

International Conformity to the Standard Minimum Age of Criminal Responsibility: Comparing the Minimum Age of Criminal Responsibility to the Minimum Legal Age of Marriage

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I. INTRODUCTION

Former president of South Africa, Nelson Mandela, once said, “[t]here can be no keener revelation of a society’s soul than the way in which it treats its children.”¹ If one is to follow these words and measure the world based on how the countries within it treat its children, what would be revealed about society’s soul? An answer to this question can be found within the juvenile justice systems across the globe.

Currently, children as young as 7 years old, in as many as twenty-one countries, are being prosecuted and imprisoned like adults.² Developmental

1. President Nelson Mandela, Address at the launch of the Nelson Mandela Children’s Fund, Pretoria (May 8, 1995).

2. Convention on the Rights of the Child, General Comment No. 24, ¶ 32, U.N. Doc. CRC/C/GC/24 (Sept. 18, 2019), <https://www.ohchr.org/sites/default/files/Documents/HRBodies/CRC/GC24/GeneralComment24.pdf> [<https://perma.cc/7H8W-2UN5>] [hereinafter

psychologists have shown that adult criminal systems are unsafe and detrimental to children and society.³ International organizations have urged countries that a low minimum age of criminal responsibility (“MACR”) infringes on a child’s human rights.⁴ Yet, the current low MACRs across the globe still exist despite a present international standard MACR at 14 years old.⁵ Why is this standard being so severely overlooked and unfollowed by over 100 countries?

The United Nations, an international organization aimed at protecting human rights, first argued a single international MACR is difficult to establish because MACR should consider the cultural and relative legal age boundaries in specific countries.⁶ Laws regulating the age of drinking, driving, voting, military enlistment, work, etc. all relate to a country’s cultural acceptance of age boundaries. However, laws that merely afford children extra rights and freedoms are not the laws that should serve as a marker for a country’s MACR. Countries should instead look to their minimum legal age of marriage (“MLAM”) in determining their MACR.

MLAM and MACR are the two types of minimum age laws that signify a society’s acceptance of a child’s legal responsibility as an individual in society before they reach the age of majority. When a country allows a child to marry, it gives that child legal and financial responsibility for themselves and their partner as a married unit earlier than when it would have given the child that right and responsibility as an individual.⁷ When a country allows a child to be convicted of a crime and imprisoned accordingly, it retroactively assigns the child the sole legal responsibility of their actions, and in turn assigns itself the responsibility of disciplining the child. In the

CRC 2019]; *Age of criminal responsibility*, WIKIPEDIA, https://en.wikipedia.org/wiki/Age_of_criminal_responsibility [<https://perma.cc/7XVC-7648>].

3. Elizabeth Cauffman & Laurence Steinberg, *Emerging Findings from Research on Adolescent Development and Juvenile Justice*, 7 VICTIMS & OFFENDERS 4, 428-49 (2012).

4. CRC 2019, *supra* note 2, ¶ 15.

5. *Age of Criminal Responsibility: Countries Compared*, NATION MASTER, <https://www.nationmaster.com/country-info/stats/Crime/Age-of-criminal-responsibility#date> [<https://perma.cc/GBF7-E899>] (last accessed Mar. 1, 2023).

6. G.A. Res. 40/33, at 2 (Nov. 29, 1985), <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/beijingrules.pdf> [<https://perma.cc/R7TM9STL>]; *About Us*, UN, <https://www.un.org/en/about-us> [<https://perma.cc/7RV9-9B7C>] (last accessed Mar. 1, 2023) [hereinafter *The Beijing Rules*].

7. Janet Halley, *Behind the Law of Marriage (I): From Status/Contract to the Marriage System*, 6 UNBOUND: HARV. J. LEGAL LEFT 1, 49-51, (2010), http://www.law.harvard.edu/faculty/jhalley/cv/1-behind_the_law_of_marriage.2.15.11.pdf [<https://perma.cc/38C9-L7PV>].

absence of the crime, the responsibility of the actions and discipline of the child would be in the hands of the parents until the child reaches adulthood.⁸

In addition to their similar legal effect, the rationales behind MLAM and MACR also derive from the same purpose of protecting children. The force behind a high international MLAM are the negative consequences child marriage has on young girls.⁹ Child marriage disproportionately affects young girls by negatively impacting their education, health, opportunity, and safety.¹⁰ Similarly, the forces behind movements and calls to raise MACRs across the globe are the negative consequences of imprisonment and the criminal system on children.¹¹ Exposing children to harsh adult sanctions not only does little to deter recidivism, but may also negatively impact children's mental health, psychological development, educational achievement, and physical safety.¹²

Despite these parallels, achieving global conformity to the international MLAM has been more successful than conformity to the international MACR. The current international standard for MLAM and MACR are 18 and 14, respectively.¹³ The following data has been separated by region (Africa, Americas, Asia, Europe, and Oceania) to keep in perspective the consideration of cultural relativity.

In Africa, the average MLAM and MACR are 19 and 11.5, respectively.¹⁴ In the Americas, the average MLAM and MACR are 18.2 and 11.8, respectively.¹⁵ In Asia, the average MLAM and MACR are 18.1 and 11,

8. *Legal Age*, CORNELL L. SCH., https://www.law.cornell.edu/wex/legal_age [<https://perma.cc/LN4W-3B54>] (last accessed Mar. 8, 2023).

9. Megan Arthur et al., *Child Marriage Laws Around the World*, SWIMMING J. OF WOMEN, POL., & POL'Y, 39 1, 51-74, at 66 (Nov. 22, 2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6382347/> [<https://perma.cc/82V7-42MD>].

10. *Id.*

11. Liz Ryan & Jason Zidenberg, *The Consequences Aren't Minor: The Impact of Trying Youth as Adults and Strategies for Reform*, CAMPAIGN FOR YOUTH JUST., (Mar. 2007), http://www.campaignforyouthjustice.org/images/nationalreports/consequencesarentminor/CFYJNR_ConsequencesMinor.pdf [<https://perma.cc/VLX9-H2Q8>].

12. *Id.* at 14.

13. CRC 2019, *supra* note 2, at 9; Convention on the Elimination of All Forms of Discrimination Against Women, *Joint General Recommendation No. 31*, ¶ 20, U.N. Doc. CEDAW/C/GC31-CRC/C/GC/18 (Nov. 14, 2014), [<https://perma.cc/6ESA-QUEK>] [hereinafter *Joint General Recommendation No. 31*].

14. *Legal Age for Marriage*, UN DATA, <https://data.un.org/documentdata.aspx?id=336> [<https://perma.cc/82R5-R5NL>] last accessed Mar. 8, 2023); *Minimum Ages of Criminal Responsibility in Africa*, CHILD RTS. INT'L NETWORK, <https://archive.crin.org/en/home/ages/Africa.html> [perma.cc/H8GQ-F5M2].

15. *Legal Age for Marriage*, *supra* note 14; *Minimum Ages of Criminal Responsibility in the Americas*, CHILD RTS. INT'L NETWORK, <https://archive.crin.org/en/home/ages/Americas.html> [perma.cc/N8FH-2QF6].

respectively.¹⁶ In Europe, the average MLAM and MACR are 18 and 13.4, respectively.¹⁷ Finally, in Oceania, the average MLAM and MACR are 18.8 and 9.6, respectively.¹⁸

As this data shows, countries across the globe, irrespective of culture, comply with and uphold the international MLAM. In contrast, they simultaneously fail to agree to the international MACR. The universal conformity with the international MLAM demonstrates that countries understand the negative consequences of marriage at a young age and care to protect children against child marriage. However, the even lower MACRs across the globe indicate that most of our world values prosecution over protection and likely sees offender first and child second.

This Comment will argue that MACR and MLAM should be recognized as similar legal concepts that are ultimately enacted to protect children, and that countries should adjust their MACR to the same age as their MLAM to reflect this. At the minimum, this Comment recommends that the UN not only reiterate a strict MACR of 14 years of age and MAAP of 18 years of age, but also explicitly lays out a framework for what a juvenile system for this age window should be.

