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IN THE  
COURT OF APPEALS OF INDIANA

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State of Indiana,  
*Appellant-Plaintiff,*

v.

Derick S. Pemberton,  
*Appellee-Defendant*

March 31, 2022

Court of Appeals Case No.  
21A-CR-668

Appeal from the Putnam Circuit  
Court

The Honorable Matthew L.  
Headley, Judge

Trial Court Cause No.  
67C01-2010-FB-939

**May, Judge.**

[1] The State of Indiana appeals the Putnam Circuit Court’s dismissal of one count of Class B felony child molesting<sup>1</sup> alleged to have been committed by twenty-

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<sup>1</sup> Ind. Code § 35-42-4-3(a) (2007).

three-year-old Derick S. Pemberton when Pemberton was sixteen years old. On appeal, the State asserts that dismissal was an error because circuit courts have original and concurrent jurisdiction over all criminal matters. Pemberton responds by asserting Indiana Code section 31-30-1-11(a) divests criminal courts of jurisdiction over adults who committed delinquent acts as children, and in support he cites our court’s recent decision in *State v. Neukam*, 174 N.E.3d 1098 (Ind. Ct. App. 2021), *reh’g denied, trans. granted*. The State, on reply, presents multiple arguments challenging Pemberton’s interpretation of Section 31-30-1-11(a).

[2] At the heart of the issue before us is a lack of clarity in the Indiana Code about whether the legislature intends adult criminal courts to have jurisdiction over individuals who allegedly committed delinquent acts as juveniles but were not identified as having allegedly committed those acts before turning twenty-one years of age. We, like the Putnam Circuit Court, are uncomfortable with the lack of an explicit indication of our legislature’s intent in these circumstances. Nevertheless, the judiciary is not the branch of government the State should petition to correct statutory inadequacies, as our authority is limited to interpreting laws, not to creating the statutes themselves. *See D.P. v. State*, 151 N.E.3d 1210, 1217 (Ind. 2020) (refusing to “violate separation-of-power principles” by rewriting statutes).

[3] In light of the “exclusive original jurisdiction” given to Indiana’s juvenile courts, Ind. Code § 31-30-1-1, and the fact that “children are constitutionally different from adults[,]” *Miller v. Alabama*, 567 U.S. 460, 471, 132 S. Ct. 2455,

2464 (2012), we infer the legislature did not intend criminal courts to have jurisdiction over adults who allegedly committed delinquent acts as juveniles, unless the alleged delinquent act was an offense over which the legislature explicitly gave jurisdiction to criminal courts when the actors were younger than age eighteen. As the criminal court would not have automatically had jurisdiction of Pemberton when he allegedly committed Class B felony child molesting as a sixteen-year-old, we affirm the criminal court's dismissal of the State's criminal charge against Pemberton for an alleged act of juvenile delinquency.

## Facts and Procedural History

- [4] In 2012, sixteen-year-old Pemberton allegedly forced eleven-year-old K.S. to have sexual intercourse. K.S. did not report the allegation to her parents until November 2018, when K.S. was sixteen years old and Pemberton was twenty-two years old. K.S.'s parents contacted police, who began an investigation.
- [5] In January 2019, the State filed a delinquency petition alleging Pemberton, when he was sixteen, had committed an act that would be Class B felony child molesting if committed by an adult. *D.P.*, 151 N.E.3d at 1212. The State asked the juvenile court to waive then twenty-three-year-old Pemberton into adult criminal court. *Id.* Pemberton moved to dismiss and argued the juvenile court lacked the subject matter jurisdiction to consider the delinquency petition or conduct the waiver hearing. *Id.* The juvenile court denied Pemberton's motion but certified its order for interlocutory appeal. *Id.* Our Indiana Supreme Court

agreed with Pemberton and, in September 2020, ordered the juvenile court to grant Pemberton’s motion to dismiss. *Id.* at 1217.

