BABIES HAVING BABIES: ADVOCATING FOR A DIFFERENT STANDARD FOR MINOR PARENTS IN ABUSE AND NEGLECT CASES

Emily Barry†

"Children have a very special place in life which law should reflect."[1]

TABLE OF CONTENTS

† Symposia Editor, *Cardozo Law Review*; J.D., Benjamin N. Cardozo School of Law, 2018; B.A., Providence College, 2013. I would like to thank my Note Editor, Ira Handa, and Professor Edward Stein for their invaluable guidance. Thank you to the entire *Cardozo Law Review* for the incredible attention to detail that was taken with the publication of this Note. To my parents and Brendan, thank you for your constant support and unwavering patience. Finally, thank you to all my family and friends who have helped me each step of the way. I feel so grateful that I have so many of you in my corner that I do not have room to list you each individually. Before attending law school, I was a middle school teacher in Memphis, TN. To all of my former students, thank you for everything you taught me, and to my incredible Treadwell Middle School and Teach for America teams, thank you for helping me to see the value, fragility, and power of each child.

1 May v. Anderson, 345 U.S. 528, 536 (1953) (Frankfurter, J., concurring).

INTRODUCTION

Shania is fifteen years old and lives with her mother and three sisters in Brooklyn, New York. Shania finds out that she is pregnant and decides to keep her child, Derek. Shania's mother tells her that Shania and Derek can live in her home, but that her mother will not be providing for them. Shania is struggling to make ends meet. She is balancing school with work and sometimes leaves Derek with her ten-year-old sister since she cannot afford a babysitter. One day, Shania's younger sister is on a walk with Derek when a neighbor notices the two. The neighbor notes that Derek's clothes are dirty and that his diaper smells like it has not been changed.

The concerned neighbor calls the Administration for Children's Services (ACS) which sends a case worker to investigate. The case worker notices that there is no crib for Derek, and Shania explains that she has been having Derek sleep with her since she cannot afford one. The case worker also notes that Shania has few clothes for Derek and Shania explains that she does not change his diaper as often as she should because of how expensive diapers are. After discovering that Shania has not taken Derek to his last three doctor's appointments, the case worker opens a case and Shania has to go to court. Despite Shania's attorney's assurances that Shania (the "minor parent") is doing her best to raise her son (the "subject child"), the court chooses not to grant an adjournment in contemplation of dismissal (ACD) and instead enters a

finding of neglect against her.[2] Shania is permitted to keep her son but is now subject to ACS supervision and has to take parenting classes.

At this point, the case would seem to be resolved. However, since this is an "indicated" report,[3] under New York Family Court Act section 1051, the report of this case will remain on file in the state's central register for ten years after Derek's eighteenth birthday, until Shania is forty-three years old.[4] Employers wishing to screen Shania for a job in childcare will have access to this report.[5] In light of this, Shania likely cannot work as a school crossing guard, teacher, or teacher's assistant, nor work with senior citizens.[6] Shania's actions as a fifteen-year-old child will follow her until she is nearly fifty years old.[7]

---

2 Prior to the court entering a finding of abuse or neglect against a parent, a judge may choose to grant an adjournment in contemplation of dismissal (ACD). *See* N.Y. FAM. CT. ACT § 1039(b) (McKinney 2018) ("An adjournment in contemplation of dismissal is an adjournment of the proceeding for a period not to exceed one year with a view to ultimate dismissal of the petition in furtherance of justice."). This option allows the court to delay making a final judgment as to whether the parent has abused or neglected their child and instead gives the parent the opportunity to attempt to remedy the underlying issues that led to the allegation. At the conclusion of the ACD period, the court can dismiss an allegation of abuse or neglect.

3 N.Y. SOC. SERV. LAW § 412(7) (McKinney 2018) ("An 'indicated report' means a report made . . . if an investigation determines that some credible evidence of the alleged abuse or maltreatment exists.").

4 FAM. CT. ACT § 1051(f)(iii).

> [T]he report made to the state central register of child abuse and maltreatment upon which the petition is based will remain on file until ten years after the eighteenth birthday of the youngest child named in such report, that the respondent will be unable to obtain expungement of such report, and that the existence of such report may be made known to employers seeking to screen employee applicants in the field of child care, and to child care agencies if the respondent applies to become a foster parent or adoptive parent.

Id.

5 *See id.*

6 HER JUSTICE, CROSS-BOROUGH COLLABORATION: THE BASICS: ABUSE AND NEGLECT CASES IN NEW YORK STATE 8 (2013), https://web.archive.org/web/20160620101131/http://www.herjustice.org/assets/pdfs/TheBasicsSeries_English/Abuse-%26-Neglect_ENGLISH.pdf/ ("If [the state central register of child abuse] shows a report against [a parent] it can seriously affect [their] chance of getting work around children (for example, as a school crossing guard, teacher or teacher's assistant). [They] could not work with senior citizens (for example, as a home care attendant). [They] could not become a foster parent or adopt a child.").

7 Based on the way section 1051 of the Family Court Act is worded, if a child who is neglected is one-year-old at the time of the neglect, the record stays on the state central register for nearly twenty-eight years. FAM. CT. ACT § 1051. Depending on the age of the subject child, the record could feasibly remain until the minor parent is close to fifty years old. *See* SOC. SERV. LAW § 422 (listing all of the individuals and organizations who may access the register, including: physicians, legislative committees, probation services, criminal justice agencies, attorneys for the child, child care resources, and more); CHILD WELFARE INFO. GATEWAY, U.S. DEP'T OF HEALTH & HUMAN SERVS., DISCLOSURE OF CONFIDENTIAL CHILD ABUSE AND NEGLECT RECORDS 2 (2017), https://www.childwelfare.gov/pubPDFs/confide.pdf.

> Central registry records are used increasingly to screen adults for various

This hypothetical provides just one example of the multitude of ways a finding or allegation of abuse or neglect against a teen parent may have major ripple effects in the life of this minor[8] parent.[9] These negative effects are particularly concerning for minor parents because although the teen pregnancy rate has declined in the United States in recent years, it remains high, especially considering numerous studies that show the negative repercussions of teen childbirth and parenting.[10] Courts and media alike recognize that having an "indicated"[11] case on a person's record can limit future job prospects and stigmatize a parent for years to come since employers can access records when screening adults for employment or volunteer positions.[12]

> employment or volunteer positions. Approximately 32 states and the District of Columbia allow access to central registry records for agencies conducting background checks on individuals applying to be child care or youth care providers. Four states provide access to tribal agencies to aid in determining the suitability of an individual to have access to children. Information is made available to employers in the child care business, schools, or health-care industry.

Id. at 3 (footnotes omitted).

8 The terms minors, juveniles, adolescents, and youths are used interchangeably throughout this Note.

9 *SCR Online Clearance System*, N.Y. STATE OFF. CHILD. & FAM. SERVICES, http://ocfs.ny.gov/main/cps/Online%20Statewide%20Central%20Register%20Clearance%20System.asp (last visited May 24, 2018) (explaining that the Online Clearance System permits legally authorized agencies to inquire about "any indicated reports of child abuse and maltreatment against an applicant prior to employment, certification, or licensure in the child care field"); *see* N.Y. SOC. SERV. LAW § 424-a(1)(a) (McKinney 2018).

> A licensing agency shall inquire of the department and the department shall . . . inform such agency and the subject of the inquiry whether an applicant for a certificate, license or permit, assistants to group family day care providers, the director of a camp[, or] a prospective successor guardian . . . has been or is currently the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment.

Id.

10 *See* discussion *infra* Section I.A; *see also About Teen Pregnancy*, CTRS. FOR DISEASE CONTROL & PREVENTION, http://www.cdc.gov/teenpregnancy/about/index.htm (last updated May 9, 2017) (explaining that "[p]regnancy and birth are significant contributors to high school dropout rates among girls. Only about 50% of teen mothers receive a high school diploma by 22 years of age, whereas approximately 90% of women who do not give birth during adolescence graduate from high school"); SAUL D. HOFFMAN, THE NAT'L CAMPAIGN TO PREVENT TEEN PREGNANCY, BY THE NUMBERS: THE PUBLIC COSTS OF TEEN CHILDBEARING (2006), http://www.thenationalcampaign.org/costs/pdf/report/BTN_National_Report.pdf (explaining that as compared to children born to older mothers, children born to teen mothers are more likely to drop out of high school, become teen parents, experience abuse or neglect, enter the foster care system, or end up in prison).

11 *See* sources cited *supra* note 3.

12 Brendan J. Lyons, *A 5-Minute Error, 25 Years on Child Abuse List?*, TIMESUNION (May 23, 2010, 1:00 AM), http://www.timesunion.com/news/article/A-5-minute-error-25-years-on-child-abuse-list-556710.php; *see* CHILD WELFARE INFO. GATEWAY, *supra* note 7; HER JUSTICE, *supra* note 6; *see also In re* Matthew B., 808 N.Y.S.2d 513, 514 (N.Y. App. Div. 2005); *In re* Lawrence Children, 768 N.Y.S.2d 83, 90 (Fam. Ct. 2003). *See generally In re* Lee TT., 642

In the child welfare system, which handles allegations of abuse and neglect, minor parents who have abuse and neglect proceedings brought against them are subject to the same laws and court process as adults involved in proceedings, which is a feature unique to this system.[13] While other court systems consider the unique faculties and situations of minors,[14] it is noteworthy that the child welfare system does not differentiate between minor and adult perpetrators in dealing with cases of abuse or neglect,[15] especially when expunging records,[16] vacating findings,[17] or amending records contained in the state central register.[18]

N.Y.S.2d 181 (N.Y. 1996).

> [E]ven though ACS has the authority to proceed against a minor parent in foster care pursuant to article 10, it should recognize that a neglect finding has a significant deleterious impact upon the parent. . . . [I]t means that the report made to the state central register of child abuse and maltreatment upon which the case was based will remain on file until the 28th birthday of the youngest subject child and will not be subject to expungement. . . . That imposes a stigma upon the respondent which could effectively prevent her from becoming a foster parent, adoptive parent, child care worker, or teacher.

In re Lawrence Children, 768 N.Y.S.2d at 90 (internal citation omitted).

13 *See infra* Section II.A; *see also* N.Y. FAM. CT. ACT § 1051 (McKinney 2018) (explaining the state central register and the length of time an indicated case must remain on it, while making no distinction between child and adult parents who have been accused of abuse or neglect). The child welfare system is one colloquial name for the system that handles allegations of abuse and neglect against parents, guardians, or persons legally responsible for children. While this system does focus on individuals other than parents, this Note will focus specifically on the way that minor parents are treated under the system. It would be interesting to consider whether minors who find themselves as persons legally responsible for a child not their own should also be subject to a slightly more relaxed standard than adults finding themselves in the same position.

14 *In re Lawrence Children*, 768 N.Y.S.2d at 90 ("In view of the fact that records of many serious crimes committed by a minor may be sealed or expunged . . . this consequence of a neglect finding can only be considered exceptionally harsh, notwithstanding petitioner's characterization of article 10 proceedings as 'remedial, rather than punitive.'" (internal citation omitted)); *see also* FAM CT. ACT § 375.2(1) ("If an action has resulted in a finding of delinquency pursuant to subdivision one of section 352.1, other than a finding that the respondent committed a designated felony act, the court may, in the interest of justice and upon motion of the respondent, order the sealing of appropriate records . . . ."); § 375.3 ("Nothing contained in this article shall preclude the court's use of its inherent power to order the expungement of court records.").

15 *See supra* text accompanying note 13.

16 N.Y. SOC. SERV. LAW § 422(6) (McKinney 2018) ("[T]he record of the report to the statewide central register shall be expunged ten years after the eighteenth birthday of the youngest child named in the report."); FAM. CT. ACT § 1051.

17 FAM. CT. ACT § 1061 (allowing a court to "stay execution, of arrest, set aside, modify or vacate any order issued in the course of a proceeding under this article" for "good cause shown").

