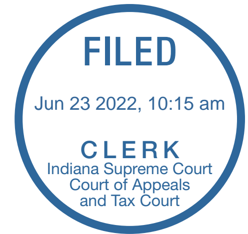


IN THE

# Indiana Supreme Court

Supreme Court Case No. 21S-CR-567

State of Indiana,
*Appellant,*

–v–

Anthony J. Neukam,
*Appellee.*

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Argued: February 3, 2022 | Decided: June 23, 2022

Appeal from the Dubois Circuit Court
No. 19C01-1711-F3-1157
The Honorable Nathan A. Verkamp, Judge

On Petition to Transfer from the Indiana Court of Appeals
No. 20A-CR-2006

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**Opinion by Justice Slaughter**

Chief Justice Rush and Justice David concur.
Justices Massa and Goff dissent with separate opinions.

**Slaughter, Justice.**

In 2020, we held juvenile courts lose jurisdiction once an alleged delinquent child reaches twenty-one years of age. But we left open the question whether the State can file criminal charges against a person who committed the charged conduct before turning eighteen but is no longer a child under the juvenile code. Under the governing statutes, a child's delinquent act does not ripen into a crime when the child ages out of the juvenile system. The result is that neither the juvenile court nor the circuit court has jurisdiction here. In short, this case falls within a jurisdictional gap only the legislature can close. We thus affirm the trial court's judgment for Neukam and against the State.

I

The State alleges Anthony Neukam molested his young cousin from the time she was ten years old until she was fourteen, which would mean Neukam molested her both before and after he was eighteen. When Neukam was twenty, the State brought charges against him in a criminal court—the Dubois Circuit Court—for acts he allegedly committed after turning eighteen.

When Neukam was twenty-two, the State filed a delinquency petition in juvenile court for the acts he allegedly committed before turning eighteen. After we held in *D.P. v. State*, 151 N.E.3d 1210 (Ind. 2020), that juvenile courts lack jurisdiction over delinquency petitions once the accused is twenty-one, the State dismissed the juvenile case and moved to amend the criminal case to add the counts of child molesting Neukam allegedly committed before he was eighteen. The trial court denied the motion "due to the age of the defendant at the time of the alleged offenses to be added to the charging information". At the State's request, the court certified its order for interlocutory appeal and stayed the proceedings.

The State appealed, and the court of appeals affirmed. It held criminal courts lack jurisdiction when an individual is alleged to have committed a delinquent act before turning eighteen but is over twenty-one when the State files charges. *State v. Neukam*, 174 N.E.3d 1098, 1106 (Ind. Ct. App.

2021). The State then sought transfer, which we granted, *State v. Neukam*, 178 N.E.3d 795 (Ind. 2021), thus vacating the appellate opinion.

II

A trial court's jurisdiction is generally a question for the legislature. *D.P.*, 151 N.E.3d at 1213. And, like other questions of statutory interpretation, we review jurisdictional questions anew, *id.*, giving no deference to lower courts.

We recently discussed the jurisdictional limits of juvenile courts in the consolidated case of *D.P. v. State*. There, the State filed delinquency petitions against D.P. and N.B. for acts that would have been felony child molesting had an adult committed them. *Id.* at 1212. Both D.P. and N.B. acted before they were eighteen, but they were older than twenty-one when the State filed the delinquency petitions. *Id*. Applying the governing statutes, Indiana Code sections 31-30-1-1 and 31-9-2-13, we held juvenile courts lose jurisdiction once the alleged offender reaches twenty-one years of age. *Id.* at 1213–14, 1216. But we left unaddressed the question before us today: whether the State can file charges in a criminal court against a person no longer a child but who committed the charged conduct while still a child. *Id*. at 1217 n.2.

As a general matter, circuit courts have jurisdiction over criminal cases, and juvenile courts have jurisdiction over delinquency cases. Under Indiana Code section 33-28-1-2(a)(1), circuit courts have "original and concurrent jurisdiction . . . in all criminal cases." But the legislature carved out a portion of this general jurisdiction to grant juvenile courts exclusive original jurisdiction over "[p]roceedings in which a child . . . is alleged to be a delinquent child under IC 31-37." Ind. Code § 31-30-1-1(1). Today's jurisdictional question turns on whether Neukam's alleged conduct was a criminal or delinquent act—or whether the same act could be both, i.e., whether a delinquent act committed before the age of eighteen could ripen into a crime once Neukam became an adult.

