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NOTE

CHILDHOOD ON THE LINE, PROTECTIONS LEFT BEHIND: A CALL FOR THE UNITED STATES RATIFICATION OF THE CONVENTION ON THE RIGHTS OF THE CHILD

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Imagine being part of a relay race with 196 runners, each essential to finishing the race. One by one, each runner passes the baton smoothly from one runner to the next, advancing the team toward the finish line. The last runner, despite his participation in training and ready stance on the track, refuses to take the baton. In fact, he just stands there and refuses to run, preventing the entire team from achieving its shared goal: for every runner to complete the race. Disappointing as it may be this metaphor reflects

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reality. In the global race to protect children and uphold their rights, 196 member States of the United Nations have run the race. Yet one country, the United States, has yet to cross the finish line.¹

In 1979, conversations surrounding children's issues gained momentum in the international community.² That year, termed the "International Year of the Child" by the United Nations General Assembly, began with a proposal from the government of Poland to draft a convention focusing on the rights of a child.³ The concern motivating the proposal stemmed from reports highlighting the widespread injustices faced by children around the world, including: "high infant mortality, deficient health care, [and] limited opportunities for basic education. There were also alarming accounts of children being abused and exploited in prostitution or in harmful jobs, of children in prison or in other difficult circumstances, and of children as refugees and victims of armed conflict."⁴

While existing human rights treaties offered some protection for children, member States advocated for the creation of "a comprehensive statement on children's rights which would be binding under international law."⁵ As a result, leaders from around the world joined together in a shared commitment to uphold and protect the rights of children globally.⁶ On November 20, 1989, the United Nations General Assembly unanimously adopted the Convention on the Rights of the Child ("Convention").⁷ The next phase in implementing the Convention focused on encouraging member States to ratify it, with the ultimate goal of achieving universal ratification by 1995.⁸ As of December 2015, 196 member States have ratified the Convention.⁹ Today, the United States remains the only member State that has not ratified the Convention, preventing universal ratification.¹⁰

The question of ratifying the Convention in the United States has

1. See *Background to the Convention: Committee on the Rights of the Child*, UNITED NATIONS HUM. RTS. OFF. OF THE HIGH COMM'R, <https://www.ohchr.org/en/treaty-bodies/crc/background-convention> [<https://perma.cc/7XAL-Y3VS>] (last visited Aug. 23, 2025) [hereinafter *Background to the Convention*].

2. See *id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. See *id.*

sparked significant debate across the nation.¹¹ Opponents of the Convention express concern that its ratification would infringe on state and federal sovereignty, as “ratified treaties are considered the ‘supreme Law of the Land’ under the U.S. Constitution, [and] the Convention could supersede both national and local laws.”¹² Additionally, opponents argue that ratifying the Convention could intrude on intimate family matters by granting the government authority over decisions related to a child’s upbringing, education, and discipline.¹³ They also express concern that the UN Committee on the Rights of the Child would be empowered to decide what constitutes the best interests of American children.¹⁴

In contrast, proponents of the Convention contend that its primary aim is to protect children from government overreach and abuse—not to undermine parental authority.¹⁵ They further argue that the United States’s failure to ratify the Convention has raised doubts among foreign governments, thereby casting uncertainty on the nation’s commitment to advancing children’s rights globally.¹⁶

Nonetheless, opponents remain concerned that ratifying the Convention would erode the United States’s sovereignty, particularly in areas governed by the states, such as juvenile justice.¹⁷ Although the United States has not ratified the Convention, many of its juvenile justice policies and protections reflect aspects of the Convention’s principles. Still, significant disparities persist, leaving many children in the United States without full protection or realization of their rights.

This Note advocates for the United States to ratify the Convention on the Rights of the Child, emphasizing that such action would affirm the nation’s commitment to safeguarding its children—particularly those within the juvenile justice system. The Note proposes a way to reconcile opposing perspectives on ratification and contends that, while ratification alone may not fully address all challenges in the juvenile justice system, it would mark a significant step toward strengthening children’s rights and protections. Moreover, ratification would serve as a foundation for accountability and future reform across all areas of children’s rights, both domestically and internationally. This Note recognizes that children

11. See LUISA BLANCHFIELD, CONG. RSCH. SERV., R40484, THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD 7 (2015).

12. *Id.* at 8.

13. *Id.* at 9.

14. *Id.*

15. *Id.* at 10.

16. *Id.* at 16.

17. *Id.* at 6.

sometimes engage in harmful or unlawful conduct and should not be read as excusing such behavior. Rather, the Note seeks to promote stronger protection for children by responding in ways that support accountability, growth, and healthier outcomes for both children and society.

The Note proceeds as follows: Part I outlines the key principles and objectives of the Convention, focusing on two specific articles related to juvenile justice that form the foundation of the argument. Part II analyzes the current legal landscape in the United States as it relates to juvenile justice and conducts a comparison with the relevant provisions of the Convention. It also highlights horrific allegations of abuse suffered by children in custody across the nation—cases where children’s rights were utterly ignored—demonstrating the need for accountability and reform. Finally, Part III explores the key arguments for and against ratification and offers a potential solution to bridge the divide between opposing viewpoints.

I. SETTING THE INTERNATIONAL STANDARD: THE CONVENTION’S KEY PRINCIPLES AND JUVENILE JUSTICE OBLIGATIONS

In an effort to guide member States in crafting policies and programs that enable children to fully realize their rights, the Convention lays out four general principles that serve as a foundation for its interpretation and implementation.¹⁸ Moreover, to ensure effective adherence to these principles, Article 44 of the Convention requires member States to submit periodic reports to the Committee on the Rights of the Child every five years.¹⁹ These reports must detail the measures taken to implement the Convention, while also documenting both the progress made and the challenges faced in protecting children’s rights within the jurisdiction.²⁰

The first of the four general principles is the principle of non-discrimination, articulated in Article 2 of the Convention, which guarantees that each and every child shall enjoy his rights free from discrimination based on race, ethnicity, gender, religion, language, disability, birth, or any other status of the child or that of his parent.²¹ The second principle, found in Article 3 of the Convention, asserts that “[i]n all actions concerning children, whether undertaken by public or private

18. *Background to the Convention*, *supra* note 1.

