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THESE AREN'T MY PEERS: WHY ILLINOIS SHOULD RECONSIDER ITS AGE REQUIREMENT FOR JURY SERVICE

Wesley Morrissette[*]

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INTRODUCTION

The first juvenile court was created in Cook County, Illinois in 1899.[1] It was initially established to protect juvenile offenders from the adult criminal process.[2] As such, the juvenile court was designed to focus more on the welfare of the juvenile offender and less on retribution for the offense.[3] Over time, the general public began to feel that the juvenile court was too lenient. This shift in public opinion ushered in a more formalized structure in the 1960s, mimicking that of the adult criminal court.[4]

The juvenile court has always retained judicial discretion to transfer certain cases into adult criminal courts.[5] An increase in violent crimes committed by juveniles during the 1980s and 1990s led many states to take a more retributive approach to juvenile justice. Punishment rather than rehabilitation became the

[1] *Juvenile Justice History*, CENTER ON JUV. & CRIM. JUST., http://www.cjcj.org/Education1/Juvenile-Justice-History.html?utm_source=%2fjuvenile%2fjustice%2fjuvenile%2fjustice%2fhistory%2f0&utm_medium=web&utm_campaign=redirect (last visited Feb. 6, 2014).
[2] *Id.*
[3] *See id.*
[4] *Id.*
[5] *See id.*

primary goal.[6] States began to enact statutes that made waiver to criminal courts easier.[7] Such statutes included the enactment of prosecutorial discretion, automatic waivers, and mandatory sentences.[8] From 1987 to 1994, the number of juvenile cases waived into adult criminal court increased by 73%.[9] This trend hit its peak in 1997.[10] Since that time, the number of transfers has decreased nationally. In 2012, however, Chicago hit a five-year high for the number of seventeen-year-old adolescents tried as adults.[11]

Once waived into adult criminal court, juveniles are afforded all of the rights of adult criminal defendants, including the Sixth Amendment right to a jury trial.[12] The Supreme Court has recognized that the right to jury trial includes a right to a jury of the defendant's peers.[13] The increased practice of waiving juveniles into adult criminal court has resulted in defendants as young as ten years old being tried in adult criminal courts. However, the minimum age to serve on a jury in most states still remains eighteen. Thus, courts systematically exclude juvenile defendants' peers from the juries deciding their cases. This systematic exclusion of jurors of the same age as these juvenile defendants violates the Sixth Amendment's fundamental right to a trial by a jury of one's peers.

This Note will first explain the various ways by which juveniles end up on trial in adult criminal court. It addresses the different mechanisms used to transfer juveniles to criminal courts and specifically identifies which of these mechanisms are present in the Illinois juvenile court system. Second, this Note details the national landscape of jury age requirements. It touches on the consistency and rigidity with which these age requirements are enforced. It also illustrates how waivers are handled in Illinois. Third, this Note analyzes possible constitutional challenges to Illinois' minimum age requirement for jury service in light of the number of juvenile defendants in Illinois criminal courts. Fourth, this Note outlines policy reasons for why Illinois should consider lowering its juror age requirement to fifteen years old. Finally, this note evaluates and addresses

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[6] *See* David P. Farrington & Rolf Loeber, *Serious and Violent Juvenile Offenders*, *in* A CENTURY OF JUVENILE JUSTICE 206, 226 (Margaret K. Rosenheim, Franklin E. Zimring, David S. Tanenhaus, & Berndardine Dohrn eds., 2002).

[7] *Juvenile Justice History*, *supra* note 1.

[8] *Id.*

[9] Farrington & Loeber, *supra* note 6, at 227.

[10] *See Easy Access to Juvenile Court Statistics: 1985-2009,* OFFICE OF JUV. JUST. & DELINQUENCY PREVENTION, http://ojjdp.gov/ojstatbb/ezajcs /asp/display.asp (last visited Feb. 6, 2014).

[11] Angela Caputo, *Minor Misconduct*, CHICAGO REPORTER (Nov. 1, 2012), http://www.chicagoreporter.com/minor-misconduct#.UvQfWP02FG4.

[12] U.S. CONST. amend. VI. The Sixth Amendment of the United States Constitution states that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury."

[13] *See* City of Mobile, Ala. v. Bolden, 446 U.S. 55, 77 n.24 (1980).

arguments against having juveniles ages fifteen to seventeen years old serve on juries.

I. WAIVING JUVENILES INTO ADULT CRIMINAL COURT

A. Background

Waiver refers to the transfer of a juvenile offender from the juvenile court system into adult criminal court. Waivers are a matter of state law and thus are established through state statutes. States vary on the minimum age at which a juvenile can be waived into adult criminal court. Though most states have set the minimum age for waiver in the range of fourteen to sixteen years old, in some states the minimum age is as low as ten years old.[14] There are several mechanisms by which a juvenile may be waived into adult criminal court, including judicial waiver, prosecutorial waiver, statutory exclusion, the "once an adult, always an adult" policy, and emancipation from parental custody.

1. Judicial Waiver

Judicial waiver is the most popular mechanism used to waive a juvenile into adult criminal court. Judicial waiver permits a juvenile-court judge to decide whether to transfer a juvenile to adult criminal court. As of the writing of this Note, forty-four states and the District of Columbia grant judges the power of judicial waiver.[15]

In *Kent v. United States*, the United States Supreme Court held that a judge must consider nine factors before employing judicial waiver.[16] These factors are: (1) the seriousness of the alleged offense; (2) whether the offense was aggressive, violent, premeditated, or willful; (3) whether it was an offense against persons or property; (4) the prosecutive merit of the complaint; (5) whether the co-offender(s) were adults; (6) the maturity level of the offender; (7) the offender's previous juvenile record and history; (8) protection of the public; and (9) the likelihood of rehabilitation through the juvenile system.[17]

There are three types of judicial waiver: discretionary, presumptive, and mandatory. Discretionary judicial waiver allows the judge to make the decision

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[14] Patrick Griffin et al., *Trying Juveniles As Adults: An Analysis of State Transfer Laws and Reporting*, OFFICE OF JUV. JUST. & DELINQUENCY PREVENTION, 4-7 (Sept. 2011), https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf (Indiana, Kansas, and Vermont).
[15] *Id.* at 3.
[16] 383 U.S. 541, 566-67 (1966).
[17] This list is exhaustive but not each factor will be applicable in every case. *Id.* at 567-68.

with no preset tendency toward either disposition.[18] With a presumptive judicial waiver, there is a presumption that the case will be waived to criminal court but the juvenile judge has discretion to retain the case, if so persuaded.[19] Mandatory judicial waiver occurs when a juvenile commits certain offenses at a certain statutorily determined age or meets specific criteria regarding his or her prior record.[20] The key difference between mandatory waiver and statutory exclusion is that mandatory waiver is used for cases originating in juvenile court, whereas statutory exclusion initiates cases directly in adult criminal court.[21]

2. Prosecutorial Waiver

The prosecutorial waiver is the statutory authority vested in a prosecutor to remove a case to adult criminal court. When the age of the offender and the nature of the offense committed allow for the case to be tried in either juvenile court or adult criminal court, the prosecutor has discretion to remove the case to adult criminal court.[22] As of the end of the 2009 legislative session, fourteen states and the District of Columbia have promulgated statutes allowing for the use of the prosecutorial-discretion mechanism.[23]

Prosecutorial waiver is unconstrained by statute or case law. Unlike judges, who must consider the nine *Kent* factors when deciding whether to remove a case to adult criminal court, prosecutors are not required to articulate any justification or adhere to a set of criteria when deciding to remove a juvenile case to adult criminal court.[24] Prosecutorial waiver statutes are generally silent regarding such criteria.[25] In the few instances where such criteria are present, the evaluation based on these criteria is done by prosecutors behind closed doors with no evidentiary hearing or opportunity for the offender to present a defense or mitigating evidence.[26]

3. Statutory Exclusion

The third mechanism used to transfer a juvenile to adult criminal court is statutory exclusion. Statutory exclusion, also known as an "automatic waiver," is

