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SHOULD JUVENILES BE TRANSFERRED TO ADULT CRIMINAL COURT IN THE CRIMINAL JUSTICE SYSTEM?

BUKI BARUWA

I. INTRODUCTION

Collectively, the Supreme Court has held that juveniles are not as culpable as the average adult criminal.¹ The Supreme Court has credited juveniles' reduced culpability to their deficient intellectual functions.² The Court described juveniles as irresponsible, vulnerable, and lacking in control and identity.³ Thus, juveniles should not be transferred to adult criminal court.

The main goals of the juvenile justice system in the United States are skill development, rehabilitation, treatment, maintaining public safety, and successful reintegration of juveniles to their community.⁴ In most jurisdictions, juveniles who are accused of committing a criminal or delinquent act are typically subject to discipline through the juvenile justice system.⁵ Generally, juvenile courts have original jurisdiction over juveniles charged with a crime if they are under the age of eighteen at the time of arrest, time of the offense, or when they are referred to the court.⁶ However, in certain cases our criminal justice system decides that juveniles are culpable

¹ See generally *Roper v. Simmons*, 543 U.S. 551 (2005) (holding that juveniles cannot receive the death penalty because of scientific differences between juveniles and adults).

² *Id.* at 569-75.

³ *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988).

⁴ Juvenile Justice and Delinquency Prevention, <http://www.findyouthinfo.gov/youth-topics/juvenile-justice> (last visited Nov. 23, 2012).

⁵ *Id.*

⁶ *Prosecuting Juveniles in the Adult Criminal Justice System: Key Issues and Recommendations for Arizona*, CHILDREN'S ACTION ALLIANCE 1, 6 (June 2003), <http://azchildren.org/wp-content/uploads/2013/01/Prosecuting-Juv-as-Adult-2003.pdf> [hereinafter *Prosecuting Juveniles*].

enough to be treated as adults; however, the criminal justice system also tries to protect juveniles because they are not culpable enough to receive the death penalty or life without the possibility of parole for non-homicide offenses.⁷

In 2005, the Supreme Court held in *Roper v. Simmons*⁸ that it is unconstitutional to execute an individual who was a minor at the time of his or her crime.⁹ The *Roper* decision was based primarily on the fact that juveniles' brains are not fully developed.¹⁰ Specifically, the decision relied largely on sociological and scientific research that concluded that juveniles, as contrasted to adults, are less mature and less responsible.¹¹ Additionally, in 2010, the Supreme Court held in *Graham v. Florida*¹² that juveniles could not receive life without the possibility of parole for non-homicide offenses because a juvenile should have a chance to grow and mature.¹³

For the most part, the trend is to treat juveniles more leniently because the court takes the juvenile's history into account for their rehabilitative needs.¹⁴ A juvenile offender is subject to a hearing that takes a holistic approach, rather than a trial.¹⁵ Furthermore, a juvenile is ultimately considered "delinquent" as opposed to "guilty".¹⁶ Lastly, many measures are taken to protect a juvenile's privacy, such as

⁷ See *Graham v. Florida*, 130 S. Ct. 2011 (2010); *Roper*, 543 U.S. 551.

⁸ 543 U.S. 551 (2005).

⁹ See *id.* at 569-75.

¹⁰ *Id.* at 569.

¹¹ *Id.*

¹² 130 S. Ct. 2011 (2010)

¹³ *Id.*

¹⁴ *Juvenile vs. Adult Justice*, PBS (last visited Nov. 17, 2012), <http://www.pbs.org/wgbh/pages/frontline/shows/juvenile/stats/juvvsadult.html>.

¹⁵ *Id.*

¹⁶ *Id.*

limitations on public access to juvenile records.¹⁷ Limitations on juveniles' records are put in place primarily because it is thought that juvenile offenders have the prospect of successfully being rehabilitated.¹⁸ Thus, limiting access to these records spares the juvenile unnecessary stigmatization for the rest of their lives.¹⁹

The issue of whether juveniles should be treated as adults in the criminal justice system has fostered a central debate about the brain science of juveniles.²⁰ In the past decade, numerous studies were conducted on the intricacies of the adolescent brain.²¹ *Roper* and *Graham* answer the question as to whether juveniles' brains are developed enough for them to be culpable enough to be treated as adults.²² Laurence Steinberg, an expert in analyzing juvenile brains, stated that "[t]he teenage brain is like a car with a good accelerator but a weak brake[.]... With powerful impulses under poor control, the likely result is a crash."²³ Steinberg's statement illustrates one argument for why juveniles should not be treated as adults.

Based on the research and scientific conclusions in *Roper* and *Graham*, this Article's stance is that juveniles should not be treated as adults in the criminal justice system. Part II of this Article provides an overview of the treatment of juveniles in the criminal justice system. Part III of this Article discusses policy rationales for why juveniles should not be treated as adults in the criminal justice system. Part IV

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Stephanie Chen, *Boy, 12, faces grown up murder charges*, CNN (Feb. 10, 2010), http://articles.cnn.com/2010-02-10/justice/pennsylvania.young.murder.defendant_1_juvenile-homicide-jordan-s-attorneys?_s=PM:CRIME (stating that, "Brain science has been central to the debate on whether juveniles should be punished as adults. It's only in the past decade that there's been any significant scientific research on the adolescent brain.").

²¹ *Id.*

²² See *Graham*, 130 S. Ct. 2011 (2010); *Roper*, 543 U.S. 551 (2005).

