Missouri Law Review

Volume 85 | Issue 1 Article 8

Winter 2020

Children Are Our Future: Resurrecting Juvenile Rehabilitation Through "Raise the Age" Legislation in Missouri

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NOTE

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I. INTRODUCTION

On Monday, October 29, 2018, retired St. Louis Police Sergeant Ralph Harper was murdered during a botched robbery.[1] Two juveniles, ages fifteen and sixteen, were accused of carrying out the attempted robbery gone wrong.[2] Because of their ages, they were charged in juvenile court, where punishments are more individualized and sentences are generally less harsh than adults would receive.[3] To determine if the boys would be subject to the adult criminal system, they were granted a transfer hearing where a juvenile court judge determined whether the nature of the accused crime and the juveniles' individual characteristics would be better addressed by the adult criminal justice system.[4]

At the transfer hearing, the two juveniles made their cases about why they belonged in the juvenile system.[5] For a crime he committed at age fifteen, one juvenile was charged as an adult with second degree murder,

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* B.A., University of Missouri-Columbia, 2017; J.D. Candidate, University of Missouri School of Law, 2020; Managing Editor, *Missouri Law Review*, 2019–2020. A special thanks to Professor Douglas Abrams for his guidance and to the editorial staff of the *Missouri Law Review* for their insightful edits.

1. Christine Byers, *Boys, 15 and 16, Charged in Juvenile Court with Murder of Retired St. Louis Police Sergeant*, ST. LOUIS POST-DISPATCH (Oct. 31, 2018) https://www.stltoday.com/news/local/crime-and-courts/boys-and-charged-in-juvenile-court-with-murder-of-retired/article_f4f0d61a-c067-55d4-920e-6d435ba71a2c.html [perma.cc/XTB8-7W7H].

2. *Id.*

3. *Id.*

4. Joel Currier, *Second Teen Charged With Murder of Retired St. Louis Police Sergeant*, ST. LOUIS POST-DISPATCH (June 14, 2019), https://www.stltoday.com/news/local/crime-and-courts/second-teen-charged-with-murder-of-retired-st-louis-police/article_0d4aee19-3a35-59ee-b3d6-0f3173f7bfff.html [perma.cc/7SPE-BB6Y].

5. *Id.*

armed criminal action, attempted robbery, tampering, and resisting arrest.[6] He eventually pleaded guilty and was sentenced to a twenty-year suspended sentence in a dual jurisdiction juvenile program.[7] If the juvenile successfully completes juvenile programming, including counseling and vocational training, he could be released on probation when he is twenty-one years old.[8] The other juvenile who participated in Sergeant Harper's death also received juvenile detention for his role.[9] Ironically, one of the boys' seventeen-year-old brother, Julian Mathews, charged with a lesser crime unrelated to the murder, did not receive the same chance.

Julian was arrested on the same day as the boys but was not involved in the attempted robbery or murder.[10] He was charged with two misdemeanors upon his arrest.[11] Because Julian was seventeen years old when he was arrested, he was charged as an adult.[12] Weeks before Sergeant Harper's death, Julian had been arrested and charged with two felonies: felony possession of marijuana and unlawful possession of a weapon.[13] Unlike his brother, he will not receive the many benefits of juvenile court. If convicted, he will carry a felony criminal record and its collateral consequences with him for the rest of his life. His younger brother, however, could avoid those negative consequences in the juvenile system.

The difference between Julian and his brother's cases demonstrates how significant a year can be to a juvenile facing the criminal system. Soon, seventeen-year-old juveniles such as Julian will be eligible to receive the benefits of Missouri's juvenile system. In recent years, state legislatures across the country have made it harder to try juveniles in adult courts in a legislative movement known as "Raise the Age."[14] Generally, Raise the Age

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6. Erin Heffernan, *Teen Charged With Murder of Retired St. Louis Police Sergeant to be Tried as an Adult*, ST. LOUIS POST-DISPATCH (June 11, 2019), https://www.stltoday.com/news/local/crime-and-courts/teen-charged-with-murder-of-retired-st-louis-police-sergeant/article_26f22109-7c05-5b1f-b67e-07d4ca205f04.html [perma.cc/58KY-NYTS].

7. *Teen Sentenced to Juvenile Detention for Role in Death of Retired St. Louis Police Sergeant*, KMOV4 (Dec. 12, 2019), https://www.kmov.com/news/teen-sentenced-to-juvenile-detention-for-role-in-death-of/article_6904b7d8-1d2b-11ea-947e-83dd1f25e356.html [perma.cc/9KWN-V5VV].

8. *Id.*

9. Joel Currier, *Teen Sentenced to Juvenile Detention in Killing of Retired St. Louis Police Sergeant*, ST. LOUIS POST-DISPATCH (Dec. 13, 2019), https://www.stltoday.com/news/local/crime-and-courts/teen-sentenced-to-juvenile-detention-in-killing-of-retired-st/article_90c9ead7-2040-505a-859e-1d203607d608.html [perma.cc/3B3Y-WREE].

10. Byers, *supra* note 1.

11. Second degree tampering with a motor vehicle and resisting arrest. State v. Mathews, Case No. 1822-CR03756 (St. Louis City Cir. Ct. Oct. 30, 2018).

12. Hefferman, *supra* note 6.

13. *Id.*

14. Brian Evans, *'Raise the Age' Passage Sets Missouri on Path to Re-Establish Itself as Youth Justice Model*, SPRINGFIELD NEWS-LEADER (May 26, 2018),

legislation represents an evolution in thinking about juvenile justice. In 2018, Missouri's General Assembly joined the "Raise the Age" movement by passing Senate Bill 793.[15] On June 1, 2018, former Missouri Governor Eric Greitens signed Senate Bill 793 into law, which will raise the age of criminal adult prosecution from seventeen to eighteen.[16] Missouri joins forty-five other states and the District of Columbia that have passed similar "Raise the Age" bills in recent years.[17] Senate Bill 793 will not go into effect until January 1, 2021, but when it does, seventeen-year-old juveniles who violate the law will automatically be processed in Missouri's juvenile courts.[18] This bill is good news both for the state of Missouri and its juveniles; it will shield some juveniles from the adult criminal justice system and its often-irreparable consequences while also lowering costs and recidivism rates for Missouri.

This Note examines the effects of Senate Bill 793 on Missouri and its juveniles through the lens of historic shifts in the understanding of juvenile justice. Part II of this Note reviews the historical background leading to the creation of separate juvenile justice systems and the history of Missouri's juvenile justice system. Part III explores how the law has evolved as our understanding of juveniles has evolved. Section A gives a brief history of "Raise the Age" statutes across the United States. Section B details how the United States Supreme Court decided to "raise the age" for the harshest types of punishment: the death penalty and life without the possibility of parole. Part IV is an in-depth look at Missouri Senate Bill 793 and addresses the two-fold benefit of the change by first explaining why Senate Bill 793 is good for Missouri's juveniles, then discussing why the legislation is also good for Missouri's communities. Finally, Part IV analyzes possible future reforms to make Missouri's juvenile system better and Missouri's juveniles safer.

II. CHARTING THE PATH TO THE MODERN JUVENILE JUSTICE SYSTEM

The path to legal adulthood is incremental. In Missouri, the age of majority – the age at which the law considers an individual fully mature – is

https://www.news-leader.com/story/opinion/readers/2018/05/26/raise-age-improves-missouri-youth-justice/641299002/ [perma.cc/5QAX-236R].

15. *Id.*

16. *See* S.B. 793, 99th Gen. Assemb., 2d Reg. Sess. (Mo. 2018); *see also* Kurt Erickson, *Here Are the Bills Gov. Eric Greitens Signed Before Leaving Office*, ST. LOUIS POST-DISPATCH, (June 1, 2018) https://www.stltoday.com/news/local/govt-and-politics/here-are-the-bills-gov-eric-greitens-signed-before-leaving/article_d2132b21-8db0-5d50-bed6-1d8ad4ec34b0.html [perma.cc/NRX5-YKWW]. The Governor also signed Senate Bill 800 that same day, which contains identical "Raise the Age" language as Senate Bill 793. S.B. 800, 99th Gen. Assemb., 2d Reg. Sess. (Mo. 2018).

17. Evans, *supra* note 14.

18. S.B. 793, 99th Gen. Assemb., 2d Reg. Sess. (Mo. 2018).

eighteen, with few exceptions.[19] Such exceptions include the age a person may drive, get married, give sexual consent, and purchase and consume tobacco products and alcohol. An individual may drive a car and get married with parental consent at sixteen.[20] A seventeen-year-old Missourian may consent to engage in sexual activities.[21] In some Missouri jurisdictions, individuals may not buy tobacco products until they are twenty-one.[22] Further, individuals may not purchase, possess, or consume alcohol until they are twenty-one years old.[23]

By law, children are not mature enough to engage in many of the above activities. However, in some instances the state still imposes criminal liability on children. Children as young as twelve can be certified, tried, and sentenced as adults in the Missouri criminal justice system.[24] There is a tension between imposing adult criminal liability on children by virtue of their actions while simultaneously barring them because of their youth from driving, marrying, voting, smoking, drinking alcohol, or making independent medical decisions. The Section that follows aims to put this dichotomy in context by presenting a brief history of the juvenile justice system, its goals, and its justifications. Next, Section B offers an overview of the structure of Missouri's juvenile justice system and briefly explores why it is a model for other systems across the United States.

A. Children Are Not Criminals: An Overview of the Juvenile Justice System

Between 1968 and 1972, the United States saw a downward trend for the age of majority from twenty-one to eighteen.[25] In response, individuals began calling for a change in the way society dealt with children in the criminal

19. *See* Bushell v. Scheep, 613 S.W.2d 689, 691 (Mo. Ct. App. 1981) (holding the age of majority is attained at eighteen for most purposes).

20. *See* MO. REV. STAT. § 302.178(1) (2018) (setting the age to obtain a driver's license at sixteen); MO. REV. STAT. § 451.090 (2018) (setting the age of marriage to sixteen with parental consent). In the last legislative session, Missouri passed Senate Bill 655, which raised the age of marriage with parental consent from fifteen to sixteen and prohibited the marriage of any person over the age of twenty-one to any person under the age of eighteen. Michelle Madaras, *New Law Cracks Down on Legal Age to Marry in Missouri*, FOX2NOW (Aug. 27, 2018), https://fox2now.com/2018/08/27/new-law-cracks-down-on-legal-age-to-marry-in-missouri/ [perma.cc/4CY6-LUPG].

21. MO. REV. STAT. § 566.034 (2018) (stating seventeen-year old individuals can consent to sexual contact with those twenty-one years or older).

22. *See, e.g.*, COLUMBIA, MO., CODE ch. 11, art. X, § 11-316 (2019) (stating tobacco products cannot be sold to persons under the age of twenty-one).

23. MO. REV. STAT. § 311.310 (2018) (stating businesses are prohibiting from selling alcohol to individuals under the age of twenty-one).

24. MO. REV. STAT. § 211.071 (2018).

25. *See generally* Vivian E. Hamilton, *Adulthood in Law and Culture*, 91 TUL. L. REV. 55 (2016) (outlining the historical trend of the age of majority).

sphere.[26] Prior to the creation of juvenile courts, children accused of crimes were given harsh sentences and confined in adult prisons where conditions were grim.[27] Children were often viewed as miniature adults without distinctive emotional and cognitive abilities.[28]

Throughout the nineteenth century, "child-savers" advocated for the creation of separate juvenile courts.[29] From the late-nineteenth century until the eve of World War I, Progressive-Era reformers argued children were not similar to adults and should not be treated as such.[30] They argued poor environments, rather than intentional behavior by juveniles, were contributing to cases of delinquency.[31] They began to push reforms that addressed the harsh confinement conditions many child offenders faced. Such reforms included curfew laws designed to keep juveniles inside and out of trouble during the nighttime hours.[32] Single mothers were offered government-subsidized stipends that allowed them to stay home with their children because many feared sending single mothers to work would push young, poor, and unsupervised children into lives of crime.[33]

These reforms were coupled with the creation of an entirely separate juvenile justice court system. In 1899, Cook County, Illinois enacted the first separate juvenile justice court in the United States.[34] By 1925, nearly every state maintained a juvenile court that, unlike the adult criminal justice system that focused on punishment and confinement, focused on rehabilitation for juvenile offenders.[35] These new courts gave children an alternative means of adjudication outside the adult criminal system. Juvenile courts also provided treatments outside of mere confinement that focused on the needs of "abused, neglected, delinquent, and dependent children."[36]

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26. DOUGLAS E. ABRAMS, SUSAN V. MANGOLD, AND SARAH H. RAMSEY, CHILDREN AND THE LAW: DOCTRINE, POLICY, AND PRACTICE 932–46 (6th ed. 2017); *see also* Hamilton, *supra* note 25, at 64–65; Megan E. Hay, *Incremental Independence: Conforming the Law to the Process of Adolescence*, 15 WM. & MARY J. WOMEN & L. 663, 667 (2009) (discussing the legal effects of the age of majority).