19. Convention on the Rights of the Child, art. 44, Nov. 20, 1989, 1577 U.N.T.S. 3.

20. *Id.*

21. *Id.* at art. 2, 1577 U.N.T.S. at 46.

social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”²²

The third principle, laid out in Article 6, mandates that member States uphold the rights to life, survival, and development to the fullest extent.²³ This concept of development encompasses “not only physical . . . but also mental, emotional, cognitive, social and cultural development.”²⁴ Finally, Article 12 emphasizes that the views of a child in matters affecting him must be given appropriate consideration according to the child’s age and maturity, recognizing children as capable of forming their own views and opinions and as deserving of the chance to be heard and taken seriously.²⁵

While the Convention’s general principles establish universal rights owed to all children, these principles take on particular importance within the field of juvenile justice. The Convention recognizes that children who have come into contact with the juvenile justice system require special protections that reflect their developmental status and vulnerability.²⁶ Articles 37 and 40 specifically establish concrete safeguards to ensure a child’s treatment in the juvenile justice system is consistent with the Convention’s principles.²⁷

Article 37 of the Convention mandates that member States ensure the following protections are given to children incarcerated within their jurisdiction:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

22. *Id.* at art. 3(1), 1577 U.N.T.S. at 46.

23. *Id.* at art. 6, 1577 U.N.T.S. at 47.

24. *Background to the Convention*, *supra* note 1.

25. Convention on the Rights of the Child, *supra* note 19, art. 12, 1577 U.N.T.S. at 48.

26. *See id.* arts. 37, 40, 1577 U.N.T.S. at 55-57.

27. *See id.*

- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.²⁸

Additionally, Article 40 focuses on the administration of juvenile justice proceedings and seeks to ensure:

- 1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
- 2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
 - (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the

28. *Id.* at art. 37, 1577 U.N.T.S. at 55-56.

time they were committed;

- (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

- (i) To be presumed innocent until proven guilty according to law;
- (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
- (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
- (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
- (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
- (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
- (vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment

of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

- (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
 - (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.
4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.²⁹

Although the United States has not ratified the Convention, its juvenile justice system nevertheless reflects several of the Convention's core principles, demonstrating a degree of commitment to the rights of children in custody. However, significant inconsistencies and gaps in practice persist, leaving the childhood of many at risk, as some protections envisioned by the Convention remain unfulfilled. These shortcomings warrant critical examination and strengthen the case for ratification. The following section will analyze where the United States's juvenile justice policies align with the Convention's mandates and where they fall short.

II. THE UNITED STATES'S JUVENILE JUSTICE SYSTEM THROUGH THE LENS OF THE CONVENTION'S FOUR FOUNDATIONAL PRINCIPLES

A. Non-Discrimination

As previously discussed, one of the Convention's four core principles is non-discrimination, which mandates that all member States guarantee every child within their jurisdiction the enjoyment of rights free from any

29. *Id.* at art. 40, 1577 U.N.T.S. at 56-57.

form of discrimination.³⁰ In the context of juvenile justice, this principle demands that a child's treatment in the system not be affected by factors such as race, ethnicity, socioeconomic status, disability, or any other immutable characteristic of the child.³¹ While the United States has acknowledged the importance of protecting children from discrimination within its juvenile justice system, and has taken some steps in this direction, these efforts have fallen short of fully aligning with the Convention's principle of non-discrimination.

One such initiative to combat discrimination within the juvenile justice system in the United States was the enactment of the Juvenile Justice and Delinquency Prevention Act of 1974 ("JJDP").³² Passed in response to nationwide concerns about rising juvenile crime and delinquency, the JJDP aims to address these issues through coordinated efforts among federal, state, tribal, and local governments.³³ The JJDP's purpose supports congressional findings that collaborative, community-based programs tailored to the needs of juveniles could both deter delinquency "and help delinquent youth return to a productive life."³⁴ One such provision of the JJDP mandates that governments at all levels implement policies and systems "to identify and reduce racial and ethnic disparities among youth who come into contact with the juvenile justice system."³⁵

Despite such efforts, systematic issues continue to plague the juvenile justice system in the United States, resulting in significant disparities among the youth who come into contact with it. National data reveals that youth of color are disproportionately impacted at every stage of the juvenile justice process.³⁶ Black youth are more likely than their white counterparts "to be arrested, referred to court, petitioned after referral (i.e., handled formally), and placed in an out-of-home facility after being adjudicated" as a delinquent.³⁷ For instance, in 2019, Black youth were 2.4

30. *Id.* at art. 2, 1577 U.N.T.S. at 46.

31. *See id.*

32. 34 U.S.C. § 11101 (originally enacted as Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. No. 93-415, 88 Stat. 1109).

33. *See id.* § 11102.

34. *Id.* § 11101(a)(11).

35. *Id.* § 11133(a)(15).

36. *Racial and Ethnic Disparity in Juvenile Justice Processing*, OFF. OF JUV. JUST. & DELINQ. PREVENTION (Mar. 2022) [hereinafter *Racial and Ethnic Disparity in Juvenile Justice*], <https://web.archive.org/web/20250110172308/https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/racial-and-ethnic-disparity#9-0> (on file with the Oklahoma City University Law Review).

37. *Id.*

times more likely to be arrested than white youth, and American Indian youth faced arrest at 1.5 times the rate of their white peers.³⁸

To demonstrate the prevalence of disparity relative to the national population, the 2019 Census of Juveniles in Residential Placement reported that for every 100,000 youths in the population, 315 Black youths were in custody compared to 72 white youths in custody—“a ratio of approximately 4.4 to 1.0.”³⁹ National data shows that the racial disparity follows youth who are transferred to the adult system.⁴⁰ In the following year, 2,731 delinquency cases involving children under the age of seventeen were waived to the adult criminal justice system, meaning those minors were prosecuted as adults for their alleged offenses.⁴¹ Of those cases, “2,537 involved a male juvenile, 194 involved a female juvenile, 825 involved a white juvenile, and 1,490 involved a Black juvenile.”⁴²

A central factor contributing to these disparities is the harsh reality that resources for delinquency prevention and treatment are not equally distributed across communities in the United States.⁴³ Many at-risk youth in economically disadvantaged communities face significant barriers, such as inadequate public education, exposure to violence, association with delinquent peers, and family-related risk factors such as parental incarceration, single-parent households, or lack of adequate supervision in the home—all of which contribute to juvenile delinquency.⁴⁴ When effective prevention programs that address these risks are either inaccessible to minority youth or are “designed for white, suburban youth,” the outcomes for minority youth are often less successful.⁴⁵

Significant disparities in youth arrest rates, detention populations, and transfers to adult courts suggest that minority youth are subjected to differential treatment within the United States juvenile justice system compared to their white counterparts. In addition, unequal access to resources further highlights the system’s failure to uphold the

38. *Id.*

39. *Id.*

40. *See Youth in the Adult Criminal Justice System*, OFF. OF JUV. JUST. & DELINQ. PREVENTION (Mar. 2024) [hereinafter *Youth in the Adult System*], <https://web.archive.org/web/20250222025512/https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/youth-in-the-adult-criminal-justice-system> (on file with the Oklahoma City University Law Review).