²³ Chen, *supra* note 20.

of this Article discusses recidivism and rehabilitation in the criminal justice system. Specifically, Part IV(i) examines whether a juvenile who commits a heinous act can be rehabilitated. Further, Part IV(ii) of this Article examines the landmark decision of *Roper v. Simmons*, which holds that individuals who commit a capital crime under the age of eighteen are not eligible to receive the death penalty.²⁴ Part IV(iii) of this Article examines another landmark case, *Graham v. Florida*, which holds that juveniles are not eligible to receive life without the possibility of parole for non-homicide offenses.²⁵ Part V of this Article examines the balance between punishment and rehabilitation and the hardships of focusing on rehabilitating the juvenile while also providing punishment. This Article will incorporate specific juvenile cases and stories to examine the usefulness of our system. Part VI of this Article looks at the weaknesses of the juvenile justice system, because if juveniles should not be treated as adults, a stronger juvenile justice system is needed. This Article looks extensively into the intricacies of the rehabilitation and juvenile programs to properly analyze the treatment of juveniles in the juvenile justice system and to support the notion that juveniles should continue to not be treated as adults. Lastly, Part VII of this Article examines alternatives to juvenile incarceration and discusses ways to improve the current system, while keeping in mind this Article's stance that juveniles should not be treated as adults.

II. OVERVIEW OF THE JUVENILE JUSTICE SYSTEM

In most states, juvenile courts have jurisdiction over minors under the age of eighteen.²⁶ Juveniles can end up in adult criminal court by constitutional or statutory exclusion, prosecutorial discretion, or judicial waiver.²⁷ Under constitutional or statutory exclusion, certain juvenile offenders are excluded from juvenile court per state

²⁴ 543 U.S. 551.

²⁵ 130 S. Ct. 2011.

²⁶ *Prosecuting Juveniles*, *supra* note 6.

²⁷ *Id.*

statute or constitution.²⁸ For example, many states have statutes mandating that if a juvenile has been tried as an adult once that juvenile must be prosecuted as an adult for any future criminal charges.²⁹ Additionally, many states have a statute that requires any juvenile fifteen years of age or older and accused of forcible sexual assault, armed robbery, murder, or other violent offenses should be tried as an adult.³⁰ Certain crimes share original jurisdiction between criminal and juvenile court, and the prosecutor decides whether to transfer the case to criminal court.³¹ When prosecutors use their discretion to transfer a case to criminal court, the decision is ultimately up to that particular prosecutor.³² When a prosecutor exercises their discretion, the transfer occurs without any hearing or formal procedure.³³ Thus, a prosecutor has the ability to make the sole determination as to whether a juvenile should be transferred to criminal court.³⁴ An advantage of putting the decision in the prosecutor's hands is how quickly the case moves. However, a disadvantage is that prosecutors may arbitrarily apply waivers or allow political pressures to influence their decision.³⁵

Lastly, a juvenile can end up in criminal court via judicial waiver.³⁶ A criminal court may obtain jurisdiction over a juvenile who

²⁸ *Id.*

²⁹ Patrick Griffin et al., *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting* OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, 1, 2 (Sept. 2011), <https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf>.

³⁰ *Id.* at 6.

³¹ *Id.* at 2.

³² *Id.*

³³ *Id.*

³⁴ Linda Szymanski, *Direct File, Prosecutor Discretion, Prosecutorial Waiver*, 3 NCJJ SNAPSHOT (1998).

³⁵ *Id.*

³⁶ *Prosecuting Juveniles*, *supra* note 6.

is waived into criminal court on a case-by-case basis.³⁷ A judge must approve the transfer, which depends on whether the state meets specific standards at a formal hearing.³⁸ The judge can order the transfer if the judge finds that the public would be best protected if the juvenile is transferred to criminal court.³⁹ The court, in coming to that conclusion, also considers the following: the seriousness of the offense, prior history of the juvenile, the level of involvement the juvenile had in committing the offense, the juvenile's mental and emotional condition, and the likelihood of rehabilitation through services available through juvenile court.⁴⁰

Regardless of how a juvenile enters the adult criminal justice system, this transfer demonstrates that our system views certain juveniles as untreatable.⁴¹ One of the main goals of the juvenile justice system is to rehabilitate the juvenile so they can become a productive member of society. However, juvenile transfers to criminal court shift the focus from rehabilitation to punishment. Recidivism

³⁷ *Id.* at 36.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ See Douglas A. Hager, *Does the Texas Juvenile Waiver Statute Comport With the Requirements of Due Process?*, 26 TEX. TECH L. REV. 813, 814 (1995).

Children described as serious, violent, persistent, sophisticated, chronic, or mature are thought to be beyond the treatment of the juvenile court system. These offenders, typically recidivists, and usually near the maximum age of juvenile court jurisdiction, account for a disproportionately large amount of serious crimes committed by juveniles. It has been suggested that keeping these offenders in the juvenile system might have a detrimental effect on those less 'criminally sophisticated' youngsters with whom they reside. A further justification for the waiver of these serious or persistent offenders is that their continued presence in the juvenile system would result in the misallocation of scarce treatment resources.

Id. at 824 (citations omitted).

rates for juveniles in juvenile justice facilities are lower than comparable juveniles transferred to adult court.⁴² Because adolescents are still developing their identity, rehabilitation provides juvenile offenders a greater chance to grow, mature and become successful members of society.⁴³ Yet, it seems the recent trend has been to shift the primary goal of the juvenile justice system from rehabilitation to retribution; transfers to criminal court support this trend.⁴⁴

Data from a study of juvenile transfers shows that two factors are present in nearly half of the cases waived to criminal court: (1) association with an older juvenile, and (2) involvement of violence or weapons.⁴⁵ Thus, rehabilitation should focus on the individual and decipher the underlying problem causing the delinquent behavior.

Contrary to juvenile court, the primary objectives of sentencing in criminal courts have been identified as: retribution, general deterrence, special deterrence, incapacitation and rehabilitation.⁴⁶ Rehabilitation is a goal of both juvenile courts and criminal courts. However, since the goal of rehabilitation can be achieved in juvenile and criminal court, when juveniles are transferred to criminal court, it can be inferred that the goal is no longer to rehabilitate. Rather, the

⁴² Paolo G. Annino, *Children in Florida Adult Prisons: A Call for a Moratorium*, 28 FLA. ST. U. L. REV. 471, 481 (2001).

