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COMMENT

JUVENILE IN JUSTICE: A LOOK AT MARYLAND'S PRACTICE OF INCARCERATING CHILDREN WITHOUT A JURY TRIAL

KELSEY ROBINSON*

*A juvenile "receives the worst of both worlds: . . . neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children."*¹

In Maryland, if Shane is arrested and charged the day before his eighteenth birthday with malicious destruction of property for throwing a rock at a vehicle, he will be adjudicated as a delinquent.² In this case, Shane is not entitled to a jury trial.³ However, if Shane is arrested for this same crime on the day of his eighteenth birthday, then he will be charged as an adult⁴ and is entitled to a jury trial because the offense he is charged with permits imprisonment for a period of more than ninety days.⁵ Yet Shane—merely because he is considered a juvenile for the charge when he is seventeen years, 364-days-old—is not afforded the protection of a jury trial if he is charged before his birthday.⁶ Since the juvenile court has jurisdiction over Shane until he is twenty-one-years-old, Shane faces a possible period of incarceration of three years when adjudicated delinquent.⁷ Yet when charged as an adult, Shane faces a period of incarceration that is at most one year.⁸

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1. *Kent v. United States*, 383 U.S. 541, 556 (1966).
2. See MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-03 (West 2011) (excluding malicious destruction of property as a crime under the juvenile court's jurisdiction).
3. See *id.* § 3-8A-13(g) ("The court shall try cases without a jury.").
4. MD. CODE ANN., CRIM. LAW § 6-302 (West 2002).
5. CTS. & JUD. PROC. § 4-302(e)(2). In the adult criminal system, a person convicted of malicious destruction of property for throwing an object at a vehicle faces up to one-year incarceration. CRIM. LAW § 6-302.
6. See CTS. & JUD. PROC. § 3-8A-01(c)–(d) (defining an adult as "an individual who is at least [eighteen] years old" and a child as "an individual under the age of [eighteen] years").
7. CTS. & JUD. PROC. § 3-8A-24.
8. CRIM. LAW § 6-302(b).

This Comment will argue that because juveniles adjudicated delinquent in Maryland are subject to incarceration upon disposition and thus at risk of losing their liberty, they are constitutionally entitled to a jury trial. Depriving juveniles the right to a jury trial violates Article 21 of the Maryland Declaration of Rights, which specifies “[t]hat in all criminal prosecutions, every man hath a right to . . . trial by an impartial jury.”⁹ It also violates Article 24, which states that “no man ought to be . . . imprisoned or disseized of his freehold liberties . . . or, in any manner, . . . deprived of his . . . liberty . . . but by the judgment of his peers, or by the Law of the land.”¹⁰ Because juveniles are deprived of their liberty when they are, in effect, prosecuted and incarcerated, they are constitutionally entitled to a jury trial under the Declaration of Rights.¹¹

Part I of this Comment will discuss the constitutional protections that the Supreme Court of the United States has extended to juveniles and will explore the relevant history of the juvenile system, particularly in Maryland.¹² It further will provide an overview on the important role that jury trials have in the criminal legal system.¹³ Part II will examine how judicial discretion, conditions of confinement, excessive sentences, and the lack of a jury trial right, violates Articles 21 and 24 of the Maryland Declaration of Rights.¹⁴ Part II will also evaluate the policy justifications for allowing juveniles in Maryland the right to a jury trial and will examine the rationales of other jurisdictions that have granted juveniles the right to a jury trial and will apply those rationales to Maryland to conclude that Maryland law does entitle a juvenile the right to a jury trial.¹⁵

I. BACKGROUND

It has long been held that juveniles facing delinquent charges are entitled to some of the same constitutional protections that adults facing criminal charges are entitled to,¹⁶ despite the consensus among state courts that juvenile proceedings are not criminal proceedings.¹⁷ In Maryland, the state constitutional protections afforded to defendants in criminal proceedings are

9. MD. CONST. art. 21.

10. MD. CONST. art. 24. “We long ago determined that the phrase, ‘the Law of the land,’ ‘mean[s] the same thing’ as ‘due process of law’ as used in the Fourteenth Amendment of the U.S. Constitution.” *Clark v. State*, 364 Md. 611, 644, 774 A.2d 1136, 1155 (2001) (quoting *Balt. Belt R.R. v. Baltzell*, 75 Md. 94, 99, 23 A. 74, 74 (1891)).

11. *See infra* Part II.

12. *See infra* Part I.

13. *See infra* Part I.

14. *See infra* Part II.

15. *See infra* Part II.

16. *See infra* Section I.A.

17. *See, e.g., In re S.B.*, 903 N.E.2d 1175, 1178 (Ohio 2009) (“Juvenile delinquency proceedings are civil . . . proceedings.”); *State v. Thompson*, 998 P.2d 762, 767 (Or. Ct. App. 2000) (“[J]uvenile adjudications are not criminal proceedings . . .”).

found in Articles 21 and 24 of the Maryland Declaration of Rights.¹⁸ Juveniles are entitled to all of these constitutional protections, except for the right to a jury trial.¹⁹

In *McKeiver v. Pennsylvania*,²⁰ the Supreme Court of the United States held that the right to a jury trial did not extend to juveniles.²¹ Despite the holding in *McKeiver*, several states granted juveniles the right to a jury trial during the adjudicatory phase of a juvenile proceeding on the ground that their respective state constitution afforded juveniles the procedural protection of a jury trial.²² In Maryland, this issue has not been considered since *McKeiver* was decided.²³ This Part will proceed in four sections. Section A discusses the constitutional protections afforded to juveniles by the Supreme Court. Section B explores the history of Maryland's juvenile system. Section C discusses Maryland's modern juvenile system. Finally, Section D describes the role that jury trials have in the American criminal legal system, both federally²⁴ and in Maryland.²⁵

A. Creating the Foundation: Supreme Court Jurisprudence for Protecting Juveniles

Although juvenile court systems have been operating since 1899,²⁶ constitutional due process protections for juveniles were not considered until the late 1960s when courts began to question whether the promises of rehabilitation and treatment were being fulfilled.²⁷ The *parens patriae* doctrine—a “[s]tate’s interest in protecting the health, safety, and welfare of its citizenry”²⁸—was not being carried out as designed, with “a fatherly judge

18. See MD. CONST. arts. 21, 24.

19. See *infra* Section II.A.4.

20. 403 U.S. 528 (1971).

21. *Id.* at 545.

22. See *infra* Section II.C.

23. See *infra* text accompanying note 80.

24. See *infra* Section I.D.1.

25. See *infra* Section I.D.2.

26. See *infra* note 68 and accompanying text.

27. See *Kent v. United States*, 383 U.S. 541, 555 (1966) (noting that although the original purposes of the juvenile courts may have been aligned with a non-punitive, non-adult ideology, “critiques in recent years raise serious questions as to whether actual performance measures well enough against theoretical purpose to make tolerable the immunity of the process from the reach of constitutional guaranties applicable to adults”). A task force report for the District of Columbia alerted the Court to failed rehabilitation efforts, measured by recidivism rates:

In fiscal 1966 approximately [sixty-six] percent of the [sixteen]- and [seventeen]-year-old juveniles referred to the court . . . had been before the court previously. . . . [Sixty-one] percent of the sample Juvenile Court referrals in 1965 had been previously referred at least once and that [forty-two] percent had been referred at least twice before.

PRESIDENT’S COMM’N ON CRIME IN D.C., REPORT OF THE PRESIDENT’S COMMISSION ON CRIME IN THE DISTRICT OF COLUMBIA 773 (1966); *infra* notes 32–43 and accompanying text (describing the movement to grant juveniles rights in juvenile trials).

28. *Wolinski v. Browneller*, 115 Md. App. 285, 300, 693 A.2d 30, 37 (1997).

touch[ing] the heart and conscience of the erring youth by talking over his problems.”²⁹ It was only after the Supreme Court recognized “that the child receives the worst of both worlds,” that certain constitutional protections were viewed as fundamental for juveniles.³⁰

Throughout the late 1960s and early 1970s, the Supreme Court began developing procedural protections for juveniles.³¹ The starting point was *In re Gault*,³² where juveniles received due process protections for the first time.³³ In *Gault*, fifteen-year-old Gerald Gault was arrested for making lewd comments, but Gerald’s parents were not notified that their son had been arrested.³⁴ The petition alleging Gerald’s delinquent acts was not served on his parents.³⁵ Further, at his adjudication hearing, the complainant was not present to be cross-examined.³⁶ At the conclusion of the hearing, Gerald was committed to a juvenile detention facility until he turned twenty-one-years-old.³⁷ The Supreme Court held that juveniles had the constitutional right to timely and adequate written notice,³⁸ the right to counsel,³⁹ the right to confrontation and cross-examination,⁴⁰ and the privilege against self-incrimination.⁴¹ The Court reasoned that juveniles were constitutionally entitled to these rights because they faced incarceration if found to be delinquent.⁴² The Court stressed that “[t]he essential difference between Gerald’s case and a normal criminal case is that safeguards available to adults were discarded in Gerald’s case.”⁴³

29. *In re Gault*, 387 U.S. 1, 26 (1967).

30. *Kent*, 383 U.S. at 556; *see infra* notes 32–53 and accompanying text.

31. *See infra* notes 32–53 and accompanying text.

32. 387 U.S. 1 (1967).

33. *Id.* at 30–31.

34. *Id.* at 4–5.

35. *Id.* at 5.

36. *Id.* at 6.

37. *Id.* at 7.

38. *Id.* at 33–34 (“Due process of law requires notice . . . which would be deemed constitutionally adequate in a civil or criminal proceeding.”).

39. *Id.* at 41 (“[T]he Due Process Clause . . . requires that in . . . proceedings . . . which may result in [incarceration] in which the juvenile’s freedom is curtailed, the child . . . must be notified of the child’s right to be represented by counsel . . .”).