In Section I, the definitions of key terms used throughout the analysis are explained to lay a foundation of understanding of the topic. In Section II, this Comment will introduce the findings of developmental psychology on criminal responsibility. In Section III, this Comment will explain the history of the international MACR and MLAM standards. In Section IV, this Comment will analyze the MACR and MLAM of three different countries: (1) Singapore, a country with a low MACR; (2) Sweden, a country with a high MACR; and, (3) the United States of America, an outlier country with no set MACR. Then, in Section V, the MACR and MLAM will be compared to argue that not only are they comparable legal concepts, but also that an international conformity to the standard MACR, like the current general conformity to the standard MLAM, can be achieved by acknowledging

16. *Legal Age for Marriage*, *supra* note 14; *Minimum Ages of Criminal Responsibility in Asia*, CHILD RTS. INT'L NETWORK, <https://archive.crin.org/en/home/ages/asia.html> [perma.cc/M9BR-P5W2].

17. *See Legal Age for Marriage*, *supra* note 14; *see Minimum Age of Criminal Responsibility in Europe*, CHILD RTS. INT'L NETWORK, <https://archive.crin.org/en/home/ages/europe.html> [https://perma.cc/B5N3-5ZZD].

18. *See Legal Age for Marriage*, *supra* note 14; *see Minimum Age of Criminal Responsibility in Oceania*, CHILD RTS. INT'L NETWORK, <https://archive.crin.org/en/home/ages/oceania.html> [https://perma.cc/S2SH-MMX6].

and proposing their similarity. Finally in Section VI, this Comment will propose recommendations for how to move forward.

II. DEFINITIONS

A. Child

A “child” is “[any] human being below the age of eighteen years.”¹⁹ For purposes of this analysis, the terms “juvenile,” “adolescent,” and “minor” will be used synonymously with “child.”

B. Age of Majority

The “age of majority” is the age at which a child gains legal status as an adult.²⁰ “[It] is the age at which a person gains control over their own actions and affairs and becomes responsible for [their own] decisions they make.”²¹ It is the threshold of adulthood as recognized or declared in law.²² It is the moment when minors cease to be considered such, and they assume legal control over their persons, actions, and decisions, thus terminating the control and legal responsibilities of their parents or guardian over them.²³ “Once this age is reached, any existing parental, guardian, and child support obligations are considered terminated.”²⁴ The age of majority varies by country.

C. Minimum Age of Criminal Responsibility (“MACR”)

The “minimum age of criminal responsibility” (hereinafter “MACR”) is “the minimum age below which the law determines that children do not have the capacity to infringe the criminal law.”²⁵ In general, the term is defined as when a child is considered capable of committing a crime and old enough to stand trial and be convicted of a criminal offense.²⁶ Some sources define MACR as the age at which juveniles are subjected to adult

19. G.A. Res. 44/55, at 2 (Nov. 20, 1989), <https://www.ohchr.org/sites/default/files/crc.pdf> [<https://perma.cc/A9ZN-SAQ8>].

20. *Legal Age*, *supra* note 8.

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. CRC 2019, *supra* note 2, at 4.

26. *The Minimum Age of Criminal Responsibility*, PENAL REFORM INT’L. (Feb. 2013), https://cdn.penalreform.org/wp-content/uploads/2013/05/justice-for-children-briefing-4-v6-web_0.pdf.

court jurisdiction.²⁷ For the purposes of this analysis, MACR is the minimum age at which a child can be convicted of a crime by any criminal system, even if such conviction is given by a juvenile criminal court.

D. Minimum Age for Adult Prosecution (“MAAP”)

The minimum age for adult prosecution (hereinafter “MAAP”) is the minimum age for a child to be prosecuted in the adult criminal system, to receive adult punishments, and to be held in adult correctional facilities.²⁸ As stated in the MACR definition, MAAP is distinct from MACR. Some countries’ MACR may be equal to their MAAP if they do not have a juvenile system, like Sweden, which is discussed later in this Comment. However, if a juvenile system exists, a country will likely have an MACR younger than its MAAP, creating a window for juvenile prosecution.

E. Minimum Legal Age of Marriage (“MLAM”)

The minimum legal age of marriage (hereinafter “MLAM”) is the minimum age at which a person can get married.²⁹ Some countries’ MLAM laws are complex and lower the age requirement if certain exceptions apply, such as parental consent, court order, other exceptional circumstances, or even gender.³⁰ However, for the purposes of this analysis, MLAM is the minimum age at which a person can get married of their own consent. If a country has a split MLAM by gender, this analysis will designate its MLAM by the youngest age used, which will typically be the age for girls.

III. DEVELOPMENTAL PSYCHOLOGY

Before diving into the comparisons of MACR and MLAM, it is important to first introduce the science supporting a high MACR. Research into developmental science has proven that, psychologically, children should not be treated like adults, especially in the justice system.³¹

27. *Thirteen States Have No Minimum Age for Adult Prosecution of Children*, EQUAL JUST. INITIATIVE (Sept. 19, 2016), <https://eji.org/news/13-states-lack-minimum-age-for-trying-kids-as-adults/> [<https://perma.cc/5WP4-QAXE>].

28. *Id.*

29. *Id.*

30. CRC 2019, *supra* note 2, at 10.

31. *An Executive Summary: Rethinking Juvenile Justice*, MODELS FOR CHANGE (Dec. 2011), https://www.njjn.org/uploads/digitalibrary/An_Executive_Summary_Rethinking_Juvenile_Justice_Models_for_Change.12.1.11.pdf [<https://perma.cc/3VZL-ETF6>].

A. Distinguishing Adolescents from Adults

Developmental psychologists focus on how humans change and grow across a lifespan.³² They have found that adolescence is a period of brain development distinct from childhood and adulthood.³³ Childhood is marked by a regulation of behavior by parents, and adulthood is reached when the individual is responsible for the regulation of their behavior.

However, the transition of responsibility for one's behavior from parent to individual does not happen overnight.³⁴ Adolescence is the period between childhood and adulthood where the skills to become independent, such as self-control, insensitivity to peer influence, and delayed gratification, start to be acquired.³⁵

Empirical evidence from current developmental and behavioral sciences shows that adolescents are found to be different than adults in three ways.³⁶ First, relative to adults, adolescents "lack mature capacity for self-regulation in emotionally charged contexts."³⁷ Second, they have "heightened sensitivity to proximal external influences, [like] peer pressure."³⁸ Lastly, they have less ability "to make judgements and decisions that require future orientation."³⁹ This combination of cognitive patterns explains adolescents' tendency to engage in risky behaviors that have the possibility of immediate reward but potential future harm.⁴⁰

In a study conducted by adolescent psychological development specialist, Laurence Steinberg, age differences were evaluated in preference for risky behavior, such as unprotected sex, shoplifting, and smoking.⁴¹ Steinberg found that the preference for risky behaviors increases by a third of a standard deviation between ages of 10 and 16, and then it declines by a half standard deviation by the age of 26.⁴² This data offers two conclusions. First, adolescent decision making and the inclination to engage in risky behaviors differs from that of adults in crucial ways that calls for an

32. *Id.*

33. RICHARD J. BONNIE ET AL., REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH 32 (The National Academies Press 2013), https://www.njjn.org/uploads/digital-library/Reforming_JuvJustice_NationalAcademySciences.pdf [<https://perma.cc/QAZ4-PKCC>].

34. *Id.* at 90.

35. *Id.* at 105.

36. See ELIZABETH S. SCOTT & LAURENCE D. STEINBERG, RETHINKING JUVENILE JUSTICE, 33–34, 39, 48, 66–67 (Harvard Uni. Press) (2010).

37. *Id.* at 66–67.

38. *Id.* at 33–34.

39. *Id.* at 39.

40. *Id.* at 48.

41. RICHARD J. BONNIE ET AL., *supra* note 33, at 92.

42. *Id.* at 91.

adjusted approach to juvenile justice.⁴³ Second, the transition to adulthood is not suddenly completed at the age of 18, for maturation is still happening between 18 and 26 years of age.⁴⁴

Brain imaging technology, such as MRIs, suggests that this difference in behavior is due to the biological immaturity of the adolescent brain compared to the adult brain.⁴⁵ The brain system that influences pleasure-seeking and emotional reactivity develops and matures faster than the brain system that supports self-control.⁴⁶ Observing neurobiological maturation, cognitive capabilities, and psychosocial capabilities, offers empirical evidence that a person's reasoning ability matures at the age of 16 while a person's ability to self-regulate matures at the age of 21.⁴⁷ Therefore, although teens may have the ability to use logical reasoning to understand right from wrong, they do not have the same ability to regulate their decisions nor control it from exterior influences like emotion, immediate reward, or social pressure.⁴⁸

B. Implications of Psychology on Criminal Responsibility

The psychological differences between juveniles and adults greatly supports developmental psychologists' argument that adolescents are inherently less culpable⁴⁹ than adults and should therefore not be punished to the same degree as an adult who commits the same offense.⁵⁰ Additionally, this science has proven that the adolescent brain is less competent to understand legal procedure.⁵¹ For example, an American study on youth's capacity to comprehend the justice system found that 14 year olds struggled to understand the meaning of Miranda warnings. Yet, almost every state

43. *Id.*

44. *Id.* at 91–92.