⁴³ See HARJIT S. SANDHU & C. WAYNE HEASLEY, IMPROVING JUVENILE JUSTICE: POWER ADVOCACY, DIVERSION, DECRIMINALIZATION, DEINSTITUTIONALIZATION, AND DUE PROCESS 154 (1981) (referencing research concluding that states that implemented rehabilitation programs had up to 50% drops in their recidivism rates); *supra* note 4.

⁴⁴ Gordon A. Martin, Jr., *The Delinquent and the Juvenile Court: Is There Still a Place for Rehabilitation?*, 25 CONN. L. REV. 57, 57-65 (1992) (illustrating how United States has turned away from juvenile court's original goal); Barry C. Feld, *The Juvenile Court Meets the Principle of the Offense: Punishment, Treatment, and the Difference It Makes*, 68 B.U. L. REV. 821, 836-38 (1988) (illustrating that increase in legislation mandating transfer focuses on punishment for the offense).

⁴⁵ Annino, *supra* note 42, at 477.

⁴⁶ JOEL SAMAHA, CRIMINAL JUSTICE 365-66 (Sherry Symington et. al. eds., 7th ed. 2006).

goal of transferring a juvenile to criminal court is most likely retribution to the victim, incapacitation, or deterrence in both forms.⁴⁷

The shift from rehabilitation to punishment for juvenile offenders may stem from the notion that juveniles are often able to distinguish right from wrong and know the consequences of their actions.⁴⁸ For example, many parents spank their children when they do something wrong so the children know not to do it again. Children likely have the ability to understand why they are getting spanked and that they should not do the act that warranted the punishment again.

In *Roper*, the defendant was seventeen-year-old Christopher Simmons.⁴⁹ Simmons planned and committed a murder with two other juveniles, ages fifteen and sixteen.⁵⁰ Simmons told the two juveniles that they would commit a burglary and murder by breaking and entering, tying up the victim, and throwing the victim off a bridge.⁵¹ Further, Simmons told the juveniles that because of their age they could “get away with it.”⁵² If stricter penalties were imposed on juveniles, they may have deterred Simmons from attempting the murder. However, there is a possibility that Simmons could be rehabilitated. In the majority opinion in *Roper*, Justice Kennedy noted:

The Eighth and Fourteenth Amendments forbid imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed.

⁴⁷ See Eric J. Fritsch & Craig Hemmens, *An Assessment of Legislative Approaches to the Problem of Serious Juvenile Crime: A Case Study of Texas 1973-1995*, 23 AM. J. CRIM. L. 563, 564 (1996).

⁴⁸ See Barry C. Feld, *The Juvenile Court Meets the Principle of the Offense: Legislative Changes in Juvenile Waiver Statutes*, 78 J. Crim. L. & Criminology 471, 524 (1987) (citing JEROME HALL, GENERAL PRINCIPLES OF CRIMINAL LAW 212-22 (2d ed. 1960)).

⁴⁹ *Roper*, 543 U.S. 551 (2005).

⁵⁰ *Id.* at 556.

⁵¹ *Id.*

⁵² *Id.*

... Once the diminished culpability of juveniles is recognized, it is evident that the penological justifications for the death penalty[,] ...retribution and deterrence of capital crimes by prospective offenders[,] ... provides adequate justification for imposing the death penalty on juvenile offenders.⁵³

Justice Kennedy's opinion articulates the notion that juvenile offenders may not be deterred from committing a crime because of their impulsiveness. For this reason, transferring juveniles to criminal court would not satisfy the intended goal of deterrence.

III. POLICY JUSTIFICATIONS AS TO WHETHER OR NOT JUVENILES SHOULD BE TRANSFERRED TO CRIMINAL COURT

In our society, youth under the age of eighteen are restricted from many activities that are permitted for adults, such as: drinking, using tobacco, getting married, signing a loan, voting, and gambling. Despite this, our criminal justice system can and does transfer certain juveniles to adult criminal court. Nationally, law enforcement makes 2.2 million juvenile arrests each year; 1.7 million of these cases are referred to juvenile court.⁵⁴ It is estimated that as many as 200,000 children are prosecuted as adults each year.⁵⁵ It is important to examine policy reasons when deciding whether a juvenile should be treated as a juvenile or an adult.

The adult system is drastically different from the juvenile system. Because the adult system does not take into account the lack of maturity and development of a youth offender, adult criminal court

⁵³ *Id.* at 571-72, 578.

⁵⁴ Douglas W. Nelson, *A Road Map for Juvenile Justice Reform*, Annie E. Casey Foundation 1-2
http://www.aecf.org/~media/PublicationFiles/AEC180essay_booklet_MECH.pdf.

⁵⁵ *JJDPFA Fact Book*, Act 4 Juvenile Justice at 2, available at
http://www.act4jj.org/media/factsheets/factsheet_20.pdf [hereinafter *JJDPFA*].

is not designed to meet the needs of juvenile offenders.⁵⁶ Juveniles treated as adults are subject to the same penalties as adults.⁵⁷ As a result, those juveniles will not receive rehabilitative or mental health treatment that would have been readily available if they had been processed through juvenile court.⁵⁸ When a juvenile ends up in an adult prison, they have a high likelihood of being attacked or sexually abused by other inmates and are likely in an environment that does not foster rehabilitation.⁵⁹ Additionally, these juveniles will have criminal records, making it more difficult for them to be productive members of society.⁶⁰ On the other hand, juvenile records can be sealed, giving juveniles a chance to become productive members of society without being tainted by a criminal record.⁶¹

There are reasons to treat a juvenile as an adult, particularly for deterrent purposes. If juveniles are aware the law is more lenient on them, it could cause them to end up in the system, simply because they are not deterred by the fear of punishment.⁶² For example, gang members are often aware that juvenile courts are more lenient than criminal court and may, as a result, recruit younger members to carry

⁵⁶ Terri Meredith, *Juvenile Justice - Trying Children As Adults Is An Oxymoron* (Nov. 10, 2012, 9:15 PM), <http://terrimeredith.hubpages.com/hub/Trying-Juveniles-As-Adults-Is-An-Oxymoron>.