27. ABRAMS ET AL., *supra* note 26, at 934; Douglas E. Abrams, *Lessons From Juvenile Justice History in the United States*, J. INST. JUST. INT'L STUD. 7, 8 (2004).

28. Abrams, *supra* note 27, at 8–9.

29. *Id.*

30. Jennifer M. O'Connor & Lucinda K. Treat, *Getting Smart About Getting Tough: Juvenile Justice and the Possibility of Progressive Reform*, 33 AM. CRIM. L. REV. 1299, 1302–03 (1996).

31. *Id.* at 1303.

32. ABRAMS ET AL., *supra* note 26, at 934.

33. *Id.* These reforms were not without their flaws; they carried with them problematic racial and socioeconomic stereotypes. *See generally* Cheryl Nelson Butler, *Blackness as Delinquency*, 90 WASH. U. L. REV. 1335 (2013).

34. ABRAMS ET AL., *supra* note 26, at 940.

35. *Id.* at 934.

36. Alicia N. Harden, *Rethinking the Shame: The Intersection of Shaming Punishments and American Juvenile Justice*, 16 U.C. DAVIS J. JUV. L. & POL'Y 93, 100 (2012).

These new juvenile courts were put to the test almost immediately. The Great Depression struck the United States in 1929, and as a result, delinquency rates rose as many children had to choose between attending school or working to provide for their families.[37] Some children resorted to theft to avoid hunger. Juvenile delinquents from this era were some of the first to be tried under the new paradigm guiding the juvenile courts: rehabilitation and prevention over confinement and punishment.

1. Early Juvenile Courts and the Rehabilitative Model

Early juvenile justice courts had jurisdiction over four categories concerning juveniles: abuse and neglect, adoption, status offenses, and delinquency.[38] Early juvenile courts were also courts of civil jurisdiction meant to temper punishment with mercy by shielding juveniles from the harshness of the criminal system.[39] These courts sought to address the misbehavior of juveniles by taking measures meant to rehabilitate them and prevent them from committing future crimes.[40] The rehabilitative model of these courts was future-looking. It took the juvenile's age and culpability into account and addressed the child's delinquency through programs and methods that sought to prevent re-offending.[41] The state, through the early juvenile courts, sought "to replicate the environment that the child would enjoy in a family setting."[42] In these courts, the judge was meant to sit as a fatherly figure who dispensed justice with a focus on the juvenile's individual needs as a devoted parent would.[43] This concept, known as *parens patriae*, focused on the best interests of juveniles and the protection of society.[44] To achieve these goals, early juvenile justice courts had five distinguishing features from ordinary criminal courts. These features were individualized treatment and

37. ABRAMS ET AL., *supra* note 26, at 932–46.

38. Abrams, *supra* note 27, at 8–14. The following focuses on the historical background of the delinquency category.

39. ABRAMS ET AL., *supra* note 26, at 942. Confining juvenile delinquency proceedings to protect juveniles also meant they sacrificed some rights afforded them by the criminal justice system: for example, the right to a jury trial. *See generally* Martin R. Gardner, *Punitive Juvenile Justice and Public Trials by Jury: Sixth Amendment Applications in a Post-McKeiver World*, 91 NEB. L. REV. 1 (2012); Jennifer M. Segadelli, *Minding the Gap: Extending Adult Jury Trial Rights to Adolescents While Maintaining a Childhood Commitment to Rehabilitation*, 8 SEATTLE J. FOR SOC. JUST. 683 (2010); Cart Rixey, Note, *The Ultimate Disillusionment: The Need for Jury Trials in Juvenile Adjudications*, 58 CATH. U. L. REV. 885 (2009).

40. Timothy Casey, *When Good Intentions Are Not Enough: Problem-Solving Courts and the Impending Crisis of Legitimacy*, 57 SMU L. REV. 1459, 1472 (2004).

41. *Id.* at 1471.

42. *Id.*

43. Anita Nabha, *Shuffling to Justice: Why Children Should Not Be Shackled in Court*, 73 BROOK. L. REV. 1549, 1560 (2008).

44. O'Connor & Treat, *supra* note 30, at 1303.

rehabilitation, civil jurisdiction, informal procedures, confidentiality, and separating juveniles from adult offenders.[45]

These features were meant to protect juveniles from long-term negative consequences of their childhood misbehavior. Juvenile courts had less formal procedures to make it easier for the juvenile to understand the process to which they were being subjected.[46] To protect juveniles from public scrutiny, juvenile adjudications were closed to the public.[47] Additionally, juvenile records were closed or expunged, and juveniles subject to adjudication were not saddled with a criminal record.[48] Finally, when juveniles were sanctioned, they were sent to institutions that kept them separate from adult offenders.[49] This policy was meant to keep juveniles with a high probability of rehabilitation from being corrupted by hardened adult criminals.[50] These protections remain largely intact in modern juvenile justice systems across the nation.

The rehabilitative model changed the language used to talk about juvenile offenders and the length of their punishments.[51] Juvenile offenders were not criminals who committed crimes, but delinquents who committed acts of delinquency.[52] The model also affected the range of punishment children might receive when compared to adult sanctions for similar conduct. Further, because the system focused on rehabilitation, punishment was either more or less severe than an adult offender might have received for the same offense in the adult justice system. This is because the rehabilitative model of juvenile courts relied heavily on the characteristics of the juvenile, largely unlike the adult criminal system.[53] Juvenile courts also generally lost jurisdiction over juveniles when they reached the age of majority, meaning the length of their punishments was based heavily on their age.[54]

For example, a juvenile offender who committed a property offense at the age of twelve might be placed in a juvenile center until he "phased out," or reached an age beyond the juvenile court's jurisdiction, less than a decade later. An adult who commits the same property offense might only receive a few days' jail time. Meanwhile, an adult who was sentenced for a violent crime might be confined in prison for decades, but a juvenile found delinquent for the same crime would phase out at the same time as his juvenile counterpart who committed the property crime.[55]

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45. ABRAMS ET AL., *supra* note 26, at 940.

46. *Id.* at 942–43. This was a widely debated topic throughout the twentieth century. *Id.*

47. *Id.*

48. *Id.* at 944.

49. *Id.* at 945.

50. *Id.*

51. *Id.* at 940.

52. *Id.*

53. *Id.*

54. *Id.*

55. A similar hypothetical can be found in ABRAMS et al., *supra* note 26, at 941.

The rehabilitative model proved difficult to maintain, due in part to the resources needed to provide juvenile delinquents with individualized treatment and the growing national interest in tempering rising rates of juvenile delinquency.[56] The rehabilitative model and the juvenile justice system began to face new challenges in the 1950s and 1960s.

2. The Mid-Twentieth Century Creates Cracks in the Rehabilitative Model

The 1950s and 1960s were a time of increasing panic over children committing crimes, prompted in part by the rising delinquency rates of the previous two decades.[57] According to Federal Bureau of Investigation statistics from the era, juvenile court cases increased 220% between 1941 and 1957.[58] Public concern over juvenile crime reached an all-time high as the media declared, "Today's delinquents kill."[59] Even courts were concerned about the growing rates of delinquency, as demonstrated by a Boston juvenile court judge who proclaimed, "We have the spectacle of an entire city terrorized by one-half of one-percent of its residents. And the terrorists are children."[60]

In response to the growing public fear, Congress began to take a special interest in the problem of juvenile delinquency. In 1953, the United States Senate Committee to Investigate Juvenile Delinquency was created and represented the growing congressional fear about the dangers of juvenile delinquency.[61] Congress remained entrenched in dialogue over juvenile delinquency until the 1960s.[62] In 1960, Congress created a national delinquency task force.[63] In 1961, it passed the Juvenile Delinquency and

56. O'Connor & Treat, *supra* note 30, at 1303.

57. ABRAMS et al., *supra* note 26, at 932–46. The Children's Bureau explained the rise in delinquency rates during World War II by stating juveniles were turning to a life of crime because they were left unsupervised by fathers who were overseas fighting in the war and by mothers who were forced to work to provide for both their families and wartime needs. *Id.*

58. Jason Barnosky, *The Violent Years: Responses to Juvenile Crime in the 1950s*, 38 POLITY 314, 320 (2006).

59. *All Our Children*, NEWSWEEK Nov. 9, 1953, at 28–30; *see also* Barnosky, *supra* note 58, at 322.

60. *All Our Children*, *supra* note 59, at 28–30; *see also* Barnosky, *supra* note 58, at 322.

61. ABRAMS et al., *supra* note 26, at 932–46. The Committee held televised hearings in 1955 at the behest of Senator Estes Kefauver from Tennessee. At these hearings, the Children's Bureau reported the United States would have 40% more juveniles by 1960 because of the increase in births post-World War II (a phenomenon now known as "baby boomers"). *Id.* at 933–34.

62. *Id.* at 934.

63. *Id.* at 932–46.

Youth Offense Control Act.[64] The 1968 Presidential campaigns frequently discussed delinquency prevention.[65]

As Congress sought to pass legislation to address juvenile delinquency, the rehabilitative model of the juvenile system began to seem untenable. Due to the rising number of juvenile delinquents, the juvenile court system became overburdened.[66] The system lacked the resources to effectively provide individualized, rehabilitative treatment as initially intended.[67] Juveniles would stay in treatment facilities for periods ranging from weeks to years, often with no follow-up treatment or guidance to prevent recidivism.[68] Juvenile courts became a place where delinquents were abandoned without the necessary resources or many constitutional protections of the adult criminal justice system.

In the late 1960s, the United States Supreme Court stepped in to provide juveniles with more traditional criminal due process rights. First, in *Kent v. United States*,[69] the Court decided juvenile courts can waive jurisdiction over a juvenile but only after a full investigation based on the individual characteristics of the juvenile offender.[70] *Kent* also ruled juvenile courts seeking to waive jurisdiction over a juvenile must provide the juvenile with a hearing, a statement of reasons for denial, and effective assistance of counsel.[71] Second, in *In re Gault*,[72] the Court held "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone."[73] *Gault* extended to juveniles the right to notice of charges, counsel, confrontation and cross-examination of witnesses, and the privilege against compulsory self-incrimination.[74] Third, *In re Winship* held the standard of proof for delinquency cases is proving the act of delinquency "beyond a reasonable doubt."[75] These protections all sought to create a balance between providing an informal procedure juveniles can understand while providing them constitutional protections to safeguard their rights within that system. In 1971, however, some Justices on the Court expressed ambivalence towards

64. *Id.* The law had a three-year authorization and was focused on finding new methods of delinquency prevention and control. The Juvenile Delinquency and Youth Offenses Control Act, Pub. L. No. 87-274, 75 Stat. 572-574.

65. ABRAMS et al., *supra* note 26, 934.

66. O'Connor & Treat, *supra* note 30, at 1303.

67. *Id.*

68. *Id.* at 1303–04.

69. 383 U.S. 541 (1966).

70. *Id.* at 553–54.

71. *Id.* at 554.

72. 387 U.S. 1 (1967).

73. *Id.* at 13.

74. *Id.* at 33–57.

75. *In re* Winship, 397 U.S. 358, 368 (1970). The Court stated, "In sum, the constitutional safeguard of proof beyond a reasonable doubt is as much required during the adjudicatory stage of a delinquency proceedings as are those constitutional safeguards applied in Gault . . . ." *Id.*

creating a juvenile justice system that too-closely mimicked the criminal justice system, and the Court refused to extend the right to a trial by jury to the juvenile justice system.[76]

3. The Rise of the Super-Predator and the Fall of the Rehabilitative Model

While societal concern over juvenile delinquency grew throughout the 1950s and 1960s, it was only a murmur compared to the uproar over juvenile delinquency in the 1980s and 1990s. In President Bill Clinton's 1997 State of the Union address, he declared "a full-scale assault on juvenile crime" while calling for new legislation focusing on more resources for prosecuting offices, tougher penalties, and stricter laws to prevent juveniles from accessing guns.[77] His remarks reflected the increasing concern regarding juvenile crime in the late-twentieth century.

In the 1970s, state juvenile systems began moving away from a rehabilitative model because such programs were deemed expensive, time-consuming, and ineffective in reducing recidivism rates.[78] The rates of crimes such as homicide and gun possession by juveniles were on the rise.[79] This perception was coupled with the growing public sentiment that juveniles were simultaneously becoming more systematic and calloused in committing acts of delinquency.[80] These fears were perpetuated by academics, most notably Professor John DiIulio of Princeton.[81] DiIulio coined the phrase "super-predator" to describe "a young juvenile criminal who is so impulsive, so remorseless that he can kill, rape, maim, without giving a second thought."[82] Popular news media latched onto this inflated sense of fear to warn the public

76. *See In re* Gault 387 U.S. 1, 76–77 (1967) (J. Harlan, dissenting); McKeiver v. Pennsylvania, 403 U.S. 528, 545 (1971).

