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IN THE

SUPREME COURT OF PENNSYLVANIA

MAP 2022 **NO. 40**

COMMONWEALTH OF PENNSYLVANIA,
Appellant

V.

NAZEER TAYLOR,
Appellee

BRIEF FOR *AMICUS CURIAE* DEFENDER ASSOCIATION OF PHILADELPHIA BEHALF OF NAZEER TAYLOR

Appeal From The Judgment Of Sentence By The Honorable William R. Carpenter, On January 31, 2017, In The Court Of Common Pleas Of Montgomery County, Criminal Division, At No. CP-46-CR-0003166-2014.

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INTEREST OF AMICUS CURIAE

Amicus Curiae, the Defender Association of Philadelphia ("The Defender") has participated in numerous cases before this Court. The Defender is a private, non-profit corporation that represents a substantial percentage of the criminal defendants in Philadelphia County at trial, at probation and parole revocation proceedings, and on appeal. The Defender is active in Pennsylvania trial and appellate courts, and before the Pennsylvania Board of Probation and Parole. The Defender attempts to ensure a high standard of representation and to prevent the abridgment of the constitutional and other legal rights of the citizens of Philadelphia and Pennsylvania.

The Defender represents a large percentage of the children charged with crimes in Philadelphia, and has a significant interest in protecting their rights to be treated as children, and in assuring that Pennsylvania law is followed when transferring those who are charged with committing crimes as children to adult court.

Amicus states that no other person or entity has paid for the preparation of, or authored, this brief in whole or in part.

STATEMENT OF SCOPE AND STANDARD OF REVIEW

Amicus adopts the Appellee's statement of scope and standard of review.

STATEMENT OF QUESTIONS PRESENTED

Amicus relies on the questions presented as framed by this Court.

STATEMENT OF THE CASE

Amicus adopts the factual and procedural history as stated by Appellee.

ARGUMENT

When a child is properly charged as a delinquent in juvenile court, and no order has properly issued transferring the case for criminal prosecution, can the Commonwealth automatically charge that child as a criminal when they turn 21 if the juvenile case has not otherwise resolved? Pennsylvania's Constitution, the Juvenile Act, the history surrounding juvenile courts, and this Court's precedents provide an answer. That answer is no. Because neither the juvenile nor criminal divisions of the court of common pleas has jurisdiction over the petition when the child turns 21, and no valid certification to criminal court was executed, the only option is discharge.

The result has strong support. First, this Court was right in *Commonwealth v. Johnson*, 669 A.2d 315, 320 (Pa. 1995) when it declared that the divide between the juvenile and criminal divisions of the court of common pleas is jurisdictional. Our Constitution, the Judicial Code, the Juvenile Act, and other statutes when considered as a whole necessarily imply this result. Indeed, since the dawn of the 20th century, the legislature limited or expanded a court's general police powers by placing

subject matter authority in single divisions, or even sessions, of courts of general jurisdiction.

Second, Pennsylvania was not unique. Jurisdictional separation between the juvenile and criminal courts was fundamental to the juvenile court movement. Nearly every state, including Pennsylvania, still maintains the jurisdictional separation by employing detailed and exclusive procedures for bridging that divide to ensure that we do not unnecessarily treat children as criminals.

Third, the Commonwealth's and its *Amici's* approach would have concerning and damaging consequences. For example, in a large number of cases, one approach – amounting to an automatic age-out transfer to criminal prosecution – renders all but illusory the separate structure of the juvenile court and the certification mechanism laid out in 42 Pa.C.S. § 6355 (transfer to criminal proceedings).

Finally, *amicus* outlines the ways in which the legislature could alter the Juvenile Act to resolve the problem at issue here. It could, for example, like many other states, expand the juvenile court's authority to hold certification hearings after the child has reached 21.

We acknowledge that a discharge in all cases may be less than satisfactory. We also acknowledge this gap could be corrected by our elected representatives, even possibly in ways that would unfortunately subject more children to criminal prosecution. Nevertheless, "it is neither the judiciary's role, nor within our constitutional authority, to fill gaps in … statutes resulting from the General Assembly's omissions. *Commonwealth v. Eid*, 249 A.3d 1030, 1044 (Pa. 2021) (citing *Commonwealth v. Derhammer*, 173 A.3d 723, 732 (Pa. 2017) (Wecht, J., concurring)). This Court should not attempt to cure this policy gap by straining the law, our history, and the purpose of the juvenile courts to achieve a result. It should affirm the Superior Court and discharge Appellee.

A. The Grant Of Authority Under The Juvenile Act To The Juvenile Division Is Jurisdictional.

Every county in Pennsylvania has a "juvenile court," which is empowered to oversee proceedings under the Juvenile Act, separate and distinct from criminal matters.[1] This power is exclusive. It is largely

[1] *See* Juvenile Court Judges' Commission, Juvenile Delinquency Benchbook, Chapter 3, at 3.2 (2018) ("Some counties have established permanent 'juvenile divisions' of their Courts of Common Pleas, while others merely hold regularly scheduled

irrelevant whether the juvenile court exists as a separate division or whether it convenes merely once a month,[2] the fact that a fully separate juvenile court exists in every county is not mere circumstance or the exercise of county level discretion. It is based in every source of law we have.

