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Jennifer M. Segadelli

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Minding the Gap: Extending Adult Jury Trial Rights to Adolescents While Maintaining a Childhood Commitment to Rehabilitation

Jennifer M. Segadelli[1]

We need a new definition of neighborhood, community, society. . . . We all need a definition of responsibility. . . . We need another perspective on the possibilities.[2]

INTRODUCTION

Notwithstanding a few cases to the contrary, nearly all states have held that in the absence of a state statute, a juvenile may not demand that his or her delinquency proceeding be determined by a jury.[3] The Sixth Amendment to the United States Constitution grants the accused "in *all* criminal prosecutions . . . the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed."[4] In *McKeiver v. Pennsylvania*, Justice Blackmun, writing for the plurality, declined to extend the right to a jury trial in juvenile criminal proceedings in order to uphold the hallmarks of restoration, compassion, and rehabilitation that have set aside the juvenile system from the adult system since its inception.[5] But in the forty years since Justice Blackmun's opinion in *McKeiver*, has legislative escalation of significant punitive consequences imposed in juvenile sentences eroded these hallmarks? If so, does this escalation elevate the importance of acknowledging the right for an accused juvenile to demand the jury trial afforded to adults who are prosecuted in a criminal justice system primarily focused on punishment, not rehabilitation, as the goal?

In a recent Kansas Supreme Court decision, juvenile defendant L.M.[6] sought review of the Court of Appeals decision affirming the district court's finding of aggravated sexual battery and being a minor in possession of

alcohol. L.M. claims that he should have had the right to a jury trial and that the changes in the Kansas juvenile judicial procedures required review of constitutional construction precluding juveniles from such a right.[7] On June 20, 2008, the Kansas Supreme Court agreed and held that the changes to the juvenile justice system have "eroded the benevolent *parens patriae*[8] character that distinguished it from the adult criminal system,"[9] and "because the juvenile justice system is now patterned after the adult criminal system, . . . the changes have superseded the *McKeiver* and *Findlay* courts' reasoning and those decisions are no longer binding precedent for us to follow."[10]

The holding in L.M.'s case overruled *Findlay v. State*, a twenty-four-year-old precedent that held that juveniles were not entitled to a jury trial.[11] The lone dissenter in L.M. was Chief Justice Kay McFarland, a former juvenile court judge; Justice McFarland voiced concern in her dissent that the majority decision put Kansas out of alignment with other states, nearly all of which adhere to the belief that the Sixth and Fourteenth Amendments to the Federal Constitution do not protect or extend a right to a jury trial to juveniles.[12]

The question that arises in the L.M. case and other juvenile cases is whether the hallmarks of compassion and rehabilitation have already been lost in the juvenile justice system. If they have, particularly as we move more toward treatment of juveniles as adults, can the right to a trial by jury justly be withheld? Or by granting that right, do we risk turning a rehabilitative and compassionate system into a fully adversarial process associated with adulthood, the very result Justice Blackmun cautioned against?

This article argues that the ideas of a constitutional right to a jury trial and commitments to rehabilitation need not be mutually exclusive; rather, expansion of established programs has shown that adolescents can be afforded equivalent constitutional rights while guarding the compassion and rehabilitation focus that so evidently sets the juvenile system apart from the

adult system. Adolescents, a very vulnerable group lost between childhood and adulthood, should have the right to a jury trial and other constitutional protections without the compromise of the juvenile justice system. Promotion of a constitutional right need not make the entire juvenile justice system defunct.

This article explores how well-established "teen courts" may be expanded and used as a model for full implementation of jury trials in adolescent court proceedings. Part I provides a background to modern juvenile justice models by exploring changing concepts of child welfare, the evolution of the juvenile justice system, the modern juvenile justice system, and the expansion of constitutionally protected rights to juveniles. Part II describes the history, development, methodology, and innovation of Washington State's juvenile justice system. Part III emphasizes the importance of jury trials, not only in American history and modern society, but the particular importance of a jury trial to adolescent offenders.

Next, Part IV discusses the importance of rehabilitation in the juvenile justice system including the important distinction of childhood, the danger of losing adolescents in the legal system, and the importance of developing a unique approach to adolescence jurisprudence. Part V explores the teen court model, specifically the innovation of Washington State's teen court model and the adoption of these models as an opportunity to extend to juveniles the right to a jury trial without impinging on the uniqueness of the juvenile justice system. Finally, Part VI concludes that adolescent offenders have had the worst of both worlds for far too long, and that the only way to address the unique developmental stage of adolescence in the legal system is to incorporate adult protections with childhood rehabilitation and compassion.

I. HISTORY OF THE JUVENILE JUSTICE SYSTEM AND THE PROGRESSION OF JUVENILE RIGHTS

Prior to 1899, when Illinois adopted the first juvenile court, statutes and regulations specifically aimed at juvenile offenders were nearly unheard of.[13] The groundwork laid by Illinois's juvenile justice system was quickly and almost universally accepted, and by 1925, every state except Maine and Wyoming had some system or model for addressing juvenile offenders that was distinct and separate from adult criminal proceedings.[14] The new approach to juvenile justice "envisioned treating juveniles in a manner different from adult criminals and focused on rehabilitating juveniles rather than punishing them."[15] This section explores changing ideas of child welfare through history, the introduction of the first juvenile courts and their progression to the modern juvenile justice system, and the expansion of constitutional rights to juveniles through time.

A. Changing Concepts of Child Welfare Through Time

The development of American policy toward juveniles can aptly be described as a dichotomy between two attitudes, both of which historically dominated social thought at different times, and both of which shaped the modern juvenile justice system—fear *of* children, and fear *for* children.[16] While the American rhetoric has always emphasized an attitude of child-centeredness, the reality of employing child-centeredness into practice is much more complex and is critical to understanding the development of legal attitudes and policies toward juveniles.[17]

The primary disagreements have been about the nature and legitimacy of the parental, the community, and the state interest in children, and the role of children in society.[18] Much of the formative thought on the matter is fueled by the belief that children are fundamentally different than adults and that they are helpless and dependent on their parents and the state for everything from survival to protection.[19] The position children hold in society at any time is defined by a compromise between a set of society's

ideals and the actual experiences of children in their social setting at any given time. Between 1820 and 1935, two distinct periods of child welfare existed, and the shifting values of these periods help illuminate the advent of the juvenile justice system.[20] Throughout history, families have been and remain the primary welfare institution in the United States; however, that role began to change as concern arose about the failure of many families to provide for their children.[21] The welfare of children then became a state policy of social action, and states are now the greatest external force for the assistance of children.[22]

1. Child Welfare Between the Early Nineteenth Century and the End of the Civil War

Child welfare between the early nineteenth century and the end of the Civil War was dominated by fear *for* children.[23] Child welfare policies and institutions became a distinct part of society for the first time in the United States,[24] born largely out of the breakdown of the family unit as society's sole child welfare provider and the development of alternative child welfare institutions such as schools and reformatories.[25] Debates during this time occurred over individual morality and responsibility, and the role of children, parents, and institutions—namely, legitimacy and opportunity for institutionalizing delinquent children.[26] For the first time, lines were drawn between public and private control of children, and a lasting distinction emerged between children and adults in legal theory and social reform.[27]

2. Child Welfare Between the Late Nineteenth Century and the Early Twentieth Century

By the 1870s, much of the old system's view of child welfare remained firmly in place, but growing concerns about the Industrial Revolution led to an increase in fear *of* children.[28] Several factors contributed to the fear of children, including further breakdown in family structure brought on by rising divorce rates, increased population of women entering the workforce

and seeking education, lower marriage rates among educated women, growing poverty, increased juvenile delinquency, and lower birth rates among middle and upper class families and increased birth rates among lower class and immigrant families, leading to concern about the fate of children.[29] Much of the debate was fueled by a fear that children of working-class and immigrant families would "undermine" society if left without institutional intervention.[30]

The juvenile court first created by the Illinois State Legislature in 1899 was "probably the most prominent of child-saving institutions."[31] There was a waning faith in self-autonomy and personal responsibility, and a growing faith in institutionalization of child welfare, making this movement known as "child-saving."[32] Change in child welfare policy was promulgated by the assumption that childhood was a "distinctive and vulnerable stage of life," inherently different than adulthood.[33] The definition and legitimacy of childrearing needed to be expanded, thus challenging the existing roles of parents, children, and the state; the hope was to preserve childhood through adolescence by strengthening children's dependence on adults and society, and by removing them from inevitable adult roles.[34]

By the 1930s, the United States had an established system of child welfare that had been developed and modified over a decade marked by policy changes toward children.[35] Throughout that time, although it could be agreed upon that the welfare of children was of central importance to the state, no consensus could be reached as to method or policy—that is, whether children were better served if the state aided the family unit, or whether children and the family unit could only be served by eliminating the inequities and injustices prevalent in society and institutions.[36] Court decisions have stated, "As a result of disagreements over the place of children in American society, child welfare practices and beliefs helped rearrange and redefine the relationship among children, parents, the state, and civil society."[37]

B. The Evolution of Juvenile Courts and the Modern American Juvenile Court

When the first juvenile court was founded, its envisioned goals were removal of the juvenile from the harsh criminal justice system and protection of adolescence through closed hearings and confidential records—a vision that took many years, and in some states, decades, to achieve.[38] The juvenile court system, therefore, did not emerge in its perfection upon creation, but rather it was a "work in progress" and many of its hallmarks and defining features were additions and responses as the system grew and developed.[39]

Since their inception, juvenile courts have been a statutory creation, which means they can be altered and amended at will, making them distinct from other court systems.[40] Founders of the juvenile courts believed that the creation of a juvenile justice and court system would be "one of their generation's major contributions to the ongoing historical process of improving the status of children in American society."[41] By 1923, the idea of a juvenile court, distinct and removed from adult proceedings, was deeply entrenched in American society.[42] The nation agreed that the juvenile justice system should have broad and exclusive jurisdiction over youth until the age of eighteen, private hearings, confidential records, detention, probation, individual treatment, and a focus on rehabilitation.[43]