41. *Id.*

42. *Id.*

43. *See Racial and Ethnic Disparity in Juvenile Justice*, *supra* note 36.

44. *Id.*

45. *Id.*

Convention’s mandate that all children—regardless of their background—receive equal treatment and protection under the law. In a perfect America, demographic disparities would not exist within the systems addressing juvenile delinquency. However, the current reality remains far from this ideal. The persistence of disparity within juvenile justice cannot be resolved solely through policy reforms within the system itself, as these issues are deeply rooted in broader structural inequalities across the United States. Nevertheless, ratification of the Convention could serve as a catalyst for systematic change aimed at addressing the underlying conditions that perpetuate inequities, not only in juvenile justice but across all systems that touch the lives of children in the United States.

B. Best Interest of the Child

Few legal principles carry as much weight as “the best interest of the child.”⁴⁶ It serves as a legal compass for decision makers responsible for the welfare of children.⁴⁷ But when, if ever, should this standard cease to apply? Should a child’s best interest be disregarded merely because he is accused of a crime? Or does this interest suddenly cease to matter the moment he turns eighteen? The Convention argues it should not.⁴⁸

Article 3 of the Convention mandates that the best interest of the child must be the primary consideration in all actions and decisions that affect the child, whether made by public or private entities, courts of law, administrative authorities, or legislative bodies.⁴⁹ The principle seeks to ensure that the child’s welfare, development, and dignity are always at the forefront of each decision.⁵⁰ In the context of juvenile justice, this means that actions involving a child accused of a crime should be guided by the best interest of that particular child. Despite the United States not ratifying the Convention, some aspects of its juvenile justice system align with the best interest principle, particularly under Articles 37 and 40, both of which focus on the treatment of children who have been deprived of liberty and accused of a criminal offense.⁵¹

46. See *Determining the Best Interests of the Child*, CHILD WELFARE INFO. GATEWAY (Sep. 2023) <https://www.childwelfare.gov/resources/determining-best-interests-child/> (on file with the Oklahoma City University Law Review).

47. *Id.*

48. See Convention on the Rights of the Child, *supra* note 19, art. 3, 1577 U.N.T.S. at 46.

49. *Id.*

50. See *id.*

51. See *id.* at arts. 37, 40, 1577 U.N.T.S. at 55-57.

As laid out above, Article 40 guarantees that every child accused of a criminal offense has the following rights: 1) presumption of innocence until proven guilty; 2) prompt and direct information about the charges brought against him; 3) timely and fair hearings held by an independent and impartial authority with legal assistance; 4) protection against self-incrimination along with the right to confront adverse witnesses and present witnesses; 5) right to appeal any decision to a higher authority; 6) free assistance of an interpreter when necessary; and 7) respect and privacy at all stages of the proceedings.⁵²

In 1967, well before the Convention's inception, the United States Supreme Court recognized that juvenile defendants are entitled to due process protections.⁵³ In the summer of 1964, Gerald Gault and another boy were arrested and held in a detention center after a neighbor filed a verbal complaint accusing them of making sexually inappropriate phone calls.⁵⁴ Gault's parents were not notified that their son had been taken into custody and were unaware of his whereabouts when they returned home from work.⁵⁵ Once they discovered he was being held at a detention center, they visited the facility and were informed that a hearing would take place the next day.⁵⁶ Although a petition was filed with the court, it was never served to Gault or his family.⁵⁷ At the hearing, the court did not place a single person under oath and made no official record of what transpired that day.⁵⁸ This led to inconsistent accounts of what had occurred, and the neighbor who filed the complaint was not present to testify because the judge stated that "she didn't have to be present at that hearing."⁵⁹ Ultimately, Gault was found to be delinquent.⁶⁰

On appeal, the Supreme Court found that the lower court ruled incorrectly and violated Gault's constitutional rights.⁶¹ In its landmark decision, the Court established that juveniles are entitled to due process protections, emphasizing "[d]ue process of law is the primary and indispensable foundation of individual freedom."⁶² The Court held that

52. *Id.* at art. 40(2)(b)(i)-(vii), 1577 U.N.T.S. at 57.

53. *See In re Gault*, 387 U.S. 1, 4 (1967).

54. *Id.* at 4.

55. *Id.* at 5.

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.* at 7.

60. *Id.* at 7-8.

61. *See id.* at 4.

62. *Id.* at 20.

juvenile defendants must receive the following rights: 1) written notice of the specific charges or factual allegations against him;⁶³ 2) notification to both the child and his parents of the right to legal representation, including the appointment of counsel if the child cannot afford it;⁶⁴ 3) protection against self-incrimination under the Fifth Amendment;⁶⁵ 4) confrontation and cross examination of adverse witnesses as guaranteed by the Sixth Amendment;⁶⁶ and 5) appellate review.⁶⁷ By recognizing these rights, the Court ensured that delinquency proceedings should not only comply with constitutional standards but also safeguard the child's welfare by promoting fair and lawful treatment under the law.⁶⁸

Additionally, Article 37 reinforces the protection of children's rights within the justice system by prohibiting member States from imposing capital punishment or life imprisonment without the possibility of parole for offenses committed by individuals under the age of eighteen.⁶⁹ It further mandates that no child shall be "unlawfully or arbitrarily" deprived of liberty, emphasizing that "detention . . . shall be used only as a measure of last resort and for the shortest appropriate period of time."⁷⁰ The Article also mandates that a child deprived of liberty be afforded humane and dignified treatment, be held separately from adults unless such separation is not in the child's best interest, and be permitted to maintain contact with his family.⁷¹ Lastly, it guarantees that every detained child has the right to legal assistance and the right to promptly challenge the legality of his detention before a competent authority.⁷²

In advancing the protection of juveniles in accordance with their best interests, the United States Supreme Court, in *Roper v. Simmons*, held that the imposition of the death penalty on individuals under the age of eighteen violates the Eighth Amendment's prohibition on cruel and unusual punishment.⁷³ The Court identified three key distinctions between juveniles and adults that render juveniles less culpable and thus ineligible

63. *Id.* at 33-34.

