EXTENDING *ROPER*'S REASONING TO MINNESOTA'S JUVENILE JUSTICE SYSTEM

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I. FOUNDING PRINCIPLES OF THE JUVENILE COURT

Juvenile court was created to address the differences between adults and children. The juvenile justice system focused more on rehabilitating children, rather than punishing them.[1] To achieve this goal, judges in juvenile court were granted discretion to consider an individual child's development and social and psychological situation when designing the response best calculated to correct that child's behavior and address its causes.[2]

Juvenile court founders believed that there was a greater

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1. *See, e.g.*, *In re* Gault, 387 U.S. 1, 15-16 (1967) (noting that the idealistic reformists who conceived of the juvenile system believed that "[t]he child was to be 'treated' and 'rehabilitated' and the procedures, from apprehension through institutionalization, were to be 'clinical' rather than punitive"); Julian W. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 107 (1909); Lisa Ells, Note, *Juvenile Psychopathy: The Hollow Promise of Prediction*, 105 COLUM. L. REV. 158, 160 (2005).

2. Ells, *supra* note 1, at 160-61; *see* MARTIN L. FORST, THE NEW JUVENILE JUSTICE 1, 2 (1995).

opportunity to rehabilitate children and that children should not be punished for their actions in the same manner as adults because they were less blameworthy than adults.[3] This belief existed since at least the seventeenth century.[4] English common law provided an infancy defense for children under the age of seven and a rebuttable presumption of irresponsibility for youths under the age of fourteen.[5] At the same time, however, the treatment of juveniles was harsh and devoid of procedural protections.[6] By the time the first juvenile court was established in 1899,[7] reducing the harsh treatment of juveniles, studies in the emerging science of child development supported the idea that juveniles are less culpable for their actions than adults.[8] Rather than treating similarly situated juveniles alike, the juvenile system's founders aimed to consider each child as an individual and to tailor a treatment plan to his or her needs with the goal of breaking the cycle of crime before it set in.

It became clear by the mid-1960s that state juvenile systems fell short of these goals.[9] Juvenile courts were unable to offer sufficient individualized treatment to each child due to their heavy caseloads[10] and budget shortfalls. Instead, most juvenile treatment facilities were factory-like and failed to provide follow-up treatment to prevent recidivism[11] because purely punitive solutions were easier to apply. Juvenile courts offered few procedural safeguards

3. *See* Ells, *supra* note 1, at 162; Eric K. Klein, Note, *Dennis The Menace or Billy The Kid: An Analysis of the Role of Transfer to Criminal Court in Juvenile Justice*, 35 AM. CRIM. L. REV. 371, 375 (1998) (stating that the reforms leading to a separate court for juveniles "stemmed from a belief that children should not be held to the same level of accountability as adults because they were not fully responsible for their actions").

4. Klein, *supra* note 3, at 375.

5. *Id.*

6. *See* Randall G. Shelden & Michelle Hussong, *Juvenile Crime, Adult Adjudication and the Death Penalty: Draconian Policies Revisited*, JUST. POL'Y J., Spring 2003, at 1, 7, http://www.cjcj.org/pdf/shelden_hussong.pdf (describing the treatment of child offenders in early U.S. jurisprudence).

7. Mack, *supra* note 1, at 107; Ells, *supra* note 1, at 160.

8. Ells, *supra* note 1, at 162; David S. Tanenhaus, *The Evolution of Transfer out of the Juvenile Court*, *in* THE CHANGING BORDERS OF JUVENILE JUSTICE 13, 17 (Jeffrey Fagan & Franklin E. Zimring eds., 2000).

9. C. Antoinette Clarke, *The Baby and the Bathwater: Adolescent Offending and Punitive Juvenile Justice Reform*, 53 U. KAN. L. REV. 659, 669 (2005).