The juvenile court system, at its inception, was founded on informality and sympathy; great effort was taken to remove the juvenile justice system from mainstream legal institutions.[44] Since the late 1970s, and increasing through the 1990s, there has been a growing trend to criminalize the juvenile justice system and transfer more cases out of juvenile court for adult proceedings.[45] Much of this came from unrest regarding beliefs that the informality of the juvenile courts was inadequate to handle the violent juvenile offender.[46] Despite continuing movements to treat more and more children and adolescents as adults, "the juvenile justice system remains unique, guided by its own philosophy and legislation and implemented by

its own set of agencies."[47] Juvenile court administration seeks to include delinquents, or children in need of intervention to prevent potentially self-destructive behavior, as well as children in need of protection.[48]

Despite criticism, it is clear that the juvenile justice system is a permanent fixture of the American government and a viable institution that "remains one of the most important social inventions of the modern period."[49] The need to protect the country's children, the demands made on people and states to do so, and the decreasing age of first-time offenders emphasize the cry to strengthen the juvenile justice system.[50]

C. The Expansion of Constitutional Rights to Juveniles

Several important Supreme Court decisions have changed the way that juveniles are processed within the criminal system. Each decision represents an attempt by the Supreme Court to secure rights for juveniles that were ordinarily enjoyed only by adults. However, despite these advances, juveniles still do not enjoy the full constitutional rights that are extended to adults.

1. Promising Initial Developments in *In re Gault*

In 1967, the U.S. Supreme Court articulated the following rights for all juveniles: (1) the right to notice of charges, (2) the right to counsel, (3) the right to confront and cross-examine witnesses, and (4) the right to invoke the privilege against self-incrimination.[51] This decision, *In re Gault*, is perhaps "the most noteworthy of all landmark juvenile rights cases" and "certainly is considered the most ambitious."[52]

Gerald Gault, at age fifteen, was committed as a "juvenile delinquent" on charges that he had placed an obscene phone call to a neighbor.[53] After hearings and proceedings during which no one was sworn in, no transcript was made, and no memorandum of proceedings was prepared, Gault was committed to the Arizona State Industrial School until the age of twenty-one, a term of six years in juvenile prison—by way of comparison, an adult

offender for the same crime would receive a $50 fine and no more than sixty days in jail.[54]

Gault never had a chance to face his accuser, nor was he advised at any point in the process that he had the right *not* to make a statement.[55] The Arizona Court of Appeals glossed over these issues, noting that the rights to confrontation and protection against self-incrimination had not been extended to "infants," but the Supreme Court disagreed, vehemently stating that "[i]t would indeed be surprising if the privilege against self-incrimination were available to hardened criminals but not to children."[56]

The Court in *Gault* never addressed the issue of a juvenile's right to a jury trial, nor did it address the issue of whether juveniles have a right to a speedy trial; however, the Court effectively managed to extend some Fifth and Sixth Amendment rights to the juvenile justice system.[57] While it is hard to comprehend how the Court reconciles protecting and granting some, but not all, rights under the Sixth Amendment, the extension of the constitutional rights it *did* address was the first important step in moving the juvenile justice system forward.

2. The Development of Proof Beyond a Reasonable Doubt: *In re Winship*

In 1970, *In re Winship* established an important precedent related to the standard of proof used in juvenile proceedings to adjudicate guilt of a defendant.[58] The U.S. Supreme Court held that the standard of proof in juvenile proceedings was to be "beyond a reasonable doubt," which initially had been reserved only for adult criminal courts.[59] Until the holding in *Winship*, the standard of proof in juvenile proceedings was "preponderance of the evidence,"[60] a standard that is easier to prove.

The Court held that the evidentiary standard in juvenile proceedings must align with that of adult criminal proceedings for the same policy and practical concerns that led courts to extend the standard to beyond a reasonable doubt in the first place. In criminal proceedings, when the

defendant's freedom and autonomy is at stake, due process requires that the state produce evidence beyond a reasonable doubt, both to ease the minds of jurors sentencing the defendant and to ensure that only the culpable are punished.[61] The Court concluded saying, "The same considerations that demand extreme caution in fact finding to protect the innocent adult apply as well to the innocent child."[62]

In light of the Court's obvious progression toward acceptance of full constitutional rights to juvenile offenders, it was somewhat surprising when, a mere year after *Winship*, and only a few years after *Gault*, the U.S. Supreme Court addressed the issue of whether juveniles were afforded constitutional protection of a trial by jury of their peers and answered with a decisive and resounding "no."

3. The End of the Expansion of Constitutional Rights: *McKeiver v. Pennsylvania*

In 1971, the U.S. Supreme Court held that juveniles are not entitled to a jury trial as a matter of constitutional right[63] and provided many reasons for this holding, the first of which was a general statement that the Court "has refrained . . . from taking the easy way with a flat holding that all rights constitutionally assured for the adult accused are to be imposed upon the state juvenile proceeding."[64]

The decision in *McKevier* seems to oversimplify the role that jury trials play in the justice system and seems to alleviate the juvenile system from the "burden" of a jury trial; the main concern is not with due process or fairness, but rather with the efficiency of proceedings.[65] One assertion postulates that judges are more capable of correctly deciding complicated or technical issues and are more likely to render decisions that are predictable, consistent, and efficient; as such, juries are seen as unpredictable and less likely to understand complex issues.[66] Jury trials are criticized as an inefficient use of judicial resources because additional time is added to the

proceedings for jury selection and deliberation, as well as for sidebar conferences and resolving evidentiary disputes.[67]

The second reason the Court provided, and the one that bears the most weight on this article, is a cautionary and protective mechanism to preserve the hallmarks of the juvenile justice system. The Court cautioned that requiring juries in juvenile proceedings would "remake the juvenile proceeding into a fully adversary process and put an effective end to what has been the idealistic prospect of an intimate, informal, protective proceeding."[68]

Moreover, the Court relied on the findings in a report created and produced by the Commission on Law Enforcement and Administration of Justice (hereinafter the "Commission") before the findings in *In re Gault*.[69] The Court noted that "[h]ad the Commission deemed [jury trials] vital to the integrity of the juvenile process, or to the handling of juveniles, surely a recommendation or suggestion to this effect would have appeared. The intimations, instead, [were] quite the other way."[70] The Court's reliance on the Commission's report is misplaced. The Commission's findings occurred before the developments in *In re Gault*. It is therefore likely that the Commission operated during a time when little to no constitutional rights had been granted to juveniles, and it is fair to understand its caution to extend those rights without precedent.[71]

The last significant reason the Court provided in denying the extension of a right to juvenile jury trials is that the abuses, if any, that occurred in the juvenile system are not "of constitutional dimension."[72] The Court credited these abuses on the "lack of resources and of dedication rather than to inherent unfairness."[73]

Since the Court's ruling in 1971, nearly all states adopted the holding of *McKeiver* and statutorily denied a juvenile's right to a jury trial, and although it has been called into doubt in numerous cases, very few states have actually found that the *McKeiver* rule no longer applies in their current juvenile justice system.[74]

In juvenile proceedings, the U.S. Supreme Court has identified the pertinent constitutional test: "The problem is to ascertain the precise impact of the due process requirement upon such proceedings."[75] Since annunciating this "constitutional test," courts have found a unique way in which the test applies to juvenile proceedings. Courts constitutionally protect the notice of charges, the right to confrontation and cross-examination, the privilege against self-incrimination, and double jeopardy protection,[76] but show a continued reluctance to recognize a jury trial as one of the constitutionally protected rights for juveniles.

4. *In re L.M.*: A New Movement in Juvenile Justice?

On June 20, 2008, the Kansas Supreme Court made national headlines when it found in favor of juvenile L.M.'s appeal on the issue of his constitutional right to a jury trial in juvenile court. Sixteen-year-old L.M. was charged and prosecuted as a juvenile offender for aggravated sexual battery and as a minor in possession of alcohol.[77] Prior to trial, L.M. requested a jury trial, and was denied.[78] At the bench trial, L.M. was found guilty and sentenced as a Serious Offender I,[79] with an eighteen-month sentence in juvenile corrections.[80] The fact that L.M. was subject to a more criminalized offender status paved the way for his appeal, and he argued that the harsh effect of sentencing with the juvenile justice code in Kansas had so eroded the benevolence of the juvenile system that it was indistinct from the adult criminal justice system.

