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Age is Not Just a Number: Problems with Florida’s Statutory Minimum Age for Juvenile Delinquency and Why it Must be Increased

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AGE IS NOT JUST A NUMBER: PROBLEMS WITH FLORIDA’S STATUTORY MINIMUM AGE FOR JUVENILE DELINQUENCY AND WHY IT MUST BE INCREASED

Natalie Brooks*

ABSTRACT

Under a Florida law enacted in 2021, any child over the age of six years old can be arrested and subjected to juvenile delinquency proceedings. Florida, as well as the United States in general, is an outlier when it comes to statutory minimum ages for juvenile delinquency. The most common and recommended minimum age internationally is fourteen years old, and many studies show that arresting, charging, and adjudicating children below the age of fourteen is counterproductive, as it leads to increased recidivism, potentially violates due process, and leaves lasting negative effects on children. This comment will discuss juvenile delinquency in the United States, as well as the problems associated with Florida’s current minimum age for juvenile delinquency. Additionally, this comment will address the problems associated with having such a low minimum age for juvenile delinquency and explain how, based on these problems, Florida’s current minimum age runs contrary to the purposes of Florida’s juvenile justice system and does not serve the bases for punishment. Finally, this comment will recommend that Florida lawmakers raise the statutory minimum age for juvenile delinquency to fourteen years old and provide alternatives to traditional juvenile justice procedures in order to mitigate the problems analyzed before and help achieve the purposes of Florida’s juvenile justice system.

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I. INTRODUCTION

For most children, throwing a tantrum will lead to a time out; however, for Kaia Rolle, throwing a tantrum led to her arrest.¹ Kaia was only six years old when police officers placed her under arrest at school for throwing a tantrum and hitting a teacher.² Police body camera footage from the arrest shows officers placing Kaia's hands in zip ties and putting her in the back of a police car, all while Kaia is crying and begging for help.³ Kaia was released before being processed, and one of the officers responsible for her arrest was fired, but the arrest still left lasting negative effects on Kaia.⁴

After Kaia's arrest sparked national outrage, Florida lawmakers finally set a statutory minimum age for juvenile delinquency. The Kaia Rolle Act established a statutory minimum age for juvenile delinquency at just seven

¹ Cristóbal Reyes, *Lawmaker Honors Girl Arrested at Orlando Charter School After Passage of Law Named After Her*, ORLANDO SENTINEL (July 28, 2021, 2:06 PM), <https://www.orlandosentinel.com/news/crime/os-ne-kaia-rolle-law-presser-20210728-ln42w3vp4bd5dn657vysuxrlki-story.html>.

² *Id.*

³ Rosa Flores & Sara Weisfeldt, *Body Camera Videos Show 6-Year-Old Sobbing and Pleading with Officers During Arrest*, CNN (Feb. 26, 2020, 12:57 AM), <https://www.cnn.com/2020/02/26/us/body-camera-video-6-year-old-arrested/index.html>.

⁴ *Id.*

years old.⁵ Although this may seem like a step in the right direction, it is not. Florida now has the lowest statutory minimum age for juvenile delinquency out of every state in the United States that has established a statutory minimum age.⁶ Additionally, the most common and recommended minimum age internationally is fourteen years old.⁷ Why did Florida lawmakers draw the line at seven years old? Are seven-year-old children really that different from six-year-old children? “Does anyone believe that prosecuting a seven-year-old deters other seven-year-olds from committing similar acts, or that society needs protection against seven-year-old predators?”⁸

This comment provides background on the history of juvenile delinquency in the United States, as well as explains the minimum age for juvenile delinquency laws within the United States and international law. Next, this comment analyzes the problems associated with Florida’s recent enactment of a statutory minimum age for juvenile delinquency of seven years old, including discussions of relevant case law, negative effects that juvenile delinquency proceedings have on children, criminal intent and competency issues associated with young children, and increased rates of recidivism associated with young children who have been subjected to juvenile delinquency proceedings. Then, this comment explains how, based on these problems, Florida’s current statutory minimum age for juvenile delinquency runs contrary to the purposes of Florida’s juvenile justice system and does not serve the bases for punishment. Finally, this comment recommends that Florida lawmakers raise the statutory minimum age for juvenile delinquency to fourteen years old and provide alternatives to traditional juvenile justice procedures in order to mitigate the problems analyzed before and help achieve the purposes of Florida’s juvenile justice system.

II. THE HISTORY OF JUVENILE DELINQUENCY IN THE UNITED STATES

In order to understand the problems with Florida’s current statutory minimum age for juvenile delinquency, it is important to know why the United States juvenile justice system was originally implemented and how it has changed over time. Doing so will help demonstrate that Florida’s current

⁵ FLA. STAT. § 985.031 (2022).

⁶ See *Raising the Minimum Age for Prosecuting Children*, NAT’L JUV. JUST. NETWORK, <https://www.njjn.org/our-work/raising-the-minimum-age-for-prosecuting-children> (last visited Apr. 1, 2022).

⁷ *Id.*

⁸ Merril Sobie, *The Delinquent “Toddler”: The Minimum Age of Responsibility*, 26 CRIM. JUST. 36, 41 (2012).

statutory minimum age for juvenile delinquency goes against the goals of the juvenile justice system and does not serve the bases of punishment.

A. Creation of the Juvenile Justice System

Prior to 1899, the United States, like most other countries, did not have separate justice systems for juveniles and adults.⁹ Instead, juveniles were treated the same as adults with respect to criminal responsibility.¹⁰ The only thing preventing a child from entering the criminal system alongside adults was the common law infancy defense, which precluded the prosecution of children under seven years old.¹¹ The common law infancy defense was largely influenced by the work of William Blackstone.¹² According to Blackstone, children under seven years old are “infants,” and thus lack the “vicious will” necessary to commit a crime.¹³ Along with preventing the prosecution of children under seven years old, the infancy defense also created a presumption that children above seven years old and below fourteen years old lacked the criminal intent necessary to be convicted of a crime.¹⁴ This presumption could only be rebutted by proving that the child had the requisite capacity to commit the crime “beyond all doubt and contradiction.”¹⁵ Accordingly, it was very rare for a child below fourteen years old to be convicted of a crime.¹⁶

In 1899, Illinois became the first state in the United States to create a separate justice system for juveniles.¹⁷ The original purpose behind the creation of this juvenile justice system was to rehabilitate, rather than punish, juvenile offenders.¹⁸ A major factor that contributed to the creation of the juvenile justice system was the ideological shift from the classical view to the positivist view regarding the causes of crime.¹⁹ Under the classical view, individuals are seen as rational, free willed beings, and the only difference between a criminal and a noncriminal is the fact that criminals “willed”

⁹ See Deborah L. Mills, *United States v. Johnson: Acknowledging the Shift in the Juvenile Court System from Rehabilitation to Punishment*, 45 DEPAUL L. REV. 903, 905 (1996).

¹⁰ *Id.* at 910.

¹¹ Sobie, *supra* note 8, at 41.