⁵⁷ *JJDPA*, *supra* note 55.

⁵⁸ *Id.*

⁵⁹ *Id.*; Jason Zeidenberg et al., *The Risks Juveniles Face When They Are Incarcerated With Adults*, JUSTICE POLICY INSTITUTE (1997), available at http://www.justicepolicy.org/images/upload/97-02_REP_RiskJuvenilesFace_JJ.pdf.

⁶⁰ *JJDPA*, *supra* note 55.

⁶¹ *How to Seal Your Juvenile Records: What Every Juvenile Should Know*, NCYL, http://www.youthlaw.org/fileadmin/ncyl/youthlaw/publications/seal_access_records/Sealing_of_JuvenileRecords_Handout_Alameda.pdf (describing the process of sealing juvenile records and explaining why these records should be sealed).

⁶² Vincent Del Castillo, Op-ed., *Juvenile Justice Too Lenient in New York City*, N.Y. TIMES, Mar. 16, 1990, available at <http://www.nytimes.com/1990/03/16/opinion/1-juvenile-justice-too-lenient-in-new-york-city-913790.html>.

out criminal acts.⁶³ Thus, adult criminals may also be seeking to take advantage of a juvenile system that is not as harsh as criminal court. Ultimately, one downfall to treating juveniles as adults is that the juvenile system is cultivating a generation of criminals who are not deterred by a fear of punishment.⁶⁴ The juvenile system needs to evolve with society because youth are becoming more and more sophisticated.⁶⁵

On the other side of the deterrence coin, however, transferring juveniles to adult criminal court increases the risk of the juveniles to re-offend. Recidivism occurs when an individual is rearrested, reconvicted, or returned to prison during a three-year period following release.⁶⁶ A 2002 study revealed that juveniles who stayed in juvenile court had a lower recidivism rate than juveniles who were transferred to adult court.⁶⁷ Specifically, the report found that “49% of the youth transferred to adult court recidivated, compared with 37% of those who remained in the juvenile system.”⁶⁸ According to Judge Ladoris

⁶³ Bill Sturgeon, *Update The Juvenile Justice Systems - Now!*, CORRECTIONS, Aug. 19, 2012, http://www.corrections.com/bill_sturgeon/?tag=outdated-juvenile-justice-systems; see also LARRY J. SIEGEL, *CRIMINOLOGY* 107 (Meghan Banks et al. eds., 10th ed. 2009). See generally *United States v. Hernandez*, 330 F.3d 964, 977 (7th Cir. 2003) (discussing evidence that there are benefits to using younger gang members for gang activity because juveniles face more lenient penalties if caught than older members).

⁶⁴ See generally *State In Interest of B.T.*, 367 A.2d 887, 892 (N.J. App. Div. 1976) (“The cruel nature of the crime herein and the involvement of the three juveniles in the heinous plan points to the strong probability that rehabilitation within the framework of the lenient processes and facilities of juvenile-oriented institutions will be fruitless. Experience has demonstrated the ineffectiveness of the rehabilitative process with juveniles who are involved in violent crimes”).

⁶⁵ See generally *id.* (juveniles who commit a violent crime would not benefit from rehabilitation).

⁶⁶ *Recidivism*, BUREAU OF JUSTICE STATISTICS, <http://bjs.ojp.usdoj.gov/index.cfm?ty=tp&tid=17> (last visited Nov. 14, 2012 12:04 PM).

⁶⁷ *JJDPA*, *supra* note 55, at 3.

⁶⁸ *Id.*

Cordell of the Superior Court of Santa Clara, who has presided over juvenile and adult cases,

The beauty of the juvenile justice system is that it can be applied and modified to deal with the needs of the particular juvenile. That's what the system is all about. And these kids ought to have an opportunity, if the law says they can, to be a part of that system so we save them, so they become productive. That's how society benefits. If not, fine; let's go spend a ton of money every year and let's just lock these kids up. They're going to get out one day, and they're going to be back here in our faces again, and we're going to be spending more money than ever. So it just makes sense. Let's just stop the buck here if we can, because we'll benefit, not only financially, but just in terms of having individuals in society who do well.⁶⁹

Judge Cordell's statement illustrates how beneficial and flexible the juvenile justice system can be for our nation's youth. Additionally, based on adolescent brain science, these statements support the notion that juveniles may age out of delinquent behavior, as they grow older.⁷⁰ In its Report to the House of Delegates, supporting the effectiveness of rehabilitation, the Criminal Justice Section of the American Bar Association stated:

Whatever the appropriateness of parole eligibility for forty-year-old career criminals serving several life sentences, quite different issues are raised for fourteen-year-old first time offenders sentenced to prison. They may have committed essentially the same acts and have been convicted of the same offenses, but 14-year-olds,

⁶⁹ FRONTLINE, JUVENILE JUSTICE, *What Works*, PBS, <http://www.pbs.org/wgbh/pages/frontline/shows/juvenile/bench/whatittakes.html> (last visited Nov. 13, 2012).

