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25 IS THE NEW 18: EXTENDING JUVENILE JURISDICTION AND CLOSING ITS EXCEPTIONS

Dylan Raymond*

INTRODUCTION

Courts are in broad agreement that juveniles—defined as people under 18-years-old¹—are less culpable than adults and thus punish them differently.² Indeed, few would disagree that the adult criminal system should apply only to adults—people “fully developed and mature.”³ If separating adults and juveniles based on culpability is the goal, it begs a simple question: should the split happen at age 18? Some U.S. institutions imply that they believe an 18-year-old lacks the requisite maturity to assume certain responsibilities, including the House of Representatives⁴ and car rental agencies,⁵ which permit participation at 25. Looking globally, important institutions like the United Nations mark the start of adulthood at age 25.⁶ These entities align with mounting evidence from brain development research suggesting that a rational brain fully forms around age 25.⁷

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¹ See, e.g., 18 U.S.C. § 5031 (“[A] ‘juvenile’ is a person who has not attained his eighteenth birthday . . .”).

² See *infra* Parts I.A, II.A.

³ *Adult*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/adult> [<https://perma.cc/AKM7-VM7R>] (last visited Aug. 14, 2022).

⁴ U.S. CONST. art. I, § 2, cl. 2.

⁵ See *How Old Do You Have to Be to Rent a Car?*, KAYAK (Aug. 31, 2020), <https://www.kayak.com/news/car-rental-age-restrictions/> [<https://perma.cc/LHK8-Z82R>] (explaining that 25 is the age to freely rent, but the “true minimum age to rent a car is 21”; however, these renters must pay a “young renter fee,” drive smaller cars, and adhere to stricter insurance requirements as younger renters increase the risk of accidents).

⁶ *Frequently Asked Questions*, U.N.: DEP’T OF ECON. & SOC. AFFS., <https://www.un.org/development/desa/youth/what-we-do/faq.html> [<https://perma.cc/C6BV-NE2T>] (last visited Aug. 14, 2022) (explaining that, for statistical purposes, the United Nations defines “youth” as “those persons between the ages of 15 and 24 years”).

⁷ Joseph Campellone & Raymond Kent Turley, *Health Encyclopedia: Understanding the Teen Brain*, UNIV. OF ROCHESTER MED. CTR., <https://www.urmc.rochester.edu/encyclopedia/content.aspx?ContentTypeID=1&ContentID=3051> [<https://perma.cc/738H-9CFT>] (last visited Aug. 14, 2022).

Until the point of full brain maturity, “emerging adults”⁸—ages 18 to 25—are “developmentally distinct from older adults . . . particularly in the prefrontal cortex region, which regulates impulse control and reasoning.”⁹ As a result, when compared to adults, emerging adults take more risks, are more prone to emotional outbursts, and disregard future consequences.¹⁰ These traits echo the foundation of courts’ reasoning that juveniles are less culpable than adults.¹¹

Thus, courts’ current approach of treating juveniles and emerging adults differently is misguided. Emerging adults should take part in the juvenile system because emerging adults are more developmentally similar to juveniles than older adults.¹² And not only do the developmental similarities call for reduced culpability, but they also link to the key forward-looking trait of emerging adults and juveniles: a unique susceptibility to rehabilitation stemming from brain plasticity.¹³ Finally, emerging adults occupy a challenging socio-economic space distinct from adulthood and childhood.¹⁴ The juvenile system is better suited for these developmental and socio-economic traits of emerging adults.

Yet the age limit of juvenile jurisdiction in the U.S. (the last year minors are subject to the juvenile system) is 17 in 46 states and Washington D.C., 16 in three states, and 18 in Vermont (which was scheduled to increase the age of juvenile jurisdiction to 20 by 2024).¹⁵ But 20, like 17, is still premature; instead, states should

⁸ “Emerging adulthood” is a term coined by Jeffrey Arnett that he used in place of young adulthood. See JEFFREY JENSEN ARNETT, *EMERGING ADULTHOOD: THE WINDING ROAD FROM THE LATE TEENS THROUGH THE TWENTIES* (2d ed. 2014). He created the distinction to avoid the implication that young adults had, at least to some degree, become adults. See *id.* at 1. This Note will follow suit, using “emerging” rather than “young” for the remainder of the discussion.

⁹ VINCENT SCHIRALDI, BRUCE WESTERN & KENDRA BRADNER, *NAT’L INST. OF JUST., COMMUNITY-BASED RESPONSES TO JUSTICE-INVOLVED YOUNG ADULTS* 3 (Sept. 2015), <https://www.ojp.gov/pdffiles1/nij/248900.pdf>. [<https://perma.cc/T673-63JA>].

¹⁰ *Id.*

¹¹ See, e.g., *Roper v. Simmons*, 543 U.S. 551, 569–70 (2005) (reasoning that juveniles, underdeveloped and more susceptible to negative influences than adults, cannot be considered culpable).

¹² SCHIRALDI ET AL., *supra* note 9, at 8.

¹³ Alex A. Stamm, *Young Adults Are Different, Too: Why and How We Can Create a Better Justice System for Young People Age 18 to 25*, 95 TEX. L. REV. 72, 74 n.15 (2017).

¹⁴ SCHIRALDI ET AL., *supra* note 9, at 4–6 (summarizing the historical shifts in “emerging adults” disconnectedness to the family unit and its effect on their ability to scale socio-economic status).

¹⁵ Anne Teigen, *Juvenile Age of Jurisdiction and Transfer to Adult Court Laws*, NAT’L CONF. OF STATE LEGISLATURES (Apr. 8, 2021), <https://www.ncsl.org/research/civil-and-criminal-justice/juvenile-age-of-jurisdiction-and-transfer-to-adult-court-laws.aspx> [<https://perma.cc/E72V-PLJE>]; Katie Dodds, *Why All States Should Embrace Vermont’s Raise the Age Initiative*, COAL. JUV. JUST. (July 22, 2020), <https://www.juvjustice.org/blog/1174>

gradually raise the age to 25. Further, the current juvenile system in the United States allows juveniles to be tried and punished as adults, a practice abandoned in other developed countries.¹⁶ The reasons that emerging adults are less culpable than adults over 25 and are susceptible to rehabilitation apply to juveniles even more, and juveniles should be addressed solely in the system created for them.¹⁷ As such, states should eliminate procedural mechanisms that transfer juveniles to the adult system.

This Note argues, first, that states should raise the age of juvenile jurisdiction to 25 to include emerging adults in the juvenile system until they are fully mature, and second, that states should eliminate current practices of transferring juveniles to the adult criminal system. Part I details the developmental and socio-economic differences between emerging adults and adults, and Part II describes the history and potential of the juvenile system and outlines the U.S. practice of punishing juveniles as adults. Part III makes a case for raising the age of juvenile jurisdiction to 25 and eliminating the juvenile transfer system, based on culpability, practicality, and the public interest in rehabilitating emerging adults. By implementing these two solutions, states can better align with the current scientific research and principles of culpability-aligned justice, while also maximizing the chance of rehabilitating justice-involved emerging adults into everyday society.

I. EMERGING ADULTS: INSIDE AND OUT

This Part focuses on emerging adults, with Part I.A articulating the developmental differences and Part I.B articulating the socio-economic differences between adults and emerging adults. Specifically, Part I.B defines and describes the exploratory nature of emerging adulthood, highlights why emerging adulthood results in a failed exploration for many, and discusses the consequences of failed exploration for emerging adults.

[<https://perma.cc/VL3P-BNER>]. *But see* Associated Press, *Vermont Pauses Plan to Consider 19-Year-Olds as Juveniles*, U.S. NEWS (Oct. 6, 2021, 1:37 PM), <https://www.usnews.com/news/best-states/vermont/articles/2021-10-06/vermont-pauses-plan-to-consider-19-year-olds-as-juveniles> [<https://perma.cc/7M44-P32D>] (“Vermont plans to halt legislation that would change the way the state’s criminal justice system handles 18- and 19-year-old criminal offenders because state officials said some young offenders are too dangerous to be treated as juveniles.”); Alan J. Keays, *Scott Administration Seeks to Slow Down Raise the Age Initiative*, VTDIGGER (Oct. 10, 2021), <https://vtdigger.org/2021/10/10/scott-administration-seeks-to-slow-down-raise-the-age-initiative/> [<https://perma.cc/W2E4-HZWK>] (noting that administration personnel say the act needs to be delayed so that the state can “beef[-]up programs and services” to handle 19-year-olds in the juvenile system).

¹⁶ *Reforming Maryland’s Cruel Treatment of Young Offenders*, ECONOMIST (Apr. 3, 2021), <https://www.economist.com/united-states/2021/04/03/reforming-marylands-cruel-treatment-of-young-offenders> [<https://perma.cc/CCL9-G2X5>].

¹⁷ For the remainder of this Note, “juvenile” will refer to those 17 and under, “emerging adult” will refer to those 18 to 25 and “adult” will refer to those 26 and older.