¹² *Id.*; see Travis Watson, *From the Playhouse to the Courthouse: Indiana’s Need for a Statutory Minimum Age for Juvenile Delinquency Adjudication*, 53 IND. L. REV. 433, 436 (2020).

¹³ Watson, *supra* note 12, at 436.

¹⁴ Sobie, *supra* note 8, at 41.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Watson, *supra* note 12, at 437.

¹⁸ Mills, *supra* note 9, at 903.

¹⁹ *Id.* at 907–08.

crime.²⁰ Accordingly, the proper punishment for criminals under the classical view is to give them a harsh sentence and “unwill” their desire to commit crimes.²¹ Alternatively, under the positivist view, external forces shape an individual’s choices, and criminal behavior can be the result of biological, sociological, and even psychological factors.²² As a result, positivists believe that criminals should be given the necessary resources to be rehabilitated, rather than harshly punished.²³

Because the juvenile justice system was created based on the idea that the main focus with juvenile offenders should be rehabilitation, it originally operated very differently from the adult criminal justice system.²⁴ The *parens patriae* doctrine allowed juvenile courts to take a parental approach and act in the “best interest of the child.”²⁵ Accordingly, the new juvenile justice system was a “benign, nonpunitive, and therapeutic” system with a goal of turning troubled juveniles into responsible adults.²⁶ The court not only treated juveniles differently than adults in this new system, but also implemented different procedures to further distinguish the juvenile justice system from the adult criminal system.²⁷ For instance, juvenile proceedings were informal and not open to the public.²⁸ Additionally, juvenile records were kept entirely confidential.²⁹ These differences demonstrate how the juvenile justice system was not originally created to decide whether a juvenile was guilty, but rather it was created to prevent juveniles from becoming repeat offenders.³⁰

B. Increasing Similarities with the Adult Criminal Justice System

While the juvenile justice system was originally created with the purpose of rehabilitation, over time it has become more punishment-focused, and thus it is now almost indistinguishable from the adult criminal justice system.³¹ Juvenile proceedings are still considered civil proceedings due to their original purpose of acting in the “best interest of the child,” rather than

²⁰ *Id.*

²¹ *Id.* at 908.

²² *Id.*

²³ Barry C. Feld, *The Juvenile Court Meets the Principle of Offense: Punishment, Treatment, and the Difference It Makes*, 68 B.U. L. REV. 821, 824 (1988).

²⁴ See Watson, *supra* note 12, at 437–38.

²⁵ *Id.* at 438.

²⁶ *Id.*; see also Mills, *supra* note 9, at 909.

²⁷ See Mills, *supra* note 9, at 909.

²⁸ *Id.*

²⁹ *Id.*

³⁰ See *id.*

³¹ See Watson, *supra* note 12, at 438–40.

solely determining whether a child is guilty.³² However, after many Supreme Court decisions, the juvenile justice system shifted from “the original *parens patriae* system to a system focused on punishment.”³³

In *Kent v. United States*, the Supreme Court recognized that because juvenile courts were starting to act less like parents under the *parens patriae* system and more like criminal courts, juvenile offenders should be entitled to some of the same due process protections that adults in the criminal system are entitled to.³⁴ The Court specifically noted that a juvenile offender “receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.”³⁵ Accordingly, the Court held that hearings for waiving the exclusive jurisdiction of the court, while they may be informal, must meet the requirements of “due process and fair treatment.”³⁶ The Court also held that juvenile offenders are entitled to counsel at such hearings.³⁷ Thus, the changes introduced by this case marked the beginning of the juvenile justice system’s transformation into a system that is increasingly similar to the adult criminal system.

In re Gault was the next step in the juvenile justice system’s transformation from a rehabilitative system to a more adversarial, punishment-focused system (more like the adult criminal system).³⁸ In this case, the Supreme Court held that juvenile offenders are entitled to the same constitutional rights as adults in the criminal system, including notice of the charges, right to counsel, right to confrontation of the witness, and the privilege against self-incrimination.³⁹ Additionally, the juvenile justice system came to resemble the adult criminal system even more after the Supreme Court’s decision in *In re Winship*.⁴⁰ In this case, the Supreme Court held that the “beyond a reasonable doubt” standard of proof is required when juveniles are charged with a crime, just as it is required for adults charged with a crime.⁴¹

As highlighted above, the decisions in *Kent*, *In re Gault*, and *In re Winship* have all transformed the juvenile justice system into a system that is

³² Mills, *supra* note 9, at 913.

³³ Watson, *supra* note 12, at 438.

³⁴ *Kent v. United States*, 383 U.S. 541, 555–56 (1966).

³⁵ *Id.* at 556.

³⁶ *Id.* at 562.

³⁷ *Id.*

³⁸ See generally *In re Gault*, 387 U.S. 1 (1967).

³⁹ *Id.* at 33–34, 41, 55, 57–58.

⁴⁰ See generally *In re Winship*, 397 U.S. 358 (1970).

⁴¹ *Id.* at 368.

almost indistinguishable from the adult criminal system.⁴² In fact, the only major difference between the juvenile justice system and the adult criminal system is the fact that adults are entitled to a trial by jury if they so choose.⁴³ The Supreme Court in *McKeiver v. Pennsylvania* declined to extend the right of a jury trial to juvenile court proceedings, partially because “the jury trial, if required as a matter of constitutional precept, will remake the juvenile proceeding into a fully adversary process.”⁴⁴

III. MINIMUM AGES FOR JUVENILE DELINQUENCY IN THE UNITED STATES

The lack of minimum ages for juvenile delinquency in the United States can be traced back to the creation of a separate juvenile justice system.⁴⁵ Because the original focus of the juvenile proceedings was to rehabilitate juvenile offenders by acting in their best interest, the states did not see a need to establish minimum ages for juvenile delinquency.⁴⁶ However, as the juvenile justice system has shifted from its original purpose and increasingly resembles the adult criminal system, states began proposing and enacting statutory minimum ages for juvenile delinquency.⁴⁷

In the United States, state law governs juvenile delinquency proceedings.⁴⁸ As a result, there are major variations in the statutory minimum ages for juvenile delinquency among the states.⁴⁹ Over half of the states have not established a statutory minimum age for juvenile delinquency; thus, in a majority of states, children of any age, regardless of how young, can be processed, prosecuted, and sentenced as juvenile delinquents.⁵⁰ These states primarily rely on precedent and case law to determine a child’s capacity and competency, and thus whether the child will be prosecuted as a juvenile delinquent.⁵¹ As a result of this, the minimum age of juvenile delinquency is

42 See generally *Kent*, 383 U.S. 541; *In re Gault*, 387 U.S. 1; *In re Winship*, 397 U.S. 358.

43 See *Mills*, *supra* note 9, at 919.

44 *McKeiver v. Pennsylvania*, 403 U.S. 528, 545 (1971).

45 *Sobie*, *supra* note 8, at 41.

