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What's My Age Again?: Adolescent Development and the Case for Expanding Original Juvenile Court Jurisdiction and Investing in Alternatives for Emerging Adults Involved in Maine's Justice System

Christopher M. Northrop
University of Maine School of Law

Jill M. Ward
University of Maine School of Law

Jonathan J. Ruterbories
University of Maine School of Law

Jess N. Mizzi
University of Maine School of Law

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WHAT'S MY AGE AGAIN?: ADOLESCENT DEVELOPMENT AND THE CASE FOR EXPANDING ORIGINAL JUVENILE COURT JURISDICTION AND INVESTING IN ALTERNATIVES FOR EMERGING ADULTS INVOLVED IN MAINE'S JUSTICE SYSTEM

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ABSTRACT

While many aspects of Maine's Juvenile Justice system are ripe for reform, this Article advocates for improving the system's response to one group of offenders often overlooked by policymakers: emerging adults. The Supreme Court, in *Roper v. Simmons*, stated that "[t]he qualities that distinguish juveniles from adults do not disappear when an individual turns 18." In fact, studies have shown that criminal conduct attributable to the unstable and impulsive nature of the adolescent mind continues well into a person's mid-twenties.

These eighteen to twenty-five-year-old offenders, termed "emerging adults" by researchers, experience much of the same developmental and physiological challenges as their younger, system involved counterparts, yet they are treated as if they are fully developed in the eyes of the law. Thus, emerging adults—without any sound scientific or legal justification—are exempt from many of the systemic protections offered to system involved youth under the age of eighteen. This is the case in Maine, resulting in poor outcomes for the state's emerging adults who come in contact with law enforcement. Overrepresentation of minority groups, and prolonged system involvement are just some of the deficits of Maine's current model.

To produce better outcomes, there must be a holistic, individualized, and supportive systemic response that considers the needs of emerging adults on an individual basis and refers them to appropriate rehabilitative services. This Article proposes two reforms aimed at improving outcomes for Maine's emerging adult population: (1) raising the age of original juvenile court jurisdiction to age twenty-one and expanding the continuum of supports and services the juvenile justice system

* Christopher Northrop, Esq. Clinical Professor and Director of the Juvenile Justice Clinic at the University of Maine School of Law. Jill Ward, Adjunct Professor and Director of the Maine Center for Juvenile Policy and Law at the University of Maine School of Law. Jonathan Ruterbories, Esq. University of Maine School of Law Class of 2021. Jess Mizzi, 2022 Frank M. Coffin Family Law Fellow, Pine Tree Legal Assistance, University of Maine School of Law Class of 2022. We are incredibly thankful to the many influential and inspirational youth justice advocates who have influenced this Article through their own work. Our press for systemic change did not start with—and will not end—with us. Thank you to all those who will continue to advocate for reform long after this piece is published. We would also like to thank the Maine Law Review editing team. Of course, any errors you may find in this work are our own. Above all, we would like to express our gratitude to former and current system involved young people whose resilience and expertise has inspired us. Their courage to share their lived experience with others has shaped the ideas at the very core of this piece. Without their strength, perseverance, and persistence we would not have made the strides we have in the fight for a fairer system of youth justice. We do this work for them.

provides this group, and (2) protecting emerging adults ages twenty-one to twenty-five from the most punitive sanctions of Maine's Criminal Code.

INTRODUCTION

In the face of progressive juvenile justice policies around the country and emerging research on adolescent brain development, Maine's juvenile justice system remains largely stagnant. An operational youth prison combined with a lack of community resources continue to produce diminishing returns for Maine youth. While multiple attempts at reform continue with varying degrees of success, there remains a need for a fundamental shift in Maine's approach to youth justice. One idea—explained in more detail in this Article—would be to institute an approach to youthful offenders that allows for a more individualized rehabilitative response to young or emerging adults who come in contact with the criminal legal system. Currently, resources for youth come into contact with police are scarce, and access to these limited resources is even harder to obtain. The scarcity of resources lands especially hard on older youth and emerging adults who struggle with maintaining housing, health, and education for their children.¹² All of this is further exacerbated for youth and emerging adults of color who experience discriminatory and overly aggressive policing that criminalizes their behavior and subjects them to the inequities and harms of justice system involvement.³ Ideally, an effective approach to assisting this population would aggregate community resources and individually respond to the needs of youth, connecting them with helpful resources *before* system involvement in an attempt to divert them away from further trouble.⁴

Specifically, age-appropriate resources are particularly lacking for youth between the ages of eighteen and twenty-five (often referred to as “emerging adults”),⁵ making it difficult for them to successfully transition into adulthood. The Supreme Court, in *Roper v. Simmons*, stated that “[t]he qualities that distinguish juveniles from adults do not disappear when an individual turns [eighteen].”⁶ In fact, studies have shown that juveniles are still developing and do not approach complete

1. LAEL CHESTER & VINCENT SCHIRALDI, PUBLIC SAFETY AND EMERGING ADULTS IN CONNECTICUT: PROVIDING EFFECTIVE AND DEVELOPMENTALLY APPROPRIATE RESPONSES FOR YOUTH UNDER AGE 21 12 (Harvard Kennedy Sch. Malcolm Wiener Ctr. for Soc. Pol’y ed., 2016), <https://www.hks.harvard.edu/centers/wiener/programs/criminaljustice/research-publications/young-adult-justice/public-safety-and-emerging-adults-in-connecticut> [<https://perma.cc/9KTV-73SV>].

2. See Jeffrey Jensen Arnett, *Emerging Adulthood: A Theory of Development from the Late Teens Through the Twenties*, 55 AM. PSYCH. 469, 469 (2000).

3. See generally KRISTEN HENNING, THE RAGE OF INNOCENCE: HOW AMERICA CRIMINALIZES BLACK YOUTH xvii-xviii (2021) (“[A] book about the criminalization of Black adolescence in America. It is a book about the excessive intrusion of police into the lives of Black teenagers and the intolerant—sometimes deadly—reactions that police and civilians have toward Black children It is about survival and success in the face of pervasive injustice—well beyond anything that is expected of White middle-class youth who enjoy the privileges of physical safety, public affirmation, and protracted periods of academic and social freedom.”).

4. *Id.* at 15.

5. See Arnett, *supra* note 2. The phrase “emerging adulthood” was initially coined by psychologist Jeffrey Arnett as “a new conception of development for the period from the late teens through the twenties, with a focus on ages 18–25.” *Id.*

6. *Roper v. Simmons*, 543 U.S. 551, 574 (2005).

brain development until they reach their mid-twenties.⁷ In *Miller v. Alabama*, the Court recognized this science and found that youth are subject to “diminished culpability” and have “greater prospects for reform.”⁸ Yet, despite these studies and the clear application of the developmental research to young adults over age eighteen, emerging adults are treated as if they are fully developed adults in the eyes of the law.⁹

Emerging adults involved in the justice system have been negatively impacted by the absence of a culturally responsive, age-appropriate, individualized approach that reflects the most recent science on adolescent brain development. In truth, the current approach has fallen short in meeting the needs of crime victims and broader public safety goals.¹⁰ Overrepresentation of youth of color, immigrant youth, LGBTQ+ youth, youth with disabilities, and tribal youth, as well as high recidivism rates and prolonged system involvement are just some of the poor outcomes experienced in Maine and across the country.¹¹ When a young person comes in contact with law enforcement, there must be a holistic response that considers the needs of that youth on an individual basis and holds them accountable in a way that is supportive, healing, and rehabilitative consistent with the purposes of Maine’s Juvenile Code. This Article proposes that Maine should adopt a comprehensive, individually responsive approach to youthful offenders that embraces the latest science in the field of adolescent development and shifts juvenile justice in Maine toward a more progressive and evidence-based model. This Article analyzes two specific options for accomplishing this: (1) raising the age of original juvenile court jurisdiction to age twenty-one and expanding the continuum of supports and services the juvenile justice system provides this group, and (2) protecting emerging adults ages twenty-one to twenty-five from the most punitive sanctions of Maine’s Criminal Code.

I. A BRIEF HISTORY OF THE JUVENILE JUSTICE SYSTEM

A. *The Rule of Sevens*

Much of the American legal system was adapted from English common law. This is no different in the context of juvenile justice. Under the common law of England in the 15th Century, children under the age of seven “were conclusively presumed incapable of forming criminal intent, and thus could not be guilty of

7. See, e.g., Kathryn L. Mills et al., *Developmental Changes in the Structure of the Social Brain in Late Childhood and Adolescence*, 9 SOC. COGNITIVE & AFFECTIVE NEUROSCIENCE 123, 129-30 (2014).

8. *Miller v. Alabama*, 567 U.S. 460, 471 (2012).

9. Ann Tiegen, *Juvenile Age of Jurisdiction and Transfer to Adult Court Laws*, NCSL (Apr. 8, 2021), <https://www.ncsl.org/research/civil-and-criminal-justice/juvenile-age-of-jurisdiction-and-transfer-to-adult-court-laws.aspx> [https://perma.cc/6MEB-K8BE].

10. See generally DANIELLE SERED, UNTIL WE RECKON: VIOLENCE, MASS INCARCERATION, AND A ROAD TO REPAIR 7-15 (2019).

11. See VINCENT SCHIRALDI ET AL., COMMUNITY-BASED RESPONSES TO JUSTICE-INVOLVED YOUNG ADULTS (Harvard Kennedy Sch. Program in Crim. Just. Pol’y & Mgmt. ed., 2015), <https://www.prisonpolicy.org/scans/ESCC-CommunityBasedResponsesJusticeInvolvedYA.pdf> [https://perma.cc/L9FG-G8Q9].

crimes.”¹² Children between the ages of seven and fourteen “were also presumed incapable of forming criminal intent.”¹³ However, this was a rebuttable presumption and if it could be shown that a child was able to distinguish between right and wrong, then the child could be held liable for criminal activity.¹⁴ Whereas, “[a] child over the age of fourteen was presumed to be able to form criminal intent and was held to the same level of responsibility for criminal wrongdoing as an adult.”¹⁵ The Rule of Sevens was the foundational approach to how the law addressed children that had been accused of criminal activity.

At this point in England’s history, there were no separate juvenile courts.¹⁶ Essentially, a child “between the ages of seven and fourteen who was accused of a crime (and found fit for trial) would be tried in an adult criminal court”¹⁷ and would receive the same sentence as an adult if ultimately convicted.¹⁸ Children received no special treatment and were often housed alongside adults convicted of crimes.¹⁹ In fact, young offenders faced equally as harsh punishments—including capital punishment—as their adult counterparts.²⁰

The English system for juvenile justice—or lack thereof—was directly transported to the American Colonies.²¹ During the time of the Colonies, three general sources of ethos combined to create the foundation of American law that exists today: (1) the importation of English folk-law or common law; (2) the “norms and practices that developed on this side of the Atlantic . . . that had no English counterpart”; and (3) the general norms and practices that were developed because of who the colonists were, namely Puritans.²² As a result, the inherited juvenile justice system included some slight, but harsh, modifications. For instance, there was “no exemption from criminal culpability for children under the age of seven.”²³ In general, fewer offenses were punishable by death, but many still were—including some that only applied to children.²⁴ For example, a rebellious or stubborn son of “sufficient years and understanding,” could be put to death for repeatedly disobeying their parents.²⁵ It is also important to note that, at this time, poverty was viewed as a vice (arguably a viewpoint that persists today), and impoverished children were thus removed from their homes and placed in poorhouses alongside adults who had committed crimes.²⁶

12. J. ERIC SMITHBURN, *CASES AND MATERIALS IN JUVENILE LAW* 1 (2d ed. 2013).

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *See id.*

19. *Id.*

20. *Id.* at 1-2.

21. *Id.* at 1.

22. LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 3 (4th ed. 2019).

23. SMITHBURN, *supra* note 12, at 2.

24. *Id.*

25. *Id.* at 3.

26. *Id.*; *see also* Sanford J. Fox, *Juvenile Justice Reform: An Historical Perspective*, 22 STAN. L. REV. 1187, 1191 (1970) [hereinafter Fox, *Juvenile Justice Reform*].