L.M. appealed, arguing that he had a constitutional right to a jury trial and challenged the constitutionality of the Kansas statute which "provides that a juvenile who pleads not guilty is entitled to a 'trial to the court,' . . . and . . . gives the district court complete discretion in determining whether a juvenile should be granted a jury trial."[81]

L.M. relied on the Sixth and Fourteenth Amendments to the United States Constitution and made three arguments on appeal: first, he claimed that the changes in the Kansas Juvenile Justice Code (KJJC) eroded the juvenile

system to the point that it was indistinguishable from the adult criminal system, and if he were to be treated like an adult, he should have been afforded full constitutional protections; second, he claimed that juveniles were entitled to a jury trial under the language of the Kansas Constitution; and third, he argued that even if juveniles were not constitutionally entitled to a jury, he should have been afforded one because of the seriousness of the offense and stigma of the sentence imposed (having to register as a sex offender).[82]

The change that L.M. refers to is reflected in the Kansas statute which sets forth the purpose for the Kansas Juvenile Justice Court. This section currently provides that the primary goals of the juvenile justice code are "to promote public safety, hold juvenile offenders accountable for their behavior, and improve their ability to live more productively and responsibly in the community."[83] In 1982, when *Findlay* was decided, the KJJC was "focused on rehabilitation and the State's parental role in providing guidance, control, and discipline."[84] The new language of "holding offenders accountable for their behavior" and lack of acknowledgment of a need to provide rehabilitation and guidance to young offenders was a primary concern of the court in addressing L.M.'s appeal. Acknowledging the import of *McKeiver* and *Findlay*, but realizing the necessary evolution of the juvenile justice system, the Kansas Supreme Court reversed the lower court's ruling concluding "that the Kansas juvenile justice system has become more akin to an adult criminal prosecution," and as a result, "juveniles have a constitutional right to a jury trial under the Sixth and Fourteenth Amendments."[85]

II. THE HISTORY OF JUVENILE JUSTICE IN WASHINGTON STATE

The juvenile justice system in Washington State is governed by the Juvenile Justice Act of 1977 (RCW 13),[86] which establishes a system of accountability and rehabilitation for juvenile offenders. Washington was the first, and remains the only state, to use "determinative sentencing" and a

sentencing grid in juvenile proceedings.[87] Committed youth have determined minimum and maximum sentence terms; for example, fifteen to thirty-six weeks. Sentencing length is then determined using a point system based on the seriousness of the offense and the defendant's previous criminal history.[88] Although this is the makeup of the "standard range," juvenile courts and judges retain the authority to sentence outside the standard range through a finding of manifest injustice.[89]

In contrast to Kansas, Washington has not extended the right to a jury trial to juveniles, despite two compelling facts: first, the Juvenile Justice Act was amended in 1997 to be more focused on punishment rather than rehabilitation; second, a recent case similarly arguing the erosion of the juvenile justice system was recently brought to the state supreme court. But, in *State v. Chavez*, the Washington State Supreme Court held that "[t]he Juvenile Justice Act requiring that cases in juvenile court be tried without a jury does not violate constitutional provisions for right to jury trial because the juvenile justice system is rehabilitative rather than retributive."[90]

Additionally, the Washington State Constitution does not guarantee juveniles a right to a jury trial by reason of the 1997 amendments to the Juvenile Justice Code. These amendments increased emphasis on accountability for serious offenses, while maintaining the court's ability to address the unique circumstances and needs of the juvenile and retain access to rehabilitation rather than punishment.[91] The "tough" new 160-page juvenile justice law passed in 1997 mandated that sixteen and seventeen-year-old alleged offenders charged with felonies in adult court be given a jury trial option, but younger offenders—who may face the same charges in the same courts—do not get that choice.[92] While the 1997 amendments may have increased the rigidity of the Juvenile Justice Code in Washington State, they showed some initial promise in moving toward a system offering jury trial options to adolescent offenders. Unfortunately, "adolescence" cannot be defined with a bright line, and reform in Washington State, as in other states, is slow to proceed.

A. Baby Steps . . . Backward?

The federal case law at this point has unabashedly extended several constitutional rights to juvenile defendants, therefore making no distinction between juveniles and adults when it comes to constitutional protections: "Our common criminal law did not differentiate between the adult and the minor who had reached the age of criminal responsibility."[93]

At the same time, when the Washington State Constitution was adopted, it too made no distinction between juveniles and adults regarding the provision of a right to a jury trial. Even after the inception of Washington's juvenile court, juveniles were still statutorily entitled to a jury trial from 1905 until 1937.[94] Beginning in 1909, special provisions were being made in the Washington juvenile code, including the capacity statute which specifically contemplates that a "jury" will hear a case where a child between the ages of eight and twelve stands accused of committing a "crime."[95] Juveniles were entitled to jury trials when the Washington State Constitution was enacted in 1889, and they remained entitled until the Juvenile Justice Act was amended to repeal that right, almost forty years later,[96] an action that certainly begs the question—why?

Again, the rationale provided by the state is repetitive, but its words are insufficient to support its three-fold conclusion: first, that juvenile crimes are truly "non-criminal" offenses because of the nature of rehabilitation; second, that the court is acting in *loco parentis*; and finally, that introduction of a jury trial would disrupt this careful balance. The fear remains that juries are ill-equipped to handle juvenile proceedings. As a result, more juvenile offenders will be unfairly punished, and the aim will become more punitive than rehabilitative. This fear is unfounded for all reasons aforementioned. But of even greater necessity is the expression of distaste in the amendment of the Juvenile Justice Act to repeal a forty-year standing right—a right that, until it was repealed, had no negative history or problematic results, but was instead repealed under the guise of protecting the juvenile system.

Washington State is uniquely situated on this issue. The state's commitment to social justice and prisoner reform in response to the overcrowded jails and harsh punishments is a hallmark of its criminal justice system. Arguably, Washington has one of the strictest criminal codes of the country, but its activists seek to change the system into a more cost-efficient, rehabilitative institution focused on the value of each individual to society. Social reform strongly seeks to incorporate rehabilitative aspects into all criminal proceedings, and if the movement is toward rehabilitation for all criminal defendants, including adults, then any concern that constitutional jury trial rights cannot exist with a commitment to rehabilitation is unsubstantiated. It is clear that adults may be provided with jury trials and still maintain an element of rehabilitation in sentencing—why must juvenile proceedings be so different?

Washington State courts have consistently relied on *McKevier* and prior state precedent in holding that juveniles do not have a constitutional right to a jury trial, both under the U.S. Constitution and the state constitution.[97] In the 1999 case of *In re J.H.*, the Washington Court of Appeals, relying on the state's prior precedent, affirmed statutes denying juveniles the right to a jury trial, holding that such statutes do not violate the guarantees of equal protection under the state and federal constitutions, and that the lack of a jury trial supports the "unique rehabilitative nature" of juvenile proceedings.[98]

This precedent was further affirmed by the Washington State Supreme Court on March 20, 2008, in a 6–3 ruling to uphold a Court of Appeals ruling in the case of Azel Chavez.[99] Chavez was convicted in juvenile court on several counts, including attempted first-degree murder, first-degree robbery, and second-degree assault.[100] In 2004, when he was fourteen, Chavez was accused of attempting to kill three high school football coaches; he then led police on a high-speed chase through three counties that ended when he collided with a police car on the Hood Canal Bridge.[101] He was sentenced to up to seven years in detention, with a one-year

enhancement for possession of a firearm.[102] The seriousness of the offense is eerily similar to the case of *In re L.M.* in Kansas. Given not only the noxious nature of the crime, but also the harshness of the 1997 amendments to the Juvenile Justice Code—which, while promising rehabilitation, actually seek to impose greater punishment on juvenile offenders and move more serious juvenile offenders to the adult criminal system—Washington State is no longer in a position to remain juxtaposed with the decision of the Kansas Supreme Court. Although the Washington State Supreme Court has consistently accepted the argument that the Juvenile Justice Code remains distinct from the adult penal system, focusing more on rehabilitation than punishment, the dissent, led by Justice Barbara Madsen, said that, "recognizing a right to a trial by jury is not inconsistent with this defining aspect of the juvenile justice system."[103]

B. The Possibility of Advancement

Could the decision of the Kansas Supreme Court mark a new movement in juvenile justice? Like the Court concluded in *In re L.M.*, some argue that the juvenile system, like that in Washington State, has eroded so much that it is indistinguishable from the adult justice system, and that the juvenile justice system, while conceptually ideological, is nothing more than a myth.[104] Proponents and creators of the juvenile justice system envisioned it "less like a court and more like a social welfare agency."[105] Juveniles brought to the attention of the juvenile court were to be helped or protected, rather than punished as adults.[106] As stated earlier, children were not to be subjected "to the rigors of formal criminal trials," but were to be handled informally. In exchange for this informality, they were denied certain rights and protections afforded to adults in formal proceedings that were deemed unnecessary in informal proceeding.[107]

Proponents of the viewpoint that juveniles should have a constitutional right to a jury trial utilize the rationale that the Kansas Supreme Court used in *In re L.M.* They argue that the rehabilitative and "nurturing" ideology of

the juvenile justice system is, in essence, nonexistent, and the movement is toward one criminal justice system rather than two that distinguish between adults and children.[108] As such, constitutional protections should be extended to all in that justice system.[109]

Conversely, proponents of the "conventional" viewpoint—that a juvenile does *not* have a constitutional right to a jury trial—believe that the very individualized, informal, rehabilitative approach attacked by opponents is the very thing worth saving about the juvenile justice system. Moreover, proponents argue that the inclusion of jury trial rights will interfere with the system's ability to treat juveniles with compassion focusing primarily on rehabilitation. Proponents of this view align with the ideals of Justice Blackmun and the Supreme Court in *McKeiver*.

Courts and commentators, however, have missed the middle ground and the coexistence of the two ideals. The construction of the juvenile justice system no longer needs to be defined by one characteristic or the other—the two are not mutually exclusive, but rather can and, more importantly, *should* exist simultaneously. In fact, compassion, rehabilitation, and fairness cannot be served in any other way. Due process requires a new juvenile court; compassion and a rehabilitative focus require the old court system. The two must find a way to meet.

III. WHY JURY TRIALS MATTER TO SOCIETY AND TO THE ADOLESCENT OFFENDER

I consider trial by jury the greatest anchor ever yet devised by humankind for holding a government to the principles of its constitution.

