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WHY DO THEY CONTINUE TO GET THE WORST OF BOTH WORLDS? THE CASE FOR PROVIDING LOUISIANA'S JUVENILES WITH THE RIGHT TO A JURY IN DELINQUENCY ADJUDICATIONS

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INTRODUCTION

The criminal defendant's right to a trial by jury was among the first rights the United States adopted from England and is among the most valued American rights.[1] The Sixth Amendment explicitly requires an impartial jury in criminal prosecutions.[2] In *Duncan v. Louisiana*, the Supreme Court held that this right is fundamental and guaranteed by due process,[3] but the Supreme Court has since limited

1. *See* Duncan v. Louisiana, 391 U.S. 145, 152 (1968) (explaining that the first colonists adopted the criminal jury trial from England and declared the right to a jury an "inherent and invaluable right" and a "great and inestimable privilege").

2. *See* U.S. CONST. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury. . . .").

3. *See Duncan*, 391 U.S. at 149 (finding the right to a jury trial to be "fundamental to the American scheme of justice" and holding that the Fourteenth Amendment requires all states to allow criminal defendants to exercise this right in cases that would be tried with a jury in federal court).

its holding in *Duncan* to adults by stating that the right to a jury is not constitutionally required for juveniles.[4] As to juvenile offenders, the Court held in *McKeiver v. Pennsylvania* that there is no constitutional right to a jury because the civil nature of the juvenile court removes the delinquency adjudication from the purview of the Sixth Amendment.[5]

State courts have repeatedly cited *McKeiver* to deny requests for juries by juvenile defendants in delinquency adjudications.[6] Most recently, the Louisiana Supreme Court, in *State ex rel. D.J.*,[7] relied on *McKeiver* to reverse a juvenile court that had declared Louisiana's statutory codification of *McKeiver* unconstitutional on both state and federal grounds.[8]

This Comment critically examines the continued preclusion of juries from juvenile delinquency adjudications in most states. To demonstrate the benefit that juries can provide to minors on trial, this Comment focuses on Louisiana's juvenile justice system.[9] Part I of this Comment discusses the theoretical foundation of the juvenile court and presents the Supreme Court's previous juvenile justice jurisprudence.[10] Additionally, Part I introduces *State ex rel. D.J.*,[11] the recent case that may have permanently settled the jury trial issue for juveniles in Louisiana.[12] Part II analyzes the common arguments

4. *See* McKeiver v. Pennsylvania, 403 U.S. 528, 533-34 (1971) (denying the right to a jury in juvenile proceedings by stating that the Constitution does not require that minors have all rights guaranteed to adults in criminal proceedings).

5. *See id.* at 550-51 (finding that the adjudicative phase of the juvenile proceeding is inherently different from the criminal trial because the juvenile proceeding incorporates aspects of fairness, concern, sympathy, and paternal attention that make procedural formalities of the adult criminal system unnecessary).

6. *See*, *e.g.*, *In re* Kevin E., 725 A.2d 669 (N.H. 1999); State *ex rel.* Juvenile Dep't of Klamath County v. Reynolds, 857 P.2d 842 (Or. 1993); N.E. *ex rel.* N.E. v. Wis. Dep't of Health & Soc. Servs., 361 N.W.2d 693 (Wis. 1985); Findlay v. State, 681 P.2d 20 (Kan. 1984); State v. Gleason, 404 A.2d 573 (Me. 1979); State v. Lawley, 591 P.2d 772 (Wash. 1979); *In re* Dino, 359 So. 2d 586 (La. 1978), *overruled on other grounds by* State v. Fernandez, 717 So. 2d 485 (La. 1998); State v. Boatman, 329 So. 2d 309 (Fla. 1976); People v. Super. Ct., 539 P.2d 807 (Cal. 1975); *In re* McCloud, 293 A.2d 512 (R.I. 1972); *In re* J.T., 290 A.2d 821 (D.C. 1972) (holding that no state constitutional right to a jury exists for minors in juvenile court proceedings because no federal constitutional right exists according to *McKeiver*).

7. 817 So. 2d 26 (La. 2002).

8. *See id.* at 28-29 (noting that the juvenile court had declared Louisiana Children's Code articles 808 and 882 unconstitutional under the Due Process Clauses of the Louisiana and the United States Constitutions).

9. *See infra* notes 176-81 and accompanying text for a discussion of how little fact-finding often occurs in Louisiana's juvenile court delinquency proceedings.

10. *See infra* notes 17-69 and accompanying text.

11. 817 So. 2d 26 (La. 2002).

12. *See* Gwen Filosa, *Louisiana Juveniles Get No Right to Jury Trial: Court Reverses Woodson Ruling*, TIMES-PICAYUNE, May 15, 2002, at B1 [hereinafter *Juveniles*

against juries in juvenile adjudications[13] and the common policy arguments for an unconditional right.[14] Part III demonstrates how the continuous exclusion of juries is unjustified in Louisiana by applying the arguments enumerated in Part II to the state's current juvenile justice system.[15] This Comment concludes by recommending that state courts reconsider whether *McKeiver* is reasonable precedent, considering a plurality of the Supreme Court decided the case without a majority rationale three decades ago in the context of a different juvenile justice system.[16]

I. THE HISTORICAL BACKGROUND OF THE JUVENILE JUSTICE SYSTEM

A. The Creation of the Juvenile Court in the United States

Illinois established the first juvenile court in the United States in 1899 through the Illinois Juvenile Court Act.[17] Within two decades, every state passed a similar statute, creating separate juvenile courts modeled after the Illinois system.[18] The Illinois statute reflected the principle that the state should rehabilitate children in order to prevent future delinquent behavior rather than punish them for breaking the law.[19] This philosophy rested on the assumption that children were amenable to change.[20] In order to facilitate

Get No Right] (quoting attorney who believes that the *D.J.* ruling "marks the final word" for the juvenile court jury trial issue in Louisiana and that "[n]ow it's stupid to even ask").

13. *See infra* notes 81-119 and accompanying text.

14. *See infra* notes 120-57 and accompanying text.

15. *See infra* notes 158-233 and accompanying text.

16. *See infra* pp. 81-83.

17. *See* 1899 Ill. Laws 131 §§ 1-21 (creating the first American juvenile court in Cook County, Illinois on Apr. 21, 1899); *see also* SUSAN GUARINO-GHEZZI & EDWARD J. LOUGHRAN, BALANCING JUVENILE JUSTICE 89 (Transaction Publishers 1995) (reviewing the development of the juvenile justice system and focusing on the social changes that prompted the creation of a separate court system in Illinois).

18. *See* JAY S. ALBANESE, DEALING WITH DELINQUENCY: THE FUTURE OF JUVENILE JUSTICE 68 (Rachel Schick ed., 2d ed. 1993) (noting that by 1920, every state had a statute creating a juvenile court system modeled after Illinois').

19. *See* Janet E. Ainsworth, *Re-Imagining Childhood and Reconstructuring the Legal Order: The Case for Abolishing the Juvenile Court*, 69 N.C. L. REV. 1083, 1098 (1991) (noting that the rehabilitation philosophy rested on the belief that children were absolved from criminal culpability because they possessed lesser moral and cognitive capacities than adults); Jaime L. Preciado, Comment, *The Right to a Juvenile Jury Trial in Wisconsin: Rebalancing the Balanced Approach*, 1999 WIS. L. REV. 571, 576 (1999) (explaining that punishment was considered tantamount to blaming the victim for his or her adversity).

20. *See* Sacha M. Coupet, Comment, *What to do with the Sheep in Wolf's Clothing: The Role of Rhetoric and Reality About Youth Offenders in the Constructive Dismantling of the Juvenile Justice System*, 148 U. PA. L. REV. 1303, 1310 (2000) (noting that reformers regarded delinquent youth as malleable objects

rehabilitation, the founders of the juvenile court adopted the doctrine of *parens patriae*[21] as its theoretical basis.[22] This doctrine provided juvenile court judges with considerable latitude to determine the appropriate treatment for the child.[23]

The rehabilitative approach resulted in a juvenile court without the procedural formality of the adult criminal court[24] because juvenile court advocates considered formality both unnecessary and undesirable.[25] Instead, the proceedings were deliberately informal, enabling the judge to converse with the juvenile to determine an appropriate treatment for his or her delinquency.[26]

By the mid-20th century, however, the existing juvenile court model generally failed to realize rehabilitation.[27] When the juvenile court

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needing protection from a corrupt environment such as poverty, poor home and neighborhood conditions, and misguided parenting).

21. *See id.* at 1308 (explaining that *parens patriae* refers to the theory that the state has a duty to assume a custodial and protective role over persons who cannot act in their own best interest).

22. *See* 1899 Ill. Laws 131 § 21 ("This act shall be liberally construed to the end that its purpose may be carried out . . . [t]hat the care, custody and discipline of a child shall approximate as nearly as may be that which should be given by its parents."); *see also* People v. Piccolo, 114 N.E. 145 (Ill. 1916) (restating that the Juvenile Court Act was enacted upon the inherent right of the state to assume custody of a child in the child and the state's best interests).

23. *See* Ainsworth, *supra* note 19, at 1099 (noting that the court's near limitless discretion is best illustrated by the judge's power to impose whatever disposition thought to best "cure" the child, ranging from probation to detention for an indeterminate period of time); *see also* Coupet, *supra* note 20, at 1309 (explaining that the *parens patriae* doctrine was "a theoretical justification for nonpunitive, yet coercive, intervention in the lives of children and [their] families").

24. *See* GUARINO-GHEZZI & LOUGHRAN, *supra* note 17, at 90 (relaying that procedural informality was a means of distinguishing the juvenile court from the adult court so that no stigma of criminal punishment would attach to the juvenile delinquent, thereby allowing the child to be more amenable to rehabilitation).

25. *See* Ainsworth, *supra* note 19, at 1100 (explaining that procedural formalities were considered both irrelevant and unnecessary because the role of the court was not to determine guilt or punish, and undesirable because informality was thought to encourage rehabilitation).

26. *See* GUARINO-GHEZZI & LOUGHRAN, *supra* note 17, at 90 (conveying that early juvenile court judges and activists believed that only through informal conversation could the judge understand the child's character and lifestyle, and identify the child's underlying problems and prescribe specific treatment); Korine L. Larsen, Comment, *With Liberty and Juvenile Justice for All: Extending the Right to a Jury Trial to the Juvenile Courts*, 20 WM. MITCHELL L. REV. 835, 842 (1994) (noting that the adjudication hearing allowed a paternalistic judge to interact intimately with the child to discuss the child's problems and supply advice and admonition).

27. *See* JOHN C. WATKINS, JR., THE JUVENILE JUSTICE CENTURY: A SOCIOLEGAL COMMENTARY ON AMERICAN JUVENILE COURTS 30 (Carolina Academic Press 1998) (arguing that rehabilitation failed because no genuine attempt to rehabilitate actually occurred once children were confined in reformatories and training schools). Watkins argues that wardens regarded children merely as a source of labor and institutions offered meager educational opportunities. *Id.*; *see also* Sanford J. Fox, *Juvenile Justice Reform: An Historical Perspective*, 22 STAN. L. REV. 1187, 1233 (1970)

failed to demonstrate that the techniques it employed actually produced rehabilitated youth, support for the juvenile court waned.[28]

B. Supreme Court Jurisprudence on the Juvenile Justice System

As disenchantment with the juvenile justice system grew throughout the mid-20th century, emphasis turned to preserving the legal rights of children adjudicated in the courts.[29] Critics had proven that the distinction between juvenile institutions and adult prisons was merely an illusory one. Juvenile institutions were no more rehabilitative than adult prisons.[30]

State courts recognized that juvenile adjudications were effectively criminal proceedings and that court procedures violated children's rights.[31] The emerging focus on juveniles' rights in the state courts prompted intervention from the Supreme Court, which had traditionally deferred to the states.[32] Beginning in the mid-1960s, the Supreme Court examined the due process rights of minors in four landmark cases: *Kent v. U.S.*,[33] *In re Gault*,[34] *In re Winship*,[35] and

(opining that there was no real intent to rehabilitate because institutions, from their inception, were inadequately financed, overcrowded, staffed by untrained custodians, and were administered by individuals appointed for political reasons rather than their expertise in rehabilitative methods).