10. *Id.*; *see* Jennifer M. O'Connor & Lucinda K. Treat, *Getting Smart About Getting Tough: Juvenile Justice and the Possibility of Progressive Reform*, 33 AM. CRIM. L. REV. 1299, 1303 (1996).

11. Clarke, *supra* note 9, at 669; O'Connor & Treat, *supra* note 10, at 1303.

to assure that guilt was clearly established before consequences were imposed.

In response to the juvenile system's failure to meet its rehabilitative ideals and the limited procedural protections afforded the accused, the U.S. Supreme Court stepped in and mandated that youthful offenders in the juvenile system received increased constitutional protections. During the mid-1960s, the Court heard several cases in which it declared that juveniles were entitled to some of the same due process procedural safeguards as adults.[12] Critics argue that these due process reforms transformed the juvenile system into a "scaled-down, second-class criminal court for young people"[13] because the courts became more adversarial and formalistic in nature.[14]

While juvenile court may have come to share some procedures and safeguards with adult criminal court since the 1960s, the rehabilitative goal remained a key component of the adjudication phase of juvenile court. This goal, however, faced increasing obstacles posed by state legislators who approached juveniles punitively, fueled by a short-term rise in juvenile crime and media fascination with more disturbing, albeit isolated, cases.

In response to the rise in violent juvenile crime between 1965 and the early 1990s, most notably between 1987 and 1991, legislatures developed a more punitive approach, with little discretion available, to addressing juvenile offenders.[15] This change was driven not only by the media's sensationalist coverage of disturbing violent juvenile crimes, such as school shootings,[16] but also by a political shift toward harsher punishments. Despite the fact that the nationwide rate of violent juvenile crime has plummeted by 71% since 1993,[17] legislators continue to propose bills which subject juveniles to unduly harsh punishments. There are existing statutes that punish juveniles automatically and severely

12. Clarke, *supra* note 9, at 669-70; Wright S. Walling & Stacia Walling Driver, *100 Years of Juvenile Court in Minnesota—A Historical Overview and Perspective*, 32 WM. MITCHELL L. REV. 883, 902-04 (2006); *see In re* Winship, 397 U.S. 358 (1970); *In re* Gault, 387 U.S. 1 (1967); Kent v. United States, 383 U.S. 541 (1966).

13. BARRY C. FELD, BAD KIDS: RACE AND THE TRANSFORMATION OF THE JUVENILE COURT 287 (1999).

14. Clarke, *supra* note 9, at 673.

15. *Id.* at 674.

16. *Id.* at 674-75.

17. FORUM ON FAMILY & CHILD STATISTICS, YOUTH VICTIMS AND PERPETRATORS OF SERIOUS VIOLENT CRIME (2005), http://www.childstats.gov/americaschildren/beh4.asp.

despite the fact that the juvenile violent crime rate has fallen. Such statutes not only fail to consider the purposes of the juvenile system, but they also expose juveniles to sentences that are not proportionate to their diminished culpability. These statutes exist despite the fact that the science of brain development has provided further clarification that juvenile brains, particularly in teenage years, are still in developmental flux and not necessarily indicative of adult behavior.[18] With these more punitive changes, efforts to redirect children to more useful lives are abandoned and the use of expensive and lengthy incarcerations is mandated.

II. THE U.S. SUPREME COURT RECOGNIZES JUVENILES' DIMINISHED CULPABILITY IN *ROPER V. SIMMONS*

The Eighth Amendment to the United States Constitution prohibits cruel and unusual punishment.[19] The Supreme Court has implemented this concept by applying a comparison between culpability and punishment. The Eighth Amendment proportionality analysis requires an examination not only of a crime's gravity, but also of a defendant's culpability. The U.S. Supreme Court explained that the Eighth Amendment guarantees individuals the right not to be subjected to excessive sanctions in proportion to their culpability.[20] In *Atkins v. Virginia*, the Court held that subjecting mentally retarded adults to the death penalty violated the Eighth Amendment because such adults were less culpable for their actions than the average adult offender.[21]