40. *Id.* at 56 (“No reason is suggested or appears for a different rule in respect of sworn testimony in juvenile courts than in adult tribunals. . . . [C]onfrontation and sworn testimony by witnesses available for cross-examination [are] essential for a finding of ‘delinquency’ . . .”).

41. *Id.* at 49–50 (“[J]uvenile proceedings[,] . . . which may lead to commitment to a state institution, must be regarded as ‘criminal’ for purposes of the privilege against self-incrimination. To hold otherwise would be to disregard substance because of the feeble enticement of the ‘civil’ label-of-convenience which has been attached to juvenile proceedings.”).

42. *Id.* at 50 (“[C]ommitment is a deprivation of liberty. It is incarceration against one’s will, whether it is called ‘criminal’ or ‘civil.’”).

43. *Id.* at 29; *see also id.* (“The summary procedure as well as the long commitment was possible because Gerald was [fifteen] years of age instead of over [eighteen].”).

In *In re Winship*,⁴⁴ the Supreme Court held that proof beyond a reasonable doubt was required in juvenile adjudication hearings.⁴⁵ In *Winship*, a twelve-year-old boy was found to be delinquent for stealing money.⁴⁶ The delinquency petition asserted that the child's charge of larceny would constitute a crime if committed by an adult, and while the juvenile court recognized that the proof present in the case might not establish guilt beyond a reasonable doubt, it rejected the child's argument that the Fourteenth Amendment required such proof in juvenile cases.⁴⁷

Prior to the *Winship* decision, the standard in juvenile delinquency proceedings nationwide was preponderance of the evidence.⁴⁸ The Court emphasized that criminal charges required a higher burden of persuasion than civil cases.⁴⁹ Since a defendant's autonomy and freedom are at stake in a criminal proceeding, the Constitution requires that evidence be proved beyond a reasonable doubt.⁵⁰ Writing for the majority, Justice Brennan reasoned that "[t]he same considerations that demand extreme caution in factfinding to protect the . . . adult apply as well to the . . . child."⁵¹ Rejecting the lower courts' interpretations of the issue, the majority emphasized that the potential loss of liberty in a delinquency disposition was "comparable in seriousness to a felony prosecution."⁵² Justice Brennan concluded that a reasonable doubt standard would not require states to "abandon or displace" the fundamental principles of the juvenile delinquency system.⁵³

After *Gault* and *Winship*, the Supreme Court stopped extending constitutional rights to juveniles.⁵⁴ In the seminal case of *McKeiver v. Pennsylvania*, the majority held that trial by jury was not a constitutional requirement in the adjudicative phase of juvenile proceedings.⁵⁵ Writing for the majority, Justice Blackmun reasoned that not all rights constitutionally guaranteed for adults applied to juveniles.⁵⁶ For example, because the

44. 397 U.S. 358 (1970).

45. *Id.* at 368 (stating the standard "is as much required during the adjudicatory stage of a delinquency proceeding as are those constitutional safeguards applied in *Gault*").

46. *Id.* at 360.

47. *Id.*

48. *Id.*

49. *Id.* at 372.

50. *Id.* at 363–64 (noting that in a prosecution, the criminally accused "has at stake interests of immense importance").

51. *Id.* at 365.

52. *Id.* at 365–66 (citing *In re Gault*, 387 U.S. 1, 36 (1967)) ("We made clear . . . that civil labels . . . do not themselves obviate the need for criminal due process safeguards in juvenile courts . . ." (citing *Gault*, 387 U.S. at 36)).

53. *Id.* at 367 (citing *Gault*, 387 U.S. at 21).

54. See *infra* notes 55–65 and accompanying text.

55. *McKeiver v. Pennsylvania*, 403 U.S. 528, 545 (1971). The Court did, however, state in dicta that individual states were free to develop a jury trial system for juveniles should they so choose. *Id.*

56. *Id.* at 545.

standard of a juvenile's due process rights was fundamental fairness and a jury was not required under fundamental fairness,⁵⁷ then juveniles were not constitutionally entitled to a jury trial.⁵⁸ The *McKeiver* majority reasoned that a juvenile jury trial would "place the juvenile squarely in the routine of the criminal process,"⁵⁹ turning delinquency proceedings into a fully adversarial system.⁶⁰ The Court thought that the juvenile system could not fulfill its rehabilitative goals with a jury trial,⁶¹ not because a jury had the potential to be harsher on a child than a judge would be, but because rehabilitation would be impeded by the technical consequences of a jury trial, including "the traditional delay, the formality, and the clamor of the adversary system."⁶²

In his dissent, Justice Douglas argued that the Sixth Amendment, made applicable to the states by the Fourteenth Amendment, required a jury trial in juvenile cases because these acts would be punishable if committed by an adult, who would be entitled to a jury trial.⁶³ Justice Douglas reasoned that as a consequence juvenile proceedings were indeed prosecutions for criminal acts that could result in the juvenile being confined until the age of twenty-one.⁶⁴ Justice Douglas concluded his dissent by noting that "'the real traumatic' experience of incarceration without due process is 'the feeling of being deprived of basic rights.'"⁶⁵

57. The Court has not explicitly defined this term, but has stated that "a person . . . would be at a severe . . . disadvantage amounting to a lack of fundamental fairness, if he could be adjudged guilty and imprisoned for years on the strength of the same evidence as would suffice in a civil case." *Winship*, 397 U.S. at 363 (citation omitted).

58. *McKeiver*, 403 U.S. at 543. The Supreme Court established that fundamental fairness is "the applicable due process standard in juvenile proceedings." *Id.*

59. *Id.* at 547.

60. *Id.* at 545 (reasoning that by allowing jury trials, there would be no need for a separate juvenile system because an adversarial process would "put an effective end to what has been the . . . intimate, informal protective proceeding").

61. *Id.* at 547 (stating that the success of the juvenile system depends in large part on the availability of resources and the dedication of the public to rehabilitating youth offenders, and that in order to reach the highest success rates, states should be allowed to experiment as they see fit, without a jury trial requirement "impeding that experimentation").

62. *Id.* at 550.

63. *Id.* at 560–61 (Douglas, J., dissenting) (noting that the children in the cases faced a possible minimum five-year sentence, and stressing that "[n]o adult could be denied a jury trial in those circumstances").

64. *Id.* at 558–59 (noting the discrepancy in the cases where "[t]he trial judge stated that the hearings were juvenile hearings, not criminal trials. But the issue in each case was whether they had violated a state criminal law.>").

65. *Id.* at 562 (citation omitted).

B. Establishing the Juvenile Causes Act: History of Maryland's Juvenile Justice System

Historically, Maryland did not distinguish between the treatment and punishment of juveniles and adults within the criminal legal system.⁶⁶ “All persons, regardless of age, had an absolute right to a jury trial for all but petty offenses.”⁶⁷ Chicago created the country’s first juvenile court system in 1899,⁶⁸ and Maryland followed in 1902.⁶⁹ The new system was created to ensure that the juvenile court applied the *parens patriae* doctrine to juvenile proceedings by focusing on the youth’s “need for protection or rehabilitation,” rather than on the youth’s guilt.⁷⁰

In 1969, the Maryland General Assembly passed a comprehensive set of laws, known today as the Juvenile Causes Act and codified at Annotated Code of Maryland, Maryland Courts and Judicial Proceedings Article, section 3-8A,⁷¹ to further protect the rights of juveniles in court.⁷² The overarching goal of the Juvenile Causes Act is to rehabilitate youthful offenders so that they can become productive members of society.⁷³ The Court of Special Appeals found that in so passing this Act, the legislature intended to retain the principles that the juvenile system was founded upon and preserve juvenile proceedings as non-punitive.⁷⁴ That same year, but two years before the *McKeiver* decision, the Court of Appeals held in *In re Johnson*⁷⁵ that juveniles in Maryland had no right to a jury trial.⁷⁶ The court reasoned that while the majority in *Gault* held that due process standards were applicable to juvenile proceedings, the *Gault* majority did not “say that *all* of the guarantees of the Bill of Rights need necessarily be applicable” to juvenile proceedings.⁷⁷

66. *In re Johnson*, 254 Md. 517, 521, 255 A.2d 419, 421 (1969) (explaining that “children were treated as persons. Children under the age of seven . . . were incapable of criminal intent . . . Children above that age were treated as adults. They were given the same legal protections and the same punishments as adults.”).

67. *Id.* (citing *Danner v. State*, 89 Md. 220, 42 A.965 (1889)).

68. *Id.* at 522, 255 A.2d at 422 (“The reform movement brought about the enactment of special statutory provisions for the handling of juvenile offenders. Illinois, which adopted its Juvenile Court Act in 1899 . . . was the first to embrace the reform . . .”).

69. *Id.*

70. *Id.*

71. MD. CODE ANN., CTS & JUD. PROC. § 3-8A (West 2011).

72. *In re Johnson*, 254 Md. at 523, 255 A.2d at 422. See *Lopez-Sanchez v. State*, 155 Md. App. 580, 598, 843 A.2d 915, 926 (2004) (“Under the Juvenile Causes Act, juveniles who, in the absence of the juvenile justice system, would be prosecuted in, and punished by, the adult criminal justice system, are instead afforded supervision and treatment, with the aim to achieve rehabilitation.”).

73. *Lopez-Sanchez*, 155 Md. App. at 598, 843 A.2d at 926.

74. *In re Hamill*, 10 Md. App. 586, 590, 271 A.2d 762, 764 (1970).

75. 254 Md. 517, 255 A.2d 419 (1969).

76. *Id.* at 531, 255 A.2d at 426.

77. *Id.* at 524–25, 255 A.2d at 423 (alteration in original).

