation, ch. 459, sec. 6, § 1202, 1983 Me. Laws 1278, 1295 (establishing Department of Corrections); *id.* sec. 7, § 1201, 1983 Me. Laws at 1405 (establishing Department of Mental Health and Mental Retardation).

219. An Act to Create a Department of Corrections, ch. 493, sec. 1, § 31, 1981 Me. Laws 1110, 1111.

220. *Id.* sec. 1, § 33(5)(1), 1981 Me. Laws at 1112.

221. An Act to Recodify the Statutes Relating to Corrections and Mental Health and Mental Retardation, ch. 459, sec. 6, § 1202, 1983 Me. Laws 1278, 1295 (establishing Department of Corrections); *id.* sec. 7, § 1201, 1983 Me. Laws at 1405 (establishing Department of Mental Health and Mental Retardation).

222. An Act to Recodify the Statutes Relating to Corrections and Mental Health and Mental Retardation, ch. 459, sec. 6, § 1202, 1983 Me. Laws 1278, 1295.

health services for children of the ages 0 to 20 years."[223] The DMHMR went through several iterations and name changes from 1983 to 2001[224] before it was ultimately combined with the Department of Human Services to become DHHS in 2003.[225]

This history suggests Maine's legislature intended, from the adoption of Maine's Juvenile Code, to have today's equivalent of *both* the DOC and DHHS available to respond to youth accused of offenses. Contemporary sources from the time of the Department of Mental Health and Corrections' dissolution suggest that the primary concerns underlying the bifurcation of that Department were prison overcrowding, the difficulty of finding a Commissioner with expertise to match the Department's broad mandate, and the inevitable tension between the needs of the "mentally handicapped" and the needs of incarcerated individuals in a hybrid agency.[226] Faced with the threat of "more class action suits and the possibility of having the courts order improvements," little discussion seems to have focused on the impact of the agency's dissolution on Maine's juvenile justice system.[227]

However, the practical impact is as clear as it is significant. Maine, after spending the better part of the seventies reimagining its juvenile justice system, entrusted that system to an agency with both mental health and corrections expertise. That agency was explicitly assigned the responsibility of providing services that both *prevent* contact with the juvenile court *and* rehabilitate youth who do come into contact with the court. When that agency dissolved, responsibility for Maine's juvenile justice system was vested in the DOC rather than the agency that would ultimately become part of DHHS. Practically speaking, this means that, since 1983, Maine's youth have received a state response that is informed by only one half of the expertise that the drafters of the Juvenile Code intended.

The DOC, by definition, is focused on corrections; its primary focus is not mental health. This issue is compounded by the fact that Maine's juvenile services are administered by *adult* corrections, rather than an independent juvenile corrections agency.[228] Maine's response to children who are accused of offenses therefore lacks specialization in either mental health *or* youth services. This

223. *Id.* sec. 7, § 1206, 1983 Me. Laws at 1410.

224. An Act to Implement the Recommendations of the Productivity Realization Task Force and to Make Supplemental Appropriations and Allocations for the Expenditures of State Government and to Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for Fiscal Years Ending June 30, 1996 and June 30, 1997, ch. 560, sec. K-3, § 12004-G(28), 1995 Me. Laws 1387, 1490 (renaming the DMHMR the "Department of Mental Health, Mental Retardation and Substance Abuse Services"); An Act to Update the Name of the Department of Mental Health, Mental Retardation and Substance Abuse Services, ch. 354, sec. 1, § 1201, 2001 Me. Laws 385, 385 (renaming the "Department of Mental Health, Mental Retardation and Substance Abuse Services" the "Department of Behavioral and Developmental Services").

225. An Act to Establish the Department of Health and Human Services, ch. 689, sec. B-1, 2003 Me. Laws 2314, 2317–18. The Department, then known as the Department of Behavioral and Developmental Services, was formally dissolved through this legislation, as was the Department of Human Services. *Id.* The duties and responsibilities of those departments were reassigned to the newly-created Department of Health and Human Services. *Id.*

226. *See* Dan Simpson, *Bill Would Separate Corrections from Mental Health*, PORTLAND PRESS HERALD (Mar. 31, 1981) (on file with Author).

227. *Id.*

228. *See Juvenile Justice Services*, *supra* note 12. Eighteen states administer their juvenile justice services through a dedicated juvenile corrections agency. *Id.*

approach makes Maine a considerable national outlier. Maine is one of only ten states in the nation that administers its juvenile justice system through an adult Department of Corrections[229]—and Maine is one of only *three* states in the country that both administers its juvenile justice services through the adult DOC and lacks any minimum age of juvenile court jurisdiction.[230] The vast majority of other states administer their juvenile justice systems through agencies that specialize in youth services, human services, or both.[231]

Maine need not continue on this path. The history of Maine's Juvenile Code demonstrates that DHHS and its expertise in children, families, and mental health was *always* intended to be part of the State's response to children accused of violating the law. Maine can and should embrace this history and leverage both the DOC *and* DHHS, and the dual areas of expertise they possess, in its response to children accused of offenses.

