
**TRIAL OF JUVENILES AS ADULTS IN HEINOUS CRIMES:
CONSTITUTIONAL AND LEGAL CHALLENGES**

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DOI: <https://doi-doi.org/101555/ijarp.1156>**ABSTRACT**

The transfer of juvenile offenders to adult criminal courts for prosecution of heinous crimes represents one of the most contentious intersections of criminal law, constitutional rights, and developmental science. This paper examines the constitutional and legal challenges arising from such transfers, analyzing the foundational due process requirements established by the United States Supreme Court and their evolution through subsequent jurisprudence. It explores the tension between legislative efforts to impose stringent consequences for serious juvenile offending and constitutional protections that recognize the diminished culpability of youth. Through comparative analysis of recent Canadian jurisprudence and examination of transfer mechanisms across jurisdictions, this paper argues that while transfer mechanisms serve legitimate public safety interests, their implementation must rigorously incorporate consideration of the unique attributes of adolescence to satisfy constitutional requirements. The paper concludes with recommendations for reform that align legal practice with developmental science while maintaining accountability for serious offending.

1. INTRODUCTION

The question of how society should respond when children commit terrible acts of violence has long vexed legal systems, policymakers, and the public conscience. When a fourteen-year-old participates in a murder, when a sixteen-year-old commits sexual assault, or when a juvenile engages in calculated violent crime, the impulse to impose consequences commensurate with the harm is powerful and understandable. Yet the mechanisms through which the legal system determines that a young person should be tried as an adult raise

profound constitutional questions about due process, equal protection, and the very nature of punishment in a constitutional democracy.

The practice of transferring juvenile offenders to adult criminal courts has existed for decades, but its constitutional dimensions have only recently received sustained scrutiny from appellate courts. The United States Supreme Court has fundamentally reshaped the landscape of juvenile sentencing through a series of landmark decisions recognizing that "children are constitutionally different from adults for purposes of sentencing." These decisions *Roper v. Simmons*, *Graham v. Florida*, *Miller v. Alabama*, and *Montgomery v. Louisiana* establish that the Eighth Amendment's prohibition on cruel and unusual punishment requires sentencing courts to consider the distinctive attributes of youth before imposing the most severe penalties.

However, these constitutional principles have generated significant tension with statutory schemes that mandate or presume transfer for certain categories of serious offenses. When legislatures create categorical rules that channel young offenders into adult courts without individualized consideration of their developmental status, they risk running afoul of constitutional guarantees. Similarly, when transfer proceedings fail to provide adequate procedural protections, they may deny juveniles the due process to which they are entitled even in proceedings that are not criminal prosecutions in the formal sense.

This paper examines these constitutional and legal challenges through several lenses. Part II traces the constitutional framework governing juvenile transfer, examining the due process revolution initiated by *Kent v. United States* and the subsequent elaboration of Eighth Amendment principles. Part III analyzes the various mechanisms through which juveniles may be transferred to adult court, highlighting the constitutional vulnerabilities of mandatory and presumptive transfer schemes. Part IV examines the procedural due process requirements that attach to transfer proceedings, including the standards of proof, evidentiary rules, and the role of scientific evidence regarding adolescent development. Part V engages in comparative analysis, examining recent Canadian Supreme Court jurisprudence that has imposed stringent requirements for adult sentencing of juveniles. Part VI addresses the emerging challenge of ensuring meaningful opportunities for release for those sentenced as adults while still juveniles. The paper concludes with recommendations for reform that respect both legitimate public safety concerns and constitutional mandates.

2. The Constitutional Framework: From Kent to Miller

A. The Due Process Revolution: Kent and Gault

The modern constitutional law of juvenile transfer begins with *Kent v. United States*, decided by the Supreme Court in 1966. Morris Kent, a sixteen-year-old charged with housebreaking, robbery, and rape, was transferred to adult court after a proceeding in which the juvenile court judge failed to conduct a "full investigation" as required by statute, held no hearing, and provided no statement of reasons for the waiver. The Supreme Court held that the waiver of juvenile court jurisdiction was a "critically important" proceeding requiring due process protections.

Justice Fortas's opinion for the Court articulated principles that continue to resonate: "There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children." The Court held that juveniles facing transfer were entitled to a hearing, access to counsel, access to their records, and a statement of reasons for the transfer decision.