⁷⁰ See *Roper*, 542 U.S. at 570-71 (2005).

certainly as compared to forty-year-olds, are almost certain to undergo dramatic personality changes as they age from adolescence to middle-age. Sentences for such offenders should not conclude today what kind of adults these adolescents will be many years from now. As any parent knows, predicting what teenagers will become by next week, let alone when they are grown adults, is nearly impossible. The key decision should wait to be made until adolescents have reached adulthood and can be assessed more accurately at that stage of their lives. If they have evolved into promising and non-threatening adults, strong consideration should be given to various forms of release on parole for those juvenile offenders.⁷¹

Ultimately, the most persuasive policy reason for treating most juveniles as delinquent, rather than criminal, stems from scientific research. Brain imaging research shows that “the brain systems that govern impulse control, planning, and thinking ahead are still developing well beyond age 18.”⁷² Further, behavior studies suggest that juveniles have an underdeveloped ability to fully evaluate risks and consequences, control their impulses, effectively handle stress, and say no to peer pressure.⁷³ Notably, research has revealed that, unlike most adult criminals, juvenile offenders may discontinue criminal activity when they mature.⁷⁴

⁷¹ AMERICAN BAR ASSOCIATION, CRIMINAL JUSTICE SECTION, SENTENCE MITIGATION: REPORT TO THE HOUSE OF DELEGATES 14 (2008); *see also* *Graham v. Florida*, 130 S. Ct. 2011 (2010).

⁷² Nelson, *supra* note 54, at 6.

⁷³ *See Roper*, 543 U.S. at 569-70.

⁷⁴ FRONTLINE, *supra* note 69. *See generally Graham*, 130 S. Ct. 2011 (determining that “juveniles generally are less culpable and more capable of growth than adults”).

IV. RECIDIVISM AND REHABILITATION IN THE JUVENILE JUSTICE SYSTEM

1. *Can a Juvenile Who Commits a Heinous Act be Rehabilitated?*

Although a juvenile may commit a heinous act during youth, rehabilitation remains a possibility because juveniles are still developing their identities and places in society. A 2002 study showed that juveniles who spend time in an adult penitentiary are forty-nine percent more likely to recommit a crime.⁷⁵ Kurt Kumli, a prosecutor who practices exclusively in juvenile court, noted, “I have seen time and time and time again kids who were lost causes turn their lives around. And 80 percent of the kids that come before us one time never come back.”⁷⁶ Kumli’s statements evidence the likelihood of juvenile rehabilitation. Juveniles who commit violent crimes require intensive, individually-focused treatment and educational programs.⁷⁷ Adult prisons offer little to no education, mental health treatment, or rehabilitative programs for juveniles.⁷⁸ Judge Cordell has witnessed multiple juveniles turn their lives around even after committing heinous crimes:

I have had these young people come into my court charged with committing some violent acts as serious as murder, but they had not gone into the adult system, because it was a decision I made as a result of a fitness hearing that this person indeed was amenable to treatment. And in some cases—not all, but in some cases—I have been proved right. So I know that this can happen. Lives can be turned around...⁷⁹

In *Roper*, Justice Kennedy, writing for the majority, stated,

⁷⁵ *JJDPA*, *supra* note 55, at 2.

⁷⁶ *FRONTLINE*, *supra* note 69.

⁷⁷ *Sturgeon*, *supra* note 63.

⁷⁸ *Meredith*, *supra* note 56.

⁷⁹ *FRONTLINE*, *supra* note 69.

The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed. Indeed, the relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuosity and recklessness that may dominate in younger years can subside.⁸⁰

As such, a juvenile, even one who commits a heinous crime, can be rehabilitated. The odds of this rehabilitation increase greatly if the juvenile is placed in the juvenile justice system rather than adult criminal court.

2. *Juveniles and the Death Penalty*

In *Roper*, the Court held that the Eighth and Fourteenth Amendments prohibit the execution of minors who were younger than eighteen years old at the time they committed a capital crime.⁸¹ The Court reviewed the laws among the several states and noted that the national trend toward abolition of the juvenile death penalty evidenced society's views that minors should not be put to death.⁸² Additionally, the Court recognized the severity of the death penalty and noted that "[c]apital punishment must be limited to those offenders who commit 'a narrow category of the most serious crimes' and whose extreme culpability makes them 'the most deserving of execution.'"⁸³

⁸⁰ *Roper*, 543 U.S. at 570 (2005) (internal quotation marks omitted).

⁸¹ *Id.* at 570-71.

⁸² *Id.* at 561-65.

⁸³ *Id.* at 568.

Notably, the Court recognized that juveniles are different from ordinary criminals for three reasons: (1) juveniles lack maturity and understanding of responsibility; (2) juveniles are “more vulnerable or susceptible to negative influences and outside pressures, including peer pressure”; and (3) “the character of a juvenile is not as well formed as that of an adult.”⁸⁴ Justice Kennedy noted that “[r]etribution is not proportional if the law’s most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity.”⁸⁵ Relying on scientific research, the Court noted that “[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.”⁸⁶ Moreover, “adolescents are overrepresented statistically in virtually every category of reckless behavior.”⁸⁷ Thus, juveniles lack the same degree of culpability of adult criminals, because of their immaturity and lack of development.

As mentioned earlier, states regularly treat juveniles differently than adults.⁸⁸ Because of juvenile’s lesser culpability, the Supreme Court concluded that “the penological justifications for the death penalty apply to them with lesser force than to adults.”⁸⁹ The Court’s position, supported by the scientific conclusions about the differences between a juvenile and adult “demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders.”⁹⁰

⁸⁴ *Id.* at 569-70.

⁸⁵ *Id.* at 571.

⁸⁶ *Roper*, 542 U.S. at 569 (citing *Johnson v. Texas*, 113 S.Ct. 2658 (1993) (“[e]ven the normal 16-year-old customarily lacks the maturity of an adult”)).

⁸⁷ *Id.* (citing Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 DEVELOPMENTAL REV. 339 (1992)).