3. The Present, Urgent Need for a Continuum of Care for Maine's Youth

Maine is in crisis when it comes to its treatment of vulnerable youth. In 2022, the Department of Justice (DOJ) found that Maine is violating the Americans with Disabilities Act (ADA) by overly relying on segregated, restrictive settings to provide services to children in need of behavioral care,[232] and in September 2024, the DOJ initiated suit against Maine for these violations.[233] In November 2024, Maine entered a binding agreement with the DOJ to make substantial changes to its behavioral health delivery system for youth in order to address those violations.[234] Children who require behavioral health care are overwhelmingly the same children who come into contact with Maine's juvenile justice system. Over two-thirds of incarcerated children in Maine received behavioral health services in the year prior to their incarceration, and nearly two-thirds have a history of child protection involvement, meaning that before they were incarcerated, most children in Maine's youth prison were considered in need of protection and behavioral health services from the State.[235] In finding that Maine's treatment of children who need behavioral health care violates the ADA, the DOJ emphasized that Maine's behavioral health services have lengthy waitlists, the State has failed to sustain a network of

229. *Id.*

230. *Compare id.* (establishing that ten states—Maine, North Carolina, Indiana, Wisconsin, Minnesota, North Dakota, South Dakota, Kansas, Montana, and California—administer juvenile justice services through adult corrections), *with* NAT'L JUV. JUST. NETWORK, *supra* note 1, at 4 (establishing that, of those ten states, only three—Maine, Indiana, and Montana—have no minimum age of juvenile court jurisdiction).

231. *See Juvenile Justice Services*, *supra* note 12 (other states use an independent juvenile corrections agency (eighteen states), a family or child welfare agency or division (eleven states), or a broad human services agency (twelve states)).

232. *See* DOJ Letter, *supra* note 17, at 1.

233. *See* Complaint, *supra* note 17, at 1.

234. *Governor Mills Announces Settlement of U.S. DOJ Lawsuit*, *supra* note 17; Settlement Agreement, *supra* note 17, at 29 ("This Agreement is binding on the Parties . . . .").

235. *See* ME. CTR. YOUTH POL'Y & L., YOUTH JUSTICE INFORMATION BRIEF: ROLES & PRACTICE STANDARDS OF YOUTH-SERVING SYSTEMS IN MAINE (2023), https://mainelaw.maine.edu/academics/wp-content/uploads/sites/3/Youth-Systems-Info-Brief-August-2023-Final.pdf.

community-based service providers, and its crisis services are under-staffed and under-resourced, leaving vulnerable youth subject to extensive and unlawful institutionalization.[236]

While Maine once operated a successful, statewide wraparound program that prevented youth institutionalization, these services were discontinued in 2013 and are now only available to youth in the juvenile justice system.[237] Under Maine's agreement with the DOJ, the State of Maine must again expand these high fidelity wraparound services to youth receiving behavioral health home services by 2026.[238] Having such services available only to justice-involved youth hints at an insidious impact of the lack of services in Maine: when scarce services are only available to youth in the justice system, prosecutors, judges, and other actors with discretion in the juvenile justice system may reasonably conclude that prosecuting a child is the only reliable means of providing that youth with the services they need. Indeed, Long Creek Youth Development Center, the only juvenile detention facility in the state, "currently fills a gap left by Maine's community-based behavioral health system," and the State itself acknowledges that juvenile justice intervention is part of its behavioral health system.[239] Although Maine law requires that juvenile justice services be provided in "the least restrictive setting, many children with mental health disabilities are sent to or remain in Long Creek because of the insufficient behavioral health services available to them in the community."[240]

By the Maine DOC's own account, eighty-five percent of youth in Long Creek have at least three mental health diagnoses.[241] This includes youth who are incarcerated at Long Creek purely due to a lack of other treatment options, leading the DOJ to conclude that "Maine is improperly using detention to deal with its failure to provide behavioral health services in the community."[242] This approach results in the separation of children from their families and communities,[243] in direct contradiction to the Maine Juvenile Code's purpose of "preserv[ing] and strengthen[ing] family ties whenever possible," and giving children "care and guidance, preferably in [their] own home."[244]

The current absence of appropriate, community-based services to respond to youth who are suspected of violating the law leaves Maine's juvenile courts forced to choose between too *little* intervention—for example, probation for a youth who needs more services and oversight—or too *much* intervention, namely,

236. *See* DOJ Letter, *supra* note 17, at 2.

237. *See id.* at 5.

238. *Governor Mills Announces Settlement of U.S. DOJ Lawsuit*, *supra* note 17 (listing "actions being taken by the Maine Department of Health and Human Services to improve children's behavioral health services" including "investing $3.3 million annually to implement High Fidelity Wraparound services"); Settlement Agreement, *supra* note 17, at 7 ("High-Fidelity Wraparound Services . . . to be offered effective as of the date set forth in the Implementation Plan, but no later than January 1, 2026.").

239. Settlement Agreement, *supra* note 17, at 6–7; Complaint, *supra* note 17, at 8 ("Maine uses Long Creek as a *de facto* psychiatric hospital.").