18 SOC. SERV. LAW § 422(8)(a)(i).

> At any time subsequent to the completion of the investigation but in no event later than ninety days after the subject of the report is notified that the report is indicated the subject may request the commissioner to amend the record of the report. If the commissioner does not amend the report in accordance with such request within

In contrast, the New York juvenile delinquency system allows courts the discretion to expunge court records in a number of criminal cases against minors, even after a finding has been entered against a juvenile.[19] Additionally, minors are often treated differently in tort proceedings, having their age taken into account when determining certain types of tort liability.[20] Finally, there are numerous cases, both in New York and the United States Supreme Court, stating that minors have the right to disaffirm most contracts entered into during minority when they reach the age of majority.[21]

This Note will draw parallels to other court systems and argue that just as other systems allow an option for courts to consider age in proceedings,[22] New York should codify a similar option to allow the age of a parent to be taken into account in abuse and neglect proceedings. This revised structure would take the treatment of minor parents outside of the discretion of judges and ensure more consistent results across cases. Since studies acknowledge that minors are different than adults,[23] and minors are already treated differently in other types of legal proceedings,[24] it is logical for the legislature to extend this principle to the child welfare system.

Part I of this Note will provide background on the statistics relating to teen pregnancy in the United States and in New York. It will also set forth the relevant laws relating to cases of abuse and neglect under

> ninety days of receiving the request, the subject shall have the right to a fair hearing, held in accordance with paragraph (b) of this subdivision, to determine whether the record of the report in the central register should be amended on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with this title.

Id.

19 FAM. CT. ACT § 375.3 ("Nothing contained in this article shall preclude the court's use of its inherent power to order the expungement of court records."). This statute gives the court extremely broad power over its ability to expunge its own records at its discretion.

20 N.Y. GEN. OBLIG. LAW § 3-112(1) (McKinney 2018) (explaining that parents of a child more than ten years old and less than eighteen years old can be held civilly liable for damages caused by such child, where the child has "willfully, maliciously, or unlawfully damaged, defaced or destroyed . . . public or private property"); FRANCIS P. BENSEL ET AL., B N.Y. PRACTICE, PERSONAL INJURY PRACTICE IN NY § 2:482 (2017) ("Parents are liable for their minor child's torts if they knew of or had reason to know (typically, from past misconduct) that it was necessary to control and supervise the child to prevent future harm to others, and they failed to exercise reasonable care to do so.").

21 *See, e.g.*, Myers v. Hurley Motor Co., 273 U.S. 18 (holding that an infant can disaffirm a contract and recover money paid under it, but must also pay restitution); Rice v. Butler, 55 N.E. 275 (N.Y. 1899) (allowing an infant to rescind a bargain for a bicycle and to recover installments paid, minus wear and tear, for his use of the bicycle); *see also* Larry Cunningham, *A Question of Capacity: Towards a Comprehensive and Consistent Vision of Children and Their Status Under Law*, 10 U.C. DAVIS J. JUV. L. & POL'Y 275, 287–88 (2006).

22 *See supra* text accompanying notes 19–21.

23 *See infra* text accompanying notes 62–70.

24 *See* discussion *infra* Section II.A.

Article Ten of the Family Court Act. Finally, this Part will draw comparisons between teen parents in the family court system and teens in other legal contexts.

Part II of this Note will analyze the reasons why juveniles are held to different standards in other legal systems. It will discuss the pros and cons of extending these different standards to abuse or neglect cases and explore some of the ways that the New York court system is already taking the youth of minor parents into account in child protective proceedings, but will discern how these measures are insufficient to protect the interests of minor parents and their minor children.

Part III of this Note will advocate a proposal for the state to codify a protection for minor parents in the child welfare statutes by modifying an already existing statute. This Part will explore four possible forms that this statutory modification could take.

Finally, Part IV will explore counterarguments to the proposal and responses to them.

I. BACKGROUND

A. *Statistics on Teen Pregnancy in the United States and New York*

In 2015, there were 3,978,4977 births in the United States.[25] Of these births, a total of 229,715 babies were born to women aged fifteen to nineteen years old, resulting in a birth rate of 22.3 births per 1000 teenagers.[26] These birth rates are celebrated because they are down nine percent from 2013.[27] Despite this decreased birth rate, the Centers for Disease Control and Prevention (CDC) acknowledges that the U.S. teen pregnancy rate is still significantly higher than other western industrialized nations and that less favorable socioeconomic conditions, such as low education and low income levels of a teen's family, may contribute to high teen birth rates.[28]

There were 237,274 total births in the state of New York in 2015.[29] The rate of births in New York during this year for adolescents ages fifteen to nineteen years old was 14.6 per 1000 females aged fifteen to

25 JOYCE A. MARTIN ET AL., NAT'L CTR. FOR HEALTH STATISTICS, NATIONAL VITAL STATISTICS REPORTS: BIRTHS: FINAL DATA FOR 2015 (2017), https://www.cdc.gov/nchs/data/nvsr/nvsr66/nvsr66_01.pdf.

26 *Id.*; *see also About Teen Pregnancy*, *supra* note 10.

27 *About Teen Pregnancy*, *supra* note 10.

28 *Id.*

29 MARTIN ET AL., *supra* note 25, at 38.

nineteen.[30] In comparison, the rate of births in New York City for adolescents ages fifteen to nineteen years old was significantly higher, at a rate of 17.5 births per 1000 females.[31] While teen birth rates have declined across all poverty levels in New York City, there continues to be a higher teen birth rate in the city's highest poverty neighborhoods as compared to the city's lower poverty neighborhoods.[32] Birth rates by age of father are largely unavailable because information on a father's age is often missing on birth certificates of children born to women under the age of twenty-five.[33]

In 2009, there were 164,831 reports of child abuse and maltreatment indicated to the New York Office for Children and Family Services.[34] In 2014, 65,655 children were victims of abuse or neglect in New York, a rate of 15.5 per 1000 children.[35] Of these children, 95.4% were neglected, 9.7% were physically abused, and 3.1% were sexually abused.[36] While the majority of perpetrators of child abuse or neglect in New York state in 2014 were those aged from twenty-five to forty-four (14,867 perpetrators), it is not insignificant that there were 281 perpetrators of child abuse or neglect under seventeen years of age.[37]

Statistics indicate that in New York, the gender divide between male and female perpetrators of child abuse and neglect seems fairly equal. In 2014, women were perpetrators 55.4% of the time, while males were perpetrators 44.6% of the time.[38] That same year, the majority of perpetrators of child abuse or neglect were in a parental relationship with children.[39] Minor parents form a widely researched subset of parents and are a population that faces their own unique challenges regarding child rearing.[40]

30 *Id.* at 7.

31 WENHUI LI ET AL., N.Y.C. DEP'T OF HEALTH & MENTAL HYGIENE, SUMMARY OF VITAL STATISTICS 2015: THE CITY OF NEW YORK 30 (2017), https://www1.nyc.gov/assets/doh/downloads/pdf/vs/2015sum.pdf.

32 *Id.* at 32.

33 MARTIN ET AL., *supra* note 25, at 9.

34 *Statistics: 2009 Child Protective Services Reports*, N.Y. STATE OFF. OF CHILD. & FAM. SERVICES, http://ocfs.ny.gov/main/cps/statistics.asp (last visited May 24, 2018).

35 CHILDREN'S BUREAU, U.S. DEP'T OF HEALTH & HUMAN SERVS., CHILD MALTREATMENT: 2014 33 (2014), https://www.acf.hhs.gov/sites/default/files/cb/cm2014.pdf.

36 *Id.* at 42.

37 *Id.* at 68.

38 *Id.* at 71.

39 *Id.* at 74–75.

40 *See* discussion *infra* Section I.B.

B. *Special Concerns Facing Minor Parents*

The irony affecting minor parents is that for many purposes they remain children in the eyes of the law, in that they cannot bring or sustain a lawsuit, enroll themselves in school, or enter into binding contracts.[41] Furthermore, state laws in fourteen states allow physicians to inform parents that their minor daughter is seeking or receiving prenatal care when the physician determines it is in the best interests of the minor.[42] In New York the age of majority is set at eighteen,[43] marriages of minors under the age of seventeen are prohibited,[44] marriages of minors between the ages of seventeen and eighteen require written consent of the minor's living parents,[45] and minors are defined as "infants" in civil court proceedings[46] and must appear in court either through a guardian ad litem, by the guardian of their property, or by a parent with legal custody.[47]

However, these minor parents are completely legally responsible for their own children.[48] The Supreme Court has held that parents have a constitutionally protected liberty interest in the care, custody, and

41 Eve Stotland & Cynthia Godsoe, *The Legal Status of Pregnant and Parenting Youth in Foster Care*, 17 U. FLA. J.L. & PUB. POL'Y 1, 2–3 (2006) (stating that children rely on adults to act on their behalves in many contexts).

42 States in which physicians may inform parents that their child is seeking or receiving prenatal care are: Delaware, Hawaii, Kentucky, Maryland, Michigan, Minnesota, Missouri, Montana, New Jersey, North Carolina, North Dakota, Oklahoma, Oregon, and Texas. *Minors' Access to Prenatal Care*, GUTTMACHER INST., https://www.guttmacher.org/state-policy/explore/minors-access-prenatal-care (last updated May 1, 2018). New York is not one of the states that allows physicians to inform parents about their minor children's prenatal care. *Id.* New York does, however, have a statute that recognizes parenting minor children as taking on more of an adult role and allows these minors to make their own medical decisions. N.Y. PUB. HEALTH LAW § 2504(1) (McKinney 2018) ("Any person who is eighteen years of age or older, or is the parent of a child or has married, may give effective consent for medical, dental, health and hospital services for himself or herself, and the consent of no other person shall be necessary.").

43 N.Y. GEN. OBLIG. LAW § 1-202 (McKinney 2018) ("As used in this chapter, the term 'infant' or 'minor' means a person who has not attained the age of eighteen years.").

44 N.Y. DOM. REL. LAW § 15-a (McKinney 2018) ("Any marriage in which either party is under the age of seventeen years is hereby prohibited.").

45 DOM. REL. LAW § 15(3) ("If it shall appear upon an application of the applicants as provided in this section or upon information required by the clerk that either party is at least seventeen years of age but under eighteen years of age, then the town or city clerk before he shall issue a license shall require . . . the written consent to the marriage from both parents of the minor or minors or such as shall then be living . . . .").

46 C.P.L.R. § 105(j) (McKinney 2018) ("Infant, infancy. The word 'infant', as used in this chapter, means a person who has not attained the age of eighteen years.").

47 C.P.L.R. § 1201 ("Unless the court appoints a guardian ad litem [to appear on behalf of the child], a[child under eighteen] shall appear [in court] by the guardian of his property or . . . by the another person . . . having legal custody . . . .").

48 Stotland & Godsoe, *supra* note 41, at 2–3.

control of their children.[49] Minor parents are entitled to make decisions for their children regarding their education,[50] familial interactions,[51] and medical needs,[52] as long as the parent is not suspected to have abused or neglected the child and the state has not been given reason to intervene in the home.[53]

The precarious position that teen parents are put in (being fully responsible for their own children while not yet fully responsible for themselves) is further exacerbated by the fact that they are highly likely to have their parenting decisions subject to a high level of scrutiny and are, in some cases, held to higher standards than their adult counterparts.[54] This is so, because minor parents tend to interact more heavily with individuals who are mandated reporters of abuse[55] or

49 *See id.* at 8 n.20 ("The rights for biological mothers and fathers are quite different. Under federal constitutional jurisprudence, 'unwed fathers' must take some step beyond biological parenting, such as holding themselves out as the father, being on the child's birth certificate, or paying support, in order to merit full notice and due process before losing physical and/or legal custody of their children." (citing Lehr v. Robertson, 463 U.S. 248 (1983) (refusing to grant a right of notice or an opportunity to be heard in his child's termination and adoption proceedings to a father who had not lived with nor financially supported his daughter and did not register as the putative father, though he had visited her)); *see also* Troxel v. Granville, 530 U.S. 57, 65–66 (2000) (holding that the "liberty" protected by the Due Process Clause includes the right of parents to "establish a home and bring up children and to control the education of their own" (quoting Meyer v. Nebraska, 262 U.S. 390, 399 (1923))); Quilloin v. Walcott, 434 U.S. 246, 255 (1978) ("We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected."); Wisconsin v. Yoder, 406 U.S. 205, 232 (1972) ("The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition."); Pierce v. Soc'y of Sisters, 268 U.S. 510, 534–35 (1925) (holding that the "liberty of parents and guardians [includes the right] to direct the upbringing and education of children under their control").