1. Pennsylvania's Constitution made divisional assignments jurisdictional.

Pennsylvania's Constitution creates a "unified judicial system."

> The judicial power of the Commonwealth shall be vested in a unified judicial system consisting of the Supreme Court, the Superior Court, the Commonwealth Court, courts of common pleas, community courts, municipal courts in the City of Philadelphia, such other courts as may be provided by law and justices of the peace….

Pa. Const. Art. V, § 1.

This provision does not establish unified jurisdiction over cases. It creates a unified judicial power which permits the judicial system flexibility to assign judges and business between the various courts. It says nothing about what court or division has jurisdiction to adjudicate

'juvenile days.' By custom, however, whenever a Court of Common Pleas is hearing a juvenile matter, it is referred to as a 'juvenile court.'").

[2] *See, e.g.,* Clarion County, Master Court Calendar, July 2022, https://www.co.clarion.pa.us/calendar.php (scheduling "juvenile court" one day per month).

different subject matters. *See Posner v. Sheridan*, 299 A.2d 309, 313 (Pa. 1973) ("nothing in these new provisions permits plaintiffs to file complaints, or courts to docket them willy-nilly without regard to the appropriate division.").

The Pennsylvania Bar Association, which largely proposed the language for Article V, § 1 in its proposal to the 1967 Constitutional Convention, explained "the structure of a single court system is similar to an industrial, commercial, or military organization – the whole organization is devoted to a single purpose but branches or phases of the enterprise are manned by specialists. The unified concept is not of specialized courts, but of specialized judges,[3] … [although] the distinction between 'powers' and 'jurisdiction' is not always apparent." *Id.*

Instead of creating completely distinct courts where the judges elected to those courts had no power to act on matters assigned to courts for which they were not judges, a constitutional feature (or perhaps bug)

[3] The Pennsylvania Constitutional Convention 1967-68, Reference Manual No. 5, The Judiciary, 51 (1968), https://www.paconstitution.org/wp-content/uploads/2019/09/rm-05.pdf.

which existed prior to the 1968 Constitutional reorganization,[4] "a unified court is stratified into levels … and judges are provided to man the courts at all levels." *Id.* Essentially, "[b]elow the appellate level, all judges, are in theory, judges of the whole court, no matter to what branch or division they have been chosen originally. They are mobile and not fixed" and may be reassigned by the higher courts to where their services are needed. *Id.* at 52.

This unified judicial power, however, has little bearing on if and how a court may adjudicate certain subjects. Jurisdiction is addressed elsewhere. With respect to the court of common pleas, the Constitution provides:

> There shall be one court of common pleas for each judicial district (a) having such divisions and consisting of such number of judges as shall be provided by law, one of whom shall be the president judge; and (b) having unlimited original

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[4] *See, e.g.*, *Case of Mansfield*, 22 Pa. Super. 224, 228-29, 232 (1903) (finding the 1901 Juvenile Court Act unconstitutional under "section 26 of article 5 of the constitution of this commonwealth in providing a separate court for a class of persons and to exercise that jurisdiction which is now vested by law in the judges of oyer and terminer and courts of quarter sessions who are designated as judges of such courts"); *Commonwealth ex rel. Margiotti v. Sutton*, 193 A. 250, 255 (Pa. 1937) (finding an act of the legislature allowing family court judges to sit as common pleas court judges was unconstitutional "[a]s the Constitution limits the common pleas of Philadelphia to three judges and as the Family Court Act provides for a court of the same class or grade but with four judges").

> jurisdiction in all cases except as may otherwise be provided by law.

Pa. Const. Art. V, § 5.

When originally enacted in 1968, this provision did not stand alone. Nor was it an absolute grant of carte blanche jurisdiction. Limits were imposed on which divisions could exercise its power. The schedule to Article V,[5] for example, required each court of common pleas to be divided into divisions. Pa. Const. Art. V, sched. § 4 (courts other than Philadelphia and Allegheny); § 16 (Philadelphia), § 17 (Allegheny). In some instances, the Constitution expressly provided which division could exercise the court's jurisdiction. *See, e.g.*, Pa. Const. Art. V, sched. § 4 ("The court of common pleas in those judicial districts [other than Philadelphia and Allegheny] shall exercise the jurisdiction presently exercised by the separate orphans' courts **through their respective orphans' court division**.") (emphasis added).

Specifically, in the state's two most populous counties, the 1968 Constitution expressly awarded jurisdiction over juvenile matters to the

[5] The schedule had the same force of law as the Constitution itself. Pa. Const. Art V., sched. Preamble.

family court division. Pa. Const. Art. V, sched. § 16(q)(ii) (in Philadelphia, the "court of common pleas through the family court division of the court of common pleas **shall exercise jurisdiction in** … [j]uvenile matters …."); Pa. Const. Art. V. sched. § 17(b)(ii) (in Allegheny County the family court is given jurisdiction in "[a]ll matters now within the jurisdiction of the juvenile court). No concurrent jurisdiction was established in any other division.