A. *The Incomplete Internal Development of Emerging Adults*

The developmental process that begins with puberty is about halfway done at age 18 and continues to about 25.¹⁸ Around ages 11 to 12, the brain has its highest levels of gray matter from “synaptic overproduction,” thickening certain areas of the brain “as neural connections proliferate” to an excess amount.¹⁹ From there, the brain matures back to front, partly through “pruning” the redundant, unused neural connections to make the brain more efficient.²⁰ The remaining parts of the brain specialize, become more responsive, and get better at transferring data through myelination.²¹ Myelin is “a sheath of fatty cell material wrapped around neuronal axons” that “acts as ‘insulation’ for neural connections.”²² This insulation “allows nerve impulses to travel throughout the brain more quickly and efficiently and facilitates increased integration of brain activity.”²³ As with pruning, myelination happens last in the prefrontal cortex, the area of the brain most responsible for “goal-directed behavior, including planning, response inhibition, working memory, and attention.”²⁴ The extended time it takes for the prefrontal cortex to mature leaves emerging adults inadequately equipped to exert self-control.²⁵

Children also have an underdeveloped prefrontal cortex,²⁶ but the difference between children and emerging adults is that emerging adults have an imbalance between an immature prefrontal cortex and a hyperactive reward system.²⁷ Like the prefrontal cortex, a brain’s reward system does not reach an adult level until age 25,²⁸ when the brain’s cognitive control system strikes a balance of emotion and reason that an adult can use to better self-regulate.²⁹ The “highly reactive” reward system of emerging adults causes them to seek rewards and take risks, especially

¹⁸ *Brain Maturity Extends Well Beyond Teen Years*, NPR (Oct. 10, 2011, 12:00 PM), <https://www.npr.org/templates/story/story.php?storyId=141164708> [<https://perma.cc/DZ2H-MRF4>].

¹⁹ Sara B. Johnson, Robert W. Blum & Jay N. Giedd, *Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy*, 45 J. ADOLESCENT HEALTH 216, 217 (2009).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Elizabeth S. Scott, Richard J. Bonnie & Laurence Steinberg, *Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy*, 85 FORDHAM L. REV. 641, 646–47 (2016).

²⁶ See Carl Sherman, *A Delicate Balance: Risks, Rewards, and the Adolescent Brain*, DANA FOUND. (Jul. 10, 2019), <https://dana.org/article/a-delicate-balance-risks-rewards-and-the-adolescent-brain/> [<https://perma.cc/LYC7-922F>].

²⁷ Scott et al., *supra* note 25, at 646–47.

²⁸ *Brain Maturity Extends Well Beyond Teen Years*, *supra* note 18.

²⁹ Laurence Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking*, 28 DEVELOPMENTAL REV. 78, 93 (2008).

when exploring new scenarios or when peer pressured.³⁰ In “the heat of the moment,” a long-term consideration happening in the prefrontal cortex “is no match for the immediate gratification promised by fast driving, excessive drinking, or unprotected sex.”³¹ Some describe this period as “a time when the ‘accelerator’ is pressed to the floor, but a good ‘braking system’ is not yet in place.”³² Taken altogether, this level of brain function is more similar to juveniles than it is adults.³³

Further, emerging adults, like juveniles, do not respond well to deterrence.³⁴ Instead, an emerging adult’s brain is primed for rehabilitation because it possesses “heightened brain plasticity” that allows it to “change in response to experience—not unlike the first few years of life.”³⁵ The highly malleable minds of young adults present an opportunity for great harm from lengthy prison sentences or great benefit from rehabilitative efforts.³⁶

Though 18 is only the halfway point in youth development, it is the point up to which the Supreme Court has been willing to confer less culpability to offenders. In three twenty-first century decisions, the Supreme Court has held that juveniles “are constitutionally different from adults for purposes of punishment”³⁷ The Court has applied this finding to cruel and unusual punishment, prohibiting juvenile execution sentences,³⁸ juvenile life without parole sentences outside of homicide cases,³⁹ and mandatory life without parole sentences for juveniles that preclude individualized hearings.⁴⁰

In 2005, in *Roper v. Simmons*, for example, the Court held that the Eighth and Fourteenth Amendments banned the death penalty for those under 18, thereby affirming “the necessity of referring to ‘the evolving standards of decency that mark the progress of a maturing society’ to determine which punishments are so disproportionate as to be ‘cruel and unusual.’”⁴¹ Relying on brain studies, the Court

³⁰ *Brain Maturity Extends Well Beyond Teen Years*, *supra* note 18 (“So, for instance, a 20 year old is 50 percent more likely to do something risky if two friends are watching than if he’s alone.”).

³¹ Sherman, *supra* note 26.

³² Scott et al., *supra* note 25, at 647 (quoting LAURENCE STEINBERG, *AGE OF OPPORTUNITY: LESSONS FROM THE NEW SCIENCE OF ADOLESCENCE* 85 (2014)).

³³ See SCHIRALDI ET AL., *supra* note 9, at 3–4; *From Youth Justice Involvement to Young Adult Offending*, NAT’L INST. OF JUST. (Mar. 10, 2014), <https://nij.ojp.gov/topics/articles/juvenile-delinquency-young-adult-offending#special> [<https://perma.cc/Q2MA-PH25>].

³⁴ Josh Gupta-Kagan, *The Intersection Between Young Adult Sentencing and Mass Incarceration*, 2018 WIS. L. REV. 669, 716–17 (2018).

³⁵ Scott et al., *supra* note 25, at 652.

³⁶ *Id.*

³⁷ Barry C. Feld & Perry L. Moriearty, *Race, Rights, and the Representation of Children*, 69 AM. U. L. REV. 743, 754 (2020).

³⁸ See *Roper v. Simmons*, 543 U.S. 551, 578–79 (2005).

³⁹ See *Graham v. Florida*, 560 U.S. 48, 82 (2010).

⁴⁰ See *Miller v. Alabama*, 567 U.S. 460, 489 (2012).

⁴¹ *Roper*, 543 U.S. at 561 (quoting *Trop v. Dulles*, 356 U.S. 86, 100–01 (1958)).

noted that juveniles have underdeveloped maturity and are sensitive to negative outside influences, reasons why “[juvenile] irresponsible conduct is not as morally reprehensible as that of an adult.”⁴²

Five years later, in *Graham v. Florida*, the Supreme Court held that the Eighth Amendment prohibits life without parole sentences for juveniles who did not commit homicide.⁴³ Echoing *Roper*’s reduced culpability argument, the Court in *Graham* stated that “[j]uveniles are more capable of change than are adults, and their actions are less likely to be evidence of ‘irretrievably depraved character’ than are the actions of adults.”⁴⁴ And doubling down on the “evolving standards of decency” approach from *Roper*, the Court showed a willingness to consider global standards in reaching a decision, noting that the rest of the world had rejected this form of punishment for juveniles.⁴⁵

Finally, in 2012, in *Miller v. Alabama*, the Court banned mandatory life without parole sentences for juveniles who committed homicide, stating that “a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles.”⁴⁶ This individualized and discretionary approach reiterated the rationales from *Roper* and *Graham*, relying “not only on common sense . . . but on science and social science as well.”⁴⁷ The court in *Miller* found “*Graham*’s ‘[t]reat[ment] [of] juvenile life sentences as analogous to capital punishment’ . . . makes relevant . . . a second line of . . . precedents, demanding individualized sentencing when imposing the death penalty.”⁴⁸

A more recent Supreme Court decision, *Jones v. Mississippi*,⁴⁹ has seemingly slowed the movement of affording juveniles less harsh punishment than adults. In *Jones*, the Court ruled that while *Miller* banned mandatory life without parole sentences for juveniles, a discretionary sentence of life without parole only requires consideration of youthfulness, not a specific factual finding of “permanent incorrigibility.”⁵⁰ Dissenting, Justice Sotomayor argued that “*Miller*’s essential holding is that ‘a lifetime in prison is a disproportionate sentence for all but the rarest children, those whose crimes reflect irreparable corruption.’”⁵¹ Justice Sotomayor said that exercising discretion by merely considering youthfulness is not an acceptable mechanism for ensuring that a court does not sentence a still developing—rather than irreparable—juvenile to life in prison in violation of the Eight Amendment.⁵² Despite this ruling, the Court’s recognition of lessened

⁴² *Id.* at 570 (quoting *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988)).

⁴³ *Graham*, 560 U.S. at 82.

⁴⁴ *Id.* at 68 (quoting *Roper*, 543 U.S. at 570).

⁴⁵ *Id.* at 80.

⁴⁶ 567 U.S. 460, 489 (2012).

⁴⁷ *Id.* at 471.

⁴⁸ *Id.* at 475 (alterations in original) (quoting *Graham*, 560 U.S. at 89 (2010)).

⁴⁹ 141 S.Ct. 1307 (2021).

⁵⁰ *Id.* at 1310.

⁵¹ *Id.* at 1328 (Sotomayor, J., dissenting) (quoting *Montgomery v. Louisiana*, 577 U.S. 190, 195 (2016)).

⁵² *Id.*

culpability for developing minds remains intact, and the effect of the ruling may be minimal.⁵³

This line of cases demonstrates that the Court has distinguished juveniles and adults. Notably, the Court has relied on science in holding that juveniles are less culpable than adults and are more prone to rehabilitation. The following section will describe the external challenges that further justify reducing emerging adult culpability and incorporating a rehabilitation-focused approach to emerging adults.

B. The Unique External Challenges of Emerging Adults

Jeffrey Arnett was the first to redefine the period from 18 to 25 as “emerging adulthood.”⁵⁴ He called it emerging adulthood rather than young adulthood because “young” conveyed that someone has at least become an adult.⁵⁵ Yet most people in this age group have not experienced the typical adult evolutions: marriage, parenthood, completed education, and stable employment.⁵⁶ A half-century ago, the typical 21-year-old had achieved all these milestones, while today, they tend to happen in one’s late twenties.⁵⁷ Today’s emerging adults are more likely to view these milestones as “perils to be avoided” rather than “achievements to be pursued.”⁵⁸

Arnett points to four revolutions that changed the socio-economic environment of emerging adults: a shift to a service economy requiring postsecondary education, the invention of birth control and tolerance for nonmarital sexual relationships, the Women’s Movement that broke down restrictions and enabled women to flourish in education and work, and the Youth Movement that saw adulthood as “a closing of doors” that could wait.⁵⁹ These revolutions spurred the growth of emerging adulthood and its five defining features: identity exploration, especially in love and work; instability; self-focus; feeling in-between; and a feeling of possibility and optimism.⁶⁰ This first feature, identity exploration, merits further explanation.