50 *Meyer*, 262 U.S. at 401 (holding that legislation mandating teaching in English interfered "with the power of parents to control the education of their own"); *Pierce*, 268 U.S. 510 (holding unconstitutional an education act that required attendance at public schools).

51 *Troxel*, 530 U.S. at 68–69 ("[S]o long as a parent adequately cares for his or her children (*i.e.*, is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children.").

52 N.Y. PUB. HEALTH LAW § 2504(2) (McKinney 2018) ("Any person . . . who has borne a child may give effective consent for medical, dental, health and hospital services for . . . her child.").

53 *See supra* text accompanying note 49.

54 Barbara Glesner Fines, *Challenges of Representing Adolescent Parents in Child Welfare Proceedings*, 36 U. DAYTON L. REV. 307, 311 (2011) (explaining that outside observers may be more critical of teen parents and their decisions than they are of adult parents); *see infra* text accompanying notes 55–57.

55 N.Y. FAM. CT. ACT § 1012(e) (McKinney 2018) (defining an "abused child" as a child under the age of eighteen whose parent "(i) inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ, or (ii)

neglect,[56] such as school teachers, and are more likely to be assumed to be putting their children at risk simply because of their age.[57]

The Second Circuit determined that no parent can automatically have their children removed from them absent emergency circumstances,[58] yet concerns about alleged coercion in the removal of children from minor parents still exist, especially when the minor parents are in foster care.[59] Additionally, minor parents living in poverty

creates or allows to be created a substantial risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ" or commits other actions against the child as defined in New York Penal Law, such as promoting prostitution or incest); Fines, *supra* note 54, at 311 (explaining that "[t]eenage parents are more likely to interact with individuals who are mandated reporters of abuse and neglect, and those reporters may be more likely to assume that children of teen parents are at risk simply by virtue of their parent's youth").

56 FAM. CT. ACT § 1012(f) (defining a neglected child as a child under the age of eighteen whose parents or persons legally responsible for him have failed "to exercise a minimum degree of care (A) in supplying the child with adequate food, clothing, shelter or education . . . or medical, dental, optometrical or surgical care, though financially able to do so or offered financial or other reasonable means to do so; or (B) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of excessive corporal punishment; or by misusing a drug or drugs; or by misusing alcoholic beverages to the extent that he loses self-control of his actions; or by any other acts of a similarly serious nature requiring the aid of the court" or who has been abandoned).

57 Fines, *supra* note 54, at 311–12 (explaining that a teen parent's caregiving abilities will be evaluated when the teen is still in the hospital with her child and because hospitals will contain numerous mandated reporters, there is a risk the teen could be reported to ACS before they have even left the hospital); *see also* N.Y. STATE OFFICE OF CHILDREN & FAMILY SERVS., SUMMARY GUIDE FOR MANDATED REPORTERS IN NEW YORK STATE (2016), http://ocfs.ny.gov/main/publications/Pub1159.pdf (explaining that New York State requires certain professionals to be mandated reporters of suspected child abuse of maltreatment to ACS). These mandated reporters include: physicians, physician's assistants, registered nurses, emergency medical technicians, hospital personnel engaged in admission, examination, care or treatment of persons, and school officials. *Id.* These individuals "are required to report suspected child abuse or maltreatment when they are presented with a reasonable cause to suspect child abuse or maltreatment in a situation where a child, parent, or other person legally responsible for the child is before the mandated reporter when the mandated reporter is acting in his or her official or professional capacity." *Id.*

58 Duchesne v. Sugarman, 566 F.2d 817, 826 (2d Cir. 1977) (holding that removing children from their parents was justified at the outset by an emergency, but that "in those 'extraordinary situations' where deprivation of a protected interest is permitted without prior process, the constitutional requirements of notice and an opportunity to be heard are not eliminated, but merely postponed"); *see also* Smith v. Org. of Foster Families for Equal. & Reform, 431 U.S. 816, 845 (1977) ("[L]iberty interest in family privacy has its source, and its contours are ordinarily to be sought, not in state law, but in intrinsic human rights, as they have been understood in 'this Nation's history and tradition.'" (footnote omitted) (quoting Moore v. City of E. Cleveland, 431 U.S. 494, 503 (1977))).

59 *In re* Tricia Lashawanda M., 451 N.Y.S.2d 553, 559 (N.Y. Fam. Ct. 1982) (holding "that a so-called 'voluntary' placement executed by an infant unprotected by the advice of parent or guardian ad litem is void *ab initio*; that any termination proceeding which may later stem from this illegitimate conception will be declared to be the fruit of a poisoned tree and disallowed").

are at an even higher risk of being charged with abuse or neglect because the systems that are in place to aid them with parenting, such as the processes for applying for government assistance, often result in their parenting being even further scrutinized by the state.[60] These additional checks on minor parents result in them having cases initiated against them and having their children removed from their care at much higher rates than their adult counterparts.[61]

C. *Reasons for Applying Different Standards to Children*

Many psychologists agree that the years between twelve and eighteen years are a time of significant development physically, cognitively, and emotionally.[62] As a result, a number of paternalistic

Some courts have found the practice of the same child protective agency supervising a foster child and also that child's child to be suspicious and potentially a conflict of interest, which may lead to coercion. *See, e.g.*, *id.* at 554 (stating that the circumstances were "highly questionable" when the mother teen ward's signature of a voluntary placement agreement to place her child with "the very agency whose ward she was" was obtained half an hour after regaining consciousness following childbirth and while she was still under the effects of the anesthetic); *see also* Rebecca Bonagura, *Redefining the Baseline: Reasonable Efforts, Family Preservation, and Parenting Foster Children in New York*, 18 COLUM. J. GENDER & L. 175, 181–82 (2008) ("In New York, and in other states, 'voluntary' separation of parenting wards from their children is frequently the result of coercive measures; specifically, young mothers have been pushed into giving up their children because of a lack of available services and funding." (citing *In re* C., 697 N.Y.S.2d 1014 (N.Y. Fam Ct. 1994); *In re Tricia Lashawanda M.*, 452 N.Y.S.2d 553)).

60 Fines, *supra* note 54, at 313 ("As poor teen parents apply for governmental assistance for themselves and their children, they may be subject to requirements for receiving that assistance that may lead to charges of abuse and neglect. The United States Supreme Court in *Wyman v. James* affirmed the right of states to condition welfare benefits upon the recipients' consent to periodic home visits by caseworkers. Welfare reform in recent decades has increased the use of these home visits as means to investigate for fraud, but also to discourage applications for government benefits." (footnote omitted)).

61 Robert M. Goerge et al., *Consequences of Teen Childbearing for Child Abuse, Neglect, and Foster Care Placement*, *in* KIDS HAVING KIDS: ECONOMIC COSTS & SOCIAL CONSEQUENCES OF TEEN PREGNANCY 257, 276 (Saul D. Hoffman & Rebecca A. Maynard eds., 2d ed. 2008) ("[C]hildren born to mothers age 15 or younger are nearly two times (1.75) as likely as children born to mothers age 20–21 to have an indicated child abuse or neglect report . . . ."); HOFFMAN, *supra* note 10, at 14 ("Children born to mothers aged 18–19 at first birth are one-third more likely to be in foster care and 39 percent more likely to have a report of abuse or neglect during the first five years after birth than children born to mothers aged 20 or 21. After adjusting for a variety of risk factors, children of mothers aged 18–19 at first birth are 13 percent more likely to be in foster care and 24 percent more likely to be the subject of a report of abuse or neglect than otherwise similar children born to mothers aged 20–21.").

62 David O. Brink, *Immaturity, Normative Competence, and Juvenile Transfer: How (Not) to Punish Minors for Major Crimes,* 82 TEX. L. REV. 1555, 1571 (2004); Dorothy Otnow Lewis et al., *Ethics Questions Raised by the Neuropsychiatric, Neuropsychological, Educational, Developmental, and Family Characteristics of 18 Juveniles Awaiting Execution in Texas*, 32 J. AM. ACAD. PSYCHIATRY & L. 408, 409 (2004) (noting that the temporal lobes and prefrontal cortex—which are "essential for mature reasoning and self-control"—do not fully develop until late adolescence); Laurence Steinberg, *Should the Science of Adolescent Brain Development*

legal regulations have emerged centering around the idea that adults must supervise and guide minors as they are unable to make decisions in their own best interests.[63] There is a concern that minors may make choices that could potentially harm themselves or others, and, as a result, they depend on their parents and other adults for guidance.[64]

Minors are generally not thought to have the same understandings of risk and time as adults and tend to be more reactive in emotionally charged and social situations than adults due to their brain circuitry.[65] Due to brain structure, minors also tend to have more difficulty using self-control than adults because they employ a much smaller number of brain regions to accomplish these tasks than adults do.[66] Minors are also more likely to be influenced by their peers than adults, and, as a result, may be more likely to engage in risky or criminal choices.[67]

A study conducted by Dr. Jason Chein and his colleagues at Temple University used a simulated driving task to demonstrate how adolescents' actions are greatly influenced by their peers.[68] Researchers discovered that adolescents who performed the driving task in the presence of friends, as opposed to those who performed the task alone, were more likely to make risky decisions.[69] Chein and his colleagues concluded that peer influences on adolescents can contribute to risky and even dangerous behaviors.[70] Recognizing that children are not just small adults and instead have remarkably different reasoning and

Inform Public Policy?, 28 ISSUES SCI. & TECH. 67 (2012) (explaining four noteworthy structural brain changes that take place during adolescence).

63 Elizabeth S. Scott, *The Legal Construction of Adolescence*, 29 HOFSTRA L. REV. 547 (2000) (explaining that children are unable to employ a rational decision-making process because of the stage of cognitive development they are in; noting that many legal systems have decided not to hold children to the same standard of legal accountability as adults because of "their cognitive and social immaturity, and their vulnerability to undue influence"); *see also* Steinberg, *supra* note 62, at 75 ("It is known from behavioral research that the average 17-year-old is less likely than the average adult to think ahead, control his impulses, and foresee the consequences of his actions . . . .").

64 Elizabeth S. Scott et al., *Evaluating Adolescent Decision Making in Legal Contexts*, 19 LAW & HUM. BEHAV. 221, 226–27 (1995).

65 Alexandra O. Cohen & B.J. Casey, *Rewiring Juvenile Justice: The Intersection of Developmental Neuroscience and Legal Policy*, 18 TRENDS COGNITIVE SCI. 63, 64 (2014) ("The neurobiological and psychological immaturity of adolescents may render them more vulnerable to making poor decisions in [emotionally charged situations]."); *see also* Cunningham, *supra* note 21; Scott, *supra* note 63, at 591; Steinberg, *supra* note 62 ("During adolescence, very strong feelings are less likely to be modulated by the involvement of brain regions involved in controlling impulses, planning ahead, and comparing the costs and benefits of alternative courses of action.").

66 Steinberg, *supra* note 62.

67 Cunningham, *supra* note 21; Scott, *supra* note 63, at 591.

68 Jason Chein et al., *Peers Increase Adolescent Risk Taking by Enhancing Activity in the Brain's Reward Circuitry*, 14 DEVELOPMENTAL SCI. F. 1(2011).