We start first with whether Neukam's alleged conduct was a criminal act. Our criminal code does not define "criminal". But the legislature has defined "crime" as "a felony or a misdemeanor." *Id.* § 33-23-1-4. Here, the State tried to amend its charging information to add multiple counts of

felony child molesting. At least facially, then, the State has alleged Neukam committed a crime.

Next, we consider whether Neukam's conduct was a delinquent act. The juvenile code does not define a "delinquent act" directly. It does so indirectly—by stating a delinquent act occurs when a child, before turning eighteen, "commits an act . . . that would be an offense if committed by an adult". *Id.* § 31-37-1-2(1). Here, the State's allegations are that Neukam also committed a delinquent act—that before he turned eighteen, he committed what would be an "offense", which includes a felony, see *id.* § 33-23-1-10, if done as an adult. The remaining question, then, is whether Neukam's alleged conduct at the time could be a delinquent act then and a crime later. We conclude, based on the juvenile court's delinquent-act statute and the circuit court's jurisdiction statute, the answer is no. The legislature has not said a delinquent act ripens into a crime when a juvenile offender ages out of the juvenile system.

First, based on the statutes' plain text, "criminal" act means something other than "delinquent act". When interpreting a statute, we seek to give effect to its enacted terms. See, e.g., *Walczak v. Lab. Works-Fort Wayne LLC*, 983 N.E.2d 1146, 1154 (Ind. 2013) (citation omitted). Here, the legislature used two different terms: "criminal" act and "delinquent act". Because we assume the legislature intended for us to apply its statutory terms logically, *ibid.*, it follows the legislature used two different terms to mean two different things. Moreover, we assume every word in relevant statutes "was used intentionally" and thus try to give every word its "effect and meaning". *Clippinger v. State*, 54 N.E.3d 986, 989 (Ind. 2016) (citation omitted). Here, we infer the legislature intended "criminal" acts to be distinct from "delinquent acts". Treating a delinquent act as merely a crime by any other name would treat the two terms as if they are one and the same—a view at odds with our interpretive canons.

Second, even if "criminal" act and "delinquent act" were ambiguous, we must try to harmonize related statutes by reading them together and giving effect to both. *Ibid.* Here, this means examining the following aspect of a delinquent act: "would be an offense if committed by an adult". I.C. § 31-37-1-2(1). Relevant here, "offense" means "felony", which is a crime. Thus, section 31-37-1-2 treats a "delinquent act" as one that "would be an

offense"—a crime—"if committed by an adult". The phrase "would be [a crime]" suggests a delinquent act is not a crime—and in fact "would be" a crime only if an adult did it—in which case, it would no longer be a delinquent act because only a child can commit such an act. *Id*. § 31-37-1-2.

While acknowledging our interpretation of the statutory text is "reasonable", our dissenting colleagues would nonetheless supplant the delinquent-act statute's text in favor of other "evidence of legislative intent." *Post*, at 2 (Goff, J., dissenting); *id.* at 1 (Massa, J., dissenting) (agreeing with part I of Justice Goff's dissent). Our reliance on the delinquent-act statute's text, they say, leads to results they find "unjust" and "absurd". *Post*, at 3 (Goff, J., dissenting). We respectfully disagree. First, that the dissents consider the outcome here unjust ignores that such value judgments are in the eye of the beholder. It also ignores our modest judicial role. If a statute's text compels a particular result, judges must not second-guess the outcome, even if it offends our own sensibilities. Policymakers often must make difficult judgment calls about when an alleged offender's needs should outweigh an alleged victim's. But it is legislators, not judges, who bear that responsibility.

