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The Anti-Parent Juvenile Court

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The Anti-Parent Juvenile Court

Barbara Fedders

ABSTRACT

This Article identifies and analyzes features of the juvenile delinquency court that harm the people on whom children most heavily depend: their parents. By negatively affecting a child's family—creating financial stress, undermining a parent's central role in rearing her child, and damaging the parent-child bond—these parent-harming features imperil a child's healthy growth and development. In so doing, the Article argues, they contravene the juvenile court's stated commitment to rehabilitation.

In juvenile court, fees and fines are assessed against parents, who also often must incur lost wages to comply with court orders. In addition, while youths of all economic backgrounds and races commit crimes, poor youth of color are disproportionately likely to become involved in the juvenile court. These parents, with less financial cushion, are uniquely likely to suffer as a result of imposed fees, fines, and lost wages.

Moreover, court actors regularly engage in at least three practices that infringe on parents' dignity interests. First, judges conscript parents to act as the court's eyes and ears, requiring regular reports about a child's whereabouts and suspected misbehavior. Such requirements interfere with family privacy. They also deprive parents of the ability to make thoughtful and considered decisions about whether and to what extent they disclose information to state authorities that may result in restrictions on a child's liberty and disruption of parents' physical custodial rights over their child. Second, court actors regularly override—and sometimes fail to elicit in the first instance—parents' views, disregarding established child development principles about the centrality of parents' input in decisions affecting minor children. Third, courts can impose onerous requirements on parents, which are ostensibly designed to improve their parenting but lack evidence of efficacy or judicial findings of a link between a child's misconduct and actions of the parent.

Such interference with the court's rehabilitative aims, combined with the court's socioeconomic and racial skew, suggest a need for more scrutiny by policymakers to eliminate those costs and harms to parents that are inequitable, unnecessary, and counterproductive.

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INTRODUCTION

We are in a moment of collective reckoning with the carceral state.[1] Commentators[2] and advocates[3] critique overcriminalization,[4] mass incarceration,[5] state-imposed liberty restrictions on wide swaths of the population,[6] and the imposition of long-term collateral consequences on people arrested[7] and convicted,[8] who are disproportionately poor people and people of color.[9] They criticize the long reach of the carceral state, arguing that its priorities and practices have infused schools[10] and workplaces.[11] One

1. "Carceral state" is a phrase that seems to have originated in Marie Gottschalk's CAUGHT: THE PRISON STATE AND THE LOCKDOWN OF AMERICAN POLITICS 1–2 (2015).
2. *Id.* at 1 (describing that the carceral state "includes not only the country's vast archipelago of jails and prisons, but also the far-reaching and growing range of penal punishments and controls that lies in the never-never land between the prison gate and full citizenship").
3. *See, e.g.*, THE MOVEMENT FOR BLACK LIVES, https://m4bl.org [https://perma.cc/KM99-4PEA] (discussing, among other things, the Breathe Act, a bill that calls for the abandonment of "police, prisons, and all punishment paradigms").
4. *See, e.g.*, DOUGLAS HUSAK, OVERCRIMINALIZATION: THE LIMITS OF THE CRIMINAL LAW 4 (2009) (characterizing the criminal legal system as resting on "too many crimes" and "too much punishment").
5. *See, e.g.*, FRANKLIN ZIMRING, THE INSIDIOUS MOMENTUM OF AMERICAN MASS INCARCERATION, at ix (2020) (noting popular use of "mass incarceration" as a label to describe high rates of imprisonment).
6. *See, e.g.*, Gabriel J. Chin, *The New Civil Death: Rethinking Punishment in the Era of Mass Conviction*, 160 U. PA. L. REV. 1789, 1803–1807 (2012) (distinguishing between "mass incarceration" and "mass conviction" and arguing that the latter more accurately captures the scale of "civil death" caused by involvement in the criminal system since most convicted people are sentenced to probation rather than incarceration).
7. *See, e.g.*, Eisha Jain, *Arrests as Regulation*, 67 STAN. L. REV. 809, 826–44 (2015) (documenting the range of negative impacts outside the criminal system that result from arrest alone, including in the areas of immigration enforcement, public housing, employment, child protective services, foster care, and education).
8. *See, e.g.*, Chin, *supra* note 6, at 1806–10 (noting consequences such as electoral disenfranchisement and sex offender registration requirements and documenting how courts impose few restrictions on collateral consequences from convictions as they are generally regarded as non-punitive).
9. *See, e.g.*, MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN AN ERA OF COLORBLINDNESS 2 (2010) (arguing that racial discrimination made unlawful through civil rights laws persists through the current racial inequity in the criminal system and positing that "we have not ended caste in America; we have merely redesigned it").
10. *See, e.g.*, Barbara Fedders, *The End of School Policing*, 109 CALIF. L. REV. 1443, 1506 (2021).
11. *See, e.g.*, JONATHAN SIMON, GOVERNING THROUGH CRIME: HOW THE WAR ON CRIME TRANSFORMED AMERICAN DEMOCRACY AND CREATED A CULTURE OF FEAR 207–231 (2007).

legal scholar has even turned the mirror inward, arguing that criminal law courses contain many procarceral elements.[12]

As policymakers across the country take steps to address the causes and ameliorate the impacts of overcriminalization and mass incarceration,[13] one popular reform has been to move the prosecution of minors[14] from criminal court to juvenile court. Proponents of trying minors in juvenile court—rather than adult court—argue that the juvenile court system's commitment to rehabilitation[15] makes it a more equitable and effective forum for adjudicating crime.[16] Among the features proponents cite as key to the juvenile court's efficacy is the statutorily mandated involvement of parents,[17] who by contrast have no legislatively defined role when their children are prosecuted in criminal court.

12. *See, e.g.*, Alice Ristroph, *The Curriculum of the Carceral State*, 120 COLUM. L. REV. 1635–36 (2020) (suggesting that "American law schools, through the required course on substantive criminal law, have contributed affirmatively to the collection of phenomena commonly labeled mass incarceration. . . . by telling a particular story about criminal law as limited in scope, careful in its operation, and uniquely morally necessary" and arguing that "[this] story has always been fiction, but it is presented as fact. Students educated in this model learn to trust and embrace criminal law, and thus law schools have helped to facilitate a carceral state by supplying it with willing agents, and more specifically, willing lawyers.").
13. *See, e.g.*, Jessica Eaglin, *The Categorical Imperative as a Decarceral Agenda*, 104 MINN. L. REV. 2715, 2720–21 (2020) (discussing various reforms to remove people from correctional institutions but noting that these reforms rely on local-actor discretion and thus suggesting they may be ineffective at producing meaningful change); *see also* Benjamin Levin, *The Consensus Myth in Criminal Justice Reform*, 117 MICH. L. REV. 259, 264–65 (2018) (mapping the difference between critiques that the criminal system results in overcriminalization and those that focus on mass criminalization, culling the policy implications of each, and arguing that while overcriminalization critiques may have pragmatic appeal for pushing policy reform, arguments sounding only in the appeal to overcriminalization may unintentionally legitimate structural flaws in the criminal system that create and perpetuate racial and class inequities).
14. *See* Daniel P. Mears, Joshua C. Cochran, Brian J. Stults & Sarah J. Greenman, *The "True" Juvenile Offender: Age Effects and Juvenile Court Sanctioning*, 52 CRIMINOLOGY 169 (2014) (using "minor" or "child" to denominate young people as they enter the juvenile court and reserving "juvenile" to refer to the legal conclusion of delinquency or status offense). States define "minors" differently; the minimum stated age for prosecution is six; the maximum, twenty-one. OFF. OF JUV. JUST. & DELINQUENCY PREVENTION, STATISTICAL BRIEFING BOOK: JUVENILE JUSTICE SYSTEM STRUCTURE & PROCESS (2012), https://www.ojjdp.gov/ojstatbb/structure_process/faqs.asp#. [https://perma.cc/4XN2-ZQ75].
15. Subpart I.A.5 explores this alleged commitment in depth.
16. NAT'L CONF. OF STATE LEGISLATURES, RAISING THE AGE OF JUVENILE COURT JURISDICTION (2015).
17. *See, e.g.*, N.C. COMM'N ON THE ADMIN. OF L. & JUST., JUVENILE REINVESTMENT 15 (2016). Unless otherwise specified, "parents" in this Article refers to those adults with legal (though not always physical) custody of and caretaking responsibilities for children in the juvenile court and thus includes biological and adoptive parents as well as other legal guardians, whether part of the same legally recognized family or not.

This Article explores the involvement of parents in juvenile court, arguing that parents' ability to aid in their children's rehabilitation is undermined by the economic costs and dignitary harms that juvenile court imposes on parents.[18] Economic costs consist of fines and fees associated with the court process, as well as lost wages parents may incur as they attend court dates, meet with court officials, and transport their child to required meetings.[19] The infringement of dignity interests include, first, juvenile court judges requiring parents to act as the court's eyes and ears by reporting their child's whereabouts, behavior, suspected substance use, school attendance, and curfew compliance—to name but a few—to probation officers.[20] Probation officers can then use that information to seek judicial orders imposing harsher sentencing consequences on children, including detention.[21] Second, prosecutors can—and often do—override parents' perspectives on whether a case should go forward and what should happen if it does.[22] In addition, defense attorneys—who may be guided by a misapplication of child-centered lawyering—also frequently shut parents out of the process entirely, failing to make space for them even during stages where their participation does not implicate concerns of confidentiality or attorney-client privilege.[23] Third, although children's alleged illegal conduct may arise from trouble with other social systems—frustration in school due to unmet academic needs, trauma from involvement with the child welfare system, or challenges accessing mental health services—judges have limited power to affect those systems' interactions with the child client.[24] Perhaps related to this circumscribed authority over systems, judges can—and do—hold individual parents responsible for their child's misconduct, issuing orders against the parents that often impose burdensome and liberty-infringing requirements.[25]

This Article shows how these economic costs and dignitary harms frustrate the court's rehabilitative aspirations. Research suggests that a parent's inability to effectively nurture and appropriately discipline her child is linked to criminal offending of said child.[26] Difficulty in performing caretaking duties is a correlate

18. *See infra* Part III.
19. *See infra* Subpart III.A.
20. *See infra* Subpart III.B.2.a.
21. *See infra* Subpart III.B.2.a.
22. *See infra* Subpart III.B.2.b.
23. *See infra* Subpart III.B.2.b.
24. *See infra* Subpart III.B.2.c.
25. *See infra* Subpart III.B.2.c.
26. *See infra* note 145, and accompanying text.

of living in poverty.[27] Fines and fees that place a financial strain on an already impoverished family are thus counterproductive and destructive. In addition, when juvenile court involvement damages the parent-child bond or undermines parental authority—both foreseeable outcomes from the common practices of requiring the parent to report on the child and ignoring or overriding the parent's input about what should happen to the child—family stability is also threatened. This, too, interferes with a child's ability to reap rehabilitative benefits from court involvement.[28]

Because juvenile courts are populated overwhelmingly by children of poor people[29] who are disproportionately Black, Latinx, and Indigenous,[30] these harms take on special salience. Throughout U.S. history, key state-sponsored practices have resulted in the destruction of family bonds in poor communities of color. These include child welfare interventions that result in disproportionate, unwarranted removals of children and termination of parental rights in Black families,[31] immigration actions leading to detention and deportation of undocumented parents,[32] and coercive assimilationist practices of removing Indigenous children from their families and communities in favor of boarding

27. *See infra* note 145, and accompanying text.
28. *See infra* Subpart IV.B.
29. *See* Tamar Birckhead, *Delinquent by Reason of Poverty*, 38 WASH. U. J.L. & POL'Y 53, 58–59 (2012).
30. *See infra* Subpart II.A.
31. *See, e.g.*, DOROTHY ROBERTS, SHATTERED BONDS: THE COLOR OF CHILD WELFARE, at ix–x (2002) ("One hundred years from now, today's child welfare system will surely be condemned as a racist institution—one that compounded the effects of discrimination on Black families by taking children from their parents, allowing them to languish in a damaging foster care system or to be adopted by more privileged people."). *See also* Peggy Cooper Davis, *The Good Mother: A New Look at Psychological Parent Theory*, 22 REV. L. & SOC. CHANGE 347, 348 (1996) ("Poor families, the only families that receive close supervision from child protective systems, are often disrupted without adequate attention to the harms of family separation."); *see also* Peggy Cooper Davis, *So Tall Within: The Legacy of Sojourner Truth*, 18 CARDOZO L. REV. 451, 452 (1996) ("Abrogation of the parental bond was a hallmark of the civil death that United States slavery imposed.").
32. *See, e.g.*, Jenny Brooke-Condon, *When Cruelty Is the Point: Family Separation as Unconstitutional Torture*, 56 HARV. C.R.-C.L. L. REV. 37, 38 (2021) (discussing the "zero tolerance" separation policy of the Trump administration in 2017–2018, when "[f]ederal officers detained migrants, took their minor children from them, and shuttled the children into a refugee child welfare system as if they were 'unaccompanied' or orphaned" and noting that "[t]hey did so without consistently tracking parent-child relationships, making clear that the government had no intention to one day reunite parents and children"); *see also* Juliet P. Stumpf, *Justifying Family Separation: Constructing the Criminal Alien and the Alien Mother*, 55 WAKE FOREST L. REV. 1037, 1076 (2020) (criticizing the Trump Administration policy of establishing itself as the "protector of separated children against parent-induced harms" and dividing immigrants into "good" and "bad").

schools and non-Indigenous adoptive homes.[33] This history counsels special care by policymakers in ensuring that any costs and harms to parents of children interacting with the juvenile court—which is ostensibly a rehabilitative institution—are justified.

This Article sits at the intersection of two bodies of legal commentary. The first is scholarship that critiques the juvenile justice system for features that render it racialized, punitive, and insufficiently attentive to the importance of growth, healthy development, and rehabilitation of children.[34] The second is scholarship arguing that the child welfare system is racialized, punitive toward parents, and insufficiently attentive to the imperatives of family integrity and preservation.[35] Scholarship on parents in juvenile court has primarily considered the proper role for parents in the attorney-client dyad,[36] the ways in which parental authority over children can thwart children's ability to assert their constitutional rights in the

33. Lorie M. Graham, *Reparations, Self-Determination, and the Seventh Generation*, 21 HARV. HUM. RTS. J. 47, 52–54 (2008) (describing how forced placement of Indigenous children into boarding schools and through adoption into non-Indigenous families were undertaken as part of governmental efforts to wipe out Native American tribal autonomy and culture).

34. *See, e.g.*, Perry L. Moriearty, *Combating the Color-Coded Confinement of Kids: An Equal Protection Remedy*, 32 REV. L. & SOC. CHANGE 285, 288–89 (2008) (citing studies showing that "youth of color are more likely to be arrested, detained, formally charged in juvenile court, transferred to adult court, and confined to secure residential facilities than their white counterparts" and that differential offending patterns do not explain these disparities); Paul Holland & Wallace J. Mlyniec, *Whatever Happened to the Right to Treatment?: The Modern Quest for a Historical Promise*, 68 TEMP. L. REV. 1791, 1811 (1995) (decrying the replacement of a rehabilitative focus with a punitive one statutes). *See also* James Herbie DiFonzo, *Parental Responsibility for Juvenile Crime*, 80 OR. L. REV. 1 (2001) (arguing these features constitute a "juvenile justice counter-revolution").

35. *See, e.g.*, CHILD WELFARE INFO. GATEWAY, CHILDREN'S BUREAU, RACIAL DISPROPORTIONALITY AND DISPARITY IN CHILD WELFARE (2016) (discussing causes of and potential solutions to racial disproportionality in the child welfare system); Kaaryn Gustafson, *Degradation Ceremonies and the Criminalization of Low-Income Women*, 3 U.C. IRVINE L. REV. 297 (2013) (noting punitive nature of means-tested assistance experienced by low-income women).

36. *See, e.g.*, Kristin Henning, *It Takes a Lawyer to Raise a Child? Allocating Responsibilities Among Parents, Children, and Lawyers in Delinquency Cases*, 6 NEV. L.J. 836, 838–39 (identifying the "core principles that will guide lawyers in counseling children, interacting with parents, and protecting the legal rights of children charged with crime"). *Accord* Erika Fountain & Jennifer Woolard, *The Capacity for Effective Relationships Among Attorneys, Juvenile Clients, and Parents*, 14 OHIO ST. J. CRIM. L. 493 (2017).

context of police searches[37] and interrogations,[38] and whether and how to hold parents responsible for their children's alleged criminal offenses.[39] Few scholars have examined how the juvenile delinquency court affects parents and how these effects in turn shape youth outcomes.[40] This Article responds to that omission, unfolding in four parts.

Part I briefly analyzes the jurisdiction and doctrinal underpinning of the early[41] juvenile court and discusses how social science regarding the uniqueness of childhood and adolescence, and criminological trends regarding prevention and rehabilitation, influenced its founders. This Part also sets out the family-interventionist practices—justified by the common-law doctrine of *parens patriae*—that minimized parents' rights.[42] Part II shifts the temporal focus to the present. After briefly analyzing how racialized poverty renders families vulnerable to juvenile court involvement, this Part juxtaposes the continued statutory commitment to rehabilitation with the troubling persistence of *parens patriae*, manifested most prominently in the judicial use of detention over the objection of parents. Part III explores the economic costs and dignitary harms to parents of their children's juvenile court involvement. It first discusses the nature, extent,

37. *See, e.g.*, Kristin Henning, *The Fourth Amendment Rights of Children at Home: When Parental Authority Goes Too Far*, 53 WM. & MARY L. REV. 55, 59 (2011) (exploring "the extent to which parental authority should be allowed to override the Fourth Amendment rights of minors to resist State intrusion" and arguing that "the Court's dicta in *Georgia v. Randolph* oversimplifies, and maybe even mischaracterizes, the Court's own analysis of children's rights in previous cases, and as a result has and will continue to distort the analysis of lower courts called upon to mediate the rights of children in competition with the rights and duties of their parents").

38. *See, e.g.*, Hillary B. Farber, *The Role of the Parent/Guardian in Juvenile Custodial Interrogations: Friend or Foe?*, 41 AM. CRIM. L. REV. 1277, 1278–79 (2004) (casting doubt on whether parents play a consistently useful role in assisting their children to resist police overreach and arguing that "the most authentic approach to ensuring that a juvenile's waiver is knowing, voluntary and intelligent, would be to require a non-waivable right to an attorney for purposes of consultation regarding the decision to waive Fifth Amendment protections").

39. *See, e.g.*, DiFonzo, *supra* note 34 (situating parental responsibility laws within "juvenile justice counter-revolution" aimed at removing special protections for youthful offenders).

40. A notable counterexample is contained in Neelum Arya, *Family-Driven Justice*, 56 ARIZ. L. REV. 623, 627 (2014), which, after noting that it is "somewhat surprising" that scholars have paid little attention to families of youth arrested and imprisoned given the dependency of youth on families, Arya articulates a theory of family engagement in which juvenile justice system actors respond to the stated needs of families rather than trying only to incorporate families into existing efforts.

41. This Article defines the early juvenile court as that which predated the U.S. Supreme Court decision in *In re Gault*, 387 U.S. 1 (1967) (casting doubt on the efficacy of the early juvenile court and instituting due process protections).

42. *See infra* notes 63–69 and accompanying text.

and impact of the direct and indirect costs to parents. Then, after laying out the nature of the parental dignity interests at stake in delinquency prosecutions, this Part identifies and analyzes how juvenile court infringes on those interests. Part IV posits that these costs and harms inflicted on parents render the court less effective at promoting rehabilitation for children.