46 See *Watson*, *supra* note 12, at 437.

47 See *id.* at 441; Blake R. Hills & Cassidy A. Hiné, *Diapers and Detention: Should There Be a Minimum Age Limit for Juvenile Delinquency in Utah?*, 32 UTAH BAR J. 24, 25 (2019).

48 Elizabeth S. Barnert et al., *Child Incarceration and Long-Term Adult Health Outcomes: A Longitudinal Study*, 14(1) INT. J. PRISON HEALTH 26, 26 (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6527101/>.

49 *Id.*

50 April Frazier-Camara, *Report to the House of Delegates*, 505 A.B.A. (2021).

51 Barnert, *supra* note 48, at 26–27.

subject to prosecutorial and judicial discretion, which creates even more variability and unpredictability.⁵²

Of the states that do have statutory minimum ages for juvenile delinquency in place, there are major variations in the minimum ages.⁵³ On one side of the spectrum, Washington's statute states, "[c]hildren under the age of eight years are incapable of committing crime."⁵⁴ On the other side of the spectrum, in New Hampshire, "no person under [thirteen] years of age shall be subject to proceedings" under the "Delinquent Children" chapter.⁵⁵ Most of the states that have a statutory minimum age for juvenile delinquency in place have established a minimum age that falls within these two examples. In fact, the most common minimum age for juvenile delinquency in the United States (other than no minimum age) is ten years old, with sixteen states incorporating this into their statutes.⁵⁶

There are also variations among the states that have statutory minimum ages in place regarding the exceptions under the statute. On the one hand, some states provide a blanket rule where children under a certain age are shielded from criminal responsibility regardless of the crime that they commit. For example, Kansas defines a "[j]uvenile offender" as someone "who commits an offense while [ten] or more years of age . . . which if committed by an adult would constitute the commission of a felony or misdemeanor"⁵⁷ On the other hand, some states provide that children under the minimum age can still be held responsible for more serious crimes, such as rape or murder. For instance, in Vermont, like in Kansas, children are only subject to juvenile delinquency proceedings "after becoming [ten] years of age"⁵⁸ However, Vermont provides an exception where a child under ten years old may be subject to juvenile delinquency proceedings if that child is alleged to have committed murder.⁵⁹

A. Florida Law

Until recently, Florida was part of the majority of states in the United States that do not have a statutory minimum age for juvenile delinquency. In

⁵² *NJJN Policy Platform: Raise the Minimum Age for Trying Children in Juvenile Court*, NAT'L JUV. JUST. NETWORK (Dec. 2020), <https://www.njjn.org/our-work/raise-the-minimum-age-for-trying-children-in-juvenile-court>—.

⁵³ *Raising the Minimum Age for Prosecuting Children*, *supra* note 6.

⁵⁴ WASH. REV. CODE § 9A.04.050 (2022).

⁵⁵ N.H. REV. STAT. § 169-B:2 (2022).

⁵⁶ *Raising the Minimum Age for Prosecuting Children*, *supra* note 6.

⁵⁷ KAN. STAT. § 38-2302 (2022).

⁵⁸ VT. STAT. ANN. TIT. 33 § 5102 (2022).

⁵⁹ *Id.*

July 2021, Florida enacted the Kaia Rolle Act, which established a statutory minimum age of seven for juvenile delinquency.⁶⁰ This means that, generally, children under seven years old cannot be arrested, charged, or adjudicated as juvenile delinquents. However, the Kaia Rolle Act provides an exception in which a child under seven years old can be arrested, charged, and adjudicated as a juvenile delinquent if the violation of law is a forcible felony.⁶¹ Under Florida law, a forcible felony includes:

[T]reason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.⁶²

The purposes behind Florida's juvenile justice system reflect goals similar to those which led to the creation of the original juvenile justice system.⁶³ For example, the first purpose listed is “[t]o increase public safety by reducing juvenile delinquency through effective prevention, intervention, and treatment services that strengthen and reform the lives of children.”⁶⁴ Here, emphasis is placed on rehabilitating child offenders, rather than punishing them. Next, the statute highlights the importance of due process—specifically, providing fair hearings and recognizing and protecting the constitutional rights of children who come into contact with the juvenile justice system.⁶⁵ Additionally, one of the purposes is “[t]o provide an environment that fosters healthy social, emotional, intellectual, educational, and physical development . . . and to promote the health and well-being of all children under the state’s care.”⁶⁶ Finally, the statute stresses the importance of allocating resources to “the most effective programs, services, and treatments to ensure that children . . . are connected with these programs . . . where they will have the most impact.”⁶⁷ Based on these goals, it makes sense why Florida lawmakers finally decided to enact a statutory minimum age for juvenile delinquency. However, the minimum age that Florida lawmakers decided on does not make sense considering these goals.

⁶⁰ FLA. STAT. § 985.031 (2022).

⁶¹ *Id.*

⁶² FLA. STAT. § 776.08 (2022).

⁶³ *See Mills, supra* note 9, at 903; FLA. STAT. § 985.01 (2022).

⁶⁴ FLA. STAT. § 985.01(1)(a) (2022).

⁶⁵ *Id.* at § 985.01(1)(b).

⁶⁶ *Id.* at § 985.01(1)(c).

⁶⁷ *Id.* at § 985.01(1)(i).

B. *How the United States Compares Internationally*

The law within the United States regarding the minimum age for juvenile delinquency is not the norm. The United States is one of only five countries that has not established a statutory minimum age for juvenile delinquency.⁶⁸ While young children are routinely arrested, charged, and adjudicated as juvenile delinquents in the United States, the average and most recommended minimum age of criminal responsibility internationally is fourteen.⁶⁹ Japan, China, and Germany are just a few examples of countries that have established a minimum age for criminal responsibility of fourteen years old.⁷⁰ However, some countries go above and beyond the United Nation's recommended age of fourteen.⁷¹ For example, the age for criminal responsibility in Sweden is fifteen years old, and Luxembourg established a minimum age for criminal responsibility of eighteen years old. However, despite the recommendations of the United Nations and many other organizations, many countries, the United States included, fall short. For example, New Zealand and Great Britain, where children under ten years old may not be held criminally responsible, are among the many countries that still have a minimum age for criminal responsibility that is lower than the recommended fourteen years old.⁷² To clarify, some countries, unlike the United States, do not have a separate judicial system for youth offenders; accordingly, international discussions of minimum ages for juvenile delinquency usually refer to it as a minimum age of criminal responsibility.⁷³

The United Nations Convention on the Rights of the Child, which is a legally-binding agreement that outlines the rights of all children, requires state parties to enact a minimum age for criminal responsibility.⁷⁴ The Convention explains that children who are below the minimum age of criminal responsibility at the time of the commission of an offense cannot be held responsible in criminal law proceedings.⁷⁵ The United States is the only

⁶⁸ *Incapable of Criminal Intent: The Case for Setting a Minimum Age of Criminal Responsibility in Illinois*, LEGIS. & POL'Y CLINIC LOY. UNIV. SCH. L. 1, 5 (2021), https://www.luc.edu/media/lucedu/law/centers/childlaw/pdfs/incapable_of_criminal_intent.pdf.