240. DOJ Letter, *supra* note 17, at 7.

241. *Id.* (84.6%).

242. *Id.*

243. *Id.* at 1.

244. ME. REV. STAT. tit. 15, § 3002(A)–(B) (2024).

incarceration.[245] Despite the State's mandate to provide services to youth in the least restrictive appropriate setting, when a youth is deemed unlikely to be successful on probation, incarceration *becomes* the least restrictive appropriate setting by default—because there simply are not alternatives available.[246] Even when justice system actors recommend against incarceration, "children are frequently confined at Long Creek due to Maine's failure to provide more integrated behavioral health services."[247] This state of affairs can only be characterized as a "tragedy."[248] It is incumbent upon the State of Maine to develop alternatives for its children:

> We, in government, must find additional alternatives for our children and youth. That continuum of care should include both well-proven and promising innovative programs, including such options as evidence-based behavioral modification programs, residential treatment facilities, enhanced mental health treatment services, and even group homes with structure and oversight, within or near the communities of their families.[249]

This is not simply a moral mandate—it is a legal mandate. As the Law Court recently recognized, "[i]nadequate resources do not excuse the state's obligation to provide benefits," especially when those services "are mandated by law."[250] Maine has now entered a binding agreement with the DOJ to improve and expand the services available to vulnerable youth.[251] This pressure to act represents an opportunity for Maine. As Maine develops this long-needed continuum of community-based services, it should build capacity in that continuum to respond to youth who are too young to understand or benefit from prosecution in its juvenile courts. By doing so, Maine can ensure meaningful interventions are available for these children, while avoiding the harms and increased risk of recidivism that result when those youth are processed through the juvenile system.

B. Maine's Competence-Based Approach to Juvenile Court Jurisdiction

Maine's closest proxy to a minimum age of jurisdiction is its competency statute. Under Maine's competency statute, children can be found not competent to stand trial based on age-related developmental limitations that echo the justifications for a minimum age of jurisdiction.[252] These limitations include an inability to appreciate the nature of the adversarial process or the range of potential outcomes; an incapacity for logical, autonomous decision making; and an inability to

245. *See* State v. J.R., 2018 ME 117, ¶ 32, 191 A.3d 1157, 1167 (Saufley, C.J., concurring).

246. *Id.* ¶ 16, 191 A.3d at 1163 (majority opinion) (noting that the only less restrictive alternative to incarceration was probation, which likely would have failed); *id.* ¶ 32, 191 A.3d at 1167 (Saufley, C.J., concurring) (calling the fact that the court was forced to choose between probation and incarceration a "tragedy" and calling for a continuum of care for Maine's youth).

247. DOJ Letter, *supra* note 17, at 9.

248. *J.R.*, 2018 ME 117, ¶ 32, 191 A.3d at 1167 (Saufley, C.J., concurring).

249. *Id.* ¶ 33, A.3d at 1167.

250. *In re* Child of Barni A., 2024 ME 16, ¶¶ 28, 41, 314 A.3d 148, 156, 160.

251. *Governor Mills Announces Settlement of U.S. DOJ Lawsuit*, *supra* note 17; Settlement Agreement, *supra* note 17, at 29.

252. *See* ME. REV. STAT. tit. 15, §§ 3318-A(5), 3318-B(1) (2024).

understand the impact of their actions on others.[253] Charges against children who are found not competent are generally dismissed.[254] This is Maine's primary means of excluding children who are too young to benefit from the juvenile justice system from its jurisdiction.

Children younger than fourteen are presumed not competent to stand trial in Maine.[255] However, no matter how young the child, there is no requirement that their competence be evaluated unless a party or the court affirmatively raises the issue.[256] The presumption only arises if and when the issue is raised.[257] This means that a child who is not competent to stand trial may still be adjudicated delinquent and have a disposition imposed so long as no one raises the issue of competence, which leaves the consideration and protection of a child's right to due process squarely within the discretion of individual actors in a given juvenile case.[258]

When a judge or party does exercise this discretion and chooses to raise the issue of competence, the proceedings are suspended pending the child's evaluation by a State Forensic examiner.[259] That evaluation must address the child's ability to appreciate the allegations against them, understand the nature of the adversarial process and the roles of the actors involved, comprehend the range of possible dispositions and how they could impact the child, and appreciate the impact of their actions on others.[260] It must also address the child's capacity to disclose pertinent facts, including their ability to articulate thoughts, emotions, and accurately relay events; engage in logical, autonomous decision making; behave appropriately in court; and testify.[261]

If the court finds a child is not competent to proceed, the charges against them may be dismissed depending on whether the court, in its discretion, believes the child will become competent in the foreseeable future.[262] If the court finds the child is likely to soon become competent—for example, by getting older—the proceedings remain suspended for up to a year while waiting to see if the child becomes competent.[263] During this time, the child can be incarcerated or subjected to conditions of release.[264] If the court finds the child is *not* likely to become competent, or if a child fails to become competent within a year, the charges against them are

253. *Id.* § 3318-A(6)(A)(2)–(4), (6).

254. *See id.* §§ 3318-A(5), 3318-B(1).