Identity exploration, a phenomenon traditionally thought to occur in the adolescent years of 10 to 18, in fact usually happens between 18 and 25,⁶¹ when economic circumstances often interfere. Though emerging adults may have more

⁵³ See Beth Schwartzapfel, *Supreme Court Conservatives Just Made It Easier to Sentence Kids to Life in Prison*, THE MARSHALL PROJECT (Apr. 30, 2021, 6:00 AM), <https://www.themarshallproject.org/2021/04/30/supreme-court-conservatives-just-made-it-easier-to-sentence-kids-to-life-in-prison> [<https://perma.cc/7L6D-CZQS>] (noting that 31 states have banned life without parole for juveniles, with only a few states imposing most sentences, a situation known as “justice by geography”).

⁵⁴ ARNETT, *supra* note 8, at vii.

⁵⁵ *Id.*

⁵⁶ *Id.* at 2, 8.

⁵⁷ *Id.* at 1.

⁵⁸ *Id.* at 6.

⁵⁹ *Id.* at 3–7.

⁶⁰ *Id.* at 8.

⁶¹ *Id.* at 9.

freedom to find themselves than past generations, they often find themselves disappointed in what the world has to offer.⁶² Despite low unemployment rates and a “general optimism” regarding the economy (before the COVID-19 pandemic, that is), many who have looked deeper argue that “the economy has broken the process of growing *up*.”⁶³ Millennials today have twice the “loan-to-income” ratio than those before them.⁶⁴ As for the denominator in that ratio, income is not as plentiful as it once was—Millennials today have “a 50 percent chance of outearning [their] parents”⁶⁵ whereas “[i]n 1970, a 30-year-old had a 92 percent chance of earning more than her parents did at the same age.”⁶⁶ And as for the loan-to-income ratio’s numerator, the chances are that it does not include mortgage debt, for Millennials “are about one-third less likely to own a house than their parents were at the same age.”⁶⁷ Finally, wage growth has not kept pace with inflation;⁶⁸ but the increased cost of living is about more than just inflation.⁶⁹ The cost of education, buying a

⁶² See generally Charmaine Jacob, *Young People are Increasingly Overwhelmed at Work, Survey Shows*, CNBC: MAKE IT (Feb. 1, 2022, 11:00 PM), <https://www.cnbc.com/2022/02/01/young-people-are-increasingly-overwhelmed-at-work-bain-co-survey.html> [<https://perma.cc/9D8S-VZDK>] (noting that in a survey of Gen Z and millennial workers, “[a]bout 61% of respondents under the age of 35 were most concerned about finances, job security and failing to meet their career goals in the next 10 years . . .”); Nathaniel Popper, *Young Adults, Burdened with Debt, Are Now Facing an Economic Crisis*, N.Y. TIMES (Apr. 8, 2020), <https://www.nytimes.com/2020/04/06/business/millennials-economic-crisis-virus.html> [<https://perma.cc/6Q87-U5K6>] (“‘You compare it to the older generations — they worked up and saved money,’ Ms. Cumberledge said. ‘It feels like I’m never going to have a stable job that has benefits and health insurance.’”).

⁶³ Derek Thompson, *How Capitalism Broke Young Adulthood*, THE ATLANTIC (Jan. 27, 2020), <https://www.theatlantic.com/ideas/archive/2020/01/boomers-have-socialism-why-not-millennials/605467/> [<https://perma.cc/79ZL-823R>].

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Josh Bersin, *Why Aren’t Wages Keeping Up? It’s Not the Economy, It’s Management*, FORBES (Oct. 31, 2018, 11:18 AM), <https://www.forbes.com/sites/joshbersin/2018/10/31/why-arent-wages-keeping-up-its-not-the-economy-its-management/?sh=1e86cc4d397e> [<https://perma.cc/2FVQ-6UPL>] (“It’s frightening to consider, but my parents, who were a young couple in the 1960s, could buy a house for less than 25% of their take-home pay. They owned two cars and put my brother and me through college on a middle-income salary. (My father was a scientist with a mid-level job.) That dream is elusive today.”); Noah Smith, *Inflation Has Turned \$15 an Hour Wages into a Setback*, BLOOMBERG (Sept. 17, 2021, 4:30 AM), <https://www.bloomberg.com/opinion/articles/2021-09-17/inflation-has-turned-15-an-hour-wages-into-a-setback> [<https://perma.cc/X7JW-GVTG>] (noting that even the significant wage growth as a result of factors from the pandemic has not kept pace with more rapidly increasing inflation).

⁶⁹ Emmie Martin, *Here’s How Much More Expensive Life Is for You than It Was for Your Parents*, CNBC: MAKE IT (Jun. 21, 2017, 2:04 PM), <https://www.cnbc.com/2017/06/21/life-is-much-more-expensive-for-you-than-it-was-for-your-parents.html> [<https://perma.cc/F8FK-SAD4>].

home, renting a home, and healthcare have also far outpaced inflation.⁷⁰ All of this contributes to the fact that “the American dream has gone from a near-certainty to a coin flip.”⁷¹ On Millennials, “[t]he Federal Reserve summed up their plight in seven words: ‘lower earnings, fewer assets, and less wealth.’”⁷²

The consequences of an impaired emerging adulthood can be severe. Emerging adults are more likely than any other age group to engage in substance abuse and experience depression, anxiety disorders, and eating disorders.⁷³ On top of that, emerging adults today have less “structure and routine” because they are less likely to be a part of stable families⁷⁴ and are dealing with the economic difficulties discussed above, such as decreased real earnings over the last half-century.⁷⁵ Difficulties like these lead to “a problem of ‘disconnection.’”⁷⁶ Disconnected emerging adults are those without work, school, and stable relationships.⁷⁷ As disconnection appears to be a consequence of a damaged emerging adulthood, it is unsurprising that the amount of disconnected emerging adults increased as society shifted to modern emerging adulthood.⁷⁸ Given emerging adults’ challenges, it also does not seem coincidental that incarceration rates among emerging adults have spiked.⁷⁹ Data show that emerging adults are an outsized portion of the prison population and recidivate at much higher rates than other prison releasees.⁸⁰

Difficult socio-economic conditions do not immunize emerging adults from blame for their actions. But such conditions have a compounding effect that today’s decision-makers should factor into a level of reduced culpability for emerging adults. Emerging adults navigate a precarious, quantifiably difficult economic environment with full-adult-level responsibility despite an equivalent to or slightly-above-juvenile physiology. Holding emerging adults to a juvenile culpability level may increase their odds of successfully navigating the economic landscape, for rehabilitation rather than punishment provides disconnected emerging adults with an avenue to societal reconnection. The next Part describes the juvenile system founded on such rehabilitative ideals.

⁷⁰ *Id.* (“As Helaine Olen wrote in her book “Pound Foolish,” families in the 2000s put 75 percent of their discretionary income toward housing, health care and education, as compared to the 50 percent families used to put toward those big-ticket items in 1973.”).

⁷¹ Thompson, *supra* note 63; Raj Chetty, David Grusky, Maximilian Hell, Nathaniel Hendren, Robert Manduca & Jimmy Narang, *The Fading American Dream: Trends in Absolute Income Mobility Since 1940*, 356 *SCI.* 398, 398 (2017).

⁷² Thompson, *supra* note 63.

⁷³ ARNETT, *supra* note 8, at 271, 276.

⁷⁴ SCHIRALDI ET AL., *supra* note 9, at 4–5.

⁷⁵ *Id.* at 5–6.

⁷⁶ *Id.* at 5.

⁷⁷ *Id.*

⁷⁸ *Id.* at 4 (“[T]his transition to adulthood has changed in recent decades. [Emerging adults] in their late teens and early 20s are more detached from the socializing institutions of work and family than in the past.”).

⁷⁹ *Id.* at 5–6.

⁸⁰ *Id.* at 6–7.

II. THE JUVENILE SYSTEM: ORIGINS, EVOLUTION, AND MECHANISMS

This Part examines the juvenile justice system,⁸¹ including its origin and history, its longstanding problems, and a cautiously optimistic outlook in Part II.A. For the final context, Part II.B explains how the United States allows the judicial system to punish some juveniles as adults through the transfer system, and Part II.C examines the consequences of the practice. This Part serves as the foundation for the argument in Part III that the juvenile system should be extended to emerging adults.

A. *The Past, Present, and Future of the Juvenile System*

In 1899, Illinois created the first juvenile court built on the concept of rehabilitation rather than punishment, empowering youth through treatment rather than debasing lawbreakers.⁸² Progressives designed the system as a “social welfare alternative,” with civil proceedings, social services personnel, and an emphasis on treatment.⁸³ As the juvenile system spread throughout the states, even the vocabulary changed to match the decriminalized court.⁸⁴ Over the ensuing decades, though, nonexistent procedures—left out to maximize flexibility and individualized solutions—led to racial discrimination and abuses of power.⁸⁵

The Supreme Court tried to reign in the juvenile courts in 1967 by creating procedural safeguards in its *In re Gault* decision,⁸⁶ which was “[a] component of the Warren Court’s reported efforts to enhance procedural fairness, expand civil rights, and combat racial injustice”⁸⁷ While the Court may have alleviated the

⁸¹ When this Note refers to the juvenile system, it is referring to the entire process through which a juvenile interacts with the justice system. For a discussion of what the juvenile system entails from start to finish, see *Juvenile Justice*, YOUTH.GOV, <https://youth.gov/youth-topics/juvenile-justice> [<https://perma.cc/E3S4-R9GW>] (last visited Aug. 14, 2022) (“While similar to that of the adult criminal justice system in many ways—processes include arrest, detainment, petitions, hearings, adjudications, dispositions, placement, probation, and reentry—the juvenile justice process operates according to the premise that youth are fundamentally different from adults, both in terms of level of responsibility and potential for rehabilitation.”); *What Is Juvenile Justice?*, ANNIE E. CASEY FOUND. (Dec. 12, 2020), <https://www.aecf.org/blog/what-is-juvenile-justice> [<https://perma.cc/TV4L-LPPW>] (“The juvenile justice system is a multistage process: (1) delinquent behavior, (2) referral, (3) intake/diversion, (4) transfer/waiver, (5) detention, (6) adjudication, (7) disposition, (8) juvenile corrections and (9) aftercare.”).