[6] Then, on October 22, 2020, the State filed a charge of Class B felony child molesting against Pemberton in criminal court for the sexual intercourse that is alleged to have occurred when Pemberton was sixteen years old. Pemberton filed a motion to dismiss and argued the adult criminal court did not have jurisdiction over him for acts that occurred when he was a juvenile. The criminal court dismissed the case, and the State now appeals.

## Discussion and Decision

[7] Pemberton’s motion to dismiss rested on an allegation that the adult criminal court did not have jurisdiction over the charge filed against him. “Subject matter jurisdiction refers to a court’s constitutional or statutory power to hear and adjudicate a certain type of case.” *In re D.P.*, 151 N.E.3d at 1213. If a court lacks subject matter jurisdiction, any judgment it enters is void. *Id.* We review a court’s subject matter jurisdiction de novo as a question of law when the underlying facts are not in dispute. *Id.*

[8] We also conduct de novo review of the meaning of any statute at issue. *Id.* Our primary goal when interpreting a statute is to determine the legislature’s intent. *Id.* at 1216. To ascertain that intent, we look first to the statute’s language. *Id.* “If the language is clear and unambiguous, we give effect to its plain and ordinary meaning and cannot resort to judicial construction.” *Id.*

When statutory language is susceptible to more than one reasonable interpretation, we must construe the statute to give effect to the legislature’s intent. *Nash v. State*, 881 N.E.2d 1060, 1063 (Ind. Ct. App. 2008), *trans. denied*.

The legislature is presumed to have intended the language used in the statute to be applied logically and not to bring about an absurd or unjust result. Thus, we must keep in mind the objective and purpose of the law as well as the effect and repercussions of such a construction.

*Id.* “When interpreting the words of a single section of a statute, this court must construe them with due regard for all other sections of the act and with regard for the legislative intent to carry out the spirit and purpose of the act.” *Fuller v. State*, 752 N.E.2d 235, 238 (Ind. Ct. App. 2001). We consider the intent behind the entire act because “[s]tatutes relating to the same general subject matter are in pari materia and should be construed together so as to produce a harmonious statutory scheme.” *Id.*

[9] Pemberton’s motion to dismiss relied on Indiana Code section 31-30-1-11(a), which states:

Except as provided in section 9 of this chapter,<sup>[2]</sup> if a court having criminal jurisdiction determines that a defendant is alleged to have committed a crime before the defendant is eighteen (18) years of age, the court shall immediately transfer

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<sup>2</sup> Indiana Code section 31-30-1-9, which is not relevant here, permits an adult criminal court to have concurrent jurisdiction over a child who left Indiana after committing an act that would be murder or a felony if committed by an adult, but it grants that jurisdiction only for purposes of criminal extradition, after which the child must be transferred to juvenile court.

the case, together with certified copies of all papers, documents, and testimony, to the juvenile court. The juvenile court shall proceed as if it had received a referral under IC 31-37-8.

Pemberton asserts that statutory language required the adult criminal court to transfer the charge against him to the juvenile court because he was alleged to have committed the crime before he was eighteen years old, and in support he cites our court's recent decision in *Neukam*, 174 N.E.3d 1098, which has since been vacated by our Indiana Supreme Court's grant of transfer. *See also State v. Dibble*, 177 N.E.3d 832 (Ind. Ct. App. 2021) (affirming criminal court's dismissal of adult charge of Class B felony child molesting against Dibble for act committed before Dibble was eighteen years old based on Section 31-30-1-11(a)).

[10] The State asserts Pemberton misreads Indiana Code section 31-30-1-11(a) when he infers that it divests criminal courts of jurisdiction over defendants whose alleged delinquent acts were committed before age eighteen. According to the State, the statute requires a criminal court to transfer a case to juvenile court only if the State's criminal allegation is filed before the defendant turns eighteen years old. We reject the State's reading of Indiana Code section 31-30-1-11(a) for a plethora of interrelated reasons, the most important of which is how the transfer statute fits into the broader purpose of the juvenile code, and we begin with that discussion.