I. THE EARLY JUVENILE COURT THROUGH A PARENT-FOCUSED LENS

This Part analyzes the early juvenile court with a focus on how it conceptualized parents' rights. While the history of the juvenile court has been exhaustively documented,[43] and need not be rehearsed here, a few key elements are relevant. Subpart A considers the court's jurisdiction, predecessor practices and institutions, underlying legal doctrine of *parens patriae*, social scientific currents of the time regarding young people that influenced the formation of the juvenile court, and the resulting emphasis on rehabilitation. Subpart B discusses how juvenile court judges and probation officers relied on the *parens patriae* doctrine to justify sweeping interventions into the home lives of poor families to the detriment of parents' ability to keep their families together.

Before exploring the history of the early juvenile court, a word on terminology is in order. Commentators then[44] and now[45] refer to the juvenile

43. *See, e.g.*, Jonathan Simon, *Power Without Parents: Juvenile Justice in a Postmodern Society*, 16 CARDOZO L. REV. 1363, 1384 (1995) (articulating that "[t]he rise of the juvenile court is one of the most studied episodes in the history of modern law"). See also *id.* at 1363 n.3 (discussing several germinal juvenile court studies: ANTHONY M. PLATT, THE CHILD SAVERS: THE INVENTION OF DELINQUENCY (2d ed. 1977); DAVID J. ROTHMAN, CONSCIENCE AND CONVENIENCE: THE ASYLUM AND ITS ALTERNATIVES IN PROGRESSIVE AMERICA (1980); STEVEN L. SCHLOSSMAN, LOVE AND THE AMERICAN DELINQUENT: THE THEORY AND PRACTICE OF "PROGRESSIVE" JUVENILE JUSTICE, 1825-1920 (1977); JOHN R. SUTTON, STUBBORN CHILDREN: CONTROLLING DELINQUENCY IN THE UNITED STATES, 1640-1981 (1988); Sanford J. Fox, *Juvenile Justice Reform: An Historical Perspective*, 22 STAN. L. REV. 1187 (1970); Alexander W. Pisciotta, *Saving the Children: The Promise and Practice of* Parens Patriae, *1838-98*, 28 CRIME & DELINQ. 410 (1982)); *see also* DAVID TANENHAUS, JUVENILE JUSTICE IN THE MAKING (2004); BARRY FELD, THE EVOLUTION OF THE JUVENILE COURT: RACE, POLITICS, & THE CRIMINALIZING OF JUVENILE JUSTICE (4th ed. 2017).

44. *See, e.g.*, James Herbie DiFonzo, *Deprived of Fatal Liberty: The Rhetoric of Child Saving and the Reality of Juvenile Incarceration*, 26 U. TOL. L. REV. 855, 858 (1995) (discussing rhetoric of "infant salvation" used by reformers and penologists of the time).

45. *See* Robin Walker Sterling, *Fundamental Unfairness:* In re Gault *and the Road Not Taken*, 72 MD. L. REV. 607, 616–22 (2013) (noting that "[t]he story of how the Child Savers campaigned for a specialized juvenile court is well known" and citing scholarly sources regarding that history).

court architects as "child savers," sometimes with admiration[46] and other times with irony or even disdain.[47] While not attempting to resolve the debate, this Article adopts the phrase, using its nuanced interpretations to describe the promise and perils of juvenile court both past and present.

A. The Promise of Child Saving

1. Jurisdiction

A little over a century ago, a loose coalition of reform-minded child advocates and business elites lobbied for the creation of the nation's first juvenile court.[48] In 1899, Illinois passed the first Juvenile Court Act.[49] Within twenty years, all but three states had passed similar legislation.[50] Today, every state has a juvenile court.[51]

The subject-matter jurisdiction of the court encompassed youths accused of conduct that violated the criminal law—which are known as delinquency cases—

46. SOC'Y FOR THE REFORMATION OF JUV. DELINQS., REPORT ON ERECTING A HOUSE OF REFUGE FOR VAGRANT AND DEPRAVED YOUNG PEOPLE, *in* DOCUMENTS RELATIVE TO THE HOUSE OF REFUGE 11, 13 (1832) (quoting reformers, noting the "ragged and uncleanly appearance, the vile language, and the idle and miserable habits of great numbers of children" and asking whether it was "possible that a Christian community can lend its sanction to such a process without any effort to rescue and to save?").

47. The most prominent work in this vein is ANTHONY PLATT, THE CHILD SAVERS: THE INVENTION OF DELINQUENCY (1969), which argued, among other things, that the creation of the juvenile court had as much to do with controlling the emergence of an incipient revolutionary class as with helping children. Consider in this regard a comment by Charles Loring Brace, founder of New York's Children's Aid Society, who warned that this "dangerous class," would eventually "vote—they will have the same rights as we ourselves . . . They will perhaps be embittered at the wealth and luxuries they never share. Then let society beware when the outcast, vicious, reckless multitude of New York boys, swarming now in every foul alley and low street, come to know their power and *use it*!" MIMI ABRAMOVITZ, REGULATING THE LIVES OF WOMEN: SOCIAL WELFARE POLICY FROM COLONIAL TIMES TO THE PRESENT 140 (Revised ed. 1996) (citation omitted).

48. *See generally* Barbara Fedders, *Losing Hold of the Guiding Hand: Ineffective Assistance of Counsel in Juvenile Delinquency Representation*, 14 LEWIS & CLARK L. REV. 771, 777 (2010).

49. 1899 Ill. Laws 131 (current version at 705 ILL. COMP. STAT. 405/1–2 (West 2009)).

50. ELLEN RYERSON, THE BEST-LAID PLANS: AMERICA'S JUVENILE COURT EXPERIMENT 81 (1978).

51. David B. Mitchell & Sara E. Kropf, *Youth Violence: Response of the Judiciary*, *in* SECURING OUR CHILDREN'S FUTURE: NEW APPROACHES TO JUVENILE JUSTICE AND YOUTH VIOLENCE 118, 122 (Gary S. Katzmann ed., 2002). In addition, juvenile courts exist in the District of Columbia and the U.S. territories of American Samoa, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. *See State Juvenile Justice Profiles, 2005*, NAT'L CTR. FOR JUV. JUST. (2012), http://www.ncjj.org/publication/State-Juvenile-Justice-Profiles-2005.aspx [https://perma.cc/R64T-WXRA].

and youths accused of conduct that but for the age of the child would be legal—today commonly known as status offense cases.[52]

2. Predecessor Practices and Institutions

The child-saving endeavor culminating in the creation of a specialized juvenile court was in fact a continuation of reform efforts undertaken in the earlier part of the century. These efforts were aimed at the increased numbers of young people—principally immigrants—crowding U.S. cities.[53] Child saving before the creation of the juvenile court took one of two forms: either the removal of children from cities to live with families in other parts of the country[54] or the temporary settlement of urban youth without known family support into Houses of Refuge, which were institutions designed to provide shelter.[55]

These efforts similarly encompassed youths accused of crimes, those who left home, and those whose parents had lost custody of them.[56] Reformers did not typically distinguish among these categories in relief efforts. This was partly because delinquency was thought to be the logical consequence of poverty and homelessness.[57] Moreover, these youths were overwhelmingly poor,[58] and nineteenth-century reformers were acting in accordance with legislation modeled on English poor laws established in the colonies.[59] Such laws established that the state—not the church or private entities—was obliged to help indigent

52. *See generally* Peter D. Garlock, *Wayward Children and the Law, 1820-1900: The Genesis of the Status Offense Jurisdiction of the Juvenile Court*, 13 GA. L. REV. 341, 342 (1979) (noting that status offense cases today typically are comprised of youth beyond parental control, runaways, and truants).

53. *See, e.g.*, NAT'L CONF. OF CHARITIES & CORR., REPORT OF THE COMMITTEE ON THE HISTORY OF CHILD-SAVING WORK: HISTORY OF CHILD SAVING IN THE UNITED STATES (1893); *see also* Walker Sterling, *supra* note 45.

54. Jill Elaine Hasday, *Parenthood Divided: A Legal History of the Bifurcated Law of Parental Relations*, 90 GEO. L.J. 299, 330 (2002).

55. Fox, *supra* note 43, at 1190.

56. Marsha Garrison, *Why Terminate Parental Rights*? 35 STAN. L. REV. 423, 434–35 (1983) ("Under the Colonial American poor laws, indigent parents who could not support their children simply lost custody of them. . . . Independence did not change these practices; throughout the first half of the nineteenth century, the state removed children from their parents' custody solely because of the parents' poverty").

57. The central provision of the legislation creating New York's House of Refuge is illustrative. It granted the administrators "power . . . to receive and take . . . all such children as shall be taken up or committed as vagrants, or convicted of criminal offenses." Fox, *supra* note 43, at 1190 (quoting Act of Mar. 29, 1824, ch. 126, § 4, 1824 N.Y. Laws 110).

58. *Id.* at 1191.

59. William P. Quigley, *Reluctant Charity: Poor Laws in the Original Thirteen States*, 31 U. RICH. L. REV. 111 (1997).

people.[60] The aid, however, was stigmatizing, contingent on means testing, and punitive: poor people were required to work, children were expected to contribute to the effort, and those who accepted aid were often deprived of their right to travel and vote.[61]

3. Legal Doctrine

The underlying legal doctrine for both the juvenile court and its predecessor practices and institutions was the common-law concept of *parens patriae*.[62] Translated as "father of the country,"[63] *parens patriae* developed in the chancery courts of sixteenth-century England to cover the narrow category of cases of children whose parents had died intestate, as well as widows and others deemed incapable of managing their own property.[64]

Fast forward to the nineteenth century, U.S. reformers stretched the doctrine to fit a much broader array of circumstances.[65] They relied on the doctrine to justify the involuntary removal of children and placement in institutions and with other families for a wide range of reasons that were believed to indicate a child was, or might be, a community crime problem.[66] The vocabulary of the new juvenile court reflected this view. Juvenile court architects conceptualized the child not as a defendant but rather as an "object of [the state's] care and solicitude."[67] Proceeding as *parens patriae,* the state denied a child due process rights based on the assertion that the child has no right to liberty, but instead only to custody.[68]

4. Social Science

The commingling of categories that characterized the people brought into the early juvenile court—houseless, wayward, abandoned, vagrant, delinquent—

60. *Id.* at 116.
61. *Id.* at 111–12.
62. Fox, *supra* note 43, at 1192–93.
63. Alfred L. Snapp & Son, Inc. v. Puerto Rico, 458 U.S. 592, 600, 600 n.8 (1982) (quoting BLACK'S LAW DICTIONARY 1003 (5th ed. 1979)).
64. Janet Gilbert, Richard Grimm & John Parnham, *Applying Therapeutic Principles to a Family-Focused Juvenile Justice Model (Delinquency)*, 52 ALA. L. REV. 1153, 1158 (2001) (noting that the concept referred to the role of the state as sovereign and guardian of a person under legal disability).
65. Fox, *supra* note 43, at 1193.
66. *Id.*
67. *In re* Gault, 387 U.S. 1, 15 (1967) (quoting Julian Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 120 (1909)) (alterations in original).
68. *Id.* at 17.

reflected not only an expansive understanding of *parens patriae* but also the influence of positivist criminology.[69] This field of study held that authorities could recognize, and the law could address, the circumstances of childhood that would lead to crime and that, moreover, interventions such as foster homes, psychiatric institutions, and probation could stop reoffending and even prevent crime.[70] For example, one of the Chicago juvenile court's founders opined she had "no doubt" that youthful criminality "is caused by nervous diseases, subnormality and mental aberration, brought about through heredity or home environment."[71]

In addition to criminology, changing views within psychology about the temporal boundaries and significance of childhood and adolescence helped shape juvenile courts. Prior to the nineteenth century, "childhood" as a unique formal life stage did not exist.[72] At common law, a person could be prosecuted so long as the legal defense of infancy did not apply.[73] Enlightenment-era declines in infant mortality and increases in literacy, however, laid a foundation for the emergence of childhood as a developmentally distinct phase.[74] Childhood, which was understood to last until age fourteen, began to be viewed in the United States as a period of plasticity, with the child imagined as uniquely innocent, pure, and malleable.[75] Childhood studies became a reputable field of study in the academy;[76] pediatrics emerged as a medical specialty, and children's hospitals were founded.[77]

69. Jonathan Simon, *Positively Punitive: How the Inventor of Scientific Criminology Who Died at the Beginning of the Twentieth Century Continues to Haunt American Crime Control at the Beginning of the Twenty-First*, 84 TEX. L. REV. 2135, 2136 (2006).
70. Fox, *supra* note 43, at 1233.
71. TANENHAUS, *supra* note 43, at 119 (quoting Jane Addams, an executive committee member of the Juvenile Psychopathic Institute). Positivist criminology in the United States focused on identifying and incapacitating, for lengthy prison sentences or hospital stays, dangerous adult criminals; the aim of this project was to prevent crime and limit the spread of criminal traits in the population. Simon, *supra* note 69, at 2137.
72. ERICA R. MEINERS, FOR THE CHILDREN?: PROTECTING INNOCENCE IN A CARCERAL STATE 33–34 (2016); *see also* Janet E. Ainsworth, *Re-Imagining Childhood and Reconstructing the Legal Order: The Case for Abolishing the Juvenile Court*, 69 N.C. L. REV. 1083, 1091 (1991).
73. MATTHEW HALE, 1 THE HISTORY OF THE PLEAS OF THE CROWN 16–28 (First Am. ed., Philadelphia, Robert H. Small 1847) (1680); *see also* Lara A. Bazelon, *Exploding the Superpredator Myth: Why Infancy Is the Preadolescent's Best Defense in Juvenile Court*, 754 N.Y.U. L. REV. 159, 159–161 (2000) (noting that the presumption of incapacity that attached to infancy was rebuttable between the ages of seven and fourteen and that children were presumed mature enough to form criminal intent at age fourteen).
74. Ainsworth, *supra* note 72, at 1093–94.
75. TERA EVA AGYEPONG, THE CRIMINALIZATION OF BLACK CHILDREN: RACE, GENDER, AND DELINQUENCY IN CHICAGO'S JUVENILE JUSTICE SYSTEM 1899–1945, at 13 (2018).
76. Ainsworth, *supra* note 72, at 1094.
77. *Id.* at 1094–95.

Beginning in the twentieth century, the chronological boundaries of childhood were expanded even further to include people older than fourteen.[78] A nineteenth-century sociological study concluded "[this period] when human beings begin to assert themselves is the most trying time for every form of government."[79] While previously these individuals were not considered to possess any of the attributes of childhood, academics now viewed them also as vulnerable, more akin to young children than adults.[80] In the early twentieth century, psychologists coined the term "adolescence" to describe this developmental phase.[81]

5. The Rehabilitation Imperative

The child savers' belief in the special significance of childhood and adolescence inspired the development of the juvenile court.[82] They objected to the practice of trying minors in courts that "recognize[] no difference between the child offender and the most hardened criminals."[83] These reformers believed that minors accused of violating the criminal law were categorically less culpable than adults in the criminal system.[84] Mixing children with adults offended this core belief; it led, reformers surmised, to victimization at the hands of adults and increased likelihood of reoffending by children as they grew up.[85] While it was the presence of younger children in the nation's police stations and jails that most outraged the child savers, older children—crucially—were also seen as properly falling within their reform efforts.[86]

The court was explicitly rehabilitative.[87] As the first chief probation officer in the nation's inaugural juvenile court explained: "Instead of reformation, the thought and idea in the judge's mind should always be formation. No child should

78. *Id.* at 1095.
79. TANENHAUS, *supra* note 43, at 6 (quoting WAYNE MORRISON, THEORETICAL CRIMINOLOGY FROM MODERNITY TO POST-MODERNISM (2014)) (alterations in original).
80. *Id.* at 6 (noting study showing that teenagers were "more like infants in their nature and needs" than like adults).
81. *Id.*
82. *See, e.g.*, PLATT, *supra* note 43.
83. TANENHAUS, *supra* note 43, at 8 (quoting Mems. of the Cook Cty. Grand Jury, Report at Chicago Historical Society (Nov. 16, 1898)).
84. FELD, *supra* note 43, at 19.
85. TANENHAUS, *supra* note 43, at 9.
86. *Id.*
87. *In re* Gault, 387 U.S. 1, 15–16 (1967) (noting that in juvenile court instead of punishment, "[t]he child was to be 'treated' and 'rehabilitated' and the procedures . . . were to be 'clinical' rather than punitive").

be punished for the purpose of making an example of him, and he certainly cannot be reformed by punishing him."[88] Julian Mack, a Cook County juvenile court judge who wrote a canonical law review article on the court,[89] encapsulated these sentiments when he rhetorically asked:

> Why is it not the duty of the state, instead of asking merely whether a boy or a girl has committed a specific offense, to find out what he is, physically, mentally, morally, and then if it learns that he is treading the path that leads to criminality, to take him in charge, not so much to punish as to reform, not to degrade but to uplift, not to crush but to develop, not to make him a criminal but a worthy citizen[?][90]

The child savers fashioned for the new juvenile court a terminology that reflected this rehabilitative commitment. They denominated juvenile court proceedings as civil rather than criminal.[91] Youths adjudicated of breaking the law were delinquents, not criminals; the institutions to which they were committed were training schools, not prisons. Proceedings were to promote the welfare of the child.[92] Flexibility was paramount, and the juvenile court thus discarded "[t]he apparent rigidities, technicalities, and harshness . . . observed in . . . procedural criminal law."[93]

The creation of the juvenile court is an apotheosis of the reformist ideals of the Progressive era: an institution committed to the possibility and desirability of determining the roots of crime to prevent it, and rehabilitating those who committed it. It was, as Jonathan Simon argues, an "institutional monument to an enlightened society's will to foreswear the ancient urge to hurt and humiliate the criminal and instead to suffocate the roots of crime."[94]

B. Perils of Child Saving

The idealism reflected in the juvenile court's assumption of responsibility for children and commitment to their rehabilitation fell

88. TANENHAUS, *supra* note 43, at 23 (quoting T. D. Hurley, *Development of the Juvenile-Court Idea*, in CHILDREN'S COURTS IN THE UNITED STATES: THEIR ORIGIN, DEVELOPMENT, AND RESULTS (reprint, New York: AMS, 1973) (Washington, D.C.: Government Printing Office, 1904); *see also* Garlock, *supra* note 52, at 343; Fox, *supra* note 43, at 1189.
89. Ainsworth, *supra* note 72, at 1097 n.93.
90. Julian W. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 107 (1909).
91. *In re* Gault, 387 U.S. at 15–16.
92. *Id.*
93. *Id.* at 15.
94. Simon, *supra* note 43, at 1364.

short.[95] Not all youth were equally seen as "proper objects" for reform; instead, the court tended to look more favorably on those whom it felt could be saved, most often poor white and Irish and Italian immigrants.[96] Black children were frequently subject to discriminatory treatment, either excluded outright from various institutions or admitted on a segregated and unequal basis.[97]

Moreover, the court's broad jurisdiction and the expansive understanding of *parens patriae* facilitated sweeping, unwanted, and long-lasting interventions into the home lives of poor[98] families. Child savers viewed the ability to properly reform children as requiring a concomitant power to regulate parents and family life itself.[99] Put another way, these reformers often saw themselves as needing to save children from their parents.[100] Throughout the first half of the nineteenth century, a family's poverty alone could prompt the state to remove children from their families.[101] Women without

95. *See generally* Bernardine Dohrn, *Foreword*, in TANENHAUS, *supra* note 43, at viii (describing the juvenile court as "laced with tension and paradox").

96. *See, e.g.*, Walker Sterling, *supra* note 45, at 618 (noting that child-saving reform efforts were confined to poor white and European immigrant youths); *see also* ROBIN BERNSTEIN, RACIAL INNOCENCE: PERFORMING AMERICAN CHILDHOOD FROM SLAVERY TO CIVIL RIGHTS 33 (2011) (noting pervasiveness of historical tropes in which "[w]hite children became constructed as tender angels while black children were labeled as unfeeling, non-innocent nonchildren"); *see generally* NOEL IGNATIEV, HOW THE IRISH BECAME WHITE (1995) (discussing how Irish immigrants in the nineteenth-century U.S. advanced from a subordinated social class, neither white nor Black, which eventually acquired white privilege through subjugation of Black people).