These provisions are complimentary and unambiguous. Article V gave the court of common pleas general jurisdiction, and the schedule divided up how and where that jurisdictional power could be exercised. They cannot be read in isolation. *In re Bruno*, 101 A.3d 635, 660 (Pa. 2014) (when interpreting the constitution, this Court must recognize "that 'the Constitution is an integrated whole' and, as a result, the Court must strive in its interpretation to give concomitant effect to all constitutional provisions") (citing *Jubelirer v. Rendell*, 953 A.2d 514, 528 (Pa. 2008); *Sprague v. Casey*, 550 A.2d 184, 191 (Pa. 1988); *Cavanaugh v. Davis*, 440 A.2d 1380, 1381–82 (Pa. 1982)).

This Court has acknowledged this jurisdictional framework. “If it makes no difference where a case was docketed, then we are left to wonder to what purpose were such divisions created by the drafters of the 1968 Constitution.” *Posner*, 299 A.2d at 312-13. *See also Johnson*, 669 A.2d at 320-21. And it was right. Writing for the Pennsylvania Bar Quarterly, the General Counsel and Assistant General Counsel to the Constitutional Convention explained:

> These divisions and the assignment of judges thereto will not be as inflexible as the present system of separate courts. The president judges of the Philadelphia and Allegheny Courts are empowered “to assign judges from each division to each other division of the Court when required to expedite the business of the Court.”

Marvin Comisky & Goncerm Krestal, *Analysis of New Judiciary Article*, Pa Bench & Bar Q. 68, 73 (Oct. 1968). As the writers describe, the divisional design was to permit the movement of judges, all vested with broad powers, between divisions (the business of the court), each of which was granted separate and distinct subject matter jurisdictions.

Of course, many of these provisions have been supplemented or superseded by statute. *See* Judiciary Act of 1976, P.L. 586, No. 142, § 26(b).[6] Most, however, have been enacted into law almost verbatim, and carry over the Constitution's structure.

2. The legislature has expressly and by necessary implication limited the court of common pleas jurisdiction to particular divisions or proceedings.

Article V, § 5 is subject to modification by statute. Pa. Const. Art. V, § 5 ("except as may be otherwise provided by law"). The Appellant and its *Amici* place significant stock in 42 Pa.C.S. § 931 (original jurisdiction and venue) and 42 Pa.C.S. § 952 (court divisions) in their attempt to establish that unless a statute vests jurisdiction in "another court" assigning matters cannot divest the court of common pleas of jurisdiction to act if the assigned division no longer can. *See* Brief for Appellant, 27-29; Brief for *Amicus Curiae* Office of the Attorney General, 16, 20-21 ("AG Brief").

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6 Section 26(b) of the Act provides:

> (b) Subsections (o), (p) and (q) of section 16, and sections 17 and 25, Schedule to Article V of the Constitution of Pennsylvania, adopted April 23, 1968, are hereby superseded and suspended….

These arguments fail to appreciate that general provisions vesting jurisdiction to the court of common pleas as a whole do not speak to whether the legislature otherwise limited **the manner** in which the court of common pleas could exercise its general jurisdiction in select matters. The legislature, just as it can grant general jurisdiction, can limit, "either expressly or by necessary implication," how that jurisdiction is executed. *In re Bruno*, 101 A.3d at 677 (citing *Commonwealth v. McCloskey*, 2 Rawle 369, 379-80 (Pa. 1830); *see also Overseers of Poor of Anville Twp. v. Smith*, 2 Serg. & Rawle 363, 366 (Pa. 1816). It has done both.

The most express limitation on the execution of the court of common pleas' general jurisdiction is 20 Pa.C.S. §§ 711 through 713. Section 711, which is titled "mandatory exercise of jurisdiction through orphans' court division in general," provides "jurisdiction of the court of common pleas over the following [23 different legal actions] shall be exercised through its orphans' court division." § 711. "[I]t has been established that the Orphans' Court (now Orphans' Court Division) is a special tribunal for specific cases and is a court of limited jurisdiction which exercises only such

power as is extended to it by statute, either expressly or by necessary implication." *In re Jervis' Est.*, 279 A.2d 151, 153 (Pa. 1971) (citing *Henderson Estate*, 149 A.2d 892 (Pa. 1959); *Webb Estate*, 138 A.2d 435 (Pa. 1958)). Section 712 then creates an exception for concurrent jurisdiction among the divisions over several specifically enumerated matters and where a section 711 issue is raised along with a non-section 711 issue. 20 Pa.C.S. § 712 ("non-mandatory jurisdiction). The limiting jurisdictional purpose of section 711 could not be plainer.

Although the Juvenile Act, adopted in 1976, 42 Pa.C.S. § 6301, does not contain similar express jurisdictional provisions, it nonetheless limits the court of common pleas' jurisdiction to particular divisions by necessary implication.

The Juvenile Act applies "exclusively" to cases in which a "child is alleged to be delinquent or dependent," along with a few other proceedings not at issue here. 42 Pa.C.S. § 6303(a)(1). This broad application is limited by definition. A "child" is a person "under the age of 21 years who committed an act of delinquency before reaching the age of 18 years." 42 Pa.C.S. § 6302. A "delinquent act" is also defined as "an act designated

a crime under the law of this Commonwealth" subject to a list of specified exceptions. 42 Pa.C.S. § 6302.