In 2005, the Supreme Court applied *Atkins*'s reasoning when declaring it unconstitutional to subject juveniles to the death penalty in *Roper v. Simmons*.[22] Framing its Eighth Amendment proportionality analysis, the court in *Roper* referred to "'the

18. *See* Joel V. Oberstar, Elise M. Anderson & Jonathan B. Jensen, *Cognative and Moral Development, Brain Development, and Mental Illness: Important Considerations for the Juvenile Justice System*, 32 WM. MITCHELL L. REV. 1051 (2006); Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOLOGIST 1009 (2003); *see also* Elizabeth Cauffman & Laurence Steinberg, *(Im)maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable than Adults*, 18 BEHAV. SCI. & L. 741, 756 (2000); Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 LAW & HUM. BEHAV. 333, 335 (2003).

19. U.S. CONST. amend. VIII.

20. Atkins v. Virginia, 536 U.S. 304, 311 (2002).

21. *Id.* at 319.

22. Roper v. Simmons, 125 S. Ct. 1183 (2005).

evolving standards of decency that mark the progress of a maturing society' to determine which punishments are so disproportionate as to be cruel and unusual."[23] By evaluating recent sociological and scientific data, the Court cited three fundamental differences between juveniles and adults that rendered juveniles less culpable for their actions.[24] First, youth tend to possess "'[a] lack of maturity and an underdeveloped sense of responsibility . . . [which] result in impetuous and ill-considered actions and decisions.'"[25] Second, juveniles are "more vulnerable or susceptible to negative influences and outside pressures, including peer pressure."[26] Finally, a juvenile's character is "not as well formed as that of an adult."[27] Rather, juveniles' personality traits are "more transitory" and "less fixed" than those of adults.[28]

Based on these differences, the Supreme Court in *Roper* concluded that juveniles' irresponsible conduct was less morally reprehensible than that of adults.[29] In addition, the fact that a majority of states had rejected the juvenile death penalty provided "sufficient evidence [to the Court] that today our society views juveniles . . . as 'categorically less culpable than the average criminal.'"[30] The Court declared the death penalty to be a disproportionate punishment for all juvenile offenders under the age of eighteen because juveniles' "culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity."[31] Due to the "marked" differences between juvenile and adult offenders, the Court found that juveniles should be subjected to less severe sentences than adults for the same crimes.[32]

Though the holding in *Roper* only addressed capital punishment of juveniles, the Supreme Court has noted that the Eighth Amendment proportionality principle also applies to noncapital sentences.[33] Thus, *Roper*'s rationale should be applied to any situation in which juveniles are subjected to harsh punishments

23. *Id.* at 1190 (quoting Trop v. Dulles, 356 U.S. 86, 100-101 (1958)).
24. *Id.* at 1195.
25. *Id.* (quoting Johnson v. Texas, 509 U.S. 350, 367 (1993)).
26. *Id.*
27. *Id.*
28. *Id.*
29. *Id.* at 1186 (citing Thompson v. Oklahoma, 487 U.S. 815, 835 (1988)).
30. *Id.* at 1194 (quoting Atkins v. Virginia, 536 U.S. 304, 312 (2002)).
31. *Id.* at 1196.
32. *Id.* at 1197.
33. Harmelin v. Michigan, 501 U.S. 957, 997-98 (1991) (Kennedy, J., concurring).

that are disproportionate to the juveniles' levels of culpability.