69 *Id.*

70 *Id.*

decision making abilities, many legal systems and states have chosen to employ protectionist measures to ensure that decisions made in youth do not affect juveniles into their adult years.[71]

The Supreme Court is one such body that has taken into account developmental science in its rulings regarding different treatment for juvenile versus adult offenders.[72] The Court has recognized three main differences between minors and adults, all pointing towards not punishing juveniles as adults.[73] First, minors are likely to be more immature and irresponsible than adults, and as a result are more likely to make impulsive and poor decisions.[74] Second, minors are more susceptible to negative influences on their behavior, including peer pressure.[75] Finally, the character of minors is not as fully developed as that of an adult.[76] As a result, the Court found that minors could not be classified among the "worst offenders" for certain crimes, as adults are, because there is a strong possibility that adolescents can mature or be reformed as they continue to develop.[77]

Scientists have also suggested that, based on the evidence pointing to the fundamental differences between juveniles and adults, it may even be considered cruel and unusual punishment under the Eighth Amendment to subject teenagers to adult punishments.[78] Instead of an incarceration model for minors, some suggest that juvenile justice policies should instead aim to rehabilitate minors while reducing recidivism and should implement programs that will encourage healthy development of minors, rather than just punishing and incapacitating

71 *See infra* Part II.

72 The Supreme Court has decided a number of cases relating to juveniles in the justice system and has cited scientific evidence of immature cognitive functioning in each of these decisions. *See* Miller v. Alabama, 567 U.S. 460 (2012) (holding that mandatory sentences of life without parole for juveniles violates the Eighth Amendment); Graham v. Florida, 560 U.S. 48 (2010) (holding that juvenile offenders cannot be sentenced to life in prison without parole for non-homicide crimes); Roper v. Simmons, 543 U.S. 551 (2005) (holding that the execution of offenders under the age of eighteen violated the Eighth Amendment prohibition against "cruel and unusual punishment").

73 *Roper*, 543 U.S. at 569–70.

74 Johnson v. Texas, 509 U.S. 350, 367 (1993).

75 Eddings v. Oklahoma, 455 U.S. 104 (1982).

76 *Roper*, 543 U.S. at 570.

77 *Id.* at 569; *Johnson*, 509 U.S. at 368 ("The relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuousness and recklessness that may dominate in younger years can subside."); Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOLOGIST 1009, 1014 (2003) ("For most teens, [risky or antisocial] behaviors are fleeting; they cease with maturity as individual identity becomes settled. Only a relatively small proportion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem behavior that persist into adulthood.").

78 Cohen & Casey, *supra* note 65, at 63–65.

them.[79] A combination of brain and behavioral science led Laurence Steinberg to conclude that minors "should be viewed as inherently less responsible than adults, and should be punished less harshly than adults, even when the crimes they are convicted of are identical."[80] The discussion in Part II outlines some of the ways that court systems have taken these studies into account and held minors less responsible for their actions than adults.[81]

II. DISPARATE TREATMENT OF MINORS

A. *How Children Are Treated Differently in Juvenile Delinquency, Tort, and Contract Cases in New York*

As described above, developmental science has largely pointed towards the necessity of treating adolescents differently from adults.[82] As a result, a number of court systems have considered this research in developing their procedures.[83] The treatment of minors in juvenile delinquency,[84] tort, and contract court systems stands in stark contrast to the treatment of minors in the child welfare system, because these other systems by and large take age into account into their proceedings.[85]

1. Juvenile Delinquency

In developing the juvenile court system, for example, the founders advocated against assigning criminal responsibility to the offenses of children,[86] arguing that children could not be criminally responsible because they lacked the necessary capacity for reasoning, moral understanding, and judgment, which must be present in order to assign

79 *Id.*

80 Steinberg, *supra* note 62.

81 *See* discussion *infra* Section II.A.

82 *See* discussion *supra* Section I.C.

83 *See infra* Sections II.A.1–3.

84 While juvenile delinquency and child welfare proceedings both fall under the umbrella of New York's family court system and both are governed by the Family Court Act, they are governed by different laws. Juvenile delinquency falls under Article 3 and child welfare falls under Article 10 of the Family Court Act. N.Y. FAM. CT. ACT §§ 301.1–385.2, 1011–1085 (McKinney 2018).

85 *See infra* Sections II.A.1–3.

86 *See* ELLEN RYERSON, THE BEST-LAID PLANS: AMERICA'S JUVENILE COURT EXPERIMENT 36–37 (1978).

blame.[87] Instead, the court system was founded in an attempt to allow the state to act as a compassionate mentor and guide in its treatment of adolescents.[88]

New York has taken these notions into account in developing its own juvenile delinquency system and recognized that children accused of crimes are not the same as adult criminals.[89] Originally, New York State recognized that a child under the age of fourteen charged with a felony that was not a capital offense could be tried for a misdemeanor, if the court in its discretion deemed it appropriate.[90] This system ultimately evolved into the creation of separate children's courts, which in 1962 were consolidated into the family court system.[91]

Juvenile delinquency proceedings provide children a number of protections, including the fact that a determination of juvenile delinquency must be proved beyond a reasonable doubt.[92] Furthermore, the distinction of a "person in need of supervision"[93] was established to classify individuals over seven and under seventeen who had committed certain acts that would be classified as crimes for adults, in order to protect these adolescents from the "stigma" of being labeled as a juvenile delinquent.[94]

New York built into its statutory framework the inherent power of the court to expunge records of juvenile delinquency,[95] as well as motions attorneys for juvenile delinquents can make for the court's discretionary expungement under New York Family Court Act section 375.3 or court orders under section 375.1, which will seal the

87 *See* Elizabeth S. Scott, *Criminal Responsibility in Adolescence: Lessons from Developmental Psychology*, *in* YOUTH ON TRIAL: A DEVELOPMENTAL PERSPECTIVE ON JUVENILE JUSTICE 291 (Thomas Grisso & Robert G. Schwartz eds., 2000).

88 Julian W. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 107 (1909) (explaining that the court system was founded in an attempt to allow the state to act as a "wise and merciful father" in its treatment of adolescents); *see also In re* Gault, 387 U.S. 1, 28 (1967) (recognizing that "the condition of being a boy does not justify a kangaroo court").

89 2 CALLAGHAN'S FAMILY COURT LAW AND PRACTICE IN NEW YORK § 9:1 (rev. ed. 2017) [hereinafter CALLAGHAN'S FAMILY COURT LAW AND PRACTICE IN NEW YORK].

90 *Id.*

91 *Id.*

92 N.Y. FAM. CT. ACT § 342.2(2) (McKinney 2018) ("Any determination at the conclusion of a fact-finding hearing that a respondent committed an act or acts which if committed by an adult would be a crime must be based on proof beyond a reasonable doubt.").

93 FAM. CT. ACT § 712(a) ("'Person in need of supervision'. A person less than eighteen years of age who does not attend school in accordance with the provisions of part one of article sixty-five of the education law or who is incorrigible, ungovernable or habitually disobedient and beyond the lawful control of a parent or other person legally responsible for such child's care, or other lawful authority . . . or who appears to be a sexually exploited child . . . .").

94 CALLAGHAN'S FAMILY COURT LAW AND PRACTICE IN NEW YORK, *supra* note 89, § 9:1.

95 FAM. CT. ACT § 375.3 ("Nothing contained in this article shall preclude the court's use of its inherent power to order the expungement of court records."); *In re* K., 442 N.Y.S.2d 45 (N.Y. Fam. Ct. 1981).

presentment agency and police records.[96] Additionally, when a delinquency proceeding is terminated in favor of the respondent, the records of that proceeding are sealed (subject to a few exceptions).[97] Finally, section 354.1(7) of the Family Court Act sets forth statutory mandates that if met, allow a court to order destruction of fingerprints, palm prints, photographs, and other information related to the juvenile's case.[98]

Courts justify this statutorily mandated and discretionary expungement in order to protect a juvenile from future discrimination and hardship.[99] For example, courts will take into account that the existence of records can affect acceptance into higher education, government or private employment, and the armed services, among other professions.[100] Recognizing that the maintenance of these records may not benefit society and could cause hardship in a child's future, the incentive to expunge is strong.[101] Although courts will likely weigh the benefit to society in retaining these records, ultimately, the court has the

96 FAM. CT. ACT § 375.3 (giving the court broad power to expunge its own juvenile delinquency records); *id.* § 375.1 (after a delinquency action is terminated in favor of the juvenile, the records are sealed and not made available to any person, or public or private agency).

97 FAM. CT. ACT § 375.1(1).

> [A]ll official records and papers, including judgments and orders of the court, but not including public court decisions or opinions or records and briefs on appeal, relating to the arrest, the prosecution and the probation service proceedings, including all duplicates or copies thereof, on file with the court, police agency, probation service and presentment agency shall be sealed and not made available to any person or public or private agency.

Id.

98 *In re* Clueso, 552 N.Y.S.2d 822, 823 (N.Y. Fam. Ct. 1990) (holding that a juvenile who had pled guilty to robbery in third degree at age fifteen was entitled, to "expungement of his fingerprints, palm prints, photographs and related information" upon reaching age twenty-one without criminal conviction or pending criminal action).

99 *In re* J., 353 N.Y.S.2d 695, 696–97 (N.Y. Fam. Ct. 1974); *In re* Dorothy D., 400 N.E.2d 1342, 1343 (N.Y. 1980) ("The Law Guardian argues that the harm generated by a court record may penalize the innocent by thwarting their career ambitions. It is contended that employers generally regard a record of complaint as a judgment of guilt with the result that applicants with court records are often automatically disqualified.").

100 *In re Dorothy D.*, 400 N.E.2d at 1342.

101 *Id.*; Richard S. v. City of New York, 300 N.E.2d 426, 427 (N.Y. 1973) ("[I]n these cases where there can be no benefit to society in maintaining such records—and—where their maintenance will result in unwarranted discrimination in the child's future, he should not be further penalized, nor should irreparable harm (the antithesis of the purpose of the Family Court Act) be the end result."); *In re J.*, 353 N.Y.S.2d at 697 ("The prejudice and hardship resulting from these records has been well documented. The records may prevent, hinder or delay the consideration of the arrested person for employment, referral by employment agencies, acceptance into colleges and apprenticeship programs, public housing, the armed forces, and obtaining a license. These records may also be used to determine whether to make a subsequent arrest, to deny release prior to trial or an appeal and to determine sentence." (footnotes omitted)).

statutory jurisdiction to order the expungement of its own records, regardless of the value the court sees in maintaining them.[102]

2. Tort

Similar to the juvenile delinquency system in New York, juveniles in the tort system also have their age taken into account.[103] In New York, parents and legal guardians (but not social services departments or foster parents) are liable by statute for damages to property or the wrongful taking of property by their children aged ten to eighteen years.[104] The statute does not consider it a defense that the parent supervised the minor, although it does acknowledge that the court may consider mitigating circumstances that affect the actions of the parent or legal guardian.[105] Since courts interpreting the statute find it obvious that children will likely be unable to compensate others for their wrongful deeds, they find one of the main purposes of the statute to be an incentive for parents to supervise their children more closely, thereby recognizing that children may be less likely to engage in these actions when properly supervised by adults. [106]

Courts citing this statute have held numerous times that parents of children who damage property or harm others are to be held liable for these transgressions.[107] Because of their age and circumstances, minors

102 *In re* K., 442 N.Y.S.2d 45 (N.Y. Fam. Ct. 1981); *In re J.*, 353 N.Y.S.2d at 696–97.

103 Parents are usually not liable for the tortious actions of their children. Wilson v. Leisure Time Recreation, Inc., 746 N.Y.S.2d 821 (N.Y. Civ. Ct. 2002). However, this Section will focus on an area of tort law that takes youth into account and has endeavored to ensure that parents will more closely supervise their children so as to avoid the damage to, and conversion of, property. In this area a parent may be held liable for negligence when: the parent knows that the child has a propensity for engaging in conduct that is dangerous towards others and does not restrain the child, the parent is negligent in entrusting the child with a dangerous instrument, or when the parent is negligent in entrusting the child with an instrument that is not in itself dangerous but that could be dangerous in the hands of a child. Steinberg v. Cauchois, 293 N.Y.S. 147, 149 (N.Y. App. Div. 1937).

104 N.Y. GEN. OBLIG. LAW § 3-112(1) (McKinney 2018) ("The parent or legal guardian, other than the state, a local social services department or a foster parent, of an infant over ten and less than eighteen years of age, shall be liable . . . .").

105 *Id.* § 3-122(3) (stating that supervision of a child is not a defense, but that a court can consider mitigating circumstances if it wishes to).