64. *Id.* at 40-41.

65. *Id.* at 55.

66. *See id.* at 42-43, 56.

67. *See id.* at 58.

68. *See id.* at 19-20, 26-28, 30-31.

69. Convention on the Rights of the Child, *supra* note 19, art. 37(a), 1577 U.N.T.S. at 55.

70. *Id.* at art. 37(b), 1577 U.N.T.S. at 55.

71. *Id.* at art. 37(c), 1577 U.N.T.S. at 56.

72. *Id.* at art. 37(d), 1577 U.N.T.S. at 56.

73. *Roper v. Simmons*, 543 U.S. 551, 568 (2005).

for the most severe punishment.⁷⁴

First, as any parent knows and as the scientific and sociological studies . . . confirm, “[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.”⁷⁵

Second, “juveniles are more vulnerable [and] susceptible to negative influences and outside pressures, including peer pressure.”⁷⁶ And unlike an adult, a child often has little to no control over his environment and lacks the capacity to remove himself from one that may foster criminal behavior.⁷⁷ Lastly, the Court explained that a juvenile’s character is “transitory,” meaning his personality and behavior will change over time as the child matures, undermining the claim “that a juvenile falls among the worst offenders.”⁷⁸

Five years later, the Supreme Court in *Graham v. Florida* held that sentencing a juvenile to life without the possibility of parole for a non-homicide offense “is an especially harsh punishment for a juvenile” and violates the Eighth Amendment.⁷⁹ The Court recognized the disproportionate impact of this sentence on youth, noting that “[u]nder this sentence a juvenile offender will on average serve more years and a greater percentage of his life in prison than an adult offender. A 16-year-old and a 75-year-old each sentenced to life without parole receive the same punishment in name only.”⁸⁰ The Court acknowledged that Graham posed a threat to public safety and deserved separation from the community to prevent a continued pattern of criminal behavior.⁸¹ However, it rejected the notion that Graham would be a risk to his community for the rest of his life and held that “[a] life without parole sentence improperly denies the juvenile offender a chance to demonstrate growth and maturity.”⁸²

74. *Id.* at 569.

75. *Id.* (alteration in original) (quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993)).

76. *Id.* (citing *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982)).

77. *See id.* at 570.

78. *Id.*

79. *Graham v. Florida*, 560 U.S. 48, 52-53, 70, 74 (2010).

80. *Id.* at 70.

81. *Id.* at 73.

82. *Id.*

Two short years after the *Graham* decision, the Supreme Court handed down another pivotal decision in *Miller v. Alabama* and held “that mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment’s prohibition on ‘cruel and unusual punishments.’”⁸³ Building upon its earlier decisions in *Roper* and *Graham*, the Court found mandatory life sentences for juveniles were impermissible because “every juvenile [would] receive the same sentence as every other—the 17-year-old and the 14-year-old, the shooter and the accomplice, the child from a stable household and the child from a chaotic and abusive one.”⁸⁴ The Court declared that by treating all juvenile offenders identically, mandatory life without parole disregards the individual circumstances of the child and overlooks his potential for rehabilitation, especially when such potential is most evident.⁸⁵

By prohibiting states from making a definitive, irrevocable judgment at the outset that a juvenile offender is incapable of rehabilitation, *Roper*, *Graham*, and *Miller* all affirm a core aspect of the best interest principle of the Convention. These decisions reflect a broader recognition in international law that, due to their developmental differences from adults, children must be treated as such in the justice system.⁸⁶ Nonetheless, as explored below, many ongoing practices in the United States remain at odds with the Convention’s best interest standard, underscoring the need for its ratification.

In 2021, the Supreme Court held in *Jones v. Mississippi* that although a court must consider a juvenile’s age, it is not required to make a formal determination that the child is incapable of rehabilitation before sentencing him to life without parole, clarifying its decision in *Miller*.⁸⁷ Instead, the Court deferred the decision of whether juveniles may be sentenced to life without parole to the states, explaining that:

States may categorically prohibit life without parole for all offenders under 18. Or States may require sentencers to make extra factual findings before sentencing an offender under 18 to life without parole. Or States may

83. *Miller v. Alabama*, 567 U.S. 460, 465 (2012).

84. *Id.* at 477.

85. *Id.* at 477–78.

86. See Convention on the Rights of the Child, *supra* note 19, arts. 3(1), 37(a), 1577 U.N.T.S. at 46, 55.

87. See *Jones v. Mississippi*, 593 U.S. 98, 101 (2021) (citing *Montgomery v. Louisiana*, 577 U.S. 190, 211 (2016)).

direct sentencers to formally explain on the record why a life-without-parole sentence is appropriate notwithstanding the defendant's youth.⁸⁸

Consequently, jurisdictions across the United States vary significantly in how they handle juvenile life without parole.⁸⁹ Today, twenty-eight states have prohibited juvenile life without parole as an available sentence; five states allow the sentence but have no juveniles currently serving such a sentence; and twenty-two states, including Oklahoma, continue to permit it as an available sentencing option.⁹⁰ The absence of a uniform federal policy in the United States means that a child's opportunity for rehabilitation depends on the jurisdiction in which he lives. Such an inconsistency could be eliminated by ratifying the Convention, which would render juvenile life without parole unconstitutional across the nation.⁹¹

Despite the recognized developmental differences between children and adults, jurisdictions in the United States allow for juvenile transfer—the process by which juvenile cases are transferred to the adult system for prosecution.⁹² The most common mechanisms for transferring juveniles to the adult system include: 1) judicial waiver, in which a juvenile judge relinquishes jurisdiction and sends the case to the adult court; 2) statutory exclusion, where state law automatically requires certain offenses to be tried in adult court; and 3) prosecutorial direct file, which grants prosecutors the sole discretion to charge a child in either juvenile or adult court.⁹³

Though there has been a significant decline in juvenile transfers since its peak in 2008, the practice and its harmful consequences persist.⁹⁴ Once transferred to the adult system, “[t]he once an adult[,] always an adult” policy attaches, meaning that a juvenile prosecuted in the adult system may subsequently be incarcerated in an adult jail or prison—a result in direct violation of the protections outlined in Article 37 of the

88. *Id.* at 120.

89. *See Juvenile Life Without Parole by State*, THE CAMPAIGN FOR THE FAIR SENT'G OF YOUTH, <https://cfsy.org/media-resources/states-that-ban-juvenile-life-without-parole/> [https://perma.cc/BRJ3-A8H2] (last visited Sep. 28, 2025).