In 1967, fourteen-year-old Thomas Johnson was found to be delinquent for allegedly striking and kicking a police officer.⁷⁸ Johnson filed a motion for a jury trial, which was denied, and was placed on indefinite probation.⁷⁹ As the seminal appellate decision addressing the right to a juvenile jury trial, both before and after the *McKeiver* decision, the *Johnson* court held that Maryland's statutory scheme creating the system of juvenile courts was not unconstitutional for its failure to provide for a jury trial.⁸⁰ The court did acknowledge, however, the shortcomings of the juvenile system and its need for reform.⁸¹ The court even recognized that the right to a jury trial in juvenile delinquency proceedings could one day become practice in Maryland.⁸²

In 1997, the Juvenile Causes Act was amended.⁸³ This amendment transformed the goals of Maryland's juvenile system from mere rehabilitation to a combination of goals, including public safety and juvenile accountability.⁸⁴ Despite this shift in ideology, Maryland's highest court still considered the juvenile system to be civil, while acknowledging that juveniles were still afforded some of the constitutional protections that adults were afforded in criminal cases.⁸⁵ Retaining the due process and fair treatment principles from *Gault*, the Court of Appeals applied the fundamental fairness standard, and concluded that juveniles in Maryland have the constitutional right to a speedy trial.⁸⁶ At this point, juveniles are entitled to all of the constitutional rights afforded to adults through the Maryland Declaration of Rights, except for the right to a jury trial.⁸⁷

78. *Id.* at 519, 255 A.2d at 420.

79. *Id.*

80. *Id.* at 517, 255 A.2d at 419.

81. *Id.* at 524, 255 A.2d at 423 (observing that in spite of the attempt to create a juvenile system that reformers originally imagined, "a wave of disenchantment has been developing for more than a decade—the result of public awareness . . . that there is substantial opinion that major revisions of the system are in order").

82. *Id.* at 531, 255 A.2d at 426 ("Such a mechanism is not without a certain attractiveness, and could some day become a part of our juvenile practice.").

83. MD. CODE ANN., CTS & JUD. PROC. § 3-8A (West 2011).

84. *See generally* CTS. & JUD. PROC. § 3-8A-02 (describing the purposes of the juvenile system); *see also In re Saifu K.*, 187 Md. App. 395, 409, 978 A.2d 881, 889 (2009) ("According to bill analyses[,] . . . the 1997 amendment 'change[d] the purpose of juvenile justice law from that of protectiveness of children committing delinquent act[s] to one that requires that children be held responsible for their behavior and accountable to the victim and the community for offenses committed.'").

85. *In re Anthony R.*, 362 Md. 51, 69, 763 A.2d 136, 146 (2000).

86. *In re Thomas J.*, 375 Md. 50, 70, 811 A.2d 310, 322 (2002).

87. *See* CTS. & JUD. PROC. § 3-8A-13(g).

C. The Pledge to Rehabilitate Youthful Offenders: Modern Juvenile System in Maryland

The juvenile system seeks to balance the goals of public safety, rehabilitation, and accountability of the child.⁸⁸ The current juvenile system in Maryland has procedures, policies, and standards that are outlined in the Maryland Code.⁸⁹ The Department of Juvenile Services (“DJS”), the state agency that oversees juvenile detention and incarceration, proffers that it strives to maintain this balance, by “keep[ing] committed and detained youth safe while delivering services to meet youth needs.”⁹⁰

The specific language of Maryland’s juvenile statutory scheme has retained the non-adversarial principles from *McKeiver*.⁹¹ For example, phrases such as “[a]djudicatory hearing,”⁹² “[d]elinquent act,”⁹³ and “[d]isposition hearing”⁹⁴ are used. Further, the charging document is called a “[p]etition”⁹⁵ and the alleged delinquent child is called a “[r]espondent.”⁹⁶ The purposes and goals of the juvenile legal system includes a balance, as discussed above, of public safety, accountability, and character development.⁹⁷

Once a juvenile is found delinquent, a disposition is held to determine what level of rehabilitation the juvenile needs and to consider public safety.⁹⁸ The court has different options, ranging from putting the child on probation to committing the child to DJS for an out-of-home placement.⁹⁹ Although a child in the custody of DJS may not be ordered to be detained for more than three years, the court or other invested party may move to renew the order.¹⁰⁰

88. See *infra* notes 89–97 and accompanying text.

89. See generally CTS. & JUD. PROC. § 3-8A-02 (describing the purposes of Maryland’s juvenile system).

90. DEP’T OF JUVENILE SERVS., DJS 2017–2020 STRATEGIC PLAN 4 (2017) [hereinafter DJS STRATEGIC PLAN].

91. See *infra* notes 92–96 and accompanying text; see also *McKeiver v. Pennsylvania*, 403 U.S. 528, 550 (1971) (describing how providing juveniles with the right to a trial by jury would turn juvenile proceedings into an adversarial process, necessarily demonstrating that the *McKeiver* majority considered juvenile proceedings to be non-adversarial).

92. See CTS. & JUD. PROC. § 3-8A-01(b) (“‘Adjudicatory hearing’ means a hearing . . . to determine whether the allegations in the petition . . . are true.”).

93. See *id.* § 3-8A-01(l) (“‘Delinquent act’ means an act which would be a crime if committed by an adult.”).

94. See *id.* § 3-8A-01(p) (“‘Disposition hearing’ means a hearing under this subtitle to determine: (1) Whether a child needs or requires guidance, treatment, or rehabilitation; and if so (2) The nature of the guidance, treatment, or rehabilitation.”).

95. *Id.* § 3-8A-01(y).

96. *Id.* § 3-8A-01(aa).

97. *Id.* § 3-8A-02(a)(1)(i)–(iii); see *supra* notes 88–90 and accompanying text.

98. CTS. & JUD. PROC. § 3-8A-19(c).

99. *Id.* § 3-8A-19(d)(1)(i)–(ii).

100. *Id.* § 3-8A-24(b).

The only other restriction to detaining a child is that the juvenile court's jurisdiction terminates when the child turns twenty-one.¹⁰¹

DJS owns and operates facilities statewide, some of which are called “committed placement” facilities.¹⁰² There are two types of committed placement facilities.¹⁰³ First, “hardware secure” is “[a] facility that relies primarily on the use of construction and hardware such as locks, bars, and fences to restrict freedom.”¹⁰⁴ Second, a “staff secure” facility is a “[r]esidential program[] where youth movement is controlled by staff supervision.”¹⁰⁵ In 2007, seventeen-year-old Isaiah Simmons, III died at a staff secure facility after being restrained by staff members.¹⁰⁶ In 2018, the juvenile court in Maryland committed 825 youth to DJS.¹⁰⁷ The average length of stay in a secure committed placement was 169 days.¹⁰⁸

D. Protecting the Criminally Accused: Fundamental Right to Trial by Jury

The Sixth Amendment of the United States Constitution, through the Due Process Clause of the Fourteenth Amendment,¹⁰⁹ and Articles 5, 21, 23, and 24 of the Maryland Declaration of Rights¹¹⁰ provide Maryland residents accused of criminal wrongdoing with the right to a jury trial.

1. Fundamental Principles: Federal Constitutional Right

The Sixth Amendment of the United States Constitution provides that “[i]n all criminal prosecutions, the accused shall enjoy the right to . . . trial, by an impartial jury.”¹¹¹ The Supreme Court has since evaluated this right according to the seriousness of the offense,¹¹² holding that certain crimes considered to be petty are not subject to the jury trial provision.¹¹³ Applying this standard, the Court has held that an alleged offender who is charged with an offense must be facing an incarceration period of at least six months to be

101. *Id.* § 3-8A-24(c).

102. DEP'T OF JUVENILE SERVS., DOORS TO DETENTION: STATEWIDE DETENTION UTILIZATION STUDY 7 (2013). Committed placement facilities are facilities where youth are detained after they have been adjudicated delinquent. *Id.* at 8.

103. *See infra* text accompanying notes 104–105.

104. DEP'T OF JUVENILE SERVS., DATA RESOURCE GUIDE FISCAL YEAR 2018 ix (2018) [hereinafter DJS DATA RESOURCE GUIDE].

105. *Id.* at xi.

106. *State v. Kanavy*, 416 Md. 1, 5, 4 A.3d 991, 993 (2010).

107. MD. GEN. ASSEMBLY., H.B. 1344, FISCAL & POLICY NOTE, REG. SESS. (2019), <http://mgaleg.maryland.gov/mgawebsite/Legislation/Details/hb1344/?ys=2019rs>.

108. *Id.*

109. *See infra* Section I.D.1.

110. *See infra* Section I.D.2.

111. U.S. CONST. amend. VI.

112. *Lewis v. United States*, 518 U.S. 322, 325 (1996).

113. *Duncan v. Louisiana*, 391 U.S. 145, 159 (1968).

entitled to a jury trial.¹¹⁴ The Court reasoned the penalty authorized for a particular crime is what matters and not the penalty actually imposed.¹¹⁵ When evaluating the seriousness of the offense, courts must consider the maximum prison term authorized, on the ground that a longer prison sentence deprives a person of their liberty more than a shorter sentence.¹¹⁶

2. In Pari Materia to the Sixth Amendment: Maryland Constitutional Right

Maryland's Declaration of Rights grants the accused the right to a jury trial in criminal proceedings.¹¹⁷ The legislature has interpreted this right to mean that an individual must be charged with a crime that provides for punishment of at least ninety days incarceration in order to be entitled to a jury trial.¹¹⁸ Legislative history reveals that one reason for the ninety-day threshold is "to reduce the number of jury trial prayers."¹¹⁹

Maryland appellate courts have interpreted what types of crimes allow for the constitutional right to a jury trial to attach.¹²⁰ Maryland's highest court has created a three-factor test to help trial courts determine whether there is a state constitutional right to a jury trial for a particular offense.¹²¹ These three factors establish that the right to a jury trial does not attach to

114. *Id.*

115. *Id.* at 160 (internal quotation and citation omitted) ("[T]he defendant was jailed for [sixty] days, but it was the [ninety]-day authorized punishment on which the Court focused in determining that the offense was not one for which the Constitution assured trial by jury.>").

116. *Lewis*, 518 U.S. at 326 ("While penalties such as probation . . . may infringe on a defendant's freedom, the deprivation of liberty imposed by imprisonment makes that penalty the best indicator of whether the legislature considered an offense to be 'petty' or 'serious.'").