Where the person is eligible for coverage under the Act, a proceeding may only be initiated in several clearly enumerated ways: "(1) By transfer of a case as provided in section 6322 (relating to transfer from criminal proceedings); ... (3) In other cases by the filing of a petition as provided in this chapter," among a few others not germane here. 42 Pa.C.S. § 6321(a). Section 6322 directs how a case may be transferred from criminal proceedings to juvenile court. Specifically, it requires a **transfer** from the "court in a criminal proceeding" "to the division or a judge of the court assigned to conduct juvenile hearings, together with a copy of the accusatory pleading and other papers, documents, and transcripts of testimony relating to the case. 42 Pa.C.S. § 6322(a). If the criminal division had the power to apply the Juvenile Act when applicable, what would be the purpose of transferring the child, the case, and the record?

The language of the transfer to criminal court provision also lends support that the Act's implicit structure is jurisdictional. Like the

transfer from criminal court, where the Commonwealth satisfies its burden, the child requests, or the case is otherwise excluded from the Act, "the court before hearing the petition on its merits may rule that this chapter is not applicable and that the offense should be prosecuted, and transfer the offense, where appropriate, to the division or a judge of the court assigned to conduct criminal proceedings …." 42 Pa.C.S. § 6355(a).

The legislature is telling "the court," defined as the court of common pleas, 42 Pa.C.S. § 6302, to transfer the case to the "division" or "judge" of the **same** court assigned to hear juvenile matters. Why require these intra-court transfers unless only those expressly specified divisions or sessions of the court are authorized to hear that issue? The answer, of course, is that the legislature intended to ensure that each county's juvenile court would be solely responsible for hearing Juvenile Act cases.

The Juvenile Act's history confirms the point. The Act is derived from a Joint State Government Commission Report tasked with remodeling the Act to deal with *In re Gault*, 387 U.S. 1 (1967), and the application of due process obligations upon juvenile courts. *See* Joint State

Government Commission, Proposed Juvenile Act, 1970.[7] Addressing the definition of "court," as "the court of common pleas … ," the Commission recognized the general grant of jurisdiction to the court of common pleas, but it was explicit that generally "the court of common pleas will exercise its **jurisdiction** through a division designated 'Juvenile Court Division.'" *Id.* at 5 (emphasis added).

The legislature intended to set the jurisdiction, meaning "the limits or territory within which authority may be exercised," in one particular division of a court. *Johnson*, 669 A.2d at 321 (citing WEBSTER'S NEW COLLEGIATE DICTIONARY 655 (1986)). And it did so by carrying forward the constitutional structure. This structure is so obvious that it has become ubiquitous in our cases, this Court's Rules, and our justice administration's official publications. *See, e.g.*, *Commonwealth v. Moyer*, 444 A.2d 101, 102 (Pa. 1982); *Commonwealth v. Greiner*, 388 A.2d 698, 702 (Pa. 1978) (transfer is jurisdictional); Pa.R.J.C.P. 310 (requiring the juvenile probation officer to determine whether "**the allegations are within the jurisdiction of the juvenile court**") (emphasis added); Juvenile

[7] http://jsg.legis.state.pa.us/resources/documents/ftp/publications/1970-12-01%201970%20Proposed%20Juvenile%20Act.pdf.

Delinquency Benchbook, *supra* n.1, at 2.1, 3.2 (discussing the juvenile court as jurisdictionally separate); Juvenile Court Judges' Commission, Standards Governing Juvenile Court Jurisdictional Procedures (2022).[8] *Johnson* was right. The divide is jurisdictional.

B. The Juvenile Court's Power Has Always Been One Of Exclusive Jurisdiction.

The reasoning presented above also harmonizes with the history and purpose of the juvenile court. Juvenile courts were explicitly founded upon their jurisdictional separation from adult criminal courts.

> Under most of the juvenile-court laws a child under the designated age is to be proceeded against as a criminal only when in the judgment of the judge of the juvenile court, either as to any child, or in some states as to one over fourteen or over sixteen years of age, the interest the state and of the child require that this be done. It is to be observed that the language of the law should be explicit in order to negative the jurisdiction of the criminal courts in the first instance.

Julian W. Mack, *The Juvenile Court,* 23 HARV. L. REV. 104, 109 (1909).

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[8] Available at https://www.jcjc.pa.gov/Publications/Documents/Standards/Standards%20Governing%20Juvenile%20Court%20Jurisdictional%20Procedures.pdf,

In 1901, Pennsylvania established its first juvenile court, Act of May 21, 1901, P.L. 279. The new court was separate and distinct from the other constitutional courts, and tasked with exercising exclusive jurisdiction over children under sixteen. *See In re Shelton,* 1902 WL 3084, at *2 (Pa. Quar. Sess. 1902). The creation of the separate court, however, posed constitutional problems. Striking down the law, the Superior Court stated "the legislature may have had [justifiably intended] to create a new court independent of the existing judicial organizations," but because it tried "to regulate the exercise of that jurisdiction" with judges elected to another court, the design violated the state Constitution. *Case of Mansfield*, 22 Pa. Super. 224, 228-29, 232 (1903).[9]

In 1903, to remedy this problem, the Legislature vested all juvenile court power to the common law court of quarter sessions, expanding the scope of its jurisdiction and removing any power of the oyer and terminer