45. *Id.* at 96.

46. *Id.* at 97.

47. RICHARD J. BONNIE ET AL., *supra* note 33, at 91–92.

48. *Id.* at 99.

49. Marie Banich et al., *Are Adolescents Less Mature Than Adults? Minors' Access to Abortion, the Juvenile Death Penalty, and the Alleged APA "Flip-Flop"*, 64 AM. PSYCH. 583, 583–84 (2009).

50. *Id.* at 593.

51. SCIENTIST ACTION & ADVOCACY NETWORK, SCIENTIFIC SUPPORT FOR A DEVELOPMENTALLY INFORMED APPROACH TO MIRANDA RIGHTS 2 (2018), <https://scaan.net/docs/20180607-MirandaReport.pdf> [<https://perma.cc/9WA3-RV98>].

in the United States allows for 14 year olds to be incarcerated in an adult facility.⁵²

IV. INTERNATIONAL STANDARDS

A. *History of International MACR and MAAP Standards*

1. *Early-Mid 20th Century: Recognition of Child's Rights*

In 1924, the Fifth Assembly of the League of Nations adopted the Declaration of the Rights of the Child.⁵³ Better known as the Geneva Declaration, this document “was the first international instrument explicitly acknowledging children’s rights.”⁵⁴ The Geneva Declaration states in part:

By the present Declaration of the Rights of the Child, commonly known as “Declaration of Geneva,” men and women of all nations, recognizing that mankind owes to the Child the best that it has to give, declare and accept it as their duty that, beyond and above all considerations of race, nationality or creed: The child must be given the means requisite for its normal development, both materially and spiritually; The child that is hungry must be fed; the child that is sick must be nursed; the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succored[.]⁵⁵

While the declaration was a start for acknowledging children’s rights, it failed to address three issues. First, the declaration did not impose obligations onto states specifically, as it only referred to “men and women of all nations.”⁵⁶ Second, it did not recognize children as the holder of their own rights.⁵⁷ Third, and most relevant to this Comment, the declaration did not expressly address the topic of child delinquency, nor define the term “child.”⁵⁸

Although the Geneva Declaration failed to address many topics, the United Nations has continued to write and adopt more comprehensive rules and declarations defining international standards for the rights of the

52. See James Austin et al., *Juveniles in Adult Prisons and Jails: A National Assessment*, 182503 BUREAU JUST. ASSISTANCE ix (Oct. 2000).

53. Office of the United Nations High Commissioner, *Legislative History of the Convention on the Rights of the Child*, at 3, U.N. Doc. HR/PUB/07/1 (Vol. 1) (2007), <https://www.ohchr.org/sites/default/files/Documents/Publications/LegislativeHistorycrl en.pdf> [<https://perma.cc/4FXW-F8PU>] [hereinafter *Legislative History*].

54. *Legislative History*, *supra* note 53.

55. *Id.*

56. *Id.*

57. *Legislative History*, *supra* note 53.

58. See *id.*; See *Declaration of the Rights of the Child*, 1959, HUMANIAN, <https://www.humanium.org/en/declaration-rights-child-2/> [<https://perma.cc/2BJN-ZAS3>] (last accessed Mar. 1, 2023).

child.⁵⁹ In 1959, the then relatively new United Nations (hereinafter “UN”) adopted the Declaration of the Rights of the Child (hereinafter “DRC”), which was “the first major international consensus on the fundamental principles of children’s rights.”⁶⁰ Unfortunately, like the Geneva Declaration, this document did not advance the interests of juvenile justice and delinquency.⁶¹ The DRC mainly focused on the liberty interests of children, and it never addressed the meeting of children and criminal law.⁶²

2. Late 20th Century: The Development of Minimum Age of Criminal Responsibility (MACR)

The first major resolution addressing adolescent incarceration and establishing an MACR occurred in 1985 in the UN’s General Assembly resolution “United Nations Standard Minimum Rules for the Administration of Juvenile Justice” (hereinafter “the Beijing Rules”).⁶³ Rule 4.1 of the Beijing Rules stated, “[i]n those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.”⁶⁴ The resolution also attempted to assist in a state’s determination of MACR, stating:

The minimum age of criminal responsibility differs widely owing to history and culture. The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially antisocial behaviour. If the age of criminal responsibility is fixed too low or if there is no lower age limit at all, the notion of responsibility would become meaningless. . . . Efforts should therefore be made to agree on a reasonable lowest age limit that is applicable internationally.⁶⁵

Although the Beijing Rules were a start to defining an international MACR standard, the UN did not explicitly set a global standard.⁶⁶ Their failure to do so allowed states to adopt the MACR standard as each state saw fit.

59. *Legislative History*, *supra* note 53.

60. *Declaration of the Rights of the Child*, *supra* note 58.

61. *See id.*

62. *See id.*

63. *See generally* The Beijing Rules, *supra* note 6.

64. *Id.*

65. *Id.*

66. The Beijing Rules, *supra* note 6.

Only a few years later, the 1989 Convention on the Rights of the Child (hereinafter “1989 CRC”) echoed the Beijing Rule’s call for an established international MACR standard.⁶⁷ Article 40 (3) of the resolution declared, “[p]arties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children . . . and, in particular: (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.”⁶⁸

Additionally, the 1989 CRC built upon “the principle of proportionality” discussed in Rule 5 of the Beijing Rules.⁶⁹ Article 40(3)(b) of the resolution communicates to nation states that “alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.”⁷⁰ This Article presented the initial proposition that children should not be subjected to adult punishment, representing the first potential reference to the importance of considering the psychological state of a child.⁷¹

3. 21st Century: Resolute Standards

In 2007, the UN finally offered an explicit, definitive age for international MACR and MAAP standards.⁷² General Comment No. 10 (2007) of the Convention on the Rights of the Child, titled “Children’s rights in juvenile justice,” is a detailed assessment of international juvenile justice standards with the purpose of encouraging “[s]tates parties to develop and implement a comprehensive juvenile justice policy.”⁷³ Building upon the standards and recommendations set by Rule 4 of the Beijing Rules and Article 40(3)(a) of the 1989 Committee on the Rights of the Child, General Comment No. 10 explicitly stated that “a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable.”⁷⁴

The minimum age established by General Comment No. 10 does not mean that the Committee considers persons aged 12 to be a holistically sufficient MACR. On the contrary, after defining the minimum, the Committee

67. G.A. Res. 45/25, Convention on the Rights of the Child (Nov. 20, 1989) <https://www.ohchr.org/sites/default/files/crc.pdf> [<https://perma.cc/59W3-YGYQ>] [hereinafter CRC 1989].

68. CRC 1989, *supra* note 67.

69. The Beijing Rules, *supra* note 6.

70. CRC 1989, *supra* note 67.

71. *Id.*

72. Committee on the Rights of the Child, General Comment No. 10, U.N. Doc. CRC/C/GC/10 (Apr. 25, 2007), <https://www2.ohchr.org/english/bodies/crc/docs/crc.c.gc.10.pdf> [<https://perma.cc/9GW4-GC3K>] [hereinafter CRC 2007].