28. *See* Coupet, *supra* note 20, at 1314 (explaining that critics successfully reduced treatment to "legal fiction" and rejected rehabilitation as a legitimate justification for procedural laxness).

29. *See* ALBANESE, *supra* note 18, at 72 ("[W]hile support for the juvenile court's rehabilitative model waned . . . greater emphasis fell on issues such as legal fairness. . . ."); *see also* Preciado, *supra* note 19, at 579 (arguing that the heart of the problem with the juvenile court was the lack of due process rights).

30. *See* Fox, *supra* note 27, at 1233 (stating that reformatories were actually as heavily punitive as adult prisons); *see also* PAUL R. KFOURY, CHILDREN BEFORE THE COURT: REFLECTIONS ON LEGAL ISSUES AFFECTING MINORS 41-42 (Butterfield Legal Publishers, 2d ed. 1991) (1987) (comparing juvenile institutions with adult jails and concluding that the distinction was illusory because juvenile institutions had many of the same features as adult prisons, such as cell blocks, guards, isolation chambers, and tools such as whips and paddles intended for use in controlling inmates).

31. *See, e.g.*, Shioutakon v. District of Columbia, 236 F.2d 666, 669 (D.C. Cir. 1956) (recognizing juveniles' right to legal counsel during adjudications in the District of Columbia); *In re* Contreras, 241 P.2d 631, 633 (Cal. Dist. Ct. App. 1952) (acknowledging that the claim that a delinquency adjudication is not a criminal conviction is "legal fiction" and that a delinquency adjudication has future implications on a minor's character just as a criminal conviction does); *see also* GUARINO-GHEZZI & LOUGHRAN, *supra* note 17, at 92 (noting that New York recognized juveniles' right to counsel by statute in 1962). *But see, e.g., In re* Holmes, 109 A.2d 523, 525 (Pa. 1954) (reaffirming that the civil nature of juvenile proceedings justified a denial of constitutional rights guaranteed to adults who were charged with a crime).

32. *See* KFOURY, *supra* note 30, at 43 (noting that the U.S. Supreme Court's first intervention on a juvenile justice issue addressed juvenile due process rights).

33. 383 U.S. 541, 561-63 (1966) (holding that a juvenile was entitled to a hearing, to be present and have legal counsel at the hearing, to have access to all records pertaining to him, and to have the judge explain the reason for the transfer into adult

McKeiver v. Pennsylvania.[36] Through these cases, the Supreme Court left an indelible mark on the juvenile justice system by restricting the discretion of juvenile court judges and enumerating the constitutional rights retained by juveniles during adjudication.[37]

1. Juvenile Proceedings Must Include Procedural Due Process Rights.

In 1966, the *Kent* Court considered whether a juvenile court properly removed a sixteen-year-old accused of housebreaking, robbery, and rape, to district court without first holding a hearing on the waiver of jurisdiction.[38] After trial, the District Court found Morris Kent guilty and sentenced him as an adult to thirty to ninety years in prison.[39] On appeal, Kent argued that the waiver was invalid for several reasons, specifically because the court failed to hold a hearing before issuing the waiver.[40] Without a hearing, Kent argued, the juvenile court failed to comply with the Juvenile Court Act's express requirement of a "full investigation" before waiving jurisdiction.[41] The Court agreed that the juvenile court failed to hold a full investigation on the issue and remanded the case for a hearing

court).

34. 387 U.S. 1, 30-31 (1967) (holding that a child is entitled to a proceeding incorporating certain Fourteenth Amendment due process rights, such as proper notice, before any court hearing).

35. 397 U.S. 358, 368 (1970) (holding that a state must meet the stricter "proof beyond a reasonable doubt" standard, rather than the "preponderance of the evidence" standard, in order to find a minor delinquent liable for acts that would be criminal if committed by an adult).

36. 403 U.S. 528, 547-49 (1971) (holding that the right to a jury trial was not a fundamental due process right for juveniles, but that the states could grant this right by statute).

37. *See* Coupet, *supra* note 20, at 1314-16 (describing and analyzing the evolution of Supreme Court jurisprudence on the rights of juvenile defendants).

38. *See Kent*, 383 U.S. at 552 (stating that the basis of Kent's challenge was that the waiver of jurisdiction to adult court violated the District of Columbia Juvenile Court Act, which conferred exclusive jurisdiction over a minor charged with a crime to the juvenile court).

39. *See id.* at 550, 554 n.18 (noting that had Kent been charged as a juvenile, he would have been confined for a maximum of five years since the District of Columbia Juvenile Court's jurisdiction over a minor ceases when the child turns twenty one). Instead, he was charged as an adult and sentenced to serve thirty to ninety years in prison. *Id.*

40. *See id.* at 546-47 (finding that the waiver was invalid because no hearing was held on the issue, no findings were made by the juvenile court, and the juvenile court stated no reasons for waiving jurisdiction). The Court also found that the juvenile court improperly denied Kent's attorney access to Kent's Social Services file, which the juvenile court presumably considered relevant in determining waiver. *Id.* Finally, the juvenile court failed to rule on Kent's motions for a hearing and for access to his records before issuing its decision. *Id.*

41. *See id.* at 547 (noting that the statute required a "full investigation" but provided no guidance as to what constituted a full investigation).

according to the guidelines established by the Court for a full investigation.[42]

The following year, the Court issued the decision that had the greatest impact on the development of juvenile rights.[43] In 1967, the Court expressly granted juveniles certain due process rights in *In re Gault*.[44] A juvenile court committed Gerald Gault, fifteen, to an institution until he turned twenty-one for making lewd calls.[45] Gault alleged that the juvenile court denied him six specific constitutional rights at his adjudication hearing.[46] After a thorough examination of the history of the juvenile court system, the Court reiterated much of the criticism it raised in *Kent*, specifically expressing concern over the juvenile court's informality and the broad discretion of its judges.[47] The Court expanded its emphasis on due process, calling due process "the primary and indispensable foundation of individual freedom."[48] Because of its fundamental importance, the Court ruled that due process applies equally to children and adults, therefore, juvenile courts must extend certain rights afforded to adults by the Constitution to children.[49] *In re Gault* provided juveniles with the rights to notice, counsel, confrontation, and silence.[50]

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42. *See id.* at 566-67 (instructing the district court to consider waiver consistently with the policy memorandum appended to the opinion, issued to instruct juvenile court judges of the standards that they must consider before granting waiver).

43. *See* CLEMENS BARTOLLAS & STUART J. MILLER, JUVENILE JUSTICE IN AMERICA (Prentice Hall, 3d ed. 2001) (describing *Gault* as "the most influential and far-reaching decision to affect the juvenile court").

44. 387 U.S. 1, 30-31 (1967) (granting to juveniles the right to receive notice of the charges, to be represented by counsel, to confront and cross-examine witnesses, and to avoid self-incrimination).

45. *See id.* at 8-9 (noting that the same charge, if committed by an adult, amounted to a misdemeanor that carried a mere fine of $5 to $50 or imprisonment for a maximum of two months).

46. *See id.* at 10 (claiming that the juvenile court denied him the right to notice of the charges, the right to counsel, the right to confront and cross-examine witnesses, the privilege against self-incrimination, the right to a transcript of the proceedings, and the right to appellate review of the case).

47. *See id.* at 17-18 (calling the juvenile court's constitutional and theoretical bases "debatable" and stating that in practice, the results are not satisfactory). Further, the Court asserted that principle and procedure cannot be substituted by a judge's vast discretion to determine what is in the child's best interest).

48. *See id.* at 20 (stating that due process is a fundamental element of the justice system that limits the state's power over the individual).

49. *See id.* at 12-13 (declining to address other pre-trial procedures relating to juveniles); *see also* Preciado, *supra* note 19, at 580 (suggesting that the Court formalized the juvenile court by imposing the procedural requirements it initially sought to avoid).

50. *See Gault*, 387 U.S. at 58 (declining to extend to juveniles the right to appellate review and to a transcript of the proceeding); THOMAS J. BERNARD, THE CYCLE OF JUVENILE JUSTICE 118 (1992) (explaining that the right to a transcript only becomes important when bringing an appeal). Although all states grant adults the

2. Requiring Proof Beyond a Reasonable Doubt

The Court continued to expand the rights of juveniles through its holding in *In re Winship*, decided in 1970.[51] The state of New York charged Samuel Winship with delinquency for stealing $112 from a woman's pocketbook in a furniture store.[52] Having already established that juvenile proceedings must conform to due process and fair treatment, the Court considered a single issue: whether due process and fair treatment require a state to demonstrate proof beyond a reasonable doubt in order to hold a juvenile accountable for committing an adult criminal act.[53]

Although a New York juvenile court found Winship to be delinquent under a statute that merely required the state to show guilt by a preponderance of the evidence, the Court reversed, emphasizing that criminal charges have always required a higher burden of persuasion than civil cases.[54] The Court expressly held that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he or she is charged.[55]

Finding that juveniles are constitutionally entitled to the reasonable doubt standard, the Court stated, "[t]he same considerations that demand extreme caution in fact-finding to protect the innocent adult apply as well to the innocent child."[56] The Court rejected the state's argument that the delinquency adjudication is a civil proceeding that did not require due process protections, calling this argument the "civil label of convenience."[57]

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right to an appeal, the Constitution does not mandate this right, so states are not required to grant this right to minors. *Id.*

51. 397 U.S. 358, 368 (1970) (holding that the state must show proof beyond a reasonable doubt in order to adjudicate a minor as delinquent for an act that would be a crime if committed by an adult).

52. *See id.* at 360 (noting that the charge against Winship would have been larceny if he had been an adult).

53. *See id.* at 359 n.1 (declining to consider the due process requirement of any stage other than the adjudicatory phase and declining to consider other constitutional issues).

54. *See id.* at 361-63 (stating that the reasonable doubt standard has always been assumed to be the requisite standard of proof in criminal cases and that there has been ubiquitous adoption of this standard by the states).

55. *See id.* at 364 (expressing that the reasonable doubt standard is "indispensable" as a safeguard against convictions resting on factual error and to maintain the community's respect and confidence in the criminal law system).

56. *Id.* at 365.

57. *See id.* at 365-66 (rejecting the civil nature argument as untenable after *Gault* and discarding the argument that incorporating due process rights in a juvenile proceeding would necessarily equate a delinquency adjudication with a criminal conviction, destroy the confidentiality of the proceeding, formalize the proceeding,

3. A Jury is Not Required for Accurate Fact-finding

After expanding the due process rights of minors in *Kent*, *Gault*, and *Winship*, the Court, in 1971, halted the expansion of rights in *McKeiver v. Pennsylvania*.[58] *McKeiver* was a consolidation of three similar appeals involving minors adjudicated delinquent in juvenile court by judges who had rejected their requests for a jury to serve as fact-finder at their hearings.[59] The state of Pennsylvania charged sixteen-year-old Joseph McKeiver with robbery, larceny, and receiving stolen goods after he and twenty or thirty youths allegedly pursued three teenagers and took twenty-five cents from them.[60] A Pennsylvania juvenile court charged Edward Terry, fifteen, with assault and battery on a police officer and conspiracy after he allegedly hit a police officer who disrupted a fight Terry had been watching.[61] The state of North Carolina charged Barbara Burrus with willfully impeding traffic after she participated in a protest against school desegregation.[62]

The Court narrowed the issue to whether the Due Process Clause assured the right to trial by jury in the adjudicative phase of a juvenile court delinquency proceeding.[63] After illustrating its previous juvenile court jurisprudence, the Court first considered whether the right to a jury was automatically guaranteed to minors by the Sixth and Fourteenth Amendments.[64] The Court found this analysis to be inconclusive; while the Court has never expressly characterized juvenile court proceedings as criminal prosecutions within the meaning and reach of the Sixth Amendment, the Court reiterated that the juvenile court system reflected many of the adult criminal court's punitive aspects.[65]

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and delay the adjudicatory process).

58. 403 U.S. 528, 545 (1976) (holding that a juvenile has no constitutional right to a jury in a delinquency adjudication).

59. *See id.* at 534-38.

60. *See id.* at 534-35 (noting facts of McKeiver's case).

61. *See id.* at 535-36 (noting facts of Terry's case).

62. *See id.* at 536-37 (noting facts of Burrus' case).