⁶⁹ *Raising the Minimum Age for Prosecuting Children*, *supra* note 6.

⁷⁰ *NJJN Policy Platform: Raise the Minimum Age for Trying Children in Juvenile Court*, *supra* note 52, at 8.

⁷¹ Comm. on the Rights of the Child, General Comment No. 24 (2019) on Children's Rights in the Child Justice System, U.N. Doc. C/GC/24 para. 21 (Sep. 18, 2019) [hereinafter General Comment No. 24].

⁷² *NJJN Policy Platform: Raise the Minimum Age for Trying Children in Juvenile Court*, *supra* note 52, at 6.

⁷³ *Id.*

⁷⁴ U.N. Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S 3, Art. 40(3)(a).

⁷⁵ *Id.*

United Nations member nation that has failed to ratify the United Nations Convention on the Rights of the Child.⁷⁶ However, the Supreme Court has taken it into account in deciding cases concerning children in conflict with the law.⁷⁷ Instead of subjecting children younger than fourteen to juvenile delinquency proceedings, General Comment Number 24 to the Convention encourages countries to implement “community-based services and [programs] that respond to the specific needs, problems, concerns and interests of children, and that provide appropriate counseling and guidance to their families.”⁷⁸ Additionally, the United Nations Global Study on Children Deprived of Liberty released a report in 2019 stating that “depriving children of liberty is depriving them of their childhood.”⁷⁹ This report urged states to establish “a strategy for progressive deinstitutionalization [of children]” and recommended that countries set a minimum age of fourteen years old for juvenile court jurisdiction.⁸⁰

These international conventions and laws are important to consider because, although the United States has not ratified the Convention on the Rights of the Child, legislators and courts within the United States still consider it, along with other international treaties and the laws of other countries, when making decisions.⁸¹

IV. BASES FOR PUNISHMENT

Within criminal law, there are two main bases for punishment: utilitarianism and retributivism.⁸² According to the utilitarian theory of punishment, punishment can only be justified if “it is expected to result in a reduction in the pain of crime that otherwise would occur.”⁸³ Utilitarians believe that the threat of punishment reduces crime because human beings are rational; a person who is considering committing a crime will weigh the costs and benefits and will avoid committing the crime if the costs (punishment) outweigh the benefits.⁸⁴ Additionally, under utilitarianism, the

⁷⁶ *Incapable of Criminal Intent: The Case for Setting a Minimum Age of Criminal Responsibility in Illinois*, *supra* note 68, at 19.

⁷⁷ *Id.*

⁷⁸ General Comment No. 24, *supra* note 71, para. 9.

⁷⁹ *NJJN Policy Platform: Raise the Minimum Age for Trying Children in Juvenile Court*, *supra* note 52, at 9.

⁸⁰ *Id.*

⁸¹ Watson, *supra* note 12, at 445.

⁸² See generally JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW 15–19 (8th ed. 2018).

⁸³ See *id.* at 16.

⁸⁴ *Id.*

importance of deterrence, incapacitation, and rehabilitation “as mechanisms by which punishment might reduce crime” is stressed.⁸⁵ Finally, utilitarians compare punishment with other methods that could be better at reducing crime at a smaller social cost.⁸⁶ On the other hand, retributivists believe that “punishment is justified in large part . . . by an offender’s deserving to be punished.”⁸⁷ According to retributivism, people have free will, and criminals voluntarily commit crimes.⁸⁸ Thus, under retributivism, a criminal should be punished for committing a crime regardless of whether that punishment will lead to a reduction in crime.⁸⁹ Finally, retributivists believe that a criminal should be punished in proportion to his culpability.⁹⁰

While these two bases for punishment fall under the umbrella of criminal law, they are still important to discuss in relation to juvenile delinquency because of the increasing similarities between the adult criminal justice system and the juvenile justice system. Utilitarianism and retributivism have long served as justification for different forms of punishment within the criminal system. Additionally, these bases for punishment have influenced legislators in passing new laws and judges in making important rulings. Accordingly, it is necessary to evaluate Florida’s minimum age for juvenile delinquency under these bases for punishment to properly demonstrate why Florida’s minimum age must be increased.

V. THE PROBLEMS WITH FLORIDA’S CURRENT MINIMUM AGE

The major problems associated with Florida’s enactment of a statutory minimum age for juvenile delinquency of seven years old can be broken down into two categories: problems relating to the fact that children under fourteen years old are not the same as those fourteen years old and older, and problems relating to the negative effect that subjecting young children to juvenile delinquency proceedings has on the children themselves, their families, and the community as a whole.

⁸⁵ Guyora Binder & Nicholas J. Smith, *Framed: Utilitarian and Punishment of the Innocent*, 32 RUTGERS L.J. 115, 116 (2000).

⁸⁶ *Id.*

⁸⁷ Stephen R. Galoob, *Retributivism and Criminal Procedure*, 20 NEW CRIM. L.R. 465, 466 (2017).

⁸⁸ DRESSLER, *supra* note 82, at 18.

⁸⁹ *Id.*

⁹⁰ *Id.*

A. Children Younger than Fourteen Are Different

One of the main problems with Florida's enactment of a statutory minimum age for juvenile delinquency of seven years old is that there is virtually no basis for it. Apart from the common law idea that children seven years old and older are mature enough to be subject to juvenile delinquency proceedings as a result of their actions, there are no compelling reasons why Florida lawmakers should have drawn the line where they did. To the contrary, as will be discussed below, there are numerous research studies that provide a basis for drawing the line for juvenile delinquency at fourteen years old.

1. Basis in Case Law

It has long been established within the United States that juveniles should not be treated the same as adults within the justice system.⁹¹ The Supreme Court has relied on research detailing the differences in brain development between adolescents and adults in striking down the death penalty and mandatory life without parole for juveniles.⁹² While juvenile delinquency proceedings are not technically criminal proceedings, the same reasoning used to justify the different treatment of juveniles and adults in criminal proceedings can be applied to justify why children under fourteen years old must be treated differently in juvenile proceedings. So, it is helpful to understand the reasoning behind some of the famous cases regarding criminal proceedings involving juveniles.

In *Roper v. Simmons*, the Supreme Court, in holding that children under eighteen years old cannot be sentenced to death, reasoned that young people are generally not as mature, have a smaller sense of responsibility, are more easily swayed by negative influence, and have less control over their environment than adults.⁹³ Additionally, in *Graham v. Florida*, the Supreme Court considered research highlighting the fact that there are “fundamental differences between juvenile and adult minds” that reduce a child's blameworthiness.⁹⁴ Thus, the Supreme Court ruled that a juvenile who committed a crime, other than homicide, could not be sentenced to life without parole.⁹⁵ Similarly, in *Miller v. Alabama*, the Supreme Court held that mandatory sentences of life without parole for juveniles were not

⁹¹ *Incapable of Criminal Intent: The Case for Setting a Minimum Age of Criminal Responsibility in Illinois*, *supra* note 68, at 8.