B. The Reform Era, Parens Patriae, and the First Juvenile Courts

This harsh system of dealing with children that had committed crimes, or by happenstance were poor and neglected, lasted into the 19th Century. In response, the Reformers, or child savers, who believed that “children were especially amenable to treatment and rehabilitation . . . sought to institute these ideals in place of the prevailing notions of punishment and incarceration.”²⁷

In 1823, a report by the Society for the Prevention of Pauperism in the City of New York specifically “called for the rescue of children from a future of crime and degradation.”²⁸ These same Reformers had also previously drawn public attention to the harms and “corruptive results” of locking up children with “mature criminals.”²⁹ Thus, the first House of Refuge was formed in New York in 1824 and was quickly replicated in several states.³⁰ These Houses of Refuge were to replace the workhouses, poorhouses, apprenticeships, and incarceration that had previously been used to address criminal behavior in youth.³¹

Though these Houses of Refuge were an ideological step in the right direction for dealing with youth, they were not free from fault and still possessed many shortcomings. One critique of these Houses of Refuge is that, although they separated youth from adults, they were still a form of incarceration that continued to house criminally culpable youth alongside youth that had been removed from their homes due to neglect.³² Furthermore, the subjective nature of youth admission to Houses of Refuge resulted in the perpetuation of systemic racial and economic oppression.³³ Reformers focused their attention on “proper objects,” or youth they deemed were still worth rescuing and not permanently incorrigible.³⁴ They believed it was necessary to turn away youth that were “prematurely corrupted” and, in turn, corrupting the other youth due to the imitative nature of youth.³⁵

Another critique is that the custody rights of parents were often ignored when it came to a youth being placed in a House of Refuge.³⁶ In the case of *Ex parte Crouse*, a habeas corpus petition by a father for the return of his infant daughter from a House of Refuge was denied by the Pennsylvania Supreme Court.³⁷ The court stated that “[t]he right of parental control is a natural, but not an unalienable one.”³⁸ Thus, if parents failed to exercise their rights and raise their child in an “appropriate” manner,

27. *Id.*

28. Fox, *Juvenile Justice Reform*, *supra* note 26, at 1189.

29. *Id.*

30. SMITHBURN, *supra* note 12, at 5.

31. *Id.*

32. *Id.* at 6.

33. See GEOFF K. WARD, *THE BLACK CHILD-SAVERS: RACIAL DEMOCRACY AND JUVENILE JUSTICE* 47-77 (2012).

34. Fox, *Juvenile Justice Reform*, *supra* note 26, at 1190.

35. *Id.*

36. SMITHBURN, *supra* note 12, at 6; *see also* *Ex parte Crouse*, 4 Whart. 9 (Pa. 1839).

37. *Ex parte Crouse*, 4 Whart. 9, 11-12 (Pa. 1839).

38. *Id.* at 11.

the State had the power to step in and take control of the situation.³⁹ This power to step in came from the *parens patriae* doctrine, literally “parent of the country.”⁴⁰

To continue to justify removing youth—both youth that violated state laws and youth whose parents were deemed neglectful—from their homes, Reformers worked to expand the *parens patriae* doctrine. This expansion led directly to the creation of state child welfare programs⁴¹ and the Supreme Court explicitly stating that *parens patriae* was “inherent in the supreme power of every state . . . for the prevention of injury to those who cannot protect themselves.”⁴²

The paternal treatment of youth by the state continued to grow. It was a fundamental tenet of the Illinois Juvenile Court Act of 1899 that led to the creation of one of the first separate juvenile court systems in the nation.⁴³ The Act gave this newly formed juvenile court the jurisdiction over youth that committed offenses and directed that “the care, custody and discipline of a child shall approximate as nearly as may be that which should be given by its parents.”⁴⁴ However, this paternalistic approach also led to a removal of “the rigidities of criminal procedure [from] the life of juvenile delinquents” and imbued this new separate juvenile court with a certain sense of informality.⁴⁵ Illinois was merely the launching point of a separate juvenile court system, and this, too, was soon replicated in other states.⁴⁶ Though there was some critique of the informality of the early juvenile courts and a fear that the underlying *parens patriae* doctrine led to an abuse of power, separate juvenile court systems that embodied this paternalistic informality continued to develop around the country.⁴⁷

C. The Supreme Court and Juvenile Reform

Finally, in 1967, the Supreme Court directly addressed the lack of structure that plagued the juvenile courts when it wrote “[u]nder our Constitution, the condition of being a boy does not justify a kangaroo court.”⁴⁸ *In re Gault* is the pivotal Supreme Court case that addressed the lack of due process protections that were afforded to youth involved in delinquency proceedings. The facts and procedural posture of this case highlight the extremes that the *parens patriae* doctrine had reached in addressing youth in an informal manner.

Gerald Gault was a fifteen-year-old when he and a friend were taken into custody by the Sheriff of Gila County, Arizona, for allegedly making “lewd or

39. *See id.*

40. DOUGLAS E. ABRAMS ET AL., *CHILDREN AND THE LAW: DOCTRINE, POLICY AND PRACTICE*, 17 (6th ed. 2017)

41. *Id.* at 18.

42. *Late Corp. of the Church of Jesus Christ of Latter-Day Saints v. United States*, 136 U.S. 1, 57 (1890).

43. Fox, *Juvenile Justice Reform*, *supra* note 26, at 1211-12; *see also* Sanford J. Fox, *A Contribution to the History of the American Juvenile Court*, 49 JUV. & FAM. CT. J. 7, 9 (1998) [hereinafter Fox, *American Juvenile Court*].

44. Illinois Juvenile Court Act of 1899, §§ 1-2, 21, 1899 Ill. Laws 132, 137.

45. Fox, *American Juvenile Court*, *supra* note 43, at 9.

46. *See id.* at 10.

47. *Id.* at 12-13.

48. *In re Gault*, 387 U.S. 1, 28 (1967).

indecent remarks" to a neighbor over the telephone.⁴⁹ Gerald was taken into custody while his parents were at work, and his parents did not learn that he was in custody until they sent his brother looking for him later that day.⁵⁰ When Gerald's mother went to the detention home where Gerald was being held, an officer, Officer Flagg, verbally notified her that a hearing would be held at the Juvenile Court the next day, on June 9, 1964.⁵¹ Officer Flagg subsequently filed a petition with the court the next day, however, this petition was not served on the Gaults and none of the family saw the petition until a habeas corpus hearing two months later.⁵² This petition lacked any reference to any factual basis for the judicial action which it started and merely stated that Gerald was a juvenile that was "in need of the protection" of the court and that he was a "delinquent minor."⁵³ The proceedings on June 9, 1964, happened before a juvenile judge in chambers, and all the information about these proceedings came from the subsequent habeas corpus hearing in August because no record or transcript was made.⁵⁴ Gerald was directly questioned by the judge about the phone call, and there was some conflict about how he had responded: Mrs. Gault recalled Gerald stating that he dialed the phone and handed it to his friend, whereas Officer Flagg testified that Gerald admitted to making lewd remarks.⁵⁵ After this proceeding, Gerald was returned to the detention home and was not released for another two-to-three days.⁵⁶ Upon his release, Gerald's mother received a note, "on plain paper, not letterhead," from Officer Flagg stating that there would be another proceeding on June 15, 1964.⁵⁷ At this proceeding, the neighbor-complainant was again not present and there was still conflict as to what Gerald's previous testimony was due to the lack of a record.⁵⁸ Ultimately, the juvenile judge committed Gerald as a juvenile delinquent to the State Industrial School until he was twenty-one years of age.⁵⁹

No appeal was permitted by Arizona law in juvenile cases at this time.⁶⁰ On August 3, 1964, a writ of habeas was filed with the Arizona Supreme Court, and on August 17, 1964, the habeas proceedings occurred in the Superior Court.⁶¹ The juvenile judge was cross-examined and stated that he found Gerald delinquent under a specific statute which, if committed by an adult, would carry a fine ranging from \$5 to \$50 and imprisonment for up to two months.⁶² Under this judge's ruling,

49. *Id.* at 4-5.

50. *Id.*

51. *Id.* It is also important to note that Officer Flagg was the arresting officer, the superintendent of the detention home, a witness in the case, and the acting District Attorney. *Id.*

52. *Id.*

53. *Id.*

54. *Id.* at 5-6.

55. *Id.* at 6.

56. *Id.*

57. *Id.*

58. *Id.* at 7.

59. *Id.*

60. *Id.* at 8.

61. *Id.*

62. *Id.* at 8-9.

Gerald was effectively committed for six years.⁶³ Despite this, the Superior Court dismissed the writ of habeas corpus.⁶⁴ The Gaults appealed, but the Arizona Supreme Court affirmed the dismissal.⁶⁵ Finally, Gerald's case made its way before the Supreme Court of the United States.⁶⁶

The first question before the Supreme Court was whether youth accused of crimes in delinquency proceedings needed to be afforded the same due process rights as adults, including the right to a timely notice of charges, to counsel, to confront and cross-examine witnesses against him, to a transcript of the proceedings, to appellate review, and to exercise the privilege against self-incrimination.⁶⁷ The Court answered this question affirmatively to all of the rights listed with the exception of the right to a transcript of the proceedings and a right to appellate review, which they did not answer.⁶⁸ The second underlying question before the Court was whether the due process standard had been met in Gerald Gault's case.⁶⁹ The Court held that this standard had not been met.⁷⁰

In answering these questions, the Supreme Court directly addressed the history of juvenile courts and the flawed paternal approach that directly led to the due process violations that Gault suffered.⁷¹ The Court explained that the early informalities were due to the view that youth, unlike adults, had a right "not to liberty, but to custody," and this lack of rights for the youth allowed *parens patriae* to take hold so the states could serve as protectors.⁷² The Court went on to state that "Juvenile Court history has again demonstrated that unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure."⁷³ The Court specifically pointed out that "the absence of substantive standards" did not mean that youth received "careful, compassionate, [and] individualized treatment," and that "[d]epartures from established principles of due process have frequently resulted not in enlightened procedure, but in arbitrariness."⁷⁴ Additionally, the Court noted that the implementation of constitutional due process rights into the juvenile system would in no way impair the unique benefit of that separate system, and that the rights discussed were procedural in nature.⁷⁵ Furthermore, the Court quoted a sociological study which observed that "when the procedural laxness of the 'parens patriae' attitude is followed by stern disciplining, the contrast may have an adverse effect upon the child, who feels that he has been

63. *See id.* at 7-8 (noting that Gerald was fifteen at the time and the judge committed him to the State Industrial School for the period of his minority, until age twenty-one, effectively committing him for six years).

64. *Id.*

65. *Id.* at 10.

66. *Id.*

67. *Id.*

68. *Id.* at 58.

69. *Id.*

70. *Id.* at 59.

71. *Id.* at 14-31.

72. *Id.* at 17.

73. *Id.* at 18.

74. *Id.* at 18-19.

75. *Id.* at 22.

deceived or enticed.”⁷⁶ The Court noted that the study concluded that unless due process is followed, even youth that have violated the law may in turn feel as if they have been wronged by the system and thus resistant to its rehabilitative efforts.⁷⁷

Since *In re Gault*, the Supreme Court has continued to expand the constitutional protections available to system-involved youth, delivering youth-centered analyses in both its Fourth and Eighth Amendment jurisprudence. In *J.D.B. v. North Carolina*, the Court held that age is a relevant factor to consider when determining whether a youth is in police custody for *Miranda* purposes because age affects a person’s ability to make mature judgments.⁷⁸ In *Roper v. Simmons*, the Court held that it was unconstitutional to impose the death penalty on offenders who were under the age of eighteen when they committed their crimes.⁷⁹ In *Graham v. Florida*, the Court concluded that youth offenders cannot be sentenced to life imprisonment without parole for non-homicide offenses.⁸⁰ In *Miller v. Alabama*, the Court held that mandatory life sentences without the possibility of parole for youth homicide offenders is cruel and unusual punishment in violation of the Eighth Amendment.⁸¹ This ruling applied even to the youth who committed murder before the age of eighteen.⁸² Then, in *Montgomery v. Louisiana*, the Court determined that *Miller* should be applied retroactively.⁸³ This meant that over two thousand individuals could challenge their sentence of life without parole for crimes they committed when they were not yet eighteen.⁸⁴

However, most recently, in *Jones v. Mississippi*, the Court halted this progress.⁸⁵ In that case, the Court held that states maintain discretion to sentence juveniles who commit homicide to life sentences without parole and do not need to make a separate assessment and finding of “permanent incorrigibility.”⁸⁶ As long as the life sentence without parole is discretionary, and not mandatory, it neither violates the Constitution nor runs counter to the Court’s holding in *Miller*—stymieing thousands of retroactive applications brought pursuant to *Montgomery* by youth sentenced discretionarily.⁸⁷ Thus, the Court made clear that it is up to a state’s legislature, not the Supreme Court, to determine sentencing relief for youth offenders.⁸⁸

Collectively, these cases highlight the expansion of rights for youth that have committed crimes. They also represent the idea that youth are qualitatively different

76. *Id.* at 26.