—Thomas Jefferson, 1792

A. Why Jury Trials Matter

The right to a jury trial, along with the other rights encompassed in the Sixth and Fourteenth Amendments, make up fundamental aspects of the Constitution's individual rights. Above all, this right protects offenders

from judicial bias and adjudicative unfairness; it is a check against state and judicial power. With it comes the opportunity to inject the norms and values of society and "reasonable" persons into the court room—norms and values that are sometimes lost upon the judicial system because they may be removed from mainstream America. A criminal defendant's right to a jury trial was one of the first rights adopted from England, and remains one of the most valued American rights and protections.[110] In fact, no country in the history of the world has turned to juries more than the United States.[111] Invoking juries requires that the law be explained to average individuals, and as a result of this historical outreach and educational effort, the judiciary system has been empowered, making the United States the most independent judiciary in the world. [112]

At the same time, the right to a trial by jury is not only a display of democracy to the accused, but also to the public. Serving on a jury allows the public to examine the judicial system and participate in its processes.[113] Moreover, jury service is a civic responsibility essential to the functioning of democracy, second only to voting itself.[114]

Jury trials are essentially an effort to seek and determine truth. Throughout history, the methods utilized to determine innocence or guilt have been ineffective and physically unacceptable by the standards now recognized today; for example, an accused would often be thrown into a pool to see if he would sink (guilty) or float (innocent).[115] Often the innocent were not retrieved from the water in time to ensure survival.[116] Juries bear the great burden of determining guilt and innocence—a task not required in any other governmental body—and simultaneously act as a barometer of society's values and protection against centralized institutional power.[117]

B. Why Jury Trials Are Imperative for the Adolescent Offender in Delinquency Proceedings

The current juvenile justice system results in juveniles "being denied both the protections extended to adults in the criminal system as well as the 'solicitous care and regenerative treatment postulated for children.'"[118] The due process requirements in the adult criminal system are centered on norms of fairness; therefore, the expansion of constitutional rights to adolescents should not necessarily focus on the particulars of the rights the adult system enjoys, but rather the underlying fairness accompanying each right, its purpose for existence, and how such fairness can best be achieved for juveniles.[119] *McKiever*, the first "no rights" decision since *Gault*, made no attempt to explain how its denial of jury trial rights fit into a coherent account of fairness for juveniles.[120] Jury trial rights are imperative on issues of fairness to (1) provide a check against a judge's abuse of discretion, (2) promote accurate fact finding, (3) compensate for potentially ineffective or inadequate counsel, and (4) provide legitimacy to the proceeding.[121]

1. Jury Trials Provide a Check Against Unbridled Judicial Discretion[122]

One overriding quality of the juvenile justice system is that decisions as to guilt, innocence, and appropriate sentencing are in the hands of a single judge. This principle, however, relies on the assumption that juvenile court judges will not be clouded by their own biases and prejudices, and that they are capable of consistently delivering fair dispositions.[123] One commentator noted, "Although judges are certainly capable of adjudicating juvenile procedures in a fair manner, only a jury could ensure that an adolescent is protected from a judge who is overburdened, or even worse, jaded."[124] Judges may be unfairly impartial for several reasons, including familiarity with a defendant from previous appearances, damaging evidence, or previous decisions on similar charges.[125]

Juries in adult proceedings were originally constructed to ensure fairness by placing a check on a judge's unbridled discretion. Because judges alone

decide the fate of the child, all safeguards to ensuring fairness should be imposed. If part of the original purpose of juries was to mitigate the plenary power that judges exercise to increase the probability of a fair result, then it would seem absurd that the same protection is unnecessary in juvenile proceedings.[126]

2. Jury Trials Promote Accurate Fact Finding and Discovery of Truth[127]

A jury trial is necessary in juvenile delinquency proceedings in order to ensure accurate and fair fact finding. Studies have shown that judges and juries can reach opposing verdicts, even when presented with the same evidence.[128] Fact finding by a jury is necessarily a more reasoned process than fact finding by an individual, because the defendant, case, evidence, and facts are viewed by multiple people who must reach a consensus of guilt in order to convict, ensuring that very few evidentiary questions and facts go unanswered or unaddressed.[129]

At the same time, juries fill the gap that likely exists between an adult judge and an adolescent offender, particularly because juries are a cross section of society, and therefore, representative of the entire population. Similarly, the potential addition of Youth Advisory Juries to traditional juvenile juries (a concept discussed later in this article) would assist in additional communion between the two.[130] Most importantly, however, juries provide a very human element to fact finding and adjudication of guilt or innocence because they incorporate common sense, community standards, and human emotion that can potentially be lost in a legal proceeding.[131]

3. Jury Trials Compensate for Unfairness of Potentially Inadequate Counsel[132]

Many proponents of juvenile jury trial rights argue that protection and fairness provided by a jury is necessary because the juvenile justice system

is becoming characteristically equated with inadequate defense counsel.[133] Adolescents often receive subpar legal counsel in comparison to the representation in adult proceedings because juvenile defense lawyers are often overworked and undersupervised.[134]

Complications arising from juvenile representation further affect a defense counselor's ability to advocate for his or her client. Such complications include the tenuous psychological divide between being a protector of an adolescent's legal rights and being a guardian-like figure acting in the juvenile's best interest, as well as balancing conscious or subconscious disapproval of the juvenile's behavior.[135]

4. Jury Trials Provide Legitimacy to the Proceeding from the Adolescent's Perspective[136]

Jury trials may serve to legitimize the proceeding in the eyes of the adolescent; without them, the adolescent likely feels he or she was not afforded the same rights that others similarly situated were, and treatment was therefore unfair. This concept of "procedural fairness" plays a critical role in understanding why people obey the law, the cognitive and emotional development of adolescents to obey the law, and the rates of adolescent recidivism, discussed in greater detail below. At the same time, participation in the legal process, the very foundation upon which jury trials were constructed, empowers adolescents to take an element of responsibility and involvement in their ultimate fate—an aspect painfully missing from the current juvenile system. The perceptions of fairness, impartiality, and involvement that adolescents are likely to feel in a jury trial proceeding will only serve to heighten rehabilitation and accountability for their wrong act.[137]

To deny *any* criminal defendant, regardless of his or her age, the right to a jury trial is truly a denial of a fundamental constitutional right. Courts and commentators have cited numerous reasons for concern in denying juveniles the right to a jury trial, but what is being masked by their concern

is an overall feeling of inefficiency. Courts are looking to take the "easy way out."[138] Jury trials are long and often inefficient procedures, but they are of such critical importance that the juvenile system should not be "protected" from their shortcomings. The right to a jury trial is of even greater importance in the juvenile arena because of the courts' and society's inability to relate to its youth, particularly its adolescent offenders.

Clearly, it is not unprecedented to extend the right to a jury trial to juvenile offenders, and it would not even be far from the scope of other constitutional rights now active in the juvenile justice system. But that is not to say that it would be without its difficulties and issues, the most salient of which will likely be: who makes up the jury? As we will explore later in the article, this may not be as big of a hurdle as once believed.

IV. Why Rehabilitation Matters to the Adolescent Offender and Why it Should be Maintained

The progressive attitude that conceived of the juvenile court system did so because of the unique aspect and position of juveniles in this society. Juveniles, for better or worse, are in an extremely different position than adults, in both maturity (physical, cognitive, and emotional) and in the capacity to learn, grow, and change—a capacity that, we as adults know, becomes increasingly difficult with age. The issue is not whether to eliminate the juvenile court system altogether—to do so would be foolish and treat minors, who are deservedly distinguishable from adults, with exact similarity. This section examines the psychology behind why people obey the law, the important distinction between children and adults, the danger of losing the adolescent in a dichotomous system, and why methods of rehabilitation remain crucial for teens.

A. Why People Obey the Law and the Theory of Procedural Justice

Procedural justice theory is the notion that people are more likely to obey the law and comply with generally accepted social policy if they believe

that the procedures utilized by the justice system are fair, unbiased, and efficient.[139] This theory is relevant to a juvenile's right to a jury trial because, if the juvenile feels that the process with which he was sentenced was unfair, he may be less likely to respect the law, leading to higher recidivism rates. Several empirical studies, conducted by Tom Tyler and others, suggest that people obey the law when the rules and procedures are consistent with their personal attitudes and values.[140] That is, when people are personally committed to obeying the law, they voluntarily assume the obligation to do so, irrespective of the risk of punishment.[141] People care enormously about process and greatly value the opportunity to be heard in an official and unofficial capacity, regardless of the outcome of that fact finding.[142] Tyler's research further suggests that the behavior of and processes used by police officers and judges—if perceived by the alleged offender to be fair, unbiased, and benevolent—can encourage voluntary acceptance of and compliance with decisions made by legal authorities.[143] Such voluntary acceptance of the rules and norms of society can thus lead to lower rates of reoffending.[144] According to Tyler, "one's sense of obligation to a certain set of rules is the key element in the concept of legitimacy, as it leads to voluntary deference."[145]

The benefits of a self-regulating and voluntary justice system are innumerable, in terms of cost and efficiency, and value to the offender.[146] Empirical evidence supports the notion that forced compliance and coercion as a means to shape individual and societal behavior is costly in terms of staffing, time, and resources.[147] Although Tyler's research has focused primarily on adult populations, the influence of legitimacy and personal morality on child development and juvenile delinquency has been examined in several studies, which lay the groundwork for further exploration of the effect of self-regulation on adolescent recidivism rates.[148] Studies suggest that adolescents who display "higher stages of moral reasoning" are less likely to engage in delinquent behavior or reoffend because of feelings of personal commitment rather than pressure to conform.[149] Moreover, "the

evidence presented . . . suggests that constraint between reported noncompliance with laws and affective-evaluative orientations toward the law, legal authorities, and legal institutions tends to be greater among individuals to whom law is more salient than among those to whom law is less salient."[150]

B. The Important Distinction Between Childhood and Adolescence and the Intersection of Procedural Justice on Adolescent Behavior and Recidivism Rates

The picture of the legal construction of childhood aligns closely with our notions of childhood in society—children are innocent beings, incapable of making competent decisions, and in need of care and protection; it is this social construct of childhood that has generated much of the legal policy aimed at juveniles.[151] In reality, however, the legal notion of childhood is far more complex, and policy makers, who seem capable of discerning a young child from an adult, have proven incapable of any social construction for adolescence, classifying these individuals as children or as adults, without a clear image of the uniqueness of this growth phase in a young person's life.[152]

Much of the legal theory and policy that drives societal decisions are based on immaturity of the child. Children are dependent on adults and the state for survival, basic needs, and education that will allow them to become mature adults.[153] Moreover, children may lack the capacity to make sound decisions because of the cognitive immaturity of their age. This leads to the belief that others should protect children from undue influence they may feel as a result of their dependence on society.[154] As a result of this societal image, children are assumed to be inherently different than adults—cognitively, emotionally, physically, psychologically—and therefore, "values of autonomy, responsibility, and liberty simply do not apply to them."[155]