117. *See* MD. CONST. art. 5(a) ("That the [i]nhabitants of Maryland are entitled to . . . trial by Jury . . ."); MD. CONST. art. 21 ("That in all criminal prosecutions, every man hath a right . . . to a speedy trial by an impartial jury . . ."); MD. CONST. art. 23 ("In the trial of all criminal cases, the Jury shall be the Judges of Law, as well as of fact . . ."); MD. CONST. art. 24 (explaining due process as "no man ought to be taken or imprisoned or disseized of his freehold, liberties . . . or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers").

118. MD. CODE ANN., CTS. & JUD. PROC. § 4-302(e)(2)(i) (West 2009).

119. MD. GEN. ASSEMBLY, H.B. 615 FISCAL AND POLICY NOTE, REG. SESS. 2 (2004), <http://mgaleg.maryland.gov/mgaweb/legislation/Search/Legislation?target=/2004rs/billfile/hb0615.htm> ("By establishing a [ninety]-day penalty threshold, the [legislature] attempted to distinguish petty offenses that under common law . . . did not trigger the right to be tried by a jury from other offenses to which the constitutional right applied. The [legislature] was trying to define the circumstances under which a defendant did not have a right to a jury trial . . . in order to reduce the number of jury trial prayers.>").

120. *Cf.* *State v. Stafford*, 160 Md. 385, 387, 153 A.77, 78 (1931) (ruling that the right to a jury trial attaches to the offenses of assault and battery). *But see In re Glenn*, 54 Md. 572, 606 (1880) (reasoning that there is no right to a jury trial for the offense of vagrancy).

121. *Fisher v. State*, 305 Md. 357, 365–66, 504 A.2d 626, 629–30 (1986). These factors include whether the offense has historically been tried before juries or subject to summary jurisdiction; whether the offense is an infamous crime; and the seriousness of the offense. *Id.*

certain minor criminal offenses.¹²² The legislature has defined this to include any offense for which the period of incarceration is not more than ninety days.¹²³

The Court of Appeals has established that “[u]nless there is good reason to do otherwise,” the constitutional provisions of the Maryland Declaration of Rights “are in *pari materia* with their federal counterparts.”¹²⁴ Thus, the provisions of the Maryland Declaration of Rights are parallel to federal constitutional provisions.¹²⁵ The court did emphasize, however, that *pari materia* “does not mean that the [state] provision will *always* be interpreted or applied” in the same way that the parallel federal provision will be interpreted or applied.¹²⁶ Indeed, where fundamental fairness is concerned, the Court of Appeals has interpreted both Article 21¹²⁷ and Article 24 “*more broadly*”¹²⁸ than the Fourteenth Amendment.¹²⁹

Under Articles 21 and 24 of the Maryland Declaration of Rights, individuals charged with a crime have the right to notice, counsel, confrontation and cross-examination, a speedy trial, and an impartial jury.¹³⁰ Both Maryland, through legislation,¹³¹ and the Supreme Court, through seminal precedent,¹³² maintain that juveniles are entitled to all of these rights, except for the right to a jury trial.

II. ANALYSIS

Under the Maryland Declaration of Rights, juveniles should be granted all constitutional protections afforded to adults.¹³³ Since juveniles adjudicated delinquent are subject to incarceration upon disposition, they are

122. *Kawamura v. State*, 299 Md. 276, 291, 473 A.2d 438, 446 (1984) (noting that nonetheless, “the state constitutional jury trial right does attach . . . to offenses which historically had been tried before juries. It also attaches to . . . any offense subject to infamous punishment.”).

123. CTS. & JUD. PROC. § 4-302(e)(2)(i).

124. *Allmond v. Dep’t of Health & Mental Hygiene*, 448 Md. 592, 609, 141 A.3d 57, 67 (2016) (internal quotation and citation omitted).

125. *Id.*

126. *Dua v. Comcast Cable*, 370 Md. 604, 621, 805 A.2d 1061, 1071 (2002) (emphasis in original).

127. *See Perry v. State*, 357 Md. 37, 86 n.11, 741 A.2d 1162, 1188 n.11 (1999) (resolving the law under Article 21 of the Maryland Declaration of Rights, while noting that “[i]f the Supreme Court were to rule upon the issue, . . . we certainly would give due and respectful consideration to it in any future construction of Article 21, but it would not serve, on its own, to alter the declaration made in this Opinion regarding Article 21”).

128. *Borchardt v. State*, 367 Md. 91, 175, 786 A.2d 631, 681 (2001) (Raker, J., dissenting) (emphasis added).

129. *See Hook v. State*, 315 Md. 25, 43, 553 A.2d 233, 242–43 (1989) (affording individuals accused of crimes with a broader protection than that afforded by the Fourteenth Amendment).

130. MD. CONST. art. 21.

131. *See supra* Section I.C.

132. *See supra* Section I.A.

133. *See infra* Section II.A.4.

constitutionally entitled to a jury trial.¹³⁴ For juveniles facing confinement, juvenile proceedings are equivalent to criminal proceedings, so juveniles must be presented with all of the same criminal procedural safeguards as adults.¹³⁵ Further, it is “disingenuous” for scholars to maintain that juvenile courts do not pursue retribution.¹³⁶ Maryland has acknowledged that “a juvenile committed to a State facility suffers a deprivation of liberty and is entitled to constitutional protections.”¹³⁷

Applying the *pari materia* doctrine and the precedent from *Gault* to Articles 21 and 24 of the Maryland Declaration of Rights, juveniles must be afforded the opportunity for a jury trial.¹³⁸ In *Gault*, the Court noted that because juveniles are in danger of losing their liberty, juvenile proceedings are “comparable in seriousness to a felony prosecution.”¹³⁹ If the magnitude of the outcome for juveniles in adjudicatory proceedings is so acute as to bring into play all other due process protections, then it must also necessarily be the case, “by force of the same reasoning,” that the jury trial right be invoked in juvenile proceedings, which in no manner could “be classified as a less vital instrument” than the other due process protections.¹⁴⁰

Denying juveniles the right to a jury trial hinders the goals enumerated in the Maryland Code.¹⁴¹ In *McKeiver v. Pennsylvania*, Justice Brennan, concurring, reasoned that “[s]tates are not bound to provide jury trials on demand so long as some other aspect of the process adequately protects the interests that Sixth Amendment jury trials are intended to serve.”¹⁴² Similarly, Maryland courts have emphasized that “[t]he analysis of whether a particular procedural right is guaranteed to juveniles under the Due Process Clause centers on whether granting that right would help achieve or serve to hinder the goals of the juvenile system.”¹⁴³ The juvenile process in Maryland neither adequately protects the interests that jury trials are intended to serve,¹⁴⁴ nor does it help to achieve the goals of the juvenile system.¹⁴⁵

134. See *supra* text accompanying notes 9–11.

135. Barry C. Feld, *Punishing Kids in Juvenile and Criminal Courts*, 47 CRIME & JUST. 417, 463–64 (2018).

136. *Id.* at 464; see also Korine L. Larsen, *With Liberty and Juvenile Justice for All: Extending the Right to a Jury Trial to the Juvenile Courts*, 20 WM. MITCHELL L. REV. 835, 866 (1994) (“Despite similarities between juvenile proceedings and criminal trials—both involve persons accused of criminal conduct and an adjudication in either could lead to incarceration—courts refuse to equate juvenile proceedings with a criminal trial.”).

137. *In re Virgil M.*, 46 Md. App. 654, 658, 421 A.2d 105, 107–08 (1980).

138. See *supra* notes 124–128 and accompanying text.

139. *In re Gault*, 387 U.S. 1, 36 (1967).

140. Larsen, *supra* note 136, at 872 (quoting *Dryden v. Commonwealth*, 435 S.W.2d 457, 460–61 (Ky. 1968)).

141. See *supra* note 84 and accompanying text.

142. 403 U.S. 528, 554 (1971) (Brennan, J., concurring).

143. *In re D.M.*, 228 Md. App. 451, 466, 139 A.3d 1073, 1082 (2016).

144. See *supra* Section I.D.

145. See *supra* Sections I.B. and I.C.

Under Maryland law, juveniles get “the worst of both worlds.”¹⁴⁶ What opponents are failing to realize is that providing juveniles with another protection does not equate to turning the juvenile system into a fully adversarial process.¹⁴⁷ Rather, by augmenting rehabilitation with due process protections, the juvenile court offers juveniles “treatment and protection—the best of both worlds.”¹⁴⁸

This Part proceeds in three Sections. Section A explores the ways in which denying juveniles the right to a jury trial violates Articles 21 and 24 of the Maryland Declaration of Rights, such as through judicial discretion,¹⁴⁹ conditions of confinement,¹⁵⁰ excessive sentences,¹⁵¹ and the denial of all due process rights afforded to adults.¹⁵² Section B evaluates the policy justifications for allowing juveniles the right to a jury trial, including the arguments that the *McKeiver* rationale no longer applies¹⁵³ and that the juvenile system in Maryland is not rehabilitative.¹⁵⁴ Finally, Section C analyzes the arguments of three jurisdictions that allow juvenile jury trials and applies these arguments to Maryland law.¹⁵⁵

A. *Unconstitutionality of Failing to Protect Juveniles’ Fundamental Rights*

A jury trial adds a layer of protection between adjudication and disposition, allowing juveniles a greater chance of not being incarcerated in the first place. First, juvenile courts have wide discretion in deciding whether to incarcerate a juvenile or allow them to receive services in the community.¹⁵⁶ Second, harsh and punitive conditions of confinement exist

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

147. *See McKeiver v. Pennsylvania*, 403 U.S. 528, 545 (1971) (“There is a possibility . . . that the jury trial, if required . . . will remake the juvenile proceeding into a fully adversary process . . .”). For more recent opinions about the dangers of granting juveniles the right to a jury trial, see *State ex rel. D.J.*, 817 So. 2d 26, 34 (La. 2002) (continuing to deny juveniles in Louisiana the right to a jury trial, noting that “[a]rguments claiming that particular statutory schemes are so punitive and have little or no rehabilitative focus so as to render *McKeiver* inapplicable have been . . . unavailing”); *In re A.C.*, 43 A.3d 454, 461–62 (N.J. Super. Ct. Ch. Div. 2012) (“To expand even further the formalities of the criminal adjudicative process by requesting jury trials in juvenile matters would effectively result in there no longer being a need for a separate process for them at all.”); *State v. Chavez*, 180 P.3d 1250, 1252 (Wash. 2008) (noting that jury trials are reserved for punitive and adversarial criminal systems, characteristics lacking in the juvenile system).