73. CRC 2007, *supra* note 72, at 3.

74. *Id.* at 11.

explicitly encouraged the states parties to continue to increase their MACR to a higher age level.⁷⁵

In addition to setting a lower limit for criminal responsibility, the Committee also called for an upper age limit to establish an age boundary between juvenile and adult criminal punishment.⁷⁶ The Committee defined the upper age limit for juvenile justice, or the MAAP, to include all those who “have not yet reached the age of 18 years.”⁷⁷

Essentially, the Committee established a window for the application of the rules of juvenile justice: any person below the MACR should not be subject to the penal system, and anyone above the MAAP is treated as an adult criminal. All people who fall in between the MACR and the MAAP are to be treated by the rules of juvenile justice.⁷⁸ The Committee went on to commend and offer appreciation for those states that have extended their MAAP to 21 years of age. This suggests that, as with the MACR, the Committee encourages states to increase the age above the MAAP set by the UN.⁷⁹

Additionally, the General Comment explicitly expresses concern for exceptions to its general rules. Many states allow exceptions to the MACR by permitting a lower age of criminal responsibility in the case of serious offenses. As a part of the MACR that the Committee established, the Committee “strongly recommends that States parties set a MACR that does not allow, by way of exception, the use of a lower age.”⁸⁰

In 2019, General Comment No. 10 was replaced by General Comment No. 24 (2019).⁸¹ While maintaining many of the same values, standards, and recommendations set forth by its predecessor, General Comment No. 24 reflects the developments on jurisprudence, international standards, and new knowledge gained over the course of the previous twelve years.⁸²

Two new developments are especially important to the new standard of juvenile age limits. First, the fields of child development and neuroscience have published a plethora of documented evidence that show that children’s capacity for abstract reasoning and ability to comprehend the impact of

75. CRC 2007, *supra* note 72, at 11.

76. *Id.* at 12.

77. *Id.*

78. *Id.*

79. *Id.* at 11–12.

80. *Id.* at 12.

81. CRC 2019, *supra* note 2, § 1, ¶ 1.

82. *See generally* CRC 2019, *supra* note 2, § 1, ¶ 1.

their actions continue to evolve through the stages of adolescence.⁸³ Second, fifty nation states have since raised their MACR, making 14 years old the most common age of MACR internationally.⁸⁴

In light of these developments, the Committee recommended an increase from the MACR set in 2007 and stated that “[s]tates parties are encouraged to take note of recent scientific findings, and to increase their minimum age accordingly, to at least 14 years of age.”⁸⁵

With all the progress made in international juvenile law over the last century, the UN finally arrived at setting a specific MACR of 14 years old, and MAAP of 18 years old.⁸⁶ However, these standards are still only recommendations and encouragements, and countries continue to vary in their MACR and MAAP. While some countries have followed the UN’s encouragement to go beyond their recommendations, many countries have taken the UN’s strong recommendations as mere suggestions and have ignored them completely.⁸⁷ Unfortunately, in some countries, children as young as 6 years old are still treated criminally as adults receiving harsh criminal punishments.⁸⁸

As made evident by the many UN conventions and comments, and the many countries that abide by them, there is an overarching international consensus that children should be dealt with only in juvenile justice systems, if at all.

B. History of International MLAM Standard

The UN’s work on defining an international MLAM standard is driven by the goal to eliminate the practice of child marriage.⁸⁹ Child marriage is, indicated by its name, a child rights problem, but also historically and more specifically, a women’s or girls’ rights problem, as child marriage disproportionately affects more girls over boys.⁹⁰ In the endeavor to establish an international MLAM standard, two separate UN organizations worked side by side before eventually teaming up to unite their interests and tackle the issue of child marriage together.⁹¹

83. See CRC 2019, *supra* note 2, § C, ¶ 22; Scott & Steinberg, *supra* note 36, at 14.

84. See CRC 2019, *supra* note 2, § C, ¶ 32.

85. *Id.* § C, ¶ 22.

86. CRC 2019, *supra* note 2, § C, ¶¶ 32–42.

87. See *Age of Criminal Responsibility: Countries Compared*, *supra* note 5.

88. See *id.*

89. See Arthur et. al., *supra* note 9, at 54.

90. *Id.* at 52.

91. *Id.* at 54.

1. Mid-Late 20th Century

In 1959, the UN's Declaration of the Rights of the Child (hereinafter "Declaration"), established children's rights and interests with the purpose of protecting and establishing the rights of all children.⁹² The Declaration served as a foundation for the fight against child marriage in the future, declaring, "the child shall enjoy special protection."⁹³ Some of the explicit protections included the protection "from practices which may foster . . . discrimination,"⁹⁴ and protection "against all forms of neglect, cruelty, and exploitation [and] [h]e shall not be the subject of traffic, in any form."⁹⁵

The Declaration also detailed the type of environment in which a child has the right to grow up—the child shall "grow up in the care and under the responsibility of his parents . . . in an atmosphere of affection and of moral and material security."⁹⁶ Additionally, the child "shall be given the opportunities . . . to enable him to develop . . . in a healthy and normal manner and in conditions of freedom and dignity."⁹⁷ An overarching right and interest from this Declaration, is that "[i]n the enactment of laws for [the Declaration's] purpose, the best interests of the child shall be the paramount consideration."⁹⁸

In 1962, shortly after the Declaration, came the UN's "Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages" (hereinafter "the Marriage Convention").⁹⁹ The Marriage Convention stated that states "should take all appropriate measures . . . [to] eliminat[e] completely child marriages,"¹⁰⁰ and to "take legislative action to specify a minimum age for marriage."¹⁰¹

However, the Marriage Convention was missing an established and concrete international MACR standard. In 1979, the UN published on the

92. G.A. Res. 1386 (XIV), Declaration of the Rights of the Child, at princ. 1 (Nov. 20, 1959), <https://digitallibrary.un.org/record/195831?ln=en> [<https://perma.cc/76NS-B33N>] [hereinafter DRC 1959].

93. *Id.* at princ. 2.

94. *Id.* at princ. 10.

95. *Id.* at princ. 2, 9.

96. *Id.* at princ. 6.

97. *Id.* at princ. 2.

98. DRC 1959, *supra* note 92, at princ. 2.

99. G.A. Res. 1763 A (XVII), Convention on Consent to Marriage (Nov. 7, 1962) <https://www.ohchr.org/sites/default/files/convention.pdf> [<https://perma.cc/PR94-S4KZ>] [hereinafter CCM 1962].

100. *Id.*

101. *Id.* art. 2.

“Convention on the Elimination of All Forms of Discrimination against Women” (hereinafter “CEDAW”); yet, again it did not establish a standard even after almost twenty years.¹⁰² CEDAW only urged that “[t]he betrothal and the marriage of a child shall have no legal effect, and all necessary action . . . shall be taken to specify a minimum age for marriage.”¹⁰³

2. 21st Century: Concrete Standards

The international MLAM was eventually passed via the 2014 “Joint General Recommendation No. 31,”¹⁰⁴ the first ever joint General Recommendation between the CRC and the CEDAW.¹⁰⁵ In this joint recommendation, the CRC and CEDAW recommended that the states amend or adopt legislation so that:

[A] minimum legal age of marriage for girls and boys is established, with or without parental consent, at 18 years. When exceptions to marriage at an earlier age are allowed in exceptional circumstances, the absolute minimum age is not below 16 years, grounds for obtaining permission are legitimate and strictly defined by law and marriage is permitted only by a court of law upon full, free and informed consent of the child or both children who appear in person before the court[.]¹⁰⁶

In this joint recommendation, a children’s rights committee and a women’s rights committee came together and explicitly urged member nations to abide by this concrete international MLAM standard of 18 years old “because of the well-documented detrimental consequences of child marriage in reduced autonomy, safety, educational attainment, health status, and the long-term negative impacts.”¹⁰⁷

V. ANALYSIS OF MACR & MLAM BY COUNTRY

For purposes of this analysis, any MACR below the UN’s recommendation of 14 is deemed “low” and above 14 is deemed “high.” Countries that either have no MACR or greatly stray from the UN’s recommendations will be deemed “outliers.”

102. G.A. Res. 34/180, Convention on the Elimination of All Forms of Discrimination Against Women (Dec. 18, 1979) <https://www.ohchr.org/sites/default/files/cedaw.pdf#page22> [<https://perma.cc/CTK2-BA48>] [hereinafter CEDAW 1979].

103. *Id.* art 16, § 2.