1. The Legal Socialization and Interaction of Adolescents with the Legal System

Adolescence complicates the legal construction of childhood. Teens are somewhat of a lost generation in the legal system; no one would propose that an adolescent and a toddler are similar in their reasoning, cognitive ability, or emotional maturity, and because of that, "the presumptions of developmental immaturity that shape the legal account of childhood do not fit comfortably with conventional images of adolescence."[156] Conventional wisdom, however, supports the notion that adolescents, though distinct from children, are not fully formed adults. Many are still dependent on their parents or the state financially, emotionally, or physically, and this age is particularly vulnerable to immature decisionmaking and negative peer pressure.[157] Because the law and society often fear the instability of this particular group of juveniles, ease and efficiency support categorizing them either as children or as adults, thus ignoring this very unique developmental stage of growth.[158]

Behavioral psychologists studying adolescent populations and their interactions with the legal system generally focus their research on a question closely related to why people obey the law, discussed in depth above. Their research focuses more on the factors that shape adolescent criminal behavior that are often far more involved than mere maturation and psychological development.[159] An adolescent's "legal socialization" is not a static process between childhood and adulthood; it is ever-developing and evolving and is heavily influenced by one's peers, family unit, and neighborhood culture.[160] Similarly, an adolescent's law-related behavior is shaped by a myriad of factors, including legitimacy of the legal process and authority figures, an obligation to obey the law from a normative perspective, and personal legal cynicism.[161]

Specifically, research has found that an adolescent's perception of fair procedures is based upon the degree to which the adolescent was given the opportunity to be heard in a judicial setting; the neutrality, quality, and

benevolence of the fact-finding process as well as whether the adolescent was treated with respect and politeness.[162] Procedural justice directly affects an adolescent's compliance with the law and similarly affects whether an adolescent views the law, authoritarian figures, and legal institutions as legitimate.[163] Empirically, a causal relationship thus exists between an adolescent's perceptions of procedural fairness and the likelihood that the adolescent will initially encounter the legal system or later reoffend.

2. The Causal Connection Between Legal Socialization, Procedural Fairness, and Adolescent Recidivism Rates

New social science research focusing on whether a causal connection exists between procedural justice and rates of juvenile recidivism has found that the causal connection between the two is not outcome dependent.[164] An adolescent was less likely to reoffend because he deemed the procedure "fair" (and therefore legitimate) rather than because of a positive or negative outcome in his adjudication.[165]

At the same time, research indicates a link between an adolescent's capacity to take responsibility for his actions and his ability and willingness to participate in the legal process and rehabilitative services.[166] The connection between an adolescent's mental, emotional, and cognitive development and his sense of accountability and cooperation with rehabilitation is also relevant in contexts outside the criminal arena. For example, in the civil context, an adolescent's development and his sense of cooperation is pertinent when commitment or inpatient treatment is a consideration; an adolescent is more likely to cooperate with therapeutic measures if he has ownership in and respect for the decision-making process.[167] Evidence suggests that allowing adolescents to direct their own care in the therapeutic or medical context enhances the ultimate effect and success of their rehabilitation.[168] Such an examination "highlights the importance of ensuring that juveniles have the opportunity for meaningful and knowing participation in the legal system."[169] Such meaningful and

knowing participation increases the likelihood that an adolescent will deem the procedure "fair," and decreases the rates of adolescent recidivism. Such involvement also promotes success in an adolescent offender's rehabilitation and reintegration into society, an important concept of child welfare in the juvenile justice system further discussed below.

3. Slipping Through the Cracks

Adolescents are neither adults nor children, and in a dichotomous legal system, they seem to fall through the cracks by being denied access to both groups' protections and rights.[170] Children cross the line to legal adulthood at different rates and in different stages, yet the law provides no clear distinction of age at which to consider a child an adult. For example, at age ten, a youth charged with murder may be tried as an adult in many states, and high school students have rights of political expression protected by the First Amendment.[171] However, young adults cannot consent to most medical procedures, including abortion or sterilization, cannot vote until age eighteen, and cannot consume alcohol until age twenty-one, three years after they are able to enter the armed forces.[172] The logic that divides this boundary is far from obvious.

During the twentieth and twenty-first centuries, legal policy makers ignored adolescence and continued to shift the boundary between childhood and adulthood depending on the policy goal at stake.[173] More bluntly, "American law embodies an informal legal presumption that adolescents are children, subject to a fair number of exceptions. . . . It has not worked well in juvenile justice policy, where the simplistic categorization . . . has undermined our ability to achieve a viable, effective, and human juvenile justice approach."[174]

The social aspects forming legal policy around the juvenile court system present unique challenges in attending to adolescence as a distinct developmental stage between childhood and adulthood. Only after the court started extending rights to juveniles was this distinction acknowledged and

aided. Legal definitions have too long ignored the transitional stage between childhood and adulthood. Individually placing adolescents into either category based on maturity or culpability has serious consequences, because these adolescents are neither innocent children nor blameworthy adults.[175] In her book about the legal construction of childhood, Elizabeth Scott suggests that "policies that fail to acknowledge this are unlikely to serve the public interest or that of young offenders."[176]

In the juvenile justice system, the goals of providing youth welfare and welfare for society have been treated as irreconcilable.[177] Juvenile courts have proven to be an arena where the dichotomy between childhood and adulthood, and the absence of recognition of adolescence, leads to ineffective policies and subpar approaches for handling youth offenders.[178] The gradual expansion of constitutional protections and rights to juveniles has proven an effective means of respecting the uniqueness of the adolescent who is neither an adult nor a child.[179] In order to ensure that protection remains for these unique individuals, courts must continue to adapt and extend rights to adolescents as necessary to account for the differences between a child offender, an adolescent, and an adult.

C. Maintaining Models of Rehabilitation and Therapeutic Jurisprudence for Adolescents

The early juvenile court was so entrenched in ideals of rehabilitation that blameworthiness and responsibility had no place in its nurturing model.[180] But as juvenile crime increased, particularly in the age group that most social psychologists refer to as adolescence (ages twelve to eighteen), a cry came for juvenile reform. Proponents of transferring adolescent offenders to adult courts called for adult penalties, insisting that adolescents are more mature and more responsible than children, and therefore more culpable and blameworthy.[181] In the justice system—all things being equal—the more noxious the crime, the greater the punishment; but all things are not equal when comparing adolescent and adult crime.[182] Adolescents are more able

to change and adapt than adults and have a greater emotional, mental, and cognitive ability to change than adults. Because of this, the role rehabilitation plays in the juvenile justice system is critical to its ability to achieve adolescent compliance and reduced recidivism rates.

The issue of handling adolescent crime has sharply divided American society, mostly because people neither expect adolescents to be criminals, nor do they anticipate them to commit such radically violent crimes.[183] Because this dilemma forced policymakers to define childhood and criminal activity along a continuum rather than a bright line, two ideologies prevailed. First, already discussed at length, adolescents have different competencies than adults and thus should be treated differently than adults. Second, adolescents have a different potential for change than adults; therefore, the justice system should focus on the rehabilitation of young offenders rather than the strict punishment associated with adult proceedings.[184]

It has been postulated that rehabilitative goals have a place and role in adult criminal justice, but these goals have an even more important role in juvenile criminal justice, especially to adolescents because of the enormous cognitive and emotional growth and maturation they experience during this period.[185] Adolescents are particularly malleable, often influenced heavily by parents, peers, schools, and other settings. Given this malleability and potential for change not associated with adulthood, "transferring juveniles into a criminal justice system that precludes a rehabilitative response may not be very sensible public policy" and may actually allow society to relinquish children for whom there is hope.[186] Adolescence is also a time when emotional, intellectual, and social habits become engrained and endure into the adolescent's adult life. Therefore, "adoption of the rehabilitative stance toward juvenile offenders is not only especially appropriate but also especially consequential."[187]

Bad decisions about juvenile justice policy and punishment may have cumulative consequences for the adolescent that are difficult, if not

impossible, to later undo.[188] Social psychologists acknowledge that adolescents, more than children, must make mistakes in order to learn, and as such, they are prime candidates for rehabilitation if done correctly.[189] Adolescent offenders should be sentenced to special facilities that avoid the brutality of adult prisons and address the special needs of a young adult, including education, vocational training, and nutritional needs.[190] "Adult correctional facilities rarely address rehabilitative goals with adult offenders. They are even more poorly suited to address the special rehabilitative needs and opportunities posed by juvenile offenders."[191] Additionally, imposing long, harsh, punitive sentences carries different implications when the offender is an adolescent or child than when the offender is an adult.[192]

At the same time, adopting a rehabilitative approach for adolescent offenders does not mean that punishment has no merit and should not be used. Instead, it means that adolescent offenders "should be punished and held responsible within a system designed to treat children, not fully mature adults."[193] Research suggests that rehabilitation is the "most reasonable course of action for juvenile offenders, not only because they are less culpable, but also because as their brains are developing they are especially amenable to learning how to behave properly."[194] Adolescents, because their brains are not fully developed, cannot fully think through and contemplate the consequences of their actions. If premeditative thought is not inherently present in the adolescent brain, then deterrence is ineffective, and society's goal should be assisting the adolescent in becoming a fully functioning member of society.[195]

V. EXPANDING CONSTITUTIONAL RIGHTS AND EXPLORING REHABILITATION: HOW TEEN COURTS AND YOUTH ADVISORY JURIES MAY BE USED AS MODELS IN JUVENILE JURY RIGHTS REFORM

The vision behind teen court programs, including Washington State's teen court program, is to utilize positive peer pressure, self-determination, ownership, and responsibility in juvenile proceedings for misdemeanors to encourage participation and reduce recidivism rates. The well-established foundation laid by teen court programs can further be channeled into potential Youth Advisory Juries, which can act as a stepping stone to full integration of jury trial rights for juveniles.