Second, the policy underlying our juvenile-justice system is that juvenile offenders should be rehabilitated instead of punished and stigmatized. See, e.g., *In re K.G.*, 808 N.E.2d 631, 637 (Ind. 2004). We find it plausible—not absurd—the legislature would prioritize this policy for juvenile offenders who have matured into adulthood—in hopes they would leave behind their delinquent past. Justice Massa, writing separately, argues our view is flawed because it "rewrites the statute of limitations". *Post*, at 1 n.2 (Massa, J., dissenting). Respectfully, he ignores the statute of limitations is a general statute located under title 35, article 41, which addresses substantive criminal provisions under the criminal code. As a matter of interpretation, general statutes yield to more specific statutes. *Grether v. Indiana State Bd. of Dental Examiners*, 239 Ind. 619, 623, 159 N.E.2d 131, 134 (1959). Justice Massa would read subsection 35-41-4-2(e) to apply to alleged offenders like Neukam regardless of their age when they molested the child. But here, the more specific statute is the delinquent-act statute, which deals explicitly with the age of an offender. In contrast, the statute of limitations deals only with the age of the victim.

See I.C. § 35-41-4-2(e) (extending the limitations period until "the alleged victim of the offense reaches thirty-one . . . years of age").

At the same time, the legislature wrote section 35-41-4-2's limitations period to apply only to crimes. In addition to its location within the criminal code's substantive provisions, subsection 35-41-4-2(e)'s plain terms extend the statute of limitations for six different crimes, including child molesting—all six of which are defined in other sections of the criminal code. Based on the delinquent-act statute, delinquent acts are not crimes, and applying the statute of limitations according to its narrow terms does not rewrite it. To the contrary, we would rewrite the statute were we to interpret subsection 35-41-4-2(e) to apply to delinquent acts, despite its clear application only to crimes. Thus, we do not consider the outcome here absurd based on the relevant statutes' text.

Moreover, Justice Goff's belief that practical considerations based on policy trump statutory text runs afoul not only of separation of powers, but of our entire constitutional scheme. "The intent of the Legislature is best gleaned from the statutory text itself." See, e.g., *George v. Nat'l Collegiate Athletic Ass'n*, 945 N.E.2d 150, 154 (Ind. 2011). Despite this clear precedent, his dissent decries our textual approach because we subordinate "practical interpretive canons" to textual fidelity. *Post*, at 8 (Goff, J., dissenting). But this is what the constitution requires of us. What counts as law, after all, is a statute's enacted text—text forged by the dual constitutional requirements of bicameralism and presentment—and not what we wish or suppose the legislature intended to enact. The statutory text here simply does not support prosecuting offenders like Neukam criminally for their conduct as juveniles. To the contrary, the delinquent-act statute requires the opposite.

The dissents would have us interpret the legislature's silence as evidence of its intent to punish offenders like Neukam criminally. But to get there, Justice Goff explains in part II of his dissent that he would empower judges to elevate their own policy priorities over a statute's text. According to Justice Goff, trial judges should adjudicate "the important policies underlying the statute of limitations for child molesting [that] may outweigh the equally important rehabilitative goals of our juvenile-justice system." *Post*, at 7 (Goff, J., dissenting). His approach, however,

would turn our system of distributed governmental powers on its head because courts typically have only such jurisdiction as the legislature grants them. *D.P.*, 151 N.E.3d at 1213. Absent an express conferral of jurisdiction, the likeliest explanation of a statute's silence is not that the legislature intended courts to have such jurisdiction but rather intended them to lack it. If the legislature intends to give broad jurisdiction to trial courts, as Justice Goff contemplates, it must say so. Relying on the legislature to say what it means is what the constitution both requires of us and demands of the legislature. Thus, we will not do as Justice Goff urges and find such reliance an "unrealistic demand[]". *Post*, at 8 (Goff, J., dissenting).

To be clear, we agree with the dissents' premise that section 31-30-1-1 vests jurisdiction in the juvenile court "only when the offender is currently a child". *Post*, at 2 (Goff, J., dissenting) (emphasis omitted). But they believe that if a juvenile court lacks jurisdiction, the circuit court necessarily must have it. *Id.* at 2–3. Respectfully, that does not follow. The question is whether the statutes confer the circuit court with jurisdiction over this class of cases. On the issue of criminal-versus-juvenile jurisdiction, a circuit court has jurisdiction over only "criminal cases". And a delinquent act by a juvenile cannot "be" a crime because it "would be" a crime only if committed by an adult. Thus, under the relevant statutes, circuit courts lack jurisdiction over conduct by juveniles.