90. *Id.*

91. *See* Convention on the Rights of the Child, *supra* note 19, art. 37(a), 1577 U.N.T.S. at 55.

92. *See Youth in the Adult System*, *supra* note 40.

93. *Id.*

94. *See id.*

Convention.⁹⁵

It is difficult to argue that housing a child among adult offenders serves the child's best interest. In fact, research indicates that placing a juvenile in an adult facility can result in serious harm, both to the child and to society as a whole.⁹⁶ Such an environment "can be extremely detrimental to [a child's] development, especially for [those] who have been seriously affected by adverse childhood experiences (ACEs), resulting in trauma."⁹⁷ Additionally, juveniles held in adult facilities often lack access to the rehabilitative programs, mental health services, and supportive resources that are typically available in juvenile detention centers.⁹⁸

There is no denying that some juveniles commit grave, even horrific crimes that undoubtedly demand accountability and consequences. But recognizing the severity of a child's actions should not erase the recognition of what makes a child fundamentally different than an adult. Regardless of the offense, sentencing a child to a sentence with no hope of release, or placement in an adult environment, takes away the possibility and opportunity for rehabilitation. No matter how serious the crime is, it is hard to argue that such conditions serve the best interest of any child. Perhaps ratifying the Convention and committing to its principles would ensure that a child who is "high risk and beyond rehabilitative repair" is given the opportunity for change and reaffirm that a child's best interest does not and should not cease to matter when it, in fact, matters the most.⁹⁹

C. The Right to Life, Survival, and Development

Article 6 of the Convention calls for member States to ensure that every child has the right to life, survival, and development.¹⁰⁰ This provision emphasizes not only the protection of life, but also promotes the holistic development of children.¹⁰¹ It encompasses a wide range of developmental areas, including: physical, mental, cognitive, emotional, and cultural development.¹⁰² In the context of juvenile justice, this

95. *Id.*; see Convention on the Rights of the Child, *supra* note 19, art. 37(c), 1577 U.N.T.S. at 56.

96. *Youth in the Adult System*, *supra* note 40.

97. *Id.*

98. *Id.*

99. *Id.*

100. Convention on the Rights of the Child, *supra* note 19, art. 6, 1577 U.N.T.S. at 47.

101. *Id.*

102. *Background to the Convention*, *supra* note 1.

principle requires member States to protect and support the development of youth within the system, reinforcing the focus on rehabilitation.

One area of alignment with this principle is reflected in the Every Student Succeeds Act of 2015, which guarantees the right to education for children involved in the juvenile justice system.¹⁰³ The Act aims “to provide *all* children significant opportunity to receive a fair, equitable, and high-quality education.”¹⁰⁴ It specifically states that detained children have the same right to an education comparable to that of their non-detained peers, allowing them “to meet the same challenging State academic standards that all children in the State are expected to meet.”¹⁰⁵ However, research indicates that this is not the case in practice.¹⁰⁶

Investigation into the educational quality within juvenile detention facilities across the United States has revealed that the educational services provided do not meet the same standards as those in the community.¹⁰⁷ One study “found that facility staff often do not receive adequate training on how to address the developmental needs of the population of youth in confinement and how to ensure continuity of education.”¹⁰⁸ Another study conducted in 2015 revealed “that only eight states provided educational and vocational services of equal quality to the services that youth received in the community.”¹⁰⁹ Further exacerbating the problem, many teachers in detention facilities are unqualified to teach, students receive limited classroom instruction compared to their non-detained peers, and educational programs often fail to meet the needs of the 30–70% of youth with learning disabilities.¹¹⁰

Moreover, roughly two-thirds of youths in juvenile detention facilities

103. See 20 U.S.C. § 6301 (originally enacted as Elementary and Secondary Education Act of 1965, Pub. L. No. 89-10, 79 Stat. 27).

104. *Id.* (emphasis added).

105. 20 U.S.C. § 6421(a)(1).

106. See Deneil Christian, *Education Behind Bars: A Review of Educational Services in Juvenile Correctional Facilities*, COLUMBIA S. UNIV.: COLL. OF SAFETY & EMERGENCY SERVS. ACAD. J. (Mar. 28, 2022) <https://csesjournal.columbiasouthern.edu/education-behind-bars-a-review-of-educational-services-in-juvenile-correctional-facilities/> (on file with the Oklahoma City University Law Review).

107. OFF. OF JUV. JUST. & DELINQ. PREVENTION, EDUCATION FOR YOUTH UNDER FORMAL SUPERVISION OF THE JUVENILE JUSTICE SYSTEM 7 (2019) [hereinafter *Education for Youth*] https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/education_for_youth_under_formal_supervision_of_the_juvenile_justice_system.pdf (on file with the Oklahoma City University Law Review).

108. *Id.*

109. *Id.* (citing COUNCIL OF STATE GOV'TS JUST. CTR., LOCKED OUT: IMPROVING EDUCATIONAL AND VOCATIONAL OUTCOMES FOR INCARCERATED YOUTH 3 (2015)).

110. Christian, *supra* note 106.

have at least one potential mental health diagnosis.¹¹¹ This is unsurprising, given that “92.5 percent of detained youths reported at least one traumatic experience [had occurred in their lives], and 84 percent reported more than one.”¹¹² Despite the prevalence of mental health concerns among youth in these facilities, “the vast majority do not receive [mental health] services.”¹¹³ In fact, research shows that symptoms often worsen during detention, which is also associated with a lower educational attainment and a heightened risk of reoffending in adulthood.¹¹⁴

The rehabilitative nature of the juvenile justice system fails to look that way when the system neglects to address the needs of the children it serves. Research highlights a significant gap between the standard set by Article 6 of the Convention and the lived experience of children in detention facilities across the United States.¹¹⁵ A child’s right to grow, learn, and develop should not be suspended simply because he is confined. While the United States has taken steps to support the development of children in custody, current services remain inadequate. Ratifying the Convention may help to establish clear national standards, strengthen oversight of programs, and increase training for those working with children in custody to achieve rehabilitation and break the cycle of recidivism.

D. Views of the Child

Article 12 of the Convention recognizes a child’s right to express his views in matters affecting his life, requiring that those views be given due weight based on his age and maturity.¹¹⁶ This principle obligates states to allow children to take an active role in the decisions that directly impact

111. OFF. OF JUV. JUST. & DELINQ. PREVENTION, INTERSECTION BETWEEN MENTAL HEALTH AND THE JUVENILE JUSTICE SYSTEM 2 (2017) [hereinafter *Intersection*], https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/intsection_between_mental_health_and_the_juvenile_justice_system.pdf (on file with the Oklahoma City University Law Review).