77. *President Clinton's Message to Congress on the State of the Union*, THE N.Y. TIMES (Feb. 5, 1997) https://www.nytimes.com/1997/02/05/us/president-clinton-s-message-to-congress-on-the-state-of-the-union.html [perma.cc/5QR3-UL7T].

78. O'Connor & Treat, *supra* note 30, at 1307.

79. A report released by the office of Juvenile Justice and Delinquency Prevention ("OJJDP") in 1996 states, "The juvenile violent crime arrest rate remained relatively constant from the early 1970's to the late 1980's, increased 64% between 1988 and 1994, and dropped 12% from 1994 to 1996. Similarly, the number of juveniles arrested for murder more than doubled between the mid-1980's and the peak in 1993, representing a percentage change far greater than the increase in adult murder arrests." OFF. OF JUV. JUST. AND DELINQUENCY PREVENTION, STATE LEGISLATIVE RESPONSES TO VIOLENT JUVENILE CRIME: 1996-97 UPDATE (1998), *available at* https://www.ncjrs.gov/pdffiles/172835.pdf [perma.cc/BAD3-LWJ2].

80. Priyanka Boghani, *They Were Sentenced as "Superpredators." Who Were They Really?* PBS FRONTLINE (May 2, 2017) https://www.pbs.org/wgbh/frontline/article/they-were-sentenced-as-superpredators-who-were-they-really/ [perma.cc/G7R7-EMCS].

81. *See id.*

82. *Id.*

that juveniles represented a growing threat to the safety of communities across the nation.[83]

Legislators responded to growing public alarm by passing legislation designed to toughen the consequences of juvenile delinquency.[84] New legislation focused on incapacitation rather than rehabilitation; its goal was to prevent the juvenile offenders from committing offenses by restricting their freedom through confinement.[85] Nearly every state passed legislation allowing certain juveniles to be transferred to the criminal courts for trial and sentencing.[86] During this time, hundreds of juveniles were sentenced to life imprisonment.[87]

Fears about juvenile "super-predators" proved misplaced. In 2015, the Office of Juvenile Justice and Delinquency Prevention reported the juvenile arrest rate for all offenses peaked in 1996 and then declined sixty-five percent by 2014.[88] A "juvenile violence epidemic" never occurred.[89]

Concern about juvenile delinquency waned in the late 1990s and the early twenty-first century as juvenile arrest rates fell, state budgets declined nationwide, and scientific research shed new light on adolescent

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83. *See generally,* Nina J. Easton, *The Crime Doctor is In But Not Everyone Likes Prof. John DiIulio's Message: There is No Big Fix*, L.A. TIMES (May 2, 1995), https://www.latimes.com/archives/la-xpm-1995-05-02-ls-61478-story.html [perma.cc/XV74-R5M3]; John J. DiIulio, Jr., *The Coming of the Super-Predators*, WASH. EXAMINER (Nov. 27, 1995), https://www.washingtonexaminer.com/weekly-standard/the-coming-of-the-super-predators [perma.cc/RN9R-SEGE]; Lori Montgomery, *'Super-Predator' – Or Just a Kid With a Gun? Skyrocketing Number of Teen Killers Brings Debate on Causes,* SEATTLE TIMES (May 30, 1996), http://community.seattletimes.nwsource.com/archive/?date=19960530&slug=2331969 [perma.cc/738R-6934].

84. *See e.g.*, STATE LEGISLATIVE RESPONSES TO VIOLENT JUVENILE CRIME: 1996–97 UPDATE, *supra* note 79.

85. O'Connor & Treat, *supra* note 30, at 1307–08.

86. Jesenia M. Pizarro, Steven M. Chermak & Jeffrey A. Gruenewald, *Juvenile 'Super-Predators' in the News: A Comparison of Adult and Juvenile Homicide*, 14 J. CRIM. JUST. AND POP. CULT. 84, 85 (2007); Clyde Haberman, *When Youth Violence Spurred 'Superpredator' Fear*, THE N.Y. TIMES (Apr. 6, 2014), https://www.nytimes.com/2014/04/07/us/politics/killing-on-bus-recalls-superpredator-threat-of-90s.html [perma.cc/5ENN-7E9X].

87. Haberman, *supra* note 86.

88. UNITED STATES DEP'T OF JUSTICE, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION STATISTICAL BRIEFING BOOK, JUVENILE ARREST RATES FOR ALL CRIMES, 1980–2014 (2015), *available at* https://www.ojjdp.gov/ojstatbb/crime/JAR_Display.asp?ID=qa05201 [perma.cc/WGC7-PV5Y].

89. JAMES C. HOWELL, PREVENTING AND REDUCING JUVENILE DELINQUENCY: A COMPREHENSIVE FRAMEWORK 16 (2008), *available* at https://www.sagepub.com/sites/default/files/upm-binaries/27206_1.pdf [perma.cc/E9H2-9AF6]; David Westphal, *Youth Crime Plunge Shoots Down Scare: Trend Refutes Predictions of 'Super-Predator'; Experts Are Divided Over Reason for Turnaround*, PITTSBURG POST-GAZETTE, Dec. 13, 1999, at A-13.

development.[90] The public became less accepting of policies and sentencing procedures that ignored maturity and age.[91] By 2014, public opinion seemed to favor juvenile justice policies with a renewed focus on rehabilitation.[92] At the same time, juvenile offenders placed in residential facilities declined fifty-four percent for all offenses between 1997 and 2015.[93] State legislatures began to soften some "tough on crime" reforms passed in the 1990s.[94] For example, between 2011 and 2013, Missouri made several significant reforms to its juvenile justice system.[95] First, Missouri narrowed its transfer and waiver criteria, giving juvenile courts more options to address juvenile delinquency.[96] Missouri also rolled back its "once an adult, always an adult" law that mandated juveniles who had been transferred to adult courts once would never be allowed in juvenile court again.[97]

As a result of changing public attitudes towards juvenile justice over several decades, the contemporary juvenile justice system has become fragmented and often overburdened. For example, in 2014, juvenile courts handled an estimated 975,000 delinquency cases or approximately 2700 cases per day.[98] This means delinquency "hearings" sometimes amount to no more than ten-to-fifteen-minute interviews between the judge and the juvenile because judges are unable to devote any time beyond that to individual cases.[99] Meanwhile, many juvenile residential facilities across the nation have been havens for scandal, violence, and abuse.[100]

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90. ABRAMS et al., *supra* note 26, 935.

91. *Id.*

92. *Public Opinion on Juvenile Justice in America*, PEW CHARITABLE TRUSTS (2014), *available at* https://www.pewtrusts.org/-/media/assets/2015/08/pspp_juvenile_poll_web.pdf [perma.cc/5NEB-X5FR]. For example, 75% of poll respondents indicated a preference to "getting juvenile offenders the treatment, counseling, and supervision they need to make it less likely they will commit another crime, even if that means they spend no time in a juvenile corrections facility," over an option that favors juvenile offenders receiving serious punishment for their offenses. *Id.*

93. UNITED STATES DEP'T OF JUSTICE, OFFICE FOR JUVENILE JUSTICE AND DELINQUENCY PREVENTION, JUVENILES IN RESIDENTIAL PLACEMENT, 2015 (2018).

94. *See, e.g.*, NAT'L CONF. OF S. LEGISLATURES, TRENDS IN JUVENILE JUSTICE STATE LEGISLATION 2011-2015 (2015); PEW CHARITABLE TRUSTS, HAWAII'S 2014 JUVENILE JUSTICE REFORM (2014); IL. JUVENILE JUSTICE COMM'N., BURDENED FOR LIFE: THE MYTH OF JUVENILE RECORD CONFIDENTIALITY AND EXPUNGEMENT IN ILLINOIS (2016).

95. TRENDS IN JUVENILE JUSTICE STATE LEGISLATION 2011–2015, *supra* note 94.

96. *Id.*

97. *Id.*

98. SARAH HOCKENBERRY & CHARLES PUZZANCHERA, NAT'L CTR. FOR JUV. JUST., JUVENILE COURT STATISTICS 2014, at 6 (2017), http://www.ncjj.org/pdf/jcsreports/jcs2014.pdf [perma.cc/4GFQ-CHEQ].

99. ABRAMS et al., *supra* note 26, 935.

100. *See e.g.*, RICHARD A. MENDEL, ANNIE E. CASEY FOUND., MALTREATMENT OF YOUTH IN U.S. JUVENILE CORRECTIONS FACILITIES 3 (2015); Emily Ramshaw, *Sexual Abuse in State Lock-ups*, TEX. TRIBUNE (Jan. 7, 2010), https://www.texastribune.org/

The evolution of the juvenile justice system over time demonstrates a national struggle to balance the perceived innocence of children with the shock of their sometimes-horrific wrongdoing. Missouri's juvenile justice system has not been immune to these challenges. Despite this, the contemporary Missouri juvenile system is one of the foremost juvenile systems in the nation. Since the late twentieth-century, Missouri has been a model juvenile system, and its focus on individualized rehabilitation for its juveniles has been dubbed the "Missouri Miracle."

B. The Missouri Miracle: How Missouri's Juvenile System Became a National Model

Like most states, Missouri housed juveniles in centralized, prison-like conditions between the late-nineteenth and late-twentieth centuries. In 1889, Missouri constructed two reform schools to house delinquent children, with a third being built several years later.[101] Missouri Governor Alexander Dockery signed legislation establishing juvenile courts in the City of St. Louis and Jackson County on March 23, 1903, just four years after Cook County, Illinois established the first juvenile court in the nation.[102] By the time these courts were established, the reform schools were not educational havens so much as "warehouses" to hold children.[103] Despite the establishment of separate juvenile courts, Missouri did not immediately change how it housed delinquent juveniles. Conditions in the reform schools remained deplorable throughout the twentieth century because the schools held abuse and neglect victims with juveniles who committed serious, violent offenses.[104] This system of confining children together regardless of the reason the juvenile was placed in the reform school led to widespread problems. Physical and emotional abuse by both other juveniles and guards, suicide, and escapes were

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2010/01/07/15-of-tx-youth-offenders-forced-into-sex-acts/ [perma.cc/P47H-97YP]; *'Kids for Cash' Captures A Juvenile Justice Scandal From Two Sides*, NAT'L PUB. RADIO (Mar. 8, 2014), https://www.npr.org/2014/03/08/287286626/kids-for-cash-captures-a-juvenile-justice-scandal-from-two-sides [perma.cc/YNL9-RFKZ]; Nancy Phillips & Chris Palmer, *Death, Rapes, and Broken Bones at Philly's Only Residential Treatment Center for Troubled Youth*, INQUIRER (Apr. 22, 2017), https://www.inquirer.com/philly/news/pennsylvania/philadelphia/Death-rape-Philadelphia-Wordsworth-residential-treatment-center-troubled-youth.html [perma.cc/AZQ6-85Y8]; David Jackson, Gary Marx, & Duaa Eldeib, *Children Attacked, Abused at Taxpayer-Funded Living Centers*, CHICAGO TRIBUNE (Dec. 3, 2014), https://www.chicagotribune.com/investigations/ct-youth-treatment-crisis-new-met-20141203-story.html [perma.cc/A2EY-QNYS].

101. Abrams, *supra* note 27, at 13.

102. JAMES D. REED, MO. JUVENILE JUSTICE ASS'N, CELEBRATING 100 YEARS OF JUVENILE JUSTICE IN MISSOURI 1903–2003 (2003).

103. Abrams, *supra* note 27, at 13. The three reform schools were the Missouri Reform School for Boys in Boonville, the State Industrial Home for Girls in Chillicothe, and the State Industrial School for Negro Girls in Tipton. *Id.*

104. *Id.*

all commonplace in the reform schools.[105] In 1950, social worker Albert Deutsch characterized the Boonville school as a "hellhole" with a "long-standing tradition of sadistic maltreatment."[106]

In 1974, Missouri created the Division of Youth Services ("Missouri DYS") within the Department of Social Services.[107] The new agency oversaw the care and treatment of vulnerable juveniles committed to it by the state's juvenile or family courts.[108] By the 1980s, Missouri DYS found the violence and indignity of the Missouri reform schools was severely harming vulnerable juveniles. As a result, the State closed the Chillicothe girls' school in 1981 and the Boonville boys' school in 1983.[109] While the rest of the nation focused its attention on get-tough measures to address the growing concerns over violent juvenile crime,[110] Missouri initiated a change focused on restoring and rehabilitating vulnerable youth. A fifteen-member advisory board focused on developing a new juvenile policy that was rehabilitative and therapeutic rather than punitive and confining.[111] Throughout the 1980s, Missouri DYS replaced the reform schools with small, regional facilities that kept children close to their homes and families.[112]

Today, Missouri DYS has divided the state into five regions, operates thirty residential facilities, and works closely with Missouri's forty-five juvenile courts.[113] During the 2017 fiscal year, Missouri DYS received 621 new youth commitments with an average age of fifteen years old.[114] That same year, its residential facilities served 1535 juveniles. Delinquents are committed to Missouri DYS when the juvenile court determines there is no community-based service suitable for the juvenile.[115] Missouri DYS retains jurisdiction over any juvenile in its care until his or her eighteenth birthday, although under special circumstances Missouri DYS can retain jurisdiction until a juvenile's twenty-first birthday.[116] Missouri DYS is authorized by law to create a wide array of treatment programs, including: maximum security facilities, moderate care facilities, group homes, day treatment programs,

105. THE MO. YOUTH SERVS. INST., APPROACH FOR POSITIVE JUVENILE JUSTICE OUTCOMES 9 (2016).

106. Abrams, *supra* note 27, at 13.

107. *Who We Are,* THE MISSOURI APPROACH, http://missouriapproach.org/approach/ [perma.cc/YS8H-H9F4] (last visited Dec. 18, 2019).