The following year, *In re Gault* extended due process protections to juvenile delinquency proceedings themselves, holding that juveniles charged with delinquency have constitutional rights to notice of charges, counsel, confrontation and cross-examination, and protection against self-incrimination. Together, *Kent* and *Gault* constitutionalized juvenile proceedings, rejecting the notion that the state's paternalistic interest in rehabilitation justified dispensing with fundamental fairness.

B. The Eighth Amendment and Juvenile Culpability

Nearly four decades after *Kent*, the Supreme Court began a systematic reconsideration of how the Eighth Amendment's prohibition on cruel and unusual punishment applies to juveniles. In *Roper v. Simmons* (2005), the Court held that the death penalty could not be imposed for offenses committed before age eighteen. Justice Kennedy's majority opinion identified three general differences between juveniles and adults that diminish juvenile culpability: "First, as any parent knows and as the scientific and sociological studies respondent and his amici cite tend to confirm, '[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.'"

Graham v. Florida (2010) extended this reasoning to sentences of life without parole for nonhomicide offenses, holding that such sentences categorically violate the Eighth Amendment when imposed on juveniles. The Court emphasized that juveniles are "less deserving of the most severe punishments" because of their "diminished culpability and greater prospects for reform." Graham also established that even when a life sentence is constitutionally permissible, the juvenile must have a "meaningful opportunity to obtain release based upon demonstrated maturity and rehabilitation."

Miller v. Alabama (2012) addressed mandatory life-without-parole sentences for homicide offenses. The Court held that such mandatory sentences violate the Eighth Amendment because they prevent the sentencer from considering the "hallmark attributes of youth" before imposing society's most severe penalty for juveniles. Miller did not categorically bar life without parole for juvenile homicide offenders, but required that sentencing schemes "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison."

Montgomery v. Louisiana (2016) made Miller retroactive, holding that Miller announced a substantive constitutional rule because it barred life without parole "for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility."⁴ The Court emphasized that "prisoners like Montgomery must be given the opportunity to show their crime did not reflect irreparable corruption; and, if it did not, their hope for some years of life outside prison walls must be restored."

Most recently, Jones v. Mississippi (2021) clarified that while Miller requires discretionary sentencing, it does not require a separate factual finding of permanent incorrigibility. The Court held that "a discretionary sentencing system is both constitutionally necessary and constitutionally sufficient" to satisfy Miller's requirements.

C. The Relevance of Developmental Science

Underpinning these constitutional developments is a growing body of scientific research regarding adolescent brain development. As the Missouri Supreme Court's dissent in *State v. Andrews* observed, "Brain imaging studies have shown that the frontal lobes of the brain, which are not developed until late adolescence, have an impact on response inhibition, regulation of emotion, planning and organization. Roper and Graham acknowledge that modern science now has established as fact the differences in juvenile brains and the effects of those differences on behavior and culpability."

This scientific understanding has several implications for transfer decisions. First, it suggests that adolescents' decision-making capacity is qualitatively different from that of adults, particularly in emotionally charged situations. Second, it indicates that adolescents are more susceptible to peer influence and less able to appreciate long-term consequences. Third, it supports the conclusion that adolescents have greater capacity for change and rehabilitation than adults whose character may be more fully formed.

Courts have increasingly recognized that these developmental differences must inform not only sentencing decisions but also the antecedent decision whether to transfer a juvenile to adult court in the first place. As the Wisconsin Court of Appeals recently stated, "The Supreme Court decisions... require courts to acknowledge that a youth who commits an offense is less culpable than an adult who commits the same offense."

3. Mechanisms of Transfer and Constitutional Vulnerability

A. Judicial Waiver

The traditional mechanism for transfer is judicial waiver, in which a juvenile court judge determines after a hearing whether the case should be transferred to adult criminal court. This approach, endorsed by Kent, typically requires consideration of statutory criteria such as the seriousness of the offense, the juvenile's age, prior record, sophistication, and prospects for rehabilitation.

Judicial waiver schemes are generally the least constitutionally problematic because they provide for individualized consideration of the juvenile's circumstances. However, they remain subject to challenge if the statutory criteria fail to require consideration of the "unique attributes of youth" identified by the Supreme Court. In Wisconsin, for example, the Court of Appeals recently held that the state's reverse waiver statute was unconstitutional "to the extent it does not require circuit courts to consider the unique attributes of youth identified by the United States Supreme Court."