⁸⁸ *Id.*

⁸⁹ *Id.* at 571.

⁹⁰ *Id.* at 569.

Therefore, this provides further support that overall juveniles should not be transferred to adult criminal court.

3. *Juveniles and Life Without Parole*

In the landmark case, *Graham v. Florida*, the Supreme Court held that juveniles cannot be sentenced to life imprisonment without the possibility of parole for non-homicide offenses.⁹¹ *Graham* is another demonstration of ways in which the criminal justice system protects juveniles. Jamar Graham and three accomplices attempted to rob a barbeque restaurant in Jacksonville, Florida.⁹² Graham was sixteen at the time of the offense and was arrested and charged as an adult for armed burglary with assault and battery and attempted armed robbery.⁹³ Graham pleaded guilty to both charges under a plea agreement with the state.⁹⁴ Less than six months later, Graham violated his probation when he attempted two home invasion robberies and fled police.⁹⁵ The trial court sentenced Graham to life in prison without the possibility for parole.⁹⁶ The Supreme Court determined, in *Graham*, that sentencing a juvenile who commits a non-homicidal offense to life without parole for an individual violates the Eighth Amendment prohibition of "cruel and unusual punishment."⁹⁷ In the majority opinion, Justice Kennedy stated that:

The Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide. A State need not guarantee the offender eventual release, but if it imposes a sentence of

⁹¹ *Graham*, 130 S. Ct. at 2034 (2010).

⁹² *Id.* at 2018.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.* at 2018-19.

⁹⁶ *Id.* at 2020.

⁹⁷ *See generally Graham*, 130 S. Ct. 2011 (2010).

life it must provide him or her with some realistic opportunity to obtain release before the end of that term.⁹⁸

Justice Kennedy's majority highlights the notion that juveniles should be given the opportunity to turn their life around and contribute to society.

The holding in *Graham* concludes that the Eighth Amendment proportionality provision excludes certain offenders (here, juveniles) from certain punishments.⁹⁹ Further, *Graham* recognizes that juveniles may redeem themselves and become contributing members of society.¹⁰⁰ In *Graham*, the Court found that imposing life without any possibility of parole offers the juvenile no chance to later show that they have grown and matured.¹⁰¹ An individual who is allowed a chance to grow and mature "can lead to that considered reflection which is the foundation for remorse, renewal and rehabilitation."¹⁰² *Graham* insinuates the notion that juveniles have the possibility of changing for the better.¹⁰³

V. THE BALANCE BETWEEN PUNISHMENT AND REHABILITATION

Although juveniles should not be transferred to adult court, there is a concern about punishment for a crime, especially when there is a victim involved. When a juvenile offender, assaults, batters, rapes, murders or commits a violent act against a victim, it is difficult to

⁹⁸ *Id.* at 2034.

⁹⁹ Robert Smith & G. Ben Cohen, *Redemption Song: Graham v. Florida and the Evolving Eighth Amendment Jurisprudence*, 108 MICH. L. REV. FIRST IMPRESSIONS 86-87 (2010), available at <http://www.michiganlawreview.org/assets/fi/108/smithcohen.pdf>.

¹⁰⁰ *Id.* at 92.

¹⁰¹ *Id.* at 93.

¹⁰² *Graham*, 130 S. Ct. at 2032.

¹⁰³ Smith, *supra* note 99, at 94.

strike a balance between punishment and rehabilitation for the juvenile and retribution for the victim. Take, for example, the case of eleven-year-old Jordan Brown, who was accused of murdering his father's fiancé, Kenzie Houk and her unborn fetus.¹⁰⁴ Jordan Brown is one of the youngest suspects to be charged with a homicide offense.¹⁰⁵ Jordan faces two homicide charges, including one for the unborn fetus.¹⁰⁶ Jordan is described as an energetic chubby fifth-grader.¹⁰⁷ Like most eleven-year olds, he is a fan of Harry Potter, plays football, and likes riding his bike.¹⁰⁸ According to Jordan's attorney and family, he is doing well, but he is unable to really understand the seriousness of the two homicide charges against him.¹⁰⁹ With an offender so young, it is hard to balance a child's interest versus ensuring retribution for the family, punishment, and rehabilitation for the offender. It is especially hard when, as here, the victim's family wants Jordan to be charged as an adult.¹¹⁰ Kenzie Houk's mother told reporters: "[t]he day Kenzie was murdered, the whole family was served with a life sentence[.] There [is] a 4-year-old and 7-year-old who are serving life right now. They are never going to see their mom."¹¹¹

Ultimately, the court tried Jordan Brown as a juvenile, and the judge presiding over his case adjudicated him as delinquent.¹¹²

¹⁰⁴ Chen, *supra* note 20.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² Nancy Lowry, *Teen Ruled Responsible for Death of Kenzie Houk, baby*, NEW CASTLE NEWS, Apr. 14, 2012, <http://www.ncnewsonline.com/brown/x1224382260/Teen-ruled-responsible-for-death-of-Kenzie-Houk-baby>.

Jordan's case will be reviewed every six months to keep track of his progress.¹¹³ However, according to juvenile law, Jordan has to be released by his twenty-first birthday.¹¹⁴ Jordan's case illustrates the balance between punishment and rehabilitation for juvenile offenders. This particular court's focus was on rehabilitating the youth and not retribution to the victim's family for the heinous crime he committed. It will be interesting to see what Jordan's status will be in twenty years; whether he will become a productive member of society or commit another violent crime after his release.