112. *Id.* at 4.

113. JENNIFER E. DUCHSCHERE ET AL., ADDRESSING A MENTAL HEALTH INTERVENTION GAP IN JUVENILE DETENTION: A PILOT STUDY 1 (2022), <https://pmc.ncbi.nlm.nih.gov/articles/PMC10449374/pdf/nihms-1795033.pdf> (on file with the Oklahoma City University Law Review).

114. *Id.* at 2.

115. See, e.g., Christian, *supra* note 106; *Education for Youth*, *supra* note 107; *Intersection*, *supra* note 111; DUCHSCHERE ET AL., *supra* note 113.

116. Convention on the Rights of the Child, *supra* note 19, art. 12, 1577 U.N.T.S at 48.

them, either personally or through representation.¹¹⁷ In juvenile justice, this principle is crucial in ensuring that a child's voice is heard and considered in legal proceedings through effective legal counsel.

In *In re Gault*, the United States Supreme Court expanded Sixth Amendment protections to juveniles and held "that the Due Process Clause of the Fourteenth Amendment requires that in [proceedings that may result in the deprivation of freedom] the child and his parents must be notified of the child's right to be represented by counsel."¹¹⁸ Despite the Court's mandate, many youth frequently fail to obtain the legal assistance to which they are entitled and all too often youth are processed through the juvenile justice system without representation.¹¹⁹

Due process requires the appointment of counsel when a child's parent is indigent and cannot afford an attorney.¹²⁰ Yet research indicates that this constitutional protection is not consistently upheld.¹²¹ The American Bar Association ("ABA") reported that "the interest of many young people in juvenile court are significantly compromised, and that many children are literally left defenseless."¹²² Contributing factors include excessive caseloads, inadequate compensation, and a lack of juvenile specific training for defense attorneys.¹²³

Although the recommended number of annual cases a juvenile defense attorney retains should not exceed 200–250, research shows the average caseload is closer to 300.¹²⁴ Such heavy workloads leave attorneys with insufficient time to investigate, meet with clients, or adequately prepare for hearings, undermining effective child advocacy.¹²⁵ Further, effective child advocacy requires well-trained attorneys, yet child attorneys are

117. *See id.*

118. *In re Gault*, 387 U.S. 1, 41 (1967).

119. OFF. OF JUV. JUST. & DELINQ. PREVENTION, INDIGENT DEFENSE FOR JUVENILES 1 (2018) [hereinafter *Indigent Defense for Juveniles*], https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/indigent_defense_for_juveniles.pdf (on file with the Oklahoma City University Law Review).

120. *In re Gault*, 387 U.S. at 41.

121. *See Indigent Defense for Juveniles*, *supra* note 119, at 2.

122. *Id.* (quoting PATRICIA PURITZ ET AL., A CALL FOR JUSTICE: AN ASSESSMENT OF ACCESS TO COUNSEL AND QUALITY OF REPRESENTATION IN DELINQUENCY PROCEEDINGS 7 (1995)).

123. *Id.*

124. *Id.*

125. Leonard P. Edwards, *A Comprehensive Approach to the Representation of Children: The Child Advocacy Coordinating Council*, 27 FAM. L.Q. 417, 417-20 (1993), as reprinted in, DOUGLAS E. ABRAMS ET AL., CHILDREN AND THE LAW: DOCTRINE, POLICY, AND PRACTICE 223 (8th ed. 2024).

among the least experienced, have the lowest status, and receive the lowest pay.¹²⁶ Compounding the problem is the persistent perception that working with children in juvenile courts is not “real work” and that “child representation is merely a form of training to be completed before a felony trial assignment, and a senior lawyer who is assigned to work with children’s issues is often perceived as being punished.”¹²⁷ Such an attitude devalues child advocacy and leads attorneys to conclude that such work is not deserving of time, attention, skill, or care.¹²⁸ As a result, the quality of legal services provided to children may as well be non-existent.

Lastly, the absence of adequate juvenile-specific training for defense counsel creates major barriers to ensuring effective legal representation for youth, as juvenile representation presents significant complexities that require counsel with specialized knowledge.¹²⁹ Juvenile representation differs from adult representation due to the developmental differences between adults and juveniles, such as limited emotional regulation, heightened vulnerability to influence, and difficulty assessing long-term consequences.¹³⁰ Despite these differences, training on key juvenile law issues, such as juvenile detention, community service, and adolescent development, is largely absent from juvenile defender training.¹³¹

When a child appears in court, his views are most effectively communicated through competent legal counsel.¹³² While indigent defendants do not have the constitutional right to select their own court-appointed attorney, a child’s lawyer plays a vital role in advocating for, and ensuring, the youth’s wishes are considered in proceedings that profoundly affect his life.¹³³ Additionally, attorneys play a crucial role in helping judges reach fair and well-informed decisions, protecting children’s rights, and preventing unnecessary incarceration or transfers to adult court.¹³⁴ Without proper legal representation, the risks are severe, and the impact on a child’s life can be permanently damaging.¹³⁵ Without

126. *Id.* at 222-23.

127. *Id.* at 223.

128. *Id.*

129. *See Indigent Defense for Juveniles*, *supra* note 119, at 2.

130. *Id.* at 3.

131. *Id.* at 2-3.

132. *See In re Gault*, 387 U.S. 1, 36-37, 41 (1967).

133. *See id.*

134. ABRAMS ET AL., *supra* note 125, at 291 (citing Juv. L. Ctr., *Lessons from “Kids for Cash,” Part 2: All Children Must Have Access to Legal Representation in Court*, (Feb. 20, 2014), <https://jlc.org/news/lessons-kids-cash-part-2-all-children-must-have-access-legal-representation-court>).

135. *Id.*

adequate legal representation, or in some cases, without representation at all, the United States practices undermine the principle embodied in Article 12.

E. Our System is Broken

Across the United States, juvenile detention facilities have repeatedly failed the children kept within them.¹³⁶ Widespread injustices and constitutional violations highlight the fact that states are falling short of even the most basic standards of justice and safety.¹³⁷ Across the country, these failures are making headlines and triggering lawsuits, revealing the very urgent and undeniable need for accountability and reform.¹³⁸ Put simply, our system is broken.