B. Legislative Offense Exclusion

Legislative offense exclusion statutes automatically exclude certain categories of offenses from juvenile court jurisdiction, typically based on the nature of the offense and the juvenile's age. These statutes raise significant constitutional questions because they operate without any individualized determination regarding the juvenile's maturity, culpability, or amenability to treatment.

The constitutional vulnerability of legislative exclusion schemes lies in their categorical nature. If the Supreme Court's juvenile sentencing jurisprudence establishes that children are "constitutionally different" for purposes of punishment, it arguably follows that they are constitutionally different for purposes of determining the forum in which their culpability will be adjudicated. A statute that mandates adult prosecution for all sixteen-year-olds charged with murder, without any opportunity to show that a particular juvenile lacks the maturity and culpability that would justify adult treatment, may be difficult to reconcile with the principles animating *Roper*, *Graham*, and *Miller*.

C. Presumptive Waiver

Presumptive waiver statutes occupy a middle ground, creating a presumption that certain categories of juveniles will be transferred to adult court, with the burden on the juvenile to rebut the presumption by demonstrating suitability for juvenile court handling. California's statute, upheld in *Hicks v. Superior Court*, provides an example: for fourteen- and fifteen-year-olds charged with specified serious offenses, the minor "shall be presumed" unfit for juvenile court treatment unless they prove amenability based on statutory criteria.

Presumptive waiver schemes raise due process questions regarding the allocation of the burden of proof. The California court in *Hicks* applied rational basis review, reasoning that age is not a suspect classification and that the statutory scheme bore a rational relationship to legitimate state interests in protecting public safety.⁵ However, this analysis predates the full flowering of the Supreme Court's juvenile sentencing jurisprudence. A modern challenge might argue that presumptive waiver fails to provide the individualized consideration that *Miller* requires before a juvenile may be subjected to adult penalties.

D. Direct File/Prosecutorial Waiver

Perhaps the most controversial transfer mechanism is prosecutorial waiver, or "direct file," which grants prosecutors discretion to file charges against juveniles directly in adult criminal court. These schemes raise concerns about prosecutorial discretion without judicial oversight and about potential disparities in its exercise.

The constitutional challenges to prosecutorial waiver have generally focused on equal protection and due process grounds, arguing that the absence of standards or review invites arbitrary decision-making. However, courts have typically upheld such schemes, finding that the decision to prosecute is traditionally within executive discretion. The more fundamental question is whether the principles of *Kent* requiring a hearing, counsel, and a statement of

reasons before a juvenile loses the protections of juvenile court can be reconciled with prosecutorial discretion that operates without any judicial proceeding at all.

E. The Federal Framework

The federal Juvenile Justice and Delinquency Prevention Act (JJDP) establishes procedures for transfer in federal prosecutions. Under 18 U.S.C. § 5032, transfer requires certification by the Attorney General and a judicial hearing considering six statutory factors: the juvenile's age and social background; the nature of the alleged offense; the extent and nature of prior delinquency; intellectual development and psychological maturity; past treatment efforts and response; and availability of treatment programs.

In *United States v. B.N.M.*, the Tenth Circuit applied this framework to a fifteen-year-old charged with murders committed in Indian Country. The court held that while the district court must consider each factor, it has "wide discretion on how it chooses to weigh each factor and is not required to find that a majority of the six transfer factors weigh in favor of either party." The court rejected challenges based on the weight assigned to the offense and the availability of treatment programs, finding no abuse of discretion.

The federal framework illustrates how transfer mechanisms can incorporate consideration of developmental factors while still permitting transfer when appropriate. The *B.N.M.* court noted the importance of expert testimony from forensic psychologists regarding the juvenile's treatment needs and risk for recidivism, emphasizing that "forensic psychiatrists and psychologists play an important role in educating the legal system when opining on this nuanced area of juvenile justice."

4. Procedural Due Process in Transfer Proceedings

A. The Nature of the Transfer Decision

The transfer decision occupies an unusual procedural space. It is not a criminal prosecution, so the full panoply of Sixth Amendment rights does not apply. Yet it is a proceeding that may result in the juvenile facing adult criminal penalties, including, in some cases, life imprisonment. This hybrid character has generated ongoing litigation regarding the procedural protections required.