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[9] The failed design tried to create a new court staffed by judges of the common law courts of oyer and terminer (O.&T.) and quarter sessions, which both had criminal jurisdiction, but labor was jurisdictionally divided based upon the nature of the crime charged. O.&T. generally had concurrent criminal jurisdiction with the inferior quarter session court, but exclusive jurisdiction over more serious offenses. *See, e.g.,* Act of 1836, June 16, P.L. 784 at sec. 14-15; 17 Pa. C.S. § 391 (1962); *Commonwealth v. Solomon*, 386 A.2d 991, 992–93 (Pa. Super. 1978); *Commonwealth ex rel. Margiotti v. Sutton,* 193 A. 250, 254 (Pa. 1937).

courts to address delinquency matters. *See Commonwealth v. Fisher*, 62 A. 198 (Pa. 1905). "With its jurisdiction unrestricted by the Constitution, it is for the Legislature to declare what shall be exercised by it as a general police court; and, instead of creating a distinctively new court, the act of 1903 does nothing more than confer additional powers upon the old court and clearly define them." *Id.* at 52. By this act, delinquent children were shielded from criminal prosecutions and handled in fully separate proceedings.

The exclusive jurisdictional grant continued under the Juvenile Court Act of 1933, P.L. 1433. Under the law, the juvenile court was given original jurisdiction over delinquent children, except in homicide cases, unless, the judge of the "Juvenile Court might, if in his opinion the interests of the State required a prosecution of such case on an indictment, certify the same to the district attorney of the county, who should thereupon proceed with the case in the same manner as though the jurisdiction of the Juvenile Court had never attached." *In re Holmes*, 109 A.2d 523, 526 (Pa. 1954); *see also In re Gaskins,* 244 A.2d 662 (Pa. 1968) (outlining the Act's jurisdictional structure).

Juvenile court laws in almost every other state reflected this jurisdictional exclusivity. *See*, *e.g.*, Col. Const. Art. 1, § 6 (1912) ("'exclusive original jurisdiction in cases involving minors and persons whose offenses concern minors may be vested in a separate court now or hereafter established by law.");[10] *Thompson v. Thompson*, 145 A. 9, 10 (Del. 1929) ("sole and exclusive jurisdiction given to the Juvenile Court"); *State v. Tweed*, 224 P. 443, 444 (Utah 1924) ("the matters of trial and punishment were placed under the sole jurisdiction of the juvenile courts").[11],[12]

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[10] The Colorado Constitution was amended in 1923 to provide for coordinate jurisdiction between the juvenile and criminal courts where a child is charged in a "criminal case" as opposed to those charged as delinquents. *See People v. Morley*, 234 P. 178, 179 (Colo. 1924). This was then amended in 1963 to allow the jurisdiction to be governed by statute, which now provides the juvenile court with exclusive and original jurisdiction. C.R.S.A. § 19-2-518.

[11] Utah amended its Juvenile Act in 1919 to exempt juveniles charged with felonies from the exclusive jurisdiction of the juvenile court.

[12] *See also York v. Willingham*, 88 So. 218, 218 (Ala. Ct. App. 1920) ("the juvenile delinquent court shall have original and exclusive jurisdiction"); *State ex rel. Watson v. Rogers*, 86 So. 2d 645, 647 (Fla. 1956) ("the legislature gave juvenile courts 'exclusive original jurisdiction of dependent and delinquent children"); *State v. Griffith*, 675 So. 2d 911, 912 (Fla. 1996) (explaining the legislature more recently adopted mandatory and exclusive jurisdiction via statute); *Mallory v. Paradise*, 173 N.W.2d 264 (Iowa 1969); *State v. Dunn*, 90 P. 231, 232 (Kan. 1907) ("The act … [gives the juvenile court] exclusive jurisdiction of all cases where children under 16 years of age are charged with criminal offenses."); *Commonwealth v. Franks*, 175 S.W. 349 (Ky. 1915); *State v. Connally*, 182 So. 318 (La. 1938) (exclusive jurisdiction except for certain offenders over 15); *State ex rel. Clarke v. Wilder*, 94 S.W. 499, 500 (Mo. 1906) ("The juvenile court … has under this act exclusive jurisdiction to try delinquent" children for criminal offenses…."); *State ex rel. Knutson v. Jackson*, 82 N.W.2d 234 (Minn. 1957); *Wheeler v. Shoemake*, 57 So. 2d 267 (Miss. 1952); *State ex rel. Boyd v. Rutledge*, 13 S.W.2d 1061 (Mo. 1929) ("the juvenile court has exclusive jurisdiction in all cases

Only a few states were outliers, and granted juvenile courts concurrent jurisdiction. *See, e.g.*, *Hicks v. State*, 92 S.E. 216, 217 (Ga. 1917) (finding the state constitution required the juvenile and superior courts to have concurrent jurisdiction). *State v. Burt*, 71 A. 30 (N.H. 1908) (finding that while New Hampshire's 1907 Juvenile Court Act permitted petitions to be brought for criminal offenses before the juvenile court, a criminal prosecution in the superior court could stand because the law did not make jurisdiction exclusive). These statutes, however, were ultimately amended or abrogated in order to give juvenile courts exclusive jurisdiction.[13]

The purpose of the juvenile court system was not just to provide for laws that affected children differently, but to erect walls between the

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in which persons under 17 years of age are charged with either delinquency or the commission of crime."); *State v. Monahan*, 104 A.2d 21 (N.J. 1954); *State ex rel. Slatton v. Boles*, 130 S.E.2d 192 (W.V. 1963) (except over children charged with capital offenses, as then provided by statute); *Gibson v. State*, 177 N.W.2d 912 (Wis. 1970).