63. *See id.* at 541 (stating that the court would limit its analysis to whether the fundamental fairness standard of due process required juveniles the right to elect a jury in delinquency proceedings).

64. *See id.* at 540 (stating that the Sixth Amendment guarantees the right to an impartial jury in all criminal prosecutions under federal law, and the Fourteenth Amendment compels states to grant a jury trial in state courts if one is held in federal court).

65. *See id.* at 541 (referring to the reasoning behind the *Kent, Gault*, and *Winship* Courts' rejection of the "civil label of convenience" where the Court would not rely on the juvenile court's civil classification as the sole determination of which rights should be granted or withheld from juveniles).

The essence of the juveniles' argument was that their adjudication proceedings were substantively similar to criminal trials and that incorporating a jury into the adjudication would not alter the supposed benefits of the juvenile court system.[66] Justice Blackmun, writing for a plurality of the Court, rejected their arguments, reasoning that a jury trial was only constitutionally required in juvenile proceedings if due process required fact-finding by a jury.[67] In support of its conclusion that a jury is not necessary for fair fact-finding, the plurality noted that equity cases, workmen's compensation cases, probate matters, deportation cases, and military trials had been traditionally decided by judges without juries.[68] The plurality holding signaled the Court's adoption of the paternalistic attitude it rejected in its previous opinions and marked the end of the era of expansion of rights in juvenile justice issues.[69]

C. Reaffirming that Juveniles Have No Right to a Jury in Louisiana

In May 2002, the Louisiana Supreme Court revisited the issue of whether juveniles in that state are entitled to have a jury act as fact-finder in delinquency adjudications in *State ex rel. D.J.*[70] This court had previously adopted the U.S. Supreme Court's *McKeiver* holding and reasoning to find that juveniles were not entitled to a jury in Louisiana.[71]

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66. *See id.* at 541-42 (arguing that an adjudication mirrored a criminal trial because the petition charged a violation of the penal code in language similar to an indictment, juveniles were detained in facilities similar to adult prisons prior to their hearings, defense counsel and the prosecution conducted plea bargains, similar motions were heard and decided, the same rules of evidence applied, the public could observe both types of proceedings, and the stigma attached to a delinquency adjudication amounted to a criminal conviction).

67. *See id.* at 545 (refraining from holding that all rights constitutionally assured to the adult criminal defendant extend to minors and noting that the *Gault* and *Winship* Courts incorporated the rights to notice, counsel, confrontation, cross-examination, and reasonable doubt standard of proof because those rights were considered essential to adequate fact-finding and therefore required by due process).

68. *See id.* at 543 (acknowledging the benefits of a jury but finding that a defendant may be treated as fairly by a judge alone as he or she would be by a jury).

69. *See* KFOURY, *supra* note 30, at 46 (stating that the *McKeiver* Court retreated philosophically in the area of procedural rights for juveniles by reaffirming the distinction between juvenile proceedings and criminal trials in nature and in focus).

70. 817 So. 2d 26 (La. 2002) (holding that statutes precluding jury trials for minors are constitutional under both the state and federal constitutions).

71. *See In re* Dino, 359 So. 2d 586, 598 (La. 1978) *overruled on other grounds by* State v. Fernandez, 712 So. 2d 485 (La. 1998) (analyzing *McKeiver's* reasoning and reaching the same holding). The *Dino* Court opined:

> For reasons similar to those expressed in *McKeiver*, a majority of this Court has concluded that the Louisiana due process guaranty . . . does not afford a juvenile the right to a jury trial during the adjudication of a charge of delinquency based upon acts that would constitute a crime if engaged in by

The Louisiana Supreme Court reconsidered the jury right question in *State ex rel. D.J.* after a state juvenile court had declared the state's statutory preclusion[72] of juries in juvenile proceedings unconstitutional under both the Louisiana and U.S. Constitutions.[73] In *D.J.*, the state charged two thirteen-year-old boys with attempted second-degree murder and with carrying a firearm on school property.[74] Darrell Johnson shot fifteen-year-old William Pennington in a schoolyard with a gun passed through a fence by Alfred Anderson, who waited outside the schoolyard fence for Johnson.[75] At their adjudication proceeding, the two teenagers requested jury trials, which the juvenile court granted after several hearings and determining that due process required delinquency adjudications by jury.[76] The Louisiana Supreme Court reversed the juvenile court, citing *McKeiver* to conclude that the legislature's preclusion of a jury for minors was consistent with due process and fundamental fairness.[77]

In a strong dissenting opinion, Justice Johnson focused on the inapplicability of the policy-based analysis applied in *McKeiver* to modern juvenile delinquency cases.[78] The dissent argued that the nature of the juvenile court system had changed so substantially that due process requires that juveniles have the option of fact-finding by jury in the delinquency adjudications.[79] In conclusion, the dissent

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an adult.

Id.

72. *See* LA. CH. C. art. 808 (West 1995) ("All rights guaranteed to criminal defendants by the Constitution of the United States or the Constitution of Louisiana, except the right to jury trial, shall be applicable in juvenile court proceedings brought under this Title."); LA. CH. C. art. 882 (West 1995) ("The adjudication hearing shall be held before the court without a jury.").

73. *See D.J.*, 817 So. 2d at 28 (discussing procedural history).

74. *See id.* at 27 (recounting the charges against the defendants).

75. *See id.* at 28 n.2 (illustrating the facts of the case); *see also* Gwen Filosa, *Teen Shooting Suspect's Lawyers Seek Jury Trial: Rule Changes Sought in Woodson Case*, TIMES-PICAYUNE, June 13, 2001, at B1 [hereinafter *Lawyers Seek Jury Trial*] (reporting the shooting in detail).

76. *See D.J.*, 817 So. 2d at 28 (recounting procedural history).

77. *See id.* at 34-35 (remanding the case to the Orleans Parish Juvenile Court for rehearing consistent with the Court's adoption of the U.S. Supreme Court's *McKeiver* holding, that a trial by jury in a juvenile proceeding is not constitutionally required under the applicable due process standard).

78. *See id.* at 35 (Johnson, J., dissenting) (arguing that the policy-based analysis applied more than thirty years ago is outdated and that recent changes in state law as well as a continuing national critique of the juvenile justice system make the reasoning behind *McKeiver* and therefore, *Dino,* inapplicable to a modern examination of this issue).

79. *See id.* at 36 (referring to the increasing criminal nature of court proceedings and detention facilities and the adversarial nature of Louisiana's juvenile adjudications).

noted that equal protection of the law required the state to provide juveniles with the same mode of trial that it provides an adult charged with a comparable offense.[80]

II. ANALYZING THE ARGUMENTS AGAINST AND IN FAVOR OF A JURY IN JUVENILE DELINQUENCY PROCEEDINGS

A. Arguments Against a Jury in Juvenile Delinquency Proceedings

The arguments in support of excluding juries from juvenile adjudications focus on preserving tradition.[81] These arguments cite the civil rather than criminal nature of juvenile court proceedings,[82] the uniqueness of the juvenile court due to its foundation under the theory of *parens patriae*,[83] and the delay[84] that a jury would cause to deny juveniles the option of a jury.

1. Because Juvenile Proceedings are Civil and not Criminal in Nature, There is no Need for a Jury

A common argument opposing juries in juvenile court proceedings focuses on the fact that the juvenile court is technically a civil court because it was founded as a chancery court.[85] Although the right to a jury does exist in civil cases, the Seventh Amendment only protects this right in trials that would have had a jury at common law.[86] The English judicial system, which laid the foundation for the American judiciary, consisted of two separate courts: courts of law,[87] which typically included juries, and chancery courts,[88] which did not. Because the chancery court system never included a jury in proceedings, the juvenile court, as a chancery court, was not

80. *See id.* at 38 (raising the equal protection argument introduced by the U.S. Supreme Court in *Kent*, in which the Court recognized that juveniles received unequal treatment but no compensating benefit because rehabilitation often failed).

81. *See* Larsen, *supra* note 26, at 862-66 (indicating that states that have denied juveniles a jury right were persuaded by traditional arguments of preserving the juvenile court as a rehabilitative tool).

82. *See infra* notes 85-100 and accompanying text.

83. *See infra* notes 101-14 and accompanying text.

84. *See infra* notes 115-19 and accompanying text.

85. *See e.g.*, Larsen, *supra* note 26, at 862 (noting that the English chancery court was the paradigm for the juvenile court).

86. *See id.* at 850 (explaining that the Seventh Amendment requires a jury only in the type of trials that would have been tried by a jury in England).

87. *See id.* at 850 n.128 (explaining that courts of law provided the legal remedy of money damages).

88. *See id.* at 850 n.129 (explaining that chancery courts provided equitable remedies, such as injunctions, specific performance, or recision).

constitutionally required to include a jury since there was no jury at common law.[89]

Opponents of the jury in juvenile proceedings also cite the rehabilitative focus of the court in continuing to call it a civil court where due process and procedural rights are unnecessary.[90] These opponents argue that the child is not being convicted of a crime, but rather the crime is evidence of a child's delinquency and need for treatment.[91]

The Supreme Court, however, specifically rejected this line of reasoning in *Gault*[92] and *Winship*.[93] Finding that the "actual performance"[94] of the juvenile justice system did not fulfill its "good intentions,"[95] the Court declined to continue withholding due process and procedural rights according to the "civil label of convenience."[96] In the eyes of the Court, both juvenile adjudications and adult proceedings were criminal because both resulted in the loss of liberty through institutionalization if found guilty.[97] Though the Court recognized the criminal nature of the juvenile court, it has never formally assigned a criminal nature to the juvenile court, thus

89. *See id.* at 850.

90. *See id.* at 862 (stating that due process is not required because the court determines the needs of the child rather than adjudicating criminal conduct).

91. *See id.* at 862 (supporting the proposition that a child's institutionalization lasts for an individually prescribed period dictated by the child's treatment needs). *But see* Sara E. Kropf, *Overturning McKeiver v. Pennsylvania: The Unconstitutionality of Using Prior Convictions to Enhance Adult Sentences Under the Sentencing Guidelines*, 87 GEO. L.J. 2149, 2175 (1999) (explaining that at least twenty-five states use determinate or mandatory minimum sentences that are based on the offense committed rather than an individual offender's assessed needs).

92. 387 U.S. 1, 50 (1967) (finding that criminal due process safeguards are necessary in juvenile court because a juvenile's institutionalization is involuntary incarceration and depravation of liberty whether called "civil" or "criminal").

93. 397 U.S. 358, 365-66 (1970) (reiterating that "civil labels and good intentions" do not alone determine whether due process safeguards should be incorporated into juvenile proceedings).

94. *See* BERNARD, *supra* note 50, at 119 (arguing that two branches of analysis exist to explain the outcomes of the Supreme Court's decisions on juvenile justice issues). One branch explains that the Court focused on the "actual performance" of the juvenile court. *Id.* This line of reasoning led the court to hold that procedural safeguards and due process were necessary to protect children because they were being punished for criminal acts. *Id.*

95. *See id.* (explaining that under the second branch of analysis, the Court focused on the "good intentions" of the system, finding that the juvenile courts provided rehabilitation without assessing a child's guilt, so due process and procedural formalities were unnecessary).

96. *See Gault*, 387 U.S. at 50-51; *see also Winship*, 397 U.S. at 365-66 (stating a juvenile's potential loss of liberty warrants due process safeguards).

97. *See Gault*, 387 U.S. at 36; *see also Winship*, 397 U.S. at 366 (finding the delinquency adjudication to be as serious as the felony prosecution).

advancing the argument that the civil nature of a court removes the need for a jury to survive.[98]

Because the American legal system no longer distinguishes between legal and equitable claims when determining whether a civil trial should include a jury, arguing that the juvenile court's roots in equity precludes a jury is no longer justifiable.[99] The Supreme Court expressly declared that courts could not deny a request for a jury solely because an equitable claim is at issue, except when the issue is so complicated that it would be outside the comprehension of a jury of laypersons.[100] As demonstrated by its ubiquitous use in adult criminal trials, adjudicating delinquency is not so complicated that a jury would be unable to act as a fact-finder in a juvenile case.