[11] Juvenile codes exist because juveniles are a "special class." *Hicks v. State*, 249 Ind. 24, 29, 230 N.E.2d 757, 760 (1967).

First, children have a “lack of maturity and an underdeveloped sense of responsibility,” leading to recklessness, impulsivity, and heedless risk taking. Second, children “are more vulnerable . . . to negative influences and outside pressures,” including from their family and peers; they have limited “control over their own environment” and lack the ability to extricate themselves from horrific, crime-producing settings. And third, a child’s character is not as “well formed” as an adult’s; his traits are “less fixed” and his actions less likely to be “evidence of irretrievable depravity.”

*Miller*, 567 U.S. at 471, 132 S. Ct. at 2464 (quoting *Roper v. Simmons*, 543 U.S. 551, 560-570, 125 S. Ct. 1183 (2005)). “Because juveniles have diminished culpability and greater prospects of reform, . . . ‘they are less deserving of the most severe punishments.’” *Id.* (quoting *Graham v. Florida*, 560 U.S. 48, 68, 130 S. Ct. 2011, 2026 (2010)). Accordingly, the State is “*parens patriae* rather than prosecuting attorney and judge (in proceedings against a juvenile offender).” *Hicks*, 249 Ind. at 29, 230 N.E.2d at 760.

[12] Regarding the purpose of Indiana’s juvenile justice system, our Indiana Supreme Court has stated:

The nature of the juvenile process is rehabilitation and aid to the juvenile to direct his behavior so that he will not later become a criminal. For this reason the statutory scheme of dealing with minors is vastly different than that directed to an adult who commits a crime. Juvenile judges have a variety of placement choices for juveniles who have delinquency problems, ranging from a private home in the community, a licensed foster home, a local juvenile detention center, to State institutions such as the Indiana Boys School and Indiana Girls School. None of these commitments are considered sentences. A child can become a

juvenile delinquent by committing acts that would not be a violation of the law if committed by an adult, such as incorrigibility, refusal to attend public school, and running away from home. A child can also become a delinquent by committing acts that would be a crime if committed by an adult. In the juvenile area, no distinction is made between these two categories. When a juvenile is found to be delinquent, a program is attempted to deter him from going further in that direction in the hope that he can straighten out his life before the stigma of criminal conviction and the resultant detriment to society is realized. In contrast, when an adult is convicted of a crime, the conviction is a stigma that follows him through life, creating many roadblocks to rehabilitation. In addition to the general stigma of being an “ex-con”, or a felon, the conviction subjects him to being found a habitual criminal if he later commits additional felonies, and affects his credibility as a witness in future trials. The Legislature purposely designed the procedures of juvenile determinations so that these problems are not visited on those found to be juvenile delinquents in a juvenile court.

*Jordan v. State*, 512 N.E.2d 407, 408-9 (Ind. 1987).

[13] It was in this broader context that Indiana’s legislature provided a “child is a delinquent child if, before becoming eighteen (18) years of age, the child commits a delinquent act described in this chapter.” Ind. Code § 31-37-1-1. A child commits a “delinquent act” if the child, while under age eighteen, commits an act:

(1) that would be an offense if committed by an adult;

(2) in violation of 35-45-4-6 [indecent display by youth]; or



(3) in violation of 35-47-10-5 [dangerous possession of a firearm][.]

Ind. Code § 31-37-1-2. That statute provides an exception to the definition of delinquent act for acts “committed by a person over which the juvenile court lacks jurisdiction under 31-30-1.” *Id.*

[14] Turning then to Indiana Code chapter 31-30-1, we initially find Indiana’s juvenile courts have “exclusive original jurisdiction, except as provided in sections 9, 10, 12, and 13 of this chapter, in the following: (1) Proceedings in which a child, including the child of divorced parents, is alleged to be a delinquent child under IC 31-37.” Ind. Code § 31-30-1-1. The exceptions for “sections 9, 10, 12, and 13 of this chapter” do not deprive the juvenile court of exclusive jurisdiction over Class B felony child molesting committed by a sixteen-year-old.<sup>3</sup> Nor have we located another section in Indiana Code chapter 31-30-1 that divests the juvenile court of that exclusive jurisdiction.<sup>4</sup>