255. *Id.* § 3318-A(8).

256. *Id.* § 3318-A(3).

257. *See id.*

258. The actors empowered to raise or not raise competence in a juvenile case include the defense attorney, the prosecutor, and the judge. *See id.*

259. *Id.* § 3318-A(4)–(5).

260. *Id.* § 3318-A(6)(A)(1)–(4).

261. *Id.* § 3318-A(6)(A)(5)–(8).

262. *Id.* §§ 3318-A(7), 3318-B(2) (stating that, while the State Forensic report is the basis for finding a child competent or not competent, the ultimate decision regarding the child's competence rests with the court).

263. *Id.* § 3318-A(5).

264. *Id.* §§ 3318-A(5), 3203-A(4)(D)(2)–(3) (establishing that a child who violates their conditions of release or who is deemed incapacitated to the extent of being incapable of participating in a conditional release may be detained).

dismissed, removing that child from the juvenile court's jurisdiction.[265] Dismissal, however, is not immediate. The juvenile court retains jurisdiction for one final hearing: a hearing where the court can order DHHS to evaluate whether to provide services or order the child out of their parents' custody and into the custody of DHHS.[266]

A child who is not competent to stand trial fundamentally cannot understand the juvenile court process. They cannot understand the players involved or their roles, they cannot appreciate the impact of their actions on others or of potential dispositions on themselves, and they cannot engage in logical or autonomous decision making.[267] Yet, Maine allows these children to remain under juvenile court jurisdiction for up to a year.[268] The process culminates in a hearing where they may be removed from their family's custody.[269] At this hearing, the child is represented by a defense attorney;[270] unlike child protection proceedings, no *guardian ad litem* is automatically assigned to determine the best interests of the child.[271] The hearing occurs while the juvenile charge still hangs over the child's head.[272] At the end of this lengthy, and arguably unconstitutional,[273] process, the ultimate question before the court is whether, and how, the child should be served by DHHS—the same agency the child would have been referred to in the first place if Maine had a minimum age of jurisdiction.[274]

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265. *Id.* § 3318-B(2).

266. *Id.* § 3318-B(1)(B), (2).

267. *Id.* § 3318-A(6)(A).

268. *Id.* §§ 3318-A(5), 3318-B(1). A child who violates their conditions of release or who is deemed incapacitated to the extent of being incapable of participating in a conditional release may be detained. *Id.* § 3203-A(4)(D)(2)–(3).

269. *Id.* § 3318-B(1)(B), (2).

270. A child who is not competent to stand trial cannot, by definition, "consult with legal counsel with a reasonable degree of rational understanding." *Id.* § 3318-A(2)(B).

271. *Compare* ME. REV. STAT. tit. 22, § 4005(1)(A) (2024), *with* ME. REV. STAT. tit. 15, § 3318-B(1)(B), (2).

272. *See* ME. REV. STAT. tit. 15, §§ 3318-A(5), 3318-B(1) (charges are dismissed at the end of the custody hearing).

273. Maine's competency statute arguably violates children's rights to due process and equal protection. First, a child who is not competent to stand trial cannot receive due process from the delinquency court because they are fundamentally unable to understand the proceedings against them or assist in their defense. *See* State v. Gerrier, 2018 ME 160, ¶ 7, 197 A.3d 1083, 1085–86. Despite this, they are subjected to the potential loss of their fundamental liberty interest in family integrity, *In re* Sabrina M., 460 A.2d 1009, 1016 (Me. 1983), violating their right to due process. Second, a child who is not competent is subjected to unequal treatment under the law as compared to competent children. Being ordered into DHHS custody is a disposition. ME. REV. STAT. tit. 15, §§ 3318-B, 3314(1)(C-1). Competent children must be adjudicated delinquent in order to receive a disposition. *Id.* § 3314(1). However, non-competent children can receive the *same disposition without ever being adjudicated as having committed a juvenile crime*. *Id.* § 3318-B(2). This essentially treats non-competent children, for the purposes of disposition (the equivalent of sentencing in adult courts), as if they had been adjudicated delinquent (the equivalent of being found guilty) despite the fact that they have not been, and by definition never will be, adjudicated based on the offense charged.

274. ME. REV. STAT. tit. 15, § 3318-B(1)(B), (2).

IV. ESTABLISHING A MINIMUM AGE OF JURISDICTION IN MAINE

Maine should establish a bright-line minimum age of fourteen for its juvenile court jurisdiction. Currently, Maine is one of only two states in New England without a minimum age of jurisdiction for its juvenile courts.[275] Maine is also a national outlier: it is one of only three states in the country that administers its juvenile justice system through an adult agency—adult corrections—and grants that system jurisdiction over children of any age, including extremely young children.[276]

The key question for Maine is whether its current approach successfully serves the core interests implicated by juvenile delinquency: (i) the State's interests in public safety, the rights of crime victims, and the rehabilitative purpose of Maine's Juvenile Code, and (ii) the interests of children and their families. Each of these interests would be better served by adopting a minimum age of jurisdiction.