2. Incorporating a Jury into the Proceeding Would Destroy the Uniqueness of the Juvenile Court

Opponents of jury rights for juvenile offenders argue that the juvenile court's foundation upon the doctrine of *parens patriae* makes the juvenile court unique.[101] Incorporating a jury in the juvenile proceeding, opponents argue, will produce a juvenile court that is criminal in both appearance and effect by destroying its civil nature, confidentiality of proceedings, and by encroaching on the vast discretion of judges to design an individual treatment for each child.[102]

Advocates of the status quo believe that the unique nature of the juvenile court produces favorable results.[103] One result is that the court's design eliminates the stigmatization by society of minors charged with crimes.[104] The system's confidentiality[105] and the

98. *See* McKeiver v. Pennsylvania, 403 U.S. 528, 541 (1971) (conceding that the juvenile adjudication process has criminal aspects but declining to classify it as criminal).

99. *See* Larsen, *supra* note 26, at 850 (explaining that the 1938 passage of the Federal Rules of Civil Procedure merged the two courts and allowed the adjudication of the two types of claims simultaneously).

100. *See* Dairy Queen, Inc. v. Wood, 369 U.S. 469, 478 (1962) (noting that the burden on the party to show that the issue is outside the comprehension of a jury is incredibly high and will rarely be met).

101. *See* Larsen, *supra* note 26, at 864 (stating that *parens patriae* theory requires the judge to act in the child's best interest by maintaining a close relationship, and the use of a jury would destroy that relationship).

102. *See id.* at 865-66 (commenting that opponents see the complete integration of procedural formalities and due process rights as creating another criminal court and leading to the inevitable abolition of the juvenile court).

103. *See* GUARINO-GHEZZI & LOUGHRAN, *supra* note 17, at 90 (discussing how removing criminal aspects of trial promotes rehabilitation).

104. *See id.* (explaining that eliminating the stigmatization of minors by society would promote rehabilitation).

practice of expunging juvenile court records allow the juvenile to re-enter society with a clean slate.[106] Incorporating a jury, opponents argue, eliminates the confidentiality of the proceedings and exposes the child to inevitable stigmatization by society.[107] Incorporating a jury, opponents further argue, would encroach on the vast discretion of the judge, limiting the judge's ability to design the best treatment for the child, as the *parens patriae* theory mandates.[108]

Jury opponents draw support for their argument from the Supreme Court's dicta in *McKeiver*.[109] Reliance on *McKeiver*, however, provides dubious support because *McKeiver* is inconsistent with other Supreme Court holdings[110] and arguably reflects poor reasoning.[111]

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105. *See* Jeffrey A. Butts, *Can We Do Without Juvenile Justice?*, 15 CRIM. JUST. 50, 55 (2000) (recounting that confidentiality is an integral aspect of the juvenile justice system because it reduces the likelihood that a juvenile delinquent will be stigmatized by public designation as a law violator). Butts comments how stigmatizing youthful offenders perpetuates delinquency by creating a "deviant self-image" in the offender. *Id.* *But see* Coupet, *supra* note 20, at 1323-24 (noting that forty-seven states have amended their confidentiality provisions, making records and proceedings more open, indicating an abandonment of the policy considerations behind confidentiality).

106. *See* Coupet, *supra* note 20, at 1324 (explaining that expungement served the purpose of avoiding stigmatization of juveniles and preventing negative labeling of an individual who may have since reformed). *But see* Butts, *supra* note 105, at 55 (noting that all fifty states and the District of Columbia have statues or court rules allowing juvenile court records to enhance adult criminal court sentences, indicating that a juvenile cannot truly leave a delinquency adjudication behind).

107. *See State ex rel.* D.J., 817 So. 2d 26, 36 (La. 2002) (suggesting that including a jury would be a clear betrayal of juvenile philosophy).

108. *See* Coupet, *supra* note 20, at 1309 (noting that advocates of *parens patriae* believed that incorporating criminal trial procedural formalities would hinder rehabilitation); *see also* McKeiver v. Pennsylvania, 403 U.S. 528, 550-51 (1971) (finding that the intimacy of the juvenile proceeding would be destroyed by including a jury). *But see D.J.*, 817 So. 2d at 38 (Johnson, J., dissenting) (arguing that a jury could be integrated into the juvenile proceeding without encroaching on the judge's discretion; the jury could serve as fact-finder in the adjudicatory stage of the proceeding while the judge would retain his or her authority to design the appropriate treatment for the child during the dispositional phase).

109. *See McKeiver*, 403 U.S. at 550 (proclaiming that incorporating a jury would turn the proceeding into an adversarial process and bring into the system the delay, formality and the disarray of the adult criminal court).

110. *Compare id.* (arguing that delay, formality, adversity, and publicity would occur by incorporating a jury), *with In re* Gault, 387 U.S. 1, 22-24 (1967) (arguing that the juvenile justice system will not cease to exist as a separate system, treatment need not be abandoned, nor would juveniles have to be classified as criminals instead of delinquents by incorporating due process rights), *and In re* Winship, 397 U.S. 358, 366-67 (1970) (arguing that the proceeding will not become a criminal trial, confidentiality would not be lost, the proceeding will not become unnecessarily formal, it will not lose its flexibility, nor cause delay by requiring a reasonable doubt standard).

111. *See* Kropf, *supra* note 91, at 2174 (arguing that *McKeiver* is poorly reasoned because the Court did not articulate how a jury trial is sufficiently distinguishable from other due process rights to alter the nature of the juvenile court when the Court expressly stated that the other due process rights already incorporated would not

In *Gault*, the Court assured that incorporating the rights to notice, counsel, confrontation, and silence would not transform the juvenile court into an adult court, subject juveniles to punishment over rehabilitation, or require classification of minors as criminals rather than delinquents.[112] Reaching the opposite conclusion in *McKeiver*, the Court stated that incorporating a jury would destroy the uniqueness of the juvenile justice system.[113] However, the Court failed to explain in *McKeiver* how a jury differs from these other fundamental due process rights, begging the question as to whether there is a difference.[114]

3. Incorporating a Jury Would Cause Unnecessary Delay

Another common argument for excluding a jury from juvenile proceedings is that a jury would cause unnecessary delay.[115] A jury would add time, personnel, paperwork, and expense to the process.[116]

Although adding a jury would necessarily make the adjudication process longer, the additional costs and time should not dictate a selective application of the Constitution.[117] In practice, delay is unlikely; surveys show that in states that provide a jury right, juvenile delinquents infrequently exercise their right to trial by jury.[118] The

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affect the nature of the juvenile court).

112. *See Gault*, 387 U.S. at 31-57 (emphasizing that the juvenile court's unique characteristics would endure).

113. *See* 403 U.S. at 550-51 (indicating that juvenile jury proceedings would imply that there was no need for a separate system).

114. *See* BERNARD, *supra* note 50, at 126-27 (arguing that the shift in view was not due to a difference between the rights at issue, but rather the result of a change in the Court's composition). Two liberal justices, Justice Fortas and Chief Justice Warren, retired between the *Winship* and *McKeiver* decisions and were replaced by Justice Blackmun and Chief Justice Burger, two conservative justices. *Id.* These two conservatives joined the *Gault* and *Winship* dissenters to form the *McKeiver* plurality. *Id.*

115. *See* Larsen, *supra* note 26, at 866 (noting that delay is often cited as a justification and draws support from the Supreme Court's dicta in *McKeiver*).

116. *See id.* (explaining the administrative impact that a jury will have on the juvenile proceeding).

117. *See* Susan E. Brooks, *Juvenile Injustice: The Ban on Jury Trials For Juveniles in the District of Columbia*, 33 U. LOUISVILLE J. FAM. L. 875, 889 (1995) (arguing that the need for accurate fact-finding when a juvenile denies his guilt outweighs the cost of added time and money).

118. *See Minnesota Supreme Court Advisory Task Force on the Juvenile Justice System: Final Report, reprinted in* 20 WM. MITCHELL L. REV. 595, 647 (1994) [hereinafter *Task Force*] (surveying states that allow juvenile delinquency adjudications by jury and noting that juveniles elect to have jury trials less frequently than adult criminal defendants). The survey noted that in 1992, Oklahoma conducted about 1% of juvenile trials using a jury (51 of 4365), in Texas, less than 1% (191 of 21,970), in New Mexico, less than 1% (6 of 4359), and in Wisconsin, less than

fact that juveniles infrequently exercise this right does not diminish its importance; a jury provides a symbolic value that is immeasurable.[119]

B. Arguments in Favor of a Jury in Juvenile Delinquency Proceedings

Since *McKeiver* held that juveniles are not constitutionally guaranteed the right to a jury, states that grant this right have done so by statute.[120] The policy arguments advanced by jury proponents focus on protection of the child's best interest.[121] Specifically, the states argue that a jury provides a much-needed check against a judge's abuse of discretion,[122] promotes accurate fact-finding,[123] compensates for inadequate defense counsel,[124] and provides legitimacy to the proceeding in the eyes of the juvenile.[125]

1. A Jury Provides a Check Against a Judge's Unbridled Discretion

A central principle of the juvenile court is that the judge should use his or her vast discretion to devise individualized treatments for the minor.[126] Jury proponents argue that this principle relies on the assumption that juvenile court judges can prescribe fair dispositions by setting aside their biases or prejudices.[127] Because judges alone

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3% of juvenile delinquency adjudications were by jury (272 of 10,000). *Id.* at n.124.

119. *See infra* notes 152-55 and accompanying text for a discussion on the symbolic benefits of a jury.

120. *See* ALASKA STAT. § 47.10.070 (Michie 2001); MASS GEN. LAWS ANN. ch. 119, § 55A (West 1996); MICH. COMP. LAWS ANN. § 712A.17(2) (West 1999); MONT. CODE ANN. § 41-5-1502 (1997); N.M. STAT. ANN. § 32A-2-16 (Michie 1998); 2002 Okla. Sess. Law Serv. 473 (West) (amending OKLA. STAT. ANN. tit. 10, § 7003-3.8 (West 1995)); TEX. FAM. CODE ANN. § 54.03(c) (Vernon 2001); W. VA. CODE ANN. § 49-5-6 (Michie 1998); WIS. STAT. ANN. § 48.31(2) (West 2001); WYO. STAT. ANN. § 14-6-223(c) (Michie 1977) (codifying an unconditional right to fact-finding by jury in juvenile adjudication proceedings in the respective states); *see also* COLO. REV. STAT. ANN. § 19-2-107 (West 2002); IDAHO CODE § 20-509 (Michie 2000); 705 ILL. COMP. STAT. ANN. 405/5-101 (West 1999); KAN. STAT. ANN. § 38-1656 (1997); R.I. GEN. Laws § 14-1-47 (1956); S.D. CODIFIED LAWS § 26-7A-34 (Michie 1991); S.D. CODIFIED LAWS § 15-6-38(a) (Michie 1966); VA. CODE. ANN. § 16.1-272 (Michie 2002) (providing a conditional right to a jury in juvenile adjudication proceedings in the respective states).

121. *See generally* Larsen, *supra* note 26, at 859-62 (summarizing the reasons offered by the fifty states and the District of Columbia as to why juries are included or excluded from juvenile proceedings).

122. *See infra* notes 126-35 and accompanying text.

123. *See infra* notes 136-43 and accompanying text.

124. *See infra* notes 144-51 and accompanying text.

125. *See infra* notes 152-75 and accompanying text.

126. *See* Larsen, *supra* note 26, at 838 (noting that judges were granted vast discretion to design individualized sentences to provide the juvenile with whatever care he or she needed to break the cycle of delinquency).

127. *See* Ainsworth, *supra* note 19, at 1125 (arguing that the assumption that a judge is immune to bias attributes "superhuman powers of self-reflection" and an

ultimately decide the fate of the child, advocates argue that the adjudication proceeding should incorporate all safeguards that would produce the fairest result.[128] Since the foundation of our country, advocates argue, the jury has mitigated precisely the type of plenary power that judges exercise over those who appear in their courtrooms.[129]

Proponents cite various factors that can affect a judge's impartiality and lead to an abuse of discretion, such as familiarity with the offender resulting from a previous appearance in the court,[130] decision of a similar charge in the past,[131] and damaging evidence.[132]

The Supreme Court addressed the potential encroachment on a child's due process and statutory rights by judges who exercise the vast discretion afforded to them in *Kent*.[133] Recognizing that a juvenile court judge should maintain ample discretion when determining the best treatment for the offender, the Court, however, declined to declare that this discretion was limitless and justified employing arbitrary procedure.[134] The Court admonished juvenile court judges to comply with the constitutional and statutory rights of the child who

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ability to address the "conscious and unconscious mental processes" to set aside biases).