104. Joint General Recommendation No. 31, *supra* note 13, § B, ¶ 55(f).

105. Arthur et al., *supra* note 9, at 54.

106. Joint General Recommendation No. 31, *supra* note 13, § B, ¶ 55(f).

107. Arthur et al., *supra* note 9, at 54.

A. Country with a Low MACR

SINGAPORE

Age of Majority = 21 years old

MACR = 10 years old

MAAP = 16 years old

MLAM = 21 years old

1. MACR: History

Singapore has a history of having a low MACR, which began in the days of British occupation and has continued through its independence.¹⁰⁸ During its occupation, Singapore's MACR laws were determined by British law as it was not recognized as a sovereign nation.¹⁰⁹ The Children and Young Persons Act of 1933, an act of the Parliament of the United Kingdom that applied to all of the United Kingdom and its territories, set the age of criminal responsibility in Singapore at 8 years old. The 1933 Act explicitly states, "[n]o child under the age of 8 years can be guilty of an offense."¹¹⁰

As a British colony for approximately 144 years,¹¹¹ the precedent set by Britain's low MACR has remained influential throughout Singapore's 60 years of independence.¹¹² Until 2019, Singapore's MAAP was as young as 16 years old, allowing a 16 year old to be tried as an adult and receive adult punishments, such as corporal punishment, solitary confinement, and life imprisonment; however, this was not a strict age cutoff.¹¹³ Singapore allowed

108. Matthias Ang, *Children Under 12 Won't be Convicted for Crime in S'pore*, MOTHERSHIP (May 7, 2019, 2:52 PM), <https://mothership.sg/2019/05/children-under-12-no-crime-conviction/> [<https://perma.cc/X828-4NYL>].

109. *See id.*

110. Children and Young Persons Act 1933, 23 Geo. 5 c.12, § 50 (1933) https://www.legislation.gov.uk/ukpga/1933/12/pdfs/ukpga_19330012_en.pdf [<https://perma.cc/H6FR-FP4V>].

111. *History of Singapore*, BRITANNICA, <https://www.britannica.com/place/Singapore/History> [<https://perma.cc/AX98-6MQH>] (last visited Aug. 19, 2023).

112. *See Ang, supra* note 108.

113. *Inhuman Sentencing of Children in Singapore*, CHILD RTS. INT'L NETWORK (Nov. 2010), https://archive.crin.org/sites/default/files/singapore_inhuman_sentencing.pdf [<https://perma.cc/4SS9-G45U>].

for children as young as 7 years old to be tried before the adult court and receive these same adult punishments for certain offenses.¹¹⁴

In 2010, the Child Rights International Network (hereinafter “CRIN”), an organization that supports the United Nations Convention on the Rights of the Child, published its, “Inhuman sentencing of children in Singapore.”¹¹⁵ This report not only highlighted Singapore’s low MACR of 7 years old, but also its low MAAP.¹¹⁶ It recommended that Singapore “raise the minimum age of criminal responsibility to an internationally acceptable level” and amend its laws “to ensure special protection for all offenders up to the age of 18.”¹¹⁷ The international standard at the time was 12 years old as designated by the UN’s Convention on the Rights of the Child (CRC).¹¹⁸ Singapore ratified the CRC in 1995, yet their MACR remained at 7 years old.¹¹⁹

Seeing no substantial change, the CRIN released another report in 2015 by the same title.¹²⁰ At this time, the MACR in Singapore was still 7 years old and the MAAP was still 16 years old with the possibility of prosecution of children as young as 7 years old for select crimes.¹²¹ The new report reflected the sentiments of the older report, again urging Singapore to “raise the minimum age of criminal responsibility,”¹²² and to “explicitly prohibit sentences of life imprisonment and corporal punishment for all children,” meaning for all individuals under 18 years old.¹²³

2. MACR: Current Law

The pressure of matching the international standard by enforcement organizations eventually effected some change in Singapore. In May of 2019, Singapore’s Parliament debated the “Criminal Law Reform Bill,”

114. *Id.* at 1–2.

115. *Id.*

116. *Id.*

117. *Id.* at 4.

118. CRC 2007, *supra* note 72.

119. Penal Code ch. 224 § 82 (1987) (Sing.).

120. *Inhuman Sentencing of Children in Singapore*, CHILD RTS. INT’L NETWORK (June 2015), https://archive.crin.org/sites/default/files/singapore_2015_upr_submission.pdf [<https://perma.cc/WKB6-3EKN>].

121. *Id.*

122. *Id.* at 2.

123. *Id.* at 7.

which included the proposal to raise the MACR.¹²⁴ The debate led to the decision to raise the MACR from 7 to 10 years old.¹²⁵

One of the reasons for this change was that members of the Parliament saw the MACR at the time, 7 years old, as a “colonial inheritance” that needed to be updated.¹²⁶ In their decision, they additionally considered the crime rate for those younger than 10 years old, the ability of children to understand consequences at that age, and the need for public protection.¹²⁷

In July of 2020, Singapore’s Penal Code was finally amended to reflect this heightened MACR to 10 years old.¹²⁸ Although this change is an improvement, it only occurred two years ago, and thus, took a long time to accomplish. Additionally, 10 years old is still substantially younger than the current international standard of 14 years old.¹²⁹

3. MLAM

Singapore has one of the highest MLAM requirements in the world, requiring its citizens to be at least 21 years old to marry without parental consent.¹³⁰ This MLAM is dictated by Singapore’s age of majority, 21 years old, which is high compared to most countries.¹³¹ Although Singapore does have lower age limits for other legal freedoms (e.g., 18 years old to purchase liquor or tobacco products), its common law has provided that

124. Tan Tam Mei, *Parliament: Minimum Age of Criminal Responsibility to be raised from 7 to 10*, STRAITS TIMES (May 7, 2019, 8:27 AM), <https://www.straitstimes.com/politics/parliament-minimum-age-of-criminal-responsibility-to-be-raised-from-7-to-10> [https://perma.cc/GZ5J-3DKW].

125. *Id.*

126. *Id.*

127. *Id.*

128. Penal Code ch. 224 (July 2020) (Sing.).

129. CRC 2019, *supra* note 2.

130. *Marriage Matters*, MINISTRY OF FOREIGN AFF., <https://www.mfa.gov.sg/Overseas-Mission/Canberra/Consular-Services/Marriage-Matters> [https://perma.cc/S28B-HLN3] (last updated Aug. 16, 2023); *Civil Marriage in Singapore: How to Register and Solemnise*, SINGAPORE LEGAL ADVICE, <https://singaporelegaladvice.com/law-articles/civil-marriage-singapore-procedure-register-solemnise/> [https://perma.cc/57U3-XVP5] (last updated Apr. 21, 2022); There are two types of marriages in Singapore, a civil marriage and Muslim marriage. For the purposes of this analysis, we will only consider civil marriages. *Getting Married in Singapore?* GOV’T SINGAPORE, <https://www.marriage.gov.sg> [https://perma.cc/5DFU-FXQ7] (last updated Oct. 24, 2022).

131. *Protection of Children in Singapore: An Overview*, SINGAPORE CHILD.’S SOC’Y 1, 1 (2005), https://www.childrensociety.org.sg/resources/ck/files/child_protection.pdf [https://perma.cc/Z4RL-939S].

21 years old distinguishes a child and an adult in a legal and cultural context.¹³² However, there are exceptions that lower the MLAM for minors between 18 and 21 who “obtain consent from their parents or guardians and complete a mandatory Marriage Preparation Programme before they can marry.”¹³³

4. *MACR v. MLAM*

With an MACR of 10 years old and an MLAM of 21 years old, Singapore has a substantial disparity—11 years—between the two minimum age requirements. Put in another perspective, Singapore is four years below the MACR international standard, but three years above the MLAM international standard.¹³⁴ Singapore’s high MLAM displays its ability to not only conform to an international standard, but surpass it and uphold a higher standard to protect its citizens.

B. *Country With a High MACR*

SWEDEN

Age of Majority = 18 years old
MACR = 15 years old
MAAP = 18 years old
MLAM = 18 years old

1. *MACR: History*

Sweden’s treatment of children in the criminal justice system is relatively progressive, and it has been for quite some time.¹³⁵ Since 1902, Swedish law has upheld a MACR of 15 years old.¹³⁶ From 1902 through the rest of the 20th century, Sweden made clear “that measures against juvenile delinquents should be separated from measures against adult

132. *Id.*

133. *Civil Marriage in Singapore: How to Register and Solemnise*, *supra* note 130.

134. *Establishing a Minimum Age for Marriage*, UN WOMEN (Jan. 27, 2011), <https://www.endvawnow.org/en/articles/616-establishing-a-minimum-age-for-marriage.html> [<https://perma.cc/VY7C-RJGP>].