[18] Griffin et al., *supra* note 14, at 2.
[19] *Id.* at 4.
[20] *Id.*
[21] *Id.*
[22] *Id.* at 5.
[23] *Id.* at 3 (Arizona, Arkansas, California, Colorado, District of Columbia, Florida, Georgia, Louisiana, Michigan, Montana, Nebraska, Oklahoma, Vermont, Virginia, and Wyoming).
[24] *Id.* at 5.
[25] *Id.*
[26] *Id.*

a state statute that excludes certain charges—such as first-degree murder and aggravated battery with a firearm—from juvenile court's jurisdiction based on a predetermined age range of juveniles. Any offender meeting the age criteria accused of such a charge is automatically tried as an adult. There are currently twenty-nine states with such exclusionary statutes.[27] Like prosecutorial waivers, statutory waivers may be held in check by the reverse waiver.[28]

4. Reverse Waivers

Some states employ "reverse waivers." Reverse waivers serve as a judicial check on prosecutorial waivers and statutory exclusions. Judges who employ a reverse waiver can reverse the decision to waive a juvenile case into adult criminal court.[29] But, because courts are reluctant to overrule the decisions of other judges, reverse waivers are rarely used.[30] As of the end of the 2009 legislative session, only twenty-four states allowed reverse waivers.[31]

5. "Once an Adult, Always an Adult"

The fourth way a juvenile can be transferred into adult criminal court is through the "once an adult, always an adult" policy. According to this policy, once a juvenile is tried as an adult for a particular charge, that juvenile will always be tried as an adult for certain subsequent charges—although which specific subsequent charges varies by state.[32] This policy is present in thirty-three states and the District of Columbia, but varies in how strictly and broadly it is applied.[33]

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[27] *Id.* at 3, 6 (Alabama, Alaska, Arizona, California, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Montana, Nevada, New Mexico, New York, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Utah, Vermont, Washington, and Wisconsin).

[28] Emily A. Polachek, *Juvenile Transfer: From "Get Better" to "Get Tough" and Where We Go from Here*, 35 WM. MITCHELL L. REV. 1162, 1172-73 (2009).

[29] *Id.*

[30] *Id.* (citing Dia N. Brannen et al., *Transfer to Adult Court: A National Study of How Juvenile Court Judges Weigh Pertinent Kent Criteria,* 12 PSYCHOL. PUB. POL'Y & L. 332, 334 n.2 (2006)).

[31] Griffin et al., s*upra* note 14, at 3 (Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Iowa, Kentucky, Maryland, Mississippi, Montana, Nebraska, Nevada, New York, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Wisconsin, and Wyoming).

[32] *Id.* at 2, 7.

[33] *Id.* at 2-3 (Alabama, Arizona, California, Delaware, District of Columbia, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin).

In general, the policy only applies when the subsequent charge is for the same offense as the original transfer.[34] However, this is not always the case.[35] For instance, in Maryland, Michigan, Minnesota, and Texas, the policy only applies when the subsequent charges are felonies.[36] In California, Iowa, and Oregon, the policy only applies to juveniles sixteen years of age and older.[37]

6. Emancipation from Parental Consent

A juvenile can be excluded from juvenile court if that juvenile has been emancipated from parental custody.[38] Emancipation relieves the juvenile's parents of all legal and economic responsibility for the juvenile.[39] It also exposes the juveniles to all adult penalties.[40] However, emancipation still does not grant a juvenile the rights to vote, drink alcohol, or buy cigarettes before the normal legal ages.[41]

B. The Situation in Illinois

Prior to January 1, 2014, in Illinois, an individual who was seventeen years or older was automatically within the adult criminal court's jurisdiction for any felony.[42] Illinois was one of only ten states that automatically transferred seventeen-year-old offenders to adult criminal court for any felony.[43] Prior to the January 2014 change, nearly eight out of every ten seventeen-year-olds sent to adult criminal court nationally were convicted in Chicago.[44] In 2011, the number of seventeen-year-old adolescents convicted of a felony in adult criminal court in Chicago hit a five-year high.[45]

Despite Illinois' change to the law, offenders seventeen and younger can still easily fall within the jurisdiction of the Illinois adult criminal court. The

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[34] *Id.* at 7.
[35] *Id.*
[36] *Id.*
[37] *Id.*
[38] Emancipation from parental custody means that a juvenile has received a grant from the court to be treated as an adult before the age of eighteen. *See Emancipation Information*, JUV. RTS. PROJECT 1-2, http://www.youthrightsjustice.org/Documents/Emancipation%20in%20Multnomah%20County%20Oregon.pdf (last visited Aug. 29, 2014).
[39] *Id.*
[40] *Id.* at 2.
[41] *Id.*
[42] *See* Pub. Act. 98-61, (eff. Jan. 1, 2014) (amending 705 ILL. COMP. STAT. 405/5-120).
[43] Caputo, *supra* note 11.
[44] *Id.* (last visited Mar. 15, 2013).
[45] *Id.*

Illinois Juvenile Court Act of 1987 contains various mechanisms for waiver into criminal court, including judicial waiver,[46] statutory exclusion,[47] the "once an adult, always an adult" policy,[48] and blended sentencing.[49] Additionally, the Illinois judicial waiver statute contains all three methods of judicial waiver: mandatory,[50] presumptive,[51] and discretionary.[52] Defendants must be at least fifteen to qualify for mandatory or presumptive judicial waiver.[53] However, the minimum age for discretionary judicial waiver is thirteen.[54]

Illinois' discretionary judicial waiver statute explicitly states the court must consider the following non-exhaustive criteria when determining whether to waive a juvenile to adult criminal court:[55]

> (i) the age of the minor;
>
> (ii) the history of the minor, including:
>
> (A) any previous delinquent or criminal history of the minor,
>
> (B) any previous abuse or neglect history of the minor, and
>
> (C) any mental health, physical, or educational history of the minor or combination of these factors;
>
> (iii) the circumstances of the offense, including:
>
> (A) the seriousness of the offense,
>
> (B) whether the minor is charged through accountability,
>
> (C) whether there is evidence the offense was committed in an aggressive and premeditated manner,
>
> (D) whether there is evidence the offense caused serious bodily harm,
>
> (E) whether there is evidence the minor possessed a deadly weapon;

[46] 705 ILL. COMP. STAT. 405/5-805 (2013).
[47] 705 ILL. COMP. STAT. 405/5-130 (2014).
[48] 705 ILL. COMP. STAT. 405/5-130(6) (2014).
[49] 705 ILL. COMP. STAT. 405/5-810(4) (2007). Illinois does not grant prosecutorial discretion as a mechanism for waiving a juvenile to adult criminal court. Griffin et al., *supra* note 14, at 3.
[50] 705 ILL. COMP. STAT. 405/5-805(1) (2013).
[51] 705 ILL. COMP. STAT. 405/5-805(2) (2013).
[52] 705 ILL. COMP. STAT. 405/5-805(3) (2013).
[53] 705 ILL. COMP. STAT. 405/5-805(1) (2013); 705 ILL. COMP. STAT. 405/5-805(2) (2013).
[54] 705 ILL. COMP. STAT. 405/5-805(3) (2013).
[55] 705 ILL. COMP. STAT. 405/5-805(3)(b) (2013).

> (iv) the advantages of treatment within the juvenile justice system including whether there are facilities or programs, or both, particularly available in the juvenile system;
>
> (v) whether the security of the public requires sentencing under Chapter V of the Unified Code of Corrections:
>
> (A) the minor's history of services, including the minor's willingness to participate meaningfully in available services;
>
> (B) whether there is a reasonable likelihood that the minor can be rehabilitated before the expiration of the juvenile court's jurisdiction;
>
> (C) the adequacy of the punishment or services.

II. THE PRESENCE OF JUVENILE DEFENDANTS AS A BASIS FOR A CONSTITUTIONAL CHALLENGE OF ILLINOIS' JUROR AGE REQUIREMENT

Illinois is one of the forty-six states where a person must be at least eighteen-years-old to serve on a jury.[56] There is no exception or discretionary component to this minimum age requirement. This means that no one under eighteen years of age can serve on a jury, even if the defendant is seventeen years old or younger. However, defendants in Illinois adult criminal court are often younger than eighteen years old—and in some cases are as young as thirteen years old. Thus, Illinois' strict age requirement legally prohibits criminal defendants younger than eighteen from having a person of their age included on the jury that decides their fate.[57] This presents possible constitutional issues on the basis of both the Sixth and Fourteenth Amendments.