⁹² *Id.* at 14–15.

⁹³ *Roper v. Simmons*, 543 U.S. 551, 570–71 (2005).

⁹⁴ *Graham v. Florida*, 560 U.S. 48, 68 (2010).

⁹⁵ *Id.* at 82.

allowed.⁹⁶ Finally, in *Montgomery v. Louisiana*, the Supreme Court ruled that the holding in *Miller* applies retroactively.⁹⁷

These cases are specifically important to highlight in the context of minimum age for juvenile delinquency laws because “[t]he idea that children and adolescents are less blameworthy,” an idea relied upon in each of these cases, “has played a key role in recent trends in juvenile justice.”⁹⁸ However, while these cases observe the differences in blameworthiness between juveniles and adults, a lot of recent research observes similar differences in blameworthiness between young children and adolescents, as will be discussed shortly. Additionally, these cases highlight a trend, which indicates that courts may, in the near future, establish a minimum age of juvenile delinquency on their own.⁹⁹

2. Lack of Culpability

One major difference between juveniles and adults is the fact that juveniles are a lot less blameworthy when it comes to committing a crime. However, this difference can also be seen between younger children and adolescents. Studies show that maturity and the capacity for reasoning are still developing in children as old as twelve to thirteen, meaning that children of this age and younger are less likely to fully understand the consequences of their actions.¹⁰⁰ In fact, research from the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice found that children under sixteen have not fully developed the ability to recognize the risks associated with different choices and to consider the consequences of their actions.¹⁰¹ While children may understand that they should not disobey parents or teachers, they do not have the mental capacity to understand what it means to break the law or to understand the legal and moral implications of their actions.¹⁰² Another study also found that individuals ages fifteen and

⁹⁶ *Miller v. Alabama*, 567 U.S. 460, 465 (2012).

⁹⁷ *Montgomery v. Louisiana*, 577 U.S. 190, 213 (2016).

⁹⁸ *Incapable of Criminal Intent: The Case for Setting a Minimum Age of Criminal Responsibility in Illinois*, *supra* note 68, at 8.

⁹⁹ Hills & Hiné, *supra* note 47, at 26.

¹⁰⁰ See, e.g., Grace Icenogle et al., *Adolescents' Cognitive Capacity Reaches Adult Levels Prior to Their Psychosocial Maturity: Evidence for a "Maturity Gap" in a Multinational, Cross-Sectional Sample*, 43(1) L. HUM. BEHAV. 69, 79–80 (2019); Sarah B. Johnson et al., *Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy*, 45 J. ADOLESCENT HEALTH 216, 217–218 (2009).

¹⁰¹ *Incapable of Criminal Intent: The Case for Setting a Minimum Age of Criminal Responsibility in Illinois*, *supra* note 68, at 7.

¹⁰² *NJJN Policy Platform: Raise the Minimum Age for Trying Children in Juvenile Court*, *supra* note 52, at 2.

younger face significant challenges in their ability to “consider the long-term, and not merely the immediate, consequences of their legal decisions.”¹⁰³

Aside from being unable to identify the long-term consequences of their actions, young children, more than adolescents, also struggle with the ability to regulate their own behavior.¹⁰⁴ This can be seen in the fact that most arrests of young children are the result of a child acting out in a way that is typical among children of the same age. Probably the most obvious example of this was seen with Kaia Rolle, who was arrested after throwing a tantrum at school.¹⁰⁵ Additionally, children who come into contact with the juvenile justice system often need help addressing the causes of their misbehavior.¹⁰⁶ For instance, a child’s contact with the juvenile justice system at a young age is normally caused by an underlying mental health issue or another risk factor.¹⁰⁷ Finally, children who commit serious offenses have often experienced child maltreatment, community violence, domestic violence, or traumatic loss.¹⁰⁸ The traditional responses of the juvenile justice system—arrest and prosecution—will not effectively hold these children accountable, and they are not the best way to help these children and keep the community safe.¹⁰⁹ As a result, these methods do not help achieve the goals of Florida’s juvenile justice system nor do they serve the bases for punishment.

3. Competency Issues

Competency is not only a big concern in criminal proceedings, but it is often the basis for many states’ statutory minimum ages for juvenile delinquency. In *Dusky v. United States*, the Supreme Court held that competency to stand trial is a constitutional right and established a standard for determining competency.¹¹⁰ While *Dusky* addressed the competency of an adult, not a child, the *Dusky* standard is nonetheless used by many states in determining youth competency.¹¹¹ The *Dusky* standard looks at whether the criminal has “sufficient present ability to consult with his lawyer with a

¹⁰³ *Incapable of Criminal Intent: The Case for Setting a Minimum Age of Criminal Responsibility in Illinois*, *supra* note 68, at 8.

¹⁰⁴ *Id.* at 7.

¹⁰⁵ Flores & Weisfeldt, *supra* note 3.

¹⁰⁶ *Incapable of Criminal Intent: The Case for Setting a Minimum Age of Criminal Responsibility in Illinois*, *supra* note 68, at 9.

¹⁰⁷ Barnert et al., *supra* note 48, at 6.

¹⁰⁸ *Incapable of Criminal Intent: The Case for Setting a Minimum Age of Criminal Responsibility in Illinois*, *supra* note 68, at 9.

¹⁰⁹ *Id.* at 21.

¹¹⁰ See *Dusky v. United States*, 362 U.S. 402, 402 (1960).

¹¹¹ See *id.*; Frank Fortunati et al., *Juveniles and Competency to Stand Trial*, 3(3) PSYCHIATRY 35, 36 (Mar. 2006).

reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him.”¹¹²

As children grow up, their understanding of criminal proceedings gradually increases.¹¹³ Research shows that children from eleven to thirteen have poorer understanding of criminal proceedings, and poorer reasoning and understanding of legal defenses than children from ages fourteen and fifteen.¹¹⁴ This is an important distinction because it shows that children under fourteen may not be able to satisfy the *Dusky* standard, yet these children will still be subjected to juvenile delinquency proceeding despite the fact that they may not entirely understand what is happening. This problem also poses issues relating to ensuring due process—one of the purposes of Florida’s juvenile justice system. How can a child be fairly subjected to juvenile dependency proceedings when he or she does not even understand the nature of the charges, the legal proceedings, or the potential forms of punishment that he or she may face?

B. Negative Effects on Children

Treating a young child as a juvenile delinquent (i.e., arresting, prosecuting, and potentially incarcerating him or her) typically has extremely negative effects on the child. These effects can manifest while the child is still young, like with Kaia, but they can also show up when these children reach adulthood. For example, research demonstrates that there is a connection between incarcerations of children younger than fourteen and increased physical and mental health issues in adulthood.¹¹⁵

A 2018 study conducted an initial survey of over 20,000 incarcerated youth from grades seven through twelve, and a follow-up survey of over 15,000 of those children was conducted when they were between the ages of twenty-four and thirty-four years old.¹¹⁶ Based on the surveys, the study found that child incarceration was associated with higher rates of poor mental and physical health in adulthood, as compared to those who were incarcerated at an older age and those who have never been incarcerated.¹¹⁷ The study also compared individuals who were incarcerated between the ages of seven and twelve with those who were incarcerated between the ages of thirteen and

¹¹² *Id.*

¹¹³ See *Incapable of Criminal Intent: The Case for Setting a Minimum Age of Criminal Responsibility in Illinois*, *supra* note 68, at 8.