128. *See* Larsen, *supra* note 26, at 859-60 (arguing that the structure of the juvenile court places the juvenile offender's fate in the judge's hands, requiring the proceeding to be fair and unbiased).

129. *See* Duncan v. Louisiana, 391 U.S. 145, 156 (1968) (explaining that the immense value placed on the right to a jury in criminal proceedings reflected the founding fathers distrust of official power and the reluctance to place the fate of a citizen in the hands of a single judge).

130. *See* Larsen, *supra* note 26, at 859 (arguing that the judge's familiarity with a particular defendant precludes impartiality during the adjudication because the judge may determine that the minor's mere reappearance indicates guilt as a repeat offender).

131. *See id.* (contending that judges who have decided certain types of cases in the past may treat a previous finding as precedent and reach the same determination, ignoring each child's unique circumstances).

132. *See id.* (proffering that since evidentiary hearings are often heard concurrently with the adjudication proceeding, exposure to evidence that may ultimately be inadmissible creates bias).

133. *See* Kent v. U.S., 383 U.S. 541, 554 (1966) (announcing that it would be "inconceivable" for an adult criminal court to reach a decision of such magnitude as waiver of jurisdiction without first holding a hearing and requiring effective assistance of counsel).

134. *See id.* at 553 (affirming that the judge should have broad discretion to determine whether to keep or waive jurisdiction over the child, but declaring that the judge could not deny the juvenile an opportunity to appear on his own behalf, to decide to ignore the child's motions, or to waive jurisdiction without articulating a reason).

appeared before the judge before reaching a decision motivated by extraneous reasons.[135]

2. A Jury Promotes Accurate Fact-Finding

Juvenile jury right advocates argue that the increasingly punitive nature of juvenile courts throughout the country makes the need for accurate fact-finding undeniable.[136] They argue that incorporating juries into juvenile proceedings would improve the quality and fairness of judicial fact-finding.[137] In criminal cases, studies have shown that judges and juries have reached opposing verdicts, even when presented with identical facts and evidence.[138] The cases in which judges and juries differ are often those in which a guilty or innocent verdict turns upon credibility evaluations and subtle distinctions.[139]

Proponents of a jury right for juveniles argue that fact-finding by a jury offers protection from government oppression and bridges the demographic and cultural gap between a judge and a minor.[140]

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135. *See id.* at 554 n.15 (asserting that due process, fairness, and the statutory requirement of a "full investigation" served as crucial checks on the juvenile court judge who decided to waive jurisdiction, either to alleviate his docket or to establish a standard of treatment for certain types of offenses).

136. *See* Barry C. Feld, *The Juvenile Court Meets the Principle of Offense: Punishment, Treatment, and the Difference It Makes*, 68 B.U. L. REV. 821, 842-45 (1988) (explaining that a shift has occurred where a majority of states, through their statutes pertaining to the juvenile court, now convey a legislative intent to punish delinquency, protect society, or assign individual responsibility for delinquent acts); *see also Draft Recommendations of the Juvenile Justice Commission's Advisory Board: Public Hearings on H. Con. R. 94*, Reg. Sess. (2001), §1.02-1.03 [hereinafter *Draft Recommendations*] (citing Louisiana's juvenile justice system's first mission as "[t]he protection of society by correcting children who break the law. . . ." and naming the four goals of juvenile justice as prevention, protection, rehabilitation, and restoration, respectively), *at* http://jjc.legis.state.la.us/JJC-2002DraftRec.pdf.

137. *See* Martin Guggenheim & Randy Hertz, *Reflections on Judges, Juries, and Justice: Ensuring the Fairness of Juvenile Delinquency Trials*, 33 WAKE FOREST L. REV. 553, 564 (reviewing appellate case law in juvenile bench trial cases and arguing that juvenile court proceedings raise troubling questions about the fairness and quality of judicial fact-finding). The case law reviewed suggests that judges often convict on scant evidence that does not satisfy the reasonable doubt standard. *Id.*

138. *See* HARRY KALVEN, JR. & HANS ZEISEL, THE AMERICAN JURY 10, 58-59 (University of Chicago Press 1971) (1966) (comparing the voting patterns of judges and juries by examining the 3576 criminal cases tried by juries). As part of the study, judges examined the facts of the case and the evidence presented at trial and indicated how they would have ruled on the defendant if the case appeared before the judge without a jury. *Id.* at 59. The study showed that the judge reached the opposite verdict than the jury did in 19% of the cases. *Id.*

139. *See* Guggenheim & Hertz, *supra* note 137, at 563 (explaining that in these "close" cases, reasonable judgment could lead to opposing conclusions).

140. *See* Ainsworth, *supra* note 19, at 1125 (arguing that judges as a group often belong to a different economic, social, racial, and gender class than both the defendant and the jury pool).

Advocates of a jury argue that fact-finding by a group is necessarily a more reasoned process than fact-finding by an individual.[141] A jury is likely to handle the fact-finding process more carefully than a judge who may have grown weary from hearing hundreds or even thousands of cases each year.[142] Furthermore, they argue, a jury humanizes the delinquency proceeding by incorporating community standards, common sense, and human emotion that can be lost otherwise in a legal proceeding.[143]

3. A Jury Provides Fairness When the Juvenile May Not Have Adequate Counsel

The fairness that a jury can provide to the juvenile court is especially necessary, proponents argue, because inadequate defense counsel is becoming characteristic of the juvenile justice system.[144] Incorporating a jury, proponents argue, would improve the quality of representation for juveniles by imposing external pressure from a neutral player to improve juveniles' cases.[145] Advocacy on behalf of juveniles is weak in comparison to the representation that adult defendants receive.[146] Minors often receive substandard representation because the defense lawyers in juvenile court are often inexperienced and overworked with little supervision or guidance.[147]

Jury proponents cite to other factors, such as institutionalized and psychological pressures, which may discourage some defense

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141. *See id.* at 1124-25 (relating that sound decision-making is more likely to result from the exchange of ideas through dialogue, articulating the logical connections between the evidence and the conclusion, and compromising with others by considering their arguments and conclusions).

142. *See id.* at 1124 (explaining that judges inevitably become less meticulous when handling their cases because they settle into a routine and may want to alleviate their heavy caseloads, whereas jurors perform a function that is novel to them and approach their task with care).

143. *See* Larsen, *supra* note 26, at 860 (arguing that public participation tempers the legal mind with the community's sense of justice).

144. *See* Ainsworth, *supra* note 19, at 1127-28 (arguing that juvenile court trials are rarely contested and that defense efforts are half-hearted).

145. *See id.* at 1128 (arguing that the jury provides an outside perspective that could lead to gradual improvement of the quality of legal representation in juvenile court).

146. *See id.* (noting that defense counsel generally make few objections, seldom raise constitutional grounds to exclude evidence, often do not call defense witnesses, only cursorily cross-examine witnesses, and make weak closing arguments, if at all).

147. *See id.* (explaining that in most jurisdictions, the least experienced attorneys are often assigned to the juvenile court in order to build experience, but are rarely provided with supervision or mentoring); *see also* INST. JUD. ADMIN.-AM. BAR ASS'N, JUVENILE JUSTICE STANDARDS ANNOTATED: A BALANCED APPROACH 70-75 (Robert E. Shepard, Jr. ed., American Bar Association 1996) (proposing guidelines for adequate representation of minors in juvenile court by defense lawyers).

attorneys from advocating on behalf of their client.[148] Juvenile court judges have responded disfavorably to lawyers who defend their clients zealously.[149] Furthermore, defense attorneys may feel pressured psychologically by their conflicting role as a protector of a child's legal rights and as a guardian acting in the child's best interest.[150] The defense attorney may consciously or subconsciously disapprove of the child's behavior and therefore fail to advocate adequately on behalf of the child.[151]

4. A Jury Provides Legitimacy to the Proceeding in the Eyes of the Juvenile

Incorporating a jury into the juvenile court has symbolic value; a jury could legitimize the proceeding in the eyes of the child who may feel abused and manipulated by the system.[152] The fundamental nature of the jury in a criminal proceeding is common knowledge, leaving the child with a sense of mistreatment when the court does not provide the child with something that others who are similarly situated receive.[153]

148. *See* INST. JUD. ADMIN.-AM. BAR ASS'N, *supra* note 147, at 75 (addressing the possibility that personal and professional advantage or convenience should not influence counsel's advice or performance.).

149. *See* Ainsworth, *supra* note 19, at 1127, 1129 (noting that defense lawyers who display excessive zeal are chastised either subtly or overtly and expose their clients to potentially harsher punishments by angering or offending the judge). One reason why judges dislike zealous advocacy is that it tends to slow the adjudication proceedings and interferes with judges' ability to clear their dockets as quickly as possible. *Id.*

150. *See id.* at 1129-30 (proposing that the *parens patriae* paternalistic ideology still survives for some juvenile court players, including defense attorneys, who consider themselves obligated to act in their clients' overall best interest rather than charged with having to preserve their clients' legal rights); *see also* INST. JUD. ADMIN.-AM. BAR ASS'N, *supra* note 147, at 75 (stating that the principle duty of the attorney is to represent the child's legitimate interests). The guidelines propose that it is ultimately the child's responsibility to determine what is in his or her own interests in consultation with the attorney. *Id.* at 76. When the child cannot determine his or her own interests due to age or incapacity, the guidelines instruct the court to incorporate the child's parents, if possible, and if not, to appoint a guardian ad litum to oversee the child's interests. *Id.* at 259. The guardian ad litum should not be associated with the court, and should not be a lawyer of a party to the proceeding because of the possibility of adverse interests. *Id.*

151. *See* Ainsworth, *supra* note 19, at 1129-30 (indicating that a personal inclination to aid the court in addressing the child's long-term best interest by providing treatment under state custody hinders the attorney's ability to defend clients effectively).

152. *See id.* at 1126 (noting that denying juveniles the right to a jury has symbolic costs, undermining the perceived legitimacy of the judicial process in the eyes of the juvenile); *see also* Brooks, *supra* note 117, at 894 (arguing that the jury lends an appearance of fairness that is no less important in juvenile court than it is in adult court).

153. *See* Brooks, *supra* note 117, at 893 (arguing that because the jury has become

Proponents contend that the juvenile is more likely to feel like he or she received a fair trial if he or she had the opportunity to participate in the process of choosing the fact-finder.[154] The perception of "fairness, impartiality and orderliness," encourages rehabilitation, as the Supreme Court recognized.[155]

The arguments in favor of maintaining the status quo focus on preserving the juvenile court's historical rehabilitative intent,[156] while advocates of a jury right for juvenile defendants argue that a jury serves the best interest of the child.[157]

III. ANALYZING THE ABSENCE OF JURIES IN LOUISIANA'S JUVENILE JUSTICE SYSTEM

Examining Louisiana's juvenile justice system in light of the arguments illustrated in Part II demonstrates that the benefit to children accused of crimes that a jury could provide arguably outweighs any detriment to the juvenile court.[158] Louisiana denies the right to a jury in juvenile proceedings both statutorily[159] and through judicial opinion.[160] However, because Louisiana has one of the highest juvenile incarceration rates in the country[161] and the

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a permanent facet in the perception of the criminal trial and highly regarded by both the adult and the child, the symbolic value of the jury is too great to deny this right to the child).

154. *Cf.* Ainsworth, *supra* note 19, at 1125 (explaining that the voir dire process provides the litigant an opportunity to probe into the attitudes, beliefs, and experiences that may affect one's decision-making process when no comparable opportunity exists to probe the background of a judge).

155. *See In re* Gault, 387 U.S. 1, 26 (1967) (accepting studies that concluded that juveniles may feel that they have been treated unfairly and may resist rehabilitative efforts after being adjudicated delinquent in an informal proceeding but subjected to a harsh penalty); *see also* Kropf, *supra* note 91, at 2170 (arguing that the perception of fairness produces an amenability to rehabilitation, which helps to achieve the system's goal).

156. *See supra* notes 81-119 and accompanying text.

157. *See supra* notes 120-55 and accompanying text.

158. *See infra* notes 164-233 and accompanying text.