As discussed above, the Convention and federal law prohibit the housing of juveniles with adults, yet only recently were juveniles in Louisiana removed “from a notorious adult maximum-security prison.”¹³⁹ Prior to the court-ordered removal, the youth were “housed in a former death-row wing in the Louisiana State Penitentiary at Angola.”¹⁴⁰ It was reported that the youth “were shackled, held in solitary confinement for more than 23 hours a day, and received dismal educational services.”¹⁴¹ Chief United States District Judge Shelly Dick visited the facility and found staff denied family visits to the youth, failed to provide necessary medical care, and even handcuffed minors during meals and card games.¹⁴² The court found that the conditions the youth were experiencing at the Angola facility violated their “constitutional rights to due process and freedom from cruel and unusual punishment.”¹⁴³

In Pennsylvania, two juvenile judges accepted an illegal \$2.8 million payment from for-profit facilities in exchange for ensuring a steady flow of children into their programs, sparking what became referred to as the

136. See Lakeidra Chavis, *Juvenile Detention Centers Face One Scandal After Another*, THE MARSHALL PROJECT (Sep. 9, 2023, at 12:00 p.m. EDT) <https://www.themarshallproject.org/2023/09/23/louisiana-youth-prison-missouri> [https://perma.cc/4QWA-FLE4].

137. See *id.*

138. See *id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

“kids-for-cash scandal.”¹⁴⁴ The judges implemented a “zero-tolerance policy” that sent children as young as eight to these facilities for minor infractions.¹⁴⁵ One judge reportedly “often ordered youths he had found delinquent to be immediately shackled, handcuffed and taken away without giving them a chance to put up a defense or even say goodbye to their families.”¹⁴⁶ Further, before the children appeared before the judge, they were asked, “‘Do you have a lawyer?’ and, if the answer was no, ‘Can you sign this form?’ The form stated that the child understood she was waiving the right to an attorney and would be representing herself in the courtroom.”¹⁴⁷ Such egregious constitutional violations have left the children, now adults, traumatized, and several have since died from overdose or suicide.¹⁴⁸

In Texas, the U.S. Department of Justice found conditions at five juvenile detention facilities to be unconstitutional.¹⁴⁹ The report documented that “children were exposed to excessive force, sexual abuse and in the case of disabled children, discrimination that kept them in custody longer or sent them to adult prisons.”¹⁵⁰ State agencies were found to have overused pepper spray, confined youth to their cells for twenty-four hours a day, isolated youth for weeks, and failed to implement policies and protections to prevent sexual abuse and grooming.¹⁵¹ Additionally, children with disabilities were denied appropriate education, and the special education services that were available fell far below the federally mandated standards.¹⁵² Such conditions clearly “fall[] short of creating an environment that fosters rehabilitation.”¹⁵³

Even closer to home, here in Oklahoma, the Tulsa County Family Center for Juvenile Justice is currently the subject of a federal lawsuit

144. *Former Judges Who Sent Kids to Jails for Kickbacks Must Pay More Than \$200 Million*, NPR (Aug. 18, 2022, at 7:48 a.m. ET) [hereinafter *Kickbacks*], <https://www.npr.org/2022/08/18/1118108084/michael-conahan-mark-ciavarella-kids-for-cash> [https://perma.cc/98FT-5AQB].

145. *Id.*

146. *Id.*

147. ABRAMS ET AL., *supra* note 125, at 290.

148. *Kickbacks*, *supra* note 144.

149. Kayla Guo, *Justice Department Finds Texas Juvenile Detention Centers Violated Youth Offenders’ Rights*, TEX. TRIB. (Aug. 1, 2024, at 6:47 p.m. CT), <https://www.texastribune.org/2024/08/01/texas-juvenile-justice-facilities-doj/> [https://perma.cc/S8DA-AHB2].

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

alleging both prior and ongoing constitutional violations and abuses.¹⁵⁴ Investigation into the facility revealed that the “youth are overly confined to their rooms and [are] not receiving the required 12-hours each day of time out of their rooms.”¹⁵⁵ Additionally, teachers at the facility reported that many youth are unable to attend school due to staffing issues.¹⁵⁶ Of the thirty-two youths housed in the facility at the time of the investigation, only fifteen were enrolled in school, and instruction consisted of “watch[ing] movies and mak[ing] slime.”¹⁵⁷ The investigation further uncovered serious allegations of sexual abuse by staff members, including allegations that youth were offered bribes such as access to cell phones, computers, and other contraband in exchange for sexual acts.¹⁵⁸

The examples above are far from the only cases of juvenile injustice across the country, yet they all point to the unmistakable conclusion: the way things are now is simply not working.

III. KEY ARGUMENTS CONCERNING RATIFICATION AND A PROPOSED PATH FORWARD

In February 1995, under the Clinton Administration, the United States signed the Convention.¹⁵⁹ However, a signature alone does not create a binding legal obligation under international law; since then, the question of whether the United States should formally ratify the Convention has remained a subject of debate.¹⁶⁰ Although the Convention raises a broad range of legal and policy issues, this section focuses specifically on those related to juvenile justice.

A. The Case for and Against Ratification in the United States

One of the primary concerns raised by opponents of the Convention involves the balance of power between the federal government and the

154. Colleen McCarty, *Heinous Allegations: Abuses in Youth Custody in Tulsa County, Oklahoma*, OKLA. APPLESEED (June 2024), <https://www.okappleseed.org/investigation-into-abuses-in-tulsa-county-juvenile> [https://perma.cc/2F4F-E6Z7]; see also Complaint, Parent Doe 1 *ex rel.* Child Doe v. Tulsa County *ex rel.* Juv. Bureau of Tulsa Cnty. Dist. Ct., No. CIV-24-182-JHR (E.D. Okla. 2024, May 23, 2024).

