With Liberty and Juvenile Justice for All: Extending the Right to a Jury Trial to the Juvenile Courts

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COMMENTS

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I. INTRODUCTION

"[T]rial by jury is more than an instrument of justice and more than one wheel of the constitution: it is the lamp that shows that freedom lives."1

Jury trials are deeply rooted in American history and have been documented from the Magna Carta to the United States Constitution.2 The Sixth Amendment guarantees every adult in criminal court the right to a jury trial.3 However, in many states,4 children who commit crimes are tried in a separate court system where they are denied the fundamental right to a jury trial.5

This Comment examines the basis and justifications for affording jury trials within the juvenile court system. Part II compares the purposes, policies, and protections of the criminal court system with those of the juvenile court system. Part III traces the historical development of juvenile courts. Part IV addresses the development of the law on the right to a jury trial, focusing on the constitutional bases of the right in adult court and the evolution of constitutional rights in juvenile court. Part V examines the reasons why some states grant the right to a jury trial and why other states deny the right. Finally, Part VI concludes that Minnesota6 should grant the right to a jury trial in juvenile court.

1. Duncan v. Louisiana, 391 U.S. 145, 156 n.23 (1968) (quoting Sir Patrick Devlin, Trial by Jury 164, xxx (1956)).
2. Id. at 151; see also Ronald K. Carpenter, A Due Process Dilemma—Juries for Juveniles, 45 N.D. L. Rev. 251, 256-57 (1969).
3. The Sixth Amendment provides in relevant part that: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed...." U.S. CONST. amend. VI.
4. See discussion infra part V.B.
6. In 1992, the Minnesota Legislature convened an Advisory Task Force to study the juvenile justice system. See Minnesota Supreme Court Advisory Task Force on
II. PURPOSES AND PROTECTIONS OF THE CRIMINAL SYSTEM

The criminal court system provides a baseline against which the juvenile court system may be compared. The following overview traces the evolution of the purposes, policies, and protections of the criminal system and reveals the similarities between adult and juvenile courts.

The goal of the criminal justice system changes with each era’s philosophies and beliefs. Over time, the pendulum has swung from retribution, the system’s original purpose, to the opposite extreme of rehabilitation, and then back again.

A. Retribution

A retributive criminal system existed for hundreds of years in English common law and subsequently was adopted by early American courts. Retribution is the intentional infliction of pain and suffering, to the extent deserved, on criminals that willingly committed a crime. Criminal sentencing guidelines reflect a particular society’s view of criminal offenders and reveal whether the society desires to punish the offenders with harsh sentences or to provide rehabilitative measures through less severe punishment. One of the earliest recorded retributive sentencing guidelines states: “Whoever kills . . . shall surely be put to death. . . . If a [person] causes disfigurement of [one’s] neighbor, as [the person] has done, so shall it be done to [that person]—fracture for fracture, eye for eye, tooth for tooth. . . .”

B. Rehabilitation

Between 1865 and 1880, penology experts theorized that criminals should be incarcerated not only for punishment, but also for rehabilitation. Where retribution looks backward and focuses on punish-
ment for past crimes, rehabilitation looks forward and strives to convert criminals into law-abiding citizens by providing them with skills and values. Instead of the retributive motto, "an eye for an eye," the watch-cry of rehabilitation advocates was "an eye patch for an eye."

Sentencing guidelines were relaxed to accommodate the new rehabilitative policies, allowing judges to design individualized treatment for criminal offenders. Under this type of flexible sentencing, judges were encouraged to use their discretion when imposing sentences in order to maximize the possibility of rehabilitating the criminal offenders. Through indeterminate sentencing, judges hoped to break the cycle of crime by giving offenders "whatever skills or opportunities were necessary to prevent them from committing future crimes."

C. The Swing Back Toward Retribution

Despite the optimism and good intentions with which indeterminate sentencing was introduced, studies conducted in the late 1960s and 1970s demonstrated no reduction in criminal recidivism rates. Many criminals merely pretended to be rehabilitated so that they could be released on probation, only to later return to prison. Legal reformers, concluding that rehabilitating criminals did not work, began to call for a return to retributive justice. Abandonment of the rehabilitative model eroded the justification for flexible sentencing.
The Sentencing Reform Act of 1984 was a direct result of the movement back toward retribution. Designed specifically to address the problems of indeterminate sentencing, the Act targeted disparate sentencing, discrimination, and excessive leniency. The legislature’s return to retribution also heralded guarantees of procedural protection in the court system. Between 1963 and 1975, the right to counsel, the privilege against self-incrimination during custodial interrogation, the right to a jury trial, the right to confront witnesses, and a standard of proof beyond a reasonable doubt were constitutionalized.

Since 1963, the United States Supreme Court has protected the accused with procedural safeguards. “[O]ur state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law.” Today, criminal courts also provide full procedural constitutional protection because of the emphasis on retribution as the basis for punishment.

III. Historical Development of the Juvenile Court System

Established as a separate system 100 years ago, juvenile courts have evolved from an exclusively rehabilitative system to a system that incorporates both rehabilitation and retribution. The development of the juvenile court system can be traced from the treatment of young offenders in the early criminal court system, to the creation of a separate court system exclusively for juvenile offenders, to the current trends in juvenile courts.

A. Early Treatment of Juveniles in the Court System

Prior to 1899, the American court system closely resembled the English court system. Although children under age seven were not prosecuted because they were considered incapable of forming criminal

26. Fisfis, supra note 7, at 1068. “[T]he philosophical pendulum has swung away from the emphasis on rehabilitation, which is no longer an enunciated goal of Federal determinate sentencing.” People v. Marchese, 608 N.Y.S.2d 776, 782 (N.Y. Sup. Ct. 1994).
intent, children over the age of seven were subjected to the same process and punishment as adult offenders. Children and adults were tried side by side. Juvenile offenders were given long prison sentences, incarcerated with hardened criminals, and even executed. Although juvenile offenders were entitled to the same constitutional safeguards as adult offenders, such as the right to due process, they were subjected to the harshness of the adult criminal system.

B. Creation of the First Juvenile Courts

1. National System

Juvenile justice reformers were appalled that juvenile offenders were tried alongside adult offenders in criminal courts that were not designed to handle children. For example, in Minnesota, a child under the age of 14 is considered incapable of committing a crime. Minn. Stat. § 609.055, subd. 1 (1992). Under certain circumstances, juvenile offenders between the ages of 14 and 18 may be prosecuted as adults.

However, many states, in the process of developing juvenile courts, raised the age of criminal capacity when they enacted their Juvenile Court Acts. For example, in Minnesota, a child under the age of 14 is considered incapable of committing a crime. Minn. Stat. § 609.055, subd. 1 (1992). Under certain circumstances, juvenile offenders between the ages of 14 and 18 may be prosecuted as adults.

34. In re Gault, 387 U.S. 1, 16 (1967). Based on a system of fairness, children under seven were not prosecuted, while children over that age were prosecuted as criminals. Id. The rationale was that a child under the age of seven should "go free of judgment because [the child] knoweth not of good and evil." Jack J. Rappeport, Determination of Delinquency in the Juvenile Court: A Suggested Approach, 1958 WASH. U. L.Q. 123, 132 n.25 (1958) (citing Eyre of Kent, 24 SELD. SOC. 109 (1909)). In Illinois, before the creation of the juvenile courts, children over the age of 10 were prosecuted as adults.


36. Thomas J. Bernard, The Cycle of Juvenile Justice 87 (1992) (citing Julia Lathrop, Introduction to Sophonisba P. Breckinridge & Edith Abbott, The Delinquent Child and the Home, 2-4 (1970)). Julia Lathrop, who later served as Chief of the Federal Children's Bureau, reported that in the six months prior to the establishment of the first juvenile court in Chicago, 332 boys between the ages of nine and 16 were sent to the city prison where they were kept in "lock-ups" in the company of adult prisoners.

37. Ex parte Becknell, 51 P. 692, 693 (Cal. 1897). Becknell committed burglary at the age of 13, and the lower court committed him to Whittier State School until he reached the age of majority. Id. The California Supreme Court declared that a person, even a juvenile, cannot be imprisoned as a criminal without a jury trial. Id.; see also Turner, 55 Ill. at 286 (applying due process of law to a young criminal offender); Commonwealth v. Horregan, 127 Mass. 450 (1897) (guaranteeing the right to presentment by a grand jury); Timothy E. Foley, Juveniles and Their Right to a Jury Trial, 15 Vill. L. Rev. 972, 973 n.9 (1970).

38. The reformers consisted mainly of conservative wives and daughters of powerful Chicago businessmen who believed that the wealthy had an obligation to return something to the less fortunate through public service. Bernard, supra note 36, at 85-86. These women entered the slums of Chicago to care for and work with the children. The women eventually fought on behalf of the children before the city council and state legislature arguing for major policy changes in the handling of juvenile offenders.
designed to implement punitive rather than rehabilitative theories. The reformers believed that children's behavior was merely reflections of the environment, and that treatment, not punishment, was the appropriate solution. They wished to remove the juvenile offenders from a system of punishment to an atmosphere that was conducive to rehabilitation. The reformers presumed that these juveniles, once removed from the culpable environment, could be treated and returned to society. Reformers believed that this kind of nurturing could overcome most of nature's defects as well as the environment's negative influences.

In 1899, consistent with the reform movement, Illinois abandoned the notions of crime and punishment for young offenders and created the first juvenile court system. Underlying this newly-created system was the premise that the state had a duty, as parens patriae, to

40. TASK FORCE REPORT: JUVENILE DELINQUENCY AND YOUTH CRIME 2 (1967) [hereinafter YOUTH CRIME]. Reformers blamed the environment for the rise in truancy and delinquency during the growth of industrialization and immigration in the late 1800s, which resulted in the overcrowding of cities, disruption of family life, and increased crime. Id.; see also ANTHONY M. PLATT, THE CHILD SAVERS 4 (1977).
41. YOUTH CRIME, supra note 40, at 3.
42. Reformers maintained that it was important to remove the children from the influences of the “manifold temptations of the streets” as well as from their “weak and criminal parents.” BERNARD, supra note 36, at 87. Another common view was that the children's delinquent behaviors were evidence of the corruptness of the parents. Rappeport, supra note 34, at 131.
43. Foley, supra note 37, at 973; see also PLATT, supra note 40, at 47. Many reformers assumed that, with rehabilitation, the “abnormal” and “troublesome” youth could be trained to become useful and productive citizens. Id. By removing the juvenile offenders from society, diagnosing and treating their problems, and then placing the juvenile offenders back into society, reformers believed they could offset the hazardous environments. YOUTH CRIME, supra note 40, at 2.
44. PLATT, supra note 40, at 51.

Commentators disagree whether Illinois was the first state to create a special system for juvenile offenders. PLATT, supra note 40, at 9-10. Massachusetts, in 1874, and New York, in 1892, passed laws that provided separate trials for children and adults. Id. at 9. Regardless of which state was first to implement a juvenile court, authorities generally agree that Illinois passed the first juvenile court act. Id. at 9-10. The Illinois Act was so revolutionary in the area of juvenile justice that it was the first official enactment to be acknowledged as a model statute, both nationally and internationally. Id.