[13] *See, e.g.*, *J. W. A. v. State*, 212 S.E.2d 849, 851–52 (Ga. 1975) (explaining that Georgia ultimately amended its constitution in 1972 to address the lack of uniform jurisdiction in its juvenile courts and the legislature passed a law effectuating the change in 1973 which intended "to vest exclusive original jurisdiction in the juvenile courts over youthful delinquents except in capital felony cases"); *State v. Lemelin,* 101 N.H. 404 (N.H. 1958) (recognizing that legislative amendments in 1937, RSA 169:21, 29. Cf. P.L., c. 110, §§ 4, 31 (1937) gave the "municipal" or juvenile courts exclusive jurisdiction, abrogating *Burt*, *supra*.).

treatment of children and adults in nearly every sphere, from their arrest, to adjudication and sanction. Even Great Britain followed America's lead and in 1908, British Parliament passed the "Children's Bill" which created a jurisdictional division:

> the child offender ought to be kept separate from the adult criminal, and should receive at the hands of the law a treatment differentiated to suit his special needs—that the courts should be agencies for the rescue as well as the punishment of children. We require the establishment throughout the country of juvenile courts—that is to say, children's cases shall be heard in a court held in a separate room or at a separate time from the courts which are held for adult cases....[14]

This basic tenet – jurisdictional separation of children from adults – remains in full force. *See* National Center for Juvenile Justice, Juvenile Justice, Geography, Policy, Practice & Statistics, Jurisdictional Boundaries (July 18, 2022), http://www.jjgps.org/jurisdictional-boundaries (detailing the divide between juvenile and criminal courts and the transfer mechanisms available between them for all 50 states).

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[14] HC Deb 10 February 1908 vol 183 cc1432-7, https://api.parliament.uk/historic-hansard/commons/1908/feb/10/children-bill-1#S4V0183P0_19080210_HOC_292

Although the informality of early juvenile courts was not "entirely satisfactory … [because] unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure," *In re Gault*, 387 U.S. 1, 17–18 (1967), the formalizing of juvenile proceedings arising from *Gault*, and *In re Winship*, 397 U.S. 358 (1970) (requiring a proof beyond a reasonable doubt burden), did not alter the basic jurisdictional structure.

This Court implied as much in *Commonwealth v. Cotto*, 753 A.2d 217 (Pa. 2000). The case concerned the 1995 amendments to the Juvenile Act, which "vest[ed] original jurisdiction in the criminal courts for specified violent felonies … [whereas] [p]rior to the amendments, those serious felonies initially came within the jurisdiction of the juvenile courts, subject to certification and transfer to adult court." *Id.* at 219-20. In upholding the law, the Court understood that the legislature could choose to prosecute serious child offenders as adults, and the manner in which it did so was perfectly constitutional – by removing set classes of people from the original jurisdiction of the juvenile court, or changing how easy it was to transfer them to adult court. *Id.* In doing so, it reaffirmed the

principle at issue here – that the divide between juvenile and adult courts remained, at its essence, jurisdictional.

C. Any Remedy Other Than Discharge Would Either Expressly Violate The Juvenile Act Or Necessarily Undermine Juvenile Court Jurisdiction Over Delinquency Petitions.

Because the order certifying Appellee was improper and should not be saved under a harmless error assessment, the Commonwealth then seeks the impossible. It asks this Court to allow the criminal division to hold a certification hearing under 42 Pa.C.S. § 6355 for someone to whom the Juvenile Act cannot apply. Brief for Appellant, 36-41. Its *Amicus*, the Attorney General's Office, likely recognizing that the Juvenile Act expressly prohibits this relief, argues that the remedy should instead be a new trial in adult court. AG's Brief, 25. Neither suggestion is tenable.

1. The Commonwealth's suggestion is impossible.

The Juvenile Act "shall apply exclusively to the following:"

> (1) Proceedings in which a child is alleged to be delinquent or dependent.
> (2) Transfers under section 6322 (relating to transfer from criminal proceedings).

> (3) Proceedings arising under Subchapter E (relating to dispositions affecting other jurisdictions).
> (4) Proceedings under the Interstate Compact on Juveniles …
> (5) … [and certain summary proceedings].

42 Pa.C.S. § 6303(a).

The word “exclusively” in the general clause does much of the work. “Unless a prosecution … falls within the ambit of these provisions, the Juvenile Act is inapplicable.” *Commonwealth v. Bursick*, 584 A.2d 291, 295 (Pa. 1990). Because Appellant is no longer a child, 42 Pa.C.S. § 6302, the Legislature has expressly barred application of any portion of the Juvenile Act. This, by necessity, includes section 6355’s transfer to criminal proceedings.

It is axiomatic that, “[w]hen the words of a statute are clear and unambiguous, there is no need to look beyond the plain meaning of the statute ‘under the pretext of pursuing its spirit,’” *Warrantech Consumer Prods. Servs., Inc. v. Reliance Ins. Co. in Liquidation*, 96 A.3d 346, 354 (Pa. 2014) (citations omitted). This Court cannot apply the Juvenile Act to someone who falls outside of the Chapter’s application. The Commonwealth’s requested remedy cannot be sanctioned.