97. Walker Sterling, *supra* note 45, at 622–25; *see also* Cheryl Nelson Butler, *Blackness as Delinquency*, 90 WASH. U. L. REV. 1335, 1364–68 (2013); *see generally* GEOFF K. WARD, THE BLACK CHILD SAVERS: RACIAL DEMOCRACY & JUVENILE JUSTICE (2012) (noting that in Chicago, all Black children were sent to the juvenile court's one Black probation officer, who worked without pay).

98. Judge Mack thought the relationship between poverty and delinquency so self-evident that he wrote in his canonical Harvard Law Review article on the juvenile court that "[m]ost of the children who come before the court are, naturally, the children of the poor." Mack, *supra* note 90, at 107; *see also* Marvin Ventrell, *From Cause to Profession: The Development of Children's Law and Practice*, 32 COLO. LAW. 65, 67 (2003) (explaining that the condition of poverty, which brought children into the Refuge system, continued as a de facto prerequisite for juvenile court intervention).

99. Naoma Maor, Delinquent Parents: Punitive Welfare and the Creation of Juvenile Justice, 1899–1927, at 12 (quoting a 1921 speech from Judge Ben Lindsey of a juvenile court from Denver, Colorado, which asserted: "We, the people, or in our aggregate capacity, the state, permit you, the parents, to retain custody of and the responsibility for your child . . . not so much because we recognize it as yours" . . . but only insofar as it can "safeguard the rights and best interests of the child . . .") (unpublished dissertation on file with author).

100. Garrison, *supra* note 56, at 436.

101. For example, the applicable Massachusetts statute provided that:

cohabitating, married male partners were viewed with particular suspicion by state authorities.[102] While the capacious category of neglect replaced poverty as the legal basis for removing children from their parents' custody, to authorities, poverty alone often constituted neglect.[103] In some cases, the child's parents were to be substituted with "an improved family home . . . by legal adoption or otherwise."[104] In other cases, a child was committed to a so-called "training school" or other institution.[105] Such results occurred at the conclusion of both delinquency and status offense cases.[106]

The nineteenth-century understanding of the interaction between due process rights of parents and the *parens patriae* doctrine was that, with respect to the children of the poor, parents' rights lost out.[107] The case of *In re Crouse* exemplifies early courts' views of the meaning and strength of parental rights.[108] In that case, the father of a girl whose mother had her committed to the Philadelphia House of Refuge challenged the constitutionality of the commitment, arguing that his parental rights were improperly abrogated.[109] The Pennsylvania Supreme Court upheld the lower court's rejection of the father's challenge, characterizing the right of parental control as "natural, but not [] unalienable," finding that the public has a paramount interest in the "virtue and knowledge of its members," and concluding that when parents are "incompetent or corrupt," their

> [T]he Overseers of the Poor in any Town or District where such Officers are chosen, otherwise the Selectmen or the Major part of them, are hereby fully Authorized & Impowered by and with the Assent of two Justices of the Peace, to set to work, or bind out Apprentice, all such Children, whose parents shall in their opinion be unable to maintain them (whether they receive alms, or are chargeable to the Town or District or not) . . . . Male Children until they arrive to the age of twenty-one years, and Females to the age of Eighteen, unless such females are sooner married, which binding shall be as good and effectual in Law to every intent & purpose, as if such Child being of full Age, had by Deed or Indenture bound himself.

Id. at 435 n.55.

102. Hasday, *supra* note 54, at 306 n.14 (noting salience of gender and race along with poverty).
103. Garrison, *supra* note 56, at 434–35.
104. Act of Apr. 21, 1899, § 16, 1899 Ill. Laws 136–37.
105. *In re* Gault, 387 U.S. 1, 6 (1967).
106. In *Gault*, for example, a fifteen-year-old boy was sent to a training school until his twenty-first birthday for making "lewd telephone calls." *Id.*
107. Douglas Rendleman, *Parens Patriae: From Chancery to the Juvenile Court*, 23 S.C. L. REV. 205, 216 (1971) (discussing how the New York House of Refuge ignored the "rights of the pauper parents to the custody of their children" or "'wrest[ed] the child away from the original parents'").
108. *Ex parte* Crouse, 4 Whart. 9 (Pa. 1839) (per curiam).
109. *Id.*

rights must give way to "the *parens patriae*, or common guardian of the community."[110]

A case from the early Chicago juvenile court illustrates how the *parens patriae* doctrine worked in combination with positivist criminology to diminish parents' rights. A boy was charged with larceny.[111] Present in court for a nonjuvenile matter, a lawyer asked whether the judge knew what children like this did with what they steal: "It is consumed, ravenously eaten, sometimes without even a pretense of cooking or parching . . . they steal, or they starve. I do not believe this boy is a criminal, only as his environment tends to make him one."[112] The judge's response was to suspend the sentence of commitment to a reform school "if the lawyer would take him and assist him in becoming a self-respecting, honorable citizen."[113] When asked by a reporter what he would do, the lawyer said, "clean him up and get him some clothes and then take him to my mother. She'll know what to do with him."[114]

Noted juvenile court scholar David Tanenhaus argues that this early Chicago case demonstrates the dramatic potential of the juvenile court to redistribute responsibility for indigent children.[115] At the same time, as was true here, this redistribution could come at the cost of children's ability to remain with their parents and, moreover, constituted a disregard for the significance of parents' custodial rights.[116]

The juvenile court did not remove from their homes all or even most children who came before it. Yet it also did not hesitate to extensively intervene in a child's home life, subjecting not only the child but also his parents to monitoring and regulation.[117] A 1910 case study of a juvenile court quoted a probation officer as saying, "[i]n many cases we have to do as great a reform work with the parents as with the children."[118] This reform work often came at the cost of any notion of

110. *Id.*
111. TANENHAUS, *supra* note 43, at 29.
112. *Id.*
113. *Id.*
114. *Id.*
115. *Id.*
116. *Id.*
117. Solomon J. Greene, *Vicious Streets: The Crisis of the Industrial City and the Invention of Juvenile Justice*, 15 YALE J.L. & HUMAN. 135, 139 (2003) ("Rather than furthering the seemingly benign goal of 'treating the child as a child,' the juvenile court movement was driven by an obsessive desire to monitor, regulate, and discipline working-class and immigrant communities in the industrial city.").
118. TANENHAUS, *supra* note 43, at 35.

privacy as well as the maintenance of parental autonomy.[119] As a condition of being permitted to hold on to their children, parents might be subject to probation-conducted home inspections, interviews of neighbors and employers, and visits to children's teachers.[120] Courts might in addition order parents to change jobs, find a new residence, become better housekeepers, prepare different meals, give up alcohol, and even abstain from sex.[121] Failure to comply could result in the child's removal.[122]

The foregoing analysis detailed how child savers, through an expansive interpretation of the *parens patriae* doctrine, emboldened by a vision of childhood and adolescence as a time of unique vulnerability, and mobilized by criminological theories that viewed the causes of crime as ascertainable and thus preventable, structured the early juvenile court. The next Part shifts the temporal focus to the present to trace ruptures and continuity in how the contemporary juvenile court conceptualizes and treats parents.

II. THE CONTEMPORARY JUVENILE COURT: RUPTURES AND CONTINUITY

In re Gault rejected much of the underlying philosophy of the early juvenile court, holding that alleged delinquents would henceforth be entitled to due process.[123] In the contemporary juvenile court,[124] minors are now entitled to receive timely, written notice of charges, and they have the right to counsel, the right to confront and cross-examine witnesses, and the privilege against self-incrimination.[125] Subsequent cases ruled that charges must be proven beyond a

119. Greene, *supra* note 117.

120. *See also* Mack, *supra* note 90, at 116–17 ("In many cases the parents are foreigners, frequently unable to speak English, and without an understanding of American methods and views").

121. TANENHAUS, *supra* note 43, at 35.

122. *Id.*

123. *In re* Gault, 387 U.S. 1, 37–38 (1967) (rejecting much of the underlying philosophy of the juvenile court and instituting due process protections for children tried in the court).

124. Today, subject matter jurisdiction of the juvenile court typically continues to encompass both status and delinquency offenses. *See generally* Kathleen Michon, *Juvenile Court: An Overview*, NOLO, https://www.nolo.com/legal-encyclopedia/juvenile-court-overview-32222.html [https://perma.cc/R3VV-BRXH]; NAT'L RSCH. COUNCIL, REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH 53–54 (Richard J. Bonnie et al. eds., 2013); *see also Juvenile Justice System Structure & Process: Related FAQs*, OFF. OF JUV. JUST. & DELINQ. PREVENTION, https://www.ojjdp.gov/ojstatbb/structure_process/faqs.asp#. [https://perma.cc/4XN2-ZQ75].

125. *Gault*, 387 U.S. 1 at 13, 27 (finding that "whatever may be their precise impact, neither the Fourteenth Amendment nor the Bill of Rights is for adults alone" and holding that these rights apply to alleged delinquents only at the adjudicatory hearing facing confinement). In practice, many of these due process protections get short shrift; a large literature exists on the

reasonable doubt[126] and that the double jeopardy prohibition applies to delinquency proceedings.[127] Moreover, while the U.S. Supreme Court has not ruled that alleged status offenders are entitled to similar rights,[128] federal funding incentives have resulted in states abandoning the practice of incarcerating these offenders.[129]

While minors in juvenile court now enjoy a more robust set of due process protections[130]—and status offenders are almost never incarcerated—three important features of the early juvenile court remain. First, as explored in Subpart A, the court continues to be, overwhelmingly, a court managing poor people, disproportionately children of women of color raising children without a cohabitating partner.[131] Second, as Subpart B discusses, nearly all state statutes have maintained language supporting the importance of rehabilitation. Third, as Subpart C demonstrates, the *parens patriae* justification for diminution of parents' rights persist.

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inadequacy of the juvenile right to counsel. *See, e.g.*, Fedders, *supra* note 48, at 54; BARRY C. FELD, JUSTICE FOR CHILDREN: THE RIGHT TO COUNSEL AND THE JUVENILE COURTS 46 (1993) (describing a 1993 study of juvenile right to counsel in Minnesota found that more than one half of children against whom delinquency petitions had been filed were not represented by counsel).

126. *In re* Winship, 397 U.S. 358, 364 (1970).

127. Breed v. Jones, 421 U.S. 519, 528–33, 541 (1975)*; see generally* Monrad G. Paulsen, *The Constitutional Domestication of the Juvenile Court*, 1967 SUP. CT. REV. 233 (1967) (discussing *In re Gault* as ushering in an era of "constitutional domestication").

128. Julie J. Kim, *Left Behind: The Paternalistic Treatment of Status Offenders Within the Juvenile Justice System*, 87 WASH. U. L. REV. 843, 856 (2010) ("Status offenders are denied procedural due process rights and continue to be 'subject[ed] to more flexible and informal procedures under the *parens patriae* notion.'" (alterations in original)).

129. NAT'L RSCH. COUNCIL, *supra* note 124, at 283 (describing a mandate conditioning state receipt of federal funds on adoption of practices ensuring that "[j]uveniles who are charged with or who have committed an offense that would not be a crime if committed by an adult, and juveniles who are not charged with any offenses, are not to be placed in secure detention or secure correctional facilities").

130. Not all protections that criminal defendants enjoy were extended to juveniles. *See, e.g.*, McKeiver v. Pennsylvania, 403 U.S. 528, 545 (1971) ("[W]e conclude that trial by jury in the juvenile court's adjudicative stage is not a constitutional requirement."). A few states provide the right under state statute. *See* Mass. Gen. Laws Ann. ch. 119, § 55A (West 2022); Mont. Code Ann. § 41-5-1502 (West 2021); N.M. Stat. Ann. § 32A-2-16 (West 2022); Okla. Stat. Ann. tit. 10A, § 2-2-401 (West 2022).

131. *See infra* Subpart II.A.1.

A. Race, Gender, and Poverty in the Contemporary Court

Child poverty is widespread.[132] Children comprise the largest group of impoverished people, with nearly one in seven living in poverty in 2019.[133] In addition, on top of those meeting the federal definition of poverty, approximately four in ten children live in households where caregivers cannot consistently meet basic expenses.[134] Poverty affects Black, Latinx, and Indigenous families particularly hard.[135] Nearly one in three Black and Indigenous children and one in four Latinx children live in poverty, compared with one in eleven white children.[136] Within this group, children living in households without two custodial parents—the majority of which are headed by women[137]—are especially vulnerable.[138]

The COVID-19 pandemic has intensified these disturbing trends.[139] Mothers have left the paid work force in unprecedented numbers to provide caregiving to children.[140] This loss of maternal income has contributed to growing rates of food insecurity experienced by children in 2020.[141] Women raising

132. Areeba Haider, *The Basic Facts About Children in Poverty*, CTR. FOR AM. PROGRESS (Jan. 12, 2021), https://www.americanprogress.org/article/basic-facts-children-poverty/ [https://perma.cc/2Z3S-95RE].

133. *See* LAURA WHEATON, SARAH MINTON, LINDA GIANNARELLI & KELLY DWYER, URBAN INST., 2021 POVERTY PROJECTIONS: ASSESSING FOUR AMERICAN RESCUE PLAN POLICIES (2021) (discussing the 2019 child poverty rate and projecting that the American Rescue Plan is believed to eventually cut the poverty rate from 13.7 to 8.7 percent and by more than half for children).

134. Haider, *supra* note 132.

135. *Id.*

136. *See* PAUL JARGOWSKY, CENTURY FOUND., THE ARCHITECTURE OF SEGREGATION: CIVIL UNREST, THE CONCENTRATION OF POVERTY, AND PUBLIC POLICY (2015).

137. Robin Bleiweis, Diana Boesch & Alexandra Cawthorne Gaines, *The Basic Facts About Women in Poverty*, CTR. FOR AM. PROGRESS (Aug. 3, 2020), https://www.americanprogress.org/article/basic-facts-women-poverty [https://perma.cc/4VEM-QXZ4] (noting that across race and ethnicity, women are more likely than men to be in poverty).

138. *Id.*

139. Haider, *supra* note 132 (discussing how the COVID-19 pandemic has exacerbated child poverty).

140. *See, e.g.*, Ernie Tedeschi, *The Mystery of How Many Mothers Have Left Work Because of School Closings*, N.Y. TIMES (Oct. 29, 2020), https://www.nytimes.com/2020/10/29/upshot/mothers-leaving-jobs-pandemic.html [https://perma.cc/G79R-MHWV]; Bryce Covert, *The Economy Could Lose a Generation of Working Mothers*, VOX (Oct. 30, 2020), https://www.vox.com/21536100/economy-pandemic-lose-generation-working-mothers [https://perma.cc/4JT9-MHT7].

141. Haider, *supra* note 132.

children alone confront emotionally challenging isolation on top of financial stresses.[142]

Poverty—and racialized, gendered[143] poverty in particular—makes it more likely that a child will enter the juvenile court.[144] Once there, poverty interacts with the juvenile court rights regime in ways that often contribute to worse outcomes for poor children of color.

1. Entry

Consider first how living in poverty makes a child vulnerable to arrest. First, while it is not clear that the relationship is causal,[145] there is evidence that living in poverty is associated with the commission of criminal activity.[146] To the extent

142. Andrew Van Dam, *We've Been Cooped up With Our Families for Almost a Year. This Is the Result*, WASH. POST (Feb. 16, 2021), https://www.washingtonpost.com/road-to-recovery/2021/02/16/pandemic-togetherness-never-have-so-many-spent-so-much-time-with-so-few [https://perma.cc/2R99-AGT2] (citing Barnard College economist Daniel Hamermesh's research showing that "the decrease in single women's happiness will have been compounded by their increased likelihood of losing work and income during the pandemic lockdowns—especially if they are the only caregiver for a few young children").

143. Poverty itself of course does not have a race or gender. I use the phrase "racialized, gendered poverty" to connote the intersections between race, gender, and socioeconomic status and to suggest the unique ways that children of poor women of color experience harm in the juvenile court.

144. Birckhead, *supra* note 29, at 57–59, 71 (noting that while few courts formally keep track of the income levels of the families the court, those jurisdictions that do confirm that nearly 60 percent were either on public assistance or had annual incomes of less than twenty thousand dollars and that another 20 percent had incomes of less than thirty thousand dollars); *see also* Katherine Hunt Federle, *Child Welfare and the Juvenile Court*, 60 OHIO ST. L.J. 1225, 1236 n.90 (1999) (noting lack of national data sets but commenting that "[f]or those who work in the juvenile court system, this assertion seems indisputable"); ALLEN BECK, SUSAN A. KLINE & LAWRENCE A. GREENFELD, U.S. DEP'T OF JUST., SURVEY OF YOUTH IN CUSTODY, 1987, at 3 (1988), https://www.bjs.gov/content/pub/pdf/syc87.pdf [https://perma.cc/JS25-DR8Z] ("Seven of every [ten delinquents] primarily grew up in a household without both parents. Approximately 54.0 [percent] lived in single parent households—48.4 [percent] with their mothers and 5.6 [percent] with their fathers." (internal citations omitted)); GAIL WASSERMAN, KATE KEENAN, RICHARD E. TREMBLAY, JOHN D. COIE, TODD I. HERRENKOHL, ROLF LIEBERMAN & DAVID PETECHUK, U.S. DEP'T OF JUST., RISK AND PROTECTIVE FACTORS OF CHILD DELINQUENCY (2003); *Historical Living Arrangements of Children*, U.S. CENSUS BUREAU (Nov. 2021), https://www.census.gov/data/tables/time-series/demo/families/children.html [https://perma.cc/GRZ8-S6CV].

145. *Historical Living Arrangements of Children*, *supra* note 144.

146. Patrick Sharkey, Max Besbris & Michael Friedson, *Poverty and Crime*, *in* OXFORD HANDBOOK OF THE SOCIAL SCIENCE OF POVERTY (David Brady & Linda M. Burton, eds. 2016).

that there is a link between poverty and crime commission[147] by young people, it appears to arise from how poverty can diminish a parent's ability to provide sufficient attachment, supervision, and appropriate discipline consequences—which social scientists refer to as "informal social control."[148]

Moreover, while crime occurs across racial and socioeconomic groups,[149] poor children of color are disproportionately likely to be arrested.[150] This is because they are disproportionately the subject of state surveillance across at least three domains.

First, officers are disproportionately likely to patrol in low-income communities of color—and to view youthful offending in those communities less as the product of simple developmental immaturity[151] than as a result of fully formed criminal intent.[152]

147. I use the phrase "crime commission" with reservation, recognizing that the decision to denominate "criminal" a given activity engaged in by a poor person is somewhat tautological. *See generally* Monica Bell, Stephanie Garlock & Alexander Nabavi Noori, *Toward a Demosprudence of Poverty*, 69 DUKE L.J. 1473, 1476 (2020) (arguing for greater scrutiny toward "what society chooses to criminalize and what structures are put in place to enforce those norms" and suggesting that commentators should focus not only on fines, fees, and costs of court in discussions of criminalization of poverty but should also attend to poverty's substantive and structural elements, with particular attention to laws targeting conduct "engaged in largely by poor individuals, such as selling loose cigarettes," and critiquing the imposition of additional obligations on and surveilling of those who apply for or receive public benefits).

148. Federle, *supra* note 144, at 1239 (quoting Robert J. Sampson & John H. Laub, *Urban Poverty and the Family Context of Delinquency: A New Look at Structure and Process in a Classic Study*, 65 CHILD DEV. 523, 525 (1994) (noting that, by contrast, strong social controls within the family "'characterized by consistent, loving, and reintegrative punishment, effective supervision, and close emotional ties' were at 'low risk for adolescent delinquency'")); *see also* Sharkey, Besbris & Fridson, *supra* note 146, at 2 (discussing "routine activities theory" for correlation between poverty and crime, which includes as an element the absence of a "capable guardian").