⁸² Feld et al., *supra* note 37, at 762.

⁸³ *Id.* at 762–63.

⁸⁴ *Id.* at 763 (noting that the vocabulary changed from criminal charge to petition, from criminal to delinquent, and from sentences to dispositions).

⁸⁵ *Id.* at 764–66.

⁸⁶ *Id.*; see *In re Gault*, 387 U.S. 1 (1967).

⁸⁷ Feld et al., *supra* note 37, at 746.

arbitrariness of what it called a “kangaroo court,”⁸⁸ some scholars argue that the new procedural safeguards—the same procedural safeguards given to adults—transformed the juvenile court into an adversarial system that punished discriminatorily.⁸⁹

Worse yet, strong voices met the Court’s attempt to address racial injustice with a “political backlash”⁹⁰ that spiraled into the “get tough” era of crime prevention.⁹¹ Unfortunately, the backlash occurred during an upsurge in violent youth crime in the 1970s and 1980s.⁹² “Get tough” proponents seized the opportunity, labeling violent youth as “super-predators” and pushing for a more punitive juvenile system that strayed away from its rehabilitative roots.⁹³

In response to the “get tough” movement, “nearly every state in the country enacted laws making it easier to prosecute children as adults, expanding criminal court jurisdiction over juvenile cases, weakening confidentiality laws, toughening gang laws, and imposing mandatory minimum sentences.”⁹⁴ The number of juveniles held in adult prisons surged.⁹⁵ The combination of procedural mechanisms and a changing ideology increased youth punishment and incarceration for the rest of the twentieth century.⁹⁶

Longstanding problems from the juvenile system’s origin and the “get tough” era still persist today.⁹⁷ Tragically, at least some behind the seemingly idealistic juvenile system were pursuing systemic racial discrimination by another name, embedding racial discrimination in the system from the start.⁹⁸ Historians posit that the “progressive reformers”—known as “child savers”—behind the first juvenile

⁸⁸ *Id.* at 768; *In re Gault*, 387 U.S. at 28. For definitions of “kangaroo court” and a description of why “dropping the ‘k-bomb’ is no light matter,” see Shaun Ossei-Owusu, *Kangaroo Courts*, 134 HARV. L. REV. F. 200, 202–04 (2021); *id.* at 204 n.22 (“[Black’s Law Dictionary] describes the kangaroo court as ‘1. A self-appointed tribunal or *mock court* in which the *principles of law and justice are disregarded, perverted, or parodied . . . 2. A court or tribunal characterized by unauthorized or irregular procedures, esp. so as to render a fair proceeding impossible. 3. A sham legal proceeding.’ These definitions also capture the three features of inferiority, informality, and inequity.” (citation omitted)).*

⁸⁹ Feld et al., *supra* note 37, at 772.

⁹⁰ *Id.* at 751.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.* at 751–52.

⁹⁴ *Id.*

⁹⁵ *Id.* at 752.

⁹⁶ See Merrill Sobie, *The State of American Juvenile Justice*, CRIM. JUST. 26, 26 (2018) (“Reversing the ‘get tough’ generation, legislatures and courts have been ‘raising the age,’ thereby replacing adult prosecution and criminal incarceration with child-oriented procedures.”).

⁹⁷ Feld et al., *supra* note 37, at 764 (“From its earliest days, Black children were overpunished and underserved in the juvenile court.”).

⁹⁸ *Id.*; Kristin Henning, *The Challenge of Race and Crime in a Free Society: The Racial Divide in Fifty Years of Juvenile Justice Reform*, 86 GEO. WASH. L. REV. 1604, 1615–17 (2018).

system in Chicago used rehabilitation as a guise for their true purpose of “control[ing] the influx of poor immigrant youth,”⁹⁹ and that “they did not consider [B]lack youth worthy of the rehabilitative citizen-building efforts.”¹⁰⁰ This systemic racism persisted with the “get tough” era, hurting Black youth the most by increasing “disparities in arrest, charging, detention, disposition, and adult court transfer”¹⁰¹ in a system already possessing shameful historical disparities.¹⁰² Today, “the primary sources of racial injustice in the juvenile court are not a lack of procedural safeguards, but the over-criminalization, over-policing, and over-punishment of juveniles of color, and the narratives and implicit racial biases that allow decision makers to continually rationalize these choices.”¹⁰³

The “get tough” era has left other misguided remnants on the current juvenile justice system. The current juvenile system allows transfers of juveniles as young as 10-years-old to the adult system, where they may receive prison sentences without hope of parole.¹⁰⁴ Those who remain in the juvenile system may face unfair treatment unique to their juvenile status, as youth may be “subject to zero-tolerance policies, pretrial detention, and lengthy punitive sentences in youth correction facilities.”¹⁰⁵ Moreover, youth may be punished in ways disproportionate to the crime committed. For example, nonviolent conduct as simple as “skipping school, running away, breaking curfew, and possessing or using alcohol”¹⁰⁶—all crimes specific to minors (known as status offenses)¹⁰⁷—can place youth in the juvenile system. Youth in the juvenile system are much more likely to experience mental health struggles and other behavioral issues—such as substance abuse—than youth outside the juvenile system, yet they often lack readily available access to the proper

⁹⁹ Henning, *supra* note 98, at 1615 (“[E]arly reformers focused their attention on ‘normalizing’ or ‘whiten[ing]’ European immigrant youth they characterized as neglected and delinquent” (second alteration in original)).

¹⁰⁰ *Id.*

¹⁰¹ Feld et al., *supra* note 37, at 752.

¹⁰² *Id.* (“By the late 1990s, Black youth made up 15% of those under eighteen in this country, but nearly 60% of the youth sentenced to adult prisons. The numbers remain bleak today.”).

¹⁰³ *Id.* at 791.

¹⁰⁴ See *Age Boundaries in Juvenile Justice Systems*, NAT’L GOVERNORS ASS’N (Aug. 12, 2021), <https://www.nga.org/center/publications/age-boundaries-in-juvenile-justice-systems/> [<https://perma.cc/5CLS-67SQ>] (“[Twenty-eight] states statutorily specify the age at which a youth may be transferred from an adjudication process in juvenile court to adult court. For states with defined transfer ages, these transfer allowances vary from 10 to 15 years of age”).

¹⁰⁵ Henning, *supra* note 98, at 1622.

¹⁰⁶ *Id.* at 1641.

¹⁰⁷ *Id.*

treatment.¹⁰⁸ And judges sentencing unrepresented juveniles is an all-too-common practice.¹⁰⁹

Finally, while the structure of the juvenile system was designed “to meet the needs of boys,”¹¹⁰ girls have become a larger share of youth involved in the justice system in recent decades.¹¹¹ While boys are more likely to become “system-involved” due to violent activity,¹¹² girls are more likely to enter the juvenile system through mandated “zero-tolerance policies” and status offenses, which together create the “school to prison pipeline.”¹¹³ Zero-tolerance policies harshly punish poor behavior at school, such as cutting the lunch line, fighting, and bringing toy weapons to school.¹¹⁴ Status offenses are offenses that become criminal “solely because of the offender’s age.”¹¹⁵ For girls, the most common status offense landing them in the juvenile system is running away.¹¹⁶ Most states do not offer a “gender-responsive” strategy to meet girls’ “physical and mental health needs.”¹¹⁷

The tide has turned somewhat, and despite its shortcomings, evidence shows that juvenile courts produce better outcomes for youth than the adult system.¹¹⁸ Despite the *Jones* decision, the Supreme Court’s other juvenile decisions and prevalent brain development research revitalized a focus on enhancing the juvenile

¹⁰⁸ See generally Karey O’Hara, Jennifer E. Duchschere, Caroline E. Shanholtz, Samantha J. Reznik, Connie J. Beck & Erika Lawrence, *Multidisciplinary Partnership: Targeting Aggression and Mental Health Problems of Adolescents in Detention*, 74 AM. PSYCH. ASS’N 329 (2019).

¹⁰⁹ Feld et al., *supra* note 37, at 776–80; *id.* at 778 (“Recent research reveals that only eleven states provide a court-appointed lawyer to every child charged with a delinquency defense regardless of financial status, just one state provides lawyers for some children arrested for serious crimes during interrogation, only eleven provide meaningful access to lawyers at post-adjudication, thirty-six states charge fees for court-appointed lawyers, and forty-three states allow children to waive their right to counsel without first consulting with an attorney.”).

¹¹⁰ Wendy S. Heipt, *Girl’s Court: A Gender Responsive Juvenile Court Alternative*, 13 SEATTLE J. SOC. JUST. 803, 806 (2015).

¹¹¹ *Id.* at 803–04.

¹¹² *Id.* at 813.

¹¹³ *Id.* at 809, 811–12.