47. Parens patriae literally means “parent of the country.” BLACK'S LAW DICTIONARY 1114 (6th ed. 1990). The term connotes the idea that the state is the ultimate parent of all of its citizens. BERNARD, supra note 36, at 88. Parens patriae was a concept adopted by English courts in cases where children lacked parental care because their parents had died. Id. American courts adapted this concept to include children who lacked paren-
intervene on behalf of juvenile offenders when parents did not effectively perform their "parental" functions. The state, assuming the role of surrogate parent, could provide what was necessary to help and rehabilitate the children. The court, acting on behalf of the state, was charged with determining the best interests of juvenile offenders and ensuring that those interests were served.

Because juvenile offenders were to be rehabilitated rather than punished, reformers proposed an informal adjudicative environment that involved only the judge and the offender. "The early concept[ ]... of the [j]uvenile [c]ourt proceeding was one in which a fatherly judge touched the heart and conscience of the erring youth by talking over [his or her] problems, by paternal advice and admonition..." This approach more closely resembled social work than the approach normal care because their parents were "weak" and "criminal." Id. at 87. See also supra note 42.

48. Gault, 387 U.S. at 17. Many states incorporated the "parental substitute" concept within their juvenile court acts. For example, the original purpose of Minnesota's Juvenile Court Act was "to secure for each minor under the jurisdiction of the court the care and guidance, preferably in [the child's] own home." (emphasis added). Juvenile Jury Trials, supra note 46, at 599 (quoting Minn. Stat. § 260.011, subd. 1 (1978) (repealed 1980)).


50. Gault, 387 U.S. at 15. Juvenile offenders were to be made to feel that they were the object of the state's care and were being saved from criminal careers and moral degradation. ORM W. Ketcham, The Development of Juvenile Justice in the United States, in The Changing Faces of Juvenile Justice 14 (V. Lorne Stewart ed., 1978); see also Foley, supra note 37, at 974.

51. Literature often references the notion that juvenile court judges represent a fatherly image. Norman G. Kittel, Juvenile Justice Philosophy in Minnesota, 34 Juv. & Fam. Ct. J. 93, 93 (1983). Juvenile court judges "often were portrayed to be kindly fathers concerned for the welfare of their faltering delinquent children." Id. Ideally, judges attempted to paternally guide the juvenile offenders into making wise choices. Juvenile Jury Trials, supra note 46, at 602.


53. Ketcham, supra note 50, at 11. In the juvenile court environment, juvenile court judges did not need to determine guilt or innocence, as did the criminal courts. Foley, supra note 37, at 974. Instead, judges adjudicated juvenile offenders as "delinquents." 18 U.S.C. § 5032 (1974). The legislators hoped that if juvenile offenders were adjudicated as "delinquents," rather than as "criminals," some of the stigma that accompanied criminal conviction would be reduced. Id. Moreover, if adjudicated as delinquents, juvenile offenders could be sent to reformatory or industrial schools, put on probation, or released into parental custody, depending on the individual circumstances. Id.

In Minnesota, juvenile proceedings may result in counseling; probation; placement of the juvenile in the custody of a child placing agency, welfare board, home school, or the commissioner of corrections; as well as several other alternatives. Minn. Stat. § 260.185, subd. 1(a)-(c) (1992).
mally taken in the courtroom because each juvenile was studied and treated as an individual.54

Other courts subsequently adopted the 1899 Illinois Juvenile Court Act as a model. By 1932, there was a juvenile court system in every state and over 600 independent juvenile courts throughout the United States.55 The states clearly recognized the need for a juvenile court system, and they responded with enthusiasm.

The first juvenile court system, with the Illinois model as its basis, focused on caring for children.56 By its nonadversarial nature, the juvenile court system afforded judges flexibility to foster rehabilitation rather than punishment.57 Petitions, hearings, dispositions, and adjudications replaced the complaints, warrants, convictions, and sentences used in criminal court.58 The juvenile courts also applied relaxed procedural policies which provided no right to confrontation, no privilege against self-incrimination, and no right to representation by counsel.59 Failure to provide these rights was justified on the theory that juvenile courts did not actually deprive juvenile offenders of liberty, but rather took temporary custody of the children in their best interests.60

Some reformers questioned whether the procedural formalities of the criminal courts, such as the right to a jury trial, ought to be incorporated into the new juvenile courts.61 The majority of reformers, however, desired informality; thus, many of the procedural safeguards that generally accompanied criminal court proceedings were omitted

55. Foley, supra note 37, at 973.
56. PLATT, supra note 40, at 10.
57. KETCHAM, supra note 50, at 14. The Illinois juvenile court not only had jurisdiction over any youth who committed an act that, if committed by an adult, would be considered a crime, but also over any child who was destitute, homeless, abandoned, or abused. BERNARD, supra note 36, at 89-90. The Juvenile Court Act was drafted so that, if interpreted broadly, the Illinois juvenile court had jurisdiction over every poor child in the city of Chicago. Id. at 90.
58. Foley, supra note 37, at 974.
60. Foley, supra note 37, at 974.
61. KETCHAM, supra note 50, at 14. Ketcham states that the founders of the juvenile courts rejected the requirements of an adversarial atmosphere because the courts were established to act in the best interests of the child. Id.; see also Foley, supra note 37, at 974.
62. Foley, supra note 37, at 974.
from juvenile court proceedings. Accordingly, the philosophy of the new juvenile justice system was "salvation," not "due process." 

2. Minnesota System

Prior to Minnesota's adoption of a juvenile court system, the state practiced a parens patriae philosophy toward those children whom the state placed in reform schools. The state interfered with the parent/child relationship only "upon the destitution and necessity of the child arising from want or default of parents." 

Creation of the Minnesota juvenile court system in 1917 further advanced the state's primary objective to protect and care for the child. The Minnesota Supreme Court interpreted the state's right to "step in and save the child" as superior to the child's right to freedom. Thus, courts that placed children in reform schools justified the placement by characterizing the state's right to intrude in the child's life as a parental right, which included the power to restrain.

Consistent with that parental capacity, Minnesota echoed the rehabilitative philosophy that the juvenile court was "designed to secure the welfare of delinquent children, and not to punish them." The courts recognized that there were many "wayward, incorrigible, and neglected children" who needed to be "humanely cared for, guided into paths of rectitude and right living, and protected from contamination by association with the lower elements of society."

63. Id. Although the early juvenile courts denied due process rights in the interest of rehabilitation, Gault later granted juvenile offenders the due process rights of notice, representation by counsel, privilege against self-incrimination, and confrontation. In re Gault, 387 U.S. 1, 33, 41, 55, 57 (1967).
64. KETCHAM, supra note 50, at 14.
65. See, e.g., State v. Brown, 50 Minn. 353, 355, 52 N.W. 935, 936 (1892).
66. Id. (quoting Milwaukee Indus. Sch. v. Supervisors, 40 Wis. 328, 338 (1876)); see also Peterson v. McAuliffe, 151 Minn. 467, 468, 187 N.W. 226, 227 (1922).
68. Peterson, 151 Minn. at 468, 187 N.W. at 227; see also State v. Zenzen, 178 Minn. 394, 394, 227 N.W. 356, 357 (1929) (declaring that the state intervenes primarily in the interest of the child).
69. Peterson, 151 Minn. at 467, 187 N.W. at 226.
70. Id.
71. Id. at 469, 187 N.W.2d at 226.
Children are always under more or less restraint. In the parental home and in the school they may not come and go as they please. And so when it is necessary for the state to step in and perform the parental duty the liberty of the child may be circumscribed.

Id.
72. Id. at 470, 187 N.W.2d at 227; see also Zenzen, 178 Minn. at 394, 227 N.W. at 356 (holding that juvenile delinquents are not entitled to an appeal because the Legislature did not intend to treat juvenile delinquents as criminals).
73. Evans v. District Ct., 118 Minn. 170, 173, 136 N.W. 746, 747 (1912).
The Minnesota Legislature codified its rehabilitative goals in the 1986 Juvenile Court Act.\(^{74}\) Although it was enacted to promote the public safety and reduce juvenile delinquency, the Act expressly directed the juvenile courts to accomplish those goals using fair and just means that recognized the “unique characteristics and needs of children.”\(^{75}\) The Act further stated that the means of rehabilitation should “give children access to opportunities for personal and social growth.”\(^{76}\)

C. Recent Trends in Juvenile Courts

After the juvenile system was created in the early 1900s, juvenile courts were virtually ignored for nearly seventy years. In the last twenty years, however, the realities of modern society have resulted in incremental changes in juvenile courts. Because of these changes, the juvenile court system now more closely resembles the adult criminal court system.

1. National Trends

In the 1930s and 1940s, the disposition of juvenile offenders was not challenged because the model for the juvenile justice system was the “social science model,” a theory with which the legal profession was unfamiliar.\(^{77}\) The juvenile courts were responsible to care for and serve the best interests of children; therefore, lawyers and judges, deferring to the expertise of social workers,\(^{78}\) did not intervene. Moreover, because juvenile offenders were not punished, but were saved from criminal careers and moral degradation, “[t]he treated or saved child had no need for protection from the court.”\(^{79}\)

After World War II, however, critics of the juvenile justice system began to challenge its effectiveness. The challenge arose because a majority of the juvenile offenders were not “saved” but, instead, continued their antisocial behavior despite guidance from “fatherly judges.”\(^{80}\) Although the juvenile courts proclaimed salvation, scrutiny of actual performance revealed that, in practice, the courts were punishing juvenile offenders rather than “treating” them.\(^{81}\)

\(^{74}\) MINN. STAT. § 260.011, subd. 2 (1986).
\(^{75}\) In re K.A.A., 410 N.W.2d 836, 838 (Minn. 1987) (quoting MINN. STAT. § 260.011, subd. 2 (1986)).
\(^{76}\) Id. at 841 n.10 (quoting MINN. STAT. § 260.011, subd. 2 (1986)).
\(^{77}\) KETCHAM, supra note 50, at 14. This model was premised on the theory that “[t]here is no such thing as a bad [child].” Id. Social workers sought to bring misguided youth back to the path of righteousness. These efforts were carried out by social workers and were largely ignored by lawyers. Id.
\(^{78}\) Id.
\(^{79}\) Id.
\(^{80}\) Id. at 15.
\(^{81}\) BERNARD, supra note 36, at 108.
Recent statistics on juvenile crime highlight both the nature of the cases that the juvenile courts adjudicate and the failure of those courts to rehabilitate juvenile offenders. For example, although the overall serious crime rate for the country has decreased slightly, the serious crime rate for juveniles is on the rise.82 Juvenile arrests for violent crimes increased forty-one percent between 1982 and 1991.83 During that nine year period, juvenile murder arrests increased ninety-three percent and aggravated assault arrests increased seventy-two percent.84 These statistics confirm that juvenile offenders commit a large number of the crimes that occur in our society.85 The juvenile system is, in effect, a system for offenders of serious crimes, not a system of rehabilitation. The juvenile court system, therefore, mirrors the retributive basis of the adult criminal justice system.

Studies reveal that repeat juvenile offenders with five or more police contacts constitute less than twenty percent of the delinquents.86 However, those offenders are responsible for approximately two-thirds of all offenses.87 This evidence shows that the juvenile court system fails to rehabilitate a significant percentage of juvenile offenders and gives rise to the inference that the system no longer achieves its primary purpose of rehabilitation.

Today, juvenile offenders commit more serious crimes and juvenile courts have adapted and responded accordingly. As a result, the rehabilitative ideals that initiated juvenile justice reform appear to have been replaced, by necessity, with retributive policies and goals.