There are two main ways to challenge a state's rules and practices governing jury composition: a Sixth Amendment challenge or a Fourteenth Amendment Equal Protection challenge. The Sixth Amendment requires that "[i]n all criminal prosecutions" the accused shall be granted trial by an impartial jury.[58] The United States Supreme Court has held that an "impartial jury" requires a jury to be composed of the defendant's peers from a "cross section of the

[56] *See Who is Eligible*, AM. JUDICATURE SOC'Y, https://www.ajs.org/judicial-administration/jury-center/jury-system-overview/choosing-who-serves/who-eligible/ (last visited Aug. 28, 2014).
[57] For purposes of this paper, "age" will refer to the exact years of age and does not refer to an age range.
[58] U.S. CONST. amend. VI.

community."[59] This cross section does not need to be directly proportional to the community's composition, but it must be selected "at random from a fair cross section of the community" in which the case will be tried.[60] The Court has held that the Sixth Amendment's cross section requirement is not meant to ensure that the jury necessarily be representative of the community but instead, is based on the concept that a cross section of the community helps ensure that the jury meets the impartiality requirement.[61]

To prove a violation of the Sixth Amendment's "cross reference of the community" requirement, the claim must satisfy the *Duren* test. In *Duren v. Missouri*,[62] the Court held that a claimant must show: "(1) the group alleged to be excluded is a 'distinctive' group in the community; (2) that the representation of the group in venires is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury-selection process."[63] The *Duren* test has since become the standard for determining such a violation.

Although a dictate of the Sixth Amendment, jury composition can also be challenged as a Fourteenth Amendment Equal Protection violation.[64] There are two Equal Protection claims that can be used to challenge juror requirements: (1) facially discriminatory statutory requirements, or (2) disparate impact. Unlike a challenge to a facially discriminatory statute, an Equal Protection challenge alleging disparate impact requires the plaintiff prove that there is systematic

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[59] Taylor v. Louisiana, 419 U.S. 522, 526 (1975); *accord* Duncan v. Louisiana, 391 U.S 145, 156-18 (1968).
[60] 28 U.S.C.A. § 1861 (1968).
[61] Holland v. Illinois, 493 U.S. 474, 480 (1990).
[62] 439 U.S. 357 (1979).
[63] *Id.* at 364. The petitioner challenged the validity of exempting women from jury service in Jackson County, Missouri. According to the County's jury-selection process, women could automatically exempt themselves from jury service by filling out a paragraph and returning a questionnaire. The practice resulted in women only representing 26.7 % of the jury pool for the eight to ten months proceeding the petitioner's trial despite women being 54% of the County's population. The Court held that women were clearly distinct from men and that the statistics showed an unfair and unreasonable representation of women on juries in comparison to their percentage of the County's population. Further, the Court held that this underrepresentation was a result of systematic exclusion caused by the exemption process. *Id.* at 364-67.
[64] The Fourteenth Amendment dictates:

> [n]o state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws.[64]

U.S. CONST. amend XIV.

exclusion of a group from juries *and* that the systematic exclusion was done with the purpose to discriminate.[65]

A Sixth Amendment challenge to Illinois' minimum age requirement would likely have the greatest chance of success. Although such a challenge has never been successful, recent Supreme Court holdings emphasizing the distinctiveness of minors in adult criminal courts strengthen a potential Sixth Amendment argument. An Equal Protection challenge to Illinois' juror age requirement is more difficult because the Supreme Court has yet to grant heightened scrutiny to minors. However, there is hope for such a challenge in light of the Court's historic trend of expanding groups covered by Equal Protection in juror-requirement jurisprudence. The holdings of *Miller*, *Graham*, and *Roper* may provide a basis for the Supreme Court to expand jury-service protections to juveniles above fifteen-years-old, as discussed *infra*.

A. In Light of Illinois' Various Waiver Statutes, Illinois' Minimum Age Requirement for Jury Service is a Violation of the Sixth Amendment

Illinois' statutory waivers of minors into adult criminal court renders the state's requirement that all jurors be at least eighteen years old a violation of the Sixth Amendment.

As a group, juveniles ages fifteen to seventeen years old better satisfy the *Duren* test than the other age groups historically analyzed in Sixth Amendment jurisprudence. These juveniles can be identified and limited as a group by certain characteristics. They also share a common thread of ideas that causes their absence from juries to prejudice them as defendants. Further, because they are statutorily excluded from jury service, their systematic exclusion is self-evident.

1. Juveniles ages fifteen to seventeen years old are identifiable as a "distinctive group"

The first prong of *Duren* requires that an excluded group be identifiable as a distinctive group.[66] The Supreme Court has yet to hear a case on the issue of whether an age group represents a distinctive group for purposes of a Sixth Amendment analysis. The Court has also never defined the term "distinctive group." In light of this fact, federal courts have promulgated their own definitions. Generally, most courts have found in order to be a "distinctive group" the group must: (1) be defined and limited by a clearly identifiable factor; (2) share a

[65] Batson v. Kentucky, 476 U.S. 79, 96 (1986).
[66] *Id.*

common thread or basic similarity in attitude, ideas, or experience; and (3) possess a community of interests among its members, such that the group's interests cannot be adequately represented if the group is excluded from the jury selection process.[67] Unlike some other age groups, which courts have failed to recognize as distinctive groups, juveniles ages fifteen to seventeen years old are a discrete and easily defined group who the Supreme Court has held share similar mental traits and ideologies.[68]

a. Juveniles Ages Fifteen to Seventeen Years Are Defined And Limited By A Clearly Identifiable Characteristic

Courts have not provided a specific definition of an "identifiable characteristic." In cases analyzing whether an age group is defined and limited by a clearly identifiable characteristic, federal circuit courts have based their decisions on the level of difficulty required to identify exactly who should and who should not be included in the group, and how arbitrary the limits would be for that particular group.[69]

In *Barber v. Ponte*, a defendant challenged his conviction on the grounds that there was a systematic exclusion of "young adults"—adults ranging in age from eighteen- to thirty-four years old—from juries. The defendant originally succeeded at the district and circuit court levels but was ultimately reversed when the First Circuit heard the case *en banc*. In reversing the prior First Circuit decision, the *en banc* panel held that "there [was] simply no evidence in the record for determining that people between the ages of 18 and 34 (as opposed to some other ages) belong[ed] to a particular group."[70] The *en banc* panel also

[67] *See, e.g.*, United States v. Green, 435 F.3d 1265, 1271-72 (10th Cir. 2006) (holding that non-voting drivers who lived outside of Tulsa county did not constitute a "distinct group" because neither a choice not to vote or a geographic location create a "common thread in attitude"); United States v. Raszkiewicz, 169 F.3d 459, 463-65 (7th Cir. 1999) (holding that reservation Indians are not a distinctive group from urban Indians); Ford v. Seabold, 841 F.2d 677, 681-82 (6th Cir. 1988) (holding that college students were not a cognizable group under *Duren* but that women were); Barber v. Ponte, 772 F.2d 982, 997 (1st Cir. 1985) (holding that young adults ages eighteen to thirty-four were not a distinct group under *Duren* because they share no common characteristics); Willis v. Zant, 720 F.2d 1212, 1216 (11th Cir. 1983) (holding that petitioner was entitled to an evidentiary hearing on whether young adults ages eighteen to thirty were not a cognizable group under *Duren*).

[68] *See* Miller v. Alabama, 132 S.Ct. 2455, 2464-69 (2012); Graham v. Florida, 560 U.S. 48, 68 (2010); Roper v. Simmons, 543 U.S. 551, 569 (2005)

[69] *See Barber*, 772 F.2d at 998.