We recognize the delinquent-act statute permits exceptions where the "juvenile court lacks jurisdiction under IC 31-30-1". I.C. § 31-37-1-2. One such exception is that certain acts a child commits can be filed only in criminal court. *Id.* § 31-30-1-4(a). These acts, so-called direct-file offenses, include "any offense that may be joined under IC 35-34-1-9(a)(2) with any crime listed in this subsection". *Id.* § 31-30-1-4(a)(10). In turn, subsection 9(a)(2) permits joinder of crimes that "are based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan." *Id.* § 35-34-1-9(a)(2). Here, after we issued *D.P.*, the State sought to amend its information and add charges for Neukam's alleged offenses as a minor "as a direct filing in criminal court". But the State does not argue the direct-file statute, via the joinder statute, fits into this exception under the delinquent-act statute. Thus, we decline to apply any such exception on this record.

Instead of following the statutes, the State would have us decide this case under *Twyman v. State*, 459 N.E.2d 705, 709 (Ind. 1984), where a juvenile defendant lied to a criminal court about his age only to challenge the court's jurisdiction after it convicted him. But on matters of jurisdiction, our precedent does not trump a statute, and *Twyman* does not require the result the State seeks. There we said: "When a juvenile . . . commits an act of delinquency", he also "commit[s] the elements of a crime." *Id.* at 708. But this is merely another way of saying a delinquent act is one that would be a crime if the offender were an adult. Although *Twyman* held the circuit court had jurisdiction, *ibid.*, we did not analyze what "criminal" act and "delinquent act" mean under sections 33-23-1-4 and 31-37-1-2, respectively. Thus, *Twyman* does not answer the question at hand.

Because these statutes—sections 33-23-1-4 and 31-37-1-2—show that criminal and delinquent acts are distinct classes of conduct determined by age, the circuit court does not have jurisdiction over the acts Neukam allegedly committed before turning eighteen. And, as we held in *D.P.*, 151 N.E.3d at 1216, the juvenile court lacks jurisdiction because Neukam is older than twenty-one. Thus, these statutes compel us to hold that no court has jurisdiction over the charges arising from Neukam's alleged conduct before his eighteenth birthday. We recognize this jurisdictional gap means certain delinquent acts will not be prosecuted—for no other reason than the delinquent act was not reported until the alleged offender turned twenty-one.

We also recognize our decision today raises questions about circuit-court jurisdiction vis-à-vis the juvenile court's waiver statutes and the criminal court's transfer statute. For instance, the waiver statutes allow a juvenile court to waive its exercise of jurisdiction. See, e.g., I.C. § 31-30-3-1. The effect of this waiver is a criminal court may then exercise its own jurisdiction. But it cannot do so without jurisdiction over the alleged conduct in the first place. By the same token, the transfer statute—which permits a criminal court to transfer a criminal case to a juvenile court—presupposes the criminal court has jurisdiction. See *id.* § 31-30-1-11 (beginning with the phrase "if a court having criminal jurisdiction"). The dissents would allow these statutes to control here. *Post*, at 4 n.3 (Goff, J., dissenting). But to do so, they bypass the import of the key phrase in the

delinquent-act statute: "would be an offense if committed by an adult". And the delinquent-act statute, unlike the transfer and waiver statutes (or the statute of limitations for child molesting), is dispositive here on its plain terms.

But even were it not, our harmonious-reading canon applies only to related statutes on the same subject. *Clippinger*, 54 N.E.3d at 989. Here, the key subject is jurisdiction over Neukam's alleged sexual conduct with a minor. In contrast, neither waiver nor transfer is a dispositive subject here. *D.P.* holds a juvenile court lacks jurisdiction to waive offenders like Neukam to criminal court. And whether a criminal court could transfer Neukam's case to juvenile court turns on the antecedent question whether the criminal court has jurisdiction. Ultimately, like the dissents, we are not blind to the weighty and far-reaching policy concerns implicated by today's decision. But separation of powers requires that we echo our words from *D.P.*: If this "result was not the intent of the legislature, then it—not we—must make the necessary statutory changes." 151 N.E.3d at 1217.

* * *

For these reasons, we hold the circuit court lacks jurisdiction over the criminal charges the State sought to add against Neukam for conduct occurring before he turned eighteen. Thus, we affirm the court's denial of the State's motion to amend the charging information.

Rush, C.J., and David, J., concur.
Massa and Goff, JJ., dissent with separate opinions.