108. *Id.*

109. Abrams, *supra* note 27, at 22.

110. *See supra* Part II.A.3.

111. Abrams, *supra* note 27, at 22.

112. *Id.*

113. *Id.*; *see also About DYS,* MISSOURI DEP'T OF SOCIAL SERVS., DIV. OF YOUTH SERVS., https://dss.mo.gov/dys/about-dys.htm [perma.cc/9RX6-F4HK] (last visited Dec. 18, 2019).

114. MISSOURI DEP'T OF SOCIAL SERVS., DIV. OF YOUTH SERVS., 2017 ANNUAL REPORT 26 (2017).

115. Mo. Rev. Stat. § 219.021.1 (2018).

116. *Id.*

family foster homes, aftercare services, educational services, and counseling services.[117]

Missouri DYS brands itself as "rehabilitative and therapeutic" over "correctional."[118] Juveniles committed to Missouri DYS are placed in the least restrictive facilities needed to support their treatment.[119] The residential facilities vary in security level, but all offer a range of services, including: individual and group treatment, life skills training, community service, family engagement opportunities, family treatment, and education services.[120] Juveniles live in dorm-style rooms, wear their own clothes, and are allowed to decorate personal spaces.[121] Even at the maximum security facilities, juveniles can play with pets and attend programs like summer basketball camp.[122]

Missouri DYS is charged with serving many of Missouri's most vulnerable juveniles: many Missouri DYS commitments struggle with educational and mental disabilities. Of juveniles committed to Missouri DYS, twenty-six percent receiving educational services in 2017 had an educational disability; thirty-nine percent of Missouri DYS commitments had a history of prior mental health treatment; and forty-six percent of juveniles had a history of prior substance abuse.[123]

Despite the challenges juveniles carry with them to Missouri DYS, they are overwhelmingly successful after they are discharged. In 2017, Missouri DYS reported a "law-abiding rate" – defined as the percentage of juveniles discharged from DYS who are not recommitted or incarcerated in adult prisons after three years – of nearly seventy-three percent.[124] Missouri DYS is successful in offering juveniles at their most vulnerable the resources they need to cope with difficult circumstances. Because of this success, Missouri DYS is an example for other states looking to revamp their juvenile justice systems.[125]

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117. § 219.021.7.

118. *About the Missouri Approach*, THE MISSOURI APPROACH, http://missouriapproach.org/approach/ [perma.cc/YS8H-H9F4] (last visited Dec. 18, 2019).

119. *Id.*

120. *Residential Treatment*, MISSOURI DEP'T OF SOCIAL SERVS., DIV. OF YOUTH SERVS., https://dss.mo.gov/dys/residential-treatment.htm [perma.cc/76XH-FZ2Z] (last visited Dec. 18, 2019).

121. RICHARD A. MENDEL, ANNIE E. CASEY FOUND., THE MISSOURI MODEL: REINVENTING THE PRACTICE OF REHABILITATING YOUTHFUL OFFENDERS 19 (2015)

122. Jenifer Warren, *Spare the Rod, Save the Child*, L.A. TIMES (July 1, 2004), https://www.latimes.com/archives/la-xpm-2004-jul-01-me-juvie1-story.html [perma.cc/52L9-6FL6].

123. 2017 ANNUAL REPORT, *supra* note 114, at 26.

124. *Id.*

125. *See e.g.,* Carol Marbin Miller & Audra D.S. Burch, *How NYC and Missouri Are Reforming Juvenile Justice — Without Razor Wire Fences*, MIAMI HERALD (Oct. 10, 2017), https://www.miamiherald.com/news/special-reports/florida-prisons/article177946631.html; Selena Teji, *Bringing the Missouri Model to*

Over time, society's understanding of juveniles who commit acts of delinquency has evolved to focus more on rehabilitation and less on punishment. While early American law punished children as adults, modernly, children are treated in a completely different setting than adults. Both policymakers and courts have changed their thinking to reflect the differences between juveniles and adults. The focus on rehabilitation that led to the creation of juvenile courts has been expanded by courts and legislatures through limiting the types of punishments that can be given to juveniles and by making it harder for juveniles to be addressed by the adult system. The next Section outlines these legal changes.

III. THE BIRTH OF THE "RAISE THE AGE" MOVEMENT

Both state legislatures and the United States Supreme Court experienced their own versions of the "Raise the Age" movement. Section A lays the foundation for the various factors prompting the "Raise the Age" movement. Section B then illustrates how various states passed their own versions of "Raise the Age" legislation. Finally, Section C demonstrates how the United States Supreme Court also "raised the age" for the harshest sentences courts give out: the death penalty and life without the possibility of parole.

A. The Rise of Neuroscience and the Fall of "Tough on Crime" Policies

As discussed in Part II, fears over juvenile super-predators prompted an increase in the number of ways juveniles can end up in the adult criminal justice system. Nearly forty years later, research on adolescent brain development and the consequences of confining juvenile offenders in adult facilities has demonstrated policies aimed at treating juvenile offenders as adults are ineffective and detrimental to those juveniles' health and future opportunities.

First, the "Raise the Age" movement is largely driven by research on adolescent brain development.[126] Research now suggests the brain is not fully developed until an individual's mid-twenties, meaning adolescents and young adults are more likely than persons younger or older to engage in risky and criminal behavior.[127] Recent advancements in developmental science and neuroscience have posited this increased susceptibility for risky behavior is likely the result of parts of the adolescent brain developing at different

California, CTR. ON JUV. JUST. AND CRIM. JUST. (Dec. 20, 2010), http://www.cjcj.org/news/5349 [perma.cc/VX8Y-ZJJ7].

126. Stephanie Tabashneck, *"Raise the Age" Legislation: Developmentally Tailored Justice*, 34 AM. BAR ASS'N: CRIM. JUST. 13–17 (Winter 2018).

127. *See* Laurence Steinberg, *Adolescent Brain Science and Juvenile Justice Policymaking,* 23 PSYCHOL. PUB. POL'Y & L. 410, 416 (2016).

paces.[128] Essentially, the brain's sensation-seeking centers develop faster in adolescence than centers controlling self-regulation.[129]

During adolescence, brain systems responsible for self-regulation of appetitive, emotional, and social stimuli are relatively immature.[130] The maturity of these brain systems are positively correlated with impulse control.[131] While these systems remain immature during adolescence, there is increasing activity in the limbic system responsible for processing emotional and social information, including risk-assessment and predicting rewards and punishments of some behaviors.[132] In other words, during adolescence, teenagers experience a "hypersensitivity to emotional content" while their ability to self-regulate their reactions to those emotions and accurately predict the consequences of their behavior have not yet fully developed.[133] The developing relationship between these two brain systems, dubbed the "dual systems model," makes teenagers particularly susceptible to high-risk criminal behavior.[134]

Second, by the early 2000s, it was clear the "tough on crime" policies of the 1980s and 1990s that often resulted in holding juveniles in adult prisons had produced serious, long-lasting, negative consequences. Children sentenced in adult courts and confined in adult prisons face exposure to extreme violence, abuse, and disease.[135] By the time the "Raise the Age" movement gained traction, a clear solution to keeping juveniles safe was to remove them from the dangers of adult prisons.

In adult prisons, children are more likely to witness and suffer extreme violence and abuse.[136] Children in adult facilities are twice as likely to be beaten by a staff member or attacked with a weapon than children placed in juvenile facilities.[137] Juveniles confined in adult facilities are also at the greatest risk of being sexually abused.[138] For example, in 2005, juveniles made up less than one percent of all adult jail inmates, but they accounted for twenty-one percent of all victims of inmate-perpetrated sexual violence.[139] In 2009, eighty-percent of the 420 boys serving life without the possibility of parole sentences in Michigan, Illinois, and Missouri reported being sexually

128. *Id.* at 413.

129. *Id.* at 413–14.

130. *Id.* at 414.

131. *Id.*

132. *Id.*

133. Tabashneck, *supra* note 126, at 16.

134. Steinberg, *supra* note 127, at 414; Tabashneck, *supra* note 126, at 16.

135. CELIA HARRIS ET AL., HUM. IMPACT PARTNERS, JUVENILE INJUSTICE: CHARGING YOUTH AS ADULTS IS INEFFECTIVE, BIASED, AND HARMFUL 19 (2017).

136. *Id.*

137. *Id.* at 21.

138. *Id.* at 22.

139. NAT'L PRISON RAPE ELIMINATION COMM'N, NATIONAL PRISON RAPE ELIMINATION COMMISSION REPORT 155 (2009).

abused within the first year of their sentences.[140] Sexual abuse in prisons is so pervasive that, in 2003, Congress passed the Prison Rape Elimination Act ("PREA") in an attempt to lower rates of sexual violence in adult and juvenile detention facilities.[141] Congress found "[j]uveniles are 5 times more likely to be sexually assaulted in adult rather than juvenile facilities – often within the first 48 hours of incarceration."[142] Under PREA, juvenile inmates may not be held in housing units where they will have "sight, sound, or physical contact" with adult inmates.[143] States must "make best efforts" to avoid placing juvenile inmates in solitary confinement, but many teenagers are still placed in isolation for up to twenty-three hours a day, leading to a host of mental and physical health problems.[144]

Juveniles held in adult facilities are also more likely to suffer from disease.[145] This is due in part to the conditions of prison life, including overcrowding, loss of privacy, increase in stress, violence, isolation, and barriers to accessing healthcare.[146] Incarcerated populations are more likely to suffer from hypertension, asthma, and arthritis.[147] Beyond suffering physical ailments, juveniles serving sentences in adult prisons are also likely to suffer from at least one psychiatric disorder. In 2015, sixty-six percent of juveniles addressed by adult courts had one psychiatric disorder and forty-three percent had two or more disorders.[148] Juveniles are thirty-six times more likely to commit suicide in adult prisons than in juvenile facilities.[149] This is especially concerning because between 2002 and 2005, suicide was the leading cause of death for juveniles detained in state juvenile facilities.[150]

Research on adolescent brain development and the harmful effects of holding juveniles in adult facilities has led many states to recognize adult facilities are dangerous and counterproductive places to house juvenile offenders. To solve this problem, states began rolling back "get tough on crime" policies that made it more likely for juveniles to find themselves in adult prisons. One such reform – "Raise the Age" legislation – protects juveniles from being tried in adult courts at all.

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140. *Id.* at 156.

141. 34 U.S.C. § 30302 (2018).

142. § 30301(4).

143. 28 C.F.R. § 115.14 (2018). This policy has been mandated since the passage of the Juvenile Justice and Delinquency Prevention Act of 1974. *See* ABRAMS ET AL., *supra* note 26, at 932–46.

144. *See, e.g.*, Lisa Armstrong, *A Teen-Ager in Solitary Confinement*, NEW YORKER (Dec. 4, 2017), https://www.newyorker.com/news/news-desk/a-teen-ager-in-solitary-confinement [perma.cc/5UKQ-EUL7].

145. HARRIS ET AL., *supra* note 135, at 19.

146. *Id.*

147. *Id.* at 20.

148. JASON J. WASHBURN ET AL., U.S. DEP'T OF JUSTICE OFF. OF JUV. JUST. AND DELINQUENCY PREVENTION, DETAINED YOUTH PROCESSED IN JUVENILE AND ADULT COURT: PSYCHIATRIC DISORDERS AND MENTAL HEALTH NEEDS 6–7 (2015).