[70] *Id.*

> The essence of a distinctive group is that its members share specific common characteristics. Yet, what can we identify as the common characteristics of

looked for evidence demonstrating that the thinking of a thirty year old was more similar to that of an eighteen year old than that of a forty year old.[71] Similar reasoning has been applied in other federal circuits and Illinois state courts where those courts have rejected other age ranges as not representing a distinctive group.[72]

Unlike other age groups that courts have rejected, juveniles ages fifteen to seventeen can be identified and limited by the characteristic that they are all eligible to be automatically waived into adult criminal court but are still minors everywhere else in the law.[73] These limits are not arbitrary. Though a January 2014 amendment changed the age of adult felony jurisdiction from seventeen to eighteen,[74] fifteen year olds are all still subject to Illinois' statutory waiver and mandatory transfer provisions. Yet, these same juveniles are not granted any of the privileges that accrue upon reaching the age of adulthood—such as the right to vote[75] or serve on a jury.[76] Thus, for Illinois, this group could easily be referred to as "criminal-court-eligible juveniles."

b. *Juveniles Between the Ages of Fifteen and Seventeen Share Basic Similarities in Attitude, Ideas, And Experience*

> people in an age group that spans a sixteen-year gap, covering such dynamic years in a person's life as those that are encompassed between the ages of 18 to 34? To be sure, they are all younger than people over 34. But what is the evidence that the attitudes and thinking of, say, 30 year olds have more in common with 18 year olds than they do with 40 year olds, or for that matter, going to the other end of the scale, that 18 year olds have more in common with 28 year olds than with 16 year olds? How do we know that there should not be two groups, 18 to 28 and 28 to 35, or three, or four groups encompassing other boundaries?

Id.

[71] *Id.*

[72] United States v. Fletcher, 965 F.2d 781, 782 (9th Cir.1992) ("The group of individuals we call 'college students' is no more capable of fitting into a pigeon hole than the group we call 'young adults.' The group is not defined by any 'limiting factor'—anyone may become a college student."); Silagy v. Peters, 905 F.2d 986, 1011 (7th Cir.1990) (holding that persons over seventy-years-old do not constitute a distinctive group); Ford v. Seabold, 841 F.2d 677, 681-82 (9th Cir. 1988) ("We agree with the First Circuit that it is impossible to clearly delineate the age boundaries of "young adults" and that such a group, therefore, cannot by definition be distinctive."); People v. McGaughy, 730 N.E.2d 127, 130 (Ill. App. Ct. 3d 2000) ("Young adults do not qualify as a 'distinctive group'"); People v. Treece, 511 N.E.2d 1361, 1369 (Ill. App. Ct. 2d 1987) (holding that people age eighteen to thirty-years-old do not represent a distinctive group).

[73] *See* 705 ILL. COMP. STAT. 405/5-805(1) (2013).

[74] *See* Pub. Act. 98-61, (eff. Jan. 1, 2014) (amending 705 ILL. COMP. STAT. 405/5-120).

[75] 10 ILL. COMP. STAT. 5/3-1 (2013)

[76] 705 ILL. COMP. STAT. 305/2(2) (2013).

The Supreme Court has repeatedly held that juveniles share distinct distinguishing characteristics from adults. Such distinctions have been most prominent in cases involving Eighth Amendment cruel and unusual punishment challenges where juveniles are sentenced in adult criminal court. Because this is the same age group this Note examines, this body of case law is most relevant to the "common-thread" prong of the *Duren* test.

The Court addressed the differences between juveniles and adults for the first time in *Thompson v. Oklahoma* in 1988.[77] In *Thompson*, the petitioner was convicted of first-degree murder for an offense he committed when he was fifteen years old.[78] The Oklahoma District Attorney petitioned to have him tried as an adult.[79] Upon conviction, the petitioner was sentenced to death.[80] On appeal, the Court of Criminal Appeals of Oklahoma affirmed the sentence.[81] The United States Supreme Court granted Thompson's petition for a writ of certiorari to review the case as a violation of the Eighth Amendment's prohibition of cruel and unusual punishments.[82] In a plurality opinion penned by Justice Stevens, the Court held that it was cruel and unusual punishment to impose the death penalty on a person younger than sixteen years old.[83]

The *Thompson* opinion relied heavily on an analysis of the differences between children and adults. The Court's discussion of the differences between children and adults first considered the disparity between the rights of a child and the rights of an adult.[84] The Court pointed to minors' inability "to vote, to sit on a jury, marry without parental consent, or to purchase alcohol or cigarettes," versus the fact that the fifteen-year-old defendant was allowed to be tried as an adult.[85] However, the Court still left untouched the Oklahoma statutes that provided for sixteen and seventeen year olds convicted of serious felonies—such as murder—to be considered adults.[86]

In *Roper v. Simmons*, the Court expanded the age range of juveniles that are too young for the death penalty under the Eighth Amendment's cruel and unusual punishment prohibition to all offenders under the age of eighteen.[87] The majority opinion identified "three general differences between juveniles under [the age of]

[77] 487 U.S. 815, 822-25 (1988).
[78] *Id.* at 815.
[79] *Id.* at 819.
[80] *Id.* at 820.
[81] *Id.*
[82] *Id.*
[83] *Id.* at 838.
[84] *Id.* at 823.
[85] *Id.* at 823-24.
[86] *Id.*
[87] 543 U.S. 551, 553 (2005).

eighteen and adults[.]"[88] First, the Court cited scientific evidence demonstrating that, unlike adults, juveniles share "[a] lack of maturity and an underdeveloped sense of responsibility[.]"[89] Second, it found juveniles to be "more vulnerable or susceptible to negative influences and outside pressures, including peer pressure," and share a "prevailing circumstance that juveniles [have] less control, or less experience with control, over their own environment."[90] Third, the Court stated, "the character of a juvenile is not as well formed as that of an adult"; their "personality traits…are more transitory, less fixed."[91] The Court held that "the differences between juvenile and adult offenders [were] too marked and well understood to risk allowing a youthful person to receive the death penalty despite insufficient culpability."[92]

In *Graham v. Florida*, the Court likewise stressed the difference between juvenile and adults offenders.[93] In holding that it was a violation of the Eighth Amendment to sentence a juvenile offender to life without parole for a non-homicide crime, the Court reiterated *Roper*'s "three general differences" and pointed to a "fundamental difference between juvenile and adult minds."[94] This reasoning was cited once again in *Miller v. Alabama* where the Court held that mandatory life sentences for juveniles violate the Eighth Amendment.[95]

Thus, juveniles ages fifteen to seventeen years old share basic similarities. Next we turn to the third requirement of a "distinctive group," that the group possess a community of interests.

c. Juveniles ages fifteen to seventeen possess a community of interests

According to Illinois case law, a distinctive group must possess a community of interests among its members "such that the group's interest cannot be adequately represented if the group is excluded from the jury selection process."[96] Although juveniles ages fifteen to seventeen could have different ideas

[88] *Id.* at 569.
[89] *Id.* (citing Johnson v. Texas, 509 U.S. 350, 367 (1993)).
[90] *Id.*
[91] *Id.* at 570.
[92] *Id.* at 572-73.
[93] 560 U.S. 48, 68 (2010).
[94] *Id.*
[95] 132 S.Ct. 2455, 2464-69 (2012).
[96] People v. Treece, 511 N.E.2d 1361, 1369 (Ill. App. Ct. 2d 1987) Courts have evaluated this element in a fairly muddy way. Courts have used this element to decide that groups such as poor people, and age groups are not distinct groups because they do not share a common interest. *See* Barber v. Ponte, 772 F.2d 982, 999 (1st Cir. 1985) ("[W]hat can we identify as the common characteristics of people in an age group that spans a sixteen-year gap...?"); U.S. v. Guzman, 337 F.Supp. 140, 146 (1972) ("Among any age group there will be vast variations in attitudes,

based on their backgrounds, socioeconomic status, and life experiences, studies and case law recognize a shared community interest of juveniles in regards to the criminal court system. In *Graham*, Justice Kennedy's majority opinion pointed out that juveniles possess certain features that "put them at a significant disadvantage in criminal proceedings."[97]

First, Justice Kennedy noted that juveniles possess a distrust of adults that makes it difficult for juvenile defendants to establish a proper attorney-client relationship.[98] Second, he noted juveniles' reduced comprehension of legal concepts and the judicial process hinders their ability to establish a proper attorney-client relationship.[99] Third, this hindered attorney-client relationship can lead to deficiencies in the defense process, such as an inferior factual investigation, flawed decisions to accept or reject plea bargains, and inappropriately harsh sentencing.[100]

Juveniles as a peer group will understand their compatriots' inherent distrust of authority and how it can affect the decisions of the juvenile defendant. They will be better able to comprehend the juvenile mind and will interpret testimony and actions differently than would an adult juror. When these juveniles are prevented from serving on juries, juvenile defendants have no one in their mental peer group to evaluate their actions in light of the juvenile thought process when determining guilt or innocence.