77. *Id.*

78. *J.D.B. v. North Carolina*, 564 U.S. 261, 265 (2011); *see also* *Miranda v. Arizona*, 384 U.S. 436 (1966).

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

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

81. *Miller v. Alabama*, 567 U.S. 460, 465 (2012).

82. *Id.*

83. *Montgomery v. Louisiana*, 577 U.S. 190, 200, 208 (2016) (holding that constitutional rules would apply retroactively and that the holding in *Miller* is a constitutional—not a procedural—case).

84. Adam Liptak, *Justices Expand Parole Rights for Juveniles Sentenced to Life for Murder*, N.Y. TIMES (Jan. 25, 2016), <https://www.nytimes.com/2016/01/26/us/politics/justices-expand-parole-rights-for-juveniles-sentenced-to-life-for-murder.html> [<https://perma.cc/4QDU-CLYB>].

85. *See* *Jones v. Mississippi*, 141 S. Ct. 1307 (2021).

86. *Id.* at 1318-19.

87. *Id.* at 1317.

88. *See id.* at 1323.

than adults and, thus, should be treated differently by the systems designed to hold them accountable. Accepting that youth are different from adults presents two questions. First, what role did science play in the expansion of rights for youth in the criminal justice system? Second, how can our legal system appropriately respond to youthful offenders in a way that is consistent with this science and considerate of public safety interests? Central to these questions is the legal determination of when adolescence ends, and adulthood begins.

II. THE EVOLUTION OF SCIENCE'S ROLE IN JUVENILE JUSTICE

"A teenager is like a car with a great accelerator but terrible brakes."⁸⁹ This quote encapsulates, in metaphorical terms, the increased understanding that the legal community has of an adolescent's brain.⁹⁰ In fact, the term adolescent itself has significantly changed in meaning over the years.⁹¹ While the traditional understanding set forth in most United States jurisdictions is that adolescent development ends at the age of eighteen, it is now more commonly understood that the brain continues development through the age of twenty-five, and perhaps, even later.⁹² Concurrent with this expanded definition of the term adolescent, attitudes towards emerging adults between ages eighteen and twenty-five involved in the criminal legal system have also shifted.⁹³ The evolution of scientific evidence showing that the brain of an emerging adult is not physiologically comparable to that of an adult offender indicates that emerging adults do not possess the culpability that adult criminal codes and legal systems intend to address.⁹⁴ The recognition of these physiological differences and the resulting decreased culpability of adolescent offenders have begun a slow but steady shift in policy that modifies the ways that law enforcement and prosecutors hold young people accountable.

Informed by new scientific developments, legal systems across the country have taken substantial steps toward altering the harsher and more punitive sentencing schemes borne out of the Superpredator Era.⁹⁵ These alterations have resulted in more rehabilitative and less punitive schemes intended to impose developmentally

89. Lizzie Buchen, *Arrested Development*, 484 NATURE 304, 305 (2012).

90. *See id.*

91. *See generally* Susan Sawyer et al., *The Age of Adolescence*, 2 LANCET CHILD & ADOLESCENT HEALTH 223 (2018) (summarizing the scientific and policy-based reasons for expanding the definition of the term adolescence to encompass a greater percentage of the young adult population).

92. *See id.* at 223-26.

93. *See generally Recent Reforms*, EMERGING ADULT JUST. PROJECT, <https://www.eajustice.org/recent-reforms> [<https://perma.cc/JH8D-U7UM>] (last visited May 13, 2022) (summarizing the various models of specialized reform targeted at emerging adults).

94. *See* Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCH. 1009, 1015-16 (2003) ("[Y]outhful criminal choices may share much in common with those of adults whose criminal behavior is treated as less blameworthy than that of the typical offender.").

95. *The Superpredator Myth, 25 Years Later*, EQUAL JUST. INITIATIVE (Apr. 7, 2014), <https://eji.org/news/superpredator-myth-20-years-later/> [<https://perma.cc/E2GL-JUTA>]. The term "superpredator" was coined by criminologists in the 1990's who predicted that by 2010, there would be an estimated 270,000 more young predators on the streets than in 1990. *Id.* These predictions which had heavy racial overtones, set off a panic fueled by highly publicized heinous crimes that led to legislation across the country, which dramatically increased the treatment of juveniles as adults for purposes of sentencing and punishment. *Id.*

appropriate accountability measures.⁹⁶ This policy shift can be seen both in legislative reforms and in reimagined policies of state agencies. Perhaps it is most prominently recognized in the jurisprudence of American courts. Various state courts have recognized the enhanced role science should play in the punishment of adolescent offenders,⁹⁷ as well as the United States Supreme Court. As mentioned above, in a couple significant—and fairly recent—decisions, the Court has relied heavily on information presented by the scientific community in holding that young people who commit crimes should be treated differently than adults who commit them.⁹⁸

In *Roper*, the Court recognized three general differences between juveniles and adults.⁹⁹ First, the Court stated that “as any parent knows, and as the scientific and sociological studies that respondent and his *amici* cite tend to confirm, ‘[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults.’”¹⁰⁰ These specific qualities, the majority continued, “result in impetuous and ill-considered actions and decisions,” and it has been noted that juveniles are “overrepresented statistically in virtually every category of reckless behavior.”¹⁰¹

Second, the Court noted that juvenile offenders are more susceptible to outside pressures in part because young offenders “have less control, or less experience with control, over their own environment.”¹⁰² This lack of control stems from the fact that youth is a “time and condition of life when a person may be most susceptible to influence and to psychological damage.”¹⁰³

Third and finally, the Court noted that the character of a young person is not as well formed as that of an adult.¹⁰⁴ “The personality traits of juveniles are more transitory, [and] less fixed,” giving them a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment.¹⁰⁵ “From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed.”¹⁰⁶

The focus of the *Roper* decision was narrow, and it applied only to the ability of courts to sentence a youth to death for a crime committed before the age of

96. See EMERGING ADULT JUST. PROJECT, *supra* note 93.

97. See, e.g., *Commonwealth v. Batts*, 163 A.3d 410 (Pa. 2017) (holding that findings of permanent incorrigibility were required in order to sentence juveniles to life in prison without the possibility of parole) *abrogated by* *Commonwealth v. Felder*, 269 A.3d 1232 (Pa. 2022); see also *State v. JR*, 2018 ME 117, ¶ 33, 191 A.3d 1157 (Saufley, C.J., concurring) (addressing the lack of evidence based resources for justice system involved youth in Maine).

98. See, e.g., *J.D.B. v. North Carolina*, 564 U.S. 261 (2011).

99. *Roper v. Simmons*, 543 U.S. 551, 569 (2005).

100. *Id.* (quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993)).

101. *Id.* (quoting Jeffrey Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 *Developmental Rev.* 339, 339 (1992)).

102. *Id.* (quoting Steinberg & Scott, *supra* note 94).

103. *Id.* (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982)).

104. *Id.* at 570.

105. *Id.*

106. *Id.*

eighteen.¹⁰⁷ However, the reasoning was broad, based in science, and opened the doors for further change.

Then, in *Graham v. Florida*, the Court recognized that “developments in psychology and brain science *continue to show* fundamental differences between youth and adult minds.”¹⁰⁸ “As compared to adults,” the Court noted, young people “have a ‘lack of maturity and an underdeveloped sense of responsibility’” which makes them more “susceptible to negative influences and outside pressures, including peer pressure” and is especially impressive upon characters not well formed.¹⁰⁹ These salient and scientific characteristics, “mean that ‘[i]t is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.’”¹¹⁰

In 2011, on the heels of the *Graham* decision, the Court in *J.D.B. v. North Carolina* affirmed its position that juveniles are a unique class of individuals whose physiological characteristics produce “commonsense conclusions” that young people are different from adults.¹¹¹ In holding that the age of an individual is a relevant factor in a *Miranda* custody analysis, the Court stated that such conclusions—that youth are physiologically and fundamentally different—are “self-evident to anyone who was a child once himself, including any police officer or judge.”¹¹² “Describing no one particular child,” the *J.D.B.* Court noted that their various observations about adolescence “restate what ‘any parent knows’—indeed what any person knows—about children generally.”¹¹³

A year later, the Court in *Miller v. Alabama* reaffirmed that juveniles who commit crimes are fundamentally different from similarly situated adults, noting that its opinions in *Graham* and *Roper* had relied “not only on common sense, but on science and social science as well.”¹¹⁴

This line of cases has been hailed by system reformers and youth advocates alike as an important acknowledgment that youth are different from adults and that adolescent development matters in determining when and where the more punitive schemes of the adult legal system should apply.¹¹⁵ The Court’s decisions in *Roper*, *Graham*, *J.D.B.*, and *Miller*, fundamentally altered the ways we respond to and determine whether and how to punish youth. They set outer limits on the type of punishment a youth justice system may impose, and did so, in part, because the unique psychological and physiological characteristics of youth necessitate different treatment. Each of these decisions is only applicable to juveniles, which means that the Court’s recognition of adolescent development science is restricted to the context

107. *See id.* at 555-56.

108. *Graham v. Florida*, 560 U.S. 48, 68 (2010) (emphasis added).

109. *Id.* (quoting *Roper*, 543 U.S. at 569-70).

110. *Id.* (quoting *Roper*, 543 U.S. at 573).

111. *J.D.B. v. North Carolina*, 564 U.S. 261, 272 (2011).

112. *Id.* at 272, 281.

113. *Id.* at 273 (quoting *Roper*, 543 U.S. at 569).

114. *See id.*

115. *See, e.g.,* ELIZABETH S. SCOTT ET AL., THE SUPREME COURT AND THE TRANSFORMATION OF JUVENILE SENTENCING, 1, 1 (Columbia Univ. ed., 2015).

of individuals under the age of eighteen.¹¹⁶ However, as the science bears out, the unique characteristics of young offenders continue well beyond a young person's eighteenth birthday.

A. Adolescent Development Science: Defining Youth

Knowing that science has played an important role in the juvenile justice jurisprudence of the Supreme Court, it is important to take a full account of the latest findings and research around adolescent development and the maturing brain. Research articles in the field of neuroscience have shown that there are indeed neurobiological differences between the adolescent and adult brain.¹¹⁷ These differences primarily exist because of the continuous developmental state in which the adolescent brain remains until it reaches an age of maturity, which studies have shown generally occurs in a person's mid-twenties.¹¹⁸

The most substantial contributor to brain development is the post-birth interactions between the brain's circuits and its surrounding environment.¹¹⁹ The adolescent brain's relative immaturity and malleability allow it to respond to the complex demands of its environment.¹²⁰

Between the ages of two and seven, the brain engages with its surrounding environment by increasing its neuronal connections through a process called expansion.¹²¹ After certain parts of the brain achieve their maximum number of neuronal connections—usually by the age of seven—the brain begins a process known as elimination, which results in the slow deletion of certain neuronal pathways to optimize the brain's anatomical structure for function within its environment.¹²² The process of elimination may last until a person is twenty-five or thirty years old and the end of this elimination process generally marks the outer boundary of adolescence.¹²³ The scientific evidence that informed the Court's decisions can generally be broken down into three categories: (i) the imbalance model of brain development, (ii) the prevalence of heightened reward pathways, and (iii) susceptibility to peer pressure.

1. Imbalance Model of Brain Development

In adolescent development, the teenage and early adult years represent a particular “period of struggle between seeking independence from parents while still

116. While some states have recently raised the age of juvenile court jurisdiction, all fifty states utilize the age of eighteen—or, in some instances, even younger—as the criminal age of majority. *See Age Matrix*, INTERSTATE COMM'N FOR JUVS., <https://www.juvenilecompact.org/age-matrix> [<https://perma.cc/KNL2-TRFZ>] (last visited May 13, 2022).