III. AUTOMATIC CERTIFICATION IN MINNESOTA

A juvenile over the age of sixteen could always be certified and tried as an adult if the evidence revealed that this was the proper path.[34] Now, however, a juvenile *must* be certified as an adult if charged with certain offenses.[35] In Minnesota, there are several situations in which a juvenile is automatically subjected to sentences that are just as severe as that of an adult without taking his or her diminished culpability into account. For instance, Minnesota Statutes section 260B.007, subdivision 6(b) explicitly excludes "a child alleged to have committed murder in the first degree after becoming 16 years of age" from its definition of a "delinquent child."[36] Furthermore, Minnesota Statutes section 609.055, subdivision 2(b) automatically certifies "a child who is alleged to have committed murder in the first degree after becoming 16 years of age" to be prosecuted as an adult in district court.[37] Under these statutes, once a juvenile aged sixteen or seventeen is accused of first-degree murder and indicted by a grand jury, he or she is automatically subject to adult court's jurisdiction without a hearing in juvenile court and is thus treated identically to an adult.[38]

This rule gives rise to two problems. First, the child, without any examination of his or her maturity or the complexity of the surrounding circumstances, is treated as an adult. Second, this determination is made based on the allegation, not the ultimate finding as to what the crime truly was.[39] Picture a real-life situation in which these two statutes apply: A sixteen-year-old is accused of first-degree murder. He is indicted by a grand jury, which finds that probable cause supports this charge. Without a hearing, he goes to trial in adult court. The jury finds him not guilty of the original charge that caused him to be deemed an adult, but guilty of a lesser charge of manslaughter, which would not automatically have sent him to adult court. Since he has been tried in adult court, he is subjected to adult punishment, which includes

34. *See* MINN. STAT. § 260B.125 (1998); MINN. R. JUV. DEL. P. 18.02.
35. *See, e.g.*, MINN. STAT. §§ 609.055, subd. 2(b), 260B.007, subd. 6(b) (2004).
36. *Id.* § 260B.007, subd. 6(b).
37. *Id.* § 609.055, subd. 2(b).
38. *Id.* §§ 260B.007, subd. 6(b), 609.055, subd. 2(b).
39. *Id.* § 260B.007, subd. 6(b).

incarceration in prison with adults and an adult conviction on his record.

By contrast, a sixteen-year-old who was correctly charged with manslaughter to begin with, absent a showing that he should be certified as an adult[40] or given Extended Jurisdiction Juvenile status,[41] would be subject to a juvenile court's jurisdiction.[42] Once he has been tried in juvenile court and found guilty of manslaughter, the judge sentences him to a punishment that is calculated to maximize the chances that the unlawful behavior will stop. If incarceration is appropriate, he will be detained in juvenile facilities and will receive treatment in programs designated for juveniles. His adjudication will not go on his record permanently; rather, it will be treated as a juvenile adjudication.

When comparing the different fates of these two similarly situated juveniles, the flaw in the automatic certification statutes is apparent. These statutes subject certain juveniles to much harsher penalties than other similarly situated juveniles merely for what they were charged with, rather than for what they actually did.

IV. THE MINNESOTA SUPREME COURT POSITION PRIOR TO *ROPER* AND *ATKINS*

In *State v. Behl*, the Minnesota Supreme Court upheld one of these automatic certification statutes[43] as constitutional.[44] The statute automatically waives the juvenile court's jurisdiction over juveniles sixteen and seventeen years old who have been indicted for first-degree murder.[45]

The *Atkins* and *Roper* rationale calls the Minnesota Supreme Court's holding in *State v. Behl* into question. The Minnesota Supreme Court decided *Behl* five years before *Atkins*[46] and eight years before *Roper*,[47] which the U.S. Supreme Court decided in 2005. The court's reasoning in *Behl* fails to consider juveniles' diminished culpability as a factor in its proportionality analysis, as the Supreme Court declared was necessary in *Roper*.[48] Instead, the

40. *See id.* § 260B.125.
41. *See id.* § 260B.130.
42. *See id.* § 260B.101, subd. 1.
43. *Id.* § 260.015 (repealed 1999) (current version at § 260B.007 (2004)).
44. State v. Behl, 564 N.W.2d 560, 567-68 (Minn. 1997).
45. MINN. STAT. § 260.015 (1998).
46. Atkins v. Virginia, 536 U.S. 304, 311 (2002).
47. Roper v. Simmons, 125 S. Ct. 1183 (2005).
48. *Id.* at 1186.