148. Larsen, *supra* note 136, at 874.

149. *See infra* Section II.A.1.

150. *See infra* Section II.A.2.

151. *See infra* Section II.A.3.

152. *See infra* Section II.A.4.

153. *See infra* Section II.B.1.

154. *See infra* Section II.B.2.

155. *See infra* Section II.C.

156. Services in the community include evidence-based treatment modalities, such as wraparound services, functional family therapy, mental health treatment, and substance abuse

in DJS-operated placements.¹⁵⁷ Third, juveniles face the risk of being incarcerated for a longer period of time than an adult who is convicted of the same offense.¹⁵⁸ Finally, juveniles are entitled to every constitutional right afforded to adults, except for the fundamental right of trial by jury.¹⁵⁹

1. *Unfettered Judicial Discretion*

Jury deliberations—a group decision-making process—serve as a protection against judicial discretion and bias.¹⁶⁰ Juvenile courts in Maryland control where to send a juvenile,¹⁶¹ meaning that juvenile court judges have unfettered discretion in choosing whether to even incarcerate a juvenile.¹⁶² This judicial discretion violates Article 24 of the Maryland Declaration of Rights because it “deprive[s]” a juvenile “of his . . . liberty” without “the judgment of his peers.”¹⁶³ Jury trials provide a check on juvenile judges’ discretion.¹⁶⁴ The Supreme Court alluded to this check when it stressed that the constitutional jury trial provisions echo an essential principle about the practice of official power in the criminal legal system and society’s hesitancy to allow one judge to have unlimited power, as opposed to a jury, composed of a group of judges.¹⁶⁵

A judge has a more expansive role in juvenile court proceedings than in adult court proceedings.¹⁶⁶ This expansive role is not because lawmakers think that a judge might be more understanding and knowledgeable than a jury about the struggles a juvenile has gone through, but instead is based

counseling. MD. DEP’T OF JUVENILE SERVS., RESIDENTIAL AND COMMUNITY-BASED SERVICES GAP ANALYSIS 2 (2013); *see infra* note 162 and accompanying text.

157. *See infra* notes 173–178 and accompanying text.

158. *See infra* notes 188–195 and accompanying text.

159. *See infra* notes 204–209 and accompanying text.

160. *See* Prescott Loveland, *Acknowledging and Protecting Against Judicial Bias at Fact-Finding in Juvenile Court*, 45 FORDHAM URB. L.J. 283, 305 (2017) (“Subtle but dangerous biases such as situational biases . . . and implicit racial biases are ‘most likely to be uncovered—and corrected—by means of an interchange between individuals with conflicting perspectives, such as what typically occurs during a jury deliberation.’” (internal citation omitted)).

161. MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-19(d)(1)(iii) (West 2011). Judges have discretion as to what level of care is in a juvenile’s “best interest.” *Id.* For example, a judge may choose to send a juvenile to a hardware secure facility or a staff secure facility but does not designate the individual facility that a juvenile will go to. That is within DJS’s power. *Id.* § 3-8A-19(d)(1)(ii).

162. There are no mandatory or statutory maximums, so the juvenile judge is the one who decides whether an individual will be incarcerated or will receive services in the community. *See id.* § 3-8A-24(a) (“[A]n order under this subtitle vesting legal custody in [a juvenile] is effective for an indeterminate period of time.”).

163. MD. CONST. art. 24.

164. *See supra* notes 160–163 and accompanying text.

165. *Duncan v. Louisiana*, 391 U.S. 145, 156 (1968).

166. *See* Loveland, *supra* note 160, at 288 (describing the judge’s role as one that is “all encompassing: managing the case, learning about the juvenile’s life, ruling on evidentiary disputes, sentencing juveniles, and also—despite all the inadmissible information the judge was privy to—adjudicating guilt through bench trials rather than jury trials”).

solely on the *McKeiver* rationale that juries would turn juvenile proceedings into a fully adversarial process.¹⁶⁷ Yet this rationale lacks merit. Not only are judges more likely to convict than juries,¹⁶⁸ but the juvenile system in Maryland is already fully adversarial.¹⁶⁹ To sum up the harmful effect that judicial discretion plays in a disposition, the law presumes that judges acting as the finder-of-fact at a bench trial are skilled at setting inadmissible evidence from pre-trial proceedings aside and making a neutral and objective decision.¹⁷⁰

2. *Deplorable Conditions of Youth Confinement*

Since the procedures in juvenile courts are supposedly not as rigorous and thorough as the procedures in adult courts, there must be “limitations upon the conditions under which the state may confine the juveniles.”¹⁷¹ If Maryland lawmakers contend that the juvenile system is distinct from the criminal system, demonstrated by the fact that no legislation speaking to juvenile justice reform in this context has been introduced in Maryland, then it should necessarily be the case that the conditions of confinement in DJS-operated facilities are distinct from conditions of confinement in Maryland jails. The data, however, do not bear this out.¹⁷²

In July 2019, the Juvenile Justice Monitoring Unit (“JJMU”) described the Victor Cullen Center (“Cullen”)¹⁷³ as having a “prison-like culture . . . and the absence of an overarching . . . rehabilitation model.”¹⁷⁴ Faculty at Cullen did not adhere to seclusion policies.¹⁷⁵ For example, while the youth

167. See *supra* notes 59–62 and accompanying text.

168. See Daniel Givelber & Amy Farrell, *Judges and Juries: The Defense Case and Differences in Acquittal Rates*, 33 LAW & SOC. INQUIRY 31, 48 (2008) (describing the acquittal rates between juries and judges, noting that “juries go from being [fifty] percent more likely to acquit when the defendant and a witness testify to being [ninety] percent more likely when the defendant also has no criminal record”).

169. See *infra* notes 219–222 and accompanying text.

170. Gary Solomon, *I Got the Post-McKeiver Blues*, 60 RUTGERS L. REV. 105, 107 (2007).

171. *Morales v. Turman*, 364 F. Supp. 166, 175 (E.D. Tex. 1973) (noting that “[t]his doctrine has been labelled the ‘right to treatment,’ and finds its basis in the due process clause of the [F]ourteenth [A]mendment” and that “[t]he commitment of juveniles to institutions under conditions and procedures much less rigorous than those required for the conviction and imprisonment of an adult offender gives rise to [these] limitations”). For example, proponents of Maryland’s juvenile system may argue that because the rules of evidence do not apply at juvenile proceedings, the juvenile system is not as rigorous as the adult criminal system. *In re Victor B.*, 336 Md. 85, 90, 646 A.2d 1012, 1014 (1994).

172. See *infra* notes 173–181 and accompanying text.

173. Cullen is a hardware secure DJS-operated facility. MD OFFICE OF THE ATTORNEY GEN., JUVENILE JUSTICE MONITORING UNIT (JJMU), 2019 FIRST QUARTER REPORT 8 (2019) [hereinafter JJMU REPORT].

174. *Id.* at 9.

175. *Id.* (finding that the director of Cullen detailed that he should have given his staff members more clarity regarding placing youth in seclusion, as the youth who were placed in seclusion “did not present an imminent threat . . . at the time . . . as required by DJS policy for an authorization of seclusion to occur”).

were in seclusion, staff members did not regularly check on youth and the youth were not assessed by mental health or medical staff.¹⁷⁶ At the Baltimore City Juvenile Justice Center (“BCJJC”), JJMU advocates found a lack of rehabilitation aspects. Concerns at BCJJC included the drastic increase in the use of seclusion and a lack of mental health staff for the youth.¹⁷⁷ At BCJJC the average daily population in the first quarter of 2019 was 88 youth per day, but physical restraints were used 100 times, handcuffs and shackles were used 22 times, and solitary confinement was used 12 times.¹⁷⁸

The goals of Maryland’s juvenile code and the goals of DJS state that youth should only be committed when absolutely necessary.¹⁷⁹ For example, in 2018, the juvenile court placed 28.2% of juveniles on probation and committed 11.8% to DJS placement.¹⁸⁰ Of those committed to DJS placement, however, the same number of children (405) were committed to state-operated facilities as were committed to group homes, independent living, foster care, intermediate care facilities for addictions, and residential treatment centers *combined*.¹⁸¹

The argument that juveniles should be given the right to a jury trial because of their potential loss of freedom becomes even more imperative when we consider those 405 children committed to the most restrictive placements¹⁸²—where solitary confinement, shackles, and physical restraints are common practices.¹⁸³ To make matters worse, these deplorable incarceration conditions have a permanent and debilitating impact on youthful offenders, which completely undercuts any possibility for rehabilitation.¹⁸⁴

176. *Id.*

177. *Id.* at 38–39.

178. *Id.* at 38.

179. *See* MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-15(e)(1) (West 2011) (explaining “[d]etention . . . may not be continued beyond emergency detention . . . unless, upon an order of court after a hearing, the court has found that” detention is necessary to protect the juvenile or others, or the juvenile is likely to leave the court’s jurisdiction); DJS STRATEGIC PLAN, *supra* note 90, at 4 (stating one of DJS’s goals as “only us[ing] incarceration when necessary for public safety”).

180. DJS DATA RESOURCE GUIDE, *supra* note 104, at 22.

181. *Id.* at 246.