2. Juveniles ages fifteen to seventeen years old represent a large enough section of the community for their exclusion from serving on juries to be unfair and unreasonable

The Supreme Court has recognized that groups based on race,[101] ethnicity, or gender[102] are distinct groups whose systematic exclusion from jury venires violates the cross-representation requirement of the Sixth Amendment. In analyzing whether the group represents a large enough section of the community for their exclusion from serving on juries to be unfair or unreasonable, the Court

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viewpoints, and experiences."). However, this argument is flawed because no group shares the same interest on *every* issue. What is more important is whether the group has a community of interest of issues involving the court system, thus, lending itself more to the second half of the element—the group's interest "cannot be adequately represented if the group is excluded from the jury selection process." *Id.* at 143.

[97] Graham v. Florida, 130 S. Ct. 2011, 2032 (2010) (citing Brief for NAACP Legal Defense & Education Fund et al. as Amici Curiae, 7-12).

[98] *Id.* at 2032.

[99] *Id.*

[100] *Id.*

[101] Strauder v. West Virginia, 100 U.S. 303, 304 (1879).

[102] Taylor v. Louisiana, 419 U.S. 522, 531 (1975).

has compared the percentage of the community that the group represents versus the percentage of the jury pool that the group represents.[103] Yet, there appears to be no steadfast threshold of what is too large a disparity.

In *Hernandez*, the Court recognized that Hispanic citizens represented a large enough percentage of the community that it was unfair and unreasonable to not have a single Hispanic person on the jury for twenty-five years.[104] In that case, persons with Latin American surnames made up about 14% of the county's population.[105] But only 6-7% of citizens that satisfied all non-racial requirements for jury duty had Latin American surnames.[106]

If the reasoning in *Hernandez* was applied to juveniles in Illinois, juveniles' small percentage of the Illinois population would appear to suggest that their absence from the jury pool is fair and reasonable. Using 2012 census estimates, juveniles ages fifteen to seventeen years old only account for an estimated 4.3% of Illinois' population. Several cases decided in lower courts have held that an absolute disparity of 4% is not significant.[107] However, such an analysis is unnecessary where there is facial exclusion of a group. The Court used the disparity analysis in *Hernandez* to determine whether Latin Americans were intentionally being excluded from venires or whether the exclusions were purely by chance. When a group is excluded by requirement, courts have not found a need to conduct such a disparity analysis, implying that excluding a group through an explicit juror-requirement is self-evident of intent to exclude. Therefore, even at 4.3% of the population, the systematic exclusion of juveniles ages fifteen to seventeen is unfair and unreasonable.

B. Equal Protection Challenge

An Equal Protection challenge to Illinois' juror age requirement would be based on the claim that the statute is facially discriminatory. To succeed in a Fourteenth Amendment claim based on a facially discriminatory statute, a plaintiff needs to show that the excluded class is recognized as one of the classes that the Fourteenth Amendment is meant to protect.[108] As of now, the Supreme Court has never recognized youths as a group warranting protection under the

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[103] *See, e.g.,* Hernandez v. Texas, 347 U.S. 475, 480 (1954).
[104] *See id.* at 480-81.
[105] *Id.* at 480.
[106] *Id.* at 480-81.
[107] *See*, *e.g.*, Berghuis v. Smith, 130 S. Ct. 1382, 1395-96 (2010) (stating that a change in comparative disparity from 18% to 15.1% was not significant to show a systematic exclusion); *see also* U.S. v. Barlow, 732 F.Supp. 2d 1, 34 (E.D.N.Y. 2010) (holding that 4.26% disparity is not significant enough to show an unfair underrepresentation).
[108] *See* Strauder v. West Virginia, 100 U.S. 303, 304 (1879).

Fourteenth Amendment.[109] But the Supreme Court's failure to previously protect age discrimination under the Fourteenth Amendment should not preclude such protection in the future. The juror qualifications in the Illinois Jury Act were originally passed in 1874 and last amended in 1998.[110] Considering the increase in federal legislation prohibiting age discrimination and recent Supreme Court jurisprudence emphasizing the need to protect juveniles as a group, society appears to be progressing to a point where the Court could reconsider the validity of a juror age requirement that is lower than the age at which juveniles are automatically subject to adult criminal jurisdiction.

Prior to 1879, a race requirement to serve on a jury was not considered to be unconstitutional even though the Fourteenth Amendment had already been adopted.[111] It was not until *Strauder v. West Virginia* that the Supreme Court held that it was unconstitutional to prohibit African Americans from jury service.[112] In *Strauder*, a West Virginia statute limited service on a jury to "[a]ll white male persons who [were] twenty-one years of age and who [were] citizens of [the] State…."[113] In the majority opinion, Justice Strong pointed to the disadvantage that a black man would suffer if his peer group—other black men—could never be included in the jury that decides his fate.[114] Seventy-five years later, in *Hernandez v. Texas*,[115] the Court extended this equal protection right to men of Hispanic descent and all other races.

Although the Court in *Strauder* prohibited the requirement that all jurors be white males, Justice Strong's opinion left room for states to impose other qualifications on the potential jurors—including qualifications related to gender, citizenship, age, and education.[116] However, over half a century later, in *Ballard v. United States*, the Court held that the systematic exclusion of otherwise qualified women from jury service was a violation of the Sixth Amendment.[117] Yet, the decision still did not prohibit gender as a requirement. It wasn't until 24

[109] Mass. Bd. of Ret. v. Murgia, 427 U.S. 307, 313 (1976) ("[O]ld age does not define a 'discrete and insular group' citing U. S. v. Carolene Products Co., 304 U.S. 144, 152-153, n. 4, (1938) in need of 'extraordinary protection from the majoritarian political process.'" (citing San Antonio Sch. Dist. V.Rodriguez, 411 U.S. 16, 28(1973))).
[110] 705 ILL. COMP. STAT. 305/2 (2012).
[111] *Strauder*, 100 U.S. at 305 (The West Virginia race requirement in question was passed in 1873, while the Fourteenth Amendment was adopted in 1868. The Court decided the case in 1879 and made such race requirements unconstitutional.).
[112] *Id.* at 304.
[113] *Id.* at 305 (citation omitted).
[114] *Id.* at 309.
[115] 347 U.S. 475, 478 (1954).
[116] *Strauder*, 100 U.S. at 310.
[117] 329 U.S. 187, 195 (1946).

years later in 1975, when the Supreme Court decided *Taylor v. Louisiana*,[118] that the exclusion of women from serving on juries was a violation of the Fourteenth and Sixth Amendments.[119]

In the 1970 case of *Carter v. Jury Commission of Greene County*,[120] the Court held that the right to file a cause of action for a violation of equal protection based on juror discrimination was present for both the defendant whose jury was tainted, as well as the citizens who were being excluded from serving on a jury.[121] In Justice Stewart's majority opinion, he refers to the exclusion of blacks from juries on the basis of their race as being "a brand upon them" and "an assertion of their inferiority."[122] He further held that any such discrimination "contravenes the very idea of a jury . . . 'representative of the community,' composed of 'the peers or equals . . . having the same legal status in society…'" as the defendant.[123]

First, legislation prohibiting age discrimination already exists. For example, the Age Discrimination in Employment Act prohibits an employer from using age as the basis for not hiring a candidate, discharging an employee, or determining an employee's wage rate.[124] In the Act's purpose, Congress points to a need to make hiring decisions based on ability rather than age. The same need exists for jury service. If the minimum age to serve on jury in Illinois were to be lowered to fifteen years old, this would allow juveniles ages fifteen to seventeen years old to be included in the jury venires. During voir dire, the attorneys would have the opportunity to evaluate each potential juror as an individual to determine if they possess the ability and skills to serve as an effective juror.