¹¹⁴ *Id.* at 811 n.29; see also Farnel Maxime, *Zero-Tolerance Policies and the School to Prison Pipeline*, SHARED JUST. (Jan. 18, 2018), <https://www.sharedjustice.org/most-recent/2017/12/21/zero-tolerance-policies-and-the-school-to-prison-pipeline> [<https://perma.cc/48UE-48BX>].

¹¹⁵ Heipt, *supra* note 110, at 812.

¹¹⁶ *Id.* at 813.

¹¹⁷ *Id.* at 817 (“These include mental health disorders, experiences of prostitution and sexual victimization, physical safety and trauma, significantly higher rates of physical and emotional abuse, high rates of pregnancy and parenting, high rates of eating disorders, a variety of weight issues, and asthma.”).

¹¹⁸ See Lisa M. Flesch, Note, *Juvenile Crime and Why Waiver Is Not the Answer*, 42 FAM. CT. REV. 583, 590 (2004) (“Juvenile offenders waived to the adult court have a higher rate of recidivism than those juvenile offenders who stay in the juvenile justice system.”); *id.* 595 n.120.

system.¹¹⁹ Substantively, much of the focus in the juvenile system is on treatment and restorative justice, such as decriminalizing non-violent youthful behavior, reducing implicit racial bias, and implementing “community-based programing.”¹²⁰ Strong evidence reveals that a juvenile system that embraces reform does and will provide rehabilitation to those involved, increase public safety, and do so more cheaply and more effectively than incarceration.¹²¹

Procedural reforms underway include reducing direct file and transfers of youth to the adult system, enhancing juvenile record expungement, and raising the age campaigns to extend the jurisdiction of the juvenile system.¹²² Based on brain development and the emerging adulthood concept, many raise-the-age advocates call for raising the age to 21¹²³—matching Germany’s system but not quite reaching that of the Netherlands at age 23¹²⁴—with additional protections for emerging adults beyond that point.¹²⁵ Some recommend moving beyond the binary court system and creating a third court system specifically tailored for the unique needs of emerging adults.¹²⁶

The efforts underway are encouraging and are backed by a more robust understanding of how the brain works; thus, these reforms now stand a better chance of success. Flaws aside, the juvenile system provides better resolutions for juveniles than the adult criminal system.¹²⁷ Its purpose leaves room to achieve an ideal that the adult system cannot mimic. While both systems “seek to protect the community . . . and . . . deter future criminal conduct,”¹²⁸ the adult system only does so through punishment, while the juvenile system seeks to do so through rehabilitation.¹²⁹ As long as rehabilitation is the driving force, the juvenile system will remain the best option for youth.

¹¹⁹ Feld et al., *supra* note 37, at 776.

¹²⁰ *Id.* at 797–98; SCHIRALDI ET AL., *supra* note 9, at 10, 16.

¹²¹ SCHIRALDI ET AL., *supra* note 9, at 3, 9, 16.

¹²² *See generally* Sobie, *supra* note 96 (explaining recent changes in juvenile procedural reform).

¹²³ *E.g., id.* at 27; Stamm, *supra* note 13, at 104.

¹²⁴ Vincent Schiraldi, *The Netherlands’ Experience in Emerging Adult Justice*, COLUMBIA JUST. LAB (Mar. 27, 2018), <https://justicelab.columbia.edu/content/netherlands-experience-emerging-adult-justice> [<https://perma.cc/7H76-V2NC>].

¹²⁵ Sobie, *supra* note 96, at 27; Stamm, *supra* note 13, at 104.

¹²⁶ Kevin Lapp, *Young Adults & Criminal Jurisdiction*, 56 AM. CRIM. L. REV. 357, 391–98 (2019).

¹²⁷ *See, e.g.,* Flesch, *supra* note 118, at 590 (“Fifty-eight percent of juveniles waived to the adult court commit additional crimes, whereas 42 percent of juveniles who remain in the juvenile systems commit additional crimes.”).

¹²⁸ *Id.* at 584.

¹²⁹ *Id.*

B. The Transfer Mechanism for Punishing Juveniles as Adults

Despite the Supreme Court decisions highlighted above, in which the Court acknowledged that juveniles are less culpable and are exempt from some of the punishments that adults face,¹³⁰ juveniles remain subject to adult punishment in many circumstances. In some cases, transferring juveniles to the adult criminal system remains an accepted practice in the United States, the only “rich country [that] does so.”¹³¹

Various international laws and treaties “explicitly recognize the right of the child to special protection and treatment,” such as the International Covenant on Civil and Political Rights, the U.N. Convention on the Rights of the Child, the U.N. Standard Minimum Rules for the Administration of Juvenile Justice, and the U.N. Rules for the Protection of Juveniles Deprived of their Liberty.¹³² Most countries treat juveniles at various levels of adherence to these standards,¹³³ but the United States is now the *only* country that has not endorsed the U.N. Convention on the Rights of Child, “the most comprehensive human rights treaty on children’s rights.”¹³⁴ The United States used to be in the company of South Sudan and Somalia, but South Sudan ratified the treaty within three years of becoming a country, and Somalia, a perennial bottom-ranked country for human rights, recently ratified the convention.¹³⁵ Though the Reagan and George H.W. Bush administrations helped

¹³⁰ See *supra* Part I.A.

¹³¹ *Reforming Maryland’s Cruel Treatment of Young Offenders*, *supra* note 16.

¹³² Cynthia Soohoo, *You Have the Right to Remain a Child: The Right to Juvenile Treatment for Youth in Conflict with the Law*, 48 COLUM. HUM. RTS. L. REV. 1, 13–14 (2017) (“The International Covenant on Civil and Political Rights expressly provides that every child has the right to special protection. It also includes specific provisions under articles protecting the rights of persons deprived of liberty and subject to criminal proceedings that require according children treatment appropriate to their age and the promotion of their rehabilitation. The U.N. Convention on the Rights of the Child . . . similarly recognizes that children accused of violating the penal law have a right to be treated in a manner that takes into account the child’s age and the desirability of promoting the child’s reintegration and . . . constructive role in society and that children deprived of liberty should be treated in a manner in which takes into account the needs of persons of his or her age The international community has also developed detailed rules concerning youth in conflict with the law, including the U.N. Standard Minimum Rules for the Administration of Juvenile Justice (‘the Beijing Rules’) and the U.N. Rules for the Protection of Juveniles Deprived of their Liberty (‘the Havana Rules’).” (internal quotation marks omitted)).

¹³³ *Id.* at 14.

¹³⁴ Sarah Mehta, *There’s Only One Country that Hasn’t Ratified the Convention on Children’s Rights: US*, ACLU (Nov. 20, 2015, 1:30 PM), <https://www.aclu.org/blog/human-rights/treaty-ratification/theres-only-one-country-hasnt-ratified-convention-childrens> [<https://perma.cc/L7VG-D4PH>].

¹³⁵ *Id.*; Karen Attiah, *Why Won’t the U.S. Ratify the U.N.’s Child Rights Treaty?*, WASH. POST (Nov. 21, 2014, 4:12 PM), <https://www.washingtonpost.com/blogs/post-partisan/wp/2014/11/21/why-wont-the-u-s-ratify-the-u-n-s-child-rights-treaty/> [<https://perma.cc/B47C-5WTH>].

draft the treaty back in the 1980s, opposition to it stems from misplaced beliefs that it would “represent an assault on American sovereignty” and its “interpretation of federalism.”¹³⁶

When transferring juveniles to the adult criminal system, 44% of 140 countries surveyed ban it,¹³⁷ while only 16% “allow youth to be tried and sentenced in adult courts without any special protections.”¹³⁸ For example, rather than allow juvenile transfer to the adult system, Germany only allows the reverse, permitting the transfer of some emerging adults ages 18 to 21 back down to the juvenile system.¹³⁹

Similarly, the Supreme Court of Canada held that youth—defined as those under 18-years-old in Canada¹⁴⁰—“are entitled to different treatment based on a presumption of diminished moral culpability.”¹⁴¹ The U.S. Supreme Court, however, “has never considered whether a youth accused of a crime has a constitutional right to be treated as a juvenile.”¹⁴² Whereas Canada’s different treatment standard for juveniles is broad and explicit,¹⁴³ the U.S. Supreme Court has limited recognition of a constitutionally different standard for juveniles to certain situations.¹⁴⁴ In the United States, courts have consistently held that “any right to juvenile treatment is a state legislative creation that can be modified or limited by statute,” subject only to “rational basis scrutiny” that results in the judicial system “rubber-stamp[ing]” provisions allowing for the transfer of juveniles to adult criminal jurisdiction.¹⁴⁵

Every state has its own juvenile system, as well as the District of Columbia and the federal government, the latter of which “has jurisdiction over a small number of juveniles, such as those who commit crimes on Indian reservations or in national parks.”¹⁴⁶ Each of these systems allows juvenile transfer to the adult criminal system.¹⁴⁷ Estimates show that around 200,000 juveniles—that is, those under 18-years-old, the current juvenile standard—are tried in the adult criminal system annually.¹⁴⁸ This alarmingly high number stems from the “get tough” era of the criminal system and unfounded fears of “super-predator” youth, allowing, and

¹³⁶ Mehta, *supra* note 134.

¹³⁷ Soohoo, *supra* note 132, at 15.

¹³⁸ *Id.* at 16.

¹³⁹ *Id.* at 15; *see also* Hans-Jörg Albrecht, *Youth Justice in Germany*, 31 CRIME & JUST. 443, 452, 474 (2004).

¹⁴⁰ *See* Youth Criminal Justice Act, S.C. 2002, c 1, s. 2(1) (Can.).

¹⁴¹ Soohoo, *supra* note 132, at 16.