2. Minnesota Trends

The evolution of Minnesota’s juvenile court system mirrors that of the national system.88 Minnesota’s Juvenile Court Act, like those of many states, was enacted early in the twentieth century.89 Following enactment, Minnesota did little to change the juvenile court system and, like the rest of the nation,90 ignored the juvenile court system for decades following its inception. In fact, the Act was not revised until 1959.91 That statutory revision changed many procedures, but the ini-

82. MINN. TASK FORCE REPORT, supra note 6, at 611-12.
83. Id.
84. Id.
85. Id.
86. Id.
87. MINN. TASK FORCE REPORT, supra note 6, at 612.
88. Id. at 613.
89. 1917 MINN. LAWS 7162; see also Pirsig, supra note 67, at 378.
90. See generally Kittel, supra note 51, at 94.
91. Act approved April 24, 1959, ch. 685, § 1, 1959 MINN. LAWS 1275, 1275; Pirsig, supra note 67, at 378.
tial purpose of the Act was maintained: to ensure the welfare of the child.92

Minnesota courts have historically adhered to a strict policy of rehabilitating juvenile offenders. For example, in J.E.C. v. State,93 the Minnesota Supreme Court refused to refer a "hard-core sophisticated, aggressive delinquent" to adult criminal court in the name of rehabilitation.94 A referee testified that J.E.C. needed security as well as rehabilitation, but, because there was no adequate juvenile facility, the referee recommended that J.E.C. be tried in adult criminal court.95 The court rejected the referee's recommendation stating, "[t]he absence of rehabilitative facilities to treat appellant may not mean he is not amenable to treatment as a juvenile if such facilities were available."96 J.E.C. demonstrates the extent of Minnesota's commitment to the policy of rehabilitating juvenile offenders.

Despite Minnesota's continued concentration on rehabilitating juvenile offenders, the nature of cases before its juvenile courts is changing. Consistent with national statistics, Minnesota's statistics on juvenile crime reveal the increasingly serious criminal nature of the charges that the juvenile courts adjudicate and the failure of those courts to rehabilitate juvenile offenders.97

In Minnesota, juvenile arrests or apprehensions increased ten percent from 1980 to 1991.98 Although this increase might seem slight, it is startling to note that in 1991, nearly half of all arrests or apprehensions for serious crimes involved juvenile offenders.99 Juvenile offenders accounted for forty-two percent of burglary arrests or apprehensions, fifty-four percent of auto theft arrests or apprehensions, and fifty-five percent of arson arrests or apprehensions.100 Only six percent of juvenile apprehensions involve serious or violent crimes; thus, a small group of juvenile offenders commits a majority of the serious or violent crimes.101

Despite the Minnesota juvenile court system's rehabilitative mission, both fear and reality have forced changes that have made the juvenile system similar to the adult criminal system. For example, the increase in juvenile crime prompted the Minnesota Legislature to amend the Purpose Clause of the Juvenile Court Act. The Act's original purpose

92. Pirsig, supra note 67, at 378.
93. 302 Minn. 387, 225 N.W.2d 245 (1975).
94. Id. at 389, 225 N.W.2d at 247.
95. Id. at 392, 225 N.W.2d at 249.
96. Id. at 393, 225 N.W.2d at 249.
97. MINN. TASK FORCE REPORT, supra note 6, at 613-14.
98. Id. at 613.
99. Id. at 613. Juvenile offenders accounted for 43% of arrests or apprehensions of serious crimes. Id.
100. Id. at 614.
101. Id. at 613-14.
was "to secure for each minor . . . the care and guidance, preferably in [the child's] own home." 102 In 1988, the Legislature revised the purpose clause "to promote the public safety and reduce juvenile delinquency." 103 This significant change, from rehabilitation to retribution, signaled a trend that the juvenile system was becoming more like the adult criminal system. 104

The Minnesota Legislature acknowledged the need for more comprehensive reform and, in 1992, convened the Advisory Task Force on the Juvenile Justice System to conduct a study of the juvenile court system. 105 The Task Force recognized that the current juvenile justice system cannot adequately handle the unprecedented numbers of serious and repeat juvenile offenders. 106

After careful consideration, the Task Force issued recommendations for changes in several areas of the juvenile justice system. 107 Many of those recommendations respond to the specific problems of serious and repeat juvenile offenders in Minnesota. The Legislature subsequently enacted most of the changes recommended by the Task Force. 108

IV. DEVELOPMENT OF THE LAW ON THE RIGHT TO JURY TRIALS

Because rehabilitation has historically been the goal in juvenile court proceedings, many procedural protections are not available to juvenile offenders. Conversely, the adult criminal justice system, with its focus on punishment, protects the rights of the accused through the use of procedural safeguards 109 such as the right to a jury trial. Although the right to a jury trial is guaranteed in both criminal and civil courts, there is no constitutional right to a jury trial in the juvenile court system. 110

103. Id. § 260.011(2) (1988).
105. See Minn. Task Force Report, supra note 6, at 597-98.
106. Id. at 599.
107. The Task Force issued recommendations on the juvenile certification process, the retention and use of juvenile delinquency records, statewide juvenile guidelines, behavior modification and treatment approaches, the right to counsel, the right to a jury trial, and the need for secure facilities. Id.
A. Constitutional Right to Jury Trials in Adult Court

1. Jury Trials in Criminal Cases

The right to a jury trial is not limited to federal courts. Every state has passed legislation that guarantees the right to a jury trial in serious criminal cases. Although the right to a jury trial is "fundamental to the American scheme of justice," the right was limited to serious crimes until Duncan v. Louisiana.

In 1968, Gary Duncan was charged with simple battery when he attempted to avoid a potential conflict between two of his cousins and four other boys. The court denied Duncan's request for a jury trial because the Louisiana Constitution granted jury trials only in cases of capital punishment or imprisonment at hard labor. Duncan was tried by a judge and convicted.

On review, the Supreme Court extended the Sixth Amendment right to a jury trial to the states through the Fourteenth Amendment's Due Process Clause. Although the Sixth Amendment right to jury trials is guaranteed in all federal cases, it is not guaranteed in all state cases. In order to apply to the states, the right to a jury trial must be an element of the Fourteenth Amendment's Due Process Clause. The Duncan Court applied a "fundamental rights" test to decide if the right to a jury trial is necessary for due process. The Court decided that a jury trial is a fundamental right, "essential for preventing miscarriages of justice and for assuring that fair trials are provided for all defendants." Subsequent to Duncan, the right to a jury trial was guaranteed in all criminal cases, regardless of the severity of the crime.

112. Id. at 149.
113. Id.
114. Id.
115. Duncan was charged for allegedly slapping another boy on the elbow. Id. at 147.
116. Duncan, 391 U.S. at 147.
117. Id. at 146 n.1.
118. Id. at 147.
119. Id. at 156.
120. Id. at 153-55.
121. Duncan, 391 U.S. at 156. The Fourteenth Amendment declares that no state can "deprive anyone of life, liberty or property without due process of law." U.S. Const. amend. XIV § 1.
122. Duncan, 391 U.S. at 148-49.
123. Id. at 158. The Supreme Court was concerned about protecting the accused from "the corrupt or overzealous prosecutor and ... the compliant, biased, or eccentric judge." Id. at 156.
124. In Bloom v. Illinois, 391 U.S. 194, 211 (1968), the right to a jury trial was expanded to include criminal contempt cases. Prior to Bloom, criminal contempt was not considered a serious enough offense to warrant the constitutional protection of a jury.
2. Jury Trials in Civil Cases

Although the Sixth Amendment guarantees the right to a jury trial in criminal cases, the right was not automatically granted in other cases.125 The Seventh Amendment granted the right to a jury trial if the case would have received a jury trial at common law.126 Therefore, if the English judicial system would have granted a jury trial, the right would also be granted under the United States Constitution.127 The English judicial system was divided into two separate courts: courts of law heard legal claims;128 and courts of chancery heard equitable claims.129 Although jury trials were widely available in the courts of law, the judge presided without a jury in the chancery courts.130 Therefore, under the English judicial system, cases brought in a court of law would receive the right to a jury trial but cases under the jurisdiction of the court of chancery received no right to a jury trial.131

The United States judicial system applied this method of distinguishing between claims in law or equity to determine the right to jury trials for more than one hundred and fifty years.132 However, in 1938, the enactment of the Federal Rules of Civil Procedure resulted in a merger of the courts of law and equity, allowing legal and equitable claims to be joined.133 Although the new system simplified matters because all claims were tried simultaneously, courts were given little guidance as to the availability of juries for cases that contained both legal and equitable claims.134 The Supreme Court was reluctant to disallow the right trial. Id. at 197. The Bloom Court decided that criminal contempt cases create a compelling argument for the provision of jury trials because contemptuous conduct “often strikes at the most vulnerable and human qualities of a judge’s temperament. . . . [I]t frequently represents a rejection of judicial authority. . . .” Id. at 202. Extending Duncan, the Bloom Court declared that if the right to a jury trial is fundamental in other criminal cases, it must be extended to criminal contempt cases. Id. at 208.

126. Id.
127. Id. at 701.
128. Courts of law provided the legal remedy of money damages. Id. at 702.
129. Courts of chancery provided equitable remedies such as injunctions, specific performance, or rescission. Id.
130. Yezell, supra note 125, at 701.
131. Id.
132. See Willing v. Chicago Auditorium Ass’n, 277 U.S. 274 (1928) (holding that there can be “no substitution of equitable for legal remedies, whereby the constitutional right of trial by jury is impaired”).
133. Yezell, supra note 125, at 723; see also Ross v. Bernhard, 396 U.S. 531, 539 (1970) (stating that civil actions in federal court are no longer brought at law or in equity, but are all joined under the Rules of Civil Procedure, under which all remedies are available); Jerome A. Hoffman, Alabama’s Right to Trial by Jury in Civil Cases Since the Merger of Law and Equity—What Has Changed and What Has Not, 32 Ala. L. Rev. 465, 466-67 (1981).
134. Yezell, supra note 125, at 723. The question of whether or not a person had a right to a jury trial was more easily answered if the claim sought only one remedy. See,
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to a jury trial in a suit that involved both types of claims.135 In 1959, the Court stated that, "[o]nly under the most imperative circumstances . . . can the right to a jury trial of legal issues be lost through prior determination of equitable claims."136 The Court subsequently decided that a jury trial could be denied only if the plaintiff proves the issues are too complicated for a jury to unravel.137

Currently, both criminal and civil courts guarantee the right to a jury trial. Although juvenile courts have adopted some forms of procedural rights, the right to a jury trial in juvenile proceedings has not yet been constitutionally guaranteed.

B. Evolution of Constitutional Rights in Juvenile Court

Juvenile courts have undergone a number of complex changes in the ninety-five years since their creation, from providing no procedural due process rights, to providing multiple rights as are granted in criminal courts. In the sixty-five years following the implementation of the Illinois Juvenile Act,138 the Supreme Court did not hear a single case regarding the juvenile court system.139 However, in 1966, the Supreme Court heard the first of a series of cases regarding the due process rights of young offenders in juvenile courts. Recognizing that punishment for juvenile offenders was similar to that of adult offenders in criminal courts, the Court instituted due process protections for juvenile offenders.140 Although the Supreme Court acknowledged the need for some procedural protections in juvenile court proceedings, the Court stopped short of providing jury trials.