106 A. v. B., 468 N.Y.S.2d 992, 994 (N.Y. Sup. Ct. 1983) (holding that a wronged individual may not receive restitution from both the child wrongdoer and then the parent, but acknowledging the purpose of the statute as an incentive for parents to more closely supervise children.); Assemb. B. 1075, 222d Leg., Reg. Sess. (N.Y. 1999) ("[T]his bill will encourage responsibility on the part of both the minor and the parent or guardian.").

107 Nolechek v. Gesuale, 385 N.E.2d 1268, 1272 (N.Y. 1978) (setting forth the standard that "[t]here is . . . a duty by a parent to protect third parties from harm resulting from an infant child's improvident use of a dangerous instrument, at least, and perhaps especially, when the parent is aware of and capable of controlling its use"); Rivera v. Meehan, No. 2010—1551WC,

are not held fully liable for their actions under the statute, and instead, their parents can be forced to bear the consequences of the poor decision making of their children.[108] There is, however a body of tort law that holds children to the adult standard of liability when they are engaged in adult activities, such as driving a car, or when they engage in hazardous activities.[109] While this body of law does occasionally hold minors responsible for their actions, there are also numerous instances in tort law of minors being treated differently than adults purely based on their age.[110]

3. Contract

Finally, New York treats minors who enter into contracts differently from contracting adults. Many states, including New York, allow minors to disaffirm most contracts entered into during minority when they reach the age of majority, based on the rationale that minors are more likely to enter into senseless contracts or make impractical decisions regarding finances.[111] The Supreme Court has also addressed this issue, recognizing that minors do not have the same discretion and experience as adults and therefore must be protected from their poor decisions.[112] New York has even allowed minors to rescind contracts while still in the age of minority, but courts will attempt to reach an equitable result for the other party.[113] The conscious decisions to take

2012 WL 3734414, at *2 (N.Y. Sup. Ct. Aug. 24, 2012) (holding that parents were liable to the plaintiffs for damages when there was "substantial evidence that defendants' son willfully participated in the damage and destruction of plaintiff's property").

108 *Nolechek*, 385 N.E.2d at 1272 ("[I]t is well-established law that a parent owes a duty to third parties to shield them from an infant child's improvident use of a dangerous instrument, at least, if not especially, when the parent is aware of and capable of controlling its use."); Joseph Mack, Comment, *Street Fights, Air Rifles, Shotguns, Minors & Their Parents—A New York Perspective on Parental Liability for the Torts of Their Minors*, 21 PACE L. REV. 441, 468 (2001) ("At some point, though, the parents must be accountable for the actions of their children, especially if they are particularly aware of dangerous conduct.").

109 *See, e.g.*, Jackson v. McCuiston, 448 S.W.2d 33 (Ark. 1969) (minor operator of tractor held to adult standard of care because the minor had been trained in tractor operation and had been operating them for a long period of time); Robinson v. Lindsay, 579 P.2d 398 (Wash. Ct. App. 1978) (holding that a minor operating snowmobile was to be held to the adult standard of care).

110 *See* Gates v. Plummer, 291 S.W. 816 (Ark. 1927) (setting forth a general rule that a minor is responsible for the degree of care that a reasonably careful minor of his age and intelligence would exercise under similar circumstances); *supra* text accompanying notes 103–09.

111 Cunningham, *supra* note 21.

112 Myers v. Hurley Motor Co., 273 U.S. 18 (1927) (allowing an infant to disaffirm a contract and recover money paid; however requiring that he must pay restitution).

113 Rice v. Butler, 55 N.E. 275 (N.Y. 1899) (allowing an infant to rescind a bargain for a bicycle and to recover installments paid, minus wear and tear for his use of the bicycle).

youth into account in these three areas of law call into question the wisdom regarding the treatment of minors as adults in the child welfare system.

B. *Teen Parents Under Article 10 of the Family Court Act*

In New York, Article 10 of The Family Court Act governs child protective proceedings (cases of abuse or neglect against children).[114] Article 10 defines a "parent" but makes no provision for any distinction between minor parents and adult parents.[115] As a result, minor parents retain full legal custody of their children.[116] In contrast to the juvenile delinquency, tort, and contract systems, which take into account the unique situations of minors in their proceedings, there is no alternate system for juvenile parents who have been accused of abuse or neglect. Since these minor parents are treated the same as adult parents for the purposes of Article 10, they are subject to the full discretion of ACS to investigate cases of abuse or neglect.[117] While the child welfare system does offer an opportunity for parents to have their records expunged if the claims against them are unfounded,[118] if the court makes a finding of abuse or neglect, a minor parent could have a report lodged in the state central register of child abuse for up to twenty-eight years.[119] This report may be made available to employers seeking to screen applicants for work in childcare and to childcare agencies if the respondent applies to

114 Article 10 of the New York Family Court Act covers all cases relating to the abuse or neglect of children, which are called child welfare cases. N.Y. FAM. CT. ACT §§ 1011–85 (McKinney 2018).

115 FAM. CT. ACT § 1012(l) ("'Parent' means a person who is recognized under the laws of the state of New York to be the child's legal parent.").

116 *In re* Lawrence Children, 768 N.Y.S.2d 83, 89 (N.Y. Fam. Ct. 2003) ("When a minor parent in foster care gives birth, she retains legal custody of her child."); *see* Troxel v. Granville, 530 U.S. 57, 72 (2000) (holding that the Due Process Clause of the Fourteenth Amendment protects the "fundamental right [of parents] to make decisions concerning the care, custody, and control" of their children and affirming a parent's right to family integrity, as long as the parent adequately cares for children); Tara Grigg Garlinghouse, *Fostering Motherhood: Remedying Violations of Minor Parents' Right to Family Integrity*, 15 U. PA. J. CONST. L. 1221, 1222 (2013) ("Minors have full parental autonomy over their children").

117 ACS is charged with the responsibility to investigate suspected acts of child abuse or neglect and to bring Article 10 proceedings when it deems it appropriate. *See* N.Y. SOC. SERV. LAW §§ 397(2)(b), 398(2)(a) (McKinney 2018); FAM. CT. ACT § 1034; *In re Lawrence Children*, 768 N.Y.S.2d at 89 ("The agency's discretion in this regard is generally not to be circumscribed by a court.").

118 Morehead v. Westchester Cty., 635 N.Y.S.2d 65, 66 (N.Y. App. Div. 1995) (claims against parents were determined to be unfounded, and as such, "pursuant to Social Services Law § 422(5), all records, including 'the records of any local child protective services or the state agency which investigated the report' were expunged"); *In re* MN, 836 N.Y.S.2d 838, 847 (N.Y. Fam. Ct. 2007).

119 FAM. CT. ACT § 1051(f)(iii) (setting forth the state central register requirements).

become a foster parent or adoptive parent, potentially becoming a lasting stigma on the record of the minor parent.[120]

Furthermore, New York mandates that preventative services, including childcare, be provided to families at risk of child protective intervention.[121] While the statute does make a special provision mandating these services for minors in the foster care system who have their children residing with them, the statute does not make any special provisions for minor parents who are not foster children, even though this is also an extremely high-risk group of parents.[122]

The New York Family Court system does put in place some provisions for the protection of parents. First, the court may issue an ACD.[123] This adjournment can be issued upon a motion of a parent or by the court sua sponte and can last no longer than one year.[124] During this one year period, the parent and child are under supervision and the supervising agency is expected to provide reports to the court.[125] This one year time period gives parents an opportunity to correct underlying issues, and if the court does not find it necessary to place the matter

120 *Id.*; *see also In re* Matthew B., 808 N.Y.S.2d 513 (N.Y. App. Div. 2005); *In re Lawrence Children*, 768 N.Y.S.2d at 90 ("In view of the fact that records of many serious crimes committed by a minor may be sealed or expunged, this consequence of a neglect finding can only be considered exceptionally harsh, notwithstanding petitioner's characterization of Article 10 proceedings as 'remedial, rather than punitive.' This would be particularly true if the respondent were unusually young, if the act of neglect was relatively minor, or if a lack of supervision of the respondent by her caretaker contributed to the commission of the neglectful act." (internal citation omitted)).

121 N.Y. COMP. CODES R. & REGS. tit. 18, § 423.4 (2018).

> Minor parents in foster care, whose own child or children are residing with them in a foster family home or residential facility, where such child or children meet the eligibility criteria . . . will be eligible for mandated preventive services . . . . [S]ervices must be provided to the minor parent and his or her child or children for the purpose of keeping the minor parent and his or her child or children together, including facilitating a custody arrangement that maintains or seeks to restore custody of the child or children of the minor parent to such minor parent except when this custody arrangement would place the child or children of the minor parent at imminent risk of abuse or maltreatment.

Id.

122 *Id.*; *see also* Goerge et al., *supra* note 61, at 276; HOFFMAN, *supra* note 10.

123 N.Y. FAM. CT. ACT § 1039 (setting forth the ACD and its procedures).

124 *Id.*

> [T]he court may upon a motion by the petitioner with the consent of the respondent and the child's attorney or upon its own motion with the consent of the petitioner, the respondent and the child's attorney, order that the proceeding be "adjourned in contemplation of dismissal" . . . . An adjournment in contemplation of dismissal is an adjournment of the proceeding for a period not to exceed one year with a view to ultimate dismissal of the petition in furtherance of justice.

Id.

125 *Id.*

back on the calendar, it is automatically dismissed after one year.[126] The court can also choose to vacate any order issued in the course of a child protective proceeding.[127] While these measures could certainly be utilized by judges more often when child parents are involved, their application is left completely to the discretion of the court.[128] The statues providing the procedures for an ACD or vacating an order are extremely vague and provide very few guiding principles for a court to consider in implementing these statutory options.[129] This is concerning because the presentation or demeanor of the minor parent may potentially influence the court's disposition.[130] The minor parent that talks back to the judge and appears callous and resistant to help, may be the minor parent that needs the assistance the most.[131] However, in many abuse and neglect cases, the focus of the court and the attorneys

126 *Id.*

127 FAM. CT. ACT § 1061 (allowing a court to vacate an order made under Article 10 "[f]or good cause shown").

128 *Id.* § 1039 (providing the court with no factors to consider when granting an ACD and simply setting forth the ACD procedure); *id.* § 1061 (neglecting to provide any standards for the court to consider in a motion to vacate an order, noting the only criteria given is "good cause," however, that statute does not define what is considered good cause).

129 *Id.* §§ 1039, 1061.

130 Patricia E. Weidler, *Parental Physical Discipline in Maine and New Hampshire: An Analysis of Two States' Approaches to Protecting Children from Parental Violence*, 3 WHITTIER J. CHILD & FAM. ADVOC. 77 (2003) (comparing the different outcomes of two cases in which children sustained similar injuries and suggesting that the demeanor and professions of the parents may have affected the court's decisions); *see also* State v. York, 766 A.2d 570 (Me. 2001) (finding that a father who inflicted corporal punishment on his child assaulted the child, noting in a footnote that the father did not appear to take responsibility for his actions and appeared to be intimidating his daughter while she testified). *But see In re* Ethan H., 609 A.2d 1222 (N.H. 1992) (finding insufficient evidence to determine that the mother (a doctor) had abused her child by inflicting corporal punishment). The following case and treatise provide examples of how a judge's feelings towards parents may affect the outcome of a family court proceeding. *See* State *ex rel.* Juvenile Dep't of Lane Cty. v. Stevens, 786 P.2d 1296, 1300 (Or. Ct. App. 1990) (Newman, J., dissenting) (pointing out the importance of the demeanor of parents during termination of parental rights proceedings in aiding the court when considering a parent's credibility and parental fitness); LINDA DIANE HENRY ELROD, CHILD CUSTODY PRACTICE & PROCEDURE § 14:14 (rev. ed., 2018) (noting that an appellate court may defer to a trial judge who had the opportunity to observe the demeanor of witnesses in an initial child custody proceeding).