The Nebraska Supreme Court's recent decision in *In re Interest of Aaden S.* illustrates these tensions. The case involved a sixteen-year-old charged with first-degree sexual assault and other offenses. At the transfer hearing, the state offered exhibits including photographs, police reports, and a video interview, without providing witnesses for cross-examination. The

juvenile's counsel objected based on due process, authentication, foundation, and confrontation rights.

The juvenile court expressed doubt that the Sixth Amendment right to confrontation applies in transfer hearings, but acknowledged that "juveniles are entitled to due process of law in juvenile court regardless of the applicability of the right to confrontation." The Nebraska Supreme Court affirmed the transfer under the specific facts, noting that the juvenile had notice, a hearing, counsel, and the opportunity to present evidence. However, the court did not establish broad precedent regarding the admissibility of hearsay in transfer proceedings.

B. Standard of Proof

The standard of proof in transfer proceedings has been a subject of particular controversy. While *In re Winship* established that delinquency adjudications require proof beyond a reasonable doubt because they may result in loss of liberty, transfer hearings are typically governed by a lower standard often preponderance of the evidence or a "probable cause" standard for the offense, combined with a discretionary determination regarding amenability.

The question of what standard applies to the factual findings underlying transfer decisions intersects with the substantive constitutional standards for adult sentencing. If a juvenile faces potential adult punishment, and if the Eighth Amendment restricts the imposition of such punishment to those juveniles whose crimes "reflect permanent incorrigibility," then arguably the findings that support transfer should be subject to a heightened standard of proof.

This issue arose dramatically in the recent Canadian Supreme Court decision discussed below, which held that the Crown must prove beyond a reasonable doubt that a young offender does not merit the presumption of diminished blameworthiness before an adult sentence may be imposed. While the Canadian Charter differs from the U.S. Constitution, the underlying principle that imposing adult consequences on juveniles requires a heightened standard of proof reflects similar concerns about diminished culpability.

C. Consideration of Developmental Factors

A recurring theme in transfer jurisprudence is the requirement that courts actually consider the developmental attributes of youth, not merely acknowledge them. The Wisconsin Court of Appeals in *State v. Mann-Tate* held that a reverse waiver statute was unconstitutional because it "does not require consideration of the impacts of the juvenile's youth before determining whether the juvenile is tried as an adult." The court enumerated specific factors that must be considered, drawn from *Miller v. Alabama*:

- The juvenile's chronological age related to immaturity, impetuosity, and failure to appreciate risks and consequences
- The juvenile's family and home environment
- The circumstances of the offense, including the extent of participation
- The impact of familial and peer pressures
- The effect of youth on ability to navigate the criminal justice process
- The possibility of rehabilitation

These factors must be considered in light of the juvenile's specific age, recognizing "that not all juveniles are equally impacted by these unique attributes of youth."

D. The Role of Expert Evidence

As transfer proceedings increasingly require nuanced assessments of developmental status and amenability to treatment, expert evidence from forensic psychologists and psychiatrists has become central. The B.N.M. court's analysis relied heavily on expert testimony regarding the juvenile's "delayed intellectual abilities and the relatively short time period before he would be required to be released from juvenile detention at the age of 21."

However, the use of expert evidence also creates challenges. Experts may disagree, as in B.N.M., where the magistrate judge misattributed testimony between the defense and prosecution experts. Courts must carefully evaluate expert opinions to ensure they address the statutory criteria without invading the province of the judicial decision-maker. Moreover, experts must be cognizant of the developmental science and "ensure courts understand the science regarding child and adolescent development and the potential for treatment to assist in rehabilitation."-6

E. Timing and Delay

The timing of transfer proceedings relative to the offense and to the juvenile's age can raise due process concerns. In Michigan, a juvenile argued that waiver to adult court based largely on his having "aged out of any programming available in the juvenile court system" violated due process. The court rejected this argument, noting that "respondent was 14 years old, such that the waiver process under MCL 712A.4 was appropriate" and that "neither the reporting delay nor the subsequent waiver violated respondent's right to due process."