Second, the Supreme Court has continued to address the disadvantages of juveniles in adult criminal courts and has issued holdings meant to protect them in those courts. The Court first began protecting juvenile defendants in adult criminal courts by using the Eighth Amendment to restrict the harshness of the sentences that juveniles could receive. In *Thompson*, the Court held that it was "cruel and unusual punishment" to impose the death penalty on a person younger than sixteen years old.[125] In *Roper*, the Court raised the age mentioned in *Thompson* from sixteen years old to eighteen years old.[126]

In *Graham* and *Miller*, the Court used the same basis to limit courts' abilities to sentence a juvenile to life without the possibility of parole. In 2010, the

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[118] 419 U.S. 522 (1975).
[119] *Id.* at 538.
[120] 396 U.S. 320 (1970).
[121] *Id.* at 329.
[122] *Id.* at 330 (quoting *Strauder*, 100 U.S. at 308).
[123] *Id.*
[124] 29 U.S.C.A. § 623 (2008).
[125] Thompson v. Oklahoma, 487 U.S. 815, 838 (1988).
[126] Roper v. Simmons, 543 U.S. 551, 553 (2005).

Court held in *Graham* that it was a violation of the Eighth Amendment to sentence a juvenile to life without parole for a non-homicide crime.[127] In their reasoning, the Court held that juveniles have difficulty establishing an adequate client-attorney relationship and ultimately have difficulty receiving an effective trial.[128] In the 2012 *Miller* case, the Court further limited the context under which courts could sentence juveniles to life without parole. Referring to the logic in *Graham*, the Court held that it was "cruel and unusual punishment" to sentence a juvenile to mandatory life without parole for any crime.[129]

In 2011, the Court addressed protections for juveniles in interrogation. In *J.D.B. v. North Carolina*, the Court held that courts must consider a person's age when analyzing whether that person waived her Miranda rights.[130] In the holding, the Court again referenced the mental differences between juveniles and adults,[131] and the Court also highlighted the tendency for children to feel subservient to adults.[132] The Court reasoned that courts couldn't accurately judge the mental state of a defendant at the time of the encounter without considering that defendant's age.[133]

Both of these trends suggest that this is the time to reconsider the age requirement for jury service. The current minimum jury age was established prior to the increase of juveniles being tried in adult criminal courts. Further, this would not be the first time that Illinois has reduced its age requirement to better align with society's balance of privilege versus burden. The minimum age requirement for jurors used to be twenty-one years old but was decreased from twenty-one to eighteen to match the reduction of the military draft age and subsequent Voting Rights Act.[134]

III. ILLINOIS SHOULD RECONSIDER THE CURRENT AGE MINIMUM

A. *Reconsideration Best Serves the Purposes of the Sixth Amendment and the Fair Cross Section Requirement*

The Supreme Court lists three purposes behind the fair cross section

[127] Graham v. Florida, 130 S.Ct. 2011, 2034 (2010).
[128] *Id.* at 2032.
[129] Miller v. Alabama, 132 S.Ct. 2455, 2464-69 (2012).
[130] J.D.B. v. North Carolina, 131 S. Ct. 2394, 2406 (2011).
[131] *Id.* at 2403.
[132] *Id.* ("[A] reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go.").
[133] *Id.* at 2405 ("In fact, in many cases involving juvenile suspects, the custody analysis would be nonsensical absent some consideration of the suspect's age.").
[134] *See* Pub. Act. 78-199, § 1 (eff. Oct. 1, 1973) (amending 705 ILL. COMP. STAT. 305/2).

requirement of the Sixth Amendment, which is designed to: (1) "guard against the exercise of arbitrary power" and ensure that "the commonsense judgment of the community" will act as "a hedge against the overzealous or mistaken prosecutor"; (2) "[preserve] public confidence in the fairness of the criminal justice system"; and (3) implement the belief that sharing in the administration of justice is a phase of civic responsibility.[135]

1. Inclusion of juveniles ages fifteen to seventeen years old best guards against the exercise of arbitrary power

Some violent crimes have the power to shock the public and create added pressure on the police force and prosecutors to seek harsh punishment, particularly for juveniles accused of crimes.[136] The added pressure and shock can cause adults to rush to judgment because they see the child as an outsider.

The juvenile court was designed to protect juveniles from the harsh penalties of criminal court.[137] This was based on the belief that juveniles should not be treated as adults, but that the focus should be on reform.[138] Over time, however, the general public became shocked by crimes that juveniles were committing, and public policy began to focus more on punishment than rehabilitation.[139] This shift led to an increase in the use of the once-rare waivers from the juvenile court to the adult criminal court.

Thus, the idea of certain children being waived into adult criminal court shows a predetermination by adults that, as a result of their alleged commission of certain crimes, these juveniles are the worst of the worst. This creates a stigma that may prejudice the jury. As is the case when members of a defendant's race are excluded from a jury, similar dangers arise when juveniles must participate in the criminal courts as defendants but are prohibited from serving on a jury. This conveys a message of the juvenile's inferiority that may prevent his right to a fair trial.

2. Inclusion of juveniles ages fifteen to seventeen years old best preserves the public's confidence in the criminal justice system

Studies show that participation on a jury affects a juror's future perception

[135] Taylor v. Louisiana, 419 U.S. 522, 530 (1975).
[136] *A Road Map for Juvenile Justice Reform*, ANNIE E. CASEY FOUND., 5 www.aecf.org/~/media/.../AEC180essay_booklet_MECH.pdf (last visited Aug. 29, 2014).
[137] *Juvenile Justice History*, *supra* note 1.
[138] *Id.*
[139] *See id.*

of the fairness and usefulness of the jury system.[140] A study conducted in Dallas County, Texas provided moderate support for the assertion that groups of former jurors found the criminal justice system to be "more fair than comparable group[s] of non-jurors."[141] There were similar findings in a previous study by William R. Pabst, Jr. [142] In Pabst's study, he found that 90% of people who had previously served as jurors either felt favorably towards the jury system or felt more favorably towards the jury system than they had prior to serving on the jury.[143]

Allowing juveniles ages fifteen to seventeen years old to sit on juries would likely increase juveniles' confidence in the criminal justices system. Because juveniles have never been allowed to serve on juries in adult criminal court, the best evidence of this phenomenon is the use of teen juror programs in juvenile court. There are currently more than 1,150 teen courts operating in 49 states and the District of Columbia.[144]

These teen courts usually follow one of four models: the adult judge model, the youth judge model, the youth tribunal model, or the peer jury model.[145] In the adult judge model, all parties of the trial process are filled by teens except for the judge, such that teens serve as the prosecutors, defense attorneys, and jurors.[146] In the youth judge model, teens fill all the roles of the court.[147] In the youth tribunal model, there are no jurors. The teens fill the roles of the prosecuting and defense attorneys and argue the case before a teen judge.[148] The peer jury model operates like a grand jury—there are no defense or prosecuting attorneys. Instead, a case presenter describes the case to a panel of youth jurors.[149] These teen courts

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[140] Daniel W. Shuman & Jean A. Hamilton, *Jury Service - It May Change Your Mind: Perceptions of Fairness of Jurors and Nonjurors*, 46 S.M.U. L. REV. 449, 458-59 (1992) ("Jury service has been found to affect attitudes of jurors about the value of jury service and the behavior of jurors in subsequent trials. Jury service affects perceptions of the importance and value of the jury system. Richard M. Durand found jurors and nonjurors differed in overall attitudes toward jury service, with jurors significantly more likely to believe jury service was a service to the community than nonjurors. A study by William R. Pabst, Jr. found that ninety percent of those who had served as jurors were favorably impressed with jury duty or felt more favorably toward it than before their jury service. Similarly, a study of New York city jurors revealed that over eighty percent of jurors had at least as favorable, or more favorable, attitudes toward the jury system after jury service." (citations omitted)).
[141] *Id.* at 469.
[142] William R. Pabst, Jr. et al., *The Myth of the Unwilling Juror,* 60 JUDICATURE 164, 165 (1976).
[143] *Id.*
[144] *Teen/Youth Courts*, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION 1 http://www.ojjdp.gov/mpg/progTypesTeenYouth.aspx (last visited Aug. 28, 2014).
[145] *Id.* at 2.
[146] *Id.*
[147] *Id.*
[148] *Id.*
[149] *Id.*

usually consist of juveniles ages eleven to seventeen years old.[150] These courts were formed to increase juveniles' perception of the fairness of the criminal justice system.[151] Though further research is needed, there is some evidence that teen courts may also improve teens' attitudes toward authority and perception of the legal system.[152]