A. Maine's Current System Does Not Serve the Interests of the State, Children, or Families

1. State Interests

The State of Maine has a clear interest in fulfilling the rehabilitative purposes of the Juvenile Code, protecting public safety, and honoring the rights of victims of juvenile crimes. None of these interests are served by Maine's current approach. As other states have recognized, competence is simply too low of a bar that comes too late in the process.[277]

The basic overall purpose of Maine's Juvenile Code is the rehabilitation of youth.[278] To this end, its statutorily-enumerated purposes include: (i) securing for each child the care and guidance that best serves their welfare and the interests of society, preferably in the child's own home; (ii) preserving and strengthening family ties whenever possible; (iii) removing a child from the custody of their parents only when their welfare or the protection of the public would otherwise be endangered, or to punish a child who has been adjudicated of a crime; (iv) assisting youth in becoming responsible, productive members of society; and (v) providing fair hearings at which the parties' rights as citizens are recognized and protected.[279] The only purpose of the Code focusing on punitive consequences emphasizes that such consequences are only appropriate for "repeated serious criminal behavior" or recurrent violations of probation.[280]

Neither the Code's global purpose of rehabilitation nor its more specific purposes are served by its current, competence-based approach. Youth who are found not competent to stand trial can be removed from the custody of their parents

275. NAT'L JUV. JUST. NETWORK, *supra* note 1, at 1.

276. *Juvenile Justice Services*, *supra* note 12. The vast majority of other states in the country administer their juvenile justice systems through some kind of specialized, youth-serving agency: an independent juvenile corrections agency (eighteen states), a family or child welfare agency or division (eleven states), or a broad human services agency (twelve states). *Id.*

277. Watson, *supra* note 8, at 455.

278. State v. Gleason, 404 A.2d 573, 580 (Me. 1979).

279. ME. REV. STAT. tit. 15, § 3002(1)(A)–(E).

280. *Id.* § 3002(1)(F).

without the procedural safeguards present in a child protective proceeding.[281] This directly contradicts the Code's purposes of preserving family ties, providing services in the youth's own home, and only removing a non-adjudicated child from their family home when public safety or the child's welfare are threatened.[282] The Code's purpose of providing fair hearings and procedures[283] is also not served. Subjecting young children to extensive system contact before they are found not competent, and then proceeding to a custody hearing without requiring a *guardian ad litem* to determine and advocate for their interests,[284] neither provides youth with fair procedures where their rights are recognized or protected nor inspires their faith in the justice system. Most importantly, early contact with the juvenile justice system harms youth and increases the chances that they will engage in future criminal behavior—which is precisely the opposite of rehabilitation.[285] Simply put, by the time a child is found not competent to stand trial, "the harm has already been done."[286]

No other state interest is advanced by a competence-only model. Practically speaking, subjecting a child to this lengthy process only to ultimately refer that child to DHHS represents a waste of state resources: the time spent engaging in competency proceedings could have been "better spent on treatment and programs to address the underlying issues" that brought the youth before the juvenile court in the first place.[287] In terms of public safety, as the National District Attorneys' Association recognizes, the safety and welfare of the community "is enhanced when juveniles . . . are dissuaded from further criminal activity."[288] Rehabilitation is the mechanism through which the juvenile court protects the public,[289] and prosecuting young children has the opposite effect—it increases the chances they will break the law in the future.[290] Nor are the rights of victims of crimes furthered by a competence-only approach. Children who are too young to stand trial will ultimately be removed from the juvenile court's jurisdiction after being found non-competent,

281. *See* ME. REV. STAT. tit. 22, § 4002(1-C), (6) (2024) (defining the standard for jeopardy and the best interests of the child); *id.* § 4005(1)(A) (requiring the appointment of a *guardian ad litem* in nearly all child protection proceedings); ME. REV. STAT. tit. 4, § 1556 (2024) (outlining the appointment of *guardians ad litem* in child protection cases); ME. REV. STAT. tit. 22, § 4005 (enumerating the components of a *guardian ad litem* investigation).

282. ME. REV. STAT. tit. 15, § 3002(1)(A)–(C).

283. *Id.* § 3002(1)(E).

284. *Compare id.* § 3318-B(1)(B), (2), *with* ME. REV. STAT. tit. 22, §§ 4002, 4005, *and* ME. REV. STAT. tit. 4, § 1556.

285. Barnert et al., *supra* note 3, at 52; *see also* WASH. STATE BD. HEALTH, *supra* note 117, at 2 (finding "very strong evidence that changing the procedural jurisdiction of juvenile court to 13 through 19 years of age will decrease juvenile recidivism"); Watson, *supra* note 8, at 455 (noting that a child can be arrested or held for several weeks in a detention facility before being able to assert a defense). This harm is particularly pronounced under Maine's system, where a child can be incarcerated for up to a year without receiving any rehabilitative services while the State waits to see if they become competent to stand trial. *See* ME. REV. STAT. tit. 15, § 3318-A.