court in *Behl* based its holding on the idea that "juveniles over the age of 16 who have undertaken conduct sufficient to invoke an indictment for first-degree murder, are more dangerous and less amenable to the treatment provided by the juvenile system."[49]

Obviously, in some cases this is true, but the ordinary certification process would find such juveniles in adult court anyway. Often, however, it is not true. The "automatic" nature of the rule conflicts with the U.S. Supreme Court's reasoning in *Roper*, for it merely considers the seriousness of the crime with which the juvenile is charged, while neglecting to take the three fundamental cognitive differences between juveniles and adults into account. In *Behl*, the Minnesota Supreme Court allowed the legislature to usurp what was traditionally the court's authority, taking the now-discredited approach of allowing automatic certification to replace individualized decision making.[50]

There is no denying the gravity of first-degree murder allegations. However, a juvenile accused of this crime should not be subjected to automatic certification in adult court. Instead, such a juvenile should be entitled to the juvenile court's individualized determination of whether adult or juvenile court is the appropriate venue. This may often result in the juvenile being certified to adult court because past or present behavior reveals it to be the appropriate response, but that will not always be the case.

In a recent case, the Arizona Supreme Court held that an Arizona automatic filing scheme violated the Eighth Amendment on the same proportionality ground explained in *Roper*.[51] Like the Minnesota statute at issue in *Behl*, the Arizona scheme automatically subjected a juvenile to adult court jurisdiction when he or she was accused of first-degree murder.[52] The Arizona court cited an earlier U.S. Supreme Court decision, *Stanford v. Kentucky*,[53] which had allowed juvenile certification because of the fact that those states' juvenile courts had conducted individualized consideration of each juvenile's maturity and moral responsibility as a precondition to transfer to adult court.[54]

Similar to the unconstitutional Arizona statute, Minnesota

49. *Behl*, 564 N.W.2d at 568.
50. *See id.*
51. State v. Davolt, 84 P.3d 456, 480-81 (Ariz. 2004).
52. *Id.* at 879.
53. Stanford v. Kentucky, 492 U.S. 361 (1989).
54. *Davolt*, 84 P.3d at 480 (citing *Stanford,* 492 U.S. at 375-76).

Statutes sections 260B.007 and 609.055 automatically certify a juvenile as an adult once he or she is accused of first-degree murder.[55] In light of the recent decisions of the U.S. Supreme Court, as well as other courts, it seems likely that Minnesota courts will declare these statutes unconstitutional if they are not changed, for they automatically subject juveniles to punishments potentially disproportionate to their culpability without the opportunity for a certification hearing in juvenile court.

A juvenile court is uniquely situated to determine whether a juvenile has sufficient culpability, when considering all relevant factors, to be certified as an adult. In Minnesota, juvenile courts routinely evaluate several factors in making this decision including:

> (A) the seriousness of the alleged offense in terms of community protection, including the existence of any aggravating factors recognized by the Minnesota Sentencing Guidelines, the use of a firearm, and the impact on any victim;
>
> (B) the culpability of the child in committing the alleged offense, including the level of the child's participation in planning and carrying out the offense and the existence of any mitigating factors recognized by the Minnesota Sentencing Guidelines;
>
> (C) the child's prior record of delinquency;
>
> (D) the child's programming history, including the child's past willingness to participate meaningfully in available programming;
>
> (E) the adequacy of the punishment or programming available in the juvenile justice system;
>
> (F) the dispositional options available for the child.[56]

The U.S. Supreme Court has recognized the juvenile court's expertise in deciding whether a juvenile should be subjected to adult court's jurisdiction.[57] In *Kent v. United States*, the Court ruled that a juvenile is entitled to due process and fair treatment in any hearing, including a hearing for transfer to adult court.[58] According to the Supreme Court in *Kent*, a juvenile is entitled to a hearing in which the juvenile court considers his or her special