159. *See* LA. CH. C. arts. 808, 882 (West 1995).

160. *See State ex rel.* D.J., 817 So. 2d 26 (La. 2002), *aff'g In re* Dino, 359 So. 2d 586 (La. 1978) (holding that no state or federal constitutional right to a jury exists in Louisiana).

161. *See* HUMAN RIGHTS WATCH, CHILDREN IN CONFINEMENT IN LOUISIANA 1 (1995) [hereinafter HUMAN RIGHTS WATCH] (noting that Louisiana has among the highest rates of secure and non-secure juvenile confinement of all states), *available at* http://www.hrw.org/reports/1995/Us3.htm (last visited Oct. 21, 2002); *see also* U.S. DEP'T OF JUSTICE, OJJDP STATISTICAL BRIEFING BOOK: CENSUS OF JUVENILES IN RESIDENTIAL PLACEMENT DATABOOK PLACEMENT STATUS BY STATE, 1999 (1999) [hereinafter CENSUS] (reporting custody rates of juvenile offenders in all states), *available at* http://www.ojjdp.ncjrs.org/ojstatbb/cjrp/asp/frame.asp (last modified Aug. 19, 2002). The census demonstrates that the national custody rate, in both secure and non-secure residential placement after juvenile court adjudication, is

highest juvenile conviction rate in the country[162] with little fact-finding in delinquency proceedings before conviction,[163] the state should grant all procedural protections available, including the right to fact-finding by jury, to its children.

A. Applying the Reasons Offered by States that Grant Juries to Louisiana

Louisiana should provide its minors with the right to a jury as a much-needed check on judges who abuse their power,[164] in order to promote accurate fact-finding,[165] to compensate for inadequate defense counsel,[166] and to lend legitimacy to the proceeding in the eyes of the juveniles.[167]

1. A Jury Is Needed to Check a Judge's Unbridled Discretion

Instances of abuse of discretion by juvenile court judges have been reported in Louisiana,[168] emphasizing the need for a jury to protect the fairness of the delinquency adjudication proceeding. Studies indicate that the racial composition of detainees in the state's non-secure and four secure facilities[169] demonstrate that judges incarcerate racial minorities disproportionately.[170] Although critics of

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73.85%. *Id.* Louisiana's custody rate is 84.70%, while Texas, Florida, and California, three states with traditionally high custody rates, follow at 80.60%, 77.15%, and 67.70% respectively. *Id.*

162. *See* Fox Butterfield, *Few Options or Safeguards In a City's Juvenile Courts*, N.Y. TIMES, July 22, 1997, at A1 (noting that New Orleans Parish Juvenile Court has the highest juvenile conviction rate at a steady 80%, whereas the national average is 33%).

163. *See* Steve Ritea, *Report Says Young Offenders Poorly Represented in Court: Louisiana Juvenile System Called "Plea Mill,"* TIMES-PICAYUNE, June 9, 2001, at 3 (calling Louisiana's juvenile court a "plea mill" due to the high rate of uncontested pleas in all parish courts).

164. *See infra* notes 168-75 and accompanying text.

165. *See infra* notes 176-81 and accompanying text.

166. *See infra* notes 182-93 and accompanying text.

167. *See infra* notes 194-200 and accompanying text.

168. *See* Butterfield, *supra* note 162, at A1 (stating, "some judges here [in Louisiana] follow unusual practices that are generally considered unconstitutional").

169. *See* HUMAN RIGHTS WATCH, *supra* note 161, at 12 (noting that Louisiana's four secure institutions are East Baton Rouge-LTI, Monroe-LTI, Bridge City-LTI, and Tallulah Correctional Center for Youth).

170. *See* BUILDING BLOCKS FOR YOUTH, LOUISIANA, DISPROPORTIONATE MINORITY CONFINEMENT, (explaining that although racial minorities comprise a majority of the juvenile inmate population in nearly every state, the disproportionate minority confinement in Louisiana is extreme), *available at* http://www.buildingblocksforyouth.org/statebystate/ladmc.html. (last visited Oct. 29, 2003). *Compare* Butterfield, *supra* note 162, at A1 (noting that more than 99% of detainees in non-secure facilities are African-American, Hispanic, or Asian) and *The Children Left Behind: An Assessment of Access To Counsel and Quality of*

the state's juvenile court system concede that these statistics do not prove conscious racism, these statistics imply that judges consider race as a factor when sentencing minors for their crimes.[171]

Statistics further indicate that juvenile court judges are not issuing the "least restrictive" dispositions, as they are statutorily required to do.[172] Instead, judges appear to be using their vast discretion to institutionalize juveniles for sentences that exceed what the offenses warrant; although violent crime is down, the overall population in secure facilities has increased because more non-violent and status offenders are confined in secure facilities.[173] Moreover, juvenile court judges appear to abuse their discretion by assigning dispositions arbitrarily[174] and by issuing sentences that they have determined before trial.[175]

Representation in Delinquency Proceedings in Louisiana, A.B.A. JUV. JUST. CTR. REP. 39 (Gabriella Celeste & Patricia Puritz, eds. 2001) [hereinafter Celeste & Puritz] (stating African-Americans alone are 67.1% of total juvenile population in non-secure facilities and 81.8% of the total population in secure facilities), *available at* http://www.abanet.org/crimjust/juvjus/ 50319-all.pdf (last visited Oct. 21, 2002), *with* OJJDP STATISTICAL BRIEFING BOOK: JUVENILE ARREST RATES FOR ALL CRIMES BY RACE, 1990-2000 (Jan. 20, 2002) [hereinafter JUVENILE ARREST RATES] (demonstrating that, in 1999, minority race groups composed 45% of the total statewide juvenile (under age seventeen) population; African-Americans constituted 40%, Hispanics 3%, and Asians 2%), *available at* http://ojjdp.ncjrs.org/ojstatbb/html/qa094.html.

171. *See* Celeste & Puritz, *supra* note 170, at 39 (indicating that African-American youth are five times more likely to be confined than white youth and are in custody for longer periods for the same offense in all categories). Celeste & Puritz note that white youth are given many more opportunities to divert out of the system than African-American youth, which is one reason for the high minority population in confinement. *Id.* at 82. The study quotes a juvenile court judge who says that white children are given preferential treatment. *Id.* However, the study does not prove system-wide racism, but implies an institutional racism. *Id.* at 83.

172. LA. CH. C. art. § 901(B) (West 1995) (requiring judges to sentence the minor to the minimal disposition consistent with the circumstances of the case, the needs of the child, and the best interest of society).

173. *Compare* Celeste & Puritz, *supra* note 170, at 38 (noting that, in 2000, violent offenders were 40% of the secure population and 26% of the non-secure population; non-violent offenders were 60% of the secure population and 45% of the non-secure population; status offenders were 27.4% of the non-secure population), *with* LA. DEP'T PUB. SAFETY & CORR., DEMOGRAPHIC PROFILES OF THE JUVENILE OFFENDER POPULATION 2 (July 1, 2002) (publishing that currently, violent offenders are 26.5% of the secure population and 14.1% of the non-secure population; non-violent offenders are 73.5% of the secure population and 85.9% of the non-secure population), *available at* http://www.corrections.state.la.us/PDFs/05-Office%20of%20Youth%20 Development/Dem%20Juvenile.pdf (last visited Apr. 3, 2004).

174. *See* Butterfield, *supra* note 162, at A1 (noting that judges have been known to hold prayer services before and during hearings for guidance in determining a minor's disposition).

175. *See id.* (reporting that judges in Orleans Parish Juvenile Court commonly pronounce sentences they will issue, if the minors are adjudicated delinquent, to public defenders in chambers before the day's proceedings while reviewing their daily docket).

2. A Jury Will Add Fact-finding to a Process Where Little Fact-finding Occurs.

Incorporating a jury into juvenile court proceedings in Louisiana would introduce a fact-finding element into a process in which arguably little, if any, fact-finding actually occurs.[176] Defense attorneys rarely challenge juvenile court prosecutors to prove their cases beyond a reasonable doubt; public defenders often conclude that their clients will not be acquitted and, therefore, advise their clients to accept plea agreements.[177] Defense attorneys, however, often make these suggestions without conducting discovery or investigating the facts of the case.[178]

Moreover, accurate fact-finding is necessary because the juvenile court arguably punishes[179] rather than rehabilitates children through institutionalization.[180] Punishment through institutionalization,

176. *See* Celeste & Puritz, *supra* note 170, at 46 (noting that plea agreements are often reached before the child has had the opportunity to meet with counsel, so adjudication hearings are often bypassed); *see also* Ritea, *supra* note 163, at 3 (quoting an advocate who observed that the adjudication (trial) and disposition (sentencing) were combined and completed within a three-minute period).

177. *See* Butterfield, *supra* note 162, at A1 (supporting the contention that the state's juvenile court system grossly favors the prosecution, citing the fact that Louisiana's prosecutors have the highest conviction rate of any big-city juvenile court in the country). A majority of convictions result from uncontested plea agreements. *Id.*;. *see also* Celeste & Puritz, *supra* note 170, at 64 (noting that in some jurisdictions, as much as 90% of cases result in plea agreements).

178. *See* Celeste & Puritz, *supra* note 170, at 67 (indicating that many defense attorneys rarely exert an effort to assess the facts of the case). Celeste & Puritz illustrate one case in which a child would have been erroneously adjudicated guilty, had it not been for the honesty of the prosecutor. *Id.* In that case, a child had pled guilty to a charge for cocaine possession at the suggestion of his attorney. *Id.* Although a lab test had been conducted, the child's attorney never requested the results. *Id.* At the sentencing hearing, the district attorney alerted the court that the lab tests indicated that there was no cocaine and moved the court to allow the child to withdraw his guilty plea to the cocaine charge. *Id.* at 68.

179. *See* HUMAN RIGHTS WATCH, *supra* note 161, at 3-5 (demonstrating that children in all state institutions experienced or witnessed physical abuse by correctional facility staff, expected physical abuse by staff as a matter of course, were isolated for periods of time arbitrarily, commonly restrained in handcuffs and shackles as a form of discipline, were underfed, and were offered no privacy even when using the restroom); *see also The Violence Continues*, TIMES-PICAYUNE, Dec. 21, 2001, at B1 (reporting the abuses by prison staff and violence among inmates that continue at Tallulah, a juvenile prison in North Louisiana (now called Swanson Correctional Center for Youth - Madison Parish Unit)). The editorial comments that conditions in the prison have improved only marginally since the state assumed control of the prison from a private company to improve prison conditions. *Id.*

180. *See* HUMAN RIGHTS WATCH, *supra* note 161, at 40 (relating that juvenile court judges in Orleans Parish conceded that treatment is merely rhetoric, even stating that the state "warehous[es] kids"). Human Rights Watch also interviewed the superintendent of a secure facility who admitted that the children held there would be released upon turning twenty-one without being taught how to function in society as adults. *Id.*; s*ee also* Celeste & Puritz, *supra* note 170, at 79, 86 (identifying the

without accurate fact-finding, amounts to a deprivation of due process of law.[181]

3. A Jury Will Provide Fairness to a System that Lacks Adequate Defense Counsel for the Juvenile.

Inadequate defense lawyering by public defenders in Louisiana's juvenile court proceedings have become standard.[182] The large volume of cases that each public defender must carry precludes the lawyer from devoting meaningful time to his or her clients.[183] Communication between the lawyer and the client often happen for the first time at the hearing.[184] These public defenders recognize that because they handle so many cases, they provide their clients with substandard representation.[185]

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three treatment needs that Louisiana's juveniles need most: sex offender and victimization treatment, mental health treatment, and treatment programs designed for females; these needs are not adequately addressed because there is a lack of funding and cooperation between state agencies).

181. *See* Duncan v. Louisiana, 391 U.S. 145, 149 (1968) (finding that justice requires a trial by jury in criminal cases); *cf. In re* Gault, 387 U.S. 1, 36 (1967) (stating that a child who may be subjected to loss of liberty if found delinquent must have a proceeding with all criminal due process safeguards).