¹⁴² *Id.* at 3–4.

¹⁴³ *Id.* at 16–17.

¹⁴⁴ *Id.* at 4; *see also* Supreme Court case discussion, *supra* Part I.A.

¹⁴⁵ *Id.* at 43.

¹⁴⁶ NAT’L RSCH. COUNCIL: INST. OF MED., JUVENILE CRIME, JUVENILE JUSTICE: PANEL ON JUVENILE CRIME: PREVENTION, TREATMENT, AND CONTROL 155 (Joan McCord, Cathy Spatz Widom & Nancy A. Crowell eds., 2001).

¹⁴⁷ Soohoo, *supra* note 132, at 6.

¹⁴⁸ *Id.* at 2.

sometimes requiring, prosecutors and judges to try juveniles as adults.¹⁴⁹ The judicial system transfers juveniles to the adult system in four ways: “(1) setting upper age limits for juvenile court jurisdiction below seventeen, (2) Prosecutorial Discretion, (3) Statutory Exclusion, and (4) Judicial Waiver.”¹⁵⁰

First, several states cut off juvenile jurisdiction earlier than the traditional age 18 dividing line, whether for specific crimes or regardless of the crime.¹⁵¹ For example, some states set the upper age limit at 16-years-old, meaning that once an individual hits age 17, that individual is excluded from juvenile court and tried as an adult.¹⁵² Second, prosecutorial discretion works by giving concurrent jurisdiction to juvenile and adult courts “for youth who meet certain criteria, typically based on age, offense, prior involvement with the adult criminal justice system, or a combination of these factors,”¹⁵³ and from these factors, the prosecutor can choose to bring charges in either system.¹⁵⁴

Third, as its name suggests, statutory exclusion automatically “exclude[s] certain categories of youth from the protections of the juvenile system and grant[s] original jurisdiction to adult criminal courts.”¹⁵⁵ Typically, these exclusions depend on the crime involved and age of the juvenile, and most states also have “once an adult/always an adult”¹⁵⁶ provisions, meaning that once a juvenile is in the adult system, that juvenile will be treated as an adult for every future crime, no matter what it is.¹⁵⁷

¹⁴⁹ *Id.*; see Renata Sago, *Charging Youths as Adults Can Be a ‘Cruel Wake-Up Call.’ Is There Another Way?*, NPR (Aug. 15, 2017, 10:30 AM), <https://www.npr.org/2017/08/15/542609000/sentenced-to-adulthood-direct-file-laws-bypass-juvenile-justice-system> [<https://perma.cc/HF5A-GERM>]; Malcolm C. Young & Jenni Gainsborough, *Prosecuting Juveniles in Adult Court: An Assessment of Trends and Consequences*, SENT’G PROJECT (Jan. 2000), <https://www.prisonpolicy.org/scans/sp/juvenile.pdf> [<https://perma.cc/8ZBA-V2Z2>].

¹⁵⁰ Soohoo, *supra* note 132, at 6.

¹⁵¹ *Id.*

¹⁵² *Id.* at 6–7.

¹⁵³ *Id.* at 7.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ PATRICK GRIFFIN, SEAN ADDIE, BENJAMIN ADAMS & KATHY FIRESTONE, U.S. DEP’T OF JUST., TRYING JUVENILES AS ADULTS: AN ANALYSIS OF STATE TRANSFER LAWS AND REPORTING 2–3, 7 (2011).

¹⁵⁷ Soohoo, *supra* note 132, at 8.

The final method, judicial waiver, involves statutory “provisions [that] may authorize or require juvenile court judges to remove certain youth from juvenile court to adult criminal court,”¹⁵⁸ as compared to statutory exclusion, which grants original jurisdiction to the adult system automatically.¹⁵⁹ Judicial waiver has different levels, the first being discretionary waiver that gives juvenile judges the option to waive jurisdiction.¹⁶⁰

But discretionary waiver is not an absolute power. In *Kent v. United States*, the Juvenile Court for the District of Columbia waived jurisdiction to the adult criminal court for a 16-year-old boy accused of burglary and rape without any indication of due process, such as ignoring motions opposing and requesting a hearing on waiver, holding no hearings, and citing no supported basis for the waiver.¹⁶¹ The U.S. Supreme Court held that although the Juvenile Court Act—the act through which the Juvenile Court could waive jurisdiction—granted broad discretion, the Juvenile Court here did not “satisfy the basic requirements of due process and fairness, including compliance with the statutory requirement of a ‘full investigation.’”¹⁶² In the opinion’s appendix, the court listed eight “determinative factors [to] be considered by the Judge in deciding whether the Juvenile Court’s jurisdiction over such offenses will be waived”¹⁶³ Yet most courts have interpreted *Kent* narrowly, holding that it only applies to discretionary judicial waiver and does not speak to any substantive considerations.¹⁶⁴ Thus, “no one stands accountable or draws scrutiny for transfer decisions, not even judges in most states.”¹⁶⁵

Other, less discretionary levels of judicial waiver include presumptive waiver, which “assumes that waiver is appropriate if the youth meets statutory criteria (e.g., age, offense) although the youth may try to rebut the presumption,” and mandatory

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*; see also Tiffani N. Darden, *Constitutionally Different: A Child’s Right to Substantive Due Process*, 50 LOY. U. CHI. L. J. 211, 244–45 (explaining that each state gives judge’s discretionary waiver power, subject to “transparent due process standards” that include input from “juvenile psychology experts” and an assessment of factors including “the defendant’s background and profile, and institutional concerns”).

¹⁶¹ 383 U.S. 541, 546 (1966).

¹⁶² *Id.* at 553 (quoting *Green v. United States*, 308 F.2d 303, 305 (D.C. Cir. 1962)); see also *id.* at 554 (“[T]here is no place in our system of law for reaching a result of such tremendous consequences without ceremony—without hearing, without effective assistance of counsel, without a statement of reasons. It is inconceivable that a court of justice dealing with adults, with respect to a similar issue, would proceed in this manner. It would be extraordinary if society’s special concern for children, as reflected in the District of Columbia’s Juvenile Court Act, permitted this procedure.”).

¹⁶³ *Id.* at 566–67 (including factors such as “the seriousness of the alleged offense,” whether the offense was “aggressive, violent, premeditated, or willful,” whether it “was against persons or against property,” the “sophistication and maturity level of the juvenile,” and “the record and previous history of the juvenile”).

¹⁶⁴ See Darden, *supra* note 160, at 262–63.

¹⁶⁵ *Id.* at 263.

waiver, which is essentially statutory exclusion, where if the juvenile court finds that the juvenile meets the necessary requirements, “it must waive the case to adult court.”¹⁶⁶

The broad transfer mechanisms available today stem from the “get tough” era of crime prevention discussed above that started in the 1980s. The “get tough” era reforms enabled the system and those within it to try more juveniles as adults, mostly through “categorical exclusions (age limitations on juvenile court jurisdiction or Statutory Exclusion provisions) and prosecutors’ decisions.”¹⁶⁷ Though the “get tough” era propagandized the need to curb violent crime, “[t]he majority of youth tried in the adult system are charged with non-violent offenses”¹⁶⁸ As stated above, the United States is an outlier among developed countries in how it not only tolerates but facilitates juvenile transfers. Because of this legal framework, many juveniles—people less culpable than adults and most likely non-violent—are dragged into the adult criminal system. Once in the adult system, juveniles face severe, disproportionate adversity, as detailed below.

C. Consequences of Punishing Juveniles as Adults

Juveniles punished as adults are subject to a broad range of hardships, both inside and outside the prison walls. Within the prison, when society imprisons juveniles with adults, “[juveniles] are far likelier to be assaulted and to commit suicide than other inmates.”¹⁶⁹ Compared to a juvenile in a juvenile facility, a juvenile incarcerated with adults has a five times greater risk of being sexually assaulted, “often within the first 48 hours of incarceration.”¹⁷⁰ As reported by the National Prison Rape Elimination Commission in 2005, though juveniles comprised less than 1% of those incarcerated in the adult system, juveniles were victims of 7.7% of the sexual violence in prisons and jails.¹⁷¹ This sexual violence takes a long-

¹⁶⁶ Soohoo, *supra* note 132, at 8; *see also* Mae C. Quinn & Grace R. McLaughlin, *Article III Adultification of Kids: History, Mystery, and Troubling Implications of Federal Youth Transfers*, 26 WASH. & LEE J. C.R. & SOC. JUST. 523, 544–45 (2020) (noting that the federal juvenile system provides for two avenues of trying juveniles as adults: one through “mandatory transfer” of “juveniles age sixteen or older, seen as repeat violent offenders” and another through “discretionary transfer,” where the Department of Justice asks the federal district court to treat juveniles as young as thirteen as adults, based on factors such as age, nature of the offense, record, maturity, and response to treatment efforts).

¹⁶⁷ Soohoo, *supra* note 132, at 9.

¹⁶⁸ NAT’L JUV. JUST. & DELINQ. PREVENTION COAL., *PROMOTING SAFE COMMUNITIES: RECOMMENDATIONS FOR THE ADMINISTRATION 15* (2013), <https://www.sentencingproject.org/wp-content/uploads/2015/12/NJJDP-Coalition-Promoting-Safe-Communities-2013.pdf> [<https://perma.cc/PA2P-GDCP>].

¹⁶⁹ *Reforming Maryland’s Cruel Treatment of Young Offenders*, *supra* note 16.

¹⁷⁰ 34 U.S.C. § 30301.