135. Nils Jareborg, *Sweden / Criminal Responsibility of Minors*, REVUE INT’L DE DROIT PENAL, 511, 511 (2004), <https://www.cairn.info/revue-internationale-de-droit-penal-2004-1-page-511.htm> [<https://perma.cc/2GZM-CAEN>].

136. *Id.* at 513.

offenders.”¹³⁷ Some of these earlier measures included creating youth prisons and expanding the Act on Child Care¹³⁸ to include all young people aged 21 and under.¹³⁹

Post-World War II, there was a growing acknowledgment and acceptance of the negative effects of institutionalization on young people within the Swedish juvenile system.¹⁴⁰ This realization shifted the goal of the system away from punishment, and instead towards treatment.¹⁴¹ As a result, all people convicted of a crime between ages 15 and 18 were to be treated under the system of child care, not in the prison system, as “youth welfare was increasingly aimed at preventive and supportive measures.”¹⁴² Under the child care system, youth offenders received penalties involving treatment named “commitment to special care,” and only in exceptional cases were those under 17 still treated by the criminal care system.¹⁴³

Already considered a progressive system for its time, Sweden’s juvenile system evolved further into the late 20th century as criticism of the institutionalization of children grew.¹⁴⁴ The rationale behind the criticism was that treatment only resulted in positive effects “if the person receiving care was motivated by the treatment,” and a child’s motivation was stifled while in an institution.”¹⁴⁵ In 1980, youth prisons were abolished in Sweden.¹⁴⁶ Sanctions for youth offenders became voluntary commitment and forced care was able to be based on what is best for the child rather than the interest to protect society.¹⁴⁷ This care was located nearer to the communities so that the children could remain in close contact with their families and in the responsibility of Special Approved Youth Homes.¹⁴⁸

In 1993, the National Board for Institutional Care (hereinafter “NBIC”) was established in Sweden as a result of criticism that the juvenile system

137. Jerzy Sarnecki & Felipe Estrada, *Juvenile Crime in Sweden*, STOCKHOLM U. DEP’T CRIMINOLOGY 1, 3 (Sept. 2004), https://www.oijj.org/sites/default/files/documentos/documental_2081_en.pdf [<https://perma.cc/H49C-UVKB>].

138. *Id.* at 3.

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. Sarnecki & Estrada, *supra* note 137, at 4.

144. *Id.* at 3.

145. *Id.* at 4.

146. *Id.*

147. *Id.* at 4.

148. *Id.*

was lacking “fixed, clear responses.”¹⁴⁹ The rules for committing juvenile offenders were changed so that “punitively motivated requirements for predictability, consequence, and proportionality are given more space.”¹⁵⁰ The sentences were to reflect the severity of the crime and no longer be guided by mutual understanding and voluntary commitment.¹⁵¹

2. MACR/MAAP: Current Law

Sweden’s MACR remains at 15 years old today. Because there is no juvenile court or prison in Sweden, the MAAP is arguably the same as the MACR.¹⁵² However, in practice, the MAAP would be between 18 and 21 as people under 21 years old are rarely imprisoned—imprisonment for children between 15 and 18 in Sweden is extremely rare and only considered in special cases.¹⁵³ For those between 18 and 21, imprisonment is only considered for serious crimes. Instead, the Swedish criminal courts typically sentence young persons under the age of 21 to youth service,¹⁵⁴ if the young person consents and the sentence is proportional to their crime.¹⁵⁵ Those under 18 years old are subject to “special measures, assistance, and treatment” within the social welfare services.¹⁵⁶

3. MLAM

In Sweden, it is forbidden for anyone to marry a child.¹⁵⁷ Swedish citizens under the age of 18 years old are considered children, as the age of majority is 18.¹⁵⁸ Sweden’s MLAM is firmly set at 18 years old.¹⁵⁹ This strict minimum is supported by Sweden’s other child protection laws, such as sexual assault protection.¹⁶⁰

149. Sarnecki & Estrada, *supra* note 137, at 4–5.

150. *Id.* at 4.

151. *Id.*; Anna Hollander & Michael Tarnfalk, *Juvenile Crime and the Justice System in Sweden*, L. EXPLORER (Feb. 26, 2017), <https://lawexplores.com/juvenile-crime-and-the-justice-system-in-sweden/> [<https://perma.cc/H49C-UVKB>].

152. Yanna Papadodimitraki, *Minimum Age of Criminal Responsibility*, CENTER YOUTH & CRIMINAL JUST. (Mar. 2016), <http://www.cycj.org.uk/wp-content/uploads/2016/03/MACR-International-Profile-Sweden.pdf> [<https://perma.cc/L76S-X6X6>].

153. *Id.* at 2.

154. See Jareborg, *supra* note 135 (explaining how “youth service is similar to community service that can be required in combination with conditional sentence or probation”).

155. Papadodimitraki, *supra* note 152.

156. *Id.*

157. *About Child Marriage — Laws and Regulations in Sweden*, SOCIALSTYRELSEN (Jan. 2020), <https://www.socialstyrelsen.se/globalassets/sharepoint-dokument/artikelkatalog/vagledning/2019-2-3-about-child-marriage.pdf> [<https://perma.cc/XRL3-KJAD>].

158. *Id.*

159. *Id.*

160. *Id.*

4. *MACR v. MLAM*

With an MACR of 15 years old and an MLAM of 18 years old, Sweden has the smallest difference between the two standards amongst all the countries analyzed in this comment. Sweden is part of the minority of countries that demonstrate the ability to conform to both the international MLAM and MACR.

C. *Outlier Country With No MACR*

UNITED STATES OF AMERICA

Age of Majority = no national standard, varies by state¹⁶¹

MACR = no national standard, varies by state

MAAP = no national standard, varies by state

MLAM = no national standard, varies by state

1. *MACR: History*

The United States has never enacted a federally mandated MACR or come to a national consensus of the sort. However, at the start of the 20th century, U.S. juvenile courts were created with the sole purpose of recognizing juveniles as less culpable persons and trying them as children not as adults.¹⁶² Yet due to an increase in violent crimes committed by teens, public fear and panic about the new “super-predators,” and political pressure on the states to “get tough” on crime in the 1980’s, many states rolled back the age restrictions on some of their policies that were meant to protect juveniles from adult sentences.¹⁶³ As a result, children in many, if not all, states are unprotected against the adult criminal system.¹⁶⁴

161. Culturally, the age of maturity and the age at which you are a legal adult is 18.

162. *About Child Marriage*, *supra* note 157.

163. Anne Teigen, *Juvenile Age of Jurisdiction and Transfer to Adult Court Laws*, NCSL (Apr. 8, 2021), <https://www.ncsl.org/research/civil-and-criminal-justice/juvenile-age-of-jurisdiction-and-transfer-to-adult-court-laws.aspx> [<https://perma.cc/EB4G-RQHM>].

164. *Id.*

2. MACR/MAAP: Current Law

The U.S. is the only UN member state that did not ratify the 2007 CRC and does not have a nationally recognized MACR.¹⁶⁵ Without a national standard, the MACR and MAAP vary by state.¹⁶⁶ As of 2022, twenty-four U.S. states have no statutory MACR.¹⁶⁷ Almost half of the country allows for the possibility of any child, no matter how young, to be held criminally responsible.¹⁶⁸

Of the remaining twenty-six states, sixteen of them have an MACR of only 10 years old.¹⁶⁹ Washington and Florida have the lowest MACR's of 8 years old and 7 years old respectively.¹⁷⁰ New Hampshire and Maryland have the highest MACR's in the country at 13 years old.¹⁷¹ In the middle of the pack, one state, Nebraska, is set at 11 years old and five states use 12 years old.¹⁷²

Additionally, amongst these twenty-six states, twelve of them have specific crime exceptions that allow children even younger than their set MACRs to be subjected to the juvenile justice system.¹⁷³ Even disregarding the exceptions, every state in the U.S. still falls short of the international standard.¹⁷⁴

In regards to MAAP, the majority of the U.S. states hold 18 years old as the age at which commitment of “any offense automatically subjects an individual to adult court jurisdiction.”¹⁷⁵ However, these laws are not the states' MAAP's because all fifty states, and the District of Columbia, have transfer laws that either allow or require juveniles who commit more serious offenses to be prosecuted in adult court, no matter how young they are.¹⁷⁶

165. *Minimum Age of Prosecution of 12*, NCCHC (Dec. 6, 2021), <https://www.ncchc.org/minimum-age-of-prosecution-of-12-what-does-it-mean-and-why-does-it-matter/> [https://perma.cc/3ERK-N2PT].