117. *See generally* Ezequiel Mercurio et al., *Adolescent Brain Development and Progressive Legal Responsibility in the Latin American Context*, 11 *FRONTIERS IN PSYCH.* 1-11 (2020).

118. *See* Sawyer et al., *supra* note 91, at 224.

119. *See* Mercurio et al., *supra* note 117, at 2.

120. *Id.*

121. *Id.* Expansion is the process of forming new synaptic connections through synaptogenesis, which allows for adaptation to the physical and social world. *Id.*

122. *Id.*

123. *Id.*

being dependent on [parents] for many of their basic needs.”¹²⁴ This struggle is not unique to humans but is a pattern observed across species.¹²⁵ During this time of struggle, “cortical development and functional circuits are highly dynamic.”¹²⁶ Brain circuits that seek reward are more active and mature earlier than the cerebral regions that control behavior, leaving vital portions of adolescent brain circuitry underdeveloped just as young people enter particularly stimulating social environments.¹²⁷

This idea that the emotional and behavioral regulatory regions of the brain develop at different paces is known as the “imbalance model” of brain development.¹²⁸ According to this model, the differential development of the various regions within the brain can lead to imbalance in their activity.¹²⁹ This imbalance produces greater reliance on the more mature emotional regions than on the less developed behavioral control regions during young adulthood, as compared to both childhood—when they develop at approximately the same rate—and adulthood—where both circuits are fully mature.¹³⁰ When young adults enter situations that *are not emotionally charged*, prefrontal behavioral circuitry “helps direct attention and action toward relevant information while suppressing responses to irrelevant information, allowing youth to appropriately respond to various environmental stimuli.”¹³¹ In *emotionally charged situations*, however, the less developed behavioral circuitry is overrun by the more fully developed emotional regulators, which can result in a loss of self-control or risky decision making.¹³² Thus, this neurobiological immaturity of the adolescent brain may render it more vulnerable to making poor decisions in emotionally charged contexts, leading to an inappropriate behavioral response to stimuli.¹³³ The height of this imbalance occurs during an individual’s late teens and early twenties, resulting in an increase in risky behaviors that can lead to system involvement.¹³⁴

2. Heightened Reward Pathways

The irregularity in emotional and behavioral circuitry development is not an isolated condition; an imbalance also exists between the reward and regulatory circuitry of an adolescent.¹³⁵ This imbalance exists because a young person’s dopamine reward pathway is hypersensitive or overcommitted in response to

124. Alexandra O. Cohen & B.J. Casey, *Rewiring Juvenile Justice: The Intersection of Developmental Neuroscience and Legal Policy*, 18 TRENDS COGNITIVE SCI. 63, 63 (2014).

125. *Id.*

126. *Id.*

127. Mercurio et al., *supra* note 117, at 3.

128. Cohen & Casey, *supra* note 124, at 63.

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.* at 63-64.

133. *Id.*

134. See Mercurio et al., *supra* note 117, at 3.

135. See Adriana Galvan, *Adolescent Development of the Reward System*, FRONTIERS IN HUM. NEUROSCIENCE, Feb. 2010, at 1, 1-7.

rewards, increasing the tendency to seek novelty and sensation.¹³⁶ This overactivity can lead to a heightened sensitivity to reward, a more frequent search for reward, and more oft-occurring sensation seeking behaviors.¹³⁷ Risk-taking behaviors such as engaging in heightened sexual activity, drinking in excess, and partaking in high impact sports have all been correlated with overactive reward-seeking pathways.¹³⁸

The overactivity of an adolescent's reward circuitry often provokes such a strong response that the adolescent finds it difficult to learn to avoid reward-seeking behaviors or consider the consequences of their actions.¹³⁹ This presents a marked difference from developmentally mature adults who often are more capable of learning from their experiences and appropriately modifying their behaviors.¹⁴⁰

The reward and regulatory circuitry imbalance is not constant, and is largely context dependent—a concept termed “hot and cold cognition” by researchers.¹⁴¹ When an adolescent is in a perceived low stress environment, this imbalance is less severe and allows youth to make more reasoned, well-balanced and informed decisions.¹⁴² This low stress state of decision making leading to less impulsive and reward based decisions is known as “cold cognition.”¹⁴³ When in a high stress environment, adolescents struggle to make reasoned decisions and lack the ability to activate the portion of their brain that inhibits impulsive decisions.¹⁴⁴ This decision making under heightened stress is known as “hot cognition.”¹⁴⁵ A state of hot cognition, resulting in an inability to adequately identify the consequences of their decisions, is where many system-involved emerging adults find themselves in the moments immediately preceding law enforcement contact.

3. Peer Pressure

During adolescence, peer pressure also plays a key role in inappropriate behavior.¹⁴⁶ “Adolescents engage in riskier behaviors when they are with their peers than when they are alone.”¹⁴⁷ Peer pressure is strongly related to an adolescent's increased sensitivity to reward-seeking behavior.¹⁴⁸ In fact, the mere presence of other individuals close in age can increase activity in reward-seeking brain regions,

136. *Id.* at 1.

137. See Beatriz Luna et al., *The Teenage Brain: Cognitive Control and Motivation*, 22 CURRENT DIRECTIONS IN PSYCH. SCI. 94, 98 (2013).

138. See Mercurio et al., *supra* note 117, at 3.

139. *Id.*

140. Stefano Palminteri et al., *The Computational Development of Reinforcement Learning During Adolescence*, PLOS COMPUTATIONAL BIOLOGY, June 20, 2016, at 1, 1-25.

141. RACHEL BARKIN, HOT AND COLD COGNITION: UNDERSTANDING EMERGING ADULTS' COGNITIVE REASONING 1, 2 (Columbia Univ. Just. Lab. ed., 2021), <https://justicelab.columbia.edu/sites/default/files/content/Hot%20and%20Cold%20Cognition.pdf> [<https://perma.cc/YPV4-G37U>].

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. See Mercurio et al, *supra* note 117, at 3.

147. *Id.*

148. *Id.*

leading to riskier behaviors.¹⁴⁹ In their search for the acceptance of their peers, adolescents are also more vulnerable to pressure and more sensitive to stress than adults.¹⁵⁰

4. Science and Emerging Adults

It is commonly accepted that this science applies to younger individuals in the youth justice system, and that because of such science, policies should individualize systemic responses to the unique needs of those under age eighteen. However, the research is clear that the adolescent brain remains in development well beyond this arbitrary societal line of age eighteen.¹⁵¹ This conclusion is supported by the frequently studied and well known “age crime curve,” which posits that unlawful behavior peaks in the late-teens and early twenties before decreasing significantly in the mid-twenties.¹⁵² For example, in 2019, youth ages ten to twenty-four made up 27% of all arrests.¹⁵³ That percentage drops to 16.8% for people ages twenty-five to twenty-nine; 15.1% for people ages thirty to thirty-four; 12.7% for people ages thirty-five to thirty-nine; 8.8% for people ages forty to forty-four; and continues to drop significantly as the age range climbs higher.¹⁵⁴

It is also important to note that emerging adults are overrepresented in terms of arrest rates when viewed in comparison to their overall percentage of the population. Nationally, in 2019, youth between the ages of eighteen and twenty-four years old represented 9.3% of the total population in the United States.¹⁵⁵ However, according to statistics from the FBI for that year, the same age group comprised 20% of all arrests nationwide.¹⁵⁶ This overrepresentation is mirrored here in Maine.¹⁵⁷ According to census data for 2019, youth ages eighteen to twenty-four years old represented 7.9% of Maine’s population.¹⁵⁸ However, according to the 2019 Crimes in Maine Annual Report from the State of Maine Department of Public Safety, youth ages eighteen to twenty-four years old accounted for 18.4% for that same year.¹⁵⁹ If the characteristics of adolescent development science are applicable to both teenagers and young adults alike, then it follows that the policy responses to this behavior through the ages of peak criminal activity should be better aligned to

149. Simon Ciranka & Woulter van den Bos, *Social Influence in Adolescent Decision-Making: A Formal Framework*, 10 FRONTIERS IN PSYCH., Aug. 2019, at 1-16.

150. See Mercurio et al. *supra* note 117, at 4.

151. See Sawyer et al., *supra* note 91.

152. Darrell J. Steffensmeier et al., *Age and the Distribution of Crime*, 94 AM. J. SOCIO. 803, 816 (1989).

153. *2019 Crime in the United States*, FBI, <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/tables/table-38> [<https://perma.cc/8UAQ-R8UF>] (last visited May 13, 2022).

154. *Id.*

155. *Age and Sex*, U.S. CENSUS BUREAU, https://data.census.gov/cedsci/table?t=Age%20and%20Sex&g=01000000US_0400000US23&tid=ACST1Y2019.S0101 [<https://perma.cc/YH6D-H2XN>] (last visited May 13, 2022).

156. FBI, *supra* note 153.

157. ME. DEP’T OF PUB. SAFETY, 2019 CRIMES IN MAINE ANNUAL REPORT 31, <https://www.maine.gov/dps/msp/sites/maine.gov.dps.msp/files/inline-files/Crime%20in%20Maine%202019.pdf> [<https://perma.cc/N99L-PFZP>].

158. *Age and Sex*, *supra* note 155.

159. See ME. DEP’T OF PUB. SAFETY, *supra* note 157.

achieve more just and effective outcomes. However, in Maine, as in most states, this is not the case.

B. Maine's Current Treatment of Emerging Adults

Knowing that science has consistently shown—and the Supreme Court has recognized—that adolescents in their teenage years and into their early twenties exhibit distinct neurobiological differences from adults, the question becomes: how should the criminal legal system respond to these differences? Ideally, an appropriate system of accountability recognizes the struggles of young people in regulating behavior and provides opportunities for adolescents to learn and grow from the poor decisions they make. To a certain degree, Maine recognizes, as do other states, that age eighteen is not a magic number denoting adulthood. In fact, an individual in Maine must be twenty-one to purchase tobacco products,¹⁶⁰ purchase and consume alcohol,¹⁶¹ foster or adopt a child,¹⁶² gamble at casinos,¹⁶³ purchase marijuana,¹⁶⁴ and carry a concealed firearm without a permit.¹⁶⁵

Although science suggests individuals are still developing through the age of twenty-five, young offenders are frequently separated into two distinct categories at the time of offense: youth under the age of eighteen, and emerging adults aged eighteen to twenty-five.¹⁶⁶ The conduct of the former is governed by a specialized statutory process that treats young people differently than developmentally mature adults.¹⁶⁷ One exception to this principle is that Maine law allows for extended juvenile court jurisdiction, meaning that if there is no new criminal conduct after age eighteen, a youth who is adjudicated delinquent for a crime committed while under age eighteen can remain under the supervision of the juvenile system up until age twenty-one.¹⁶⁸

Maine's system for holding youth under age eighteen accountable for their actions is governed by Maine's Juvenile Code.¹⁶⁹ Maine's Juvenile Code sets forth various procedures for adjudication of youth who have been charged with crimes and serves a very different purpose than Maine's Criminal Code, which seeks primarily

160. 22 M.R.S. § 1555-B(2) (2021).

161. 28-A M.R.S. §§ 2(20), 2051 (2021).

162. *Maine Adoption and Foster Care Guidelines*, ADOPT US KIDS, <https://www.adoptuskids.org/adoption-and-foster-care/how-to-adopt-and-foster/state-information/maine> [https://perma.cc/TQV4-6BGT] (last visited May 13, 2022).

163. 8 M.R.S. § 1031(1) (2021).

164. 28-B M.R.S. § 504(4) (2021).

165. 25 M.R.S. § 2001-A(2)(A-1) (2021).

166. *See Age Matrix*, *supra* note 116 (indicating that each state has an age of majority which serves as the cut off for a young person's ability to access resources in the juvenile system).

167. *See generally* Joseph E. Brennan, *The Maine Juvenile Code*, ALERT FROM THE OFFICE OF THE ATT'Y GEN. OF ME. (Oct. 26, 1978), [https://perma.cc/24VY-CD47] (explaining the reasoning behind the implementation of Maine's juvenile code which includes individualized treatment of young offenders separate from the adult system).

168. 15 M.R.S. § 3316(2)(A) (2021).