55. MINN. STAT. §§ 260B.007, subd. 6(b), 609.055, subd. 2(b) (2004).
56. MINN. R. JUV. DEL. P. 18.06, subd. 3.
57. *See* Kent v. United States, 383 U.S. 541, 564 (1966).
58. *Id.* at 562.

needs and the individual circumstances of his or her alleged crime on a case-by-case basis in order to preserve his or her due process rights.[59] Because Minnesota's automatic certification statutes deny juveniles any hearing whatsoever, these statutes deny juveniles due process, as well as subject them to unduly harsh punishments in adult court. In light of these cases and the legal concepts they explain, Minnesota's highest court should declare the automatic treatment unconstitutional.

V. SEX OFFENDER REGISTRATION

When juveniles are accused of any of a wide variety of sex offenses, they face another scenario in which they are treated as adults and are thereby disproportionately punished. Minnesota's sex offender registration law requires juveniles accused of or adjudicated delinquent for any level of sex offense to register as sex offenders. Minnesota Statutes section 243.166 requires a person to register if "the person was charged with or petitioned for a felony violation of or attempt to violate any [degree of criminal sexual conduct] and convicted of *or adjudicated delinquent for that offense or another offense arising out of the same set of circumstances*."[60]

Picture another scenario: At his belated sixteenth birthday party, a sixteen-year-old male and a thirteen-year-old female kiss. She lifts her shirt and he brushes against her breasts. Her incensed parent reports this to the police. The police come to the party and arrest him for fourth degree sexual conduct. When they attempt to put him in handcuffs, he resists, yelling that he does not want to go to jail. He is charged with disorderly conduct in addition to the first offense. In juvenile court, the sixteen-year-old pleads guilty to disorderly conduct, and is adjudicated delinquent for that offense, but not for the charge of criminal sexual conduct. However, his probation officer tells him that he must register as a sex offender for the next ten years because he was convicted of an offense arising from the same circumstances as the charge of fourth degree criminal sexual conduct. In response, he diligently registers with the Bureau of Criminal Apprehension. Several years later, he

59. *Id.* at 554-55.

60. MINN. STAT. § 243.166, subd. 1(b)(1) (emphasis added). The statute provides that the person "required to register under this section shall continue to comply with this section until ten years have elapsed since the person initially registered in connection with the offense, or until the probation, supervised release, or conditional release period expires, whichever occurs later." *Id.* subd. 6.

forgets to register. He then receives a court summons to answer to a felony charge of failure to register.

This young man's behavior certainly did not pose a danger to the public like the violent sex crimes that the Minnesota Legislature envisioned when it passed the registration statute. His behavior was worthy of scolding from a parent and, at worst, a juvenile court intervention. This behavior did not deviate sharply from normative, exploratory sexual behavior for many people his age who have no criminal propensity. This person, however, will suffer the long-term consequences of being a registered sex offender.

Sex offenders suffer grave collateral consequences due to this registration requirement. Like many other states, Minnesota's registration statute sweeps broadly by including juveniles who have committed relatively minor offenses.

VI. CONCLUSION

It is important to remember that when addressing the unique social, physiological, and brain development realities of juveniles, deterrence, justice, and public safety[61] must be "pursued through means that are fair and just, that recognize the unique characteristics and needs of children, and that give children access to opportunities for personal and social growth."[62] This serves the long-term interests of public safety, fairness, and the sensible administration of justice.

61. "The purpose of the laws relating to children alleged or adjudicated to be delinquent is to promote the public safety and reduce juvenile delinquency by maintaining the integrity of the substantive law prohibiting certain behavior and by developing individual responsibility for lawful behavior." MINN. STAT. § 260B.001, subd. 2.

62. *Id.*