131 *See* sources cited *supra* note 130. As opposed to ignoring a parent's demeanor in family court proceedings, there is evidence that judges at times actively consider it in their decision making processes, which may be very harmful to teen parents, especially those who fail to see they need help. *See In re* O.C. v. L.T., 2005 WL 1509848 (N.Y. Fam. Ct. Feb. 8, 2005) (awarding child custody to grandmother over father after hearing testimony of witnesses (including the father) and evaluating their credibility and demeanor); Rutz v. Rutz, No. V-0229-12, 2014 WL 5394466, at *1 (N.Y. Fam. Ct. Oct. 9, 2014) ("This Court has assessed the character, temperament, and sincerity of the parents, and evaluated the credibility of the parents and other witness based upon their demeanor, the manner in which they testified, and the consistency, accuracy and probability or improbability of their testimony in light of all other evidence.").

involved completely shifts to the protection of the subject child, rather than the minor parent who may also be crying for help.[132]

The fact that these measures operate on such a discretionary basis is also concerning seeing as New York sets forth the "best interests of the child" standard in its Family Court Act.[133] In determining custody placements for a child, the court will take into account a number of factors including stability, childcare arrangements, mental health of parents, prior abuse and neglect, and the court's observations of parents.[134] A court's consideration of these factors could be affected by a minor parent's youth and lead to allegations of abuse and neglect and potentially even a termination of custody.[135]

The law's concept of family rests largely on the presumption that parents are more mature and experienced and can make better judgments than their children; however, when it is clear that an entire class of parents are not fulfilling this presumption, the law should address this issue.[136] Some courts in New York are beginning to address this concern and recognize that cases of minor parents are unique.[137] Specifically, the court in *In re Lawrence Children*[138] dealt with allegations of neglect or abuse against a foster child who was also a parent and held that the child protective agency should use its discretion and not advocate for an abuse or neglect finding if a lack of supervision by the

---

132 *See* Martin Guggenheim, *How Children's Lawyers Serve State Interests*, 6 NEV. L.J. 805, 809–10 (2006) (remarking on the various forms of advocacy attorneys for children undertake depending on the label of the case (child welfare versus juvenile delinquency)).

> When children are accused of wrongdoing, lawyers tend to see their principal function to defend them. However, when the state labels children as 'victims,' their lawyers no longer see a need to protect their clients from the state. Instead, they see a need to protect them from the people whom the state has identified as harmful to their clients.

Id. This proves to be most problematic when the people the state identifies as harmful to their clients are also children.

133 FAM. CT. ACT § 1052(b)(i)(A) (considering the "best interests of the child" in making determinations about custody and removal from a child's home).

134 Angela Barker, *Best Interests of the Child*, N.Y.C. B. LEGAL REFERRAL SERV. (Jan. 2015), http://www.nycbar.org/get-legal-help/article/family-law/child-custody-and-parenting-plans/best-interests-of-the-child.

135 *See* discussion *infra* Section II.B.

136 Parham v. J.R., 442 U.S. 584, 602 (1979) ("The law's concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions. More important, historically it has recognized that natural bonds of affection lead parents to act in the best interests of their children."). Arguments such as this are problematic because research on underdeveloped adolescent brains calls into question the issue of whether or not minor parents are able to truly discern what is in the best interests of their children.

137 Stotland & Godsoe, *supra* note 41 (explaining the unique struggles facing minor parents); *see also infra* text accompanying notes 138–44.

138 *In re* Lawrence Children, 768 N.Y.S.2d 83 (N.Y. Fam. Ct. 2003).

minor parent's caretaker (the state agency) had something to do with the minor parent's neglect of their own child.[139] The court recognized that in many ways, minors cannot be held to the same standards of conduct as adults and that the standard in evaluating cases of alleged abuse or neglect should be an objective one, examining what a reasonable child of like age, intelligence, and experience under like circumstances would have done.[140] Arguing that "common sense dictates this result," the court held that a child cannot be expected to provide the same level of care as an adult nor be expected to act as an adult.[141] The court ultimately arrived at a solution, holding that while child parents are not immune from Article 10 proceedings,[142] there may be cases where the age and circumstances of the parent may lead the supervising agency to ultimately determine that the minor parent has not neglected the subject child.[143] This consideration by the court mirrors the way that other court systems also take into account the youth of certain offenders in determining their liability and the consequences of their actions.[144]

C. *How Principles That Underlie Special Treatment Under Criminal Law, Torts, and Contracts Can Be Applied to Abuse and Neglect Cases*

The factors discussed above that affect minors in the juvenile delinquency, tort, and contract court systems, such as impulsiveness,

139 *Id.*

140 *Id.* at 92 ("To implement the stated purpose of Article 10 proceedings, the Court finds that parental behavior must be evaluated objectively. Thus, the test is whether a reasonable and prudent parent would have so acted (or failed to act) under circumstances then and there existing."); *see also* Deliso v. Cangialosi, 457 N.Y.S.2d 396, 397–98 (N.Y. Civ. Ct. 1982).

141 *In re Lawrence Children*, 768 N.Y.S.2d at 92.

142 *Id.*

143 *Id.* at 93.

> We are not in any way suggesting that a minor is immune from Article 10 proceedings because of his or her age, or because he or she is in foster care. As we discussed above, the legislature has determined to make minor parents subject to such proceedings. On many occasions, a minor parent's conduct will be sufficiently egregious under the applicable standard to warrant the commencement of a proceeding and a finding by the Court. However, there will likely be other occasions where consideration of the age and circumstances of the minor parent will lead ACS to conclude that the parent has not committed acts of neglect.

Id. But see discussion *infra* Part IV (exploring concerns about whether separate proceedings for youth parents may go against the "best interests of the child" considerations that are explored at nearly every stage of Article 10 proceedings).

144 *See* discussion *supra* Section II.A.

immaturity, and underdeveloped brains, also affect minor parents.[145] Additionally, cases involving minor parents in the family court system are analogous to juvenile delinquency proceedings in that they both involve either intentional or unintentional acts.[146] Finally, by their nature, actions or omissions leading to child abuse or neglect always harm third parties—the subject child or children.[147] Similarly, wrongs leading to interactions with the juvenile delinquency, tort, and contract systems also often involve wrongs against third parties.[148] As a result of these numerous similarities, the same principles that underlie special treatment in other legal systems could also be applied to abuse and neglect cases involving minor parents.

Here, the tort model of holding parents of minor children liable for property damage that the children cause does not seem applicable or have an analogous corollary to the situation of adolescent parents, since that would involve holding adult parents responsible for the parenting acts of their minor children, a system that could be unwieldy or impossible to enforce.[149] Similarly, the contract system model permitting minors to disaffirm actions they took as minors once they reach the age of majority errs too far in the direction of not holding

145 *See* discussion *supra* Section I.C.

146 N.Y. FAM. CT. ACT § 301.2(1) (McKinney 2018) (defining juvenile delinquent as one who "committed an act that would constitute a crime if committed by an adult"); *id.* § 1012 (describing the various acts or omissions that lead to a finding of abuse or neglect); *see also In re* Kaden B. (Priscilla O.), 2016 WL 7233973 (N.Y. Fam. Ct. Dec. 7, 2016) (holding that evidence of respondent parent intentionally burning the subject child with a cigarette lighter constituted child abuse); *In re* Kiara C., No. D-11447/07, 2011 WL 2477541 (N.Y. Fam. Ct. June 21, 2011) (holding that a teen child who hid her pregnancy and birth from her family, ultimately resulting in her child's death, had acted recklessly rather than intentionally because she was immature and unable to cope emotionally with the situation and, as a result, her juvenile delinquency record should be sealed).

147 FAM. CT. ACT § 1012(f) ("'Neglected child' means a child less than eighteen years of age . . . whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care . . . ."); *see also In re* Kimberly F., 45 N.Y.S.3d 75 (N.Y. App. Div. 2017) (finding evidence that the mother neglected her child was supported by a preponderance of the evidence when the mother was notified of an incident with child, the mother stated that child was lying about being raped, the mother refused to take the child home or discuss services with children's services, and the mother failed to offer a plan for child other than foster care); *In re* Lillian SS., 45 N.Y.S.3d 640 (N.Y. App. Div. 2017) (holding that the mother neglected her daughter and derivatively neglected her older son, by her unwillingness to appreciate the risk of harm posed by the father's presence in her household, especially with respect to her infant daughter, in light of his prior convictions for sex offenses involving young children). The doctrine of derivative neglect reflects the presumption that a parent who has abused or neglected a child may have inflicted or may in the future inflict similar harm on other children who live in the household because of the parent's fundamental inability to understand the duties of parenthood. *See* FAM. CT. ACT §§ 1012 practice cmt. 6.

148 *See* discussion *supra* Section II.A.

149 *See* discussion *supra* Section II.A.ii.

minors responsible for their actions and potentially endangering the subject children for whom these minor parents continue to be responsible.[150] The most practical and feasible way to apply the principles utilized in juvenile delinquency, contract, and tort proceedings to the family court context would be to create alternate procedures and requirements for minor parents in order to fully take their youth into account during the proceedings.

While New York Family Court law does allow some discretion in cases involving minor parents,[151] the current discretion exercised is ineffective and can actually be used to harm minor parents. For example, in the case of *In re Nurayah J.*, the respondent mother (age sixteen at the time) had her child removed from her only a few days after the birth of the child, while she and her child were still in the hospital.[152] The grounds of the removal, as presented in family court, were the mother's history of behavioral problems and prior misconduct and a concern that these prior actions would place the child at risk of neglect.[153] While the family court did eventually dismiss the child protective proceeding, it did so based on due process grounds and the manner in which the child was removed from her parent, not based on the unfairness in the proceeding of judging a minor parent based on previous bad acts before she had any chance to prove herself as a fit parent.[154] It was not until this case reached the appellate court that it was recognized that the mother's past actions did not establish per se that the child was neglected.[155] While is it heartening that the appellate court recognized the unfairness of the baseless removal of a child from her mother, it is also extremely concerning that the trial court did not originally take this into account. The actions of the trial court call into question how much the adolescent mother was being unfairly judged based solely on the fact that she was a minor. Building statutory protections for minor parents into family court proceedings could combat this unfair use of discretion by the court.

150 *See* discussion *supra* Section II.A.iii.
151 *See* discussion *supra* Section II.B.
152 *In re* Nurayah J., 839 N.Y.S.2d 97, 98 (N.Y. App. Div. 2007).
153 *Id.*
154 *Id.*
155 *Id.*

D. *Other State Approaches to Minors Who Mistreat Children*

1. Pennsylvania

While New York's statutes are seemingly completely focused on the subject child who was allegedly abused or neglected, other states instead have a focus on the minor parent in determining the final disposition of a case following allegations of abuse or neglect.[156] For example, the Superior Court of Pennsylvania, in *In re Barnett*,[157] held that a mother's termination of parental rights could not be based on a failure to satisfy certain "goals" that the agency had set forth, particularly relating to employment.[158] The court took into account the fact that the minor parent was severely limited in her job prospects because of her age and considered the fact that she had attempted to obtain employment as significant in its decision making process.[159] The court also noted that neglect is a subjective condition that can be defined in many different ways and that there must be effective screening mechanisms in place to combat the risk of a state case worker erring in her decision that state intervention is necessary.[160] This decision demonstrates a positive example of the court choosing to take the youth of a parent into account when determining child welfare cases and that, at times, the model that is most effective for adult parents may not be applicable to minor parents.[161] Furthermore, this decision draws attention to a risk specific to minor parents, that the minor's demeanor may be misinterpreted by a judge, resulting in a denial of the guidance and assistance the minor parent may so desperately need.[162]

156 *See* discussion *infra* Section II.D.

157 *In re* Barnett, 450 A.2d 1356 (Pa. Super. Ct. 1982).

158 *Id.* at 1362.

159 *Id.*

160 *Id.* ("Potential caseworker misperception of a need for state intervention into family privacy must therefore require effective screening mechanisms to protect the interests of parents and their children." (quoting Richard Steven Levine, *Caveat Parens: A Demystification of the Child Protection System*, 35 U. PITT. L. REV. 1, 20 n.110 (1973)).