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<sup>3</sup> Indiana Code section 31-30-1-9 provides concurrent original jurisdiction to criminal courts and juvenile courts for purposes of obtaining extradition of children who have fled Indiana after committing murder or a felony. Indiana Code section 31-30-1-10 gives concurrent jurisdiction to circuit and superior courts for purposes of paternity proceedings “to enforce a duty of support.” Indiana Code section 31-30-1-12 provides concurrent jurisdiction in divorce cases involving child custody, parenting time, or child support if a child is under the jurisdiction of the juvenile court because of a delinquent act. Indiana Code section 31-30-1-13 gives concurrent jurisdiction in paternity cases involving child custody, parenting time, or child support of children under the jurisdiction of the juvenile court because of a delinquent act.

<sup>4</sup> Indiana Code section 31-30-1-2 indicates juvenile law does not apply to a child alleged to have violated an infraction or an ordinance, or to a child alleged to have committed a felony after having been waived into adult court previously under Indiana Code chapter 31-30-3. Indiana Code section 31-30-1-2.5 concerns the appointment of guardians or custodians and, thus, has no relevance to this case. Indiana Code section 31-30-1-3 is irrelevant for our purposes as it gives juvenile courts concurrent original jurisdiction when adults are

[15] One section that appears might impact the juvenile court’s exclusive original jurisdiction is Indiana Code section 31-30-1-4, which divests juvenile courts of jurisdiction over a number of offenses when those offenses are committed by a person who is sixteen or seventeen years old. However, child molesting is not included in that list of offenses over which the juvenile court does not have jurisdiction. *See* Ind. Code § 31-30-1-4. Moreover, as we noted in *Dibble*, 177 N.E.3d at 836 n.4, our legislature attempted in 2021 to amend Section 31-30-1-4 to add child molesting, vicarious sexual gratification, child solicitation, child seduction, sexual misconduct with a minor, and incest to the list of offenses over which the juvenile court does not have jurisdiction “if the individual was less than eighteen (18) years of age at the time of the alleged violation but at least twenty-one (21) years of age at the time of filing.” *See* 2021 IN H.B. 1198. That bill did not pass. The Indiana legislature, when given the opportunity to enact a law doing precisely what the State insists the legislature intends to have happen to Pemberton, chose not to bring that intent to fruition, and we decline the State’s invitation to infer the legislature intends the opposite.<sup>5</sup>

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charged with neglect of a dependent, contributing to delinquency, criminal confinement of a child, violation of school attendance laws, or interference with custody. Indiana Code section 31-30-1-5 impacts juvenile court jurisdiction over child commitment and termination of parental rights proceedings, and section 31-30-1-6 concerns jurisdiction over guardianship proceedings. Indiana Code section 31-30-1-7 gives juvenile courts “concurrent original jurisdiction” over cases involving violation of water recreation law by individuals between the ages of sixteen and eighteen. Indiana Code section 31-30-1-8 gives Marion Superior Court’s juvenile division exclusive jurisdiction over children who commit what would be misdemeanor traffic offenses if committed by an adult.

<sup>5</sup> Nor do we believe a presumption that the juvenile court will *waive* its jurisdiction to adult court, as found in Indiana Code section 31-30-3-5, should be read, as the dissent would, to indicate the legislature intended to *divest* the juvenile court of jurisdiction. The legislature could have divested jurisdiction from the juvenile

[16] This is the broader statutory context in which we encounter the transfer statute at issue in this appeal. Section 31-30-1-11(a) indicates a criminal court should transfer a case to juvenile court immediately if “a defendant is alleged to have committed a crime before the defendant is eighteen (18) years of age[.]” Ind. Code § 31-30-1-11(a). The State asserts the clause “before the defendant is eighteen (18) years of age” modifies the verb “alleged” – rather than the verb “committed” – such that, regardless of when the act was committed, a criminal court should transfer to juvenile court only those who remain under age eighteen at the time of the State’s filing of the charges.<sup>6</sup>

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court, just as it did with some offenses in Indiana Code section 31-30-1-4, but the legislature chose instead to create a waiver statute.