Some juveniles are so close to eighteen that they seem to have little chance for rehabilitation. For instance, seventeen-year-old, Austin Reed Sigg was charged with kidnapping, sexually assaulting, and murdering ten-year-old Jessica Ridgeway.¹¹⁵ Sigg was alleged to have strangled, dismembered, and hid Ridgeway's body parts in a crawlspace at his house.¹¹⁶ Sigg was also accused of sexually assaulting and attacking a woman who was running.¹¹⁷ The allegation is that Sigg placed a rag doused with a chemical over the runner's face and attacked her from behind.¹¹⁸ The facts of Sigg's case evoke outrage on behalf of Jessica Ridgeway and her family. Additionally, the nature of Sigg's crime makes it difficult to believe that he can be rehabilitated. Sigg, even at seventeen, if tried in juvenile court, would

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ CNN Wirestaff, *Teen Charged in Jessica Ridgeway's Grisly Death*, CNN, Oct. 30, 2012, http://www.cnn.com/2012/10/30/justice/jessica-ridgeway-charges/index.html?hpt=hp_t3.

¹¹⁶ *Id.*

¹¹⁷ P. Solomon Banda, *Austin Reed Sigg, Colorado Teen, Charged As Adult In Girl's Killing*, HUFFINGTON POST, Oct. 30, 2012, http://www.huffingtonpost.com/2012/10/30/colorado-teen-charged-as-_0_n_2045515.html.

¹¹⁸ *Id.*

be released when he turns twenty-one.¹¹⁹ For some reason, the thought of Sigg incapacitated in the juvenile system while simultaneously rehabilitating in four years seems insufficient – especially compared to the potential ten years that Jordan Brown faces. The court agreed and charged Sigg as an adult.¹²⁰

The more heinous the crime and the older the juvenile, the more adult criminal court seems like a viable option. Sigg is the perfect case in which treatment as an adult seems proper. The concern is that he likely poses a threat to public safety and has little chance for rehabilitation. If Sigg were just one year older, there is no doubt he would be tried as an adult. Moreover, this case supports the notion that the juvenile justice system should be revamped and a new category, youthful offenders, should be implemented for older offenders who have a decreased chance of rehabilitation. This suggestion is further discussed in Part VII of this article.

VI. WEAKNESSES OF THE JUVENILE JUSTICE SYSTEM

Juveniles should not be treated as adults; therefore, it is necessary that America maintain a strong juvenile justice system. Thus, this Article will examine the weaknesses of the juvenile justice system to better meet the needs of juveniles. Our criminal and juvenile justice systems are not perfect and, in some instances, fall short of meeting their rehabilitative goals. According to available studies of youth's released specifically from juvenile residential correction programs, seventy to eighty percent of the youth are rearrested within two to three years.¹²¹ If juveniles are no longer transferred to adult criminal court, the conditions of juvenile

¹¹⁹ *State Statutes Define who is Under Juvenile Court Jurisdiction*, OJJDP NATIONAL REPORT SERIES BULLETIN (June 2003), <https://www.ncjrs.gov/html/ojjdp/195420/page3.html>.

¹²⁰ Banda, *supra* note 123.

¹²¹ Richard A. Mendel, *No Place for Kids*, ANNIE E. CASEY FOUNDATION 10 (2011), http://www.aecf.org/~media/Pubs/Topics/Juvenile%20Justice/Detention%20Reform/NoPlaceForKids/JJ_NoPlaceForKids_Full.pdf.

correctional facilities must be up to the task of successfully rehabilitating incarcerated juveniles. In 2004, reports from California revealed that violence was a problem in juvenile facilities.¹²² Nationally, 13,000 abuse cases were reported in juvenile institutions between 2004 and 2007.¹²³ The high number of abuse possibly stems from lax work policies, poor wages, inefficient training, lack of incentives for employees, poor supervision, and high turnover rates.¹²⁴ Thus, resources and money need to be devoted to juvenile facilities to ensure they are able to meet the needs of incarcerated juveniles. The next section of this Article will examine possible alternatives to our current juvenile system and ways that our current system can be improved.

VII. ALTERNATIVES TO JUVENILE DETENTION IF THEY ARE TREATED DIFFERENTLY THAN ADULTS AND WAYS TO IMPROVE THE SYSTEM

The main goal of the juvenile justice system is rehabilitation; thus, alternatives to juvenile incarceration and ways to improve the system must be explored to better meet the rehabilitation goals of juveniles in the system. If juveniles are not transferred to adult courts, more juveniles will be treated in the juvenile justice system. Therefore, the system needs to be very effective in successfully rehabilitating juveniles to become contributing members of society.

The juvenile detention system could be described as dangerous, ineffective, unnecessary, obsolete, wasteful, and inadequate.¹²⁵ Juveniles incarcerated are exposed to physical and psychological forms of violence, such as sexual assaults, and the use of excessive isolations or restraints.¹²⁶ Despite the rehabilitative objective,

¹²² Nelson, *supra* note 54, at 9.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ Mendel, *supra* note 124 at 4.

¹²⁶ *Id.* at 5.

recidivism rates are high and incarceration greatly diminishes a juvenile's chance for success in finding employment or getting a quality education – making incarceration inconsistent with goals of the juvenile justice system.¹²⁷ Moreover, it is unnecessary to incarcerate youth in most instances because they do not really pose a threat to society.¹²⁸ The current structure of the juvenile justice system is also wasteful because tax dollars are funding correctional institutions when other programs may deliver better results. Lastly, many facilities fail to provide the services necessary to rehabilitation, furthering the inadequacy of the current system.¹²⁹

The first alternative that is more in line with the goals of the juvenile justice system is a focus towards prevention. If we can prevent our youth from becoming involved with the system to begin with, then it lessens the burden on the state to try and rehabilitate the youth. One of the key elements of prevention is catching potential delinquents early.¹³⁰ In terms of development, the preschool period is crucial in preventing disruptive behavior and potential child delinquency.¹³¹ During a youth's early preschool years, development stems from the family.¹³² If a teacher can identify certain risk factors such as physical aggression and address them with the parent, it could play a significant role in preventing future delinquency.¹³³ Additionally, if schools launch programs to educate students on bullying, provide afterschool recreational programs, assign students mentors, and sponsor sport teams, it will likely result in less

¹²⁷ *Id.* at 9,16.