169. *Id.* § 3001-3507.

to punish adults for their conduct and to deter others from engaging in the same.¹⁷⁰ The purposes of the Maine Juvenile Code include:

- (A) [t]o secure for each juvenile subject to these provisions such care and guidance, preferably in the juvenile's own home, as will best serve the juvenile's welfare and the interests of society;
- (B) [t]o preserve and strengthen family ties whenever possible, including improvement of home environment;
- (C) [t]o remove a juvenile from the custody of the juvenile's parents only when the juvenile's welfare and safety or the protection of the public would otherwise be endangered or, when necessary, to punish a child adjudicated, pursuant to chapter 507, as having committed a juvenile crime;
- (D) [t]o secure for any juvenile removed from the custody of the juvenile's parents the necessary treatment, care, guidance and discipline to assist that juvenile in becoming a responsible and productive member of society;
- (E) [t]o provide procedures through which the provisions of the law are executed and enforced and that ensure that the parties receive fair hearings at which their rights as citizens are recognized and protected; and
- (F) [t]o provide consequences, which may include those of a punitive nature, for repeated serious criminal behavior or repeated violations of probation conditions.¹⁷¹

As previously mentioned, this special subset of statutes only applies to individuals who are eighteen years of age and younger.¹⁷²

Maine's system of juvenile justice properly focuses on providing a rehabilitative response to criminal behavior rather than a punitive one.¹⁷³ This process for those offenders under eighteen begins with law enforcement contact.¹⁷⁴ If the officer decides to summons the youth for the offense, then the case is referred to a Juvenile Community Corrections Officer (JCCO) who conducts their own investigation into the facts of the case and decides whether no further action is needed, an informal adjustment is appropriate, or whether a juvenile petition should be filed with the court.¹⁷⁵ The discretion that a JCCO has to recommend a case to the prosecution or dispose of it in some alternative way is a distinct feature of Maine's Juvenile Code that responds in a developmentally appropriate way to the actions of an adolescent. It gives the JCCO an opportunity to inquire into the true culpability of the adolescent

170. Compare 15 M.R.S. § 3002(1) (expressly stating the rehabilitative purposes of Maine's juvenile code), with *Cooke v. Naylor*, 573 A.2d 376, 377 (Me. 1990) (noting that a statute is criminal in nature if it serves and promotes the traditional aims of punishment—deterrence and retribution).

171. 15 M.R.S. § 3002(1)(A)-(F) (2021).

172. *Id.* § 3003(2) (“‘Adult’ means a person eighteen years of age or older.”).

173. There are, understandably, advocates who stress that Maine's system of juvenile justice as it is currently structured does not adequately serve youth under the age of eighteen. See *The Problem*, ME. YOUTH JUST., <https://www.mainejuvenilejustice.org/the-problem/> [https://perma.cc/C8ZZ-EEDD] (last visited May 13, 2022); The Editorial Board, *Our View: It's Beyond Question – Justice System Fails Kids*, PORTLAND PRESS HERALD (June 17, 2008), <https://www.pressherald.com/2018/06/17/our-view-its-beyond-question-justice-system-fails-kids/> [https://perma.cc/6EDP-9VGJ].

174. *What Happens in a Juvenile Case*, STATE OF ME. JUD. BRANCH, <https://www.courts.maine.gov/courts/juvenile/happens.html> [https://perma.cc/CYS2-6SCL] (last visited May 13, 2022).

175. *Id.*

and ascertain whether the actions taken represent irreparable corruption, or if instead, the young person requires developmentally appropriate intervention to limit the chances of any repeat behavior.

If the JCCO opts for an informal adjustment, they have the authority to require the youth to: (i) engage in community service, (ii) compensate the victim if they incurred financial harm, (iii) attend school or work, (iv) obey a curfew and abstain from interacting with certain individuals, (v) partake in a restorative justice process, (vi) and/or receive counseling and other therapeutic services.¹⁷⁶ Even if an informal adjustment is not sought, the JCCO and the Assistant District Attorney (ADA) oftentimes work together to reach a resolution that does not result in the detention of youth.¹⁷⁷

These resolutions often take the form of deferred dispositions that, if successfully completed, do not result in an adolescent returning to court.¹⁷⁸ On occasion, if alternative pathways fail, a criminally accused youth may proceed to an adjudicatory hearing and may face a period of detention in a juvenile facility.¹⁷⁹

Importantly, the alternative ways that resolve a youth's case and cater to the unique neurological differences of youth do not exist for emerging adults over the age of eighteen. As soon as a young person reaches their eighteenth birthday, they are no longer eligible for an informal adjustment or any other alternative resolution because they now fall under the jurisdiction of Maine's Criminal Code.¹⁸⁰ While this categorical exclusion from developmentally appropriate resolutions is common in most states, it is not supported by the science of adolescent development. As Susan Sawyer noted in *The Age of Adolescence*, the imbalanced development of the adolescent brain—and the associated risk-taking behaviors—continue well into a person's mid-twenties.¹⁸¹

If an individual commits an offense considered to be a crime after their eighteenth birthday, the process they encounter is starkly different. After the criminal conduct occurs, the youth is either arrested or summonsed and then a local District Attorney's Office decides whether to prosecute the crime without any particular or required consideration as to the offender's individual characteristics.¹⁸² If they do prosecute, then the case proceeds to court and the young person must either vigorously defend their case, work out some deferred disposition agreement, plead guilty, or exercise their right to trial.¹⁸³ Absent any conduct, circumstances, or characteristics which qualify the youth for one of Maine's specialized treatment

176. *Id.*

177. *See id.* (discussing the expansive ways in which a JCCO may be involved in the resolution of a young person's case).

178. *See id.*

179. *Id.*

180. *See* 15 M.R.S. § 3003(2) (2021).

181. *See* Sawyer et al., *supra* note 91.

182. *See What Happens if I am Charged with a Crime in Maine? Can I get a Lawyer?*, PINE TREE LEGAL ASSISTANCE, <https://www.ptla.org/what-happens-if-i-am-charged-crime-maine-can-i-get-lawyer> [<https://perma.cc/A7KU-LB5M>] (last visited May 13, 2022).

183. *See id.*

courts,¹⁸⁴ there exists no state-mandated alternative pathway toward achieving an alternative, non-carceral resolution of the youth's case.¹⁸⁵ There is no JCCO, no informal adjustments, and no viable alternatives available to respond to the needs of the developing brain. This lack of viable alternatives leads to higher recidivism rates and forecloses the opportunity for emerging adults to receive developmentally appropriate treatment that is responsive to their unique neurological and developmental needs.

In order to respond to the needs of emerging adults in evidence and science-based ways that meet public safety goals, policy makers in Maine should look for alternatives which provide the unique, developmentally appropriate protections offered by Maine's Juvenile Code to emerging adults.

C. Science-Based, Developmentally-Appropriate Characteristics of Effective Emerging Adult Policy

With the understanding that Maine's system falls short of adequately addressing young people in the eighteen to twenty-five-year-old age group, the next inquiry must be, what type of policy shifts would appropriately serve these young people? In other words, what does a policy approach that accurately reflects and implements the most current science concerning treatment of adolescents who are eighteen to twenty-five years old actually look like?

The Section below discusses the benefits and drawbacks of certain frameworks for responding to emerging adults. Regardless of the framework chosen, an emerging adult policy must be anchored by the following four principles: (i) individualized response; (ii) specialized case managers; (iii) consideration of developmental maturity in disposition and sentencing; and (iv) post-program confidentiality.

1. Individualized Response

The first guiding principle of individualized response recognizes that each emerging adult that encounters law enforcement has their own individual needs, and that "interventions should be equally accessible and specific to all socio-economic levels, cultures, jurisdictions, sexual orientation, and ethnic groups."¹⁸⁶ As discussed

184. *Treatment Courts*, STATE OF ME. JUD. BRANCH, <https://www.courts.maine.gov/courts/treatment/index.html> [<https://perma.cc/398K-LG4J>] (last visited May 13, 2022). Maine has four treatment courts where those charged with crimes may seek treatment: Adult Drug Treatment Court, Co-Occurring Disorders Court, Family Recovery Court, and Veterans Treatment Court. *Id.*

185. *See infra* notes 221-23 and accompanying text for a brief discussion about an independent project to divert emerging adults charged with first offense misdemeanors. This program has been in existence for about twenty-four months in Cumberland County. *See Restorative Justice*, CUMBERLAND CNTY, <https://www.cumberlandcounty.org/726/Restorative-Justice> [<https://perma.cc/G4M8-DEZW>] (last visited May 13, 2022).

186. AMERICAN PROBATION AND PAROLE ASS'N, GUIDING PRINCIPLES FOR SYSTEMS WORKING WITH YOUTH INVOLVED IN THE JUSTICE SYSTEM 2 (2020).

above, each emerging adult is also likely to be at different stages of their development, and they will therefore require different developmental supports.¹⁸⁷

If the legal community accepts—and the scientific community supports—the notion that each emerging adult is their own person possessing their own individual needs, then any approach designed to enhance outcomes for their age group will be unable to offer blanket treatments and programming that will sufficiently serve them all. Rather, quality policy must consider the individualized circumstances of each emerging adult and be able to tailor services and restrictions to best suit their needs.

In Maine, one small example of an antithetical approach is pre-trial bail conditions, which operate as a pretrial probation.¹⁸⁸ At their initial appearance, virtually all offenders (violent or not) are placed on court ordered bail that includes certain conditions the accused adults must follow.¹⁸⁹ Failure to follow these conditions can result in revocation of bail and further criminal charges.¹⁹⁰ These conditions have, for the most part, been standardized pursuant to the statutorily authorized conditions found in the Maine Criminal Code.¹⁹¹ Thus, when either an eighteen year old, or a sixty-seven year old, comes before the Court on a summons from a local officer, they can each expect to generally be placed on the same set of standard conditions.

The problem with this approach is that following the conditions—and understanding the consequences for failing to follow them—may be easier for a fully mature adult than for an emerging adult. If a still-developing eighteen-year-old with hyperactive reward circuitry uses the same substance as a sixty-seven-year-old—both in violation of their probationary conditions—then under the current system, they face the same punishment. After incurring a violation of conditions charge, they would also likely face additional drug charges.

An individually-responsive, scientifically-principled systemic response would recognize the developmental differences between the eighteen and sixty-seven year old, and curtail bail conditions or consequences for violations to better fit the youth's needs. The eighteen-year-old's conditions could provide for graduated consequences other than additional criminal charges in an effort to avoid further system involvement and recidivism. If the young person is homeless, the conditions could require appointments with local housing authorities or agencies, and if they

187. For example, one young adult may have a nearly fully developed emotional regulatory circuit but may be more prone to participation in reward-seeking behaviors, failing to recognize the consequences of their conduct. *See* Luna et al., *supra* note 137. Therefore, this young person may require different services than their peers who may possess a severely underdeveloped emotional regulatory circuit. *Id.*

188. *Adult Community Corrections*, ME. DEP'T OF CORRS., <https://www.maine.gov/corrections/adult-community-corrections> [<https://perma.cc/XF8C-34CQ>] (last visited May 13, 2022).

189. *Id.*

190. *Id.*

191. 17-A M.R.S. § 1807(2)(N) (2021). While this provision grants a court broad discretion to impose “any conditions reasonably related to the rehabilitation of the person or the public safety or security,” *id.*, such discretion is rarely exercised by the court. *See Understanding Bail in Criminal Cases*, ME. CRIM. DEF. GRP., <https://www.notguiltyattorneys.com/understanding-bail-in-criminal-cases/> [<https://perma.cc/D58G-VXAR>] (last visited May 13, 2022). A bail condition form generally contains a number of standard boxes to be checked which prohibit the use of drugs or alcohol, require a payment of bail, mandate regular testing for use of substances, and require some sort of participation in work or school. *See* State of Maine Probation Conditions Form (on file with author).

are not attending school or working, the conditions could require contact with one of the many Maine-based organizations that offer help in these areas.¹⁹² Rather than forcing the fundamentally different and unique class of young people known as emerging adults to comply with the blanket requirements imposed on adults, the conditions mandated could be used as a tool to aid the eighteen-year-old in achieving a positive outcome. Individualized conditions could help limit recidivism and further healthy, appropriate development. Taking an individualized approach in response to an emerging adult's behavior is an important step in shifting the narrative surrounding crime within the emerging adult population. This approach recognizes that young adults who engage in criminal behavior often have underlying conditions, such as mental health issues or other traumas. Such an approach creates a unique opportunity for a system of justice—it can respond to every need a young person has, not just those that are legal in nature.