149. HARRIS ET AL., *supra* note 135, at 23.

150. *Id.*

B. Brief Legislative History of "Raise the Age" Statutes

The year 2019 marked the first time in United States history that sixteen-year-old juveniles were not automatically treated as adults in the criminal justice system in any state nationwide; a feat accomplished largely through "Raise the Age" legislation.[151] States have been passing "Raise the Age" legislation for over a decade. In 2007, fourteen states continued to automatically exclude some juveniles under the age of eighteen from juvenile court jurisdiction, and approximately 175,000 juveniles were automatically tried in the adult criminal system.[152] In 2019, the number of juveniles automatically excluded from the juvenile system is expected to fall to between 35,000 and 40,000.[153] After the passage of Missouri's Senate Bill 793, only four states continue to automatically exclude juveniles from the juvenile system, and all four of those states have recently considered "Raise the Age" legislation.[154]

In 2007, Connecticut passed Senate Bill 1500, which raised the age of juvenile court jurisdiction from sixteen to eighteen.[155] Connecticut implemented its legislation in stages, and full implementation occurred in 2012.[156] Illinois also raised the age in steps; in 2009, Illinois raised the age for juvenile misdemeanors from seventeen to eighteen.[157] When none of the anticipated negative consequences – i.e., potential rising costs, decreased public safety, and overburdening the juvenile system – occurred, Illinois raised the age for juvenile felonies from seventeen to eighteen in 2013.[158] Also in 2013, Massachusetts raised the age of juvenile court jurisdiction from seventeen to eighteen.[159] In 2014, New Hampshire followed suit with the passage of House Bill 1624.[160] Louisiana and South Carolina both raised the age in 2016.[161] New York and North Carolina became the last states before the passage of Missouri Senate Bill 793 to pass "Raise the Age" legislation.[162]

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151. JEREE THOMAS, CAMPAIGN FOR YOUTH JUSTICE, RAISING THE BAR: STATE TRENDS IN KEEPING YOUTH OUT OF ADULT COURTS (2015–2017), at 3 (2017).

152. *Id.*

153. *Id.* at 10.

154. Those states are Texas, Michigan, Georgia, and Wisconsin. Tabashneck, *supra* note 126, at 18–19; THOMAS, *supra* note 151, at 8.

155. *See* S. 1500, 2007 Gen. Assemb., Spec. Sess. (Conn. 2007).

156. *Id.*

157. S. 2275, 95th Gen. Assemb., Reg. Sess. (Ill. 2009).

158. H.R. 2404, 98th Gen. Assemb., Reg. Sess. (Ill. 2013).

159. H.B. 1432, 188th Gen. Assemb., Reg. Sess. (Mass. 2013).

160. H.B. 1624, 2014 Reg. Sess. (N.H. 2014).

161. S.B. 324, 2016 Reg. Sess. (La. 2016); S.B. 916, 121st Gen. Assemb., Reg. Sess. (S.C. 2016).

162. Jesse McKinley, *'Raise the Age,' Now Law in New York, Is Still a Subject of Debate*, THE N.Y. TIMES (Apr. 10, 2017), https://www.nytimes.com/2017/04/10/nyregion/raise-the-age-new-york.html [perma.cc/3X9Y-88WX]; S.B. 257, 2017 Gen. Assemb., Reg. Sess. (N.C. 2017).

Congress has also considered legislation to incentivize states to "raise the age." Senators Rand Paul (R-Ky.) and Cory Booker (D-N.J.) offered the Record Expungement Designed to Enhance Employment ("REDEEM") Act in 2013,[163] 2015,[164] and 2017.[165] The REDEEM Act would offer states who pass "Raise the Age" legislation priority when applying for federal grants through the Community Oriented Policing Services ("COPS") program.[166] Despite bipartisan support, the bill has failed to make it out of committee.[167]

Even without REDEEM Act incentives, states continue to consider legislation to "raise the age" even beyond the age of eighteen. In 2016, Vermont became the first state in the nation to pass legislation that raises the age of juvenile court jurisdiction beyond age eighteen, to twenty-one.[168] Several more states are now considering the same.[169] In 2017, Massachusetts state legislators considered Senate Bill 947, which would raise the age of juvenile court jurisdiction to twenty-one years old.[170] Further, Connecticut's "Raise the Age" legislation has been so successful in its implementation – by lowering recidivism rates,[171] saving state funds,[172] and maintaining the juvenile system's caseload[173] – that Connecticut's then-Governor Dannel Malloy offered legislation in 2018 to raise the age of juvenile court jurisdiction to twenty-one.[174]

The overwhelmingly positive trend in the passage of "Raise the Age" legislation suggests it is only a matter of time before every state automatically handles juveniles under the age of eighteen within the juvenile justice system. The "Raise the Age" trend is not confined to legislatures: the United States

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163. S. 2567, 113th Cong. (2013).

164. S. 675, 114th Cong. (2015).

165. S. 827, 115th Cong. (2017).

166. Tabashneck, *supra* note 126, at 19; Ed O'Keefe, *Cory Booker, Rand Paul Team Up on Sentencing Reform Bill*, WASH. POST (July 8, 2014), https://www.washingtonpost.com/news/post-politics/wp/2014/07/08/cory-booker-rand-paul-team-up-on-sentencing-reform-bill/?noredirect=on&utm_term=.9f2d474dd906 [perma.cc/6AAU-9YJB].

167. Tabashneck, *supra* note 126, at 19.

168. H.B. 95, 2016 Gen. Assemb, Reg. Sess. (Vt. 2016).

169. THOMAS, *supra* note 151, at 19; *see also* Katie Lannan, *Mass. Watching as Vermont Pulls Teenagers into Family Court*, DAILY NEWS (July 4, 2018), https://www.newburyportnews.com/news/regional_news/mass-watching-as-vermont-pulls-teenagers-into-family-court/article_750e7535-0a00-5081-aab6-12e29d5a166d.html [perma.cc/T9QU-UDYD].

170. S.B. 947, 190th Gen. Assemb., Reg. Sess. (Mass. 2017).

171. JUV. JUST. INST., RAISING THE AGE: SHIFTING TO A SAFER AND MORE EFFECTIVE JUVENILE JUSTICE SYSTEM 40 (2017).

172. *Id.*

173. *Id.*

174. Rich Scinto, *Malloy Pushes to 'Raise the Age' to 21 for Many Crimes*, PATCH (Mar. 20, 2018), https://patch.com/connecticut/ridgefield/malloy-pushes-raise-age-21-many-crimes [perma.cc/VKA3-A5WT].

Supreme Court has also recently "raised the age" for the harshest forms of punishment.

C. The United States Supreme Court "Raises the Age" for Severe Punishments

This Section focuses on several key United States Supreme Court decisions on the constitutionality of two types of punishment for juvenile offenders: the death penalty and life imprisonment without the possibility of parole ("LWOP"). The Court's decisions have largely reflected the overall social attitude of the times. In the late twentieth century, as fear over juvenile "super-predators" grew, the Court ruled the juvenile death penalty was constitutional. By the 2010s, when the legislative "Raise the Age" movement was gaining traction, the Court barred both capital punishment of juveniles and mandatory LWOP sentences for juvenile offenders. As the next Section illustrates, the same arguments in favor of "raising the age" of juvenile court jurisdictions – the neuroscience of juvenile brains and their incompatibility with adult prisons – also shaped the Justices' thinking on juveniles' eligibility for certain punishments.[175]

1. The Death of the Juvenile Death Penalty

In the 1970s, as the juvenile justice system was walking back the rehabilitative model of addressing juvenile delinquency, the death penalty became a hotly debated topic.[176] The United States Supreme Court decided numerous death penalty cases, including cases involving the constitutionality of executing persons who were juveniles when they committed their capital crimes. Between 1973 and 2005, the United States executed twenty-two juveniles.[177] In the 1980s, the United States Supreme Court set an age limit on the use of the death penalty, but the execution of anyone under the age of

175. Notably, the Court is posed to decide another case regarding juvenile sentencing in the adult system. On March 18, 2019, the United States Supreme Court granted a writ for certiorari in *Mathena v. Malvo*, 139 S. Ct. 1317 (2019) (Mem.). The issue in that case was whether the Court's holdings in *Miller* and *Montgomery* apply regardless of whether a state characterizes its sentencing scheme as "mandatory" or "discretionary." Respondent's Brief at 19, Mathena v. Malvo, 139 S. Ct. 1317 (2019) (No. 18-217).

176. *See generally* Furman v. Georgia, 408 U.S. 238 (1972); Gregg v. Georgia, 428 U.S. 153, 188 (1976); Woodson v. North Carolina, 428 U.S. 280 (1976); Roberts v. Louisiana, 428 U.S. 325 (1976); Jurek v. Texas, 428 U.S. 262 (1976).

177. VICTOR L. STREIB, THE JUVENILE DEATH PENALTY TODAY: DEATH SENTENCES AND EXECUTIONS FOR JUVENILE CRIMES, JANUARY 1, 1973 – FEBRUARY 28, 2005, at 3 (2005), *available at* http://www2.law.columbia.edu/fagan/courses/law_socialscience/juvenile_justice/documents/Streib_JuvDeathMar2004.pdf [perma.cc/2X3F-EUQQ]. Between 1973 and 2005, Missouri sentenced four juvenile offenders to death and ranked fourteen out of twenty-three states that allowed the execution of juveniles. *Id.* at 10.

eighteen at the time of their crime was not declared unconstitutional until 2005.

The United States Supreme Court did not bar the execution of persons because of their youth until 1988.[178] In *Thompson v. Oklahoma*, the Court held that executing juveniles for capital crimes they committed while fifteen-years old or younger violated the Eighth Amendment's bar against "cruel and unusual" punishment.[179] The Court, in a plurality opinion, found fifteen-year old juveniles are "less mature and responsible than adults."[180] The plurality concluded, "Given the lesser culpability of the juvenile offender, the teenager's capacity for growth, and society's fiduciary obligation to its children, this conclusion is simply inapplicable to the execution of a [fifteen-year-old] offender."[181]

The Court drew a bright line in *Thompson*: juveniles fifteen-years old or younger are categorically less culpable than adults and thus cannot be executed by the state for their crimes. But the Court was hesitant to apply this reasoning to all juveniles under the age of majority. Just one year after the decision in *Thompson*, the Court refused to extend its reasoning to juveniles older than fifteen in *Stanford v. Kentucky*.[182] The plurality, led by Justice Antonin G. Scalia, was unpersuaded by new scientific evidence indicating adolescent brains struggle to grasp the consequences of homicidal actions.[183] Ultimately, the plurality allowed age to be considered only as a mitigating factor rather than as a complete bar to the death penalty for juveniles for acts they committed when they were older than fifteen.[184]

States continued to execute juveniles older than fifteen until 2005. In fact, eighteen of the twenty-two juveniles executed between 1973 and 2005 were executed after the *Stanford* decision.[185] The last juvenile executed in the United States was Scott Hain, who was executed by Oklahoma in 2003 for a crime he committed at age seventeen.[186] The tide began to turn in 2002, when the United States Supreme Court ruled in *Atkins v. Virginia* executions of persons with intellectual disabilities violates the Eighth Amendment.[187] The Court reasoned persons with intellectual disabilities have a diminished personal culpability because they are less able to understand and process information, learn from mistakes and experiences, engage in logical reasoning, control impulses, and understand the reactions of others.[188] The

178. Thompson v. Oklahoma, 487 U.S. 815, 838 (1988).
179. *Id.* at 815.
180. *Id.* at 834.
181. *Id.* at 836–37.
182. Stanford v. Kentucky, 492 U.S. 361, 380 (1989).
183. *Id.* at 378.
184. *Id.* at 375.
185. STREIB, *supra* note 177, at 4.
186. *Id.* at 4.
187. Atkins v. Virginia, 536 U.S. 304, 321 (2002).
188. *Id.* at 318.

Court stated persons with intellectual disabilities are not exempt from criminal sanctions but cannot be given the death penalty.[189]

In 2003, the Missouri Supreme Court applied the Court's reasoning in *Atkins* to the execution of a seventeen-year-old in *State ex rel. Simmons v. Roper*.[190] In *Simmons*, the Missouri Supreme Court held juveniles have a diminished personal culpability for all of the same reasons *Atkins* held those with intellectual disabilities are less personally culpable.[191] The Missouri Supreme Court reasoned: (1) legislative action has consistently opposed the juvenile death penalty;[192] (2) juries infrequently impose the death penalty for juveniles;[193] and (3) a national and international consensus exists among professional, social, and religious organizations against the juvenile death penalty.[194]

The United States Supreme Court affirmed the Missouri Supreme Court's application of *Atkins* to juveniles.[195] The Court stated the death penalty is available only to those offenders with "extreme culpability."[196] Importantly, for the first time, the United States Supreme Court recognized juveniles are fundamentally different from – and should not be classified among – the worst offenders for three reasons.[197] First, juveniles lack maturity and a sense of responsibility.[198] Second, juveniles are the most susceptible to negative influences and peer pressure.[199] Third and finally, juveniles have a character "not as well formed as that of an adult."[200] The Court reasoned these fundamental differences make it impossible for judges and juries to consistently and accurately determine which juveniles acted with the appropriate culpability to receive a death sentence and which juveniles acted based on their youth.[201]

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189. *Id.*

190. State *ex rel.* Simmons v. Roper, 112 S.W.3d 397, 399 (Mo. 2003). Notably, Christopher Simmons told his accomplices before they committed the murder they would "get away with it" because they were juveniles. Roper v. Simmons, 543 U.S. 551, 556 (2005).