A. What are Teen Courts?

Teen courts are a division within several juvenile court systems. Although they utilize court-like procedures, they are essentially teen diversion programs[196] that are typically offered to first-time misdemeanor offenders, often charged with traffic offenses, assault, possession of alcohol, theft, disorderly conduct, or truancy.[197]

Predecessors to modern teen courts appeared at least sixty years ago. The modern idea of teen courts started to take shape in the 1970s and experienced a particular boom of popularity in the mid- to late-1990s, due particularly to financial support from the Justice Department's Office of Juvenile Justice and Delinquency Prevention (OJJDP).[198] Currently, more than eight hundred teen courts operate nationwide, with many more in the planning stages.[199] Paula A. Nessel of the American Bar Association notes that "their rapid growth is compelling evidence that they are fulfilling a recognized need."[200] Teen courts provide a voluntary alternative to the traditional juvenile justice system for offenders charged with less serious crimes. Proceedings mirror those of a traditional court, but typically, the jury, prosecutor, defense counsel, bailiff, and clerk are all youths in an almost entirely youth-run courthouse.[201] Currently, in most teen courts,

young offenders are referred to the program for sentencing after admitting to the charges against them. In most courts, teens are not responsible for adjudicating guilt or innocence (although a few programs utilize this approach).[202]

The extent of youth responsibility in any given teen court program depends heavily on the model being implemented.[203] In general, teen court models are grouped into four basic categories: adult judge, youth judge, youth tribunal, and peer jury.[204] Adult judge and peer jury models most closely mirror typical court proceedings. The adult judge model is similar to the youth judge model, except that a figure from the legal community (usually a volunteer attorney or retired judge) acts as the judge and manages courtroom dynamics.[205]

The youth tribunal model eliminates the jury from the proceedings and instead consists of a panel of youth judges that hear cases presented by youth attorneys.[206] The peer jury model closely aligns with a grand jury. Youth juries question defendants directly after the case is presented by youth or adult attorneys.[207] All youth models maximize youth involvement because both require that teens are involved in and perform all necessary roles.[208]

Philosophically, teen courts embrace the hallmarks associated with the juvenile justice system, including providing rehabilitative qualities for the defendant, victim, and community as they all collaborate to resolve the dispute.[209] At the same time, teen court jury trials are similar to the adult process. Judi Bertrand, an adult judge who oversees teen court proceedings in Texas, notes: "To have to get up there and testify makes them more nervous. This is better than just paying a fine, because they have to take responsibility."[210]

B. Washington State's Teen Court Program

Washington State is home to over thirty teen court offshoots, including teen courts in Bellingham, Lake Forest Park, Auburn, Kirkland, Port

Angeles, and Issaquah.[211] The oldest teen court in Washington State is in Issaquah and was created in the 1960s.[212] The most nationally recognized and visible teen court in the state, however, is the Whatcom County Teen Court, located in Bellingham.

The Whatcom County Teen Court was created in 1998 as a result of discussion between the Superior Court Commissioner who was assigned to juvenile offenses that year and Northwest Youth Services.[213] Discussions centered on new methods for providing community service to juvenile offenders, offering them a way to constructively give back to their community, shortening the time needed to resolve charges, and reinforcing the need for individual responsibility and responsibility to the community.[214] Whatcom County Teen Court cases are traditionally heard in front of a jury of high school students who are charged with determining the defendant's penalties.[215] Because of its commitment to rehabilitation of adolescent offenders, the Whatcom County Teen Court has received the Liberty Bell Award from the Whatcom County Bar Association, as well as the Ken Grass Founders Award from the Whatcom County Commission on Children and Youth.[216]

According to a Washington State study by the U.S. Department of Justice, adolescents whose cases are heard in Washington teen courts have only a 6 percent recidivism rate, compared to an 18 percent recidivism rate for juvenile cases heard in traditional courts.[217] At the same time, Washington State taxpayers save over ninety-two thousand dollars for each case that is diverted from traditional courts to state teen courts.[218]

Collectively, Washington State approached its commitment to teen courts in a unique manner.[219] The Council on Public Legal Education—which is housed inside the Washington State Bar Association—is committed to "the education of the people of Washington about their legal rights and responsibilities in order to help them participate effectively in a democracy and in the justice system."[220] Because of the value that youth courts were shown to have on educating volunteers and offenders about the law and the

consequences of their actions, the council launched a statewide campaign to strengthen existing youth courts and create new youth courts.[221]

C. How Teen Courts May Act as a Stepping Stone for Jury Trial Integration Without Impinging on the Uniqueness of the Juvenile Justice System

Teen courts were developed as a community-based approach to the problem of adolescent crime.[222] The guiding principle of teen courts is that youth are more responsive to the disapproval of their peers than to disapproval of authority and the legal system.[223] Although teen courts across the country utilize different approaches, what seems to be consistent throughout is the imposition of sentences by youth juries.[224]

The developers of teen courts strongly believe that, because an adolescent's cognitive and emotional development (or lack thereof) makes them particularly susceptible to peer-influence, courts where teens are able to question and confront one another on peer delinquent behavior have a powerful rehabilitative effect.[225] Teen courts, therefore, attempt to harness peer pressure and use the influence of peers in a positive manner, namely as a deterrent for future crime.[226]

Additionally, many—if not all—adolescent defendants going through the teen court system are required to serve a term as a jury member for other youth offenders.[227] Because of this requirement, teen courts are thought to have a beneficial social and educational effect on teens and assist in reintegrating delinquent youth back into society.[228] The goal of teen courts is ultimately rehabilitative with respect to teen defendants (a hallmark of juvenile proceedings), while requiring acknowledgment of responsibility (a hallmark of adult proceedings).[229]

For too long, adolescents have had the worst of both worlds—adult protections are not extended to them because they are not adults, but childhood rehabilitative foci are ignored because they are not children.[230] The difficulty in creating policy that expands the teen court model is that the program is generally limited to minor crimes committed by first-time

offenders.[231] It has yet to be seen how a youth court would respond to major felony cases or the imposition of sentences of incarceration.[232]

Additionally, several questions inevitably arise regarding expansion of this model into full jury trial rights for adolescent defendants. Clearly, "teens could not be the principle participants or decision makers" in juvenile jury trials for many of the same reasons that they should not be treated as adults—cognitively and emotionally they cannot and should not be expected to adjudicate cases unsupervised because they lack the educational and life experiences that make this possible for adults.[233] However, this should not discount the role that teens could play in ordinary juvenile court proceedings and potential jury trials. Youth Advisory Juries may act as the step needed to integrate rehabilitative teen court models into full jury trials for adolescent offenders.

Youth Advisory Juries could be comprised of six to eight members, many of whom could be conditionally released juveniles serving probationary sentences.[234] In this sense, selection of adolescent jurors would more closely align with selection of jurors in teen courts, rather than traditional selection of adult jurors who are called to serve via summons and are selected only after a lengthy questioning process by case counsel. As opposed to acting on their own volition, the teen jurors would merely comprise a part of an otherwise traditional jury; that is, jury selection and the role of the jury would be identical to adult proceedings, save for the presence of six to eight teen jurors assisting in the proceedings. Taking a cue from teen courts, these Youth Advisory Juries should be allowed to make comments, ask questions of the judge and other jury members, and witness adjudication of guilt or innocence. Under an approach like this, the court and the jury do not lose their actual authority as a decision-making body.[235] A traditional jury would still determine guilt or innocence; however, youth involvement makes the process less adversarial and more aligned with "peer review" associated with adult jury trials. At the same time, forcing a teen to face his or her peers will have tremendous rehabilitative aspects (as seen from teen court

models) and still serve the needs of the adult justice system, that is, constitutionally protected rights and offender responsibility. Additionally, the teens serving on the Youth Advisory Jury, many of whom were offenders themselves, will be provided with a unique perspective of real adjudications, which may serve as a deterrent or preventative tool for the youth juror himself as his empathy and institutional understanding increase.[236]

The creation of Youth Advisory Juries should be given serious consideration as a role in jury trials for juvenile proceedings. The strong success of teen courts suggests that adolescents should play a role in adjudications.[237] The most logical place to employ Youth Advisory Juries is in a state like Washington, where successful teen courts are already operating, and social activism remains focused on rehabilitation for criminal defendants.[238] If states can shift their focus to the idea that a juvenile's constitutional rights can be protected while simultaneously upholding values of rehabilitation, then juvenile adjudication may adopt a more holistic, constitutionally appropriate approach to treatment of adolescents.

It is crucial that all states, especially Washington State, with its unique opportunity for employment of Youth Advisory Juries, recognize the democratic values and fundamental fairness that make extension of constitutional rights to all adolescents imperative. The foundation of this country did not distinguish between adults and children for the purpose of constitutional rights, and neither did the Washington State Constitution when it was adopted. Courts are ill-placed to decide, years later, that such a right never existed. Courts are essentially picking and choosing the rights they deem "appropriate" for juveniles under the guise of protecting the careful balance between punishment and rehabilitation.

CONCLUSION

The sad truth is that our society greatly undervalues young people. Adolescents comprise a group of individuals that adults fear and fear for;

the result is a standstill on how to promote their wellbeing. Simply put, we have stopped caring enough to continue moving forward. We must constantly experiment, evaluate, and rethink matters if we wish to contribute meaningfully to the definition of "what works" in juvenile court adjudication.[239] "Although American public rhetoric may suggest that we cherish the young, the minuscule amount of government resources dedicated to programs dealing with children's issues demonstrates that the problems of the young are a low social priority."[240]

Without restoration of several constitutional rights to the juvenile justice system, adolescents are easy prey for a system that does not seem to know where they best belong. We cannot dismiss the juvenile justice system as moot or mythical, because the rehabilitative focus of this system has proven beneficial. Unless courts are willing to begin to view an adolescent as deserving of constitutional protections, how can courts truly protect the best interests of the juvenile? How does a court system that systematically denies juveniles their constitutional rights, while at the same time attempts to protect them, ever operate to its fullest capacity? The bottom line is that it cannot. In the same way that the adult criminal justice system cannot operate fairly and efficiently without constitutional considerations, neither can the juvenile system. To suggest anything else would be to say that juvenile offenders are less deserving of the very due process and equal protection clauses that this country was founded on.