1. Right to a Hearing

In 1966, the Supreme Court, in Kent v. United States,141 considered whether a hearing is required to waive jurisdiction in juvenile courts.142 Morris A. Kent, Jr., age fourteen, was arrested, charged with breaking into several houses, and placed on probation.143 Two years later, while still on probation, Kent broke into a woman's apartment, raped her, and stole her wallet.144 Kent moved for a hearing on waiver

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e.g., Chauffeurs, Teamsters, & Helpers, Local No. 391 v. Terry, 494 U.S. 558, 572 (1990) (finding a legal remedy where a group of aggrieved truckers sought backpay).
136. Id.
138. 1899 Ill. Laws 131.
140. Bernard, supra note 36, at 108.
142. Id. at 552-54.
143. Id. at 543.
144. Id.
of jurisdiction to criminal court. Kent also filed a motion to obtain his own probation records for the previous two years to support his argument against a waiver to criminal court. The judge received the motions, did not rule on them, yet waived jurisdiction. As a result, the case was heard by the district court and Kent was subsequently convicted and sentenced to thirty to ninety years in prison. Kent appealed, arguing that the waiver was defective without a hearing.

The Supreme Court decided that the waiver violated the District of Columbia’s Juvenile Court Act which required a judge to hold a full investigation prior to waiving jurisdiction. The Supreme Court reasoned that waiver of jurisdiction was a “critically important” action in the juvenile justice system and, therefore, “must measure up to the essentials of due process and fair treatment.”

Although the Court did not directly address the constitutional issue of due process, its decision contained numerous references to the need for necessary due process protections in juvenile court. In Kent, the Supreme Court laid the due process foundation for its decision in In re Gault.

2. Procedural Due Process Rights

One year later, the United States Supreme Court recognized four due process rights for juvenile court proceedings in the controversial case of In re Gault.

145. Id. at 545. In the District of Columbia, juvenile offenders were subjected to the jurisdiction of the District of Columbia Juvenile Court unless that court waived jurisdiction. The offenders were then remitted for trial to the United States District Court to be tried as adults. Id. at 547-48; see also Bernard, supra note 36, at 110.

146. Kent, 383 U.S. at 546.

147. Bernard, supra note 36, at 110.

148. Kent, 383 U.S. at 550. In the district court, Kent was convicted of six counts of housebreaking and robbery and sentenced to serve five to 15 years on each count. Id. at 549-50.

149. Id. at 552.

150. Id. at 553; see also Bernard, supra note 36, at 110-11.

151. Kent, 383 U.S. at 553-54. Within the juvenile court, juvenile offenders receive special rights and immunities that are not available in the criminal system. The right to a hearing on a motion for waiver of jurisdiction could mean the difference between five years of confinement in the juvenile system and the possibility of the death penalty in the criminal system. Id. at 557.

152. Id. at 562.

153. Bernard, supra note 36, at 112. For example, the Court stated that the juvenile offender is entitled to the statutory hearing "read in the context of constitutional principles relating to due process and the assistance of counsel." Kent, 383 U.S. at 557.

154. 387 U.S. 1, 33, 41, 55, 57 (1967). Gault is considered controversial both for its potentially broad and its potentially narrow interpretations. See generally Carpenter, supra note 2, at 255. While the Court expanded the rights of juvenile offenders by allowing the rights to notice, counsel, confrontation of witnesses, and the privilege against self-incrimination, the Court declined to rule on two other due process claims,
Gerald Gault, age fourteen, and his friend, Ronald Lewis, were arrested for making lewd and indecent phone calls to their neighbor. Gault was immediately taken to a detention home without notice to his parents. The petition that was filed did not state the charges against Gault. After two hearings, during which no record was kept, Gault was adjudicated a delinquent and committed to a detention center until he reached the age of twenty-one.

The Supreme Court recognized that neither the Fourteenth Amendment nor the Bill of Rights apply to adults alone. The Court relied on previous holdings in which juvenile offenders were given certain due process protections. The Court stated that although the cases upon which it relied were restricted in their holdings, the cases "unmistakably indicate" that the Fourteenth Amendment was intended to apply to children as well as adults.

After applying the Due Process Clause of the Fourteenth Amendment, the Supreme Court granted juvenile offenders four procedural rights guaranteed in the criminal court system: adequate written notice to the child and the child's parents of the specific issues; representation by counsel; constitutional privilege against self-incrimination; and confrontation of witnesses. The Court reiterated its reasoning for upholding due process procedures and stated that no result of consequence can be reached without the ceremony of court proceedings. After In re Gault, the "ceremony" of juvenile court proceedings required due process procedural protections.
3. Proof Beyond a Reasonable Doubt

Three years later, the Court, in *In re Winship*, further enhanced juvenile procedural protections and held that juvenile adjudications, like adult criminal convictions, required proof beyond a reasonable doubt.

Samuel Winship, age twelve, was charged with stealing money from a woman's pocketbook in a furniture store. A salesperson said she saw Winship run from the store and then she discovered that the money was missing. However, a defense witness testified that the salesperson could not possibly have seen Winship because the salesperson was in another part of the store at the time of the theft.

Under New York state law, the judge was required to find a "preponderance of evidence" in order to adjudicate Winship. Despite the witnesses' inconsistent testimonies, the judge found a "preponderance of evidence" and ordered Winship to a training school for a period of eighteen months to six years.

The United States Supreme Court held that the Fourteenth Amendment's Due Process Clause requires the standard of proof in juvenile proceedings to be "beyond a reasonable doubt." The Court stated, "[t]he same considerations that demand extreme caution in fact finding to protect the innocent adult apply as well to the innocent child." The standard of proof is a constitutional safeguard and "is as much required during the adjudicatory stage of a delinquency proceeding as are those constitutional safeguards applied in *Gault*.

4. No Right to a Jury Trial

One year after *Winship*, the Court retreated from further expansion of due process rights to juvenile offenders. In *McKeiver v. Penn-
the Court stated that a jury trial was not constitutionally required in juvenile court proceedings.\footnote{175} Joseph McKeiver, age sixteen, was charged with robbery, larceny, and receiving stolen goods.\footnote{177} Under Pennsylvania law, the charges constituted felonies.\footnote{178} Although jury trials are a constitutional right in the criminal system, McKeiver’s request for a jury trial was denied.\footnote{179}

McKeiver argued that he should be granted a jury trial because his juvenile trial proceedings mirrored adult criminal trials.\footnote{180} For example: McKeiver’s petition used the language of an indictment; prior to trial he was detained in a building similar to a prison; his counsel and the prosecution engaged in plea bargaining; rules of evidence were applied; the press and the public were admitted to the trial; and, once adjudged delinquent, he could be confined until the age of majority in a prison-like setting.\footnote{181}

The Court stated that although the right to a jury trial is a constitutional safeguard in criminal trials, that right is not a constitutional requirement in juvenile court.\footnote{182} In support of its position, the \textit{McKeiver} Court outlined the differences between the two systems. First, the adjudication of delinquency in juvenile court is much less onerous than the conviction of a crime in the criminal system.\footnote{183} Second, juvenile court judges handle cases differently than criminal court judges.\footnote{184} But most significant, a jury trial is the one due process right that would most disrupt and destroy the uniqueness of the juvenile court process.\footnote{185} The Court concluded that a juvenile offender can be given a

\footnotesize{\textit{sylvania},}\footnote{175} \textit{403 U.S. 528} (1971).
\footnotesize{\textit{Id.}}\footnote{176} at 545.
\footnotesize{\textit{Id.}}\footnote{177} at 534.
\footnotesize{\textit{Id.}}\footnote{178} The felony charges arose from an incident in which McKeiver and 20 or 30 other youths chased three younger teenagers and took 25 cents from them. \textit{Id.} at 536.
\footnotesize{\textit{Id.}}\footnote{179} at 535. When McKeiver reached the Supreme Court, it was consolidated with three other cases in which juveniles also argued for the right to a jury trial in juvenile court. \textit{Bernard}, supra note 36, at 124. One of the cases was \textit{In re Terry}, 265 A.2d 350 (Pa. 1970), in which Edward Terry was charged with assault and battery of a police officer. \textit{McKeiver}, 403 U.S. at 535. The two other cases stemmed from racial discrimination protests. \textit{Id.} at 536. In one case, Barbara Burrus and approximately 45 other black children were charged with impeding traffic during a protest. \textit{In re Burrus}, 167 S.E.2d 454 (N.C. Ct. App. 1969), \textit{aff'd}, 169 S.E.2d 879 (N.C. 1969). In the other case, James Lambert Howard was charged with willfully making riotous noise and defacing school furniture. \textit{In re Shelton}, 168 S.E.2d 695 (N.C. Ct. App. 1969), \textit{aff'd}, 169 S.E.2d 879 (N.C. 1969).
\footnotesize{\textit{McKeiver}}, \textit{403 U.S.} at 541.
\footnotesize{\textit{Id.}} at 542.
\footnotesize{\textit{Id.}} at 545.
\footnotesize{\textit{Id.}} at 540.
\footnotesize{\textit{Id.}} at 541.
\footnotesize{\textit{McKeiver}}, \textit{403 U.S.} at 540 (citing \textit{In re Terry}, 265 A.2d 350, 354-55 (Pa. 1970)). The Supreme Court applied a balancing test to determine whether or not due process

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fair trial without a jury.\textsuperscript{186} Therefore, the \textit{McKeiver} Court decided that jury trials were not fundamental to the juvenile court system.\textsuperscript{187}

5. An Open Window: State Legislative Protection

Following \textit{McKeiver}, the Supreme Court appears to have closed the door on federal expansion of juvenile constitutional rights. However, the Court left open a window for state expansion. Although the Court declined to declare a constitutional right to a jury trial in juvenile proceedings, individual states may adopt legislation allowing jury trials for juvenile offenders.\textsuperscript{188} Today, nearly one-third of the states have decided that a jury trial provides necessary protection in juvenile court proceedings and have enacted such legislation.\textsuperscript{189}

requires the right to a jury trial in juvenile court proceedings. \textit{Id.} at 547; \textit{see also} Lanes v. State, 767 S.W.2d 789, 794 (Tex. Crim. App. 1989). The \textit{McKeiver} Court balanced the function of the jury as fact-finder against the impact on the proceedings and decided that the presence of a jury did not strengthen the fact-finding function. \textit{McKeiver}, 403 U.S. at 547. The Court also balanced the function of the right to a jury trial against its impact on the juvenile system and decided that a jury would create an adversarial process, thus destroying the system's unique nature. \textit{Id.} at 545; \textit{see also} State v. Turner, 453 P.2d 910, 913 (Or. 1969).

Factoring in the success or failure of the juvenile court system, the Court reluctantly recognized that the system, nearly 100 years old, had not accomplished its rehabilitative goals. \textit{McKeiver}, 403 U.S. at 547. However, the Court was unwilling to blame the ineffectiveness of the system on its lack of procedural safeguards. \textit{Id.} The Court, instead, blamed the system's failure on a lack of proper funding and the lack of a public commitment to learn and understand the reasons for the failure. \textit{Id.}


187. \textit{McKeiver}, 403 U.S. at 545. The Supreme Court relied partially on \textit{In re Terry}, 265 A.2d 350 (Pa. 1970), which held that jury trials were not fundamental to the juvenile justice system because protecting children in juvenile proceedings was not as essential as protecting the accused's rights in criminal proceedings. \textit{Id.} at 354-55. Justice Blackmun, writing for the \textit{McKeiver} majority, reasoned that while the Court had allowed some constitutional safeguards to apply to juvenile offenders, "[t]he Court... has not yet said that all rights constitutionally assured to an adult accused of crime also are to be enforced or made available to the juvenile in [his or her] delinquency proceeding." \textit{McKeiver}, 403 U.S. at 533 (emphasis added).