149. ACLU & ACLU OF CONN., HARD LESSONS: SCHOOL RESOURCE OFFICER PROGRAMS AND SCHOOL BASED ARRESTS IN THREE CONNECTICUT TOWNS (2008), https://www.aclu.org/report/hard-lessons-school-resource-officer-programs-and-school-based-arrests-three-connecticut [https://perma.cc/7SLX-GL7U] (noting crime occurs across race and class).

150. Kenneth Nunn, *The Child as Other: Race and Differential Treatment in the Juvenile Justice System*, 51 DEPAUL L. REV. 679, 681–82, 706–07 (2002).

151. Birckhead, *supra* note 29, at 79; *see also* Lisa H. Thurau, *Rethinking How We Police Youth: Incorporating Knowledge of Adolescence Into Policing Teens*, 29 CHILD. LEGAL RTS. J. 30, 31–32 (2009) (noting impacts of socioeconomic status and race on police arrests and use of force tendencies against adolescents).

152. Kristin Henning, *Criminalizing Normal Adolescent Behavior in Communities of Color: The Role of Prosecutors in Juvenile Justice Reform*, 98 CORNELL L. REV. 383, 419 (2013) (noting studies repeatedly document that "many Americans are predisposed to consciously or subconsciously associate [B]lack youth with crime and dangerousness").

Second, a similar phenomenon exists in schools, from which approximately half of all delinquency complaints originate.[153] While both low- and high-income schools employ permanent, full-time police officers,[154] the race and income levels of the student bodies shape how police view their responsibilities.[155] Schools with high concentrations of low-income students of color tend to see arrest and juvenile court referral as a necessary tool to maintain order.[156] Schools with a comparatively affluent student body, by contrast, are much less likely to rely on the police to resolve problems of disorder and crime.[157]

Third, poor women of color are disproportionately vulnerable to child welfare intervention[158] into their families,[159] which in turn increases the likelihood of juvenile justice involvement for their children.[160] This disproportionate representation arises in part because neglect—the overwhelming cause for child

153. *See* SARAH HOCKENBERRY & CHARLES PUZZANCHERA, NAT'L CTR. FOR JUV. JUST., JUVENILE COURT STATISTICS 2018 (2020); *see also Youth & Children*, CAROLINA JUST. POL'Y CTR., https://www.cjpcenter.org/our-priorities/women-youth-children/ [https://perma.cc/5EQL-7VT6] (finding in North Carolina that over half of youth-related referrals to the justice system are from schools).

154. Fedders, *supra* note 10, at 118.

155. *Id.* at 120.

156. Katayoon Majd, *Students of the Mass Incarceration Nation*, 54 HOW. L.J. 343, 368–69 (2011) ("[School Resource Officers] are most likely to be found in schools in urban neighborhoods with high poverty, and many schools in low-income communities of color physically resemble prisons, with fortress-like layouts, metal detectors, video surveillance cameras, security check points, and drug-sniffing dogs."); *see also* CHRIS CURRAN, ET AL., KEEPING STUDENTS SAFE OR HEIGHTENING PERCEIVED RISK? RESEARCH BRIEF #6, at 15 (2019) (unpublished manuscript on file with author) (discussing influence of race and class on behavior of police).

157. Fedders, *supra* note 10, at 119; *see also* CURRAN, ET AL. *supra* note 156, at 15 (noting that these schools rely on school police primarily for protection against perceived threats arising outside the school).

158. Following Annette Appell, this Article defines "intervention" to include decisions "to contact the child abuse and neglect hotline, to investigate allegations, to find those allegations to be founded, to coercively provide services, and to remove children from their families." Annette Ruth Appell, *Virtual Mothers and the Meaning of Motherhood*, 34 U. MICH. J.L. REFORM 683, 773 n.382 (2001).

159. Sarah S. Greene, *A Theory of Poverty: Legal Immobility*, 96 WASH. U. L. REV. 753, 778 (2019) (noting that families with incomes of less than $15,000 per year are forty-five times more likely to be victims of substantiated neglect allegations than children in families with incomes exceeding $30,000 per year); *see also* ROBERTS, *supra* note 31, at 6–9 (tracing overrepresentation of Black women whose children are in foster care to racial injustice and arguing that this overrepresentation threatens individuals and the larger Black community).

160. J.P. Ryan & M.F. Testa, *Child Maltreatment and Juvenile Delinquency: Investigating the Role of Placement and Placement Instability*, 27 CHILD. & YOUTH SERVS. REV. 227 (2005) (noting that delinquency rates are approximately 47 percent greater for youth associated with at least one substantiated report of maltreatment).

welfare involvement[161]—is a capacious term. Its indicators—substandard housing, housing insecurity, unreliable and inconsistent childcare—are also correlates of poverty.[162] Indeed, experts estimate that between 40 and 70 percent of children in foster care would not need to be there if robust income and social supports existed outside the foster care system for poor families.[163] Moreover, racial disproportionality exists in the rates at which families are investigated for abuse.[164] Research shows that Black and Latinx pediatric emergency room patients who have minor head trauma are two to four times more likely to be reported to child welfare authorities in comparison to the children of white, non-Hispanic patients.[165]

Finally, poverty means a lack of resources to defend against child welfare intervention. On the rare occasion when a financially stable family attracts the attention of child welfare workers, parents can hire counsel to fight abuse or neglect allegations and investigations.[166] By contrast, poor people are more likely to be subject to the whims of the system,[167] forced to hope that the vagueness of neglect statutes will work in their favor.[168]

Research suggests that children with open child welfare cases are especially vulnerable to juvenile justice involvement.[169] These children are likely to spend longer periods of time in pretrial detention than other youth.[170]

161. Kele Stewart & Robert Latham, *COVID-19 Reflections on Resilience and Reform in the Child Welfare System*, 48 FORDHAM URB. L.J. 95, 100 (2020) (noting that more than 70 percent of parents subject to child welfare jurisdiction are there because of neglect).
162. *Id.* at 101; *see also* Michele Estrin Gilman, *The Poverty Defense*, 47 U. RICH. L. REV. 495, 514–15 (2013).
163. MARTIN GUGGENHEIM, WHAT'S WRONG WITH CHILDREN'S RIGHTS 193 (2005).
164. Jessica Horan Black, *A Child Bumps Her Head. What Happens Next Depends on Race*, N.Y. TIMES (Aug. 24, 2019), https://www.nytimes.com/2019/08/24/opinion/sunday/child-injuries-race.html [https://perma.cc/NL7C-A6S2]; *see also* Kent P. Hymel et al., *Racial and Ethnic Disparities and Bias in the Evaluation and Reporting of Abusive Head Trauma*, 198 J. PEDIATRICS 137 (2018).
165. Hymel et al., *supra* note 164; *see generally* Horan Black, *supra* note 164.
166. Greene, *supra* note 159, at 781 (discussing the case of wealthy "free range" parents who allowed their young children to walk alone to the park and thereby caught the attention of Child Protective Services, and contrasting the treatment they received with that of a low-income family).
167. *See* sources cited *supra* note 34.
168. Greene, *supra* note 159, at 779.
169. *Id.* at 782.
170. DYLAN CONGER & TIMOTHY ROSS, VERA INST. OF JUST., REDUCING THE FOSTER CARE BIAS IN JUVENILE DETENTION DECISIONS: THE IMPACT OF PROJECT CONFIRM (2001), https://www.vera.org/downloads/Publications/reducing-the-foster-care-bias-in-juvenile-detention-decisions-the-impact-of-project-confirm/legacy_downloads/Foster_care_bias.pdf [https://perma.cc/7UHV-3KBZ] (noting impact of foster

2. Juvenile Court Process and Rights

Once a minor is arrested, or referred to the juvenile court through a civilian complaint,[171] the charge need not become a full-blown delinquency case. Instead, judges, prosecutors, and probation officers have options of dismissing or diverting a case, either through an informal route or pursuant to a formal contract with specific conditions.[172]

The screening criteria for diversion eligibility, however, have the potential to favor the children of the comparatively financially advantaged. In many states, a child's case can be diverted or dismissed only if she attends a meeting with a juvenile court probation officer.[173] Often, these meetings are initiated not through official court process such as a subpoena that requires proof of service but instead only through a letter.[174] Parents without stable housing,[175] or for

care on juvenile justice involvement and tracing higher likelihood of detention to the fact that child welfare workers do not appear in court on behalf of the youth); *see also* Miriam Aroni Krinsky, *Disrupting the Pathway From Foster Care to the Justice System: A Former Prosecutor's Perspectives on Reform*, 48 FAM. CT. REV. 322, 325 (2010).

171. NATIONAL RESEARCH COUNCIL, *supra* note 124, at 54 ("Generally police are the primary referring agents, but, in approximately 20 percent of the arrests, referral will come from a source other than the police.").

172. *See, e.g.*, N.C. GEN. STAT. § 7B-1706 (2019), *amended by* 2021 N. C. Sess. Laws 2021-123 (S.B. 207), (stating that "[u]nless the offense is one in which a petition is required by G.S. 7B-1701," including, among other things, murder, rape, and crimes against nature, "upon a finding of legal sufficiency the juvenile court counselor may divert the juvenile pursuant to a diversion plan"); CAL. R. OF CT. 5.514; COLO. REV. STAT. § 192-303 (establishing a diversion program and barring Class 1 and 2 felony acts from the program); *see also Diversion Programs*, YOUTH.GOV, https://youth.gov/youthtopics/juvenile-justice/diversion-programs [perma.cc/3V6T-QB76].

173. *See, e.g.*, N.C. GEN. STAT. § 7B-1706 (stating that juvenile and parents must sign a diversion contract); *see also* NEB. REV. STAT. ANN. § 43-260.04 (requiring attendance); WASH. REV. CODE § 13.40.080 (also requiring attendance).

174. *See, e.g.*, Cheri Panzer, *Reducing Juvenile Recidivism Through Pre-Trial Diversion Programs: A Community's Involvement*, 18 J. JUV. L. 186, 189 (1997) (explaining process).

175. Those in poverty are forced to move often. *See, e.g.*, Stefanie DeLuca, *Why Families Move (And Where They Go): Reactive Mobility and Residential Decisions*, 18 CITY & CMTY. 556, 559 (2019) ("Decades of scholarship . . . have documented that low-income and [B]lack families have been more susceptible to involuntary and frequent moves than [white families]"). As a result, they may struggle to consistently receive mail, as perhaps best illustrated in the last census when government officials struggled to contact people in poorer, urban areas. *See, e.g.*, Kavahn Mansouri, *People in East St. Louis Don't Trust the Census. That Could Cost Illinois Millions*, BELLEVILLE NEWS DEMOCRAT (Sept. 16, 2019), https://www.bnd.com/news/politics-government/article234964792.html#storylink=cpy [https://perma.cc/2PXS-REZG] (finding that those "living in nonpermanent housing, who

whom official documents often portend bad news—threatened cessation of a utility or notices of unpaid medical bills, for example[176]—may be less likely to receive and open such a letter. If they miss the appointment, the petition may automatically issue.[177]

A host of other factors weighs against diversion for children of poor parents. One factor is a determination that a child is in need of supervision, treatment, or confinement.[178] As was true at the outset of child saving in the nineteenth century, children of poor parents, particularly parents raising children without a cohabitating partner, are particularly likely to be seen as in need.[179] A second factor that militates against diversion is the existence of a delinquency record.[180] Far from purely objective indicators of prior offending, delinquency records often also reflect the class-race biases of policing.[181] A third factor that works against poor families is that diversion also depends on a child's family's ability to independently access community resources.[182] Community resources are more plentiful when one is not limited only to those that are free or low cost. In addition, the ability to access resources is shaped by the availability of reliable transportation as well as a flexible work schedule. Finally, the constitutional right to counsel afforded alleged delinquents attaches under federal constitutional law only after a petition issues and proceedings commence.[183] The public defenders and state-appointed private

move often or are homeless have a significantly lower chance of being counted than those with a permanent address").

176. Lee Raine, Scott Keeter & Andrew Perrin, *Trust and Distrust in America*, PEW RSCH. CTR. (July 22, 2019), https://www.pewresearch.org/politics/2019/07/22/trust-and-distrust-in-america [https://perma.cc/3Q3C-J3VG] (finding that impoverished people have more distrust in the government).

177. N.C. GEN. STAT. § 7B-1703 (2019), *amended by* 2021 N. C. Sess. Laws 2021-123 (S.B. 207).

178. *Id.*

179. Donna M. Bishop, *The Role of Race and Ethnicity in Juvenile Justice Processing*, *in* OUR CHILDREN, THEIR CHILDREN: CONFRONTING RACIAL AND ETHNIC DIFFERENCES IN AMERICAN JUVENILE JUSTICE 23, 63–64 (Darnell F. Hawkins & Kimberly Kempf-Leonard eds., 2005).

180. *See, e.g.*, THOMAS R. YOUNG, N.C. JUV. CODE PRAC. & PROC., at § 4:3(B) (2021).

181. *See generally* JOSH ROVNER, RACIAL DISPARITIES IN YOUTH INCARCERATION PERSIST (2021).

182. *See, e.g.*, YOUNG, *supra* note 180. *In re* Gault, 387 U.S. 1, 37 (1967). While states may provide attorneys for the pretrial and sentencing phase, they are not constitutionally mandated to do so. *See* Sandra Simkins & Laura Cohen, *The Critical Role of Post-Disposition Representation in Addressing the Needs of Incarcerated Youth*, 8 J. MARSHALL L.J. 311, 342–43 (2015) (noting that divergence between opinion of courts and commentators who counsel from detention through disposition is necessary to effectuate the mandate of *Gault*, and the reality that most states do not provide counsel at all stages, having failed to build on *Gault*'s holding).

183. *Gault*, 387 U.S. at 37. While states may provide attorneys for the pretrial and sentencing phase, they are not constitutionally mandated to do so. *See* Simkins & Cohen, *supra* note 182, at 342–43.

counsel who represent the vast majority of alleged delinquents[184] therefore do not know about their future clients, and cannot begin charging for their work, until the pivotal prepetition screening phase has already passed.[185] Children could benefit enormously at the screening phase from the guidance of an attorney, who could point out legal weaknesses and marshal mitigating evidence in favor of arguing for dismissal or diversion.[186] Without this assistance, however, poor parents and their children are at a disadvantage as they may not know which aspects of a child's life are most significant to bring to the attention of the prepetition screener. Children of the comparatively well off, by contrast, are more likely to have parents who can afford counsel at this early stage.

3. Outcomes

Decades of research suggest that children of color receive fewer allowances for youthful immaturity at every juncture within the juvenile court process that calls for the exercise of discretion. Being a child of color is predictive of receiving more adult-like consequences.[187] Children of color are more likely to receive longer terms of probation with more onerous conditions than their white and comparatively affluent peers.[188] Moreover, they are also more likely to be incarcerated than to receive probation.[189] If incarcerated, these children of color will spend more time confined than their white peers, even controlling for offense

184. DEV. SERVS. GRP., INDIGENT DEFENSE FOR JUVENILES (2018), https://www.ojjdp.gov/mpg/litreviews/Indigent-Defense-for-Juveniles.pdf [https://perma.cc/GNJ6-MXPF].

185. NAT'L JUV. DEF. CTR., ACCESS DENIED: A NATIONAL SNAPSHOT OF STATES' FAILURE TO PROTECT CHILDREN'S RIGHT TO COUNSEL 18–19 (2017), https://njdc.info/wp-content/uploads/2017/05/Snapshot-Final_single-4.pdf [https://perma.cc/8SNH-QYY2].

186. Katayoon Majd & Patricia Puritz, *The Cost of Justice: How Low-Income Youth Continue to Pay the Price of Failing Indigent Defense Systems*, 16 GEO. J. ON POVERTY L. & POL'Y 543, 566–68 (2009).

187. As Henning notes,

> As documented by the National Council on Crime and Delinquency, while African Americans comprised only 16 [percent] of all youth in the United States from 2002 to 2004, they accounted for 28 [percent] of all juvenile arrests, 30 [percent] of juvenile court referrals, 37 [percent] of detained youth, 34 [percent] of youth formally processed by the juvenile court, 30 [percent] of adjudicated youth, 35 [percent] of youth judicially waived to criminal court, 38 [percent] of youth in residential placements, and 58 [percent] of youth sent to adult state prison.

Henning, *supra* note 152, at 408; *see also* BERNSTEIN, *supra* note 96, at 9.

188. Nunn, *supra* note 150, at 680; *see also* Ward, *supra* note 97, at 88–89.

189. Nunn, *supra* note 150, at 686.

and prior delinquency record.[190] In addition, they are more likely to be tried in the adult system.[191] At every point where a decisionmaker—a prosecutor, probation officer, or judge—can make allowances for youthful immaturity, the race of a juvenile is an influential factor.[192]

B. The Survival of the Rehabilitation Imperative

In extending constitutional protections to alleged delinquents in juvenile court, the U.S. Supreme Court made clear it that it did not intend to interfere with the components of the juvenile court believed to aid in rehabilitation.[193] These components include greater availability of and access to therapeutic programs and services;[194] the fact that minors in juvenile court are spared from detention or incarceration in adult facilities, where they are more likely to be assaulted or abused;[195] and the relative confidentiality of juvenile proceedings, such that delinquency records are not as accessible to potential employers, colleges and universities, and agencies administering financial aid.[196] Each of these features, proponents argue, promote rehabilitation and lower recidivism, thus improving public safety.[197] While casting doubt on the efficacy of the juvenile court's programs and services at achieving its stated goal, the Supreme Court nonetheless did not entirely disavow the effort.[198] In describing the difference between criminal and juvenile courts, the Court of Appeals for the Ninth Circuit

190. *Id.* at 687 (noting dramatically longer custody periods for African American youth as compared with white youth).
191. *Id.* at 685.
192. *See* Barry Holman & Jason Zeidenberg, *Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilitie*s, JUST. POL'Y INST. 14 (2006) (noting decisions to detain youth consider several extralegal factors such as the youth's family status, race, gender, and neighborhood); *see generally* EILEEN POE-YAMAGATA & MICHAEL A. JONES, NAT'L COUNCIL ON CRIME & DELINQ., AND JUSTICE FOR SOME: DIFFERENTIAL TREATMENT OF MINORITY YOUTH IN THE JUSTICE SYSTEM 3 (2000) ("Minority youth are more likely than [w]hite youth to become involved in the system with their overrepresentation increasing at each stage of the process").
193. *In re* Gault, 387 U.S. 1, 22–24 (1967) (allowing states to preserve confidentiality of delinquency hearings); *see generally* Kristin Henning, *What's Wrong With Victims' Rights in Juvenile Court?: Retributive Versus Rehabilitative Systems of Justice*, 97 CALIF. L. REV. 1107, 1121 (2009) (analyzing case law in the wake of *In re* Gault pertaining to rehabilitation).
194. Tamar Birckhead, *North Carolina, Juvenile Court Jurisdiction, and the Resistance to Reform*, 86 N.C. L. REV. 101, 110 (2008).
195. *Id.* at 115.
196. *Id.* at 111–14.
197. *Id.*
198. *Gault*, 387 U.S. at 22–24.

subsequently noted that "[o]ur punitive system is public; our rehabilitative system for juveniles, quite deliberately, is not."[199]

Starting in earnest in the 1980s, the rehabilitative emphasis of juvenile court came under attack.[200] For at least two decades, a media-fueled and politically expedient tough-on-crime movement, facilitated by racist, now widely discredited theories of juvenile "superpredators,"[201] spurred changes in state laws that collectively de-emphasized rehabilitation.[202]