182. Just as being committed to prison, as opposed to jail, results in a greater loss of freedom, being committed to a more restrictive youth placement, as opposed to a less restrictive setting, results in a greater loss of freedom. *See* Patrick McCarthy, Vincent Schiaraldi, & Miriam Shark, *The Future of Youth Justice: A Community-Based Alternative to the Youth Prison Model*, NEW THINKING CMTY. CORR., Oct. 2016, at 1, 2, <https://www.ncjrs.gov/pdffiles1/nij/250142.pdf> (noting that a states’ dependence on “large, congregate facilities has resulted in scandalous abuses, unconstitutional conditions, and poor public safety outcomes almost since their inception”).

183. JJMU REPORT, *supra* note 173.

184. Lilah Wolf, *Purgatorio: The Enduring Impact of Juvenile Incarceration and a Proposed Eighth Amendment Solution to Hell on Earth*, 14 STAN. J. C.R. & C.L. 89, 98 (2018); *see id.* at 97–98 (“Incarcerated youths’ isolation only augments the impact of maltreatment because they lack the human connections that encourage positive attachment and self-esteem, undermining their ability

In the JJMU report, the director of JJMU advised Governor Hogan, members of the General Assembly, and DJS that Maryland should adopt other jurisdictions' practices of closing down large detention facilities and replacing them with rehabilitation facilities that provide youthful offenders with individualized treatment plans and services.¹⁸⁵ The reality of DJS-operated facilities is that they are punitive and subject juveniles to incarceration conditions that are similar to those that adults face.¹⁸⁶ Therefore, juveniles are constitutionally entitled to a jury trial, because subjecting juveniles to these incarceration conditions necessarily violates the Maryland constitutional provision that no one may be "imprisoned or disseized of his freehold liberties . . . or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers."¹⁸⁷

3. Juvenile Sentences Are Excessive as Compared to Adult Sentences

The very definition of what constitutes a delinquent act is "an act which would be a crime if committed by an adult."¹⁸⁸ Yet because of indeterminate sentencing in Maryland's juvenile system,¹⁸⁹ a juvenile may serve a longer period of incarceration than an adult¹⁹⁰ for the same crime.¹⁹¹ Juveniles can be incarcerated until the age of twenty-one,¹⁹² while an adult is incarcerated until their statutorily-defined penalty is completed.¹⁹³ In Maryland, the right to a jury trial extends to adults who are facing at least ninety days of

to cope with the traumas they experience. The personal relationships so difficult to maintain while incarcerated also carry a variety of other tangible benefits, for instance helping youths develop self-control and self-confidence.").

185. JJMU REPORT, *supra* note 173, at v. By rehabilitation centers that provide services, the director of JJMU meant that DJS should provide "a continuum of community-based care for youth in need of intensive services within the health care, child welfare, and juvenile justice systems." *Id.* at 3. Examples include both non-residential facilities and short-term residential facilities. *Id.* at 4.

186. *See supra* notes 173–178 and accompanying text. Like DJS-operated facilities, segregation is also common in Maryland jails and prisons. *See* DISABILITY RIGHTS MD., BEYOND INCARCERATION: LOCK DOWN FOR PERSONS WITH DISABILITIES 6 (2017) (finding that Maryland correctional institutions' use of solitary confinement is almost twice that of the national average).

187. MD. CONST. art. 24.

188. MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-01(l) (West 2011).

189. *Cf.* JJMU REPORT, *supra* note 173, at 12. DJS now requires juveniles at Cullen to serve at least a six-month period of incarceration. *Id.* Even for those youth who have successfully completed the program requirements have their stay "arbitrarily extended." *Id.* The director of JJMU emphasized that this form of determinate sentencing "is in direct contravention" to the policy rationales of having a separate juvenile justice system, because juveniles warrant the protection of rehabilitation and not "an approach that is exclusively punitive." *Id.*

190. *See* MD. OFFICE OF THE ATTORNEY GEN., JJMU, 2019 SECOND QUARTER REPORT 5 (2019) (concluding that "[t]he creation of a minimum time period for youth confinement reinforces the prison-like mentality of 'doing time' that is already pervasive at DJS placement sites"). *But see supra* note 189 and accompanying text.

191. *See supra* notes 2–8 and accompanying text.

192. CTS. & JUD. PROC. § 3-8A-24(c).

193. *See, e.g.,* CRIM. LAW § 3-402(b) (enumerating that the penalty for robbery is imprisonment for up to fifteen years).

incarceration.¹⁹⁴ Juvenile confinement often exceeds this ninety-day standard, as evidenced by the average length of stay of 169 days in 2018.¹⁹⁵

The fact that juveniles may face a longer time incarcerated than an adult who committed the same offense justifies that juveniles are constitutionally entitled to a jury trial. Because it would be unconstitutional to deprive an adult of a jury trial for an offense that carries at least ninety days incarceration,¹⁹⁶ it is also unconstitutional to deprive a juvenile of a jury trial for the same offense. The Maryland Declaration of Rights is unambiguous when it states that no one may be “imprisoned . . . or deprived of his . . . liberty . . . but by the judgment of his peers.”¹⁹⁷ The legislature has interpreted the deprivation of liberty to be “imprisonment for a period in excess of [ninety] days.”¹⁹⁸ Since juveniles may be incarcerated longer than an adult who committed the same offense and is entitled to a jury trial, juveniles are constitutionally entitled to a jury trial.

4. *Unconstitutional Denial of All Due Process Protections Afforded to Adults*

The importance of the jury trial in the American legal system cannot be overstated. “The powers of the criminal jury were the ones our Framers were most adamant about safeguarding, because . . . there is a heightened need for protecting individual rights.”¹⁹⁹ Even before *Gault*, Maryland’s highest court deemed that persons under the age of eighteen are protected by the Due Process Clause of the Fourteenth Amendment.²⁰⁰ After *Gault*, Maryland extended most constitutional rights to juveniles.²⁰¹

The right to counsel is so critical in juvenile proceedings that “the standard for waiver of counsel in a delinquency proceeding is necessarily as

194. CTS. & JUD. PROC. § 4-302(e)(2).

195. *See supra* text accompanying note 108. To show how common it is for the length of juvenile incarceration to exceed the ninety-day standard, it is useful to look at the average length of stay in prior years. In 2017, the average length of stay for youth in a DJS-operated facility was 194.5 days. DEP’T OF JUVENILE SERVS., DATA RESOURCE GUIDE FISCAL YEAR 2017 138 (2017). In 2016, the average length of stay was 213.2 days. DEP’T OF JUVENILE SERVS., DATA RESOURCE GUIDE FISCAL YEAR 2016 136 (2016). In 2015, the average length of stay was 229.2 days. DEP’T OF JUVENILE SERVS., DATA RESOURCE GUIDE FISCAL YEAR 2015 130 (2015). In 2014, the average length of stay was 204.9 days. DEP’T OF JUVENILE SERVS., DATA RESOURCE GUIDE FISCAL YEAR 2014 128 (2015). In 2013, the average length of stay was 172.5 days. DEP’T OF JUVENILE SERVS., DATA RESOURCE GUIDE FISCAL YEAR 2013 126 (2013).

196. *See* CTS. & JUD. PROC. § 4-302(e)(2)n.

197. MD. CONST. art. 24.

198. CTS. & JUD. PROC. § 4-302(e)(2).

199. Meghan J. Ryan, *Juries and the Criminal Constitution*, 65 ALA. L. REV. 849, 852 (2014) (citing *Apprendi v. New Jersey*, 530 U.S. 466, 498 (2000) (Scalia, J., concurring)).

200. *Police Comm’r of Balt. City v. Siegel Enters., Inc.*, 223 Md. 110, 120, 162 A.2d 727, 731 (1960) (citing *Yick Wo. v. Hopkins*, 118 U.S. 356 (1886)).

201. *See supra* Sections I.B–C.

strict as the waiver standard that attaches in a criminal case.”²⁰² Under Article 21 of the Maryland Declaration of Rights,²⁰³ the courts have held that juveniles are entitled to a speedy trial²⁰⁴ and fair notice.²⁰⁵ Due process also requires that juveniles enjoy the privilege against self-incrimination.²⁰⁶ Further, juveniles have the right to confrontation and cross-examination,²⁰⁷ as well as the beyond-a-reasonable-doubt evidentiary standard.²⁰⁸ Maryland’s highest court has acknowledged that the distinctions between juvenile proceedings and adult criminal proceedings “have all but disappeared” because with the exceptions of indictment proceedings and jury trials, the fundamental rights afforded to adults charged with crimes apply in juvenile proceedings as well.²⁰⁹ Despite the progress that Maryland has made in protecting juveniles, there are still major shortcomings—the fact remains that juveniles are being unconstitutionally incarcerated and that they are afforded every single right except the right to a jury trial.²¹⁰ Therefore, juveniles must be provided with all procedural protections that are provided to adults facing criminal charges.

B. Policy Rationales: Outdated Modalities and Punitive Measures

Although the constitutional reasons for allowing Maryland juveniles the right to a jury trial should be enough to encourage the legislature to amend the Juvenile Causes Act, there are also strong policy arguments for allowing juveniles in Maryland the protection of the jury trial right. First, it has been

202. *In re Christopher T.*, 129 Md. App. 28, 36, 740 A.2d 69, 73 (1999); *see also id.* at 34, 740 A.2d at 72 (“The fundamental right to counsel unquestionably extends to juveniles . . .”).

203. MD. CONST. art. 21. For another example of how the Maryland Declaration of Rights provides more protections for those accused of criminal offenses, see DAN FRIEDMAN, *THE MARYLAND STATE CONSTITUTION* 52 (2011) (“Article 21 [of the Maryland Declaration of Rights] also guarantees that a defendant may only be convicted by a unanimous jury. There is no equivalent protection under the federal Constitution and, in fact, the Supreme Court has held that there is no federal constitutional impediment to conviction by a nonunanimous jury.” (internal citation omitted)).