¹¹⁴ *Id.*

¹¹⁵ Barnert et al., *supra* note 48, at 5–6.

¹¹⁶ *Id.* at 3.

¹¹⁷ *Id.* at 5–6.

fourteen.¹¹⁸ The findings showed that the individuals who were incarcerated between the ages of seven and twelve had higher rates of depression and suicide in adulthood than those who were incarcerated between the ages of thirteen and fourteen.¹¹⁹ This finding is particularly compelling considering Florida's recent enactment of a minimum age of seven for juvenile delinquency. Because children in Florida can still be arrested, adjudicated, and incarcerated between the ages of seven and twelve, children between these ages may be at a higher risk for increased mental and physical health problems in adulthood.

It is well established that children who are detained or incarcerated have very high rates of unmet health needs, specifically regarding mental health and substance abuse treatment needs.¹²⁰ In fact, it is estimated that approximately sixty to seventy-five percent of children in the juvenile justice system have a psychiatric disorder.¹²¹ One reason for this is that juvenile delinquency proceedings can be traumatizing to young children, which can disrupt their mental development.¹²² In fact, research shows that incarceration for young children is counterproductive to their mental development, as it causes decreased psychosocial maturity and creates stress that can disrupt healthy brain development.¹²³ Additionally, a broad population of incarcerated children face higher rates of morbidity and mortality.¹²⁴ One reason for this is that juvenile correctional facilities are "routinely found to be unsafe, unhealthy, and unconstitutional."¹²⁵ As a result, these children have an increased risk of experiencing abuse, both physical and sexual, and suicide.¹²⁶ In fact, a report from 2014 showed that children under thirteen years old "are at the greatest risk of being victims of violence when in custody."¹²⁷

Not every negative effect associated with holding young children criminally responsible involves their physical or mental health. While most arrests of children younger than fourteen involve minor offenses, these

¹¹⁸ *Id.* at 6.

¹¹⁹ *See id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *NJJN Policy Platform: Raise the Minimum Age for Trying Children in Juvenile Court, supra* note 52, at 13–14.

¹²³ *Id.* at 14.

¹²⁴ Barnert et al., *supra* note 48, at 3.

¹²⁵ *NJJN Policy Platform: Raise the Minimum Age for Trying Children in Juvenile Court, supra* note 52, at 13.

¹²⁶ *See id.*

¹²⁷ *Id.* (citing NAT'L CTR. FOR JUV. JUST., JUVENILE OFFENDERS AND VICTIMS: 2014 NATIONAL REPORT 216 (Melissa Sickmund & Charles Puzzanchera eds., 2014), <https://www.ojjdp.gov/ojstatbb/nr2014/downloads/nr2014.pdf>).

children are still likely to face limitations later in life as a result.¹²⁸ Children who encounter the juvenile justice system have a permanent juvenile record that follows them throughout life.¹²⁹ Juvenile records can place barriers on one's ability to get an education or find employment and can also pose a risk to immigration status.¹³⁰ This issue, along with each of the other negative effects associated with subjecting children younger than fourteen to juvenile delinquency proceedings, contributes to the opposite effect of the goals of Florida's juvenile justice system. For instance, subjecting a young child to a system that is known to cause harm both physically and mentally, in childhood and into adulthood, seems to contradict the idea that Florida's juvenile justice system is meant to promote the physical and mental well-being of children.

C. Higher Rates of Recidivism

“While some people think an arrest will steer a youthful offender onto the right path, the statistics tell a different story.”¹³¹ In Florida, approximately fifteen percent of juvenile delinquents who receive supervised probation will end up being arrested again.¹³² Additionally, when it comes to the most serious juvenile offenders, the recidivism rate is forty-five percent.¹³³ On the other hand, the recidivism rate for juvenile offenders who just receive civil citations and not an arrest record is only five percent.¹³⁴ This phenomenon is not unique to Florida. Research has shown that having an early encounter with the juvenile justice system negatively impacts a child's future behavior.¹³⁵ In fact, one study found that children “who had contact with police by eighth grade were five times as likely as their peers with similar backgrounds and self-reported behaviors to be arrested by [tenth] grade and [eleven] times more likely to be arrested by age [twenty].”¹³⁶

¹²⁸ *Statement on Raising the Minimum Age of Juvenile Jurisdiction*, YOUTH CORR. LEADERS FOR JUST. (May 5, 2021, 5:00 PM), <https://yclj.org/minimum-age>.

¹²⁹ *NJJN Policy Platform: Raise the Minimum Age for Trying Children in Juvenile Court*, *supra* note 52, at 13.

¹³⁰ *Id.*

¹³¹ FLA. CAMPAIGN FOR CRIM. JUST. REFORM, LOWERING JUVENILE RECIDIVISM THROUGH CIVIL CITATIONS 1, https://www.splcenter.org/sites/default/files/cjr_fl_lowering_juvenile_recidivism_through_civil_citation_s.pdf.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *NJJN Policy Platform: Raise the Minimum Age for Trying Children in Juvenile Court*, *supra* note 52, at 13.

¹³⁶ *Statement on Raising the Minimum Age of Juvenile Jurisdiction*, *supra* note 128.

As evidenced by these findings, the juvenile justice system does not decrease delinquency; in fact, it may even have the opposite effect.¹³⁷ When it comes to children who have experienced trauma, encounters with the juvenile justice system can lead to traumatized responses and increase recidivism.¹³⁸ Furthermore, the arrest process can create trauma and cause children to label themselves as prone to criminal behavior and lower educational success.¹³⁹ As a result, these children will continue to get themselves into trouble, thus only increasing the recidivism rates.

VI. WHY FLORIDA MUST INCREASE THE MINIMUM AGE

Florida must increase the statutory minimum age for juvenile delinquency to the recommended fourteen years old because the current minimum age does not help achieve the purposes of Florida's juvenile justice system, nor does it serve the bases for punishment.

A. Does Not Serve the Goals of Florida's Juvenile Justice System

As highlighted previously, the relevant purposes of Florida's juvenile justice system express the following goals: (1) increasing public safety by providing necessary services to rehabilitate juveniles who come into contact with the juvenile justice system; (2) ensuring due process by providing fair hearings, and recognizing and protecting the constitutional rights of juveniles; (3) creating an environment that promotes "healthy social, emotional, intellectual, educational, and physical development;" and (4) allocating resources to "the most effective programs, services, and treatments to ensure that children . . . are connected with these services . . . where they will have the most impact."¹⁴⁰ Florida's current statutory minimum age for juvenile delinquency runs contrary to each of these purposes.