191. *Roper*, 112 S.W.3d at 399.

192. *Id.* at 407.

193. *Id.* at 409.

194. *Id.* at 410. The Missouri Supreme Court also concluded the juvenile death penalty was unconstitutional "cruel and unusual" punishment barred by the Eighth Amendment after conducting its own independent analysis. *Id.* at 411.

195. *Roper*, 543 U.S. at 554.

196. *Id.* at 568.

197. *Id.* at 569.

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.* at 572–73. "An unacceptable likelihood exists that the brutality or cold–blooded nature of any particular crime would overpower mitigating arguments based on youth as a matter of course, even where the juvenile offender's objective immaturity, vulnerability, and lack of truth depravity should require a sentence less severe than death." *Id.* at 573.

Roper was the first time the Court recognized the scientific and social differences separating youth from adulthood; those same scientific and social differences fueled the passage of "Raise the Age" statutes just a few years later.[202] In the decade that followed the *Roper* decision, the landscape for sentencing juvenile offenders who commit serious offenses changed drastically.[203] The United States Supreme Court has "raised the age" of offenders eligible for mandatory LWOP sentences. Today, only those aged eighteen and above can automatically be sentenced to LWOP for both homicide and non-homicide offenses.

2. The Cruel and Unusual Punishment of LWOP for Juvenile Offenders

In *Graham v. Florida*,[204] the Court used its reasoning from *Roper* to rule the Eighth Amendment bars a LWOP sentence for juvenile offenders who commit non-homicide offenses.[205] The Court restated a tenet of *Roper*: juveniles have diminished culpability and are thus less deserving of the most severe punishments.[206] Further, the Court noted defendants who do not kill, intend to kill, or foresee any loss of life are also categorically less deserving of the severest forms of punishment.[207] Thus, the Court concluded juveniles who commit non-homicide offenses have "a twice diminished moral culpability."[208] This diminished culpability coupled with the acute harshness of a LWOP sentence for juveniles – they spend more years and a greater percentage of their lives in prison compared to adult offenders – prompted the Court to hold such mandatory LWOP sentences are "cruel and unusual" punishment barred by the Eighth Amendment.[209] The Court conceded states are not required to guarantee release to all juvenile offenders convicted of non-homicide crimes but nonetheless must give such juvenile offenders "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation."[210] In sum, after the Court's decision in *Graham*, juveniles can no longer receive LWOP sentences for non-homicide

202. *See* THOMAS, *supra* note 151, at 19.

203. *See, e.g.*, Graham v. Florida, 560 U.S. 48 (2010) (prohibiting life without parole for juveniles who committed non-homicide offenses); Miller v. Alabama, 567 U.S. 460 (2012) (expanding *Graham* to juveniles who committed homicides); Montgomery v. Louisiana, 136 S. Ct. 718 (2016) (ruling the decision in *Miller* applied retroactively).

204. 560 U.S. 48 (2010).

205. *Id.* at 68.

206. *Id.*

207. *Id.* at 69.

208. *Id.*

209. *Id.* at 70–71.

210. *Id.* at 75.

offenses,[211] and states must give juveniles with such sentences for non-homicide offenses "meaningful opportunity" for release.[212]

Just two years later in *Miller v. Alabama*,[213] the Court extended *Graham* to homicide cases and held mandatory LWOP sentences for offenders under the age of eighteen violated the Eighth Amendment.[214] The Court held juveniles who commit criminal acts cannot automatically be given a LWOP sentence because they have a diminished moral culpability and "greater prospects for reform."[215] After this decision, before sentencing a juvenile to LWOP, the judge or jury must take into account the juvenile's age.[216] The Court stated the judge or jury must consider "hallmark features" of age such as "immaturity, impetuosity, and failure to appreciate risks and consequences," as well as the juvenile's home environment, level of participation in the criminal conduct, the possibility of peer or familial pressures, and the juvenile's ability to navigate the adult criminal justice system.[217] Most importantly, the Court requires judges sentencing juveniles to consider the juvenile's capacity for rehabilitation.[218] After this decision, juveniles facing LWOP sentences may present their age and all associated mitigating evidence at their sentencing. In 2016, the Court extended its holding in *Miller* to afford juveniles sentenced pre-*Miller* a re-sentencing or parole hearing.[219]

The Court's recent decisions reflect the same change in thinking that led state legislatures to create "Raise the Age" legislation. The United States Supreme Court decisions discussed above conclude juveniles should be sentenced differently than adults for two reasons: (1) juveniles are entitled to more lenient sentences than adult offenders because of their incomplete brain development; and (2) time allows juvenile brains to develop and thus reduces the need for punitive intervention to accomplish reform.[220] The passage of Missouri Senate Bill 793 indicates Missouri is joining other states and the United States Supreme Court in recognizing the inherent differences in juveniles that require they be treated differently for their acts of delinquency. The next Section explores Missouri Senate Bill 793 in detail by examining the new law's benefit to both Missouri juveniles and Missouri communities.

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211. *Id.* at 74–75.

212. *Id.* at 75.

213. 567 U.S. 460 (2012).

214. *Id.* at 470.

215. *Id.* at 471.

216. *Id.* at 477.

217. *Id.* at 477–78.

218. *Id.* at 478.

219. *See* Montgomery v. Louisiana, 136 S. Ct. 718, 736 (2016).

220. Susan Frelich Appleton, Deanna M. Barch & Anneliese M. Schafer, *The Developing Brain: New Directions in Science, Policy, and Law*, 57 WASH. U. J.L. & POL'Y 1, 2 (2018)

IV. MISSOURI SENATE BILL 793: PROTECTING MISSOURI'S JUVENILES

"Raise the Age" legislation was first introduced in the Missouri legislature in 2015 by Senator Wayne Wallingford.[221] That year, it did not earn a hearing in the Senate's Judiciary and Civil and Criminal Jurisprudence Committee.[222] Senator Wallingford persisted and introduced the legislation again in 2016 and 2017.[223] However, neither bill made it to a vote in that Committee. Finally, in 2018, Senator Wallingford was able to send Senate Bill 793 to the Governor's desk with widespread support.[224] The bill passed the Senate by a 32-1 vote.[225] The bill passed the House 139-4.[226] The law does not go into effect until 2021 and will not be fully implemented until 2027, giving Missouri DYS time to hire more staff and plan to treat and house seventeen-year-old juveniles. In 2021, seventeen-year-old juvenile offenders and Missouri's communities will begin to reap the benefits of this legislation.

A. Spare the Rod, Save the Child:[227] Individual Benefits of "Raise the Age" Legislation

Senate Bill 793 expands the age of juvenile court jurisdiction to include eighteen-year-olds.[228] Senate Bill 793 protects juveniles from exposure to the adult criminal system. The benefits to seventeen-year-old juveniles under Senate Bill 793 are threefold. First, the presumption of juvenile court jurisdiction exposes them to transfer laws, where they have an opportunity to plead their case prior to being adjudicated as an adult. Second, juvenile courts shield juveniles from experiencing the vast collateral consequences that accompany adult convictions. Third, juvenile courts and Missouri DYS offer programs and opportunities designed specifically for juvenile rehabilitation. This Section explores each of these benefits in turn.

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221. S.B. 213, 98th Gen. Assemb., 1st Reg. Sess. (Mo. 2015).

222. *SB 213 Current Bill Summary*, MO. SENATE, https://www.senate.mo.gov/15info/BTS_Web/Bill.aspx?SessionType=R&BillID=901414 [perma.cc/8Q6P-XBKW].

223. *See* S.B. 685, 98th Gen. Assemb., 2d Reg. Sess. (Mo. 2016); S.B. 40, 99th Gen. Assemb., 1st Reg. Sess. (Mo. 2017).

224. Senate Bill 800, sponsored by Senator Doug Libla, also contained a "Raise the Age" provision and was signed into law on the same day Senate Bill 793 was signed. *See* S.B. 800, 99th Gen. Assemb., 2d Reg. Sess. (2018).

225. S. 99th Gen. Assemb., 2d Reg. Sess., at 1833 (Mo. 2018), *available at* https://www.senate.mo.gov/18info/pdf-jrnl/DAY68.pdf#page=44 [perma.cc/3HWP-PW65]. Senator Rob Schaaf was the lone nay vote. *Id.*

226. H. 99th Gen. Assemb., 2d Reg. Sess., at 2550 (Mo. 2018), *available at* https://house.mo.gov/billtracking/bills181/jrnpdf/jrn068.pdf#page=22 [perma.cc/U4PC-3CV3].

227. Warren, *supra* note 122.

228. S.B. 793, 99th Gen. Assemb., 2d Reg. Sess. (Mo. 2018).

1. "Hear Me:" Allowing Seventeen-Year-Old Offenders to Plead Their Case

First, under Senate Bill 793, seventeen-year-old juveniles accused of committing any felony will automatically fall under the exclusive jurisdiction of juvenile courts rather than being automatically processed through the adult system.[229] However, this change does not mean juveniles cannot be tried in the adult criminal system. Seventeen-year-old juvenile offenders will presumptively be treated as children, but after Senate Bill 793 takes full effect in 2021, seventeen-year-old juvenile offenders will be subjected to adult criminal courts only after a transfer hearing is held.

Transfer hearings are proceedings where courts decide if children are treated as adults via legal fiction regardless of their actual age.[230] Currently, any juvenile between twelve and seventeen who has committed an offense that would be considered a felony if committed by an adult is eligible for transfer to a court of general jurisdiction.[231] For most eligible offenses, the juvenile court may order a hearing for transfer upon its own motion or a motion made by a juvenile officer, the child, or the child's custodian.[232] If a juvenile allegedly commits a "serious violent felony," a hearing to determine transfer is automatically held.[233]

Prior to the hearing, the court reviews a written report outlining the statutorily-required criteria for transfer is prepared.[234] The report considers characteristics of the offense, including: the seriousness of the offense and whether transfer serves community safety; whether the alleged offense involves "viciousness, force, and violence;" and whether the offense was against persons or property.[235] The report also considers the juvenile's characteristics, such as: the child's record and history, including previous experience with the juvenile justice system; the child's sophistication and maturity as determined by consideration of their home, environmental situation, emotional condition, and pattern of living; the child's age; programs and facilities available to the child in the juvenile system; whether the child can benefit from the treatment and rehabilitative programs of the juvenile justice system; and racial disparity in certification.[236] At the transfer hearing,

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229. *Id.*

230. Jenny E. Carroll, *Rethinking the Constitutional Criminal Procedure of Juvenile Transfer Hearings: Apprendi, Adult Punishment, and Adult Process*, 61 HASTINGS L.J. 175, 176 (2009).

231. MO. REV. STAT. § 211.071.1 (2018).

232. *Id.*

233. *Id.* The statute defines serious violent felony as first-degree murder, first degree assault, forcible rape, first degree rape, forcible sodomy, first degree sodomy, first degree robbery, or has committed two or more prior offenses that would be felonies if committed by an adult. *Id.*

234. § 211.071.6.

235. § 211.071.6(1)–(3).

236. § 211.071.6(4)–(10).

the judge reviews the report and hears arguments from both parties before deciding whether the juvenile's case should be adjudicated in the juvenile or adult system.[237]

Once Senate Bill 793 takes full effect, all juveniles under the age of eighteen will be subject to transfer laws. This hearing also gives judges the chance to consider the best placement for every juvenile, whereas before seventeen-year-olds were barred simply by their birthdays. These transfer hearings allow an opportunity for individualized justice at the front end of the adjudication process. Presuming seventeen-year-old juvenile offenders are best rehabilitated in juvenile courts and allowing them to plead their case if anyone thinks otherwise is the smartest approach to addressing their misbehavior. This approach exposes them to the programming of Missouri DYS, which is geared towards rehabilitation and skill-building rather than punishment and confinement.

2. "Help Me:" Avoiding the Collateral Consequences of a Criminal Conviction

As discussed in Part III, adult prisons are dangerous places to confine children. This is not the only negative consequence of juveniles being adjudicated in adult criminal courts. Criminal convictions in adult courts often carry heavy and permanent burdens known as collateral consequences. Collateral consequences are "legal disabilities imposed by law as a result of a criminal conviction . . . ."[238] These consequences deny or restrict benefits typically available to everyone and create social and economic barriers for those trying to re-enter society after a criminal conviction.[239] As many as 110 million Americans have criminal records and thus face collateral consequences.[240] These consequences affect all areas of public life: from housing and employment opportunities to voting and other civic services.[241] Under the current scheme in Missouri, seventeen-year-old juveniles who are convicted in the adult criminal justice system face these collateral consequences, some of which are permanent. Senate Bill 798 removes these juveniles from adult court jurisdiction absent a transfer hearing, meaning these children will no longer face these collateral consequences.