286. Watson, *supra* note 8, at 455.

287. *Id.*

288. NAT'L DIST. ATT'Y ASS'N, *supra* note 119, commentary ¶ 2.

289. *Id.*

290. *See., e.g.*, WASH. STATE BD. HEALTH, *supra* note 117; Barnert et al., *supra* note 3, at 52.

and during that time, they will have become more likely to reoffend—an outcome that victims of crime would surely find deeply dissatisfying.

2. The Interests of Children & Families

The interests of children engaged with the juvenile justice system and their families are also not served by Maine's current procedure. Children and families have their own interest in youth rehabilitation, which is not furthered by Maine's approach.[291] Children and their families also have an interest in family integrity[292]—an interest significantly threatened by subjecting them to custody proceedings that lack the procedural safeguards associated with child protective proceedings.[293] The State's capacity to incarcerate and impose conditions of release upon a child from the moment they are charged until the end of this custody hearing burdens the parents' rights to custody and control of their children.[294] A child who is removed from the custody of their parents through a child protective proceeding, which focuses on the parents' capacity to care for their children, surely has a different experience than a child who is removed from the custody of their parents through a proceeding that results directly from a juvenile charge against the child. The message to the second child is clear: your parents' loss of custody is *your fault*, and is being imposed as punishment for a crime you have been accused of committing—despite the fact that you never have been, and never will be, adjudicated guilty of that crime.[295] Even youth who are diverted from the system before being charged are injured by the lack of a minimum age of jurisdiction in Maine—upon being accused of a crime for which they could face prosecution, they are legitimate targets for and often subject to police interrogation, which causes its own harms.[296]

Finally, the significant discretion conferred upon system actors throughout the process—the discretion of prosecutors in deciding which young children to charge, the discretion of attorneys and the court in raising the question of competence, and the discretion of the juvenile court in making findings of competence—creates space for bias and disparate outcomes.[297] In Maine, as in other parts of the country, these disparities exist along lines of race, class, and geography. In 2021, youth of color constituted ten percent of referrals to Maine's Department of Corrections.[298] Relative to this referral rate, these youth were disproportionately subjected to incarceration, accounting for twenty-four percent of all detentions and thirty-seven percent of all commitments.[299] Children from Maine's rural, comparatively poor

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291. *Supra* Section III.B.

292. *In re* Sabrina M., 460 A.2d 1009, 1016 (Me. 1983).

293. *See* ME. REV. STAT. tit. 22, §§ 4002, 4005 (2024); ME. REV. STAT. tit. 4, § 1556 (2024).

294. *See* Troxel v. Granville, 530 U.S. 57, 65 (2000).

295. ME. REV. STAT. tit. 15, § 3318-B(1)(B), (2) (2024) (charges against a child who is found not competent and not restorable are dismissed without proceeding to an adjudication of guilt).

296. *See In re* Gault, 387 U.S. 1, 46 (1967) (describing the uniquely harmful position that children face during police investigations).

297. *See* Tolliver et al., *supra* note 5, at 1337 (noting how implicit bias leads to overcriminalization of Black children).

298. ME. DEP'T CORR., JUVENILE DIVISION OVERVIEW 6 (2021), https://www.maine.gov/corrections/sites/maine.gov.corrections/files/inline-files/Juvenile%20Overview_FINAL%202021.pdf.

299. *Id.* at 16–17.

Aroostook County[300] are disproportionately committed to youth prisons compared to other counties, despite the fact that most offenses in Aroostook are "small things."[301] Maine's Department of Corrections claims it is unable to control this disparity precisely "because 'various actors'—police, prosecutors, judges—influence cases."[302]

B. Maine Should Adopt a Minimum Age of Jurisdiction of Fourteen

1. Recommended Procedure

Maine should adopt a bright-line minimum age of jurisdiction of fourteen for its juvenile courts. Children below this age who are accused of unlawful behavior should be directly referred to DHHS, Maine's child welfare agency, which can assess the child's needs, provide appropriate services, and, if there are grounds to suspect abuse or neglect, conduct a child protective hearing. Maine does not need any additional statutory mechanisms to implement this process. Juvenile community corrections officers, law enforcement agencies, district attorneys, and other state actors already have the authority—as does *any* individual in the state—to refer a child to DHHS for services.[303]

In order to ensure that such children receive appropriate treatment in a timely manner, the State should invest the resources it will save by excluding children under fourteen from juvenile courts to support the development of a community-based continuum of services for youth—which the State has already committed to creating.[304] Stakeholders in the DOC, district attorney's offices, members of the juvenile defense bar, and DHHS should collaborate to develop, through agency rulemaking, a direct referral mechanism from juvenile justice system actors to the DHHS to ensure timely follow-up on referrals.

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300. *See County Profiles*, ME. CTR. WORKFORCE RSCH. & INFO., https://www.maine.gov/labor/cwri/county-economic-profiles/countyProfiles.html (last visited Dec. 6, 2024) (reflecting that Aroostook County's median household income ($50,843) is forty-two percent less than that of Cumberland County ($87,710)); *Economic Data*, ME.: AN ENCYCLOPEDIA, https://maineanencyclopedia.com/economic-data [https://perma.cc/U85U-3BZU] (last visited Dec. 6, 2024) (listing data from 2019 reflecting that Aroostook County's gross domestic product ($2.40 billion) is eighty-seven percent less than that of Cumberland County ($19.40 billion)).