The belief in rehabilitation never entirely disappeared, however. Most state legislatures maintained rehabilitation as a purpose of juvenile court proceedings.[203] Moreover, beginning with the Court's decision in 2005 in *Roper v. Simmons*,[204] the pendulum began to shift back.[205] That case, followed by three more,[206] reaffirmed the importance of rehabilitation as a goal in proceedings involving the adjudication and sentencing of crimes committed by minors.[207] In *Roper*, the Court accepted that "a greater possibility exists that a minor's character deficiencies will be reformed," finding that because the character of a juvenile is

199. United States v. Juv. Male, 590 F.3d 924, 932 (9th Cir. 2010), *vacated*, 564 U.S. 932 (2011).
200. Simon, *supra* note 43, at 1364.
201. *See generally* James Forman Jr. & Kayla Vinson, *The Superpredator Myth Did a Lot of Damage. Courts Are Beginning to See the Light*, N.Y. TIMES (Apr. 20, 2020), https://www.nytimes.com/2022/04/20/opinion/sunday/prison-sentencing-parole-justice.html [https://perma.cc/R8T2-77NS] (describing racist origins of superpredator myth and noting that theory has been widely discredited, including being disavowed by the sociologist who coined term); *see also* State v. Belcher, 342 Conn. 1, 14 (2022) ruling that trial court abused its discretion in denying the defendant's motion to correct the sixty-year sentence imposed when he was fourteen by a judge who explicitly relied on now discredited superpredator theory and noting that this theory "centered disproportionately on the demonization of Black male teens").
202. Henning, *supra* note 193, at 1113 (noting that these changes included "policies [that made] it easier for prosecutors to transfer juveniles to adult court, create presumptions for detaining youth pending trial, impose mandatory minimum sentences for juveniles, lift the protective veil of confidentiality in juvenile proceedings, and require juveniles to register in sex-offender databases"). These changes also included the introduction of punishment and accountability, along with rehabilitation, into juvenile court purpose clauses.
203. *Id.*
204. 543 U.S. 551 (2005) (abolishing the death penalty for juvenile offenders).
205. Henning, *supra* note 193.
206. Graham v. Florida, 130 S. Ct. 2011 (2010) (abolishing life without parole sentences for juvenile nonhomicide offenders); J.D.B. v. North Carolina, 131 S. Ct. 2394 (2011) (holding that age is a factor that must be taken into account by police officers and judges in the analysis of whether an individual was in custody for purposes of triggering the warnings required under Miranda v. Arizona, 384 U.S. 436 (1966)); Miller v. Alabama, 132 S. Ct. 2455 (2012) (abolishing statutes mandating life without parole sentences for juvenile offenders).
207. Barbara Fedders & Jason Langberg, *School Discipline Reform: Incorporating the Supreme Court's 'Age Matters' Jurisprudence*, 46 LOY. L.A. L. REV. 933 (2013).

less "fixed" than that of an adult, it would be wrong to treat a juvenile as if he were of "irretrievably" depraved character.[208] In addition, states across the country have taken steps to move youth out of the adult and into the juvenile system. This shift takes two principal forms[209]: first, through curtailing the circumstances under which people who would otherwise fall under juvenile court jurisdiction may be transferred to the adult system,[210] and second, by raising the age of juvenile court jurisdiction so that older adolescents and young adults are presumptively tried in juvenile court.[211]

C. The Vestiges of *Parens Patriae*

Along with the persistence of the rehabilitation imperative, the *parens patriae* doctrine has not disappeared. Indeed, post-*Gault*, the Court pulled back on extending procedural protections in juvenile proceedings, bowing to the notion that the state continues to have a parental interest in the safety and well-being of the child. Perhaps nowhere are the downsides of the *parens patriae* doctrine more acutely experienced by children and their parents than in the judicial imposition of secure custody, without the possibility of bail, even over the objection of parents.

The Supreme Court laid the groundwork for a broad judicial use of juvenile detention in *Schall v. Martin*,[212] when it ruled that New York's prevention detention system did not violate children's due process rights.[213] On the one hand, the case was an unremarkable prelude to *U.S. v. Salerno*,[214] wherein the Court rejected substantive due process and Eight Amendment challenges to the use of preventive detention in the federal adult system on the ground that the

208. *Roper*, 543 U.S. at 553.

209. NAT'L CONF. OF STATE LEGIS., JUVENILE AGE OF JURISDICTION AND TRANSFER TO ADULT COURT LAWS (2021) (showing upper age of juvenile court jurisdiction in each state and each state's mechanism for transferring juveniles to adult court).

210. *See, e.g.*, MARCY MISTRETT, BRINGING MORE TEENS HOME: RAISING THE AGE WITHOUT EXPANDING SECURE CONFINEMENT IN THE YOUTH JUSTICE SYSTEM 4 (2021) (noting that since 2007, eleven states have raised the maximum age of juvenile court jurisdiction to seventeen, that only three states consider all seventeen-year-olds to be adults for purposes of criminal prosecution, and that Vermont includes eighteen-year-olds in juvenile court).

211. Marcy Mistrett, *15 Years of Impact: How We Won*, CAMPAIGN FOR YOUTH JUST., https://www.campaignforyouthjustice.org/15-years-of-impact-how-we-won [https://perma.cc/48ZU-37DT] (documenting a 70 percent drop in the number of youths prosecuted as adults between 2005 and 2015 and noting that forty states and Washington, D.C. changed more than one hundred laws to make it more difficult to send youths to adult courts).

212. 467 U.S. 253 (1984).

213. *Id.* at 255.

214. 481 U.S. 739 (1987).

"[g]overnment's regulatory interest in community safety can, in appropriate circumstances, outweigh an individual's liberty interest."[215] On the other hand, the Court's reasoning substantially undermined the *Gault* skepticism about the early court's reliance on an expansive interpretation of its *parens patriae* power..[216]

The *Schall* majority opinion, while acknowledging that the child has an "interest in freedom," stated that that interest "must be qualified by the recognition that juveniles, unlike adults, are always in some form of custody."[217] The Court thus revitalized a concept about which the *Gault* court had expressed some skepticism[218]—namely, that whether that custody is provided by a child's family or by the state through a detention facility was an issue of no legal consequence.[219] The Court in *Schall* asserted "[i]f parental control falters, the State must play its part as *parens patriae*"[220] and cites with approval "the desirability of protecting the juvenile from his own folly"[221] supposedly manifest in the New York preventive detention scheme. In so doing, the *Schall* Court reinvigorated a *parens patriae* doctrine that might have, after *Gault*, seemed to be on its last legs.

One can see in contemporary statutes regulating the use of detention in juvenile court the persistence of *parens patriae*, which, as we have seen,[222] subordinates parents' rights. Today, nearly every state authorizes secure pretrial detention for juveniles, and judges impose it for a broader array of reasons than would justify detention of adults.[223] Juveniles have fewer procedural protections available to contest detention decisions than their adult counterparts.[224] For example, the discretion available to judges in making detention decisions has led

215. *Id.* at 740.
216. Irene Merker Rosenberg, *Leaving Bad Enough Alone: A Response to the Juvenile Court Abolitionists*, 1993 WIS. L. REV. 163, 168.
217. 467 U.S. at 265.
218. 387 U.S. at 17.
219. Jean Koh Peters, Schall v. Martin *and the Transformation of Judicial Precedent*, 31 B.C. L. REV. 641, 665 (1990). The dissent found the characterization of preventive detention as nothing more than a transfer of custody from a parent or guardian to the state "difficult to take seriously." *Schall*, 467 U.S. at 289 (Marshall, J., dissenting).
220. 467 U.S. at 265 (majority opinion).
221. *Id.* (internal citation omitted).
222. *See supra* note 105, and accompanying text.
223. Hillela B. Simpson, *Parents Not Parens: Parental Rights Versus the State in the Pre-Trial Detention of Youth*, 41 N.Y.U. REV. L. & SOC. CHANGE 477, 488 (2017). *See also* Perry Moriearty, *Combating the Color-Coded Confinement of Kids: An Equal Protection Remedy*, 32 N.Y.U. REV. L. & SOC. CHANGE 285, 304 (2008) (outlining differences between juvenile and adult systems with respect to pretrial detention, noting that adult defendants enjoy procedural safeguards such as the right to bail and a more rigorous burden of proof for prosecutors).
224. *See, e.g.*, Shana Conklin, *Juveniles Locked up in Limbo: Why Pretrial Detention Implicates a Fundamental Right*, 96 MINN. L. REV. 2150, 2151 (2012).

to practices of judges ordering a child detained ostensibly for their own good .[225] One such practice is the detention by courts of status offenders for up to seven days after finding that they have violated court orders—a loophole in the federal statute that denies funds to states that incarcerate status offenders.[226] What this means in practice is that a child who is under the jurisdiction of the court for a noncriminal offense such as truancy or running away can then be incarcerated for committing another such noncriminal offense.[227] One can see this most pointedly in the use of detention for minors with the stated rationale that the child in question—often a girl[228]—is endangered by association with older romantic partners or engaging in survival sex work.[229] The dangers of detention are well known—exposure to prison-like conditions, loss of family connections and support, interruption of education, creation or exacerbation of mental health problems[230]—suggesting a poorly considered weighing of the harm of a hypothetical future danger in the community and the well-documented problems associated with secure custody.

In addition, after adjudication, states may authorize courts to remove children from their homes and place them in a foster placement or group home if the court finds the child needs "more adequate care or supervision," and may order the child detained pending the availability of such a placement.[231] Importantly, the underlying crime need not be serious or violent to support an order for secure custody.[232] The waiting period for the placement can be lengthy, and juveniles often have no right to hearings within a prescribed time period at this stage.[233]

225. *See, e.g.*, Cynthia Godsoe, *Contempt, Status, and the Criminalization of Non-Conforming Girls*, 35 CARDOZO L. REV. 1091, 1107 (2014) (noting protectionist rationale for detaining girls).

226. As described in *supra* note 128, and accompanying text, in 1974 an amendment to the federal statute regulating juvenile justice withheld federal funds for states that use incarceration for status offenders. A 1980 amendment, however, created an exception for juveniles adjudicated of status offenses who violate a "valid court order." *See* John Sciamanna, *Courts Use of the Valid Court Order*, CHILD WELFARE LEAGUE OF AM., https://www.cwla.org/courts-use-of-the-valid-court-order [https://perma.cc/7GJY-5ECG].

227. *See, e.g.*, Alecia Humphrey, *The Criminalization of Survival Attempts: Locking up Female Runaways and Other Status Offenders*, 15 HASTINGS WOMEN'S L.J. 165, 170 (2004).

228. Godsoe, *supra* note 225, at 1105.

229. *Id.*

230. *See, e.g.*, BARRY HOLMAN & JASON ZEIDENBERG, THE DANGERS OF DETENTION: THE IMPACT OF INCARCERATING YOUTH IN DETENTION AND OTHER SECURE FACILITIES (2006).

231. *See, e.g.*, N.C. GEN. STAT. § 7B-2506(1)(b) (2019) (authorizing courts to remove children from their families after adjudication upon a finding of need of "more adequate care or supervision").

232. Conklin, *supra* note 224, at 2171.

233. *Id.*

The foregoing analysis has traced ruptures and continuities in the juvenile court. It briefly discussed how *Gault* constituted a "constitutional domestication"[234] of juvenile court proceedings, instituting some due process protections for juveniles. It showed how the juvenile courts, despite a period of increasing levels of punitiveness, have maintained the commitment to rehabilitation envisioned by the child savers. It then analyzed what has remained the same in the contemporary court—namely, the enhanced vulnerability for justice involvement of youth from marginalized populations, as well as the persistence of the *parens patriae* doctrine and its most troubling manifestation: the broad rationale for detaining children, even over parental objection.

III. ECONOMIC COSTS AND DIGNITARY HARMS

Having established a historical framework and outlined the landscape of the rights regime and demographics of the contemporary courts, this Part takes up the Article's focus—namely, how juvenile court in many instances inflicts a series of economic costs and dignitary harms upon parents, manifesting the ongoing influence of *parens patriae* yet undermining the rehabilitation imperative.[235]

Because living in racialized poverty increases the likelihood of delinquency involvement and compounds juvenile court's negative impacts, the harms discussed in this Part do not affect all parents equally. Instead, they are particularly salient for, and especially disadvantage, low-income parents of color, particularly when they are parenting without a cohabitating partner.

Subpart A considers economic costs and impacts. Subpart B outlines the nature of the parental dignity interests at stake in delinquency prosecutions and demonstrates how juvenile court infringes on those interests.

A. Economic Costs and Impacts

As discussed above, racialized, gendered poverty renders poor youth of color disproportionately likely to become ensnared in the juvenile court. Once there, parents face a series of costs that can exacerbate economic struggles.[236] These include both direct costs levied by the juvenile court and its associated

234. *Supra* note 126, and accompanying text.
235. The impacts of these costs and harms on rehabilitation are discussed in Part IV, *infra.*
236. *Economic Justice*, JUV. L. CTR., https://jlc.org/issues/economic-justice [https://perma.cc/3GPN-BSWA] (explaining that "[t]he juvenile justice system imposes numerous fines and fees on youth and their families. These fines and fees are widespread across the country").

agencies and programs,[237] as well as indirect costs in the form of lost economic opportunities or other negative consequences that attach. These costs can accrue regardless of whether a child is adjudicated delinquent.[238]

1. Direct Costs

Direct costs in the juvenile court consist of numerous fees[239] and fines.[240] Because minors usually do not have financial assets, courts frequently require parents to pay.[241]

Among the fees are those associated with defense counsel. While the Supreme Court in *Gault*[242] emphasized the importance of an attorney to the effectuation of due process,[243] the right to counsel is compromised by the routine practice of assessing counsel fees. While in some states, juveniles are presumptively indigent and thus entitled to court-appointed counsel without regard to their parents' income and without the imposition of fees, in others, parents must first demonstrate that they themselves fall below a very low financial

237. For an analysis of an advocacy campaign to abolish these kinds of costs, see Jeffrey Selbin, *Juvenile Fee Abolition in California: Early Lessons and Challenges for the Debt-Free Justice Movement*, 98 N.C. L. REV. 401 (2020).

238. Economic sanctions are not unique to juvenile court. *See* Beth Colgan, *Beyond Graduation: Economic Sanctions and Structural Reform*, 69 DUKE L.J. 1529, 1537 (2020) ("All levels of courts—traffic and municipal courts, juvenile courts, and misdemeanor and felony courts at the local, state, and federal level—use economic sanctions, including fines, fees, surcharges, and restitution, to punish people . . . .").

239. One scholar refers to the welter of court fees as constituting "cash register justice." *See* Laura I. Appleman, *Nickel and Dimed Into Incarceration: Cash-Register Justice in the Criminal System*, 57 B.C. L. REV. 1483, 1483 (2016) (noting that fees are created as a means of assisting state courts and other agencies in the wake of falling tax revenues).

240. A fine is associated with the commission of the crime itself, distinct from a fee which is associated with the court process. *See, e.g.*, Monica Llorente, *Criminalizing Poverty Through Fines, Fees, and Costs*, AM. BAR ASS'N (Oct. 3, 2016), https://www.americanbar.org/groups/litigation/committees/childrensrights/articles/2016/criminalizing-poverty-fines-fees-costs [https://perma.cc/K4A8-WUL8].

241. JESSICA FEIERMAN, NAOMI GOLDSTEIN, EMILY HANEY-CARON & JAYMES FAIRFAX COLUMBO, DEBTOR'S PRISON FOR KIDS: THE HIGH COST OF FINES AND FEES IN THE JUVENILE JUSTICE SYSTEM (2016) (enumerating costs, fees, and fines and indicating states where they are assessed against parents, those where they are assessed against youth, and those where they are assessed against youth or parents). In a small number of states, juveniles are entitled to cash bail. *See* Joanna S. Markman, In re Gault*: A Retrospective in 2007: Is It Working? Can It Work?*, 9 BARRY L. REV. 123, 137 n.126 (2007) (noting most states do not authorize juveniles to be released on bail). Parents who must post bail undoubtedly incur financial hardship, however temporary.

242. 387 U.S. 1, 29 (1967).

243. *Id.* at 36 (citing Powell v. Alabama, 287 U.S. 45, 69 (1932)) (holding that the "child requires the guiding hand of cousel at every step in the proceedings against him").

threshold to qualify for court-appointed counsel.[244] Even in those cases, attorneys' fees may be assessed against parents, notwithstanding the constitutional status of the right.[245] In total, fees are assessed for the right to counsel in all but ten states.[246] Along with fees for trial counsel, in a small number of jurisdictions parents are assessed counsel fees if their child unsuccessfully appeals a delinquency adjudication.[247]

A host of other fees may be assessed throughout the life of a juvenile case. In some jurisdictions, courts assess fees when their children are diverted from formal juvenile court processing.[248] In addition, half of all states authorize fee collection for court-related costs—depositions, travel expenses, and the like.[249] Nearly all states have statutes authorizing imposition of fees for so-called "costs of care" when children are taken into custody pre-adjudication or committed to a secure facility post-adjudication.[250] These include food, clothing, and sometimes the cost of the detention itself;[251] many states also require parents to pay for the costs of a detained child's health care.[252] Especially common are the costs[253] associated with

244. NATIONAL JUVENILE DEFENDER CENTER, *supra* note 185, at 10–12. Often, the bar for what constitutes an inability to pay is quite low, such that working-class families do not qualify. Mary E. Berkheiser, *The Fiction of Juvenile Right to Counsel: Waiver in Juvenile Courts*, 54 FLA. L. REV. 577 (2002); *see also* Tamar R. Birckhead, *The New Peonage*, 72 WASH. & LEE L. REV. 1595, 1674 (2015).

245. Katayoon Majd & Patricia Puritz, *The Cost of Justice: How Low-Income Youth Continue to Pay the Price of Failing Indigent Defense Systems*, 16 GEO. J. ON POVERTY L. & POL'Y 543, 564–66 (2009). This is true in adult criminal courts as well, where *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963) held that all indigent criminal defendants must be provided counsel at state expense. *See* Kate Levine, Note, *If You Cannot Afford a Lawyer: Assessing the Constitutionality of Massachusetts' Reimbursement Statute*, 42 HARV. C.R.-C.L. L. REV. 191, 193 (2007) (arguing that the imposition of counsel fees on indigent defendants undermines *Gideon*'s counsel guarantee, belying conventional wisdom among commentators that "our criminal justice system is the fairest in the world").

246. JESSICA FEIERMAN, NADIA MOZAFFAR, NAOMI GOLDSTEIN & EMILY HANEY-CARON, THE PRICE OF JUSTICE: THE HIGH COST OF "FREE" COUNSEL FOR YOUTH IN THE JUVENILE JUSTICE SYSTEM (2018).

247. FEIERMAN, GOLDSTEIN, HANEY-CARON & FAIRFAX COLUMBO, *supra* note 241, at 17.

248. *Id.* at 12 (noting that twenty-two states have statutes authorizing fees for diversion). For a discussion of diversion, see *supra* notes 170–173, and accompanying text.

249. FEIERMAN, GOLDSTEIN, HANEY-CARON & FAIRFAX COLUMBO, *supra* note 241, at 17.

250. *Id.* at 15.

251. *See* Eli Hager, *Your Kid Goes to Jail, You Get the Bill*, THE MARSHALL PROJECT (Mar. 2, 2017), https://www.themarshallproject.org/2017/03/02/your-kid-goes-to-jail-you-get-the-bill [https://perma.cc/AJ6C-XMAH] (discussing different approaches that states take to these fees, ranging from an ability-to-pay system to seizing bank accounts and noting that some jurisdictions are eliminating the practice notwithstanding state statutes authorizing it).