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237. Carroll, *supra* note 230, at 198.

238. AM. BAR. ASS'N, COLLATERAL CONSEQUENCES OF CRIMINAL CONVICTIONS: JUDICIAL BENCH BOOK 5 (2018).

239. *Id.*

240. U.S. DEP'T OF JUSTICE, SURVEY OF STATE CRIMINAL HISTORY INFORMATION SYSTEMS, 2016, at 2 (2018).

241. *See generally* Michael Pinard & Anthony C. Thompson, *Offender Reentry and the Collateral Consequences of Criminal Convictions: An Introduction*, 30 N.Y.U. REV. L. & SOC. CHANGE 585 (2006); Gabriel J. Chin, *Collateral Consequences and Criminal Justice: Future Policy and Constitutional Directions*, 102 MARQ. L. REV. 233 (2018).

For example, landlords may deny housing to potential tenants solely because they have a criminal record, even if they were a juvenile when they committed the underlying offense.[242] The federal government can deny people access to some social programs solely because of their criminal record.[243] As discussed later in this Note, criminal convictions also lead to a substantial decrease in earning potential, as those with prior convictions struggle to find employment and make less money upon finding a job.[244] Overall, seventeen-year-old juveniles with prior felony convictions face a whole host of obstacles affecting every area of their lives that limit their ability to re-enter society successfully.[245] Pulling children back into the juvenile system shields them from these detrimental and permanent consequences of the adult system.

Further, persons with felony convictions are often denied the ability to practice their constitutional rights or engage in civic duties. It is both a state and federal crime for a felon to possess a firearm, meaning those with felony convictions are denied their Second Amendment right to bear arms.[246] Those with felony convictions also lose their right to vote, sometimes forever. Approximately six million potential voters in the United States are barred from voting because of a prior felony conviction.[247] In Missouri, individuals are disqualified from voting while serving a sentence of imprisonment, while on probation or parole until they are discharged, and forever disqualified after a conviction of a felony or misdemeanor related to the right of suffrage.[248] In 2016, it was estimated this law prevented 89,665 individuals from

242. In 2016, the U.S. Department of Housing and Urban Development released new guidelines under the Fair Labor Standards Act banning landlords from denying people housing simply because of their past criminal convictions. *Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions*, U.S. DEP'T OF HOUSING AND URBAN DEVEL. at 6 (Apr. 4, 2016), https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF [perma.cc/RML8-2MX5]. However, the Fair Labor Standards Act has not changed to include this language, and landlords are still permitted to refuse housing to people who have been convicted of certain types of offenses. *Id.* Landlords now must simply prove why the denial of housing serves a "substantial, legitimate, nondiscriminatory interest." *Id.*

243. *See, e.g.*, 21 U.S.C. §862 (2018) (denying federal benefits for those with prior drug-related offenses).

244. *See infra* Section IV.B.1.

245. *See generally* Pinard & Thompson, *supra* note 241, at 613.

246. *See* MO. REV. STAT. § 571.070 (2018) (describing the elements of unlawful possession of a firearm); 18 U.S.C. § 922(g) (2018) (describing the elements of the federal law against unlawful possession of a firearm); U.S. CONST. amend. II.

247. *See generally*, Christopher Uggen et al., *6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016* THE SENT'G PROJECT 3 (Oct. 6, 2016), https://www.sentencingproject.org/publications/6-million-lost-voters-state-level-estimates-felony-disenfranchisement-2016/ **[**perma.cc/U7NN-URD4**]**.

248. MO. REV. STAT. § 115.133 (2018).

participating in local, state, and federal elections.[249] Further, those with felony records cannot serve on juries.[250]

In short, a felony conviction does not just result in lost time during incarceration but extends to affect all areas of a juvenile's life permanently. Given that neuroscience has revealed juvenile brains are less able to appreciate the potentially serious consequences of their behavior, saddling juveniles with a lifetime of struggles is especially unfair. Senate Bill 793 shields juveniles from both the loss of time in adult incarceration and from the long-term negative effects collateral consequences have on their lives. For Missouri's juveniles, Missouri DYS is a better place for them to be rehabilitated.

3. "Heal Me:" Using Juvenile Programs to Rehabilitate Seventeen-Year-Old Offenders

As discussed in Part II, juvenile courts and juvenile treatment programs are aimed towards rehabilitating juveniles.[251] The juvenile court system assumes children and their wrongdoings are often products of their environment. Therefore, in order to properly treat the underlying offense, the child's environment needs to improve. Missouri DYS characterizes this idea as one of their "Treatment Beliefs" by stating, "All behavior has a purpose and is often a symptom of unmet needs."[252] Under Senate Bill 793, seventeen-year-old juvenile offenders will be able to access Missouri DYS resources aimed at helping them overcome their pasts and prepare for the future.

Juveniles entering the juvenile justice system often bring with them the heavy baggage of abuse, neglect, disability, and instability. For example, in fiscal year 2017, forty-six percent of juveniles committed to Missouri DYS had a history of prior substance abuse.[253] As stated in Part II.C, juveniles under the care of Missouri DYS often struggle with educational disabilities and substance abuse and require mental health services. Unlike the Missouri Department of Corrections, Missouri DYS has programs and treatment regimens designed specifically to aid juveniles in their recovery. Missouri DYS services extend to aftercare services and to the juvenile's familial support system. In 2021, seventeen-year-old juveniles who likely suffer from the same rate of disability will have access to Missouri DYS programming.

Missouri DYS offers a variety of services – including individualized care, day treatment services, residential treatment services, education services, aftercare services, and family engagement programs – to help

249. Uggen et al., *supra* note 247, at 15.

250. MO. REV. STAT. § 561.026 (2018) (stating those with felony convictions are forever disqualified from serving on a jury).

251. *See supra*, Part II.

252. *Missouri DYS Treatment Beliefs*, MO. DEP'T SOC. SERVS., https://dss.mo.gov/dys/belief.htm [perma.cc/YAN2-WTFT] (last visited Dec. 19, 2019).

253. 2017 ANNUAL REPORT, *supra* note 114, at 1.

juveniles overcome the struggles they face.[254] Missouri DYS also undertakes an empirically-based risk assessment to create a "Comprehensive Individual Treatment Plan" for each juvenile in its care.[255] These plans are flexible and are continuously changed as Missouri DYS develops community-based partnerships for education, treatment, and job placement for its juveniles. Missouri DYS Director Scott Odum stated that Missouri DYS will work to develop programming specifically geared towards seventeen-year-old juveniles in the years leading to 2021.[256] For instance, Missouri DYS will develop programming to release seventeen-year-old juveniles back into society as adults and will place greater emphasis on developing life skills and vocational skills.[257]

In sum, Missouri Senate Bill 793 will place seventeen-year-old juveniles where they belong beginning in 2021: under the jurisdiction of Missouri DYS where they can be given a chance at rehabilitation through programs designed to treat their individualized needs. Seventeen-year-old juveniles are not the only group that will benefit from Missouri's "Raise the Age" legislation. The next Section outlines how Missouri Senate Bill 793 will improve communities.

B. "It Takes a Village to Raise a Child:" How Raising the Age Helps Communities

This Section first discusses the benefits of Missouri's "Raise the Age" legislation and then explores further reforms to improve the juvenile justice system in Missouri. First, "Raise the Age" legislation is economically sound policy; it will save Missouri money by decreasing recidivism rates and will increase Missouri's tax revenue in the long run. Second, early intervention aimed at preventing children from entering the adult criminal justice system means lower crime rates and safer communities.

1. "You Got to Spend Money to Make Money:" The Economic Payout of "Raise the Age" Legislation

Senate Bill 793 will decrease costs in Missouri by diverting seventeen-year-old juveniles to Missouri DYS, where recidivism rates are much lower than the Missouri Department of Corrections. Missouri Senate Bill 793 will also improve the economic outlook for the seventeen-year-old juveniles

254. *Division of Youth Services*, MO. DEP'T SOC. SERVS., https://dss.mo.gov/dys/ [perma.cc/66TH-BC7F] (last visited Dec. 19, 2019).

255. *Individualized Care*, MO. DEP'T SOC. SERVS., https://dss.mo.gov/dys/individualized-care.htm [perma.cc/V7GG-67GW] (last visited Dec. 19, 2019).

256. Telephone Interview with Scott Odum, Director, Missouri Division of Youth Servs. (Sept. 14, 2018) (Please note at the time of this interview, Mr. Odum was Deputy Director of Missouri DYS and was named Director during the drafting of this paper).

257. *Id.*

affected and thus will improve the economic power of the state.[258] The next Section outlines these economic benefits by examining cost-savings from reduced recidivism and, in turn, the increase in spending power for seventeen-year-old juveniles as a result of this bill.

First, Missouri DYS will likely see an increase in expenditures in the immediate years following Missouri Senate Bill 793's implementation in 2021. This is largely due to the increase in juveniles falling under Missouri DYS's care. In the fiscal note attached to Senate Bill 793, Missouri DYS estimated approximately 284 juveniles will be transferred from the Missouri Department of Corrections to Missouri DYS as a result of this bill.[259] Missouri DYS estimates a fiscal impact of $1.8 million to develop programming aimed at seventeen-year-old juveniles and to hire and train additional staff.[260] On the other hand, the Missouri Department of Corrections expects to see a reduction in costs due to fewer offenders being housed in its facilities. In 2018, the Missouri Department of Corrections expected to reduce the prison population by 425 offenders in the year 2021.[261] After ten years, the Missouri Department of Corrections expects to see 1310 less offenders in its prisons and expects to save $3.8 million as a result of Senate Bill 793.[262]

Further, to offset the increase in cost for the juvenile system, Senate Bill 793 creates the Juvenile Justice Preservation Fund, which will expire in fiscal year 2025.[263] This fund will generate revenue from two new surcharges added to some judicial actions. First, a $2 surcharge will be added to all county and state traffic violations where the offender pleads guilty.[264] This surcharge is expected to raise between $1.05 million and $1.26 million.[265] Second, a $3.50 surcharge will be collected for every civil action filed in the state.[266] The Office of the State Courts Administrator expects this to generate $840,706 and $1,008,847, respectively, for the Fund.[267]

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258. *See generally*, DAVID M. MITCHELL, ECONOMIC COSTS AND BENEFITS OF RAISE THE AGE LEGISLATION IN MISSOURI 1 (Nov. 2017) (note his estimates are based upon the fiscal note compiled for Missouri Senate Bill 40, which is the "Raise the Age" legislation introduced in 2017 and is substantially similar to Missouri Senate Bill 793).

259. COMMITTEE ON LEGIS. RES. OVERSIGHT DIV., FISCAL NOTE (June 8, 2018), https://www.senate.mo.gov/18info/BTS_FiscalNotes/index.aspx?SessionType=R&BillID=69675271 [perma.cc/X2AH-9XHL] [hereinafter FISCAL NOTE] (discussing the financial impact of Senate Bill 793).

260. *Id.*

261. *Id.*

262. *Id.*

263. S.B. 793, 99th Gen. Assemb., 2d Reg. Sess. (Mo. 2018) (modifying MO. REV. STAT. § 211.435).

264. *Id.*

265. FISCAL NOTE, *supra* note 259.

266. S.B. 793, 99th Gen. Assemb., 2d Reg. Sess. (Mo. 2018) (modifying MO. REV. STAT. § 488.315).

267. FISCAL NOTE, *supra* note 259.

The legislation is also likely to result in higher tax revenue because people without criminal records and periods of incarceration generally earn more income and thus pay more taxes. For example, a study on Missouri's "Raise the Age" legislation compared the income and taxes paid of an average citizen without a period of incarceration ("Mr. Citizen") to the income and taxes paid of a citizen who had been incarcerated for ten years ("Mr. Criminal").[268] Mr. Criminal's criminal action cost society approximately $814,436 over Mr. Criminal's lifetime when compared to the income earned and taxes paid by Mr. Citizen.[269]

Senate Bill 793 ensures Missouri's seventeen-year-old juveniles do not face this same loss of earnings. In 2017, there were 430 seventeen-year-old juveniles serving time in Missouri Department of Corrections facilities.[270] On average, those juveniles will be 23.2 years old when they are first eligible for release.[271] Because of their youth upon entering Missouri Department of Corrections, they are unlikely to have any significant work experience upon their release at age 23. Facing the same constraints as Mr. Criminal above, those 306 juveniles will earn a collective $305.6 million in wages and pay $62.3 million in taxes.[272]

On the other hand, if those juveniles fell under the jurisdiction of Missouri DYS, the state would raise approximately $52 million more in taxes over the seventeen-year-old juveniles' lifetimes than if they were incarcerated in adult prisons.[273] They are unlikely to earn wages equal to an adult who has never committed an act of delinquency (Mr. Citizen), but they earn significantly more than their counterparts incarcerated in the adult system (Mr. Criminal).[274] Under this assumption, juveniles whose delinquency is addressed by Missouri DYS are likely to earn approximately $504 million in lifetime income and pay $114.2 million in lifetime taxes.[275]

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268. MITCHELL, *supra* note 258, at 7–11. Mr. Citizen's career begins when he is eighteen and spans for forty-seven years, and he earns $2.4 million in income and pays a total of $741,622 in various taxes. *Id.* at 8. Mr. Criminal also begins work at age eighteen but commits a crime when he is twenty-one and receives a ten-year sentence. *Id.* at 9. When Mr. Criminal is released from jail, he begins to seek employment. *Id.* However, his earning potential will remain below Mr. Citizen's for the rest of his life for two reasons: first, his felony conviction makes it harder for him to find employment; and second, because of his felony conviction, he will suffer from a permanent decrease in wages. *Id.* Over his lifetime, Mr. Criminal earns $812,421 in income and pays $167,032 in taxes. *Id.* at 10.