We similarly reject the State’s assertion that the legislature’s decision to extend the statute of limitations for specified sex crimes, including child molesting, committed by adults against children until the alleged victim reaches age thirty-one should impact our reading of the transfer provision in Indiana Code section 31-30-1-11(a). *See* Ind. Code § 35-41-4-2. Indiana Code section 35-41-4-2 extends the statute of limitation for “prosecution” – and juveniles are not “prosecuted” for the sex crimes specified. *See D.M. v. State*, 949 N.E.2d 327, 333 n.6 (Ind. 2011) (“Juvenile delinquency proceedings are civil proceedings, not criminal proceedings, and are based on a philosophy of social welfare rather than criminal prosecution.”). *See also* 2021 IN H.B. 1198 (not enacted).

<sup>6</sup> To support this reading, the State cites the language of the remainder of Indiana Code section 31-30-1-11 and the text of a prior version of this transfer statute. We acknowledge the remaining subsections of Indiana Code section 31-30-1-11 use the term “child” and agree with the State that the word “child” has a narrower definition than the word “defendant;” however, we disagree with the State about the implication of the legislature using those distinct words. The State reads the use of child in the final three subsections to narrow the definition of “defendant” in subsection (a), such that subsection (a) applies only to those defendants who are under age eighteen. We choose, however, to give meaning to the legislature’s use of different words in different subsections and infer the three final subsections apply only to the subset of defendants who are children, while subsection (a) refers to any defendant alleged to have committed a crime based on an act that occurred before said defendant was eighteen years old. *See Clippinger v. State*, 54 N.E.3d 986, 989 (Ind. 2016) (“We assume that the language in a statute was used intentionally and that every word should be given effect and meaning.”) (quoting *Merritt v. State*, 829 N.E.2d 472, 475 (Ind. 2005)).

Nor has the State’s argument regarding the text of the prior version of the statute convinced us that its interpretation is proper. The prior statute required transfer to juvenile court if “it shall be ascertained that said person was under the age of eighteen (18) years at the time the offense is alleged to have been

[17] The State’s interpretation of Indiana Code section 31-30-1-11(a) is undermined by its own acknowledgment that:

If someone is a “child” as defined by the juvenile code, when they “commit[] an act that would be an offense if committed by an adult,” that is a delinquent act, not a crime.

(State’s Reply Br. at 7.) *See also* Ind. Code § 31-37-1-2(1) (defining a delinquent act, in relevant part, as an act that “would be an offense if committed by an adult” and that is committed by a “child . . . before becoming eighteen (18) years of age”). It is illogical to acknowledge, on the one hand, that the juvenile code defines as a delinquent act – not a crime – most offenses committed by children, while insisting, on the other hand, that the transfer statute should be interpreted to allow criminal charges against adults for offenses defined as delinquent acts.<sup>7</sup>

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committed[.]” Ind. Ann. Stat. s 9—3213 (Burns, 1956 Repl.). Our Indiana Supreme Court held that statutory language required transfer to juvenile court if a person was under eighteen at the time the offense was committed. *Hicks*, 249 Ind. at 28, 230 N.E.2d at 759-60. Comparison of the prior statute and current statute –which reveals the new language is more closely aligned with the meaning ascribed by *Hicks* – indicates to us the statutory changes during recodification of the juvenile code were attempts to write the statute to better comport with the holding in *Hicks*, rather than to overturn *Hicks*. *See Binninger v. Hendricks Cnty. Bd. of Zoning Comm’rs*, 668 N.E.2d 269, 273 (Ind. Ct. App. 1996) (“When the legislature amends a statute, it is presumed that the legislature intended to change the law unless it clearly appears that the amendment was made only to express the original intention of the legislature more clearly.”), *trans. denied*.