First, Florida's current statutory minimum age for juvenile delinquency does not help increase public safety, nor does it effectively rehabilitate juveniles who come into contact with the juvenile justice system. Children who come into contact with Florida's juvenile justice system are clearly not being effectively rehabilitated, as evidenced by the recidivism rate among this population. A child who enters the juvenile justice system at a younger age "will be less likely to break free of the system as they approach

¹³⁷ *Incapable of Criminal Intent: The Case for Setting a Minimum Age of Criminal Responsibility in Illinois*, *supra* note 68, at 1.

¹³⁸ *Id.* at 9.

¹³⁹ *Id.*

¹⁴⁰ FLA. STAT. § 985.01 (2022).

adulthood.”¹⁴¹ In fact, research shows that children “who had contact with police by eighth grade were five times as likely as their peers with similar backgrounds and self-reported behaviors to be arrested by [tenth] grade and [eleven] times more likely to be arrested by age [twenty].”¹⁴² Limiting the number of children who come into contact with the juvenile justice system, by increasing the statutory minimum age for juvenile delinquency, would help reduce recidivism rates and thus increase public safety.

Second, Florida’s current statutory minimum age for juvenile delinquency does not ensure due process. While many Supreme Court cases have recognized that juveniles are entitled to many of the same constitutional protections as adults, due process concerns exist regarding juveniles who come into contact with Florida’s juvenile justice system.¹⁴³ Research shows that children from eleven to thirteen have poorer understanding of criminal proceedings and poorer reasoning and understanding of legal defenses than children from ages fourteen and fifteen.¹⁴⁴ So, even if these children are given fair notice, as well as any other applicable constitutional protections, they likely will not understand what is happening to them or why they are being punished. Thus, due process cannot be ensured for children under fourteen who come into contact with the juvenile justice system. Accordingly, Florida lawmakers must increase the statutory minimum age for juvenile delinquency in order to ensure due process among juveniles who enter the juvenile justice system.

Third, Florida’s current statutory minimum age for juvenile delinquency does not promote the health and well-being of juveniles who come into contact with the juvenile justice system. Studies show that child incarceration is associated with higher rates of poor mental and physical health in adulthood, as compared to those who were incarcerated at an older age and those who have never been incarcerated.¹⁴⁵ Additionally, research shows that incarceration for young children is counterproductive to their mental development, as it causes decreased psychosocial maturity and creates stress that can disrupt healthy brain development.¹⁴⁶ In order to ensure that the health and well-being of juveniles who come into contact with the juvenile

¹⁴¹ Brianna Hill, *Legislative Update: Massachusetts Raises Minimum Age of Criminal Responsibility*, 39 CHILD.’S LEGAL RTS. J. 168, 168 (2019).

¹⁴² *Statement on Raising the Minimum Age of Juvenile Jurisdiction*, *supra* note 128.

¹⁴³ See generally *Kent v. United States*, 383 U.S. 541 (1966); *In re Gault*, 387 U.S. 1 (1967); *In re Winship*, 397 U.S. 358 (1970).

¹⁴⁴ *Incapable of Criminal Intent: The Case for Setting a Minimum Age of Criminal Responsibility in Illinois*, *supra* note 68, at 8.

¹⁴⁵ Barnert et al., *supra* note 48, at 6.

¹⁴⁶ *NJJN Policy Platform: Raise the Minimum Age for Trying Children in Juvenile Court*, *supra* note 52, at 14.

justice system is protected, Florida lawmakers must increase the statutory minimum age for juvenile delinquency.

Fourth, Florida's current statutory minimum age for juvenile delinquency does not allow those within the juvenile justice system to allocate resources for the treatment of children in the most effective way. As highlighted above, allowing children younger than fourteen years old to come into contact with the juvenile justice system leads to increased rates of recidivism, due process violations, and poorer mental and physical health.¹⁴⁷ These concerns would be solved if Florida were to actually focus its resources in the most effective way. Instead of arresting, charging, or adjudicating children as juvenile delinquents, Florida must increase the minimum age for juvenile delinquency and implement a process where children can be assessed, and appropriate services can be provided to adequately address the child's specific needs.

B. Does Not Serve the Bases for Punishment

Utilitarianism and retributivism are the major bases for punishment within criminal law, and the juvenile justice system looks more like the adult criminal system than it ever has.¹⁴⁸ Thus, it is important to highlight how Florida's minimum age for juvenile delinquency does not serve the bases for punishment.

1. Utilitarianism

Utilitarians believe that a person who is considering committing a crime will weigh the costs and benefits and will avoid committing the crime if the costs (punishment) outweigh the benefits.¹⁴⁹ However, this belief directly contradicts research findings regarding the culpability of children. Research shows that children younger than thirteen are less likely to fully understand the consequences of their actions.¹⁵⁰ Additionally, young children, more than adolescents, also struggle with the ability to regulate their own behavior.¹⁵¹ Utilitarians also stress the importance of deterrence, incapacitation, and

¹⁴⁷ See Hill, *supra* note 141, at 168; *Incapable of Criminal Intent: The Case for Setting a Minimum Age of Criminal Responsibility in Illinois*, *supra* note 68, at 8; Barnert et al., *supra* note 48, at 6.

¹⁴⁸ See generally DRESSLER, *supra* note 82, at 16–19; see also Watson, *supra* note 12, at 438–40.

¹⁴⁹ DRESSLER, *supra* note 82, at 16.

¹⁵⁰ General Comment No. 24, *supra* note 71.

¹⁵¹ *Incapable of Criminal Intent: The Case for Setting a Minimum Age of Criminal Responsibility in Illinois*, *supra* note 68, at 7.

rehabilitation “as mechanisms by which punishment might reduce crime.”¹⁵² However, the traditional forms of punishment utilized by the criminal justice system and the juvenile justice system do not help deter, incapacitate, or rehabilitate young children who come into contact with the juvenile justice system. As previously mentioned, young children likely do not understand the consequences of their actions.¹⁵³ Accordingly, they are not weighing the costs and benefits of their actions before committing a crime; they often times are completely unaware that they have committed a crime.¹⁵⁴ Thus, young children are not adequately deterred by the threat of punishment, as utilitarians believe. While the traditional forms of punishment do have the potential to incapacitate young juvenile offenders, this method does not actually help reduce crime like utilitarians would hope.¹⁵⁵ In fact, “[b]eginning in 2005, the Supreme Court rejected determinations that children are likely to be permanently dangerous to society.”¹⁵⁶ So, there is not the same need for incapacitation with young children who come into contact with the juvenile justice system as there is with adult criminals. Traditional forms of punishment also do not help rehabilitate juvenile offenders in accordance with utilitarianism. Research has shown that having an early encounter with the juvenile justice system negatively impacts a child’s future behavior and can lead to increased rates of recidivism.¹⁵⁷ Thus, Florida’s current statutory minimum age for juvenile delinquency does not align with the utilitarianism views.