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**Massa, J., dissenting.**

I agree with Justice Goff's statutory analysis in Part I of his dissent. However, I conclude the procedural approach suggested in Part II is unnecessary and thus write separately.

As Justice Goff explains in Part I, the circuit court has jurisdiction over Anthony Neukam and his alleged criminal acts. A majority of the Court disagrees, leaving it to the legislature to clarify. But even if the General Assembly finally acts to eliminate the jurisdictional Catch-22 announced by the Court today and allows courts to try certain adult offenders for sex crimes committed while juveniles, the penological, jurisprudential, and moral blameworthiness questions will persist. Chief among them: how to hold an adult accountable for a crime committed while still a child, when the adult system is more punitive and the juvenile system more therapeutic. Clearing the jurisdictional roadblock cannot solve that riddle, it can only provide a forum. These cases must go somewhere.[1] The General Assembly never contemplated safe harbor for alleged sex offenders who turn twenty-one before their victims reveal.[2]

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[1] In some of our smaller counties, it is literally the same judge, in the same courtroom, applying a different body of law depending on the age of the offender.

[2] The Court "find[s] it plausible" that the legislature intended for individuals like Neukam to evade the State's reach by aging out of the juvenile system "in hopes they would leave behind their delinquent past," *ante*, at 5, (hopes that are at least potentially fulfilled through rehabilitative efforts precluded by today's ruling). But the assertion overlooks the actual legislative determination of when an individual is beyond the State's reach: the statute of limitations. And for offenses like child molesting, an extended statute of limitations allows the State, at a minimum, to prosecute Neukam until his alleged victim turns thirty-one. Ind. Code § 35-41-4-2(e)(1) (2014). As the Illinois Supreme Court aptly noted in a similar case, inherent in the choice to enact a lengthy statute of limitations for child molesting "must be the implicit recognition that both youthful victims and their assailants age at the same rate." *People v. Fiveash*, 39 N.E.3d 924, 931 (Ill. 2015). The legislature could readily foresee that those assailants who were minors "could logically be adults before the extended statute of limitations had run on their crimes." *Id.* But today the Court rewrites the statute of limitations to turn on the age of the alleged assailant, not the alleged victim.

The best we can do is adjudicate these matters in a court of general jurisdiction and take age into account as a mitigating factor at sentencing. While I might assume the General Assembly will explicitly allow it next year,[3] Justice Goff provides an analysis that would make new legislation unnecessary and immediately close an unintended loophole that will remain open until the legislature can act. I join him in respectfully dissenting.

[3] In the 2021 General Assembly session, following our decision in *D.P. v. State*, 151 N.E.3d 1210 (Ind. 2020), House Bill 1198 addressed this jurisdictional conundrum. It passed the House 85-8 and the Senate 45-5 but died in conference committee when differences between the House and Senate versions could not be resolved.

**Goff, J., dissenting.**

In *D.P. v. State*, we held that juvenile courts lose jurisdiction once the alleged delinquent child reaches twenty-one years of age. 151 N.E.3d 1210, 1217 (Ind. 2020). Today, the Court holds that the "plain text" of the relevant statutes show that criminal and delinquent acts are distinct conduct. *Ante*, at 4, 5. And because the "legislature has not said a delinquent act ripens into a crime when a juvenile offender ages out of the juvenile system," the Court holds that a criminal court has no jurisdiction over acts allegedly committed by that offender before turning eighteen. *Id.* at 8. The result is, when taken with our decision in *D.P.*, that "**no court** has jurisdiction" under the circumstances presented here. *Id.* (emphasis added).

Because the Court's reading of the relevant jurisdictional statutes permits Neukam's alleged acts of child molestation "to go unpunished," *id.*, because it judicially repeals the juvenile waiver and transfer statutes, and because the legislature would never have intended these results, I respectfully dissent.

# I. The juvenile-court exception to the circuit court's power of general jurisdiction applies only when the offender is currently a child.

Our General Assembly has vested in our circuit courts "original and concurrent jurisdiction" over "all criminal cases" and over "all civil cases." Ind. Code § 33-28-1-2(a)(1). However, it carved out an exception to this grant of general jurisdiction by vesting "exclusive original jurisdiction" in a juvenile court over proceedings in which a "child" faces allegations of delinquency. I.C. § 31-30-1-1(1) (the Juvenile Jurisdiction Statute).