¹⁷¹ Andrea Wood, *Cruel and Unusual Punishment: Confining Juveniles with Adults After Graham and Miller*, 61 EMORY L.J. 1445, 1451 (2012); *see also* NAT’L PRISON RAPE ELIMINATION COMM’N, *REPORT 155–56* (2009), http://nprec.us/files/pdfs/NPREC_FinalReport.PDF [<https://perma.cc/LV8P-UT4U>].

term toll on juveniles, including undue exposure to sexually transmitted infections, increased likelihood of “major depression and posttraumatic stress disorder,” and an increased “tendenc[y] toward criminal behavior and substance abuse.”¹⁷² One consequence of this trauma is that juveniles sent to the adult criminal system recidivate more than those left in the juvenile system.¹⁷³

Beyond the tragedies within the prison walls, another tragedy is the outsized impact of a life sentence on a juvenile compared to an older adult. A few stories illustrate how life-altering adult sentences can be on juveniles. At the age of 16, Warren Hynson burglarized a house.¹⁷⁴ The homeowner was shot and killed, not by Mr. Hynson but by one of his associates.¹⁷⁵ Mr. Hynson woke up in a hospital—as he was shot in the ordeal—facing charges of felony murder.¹⁷⁶ At the young age of 17, with an entire life yet to live, the adult system sentenced Mr. Hynson to life in prison.¹⁷⁷ Similarly, Abd’Allah Lateef, at age 17, also took part in a burglary gone wrong.¹⁷⁸ As he and his associate escaped the burglary, they shoved the senior homeowner to the ground and broke his femur.¹⁷⁹ The homeowner died of a heart attack two weeks later, and Mr. Lateef was charged with murder and sentenced to life in prison without parole.¹⁸⁰ After the Supreme Court decided *Montgomery v. Louisiana*¹⁸¹ in 2016, which retroactively applied the *Miller* decision’s ban on life without parole sentences for juveniles,¹⁸² Mr. Lateef was released at age 51.¹⁸³ His release came 34 years after his conviction, and after spending two-thirds of his life in prison, his parents were no longer alive to greet him.¹⁸⁴ Life sentences are heavy at any age, but they carry extra weight when prematurely given to juveniles who will never have the chance to transition to adulthood and spend more time incarcerated than anyone despite having less culpability.

Supreme Court decisions like *Montgomery* and *Miller* set a positive tone for state governments, causing a shift in juvenile treatment in severe cases.¹⁸⁵ Still, adult punishment of juveniles persists, and many sentences sought remain drastic. In 2017, five teenagers between the ages of 15 and 17 were charged with second-degree

¹⁷² Wood, *supra* note 171, at 1451–52.

¹⁷³ Flesch, *supra* note 118, at 590.

¹⁷⁴ *Reforming Maryland’s Cruel Treatment of Young Offenders*, *supra* note 16.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Montgomery v. Louisiana*, 577 U.S. 190 (2016).

¹⁸² *Reforming Maryland’s Cruel Treatment of Young Offenders*, *supra* note 16; see *Montgomery v. Louisiana*, 577 U.S. 190, 206 (2016).

¹⁸³ *Reforming Maryland’s Cruel Treatment of Young Offenders*, *supra* note 16.

¹⁸⁴ *Id.* Mr. Lateef is now a racial-equity specialist for the Campaign for the Fair Sentencing of Youth. *Id.*

¹⁸⁵ *Id.* (“Since 2012, when the Supreme Court issued the first in a series of rulings that said the harshest sentence for juveniles—life without the possibility of parole—was unlawful except in rare cases, nearly half America’s states have abolished it.”).

murder after throwing rocks from a bridge to a highway below, of which one hit a van and killed the man driving.¹⁸⁶ The prosecutor exercised his discretion, choosing to charge each teenager as an adult with the possibility of life imprisonment, a decision the surrounding community seemed to welcome.¹⁸⁷ The prosecutor and sheriff “threw the book” at these teenagers in pursuit “of general deterrence . . . ‘telling young people: you make a bad decision, you could be spending the rest of your life in prison.’”¹⁸⁸ In other words, to avoid being perceived as soft on crime, the prosecutor and sheriff sought the maximum available adult criminal punishment on the teenagers because their tragic but “childish activity” did not meet adult reasonableness standards.¹⁸⁹ They meant for this punishment to generally deter other teenagers, a population whose “characteristics that render [them] less culpable than adults suggest[s] as well that [they] will be less susceptible to deterrence.”¹⁹⁰

Despite its turbulent history, the juvenile system provides an avenue toward beneficial outcomes unattainable in the adult criminal system. Transferring out juveniles from the rehabilitative system to the punitive system is an antiquated method lacking justification and exacerbating harmful consequences. A better alternative to maximize the juvenile system’s potential is expanding its jurisdiction to include emerging adults while prohibiting transfers of anyone falling within its jurisdiction, as Part III explains.

III. THREE REASONS TO RAISE THE AGE AND ELIMINATE THE TRANSFER SYSTEM

As illustrated above, emerging adults are more like juveniles than they are adults; thus, legally, emerging adults should be treated more like juveniles than adults. This Part makes the case for entirely separating adults from emerging adults and juveniles through raising the age of juvenile jurisdiction to 25 and ending the transfer system that enables the adult punishment of juveniles.

There are three reasons to raise the upper limit on juvenile jurisdiction from 18 to 25 and eliminate the transfer system: (1) the reduced culpability of emerging adults and juveniles compared to adults; (2) practical factors, such as the cost of incarceration; and (3) the public interest in rehabilitating young adults.

First, juveniles and emerging adults are less culpable than true adults. As shown by the Latin term *mens rea*, meaning “bad mind,” culpability is unique to criminal law and is the basis of blameworthiness.¹⁹¹ Knowing that human minds do not fully develop until 25 and that much of the critical, goal-oriented parts of the brain are the last to mature, it is immoral that a 19-year-old lacks the opportunities for a second chance given to those younger, despite little substantive developmental

¹⁸⁶ Darden, *supra* note 160, at 239.

¹⁸⁷ *See id.* at 239–40.

¹⁸⁸ *See id.* at 241–42.

¹⁸⁹ *See id.* at 242.

¹⁹⁰ *See id.*; *Roper v. Simmons*, 543 U.S. 551, 571 (2005).

¹⁹¹ PAUL H. ROBINSON, SHIMA BARADARAN BAUGHMAN & MICHAEL T. CAHILL, *CRIMINAL LAW: CASE STUDIES & CONTROVERSIES* 110 (5th ed. 2021).

difference.¹⁹² The sway of the age 18 dividing line—the line where the Supreme Court ends juvenile treatment in part because it “is the point where society draws the line for many purposes between childhood and adulthood”¹⁹³—suggests that the United States cares about culpability-based punishment until it becomes inconvenient—until aligning culpability with punishment requires changing tradition. As long as society structures its criminal system in a way that commingles “bad minds” with “unformed minds,” the system does not adhere to culpability-based justice.

Some advocates call for raising the age to 21, which has shown some traction in states, though it is still a work in progress.¹⁹⁴ But while 21 is better than 18, it is still not ideal. Many, if not all, of the physiologically based differences¹⁹⁵ between true adults and emerging adults suggest 21 is still too young for adult criminal jurisdiction. Twenty-one-year-olds can buy alcohol¹⁹⁶ and gamble,¹⁹⁷ and they are three years closer to being fully-formed adults, but they still possess pre-adult minds.¹⁹⁸ Raising the age to 25 gradually over time, like the implementation of Vermont’s age 20 law, along with preventing transfers of emerging adults to the adult system, would achieve the most accurate alignment between culpability and punishment—reserving the fullest punishment system for the fully developed.¹⁹⁹ An on-off switch from juvenile to adult punishment is imperfect, but if a line must be drawn, then 25 is the most morally efficient line to make. Those most deserving of adult punishment would receive it, while those with lessened culpability would not

¹⁹² See also R.W., *Why It Makes Sense to Raise the Age of Juvenile Courts*, ECONOMIST (Nov. 17, 2015), <https://www.economist.com/democracy-in-america/2015/11/17/why-it-makes-sense-to-raise-the-age-of-juvenile-courts> [<https://perma.cc/C6AJ-S9VG>] (quoting Connecticut’s former governor, Daniel Malloy, who said, “[i]s it right that a 17-year old can have a second chance, but a 22-year old should not?”).

¹⁹³ *Roper v. Simmons*, 543 U.S. 551, 554 (2005).

¹⁹⁴ See, e.g., *Emerging Adults—Raise the Age*, JUV. JUST. INITIATIVE, <https://jjustice.org/resources/raise-the-age/> [<https://perma.cc/VX2L-BN3U>] (last visited Oct. 10, 2022); sources cited *supra* note 15 and accompanying text.

¹⁹⁵ See *supra* Part I.A.

¹⁹⁶ See 23 U.S.C. § 158 (withholding eight percent of federal highway funds for any state that allows people under 21 to buy alcohol).

¹⁹⁷ Though some states allow some types of gambling before 21, gambling is generally legal everywhere by age 21. See *Your Guide to Gambling by US State*, CASINO.ORG, <https://www.casino.org/local/guide/> [<https://perma.cc/P3UH-JAPM>] (last visited Aug. 14, 2022).

¹⁹⁸ See *supra* Part I.A (highlighting the areas of the brain still undergoing maturation before age 25).

¹⁹⁹ Dodds, *supra* note 15.

be over-punished. Like Blackstone's Ratio, which states that "it is better that ten guilty persons escape than that one innocent suffer,"²⁰⁰ it is better that ten fully formed minds receive juvenile treatment—maybe even experience rehabilitation—than one underdeveloped mind receive unmitigated adult punishment.