The ability to adequately respond to the individualized needs of emerging adult offenders must be a tenet of any policy approach designed to better serve them. Realistic, youth-centered expectations would go a long way towards enhancing outcomes and decreasing the system involvement within Maine's emerging adult population.

2. *Specialized Case Managers*

A second tenet of any policy-based approach to enhancing outcomes for emerging adults is the creation of specialized case management positions—preferably not within the department of corrections¹⁹³—that are assigned to manage an emerging adult's case.¹⁹⁴ While the benefits of having a JCCO would extend to youth covered by a raised jurisdictional age, the functional equivalent should be developed in the emerging adult context as well. Someone able to facilitate and coordinate the criminal legal system's response to emerging adults is a pivotal component of effective policy. These specialized workers who would be employed to specifically serve emerging adults would be a crucial tool in building an individually-responsive system that identifies and addresses the unique social, emotional, behavioral, and mental health needs of emerging adults.

When law enforcement makes a referral to a JCCO, the JCCO can ask the prosecutor to decline taking any action against the juvenile, reach an agreement for an informal adjustment with the youth and their familial/community supports, or ask the prosecutor to petition the case to court.¹⁹⁵ Even after petitioning the case, the

192. See, e.g., *Regional Care Teams*, PLACE MATTERS, <https://placemattersmaine.org/regional-care-teams/> [<https://perma.cc/3SX2-FNG5>] (last visited Mar. 17, 2022).

193. See CTR. FOR CHILD.'S L. & POL'Y, ME. JUVENILE JUSTICE SYSTEM ASSESSMENT 130 (2020).

194. While research is scarce regarding the benefits, many states have housed juvenile justice services outside of the department of corrections and found that facilitating supervision of criminally accused youth within a more service-oriented agency allows access to funding streams that may not be available to more punitive departments like corrections. See, e.g., *Juvenile Justice Services*, N.H. DEP'T. OF HEALTH & HUM. SERVS., <https://www.dhhs.nh.gov/djjs/index.htm> [<https://perma.cc/BEB6-2MKM>] (last visited Feb. 25, 2021); *Services for Youth*, AGENCY OF HUM. SERVS., DEP'T. FOR CHILD. & FAMS., <https://dcf.vermont.gov/youth/justice> [<https://perma.cc/FS65-AVX6>] (last visited May 13, 2022).

195. See STATE OF ME. JUD. BRANCH, *supra* note 174.

JCCO can play a role in its resolution by staying in touch with the youth and acting as a resource for them as needs arise.¹⁹⁶

However, for people in Maine between the ages of eighteen and twenty-five, there is no JCCO equivalent; instead, there is a summons, a court date, a prosecutor, and a judge.¹⁹⁷ There is no early intervention or any sort of specialized job training in what these young people require. While eighteen- to twenty-one-year-old youth may be served by a JCCO, if the juvenile court's age of jurisdiction is raised, or if a young person is committed until the age of twenty-one, this still leaves those ages twenty-one to twenty-five without crucial support needed to successfully navigating the system. This role of the specialized worker is vital because they can identify and respond to unique developmental needs in a holistic manner.¹⁹⁸

3. *Consideration of Developmental Immaturity in Disposition and Sentencing*

Absent a plea deal or deferred disposition, emerging adults who engage in criminal conduct in Maine are subject to the same dispositional procedures as adults and are sentenced according to Maine's Criminal Code.¹⁹⁹ When imposing a sentence on an emerging adult convicted of a crime, the court considers three factors as part of a process termed a "Hewey" analysis.²⁰⁰ First, the court shall "determine a basic term of imprisonment by considering the particular nature and seriousness of the offense as committed by the individual."²⁰¹ Second, the court must "determine the maximum term of imprisonment to be imposed by considering all other relevant sentencing factors, both aggravating and mitigating, appropriate to the case."²⁰² Relevant sentencing factors "include, but are not limited to, the character of the individual, the individual's criminal history, the effect of the offense on the victim and the protection of the public interest."²⁰³ Finally, the Court will "determine what portion, if any, of the maximum term of imprisonment . . . should be suspended and,

196. *See id.*

197. While many youth in Maine receive case management services from various providers, there are often barriers to accessing these services. For instance, most case management service providers require clients to meet certain criteria such as being diagnosed with a behavioral or intellectual disability. *See Case Management*, ME. DEP'T OF HEALTH & HUM. SERVS., <https://www.maine.gov/dhhs/oads/get-support/adults-intellectual-disability-and-autism/case-management> [<https://perma.cc/4MMU-PN9K>] (last visited May 13, 2022). The creation of specialized case worker positions to provide resources to emerging adults involved in the system would provide access to services regardless of clinical condition.

198. Examples include targeted substance abuse counseling for youth with a diagnosed substance use disorder, intensive counseling for youth with significant trauma, and reproductive health services for youth who are sexually active. *See Transition Planning with Youth: A Checklist for Community Reintegration*, UNIV. OF ME. SCH. OF L., <https://mainelaw.maine.edu/academics/clinics-and-centers/maine-center-juvenile-policy-law/> [<https://perma.cc/2ZST-EKJP>] (last visited May 13, 2022).

199. 17-A M.R.S. § 1502(1) (2021).

200. *See* Matthew E. Lane, *Thinking Inside the Box: Placing Form Over Function in the Application of the Statutory Sentencing Procedure in State of Maine v. Eugene Downs*, 60 ME. L. REV. 587, 591-92 (2008); *State v. Hewey*, 622 A.2d 1151, 1154 (Me. 1993) ("[W]e use this opportunity for clarification . . . [and] to define each of the three steps we deem necessary to be followed by the trial court to achieve a greater uniformity in the sentencing process . . .").

201. 17-A M.R.S. § 1602(1)(A) (2021). Notably, this factor is to be considered in an objective manner, without regard to the circumstances of the offender. *State v. Weir*, 600 A.2d 1105, 1106 (Me. 1991).

202. 17-A M.R.S. § 1602(1)(B) (2021).

203. *Id.*

if a suspension order is to be entered, determine the appropriate period of probation or administrative release to accompany that suspension.”²⁰⁴

Effective emerging adult policy allows for the developmental immaturity of the emerging adult to be considered in the sentencing or dispositional process.²⁰⁵ The age of the offender is paramount because the culpability of the emerging adult is inherently less than that of the developmentally mature adult.²⁰⁶ With an underdeveloped emotional regulatory circuit, heightened reward-seeking tendencies, and the influence of peers, a sentencing scheme which ignores the reality of an emerging adult’s diminished culpability is problematic and misguided.²⁰⁷ Thus, any effective dispositional mechanism must be anchored in its commitment to considering the developmental maturity of participants at every stage in the process.²⁰⁸

4. Increased Confidentiality

It is no secret that criminal records present a serious barrier to successful reintegration for system-involved young people.²⁰⁹ Any step towards societal reintegration that a former, or current, system-involved young person takes is often stymied by the existence of a criminal history.²¹⁰ Applying for a job, entering the military, obtaining post-secondary education, and securing housing are just a few of the tasks made more difficult by the existence of a criminal record.²¹¹

The principal justification for sealing juvenile records is that crimes committed by people when they were children should not inhibit their success as adults. Proponents of automatic or other sealing and expungement provisions often cite the diminished culpability of youth as a primary reason for reform enacting legislation.²¹² Because the neurobiological differences which provide support for sealing the juvenile records of those under eighteen are also present in those aged eighteen to twenty-five, the rationale for confidentiality of records extends to this age group as well.

Any policy change aimed at enhancing outcomes for emerging adults must include a mechanism for minimizing the collateral consequences of a criminal record. To truly advance and promote better outcomes for adults eighteen to twenty-

204. *Id.* § 1602(1)(C) (2021).

205. *See generally* HOWARD LEAGUE FOR PENAL REFORM, SENTENCING YOUNG ADULTS: MAKING THE CASE FOR SENTENCING PRINCIPLES FOR YOUNG ADULTS 3 (2018).

206. *Id.* *See also* Sawyer et al., *supra* note 91; Mercurio *supra* note 117.

207. *Id.*

208. *Id.*

209. *See generally* SUSAN HAWES ET AL., UNSEALED FATE: THE UNINTENDED CONSEQUENCES OF INADEQUATE SAFEGUARDING OF JUVENILE RECORDS IN MAINE (Univ. of S. Me. Muskie Sch. of Pub. Serv. eds., 2017).

210. *Id.*

211. *Id.*

212. *See, e.g.*, Judith G. McMullen, *Invisible Stripes: The Problem of Youth Criminal Records*, 27 S. CAL. REV. L. & SOC. JUST. 1, 38-40 (2018); *see also* *Automatically Sealing or Expunging Juvenile Records*, NAT’L CONFERENCE OF STATE LEGISLATURES, <https://www.ncsl.org/research/civil-and-criminal-justice/automatically-sealing-or-expunging-juvenile-records.aspx> [https://perma.cc/S65Z-WG 2A] (last visited May 13, 2022).

five years old, it is imperative that emerging adults be freed from the collateral consequences of their youthful indiscretions.

III. MAKING IT RIGHT IN MAINE: LOCAL CHANGES IN LEGISLATION AND POLICY

A. Recent Efforts and a Path Forward

The 130th Maine Legislature introduced a number of proposals designed to recognize and respond to scientific advances in understanding the development of youth.²¹³ One such effort aimed to prevent very young children from entering the delinquency system.²¹⁴ The youth-centered package of legislation also included a housing bill that sought to improve the community reintegration process for youth.²¹⁵ Unfortunately, this legislation did not make it out of the Committee on Health and Human Services; it was voted “Ought Not To Pass” on May 19, 2021.²¹⁶ Another piece of legislation attempted to take initial steps toward recognition of a young adult offender category.²¹⁷ This bill defined a “young adult” as a person between the ages of eighteen and twenty-five and would have provided young adults with options to avoid justice system involvement.²¹⁸ The bill passed both the House and Senate but it was vetoed by Governor Mills.²¹⁹

Despite the Governor’s misgivings about diversion for emerging adults, a diversion program for emerging adults was established on a county-wide basis in 2020.²²⁰ The Restorative Justice Institute of Maine came to a cooperative agreement with the Cumberland County District Attorney’s Office to divert some misdemeanor offenses for certain emerging adults.²²¹ Within its first year, the Young Adult Diversion Program (“YADP”), allowed for the diversion of forty-nine youth.²²² YADP permitted these youth to avoid the adult system, bail, potential convictions, and ensuing collateral consequences by offering them an opportunity to complete a restorative justice program.²²³ Once the youth completed this restorative justice component, the District Attorney’s Office declined prosecution on any charges related to the YADP participant.²²⁴ This is a promising program, but because it is currently financed by a combination of foundation money and support from individual prosecutors’ offices without statutory backing, it could cease to exist

213. See, e.g., *Maine Juvenile Justice Legislative Update 2021*, UNIV. OF ME. SCH. OF L., <https://mainelaw.maine.edu/academics/clinics-and-centers/maine-center-juvenile-policy-law/> [https://perma.cc/UF43-RUKE] (last visited May 13, 2022).

214. L.D. 320, §§ 2, 11 (130th Legis. 2021).

215. See L.D. 843 (130th Legis. 2021).

216. *Id.*

217. L.D. 847 (130th Legis. 2021).

218. *Id.*

219. Letter from Governor Janet T. Mills to the 130th Legislature of the State of Maine (June 23, 2021).

220. *Young Adult Diversion Program*, RESTORATIVE JUST. INST. OF ME., <https://www.rjmaine.org/young-adults> [https://perma.cc/J4HX-75L3] (last visited May 13, 2022).

221. *Id.*

222. RESTORATIVE JUSTICE INSTITUTE OF MAINE, *YOUNG ADULT DIVERSION PROGRAM ANNUAL EVALUATION 10/1/2020 – 9/30/2021* 1 (2021).

223. *Id.*

224. *Id.*

should the resources funding the program be depleted.²²⁵ Further, the prosecutors control the selection process,²²⁶ which creates the risk of bias influencing decisions about which emerging adults are given this opportunity.