Because the "plain text" of the relevant statutes show that criminal and delinquent acts are distinct conduct, the Court holds that "the circuit court does not have jurisdiction over the acts Neukam allegedly committed before turning eighteen." *Ante*, at 8. And because, under *D.P.*, "the juvenile court lacks jurisdiction" over Neukam, who has since reached the

age of twenty-one, the applicable statutes "compel" the Court "to hold that no court has jurisdiction over the charges arising from Neukam's alleged conduct before his eighteenth birthday." *Id.* at 8.

In my view, the relevant statutes, taken together, aren't so clear cut.

To begin with, I acknowledge that the distinction between a "crime" and a "delinquent act" is straightforward enough. Whereas the former refers to "a felony or a misdemeanor," I.C. § 33-23-1-4, the latter denotes an act "that **would be** an offense if committed by an adult," I.C. § 31-37-1-2(1) (emphasis added), suggesting that it's **not** a crime. But while these two terms undoubtedly define different things, the question here does not, as the Court concludes, turn exclusively on how we define Neukam's alleged **conduct**. *See ante*, at 3 (opining that the "question turns on whether Neukam's alleged conduct was a criminal or delinquent act—or whether the same act could be both"). In my view, the question turns on the offender's **status** as a child or as an adult.[1] Under the Juvenile Jurisdiction Statute, a juvenile court exercises its "exclusive original jurisdiction" over "[p]roceedings in which a child . . . is alleged to **be a delinquent child**." I.C. § 31-30-1-1(1) (emphasis added). By referring to the child in the present tense ("is alleged to be"), the statute vests jurisdiction in the juvenile court **only** when the offender **is currently a child**. It logically follows, then, that when the offender is an adult, the juvenile-court carve-out exception to the legislative grant of general jurisdiction to the circuit courts simply doesn't apply.

To be sure, the Court's interpretation of the words "crime" and "delinquent act" is reasonable. But its reading of those terms in isolation from—rather than in harmony with—the language used in our Juvenile Jurisdiction Statute overlooks statutory evidence of legislative intent. In my view, it's equally, if not more, reasonable to interpret these statutes—collectively—as vesting exclusive original jurisdiction in the juvenile court

[1] A "child" under the juvenile law is a person who is eighteen, nineteen, or twenty years of age and who "is charged with a delinquent act committed before the person's eighteenth birthday." I.C. § 31-9-2-13(d)(2).

**only** when the offender is currently a child, leaving us with the circuit court as the default court of general jurisdiction in cases where the offender is an adult, regardless of how we define his conduct.

And because the Juvenile Jurisdiction Statute is "susceptible to more than one interpretation," it is deemed ambiguous. *See In re Lehman*, 690 N.E.2d 696, 702 (Ind. 1997). When a statute is ambiguous, we subject it to our canons of statutory interpretation. *Id.* One such canon is the presumption that the "legislature intended logical application of the language used in the statute, so as to avoid unjust or absurd results." *Bolin v. Wingert*, 764 N.E.2d 201, 204 (Ind. 2002). In my view, the Court's interpretation of the jurisdictional statute leads to a result that is both unjust and absurd.

First, it leads to unjust results in cases such as this one. The legislature expanded the statute of limitations for child molesting until the victim reaches the age of thirty-one. I.C. § 35-41-4-2(e)(1). This policy accounts for the fact that, whether due to the child's suppression of traumatic memories or the abuser's intimidation of the victim and attempt at concealing the crime, the harm inflicted "may not become apparent for years—or even decades—following the offense." *K.G. by Next Friend Ruch v. Smith*, 178 N.E.3d 300, 308 n.2 (Ind. 2021). And yet, the Court's decision today effectively negates this policy choice. The victim in this case was fourteen years of age when the molestations ended, creating a seventeen-year window for the State to prosecute Neukam. But the Court's interpretation of the Juvenile Jurisdictional Statute renders the State powerless to punish Neukam for the acts of molestation he allegedly perpetrated as a minor.[2]

Second, the Court's interpretation leads to an absurd result. Beyond creating a "jurisdictional gap" allowing "certain delinquent acts to go unpunished," today's decision judicially repeals the juvenile-waiver and juvenile-transfer statutes—thirteen of them in total—because the juvenile

[2] When Neukam turned twenty-one, the victim was only seventeen years old, so the statute of limitations provided for fourteen more years to prosecute Neukam.

court cannot waive the case to criminal court when the criminal court is "without jurisdiction over the alleged [juvenile] conduct in the first place." *Ante*, at 8. *See* I.C. §§ 31-30-3-1 through -12; 31-30-1-11. While "not blind to the weighty and far-reaching policy concerns," the Court nevertheless justifies its decision by invoking—ironically—the separation of powers.[3] *Id.* at 9.