269. *Id.* at 10.

270. *Id.* at 13. Of these prisoners, two were serving life sentences without the possibility of parole, and the remainder had an average sentence of 7.3 years. *Id.*

271. *Id.* at 15. Those juveniles convicted of murder, rape, sexual assault, robbery, and manslaughter were excluded from this calculation. *Id.* at 15 n.9.

272. *Id.* at 15.

273. *Id.* at 16.

274. *Id.* at 15–16.

275. *Id.* at 16.

In sum, the increase in departmental expenses can be viewed as immediate cost-shifting and over time cost-saving as Missouri DYS gains jurisdiction over juveniles the Missouri Department of Corrections loses. Further, any initial increase in costs due to the increased expense of housing juveniles in Missouri DYS facilities will likely decrease costs in the future, as juveniles in residential facilities typically spend less time there than they would in adult prisons and are less likely to recidivate and enter the adult system later in their lives.

2. Children Are Our Future: Further Community Reforms to Give Today's Children a Chance

The next Section attempts to put "Raise the Age" legislation in context by outlining some of the other problems facing Missouri juveniles today. The benefits of Senate Bill 793 should be coupled with reforms to both prevent children from coming in contact with the juvenile court system and to improve the system for those juveniles who must face adjudication. Improving access to education, minimizing the effects of racial disparities, and improving access to competent and prepared attorneys will ultimately improve outcomes of affected juveniles. This Section concludes there is still more work to be done in the Missouri juvenile justice system to improve the futures of Missouri's juveniles.

First, further reforms can be aimed at preventing children from entering the juvenile justice system in the first place. Meeting children's educational needs could be a first step in preventing any future acts of delinquency. A 2005 study found the national average for juveniles with educational disabilities who are confined in correctional facilities was thirty-three percent.[276] These children were more likely to come into contact with the juvenile justice system as a result of school zero-tolerance policies for certain behavior that results in immediate suspension or expulsion.[277] Zero-tolerance policies in schools often punish behavior that is a manifestation of an educational disability; this makes it more likely for students with educational disabilities to come into contact with the juvenile justice system.[278] Missouri's criminal code does not adequately address this problem.[279] Recently, Missouri enacted a new criminal code that may negatively impact students in Missouri schools by criminalizing behavior previously outside the reach of juvenile courts.[280] While zero-tolerance policies create easy-to-follow, bright line rules for schools, they remove teacher and administrator

276. Lisa M. Geis, *An IEP for the Juvenile Justice System: Incorporating Special Education Law Throughout the Delinquency Process*, 44 U. MEM. L. REV. 869, 873 (2014).

277. *Id.* at 879.

278. *Id.*

279. Michele L. Moyer, Note, *Schoolyard Felons: Missouri's New Criminal Code and Its Impact on Schools*, 82 MO. L. REV. 1213, 1227 (2017).

280. *Id.* at 1213–14.

discretion in addressing student misconduct. Further, Missouri's education system has been criticized for failing to keep up with national academic benchmarks.[281] Missouri should consider educational reforms that improve Missouri students' academic performance and reduce the "school-to-prison pipeline."[282] Such reforms could result in less contact with the juvenile justice system for vulnerable children, thus reducing costs and improving individual outcomes.

Missouri could also raise the age at which children are eligible for transfer to the adult criminal justice system. Currently, Missouri allows children as young as twelve to be transferred and tried in the adult criminal system. Only two other states – Colorado and Vermont – allow transfer of children age twelve to adult courts, and only two states – Wisconsin and Iowa – allow children as young as ten to be transferred to adult courts.[283] Most states set the minimum age of transfer at fourteen.[284] By passing Missouri Senate Bill 793, the state acknowledged juveniles as old as seventeen are not presumptively fit for the adult criminal justice system. Therefore, it seems inconsistent to continue to subject juveniles as young as twelve to the adult criminal system at all. Limiting the number of paths to adult court and creating reasonable age restrictions for transfer to adult courts is consistent with the "Raise the Age" movement. Further, such restrictions will protect Missouri juveniles from the harshness of the adult criminal justice system.

Next, Missouri should make changes to prevent systemic bias and injustice in the juvenile system. For example, juveniles in Missouri are often subjected to racial discrimination within the juvenile justice system.[285] Race

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281. Mae C. Quinn, *The Other "Missouri Model": Systemic Juvenile Injustice in the Show-Me State*, 70 MO. L. REV. 1193, 1203 (2013) (stating a Center on Education Policy study found Missouri ranked forty-ninth out of fifty in the 2010–2011 school year for satisfying the educational standards of the No Child Left Behind Act); *see also* Valerie Strauss, *The Sad Story of Public Education in St. Louis*, WASH. POST (Sept. 7, 2017), https://www.washingtonpost.com/news/answer-sheet/wp/2017/09/07/the-sad-story-of-public-education-in-st-louis/?utm_term=.9f6d172fd12a [perma.cc/VJ72-3WAX].

282. *See generally* Kendra Cheek & Justin Bucchio, *School-to-Prison Pipeline Can Be Dismantled Using Alternative Discipline Strategies*, JUVENILE JUSTICE INFO. EXCH. (Sept. 7, 2017), https://jjie.org/2017/09/07/alternative-discipline-strategies-for-dismantling-the-school-to-prison-pipeline/ [perma.cc/J9B9-EBHS]; S. David Mitchell, *Zero Tolerance Policies: Criminalizing Childhood and Disenfranchising the Next Generation of Citizens*, 92 WASH. U. L. REV. 271 (2014).

283. UNITED STATES DEP'T OF JUSTICE, OFF. OF JUV. JUST. AND DELINQUENCY PREVENTION STATISTICAL BRIEFING BOOK, MINIMUM TRANSFER AGE SPECIFIED IN STATUTE (2015), *available at* https://www.ojjdp.gov/ojstatbb/structure_process/qa04105.asp [perma.cc/U4EP-QJRN]. Wisconsin has charged a ten-year old girl with homicide in adult court. *See Four Keys Issues in Murder Case of 10-Year-Old Suspect*, ASS'N PRESS (Nov. 9, 2018), https://www.columbiatribune.com/zz/news/20181109/4-key-issues-in-murder-case-of-10-year-old-suspect [perma.cc/QX7F-DT2Y].

284. MINIMUM TRANSFER AGE SPECIFIED IN STATUTE, *supra* note 283.

285. *See* INVESTIGATION OF THE ST. LOUIS COUNTY FAMILY COURT ST. LOUIS, MISSOURI, U.S. DEP'T OF JUSTICE 3 (2015).

shares a strong correlation to other structural inequalities such as poverty, social disadvantage, lack of neighborhood organization, and lack of access to upward mobility. These factors mean Missouri's most vulnerable juveniles are the ones most likely to face its juvenile justice system.[286] In 2015, the United States Justice Department found "[b]lack children are subjected to harsher treatment because of their race" in the St. Louis County Family Court.[287] The study also found black children are more likely to experience formal adjudication, get pretrial detention, and be committed to Missouri DYS upon violation of the conditions equivalent to probation or parole than similarly-situated white children.[288] This racial disparity means the due process rights of black juveniles are systematically violated, and Missouri DYS is receiving children that could be successfully diverted to less restrictive treatment plans. Reforms aimed at removing racial disparities from the juvenile justice system would ensure all children receive the best treatment.[289]

Further, Missouri's juveniles are systematically denied access to adequate counsel.[290] For example, the same Justice Department study that found racial discrimination in the St. Louis County Family Court also found only one public defender was designated to represent all children in the court.[291] In 2014, that St. Louis County public defender handled 394 juvenile cases.[292] Further, in 2012, 4631 new juvenile delinquency and status offense petitions were reported to the Missouri Supreme Court, but Missouri State Public Defenders were assigned to only 1923 juvenile cases.[293] Approximately sixty-percent of juveniles were left without access to counsel.[294] For those who received assistance from a public defender, that

286. NAT'L RES. COUNCIL, REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH 6–7 (Richard J. Bonnie et al. eds., 2013).

287. INVESTIGATION OF THE ST. LOUIS COUNTY FAMILY COURT ST. LOUIS, *supra* note 285, at 3.

288. *Id.* at 3–4.

289. *See Racial Disparities Remain but St. Louis County Family Court Claims Progress*, ST. LOUIS POST-DISPATCH (May 18, 2018), https://www.stltoday.com/news/local/crime-and-courts/racial-disparities-remain-but-st-louis-county-family-court-claims/article_f7ca1171-2076-5270-b07d-fb2a30089b56.html [perma.cc/UNJ5-2QC3].

290. *See* INVESTIGATION OF THE ST. LOUIS COUNTY FAMILY COURT ST. LOUIS, MISSOURI, *supra* note 285, at 8. Missouri's indigent public defense system has faced astronomical challenges for years related to limited resources and constant budget shortcomings. *Id.* at 3.

291. Richard Pérez-Peña, *St. Louis County Biased Against Black Juveniles, Justice Department Finds*, THE N.Y. TIMES (July 21, 2015) https://www.nytimes.com/2015/08/01/us/st-louis-county-biased-against-black-juveniles-justice-department-finds.html [perma.cc/9UQ2-KVLN].

292. *Id.*

293. MARY ANN SCALI ET AL., NAT'L JUV. JUST. DEFENDER CTR., MISSOURI: JUSTICE RATIONED 34–35 (2013).

294. *Id.* at 35.

public defender only had time to devote 4.6 hours to their case.[295] An underfunded public defense system negatively impacts juveniles in a special way: juveniles already have a diminished capacity to understand the consequences of their actions by virtue of their age, and thus without representation, struggle to understand the intricacies of the system they face. Adequately funding the Missouri State Public Defender would ensure children facing the daunting juvenile system have the legal assistance they need to successfully navigate the system.[296]

"Raise the Age" legislation is a smart move for Missouri's juveniles, but the system is not perfect. Further reforms can ensure fewer children are subjected to a juvenile court and are treated fairly if they do find themselves in a juvenile court. Guaranteeing equal access to education, raising the minimum age at which a child can be tried as an adult, minimizing the effect race plays in the juvenile justice system, and providing children access to adequate counsel will all ensure fewer children end up in juvenile courts across the state and receive better outcomes when they do.

V. CONCLUSION

The "Raise the Age" movement represents the United States' changing attitude in addressing juvenile delinquency. The movement indicates the United States has come far from treating children as miniature adults. Since neuroscience uncovered the developmental arc of adolescent brains, legislatures and judiciaries across the nation have participated in the "Raise the Age" movement by working to incorporate the changing understanding of juvenile delinquency into the legal system of the United States.

Missouri has long been a leader in the area of juvenile justice reform. The creation of Missouri DYS was a revolution in the late twentieth century. However, the success of Missouri's juvenile system in rehabilitating children has been overshadowed by cases like Julian Mathews. Because of an outdated law premised on a misunderstanding of juvenile delinquency, Julian Mathews may be burdened with adult consequences for childish actions. Missouri Senate Bill 793 changes that for future children. The new law also benefits communities where children like Julian live through long-term cost savings and by lowering crime rates. Overall, Senate Bill 793 reflects a juvenile system that is ultimately concerned with the well-being and safety of every child and recognizes we are all better when our children are happier, healthier, and safer.

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295. AM. BAR ASSOC., THE MISSOURI PROJECT: A STUDY OF THE MISSOURI PUBLIC DEFENDER SYSTEM AND ATTORNEY WORKLOAD STANDARDS 15 (2014), *available at* https://www.americanbar.org/content/dam/aba/events/legal_aid_indigent_defendants/2014/ls_sclaid_5c_the_missouri_project_report.authcheckdam.pdf [perma.cc/QNJ9-JJTV]. Public defenders should be averaging 19.5 hours per juvenile case. *Id.* at 6.

296. *See generally id.*; Taylor Payne, Note, *Plight of the Public Defender: Excessive Caseload as a Non-Mitigating Factor in Sanctions for Ethical Violations*, 83 MO. L. REV. 1087 (2018).