Additionally, the Maine Legislature previously attempted to help mitigate both direct and collateral consequences. In 2015, Maine enacted a law that allowed some relief from certain convictions for a brief period of time.²²⁷ The law contained a narrow category of eligible crimes²²⁸ and eligible youth,²²⁹ and the relief was very burdensome to obtain.²³⁰ This law remained in force for four years until its sunset provision became effective, ending any statutory relief for emerging adult offenders.²³¹

Other legislation borne of a year-long assessment of Maine's juvenile system continued to reinforce a more rehabilitative, less carceral approach to youth and young adults in general.²³² An Act to Implement the Recommendations of the Maine Juvenile Justice System Assessment and Reinvestment Task Force provided guideposts for the eventual closure of the state's remaining youth prison and the transition to smaller, more therapeutic secure placements for youth committed to the Maine Department of Corrections.²³³

In light of these recent efforts, now is the time for Maine to implement more focused policy initiatives designed to rehabilitate, not punish, emerging adults that come in contact with the criminal legal system. Based on the analysis above, Maine should raise the age of original juvenile court jurisdiction to age twenty-one and enact laws that shield emerging adults ages twenty-one to twenty-five from the most punitive sanctions of Maine's Criminal Code.

B. Raising the Age

To raise the age of original juvenile court jurisdiction, Maine must amend its juvenile code to allow any young adult age twenty-one or under who commits a crime to remain under the authority of the juvenile court.²³⁴ Correspondingly,

225. *Id.* at 8.

226. See Letter from District Attorney Jonathan Sahrbeck to Defense Counsel with attached Legal Memo from Cumberland County District Attorney's Office to Defense Counsel and Interested Parties, March 27, 2021.

227. 15 M.R.S. §§ 2251-2258 (2015).

228. 15 M.R.S. § 2251(6) (2015) *repealed pursuant to its own terms* by P.L. 2015, ch. 354, § 1 (effective Oct. 1, 2019).

229. 15 M.R.S. § 2252(2) (2015) *repealed pursuant to its own terms* by P.L. 2015, ch. 354, § 1 (effective Oct. 1, 2019).

230. See 15 M.R.S. § 2252(3)-(6) (2015) *repealed pursuant to its own terms* by P.L. 2015, ch. 354, § 1 (effective Oct. 1, 2019).

231. 15 M.R.S. § 2259 (2015) *repealed pursuant to its own terms* by P.L. 2015, ch. 354, § 1 (effective Oct. 1, 2019).

232. L.D. 320, §§ 2, 11 (130th Legis. 2021); L.D. 546 (130th Legis. 2021); L.D. 1668 (130th Legis. 2021); see also CTR. FOR CHILD.'S L. & POL'Y ET. AL, MAINE JUVENILE JUSTICE SYSTEM ASSESSMENT (2020).

233. L.D. 546 (130th Legis. 2021).

234. This will make the definition of "juvenile" in Chapter 15 consistent with the definition of "child" in 22 M.R.S. § 4099-I(1)(B) (2021). Currently, "Juvenile Courts have exclusive original jurisdiction over

indeterminate commitments will need to be increased from age twenty-one to age twenty-five.²³⁵ The current statute allows for juvenile probation to continue past the age of twenty-one,²³⁶ and therefore it would not need to be amended except to cap it at twenty-five.

1. A Look at Other States, Lessons Learned, and Progress Made

In the 1980s and 1990s, nearly every state approved laws making it easier to remove children and youth from juvenile court jurisdiction, exposing them to adult court jurisdiction.²³⁷ Throughout the 1990s the tough on crime, “adult crime adult time” rhetoric, fueled by false predictions of a coming wave of youthful “superpredators” and sensationalized and racially-coded media reports of serious crimes committed by juvenile offenders, dominated the policy conversation.²³⁸ But by the early 2000s, the superpredator myth had been debunked,²³⁹ juvenile crime continued to decline,²⁴⁰ and the growing body of adolescent development research, including a better understanding of brain development, began to shift the conversation back toward more data-informed policies and practices.²⁴¹ For example, in 2007, there were fourteen states that excluded sixteen- or seventeen-year-olds from the juvenile justice system solely because of their age.²⁴² Successful advocacy efforts across the country to reverse these policies and bring more youth under juvenile jurisdiction has resulted in 80% fewer youth charged as adults in the U.S., down from a height of an estimated 250,000 in the early 2000s to just 53,000 in 2019.²⁴³ By 2020, only three states—Georgia, Texas, and Wisconsin—continued to exclude seventeen year-olds from juvenile court jurisdiction, establishing a

proceedings in which an adult is alleged to have committed a juvenile crime before attaining 18 years of age.” 15 M.R.S. § 3101(2)(D) (2021).

235. See 15 M.R.S. § 3316(2)(A).

236. *Id.* § 3314-A.

237. PATRICK GRIFFIN ET AL., OFF. OF JUV. JUST. DELINQ. AND PREVENTION, TRYING JUVENILES AS ADULTS: AN ANALYSIS OF STATE TRANSFER LAWS AND REPORTING 8 (2011), <https://www.ojp.gov/pdffiles1/ojjdp/232434.pdf> [<https://perma.cc/KLB8-WK3M>].

238. Carroll Bogert & Lynnell Hancock, *Superpredator: The Media Myth that Demonized a Generation of Black Youth*, THE MARSHALL PROJECT, <https://www.themarshallproject.org/2020/11/20/superpredator-the-media-myth-that-demonized-a-generation-of-black-youth> [<https://perma.cc/ZZ2A-8AT8>] (last visited May 13, 2022).

239. Elizabeth Becker, *As Ex-Theorist on Young ‘Superpredators,’ Bush Aide Has Regrets*, N.Y. TIMES (Feb. 9, 2001), <https://www.nytimes.com/2001/02/09/us/as-ex-theorist-on-young-superpredators-bush-aide-has-regrets.html> [<https://perma.cc/T6GT-Y5TG>].

240. CHARLES PUZZANCHERA, OFF. OF JUV. JUST. DELINQ. AND PREVENTION, THE DECLINE IN ARRESTS OF JUVENILES CONTINUED THROUGH 2019 1 (2020).

241. NATIONAL RESEARCH COUNCIL, REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH (Richard J. Bonnie et al. eds., 2013).

242. JEREE THOMAS, CAMPAIGN FOR YOUTH JUSTICE, RAISING THE BAR: STATE TRENDS IN KEEPING YOUTH OUT OF ADULT COURTS (2015-2017) 8 (2017).

243. CHARLES PUZZANCHERA ET AL., NAT’L CTR. FOR JUV. JUST., YOUTH YOUNGER THAN 18 PROSECUTED IN CRIMINAL COURT: NATIONAL ESTIMATE, 2019 CASES 2 (2021), http://ncjj.org/pdf/NCJJ_Transfer_estimate_2019.pdf [<https://perma.cc/SSY8-LHMU>].

national standard of age eighteen as the minimum age of adult criminal responsibility.²⁴⁴

Several state legislatures have also begun to look at raising the age of original juvenile court jurisdiction further. A majority of states already have extended original juvenile court jurisdiction, meaning that youth adjudicated in juvenile or family court can remain under juvenile jurisdiction up to age twenty-one and, in some states, up to ages twenty-four or twenty-five to complete juvenile dispositions, sanctions, and services, encompassing offense and consent requirements.²⁴⁵ Raising the age of original juvenile court jurisdiction allows older youth and emerging adults to automatically be processed under juvenile or family court jurisdiction, where there is a more rehabilitative approach and frequently more alternative services and support available.

In 2015, Connecticut Governor Daniel Malloy became the first governor to propose raising the age of original juvenile court jurisdiction above age eighteen and eventually proposed legislation that would gradually incorporate eighteen, nineteen, and twenty year-olds into the juvenile justice system over a three-year period.²⁴⁶ Since then, several states including California, Colorado, Connecticut, Illinois, Massachusetts, and Nebraska have looked at raising the age of original juvenile court jurisdiction to eighteen years and above.²⁴⁷ In 2018, Vermont became the first state to pass legislation raising the age of original juvenile court jurisdiction beyond age seventeen, mandating that eighteen-year-olds be included in the family court system beginning on July 1, 2020, nineteen-year-olds on July 1, 2022, and twenty-year-olds beginning in 2024.²⁴⁸ Those accused of twelve specified felonies known collectively as “5204” felonies were excluded from this shift in jurisdiction and continued to be handled in adult court.²⁴⁹

2. Benefits vs. Costs

Raise-the-age reforms are not only a reflection of the science that suggests emerging adults are developmentally more like teens than older adults—and therefore should elicit a like response from the criminal legal system—but are also an acknowledgement that processing emerging adults in the adult system fails to

244. BRIAN EVANS, CAMPAIGN FOR YOUTH JUST., WINNING THE CAMPAIGN: STATE TRENDS IN FIGHTING THE TREATMENT OF CHILDREN AS ADULTS IN THE CRIMINAL JUSTICE SYSTEM 10 (2020).

245. *Jurisdictional Boundaries*, JUV. JUST. GEOGRAPHY, POL’Y, PRAC. & STAT., <http://www.jjgps.org/jurisdictional-boundaries#delinquency-age-boundaries> [<https://perma.cc/2SSY-59M4>] (last visited Feb. 25, 2022).

246. Press Release, Governor Daniel P. Malloy, Gov. Malloy Introduces Juvenile Justice Reform Legislation: Legislative Proposal Raises the Age of Juvenile Justice Jurisdiction; Expands Opportunity for Youthful Offenders to Lead Productive Lives (Mar. 20, 2018), <https://portal.ct.gov/Malloy-Archive/Press-Room/Press-Releases/2018/03-2018/Gov-Malloy-Introduces-Juvenile-Justice-Reform-Legislation> [<https://perma.cc/38CD-WQJM>]; see German Lopez, *Connecticut’s Governor Wants to Try 19- and 20-Year Olds as Minors. Why It’s a Great Idea*, VOX (Nov. 6, 2015), <https://www.vox.com/2015/11/6/9684148/juvenile-justice-age> [<https://perma.cc/8GX7-RBNJ>].

247. BARKIN, *supra* note 141.

248. Katie Dodds, *Why All States Should Embrace Vermont’s Raise the Age Initiative*, COALITION FOR JUV. JUST. (July 20, 2020), <https://www.juvjustice.org/blog/1174> [<https://perma.cc/GLE4-B45H>].

249. 33 VT. STAT. ANN. tit. 33, § 5204 (West 2021).

meet public safety goals, causes undo harm to the individual young adult, and often fails to satisfy the victim.

Research on recidivism rates that compares youth handled in the adult system to those retained in the juvenile system finds that those processed as adults were 34% more likely to be re-arrested—and for more violent crimes—than those who remained under juvenile or family court jurisdiction.²⁵⁰ Another national study of thirty-four states including Maine reveals that 71% of system-involved young adults aged eighteen- to twenty-four years old released in 2012 were re-arrested within five years.²⁵¹ Similarly, these same characteristics of adolescence and young adult brains suggest that the threat of processing youth in the adult system also fails as a deterrent.²⁵² As discussed in the earlier Sections on adolescent development and recent Supreme Court rulings, youthful offenders are fundamentally different than adults. Given the research on brain science, that distinction does not end at age seventeen, but rather extends into an individual's mid-twenties, especially as it relates to decision-making in highly emotional or high-risk, high-reward situations.²⁵³ It then stands to reason that the adult system will be less effective in achieving public safety goals of deterrence and reduced recidivism with respect to emerging adults and, given the added legal responsibilities that come with attaining age eighteen, may actually do more harm than good.

The problem of using 18 as a stark demarcation of the “transition” between childhood and adulthood is that the criminal justice system could, unintentionally, be making this natural maturing process worse rather than better: Emerging adults are “branded” as criminal and are weighed down with a criminal conviction that will follow them throughout the rest of their adult lives, affecting their employment, housing and educational opportunities. The juvenile justice system, on the other hand, holds the individual accountable but provides developmentally appropriate services and allows the individual to exit the system without a public “conviction.”²⁵⁴

In addition to the significant barriers individual emerging adults face following a criminal conviction, the older youth and young adult population is also characterized by: (i) high rates of mental health and substance use issues,²⁵⁵ (ii) limited education and job skills,²⁵⁶ (iii) prior involvement in the child welfare

250. CDC, EFFECTS ON VIOLENCE OF LAWS AND POLICIES FACILITATING THE TRANSFER OF YOUTH FROM THE JUVENILE TO THE ADULT JUSTICE SYSTEM: A REPORT ON RECOMMENDATIONS OF THE TASK FORCE ON COMMUNITY PREVENTIVE SERVICES, MORBIDITY AND MORTALITY WEEKLY REPORT 1, 6 (2007).