Jury trials are necessary for juvenile offenders so that they may protect themselves from being subjected to biases, in the same way that jury trials protect adults in adult proceedings. Because adolescents are a uniquely malleable group, using a youth jury may steer peer pressure in positive, rehabilitative ways that make adolescents accountable to their communities. It is time that adolescents have a place in the American legal system. Because adolescents are neither adults nor children, the gap created simultaneously removes childhood compassion and adult constitutional

protections. If we don't mind the gap, we risk losing this incredibly vulnerable group.

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[2] Monya M. Bunch, *Juvenile Transfer Proceedings: A Place for Restorative Justice Values*, 47 HOW. L.J. 909, 909 (2004) (quoting NIKKI GIOVANNI, *A Civil Rights Journey*, *in* BLUES FOR ALL THE CHANGES (1999)).

[3] Fern L. Kletter, *Juvenile Courts and Delinquent and Dependent Children*, 47 AM. JUR. 2D JUVENILE COURTS, ETC. § 94 (2010).

[4] U.S. CONST. amend. VI.

[5] McKeiver v. Pennsylvania, 403 U.S. 528 (1971).

[6] The names of juvenile defendants are not included in the case material to protect privacy.

[7] *In re* L.M., 186 P.3d 164 (2008).

[8] *Parens patriae* refers to "the state [acting] in its capacity as provider of protection to those unable to care for themselves," BLACK'S LAW DICTIONARY (8th ed. 2004).

[9] *In re* L.M., 186 P.3d 164.

[10] *Id.*

[11] Kansas Defenders Blog, http://kansasdefenders.blogspot.com/2008_06_01_ archive.html (June 20, 2008, 6:17 p.m.).

[12] Mike Belt, *Court: Juveniles Have Right to Jury Trial*, LAWRENCE JOURNAL WORLD & NEWS, June 21, 2008, *available at* http://www2.ljworld.com/news/2008/jun/21/ court_juveniles_have_right_jury_trial/.

[13] Gerald P. Hill, *Revisiting Juvenile Justice: The Requirement for Jury Trials in Juvenile Proceedings Under the Sixth Amendment*, 9 FLA. COASTAL L. REV. 143, 144 (2008).

[14] *Id.* at 145.

[15] *Id*.

[16] MICHAEL GROSSBERG, CHANGING CONCEPTIONS OF CHILD WELFARE IN THE UNITED STATES, 1820–1935 at 3 (Margaret K. Rosenheim et al. eds., 2002).

[17] *Id.* at 3–4.

[18] *Id.* at 4.

[19] *Id.*

[20] *Id.* at 5.

[21] *Id.*

[22] *Id.*

[23] *Id.* at 22.

[24] *Id.* at 21.

[25] *Id.*
[26] *Id.*
[27] *Id.* at 22.
[28] "If we do not pull him up [the street waif] will pull us down." GROSSBERG, *supra* note 16, at 22 (quoting J.F. Atkinson, Boy's Club organizer).
[29] *Id.* at 22–23.
[30] *Id.* at 23.
[31] *Id.* (quoting Hamilton Craves).
[32] GROSSBERG, *supra* note 16, at 22.
[33] *Id.* at 37–38.
[34] *Id.*
[35] *Id.* at 38.
[36] *Id.* (internal citations omitted).
[37] *Id.*
[38] DAVID S. TANENHAUS, THE EVOLUTION OF JUVENILE COURTS IN THE EARLY TWENTIETH CENTURY: BEYOND THE MYTH OF IMMACULATE CONSTRUCTION 43 (Margaret K. Rosenheim et al. eds., 2002).
[39] *Id.* at 44.
[40] *Id.*
[41] *Id.* at 45.
[42] *Id.* at 69.
[43] *Id.* at 69–70.
[44] MARGARET K. ROSENHEIM, THE MODERN AMERICAN JUVENILE COURT 342 (Margaret K. Rosenheim et al. eds., 2002).
[45] *Id.*
[46] *Id.*
[47] *Id.* (internal citations omitted).
[48] ROSENHEIM, *supra* note 44, at 341.
[49] *Id.* at 357 (internal citations omitted).
[50] *See* ROSENHEIM, *supra* note 44, at 357.
[51] *In re* Gault, 387 U.S. 1 (1967).
[52] DEAN JOHN CHAMPION, THE JUVENILE JUSTICE SYSTEM: DELINQUENCY, PROCESSING, AND THE LAW 173 (4th ed. 2003).
[53] *In re Gault*, 387 U.S. at 4.
[54] CHAMPION, *supra* note 52, at 174. *See also In re* Winship, 397 U.S. 358 (1970).
[55] Hill, *supra* note 13, at 150.
[56] *In re Gault,* 387 U.S. at 47.
[57] Hill, *supra* note 13, at 151.
[58] CHAMPION, *supra* note 52, at 174.
[59] *Id.*
[60] *Id.*
[61] *Id.* at 175. *See also* Hill, *supra* note 13, at 152–53; *In re* Winship*,* 397 U.S. 358 (1970).
[62] *In re Winship*, 397 U.S. at 365.

[63] McKeiver v. Pennsylvania, 403 U.S. 528, 545 (1971). *See also* CHAMPION, *supra* note 52, at 175.
[64] *McKeiver*, 403 U.S. at 545.
[65] Hill, *supra* note 13, at 154–55.
[66] Margaret L. Moses, *The Jury Trial Right in the UCC: On a Slippery Slope*, 54 SMU L. REV. 561, 592–93 (2001).
[67] *Id.*
[68] *McKeiver*, 403 U.S. at 545.
[69] Hill, *supra* note 13, at 155.
[70] *Id.*
[71] *Id.*
[72] *Id.*
[73] *Id.*
[74] *Id.* at 159–60; *see also In re* L.M., 186 P.3d 164 (2008).
[75] Bernard P. Perlmutter, *'Unchain the Children': Gault, Therapeutic Jurisprudence, and Shackling*, 9 BARRY L. REV. 1, 41–42 (2007) (citing *In re* Gault, 387 U.S. 1, 13–14 (1967)).
[76] *In re* Kevin S., 113 Cal. App. 4th Supp. 97 (2003). *See generally In re* Gault*,* 387 U.S. 1 (1967); *In re* Winship, 397 U.S. 358 (1970); McKeiver v. Pennsylvania, 403 U.S. 528 (1971).
[77] *In re* L.M., 186 P.3d at 164.
[78] *Id.* at 165.
[79] "The serious offender I is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute a nondrug severity level 4, 5, or 6 person felony or a severity level 1 or 2 drug felony. Offenders in this category may be committed to a juvenile correctional facility for a minimum term of 18 months and up to a maximum term of 36 months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of 24 months." KSA 38-2369, *available at* http://kansasstatutes.lesterama.org/Chapter_38/Article_23/38-2369.html.
[80] *In re* L.M., 186 P.3d at 165.
[81] *Id.*
[82] *Id*. at 167–68.
[83] *Id.* at 168.
[84] *Id*.
[85] *Id.* at 170.
[86] *See generally* WASH. REV. CODE TITLE 13 (2006).
[87] WASHINGTON STATE DEP'T OF SOCIAL & HEALTH SERVICE, JUVENILE REHABILITATION ADMINISTRATION: JUVENILE JUSTICE IN WASHINGTON (2006), *available at* http://www.dshs.wa.gov/jra/JuvJustWA.shtml [hereinafter JUVENILE JUSTICE IN WASHINGTON]. *See also* Roxanne Lieb & Megan E. Brown, *Washington State's Solo Path*, 11 FED. SENT'G REP. 273 (1999).
[88] JUVENILE JUSTICE IN WASHINGTON, *supra* note 87.
[89] *Id.*
[90] 4B WASH. PRAC., RULES PRACTICE JuCR 7.11 (7th ed. 2008).
[91] *Id.*

[92] Victoria Slind-Flor, *Pressure to Give Juries to Juvies Tried as Adults: More Juveniles are Getting Pushed into Adult Court, but Without All the Rights*, 20 NAT'L L.J., Oct. 6, 1997, at A6.
[93] Julian Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 106 (1909).
[94] 1937 Wash. Sess. Laws 211.
[95] WASH. REV. CODE § 9A.04.050 (2006).
[96] Brief for the Washington Association of Criminal Defense Lawyers as Amici Curiae Supporting Respondents at 2, State v. Chavez, 180 P.3d 1250 (Wash. 2008) (No. 79265-8), *available at* http://www.courts.wa.gov/content/Briefs/A08/792658%20WACDL%20amicus.pdf.
[97] Cart Rixey, *The Ultimate Disillusionment: The Need for Jury Trials in Juvenile Adjudications*, 58 CATH. U. L. REV. 885, 897 (2009).
[98] *In re* J.H., 978 P.2d 1121, 1122–23 (1999). *See id.*
[99] Rachel La Corte, *Juveniles charged with violent crimes have no right to a jury trial, state Supreme Court rules*, SEATTLE TIMES, Mar. 20, 2008, *available at* http://seattletimes.nwsource.com/html/localnews/2004295473_webjuveniles20m.html.
[100] *Id.*
[101] *Id.*
[102] *Id.*
[103] *Id.*
[104] *See* Hill, *supra* note 13, at 163–67.
[105] *Id.* at 109.
[106] *Id.*
[107] *Id.*; *see also* TANENHAUS, *supra* note 38.
[108] *See generally* Hill, *supra* note 13.
[109] *Id.*
[110] Sandra M. Ko, *Why Do They Continue to Get the Worst of Both Worlds? The Case for Providing Louisiana's Juveniles with the Right to a Jury in Delinquency Adjudications*, 12 AM. U. J. GENDER SOC. POL'Y & L. 161, 162 (2004).
[111] William G. Young, Judge, Speech at Judicial Luncheon, The Florida Bar's Annual Convention in Orlando 4 (June 28, 2007).
[112] *Id.*; *see generally* Hill, *supra* note 13.
[113] TRIAL BY JURY, AMERICA.GOV (2008), *available at* http://www.america.gov/st/democracy-english/2008/June/20080630224303eaifas0.7254129.html.
[114] *Id.*
[115] *Id.*
[116] *Id.*
[117] *Id.*
[118] Hill, *supra* note 13, at 154 (quoting Kent v. United States, 383 U.S. 541, 556 (1966)).
[119] Emily Buss, *The Missed Opportunity in Gault*, 70 U. CHI. L. REV. 39, 46 (2003).
[120] *Id.* at 43–44.
[121] Ko, *supra* note 110, at 178.
[122] *Id.*
[123] *Id.* at 179.
[124] Hill, *supra* note 13, at 154.