¹²⁸ *Id.* at 13.

¹²⁹ *Id.* at 22.

¹³⁰ Rolf Loeber ET. AL, *Child Delinquency: Early Intervention and Prevention*, U.S. Department of Justice Child Delinquency Bulletin Series 4 May 2003, <https://www.ncjrs.gov/pdffiles1/ojjdp/186162.pdf>.

¹³¹ *Id.*

¹³² *Id.* at 6.

¹³³ *Id.*

delinquents.¹³⁴ Programs such as the ones suggested “have demonstrated that interventions with young children can reduce later delinquency.”¹³⁵

Furthermore, the juvenile justice system would be more effective if it was more involved with rehabilitating individual juveniles. Juveniles need a significant amount of attention in order for them to effectively become rehabilitated. For instance, the Family Integrated Transitions (“FIT”) program, instituted in some juvenile justice programs, provides juvenile offenders with mental health and substance abuse services.¹³⁶ The FIT program provides outreach and treatment for the juvenile and their family.¹³⁷ The program works with juveniles about two months prior to their release and the services continue for four months afterwards.¹³⁸ Participants of FIT are one-third less likely to succumb to recidivism within eighteen months of release.¹³⁹ Similar programs need to be instituted in more juvenile facilities, in order to limit the recidivism rate of juveniles.

Bill Sturgeon, a criminal justice consultant, proposed a novel revision to the setup of the juvenile justice system that adapts to society’s changing youth. Sturgeon proposes changing the classification of juveniles.¹⁴⁰ He proposes that only children twelve years old and under be titled juveniles.¹⁴¹ He believes that there is a need to add another layer to the criminal justice makeup – a hybrid youthful/adult offender category that would fulfill the needs of youthful offenders.¹⁴² He proposes that teens between the ages of

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ Nelson, *supra* note 54, at 23.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ Sturgeon, *supra* note 63.

¹⁴¹ *Id.*

¹⁴² *Id.*

thirteen and nineteen be titled as youthful offenders.¹⁴³ This new category would create a new correctional environment.¹⁴⁴

The juvenile justice advisory committee has weighed the possibility of a youthful offender system, but for eighteen to twenty-five year olds.¹⁴⁵ The committee noted that this could allow young offenders to be held with their peers and allow for programs to be geared towards youth of certain ages.¹⁴⁶ Consequently, this scheme would be expensive to administer.¹⁴⁷ This proposed change, however, could allow for the juvenile justice system to cater to the specific needs of different age groups of delinquents and perhaps institute stricter sentences for older delinquents.

Bill Sturgeon also suggests that upon a youth's entry into the criminal justice system, extensive baseline testing needs to be conducted to fully understand the offender.¹⁴⁸ The baseline testing would consist of extensive physical, emotional, cognitive, and psychosocial testing.¹⁴⁹ He suggests baseline testing so that the system has an integrated "snapshot" of each individual's needs.¹⁵⁰ Sturgeon believes this approach is necessary because currently all offenders are essentially put through the same program instead of an individualized treatment addressing their specific needs.¹⁵¹ Bill Sturgeon does have innovative ideas for possible alternatives to our current system; however, it will take a significant amount of resources – both monetary and non-monetary – to see his ideas realized. The

¹⁴³ *Id.*

¹⁴⁴ *Prosecuting Juveniles, supra* note 6, at 21.

¹⁴⁵ *Id.*

¹⁴⁶ *Id. at* 28.

¹⁴⁷ *Id.*

¹⁴⁸ Sturgeon, *supra* note 63.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

effectiveness and success of his changes could, however, outweigh the expense.

VIII. CONCLUSION

“Children are like wet cement, whatever falls on them makes an impression.”¹⁵² It is up to us as a society to make a positive impression on children and ensure that they do not become delinquent. It is engrained in the American criminal justice system that juveniles are treated differently than adults. We have statutes aimed to protect youth, such as statutory rape, that punishes an adult for having sex with a minor even if the act was consensual, because we have determined that children do not have the mental capacity to consent. We also do not allow our youth to drink or smoke, presumably because they are not mature enough. Landmark cases, such as *Roper* and *Graham*, highlight the differences between children and adults and why juveniles should not receive the death penalty or be sentenced to life without parole for non-homicide offenses.

The analysis and opinions presented above support the conclusion that juveniles should not be transferred to adult criminal court. This Article does not assume that all juveniles can be rehabilitated. There are some juveniles who do not belong in society because they pose a threat to public safety. What this Article does is highlight political, scientific, and specific examples as to why juveniles should be treated in the juvenile justice system and not transferred to adult court.

By proffering alternatives to our current juvenile justice system, this Article does not discredit the successes of juvenile rehabilitation programs or juveniles incarceration. Instead, this Article aims to highlight alternatives that are available and offer a higher rate of success. In order to recognize the faults of our current system and consider initiatives to improve and prevent juvenile delinquency, members of the public must be aware of the system’s weaknesses to

¹⁵² VICKI LANSKY, *Practical Parenting Tips* 1, 190 (Joseph Gredler ed., 2003) (quoting Dr. Haim G. Ginott).

actively weigh the pros and cons of treating juveniles as adults and maintaining the current juvenile system. “Children are one third of our population and all of our future.”¹⁵³ We must do what we can to ensure that future generations are successful members of society, and begin with preventing juvenile delinquency. If a child does end up in the system, rehabilitation is key for the juvenile to be a productive member of society and we need to ensure our juvenile system reflects this initiative.

¹⁵³ Select Panel for the Promotion of Child Health, 1981 *quoted at* <http://www.healthpaconline.net/health-care-for-children.htm>.