This issue is likely to arise more frequently as states grapple with the implications of developmental science. If a primary justification for juvenile court jurisdiction is the availability of rehabilitative programming, what should happen when a juvenile approaches

the age limit for such programming before the case is resolved? The answer may depend on whether the delay is attributable to the state or the defense, and whether alternatives such as extended juvenile jurisdiction exist.

5. Comparative Perspectives: The Canadian Approach

A. The Youth Criminal Justice Act Framework

Canada's Youth Criminal Justice Act (YCJA) establishes a distinct legal framework for young offenders, with a presumption of diminished moral blameworthiness for those under eighteen. The Act permits adult sentences for the most serious offenses, but requires the Crown to establish that a youth sentence would be insufficient to hold the young person accountable.

The YCJA's accountability standard differs from the punitive orientation of many U.S. transfer statutes, reflecting Parliament's judgment that youth justice should emphasize rehabilitation and reintegration while still providing meaningful consequences for serious offending. This philosophical difference has important implications for how courts approach the decision to impose adult sanctions.

B. The Supreme Court's Decision in R. v. I.M.

In July 2025, the Supreme Court of Canada issued a landmark decision fundamentally altering the framework for adult sentencing of juveniles.¹ The case involved I.M., a young person seven months shy of his eighteenth birthday when he participated in a home invasion robbery that resulted in the stabbing death of a seventeen-year-old victim. I.M. was convicted of first-degree murder and sentenced as an adult to life imprisonment with no parole eligibility for ten years.

The Supreme Court, in a 7-2 majority opinion by Justice Nicholas Kasirer, overturned the adult sentence and imposed the maximum youth sentence six years in custody followed by four years of conditional supervision. The Court held that trial judges must be satisfied "beyond a reasonable doubt" that the presumption of diminished moral blameworthiness has been rebutted before imposing an adult sentence.

This heightened standard of proof represents a significant departure from prior practice, which required only that the judge be "satisfied" that adult sentencing was appropriate. The majority reasoned that the fundamental principle of diminished blameworthiness could not be overcome by a mere preponderance of evidence, but required the highest standard of proof known to law.

C. Rebutting the Presumption of Diminished Blameworthiness

The Canadian Court also addressed what evidence may rebut the presumption of diminished blameworthiness. Critically, the majority cautioned against placing too much weight on the objective seriousness of the offense, because "horrific specifics about a crime could encourage outrage and have no evaluative bearing" on whether the particular juvenile possessed adult-like maturity and culpability.

Similarly, the Court discounted post-offense conduct such as fleeing the jurisdiction, which may "reflect impulsive reactions driven by juvenile fear and panic, rather than adult-like calculation." This analysis reflects a sophisticated understanding of adolescent development, recognizing that behaviors that might indicate adult-like culpability in an older offender may be consistent with juvenile immaturity in a younger one.

D. The Dissent and Parliamentary Intent

The dissenting opinion by Justices Côté and Rowe strongly criticized the majority for overriding Parliament's careful legislative balancing. They noted that the YCJA's adult sentencing provisions resulted from extensive legislative consideration, with the House of Commons Justice Committee meeting on sixteen occasions to consider amendments. A proposed "explicit standard of proof" had been deliberately omitted, indicating Parliament's intent to adopt a "satisfaction" standard rather than proof beyond a reasonable doubt.-1

The dissent's concern about judicial overreach echoes similar debates in the United States about the respective roles of courts and legislatures in defining criminal justice policy. However, the majority's response that constitutional principles of fundamental justice require heightened procedural protections when imposing adult sanctions on juveniles reflects a growing international consensus that developmental immaturity must be accommodated through rigorous procedural safeguards.

E. Implications for U.S. Jurisprudence

While the Canadian Charter of Rights and Freedoms differs from the U.S. Constitution, the I.M. decision offers instructive parallels for American courts grappling with similar questions. The requirement of proof beyond a reasonable doubt regarding diminished blameworthiness resonates with the U.S. Supreme Court's insistence that juvenile sentencing reflect individualized consideration of developmental factors.

Moreover, the Canadian Court's skepticism about relying on offense severity as a proxy for adult culpability challenges a common assumption in U.S. transfer statutes that certain crimes are so serious that they necessarily demonstrate adult-like culpability regardless of the offender's age. If developmental science teaches that adolescents may commit terrible acts without possessing adult capacities for judgment and self-control, then reliance on offense categories alone may be constitutionally insufficient.