161 *See* discussion *supra* Part II; *see also* Garlinghouse, *supra* note 116, at 1256 (advocating for the adjustment of proceedings so that the law impacts all mothers equally and advocating for the court to consider the "complications of a parenting ward's placement, removal of biases in court proceedings, and standards of parental fitness that young mothers can achieve given the resources available to them"); *id.* at 1257 ("A minor should not be considered 'unfit' for not providing housing when they cannot sign a lease or for not purchasing appropriate clothes when they cannot get benefits and are not eligible for employment. Adults, however, have access to those resources and therefore can be held accountable for not providing them.").

162 *See supra* note 131.

2. Illinois

Furthermore, Illinois takes into account the fact that a minor parent is a ward of the state when she is accused of abuse or neglect.[163] If a report of abuse or neglect is made by a minor's foster parent or the caregiver (likely a caseworker) charged with caring for the minor parent, the agency will likely not begin a child protective investigation since the adults who called in the report are tasked with supervising the care of both the minor parent and her child.[164] Again, this model shows a type of discretion that recognizes that minor parents may not be privy to the same resources and experiences that adult parents may have and suggests that those responsible for caring for the minor parent may need to take on more of a rehabilitative role in aiding the minor parent, rather than a punitive role in punishing a parent for something she may not be able to control.

3. Vermont

Vermont has codified the age at which a person found to have abused or neglected a child can be included in the state central registry.[165] The Vermont statute requires the Commissioner for Children and Families to maintain a Child Protective Registry and to address whether the person is a juvenile or adult in the maintenance of that registry.[166] Furthermore, the statute requires a separate registry of all substantiated reports of child abuse or neglect and calls for this registry to evaluate the risk the person responsible for the abuse or neglect poses to children.[167] In assessing the risk that the person poses, this list must include consideration of the person's age and developmental maturity.[168] While the statute does not codify how age is to be considered or weighed against other factors to be evaluated, it does codify a consideration of age in assessing future risk.[169] Both of these measures presumably allow anyone looking at the state central registry to consider the age of the parent when they committed an act of abuse or neglect and potentially give the parent some leeway if the incident happened many years ago and when they were a child themselves.

163 Stotland & Godsoe, *supra* note 41, at 22–23.
164 *Id.* at 45.
165 VT. STAT. ANN. tit. 33, § 4916 (West 2018).
166 *Id.*
167 *Id.*
168 *Id.*
169 *Id.*

4. Arkansas

Arkansas has codified state central registry procedures that most closely align with the proposed measures this Note sets forth.[170] In Arkansas, when the offender was a child[171] at the time of the act or omission that led to a finding of child maltreatment,[172] the Department of Human Services is instructed to remove the respondent's name from the registry when the respondent has turned eighteen or more than one year has passed since the circumstances that led to the finding of maltreatment, as long as there have been no other acts or omissions resulting in a true finding of child maltreatment and the offender can prove by a preponderance of the evidence that they have been rehabilitated.[173] If this request to remove a respondent's name from the registry is denied, the offender may file a new petition one year later.[174] The only exception to this procedure is if the offender is found guilty of or pled guilty to a felony in circuit court for the acts that led to the finding of child maltreatment.[175] The form allowing respondents to petition for removal of their name from the state central registry gives minor offenders numerous opportunities to demonstrate their rehabilitation through documentation of treatment, remediation or rehabilitation programs, and letters of reference from numerous sources, such as professionals, spiritual counselors, employers, family, or friends.[176] These measures allow minors who have been rehabilitated to avoid the stigmatizing effects of having their name contained in the state central registry indefinitely,[177] making their name available to the over twenty different types of individuals and agencies that can access the registry.[178]

170 *See* discussion *infra* Part III.

171 ARK. CODE ANN. § 12-18-103(6) (West 2018) ("'Child' or 'juvenile' means an individual who is from birth to eighteen (18) years of age . . . .").

172 *Id.* § 12-18-103(7) ("'Child maltreatment' means abuse, sexual abuse, neglect, sexual exploitation, or abandonment . . . .").

173 *Id.* § 12-18-908(d)(2)(B).

174 *Id.* § 12-18-908(d)(3).

175 *Id.* § 12-18-908(d)(1).

176 DIV. OF CHILDREN & FAMILY SERVS., ARK. DEP'T OF HUMAN SERVS., PROCEDURE XIII-A9: NAME REMOVAL FROM CHILD MALTREATMENT CENTRAL REGISTRY BY AN ADULT OFFENDER'S REQUEST (2014), http://170.94.37.152/REGS/016.15.14-004F-14304.pdf.

177 ARK. CODE ANN. § 12-18-904.

178 *Id.* § 12-18-909.

III. PROPOSALS TO ENSURE PROTECTION OF MINOR PARENTS

As described above, a number of states are moving towards a model that treats minor parents involved in abuse and neglect proceedings differently than their adult counterparts.[179] While New York is certainly moving towards a system that takes a minor parent's age into account in child protective proceedings, this standard is still greatly left to the discretion of the court.[180] Indeed, cases like *In re Lawrence Children* seemingly offer a solution to the concerns of minor parents being treated as adults in family court; however, the case does not propose a bright line rule and recognizes that there are not any New York cases that set forth this standard per se.[181] Furthermore, the procedure for vacating an order of the court (for example, a finding of abuse or neglect) is left largely to the judge's discretion, allowing a judge to vacate an order "for good cause shown," but the statute does not define "good cause," leaving interpretation of this phrase completely up to the judge.[182]

Because it is apparent that minor parents are different than adults and should not be held to the same standard as adult parents,[183] this Note proposes codifying a protection for minor parents in the child welfare statutes by modifying an preexisting statute. There are four different statutes that would benefit from modification and all would achieve the same goal of taking the age of parents into account in child welfare proceedings.

A. *#1: Modification to N.Y. Family Court Act Section 1051*

One option for statutory modification is N.Y. Family Court Act section 1051, which sets forth the standard of maintaining a parent's name in the state central register until ten years after the eighteenth birthday of the abused or neglected subject child.[184] This statute could be amended to decrease the number of years that the parent's name stays in the register if the parent was a minor when she or he abused or neglected a child. This modification would be helpful for minor parents who abused a very young subject child because under the current

179 *See* discussion *supra* Section II.D.

180 *See* discussion *supra* Section II.B.

181 *In re* Lawrence Children, 768 N.Y.S.2d 83, 92 (N.Y. Fam. Ct. 2003).

182 N.Y. FAM. CT. ACT § 1061 (McKinney 2018).

183 *See* discussion *supra* Sections I.B–C.

184 FAM. CT. ACT § 1051(f)(iii) (setting forth the requirements about the state's central register).

statute, information about alleged abuse could potentially stay on a minor parent's record for twenty-eight years.[185] The statute could be amended to adopt the model that Arkansas uses and remove minor parents' names from the state central registry once the minor parent turns eighteen or if more than one year has passed since the circumstances that led to the finding of maltreatment.[186] Alternatively, the statute could provide that if the parent was a minor at the time of the event of abuse or neglect and the incident was an isolated one, the parent's name could be maintained on the register for less than ten years after the eighteenth birthday of the child (the exact amount of time could be determined by the legislature).[187] These measures would alleviate some concerns of parents having "stigma" on their record for a long time that would affect their eligibility to gain employment at certain jobs.[188]

Opponents of these measures may argue that this proposal could severely handicap the Administration for Children's Services in its prosecution of new cases of abuse and neglect since proof of the abuse or neglect of one child is admissible evidence on the issue of the abuse or neglect of another child (a type of neglect called derivative neglect).[189] If these records are not maintained in the state central register for as long as they currently are, courts may be prevented from using these records as evidence for cases of derivative neglect. Additionally, courts could be handicapped in attempts to place children in accordance with their best interests, since they may not be aware of past incidents of abuse or neglect involving an individual being considered to care for a child.[190] However, this Note does not propose abolishing Article 10 proceedings as to minor parents as a whole, so the concern that evidence of these proceedings will be completely unavailable to prove derivative neglect is unfounded.[191] In cases of minor parents abusing or neglecting their children, a record would still be maintained in the state central register for a number of years and would still be available in order to prove derivative abuse and neglect and to consider the fitness of individuals to care for children during the time that record is maintained. Additionally, there is also a very real possibility that minor

185 *Id.*

186 *See* discussion *supra* Section II.D.4.

187 FAM CT. ACT § 1051(f)(iii) (setting forth the requirements for the state's central register).

188 *See* discussion *supra* Introduction, Section I.C.

189 FAM. CT. ACT § 1046(a)(i) ("[P]roof of the abuse or neglect of one child shall be admissible evidence on the issue of the abuse or neglect of any other child of, or the legal responsibility of, the respondent . . . .").

190 *Id.* § 1055 (calling upon the court to make a placement determination that is in the best interests of the child).

191 *Id.* § 1046(a)(i).

parents will not abuse or neglect their children a second time, especially based on the large body of evidence demonstrating that as the majority of minors mature into adults, many of their impulsive behaviors and poor decision making abilities subside.[192] As a result, there may be no need for the use of these records in subsequent proceedings concerning derivative neglect.

A second concern centers around a worry that perhaps a minor parent will harm other children while they are working if their name is not kept on the state central register for the same number of years as an adult offender, allowing potential employers to screen out potential dangerous hires.[193] This concern is mitigated by the fact that the legislature certainly has the leeway to consider this proposal to shorten the amount of time a parent's name is kept on the state central register as well as the practical implications of this revision.[194] Should the legislature, for example, choose to shorten the length of time in the central register from ten years after the eighteenth birthday of the youngest child found to be neglected or abused[195] to nine years, the legislature would be accomplishing the goal of assisting more young people with removing their stigmatizing pasts from the state central register while also taking into account that minors have remarkably different mental capacities than adults. As the current statutory mandate of ten years after the eighteenth birthday does not seem to be rooted in a specific rationale,[196] the effects of decreasing that statutory mandate by just a few years are uncertain and could certainly be piloted in the interest of protecting minors. Other states have adopted this rationale and considered the age of respondents in abuse or neglect proceedings as well as in maintenance of state central registers of abuse and neglect.[197]

192 *See* discussion *supra* Section I.C.

193 CHILD WELFARE INFO. GATEWAY, U.S. DEP'T OF HEALTH & HUMAN SERVS., ESTABLISHMENT AND MAINTENANCE OF CENTRAL REGISTRIES FOR CHILD ABUSE REPORTS 2 (July 2014), https://www.childwelfare.gov/pubPDFs/centreg.pdf#page=2&view= (explaining that the goal of state central registries is to screen individuals who will be trusted to care for children, such as those working in child care business, schools, or the health-care industry).

194 *Rules of the Assembly: Rule III—Bills and Resolutions*, N.Y. STATE ASSEMBLY, http://assembly.state.ny.us/Rules/?sec=r3 (discussing the procedure for introducing bills, reading bills prior to their passage, and for debate over proposed legislation).

195 FAM. CT. ACT § 1051.

196 There is no information in any of the legislative history materials for the N.Y. Family Court Act section 1051 explaining why the time period of ten years after the eighteenth birthday of the abused or neglected child was chosen as the amount of time a parent is required to remain on the register.

197 *See* discussion *supra* Section II.D.

B. *#2: Modification to N.Y. Family Court Act Section 1039*

The legislature could also choose to amend the statutory provisions for an ACD.[198] While the childcare agency could continue the mandatory supervision of both minor parent and child, it is possible to extend the adjournment in contemplation of dismissal period for longer than a year to give a minor parent additional time to rectify the underlying issues leading to the case. This would aid minor parents by taking into account the fact that they may need additional time to make changes to their lifestyle or parenting abilities, for example, by finding work or obtaining stable housing. Furthermore, additional supervision over the minor parent could mitigate any potential risk to the subject child during this time period. A proposal allowing parents greater time to rectify these underlying issues leading to their case codifies the Pennsylvania common law approach, which recognizes the limitations many minor parents will have in satisfying goals that the court may put forth for the parent.[199] This proposal would provide the minor parent a greater opportunity to have the case dismissed after the lengthened ACD period, especially if no new cases have arisen and the underlying issues leading to the initial case have been resolved.[200]

While there are certainly concerns about negative effects of extending the ACD period for longer than a year, the existing ACD statute already provides the court the freedom to extend this period upon consent of all parties involved.[201] This statutory provision indicates that legislatures have already considered the possibility that a year long period adjourning the proceedings may not be appropriate in all cases.[202] This Note argues that cases involving minor parents accused of abuse and neglect are ideal candidates to be listed in the statute as an instance where the court has the freedom to extend the ACD period sua sponte, based on the court's consideration of the parent's youth and immaturity. Furthermore, if the legislature elects to modify the ACD

198 FAM. CT. ACT § 1039 (giving the court the power to adjourn the proceeding for up to one year with an ultimate disposition towards dismissal in the interest of justice).