182. *See* Celeste & Puritz, *supra* note 170, at 53-59 (reporting that the juvenile defense system is plagued by inadequate resources and support services, lack of parity with prosecutors, lack of accountability and leadership, lack of support and training, and little respect from the defense bar); *see also* Vicki Ferstel, *Juvenile Courts Criticized*, THE ADVOCATE ONLINE (June 8, 2001) [hereinafter *Juvenile Courts Criticized*] (arguing that even with public defenders, juveniles often enter guilty pleas because their attorneys are "ill-prepared, overworked, under-trained, or lack the resources to provide a proper defense"), *available at* http://br.theadvocate.com/news/story.asp?StoryID=22201 (last visited Oct. 21, 2002). Defense lawyers rarely file discovery motions, rarely challenge the admissibility of evidence, and rarely raise constitutional challenges, such as whether the child properly waived *Miranda* rights. *Id.*

183. *See* Celeste & Puritz, *supra* note 170, at 63 (reporting that public defenders in juvenile court have the most demanding caseloads of all public defenders, estimating that they each defend over 800 cases a year while other public defenders handle between 150-300 cases); *see also* Butterfield, *supra* note 162, at A1 (stating that in Orleans Parish Juvenile Court, there are six public defenders who handle approximately 2200 delinquency cases annually). *But see* INST. JUD. ADMIN.-AM. BAR ASS'N, *supra* note 147, at 73 (recommending that defender offices accept only as many cases as the staff can discharge with "prompt, full and effective counseling and representation to each client").

184. *See* Celeste & Puritz, *supra* note 170 at 64 (surveying confined youth who responded that 40% never met with an attorney, 29% met with an attorney for less than five minutes, and only 15% recall meeting with an attorney for more than half an hour).

185. *See id.* at 63 (stating that a public defender admitted that because he is so overburdened, he relies on the district attorney being disorganized and another public defender placed the burden of locating and providing any defense witnesses on the child).

In Louisiana, public defender services are organized on the local judicial district level.[186] Each judicial district funds the public defender office through the Indigent Defender Board ("IDB"), which is a set amount allocated to each district.[187] Because all expenses related to the juvenile court in each district are paid from the IDB, most districts lack the resources to fund a formal training program for public defenders on juvenile-specific practice;[188] often times, new public defenders must learn through trial and error.[189] The severe lack of resources precludes adequate representation.[190]

The result of inadequate defense representation in Louisiana is that many children, some of whom should not even be in court for the acts they are charged with, are committed to institutions by accepting pleas.[191] Granting a jury to juveniles in Louisiana is a way to compensate these children for the inadequate representation they receive,[192] and would force improvement on the defense system.[193]

186. *See id.* at 53 (explaining that there are forty-one judicial districts, each with its own public defender service).

187. *See id.* at 53-54 (noting that the public defender services are funded by the Indigent Defender Board ("IDB"), which sets a strict budget each year from which salaries, training, materials, and all case related costs are paid).

188. *See id.* at 58 (quoting a defense attorney who describes his role as a "criminal defense lawyer, education law specialist, psychotherapist, counselor, and the last hope for a hopeless child").

189. *See id.* at 57 (observing that there is no required training for defenders practicing in juvenile court and many public defenders are hired right out of law school; lawyers must only have a law degree, and if possible, shadow an outgoing public defender for one week).

190. *See id.* at 54-55 (indicating that public defenders report sharing space at the courthouse with other defenders, having no secretaries or paralegals or investigators, having no personal computer, telephone or fax line, and having no long distance access). *But see* David Allan Felice, Comment, *Justice Rationed: A Look at Alabama's Present Indigent Defense System with a Vision Toward Change*, 52 ALA. L. REV. 975, 981-82 (2001) (illustrating Maryland's public defender's office, which is organized on the statewide level, as a model for public defender offices because a centralized system offers more resources, efficiency, economy, and encourages uniform scope and quality of representation for juvenile delinquents). Felice notes that the centralized organization of Maryland's public defender service demonstrates a commitment on the part of the legislature to provide the resources necessary for adequate representation. *Id.*

191. *See* Celeste & Puritz, *supra* note 170, at 68-69 (reporting that many defense attorneys in Louisiana encourage their clients to accept pleas without learning the child's side of the story or conducting investigations).

192. *Cf. id.* at 70 (arguing that including other players in juvenile court compensates for a weak defense attorney).

193. *See* Vicki Ferstel, *Report Says Juveniles Presumed Guilty*, THE ADVOCATE ONLINE (June 13, 2001), [hereinafter *Juveniles Presumed Guilty*] (explaining that public awareness can lead to additional funding for the juvenile court, which is needed to institute improvement to the court), *available at* http://br.theadvocate.com/news/story.asp?StoryID=22279 (last visited Oct. 28, 2003).

4. A Jury Will Help Legitimize the Proceedings in the Eyes of the Juvenile

Children in Louisiana could benefit from the symbolic benefit that a jury can provide to the juvenile court system; institutionalized children continuously express frustration with the system from the time they appear in court and throughout confinement.[194] Many confined children desire education[195] and rehabilitation,[196] but report that they do not receive any.

The structure of the system causes children in Louisiana's institutions to feel angry,[197] abandoned, and helpless.[198] Some children even report feeling as though their problems worsen the longer they remain in institutions.[199] By producing a sense of despair

194. *See* Celeste & Puritz, *supra* note 170, at 64-65 (quoting an incarcerated youth who expressed feelings of frustration).

> Listen to what I have to say, listen to what's going on because people do change. . . . When I first come to court ask me questions before we go in front of the judge. . . . Get to know me better before they send me off to places and stuff. . . . Try to come down to our level and give good advice. . . . Spend time with me.

Id. The report quotes another incarcerated youth who described being ignored by his lawyer:

> I was told when I was sentenced that if I did well in LTI I'd get a review and get a chance on early release but I haven't heard from a lawyer or my PO since being locked up. I've been doing real good in the program, not gotten any tickets . . . but it's like the court and everybody just forgot about me.

Id. See generally HUMAN RIGHTS WATCH, *supra* note 161, at 27-37 (exposing several instances of physical abuse in facilities and noting that the juveniles in the facilities lack confidence that the abuse would stop or that conditions would improve even if they complain to the authorities).

195. *See* HUMAN RIGHTS WATCH, *supra* note 161, at 38 (noting that education is not provided to confined youth according to any standard nor is higher education available to those whose capacities surpass the highest levels available). A child stated, "[i]f you are smarter, you don't get a good education. It pays to be stupid, you get rewarded." *Id.*

196. *See* JUV. JUST. PROJECT OF LA., YOUTH SPEAK OUT: TESTIMONIALS (quoting youth who recognize they misbehave to get attention, who believe they can change, who dream of having a happy family and having a career, and wish to counsel other youth with problems), *at* http://www.jjpl.org/YouthSpeakOut/Testimonials/testimonials.html (last visited Oct. 28, 2003).

197. *See* HUMAN RIGHTS WATCH, *supra* note 161, at 42 (noting that the overall temper of juvenile institutions is hostile and angry).

198. *See id.* (discussing an interview in which a child indicated that his release date had already passed but that he had not heard when he would actually be released). This child worried that he would never leave because he had seen other children remain long after their release dates. *Id.* The child indicated that there was no one he could speak to about his release because the phones only allow collect calls and lawyers do not accept collect calls. *Id.* The report also notes that children do not believe that they will stay out of trouble once reintegrated into society. *Id.*

199. *See id.* at 41 (reporting an interview with a boy who had been in a secure prison for three and a half years, who acknowledged that he had problems, but felt that they had only worsened because he had become "institutionalized").

and unfairness in these youths, Louisiana's juvenile justice system impedes rehabilitation; if the purpose of Louisiana's juvenile court system is to facilitate rehabilitation, a jury, which adds an appearance of fairness into the proceeding, should be incorporated to encourage rehabilitation.[200]

B. Applying the Reasons Offered by States that Deny Juries to Louisiana

The arguments in favor of excluding a jury from the juvenile proceeding cannot justify their absence in Louisiana because the state's juvenile delinquency proceedings are clearly criminal and not civil,[201] the juvenile court system is not distinct from the adult court system,[202] and because delay in the proceedings, if any, would arguably have a positive effect.[203]

1. Louisiana's Juvenile Proceedings are Criminal in Nature and not Civil, Therefore, a Jury is Required

Louisiana's Children's Code states a dual purpose of rehabilitation for the child while promoting the best interest of the state.[204] Because the statute simultaneously serves to address the best interest of the state and the child, Louisiana does not have an entirely rehabilitative system in theory.[205] In order to protect the best interest of the state, Louisiana punishes its youthful offenders and forces them to be accountable for their criminal behavior as a means of deterring future delinquent behavior.[206] The dual purpose of the statute indicates that Louisiana is among the states that have acknowledged

200. *See supra* notes 154-55 and accompanying text for a discussion on how the perception of fairness encourages rehabilitation.

201. *See infra* notes 204-11 and accompanying text.

202. *See infra* notes 212-27 and accompanying text.

203. *See infra* notes 228-33 and accompanying text.

204. *See* LA. CH. C. art. 801 (West 1995) (stating that the purpose of the statute is to provide due process to each child accused of a crime and to provide that child with "the care, guidance, and control that will be conducive to his welfare and the best interests of the state . . .").

205. *See* Feld, *supra* note 136, at 844-45 (finding that states that manifest intent to rehabilitate the child and protect the interest of the state have accepted that punishment is a legitimate goal of the juvenile court and thus functions to penalize as well as rehabilitate).

206. *See id.* at 845 (naming the protection of the general welfare of society as one interest that the state seeks to protect by sanctioning the child according to the seriousness of the crime and deterring criminal acts by threatening the juvenile population with punishment); *see also Draft Recommendations*, *supra* note 136, at 19-20 (recommending that the state adopt programs in restorative justice, such as "victim/offender conferencing, victim restitution programs, victim or community impact panels and programs, and family/community group conferencing").

that punishment is a form of treatment.[207]

In addition to abandoning a complete rehabilitative theory, in practice, Louisiana does not appear to attempt to rehabilitate its youth.[208]

The Louisiana Supreme Court has recognized that the state's current juvenile justice system functions to adjudicate guilt and punish criminal acts.[209] Statistics show that although crime rates are continuing to decrease in the state, the number of children institutionalized in non-secure and secure facilities remains constant, with non-violent offenders constituting a larger percentage of the population each year.[210] The institutionalization of more non-violent and status offenders indicates that the juvenile court is not attempting to treat delinquent children by the least restrictive means as required by Louisiana Children's Code,[211] but rather seeks to punish them for breaking the law.

2. The Juvenile Court is Not a Unique Court System

Arguably, Louisiana's juvenile court no longer displays any of the characteristics that made the juvenile court system unique.[212] Today, the juvenile justice system is no less formal, criminal, or adversarial

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207. *See* Feld, *supra* note 136, at 845 (noting that courts have signaled a basic philosophical shift that recognizes that "child welfare cannot be completely child centered" and that punishment commensurate with age, crime, and criminal history does as much to rehabilitate as treatment based on the child's individuality).

208. *See* HUMAN RIGHTS WATCH, *supra* note 161, at 40-41 (quoting a Louisiana juvenile court judge who said that "people may mouth treatment, but they don't mean it" and an expert in the field of juvenile justice who states, "once the youth enters a juvenile institution, his or her chances of becoming a productive member of society are significantly decreased . . . "). *But see* LA. DEP'T PUB. SAFETY & CORR., PROFILE OF RECIDIVISM IN OFFICE OF YOUTH DEVELOPMENT 1-2 (July 3, 2002) (indicating the overall rate of recidivism has gradually decreased from 1994 through 2001), *available at* http://www.corrections.state.la.us/PDFs/05-Office%20of%20Youth%20Development/Profile%20of%20Recidivism.pdf (last visited Oct. 28, 2003).

209. *See State ex rel.* D.J., 817 So. 2d 26, 38 (La. 2002) (Johnson, J., dissenting) (arguing that the incorporation of principles of punishment and accountability into the juvenile justice system has made proceedings more criminal than civil in nature).

210. *See Juvenile Justice Project of Louisiana, What's Happening to Our Kids: Non-Incarcerated Youth in the Juvenile Justice System: Who We See & Where*, (noting that Louisiana follows the national trend of decreasing juvenile crime and noting that most institutionalized children in Louisiana are non-violent or status offenders), *at* http://www.jjpl.org/WhatsHappeningToOurKids/NonIncarceratedYouth/nonincarceratedyouth.html (last visited Oct. 28, 2003).