166. Thomas Jeree et al., *Raising the Floor: Increasing the Minimum Age of Prosecution as an Adult*, CAMPAIGN FOR YOUTH (2019), https://www.prisonpolicy.org/scans/Raising_the_Floor_Final.pdf.

167. *Raising the Minimum Age for Prosecuting Children*, NAT'L JUV. JUST. NETWORK (Oct. 2022), <https://www.njjn.org/our-work/raising-the-minimum-age-for-prosecuting-children> [https://perma.cc/5PL5-HV4M].

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. Thomas Jeree et al., *supra* note 166.

174. *Id.*

175. *Age Matrix*, INTERSTATE COMM'N FOR JUV. (Jan. 20, 2022), <https://www.juvenilecompact.org/age-matrix> [https://perma.cc/Z99U-V7V2].

176. *Id.*; Teigen, *supra* note 163.

Therefore, in reality, the most common MAAP in the U.S. by state is not 18 years old, but instead 14 years old with twenty-three states using this age as their minimum.¹⁷⁷ Eleven states have no MAAP because their transfer laws have no age limit for certain crimes.¹⁷⁸ Forty-five states hold that 17 year olds are adults and should be tried and sentenced as such.¹⁷⁹ Five states draw the MAAP line even lower at 16.¹⁸⁰

3. MACR/MAAP: Consequences

Due to the low and nonexistent minimums and transfer laws nationwide, on average more than 250,000 youth are tried, sentenced, or incarcerated as adults every year in the U.S.¹⁸¹ On any given night, 48,000 youth are held in facilities away from home.¹⁸² Jarringly, 4,535 of these youth are in adult jails and prisons.¹⁸³ This means that in the U.S., one of ten kids in the criminal justice system are being completely deprived of their childhood and are being treated as adults.¹⁸⁴ When compared to teens in juvenile facilities, teens in adult prisons and jails are five times more likely to be sexually assaulted and five times more likely to commit suicide.¹⁸⁵

The absence of a federal MACR and MAAP enables states to place children in adult facilities where they receive poor treatment.¹⁸⁶ Jail staff in American adult facilities have two options to hold youth.¹⁸⁷ First, they can place them amongst the adult population, but studies show doing so exposes youth to serious physical and emotional harm at the hands of adult inmates.¹⁸⁸ Second, they can hold them in isolation, separated by “sight and sound” as legislation requires, but this has been shown to exacerbate mental health issues like depression and can lead to suicide.¹⁸⁹

177. *Age Matrix*, *supra* note 175.

178. *Id.*

179. Teigen, *supra* note 163.

180. *Id.*

181. Wendy Sawyer, *Youth Confinement: The Whole Pie 2019*, PRISON POL’Y INITIATIVE (Dec. 19, 2019), <https://www.prisonpolicy.org/reports/youth2019.html#facilities> [<https://perma.cc/FM6Y-4B6G>].

182. *Id.*

183. *Id.*

184. *Id.*

185. *Id.*

186. *See id.*

187. Teigen, *supra* note 163.

188. Sawyer, *supra* note 181.

189. *Id.*

Apart from being dangerous, adult facilities in the U.S. do not offer adequate nutrition or exercise for growing youth and have insufficient or even no educational programming or counseling.¹⁹⁰ Consequently, they are not effective in reducing crime.¹⁹¹ Not only are juveniles in adult facilities more likely to reoffend, but they are also more likely to reoffend quicker and commit a more serious new offense.¹⁹²

4. MLAM

As with the United States's nonexistent national MACR, the country also has no MLAM national standard, which produces a similar, varied outcome amongst the states.¹⁹³ Only four states have a statutory MLAM of 18 years old with no exceptions.¹⁹⁴ In these states, no one under the age of 18 can be issued a marriage license, regardless of the presence of parental consent or a court order for a minor. However, these special circumstances do impact the MLAM of the rest of forty-six states.¹⁹⁵

Seven states have set a "legal adult" standard for marriage, meaning one has to be considered a legal adult to be eligible to get married.¹⁹⁶ These states differ from the four previously mentioned states because this standard leaves the door open for younger emancipated minors to be eligible for marriage as they are considered legal adults.¹⁹⁷ Nevertheless, with the emancipation exception, these seven states keep their MLAM's at no lower than either 17 or 16 depending on the state.¹⁹⁸

Apart from the first four "[MLAM] 18 with no exception" states, the remaining forty-six states are split into two categories: 1) states that have exceptions but still have a MLAM; or 2) states that have exceptions with no MLAM.¹⁹⁹ The majority of states fall within the first category. Thirty-six states make up the first category,²⁰⁰ permitting minors to marry under statutory exceptions of parental consent, emancipation, pregnancy, or

190. *Id.*

191. *Id.*

192. *Id.*

193. *Understanding State Statutes on Minimum Marriage Age and Expectations*, TAHIRI JUST. CENTER (Aug. 1, 2020), https://www.tahirih.org/wp-content/uploads/2016/11/State-Statutory-Compilation_Final_July-2019_Updated.pdf [<https://perma.cc/6CFV-5L7J>].

194. *Id.*

195. *See id.*

196. *Id.*

197. *Id.*

198. *Id.*

199. *Understanding State Statutes on Minimum Marriage Age and Expectations*, *supra* note 193.

200. *Id.*

court order.²⁰¹ Despite the exceptions, these states still have firm MLAM's ranging from 14 to 17, with the majority using 16.²⁰² As for the second category, the remaining ten states, have no set MLAM by statute, meaning "if statutory exceptions are met, a child of any age could get married."²⁰³

5. *MACR v. MLAM*

Because the U.S. has neither a standard MACR nor a standard MLAM, contrasting the two is a difficult task. Of the states that have a statutory MACR, the most common MACR in the U.S. is 10 years old. Of the states that have a set statutory MLAM, the most common MLAM is 16 years old. Based on these numbers, the U.S.'s approximate MLAM commonly sits at six years above its approximate MACR. Additionally, both the standards fall below the international standard with the MACR falling short four years and the MLAM by two.

VI. ARGUMENT

A. *MACR v. MLAM: Similar Legal Effects*

MACR and MLAM are two age minimum laws that can signify a country's acceptance of a child's legal responsibility as an individual in society prior to the age of majority. The age of majority is when a child, for all other purposes, assumes legal control over their persons, actions, and decisions, thus terminating the control and legal responsibilities of their parents or guardian over them.²⁰⁴ While other age minimum laws exist—for age of drinking, driving, voting, etc.—at younger ages than the age of majority in many countries, these laws simply afford more rights to a child before they reach legal adulthood; they do not, by contrast to MACR and MLAM, assign legal responsibility of one's person and actions to a child.

Marriage has both a status and contractual effect.²⁰⁵ In terms of legal status, someone's status as a married person is held outside of themselves.²⁰⁶ They are no longer themselves as individuals, but a member of a married

201. *Id.*

202. *Id.*

203. *Id.*

204. *Legal Age*, *supra* note 8.

205. Halley, *supra* note 7, at 2.

206. *Id.* at 54.

couple.²⁰⁷ In terms of a legal contract, marriage legally binds one person to another.²⁰⁸ Under both status and contract, one married person is financially and legally responsible to the other, and they are to make legal decisions and actions for the both of them.²⁰⁹ An MLAM below the age of majority affords a child this legal responsibility for themselves and their partner as a married unit, before they were supposed to be given that right and responsibility for themselves as an individual adult.

In a country like Singapore—where the age of majority is 21 and the MACR is 10—a 15 year old does not reserve the freedoms, rights, and responsibilities of an adult: they are not assumed to have legal control over their actions and decisions, and their parents still retain legal responsibility over their wellbeing, care, and discipline.²¹⁰ However, if the same 15 year old commits a crime, then they are solely responsible for their actions and the legal repercussions of them. Further, they are treated as if they were fully in control of their decisions and are now seen to have sacrificed the responsibility of their wellbeing and discipline away from their parents and instead to the state.