6. Post-Transfer Challenges: Sentencing and Release

A. The Requirement of Individualized Sentencing

Even after transfer to adult court, the Eighth Amendment continues to constrain the sentences that may be imposed on juvenile offenders. Miller requires that juveniles convicted in adult court receive individualized sentencing that takes into account the "hallmark attributes of youth." This requirement applies regardless of whether the juvenile was transferred through judicial waiver, legislative exclusion, or prosecutorial discretion.

The practical implication is that adult criminal courts must be prepared to conduct sentencing hearings that are qualitatively different from those for adult offenders. Sentencing courts must consider the juvenile's age, family background, developmental status, peer influences, capacity for change, and any other factors bearing on culpability and prospects for rehabilitation. They must also consider whether the juvenile's offense reflects the "irreparable corruption" that might justify the most severe penalties, or instead reflects the transient immaturity characteristic of youth.

B. The Meaningful Opportunity for Release

For juveniles sentenced to lengthy terms, Graham's requirement of a "meaningful opportunity to obtain release based upon demonstrated maturity and rehabilitation" imposes ongoing obligations on correctional and parole authorities. As the district court recognized in *Makthepharak v. Kelly*, this requirement extends beyond the initial sentencing to the mechanisms through which release decisions are made.

In *Makthepharak*, a juvenile offender sentenced to life with parole eligibility after twenty years challenged Kansas's parole scheme as unconstitutional. The plaintiff alleged that the state's policies and practices including security classifications that barred progress to lower levels, risk assessment tools that penalized youthful offending, and parole decision-making that failed to consider developmental factors effectively converted his parole-eligible sentence into a de facto life without parole sentence.

The court denied the state's motion for judgment on the pleadings, allowing the constitutional challenge to proceed. The allegations, if proven, would establish that "Kansas's parole system doesn't provide him with a meaningful and realistic opportunity for release, converting his life sentence into a de facto sentence of life without parole" in violation of Graham and Miller.-9

C. The Problem of De Facto Life Without Parole

The Makthepharak case highlights a critical emerging issue: the gap between formal sentencing structures and actual release practices. Even when statutes nominally provide for parole eligibility, the practical operation of parole systems may deny juvenile offenders any realistic chance of release. Factors that may contribute to de facto life without parole include:

- Categorical exclusion of certain offenses from parole consideration
- Risk assessment tools that do not account for maturation and rehabilitation
- Failure to train parole decision-makers on adolescent development
- Policies that require admission of guilt as a condition of parole, even when such admissions are contested
- Security classifications that preclude access to programming necessary for release

If Graham's guarantee of a "meaningful opportunity" for release is to have substance, courts must be prepared to examine not only the nominal sentence but also the practical realities of how release decisions are made. This may require extending constitutional scrutiny to parole systems that systematically deny juvenile offenders the opportunity to demonstrate their rehabilitation and fitness for return to society.

D. Disparities and Equal Protection

Transfer decisions and subsequent sentencing may also raise equal protection concerns, particularly if patterns of transfer reflect racial or ethnic disparities. While courts have generally been reluctant to find equal protection violations without proof of intentional discrimination, the cumulative impact of discretionary decisions at multiple stages arrest, charging, transfer, conviction, sentencing may produce outcomes that warrant scrutiny.

Moreover, as the California court noted in Hicks, age-based classifications are generally subject only to rational basis review. However, if transfer statutes create arbitrary distinctions for example, treating sixteen-year-olds differently from fifteen-year-olds without any developmental justification they may be vulnerable to challenge. The growing scientific

understanding that development is gradual and variable, rather than tied to specific birthdays, may support arguments that rigid age lines lack rational basis.

7. Recommendations for Reform

A. Incorporating Developmental Science

Transfer statutes should be revised to explicitly require consideration of the developmental attributes of youth identified by the Supreme Court. The Wisconsin Court of Appeals' enumeration of factors in *State v. Mann-Tate* provides a useful model: chronological age related to immaturity, family and home environment, circumstances of the offense, peer pressures, ability to navigate the justice system, and prospects for rehabilitation.