199 *See* discussion *infra* Section II.D.1.

200 FAM. CT. ACT § 1039 (giving the court the power to impose terms on the ACD and to restore the matter to the calendar if the ACD terms are not complied with). This Note proposes that one of these terms could be to not be accused of any further abuse or neglect. *See In re* Tristen O. (Shanee S.), 1 N.Y.S.3d 804, 804 (N.Y. App. Div. 2015) (restoring a matter to the calendar after the mother failed to complete the required services and the father violated an order of protection).

201 FAM. CT. ACT § 1039(b) ("Upon the consent of the petitioner, the respondent and the child's attorney, the court may issue an order extending such period for such time and upon such conditions as may be agreeable to the parties.").

202 *Id.*

time period for minor parents, it could do so in a way that extends the outer limit of time for minor parents but still gives judges the discretion to adjourn for a shorter amount of time as well, thereby protecting children of minor parents if the court feels the need to do so.

C. *#3: Amending N.Y. Family Court Act Section 1061*

Section 1061 of the N.Y. Family Court Act, which allows a court to vacate any order the court enters, also stands ripe for revision.[203] It is noteworthy that section 422 of the N.Y. Social Services Law, which deals with amendments of reports in the statewide central register, *mandates* the petitioner's right to a hearing within ninety days of a request to amend.[204] In contrast, section 1061 of the N.Y. Family Court Act leaves the decision to have a hearing regarding a stay, modification, or vacatur of a court order completely to the discretion of a judge.[205] Section 1061 also leaves some ambiguity in its language requiring "good cause" to be shown to hear the motion, while not precisely defining what good cause can consist of.[206] While New York judges should certainly maintain the discretion to deny a motion to amend or vacate a court order,[207] this Note proposes amending section 1061 of the N.Y. Family Court Act to be more in line with section 422 of the N.Y. Social Services Law,

---

203 FAM. CT. ACT § 1061 (giving the court the power to vacate an order "for good cause shown"). The different orders that a court can enter are included in Article 10, Part 5, "Orders" and include: sustaining or dismissing a petition, suspended judgment, placement of a child with a non-respondent parent, placement of the child with the local commissioner of social services, creation of an order of protection, and granting custody to a non-respondent parent. *See* FAM. CT. ACT §§ 1051–1059.

204 N.Y. SOC. SERV. LAW § 422(8)(a)(i) (McKinney 2018)

> If the commissioner does not amend the report in accordance with such request within ninety days of receiving the request, the subject shall have the right to a fair hearing . . . to determine whether the record of the report in the central register should be amended on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with this title.

Id.

205 FAM. CT. ACT § 1061 ("For good cause shown and after due notice, the court on its own motion, on motion of the corporation counsel, county attorney or district attorney or on motion of the petitioner, or on motion of the child or on his behalf, or on motion of the parent or other person responsible for the child's care *may* stay execution, of arrest, set aside, modify or vacate any order issued in the course of a proceeding under this article." (emphasis added)).

206 *Id.*

207 *In re* N./G./T., 2015 WL 9942111, at *6 (N.Y. Fam. Ct. Dec. 24, 2015).

> While the court understands Ms. N's desire to seek expungement of the neglect report from her child protective history, the court does not agree that good cause has been shown to vacate the prior fact-finding order, nor does the court believe that it would be in the children's best interests to dismiss the underlying petition.

Id.

requiring family courts to at least hear a motion to modify or vacate an order made by a minor parent. This modification would ensure that minors are given the chance to advocate for themselves and that the court is required to at least consider taking age into account in its decision making process.

If this proposal is adopted, there is a concern that courts would be inundated with more motion practice because more minors will move to have their convictions vacated. This proposal is strengthened by the fact that New York courts already possess the power to expunge their own records under the statute as it stands.[208] This proposal is merely suggesting that more of this inherent power should be used to ensure that the age and circumstances of minors are taken into account in determinations that courts already make on a regular basis. Judges will still have discretion on the ultimate disposition of a modified vacation of an order motion, but could additionally be required to hear the motion of a minor parent, or a parent that was a minor when a finding was entered against them in family court.

While the concern regarding more motion practice is certainly a valid one, the importance of these measures cuts against the possibility of more motion practice. Courts have recognized time and time again that adolescents are not adults and, as a result, cannot be held to the same standards and proceedings that adults are.[209] The Supreme Court has even held unconstitutional measures that attempted to subject children to adult criminal justice proceedings.[210] Following those cases, juvenile delinquency courts were created, despite concerns about increased litigation, so the benefits to adolescents should outweigh the concerns in the abuse and neglect setting as well. Finally, while this concern is surely very real and important to adolescents who have been accused of abuse or neglect, statistics show that the majority of individuals who abuse or neglect children are aged eighteen to forty-four years, and offenders below the age of eighteen make up only a small portion of the population.[211] As a result, these proposed measures will not affect a majority of the Article 10 proceedings heard in New York, meaning that motion practice will likely remain substantially the same.

208 FAM. CT. ACT § 375.3 ("Nothing contained in this article shall preclude the court's use of its inherent power to order the expungement of court records.").

209 *See* discussion *supra* Section I.C.

210 *See* discussion *supra* Section I.C.

211 *See* discussion *supra* Section I.A.

D. *#4: Modifying State Central Register Procedures Under Family Court Act Section 1051*

The legislature could also consider amending the way reports are recorded in the central register to differentiate between minor offenders and adult offenders, as the statute currently makes no distinction.[212] This revision would allow employers to take into account the youth of minor offenders in hiring decisions and perhaps even disregard indicated cases based on the youth of the parent at the time the offense took place. Vermont took this approach in maintaining its state central register because the legislature recognized that being placed on a registry can damage a child's reputation and cause a loss of job opportunities.[213] As Vermont's juvenile statutes are designed to focus on rehabilitation rather than punishment,[214] the protections in place help guard against a long-lasting stigma.[215] New York could also protect against these negative consequences by similarly modifying its state central register procedures.

The strongest counterargument against this proposal is that it does not go far enough to protect minor parents and instead places the onus on employers reading the state central register to take youth into account when making hiring decisions. This proposal would hopefully help to protect minor parents from many of the stigmatizing effects of a finding of abuse or neglect against them, but would largely keep the court system out of this protective action. This proposal would likely be most effective if adopted in conjunction with any of the previously proposed measures.

---

212 FAM. CT. ACT § 1051(f)(iii) (failing to distinguish between the provisions for minors and adults relating to requirements for the state central register).

213 Maryann Zavez, *Child Abuse Registries and Juveniles: An Overview and Suggestions for Change in Legislative and Agency Direction*, 22 SETON HALL LEGIS. J. 405, 425 (1998) (explaining the potential negative consequences of one's name being listed on the state central register).

214 *See* VT. STAT. ANN. tit. 33, § 5101 (West 2018).

> The juvenile judicial proceedings chapters shall be construed in accordance with the following purposes: (1) to provide for the care, protection, education, and healthy mental, physical, and social development of children coming within the provisions of the juvenile judicial proceedings chapters; (2) to remove from children committing delinquent acts the taint of criminality and the consequences of criminal behavior and to provide supervision, care, and rehabilitation . . . .

Id.

215 Zavez, *supra* note 213, at 425–26.

IV. GENERALLY APPLICABLE COUNTERARGUMENT AND RESPONSE: PROPOSED MEASURES WILL STILL PROTECT CHILDREN

The main counterargument to creating a separate procedure for adolescent parents accused of abuse or neglect concerns potential further harm to the subject child if the minor parent is not properly monitored.[216] Allowing a child to be further harmed by a parent clearly goes against the "best interests of the child" standard articulated in the Family Court Act.[217] For this reason, courts have expressly rejected any proposal completely immunizing minor parents from Article 10 proceedings.[218] Instead, youth can simply be taken into account in the proceedings by mandating consideration by the court of a minor's age and circumstances when considering whether to vacate a court order or expunge a record.[219] While there is certainly a concern about leaving children in dangerous situations, this is a constant concern in all Article 10 proceedings where there is a possibility that a child may be in danger and the reason that Article 10 allows the court to place respondents under supervision upon release of a child to respondent parents.[220] As a result, it is possible to address this disparate treatment of minor parents in abuse and neglect proceedings not by completely negating liability, but instead by simply considering how youth may have played a role in the wrongdoing, as other court systems do.[221] Rather than tying the court's hands and preventing action if necessary to protect a subject child, a mandate that courts consider youth but still maintain the power to take action to protect the child of a minor parent if necessary, could produce results similar to those achieved in other court systems.[222] This measure would not alter the emergency procedures still available under

216 Ronald S. v. Lucille Diamond S., 846 N.Y.S.2d 85 (N.Y. App. Div. 2007) (holding that a finding of neglect against the mother, evidence of a pattern of poor parental judgment and of inattentiveness and distractibility on her part that had endangered children, was sufficient evidence to support denial of her motion to terminate supervision of her visits with her children).

217 *See supra* text accompanying note 190.

218 *In re* Tyriek W., 652 N.E.2d 168, 171 (N.Y. 1995) ("To the extent that there is concern that a particular child is being neglected or abused in the foster care placement, the supervising agency can take whatever remedial steps are necessary, including making an appropriate petition under article 10 of the Family Court Act.").

219 *See* discussion *supra* Part III.

220 N.Y. FAM. CT. ACT § 1057(b) (McKinney 2018) ("In conjunction with an order releasing a child . . . the court may place the respondent or respondents under supervision of a child protective agency or of a social services official or duly authorized agency."); *see also In re* Romeo M., 942 N.Y.S.2d 827, 827–28 (N.Y. App. Div. 2012) ("[T]he mother [was placed] under petitioner's supervision pursuant to Family Court Act § 1057 upon a finding that she neglected the subject children.").

221 *See* discussion *supra* Section II.A.

222 *See* discussion *supra* Section II.A.

Article 10 at all, and would still give ACS the power to intervene in a seriously dangerous situation.[223]

CONCLUSION

The ideal case for these statutory modifications to apply would be a case where a minor parent has made a mistake that resulted in a finding of abuse or neglect, has taken sufficient steps to correct the error, and has demonstrated insight and a desire to not repeat the error in question.[224] In cases such as this, there is no benefit to society to keep the names of these minor parents on file in police and court records, and the court should have the power to make modifications with the best interests of the minor parents in mind.

The opportunity for minor parents to have their records of abuse or neglect expunged provides them with a chance to move on with their lives after what was certainly an extremely trying and difficult time. As other states have already codified protections similar to what is suggested here, and New York is already moving in a direction involving taking youth into account, the proposals contained in this Note provide a logical next step to achieve a balance between protecting both young subject children and their minor parents.

223 FAM. CT. ACT § 1024(a) (allowing emergency removal of a child from a home, custody of a parent, or person legally responsible for the child, if there is a reasonable belief that the person responsible for the child is presenting an imminent danger to the child's life or health).

224 *In re* J., 353 N.Y.S.2d 695, 697 (N.Y. Fam. Ct. 1974) ("[M]ovant fails to set forth any ways in which society will benefit from the retention of Respondent's name and the names of Respondent's parents on police and court records. This Court can find no way in which society will benefit by the granting of [the motion to vacate order of expungement]."); *see also* Guggenheim, *supra* note 132, at 811 ("But the problem is that children's lawyers commonly fail to do a good enough job distinguishing between these serious safety cases (including cases involving severe neglect that exposes children to serious harm), which are relatively rare, and the large majority of cases in which children are ordered into foster care even though they have not suffered, and there is no serious risk of suffering, serious harm.").