188. \textit{McKeiver}, 403 U.S. at 547. The Supreme Court did not bar jury trials for juvenile offenders, but, instead, encouraged states to experiment with their juvenile court systems to find the ideal process for juvenile proceedings. This process may include jury trials. \textit{See Juvenile Jury Trials, supra} note 46, at 596.

189. \textbf{ALASKA} \textit{STAT.} \S 47.10.070 (1990 & Supp. 1993); \textbf{COLO. REV. STAT. ANN.} \S 19-2-501 (West 1990); \textbf{IDAHO CODE} \S 16-1806A (1979 & Supp. 1993); \textbf{ILL. ANN. STAT. ch. 705, para. 405/5-35} (Smith-Hurd 1992); \textbf{KAN. STAT. ANN.} \S 38-1656 (1993); \textbf{MICH. COMP. LAWS ANN.} \S 712A.17(2) (West 1993); \textbf{MONT. CODE ANN.} \S 41-5-521 (1981); \textbf{N.M. STAT. ANN.} \S 32A-2-16 (Michie 1978 & Supp. 1995); \textbf{OKLA. STAT. ANN. tit. 10, \S 1110} (West 1987 & Supp. 1994); \textbf{R.I. GEN. LAWS} \S 14-1-7 (1981); \textbf{TEX. CODE ANN.} \S 54.03(c) (West 1986 & Supp. 1994); \textbf{VA. CODE ANN.} \S 16.1-272 (Michie 1988); \textbf{W. VA. CODE ANN.} \S 49-5-6 (1992); \textbf{WIS. STAT. ANN.} \S 48.31(2) (West 1987 & Supp. 1993); \textbf{WYO. STAT.} \S 14-6-223(c) (1986); \textit{see also} 12 \textbf{JOHN JUVENILE LAW JOURNAL}
Some states, such as Massachusetts, allow an unconditional right to a jury trial in juvenile court proceedings because the right is of fundamental importance.\textsuperscript{190} West Virginia also allows a juvenile an unconditional right to a jury trial, recognizing that the presence of a jury protects the juvenile offender against possible prejudice from a judge.\textsuperscript{191}

Other states allow jury trials only in certain circumstances.\textsuperscript{192} For example: Illinois allows a trial by jury for habitual juvenile offenders;\textsuperscript{193} Kansas provides jury trials if the offense, under adult prosecution, is classified as a felony and if the trial is ordered by the judge;\textsuperscript{194} and Montana grants jury trials only if the juvenile offender denies the alleged offenses.\textsuperscript{195}

\section*{C. The Right to a Jury Trial in Minnesota}

Historically, jury trials have not been provided to juvenile offenders in Minnesota\textsuperscript{196} despite recent efforts to provide strict procedural protections to juvenile offenders. In the recent case of \textit{In re D.S.S.},\textsuperscript{197} the Minnesota Court of Appeals emphasized not only the right to counsel, but also \textit{notice} of the right to counsel for juvenile offenders.\textsuperscript{198} Although a social worker provided D.S.S. with written notice of his right to counsel, the court stated that the notice was insufficient to

\begin{itemize}
\item \textsuperscript{190} Commonwealth v. Thomas, 269 N.E.2d 277, 278 (Mass. 1971) (holding that the function of a jury is to provide juvenile offenders with a fact-finding safeguard).
\item \textsuperscript{191} State \textit{ex rel.} Smith v. Scott, 238 S.E.2d 223, 227 n.3 (W. Va. 1977). The Scott court found that a judge who obtained potentially prejudicial information during a transfer hearing was not precluded from holding a subsequent adjudicatory proceeding because "the integrity of the fact-finding process is preserved by the right to have a jury trial in a juvenile proceeding. . . ." \textit{Id.} (referencing W.Va. Code \S 49-5-6 (1975)).
\item \textsuperscript{193} ILL. ANN. STAT. ch. 705, para. 405/5-35 (Smith-Hurd 1992). An habitual offender is a minor who has been twice adjudicated a delinquent for offenses which would have been felonies if the offender had been an adult. \textit{Id.} The third adjudication results in the status of a Habitual Juvenile Offender. In that case, the juvenile offender is granted a jury trial unless the offender demands a bench trial. \textit{Id.}
\item \textsuperscript{194} KAN. STAT. ANN. \S 38-1656 (1993); see also VA. CODE ANN. \S 16.1-296 (Michie 1988).
\item \textsuperscript{195} MONT. CODE ANN. \S 41-5-521 (1981).
\item \textsuperscript{196} MINN. STAT. \S 260.155, subd. 1 (Supp. 1993).
\item \textsuperscript{197} 506 N.W.2d 650 (Minn. Ct. App. 1993).
\item \textsuperscript{198} \textit{Id.} at 653.
meet the requirements of the Minnesota Rules of Juvenile Procedure.\textsuperscript{199}

The court expressed concern that a juvenile offender may not fully understand the consequences of waiving the right to counsel.\textsuperscript{200} Minnesota law, therefore, provides stronger protections than federal law in requiring an advisement of the right to counsel in order to protect the child from "manifest injustice."\textsuperscript{201}

Despite the trend to provide heightened procedural protection in the best interests of the juvenile offender, Minnesota has refused to grant juveniles the right to a jury trial.\textsuperscript{202} Not only does a juvenile offender not have the right to a jury trial in juvenile court, but under Minnesota law, the juvenile offender cannot opt out of juvenile court in favor of adult criminal proceedings in which a jury trial, as well as all due process protections, are guaranteed.\textsuperscript{203}

One of the issues considered by the Advisory Task Force on the Juvenile Justice System was whether juvenile offenders should be granted the right to a jury trial.\textsuperscript{204} A majority of the Task Force recommended that the right to a jury trial only be granted to one group of juvenile offenders, those juveniles that would be included in the newly created Serious Youthful Offender category.\textsuperscript{205} In a minority report, however, the Task Force recommended that all juvenile offenders should be granted the right to a jury trial.\textsuperscript{206} The Minnesota Legislature adopted the recommendations of the majority.\textsuperscript{207} Subsequently, jury trials will be provided for only a limited group of juvenile offenders in Minnesota.

V. THE REASONS FOR GRANTING OR DENYING JURY TRIALS IN JUVENILE COURT

The issue of whether Minnesota should limit the right to jury trials to a small group of serious juvenile offenders or should extend that right to all juvenile offenders should be considered in the context of the current law on the right to a jury trial in juvenile court. The following survey analyzes the laws of the other forty-nine states, focusing on

\textsuperscript{199} Id. at 653-54; see Minn. R. Juv. P. 4.01, subd. 2 (1985) which requires that juveniles receive an on-the-record explanation of the right to counsel. Id. Notice of the right to counsel is required because "[t]he juvenile justice system is expected to rehabilitate the juvenile." D.S.S., 506 N.W.2d at 655.

\textsuperscript{200} Id. at 653.

\textsuperscript{201} Id. at 655; see In re Gault, 387 U.S. 1, 33, 41, 55, 57 (1967).


\textsuperscript{203} In re K.A.A., 410 N.W.2d 836, 839 (Minn. 1987).

\textsuperscript{204} Minn. Task Force Report, supra note 6, at 645-49.

\textsuperscript{205} Id. at 648-49.

\textsuperscript{206} Id. at 649-52.

\textsuperscript{207} Act approved May 5, 1994, ch. 576, 1994 Minn. Laws 934.
the reasons those states either grant or deny the right to a jury trial in juvenile court.

A. Reasons States Grant this Right

Currently, ten states unconditionally grant juvenile offenders the right to a jury trial. Although the reasons for extending this right to juvenile court proceedings vary from state to state, courts consistently act in the best interests of the child.

1. Protection from Prejudicial Judges

Because the juvenile court system is based on a relationship between the juvenile offender and judge, the presiding judge must be a fair, unbiased finder of fact. The future of the juvenile offender lies in the judge's hands and, therefore, it is critical that prejudice not taint the judge's decisions. Juvenile court judges may be biased or prejudiced in a variety of ways.

First, the familiarity with a particular juvenile may prejudice a judge. A judge who knows or is familiar with a juvenile offender, because of the juvenile's past involvement with the court, is less likely to be as fair as a jury of strangers.

Second, judges may be prejudiced when faced with cases similar to those they have heard in the past. Because each child's circumstances are unique, judges who base decisions on precedent may impede the juvenile system's goal of providing separate and individualized attention to each child.

Third, judges may become prejudiced during the proceedings. For example, Minnesota allows evidentiary hearings in juvenile court. A judge often will combine the admissibility of evidence hearing and the adjudication of delinquency hearing in one proceeding. Consequently, there is a risk that potentially damaging inadmissible evidence


209. See Duncan v. Louisiana, 391 U.S. 145, 156 (1968) (noting that a trial by jury is a safeguard against a biased or eccentric judge).

210. See Juvenile Jury Trials, supra note 46, at 608.

211. Id.


will influence the judge.\textsuperscript{215} Despite the \textit{McKeiver} Court's presumption that judges can be fair, "given the same evidence, a judge in juvenile court is more likely to convict a youth than would a jury of detached citizens in a criminal proceeding."\textsuperscript{216}

Providing the right to a jury trial protects against the dangers of biased or prejudiced judges.\textsuperscript{217} Even if a judge were to preside over both the admissibility hearing and adjudication hearing, the proceedings would not be tainted with bias because "the integrity of the fact-finding process [would be] preserved by the right to have a jury trial in a juvenile proceeding."\textsuperscript{218}

2. \textit{Assure Accurate Fact Finding}

The function of a jury is to ascertain the truth in questions of fact.\textsuperscript{219} Juries are an essential part of the court system and are authorized to evaluate the credibility of witnesses.\textsuperscript{220} Moreover, centuries of use have proven the value of criminal jury trials.\textsuperscript{221} Juries "bring an element of the community into the courtroom. . . . [P]ublic participation [is] expected to temper the legal mind with a healthy dosage of common sense and human emotion."\textsuperscript{222} Juries also provide a nexus between the Legislature's original intentions and the community's sense of justice.\textsuperscript{223} This nexus is equally as important for juvenile offenders as it is for adults.