B. MACR v. MLAM: Similar Purpose

1. Negative Impacts of Child Marriage

The prevailing purpose behind setting an international MLAM of 18 years old is the goal of eliminating the practice of child marriage, for it “hinders the development and well-being of hundreds of millions of girls” across the globe.²¹¹ As evidenced by the joint recommendation between the CDC and CEDAW, protecting children from child marriage is both a children’s rights and girls’ rights issue, as the rate of child marriage among girls is disproportionately high compared to boys.²¹² MLAM laws have a direct effect on this inequality as many countries—mostly within Africa, Asia, and Oceania—have different MLAMs depending on gender, and of these countries, girls are always allowed to be married at a younger age than boys.²¹³

Beyond the unequal treatment of girls in the words of the law, the setting and enforcement of a high international MLAM is also driven by

207. *Id.*

208. *Id.* at 17.

209. *Id.* at 17, 19.

210. *Protection of Children in Singapore: An Overview*, *supra* note 131; *Inhuman Sentencing of Children in Singapore*, *supra* note 120.

211. Arthur et al., *supra* note 9, at 51.

212. *Id.* at 65, 66.

213. *Id.* at 67.

the reality of the unequal treatment of girls in the practice of the law.²¹⁴ The detrimental consequences of child marriage are well-documented and include “reduced autonomy, safety, educational attainment, [and] health status.”²¹⁵ In terms of educational attainment, child marriage tends to interrupt or even end a young girl’s education.²¹⁶ The negative effect of child marriage reaches even further, as the disruption in one’s education “has lifelong intergenerational impacts on women’s earning potential and financial independence.”²¹⁷

Another consequence of child marriage is the increase in poor mental health, suicidal ideation, and suicide attempts.²¹⁸ Child marriage also increases the probability for girls to experience physical, emotional, and sexual violence.²¹⁹ In all, child marriage has lasting negative impacts on young girls’ education, health, opportunity, and safety, which ultimately are a sufficient motivation for most countries to set a high MLAM at 18 years old and comply with the international standard.

The motivating factors behind the international MLAM are the same reasons for the international MACR, yet most countries have an MACR younger than the recommended 14 years old. Developmental psychology is an area of science that has been researching the negative impacts of treating children like adults within the criminal justice systems. While a slow acceptance of this science—and consequently, little to no change in MACRs around the world—could be attributed to the novelty of this field, a deep dive into the research of developmental psychology reveals strikingly similar comparisons to the negative effects of child marriage that are too obvious to ignore.

2. Negative Impacts of Low MACR

Developmental psychology research continues to show that adult punishment for juveniles is not only ineffective, but harmful.²²⁰ Psychologists argue that trying adolescents as adults or exposing them to especially harsh sanctions—including incarceration—does little to deter committing criminal

214. *Id.* at 66.

215. *Id.* at 51.

216. *Id.* at 54.

217. Arthur et al., *supra* note 9, at 54.

218. *Id.* at 53.

219. *Id.*

220. Ryan & Ziedenberg, *supra* note 11.

offenses and may actually have iatrogenic²²¹ effects on adolescents' mental health, psychosocial development, and antisocial behavior.²²² The adolescent brain is in a stage of rapid change and all events and experiences that occur during this time place individuals on pathways that can set the course of their adult lives.²²³ Juveniles whose educational paths are interrupted typically never fully recover because the psychological problems of adults, more than likely, first appear during the child's adolescence.²²⁴

Being in a cell in isolation or surrounded by adult offenders with little to no access to education, therapy, exercise, or proper nutrition is not a healthy place for an adolescent brain. Adolescents need stimulation, engagement, and nutrients to grow and support their brain's health.²²⁵ The way countries treat children in their justice systems matters because all justice interventions have a lasting effect on each child. A country's choice in deciding an MACR is ultimately their choice to influence an adolescent offender's development for better or worse.

Research indicates that the most effective sanctions and programs for juvenile justice focus on social development and improving skills in self-control, interpersonal relations, and academic and job performance.²²⁶ These are programs that consider developmental science and take an empathetic approach.²²⁷

C. MACR v. MLAM: Differences

Despite the many similar considerations that go into setting an MACR and MLAM, many argue that children should be treated like adults within the criminal justice systems because they chose to break the law. The criminal systems are intended to be punitive, and if a child is old enough to break the law, then the child is presumably old enough to be punished for it. Many also believe that protecting children from the consequences of their own wrongdoing is degrees different from protecting young girls from child marriage and the adult predators, abuse, and inequality that are often involved in it.

The science behind developmental psychology laid out above discredits these points: children do not have the culpability of adults and incarcerating

221. See *Iatrogenic*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/iatrogenic> [<https://perma.cc/4VRP-BZ7Y>] (iatrogenic is defined as injury, harm, or adverse effects caused by the treatment).

222. Ryan & Ziedenberg, *supra* note 11, at 7–8, 14.

223. RICHARD J. BONNIE ET AL., *supra* note 33, at 118.

224. See *id.* at 179–80.

225. *Id.* at 3.

226. *Id.* at 22, 181

227. *Id.* at 20.

children is harmful to the child, and therefore harmful to society.²²⁸ However, one does not need to look at the recent scientific developments to argue in support of treating children differently and less harshly than adults. The Geneva Declaration of 1924, explicitly stated that “the child that is backward must be helped; the delinquent child must be reclaimed.”²²⁹ It was the legislative intent of the UN approximately 100 years ago to help juvenile offenders, not punish them.²³⁰

To bring the topic of juvenile justice into the discussion of the legal policy and theory behind criminal justice as it applies to adults is to misplace the issue and characterize the goal of juvenile justice as one that is punitive. The scientific research and legislative history discussed above is sufficient to support the recommendation of the existence of a juvenile justice system that is limited in reach and separate from the adult criminal systems; one that is distinct in purpose and legal theory.

Another challenge to raising the MACR and MLAM is the practicality and effectiveness of doing so. The UN had these same concerns when trying to define an international MACR, which it did not explicitly define until 2007.²³¹ The Beijing rules of 1985 didn’t set an explicit standard because the UN expected that an MACR will differ based on the “history and culture” of the respective country.²³² To support that point, there has been an international MACR standard since 2007, yet still today, the majority of countries do not comply with it. As a result, children as young as 7 years old can be convicted of a crime and sentenced to prison.

However, looking at the effectiveness of the international MLAM reveals that high MACR laws can work to combat the negative effects of child imprisonment. A study done using Demographic and Health Surveys (“DHS”) “indicate[s] that protective legislation may indeed be associated with a lower prevalence of child marriage and lower rates of adolescent fertility.”²³³ Specifically, DHS data was taken from countries in sub-Saharan Africa that revealed that “a consistent minimum marriage age of 19 or older in national laws . . . was associated with lower household rates of child marriage.”²³⁴

228. See *id.* at 46, 121, 127–28, 132–33.

229. Legislative History, *supra* note 53, at 3.

230. *Id.* at 3–4.

231. CRC 2007, *supra* note 72, at 11.

232. See The Beijing Rules, *supra* note 6, at 3.

233. Arthur et al., *supra* note 9, at 55.

234. *Id.*

VII. CONCLUSION

MACR and MLAM are age minimum laws with similar purposes, impacts, and legal effects. The overarching goals of MACR and MLAM are to protect children from the consequences of the criminal system and child marriage, respectively, as they both negatively impact a child's safety, education, and future. With the above facts and arguments in mind, this Comment proposes the following recommendations:

The UN should recognize the similarities between the effects, impacts, and purposes of the MACR and MLAM standards. By doing so, the UN could influence the conversations within individual states' governments and change the way states think about juvenile justice policy. The UN should detail and define what the juvenile court and criminal systems should look like between the windows of the MACR at 14 years of age and MAAP at 18 years of age. Sweden should be looked to as an example. Ideally, all members states that do not comply with the international MACR standard should raise their MACR to 14 years old.

At the minimum, member states with low MACRs and conforming MLAMs should raise their MACR to as close to the international standard as their history and culture would allow.

This Comment is not recommending or concluding that children should not be held accountable for their mistakes and wrong doings. The argument for treating children separate from the adult criminal systems is not one driven necessarily by leniency. As the policy in Sweden upholds, this argument is driven by the concept of proportionality.²³⁵ To reiterate the Beijing Rules, "alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offense."²³⁶

235. Papadodimitraki, *supra* note 152, at 2.

236. CRC 1989, *supra* note 67, at 12.