252. FEIERMAN, GOLDSTEIN, HANEY-CARON & FAIRFAX COLUMBO, *supra* note 241, at 15.

253. *Id.* at 10.

court-ordered probation.[254] These include substance use evaluations, sex offender assessments, and other evaluations designed to produce recommendations for the sentencing judge.[255] They also include fees for electronic monitoring to determine compliance with probation.[256] While many of these fees are for programs ostensibly in lieu of detention, critics have noted that they are often imposed on people who would not otherwise be locked up.[257]

Finally, fines, imposed as punishment for specified offenses,[258] encompass any monetary restitution distributed to the person or entity denominated the victim post-adjudication.[259] All states allow for the imposition of some fines; mandatory fines are possible in ten states, while in the remainder of states fines are assessed as a matter of judicial discretion.[260]

2. Indirect Costs

Juvenile court involvement also brings about a number of indirect economic costs.[261] Although a given case may last mere minutes, delinquency cases are often

254. *Id.*

255. *Id.* at 15 (twenty states have statutes authorizing charging families for assessments).

256. *See generally* Kate Weisburd, *Monitoring Youth: The Collision of Rights and Rehabilitation*, 101 IOWA L. REV. 297 (2015); Chaz Arnett, *Virtual Shackles: Electronic Surveillance and the Adultification of Juvenile Courts*, 107 J. CRIM. L. & CRIMINOLOGY 399 (2018). Critics charge that electronic monitoring is often imposed not in cases where detention or incarceration would otherwise be imposed, but as a means of providing enhanced surveillance to juvenile probationers who are not legitimately at risk of being confined.

257. Stephen Mainprize, *Electronic Monitoring in Corrections: Assessing Cost-Effectiveness and the Potential for Widening the Net of Social Control*, 34 CANADIAN J. CRIMINOLOGY 161 (1992).

258. *Id.* at 162.

259. For a critique of the common assumption that the person claiming to have been harmed by a crime is properly considered a victim in the absence of proof beyond a reasonable doubt in a criminal proceeding, see Anna Roberts, *Victims, Right?*, 42 CARDOZO L. REV. 1449 (2021).

260. FEIERMAN, GOLDSTEIN, HANEY-CARON & FAIRFAX COLUMBO, *supra* note 241, at 19.

261. On top of the costs imposed by delinquency involvement itself, the mere accusation of delinquency conduct can have financially damaging consequences. For example, a child may be suspended in North Carolina simply for having a felony charge. *See, e.g.*, N.C. GEN. STAT. § 115C-390.2 (2021) (allowing the Board of Education to suspend a student for "conduct not occurring on educational property" if it violates the Board's Code of Student Conduct or "is reasonably expected to have a direct and immediate impact on the orderly and efficient operation of the schools or the safety of individuals in the school environment"); *see also* CHILD.'S L. CTR. OF MASS., QUICK REFERENCE ON SCHOOL DISCIPLINE (2014) (discussing a Massachusetts law that allows students to be suspended for a felony charge and expelled upon a felony conviction); *School Discipline Laws & Regulations by State*, NAT'L CTR. ON SAFE SUPPORTIVE LEARNING ENV'TS, https://safesupportivelearning.ed.gov/school-discipline-laws-regulations-state [https://perma.cc/47D4-PTQX] (surveying state laws on interplay between delinquency

collectively docketed all at one time rather than being spread throughout the day.[262] Parents therefore must plan their entire days around one or more court appearances.[263] A delinquency adjudication that results in probation—the result in 63 percent of cases involving a delinquency adjudication[264]—may also affect a parent's work schedule. Terms of probation often include early curfews or even house arrest, which could necessitate ongoing parental supervision that similarly requires missed days of work, or reorganized schedules.[265]

3. Impacts

Several negative impacts flow from the direct and indirect economic costs in juvenile court. The first is that they can work to stunt the full and fair adjudications of delinquency allegations. For example, a parent who does not get paid when she misses work has a strong incentive to encourage her child to quickly make an

involvement and school consequences). While the most obviously affected person in this scenario is the child, a parent must often stay home from work to supervise a suspended child, thereby potentially imperiling her income. Similarly, the allegation of delinquency conduct in the form of an arrest or charge can trigger negative housing consequences such as eviction or denial of a voucher for people living in public housing. *See, e.g.*, Dep't of Hous. & Urb. Dev. vs. Rucker, 535 U.S. 125 (2002) (upholding federal statute that gave local public housing authorities the discretion to terminate the lease of a tenant when a member of the household or a guest engaged in drug-related activity, regardless of whether tenant knew or should have known, of the drug-related activity). Since these harms arise not because of the juvenile court itself but because of state or federal laws regulating allegedly criminal conduct of young people and imposing consequences outside the court, they are beyond this Article's scope.

262. *See, e.g.*, *Juvenile Delinquency: General Information*, N.C. JUD. BRANCH, https://www.nccourts.gov/help-topics/family-and-children/juvenile-delinquency [https://perma.cc/CA23-L4A3] ("Many cases will be scheduled at the same time, and the court will handle cases one by one.").

263. *Id.* (instructing those attending juvenile court to be "prepared to sit and wait patiently in the courtroom or in a place designated by your attorney" and that it "is possible that your case may not be resolved when you appear in court and may be continued to a later date"); *see also* HEATHER HUNT & GENE NICHOL, THE PRICE OF POVERTY IN NORTH CAROLINA'S JUVENILE JUSTICE SYSTEM 9 (2021) ("Once at the courthouse, parents and children may have to wait for hours before their case is called").

264. SARAH HOCKENBERRY & CHARLES PUZZANCHERA, NAT'L CTR. FOR JUV. JUST., JUVENILE COURT STATISTICS 2017, at 50 (2019).

265. *See, e.g.*, N.C. GEN. STAT. § 7B-2506 (2019) (granting court the ability to impose house arrest as a punishment); N.C. GEN. STAT. § 7B-2510 (2019) (granting court authority to impose curfew on a juvenile on probation, to prevent the juvenile from being in "specified places" and "any other conditions determined appropriate by the court"). This Article characterizes conscription of parents into court-actor roles as a dignitary harm. See *infra* notes 315–325 , and accompanying text.

admission of guilt to avoid the necessity of multiple court dates.[266] This incentive likely contributes to the fact that well over 90 percent of cases are resolved by way of admission.[267] Moreover, a family in a jurisdiction where fees are assessed in the event of unsuccessful appeals is disincentivized to pursue claims in appellate court, thereby stunting the development of juvenile appellate law.[268]

Second, and more pressing for this Article's analysis, is that these fees and fines create strain on already vulnerable parents, which in turn exposes their child to additional harm from the juvenile system. While a family of economic means may be able to pay these costs without having to forego necessary expenses, for other families, fulfilling court obligations can mean not paying essential bills.[269] Even before the COVID-19 pandemic, more than half of adults reported a level of economic insecurity that would make a significant court-related expense unaffordable based on average monthly financial assets.[270] The assessment of costs can thus create untenable choices: fulfill the court-ordered financial obligation and forego paying other critical expenses, such as rent, utilities, or food,[271] or default on or defer court-assessed fines and fees and risk negative consequences for their child. Sixty-two percent of survey respondents who reported that youth or families were charged for probation also reported that "difficulty paying caused not only heightened juvenile justice system involvement, but also more frequent court contact, family debt, driver's license issues, and family stress and strain."[272] Consider that failure to pay can mean the issuance of a petition if the parents were

266. NATIONAL JUVENILE DEFENDER CENTER, *supra* note 185, at 28 (outlining how "[p]arents could be . . . wary of taking time off work to attend court hearings . . . . [which could] lead parents to believe their child should simply waive their rights and plead guilty").

267. Fedders, *supra* note 48, at 795.

268. For an in-depth exploration of how poverty stunts the development of law in adjudication of housing claims, *see* Kathryn A. Sabbeth, (*Under) Enforcement of Poor Tenants' Rights*, 27 GEO. J. ON L. & POL'Y 97, 120–21 (2019) (explaining how forcing poor tenants to pay for counsel to adjudicate claims of housing code violations results in the underenforcement of tenants' rights and continuation of substandard housing conditions).

269. HUNT & NICHOL, *supra* note 263, at 6 ("When 16 [percent] of American adults are unable to pay all of their current month's bills in full—and almost 40 [percent] lack $400 to cover an emergency—even a few hundred dollars of court debt can destroy the fragile balancing act of household budgeting.").

270. BD. OF GOVERNORS OF THE FED. RSRV. SYS., REPORT ON THE ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2019, FEATURING SUPPLEMENTAL DATA FROM APRIL 2020, at 2 (May 2020).

271. *See, e.g.*, NAT'L JUV. DEF. CTR., A RIGHT TO LIBERTY: REFORMING JUVENILE MONEY BAIL 8 (2019) (discussing how money bail in juvenile court puts financial pressure on families forced to choose between having their children home with them and meeting monthly expenses).

272. FEIERMAN, GOLDSTEIN, HANEY-CARON & FAIRFAX COLUMBO, *supra* note 241, at 10.

assessed fees as part of a diversion contract.[273] If probation terms included fines or fees that are not paid, the probation can be extended, subjecting the child to increased state surveillance,[274] and can trigger probation violation proceedings that lead to detention or incarceration.[275] For failing to pay supervision fees, at least thirteen states impose a civil judgment, "allowing for wage garnishment, tax withholding, and a credit score reduction."[276] Of those states, five pursue the judgment against the parent, four against the child, and four against both once the child turns eighteen.[277] This credit score reduction in particular can result in long-term financial difficulties even after the fees have been paid and probation has ended.[278] Similarly, the policy of revoking driving privileges perpetuates the cycle by removing the child's or parent's ability to commute to work.[279] Finally, a family that does not pay "costs of care" may find their child deprived of needed and court-ordered treatment.[280]

Third, the imposition of costs serves as a potential source of intrafamilial tension.[281] It is easy to imagine a child feeling pressure from financially taxed parents to plead guilty to save her parents time in court in order to quickly resolve the case even when she has a viable defense to claims.[282] The stress that the imposition of fees places on children of low-income parents is exemplified by a California case decided shortly after *Gault*.[283] There, a child seeking to save his father the expenses associated with defense counsel waived the right at a preliminary hearing.[284] On appeal, the court held that such a waiver was

273. *Id.* at 12.
274. Eli Hager, *Punishing Kids With Years of Debt*, THE MARSHALL PROJECT (June 11, 2019), https://www.themarshallproject.org/2019/06/11/punishing-kids-with-years-of-debt [https://perma.cc/L76D-BZAX] (noting 2017 case of a teenager who agreed to pay $5000 in restitution in exchange for his charges being reduced to misdemeanors, but who is now homeless and still trying to pay that debt); *see also* Matthew Shaer, *Trapped*, SLATE (June 22, 2020), https://slate.com/news-and-politics/2020/06/juvenile-debt-families.html [https://perma.cc/H5EB-M29B] (discussing issue of how fines and fees from court involvement harm whole families).
275. FEIERMAN, GOLDSTEIN, HANEY-CARON & FAIRFAX COLUMBO, *supra* note 241, at 15.
276. NATIONAL JUVENILE DEFENDER CENTER, THE COST OF JUVENILE PROBATION: A CRITICAL LOOK INTO JUVENILE SUPERVISION FEES 3 (2017).
277. *Id.*
278. *Id.*
279. *Id.*
280. FEIERMAN, GOLDSTEIN, HANEY-CARON & FAIRFAX COLUMBO, *supra* note 241, at 15.
281. *Id.* at 17 (noting that family debt incurred as a result of court fines and fees causes "rift" between parents and children).
282. *See supra* notes 264–265 and accompanying text.
283. *In re* Ricky H., 468 P. 2d 204 (Cal. 1970).
284. *Id.* at 206.

involuntary.[285] Of course, the appellate decision, rendered long after the child had tendered his waiver, could do nothing to remedy the intrafamily tension likely created by this fee assessment.

It is difficult to know with certainty how broad of an economic impact these costs, fines, and fees have on families. Many states permit judges to consider a family's ability to pay before imposing costs or fees.[286] Other states make the assessment of fees and costs discretionary.[287] Still other states allow children to perform community service in lieu of restitution,[288] or cap the amount of restitution that can be assessed in any given case.[289] Yet it is clear that even relatively limited fees or fines can have outsized impact given the financially precarious circumstances of many families in juvenile court.[290]

The next Subpart considers the infringement on parental dignitary interests that also characterize juvenile court prosecutions.

B. Dignitary Harms

1. Parental Dignitary Interests Defined

Dignity is a central value in our legal system. Recognition of human dignity underlies our belief in the importance of popular sovereignty over monarchical rule, a limited state, and the centrality of individual liberty and rights.[291] While the U.S. Constitution does not specifically protect dignity, Supreme Court opinions regularly and with increasing frequency reference it in protecting individual rights.[292] Indeed, the Court has invoked dignity in analyzing protections under the First, Fourth, Fifth, Sixth, Eight, Ninth, Eleventh, Fourteenth, and Fifteenth Amendments.[293]

285. *Id.* at 211.
286. FEIERMAN, GOLDSTEIN, HANEY-CARON & FAIRFAX COLUMBO, *supra* note 241, at 17.
287. *Id.*
288. *Id.* at 18.
289. *Id.*
290. Judith Resnik & David Marcus, *Inability to Pay: Court Debt Circa 2020*, 98 N.C. L. REV. 361, 364 (2020).
291. *See* Maxine Eichner, *Families, Human Dignity, and State Support for Caretaking: Why the United States' Failure to Ameliorate the Work-Family Conflict is a Dereliction of the Government's Basic Responsibilities*, 88 N.C. L. REV. 1593, 1615 (2010).
292. Reva B. Siegel, *Dignity and the Politics of Protection: Abortion Restrictions Under* Casey/Carhart, 117 YALE L.J. 1694, 1736 (2008).
293. Leslie Meltzer Henry, *The Jurisprudence of Dignity*, 160 U. PA. L. REV. 169, 172–73 (2011).

While important in U.S. jurisprudence, dignity has been difficult to define.[294] One scholar's taxonomy of the term revealed five distinct usages, positing that dignity is conceptualized by courts and commentators as institutional status, equality, liberty, personal integrity, and collective virtue.[295] Another argues for only three: "dignity as life, dignity as liberty, and dignity as equality."[296]

Surveying scholarship and judicial opinions addressing dignity, one might conclude, as one constitutional scholar does, that the "primary judicial function [of dignity] is to give weight to substantive interests that are implicated in specific contexts."[297] Let us, then, adopt this instrumentalist understanding and consider how dignity plays out in the specific context of two separate but sometimes overlapping legal doctrines regarding parents' rights.

The first is the line of cases enshrining parental autonomy. In the 1923 case *Meyer v. Nebraska*,[298] the Supreme Court ruled that "the rights of parents to engage [a teacher] so to instruct their children" are "within the liberty of the [Fourteenth] amendment," recognizing "the power of parents to control the education of their own [children]."[299] Four years later, the Court developed the nature of the parental liberty interest. In *Pierce v. Society of Sisters*,[300] the Court invalidated an Oregon statute requiring parents to send their children to public school. In that case, the Court declared "[t]he child is not a mere creature of the State" and that parents "have the right, coupled with the high duty" to direct their children's upbringing.[301] The parental autonomy right enshrined in *Meyer* and *Pierce* has been repeatedly reaffirmed[302] and is a bedrock constitutional principle of family law.[303]

Along with this parental autonomy right, courts in the latter part of the twentieth century have recognized and elaborated on a more capacious right to

294. I am grateful to Maxine Eichner for suggestions for how better to articulate dignitary harm. *See* Eichner, *supra* note 291 at 1615.
295. Meltzer Henry, *supra* note 293, at 190.
296. Siegel, *supra* note 292, at 1737.
297. Meltzer Henry, *supra* note 293, at 190.
298. 262 U.S. 390 (1923).
299. *Id.* at 400–01.
300. 268 U.S. 510 (1925).
301. *Id.* at 535.
302. *See, e.g.*, Troxel v. Granville, 530 U.S. 57, 65 (2000) (striking down visitation statute and noting that "[t]he liberty interest of parents in the care, custody, and control of their children—is perhaps one of the oldest of the fundamental liberty interests recognized by this Court.").
303. Peggy Cooper Davis refers to *Meyers* and *Pierce* as "old chestnuts." Peggy Cooper Davis, *Little Citizens & Their Families*, 43 FORDHAM URB. L.J. 1009, 1010 (2016).

family integrity. Courts have relied on this right in conferring due process protections when the state intervenes in a family to remove children from their parents' physical or legal custody.[304] As articulated in *Duchesne v. Sugarman*,[305] an oft-cited 1977 Second Circuit case, family integrity encompasses not only parents' rights but the interests "of children in not being dislocated from the 'emotional attachments that derive from the intimacy of daily association,' with the parent."[306] While the "care, custody, and control" line of cases often involved rights of relatively privileged parents, the right to family integrity developed in response to child welfare intervention into poor families.[307]

Both rights—parental autonomy and family integrity—rest on dignity interests. As one prominent children's rights scholar argues, "[t]he right to family privacy and parental autonomy, as well as the reciprocal liberty interest of parent and child in the familial bond between them, need no greater justification than that they comport with each state's fundamental constitutional commitment to individual freedom and human dignity."[308]

Along with working to undergird restraint on state action in the parental autonomy and family integrity contexts, dignity buttresses the claims of economically and racially marginalized people to be treated with respect, even

304. "We have little doubt that the Due Process Clause would be offended," the U.S. Supreme Court held in *Quilloin v. Walcott*, "[i]f a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest." Quilloin v. Walcott, 434 U.S. 246, 255 (1978) (quoting Smith v. Org. of Foster Families, 431 U.S. 816, 862–63 (1977) (Stewart, J., concurring)); *see also* M.L.B. v. S.L.J., 519 U.S. 102, 116 (1996) (holding that a Mississippi statute violated the Equal Protection and Due Process Clauses of the Fourteenth Amendment while specifically recognizing the unique importance of termination proceedings); Santosky v. Kramer, 455 U.S. 745 (1982) (requiring that all states use a clear and convincing standard of proof, that is, more than a preponderance of the evidence but less than the beyond a reasonable doubt standard required in criminal proceedings, when seeking a termination of parental rights). These cases, which addressed family integrity, both centered on attempts by the state to permanently terminate the rights of poor or otherwise socially marginalized parents.

305. 566 F.2d 817 (2d Cir. 1977).

306. *Id.* at 825 (quoting Smith v. Org. of Foster Families for Equality and Reform, 431 U.S. 816 (1977)); *see also* Goodridge v. Dep't of Pub. Health, 440 Mass. 309, 333 (2003) (noting "the integrated way in which courts have examined the complex and overlapping realms of personal autonomy, marriage, family life, and child rearing").

307. Caitlin Mitchell, *Family Integrity and Incarcerated Parents: Bridging the Divide*, 24 YALE J.L. & FEMINISM 175, 180–81 (2012).

308. Joseph Goldstein, *Medical Care for the Child at Risk: On State Suspension of Parental Autonomy*, 86 YALE L.J. 645, 649 (1977).

when they are ensnared in or must rely on public systems.[309] Poor people and people of color who struggle for civil rights and economic justice frequently invoke dignity.[310] One scholar conceptualizes "the long battle to attain racial justice in the United States 'as a struggle to secure dignity in the face of sustained efforts to degrade and dishonor persons on the basis of color.'"[311]

2. Juvenile Court Infringement on Parental Dignitary Interests

Infringement on a parent's dignity interests often accompanies the prosecution of children in juvenile court. Without suggesting that any of these infringements necessarily constitute denial of a parent's right to autonomy or family integrity such that they would support a legal claim, they nonetheless act as a dignitary burden worthy of interrogating. At least three separate infringements exist.

a. Conscription by Court Officials

Recall that the most common dispositional outcome when juveniles are adjudicated delinquent is supervised probation.[312] When a judge places a child on probation, she often issues a supplemental order against the parent as well, aimed

309. William Forbath, *Constitutional Welfare Rights: A History, Critique, and Reconstruction*, 69 FORDHAM L. REV. 1821, 1852–53 (2001) (discussing welfare rights organizers' objections to work programs as undignified and demeaning).