301. Callie Ferguson, *For Young Offenders in Maine, Justice Varies with Geography*, N.Y. TIMES (Mar. 28, 2024), https://www.nytimes.com/2024/03/28/us/maine-juvenile-detention.html.

302. *Id.*

303. ME. REV. STAT. tit. 22, § 4011-A(3) (2024) (anyone can make a report to DHHS if they "know[] or [have] reasonable cause to suspect that a child has been or is likely to be abused or neglected"). While Maine may ultimately decide to explore a CHINS or similar statute, it should also consider a simple statutory modification such as that used in Delaware. *See supra* Section II.C.

304. *See Governor Mills Announces Settlement of U.S. DOJ Lawsuit*, *supra* note 17 ("Through the agreement, the State will increase the availability of community-based behavioral health services for children . . . .").

2. Policy Justifications

Fourteen is the developmental point below which children are likely not competent to stand trial.[305] The American Academy of Child and Adolescent Psychiatry,[306] American Bar Association,[307] and United Nations[308] all urge that fourteen is the appropriate age boundary for modern juvenile delinquency proceedings. Across the country, many juvenile statutes, court rules, and practice standards emphasize that, especially for children under the age of fourteen, formal proceedings in the juvenile justice system should be a last resort.[309] Compared to their older counterparts, children below the age of fourteen demonstrate significantly less functional ability to understand and participate in a trial.[310] They also show significantly decreased emotional maturity, including their ability to consider long-term consequences and comprehend risk.[311] These developmental incapacities directly relate to their competence to stand trial[312] as well as their culpability for their actions.[313] It serves no state interest to process these children through the juvenile justice system for up to a year while determining their competence—delaying the opportunity to provide services and increasing their odds of recidivism along the way—only to ultimately refer these children to DHHS anyway, all the worse for their engagement with the system.

Adopting a minimum age of jurisdiction of fourteen would better serve the interests of the State, children, and families. In terms of the State, Maine's competence-only model likely increases recidivism by subjecting very young children to the juvenile justice system and wastes state resources by engaging in a lengthy legal process before ultimately referring these children to DHHS. Maine could save considerable time by simply referring the children who are most likely to be found not competent to stand trial—and least likely to be blameworthy for their actions—directly to this youth-serving agency, which, unlike the DOC, possesses the necessary expertise to respond to these children, up to ninety percent of whom have experienced trauma.[314]

Here, the State's interests and the interests of children and families are aligned. Children arrive at the door of the juvenile justice system with a constellation of underlying mistreatment, learning disorders, and behavioral health problems.[315] Exposure to the justice system multiplies these harms and makes children more likely

305. Blitzman, *supra* note 10, at 12, 15.

306. *Policy Statement on the Jurisdiction of the Juvenile Court System*, *supra* note 13.

307. Robert, *supra* note 14.

308. Tolliver et al., *supra* note 5, at 1337.

309. RESTATEMENT OF CHILD. & L. § 13.10 (AM. L. INST., Tentative Draft No. 4, 2022).

310. MACARTHUR FOUND. RSCH. NETWORK, ADOLESCENT LEGAL COMPETENCE IN COURT 1–3 (2009), https://www.modelsforchange.net/publications/852/Adolescent_Legal_Competence_in_Court.pdf.

311. *Id.*

312. *Id.*

313. *See* Roper v. Simmons, 543 U.S. 551, 561, 570 (2005); Graham v. Florida, 560 U.S. 48, 68 (2010); Miller v. Alabama, 567 U.S. 460, 466–67 (2012).

314. Watson, *supra* note 8, at 447.

315. *Id.*

to engage in future unlawful behavior.[316] Those who ultimately come into the custody of the system are four times more likely to commit suicide than those who do not.[317] These children would be better served by being directly referred to a system such as DHHS that has the social service expertise to respond to their underlying needs.[318] Receiving services from DHHS rather than experiencing prosecution at the hands of the State will increase the chances that these children grow into healthy adults, thereby fulfilling the rehabilitative purposes of the Juvenile Code.[319] Finally, by establishing a boundary on the discretion of individual actors in Maine's juvenile justice system, a minimum age of jurisdiction will protect Maine's children from the disparate outcomes they are currently experiencing along the lines of race, class, and geography.[320]

3. Barriers to Implementation & Possible Solutions

Lawmakers in Maine have demonstrated a reluctance to adopt a minimum age of juvenile court jurisdiction. In 2020, a proposed minimum age of twelve was amended out of a juvenile justice reform bill.[321] Although this bill became law as amended and limited the State's ability to detain children under twelve, it did not establish any minimum age of court jurisdiction.[322] It is unclear based on the public record why this minimum age proposal was abandoned; however, the bill as passed made significant changes to the State's Juvenile Code, especially in terms of children's rights to counsel and due process,[323] and it is unsurprising that compromises were required for the bill's passage. Advocates may be more successful in introducing a bill specifically aimed at establishing a minimum age of jurisdiction, which would create space for legislative debate centered on the developmental appropriateness and positive public safety outcomes of a minimum age of jurisdiction.