<sup>7</sup> Our justice system prefers to determine whether an act is a crime, what kind of crime it is, and what forms of punishment are available for that act based on the moment when the crime was committed. *See Peugh v. United States*, 569 U.S. 530, 532-33, 133 S. Ct. 2072, 2077-78 (2013) (“The Constitution forbids the passage of *ex post facto* laws, a category that includes “[e]very law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed.”) (italics in original) (quoting *Calder v. Bull*, 3 Dall. 386, 390 (1798)). While the issues have not been briefed in this appeal, we have serious concerns about whether renaming delinquent acts as crimes based on a change in the actor’s age as time passed

[18] To interpret the transfer statute in the manner the State proposes would allow the State to drag into adult court not just those adults who committed acts over which adult courts had jurisdiction if the juvenile was at least sixteen when the act was committed, *see* Ind. Code § 31-30-1-4, but literally any juvenile delinquent for whom the statute of limitations on adult crimes had not yet run. Thus, for example, if a seventeen-year-old foolishly committed Level 6 felony theft by shop-lifting – which has a five year statute of limitations for adults, *see* Ind. Code § 35-41-4-2 – and if the transfer statute is given the reading urged by the State and the dissent, then the State could bring an adult criminal charge of theft when that foolish teenager is twenty-one or twenty-two years old, even though Indiana Code section 31-30-1-4 would not have allowed the adult court to have jurisdiction over the shoplifter at age seventeen, and even if that foolish teenager had gone on to become a decorated military officer or employed college graduate. If the legislature intended to sweep into adult court all unpunished acts of juvenile delinquency for which the statute of limitation had not yet run, we trust the legislature would do so in a more direct fashion than by use of a heretofore unacknowledged loophole in Indiana Code section 31-30-1-11 that divests the juvenile court of its exclusive jurisdiction of all acts

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following commission of the act could comport with the *ex post facto* prohibitions and due process requirements found in our federal and state constitutions.

committed by children that would have been crimes if committed by an adult.<sup>8</sup> We, accordingly, hold Section 31-30-1-11(a) prohibits the adult criminal court from taking jurisdiction of charges against Pemberton for an act of child molesting that he allegedly committed when he was sixteen years old.<sup>9</sup> *See Dibble*, 177 N.E.3d 832 (affirming criminal court’s dismissal of adult charge of Class B felony child molesting against Dibble for act committed before Dibble was eighteen years old based on Section 31-30-1-11(a)).

## Conclusion

[19] Absent specific exceptions outlined by our legislature in other statutes, acts that would be criminal offenses if committed by adults are defined by Indiana law as delinquent acts when committed by individuals under age eighteen, and Indiana law gives exclusive jurisdiction of delinquency proceedings to juvenile courts. In accordance therewith, we read Indiana Code section 31-30-1-11(a) to prohibit criminal proceedings when the acts alleged as crimes were committed by an individual under age eighteen over whom the juvenile court was not

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<sup>8</sup> Finally, the State claims absurdity will arise if we do not adopt its interpretation of Indiana Code section 31-30-1-11. However, the State’s assertion that our reading of Indiana Code section 31-30-1-11 is absurd – because the legislature intended Pemberton to land in adult court – is undermined by the legislature’s failure to pass a bill creating precisely that legal result. *See* 2021 IN H.B. 1198 (not enacted). *And see K.C.G. v. State*, 156 N.E.3d 1281, 1284 (Ind. 2020) (“For the absurdity doctrine to apply . . . ‘the text must impose an outcome no reasonable person could intend[.]’”) (quoting *R.R. v. State*, 106 N.E.3d 1037, 1042 (Ind. 2018)).