2. **The Superior Court's remedy is right, and the AG's ask would permit unfair gamesmanship and violate the necessarily implied structure of the Juvenile Act.**

The Superior Court was right that until the legislature provides a mechanism for a delinquency petition to transfer to criminal court when the juvenile reaches the age of 21, there is simply no court with the power to adjudicate the dispute. *Commonwealth v. Taylor*, 2021 WL 3206496, *13 (Pa. Super., July 29, 2021) (explaining its reasoning). Granting a new trial in the adult court, as the AG suggests, where no proper certification order was ever issued, would not only violate the exclusive power of a juvenile court to determine if a person subject to a properly filed delinquency petition should be transferred, it would allow the Commonwealth's mere decision to appeal from the denial of certification to overturn the precise thing it appeals, and decide the case in its favor. This cannot be sustained.

The Legislature has provided the exclusive mechanisms to bridge the gap between adult and juvenile court jurisdictions – certification or decertification hearings. 42 Pa.C.S. § 6322 (transfer from criminal prosecution); 6355 (transfer to criminal prosecution). Section 6355 represents

the exclusive means by which a petition properly before the juvenile court can be transferred to the adult court. 42 Pa.C.S. § 6355. *In re E.F.,* 995 A.2d 326, 329 (Pa. 2010) ("'ultimate decision of whether to certify a minor to stand trial as an adult is within the sole discretion of a juvenile court.'") (quoting *Commonwealth v. Jackson*, 722 A.2d 1030, 1034 (Pa. 1999)); *In the Interest of McCord*, 664 A.2d 1046, 1049 (Pa. Super. 1995) (denial of certification effectively terminates the possibility of criminal prosecution). To cross that bridge, a child is entitled to numerous due process protections, such as a hearing, a statement of reasons, and the duty of the Commonwealth in certain cases to meet a specific burden. 42 Pa.C.S. § 6355; *Greiner*, 388 A.2d at 700 n.3; *Kent v. United States*, 383 U.S. 541, 557 (1966). Only when a child is properly certified by a juvenile court, pursuant to due process, may the Commonwealth employ all the tools in its criminal arsenal.

As explained before, jurisdiction may be granted or removed by necessary implication. *See*, *e.g.*, *In re Jervis' Est.*, 279 A.2d at 153. Because the legislature has, for good reason, granted the juvenile court exclusive jurisdiction over delinquency petitions, barring an express statement to

the contrary, the juvenile court must decide whether the adult court can assume jurisdiction when a delinquency petition was properly filed therein. It is no moment that the juvenile court can no longer perform that act once the child reaches 21. The important fact, and the one necessary to preserve the juvenile court's jurisdictional power, is that the juvenile court never properly certified the case for criminal prosecution. When it has not, and the child ages-out, the prosecution simply must end.

Any position to the contrary necessarily undermines the carefully crafted structure of our juvenile courts. It would mean that at the moment of the child's 21st birthday, if a juvenile court has yet to hold an adjudicatory hearing, the case would automatically transfer to criminal court. No certification hearing would be necessary. But if that were true, why would the Commonwealth bother to seek certification at all if the child's 21st birthday approached.

It would also mean, most significantly, that the Commonwealth would be given a fast pass around certification denials. Where the Commonwealth seeks certification, and certification is denied, all the prosecution would need to do is file an interlocutory appeal, which is its right.

In Interest of McCord, 664 A.2d at 1049. If the child ages-out before the appeal is resolved, the Commonwealth effectively wins. The child would be transferred to criminal court regardless of the contrary decision. And that result would be fairly easy to anticipate. All the Commonwealth needs to know is the child's age at the time it files its notice of appeal. Considering a case can easily take two years to work through the many stages of appellate review, the Commonwealth could "win" many contested certification denials by simply waiting out the clock. The legal effect would be to take the exclusive power to decide whether a transfer is appropriate from the juvenile court, and place the decision squarely within the Commonwealth's hands. This result should find no quarter here.[15]

[15] Nor should this Court conflate a discharge here, or in a case where a child charged in a delinquency petition reaches 21 without a transfer, as barring criminal jurisdiction generally for offenses committed by children. *See contra* AG's Brief, 24-25 n.10 (citing cases from other jurisdictions where the adult court has jurisdiction over an adult whose acts were committed as a child). Pennsylvania criminal courts do have jurisdiction over a newly filed criminal complaint charging a person over 21 with a crime committed as a child. *See Commonwealth v. Monaco,* 869 A.2d 1026, 1030 (Pa. Super. 2005); *Commonwealth v. Anderson*, 630 A.2d 47 (Pa. Super. 1993). The AG's cited cases exemplify little more than this proposition.

D. There are easy legislative fixes.

This Court cannot rewrite the law to remedy a jurisdictional gap. "[I]t is neither the judiciary's role, nor within our constitutional authority, to fill gaps in sentencing statutes resulting from the General Assembly's omissions." *Commonwealth v. Eid*, 249 A.3d 1030, 1044 (Pa. 2021 (citing *Commonwealth v. Derhammer*, 173 A.3d 723, 732 (Pa. 2017) (Wecht, J., concurring)). But the gap is easily remedied.