Perhaps most significantly, Maine needs viable alternatives to juvenile justice processing for children under fourteen who are accused of committing offenses.

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316. Barnert et al., *supra* note 3, at 52.

317. Watson, *supra* note 8, at 447.

318. *See* Tolliver et al., *supra* note 5, at 1338 ("The mental health harms caused by justice involvement indicate that the funds spent processing children in the justice system could be better spent providing mental health supports to children, families, and communities."); Hill, *supra* note 98, at 170 (suggesting a child welfare or social work response for children younger than Massachusetts' new minimum age of jurisdiction that provides human services such as "therapy, social work services, domestic violence services, and restorative justice practices" will "more adequately address the needs of the child and family than the court process").

319. ME. REV. STAT. tit. 15, § 3002(1)(A)–(E) (2024).

320. *See* discussion *supra* Section IV.A.2.

321. *Compare* L.D. 320, § 2, 130th Leg., Reg. Sess. (Me. 2021), *with* Comm. Amend. A to L.D. 320, 130th Leg., Spec. Sess. (Me. 2021), *and* An Act to Provide the Right to Counsel for Juveniles and Due Process for Juveniles, ch. 326, secs. 1–18, §§ 3003, 3203-A(4)(G)–(5), 3301(6), 3306(1), 3313(2)(F), (J)–(M), 3314(F), 3315(3), 3316(2)(A), 3317, 3402(1), 3405(2), 3805(1), (1)(A), 2021 Me. Laws 657, 657–60.

322. *See* An Act to Provide the Right to Counsel for Juveniles and Due Process for Juveniles, ch. 326, secs. 1–18, §§ 3003, 3203-A(4)(G)–(5), 3301(6), 3306(1), 3313(2)(F), (J)–(M), 3314(F), 3315(3), 3316(2)(A), 3317, 3402(1), 3405(2), 3805(1), (1)(A), 2021 Me. Laws 657, 657–60.

323. *Id.*

Maine's DHHS is already overburdened.[324] Opponents may legitimately fear that the State would be left without any response to children aged thirteen and under who would otherwise come under the jurisdiction of the juvenile court, especially those accused of violent or otherwise particularly harmful offenses. There are several approaches that could mitigate this concern.

First, because Maine has already agreed to create a continuum of community-based services to respond to youth experiencing behavioral health challenges,[325] there is an opportunity to ensure that this continuum is developed with the capacity to respond to youth accused of offenses who are thirteen or younger. The State currently expends considerable resources—the time of the courts, prosecutors, State Forensic examiners, juvenile community corrections officers, and publicly-funded defense attorneys, as well as the cost of incarcerating youth—evaluating the competence of children below fourteen and waiting to see if they become competent to stand trial. The time and expense saved by referring youth aged thirteen and under directly to DHHS can be reinvested to develop this continuum of community-based services and ensure it can respond appropriately and effectively to these youth.

Second, while the great majority of crimes committed by young children are minor, nonviolent, and pose minimal danger to public safety,[326] this does not mean that young children *never* commit violent crimes. As a result, some may fear that a social services and child welfare response would be inadequate to protect public safety under these circumstances. In response to these concerns, several states have adopted minimum ages of jurisdiction with carve-outs for certain offenses—such as murder and some sexual offenses—for which there is a lower or, in some cases, no minimum age of jurisdiction.[327] Others have adopted a bright-line minimum age below which a child absolutely cannot be prosecuted, while also creating a rebuttable presumption that slightly older children are incapable of committing crimes unless the State proves by clear and convincing evidence that the child "had sufficient capacity to understand the act and know it was wrong."[328] Maine can and should explore these options to determine what approach is right for its children.

CONCLUSION

Maine should join its neighbors in New England and the majority of states across the country by establishing a minimum age of jurisdiction for its juvenile courts. Maine should set this age at fourteen. Children thirteen and under are less competent to stand trial and less culpable for their actions than older teens. Processing these children through the juvenile justice system only increases the odds they will commit

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324. *See, e.g.*, Billings, *supra* note 16.

325. *See Governor Mills Announces Settlement of U.S. DOJ Lawsuit*, *supra* note 17 (noting that Maine has agreed to "increase the availability of community-based behavioral health services for children," reflecting "long-term commitments by the State to provide timely assessments of children's behavioral health needs and care coordination, guided by wrap-around principles, to all children covered by the agreement; restore wrap around services for children with high acuity behavioral health needs; reduce wait lists for behavioral health services; and reduce the need for short term stays in hospitals and other institutional settings based on behavioral health needs").

326. Watson, *supra* note 8, at 446.

327. *See, e.g.*, *id.* at 443.

328. *Id.* at 442.

future unlawful behavior—an outcome contrary to the interests of the State, the child, and their family. All of these interests are better served by responding to children aged thirteen and under through social service and child welfare systems, which are best equipped to meet their needs and help them grow into healthy adults—the core purpose of Maine's Juvenile Code.