Much of the research on the effects of these teen courts has focused on their effects on offenders.[153] Though results are mixed, studies in certain states show a reduced rate of recidivism in offenders who were tried in teen court.[154] However, the fact that these offenders tended to be first-time offenders charged with petty offenses may also explain this result.[155]

Further, preventing juveniles ages fifteen to seventeen years old from contributing to the same criminal system that may prosecute them increases their mistrust of that system. In *Carter*, the Court referred to the exclusion of Blacks from jury duty on the basis of their race as "a brand upon them" and "an assertion of their inferiority."[156] The Court further held that any such discrimination "contravene[d] the very idea of a jury [that] 'represent[s] . . . the community . . .' composed of 'peers or equals . . . having the same legal status in society'" as the defendant.[157] This same rationale applies to juveniles ages fifteen to seventeen. By prosecuting this age group but forbidding them from participating in the jury process, the State conveys the idea that juveniles are old enough to be punished but not mature enough to take part in the judicial process.

B. The process could curtail some of the negative traits that are associated with juveniles

In *Graham*, the Court points to a juvenile's reduced comprehension of core legal concepts, institutional actors, and the adjudicatory process as hindrances to establishing an adequate client-attorney relationship and ultimately receiving an effective trial.[158] The Court also mentioned juveniles' mistrust of the legal system

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[150] *Id.* at 1.
[151] *Id.* ("Teen courts can make an impact on juvenile offenders by increasing their knowledge of the criminal justice system and influencing their perceived fairness of the system.") (citations omitted).
[152] *Id.* at 2.
[153] *See id.*
[154] *Id.*
[155] *See id.* at 1.
[156] Carter v. Jury Comm'n of Greene Cnty., 396 U.S. 320, 330 (1970) (citing Strauder v. West Virginia, 100 U.S. 303, 308 (1879)).
[157] *Id.* (citing Smith v. Texas, 311 U.S. 128, 130 (1940)); *Strauder*, 100 U.S. at 308.
[158] Graham v. Florida, 130 S. Ct. 2011, 2032 (2010).

as another obstacle to building an effective defense case.[159] Allowing juveniles to begin serving on juries at age fifteen is one way to curtail this phenomenon. By getting involved in the criminal justice process at a younger age as stewards of the community, rather than as defendants, juveniles will gain the opportunity to be a part of the adjudicatory process and experience how it works. This could lead to several different positive effects.

Juveniles' failure to adequately comprehend the long-term consequences of their actions is one of the contributing factors to juvenile crime.[160] By experiencing the adjudicatory process at an earlier age, juveniles may come to better understand the potential consequences of the dangerous activities that they would otherwise engage in. This could reduce the State's juvenile crime rate. In the case that a juvenile does have a run-in with the law, prior experience as a juror may give the juvenile an increased comprehension of the important aspects of the legal system and more trust in how the process works. This, in turn, may create a more effective attorney-client relationship that boosts the effectiveness of the juvenile's defense.

C. Lowering the age requirement to fifteen years old furthers the various roles that a jury is expected to fulfill

There are four roles that a jury is expected to fulfill: (1) articulation of public values; (2) fact finding; (3) fair decision making; and (4) educating the citizenry.[161]

The first role of a jury is to decide cases in a way that illustrates the community's values.[162] If the jury is to represent the community, it should mirror the community that it is evaluating as closely as possible. In adjudicating the guilt of juvenile defendants, the court should consider the interpretation of societal values of other juveniles through the use of juveniles on the jury. The court will best achieve this by including adolescents ages fifteen to seventeen year old on

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[159] *Id.*

[160] *See* Nina Chernoff & Marsha Levick, *Beyond the Death Penalty: Implications of Adolescent Development Research for the Prosecution, Defense, and Sanctioning of Youthful Offenders*, 39 CLEARINGHOUSE REV. J. POVERTY L. & POL'Y 209, 210 (2005) (citing Elizabeth S. Scott et al., *Evaluating Adolescent Decision Making in Legal Contexts*, 19 L. & HUM. BEHAV. 221, 231 (1995)); Elizabeth S. Scott & Thomas Grisso, *The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform*, 88 J. CRIM. L. & CRIMINOLOGY 137, 147 (1997) ("As compared to adults, minors were assumed to be more impulsive, to have less capacity for self control, to lack experience, and to be more inclined to focus on immediate rather than long-term consequences of their choices.").

[161] *See* Nancy S. Marder, *Beyond Gender: Peremptory Challenges and the Roles of the Jury*, 73 TEX. L. REV. 1041, 1052-86 (1995).

[162] *Id.* at 1052.

the jury because they recognize the community's values from the perspective of people their age.

The second role of a jury is to serve as a fact-finder. [163] When finding facts in a criminal trial, the jury must listen to the testimony of witnesses and view other pieces of evidence in order to determine what acts occurred and the defendant's *mens rea* at the time of the events in question. With regard to the racial composition of a jury, various authorities have found that the more heterogeneous the jury's composition, the higher the quality of the jury's deliberation process and ultimate decisions.[164] There is no reason to believe that having a jury that is more heterogeneous with regard to age would not have the same effect. By decreasing the minimum age of jurors to include persons as young as fifteen, there would be more perspectives which would, in turn, promote a greater breadth of recollection, different ways of organizing information, and more considerations than would be present in a more homogenized group. This added diversity would better allow the jury to serve its purpose as an effective fact-finder.

The third role of a jury is to be a fair decision maker in both fact and appearance.[165] In addition to accurately deliberating on findings of fact, it is important that juries' decisions *appear* fair to the community. It appears inherently unfair for a state to decide that a certain group is old enough to be penalized through the adult criminal court but too young to participate in the adjudicatory process as a juror. By changing the state's juror age requirement to match the youngest age at which a juvenile can be automatically waived to adult criminal court, the jury decision-making function gains fairness in both practice and appearance.

The fourth role of a jury is to educate the citizenry.[166] One of the main motivations behind a jury system is to give ordinary citizens an opportunity to participate in their government.[167] Juries give citizens the opportunity to participate in the law, and by doing so, juries promote the acceptance of the laws by the citizens.[168] Exclusion of a class from serving on a jury excludes that class from receiving that learning experience and gaining that feeling of acceptance towards the State's laws. Thus, the role of educating the citizenry is best served

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[163] *See id.* at 1066; *see also* Amy R. Motomura, *The American Jury: Can Noncitizens Still Be Excluded?*, 64 STAN. L. REV. 1503, 1510 (2012).
[164] *Id.* at 1510-11 (citing Samuel R. Sommers, *Race and the Decision Making of Juries*, 12 LEGAL & CRIMINOLOGICAL PSYCHOL. 171, 179-80 (2007)).
[165] Marder, *supra* note 161, at 1074.
[166] *Id.* at 1083.
[167] Powers v. Ohio, 499 U.S. 400, 406 (1991) (citing Duncan v. Louisiana, 391 U.S. 145, 147-58 (1968)).
[168] *Id.* at 407.

by including as many of the classes that are subject to criminal prosecution in the juror process as possible. By lowering the minimum age to serve on a jury to fifteen years old, the jury function would better educate the citizenry that is subject to its laws. Further, juveniles eventually grow to be adults who are *expected* to participate in jury duty. Earlier participation and education about the criminal justice system would benefit the youths by immersing them in their civic duty before they become jaded by the system's appearance of unfairness.