3. \textit{Due Process and Fundamental Fairness Guarantee the Right to a Jury Trial}

In \textit{In re Gault},\textsuperscript{224} the Supreme Court stated that due process rights are critically important because they define the rights of the individual and provide protection from the state.\textsuperscript{225} These protections include the right to have the assistance of counsel,\textsuperscript{226} the right against self-incrimination,\textsuperscript{227} the right to notice of charges,\textsuperscript{228} and the right to

\begin{itemize}
\item \textsuperscript{215} Id. at 235.
\item \textsuperscript{216} MINN. TASK FORCE REPORT, supra note 6, at 650, 687.
\item \textsuperscript{217} State \textit{ex rel.} Smith \textit{v.} Scott, 238 S.E.2d 223, 226 (W.Va. 1977). The \textit{Scott} court refused to prevent a juvenile court judge from presiding over both a transfer hearing and any subsequent adjudicatory or criminal proceeding. \textit{Id.} at 226-27.
\item \textsuperscript{218} \textit{Id.} at 227 n.3; see also W. VA. CODE § 49-5-6 (1992).
\item \textsuperscript{219} 47 AM. JUR.2D \textit{Jury} § 1 (1969).
\item \textsuperscript{220} \textit{In re Banschbach}, 323 P.2d 1112, 1113 (Mont. 1958) (holding that denial of jury trial for a minor was reversible error); see also Gullick, supra note 212, at 593, 609.
\item \textsuperscript{221} 47 AM. JUR.2D \textit{Jury} § 3 (1969).
\item \textsuperscript{222} Keegan, supra note 49, at 835-36.
\item \textsuperscript{223} MINN. TASK FORCE REPORT, supra note 6, at 686-87 (quoting Criminalizing Juvenile Justice, supra note 214, at 244-46).
\item \textsuperscript{224} 387 U.S. 1 (1967).
\item \textsuperscript{225} Id. at 20.
\item \textsuperscript{226} U.S. CONST. amend. VI.
\item \textsuperscript{227} \textit{Id.} amend. V.
\end{itemize}
confront witnesses. In *Duncan v. Louisiana*, decided one year after *Gault*, the Supreme Court held that the right to jury trial is a fundamental due process right in all criminal proceedings.

When *Gault* and *Duncan* are read together it is evident that because due process rights are afforded to juvenile offenders in juvenile court proceedings, and jury trials are fundamental to due process, a due process right to a jury trial exists in juvenile court. Alaskan courts follow this "combination" theory for allowing the right to jury trials. Massachusetts also holds that the right to a jury trial is of such fundamental importance that it should not be denied in juvenile court proceedings.

### 4. Once Granted, a Right Cannot be Removed

Historically, children were granted the fundamental due process right to a jury trial. Prior to the juvenile system's formation, juvenile offenders were tried in the same type of proceedings as adults and the right to a jury trial was granted to each person. New Mexico is one state that continues to grant juveniles that right. The New Mexico Supreme Court stated that the formation of a separate juvenile system should not remove a right previously granted to juvenile offenders. The court reasoned, "[o]n what kind of theory could this [right] be denied [to a child] merely by creating a juvenile court and denominating the proceedings as something different than criminal?"

228. *Id.* amends VI.

229. *Id.*


231. *Id.* at 149.


234. *See* DeBacker v. Brainard, 396 U.S. 28, 38 (1969) (Douglas, J., dissenting) (stating that the right to jury trial is so fundamental that there is no sufficient reason to deprive juvenile offenders of this right). Justice Douglas reached this conclusion by balancing the rehabilitative ideal of the juvenile courts and the fundamental fairness of the right to a jury trial. *Id.* at 38.


237. Peyton v. Nord, 437 P.2d 716, 722 (N.M. 1968); *see also supra* notes 38-40 and accompanying text.


239. *Id.*

240. *Id.*

241. *Id.* The New Mexico Supreme Court concluded that "at the time of the adoption of our constitution, petitioner could not have been imprisoned without a trial by jury. This being true, no change in terminology or procedure may be invoked whereby incarceration could be accomplished in a manner which involved denial of the right to jury trial." *Id.* at 723.
B. Reasons States Do Not Grant this Right

The majority of states do not grant juvenile offenders the right to a jury trial.242 Clearly, these states intend to preserve the goals of the original reformers of juvenile justice in providing a unique, informal proceeding designed to rehabilitate rather than punish.

1. Juvenile Court Proceedings are Civil, Not Criminal

The juvenile court system originated from English chancery courts which were civil in nature.243 Because the juvenile system was designated as "civil," some courts have stated that juvenile proceedings are not entitled to the same due process and procedural rights available in criminal proceedings.244 Juvenile courts are "engaged in determining the needs of the child . . . rather than adjudicating criminal conduct."245 An adjudication of delinquency in juvenile court does not constitute a conviction of a crime even though the juvenile may have committed a crime.246 The crime is simply evidence of whether or not the child is delinquent.247 Juvenile courts were created to remove children from criminal proceedings and to "get away from the notion that the child is to be dealt with as a criminal."248


Currently, only 10 states unconditionally grant all juvenile offenders the right to a jury trial. See supra note 208. See supra note 189 for a complete listing of states granting the right to a jury trial. Although the United States Supreme Court has stated that the fact that a practice is followed in many states is not conclusive evidence that it accords due process, it is a factor to consider when determining whether a fundamental right is at stake. McKeiver v. Pennsylvania, 403 U.S. 528, 548 (1971).

243. See BERNARD, supra note 36, at 88.

244. Kent v. United States, 383 U.S. 541, 555 (1966); see Carpenter, supra note 2, at 257.

245. Kent, 383 U.S. at 554.


To save a child from becoming a criminal . . . the legislature surely may provide for the salvation of such a child . . . by bringing it into one of the
In some states, juvenile court legislation has been revised to mirror the criminal justice system and, as a result, employs a punitive philosophy. In 1977, the Washington Legislature altered the focus of its Juvenile Court Act from treatment and rehabilitation to punishment.

The Washington Supreme Court considered whether a constitutional right to a jury trial was required since juvenile proceedings were now "akin" to adult criminal proceedings. However, the court refused to grant the right in juvenile court despite the newly-placed emphasis on punishment. The court stated that although the statute placed an emphasis on accountability, "[a]ccountability . . . does as much to rehabilitate, correct and direct errant youth as does the prior philosophy of focusing upon the particular characteristics of the individual juvenile." The court concluded that, in spite of the stated purpose, the juvenile court proceedings were "not totally comparable to an adult criminal offense scenario."

courts of the state without any process at all, for the purpose of subjecting it to the state's guardianship and protection.

The action is not for the trial of a child charged with a crime, but is mercifully to save it from such an ordeal, with the prison or penitentiary in its wake. . . . Whether the child deserves to be saved by the state is no more a question for a jury than whether the father, if able to save it, ought to save it.

Id. at 110 (quoting Commonwealth v. Fisher, 62 A. 198 (Pa. 1905)).

See CAL. WELF. & INST. CODE § 202(b) (West Supp. 1994); ME. REV. STAT. ANN., tit. 15, § 3002.1(C) (West 1980); WASH. REV. CODE ANN. § 13.40.010(2)(a), (c), (d) (West 1993).

State v. Lawley, 591 P.2d 772 (Wash. 1979). The reform included an emphasis on accountability as well as sentencing guidelines based on the age, crime, and criminal history of the offenders. Id. at 772-73.

Id. at 772.

Id. at 774.

Id. at 773. The court also noted that the Legislature had not merely mandated punishment in the statute, but intended to provide treatment and supervision for juvenile offenders. Id. (interpreting WASH. REV. CODE ANN. § 13.40.010(2)(f) (West 1977). Moreover, the court relied on the Supreme Court's refusal to guarantee the right to a jury trial in juvenile court proceedings. Id. (relying on McKeiver v. Pennsylvania, 403 U.S. 528 (1971)).

Id. at 774. The Washington Supreme Court, in 1987, again defended its denial of jury trials notwithstanding the imposition of monetary penalties for juvenile offenders and the possibility of adult incarceration. State v. Schaaf, 743 P.2d 240, 244 (Wash. 1987). The Schaaf court refused to grant jury trials because the legislature had not completely rejected the goal of rehabilitation. Id. at 244. Although juvenile proceedings had been modified, some degree of flexibility and informality still existed in the proceedings. Id. at 245.

The court also cited examples demonstrating that juvenile proceedings are not adversarial: juvenile offenders are not automatically fingerprinted and photographed; juvenile offenders may sign diversion agreements instead of being prosecuted; mitigating factors are considered at hearings; and limitations are placed on the use of the juvenile offender's record. Id. at 245-46.
2. Uniqueness of the Juvenile Courts

Courts often deny juvenile offenders the right to a jury trial on the premise that a jury would destroy the unique nature of juvenile court proceedings. Juvenile courts are unique because of the philosophy under which the courts were created. The reformers' *parens patriae* concept is based on establishing a close relationship between the judge and child. The juvenile court judge should oversee each stage of the proceeding and "be in command, ever ready to guide counsel, parent and child." In order achieve this goal, the judge should have maximum flexibility, free from the formalities and procedural complexities of criminal proceedings.

The judge needs flexibility to "impart a feeling of security and belonging, communicate the importance and dignity of being a member of society and . . . prevent the child from pursuing a criminal and antisocial career. . . . [The judge] must have patience, understanding, and a genuine interest in the welfare of the child. . . ." Under this theory, the rehabilitative process will begin and succeed only if there is a close relationship between the judge and the child.

Introducing a jury into the proceedings would destroy the relationship between the "fatherly" judge and the "erring youth" and, as a result, the judge would have difficulty fulfilling the Legislature's intended goals. The judge's position would be drastically altered to that of a judge in a criminal trial.

The court further reasoned that if the Legislature intended to grant all procedural rights and equate the proceedings with criminal courts, it would have abandoned the juvenile court system altogether. Instead, the Legislature chose to restructure the system to "better serve the needs of the community and the juvenile while retaining the features of informality and individualized attention." In re Fucini, 255 N.E.2d 380, 383 (Ill. 1970).


260. *State v. Gleason*, 404 A.2d 573, 584 (Me. 1979); *see also State v. Turner*, 453 P.2d 910, 914 (Or. 1969) (suggesting that the adjudicative phase of the juvenile court process provides a unique opportunity in the case of first-time offenders and might prevent them from becoming repeat offenders). The *Turner* court feared that the introduction of a jury into this delicate proceeding may have an adverse effect on first-time offenders and cause them to further rebel against the justice system. *Id.*


262. *Johnson*, 234 A.2d at 17.

Jury Trials for Juveniles

Juvenile courts are also unique because the system was specially created for children with the intent to remove them from adult criminal courts to a more informal, individualized setting. By design, juvenile courts lack the adversarial aspects of criminal courts in order to create an atmosphere more conducive to treatment.

The Washington Supreme Court upheld state legislation that denied juvenile offenders the right to a jury trial on the basis that juvenile proceedings are private, informal hearings. Similarly, the Oregon Supreme Court refused to grant juvenile offenders certain procedural rights granted to adults in criminal court because the "informal . . . atmosphere [of the juvenile court] . . . is the antithesis of adult criminal procedure." North Dakota refused to allow jury trials, reasoning that a jury would formalize procedures and thus destroy the very purpose of the juvenile court system.

3. Juvenile Court Proceedings Would Become Adversarial

In McKeiver v. Pennsylvania, the United States Supreme Court stated that the presence of a jury would place the juvenile offender "squarely in the routine of the criminal process." Accordingly, some states deny juveniles the right to a jury trial reasoning that juvenile proceedings will become adversarial and create the appearance of a criminal trial. The Kentucky Court of Appeals, also concerned with appearances, stated:

A jury trial, with all the clash and clamor of the adversary system that necessarily goes with it, would certainly invest a juvenile proceeding the appearance of a criminal trial and create in the mind and memory of the child the same effect as if it were [a criminal trial].

4. Juvenile Courts Are Separate and Unequal

The McKeiver Court stated that one of the reasons for denying the right to a jury trial in juvenile proceedings is that juvenile and criminal proceedings cannot be equated. The Court also suggested that if a procedural formality such as a jury trial were introduced into the juve-

265. Id.
269. 403 U.S. 528 (1971).
270. Id. at 547.
272. Dryden, 435 S.W.2d at 461.
nile court system, "there [would be] little need for [the juvenile court's] separate existence." Despite similarities between juvenile proceedings and criminal trials—both involve persons accused of criminal conduct and an adjudication in either could lead to incarceration—courts refuse to equate juvenile proceedings with a criminal trial. This refusal serves as further justification for denying juvenile offenders the right to a jury trial.