[125] Ko, *supra* note 110, at 179.
[126] *See id.*
[127] *Id.* at 180.
[128] *See* HARRY KALVEN, JR. & HANS ZEISEL, THE AMERICAN JURY 58–59 (1971). As part of the study, judges examined the facts of the case and determined how they would have ruled if the case was before them instead of a jury. The judge reached the opposite verdict of the jury in 19 percent of cases.
[129] *See* Ko, *supra* note 110, at 180–81.
[130] *Id.*
[131] *Id.* at 181.
[132] *Id*.
[133] Janet E. Ainsworth, *Re-Imagining Childhood and Reconstructing the Legal Order: The Case for Abolishing the Juvenile Court*, 69 N.C. L. REV. 1083, 1098 (1991).
[134] *Id.* at 1128.
[135] Ko, *supra* note 110, at 182.
[136] *Id.*
[137] *Id.* at 183.
[138] *See* Hill, *supra* note 13, at 155.
[139] Tamar R. Birckhead, *Toward a Theory of Procedural Justice for Juveniles*, 57 BUFF. L. REV. 1447, 1471–72 (2009).
[140] *Id.* at 1473.
[141] *Id.*
[142] *Id.*; *see also* Michael S. King, *Restorative Justice, Therapeutic Jurisprudence and the Rise of Emotionally Intelligent Justice*, 32 MELB. U. L. REV. 1096, 1114 (2008).
[143] Birckhead, *supra* note 139, at 1473–74.
[144] *Id.*
[145] *Id.* at 1474.
[146] *Id.* at 1474–75.
[147] *Id.* at 1475.
[148] *Id.*
[149] *See*, *e.g.*, August Blasi, *Bridging Moral Cognition and Moral Action: A Critical Review of the Literature*, 88 PSYCHOL. BULL. 1, 11–13, 37–41 (1980).
[150] Don W. Brown, *Adolescent Attitudes and Lawful Behavior*, 38 PUB. OPINION Q. 98, 105 (1974).
[151] ELIZABETH S. SCOTT, THE LEGAL CONSTRUCTION OF CHILDHOOD 113 (Margaret K. Rosenheim et al. eds., 2002)
[152] *Id.* at 114.
[153] *Id.* at 115.
[154] *Id.*
[155] *Id.*
[156] *Id.* at 118.
[157] *Id.*
[158] *Id.*
[159] Birckhead, *supra* note 139, at 1476.
[160] *Id.*

[161] *Id.* at 1476–77.
[162] *Id.* at 1478
[163] *Id.*
[164] *Id.* at 1480.
[165] *Id.*
[166] *Id.* at 1481.
[167] *Id.*
[168] *Id.*
[169] *Id.*
[170] SCOTT, *supra* note 151, at 113.
[171] *Id.* at 119.
[172] *Id.*
[173] *Id.* at 139.
[174] *Id.* at 139–40.
[175] *Id.* at 135.
[176] *Id.*
[177] *Id.* at 129.
[178] *Id.*
[179] *Id.*
[180] Elizabeth S. Scott, *The Legal Construction of Adolescence*, 29 HOFSTRA L. REV. 547, 589 (2000).
[181] David O. Brink, *Immaturity, Normative Competence, and Juvenile Transfer: How (Not) to Punish Minors for Major Crimes*, 82 TEX. L. REV. 1555, 1569 (2004).
[182] *Id.*
[183] Laurence Steinberg, *Should Juvenile Offenders be Tried as Adults?—Rehabilitation at Issue*, USA TODAY, Jan. 2001, *available at* http://findarticles.com/p/articles/mi_m1272/is_2668_129/ai_69698409.
[184] *Id.*
[185] Brink, *supra* note 181, at 1573.
[186] Steinberg, *supra* note 183.
[187] Brink, *supra* note 181, at 1573.
[188] Steinberg, *supra* note 183.
[189] Tracy Rightmer, *Arrested Development: Juveniles' Immature Brains Make Them Less Culpable Than Adults*, 9 QUINNIPIAC HEALTH L.J. 1, 19 (2005).
[190] Brink, *supra* note 181, at 1573.
[191] *Id.*
[192] Steinberg, *supra* note 183.
[193] *Id.*
[194] Rightmer, *supra* note 189, at 27.
[195] *Id.*
[196] Teen diversion programs are not courts; they provide a voluntary alternative for young offenders charged with less serious law violations like shoplifting, vandalism, and disorderly conduct. Jeffrey A. Butts, *The Sudden Popularity of Teen Courts*, URBAN INSTITUTE, Mar. 1, 2002, *available at* http://www.urban.org/url.cfm?ID=1000262.

[197] David B. Wexler, *Just Some Juvenile Thinking About Delinquent Behavior: A Therapeutic Jurisprudence Approach to Relapse Prevention Planning and Youth Advisory Juries*, 69 UMKC L. REV. 93, 100 (2000).
[198] Butts, *supra* note 196.
[199] *Id.*
[200] Paula A. Nessel, *Teen Court: A National Movement*, TECH. ASS. BULLETIN NO. 17., AMERICAN BAR ASSOCIATION, 2000, at 2, *available at* http://www.abanet.org/publiced/tab17.pdf.
[201] Butts, *supra* note 196.
[202] Nessel, *supra* note 200, at 1. *See also* Butts, *supra* note 196.
[203] Butts, *supra* note 196.
[204] *Id.*
[205] *Id.*
[206] *Id.*
[207] *Id.*
[208] *Id.*
[209] Wexler, *supra* note 197, at 100.
[210] Julie Elliott, *Youths Face a Jury of Their Peers*, *in* JUDGING IN THERAPEUTIC KEY: THERAPEUTIC JURISPRUDENCE AND THE COURTS 50 (Bruce J. Winnick & David B. Wexler eds., 2003).
[211] Nancy Bartley, *Teen Courts Put Youngsters at the Mercy of Their Peers*, SEATTLE TIMES, Dec. 23, 2006, *available at* http://www.seattleymca.org/files/25/Seattle%20Times%20Teen%20Court%2012.22.06.pdf. *See also* Rob Ollikainen, *Teen Court Catching On: TV Network to Tape Feb. 25 Trials*, PENINSULA DAILY NEWS, Feb. 6, 2009, *available at* http://www.peninsuladailynews.com/article/20090206/news/302069995. *See also* CITY OF BELLEVUE, BELLEVUE YOUTH COURT, *available at* http://www.ci.bellevue.wa.us/youth_court.htm.
[212] *Id.*
[213] WHATCOM COUNTY SUPERIOR COURT, COMMUNITY LEGAL RESOURCES: TEEN COURT (2007), *available at* http://www.co.whatcom.wa.us/superior/resources/teen_court.jsp.
[214] *Id.*
[215] *Id.*
[216] *Id.*
[217] Bartley, *supra* note 211.
[218] *Id.*
[219] YOUTH COURTS: YOUNG PEOPLE DELIVERING JUSTICE, AMERICAN BAR ASSOCIATION (1995), *available at* http://www.abanet.org/justice/pdf/Roadmap_YouthCourts.pdf.
[220] *Id.*
[221] *Id.*
[222] Victoria Weisz et. al., *A Teen Court Evaluation with a Therapeutic Jurisprudence Perspective*, 20 BEHAV. SCI. & L. 381 (2002).
[223] *Id.*
[224] *Id.* at 382.

[225] *Id.*
[226] Wexler, *supra* note 197, at 101.
[227] *Id.*
[228] Weisz et al., *supra* note 222, at 382.
[229] Wexler, *supra* note 197, at 101.
[230] "Most state juvenile codes provide neither special procedural safeguards to protect juveniles from the consequences of their own immaturity nor the full panoply of adult criminal procedural safeguards to protect them from punitive state intervention. Instead, juvenile offenders are treated like adult criminal defendants when formal equality redounds to their disadvantage and subjected to less effective juvenile court procedures when those procedural deficiencies redound to the advantage of the state."
Hill, *supra* note 13 at 154–55, (quoting Barry C. Feld).
[231] Wexler, *supra* note 197, at 101.
[232] *Id.*
[233] *Id.*
[234] *Id.* at 102.
[235] *Id.*
[236] *Id.* at 104.
[237] *Id.*
[238] *Id.*
[239] *See generally* A.J. Stephani, *Symposium: Therapeutic Jurisprudence and Children*, 71 U. CIN. L. REV. 13, 14 (2002).
[240] Janet E. Ainsworth, *Youth Justice in a Unified Court: Response to Critics of Juvenile Court Abolition*, 36 B.C. L. REV. 927, 951 (1995) (quoting Bob Herbert, *What Special Interest?*, N.Y. TIMES, Mar. 22, 1995, at A19).