By interpreting the Juvenile Jurisdiction Statute as creating an exception to the general jurisdiction of the circuit court **only** when the offender is currently a child, we can avoid the unjust and absurd results the Court's decision imposes today. *See Allen Cnty. Dep't of Pub. Welfare v. Ball Mem'l Hosp. Ass'n.*, 253 Ind. 179, 185, 252 N.E.2d 424, 428 (1969) (seeking to avoid "interpretations of the statute [that] lead to absurd results").

For these reasons, I would hold that the circuit court has jurisdiction over an individual who committed the offensive acts as a child but who ages out of the juvenile system. Whether the circuit court should exercise that jurisdiction is an issue I turn to next.

## II. Because the juvenile court doesn't have exclusive jurisdiction over an offender who is no longer a "child," the circuit court should determine whether to exercise its jurisdiction.

Indiana's juvenile system is designed to rehabilitate youthful offenders. *N.L. v. State*, 989 N.E.2d 773, 778 (Ind. 2013). And because we recognize that juvenile offenders are different than adult offenders, *see*

[3] The Court seeks to harmonize the statutes by looking at the definition of "delinquent act" and "crime." *Ante,* at 3–5. These words, it determines, cannot have the same—or even overlapping—meaning. *Id*. at 4. Therefore, the Court "infer[s]" that a criminal act is distinct from a delinquent act in order to "give every word its 'effect and meaning.'" *Id*. (citing *Clippinger v. State*, 54 N.E.3d 986, 989 (Ind. 2016)). And yet, the Court acknowledges that their interpretation prevents the application of **entire statutes**, not just individual words within a statute. These statutes, lawfully enacted by our General Assembly, also deserve to be given effect and meaning.

*State v. Stidham*, 157 N.E.3d 1185, 1196 (Ind. 2020), the system used to address their delinquency is necessarily different than the system designed to address adult crimes. There are circumstances, however, in which a criminal court is the proper forum for a youthful offender.

### A. The juvenile system's safeguards for youthful offenders do not always apply.

Ordinarily, youthful offenders may not be tried in adult court. *See* I.C. § 31-30-1-11. There are, however, several exceptions to this general rule. For example, certain heinous offenses, if allegedly committed by a child over a certain age, may be prosecuted through direct filing of charges in the circuit court. I.C. § 31-30-1-4 (the Direct File Statute). And a juvenile court may, under certain circumstances, waive jurisdiction "to a court that would have jurisdiction had the act been committed by an adult." I.C. § 31-30-3-1 (the Waiver Statute). Under either procedure, the youthful offender is subject to the same process and punishment as an adult.

Generally, for these exceptions to apply, the evidence must show that the youthful offender is beyond the rehabilitative powers of the juvenile court. *See* I.C. § 31-30-1-4 (requiring the court to consider "whether the child is amenable to rehabilitation under the juvenile justice system"), I.C. § 31-30-3-2 (permitting waiver if the court finds, among other things, that "the child is beyond rehabilitation under the juvenile justice system").

Of course, our holding in *D.P.* precluded the State from initiating proceedings in the juvenile court to determine whether waiver is appropriate when the alleged offender is twenty-one or older. 151 N.E.3d at 1217. But our decision in that case did not prevent the State from seeking to charge the defendant with an offense that was committed while he was a juvenile.

### B. When deciding whether to exercise jurisdiction over an adult who committed an offense as a child, a circuit court might consider the requirements of our Waiver Statutes and the reasons for the delay in filing charges.