211. *See* LA. CH. C. art. 901(B) (West 1995) (stating that courts should consider the "circumstances of a case, the needs of the child and the best interest of society" when considering punishment).

212. *See D.J.*, 817 So. 2d at 36 (Johnson, J., dissenting) (expressing that the legislature has eliminated all of the juvenile court's traditional characteristics, such as confidentiality, through statutory amendments).

than the adult criminal court.[213] In particular, three statutory amendments have turned the juvenile court into a parallel criminal system.[214]

First, Louisiana Children's Code Article 897.1 requires minimum sentences for specific criminal acts.[215] The sentencing statute essentially eliminated what was considered one of the key distinguishing elements of the juvenile court: the judge's role as the ultimate decision-maker who prescribes the treatment he or she deems appropriate.[216]

The Louisiana legislature statutorily eliminated the confidential nature of juvenile adjudications by enacting Louisiana Children's Code Article 407.[217] Confidentiality was meant to ensure that no criminal label attached to the youth and stigmatized the child.[218] Concern that including a jury would destroy the confidentiality of the proceeding by incorporating a public element justified excluding a jury when the juvenile court was established.[219] As a result of this legislative amendment, adjudication proceedings for certain crimes

213. *See id.* at 30 (recognizing that the only substantial difference between the juvenile delinquency adjudication and the adult criminal trial is the absence of the jury from the former; juvenile defendants have every other constitutional right afforded to adult criminal defendants).

214. *See* LA. CH. C. art. 897.1 (West 1995) (requiring minimum sentences for certain violent offenses); LA. CH. C. art. 407 (West 1995) (removing confidentiality from juvenile adjudications); LA. REV. STAT. ANN. § 15:529.1 (West 1992) (enhancing sentences for previous juvenile delinquency adjudications).

215. *See* LA. CH. C. art. 897.1 (mandating confinement until the age of twenty-one without the possibility of parole, probation, suspension, or modification of sentence for first degree murder, second degree murder, aggravated rape, aggravated kidnapping, and treason).

216. *See* Butts, *supra* note 105, at 54-55 (calling these mandatory outcomes fundamentally contradictory to the basic premise of juvenile justice); Larsen, *supra* note 26, at 864 (noting that the judge's ability to tailor treatment to the individual's needs in order to maximize rehabilitation was central to *parens patriae* theory).

217. *See* LA. CH. C. art. 407.

218. *See* Butts, *supra* note 105, at 55 (stating that rehabilitation would be hindered by stigma because the child would adopt a deviant self-image).

219. *See State ex rel.* D.J., 817 So. 2d 26, 31 (La. 2002) (explaining that including a jury would be a clear betrayal of juvenile court philosophy).

are now open to the public.[220] In addition, the press can legally obtain and publish the names of juvenile suspects.[221]

Finally, Louisiana no longer expunges juvenile delinquency determinations, which was another distinguishing element of the juvenile court.[222] The "Habitual Offender" statute, Louisiana Revised Statute § 15:529.1, allows a delinquency adjudication for a felony offense to enhance a subsequent adult sentence if the juvenile is convicted for a felony as an adult.[223] With the passage of this statute, Louisiana became one of three states where a juvenile delinquency adjudication serves as the first and second "strikes" against an adult offender;[224] thus, even as a first-time adult offender, he or she nevertheless may face life in prison for having two previous delinquency adjudications.[225]

Because a juvenile delinquency adjudication is no longer confidential and because a juvenile may have accumulated two "strikes" before his or her appearance in criminal court, the juvenile carries the implications of a delinquency adjudication into adulthood, and therefore should be afforded maximum due process

220. *See* LA. CH. C. art. 407 (allowing a public trial for the following crimes: solicitation for murder, first degree murder, second degree murder, manslaughter, aggravated battery, second degree battery, aggravated assault, mingling harmful substances, aggravated rape, forcible rape, simple rape, sexual battery, aggravated sexual battery, intentional exposure to AIDS virus, aggravated kidnapping, second degree kidnapping, simple kidnapping, aggravated arson, aggravated criminal damage to property, aggravated burglary, armed robbery, first degree robbery, simple robbery, purse snatching, extortion, assault by drive-by shooting, aggravated crime against nature, carjacking, illegal use of weapons, dangerous instrumentalities, illegal use of weapons or dangerous instrumentalities, terrorism, aggravated second degree battery, aggravated assault upon a peace officer with a firearm, aggravated assault with a firearm, armed robbery, use of a firearm, additional penalty, aggravated robbery, disarming of a police officer, stalking, second degree cruelty to juveniles, or aggravated flight from an officer).

221. *See, e.g., Juveniles Get No Right*, *supra* note 12, at B1 (revealing names of *State ex rel. D.J.* defendants Darrell Johnson and Alfred Anderson).

222. *See* Coupet, *supra* note 20, at 1324 (explaining that expungement was central to preventing stigmatization).

223. *See* LA. REV. STAT. ANN. § 15:529.1 (West 1992) (amended 2003) (allowing sentence enhancements for future convictions of felony offenses if the subsequent felony was committed in Louisiana regardless of whether the initial felony was committed in Louisiana).

224. *See* Butts, *supra* note 105, at 55 (noting that only two other states, California and Texas, allow a first-time adult offender to face the possibility of incarceration for life).

225. *See* LA. REV. STAT. ANN. § 15:529.1(A)(1)(b)(ii) (imposing a life sentence upon the third conviction even if the third conviction is actually the first conviction as an adult); *see also* Louisiana v. Dorthey, 623 So. 2d 1276 (La. 1993) (holding that a statute that enhanced defendant's sentence from five years to twenty years to life upon his third conviction for possession of crack cocaine did not amount to cruel and unusual punishment).

protections.[226] Continuing to exclude a jury from juvenile delinquency proceedings in Louisiana violates "the American scheme of justice."[227]

3. Incorporating a Jury May Cause Delay, But the Delay can be Beneficial

The delay to the juvenile adjudication proceeding that may result from jury selection and deliberation may not necessarily place an encumbrance on the Louisiana juvenile court system. In fact, in other states that allow juries, including a jury does not appear to burden the proceeding at all.[228]

Among the problems that afflict the juvenile court system is that hasty procedure is commonly practiced and condoned.[229] Little, if any, fact-finding occurs in juvenile courts because judges and attorneys hesitate to slow the process down.[230]

In Louisiana's juvenile court, motions are rarely filed[231] and experts are rarely employed[232] in order to facilitate expeditious processing of these children. Although studies show that juveniles infrequently elect to impanel a jury in those states that allow them in juvenile

226. *See* Butts, *supra* note 105, at 55 (arguing that as the juvenile court continues to adopt more characteristics of the adult court, it is "unjustifiable" to continue depriving youths of complete due process protections); *see also State ex rel.* D.J., 817 So. 2d 26, 38 (La. 2002) (Johnson, J., dissenting) (arguing that the nature of the juvenile court has changed so drastically from its original intent that due process requires trial by jury).

227. *See* Duncan v. Louisiana, 391 U.S. 145, 149 (1968) (calling the jury "fundamental to the American scheme of justice").

228. *See Task Force*, supra note 118, at 647 (reporting that states surveyed indicate that there is little administrative burden by disposition by jury suggestion and therefore recommending that the right to jury trial be extended to Minnesota's Serious Youthful Offenders).

229. *See* Butterfield, *supra* note 162, at A1 (reporting that judges have decided sentences that will be issued before meeting the child, before holding the adjudication, and before ruling on the child's delinquency); Celeste & Puritz, *supra* note 170, at 46 (noting that adjudications are often bypassed because plea agreements are hastily reached); Ritea, *supra* note 163, at A1 (observing that the detection hearing, the adjudication, and the disposition hearing for one child was completed within a three-minute period).

230. *See* Celeste & Puritz, *supra* note 170, at 55 (noting the demanding caseloads handled by public defenders); Butterfield, *supra* note 162, at A1 (noting that judges place subtle pressure on attorneys to avoid lengthening the court day).

231. Butterfield, *supra* note 162, at A1 (explaining that motions are withheld in order to keep judges, who dislike reading motions, happy); *see also Juvenile Courts Criticized*, *supra* note 182 (explaining that defense attorneys lack the resources to draft and file motions).

232. *See* Celeste & Puritz, *supra* note 170, at 54 (commenting that a lack of resources precludes experts); Butterfield, *supra* note 162, at A1 (quoting defense attorney who considered expert witnesses useless because they merely made the court day longer for the attorneys and the judge).

proceedings, introducing a public element would help to improve the juvenile court system by providing public scrutiny that would encourage accountability by court players.[233]

CONCLUSION

State courts' continued reliance on *McKeiver v. Pennsylvania*[234] to deny requests for jury trials in juvenile delinquency proceedings, as the Louisiana Supreme Court recently did,[235] is problematic because *McKeiver* was a plurality opinion that lacked a majority rationale.[236] The Supreme Court has previously warned that when a fragmented court decides a case without a majority rationale, the plurality holding should be viewed "on the narrowest grounds."[237] Because the opinion is to be narrowly construed, *McKeiver* cannot decisively conclude that fundamental fairness does not require fact-finding by a jury.

Furthermore, the current juvenile justice system differs significantly from the juvenile justice system in place when the Court decided *McKeiver.* The current system incorporates many aspects of the adult criminal system.[238] Many states now seek to punish children for their crimes and hold them accountable for their criminal conduct.[239]

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233. *See Juveniles Presumed Guilty*, *supra* note 193 (explaining that public awareness and oversight would lead to additional funding for the court, thus improving both the quality of defense and the treatment programs); Ainsworth, *supra* note 19, at 1128 (arguing that a jury would impose an external pressure on attorneys who deliberately provide inadequate representation).

234. 403 U.S. 528 (1971) (holding that there is no right to jury trial for juveniles in delinquency adjudications).

235. *See State ex rel.* D.J., 817 So. 2d 26 (La. 2002) (relying on the Supreme Court's holding in *McKeiver v. Pennsylvania* to uphold state statute precluding a jury to serve as fact-finder in juvenile delinquency adjudication).

236. *See McKeiver*, 403 U.S. at 528 (noting that Justice Blackmun, who delivered the opinion of the Court, was joined by Chief Justice Burger, Justice White, and Justice Stewart to form the plurality). The justices reached the same conclusion, but employed their own reasoning; Justice Blackmun declined to equate the juvenile proceeding with the criminal trial, which including a jury would automatically imply. *Id.* at 550. Justice White concurred in the judgment, but reasoned that a jury was unnecessary because the juvenile court sought to rehabilitate the child. *Id.* at 552-53. Justice Harlan concurred because he believed that *Duncan v. Louisiana* incorrectly extended the jury trial to state proceedings. *Id.* at 557. Justice Brennan, who concurred in part and dissented in part, concluded that a juvenile's right to trial by jury depended on whether the child had a right to a public trial. *Id.* 555-56.

237. *See* Marks v. U.S., 430 U.S. 188, 193 (1977).

238. *See State ex rel.* D.J., 817 So. 2d at 36 (Johnson, J., dissenting) (noting that the absence of a jury in juvenile court is the only perceived difference between the two systems).

239. *See* Ainsworth, *supra* note 19, at 1100-01 (explaining that, traditionally, the juvenile court did not seek to punish children for their behavior nor did it serve to determine guilt).

This shift away from rehabilitation makes the policy arguments supporting *McKeiver* untenable.[240]

Louisiana's juvenile justice system demonstrates that the traditional policy arguments do not support the absence of juries in juvenile proceedings.[241] Conditions in Louisiana are unlikely to change without external pressure, which the jury can provide. Although there is no guarantee that incorporating a jury will produce improvements to the overall system quickly, it will improve the quality of the juvenile court by reducing the ability of judges to abuse their discretion and making defense attorneys who provide substandard representation accountable for their actions. Until this first step is taken, children in Louisiana's juvenile justice system will continue to receive "the worst of both worlds", getting "neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children".[242]

240. *Cf.* D.J., 817 So. 2d 26 at 38 (Johnson, J., dissenting) (arguing that the nature of the juvenile justice system has changed so significantly that due process requires that juveniles have all the protections afforded to adults, including the right to a jury trial).

241. *See supra* notes 158-233 and accompanying text.

242. Kent v. United States, 383 U.S. 541, 556 (1966).