204. *See In re Thomas J.*, 372 Md. 50, 70, 811 A.2d 310, 322 (2002) (holding that under the fundamental fairness standard, both Article 21 of the Maryland Declaration of Rights and the Fourteenth Amendment Due Process Clause mandate that juveniles be given a speedy trial).

205. *See In re Roneika S.*, 173 Md. App. 577, 588, 920 A.2d 496, 503 (2007) (“In light of *Gault*, *Winship*, and *Thomas*, the notice provision of Article 21 . . . must apply to juvenile delinquency proceedings.”).

206. *See In re Spalding*, 273 Md. 690, 704–05, 332 A.2d 246, 254 (1975) (“Due Process requires that various of the federal constitutional guarantees accompanying . . . criminal proceedings, . . . including the privilege against self-incrimination, be made applicable at the adjudicatory stage of those juvenile proceedings . . . which may result in confinement of the child . . .”).

207. *See In re Appeal No. 101(76)*, 34 Md. App. 1, 11, 366 A.2d 392, 398 (1976) (holding that the Confrontation Clause of the Sixth Amendment applies to juvenile delinquency proceedings).

208. *See In re Calvin S.*, 175 Md. App. 516, 537, 930 A.2d 1099, 1110–11 (2007) (“In a delinquency proceeding, the juvenile court must determine whether the State has proven beyond a reasonable doubt that the accused juvenile committed the delinquent act . . .”).

209. *Lopez-Sanchez v. State*, 388 Md. 214, 225, 879 A.2d 695, 701 (2005).

210. *See supra* Section II.A.2.

almost fifty years since *McKeiver* was decided and the Court's rationale behind denying juveniles the right to a jury trial no longer applies.²¹¹ Second, the rehabilitative policies and goals promised by the Maryland General Assembly and the Department of Juvenile Services are not being fulfilled, and juveniles in Maryland are not being provided with rehabilitation.²¹²

1. The Destruction of the McKeiver Principles

Times have changed with respect to the treatment of juveniles, and the *McKeiver* rationale no longer applies.²¹³ The realities of Maryland's juvenile system trigger the concerns set out by Justice Douglas in his *McKeiver* dissent.²¹⁴ Justice Douglas emphasized how even if juveniles were not incarcerated with adults, those juveniles were being treated as adults in the first instance by simply being incarcerated at all.²¹⁵ This is the reality in Maryland almost fifty years later.²¹⁶ In the past fifteen years, the Supreme Court has recognized "that children are constitutionally different from adults for purposes of sentencing," noting that "they are less deserving of the most severe punishments."²¹⁷ Even though the Court's opinions were centered around the death penalty and life imprisonment, the rationale applies to juveniles being adjudicated delinquent.²¹⁸

This is not to suggest that juvenile disposition deserves the same stature as capital sentencing, but the Court's reasoning is relevant because a juvenile's disposition is in effect a sentencing proceeding.²¹⁹ Coupled with the reality that conditions of confinement are harsh and retributive, and that juveniles face the potential of a longer incarceration period than adults, it is reasonable to conclude that Maryland's juvenile system is failing to recognize the Court's standard that juveniles are less deserving of

211. *See infra* Section II.B.1.

212. *See infra* Section II.B.2.

213. *See infra* Section II.B.2.

214. *See supra* notes 63–65 and accompanying text.

215. *McKeiver v. Pennsylvania*, 403 U.S. 541, 560 (1971) (Douglas, J., dissenting) (emphasizing how one juvenile judge described a facility as "a maximum security prison for adjudicated delinquents" (quoting *In re Bethea*, 257 A.2d 368, 369 (Pa. 1969))). In Maryland, juveniles cannot be confined with adults. MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-15(g) (West 2011).

216. *See supra* Section II.A.2.

217. *Miller v. Alabama*, 567 U.S. 460, 471 (2012) (internal quotation omitted) (quoting *Graham v. Florida*, 560 U.S. 48, 68 (2010)).

218. The rationale from *Miller* is applicable to juvenile adjudicatory proceedings because the Court's reasoning for the holding, namely that juveniles are inherently different than adults, applies to all justice-involved juveniles. *See* Piper Waldron, *Youth Matters: Miller v. Alabama's Implications for Individualized Review in Juvenile Sentencing*, 46 LOY. L.A. L. REV. 775, 783–84 (2013) (describing how *all* youth, not just youth who commit the most serious of crimes once subject to the death penalty, have psychosocial and biological "attributes" that necessitate judges to treat juveniles differently than adults for sentencing purposes).

219. *See supra* text accompanying notes 98–101.

punishment than adults.²²⁰ The underlying principle that *McKeiver* was decided upon—that the juvenile system is distinct from the adult criminal system²²¹—has been destroyed. Maryland needs to follow in *pari materia* with recent Supreme Court jurisprudence that juveniles are in need of more protection than adults.²²² Maryland must also go above the federal floor by interpreting Articles 21 and 24 more broadly than the Fourteenth Amendment²²³ and granting juveniles the right to a jury trial.

2. False Picture of Rehabilitation

The entire rationale behind the creation and maintenance of a juvenile system is that juveniles are in need of rehabilitation, not punishment.²²⁴ Since juveniles in Maryland “bargain[] away” their constitutional rights in light of the system’s promise of rehabilitation, the state is obligated to do just that, actually rehabilitate the juvenile offender.²²⁵ The juvenile delinquency laws in Maryland suggest that the juvenile system remains focused on rehabilitation,²²⁶ but the reality does not complement the laws and policies currently in place.²²⁷

One does not need to be a social scientist to conclude that rehabilitation should reduce recidivism rates. It seems logical when statistical analyses provide that states who focus on rehabilitating youthful offenders have lower recidivism rates for juvenile delinquent acts.²²⁸ Yet Maryland, a state that claims to be committed to the rehabilitation of juveniles, does not have

220. It must necessarily be the case that if the Court feels that juveniles are less deserving of the most severe punishments, then they are less deserving of less severe punishments as well. *See supra* note 218 and accompanying text.

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

222. *See supra* text accompanying note 217.

223. *See supra* note 128.

224. *See supra* Section I.A.

225. SAMUEL M. DAVIS, RIGHTS OF JUVENILES § 7:7, Westlaw (database updated Feb. 2020).

226. *See supra* Section I.C.

227. *See* Robin Walker Sterling, *Fundamental Unfairness: In re Gault and the Road Not Taken*, 72 MD. L. REV. 607, 675 (2013). Professor Sterling states:

Two popular misperceptions of juvenile court allow discretion to flourish unchecked. The first misconception is that any given state’s juvenile court system . . . is geared primarily to support the rehabilitation of a system-involved youth. While this was perhaps true in the first decades of juvenile court’s existence, as of 1997, seventeen states had changed the purpose clauses of their juvenile codes to incorporate goals of punishment, accountability, and public safety—goals traditionally reserved for the criminal justice system. And “[a]lthough many jurisdictions still retain language suggesting rehabilitation as a goal, only three states emphasize the best interests of the child as the primary purpose of the juvenile court.”

Id. (footnotes omitted). Maryland is not one of these three states.

228. C. Phillip Nichols, Jr., *Best Practices Around the Country and in Maryland*, MD. B.J., Sept. 2016, 24, 28 (describing that in Missouri “of the 813 juveniles that were discharged from Missouri [Division of Youth Services] in 2014, only 4.3 percent were recommitted, 0.9 percent were incarcerated as adults, and 7.2 percent were either placed on probation or 120-day treatment, resulting in a recidivism rate of only 12.3 percent within one year of discharge”).

recidivism rates that reflect rehabilitation.²²⁹ In 2015, of the 1142 children released from committed programs, 10.5% were reconvicted within six months of their release, 18.7% within twelve months, 29.9% within twenty-four months, and 35.1% within thirty-six months.²³⁰

In 2016, 208 children were released from group homes, and 347 children were released from state-operated facilities.²³¹ Of the children released from group homes, 40.9% of youth were rearrested within a year of their release, 15.4% were reconvicted, and 10.6% were reincarcerated.²³² Of the children released from state-operated facilities, 53.6% were rearrested within a year of their release, 26.2% were reconvicted, and 21.0% were reincarcerated.²³³ These numbers show that not only are recidivism rates for any type of placement in Maryland contraindicated to the supposed rehabilitation taking place, but the more secure (jail-like) the placement, the higher the recidivism rates.²³⁴ Even if one argues that the Maryland juvenile system is rehabilitative, it still does not lead to the conclusion that “our benevolent purposes justify deprivation of rights applicable to adult prosecutions.”²³⁵

C. Jury Trial Rights for Juveniles in Other States²³⁶

As early as 1971, states began affording juveniles the right to a jury trial.²³⁷ In *RLR v. State*,²³⁸ the Alaska Supreme Court reasoned that the purposes of the right to a trial by jury applied as much in juvenile cases as it did in criminal proceedings.²³⁹ The court reasoned that the phrase “‘criminal prosecution[.]’ under the Alaska constitutional jury trial [right] . . . include[d] any offense a direct penalty for which may be incarceration in a jail or penal institution.”²⁴⁰ The court applied this definition to RLR’s case, analyzing that the minor delinquent’s behaviors constituted an offense because the sale

229. See *infra* text accompanying note 230.

230. DJS DATA RESOURCE GUIDE, *supra* note 104, at 187.

231. *Id.* at 198.

232. *Id.*

233. *Id.*

234. See *supra* text accompanying notes 229–233 for statistics.

235. *RLR v. State*, 487 P.2d 27, 31 (Alaska 1971).

236. As of July 2014, eighteen states grant juveniles the right to a jury trial in delinquency proceedings, albeit some on conditional grounds. These states include Alaska, Arkansas, Colorado, Idaho, Illinois, Kansas, Massachusetts, Michigan, Minnesota, Montana, New Hampshire, New Mexico, Ohio, Oklahoma, Texas, Virginia, West Virginia, and Wyoming. *Juvenile Right to Jury Trial Chart*, NAT’L JUVENILE DEF. CTR. (July 17, 2014), <https://njdc.info/wp-content/uploads/2017/03/Right-to-Jury-Trial-Chart-7-18-14.pdf>.