When the State petitions the juvenile court to waive jurisdiction to an adult criminal court under facts similar to these, the relevant Waiver Statute requires the State to show (1) that the child was alleged to have committed a delinquent act that, if committed by an adult, would be a Level 1 through Level 4 felony; (2) that probable cause supported a finding that the child committed that act; and (3) that the child was at least sixteen years of age when he allegedly committed the act. I.C. § 31-30-3-5. After the State makes this showing, the child must rebut the presumption of waiver by showing that "it would be in the best interests of the child and of the safety and welfare of the community for the child to remain within the juvenile justice system." *Id*. If the juvenile fails to rebut the presumption of waiver, the juvenile court **shall** waive jurisdiction. *Id*.

By enacting the Waiver Statutes, the legislative branch has already called for judges to balance the policy interests involved in the juvenile- and criminal-justice systems. And this makes sense. The analysis required in a waiver determination is necessarily a fact-sensitive inquiry, one typically left to the discretion of a judicial officer on a case-by-case basis. In my view, trial judges should be authorized to make the same type of inquiry in cases like Neukam's. Because, while I do not accept the proposition that the General Assembly intended **no court** to have jurisdiction, neither do I accept that the circuit court should **always** exercise jurisdiction. If, for example, a circuit court were to apply the waiver standard in this case, the outcome is far from guaranteed.

Neukam's alleged offenses are serious, but they are not among those offenses enumerated in our Direct File Statute, so the State would carry the burden of showing that Neukam should be waived to adult court. *See* I.C. § 31-30-3-5. And while Neukam had not yet turned eighteen at the time of the alleged offenses, he was seventeen and nearing the point of aging out of the juvenile system. Given the severity of the alleged offenses, Neukam's age at the time, the victim's fear of Neukam, and his request

that she remain silent, it may well be that the State's charging amendment is appropriate. In other words, under the facts of **this case**, the important policies underlying the statute of limitations for child molesting may outweigh the equally important rehabilitative goals of our juvenile-justice system. On the other hand, the State waited an extraordinarily long time to file the delinquency charge. The adult charges were filed on November 28, 2017, but the State didn't seek to amend the charging information until September 18, 2020—almost two years later. Still, we may not have all the information, and, even if we did, different circumstances may produce a different outcome in the next case. In my view, a judicial officer, entrusted by their community to balance safety and fairness, should be empowered to make this difficult call.

The solution in this hypothetical is, I admit, an imperfect one. But it addresses the jurisdictional gap created by the Court's opinion, a jurisdictional gap that I do not believe the legislature could have intended. In *D.P*. we invited the General Assembly to clarify the jurisdictional reach of the juvenile court if the results of the case didn't reflect the legislative intent. 151 N.E.3d at 1217. I believe that this case creates an even more compelling call for the legislature to create a statutory fix. Until then, my hypothetical above offers an alternative to allowing "certain delinquent acts to go unpunished," one that also leaves intact the important rehabilitative goals of our juvenile-justice system.

## Conclusion

This Court's decision in *D.P.*, in which I concurred, relied on the "plain language" of the Juvenile Jurisdiction Statute. 151 N.E.3d at 1216. I assented to the *D.P*. Court's textualist approach because I found no ambiguity in the statutory scope of the **juvenile court's** jurisdiction. What's more, our interpretation of the statute there, unlike here, presented no clear conflict with the policy goals of our legislature and did not invalidate multiple other statutes. With today's decision, however, the net effect is that "no court has jurisdiction" over acts committed by a defendant before turning eighteen.

The "jurisdictional gap" created here emerges from a narrow view of statutory interpretation that ignores other **reasonable** interpretations of a statute to find it unambiguous and then ignores practical interpretive canons. To be sure, I find great value in the use of textualism as a tool of statutory construction. But my concern, as is evident in this case, centers on the extremes to which the Court chooses to apply textualism to the exclusion of other evidence of legislative intent. This approach, in my view, places "unrealistic demands" on our colleagues in the General Assembly "to address the range of possible applications" presented in a given statutory scheme. *See* Amanda L. Tyler, *Continuity, Coherence, and the Canons*, 99 Nw. U. L. Rev. 1389, 1423 (2005). *Cf. Fix v. State,* 186 N.E.3d 1134, 1140 (Ind. 2022) (avoiding a strict, "impracticable" approach to statutory interpretation by concluding "that burglary—even if 'complete' for purposes of establishing culpability—is an ongoing crime that encompasses a defendant's conduct **after** the breaking and entering, not just at the threshold of the premises").

For the reasons above, I respectfully dissent.