310. *See* Jamie Allison Lee, *Poverty, Dignity, and Public Housing*, 47 COLUM. HUM. RTS. L. REV. 97, 109 ("Dignitary rights became a national focus as the civil rights movement established new rights for racial minorities and as President Johnson's War on Poverty galvanized policymakers, activists, and legal scholars around welfare reform."); *see also* Cooper Davis, *So Tall Within, supra* note 31, at 470 (citing Malcolm X's experience as a child with the state child welfare system, who recalled his mother's efforts to maintain her dignity: "My mother was, above everything else, a proud woman, and it took its toll on her that she was accepting charity. . . . [Child welfare authorities] were vicious as vultures. They had no feelings, understanding, compassion, or respect for my mother").

311. Darren Hutchinson, *Undignified: The Supreme Court, Racial Justice, and Dignity Claims*, 69 FLA. L. REV. 1, 26 (2017) (quoting Christopher A. Bracey, *Dignity in Race Jurisprudence*, 7 U. PA. J. CONST. L. 669, 671 (2005)). *See also* Michael Pinard, *Collateral Consequences of Criminal Convictions: Confronting Issues of Race and Dignity*, 85 N.Y.U. L. REV. 457, 526–27 (2010) ("A dignity-based approach to individuals' post-incarceration lives would seek to promote, rather than suppress, their standing in the community. It would aim to restore individuals, as much as possible, to their prior status, rather than impose broad legal restrictions that serve to degrade and marginalize them.").

312. *See supra* note 263, and accompanying text.

at ensuring compliance with the court.[313] Probation typically includes requirements to report to a juvenile probation officer, but many other terms and conditions effectively require that the parent do the monitoring, reporting, and enforcement.[314] For example, common delinquency terms and conditions of probation include obeying the rules of the home, observing a curfew, and avoiding certain peers.[315]

On the one hand, deputizing a parent to act as the eyes and ears of a probation officer may seem to be common sense. It is she, after all, who already has a series of statutory and common-law responsibilities to her child's wellbeing.[316] Moreover, such conditions ordered by a court may seem an obvious delegation; should parents not already be requiring a child's obedience and respect, keeping her at home after a certain hour, and paying attention to the people whom she is around anyway?[317]

On the other hand, this "devolution of legal control"[318] from court actors to parent raises several troubling issues. For one, courts need not explicitly warn parents of the range of consequences that can attach upon their receipt of parent-provided incriminating information about their children, and they may ignore the parents' wishes about what should happen as a result of the information. The child of a parent in this precise situation was incarcerated as a consequence for a probation violation after failing to reliably wake up on time and log in for remote

313. *See, e.g.*, MICH. COMP. LAWS SERV. § 712A.18(1)(g) (West 2021) (stating that the court may order "the parents, guardian, custodian, or any other person to refrain from continuing conduct that the court determines has caused or tended to cause the juvenile to come within or to remain under this chapter or that obstructs placement or commitment of the juvenile by an order under this section."); MONT. CODE ANN. § 41-5-1412(3) (2007) ("A youth's parents or guardians are obligated to assist and support the youth court in implementing the court's orders concerning a youth . . . . and the parents . . . are subject to the court's contempt powers if they fail to do so."); N.C. GEN. STAT. § 7B-2703(b) (West 2021) (stating that the court may order a parent to comply with orders of the court and "to cooperate with and assist the juvenile in complying with the terms and conditions of probation").

314. MONT. CODE ANN. § 41-5-1412(3) (West 2021).

315. *See, e g.*, N.C. GEN. STAT. § 7B-2510 (West 2021).

316. *See* John H. Wigmore, *Comment, Torts—Parent's Liability for Child's Torts*, 19 ILL. L. REV. 202, 203 (1924–1925).

317. Tina Maschi, Craig Schwalbe & Jennifer Ristow, *In Pursuit of the Ideal Parent in Juvenile Justice: A Qualitative Investigation of Probation Officers' Experiences With Parents of Juvenile Offender*s, 52 J. OFFENDER REHAB. 470, 477–78 (2013) (describing some partnership behaviors between parents and probation officers including calling the probation officer when the parent needs help for parenting problems, and reporting youth noncompliance when it occurs).

318. Forrest Stuart, Amada Armenta & Melissa Osborne, *Legal Control of Marginal Groups*, 11 ANN. REV. L. & SOC. SCI. 235, 238 (2015).

school.[319] The court became aware about the girl's school troubles after the mother dutifully reported them to the juvenile probation officer. She did so, notably, without desiring detention.[320]

It is also one thing to want to be a good parent and do what one can to be so. It is quite another to have one's parenting scrutinized by state authorities, who impose demands on top of the already difficult task of raising children. We know that the people whose children are on probation are likely to have financial struggles already.[321] Court orders that a parent surveil her child at particular times may necessitate schedule changes in jobs that are difficult to attain and maintain. They almost surely create additional stress within the family, as they did in the case described above.[322]

b. Denial of Voice

Throughout the course of a delinquency proceeding, prosecutors, defense attorneys, and judges often override parents' perspectives or fail to even elicit them in the first instance. The issues and stakes are different depending on the particular court actor.

Consider first the scenario in which the parent is the complaining witness and/or the alleged victim in a case. She may make the difficult decision to contact the police upon discovery of drugs or alcohol.[323] Physical violence may occur between a child and her sibling,[324] or against the mother herself. An angry child might throw something at home and break a treasured vase or damage a wall.[325] Such events are not uncommon in rearing

319. Jodi S. Cohen, *A Teenager Didn't Do Her Online Schoolwork. So a Judge Sent Her to Juvenile Detention*, PROPUBLICA (July 14, 2020, 5:00 AM), https://www.propublica.org/article/a-teenager-didntdo-her-online-schoolwork-so-a-judge-sent-her-to-juvenile-detention [https://perma.cc/8883-WPHF].
320. *Id.*
321. *See supra* notes 144–169, and accompanying text.
322. Cohen, *supra* note 319. The impact that these orders have on parent-child bonds is discussed *infra* Subpart IV.B.
323. *See generally* N.C. GEN. STAT. ANN. § 90-95 (West 2021); *see also* N.C. DEP'T OF PUB. SAFETY, UNDERAGE DRINKING (noting that 38 percent of eighth graders in North Carolina have had alcohol at least once).
324. *See, e.g.*, N.C. GEN. STAT. ANN. § 14-33 (West 2021) (defining and criminalizing assault and not exempting family members, including minor siblings).
325. *See, e.g.*, N.C. GEN. STAT. ANN. § 14-127 (West 2021) (criminalizing malicious destruction of real property).

a child.[326] External stressors such as the COVID-19 pandemic might make them even more common—and certainly may make it more likely that a parent will know about them.[327] If she contacts the police, she is setting in motion a process in which a delinquency complaint will likely issue from the court unless the case is diverted or dismissed.[328]

Studies suggest that parents who rely on police in such situations are disproportionately likely to be low-income mothers of color.[329] These mothers may do so notwithstanding their own negative lived experience with law enforcement.[330] This seemingly anomalous phenomenon makes sense when one considers that these parents have minimal access to the resources other parents might secure in similar situations—extended family, private drug treatment, or boarding school, to name a few.[331] Indeed, particularly in the absence of a strong and supportive community of family and friends, these parents may in fact have nowhere to turn for help except to the police.

Such parents may hope, even expect, that authorities will in turn respect their views about whether to proceed with a prosecution. That just as they brought the police and the state into their lives, they may in turn ask them to exit. Indeed, they may surmise, but for their voluntary involvement, the state in many instances would have no case at all. Yet they may quickly discover that their wishes about what should happen with a child matter little once the police have been contacted.[332]

While some prosecutors may elect to drop a case when the parent is uninterested in proceeding, often they need not do so. There is no federal statutory

326. *See, e.g.*, Corinna Jenkins Tucker & David Finkelhor, *The State of Interventions for Sibling Conflict and Aggression: A Systematic Review*, 18(4) TRAUMA, VIOLENCE, & ABUSE, 396, 396 (2017) (describing how "[s]ibling conflict is frequent and occurs in some cases up to [eight] times an hour."); *see also* NAT'L CTR. FOR HEALTH STAT., HUS 2018 TREND TABLES, TBL. 20 (noting 11.2 percent of persons aged twelve years and older reported using any illicit drug and 51.0 percent of persons aged twelve years and older reported alcohol use in the past month in 2017).

327. Molly Buchanan, Erin D. Castro, Mackenzie Kushner & Marvin D. Khron, *It's F**ing Chaos: COVID-19's Impact on Juvenile Delinquency and Juvenile Justice*, AM. J. CRIM. JUST. 1, 5 (June 23, 2020) (explaining how "stay-at-home mandates further increase the likelihood that caregivers are aware of youths' movements and activities").

328. *See supra* notes 170–171, and accompanying text.

329. Monica C. Bell, *Situational Trust: How Disadvantaged Mothers Reconceive Legal Cynicism*, 50 L. & SOC'Y REV. 314, 315 (2016).

330. *Id.*

331. Joseph B. Richardson, Jr., Waldo E. Johnson, Jr. & Christopher St. Vil., *I Want Him Locked Up: Social Capital, African American Parenting Strategies, and the Juvenile Court*, 43 J. CONTEMP. ETHNOGRAPHY 488 (2014).

332. Bell, *supra* note 329, at 316.

or common-law testimonial privilege to protect the communications between parents and their children.[333] Only a handful of states have such a privilege.[334] The absence of a parent-child testimonial privilege in the majority of states means that a prosecutor may call a parent to testify against her child about what she has seen or heard, even over her objection.[335]

Defense attorneys, too, also often fail to elicit the parents' perspectives. The defense attorneys may be acting from a variety of motives. An unfortunate reality of juvenile court practice is that busy court-appointed counsel with high caseloads may not have or make the time to speak with the client, much less find space for conversations with the parent.[336] On the other end of the spectrum of diligence, a conscientious attorney may correctly reason that the client will be more forthcoming about potentially incriminating information when out of earshot of her parent.[337] Best practice guides for juvenile defense lawyers in fact make clear that the attorney owes a duty of loyalty to the child, not the parent.[338] Without adhering to the child's expressed interest, the guarantees of *Gault* are largely devoid of meaning; if a parent, for example, can direct a child's attorney to enter a guilty plea, the right against self-incrimination is of little import.[339]

333. Hillary Farber, *Do You Swear to Tell the Truth, the Whole Truth, and Nothing but the Truth Against Your Child?* 43 LOY. L.A. L. REV. 551 (2010).

334. *Id.* at 601 (listing Connecticut, Idaho, Massachusetts, and Minnesota). In one of those states, the parent-child privilege is abrogated in cases involving allegations of violence by the child against the parent. CONN. GEN. STAT. ANN. § 46b-138a (West 2021) (stating that in any juvenile proceeding "[t]he parent or guardian of such child shall be a competent witness but may elect or refuse to testify for or against the accused child except that a parent or guardian who has received personal violence from the child may . . . be compelled to testify in the same manner as any other witness.").

335. Scholars disagree about how often prosecutors compel parental testimony over the objection of parents. Hillary Farber points to media accounts of parents testifying against their children and other anecdotal evidence as suggesting the practice is not infrequent. Farber, *supra* note 333, at 606. *Compare* Margareth Etienne, *Managing Parents: Navigating Parental Rights in Juvenile Cases*, 50 CONN. L. REV. 61, 87–88 (2018) (noting few recorded instances of compelled parental testimony and arguing that prosecutors' reluctance to subpoena a hostile parent to the stand for fear of her sabotaging the case acts as a deterrent to the practice).

336. Fedders, *supra* note 48, at 772.

337. *Id.*

338. NAT'L JUV. DEF. CTR., NAT'L JUVENILE DEFENSE STANDARDS 19 (2012) (articulating that "counsel's primary and fundamental responsibility is to advocate for the client's expressed interests"); *see* Kristin Henning, *Loyalty, Paternalism and Rights: Client Counseling Theory and the Role of the Child's Counsel in Delinquency Cases*, 81 NOTRE DAME L. REV. 245, 255–59 (2005) (discussing joint standards by the American Bar Association and International Juridical Association requiring the attorney to respect the client's determination of her own interests).

339. Martin Guggenheim, *The Right to Be Represented but Not Heard: Reflections on Legal Representation for Children*, 59 N.Y.U. L. REV. 76, 86 (1984).

The fact that lawyers may appropriately decide not to include parents in confidential meetings with their young clients, however, need not mean that defense attorneys should not consult with parents at all.[340] To the contrary, parents can contribute to a child's defense in several ways. They can supplement a child's account of her strengths and weaknesses to aid a lawyer in arguing against detention. They can assist a child in articulating components that would comprise a probationary sentence at which a child is most likely to be successful.[341] In addition, parents who are apprised by their child's attorneys about what to expect during the juvenile court process will—during hearings—be less likely to act in ways that could, even inadvertently, jeopardize their child's case. Moreover, it is quite likely that a child will rely on her parent's advice regarding many aspects of the case. When the attorney can involve the parent—ensuring that she does not disclose privileged and confidential client communication[342] or otherwise jeopardize client rapport—the child may feel more comfortable in both speaking candidly to the lawyer and fully considering her advice. These reasons for including parents in conversations, with carefully guarded parameters to ensure the maintenance of confidentiality, help explain why recently issued professional standards suggest that lawyers and parents have different roles but may be conceptualized as being part of the same team.[343]

In addition, a parent is encouraged to share a child's progress and struggles with the probation officer.[344] Again, the child on probation may be there because the court is serving as a de facto safety net for a family unable to access services elsewhere.[345] A parent might understandably confide in a probation officer when the child is struggling. She may be doing so to secure validation or support, which

340. Henning, *supra* note 36, at 780–81; *see also* Etienne, *supra* note 335, at 79.

341. NAT'L JUV. DEF. CTR., JUVENILE DEFENSE ATTORNEYS & FAMILY ENGAGEMENT: SAME TEAM, DIFFERENT ROLES 1 (2014).

342. *See supra* note 334, and accompanying text.

343. NATIONAL JUVENILE DEFENDER CENTER, *supra* note 341; *see also* Henning, *supra* note 36, at 780–81.

344. Sarah Vidal & Jennifer Woolard, *Parents' Perceptions of Juvenile Probation: Relationship and Interaction With Juvenile Probation Officers, Parent Strategies, and Youth's Compliance on Probation*, 66 CHILD & YOUTH SERVS. REV. 1, 6 (2016) (describing the importance of probation officers' attitudes in parent-probation relationships).

345. Jenny Gross, *Judge Declines to Release Girl, 15, Held for Skipping Online Schoolwork*, N.Y. TIMES (July 21, 2020), https://www.nytimes.com/2020/07/21/us/michigan-teen-coursework-detention.html [https://perma.cc/MT3Y-Y44X] (citing Michigan advocate arguing that "[a] lot of Black children get their introduction to the criminal legal system through school, through detention, through the police getting involved because they have no other place to go").

is important in parenting and especially parenting in a pandemic.[346] Yet she can easily find that these shared confidences result in an unwanted outcome, such as detention.[347]

Finally, consider the judge. Emboldened by the *parens patriae* logic that continues to undergird the contemporary juvenile court, judges can–and frequently do–lock children up as a consequence of noncriminal acts.[348] These include technical violations of probation, such as missing school or being late for curfew.[349] They may do so notwithstanding parents' objections to detention.[350]

c. Attribution and Penalization

Recall that the courts' broad discretion to act in a child's best interest[351] confers on it the ability to issue orders to parents as part of delinquency dispositions.[352] Along with requiring them to monitor and report on the child, these orders often extend further. They sometimes include orders to attend parenting classes.[353]

Such orders seem premised on a series of questionable assumptions. The first is that a child's delinquent conduct is attributable to, and remediable by, the parent. In this respect, they resemble prosecutions of parents for their children's truancy.[354] The questionable premise for those prosecutions is that a child who chronically misses school is under the control of a parent who, upon threat of being

346. Van Dam, *supra* note 142.
347. Cohen, *supra* note 319.
348. Mark Soler, Dana Shoenberg & Marc Schindler, *Juvenile Justice: Lessons for a New Era*, 16 GEO. J. ON POVERTY L. & POL'Y 483, 503–04 (2009) (discussing 2001 study showing that approximately one-third of youth in juvenile detention centers were held not for new delinquent conduct but for technical violations of court orders).
349. *Id.*
350. Simpson, *supra* note 223, at 497–98.
351. Henning, *supra* note 338, at 250–53 (discussing juvenile courts' best-interest focus).
352. *See, e.g.*, N.C. GEN. STAT. § 7B-2702 (West 2021) (permitting court to require that the parent undergo psychiatric, psychological, or other evaluation or treatment or counseling directed toward remedying behaviors or conditions that led to or contributed to the juvenile's adjudication); *see also supra* notes 309–310 and accompanying text.
353. *See In re* Cunningham, 2002-Ohio-5875, 2002 WL 31412256 (Oct. 18, 2002) (holding that a trial court had authority to initiate contempt proceedings against juvenile's mother based on a violation of an order that required mother to attend parenting classes).
354. Truancy prosecutions of parents pursuant to criminal statutes are distinct from status offense proceedings against juveniles for failure to attend school. *See* Adriane Kayoko Peralta, *An Interrogation and Response to the Predominant Framing of Truancy*, 62 UCLA L. REV. DISCOURSE 42, 51 (2014); Janet Stroman, *Holding Parents Liable for Their Children's Truancy*, 5 U.C. DAVIS J. JUV. L. & POL'Y 47, 50 (2000).

held criminally liable, will find it within herself to ensure that her child attends. Yet orders to attend parenting classes need not be based on judicial findings that parenting deficiencies contributed to the delinquent conduct.[355]

Rather than, or at least in addition to, ostensibly deficient parenting, other social forces in a child's life may equally contribute to delinquent conduct. A child's actions may be related to undiagnosed learning disabilities.[356] They may also arise from proximity to weapons or readily available gang-involved peers. Delinquency court judges, however, have circumscribed authority to meaningfully intervene in the institutions in which children are involved that may be contributing to delinquent behavior.[357] A delinquency judge does not have the authority to order a school, for example, to conduct an evaluation to determine if a child is eligible for special education services.[358] In addition, other than waiving court costs where possible, a juvenile court judge cannot ameliorate food insecurity or housing instability. Given the court's inability to address these social circumstances contributing to a child's court involvement, a requirement to attend parenting classes to a parent might seem especially burdensome and unfair.[359]

Finally, parenting-class orders seem premised on an understanding that the classes will be effective and meaningfully address any issues that do exist. Yet little research has been done on the efficacy of parenting classes; the studies that exist suggest that classes may not be culturally responsive in accounting for different

355. In this respect these orders resemble parental responsibility laws. DiFonzo, *supra* note 34; *see also* Leslie Joan Harris, *An Empirical Study of Parental Responsibility Laws: Sending Messages, but What Kind and to Whom?*, 2006 UTAH L. REV. 5, 7 (2006); Elena R. Laskin, Note, *How Parental Liability Statutes Criminalize and Stigmatize Minority Mothers*, 37 AM. CRIM. L. REV. 1195, 1206 (2000).

356. *See* KRISTIN C. THOMPSON & RICHARD J. MORRIS, JUVENILE DELINQUENCY AND DISABILITY 31–39 (Springer 2016) (outlining theories of the link between disability and delinquency).

357. While examples abound of juvenile court judges taking leadership roles in convening juvenile justice stakeholders, see, e.g., Leonard Edwards, *The Juvenile Court and the Role of the Juvenile Court Judge*, 43 JUV. & FAM. CT. J. 1, 29 (1992), in any one particular case a judge's role is confined to the facts and legal issues presented by the child before the court.