The legislature could grant the juvenile court jurisdiction based exclusively on the age of the defendant at the time the crime occurred. It could expand the limit of juvenile court jurisdiction to 25 consistent with developmental science, which would reduce the chances of a case not resolving before that time. Or it could expand the jurisdiction of the juvenile court to address certification questions for those children who have now aged-out. Many states have models that do precisely this.[16] In most of these states, the juvenile court has jurisdiction to decide whether to

[16] *See, e.g.,* Cal. Welf. & Inst. Code §§ 601, 602; Iowa Code Ann. § 232.8(1)(a); Md. Code Ann., Cts. & Jud. Proc. §§ 3-8A-05; 3-8A-07; Mass. Gen. Laws Ann. ch. 119, § 72A; Minn. Stat. Ann. §§ 260B.103(1), 260B.125; 628.26; N.J. Stat. Ann. §§ 2A:4A-25, 2A:4A-22, 2A:4A-26.1; Tex. Fam. Code Ann. §§ 51.02(2)(B) (definitions); 51.04 (jurisdiction); 33 Vt. Stat. Ann. § 5204a.

transfer the matter for adult prosecution, address it in juvenile court, or simply issue a discharge. *See, e.g.*, Mass. Gen. Laws Ann. ch. 119, § 72A (providing for transfer or discharge). These jurisdictional grants result from each state's legislative judgment about what should be done with aged-out juveniles.

Some examples are worth specifically discussing. Vermont has expressly accounted for delays in reporting of juvenile cases. 33 Vt. Stat. Ann. § 5204a. "[U]nder the proper circumstances and for serious offenses, the state may bring charges against a person 18 years of age or older who committed a crime before turning 18." *In re D.K.*, 47 A.3d 347, 351 (Vt. 2012). While some cases may be transferred to adult court after a hearing which considers the person's age, maturity, needs, and the community safety, "if the Family Division does not transfer a petition ... to the Criminal Division or order that the defendant be treated as a youthful offender pursuant to subsection (b) of this section, the petition shall be dismissed." 33 Vt. Stat. Ann. § 5204a(c). The statute reflects that in some cases, there may be no basis upon which to further prosecute an adult for their

childhood acts, and that courts are given guided discretion to make these choices. *See, e.g.*, *In re D.K.*, 47 A.3d at 354-58; § 5204a.

California's law uses age at the time of the offense to establish juvenile court jurisdiction but imposes no age cap. *See* Cal. Inst. Welfare Code §§ 602, 604, 606. "[A] person might commit a murder at age 17, be apprehended 50 years later, and find himself subject to juvenile court jurisdiction." *Rucker v. Superior Ct.*, 75 Cal. App. 3d 197, 200, 141 Cal. Rptr. 900, 902 (Ct. App. 1977); *see also People v. Ramirez*, 246 Cal. Rptr. 3d 897, 906 (Cal. App. 5th 2019) (quotations omitted) (the juvenile court has the power to decide if the defendant should "be dealt with" under the juvenile code). *See also* Iowa Code Ann. §§ 232.8(1); 803.5; *State v. Duncan*, 841 N.W.2d 604, 614 (Iowa Ct. App. 2013) (allowing transfer to juvenile court at any age).

Some states more directly target the problem and allow a juvenile court to retain jurisdiction solely to address the certification question. Maryland's statute entitled "Persons over 21 years of age who committed a delinquent act while a child" provides "[t]he [juvenile] court has exclusive original jurisdiction, but only for the purpose of waiving it, over a

person 21 years of age or older who is alleged to have committed a delinquent act while a child." Md. Code Ann., Cts. & Jud. Proc. § 3-8A-07.

In Massachusetts, the juvenile court is given exclusive original jurisdiction over all cases in which "a person commits an offense or violation prior to his eighteenth birthday, and is not apprehended until after his nineteenth birthday ...." Mass. Gen. Laws Ann. ch. 119, § 72A; *See also, Commonwealth v. Nanny*, 971 N.E.2d 762, 765 (Mass. 2012). In these cases, the juvenile court must hold a hearing to determine if probable cause exists that the offense was committed and if so, whether the person should be discharged if consistent with protection of the public, or whether an adult criminal complaint should issue. Mass. Gen. Laws Ann. ch. 119, § 72A, *Nanny*, 971 N.E. 2d at 765*; Commonwealth v. Irvin I.*, 173 N.E.3d 415, 422 (Mass. App. 2021) *review denied*, 173 N.E.3d 1099 (Mass. 2021) (outlining factors).

These legislative solutions are not just possible, they are workable and have readily available models. Unless and until the legislature decides how it wants to address these issues, this Court should not undermine the constitutional, historical, and statutory structure that all

mandate exclusive jurisdiction over properly filed delinquency petitions to the juvenile court.

CONCLUSION

For the forgoing reasons, *Amicus* respectfully submits that this Court should find that the juvenile division had jurisdiction, and because no mechanism exists to grant the criminal division jurisdiction over a properly filed delinquency petition without a valid certification order, Appellee should be discharged.

Respectfully submitted,

/S/

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CERTIFICATION OF COMPLIANCE WITH RULE 531

I do hereby certify on this 5th day of August, 2022, that the Brief For *Amicus Curiae* filed in the above captioned case on this day does not exceed 7,000 words. Using the word processor used to prepare this document, the word count is 6,940 as counted by Microsoft Word.

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE WITH RULE 127, PA.R.A.P.

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

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