These factors should be considered in every case involving potential transfer, regardless of the transfer mechanism. For legislative exclusion and direct file systems, this may require creating opportunities for juveniles to present evidence regarding their developmental status before transfer becomes final.

B. Heightened Procedural Protections

The Canadian approach requiring proof beyond a reasonable doubt regarding diminished blameworthiness merits serious consideration. At minimum, transfer decisions should require clear and convincing evidence that the juvenile possesses adult-like culpability and that juvenile court handling would be inadequate to protect public safety and hold the juvenile accountable.

Transfer hearings should also provide adequate evidentiary protections. While the formal rules of evidence may not apply in their full rigor, juveniles should have the opportunity to confront adverse witnesses and present their own evidence regarding developmental status and amenability to treatment. The concerns raised in *Aaden S.* about hearsay evidence and lack of cross-examination opportunities highlight the need for procedural safeguards that ensure reliable fact-finding.

C. Ensuring Meaningful Release Opportunities

States should review their parole systems to ensure compliance with Graham's requirement of a meaningful opportunity for release. This review should include examination of risk assessment tools, security classification systems, program availability, and parole decision-making criteria to ensure that juvenile offenders are not categorically denied the chance to demonstrate rehabilitation.

Legislatures should consider creating specialized parole processes for juvenile offenders, with decision-makers trained in adolescent development and authorized to consider the distinctive pathways to desistance that characterize youthful offending. As the Makthepharak litigation suggests, without such reforms, nominal parole eligibility may be constitutionally insufficient.-9

D. Judicial Education

Transfer decisions require judges to apply developmental principles to specific cases, a task that demands specialized knowledge. Judicial education programs should include training on adolescent brain development, the implications of developmental science for culpability and amenability to treatment, and the practical assessment of rehabilitation prospects.

Similarly, attorneys representing juveniles facing transfer should receive training on how to develop and present evidence regarding developmental status. The federal framework's reliance on expert testimony from forensic psychologists illustrates the importance of well-developed evidentiary records in transfer proceedings.-6

E. Data Collection and Oversight

Legislatures should require collection of data regarding transfer decisions, including demographic information, offense categories, and outcomes. Such data would enable assessment of whether transfer statutes are operating as intended and whether disparities warrant remedial action.

Oversight mechanisms, such as requiring judicial findings to be stated on the record with specific reference to statutory criteria, can promote accountability and facilitate appellate review. The Kent requirement of a statement of reasons remains essential to ensuring that transfer decisions are made thoughtfully and can be reviewed for abuse of discretion.-8

8. CONCLUSION

The trial of juveniles as adults for heinous crimes sits at the intersection of society's legitimate demand for accountability and constitutional principles that recognize the distinctive status of childhood. The Supreme Court's juvenile sentencing jurisprudence establishes that children are constitutionally different less culpable, more capable of change, and entitled to sentencing processes that take these differences into account. These principles apply with equal force to the antecedent decision whether to transfer a juvenile to adult court in the first place.

The constitutional and legal challenges arising from juvenile transfer are not merely technical. They reflect fundamental questions about the nature of punishment, the purposes of the juvenile justice system, and the meaning of constitutional guarantees for society's youngest members. When a state seeks to try a juvenile as an adult, it is making a claim about that young person's moral culpability that despite their youth, they possess the maturity and moral sophistication that justify adult punishment. That claim must be tested through processes that are fair, reliable, and informed by the best available scientific understanding of adolescent development.

The recent Canadian Supreme Court decision in *I.M.* and the ongoing litigation in cases like *Makthepharak v. Kelly* demonstrate that these questions remain live and contested. Courts continue to grapple with how to implement constitutional principles in the face of legislative schemes that often reflect punitive impulses rather than developmental realities. The challenge for courts, legislatures, and practitioners is to construct systems that hold young people accountable for serious offending while respecting their capacity for change and their constitutional entitlement to be treated as children until they have truly demonstrated the culpability of adults.

As Justice Fortas warned nearly sixty years ago, the risk is that juveniles will receive "the worst of both worlds" neither the protections accorded to adults nor the solicitous care promised to children. Avoiding that outcome requires rigorous attention to constitutional requirements, careful consideration of developmental science, and a commitment to ensuring that even in responding to the most heinous crimes, we do not lose sight of the humanity and potential of the young people before our courts.

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