D. Juveniles' unfamiliarity with issues of law may actually be a benefit for the pure "fact-finding" function of a juror

One of the difficulties of maintaining an impartial jury is ensuring that the jury sticks to its function of fact-finding instead of grappling with issues of law—which are supposed to be decided by the judge.[169] It is important that matters of law be decided and dictated by the judge in the form of jury instructions. As jury instructions, and errors therein, can often be a basis for appeal, it is key that a jury follows them without bringing in their own ideas on concepts of law. A juvenile's relative inexperience with law allows him to absorb the jury instructions given by the judge without bringing in outside notions of law. The counter to this argument will be discussed in a later section.

IV. WHY THE CASE FOR JUVENILES IS HARD

A. The Catch-22 of the juvenile mind

One of the biggest challenges to lowering the juror age requirement in Illinois to fifteen years old is the nature of what makes the juvenile mind different from the adult mind. As stated above, one of the elements required to be considered a distinctive group for purposes of the Sixth Amendment's cross-representation requirement is that the group share a common thread or basic similarity in attitude, ideas, or experience.[170] According to the Supreme Court, the characteristics that define adolescents as a group are: a "lack of maturity and an underdeveloped sense of responsibility"; an increased vulnerability "to negative influences and outside pressures, including peer pressures"; "less control, or less experience with control, over their own environment"; and an under-formed

[169] *See* Marder, *supra* note 161, at 1067 (citing Stephen C. Yeazell, *The New Jury and the Ancient Jury Conflict*, 1990 U. CHI. LEGAL F. 87, 92 (1990)).
[170] People v. Treece, 511 N.E.2d 1361, 1369 (Ill. App. Ct. 1987) (citing Barber v. Ponte, 772 F.2d 982, 997 (1st Cir. 1985)).

character.[171] The ability to set requirements on who may serve on a jury is predicated on the need to ensure that all those who serve on a jury are adequately equipped to do so.[172] Unfortunately, many of the common traits that distinguish juveniles as a group also make them unattractive jurors.

Scientific research supports this school of thought. Juveniles generally focus on short-term effects and undervalue long-term consequences.[173] Developmental neuroscience shows that the brain changes during the transition from childhood to adolescence. During this transition, emotional regulation shifts to peer groups and peer influence.[174]

The requirements for jury duty are designed to ensure that members of the jury possess adequate intellect, maturity, and decision making to serve as effective jurors.[175] The immaturity of the juvenile mind may be a hindrance to this goal. Juveniles' failure to fully grasp long-term consequences could possibly lead to juvenile jurors making rash judgments or taking juror responsibility less seriously because he does not understand the gravity of what he are doing. Because of their high susceptibility to peer pressure, juveniles may also be more prone to juror tampering. They might feel an increased pressure to acquit certain people for fear of facing admonishment by their community or possible physical retaliation, maybe even more so than other jurors.

It is important, however, to recognize that much of juveniles' lack of maturity comes from a lack of life experience. Adults tend to be more mature and make better decisions because they have seen more life events and learned from them. An increased role in civic responsibility may create earlier maturation in juveniles. This idea gains support from the Mofitt theory that much juvenile delinquency is a result of juveniles trying to find a sense of independence by fulfilling adult roles that they are not legally allowed to yet, such as drinking and

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[171] Roper v. Simmons, 543 U.S. 551, 569 (2005) (citing Johnson v. Texas, 509 U.S. 350, 367 (1993)).
[172] *See* Carter v. Jury Comm'n of Greene Cnty., 396 U.S. 320, 333-35 (1970).
[173] Chernoff & Levick, *supra* note 160, at 210 (citing Elizabeth S. Scott et al., *Evaluating Adolescent Decision Making in Legal Contexts*, 19 L. & HUM. BEHAV. 221, 231 (1995)).
[174] Susan D. Calkins & Jennifer S. Mackler, *Temperament, Emotion Regulation, and Social Development, in* SOCIAL DEVELOPMENT: RELATIONSHIPS IN INFANCY, CHILDHOOD, & ADOLESCENCE 44 (Marion K. Underwood & Lisa H. Rosen eds., 2011).
[175] In Illinois jurors must meet the following requirements: "(1) [i]nhabitants of the county [in which the presiding court is located;] (2) [o]f the age of 18 years or upwards[;] (3) [f]ree from all legal exception, of fair character, of approved integrity, of sound judgment, well informed, and able to understand the English language, whether in spoken or written form or interpreted into sign language[; and] (4) [c]itizens of the United States of America." 705 ILL. COMP. STAT. 305/2 (1998).

smoking.[176] Mofitt goes on to say that such delinquency lessens with an increased ability to legitimately fill these roles.[177] By participating on juries, juveniles would get a chance to fill an adult role.

Current Illinois law already acknowledges that some juveniles may be ready for adult roles in society prior to reach the official age of adulthood. For example, Illinois' compulsory education statute contains an exemption that allows juveniles ages sixteen years old and older to withdraw from school with proof of employment.[178] Not only does this show a recognition that juveniles can sometimes handle more adult responsibilities, it also shows an example of how certain juveniles may gain more real world experience at an earlier age, possibly spurring earlier emotional and mental maturation.

B. Logistics

Another difficulty in lowering the age requirement to fifteen years for jurors in Illinois is the logistical issue of having people committed to attending a trial when they are supposed to be in school. Unlike most eighteen year olds, juveniles ages fifteen to seventeen years old are required by law to be in school.[179] In Illinois, state trials are only conducted on weekdays; thus, jury duty would be in direct conflict with the legal requirement for those juveniles to be in school. Although jury duty often conflicts with adults' obligations to work, employment law protects jurors from being penalized for fulfilling their jury duties.

This problem could be easily mitigated. First, courts often have an idea of how long a trial is scheduled to take. With this knowledge, courts could simply excuse juvenile jurors from trials that will last more than a few days. Second, in the current age of online lectures and electronic resources, schools could easily have their teachers post lectures and assignments online so that juveniles serving jury duty can learn on their own time. Further, there are many excused reasons for missing school, such as a doctor's appointment. Even in its current state, Illinois's compulsory education statute allows for juveniles ages sixteen years old and above to withdraw from school with parental permission and proof of employment.[180] An amendment could be made to Illinois' compulsory education statute mandating that jury service not be a violation of the attendance policy. It is

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[176] Elizabeth S. Scott & Thomas Grisso, *The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform,* 88 J. CRIM. L. & CRIMINOLOGY 137, 156 (1997) (citing Terrie Moffitt, *Adolescent-Limited and Life Course Persistent Antisocial Behavior: A Developmental Taxonomy*, 100 PSYCHOL. REV. 674, 688-89 (1993)).
[177] *Id.*
[178] 105 ILL. COMP. STAT. 5/26-1 (2014).
[179] *Id.*
[180] *Id.*

reasonable to believe that excusing a few days of class for jury duty is a far less extreme measure than completely withdrawing from school.

CONCLUSION

The Supreme Court has never prohibited juveniles ages fifteen to seventeen years old from being tried in adult criminal courts while also affirming state juror requirements that prohibit those juveniles from serving on juries.[181] However, the case law and reasoning that allows this exclusion has not kept up with the changing landscape of Illinois' criminal justice system. The minimum age requirement of eighteen, which has become so ingrained in United States courts, was passed prior to the drastic increase in the number of juveniles whose fates are now being decided by these adult criminal courts. Although national figures have shown a decrease in the number of juveniles being tried in these courts, Illinois is experiencing a boom, especially in the state's most populous and violent city, Chicago.

Given the continuing debate regarding punishing juveniles as adults, the fact that juveniles are not given that same adult opportunities to participate in the positive civic duty of jury service further exacerbates the appearance of injustice and diminishes the credibility of the criminal court. The best way to give the appearance of fairness and justice is to allow juveniles to participate in *both* sides of the adjudicatory process. If fifteen year olds can be automatically waived to adult court, it is only reasonable that they also be allowed to serve on the juries of those courts. Juveniles should be given the same opportunities as adults to have their fates decided by juries of their "peers," not their superiors. This is the intention of the Sixth Amendment.

[181] *See* Strauder v. West Virginia, 100 U.S. 303, 310 (1879).