2. Retributivism

According to retributivism, people have free will, and criminals voluntarily commit crimes.¹⁵⁸ However, research shows that children usually do not willfully commit crimes; many children who come into contact with the juvenile justice system are unaware that they were committing a crime at all.¹⁵⁹ In fact, one of the original reasons for the creation of the juvenile justice system was based on the fact that children, unlike adults, did not possess the

¹⁵² Binder & Smith, *supra* note 85, at 116.

¹⁵³ See, e.g., Icenogle et al., *supra* note 100; Johnson et al., *supra* note 100.

¹⁵⁴ DRESSLER, *supra* note 82, at 16.

¹⁵⁵ Binder & Smith, *supra* note 85, at 116.

¹⁵⁶ *Incapable of Criminal Intent: The Case for Setting a Minimum Age of Criminal Responsibility in Illinois*, *supra* note 68, at 9.

¹⁵⁷ *NJJN Policy Platform: Raise the Minimum Age for Trying Children in Juvenile Court*, *supra* note 52, at 14.

¹⁵⁸ DRESSLER, *supra* note 82, at 18.

¹⁵⁹ See General Comment No. 24, *supra* note 71; *Incapable of Criminal Intent: The Case for Setting a Minimum Age of Criminal Responsibility in Illinois*, *supra* note 68, at 7.

will to commit crimes.¹⁶⁰ Additionally, retributivists believe that a criminal should be punished in proportion to his culpability.¹⁶¹ Florida's current minimum age does not allow for this. The same forms of punishment are applied to all children over six years old, regardless of their culpability.¹⁶² For instance, a seven-year-old who gets upset and hits someone could be arrested alongside a seventeen-year-old who gets into a fist fight and severely injures someone. Clearly, the seven-year-old lacks the same culpability that the seventeen-year-old has, but both will potentially be subjected to the same forms of punishment. Florida's minimum age completely disregards the research findings showing that children are unable to identify the long-term consequences of their actions and also struggle with the ability to regulate their own behavior.¹⁶³ Thus, Florida's current statutory minimum age for juvenile delinquency does not align with the retributivism views.

VII. RECOMMENDATION

In order to achieve the goals of the juvenile justice system and serve the bases for punishment, Florida must raise the statutory minimum age for juvenile delinquency to fourteen years old. While under the common law, children under seven years old were considered incapable of the necessary culpability to commit crimes, this is not an adequate place to draw the line.¹⁶⁴ Instead, the line should be drawn at fourteen years old, at the very minimum, based on the numerous research studies outlining the developmental differences between children under fourteen years old and those fourteen years old and older. In doing so, Florida lawmakers would be ensuring that the best possible procedures are in place to effectively help achieve each of the goals of Florida's juvenile justice system. While many states provide exceptions along with their minimum age of criminal responsibility, as does Florida, this is not beneficial, partly because a majority of the children under fourteen who come into contact with the juvenile justice system have committed minor offenses. At the very most, Florida could evaluate cases of extremely serious offenses committed by a child under fourteen years old on a case-by-case basis in order to determine if the child has the necessary culpability and competency to be subject to juvenile delinquency proceedings. However, this standard would give the prosecutors and judges

¹⁶⁰ Watson, *supra* note 12, at 436.

¹⁶¹ DRESSLER, *supra* note 82, at 18.

¹⁶² See FLA. STAT. § 985.031 (2022).

¹⁶³ *Incapable of Criminal Intent: The Case for Setting a Minimum Age of Criminal Responsibility in Illinois*, *supra* note 68, at 7.

¹⁶⁴ *NJN Policy Platform: Raise the Minimum Age for Trying Children in Juvenile Court*, *supra* note 52, at 9.

a lot of discretion, thus creating inconsistencies and inherent unfairness, which would only continue to contribute to the problems analyzed above. Accordingly, Florida lawmakers must increase the minimum age for juvenile delinquency to at least fourteen with, at the very most, a conditional exception reserved only for the most serious of crimes committed by children under fourteen. Finally, instead of subjecting children under fourteen years old to traditional juvenile delinquency proceedings, Florida lawmakers should highly consider the alternatives outlined below.

Holding children criminally responsible is not effective in helping support the development of children and keeping the community safe.¹⁶⁵ Research has consistently demonstrated that supportive services and diversionary programs have been more successful than traditional juvenile justice system responses at reducing recidivism and keeping communities safe.¹⁶⁶ For instance, when it comes to supporting the development of children who are in conflict with the law and keeping communities safe, a combination of early intervention and providing coordinated interventions for children has been shown to be very successful.¹⁶⁷ Additionally, providing needed mental health and substance abuse assessments and referrals to children who come into conflict with the law may be a promising path for prevention of child incarceration and mitigation of any immediate and long-term negative health effects.¹⁶⁸ “Leveraging partnerships between schools and health systems may help identify health needs and address patterns of delinquency among vulnerable children, a known precursor to justice involvement.”¹⁶⁹ Finally, a “child welfare system can provide in-home supports such as family counseling or parenting education[, a]nd schools can provide students with guidance counselors, positive behavior supports, and restorative justice programs to help them find healthy ways to deal with trauma and address conflicts with other students and teachers.”¹⁷⁰ These alternate child-serving systems can be created or improved through funding investments, including reallocation of funds from juvenile justice, “so that young children can be healthy and thrive—and can contribute throughout their lifetime to healthier, safer communities.”¹⁷¹

¹⁶⁵ *Incapable of Criminal Intent: The Case for Setting a Minimum Age of Criminal Responsibility in Illinois*, *supra* at note 68, at 9.

¹⁶⁶ *Id.* at 10.

¹⁶⁷ *Id.* at 9.

¹⁶⁸ *Id.* at 2–3.

¹⁶⁹ Barnert et al., *supra* note 48, at 31.

¹⁷⁰ *NJIN Policy Platform: Raise the Minimum Age for Trying Children in Juvenile Court*, *supra* note 52, at 14.

¹⁷¹ *Id.* at 15.

VIII. CONCLUSION

Florida is an outlier when it comes to international law and law within the United States regarding the minimum age for juvenile delinquency. The average minimum age for criminal responsibility internationally is fourteen years old, and the United Nations, as well as many other organizations, have urged the states to consider establishing a statutory minimum age for juvenile delinquency of fourteen years old.¹⁷² Florida must make changes based on the findings of many research studies and the statements of several organizations. Arresting, charging, and adjudicating children under the age of fourteen years old has been shown to increase recidivism rates, violate due process, and negatively affect the mental and physical health of children. Additionally, subjecting children under fourteen years old to the juvenile justice system neither has a deterrence effect nor does it effectively rehabilitate the children. Thus, in order to support the purposes of Florida's juvenile justice system and serve the bases for punishment, Florida lawmakers must increase the statutory minimum age for juvenile delinquency to at least fourteen years old. Florida lawmakers must do better.

¹⁷² *Raising the Minimum Age for Prosecuting Children*, *supra* note 6.