155. McCarty, *supra* note 154.

156. *Id.*

157. *Id.*

158. *Id.*

159. BLANCHFIELD, *supra* note 11, at 1.

160. *Id.* at 7.

states.¹⁶¹ Opponents argue that the Convention addresses issues that fall within the states' police powers, such as juvenile justice, and that ratification would significantly undermine federalism.¹⁶² Additionally, opponents believe ratification would threaten United States sovereignty "since ratified treaties are considered the 'supreme Law of the Land' under the U.S. Constitution" and could potentially conflict with preexisting federal and state law.¹⁶³ Further, opponents worry that ratification would grant the Convention Committee authority over the actions of the government and private citizens regarding children.¹⁶⁴

Opponents also question whether the Convention would serve as an effective tool for protecting children's rights across the world.¹⁶⁵ They point out that countries often cited for serious child rights violations, such as Sudan, the Democratic Republic of the Congo, and China, have ratified the Convention, arguing that ratification is simply a "facade for governments that abuse children's rights."¹⁶⁶ Additionally, opponents argue the reservations and declarations that some countries attach to the Convention may undermine its intent and purpose, creating potential loopholes that limit protection for children.¹⁶⁷

In contrast, proponents of the Convention maintain that ratification poses minimal risk to sovereignty, noting that federal and state laws generally align with the Convention's standards.¹⁶⁸ Further, proponents argue that ratification with reservations, understandings, and declarations—such as a non-self-executing declaration which ensures the treaty does not automatically create domestic legal obligations—can alleviate sovereignty concerns.¹⁶⁹ Proponents also stress that the Convention Committee "may only comment on the reports of States Parties or make general recommendations" and that its enforcement mechanisms are limited, making its authority advisory rather than punitive.¹⁷⁰

Additionally, proponents argue that the Convention has improved and expanded children's rights and protections in many countries by serving

161. *Id.*

162. *Id.*

163. *Id.* at 8 (citation omitted).

164. *Id.*

165. *Id.* at 15.

166. *Id.*

167. *Id.*

168. *Id.* at 8.

169. *Id.* at 8-9.

170. *Id.* at 9.

as a foundation for child focused legislation.¹⁷¹ More than half of the countries that have ratified the Convention have incorporated its provisions into their domestic law, and roughly one-third have amended their national constitutions to include its protections.¹⁷² The Convention has also contributed to the creation of “over 60 independent human rights institutions for children in 38 countries.”¹⁷³ Proponents recognize that, while great progress has been made, there is still a lot of work to do, emphasizing that meaningful “social change will occur only when high-level commitment is matched by ‘effective law enforcement, allocation of adequate resources and the engagement of all levels of society.’”¹⁷⁴

B. The Proposed Path Forward

The debate over the Convention’s ratification in the United States largely reflects a tension between comity and federalism and the advancement of child protections both domestically and internationally. While it is argued that the current legal landscape in the United States largely aligns with the Convention, the rights of children involved in the juvenile justice system continue to be ignored, as illustrated by the stories discussed above. This reality highlights the need for action. Ratification that is carefully structured offers an opportunity to strengthen children’s rights in the United States while respecting both state and federal authority. Three potential paths forward exist: 1) full ratification of the Convention; 2) ratification with carefully drafted reservations, declarations, and understandings; or 3) maintaining the status quo.

The first option is full ratification of the Convention, with the United States formally incorporating its provisions into domestic law as binding under international law. Such an action would undoubtedly demonstrate a strong commitment to protecting children’s rights both in the United States and internationally. Although many of the Convention’s standards are reflected in state and federal law, full ratification could help address existing gaps where children’s rights are still being violated, particularly in the juvenile justice system. Ratification would also empower Congress to legislate areas traditionally reserved to the states, enabling stronger

171. *Id.* at 15.

172. *Id.*

173. *Id.*

174. *Id.* at 15-16 (quoting Press Release, *Despite Progress, Children’s Rights Far From Universal*, UNICEF (Nov. 20, 2004), https://web.archive.org/web/20050113084438/https://www.unicef.org/media/media_24176.html (on file with the Oklahoma City University Law Review)).

protection for children while preserving the states' responsibility for child-related policies.¹⁷⁵ Under this approach, policies in juvenile justice that currently fall short of the Convention's standards would be revised to ensure stronger protection and greater accountability across the nation.

While full ratification may be politically unlikely, ratification with carefully structured reservations, understandings, and declarations is more likely to be accepted. Under this approach, the United States could attach a non-self-executing declaration, a federalism reservation, and an interpretive understanding.¹⁷⁶ The non-self-executing declaration would allow the United States to ratify the Convention without automatically creating domestic law; instead, the treaty would only take effect through the passage of implementing legislation.¹⁷⁷ The federalism reservation would clarify that areas such as juvenile justice remain under state and/or federal authority. Lastly, the interpretive understanding would make clear that the Convention Committee's recommendations are strictly advisory and do not override United States law. A carefully structured ratification would not require Congress to implement all provisions of the Convention, but it would preserve the option to pass legislation in areas where existing law falls short. As a result, children in the juvenile justice system would gain enhanced protections, all while maintaining sovereignty and respecting federalism in the United States.

The final option is for the United States to remain a signatory to the Convention without ratifying it. Under this approach, the Convention would continue to carry no legal force domestically, and existing state and federal law would govern juvenile justice policies without coming into alignment with its standards. Ratification would provide Congress with a stronger constitutional basis to align current law with the Convention, whereas without ratification, Congress is limited to its enumerated constitutional powers.¹⁷⁸ While maintaining the status quo may be the safest and most politically feasible option, it does nothing to address the persistent gaps in children's rights within the United States.

IV. CONCLUSION

In the global race to protect children, the United States occupies the final position. It is on the track but hesitant to cross the finish line.

175. See *Missouri v. Holland*, 252 U.S. 416, 434-35 (1920).

176. See BLANCHFIELD, *supra* note 11, at 8-9.

177. See *Medellin v. Texas*, 552 U.S. 491, 526-27 (2008).

178. See U.S. CONST. art. I.

Meanwhile, across the country, children involved in the juvenile justice system continue to face violations of their most basic rights, including solitary confinement, inadequate education, denial of counsel, and shocking physical and sexual abuse, as a sampling of cases in Louisiana, Pennsylvania, Texas, and Oklahoma all reveal. Though a child may commit an offense that shocks the conscience of society, his rights and best interests should not be abandoned as soon as he enters the juvenile justice system.

Ratifying the Convention, even with reservations, declarations, and understandings, would not solve every challenge facing system-involved youth, but it would mark a meaningful step forward. Given that the United States is widely regarded as a global leader due to its military strength, economic power, technological innovation, and cultural influence, it is worth asking why that leadership has not extended to the protection of its most vulnerable population. Ratification would equip Congress with the basis necessary to align domestic law with international standards, while also demonstrating a national commitment to reform, accountability, and the protection of every child. “Change is possible, but change depends on commitment and leadership within the legal community at the national, state, and local levels.”¹⁷⁹

The childhood of our nation’s youth is on the line, and protections cannot be left behind.

179. ABRAMS ET AL., *supra* note 125, at 223.