251. MATTHEW DUROSE & LEONARDO ANTENANGELLI, RECIDIVISM OF PRISONERS RELEASED IN 34 STATES IN 2012: A 5-YEAR FOLLOW-UP PERIOD (2012–2017) 1, 22 (Dept. of Just. ed., 2021).

252. Jill M. Ward, *Deterrence's Difficulty Magnified: The Importance of Adolescent Development in Assessing Deterrence Value of Transferring Juveniles to Adult Court*, 7 U.C. DAVIS J. JUV. L. & POL'Y, 253, 260-63 (2003).

253. BARKIN, *supra* note 141.

254. CHESTER, *supra* note 1.

255. See *Intersection Between Mental Health and the Juvenile Justice System*, LITERATURE REVIEW: OJJDP (July 2017), https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/intsection_between_mental_health_and_the_juvenile_justice_system.pdf [https://perma.cc/2JF2-Y9CG].

256. See *Locked Out: Improving Educational and Vocational Outcomes for Incarcerated Youth*, COUNCIL OF STATE GOV'TS JUST. CTR. (Nov. 2015), <https://csgjusticecenter.org/wp-content/uploads/>

system,²⁵⁷ and (iv) homelessness and unemployment.²⁵⁸ There is also the larger taxpayer cost in terms of incarceration²⁵⁹ that is further compounded by recidivism data that shows that these young adults are likely to return more frequently and for more serious crimes after their initial involvement in the adult criminal system.²⁶⁰ Giving these emerging adults access to supports and services more commonly provided in the juvenile justice system would help meet their needs and better support their successful transition into adulthood with a lower long-term public cost.

Recent evidence also suggests that victims of crime are increasingly dissatisfied with the criminal justice system's ability to make them feel safe and to hold those that caused harm accountable in ways that are meaningful and prevents future harm.²⁶¹ A 2016 national survey on victims' views found that the vast majority of crime victims believe that the criminal legal system relies too heavily on punitive responses to crime and they overwhelmingly prefer that systems invest in prevention and treatment over incarceration.²⁶² Raising the age of original juvenile jurisdiction would give emerging adults who come in contact with the criminal legal system greater access to more rehabilitative responses, like the diversion and restorative programs envisioned in L.D. 847, that are in line with the desires of those most impacted by the harm caused.²⁶³ Finally, it is worth noting that the U.S. Department of Justice and a wide array of criminal justice organizations and stakeholders,

2020/01/LOCKED_OUT_Improving_Educational_and_Vocational_Outcomes_for_Incarcerated_Youth.pdf [https://perma.cc/27UV-WEJ3].

257. See *Dual System Youth: At the Intersection of Child Maltreatment and Delinquency*, NIJ (Aug. 10, 2021), <https://nij.ojp.gov/topics/articles/dual-system-youth-intersection-child-maltreatment-and-delinquency> [https://perma.cc/S6ND-QTDR].

258. See *Youth Homelessness and Juvenile Justice: Opportunities for Collaboration and Impact*, COALITION FOR JUV. JUST. (June 2016), https://www.juvjustice.org/sites/default/files/resource-files/policy%20brief_FINAL.compressed.pdf [https://perma.cc/Q8J6-YCSL]; Angela Carter, *The Consequences of Adolescent Delinquent Behavior for Adult Employment Outcomes*, 48 J. YOUTH ADOLESCENCE 17, 17-29 (2019).

259. JUST. POL'Y INST., IMPROVING APPROACHES TO SERVING YOUNG ADULTS IN THE JUSTICE SYSTEM 1 (2016) https://justicepolicy.org/wp-content/uploads/justicepolicy/documents/jpi_young_adults_final.pdf [https://perma.cc/B5ND-ZLCT]. Among a sampling of eight cities and counties, young adults were 8.4% of the overall population, but were 25% of the jail population in these communities, 72% of whom were young adults of color. *Id.* In these eight communities, taxpayers spend \$163 a day to jail someone (upwards of \$58,000 per year). *Id.*

260. KAREN U. LINDELL & KATRINA L. GOODJOINT, RETHINKING JUSTICE FOR EMERGING ADULTS: SPOTLIGHT ON THE GREAT LAKES REGION 11 (2020).

261. DANIELLE SERED, UNTIL WE RECKON: VIOLENCE, MASS INCARCERATION AND THE ROAD TO REPAIR 42-49 (The New Press ed., 2019).

262. ALLIANCE FOR JUSTICE, CRIME SURVIVORS SPEAK: THE FIRST-EVER NATIONAL SURVEY OF VICTIMS' VIEWS ON SAFETY AND JUSTICE 13-21 (2016) (citing data that found victims of crime prefer rehabilitation over punishment, prefer shorter sentences and more spending on prevention to longer sentences and prefer spending more on education, jobs, and treatment than jails and prisons).

263. *Id.* at 216 (defines young adult as aged eighteen to twenty-five and requires that for certain offenses that this population is provided "information on community-based programs or services that address the daily living needs of a young adult, including but not limited to the need for housing assistance; health care; behavioral health or substance use disorder assessment, treatment and services; restorative justice; social services and mentoring; and employment services")

including a growing number of prosecutors, support efforts to include some emerging adults in the juvenile system.²⁶⁴

Raising the age of jurisdiction in Maine would address the youngest of the emerging adults but leave the twenty-one- to twenty-five-year-olds without a buffer from our adult criminal system. In order to provide our most vulnerable youth a better chance to successfully transition into their adult life, Maine must also provide protection from a range of criminal sanctions.

C. Protecting the Youngest Adults from the Harshes Sanctions

The full range of criminal sanctions, from mandatory minimum fines to life without parole applies not only to all youth from their eighteenth birthday forward, but to every child bound-over from juvenile to criminal court. The 130th Maine Legislature finally added a few minimal protections for the youngest of children charged with juvenile crimes.²⁶⁵ Although a child of any age can still be charged with committing a juvenile crime, if that child is under the age of twelve they cannot be detained in a correctional facility for more than seven days without their consent.²⁶⁶ Also, a child under the age of twelve cannot be committed to a DOC facility.²⁶⁷ These new statutory protections limiting a judge's ability to detain and commit youth under twelve provide necessary and important safeguards for a limited number of children each year. Maine needs meaningful protections for older youth, who share more developmental affinity with children than adults.

The Maine Criminal Code is littered with minimum mandatory sentences and fines, especially if the charges involve drugs or driving.²⁶⁸ In the sentencing provision of the drug chapter, a judge may be able to make findings to alleviate the harshes sentences.²⁶⁹ Alternatively, Maine's Motor Vehicle Code offers no judicial discretion to its minimum mandatory provisions, which requires a minimum mandatory sentence of five years' imprisonment for merely operating a motor vehicle after certain prior convictions.²⁷⁰ Once a youth reaches their eighteenth birthday or is bound-over to adult court, there are other statutory provisions that enhance punishment outside of driving and drug charges.

264. See U.S. DEP'T OF JUST., OFF. OF JUST. PROGRAMS, YOUNG OFFENDERS: WHAT HAPPENS AND WHAT SHOULD HAPPEN (2014), <https://www.ncjrs.gov/pdffiles1/nij/242653.pdf> [<https://perma.cc/QHE3-6HA8>]; FAIR & JUST PROSECUTION, YOUNG ADULTS IN THE JUSTICE SYSTEM (2019), https://fairandjustprosecution.org/wp-content/uploads/2019/01/FJP_Brief_YoungAdults.pdf [<https://perma.cc/SQ4R-UKPG>].

265. See L.D. 320, §§ 2, 11 (130th Legis. 2021).

266. 15 M.R.S. § 3203-A(4)(G) (2021).

267. *Id.* § 3314(F) (2021).

268. See 17-A M.R.S. § 1125 (2021); 29-A M.R.S. § 2557-A(2) (2021).

269. 17-A M.R.S. § 1125(2) (2021).

270. 29-A M.R.S. § 2558(2)(D) (2021). This mandatory minimum sentence must be issued if a person operates a motor vehicle after three prior operating-after-revocation convictions or three prior operating-under-the-influence convictions within the last ten years. *Id.* License revocation can occur without any dangerous or impaired driving based on a history of driving offense convictions from any age. 29-A M.R.S. § 2472 (2021). One example is operating without a driver's license (OWL). 29-A M.R.S. § 1251 (2021). OWLs are statutorily excluded from the juvenile code, and it is an offense that leads to license revocation. 15 M.R.S. § 3103(1)(A) (2021); see also 29-A M.R.S. §§ 2551-A(1)(A)(5), 2552 (2021).

Prior criminal convictions result in misdemeanor conduct leading to felony charges.²⁷¹ The criminal code's Theft by unauthorized taking or transfer statute includes a laundry list of offenses that are used to elevate misdemeanor conduct to felony indictments.²⁷² This list includes shoplifting, writing a bad check, and videotaping a film at a movie theater.²⁷³

Maine must revisit L.D. 847, using YADP's initial success²⁷⁴ as support and guidance, to allow emerging adults throughout the state access to the benefits of restorative practices and, for those charged with first time misdemeanor offenses, from obtaining criminal records or incurring crippling fines and fees. Moreover, any criminal statute that gives a judge the power to deviate from a minimum mandatory sentence needs to have the addition of "emerging adult" as a specific reason not to impose the minimum mandatory fine, jail, or prison sentence.

Driving charges have become some of Maine's most punitive offenses.²⁷⁵ Many Class D and E criminal offenses that are driving-related are specifically exempted from the Juvenile Code. For example, if a youth has a car accident and is charged with driving to endanger²⁷⁶ and possession of alcohol by a minor,²⁷⁷ that youth will be subjected to prosecution in both the adult criminal system and the juvenile system.²⁷⁸ Even though the charges arose out of the same incident, the youth will have separate court dates, different standards, and no confidentiality for the driving to endanger charge.

To protect Maine's young adult population, the legislature should make the following three changes. First, section 3103 of Title 28-A of the Maine Revised Statutes, which defines juvenile crimes, must be amended to include any misdemeanor charges now specifically excluded from Titles 12 and 29-A.²⁷⁹ Furthermore, unlike Title 17-A offenses (criminal), Title 29-A (driving) offenses offer no exceptions for their minimum mandatory sentencing provisions. Therefore, for every minimum mandatory fine or sentence in the Motor Vehicle Code, Maine must add a statutory provision giving a judge the ability to impose less than the minimum mandatory fine or sentence for youthful adult offenders. Statutes that require prior convictions to serve as aggravating factors to enhance punishments or classes of crime should exempt youth under the age of twenty-five. Lastly, Maine must revisit the sealing or expungement of criminal convictions for youthful adult offenders.

271. *See, e.g.*, 17-A § 353(1)(B)(6).

272. *Id.*

273. *Id.*

274. According to the statistics kept by the Restorative Justice Institute of Maine, the recidivism rate for YADP's participants in its first year was 6.7%. RESTORATIVE JUST. INST. OF ME., *supra* note 220.

275. 29-A M.R.S. § 2558(2)(D) (2021).

276. *See Id.* § 2413 (2021).

277. *See* 28-A M.R.S. § 2051(E-1) (2021).

278. *See* 15 M.R.S. § 3103 (2021). The statutory definition of juvenile crimes specifically excludes all driving (Title 29-A) misdemeanors that do not have a drug or alcohol component. *Id.* § 3103(1)(A).

279. 15 M.R.S. § 3103(1)(A) (2021).

CONCLUSION

To help break the cycle of poverty, homelessness, and recidivism for youth and emerging adults, Maine must adopt a very different approach for our youngest, most vulnerable adults. The juvenile justice system's purposes and correction philosophy is better suited for youth under the age of twenty-one. Thus, the jurisdictional age must be raised. The Maine Criminal Code is counterproductive, and often destructive, for adults under the age of twenty-five. Adults under the age of twenty-five need to be exempted from the harshest of our criminal sanctions including minimum mandatory jail and prison sentences, minimum mandatory fines, and elevations of misdemeanor conduct to felony charges due to prior convictions.