5. Delay, Delay, Delay

Juvenile courts theoretically enjoy simple and expedited administration. A jury trial in juvenile court could burden the proceedings and result in delay. Adding a jury trial to juvenile proceedings would require additional time, personnel, paperwork, and expense. The Alabama Supreme Court refused to allow jury trials because of its concern with detrimental effects on the orderly functions of juvenile proceedings. The court feared that the administrative efficiency of juvenile court proceedings would be hindered. North Dakota and Pennsylvania courts share similar concerns that such delays could complicate the rehabilitative process.

The majority of states continue to deny the right to a jury trial in juvenile court proceedings because of historical reasons that originated with the nineteenth-century reformers. The ultimate justification for denying juvenile offenders the right to a jury trial is the necessity of acting in the best interests of the child.

VI. MINNESOTA SHOULD GRANT THE RIGHT TO A JURY TRIAL IN JUVENILE COURT PROCEEDINGS

The nature of the acts committed by juvenile offenders and the proceedings in juvenile court have changed dramatically since the juvenile justice system's inception. As a result, the juvenile court system now

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274. *Id.* at 551; see also *Findlay*, 681 P.2d at 22 (citing *McKeiver*, 403 U.S. at 551; *Juvenile Court Legislative Reform*, supra note 107, at 242. Professor Feld offers a similar suggestion stating that juvenile offenders should not be tried in juvenile courts but in adult courts with full procedural protections. After conviction, juvenile offenders could receive appropriate dispositions based on such factors as criminal history, age, and availability of facilities. *Id.*

275. *Dryden*, 435 S.W.2d at 461.

276. *Id.*


279. *In re D.*, 261 N.E.2d 627, 630 (N.Y. 1970); see also *Gullick*, supra note 218, at 591.


281. *Id.*

282. *In re R.Y.*, 189 N.W.2d 644, 653 (N.D. 1971); *Commonwealth v. Johnson*, 234 A.2d 9, 17 (Penn. 1967); see also *Foley*, supra note 37, at 995; *Gullick*, supra note 212, at 590.
mirrors the adult criminal court system. Because of these ever-increasing similarities, the due process protection afforded by a jury trial is critical. A careful analysis of the reasons for and against jury trials shows that Minnesota should grant the right to a jury trial to all juvenile offenders.

A. Juvenile Court Proceedings are Criminal, Not Civil

1. The Proceedings Sound Criminal

The justification for refusing to allow jury trials in juvenile court proceedings is often based on the underlying philosophical difference between adult courts and juvenile courts. The underlying purpose of the criminal justice system is punitive, whereas the juvenile justice system is intended to be helpful and rehabilitative. In the criminal justice system, punishment "involves the imposition by the State, for purposes of retribution or deterrence, of burdens on an individual who has violated legal prohibitions." In contrast, the juvenile justice system "focuses on the . . . future welfare of the individual." 

In , the Supreme Court reasoned that, because the juvenile court system provided only positive rehabilitative treatment, special safeguards to protect individual rights were unnec-

283. The provision of jury trials in the juvenile court system gives rise to an interesting question: because the case must be tried before a jury of the defendant's peers, must the jury include persons at least as young as the juvenile offender? R.L.R. v. State, 487 P.2d 27, 33 (Alaska 1971). A jury of peers preserves the defendant's enjoyment of full protection of the laws. A jury is to be "composed of the peers or equals of the accused so as to afford [the accused] a tribunal free of the prejudices that often exist against certain classes in the community." Stacey L. Kepnes, United States v. DeGross: The Ninth Circuit Expands Restrictions on a Criminal Defendant's Right to Exercise Peremptory Challenges, 23 GOLDEN GATE U.L. REV. 109, 121 n.85 (1992).

Although a jury comprised of persons the same age as the juvenile offender may not comprehend the seriousness of the offender's actions, a jury composed of adults may be prejudiced against juvenile offenders. Consequently, a jury consisting of either peers or adults may not prove a suitable jury for the juvenile offender. If young persons, or persons the same age as the juvenile offender, are excluded from the jury, then the defendant could face equal protection and due process problems, similar to the problems faced by racial minorities. See, e.g., Batson v. Kentucky, 476 U.S. 79, 82 (1976). In most states, however, persons over 18 may serve as jurors. Juvenile Jury Trials, supra note 46, at 612 (citing MINN. STAT. § 593.41, subd. 2(2) (1982)). The age of 18 may be sufficient to be considered a "peer." Moreover, "peer" has never been so narrowly defined as to include only persons the age of the accused. Id. at 612.


286. Id.

287. 403 U.S. 528 (1971).
Recently, however, state legislation has moved away from the rehabilitative ideals of juvenile justice reform toward "an emphasis on public safety, the seriousness of a youth's offense, and social control." Many states have rewörded preambles, purpose clauses, and the sentencing guidelines of juvenile court acts to express accountability and punishment instead of rehabilitation and treatment. The movement from rehabilitation to punishment "call[s] into question the underlying rationales of McKeiver that juvenile dispositions are benign and therapeutic. . . ."

In 1977, for example, the Washington Legislature revised its Juvenile Court Act to emphasize the juvenile offender's prior criminal activity for the purpose of sentencing. Washington's "just deserts," sentencing guidelines mandate that the punishment of an adjudicated delinquent shall be a reflection of the juvenile offender's age, offense and juvenile history.

In 1980, the Minnesota Legislature changed the language of the Purpose Clause to the Juvenile Court Act from "care and guidance" instead of punishment. In McKeiver, Justice White supported the denial of jury trials for juvenile offenders and distinguished between the consequences of unlawful adult behavior and the consequences of unlawful juvenile behavior. He found a "substantial gulf" between adult criminal guilt resulting in incarceration for punishment and juvenile delinquency resulting in commitment for rehabilitation. Id. at 553. See Juvenile Jury Trials, supra note 46, at 597 (quoting McKeiver, 403 U.S. at 553). "[Justice White] feared that jury trials would leave states free to 'embrace condemnation, punishment, and deterrence as permissible and desirable attributes of the juvenile justice system.'" Id. (quoting McKeiver, 403 U.S. at 551). Many states, however, including Minnesota, combine punishment and deterrence in the treatment of juvenile offenders. Therefore, according to Justice White's reasoning, jury trials should be implemented in today's juvenile courts. Id. at 597 n.69.

The "just deserts" concept is based on individual and systematic accountability rather than rehabilitation. Offenders often fall into different categories that have predetermined sentences and standard ranges. The Juvenile Court, supra note 285, at 852-53. For example, WASH. REV. CODE ANN. § 13.40.020(1), (13), (14) (West 1993), places offenders in three categories: serious, middle, or minor. Each category has its own predetermined sentence.

Lauley, 591 P.2d at 773. The Washington statute provides:

It is the intent of the legislature that . . . youth, in turn, be held accountable for their offenses. . . . To effectuate these policies, the legislature declares the following to be equally important for purposes of this chapter: . . . Protect the citizenry from criminal behavior; . . . Make the juvenile offender accountable for his or her criminal behavior; . . . Provide for punishment commensurate with the age, crime, and criminal history of the juvenile offender. . . .

WASH. REV. CODE ANN. § 13.40.010(2)(a), (c), (d) (West 1993). Despite this change in policy toward juvenile offenders, Washington continues to deny the right to jury trials in juvenile court proceedings. Lauley, 591 P.2d at 774.

Act approved April 24, 1959, ch. 685 § 1, 1959 MINN. LAWS 1275, 1275.
to "promot[ing] the public safety."296 The state legislatures of California and Maine also have changed statutory language and permit juvenile offenders to be punished.297

Some commentators suggest that the changes from rehabilitative purposes to punitive purposes move the juvenile court system closer to the criminal court system.298 In fact, the Purpose Statement of Minnesota’s Juvenile Court Act is similar to the Purpose Statement of the Minnesota Criminal Code.299

The Purpose Statement of the Minnesota Juvenile Court Act reads as follows: "[T]o promote the public safety and reduce juvenile delinquency by maintaining the integrity of the substantive law prohibiting certain behavior and by developing individual responsibility for lawful behavior."300 In comparison, the Purpose Statement of the Minnesota Criminal Code reads as follows: "To protect the public safety and welfare by preventing the commission of crime through the deterring effect of the sentences authorized, the rehabilitation of those convicted, and their confinement when the public safety and interest requires. . . ."301

The increasing similarities between juvenile and criminal courts erode prior justifications for denying the right to a jury trial in juvenile court that were based on the systems’ different purposes. Because juveniles face an increasing possibility that they will be punished for their actions, jury trials must be required as a safeguard to protect their rights.

296. Act approved April 15, 1980, ch. 580 § 3, 1980 Minn. Laws 962, 966; see also Minn. Task Force Report, supra note 6, at 685.
298. Forst & Blomquist, supra note 33, at 2 (1992); Juvenile Court Legislative Reform, supra note 104, at 198.

The movement toward the criminal court system may not be merely theoretical. There is increasing evidence that juvenile court dispositions, although intended to be rehabilitative, often are punitive. Criminalizing Juvenile Justice, supra note 214, at 259. Professor Feld suggests that the daily reality of juvenile facilities is characterized by predatory behavior and custodial incarceration. Id. at 259-61.

In McKeiver, Justice Douglas stated that juvenile facilities are often no better than criminal facilities. McKeiver v. Pennsylvania, 403 U.S. 528, 560 (1971) (Douglas, J., dissenting). Justice Douglas described a Pennsylvania facility that had barred windows, locked steel doors, a cyclone fence topped with barbed wire, and guard towers. Id. If juvenile courts are punishing instead of rehabilitating, then it appears that the underlying rationale for distinguishing between juvenile and adult court has been eliminated. The Juvenile Court, supra note 285, at 837-38.