358. 20 U.S.C.A. § 1414(a)(1)(B) (stating, "[E]ither a parent of a child, or a State educational agency, other State agency, or local educational agency may initiate a request for an initial evaluation to determine if the child is a child with a disability."); 34 C.F.R. § 300.301 (stating, "[E]ither a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability."); *see also Evaluating School-Aged Children for Disability*, CTR. PARENT INFO. & RES. (Sept. 9, 2019), https://www.parentcenterhub.org/evaluation [https://perma.cc/TF24-Y8B7].

359. Kristyne Armenta & Janell Edith Huerta, *Effectiveness of Parenting Classes for Parents of At-Risk Youth*, ELECTRONIC THESES, PROJECTS, AND DISSERTATIONS (2015) (noting that a 2002 study found that nearly 50 percent of parents were unable to complete the program as a result of the "erratic schedules" of the participants).

parenting styles and family compositions.[360] Notwithstanding the thin evidence base for the effectiveness of parenting classes, courts can and do hold parents in civil or criminal[361] contempt upon the state[362] showing that a parent failed to comply with lawful orders.[363]

One can see remnants of *parens patriae* in the practices of requiring parents to participate in the probation process, overriding their expressed wishes about whether a case should go forward and what should happen as a result, and ordering parents to attend classes in the absence of evidence of efficacy or of findings that the child's misbehavior stems from poor parenting.[364] The power dubiously claimed by the state in the nineteenth century pursuant to a broad interpretation of the *parens patriae* doctrine continues to stand for the notion that parents must make their homes "fit training places for their children" or face state sanction.[365]

This Part has analyzed the economic costs and dignitary harms in the treatment of parents, linking them to the fact that the *parens patriae* doctrine claimed by the state in the early court has contemporary relevance as well. In the next Part, I identify and analyze the implications of these costs and harms and argue that they undermine the court's rehabilitative aspirations.[366]

360. Mary Eamon & Meenakshi Venkataraman, *Implementing Parent Management Training in the Context of Poverty*, AM. J. FAM. THERAPY (2003).

361. Courts need not necessarily designate whether they are finding the offending parent in civil or criminal contempt. *See, e.g.*, *In re* J.D., 728 S.E.2d 698 (Ga. App. 2012).

362. Sockwell v. State, 123 So. 3d 585 (Fla. Dist. Ct. App. 2012) (holding that it was impermissible for trial judge to find a parent in contempt without state first showing willful violation by the parent of court order); *see also In re* Holmes, 355 So. 2d 677 (Miss. 1978).

363. *See In re* Cunningham, 2002-Ohio-5875, 2002 WL 31412256 (Oct. 18, 2002) (upholding contempt order for failing to attend parenting classes); *see also In re* EWR, 902 P.2d 696 (Wyo. 1995) (holding similarly); D.M. v. Glover, 711 So. 2d 259 (Fla. App. 1998) (discussing finding of contempt for failure to pay restitution, a finding that was overturned when court made no finding of present ability to pay assessed amount); Brown v. State, 2017 Wy. 45, 393 P.3d 1265 (Wyo. 2017) (holding juvenile court had jurisdiction over criminal contempt action brought against juvenile's mother for violating juvenile court order).

364. *See also* DiFonzo, *supra* note 44, at 857.

365. *Id.*

366. Future work will propose a normative framework, grounded in the value of dignity, for policymakers to use in assessing how they might change juvenile court to minimize if not entirely eliminate the dignitary harms inflicted on parents. More broadly, this Part argues that a more robust understanding of the importance of dignity rights to marginalized populations should inform policy reform in juvenile justice.

IV. IMPLICATIONS FOR REHABILITATION

Recall that the juvenile court, in its earliest iteration as well as its post-*Gault* version, is committed to individualized treatment of youths with the aim of encouraging rehabilitation.[367] Indeed, studies suggest that minors prosecuted in juvenile rather than criminal courts are less likely to reoffend,[368] and part of the reason for this comparative success is the rehabilitative emphasis.[369] In order for juvenile courts to have their intended effect, then, they need generous human and programmatic resources that can address the circumstances underlying the commission of criminal conduct.[370] Commentators have long argued that insufficient funding for such resources within the juvenile court apparatus prevents them from fully realizing the rehabilitative aspirations of juvenile court proponents.[371] They also have exhorted parents to further the rehabilitative goals of the juvenile court, through assisting the child in complying with pretrial terms and ensuring her compliance with any posttrial dispositions.[372]

As this Part argues, however, the juvenile court process itself, with its infliction of economic costs and dignitary harms, often compromises a child's rehabilitation through negatively affecting parents. Moreover, the racial and socioeconomic skew of the court intensifies the impact of these costs and harms.

A. Creation of Economic Instability

Recall that, to the extent that there is a link between poverty and crime commission[373] by young people, it appears to arise from how poverty can diminish a parent's ability to provide sufficient attachment, supervision, and appropriate

367. *In re* Gault, 387 U.S. 1, 51 (1967) (holding that the early court's stated aim of providing "individualized treatment" to further a child's best interests should continue); *see also In re* Winship, 397 U.S. 358, 366 (1970) (suggesting that imposition of a beyond a reasonable doubt proof standard does not negatively affect confidentiality, flexibility, and opportunity for individualized treatment); *supra* notes 79–91 & 187–204.

368. Donna M. Bishop, Charles E. Frazier, Lonn Lanza-Kaduce & Lawrence Winner, *The Transfer of Juveniles to Criminal Court: Does It Make a Difference?*, 42 CRIME & DELINQ. 1 (1996).

369. Birckhead, *supra* note 29.

370. *Id.*

371. *Id.*

372. OFF. OF JUV. JUST. & DELINQ. PREVENTION, LITERATURE REVIEW: A PRODUCT OF THE MODEL PROGRAMS GUIDE, FAMILY ENGAGEMENT & JUVENILE JUSTICE 1 (2018).

373. *See supra* note 146, and accompanying text.

discipline consequences to her child.[374] Poor parents, especially parents raising children without a cohabitating partner, are stretched thin, often working multiple jobs to make ends meet that deprive them of the opportunity to spend meaningful time with their children.[375] Given that poor parents receive scant, if any, income supports to assist in raising their children, a parent's poverty negatively affects her child's ability to receive nurturance and support elsewhere as well—from, say, high-quality child care and excellent schools.[376] Moreover, the time that poor parents do have with their children is often characterized by parental exhaustion, far from conducive to the patience one needs to confront the myriad challenges of raising children.[377]

One might think that the juvenile court—originally conceived as a poverty-fighting institution[378]—would find ways to prop up families or, at a minimum, avoid practices that tear them down financially. Yet the assessment of costs against already struggling families can do the latter, as paying fines and fees can require foregoing a rent or utility payment, skimping on groceries, and the like.[379] In further immiserating a child's family, the court may thus precipitate a parent picking up yet more hours at work, thus compounding some of the stressors that may underlie the criminal conduct in the first instance. To the extent that the assessment of costs against a child's parents financially destabilizes the family, then, it thwarts the aim of rehabilitation.

The imposition of fees at the probation stage appears especially contraindicated. With some frequency, youths on probation may fulfill all of the conditions other than the payment of fees.[380] Inability to pay fees can be an extension of probation and the assessment of additional fees and so "the vicious cycle continues."[381] Greater exposure to state surveillance means more stigma attaches to the young person.[382] Unsurprisingly, studies point to a correlation

374. *See supra* note 147, and accompanying text.
375. *See also* MAXINE EICHNER, THE FREE MARKET FAMILY: HOW THE MARKET CRUSHED THE AMERICAN DREAM (AND HOW IT CAN BE RESTORED) 25, 27, 136 (2020).
376. *Id.* at 120–39.
377. *Id.*
378. TANENHAUS, *supra* note 43, at 5.
379. *Supra* notes 266–269, and accompanying text.
380. Birckhead, *supra* note 29, at 91 (discussing how "it is not uncommon for youth on probation to complete all of their conditions except for the payment of fees, leading to an extension of probation and the assessment of additional fees").
381. *Id.*
382. *See, e.g.*, Ioan Durnescu, *Pains of Probation: Effective Practice and Human Rights*, 55 INT. J. OFFENDER THERAPY & COMP. CRIMINOLOGY 530, 534–37 (2011) (finding that parolees often face humiliation, stigmatization, and a lack of autonomy); Erin Murphy, *Paradigms of Restraint*, 57 DUKE L.J. 1321, 1372 (2008) (arguing that "[m]any people would likely trade a

between fee schedules for juvenile offending and protracted entanglement in the juvenile system by a child.[383] In other words, the imposition of costs lengthens and deepens, rather than shortens, a child's involvement with court authorities.

B. Damage to the Parent-Child Relationship

A parent's ability to effectively nurture, support, and discipline her child is not only a question of finances, of course. Less tangible but equally critical components include the existence of close emotional bonds between parent and child and the external validation of and respect for a poor parent's ability to make considered child-rearing decisions. The juvenile court process can threaten both, especially when families are already fragile from the impacts of poverty and racism.

To be sure, some of these impacts are likely endemic to juvenile court involvement. A child charged and prosecuted in court will more than likely incur parental disapproval, if not worse. Moreover, the moment a probation officer, prosecutor, or judge enters a courtroom, the exclusiveness of a parent's authority over her family has been lost. At the same time, much of the practice in juvenile court seems to unnecessarily undermine parental authority and damage the parent-child relationship. The law's concept of the family rests on a presumption that "natural bonds of affection" between child and parent prompt parents to make considered decisions to advance their children's best interests.[384] In addition, the law recognizes that children do—and should— rely primarily on their parents for nurturance and guidance, however imperfectly given.[385] Indeed, the family integrity doctrine recognizes the importance of the parent-child bond both as a matter of parental rights and children's well-being.[386]

year in jail to avoid a lifetime ban from their hometown or the indelible stigma of public registration."); *see generally* ELECTRONICALLY MONITORED PUNISHMENT: INTERNATIONAL AND CRITICAL PERSPECTIVES (Mike Nellis et al., eds. Willan Publishing 2012).

383. Jeff Selbin, *Juvenile Fee Abolition in California: Early Lessons and Challenges for the Debt-Free Justice Movement*, 98 N.C. L. REV. 401, 406 n.29 (2020).

384. J.R. v. Parham, 442 U.S. 584, 590 (1977).

385. *See generally* Emily Buss, *What the Law Should (and Should Not) Learn From Child Development Research*, 38 HOFSTRA L. REV. 13 (2009).

386. "For a child, the consequences of termination of his natural parents' rights may well be far-reaching. In Colorado, for example, it has been noted: 'The child loses the right of support and maintenance, for which he may thereafter be dependent upon society; the right to inherit; and all other rights inherent in the legal parent-child relationship, not just for [a limited] period . . ., but forever.'" Santosky v. Kramer, 455 U.S. 745, 761 n.11 (1982) (quoting *In re* K.S., 33 Colo. App. 72, 76, 515 P.2d 130, 133 (1973)).

The parent-child relationship is a uniquely complex and intimate one,[387] perhaps especially during adolescence[388]—the time when a child is most likely to become involved in the juvenile court.[389] It is developmentally appropriate for teens to push against their parents, yet their parents must continue to provide critical support.[390] Parenting during this period requires flexibility and nuance, not heavy-handed state intervention that disregards the parental role.[391]

When the interests of parents and children are placed squarely in tension with each other by the State, as they are in the situations discussed throughout the previous Part,[392] parents and children may find that already-tenuous bonds snap. When that happens, as our understanding of the relationship between a strong and stable family and childhood offending suggests,[393] the rehabilitation commitment of the juvenile court is compromised. At least three such scenarios could and do occur in juvenile court.

First is the circumstance where court actors disregard a parent's perspectives on what should happen with a case and to her child. Consider in this regard the prosecutor who insists on pursuing a case against a child where the parent is the alleged victim or complaining witness but does not wish to go forward. The paradigmatic example is that of a poor parent calls the police about a child over whom she feels she has diminished control or about whom she has emergent concerns. When the state insists on prosecution of a child who is in the system only because her parent took steps to place her there, such an action suggests to parents that they should not rely on the police for assistance, depriving them of perhaps the only meaningful safety net they feel they have. Moreover, forcing parents to continue to participate in a prosecution of their child—especially one who is in the system only because of a parent's actions—negates the legally sanctioned presumptions about parents: that they know what is best for their child.[394]

Relatedly, when no one in the court makes space for a parent to share her perspectives on the appropriate sentence, including the imposition of detention, parental authority is compromised. Recall that case law and statutes confer on

387. Mai Stafford, Diana L. Kuh, Catherine R. Gale, Gita Mishra & Marcus Richards, *Parent-Child Relationships and Offspring's Positive Mental Well-Being From Adolescence to Early Older Age*, 11 J. POSITIVE PSYCH. 326 (2016).
388. *See supra* notes 74–75, and accompanying text.
389. CHARLES PUZZANCHERA, JUV. JUST. STAT., JUVENILE ARRESTS, 2019, at 3 (2020).
390. AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY, PARENTING: PREPARING FOR ADOLESCENCE (2015).
391. Elizabeth S. Scott & Robert E. Scott, *Parents as Fiduciaries*, 81 VA. L. REV. 2401, 2417 (1995).
392. *Supra* Subpart III.B.
393. *See supra* note 145, and accompanying text.
394. J.R. v. Parham, 442 U.S. 584, 590 (1977).

juvenile court judges the ability to hold children in detention without bail under a range of circumstances, including many that do not involve allegations of new criminal conduct. One such incident occurred in the case of the woman whose daughter was detained after a probation violation for failing to do her homework in remote school.[395] The mother was reportedly adamant in her opposition to the detention of her child, yet her views were ignored. It is not difficult to imagine the resulting tension that this turn of events placed on the family relationship. Public outcry over this excessive court response eventually prompted the court to reverse its decision and release the child to her mother.[396] Yet outrage focused on how unfair it was for the court to have penalized a child for a problem in online school[397] rather than the fact that the court ignored the mother's wishes to have her daughter out of detention.[398]

One might reasonably ask why it is essential for court actors to respect the wishes of a child's parent when the child is involved in the court.[399] After all, the child has now allegedly committed, or even been adjudicated of, a criminal offense. Such actions arguably negate the zone of deference that parental autonomy doctrines suggest. Moreover, given the still applicable *parens patriae* doctrine applicable to children in the juvenile court, it might seem appropriate to override what the parent thinks should happen.

The socioeconomic skew of the juvenile court, however, counsels otherwise. Parents of financial means are able to wall themselves off from government scrutiny and intervention, able to rely on private and nonpunitive resources to assist in managing their children's troubles. It seems, by contrast, normatively dubious to make demands of parents of children in the juvenile court that interfere with their parental autonomy interests, particularly if the reason their children became involved in the

395. Cohen, *supra* note 319.

396. Aimee Ortiz, *Court Frees Michigan Teen Who Was Held for Skipping Online Schoolwork*, N.Y. TIMES (July 31, 2020), https://www.nytimes.com/2020/07/31/us/michigan-teen-homework-release.html [https://perma.cc/HXM9-EM3H].

397. Cohen, *supra* note 319 (noting that officials at the Michigan Protection & Advocacy Service, the organization with oversight authority over state treatment of the disabled population, indicated being "especially troubled that a student with special needs — one of the most vulnerable populations — was punished when students and teachers everywhere couldn't adjust to online learning").

398. Gross, *supra* note 345 (noting that the prosecutor had joined defense counsel's motion for the girl to be released after the mother expressed her wishes but that the judge denied the joint motion).

399. Christine Gottlieb, *Children's Attorneys' Obligations to Turn to Parents to Assess Best Interests*, 6 NEV. L.J. 1263 (2006).

court in the first instance was the parent's lack of access to services and supports.[400]

Third, when a juvenile court judge conscripts parents to act as the eyes and ears of the court, the court can create or aggravate parent-child tensions. Consider in this regard the parent ordered to report her child's location, school attendance, friends and associates, and suspected drug use to the juvenile probation officer. When this information is redisclosed to the juvenile court judge, a host of negative consequences can ensue—including detention—none of which may be in the parents' judgement in the best interests of the child.

Fourth and finally, court orders that link a child's misconduct to perceived parenting flaws—absent a proven link between the two and without evidence that the required programs or services will be effective—needlessly undermine a parent's authority. An order that a mother attend parenting classes may not address the underlying dynamics that have fueled a child's delinquency involvement. A parent wishing to contest these orders will need to expend time and resources she may not have. Moreover, because parental orders can be issued in the absence of any demonstrated causal link between parenting and juvenile misbehavior, a parent may reasonably feel resentful and demeaned by the process. At the same time, the child must now see her parent cast as an object of suspicion and held in little regard by an institutional authority. It is easy to imagine a parent forced to attend parenting classes garnering less, rather than more, respect from a perhaps already recalcitrant child.

In threatening family integrity, these dignitary harms may alienate both parent and child from the juvenile court process and promote disengagement from its attendant terms and conditions.[401] At a minimum, a parent who was shut out of the process may lack an understanding of whether and how she can help her child succeed with completing the requirements of whatever disposition was ordered by the court. The child may internalize this parental alienation, to her detriment; research indicates that when a child believes she is not treated fairly, she is less likely to invest in court programs and services.[402] Moreover, at least one study has found that probation supervision diminished rather than strengthened parents' attentiveness to their children.[403]

400. Bell, *supra* note 329.
401. *See supra* notes 373–391, and accompanying text.
402. *See, e.g.*, Tamar Birckhead, *Toward a Theory of Procedural Justice for Juveniles* 33 BUFF. L. REV. 898 (2014).
403. Adam D. Fine, Zachary R. Rowan & Elizabeth Cauffman, *Partners or Adversaries? The Relation Between Juvenile Diversion Supervision & Parenting Practices*, 44 L. & HUM. BEHAV. 461 (2020).

CONCLUSION

This Article has identified and analyzed the economic and dignitary harms that juvenile delinquency courts inflict on the low-wealth parents whose children are prosecuted within them. It has demonstrated that these impacts can be harmful, and that the harms have economic and dignitary dimensions. These harms undermine the juvenile court's rehabilitative aspirations. Moreover, given the racial and socioeconomic skew of the court, policymakers ought to pay closer attention to whether these costs and harms are justified.

Having called attention to the parent-damaging practices of juvenile court, I do not suggest that the juvenile court should be abolished, as some commentators have.[404] While a full set of prescriptions for reform is beyond this Article's scope, the analysis undertaken here suggests at least two policy takeaways, which future work will explore. The first is that, without reforms ameliorating the economic and dignitary harms to parents, the juvenile court is unlikely ever to achieve its most ambitious, rehabilitative goals.[405] The second is that, given the seeming intractability of racial and socioeconomic disparity within juvenile courts, more noncourt mechanisms for addressing the issues that bring children to the court's attention are advisable.[406]

404. Janet E. Ainsworth, *Re-Imagining Childhood and Reconstructing the Legal Order: The Case for Abolishing the Juvenile Court*, 69 N.C. L. REV. 1083, 1118–21 (1991) (recommending abolition because of the availability of greater procedural safeguards and greater opportunity for effective assistance of counsel).

405. Barbara Fedders, *The Indignity of Juvenile Court: A Prescription for Reform* (draft on file with the author).

406. In a recent article, Maximo Langer differentiates penal abolitionism from prison abolitionism, arguing that penal abolitionist scholars critique not just prisons or even prisons and policing, but "the practice of looking at many social situations as crimes and through the lens of criminal law. For these thinkers, criminal law has an impoverished view of social life and of human beings that distracts from 'more serious problems' and justifies 'inequality and relative deprivation.'" *Penal Abolitionism and Criminal Law Minimalism*, 134 HARV. L. REV. F. 42, 49 (2020) (internal citation omitted). Langer's explication of penal abolitionism applies here; the call to shrink the juvenile court suggests examining social problems encountered and created by children neither only as crimes nor exclusively through the lens of criminal law.