237. See *infra* text accompanying notes 238–243.

238. 487 P.2d 27 (Alaska 1971).

239. *Id.* at 32 (“The purposes of the right to jury trial . . . such as protection ‘against the corrupt . . . prosecutor and against the . . . biased . . . judge,’ apply as much in children’s cases as in adults’ cases.” (citing *Duncan v. Louisiana*, 391 U.S. 145, 156 (1968))).

240. *Id.* (internal quotations omitted) (quoting *Baker v. City of Fairbanks*, 471 P.2d 386, 402 (Alaska 1970)).

of LSD is a crime under Alaska's statutory provisions. Further, RLR would be subject to incarceration upon disposition.²⁴¹ The court concluded by stressing that to treat the "adjudicat[ory] phase of a [juvenile] proceeding for the sale of LSD differently from" a criminal adult proceeding for jury trial right purposes "would be a *cynical and unprincipled refusal* to obey the Alaska constitution."²⁴²

The Alaska Supreme Court held that a child who is charged with an offense that would constitute a crime if committed by an adult and subsequently subjected to incarceration, the state constitution guarantees that child a right to a jury trial.²⁴³ In *In re L.M.*,²⁴⁴ the Kansas Supreme Court held that because the Kansas juvenile code had become akin to the adult criminal system and was used as a punitive tool, juveniles had the state constitutional right to a jury trial.²⁴⁵ In interpreting a juvenile's right to a jury trial under the Kansas Constitution, the court looked at the plain language, which extended the jury trial right "to all prosecutions."²⁴⁶ The court had before understood this language to "mean all criminal prosecutions for violations of the laws of the state."²⁴⁷ Applying this precedent to juveniles, the court reasoned that not only did the Kansas juvenile code frequently call its proceedings a prosecution, but that these proceedings resulted from claims that a juvenile had broken the criminal laws of Kansas.²⁴⁸ The court concluded that the proceedings of the Kansas juvenile code fit within the meaning of "all prosecutions," and therefore juveniles were entitled to a jury trial.²⁴⁹

The decisions from Alaska and Kansas's highest courts indicate a slow-moving trend among the states to grant juveniles the right to a jury trial, but a trend, nonetheless. Article 21 of the Maryland Declaration of Rights mirrors the language of both the Alaska and Kansas Constitutions that have been the ground for granting juveniles the right to a jury trial. Therefore, the reasoning applied by the courts in these two jurisdictions should be applied to Maryland law, because the very definition of a delinquent act in Maryland

241. *Id.* at 32–33.

242. *Id.* at 33 (emphasis added).

243. *Id.*

244. 186 P.3d 164 (Kan. 2008).

245. *Id.* at 172; *see id.* at 168 (noting that the juvenile code, once focused on rehabilitation, "has shifted to protecting the public, holding juveniles accountable for their behavior and choices"). The court determined that the Kansas juvenile code had been used as a punitive tool by analyzing the language of the statutes. *Id.* For example, the court noted that under the juvenile code, "a juvenile is required to plead guilty, not guilty, or nolo contendere like adults charged with a crime." *Id.* The code also refers to juvenile commitment as incarceration and courts are required to follow a sentencing matrix, similar to the Kansas Sentencing Guidelines. *Id.* at 169.

246. *Id.* at 171 (citation omitted).

247. *Id.* (quoting *State ex rel. Mayer v. Pinkerton*, 340 P.2d 393 (1959)).

248. *Id.* at 172.

249. *Id.*

is “an act which would be a crime if committed by an adult.”²⁵⁰ Further, just as Alaska’s highest court has held that “contemporary social values rather than historical categorizations determine whether a prosecution is criminal for purposes of the right to jury trial,”²⁵¹ Maryland’s highest court has reasoned that “the Maryland cases have determined whether a juvenile proceeding should be treated as a criminal prosecution for purposes of a specific right guaranteed by Maryland law.”²⁵²

Like the Kansas Constitution, Article 21 of the Maryland Constitution provides “[t]hat in all criminal prosecutions, every man hath a right . . . to a speedy trial by an impartial jury.”²⁵³ The Maryland Court of Appeals has interpreted the phrase “all criminal prosecutions” to “guarantee[] a right that is absolute in the sense that it applies to all criminal prosecutions or . . . to the prosecution of *every* crime.”²⁵⁴ As Article 21 is parallel in language to both the Alaska and Kansas Constitutions, and because both of these jurisdictions granted juveniles the right to a jury trial on state constitutional grounds, it is reasonable for Maryland to follow this line of reasoning and grant juveniles the right to a jury trial.²⁵⁵ The policy arguments emphasized in *In re L.M.* are also applicable to Maryland’s modern juvenile system.²⁵⁶

Although Maryland’s juvenile statutory scheme does not refer to juvenile proceedings as criminal prosecutions,²⁵⁷ the specific terminology used does not make a difference because the proceedings themselves operate as a criminal prosecution.²⁵⁸ Before *McKeiver* was decided, the Supreme Court of New Mexico held in *Peyton v. Nord*²⁵⁹ that “[a] juvenile charged with violation of a state law . . . is entitled to a trial by jury in juvenile court.”²⁶⁰ The court reasoned that when the state constitution was adopted, Albert Peyton could not have been sentenced to a term of imprisonment without a jury trial.²⁶¹ Based on this historical context, the court declared

250. MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-01(l) (West 2011).

251. *RLR v. State*, 487 P.2d 27, 32 (Alaska 1971).

252. *In re Thomas J.*, 372 Md. 50, 58, 811 A.2d 310, 315 (2002).

253. MD. CONST. art 21.

254. *State v. Allen*, 423 Md. 208, 224, 31 A.3d 476, 486 (2011) (emphasis added) (quoting *United States v. Pelullo*, 14 F.3d 881, 895 (3d Cir. 1994)).

255. *See supra* notes 237–254 and accompanying text.

256. *See* Brief for Appellant at 24, *In re L.M.*, 186 P.3d 164 (Kan. 2008) (No. 06–96197–A) (noting how juveniles “face a very different situation than that which existed in 1971 when *McKeiver* was decided,” as apparent by the Kansas juvenile code becoming akin to the adult criminal code, “both in form and underlying philosophy,” and by the Kansas juvenile code’s “goals of public safety and juvenile accountability” becoming “seemingly more important than rehabilitation”).

257. *See* MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-02(b) (West 2011) (referring to the proceedings as adjudications).

258. *See supra* notes 200–210 and accompanying text.

259. 437 P.2d 716 (N.M. 1968).

260. *Id.* at 725.

261. *Id.* at 723.

that a mere “change in terminology or procedure” was not commensurate with a court denying Albert a jury trial and subsequently sentencing him to incarceration.²⁶²

Like juveniles in New Mexico at the time of the adoption of the state constitution, juveniles in Maryland, at the time of the adoption of the Maryland Declaration of Rights, had the right to a jury trial.²⁶³ Therefore, the fact that juveniles had the right to a jury trial at the time of the adoption of the Maryland Declaration of Rights logically takes precedent over what the state legislature has chosen to call juvenile proceedings. Maryland needs to follow in line with states like Alaska, Kansas, and New Mexico, and grant juveniles the right to a jury trial.

III. CONCLUSION

Juvenile incarceration in Maryland is so egregious and punitive that one young child died after being restrained by DJS staff.²⁶⁴ In 2007, seventeen-year-old Isaiah Simmons, III died at a staff secure facility after being restrained by staff members.²⁶⁵ Disguised under a false premise of rehabilitation, with softer terminology and non-punitive policies, Maryland’s juvenile system is harmful for Maryland youth because it has resulted in “judges ruling for fewer procedural protections for juveniles.”²⁶⁶ In Maryland the right to a jury trial is so critical that “[t]o satisfy constitutional due process standards, the waiver of the right to a jury trial must constitute an intentional relinquishment.”²⁶⁷ Yet children today are denied this fundamental right.

Each injustice discussed in this Comment—judicial discretion in placing the child,²⁶⁸ conditions of confinement,²⁶⁹ excessive sentences,²⁷⁰ and

262. *Id.*

263. *In re Johnson*, 254 Md. 517, 521, 255 A.2d 419, 421 (1969) (“Until the beginning of this century, Maryland made no distinction in regard to the manner in which criminal offenders, whether they be adults or minors, were tried.”).

264. *See State v. Kanavy*, 416 Md. 1, 9, 4 A.3d 991, 995 (2010) (“When the state by . . . its power so restrains an individual’s liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs[,] . . . it transgresses the substantive limits on state action set by . . . the Due Process Clause.” (quoting *DeShaney v. Winnebago Cty. Dep’t of Soc. Servs.*, 489 U.S. 189, 200 (1989))).

265. *Kanavy*, 416 Md. at 5, 4 A.3d at 993.

266. Michael J. Ritter, *Just (Juvenile Justice) Jargon: An Argument for Terminological Uniformity Between the Juvenile and Criminal Justice Systems*, 37 AM. J. CRIM. L. 221, 237 (2010). The author further notes “that legal changes in the past few decades have transformed these once persuasive rhetorical strategies into mere vestiges that undermine the goals of the juvenile justice system.” *Id.* at 224.

267. *Dortch v. State*, 290 Md. 229, 234–35, 428 A.2d 1220, 1223 (1981) (citing *Boykin v. Alabama*, 395 U.S. 238 (1969)).

268. *See supra* Section II.A.1.

269. *See supra* Section II.A.2.

270. *See supra* Section II.A.3.

being denied all due process rights afforded to adults²⁷¹—is by itself enough to extend the constitutional protection of jury trials to juveniles. Yet taken in the aggregate, the reality becomes undeniably clear that juveniles are entitled to a jury trial under Articles 21 and 24 of the Maryland Declaration of Rights.

271. *See supra* Section II.A.4.