299. Juvenile Court Legislative Reform, supra note 104, at 198.
301. Id. § 609.01, subd. 1 (1992).
2. The Proceedings Look Criminal

Since In re Gault,\textsuperscript{302} the proceedings in juvenile courts have taken on a more criminal appearance.\textsuperscript{303} For example, in Minnesota, the laws of evidence apply to juvenile court proceedings;\textsuperscript{304} juvenile courts can levy fines up to $700 against the juvenile offender;\textsuperscript{305} “probable cause” that the child offender committed the offense is a prerequisite to holding a reference hearing;\textsuperscript{306} the prosecutor must show by “clear and convincing” evidence that the child is not suitable for treatment or that public safety is not served under juvenile court laws;\textsuperscript{307} and parental presence is not required in order for children to properly waive their rights.\textsuperscript{308}

It is likely that adherence to these rules will consume more time.\textsuperscript{309} The “reforms will probably create more formal and adversarial juvenile court proceedings. . . . Viewed as a whole, the revisions eliminate almost all remaining distinctions between juvenile and adult criminal proceedings. Except for the absence of jury trials, juvenile court proceedings now encompass all the trappings of a criminal prosecution.”\textsuperscript{310}

The introduction of criminal policies and procedures into Minnesota’s juvenile court proceedings has caused the juvenile court system to take on a criminal appearance.\textsuperscript{311} With these changes, the juvenile

\begin{itemize}
  \item \textsuperscript{302} 387 U.S. 1 (1967).
  \item \textsuperscript{303} See Billingsley, supra note 186, at 314. Billingsley states that society has realized the ineffectiveness of the juvenile court and has introduced a more legalistic approach to the present juvenile court system. “Undoubtedly, juvenile delinquents will benefit from that aspect of the legalistic approach which advocates procedural fairness.” \textit{Id.}
  \item \textsuperscript{304} Minn. Stat. § 260.155 (1992); Juvenile Court Legislative Reform, supra note 104, at 196.
  \item \textsuperscript{305} Minn. Stat. § 260.185(1)(f) (1992); Juvenile Court Legislative Reform, supra note 104, at 196. In 1981, Professor Feld noted that the courts had power to levy fines up to $500.00. \textit{Juvenile Court Legislative Reform, supra} note 104, at 196. The amount has since been increased to $700.00. Minn. Stat. § 260.185(1)(f) (1992).
  \item \textsuperscript{306} Minn. Stat. § 260.125(2)(d)(1) (1992); Juvenile Court Legislative Reform, supra note 104, at 204.
  \item \textsuperscript{307} Minn. Stat. § 260.125(2)(d)(2) (1992); Juvenile Court Legislative Reform, supra note 104, at 206.
  \item \textsuperscript{308} Minn. R. Juv. P. 15.02 (1994); Criminalizing Juvenile Justice, supra note 214, at 190.
  \item \textsuperscript{309} Juvenile Court Legislative Reform, supra note 104, at 223.
  \item \textsuperscript{310} Id. at 241. Professor Feld suggests that providing jury trials in juvenile court proceedings will result in one of three scenarios. Barry C. Feld, Juvenile (In)Justice and the Criminal Court Alternative, 39 Crime & Delinquency 403, 413 (1993). First, the juvenile court could be restructured to accommodate the rehabilitative purpose. \textit{Id.} Second, juvenile court proceedings could acknowledge punishment as a goal and add more criminal procedural safeguards. \textit{Id.} Third, juvenile courts could be abolished and children could be tried with adults. \textit{Id.}
  \item \textsuperscript{311} One of the recommendations of the Advisory Task Force on the Juvenile Justice System is that the Legislature create a new category for serious offenders and repeat
system has become closely aligned with the criminal system and, like that system, must also guarantee the right to a jury trial.

B. Jury Trials are a Due Process Right

The right to due process in all court proceedings is essential to every individual. In *Gault*, the Court found that certain judicial procedures were fundamental to due process and they were granted to offenders in juvenile court proceedings.\footnote{312. In re *Gault*, 387 U.S. 1, 2-3 (1967).}

*Gault* underscored the importance of procedural rights. After years of juvenile courts acting with "judicial discretion," the Court recognized that "unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure."\footnote{313. Id. at 18.}

Since *Gault*, states have afforded broader procedural protections to offenders in juvenile court proceedings that safeguard due process rights.\footnote{314. Id. at 685.} These constitutional rights include the right to a jury trial,\footnote{315. See statutes cited supra note 189.} probable cause,\footnote{316. Id. at 689.} double jeopardy,\footnote{317. Id. at 691.} the right to effective counsel,\footnote{318. Id. at 692.}

offenders called the "Serious Youthful Offender" category. \*MINN. TASK FORCE REPORT*, supra note 6, at 633-41. The criteria for this category are carefully explained in the report. \*Id.* The Task Force further recommended that Serious Youthful Offenders be provided the right to a jury trial. \*Id.* at 648-49.

The Minnesota Legislature recently enacted the recommendations of the Task Force. Act approved May 5, 1994, ch. 576, § 19, 1994 \*MINN. LAWS* 951. Instead of the term "serious youthful offender," the act employs the term "extended jurisdiction juvenile" to describe serious juvenile offenders. \*Id.* With this minor change in terminology, the legislature granted the right to a jury trial only to those juveniles that fall within the extended jurisdiction juvenile category.

The Minority Report recommended that jury trials be afforded in all juvenile court proceedings. \*MINN. TASK FORCE REPORT*, supra note 6, at 691. The recommendation was based on the fact that, in reality, juvenile courts are "little more than a scaled-down criminal court for young people." \*Id.* at 685. The Minority Report's position is that a change in semantics from "criminal" to "juvenile delinquent" cannot alter the reality that the loss of a child's liberty, involuntary separation from family, or supervision by a probation officer is retributive. \*Id.* at 689. Juvenile offenders charged with offenses that result in "coercive state intervention" should receive the same procedural safeguards as criminals, including the right to jury trials. \*Id.*

Because the Minnesota Legislature has followed the recommendations of the Task Force, juvenile courts will resemble criminal courts more closely than ever. The right to a jury trial, however, which is only afforded to criminals in adult court, will not be afforded to the vast majority of juvenile offenders in juvenile court proceedings.

\footnote{312. In re *Gault*, 387 U.S. 1, 2-3 (1967).}

\footnote{313. Id. at 18.}

\footnote{314. *Gault* protected the following juvenile due process constitutional rights: adequate written notice to the juvenile and the juvenile's parents of the specific issues, representation by counsel, constitutional privilege against self-incrimination, and confrontation of witnesses. \*Id.* at 33, 41, 55, 57.}

\footnote{315. See statutes cited supra note 189.}

\footnote{316. The Texas Court of Criminal Appeals recognized the importance of due process protections within its juvenile courts when, as a result of overcrowded dockets and facilities, the system became conducive to abuse and discrimination. Lanes v. State, 767}
the right to appeal an adjudication,319 the right not to be tried while incompetent,320 and the right to a public trial.321

There is no substantial difference between constitutional or state rights presently guaranteed in juvenile court proceedings and the right to a jury trial.

Surely if the gravity of what may happen to a defendant in a juvenile proceeding is sufficient to invoke the other constitutional protections we have mentioned [in Gault], by force of the same reasoning it would seem also to call for the right to a jury trial, which could hardly be classified as a less vital instrument of protection than the others.322

S.W.2d 789, 793 (Tex. Crim. App. 1989). To determine whether the procedural right of requiring probable cause should be granted in juvenile court proceedings, the court compared the purpose and goals of the juvenile court system with the protection that probable cause provides an individual. Id. at 794. The court stated that the purpose of juvenile court is “to provide for the care, the protection, and the wholesome moral, mental, and physical development of children . . . .” Id. (quoting TEX. FAM. CODE ANN. § 51.01(1) (West 1986). The requirement of probable cause protects against the prejudicial use of police power. Id. at 795.

The court recognized the shortcomings of the juvenile system and noted that “even at the expense of procedural protections, the exalted ideals of rehabilitation in the juvenile system have failed.” Id. at 798. The court reasoned that children have a strong sense of justice, which can easily be turned to cynicism. “Even a juvenile who has violated the law but is unfairly arrested will feel deceived and thus resist any rehabilitative efforts.” Id. at 795.

Not yet ready to abandon the rehabilitative ideal, the court attempted to combine a system of treatment and procedure and held that probable cause was required in juvenile court proceedings. Id. at 800. “Thus, while we dispel the antiquated and unrealistic resistance to procedural safeguards, we continue to embrace a rehabilitative and treatment oriented spirit.” Id.

317. Breed v. Jones, 421 U.S. 519, 541 (1975) (holding that the prosecution of a juvenile in superior court, after an adjudicatory proceeding in juvenile court, violated the double jeopardy clause of the Fifth Amendment); see also In re J.R.R., 696 S.W.2d 382, 384 (Tex. 1985) (determining that, because juvenile offenders are entitled to due process, they are entitled to double jeopardy protection).

318. Gilliam v. State, 808 S.W.2d 738, 739 (Ark. 1991) (stating that certain due process safeguards, including the right to counsel, that are normally administered in criminal proceedings have been extended to juvenile court proceedings).

319. In re Brown, 439 F.2d 47, 52 (3d Cir. 1971) (declaring that the informality of the juvenile court proceedings makes the right to appeal vital in order to protect those subjected to the system).

320. In re W.A.F., 573 A.2d 1264, 1266 (D.C. 1990) (holding that because adults are denied due process if forced to stand trial while incompetent, juveniles have the same constitutional right).

321. In re Dino, 359 So.2d 586, 597 (La. 1978) (deciding that the right to a public trial, like the right to jury trial, is fundamental to the American scheme of justice).

322. Dryden v. Commonwealth, 435 S.W.2d 457, 460-61 (Ky. 1968). The Dryden court did not extend the right to jury trials to juvenile offenders because the Supreme Court had not yet ruled on the issue. Id. at 461. The Kentucky court appeared unwilling to anticipate that the Supreme Court would interpret Gault broadly to encompass the right to a jury trial. Id.
JURY TRIALS FOR JUVENILES

Just as the procedural protections in *Gault* were justified, so too is the right to a jury trial in juvenile court. The current trend evidences the increase in procedural protections in juvenile courts. Jury trials are a necessary part of those protections.

C. There is Little Delay, Delay, Delay

Although courts express concern with the administrative impact of implementing jury trials, in reality, administrative concerns do not pose a threat to the proceedings. The Minnesota Supreme Court Advisory Task Force on the Juvenile Justice System specifically addressed this problem and surveyed those states that currently provide jury trials. The surveys indicate that, in practice, juvenile offenders seldom exercise their right to a jury trial. In three of the states that allow a juvenile offender the right to a jury trial, "only one percent or less of the total juvenile delinquency dispositions were by jury trial" in 1992. Arguably, the potential for an administrative burden exists. However, if the frequency of jury trials in juvenile court proceedings remains as low in other states, there will be little burden.

The Minnesota Task Force concluded that because the states that allow jury trials in juvenile court proceedings experienced little administrative impact, "there would be minimal impact to the juvenile justice system in Minnesota." Even if the right to a jury trial is seldom invoked when implemented within the juvenile court system, the Minority Report states that "the theoretical availability of a jury provides an important practical safeguard for the overall quality of justice."

VII. Conclusion

The juvenile court system has undergone many changes since its rehabilitative goals were first implemented. Primarily in response to the increase in juvenile crime, some procedural protections that were previously granted only in criminal courts have been granted to offenders in juvenile courts. However, the right to jury trials is not among these protections. Although some states grant the right to a jury trial in juvenile court proceedings in the best interests of the child, other states ironically deny the right for the same reason. Some states argue that added safeguards are the best way to provide protection; others claim

324. *Id.* at 647 n.124 (referring to Oklahoma, Texas, and New Mexico).
325. *Id.* at 647 n.126; see Peyton v. Nord, 437 P.2d 716, 726 (N.M. 1968) (stating that, in most cases, jury trials will be waived and it will be the exceptional case that demands a jury).
327. *Id.* at 651, 688.
fewer procedural protections are necessary. Because juvenile courts have shifted their focus so radically from rehabilitation toward retribution, due process protection is critical. Little justification remains for denying juvenile offenders the due process protection of jury trials when juvenile courts mirror criminal proceedings.

Rehabilitation need not be abandoned. Instead, rehabilitation should be incorporated with due process protections. This type of juvenile court system will provide juvenile offenders with treatment and protection—the best of both worlds. 328

Equal and exact justice to all . . . and trial by juries impartially selected. These principles form the bright constellation which has gone before us, and guides our steps. . . . Should we wander from them in moments of error . . . let us hasten to retrace our steps and to regain the road . . . . 329

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