Similarly, the transfer system's existence undermines any culpability-based justice the legal system claims to have. To guarantee that all youth—appropriately including those up to age 25—are treated as juveniles, society must not only raise the age but must also abolish this back door transfer to the adult criminal system. Eliminating the transfer of juveniles to the adult criminal court system is not a new idea.²⁰¹ But it is a necessary complement to raising the age, giving the juvenile system original and exclusive jurisdiction over all who are not fully formed, more culpable adults. And while the Supreme Court has not recognized a right for youth to receive "special protection or treatment,"²⁰² the same logic the Supreme Court used to ban severe punishment of juveniles is the only argument necessary to support the notion that society should not transfer juveniles—and emerging adults—to the adult system.²⁰³

Second, raising the age of juvenile jurisdiction and eliminating the transfer system is socially and economically practical. "Incarceration is the most expensive and least effective sentencing option for [emerging] adults."²⁰⁴ Emerging adults and transferred juveniles sentenced to adult prisons get a firsthand look at these "schools of crime," increasing the odds that they mimic their adult offenders.²⁰⁵ The near 80% recidivism rate of emerging adults shows the effect of the "school of crime" as more of a facilitator than a deterrent.²⁰⁶ And the actual cost of over-incarcerating emerging adults and juveniles includes the opportunity cost of lost societal contributions, for incarceration exacerbates subsequent educational, employment, housing, and healthcare difficulties.²⁰⁷

Though the idea of extending juvenile jurisdiction and ending the transfer system may seem daunting, a phased extension of juvenile jurisdiction would spread

²⁰⁰ 2 WILLIAM BLACKSTONE, COMMENTARIES *587, https://oll-resources.s3.us-east-2.amazonaws.com/oll3/store/titles/2142/Blackstone_1387.02_Bk.pdf [<https://perma.cc/HZ7G-EZTU>].

²⁰¹ See Flesch, *supra* note 118; Wood, *supra* note 171, at 1490 (arguing that transferring juveniles to the adult criminal system, and then imprisoning juveniles in adult prisons, constitutes cruel and unusual punishment under the Eighth Amendment).

²⁰² Soohoo, *supra* note 132, at 53.

²⁰³ Wood, *supra* note 171, at 1490 ("Juveniles, recognized by the Supreme Court as being developmentally different from adults and having diminished culpability, face grave dangers when confined with adults in prisons and jails. . . . Similarly, juveniles' diminished culpability, along with the unfulfilled penological goal of deterrence, merits a bright-line rule preventing the confinement of juveniles with adults in prisons and jails.").

²⁰⁴ SCHIRALDI ET AL., *supra* note 9, at 14.

²⁰⁵ See *id.* at 8; Anna Piil Damm & Cédric Gorinas, *Prison as a Criminal School: Peer Effects and Criminal Learning Behind Bars*, 63 J.L. & ECON. 149, 174 (2020).

²⁰⁶ SCHIRALDI ET AL., *supra* note 9, at 6.

²⁰⁷ *Id.* at 8.

the cost out over time, and evidence suggests the return on the investment is quick. Indeed, Connecticut raised the upper age of juvenile jurisdiction from 15 to 17 in 2012.²⁰⁸ And it ended up spending less on its juvenile system than it did before the change, while also seeing arrests of teenagers ages 15 to 19, incarceration of teenagers 16 to 17, and incarceration of emerging adults 18 to 21 drop.²⁰⁹ Similarly, in 2010, Illinois extended juvenile court jurisdiction over all juveniles 17 and under who committed a misdemeanor.²¹⁰ Rather than overflowing the system, the number of juveniles fell as overall crime and arrests declined.²¹¹ The success of this policy inspired Illinois to raise the age to 18 for all crimes.²¹² Mississippi, Massachusetts, and New York have similarly reduced crime rates and costs within their juvenile systems.²¹³

Raising the age to 25 is of a different magnitude than raising the age to 18. But by adding emerging adults to the juvenile system one year at a time, and simultaneously preventing their transfer to the adult system, there is reason to believe juvenile systems would not feel such a drastic shift in cost and operating strains. Since emerging adults are developmentally similar to current older juveniles, the juvenile system handling youth currently could use its expertise—with more training—to deal with emerging adults.²¹⁴ And compared to another proposed reform—creating a new emerging adult court system—the upfront costs of extending the juvenile court system are likely less while offering similar developmentally aligned services and long-term benefits.²¹⁵ Moving past the shock value of raising the age to 25 and eliminating the transfer system, these two reforms may be some of the most practical options on the table.

Third, rehabilitating emerging adults creates a public interest benefit. What makes emerging adults recidivate also makes them more likely to rehabilitate: brain plasticity.²¹⁶ Rather than expose malleable minds to the “school of crime,” rehabilitative intervention “can promote socially integrative public safety . . . [and] draw young men and women into prosocial adult roles.”²¹⁷ Raising the age to 25

²⁰⁸ Teresa Wiltz, *Children Still Funneled Through Adult Prisons, but States Are Moving Against It*, USA TODAY (Jun. 22, 2017, 7:00 AM), <https://www.usatoday.com/story/news/2017/06/17/how-raise-age-laws-might-reduce-recidivism/400065001/> [<https://perma.cc/8HX9-PGCW>].

²⁰⁹ *Id.*

²¹⁰ *Raising the Age of Juvenile Court Jurisdiction Fact Sheet*, ILL. JUV. JUST. COMM’N, <http://ijjc.illinois.gov/publications/raising-age-fact-sheet> [<https://perma.cc/6WL6-TY22>] (last visited Aug. 14, 2022).

²¹¹ *Id.*

²¹² *Id.*

²¹³ CAMPAIGN FOR YOUTH JUST., THE IMPACT OF “RAISE THE AGE” LAWS ON JUVENILE COURTS, http://www.campaignforyouthjustice.org/images/factsheets/RTA_IMPACT_0323_20.pdf [<https://perma.cc/YD6R-6YQB>] (last visited Aug. 14, 2022).

²¹⁴ Lapp, *supra* note 126, at 384.

²¹⁵ *Id.* at 397.

²¹⁶ Scott et al., *supra* note 25, at 652.

²¹⁷ SCHIRALDI ET AL., *supra* note 9, at 3, 16.

enables the juvenile system to catch emerging adults during the “age of opportunity” and reorient them on a promising life trajectory.²¹⁸

With the growth in brain development research and the twenty-first-century view of the purpose of the juvenile system, rehabilitation efforts are at the forefront. Endorsed rehabilitative efforts include mental health and substance abuse treatments, cognitive behavior tactics, and work and educational preparation.²¹⁹ Many posit that rehabilitation is most successful as a community effort, with Roca, Inc., a nonprofit, serving as a primary example.²²⁰

Roca works with high-risk emerging adults aged 17 to 24, providing two years of in-depth outreach; educational, vocational, cognitive-behavioral, and life skills training; and employment support, followed by two years of less exhaustive support.²²¹ This support comes through partnerships with community entities, such as law enforcement, employers, and other governmental agencies.²²² Roca has proved successful over many years, and of the 745 young men it served in 2021, 89% stuck with the program, 85% participated in education, life skills, and employment programming inclusive of the pandemic period, and 98% had no new incarcerations.²²³ Increasing the use of programs like Roca could amplify the success of juvenile rehabilitative programs, a small price to pay for a launchpad to socially integrated adulthood.

Rehabilitation is crucial for those in their emerging adult years. Studies show that prior arrestees possess no higher risk of arrest than the general population after five to seven years without another arrest²²⁴ and that past offender crime rates plummet at age 25.²²⁵ Rehabilitating emerging adults ages 18 to 25 can catch them before recidivation, shield them from negative influences while providing social and professional skills, and reintroduce them to the adult world ready to contribute and unlikely to commit more crimes.

CONCLUSION

Emerging adults occupy a liminal space between juveniles and adults. They have different minds and socio-economic circumstances that reduce their relative culpability compared to adults. Emerging adults also respond better to rehabilitation,

²¹⁸ Stamm, *supra* note 13, at 74 n.15 (citing LAURENCE STEINBERG, AGE OF OPPORTUNITY: LESSONS FROM THE NEW SCIENCE OF ADOLESCENCE 21–26 (2014)).

²¹⁹ R.W., *supra* note 192.

²²⁰ SCHIRALDI ET AL., *supra* note 9, at 12.

²²¹ *Id.*

²²² *Id.*

²²³ ROCA, CHANGE IS POSSIBLE IN MASSACHUSETTS, https://rocainc.org/wp-content/uploads/2021/11/MA-Onepager-2021_R3.pdf [<https://perma.cc/5PAP-YVMJ>] (last visited Aug. 14, 2022); *See also id.*

²²⁴ SCHIRALDI ET AL., *supra* note 9, at 15.

²²⁵ *From Youth Justice Involvement to Young Adult Offending*, NAT’L INST. JUST. (Mar. 10, 2014), <https://nij.ojp.gov/topics/articles/juvenile-delinquency-young-adult-offending#special> [<https://perma.cc/7PT3-LKBW>].

leading to reduced costs and positive outcomes, should they be given a second chance through rehabilitative-leaning justice programs. These characteristics align emerging adults better with juveniles than with full-fledged adults. These aligned characteristics call for similar treatment of the two groups, a shift that would move emerging adults from unwarranted punishment to worthwhile rehabilitation. Thus, states and the federal government should raise adult criminal jurisdiction to age 25. And to achieve true separation of the two systems so that all who should receive juvenile treatment do receive it, states should eliminate the juvenile transfer system. The juvenile system has a shameful history;²²⁶ many problems exist, and further reform is needed. Yet the juvenile court system provides an avenue of rehabilitation that the adult system does not. Assuming society can make it more equitable, the juvenile system can better serve those under 25 than the adult system.

²²⁶ See *supra* Part II.A.