<sup>9</sup> More than twenty years ago, we addressed the interplay between Indiana Code section 31-30-1-11(a) and Indiana Code section 31-30-1-4, and we held Indiana Code section 31-30-1-11(a) does not apply to those over whom the adult court had jurisdiction under Section 31-30-1-4 because such a reading would “render Ind. Code § 31-30-1-4 meaningless.” *Fuller v. State*, 752 N.E.2d 235, 238 (Ind. Ct. App. 2001).

deprived jurisdiction by our legislature. Neither the legislative history nor remaining subsections of Indiana Code section 31-30-1-11 convince us the legislature intended otherwise. Because transfer of this case to juvenile court would be futile, *see D.P. v State*, 151 N.E.3d at 1214, we affirm the trial court's dismissal of the criminal charge brought against twenty-three-year-old Pemberton for the delinquent act he allegedly committed when he was sixteen years old.

[20] Affirmed.

Vaidik, J., concurs.

Molter, J., dissents with opinion.

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I N T H E  
C O U R T O F A P P E A L S O F I N D I A N A

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State of Indiana,  
*Appellant-Plaintiff,*

v.

Derick S. Pemberton,  
*Appellee-Defendant*

Court of Appeals Case No.  
21A-CR-668

Appeal from the  
Putnam Circuit Court

The Honorable  
Matthew L. Headley, Judge

Trial Court Cause No.  
67C01-2010-FB-939

**Molter, Judge, dissenting.**

[21] Pemberton’s motion to dismiss was based solely on Indiana Code section 31-30-1-11(a) (the “Transfer Statute”), which provides that “if a court having criminal jurisdiction determines that a defendant is alleged to have committed a crime before the defendant is eighteen (18) years of age, the court shall immediately transfer the case . . . to the juvenile court.” As I read that statute, it directs an adult criminal court to transfer a case to the juvenile court when the adult court discovers the accused is a child at the time the criminal court is considering the question of transfer, not at the time the relevant acts were allegedly committed. While the Transfer Statute’s first subsection directs the adult criminal court to transfer the case when “a defendant” is alleged to have committed a crime before age eighteen, every subsequent reference is to “the child,” and the entire statute presupposes the defendant is a child at the time transfer is being considered. Ind. Code § 31-30-1-11. Most notably, every



subsection after the first governs what to do with the individual while the case is being transferred, and those subsections all pertain to handling someone who is currently a child. *See, e.g.*, Ind. Code § 31-30-1-11(b) (“The court having criminal jurisdiction shall release the child on the child’s own recognizance or to the child’s parent, guardian, or custodian . . .”).

[22] Under this interpretation, the Transfer Statute has a modest role in a broader jurisdictional scheme: the juvenile court generally has jurisdiction over children, Ind. Code § 31-30-1-1, so the Transfer Statute requires the adult court to transfer cases involving children there. But when the defendant is not a child, the juvenile court lacks jurisdiction regardless of when the alleged conduct occurred, and it cannot accept the case. *D.P. v. State*, 151 N.E.3d 1210 (Ind. 2020). Naturally, the adult court is then not required to transfer the case to a court which cannot receive it.

[23] In this case, our Supreme Court held the juvenile court lacks subject matter jurisdiction over the child molesting charge against Pemberton because he was no longer a child when the State initiated its prosecution for acts he allegedly committed as a child. *Id.* It follows then that the Transfer Statute did not require transferring the case to a juvenile court which could not receive it. In any event, the Transfer Statute only authorizes an adult court to *transfer* a case to the juvenile court, not to *dismiss* a case as the trial court did here. After all, one trial-level court cannot determine another trial-level court’s jurisdiction.

[24] The majority interprets the Transfer Statute not as prioritizing jurisdiction or as a mechanism for transferring a case between two courts which might otherwise have subject matter jurisdiction, but rather as a jurisdiction-stripping statute with a much more robust role in the legislature's scheme. Under this view, the Transfer Statute strips the adult court of subject matter jurisdiction when the alleged conduct occurred before the defendant was eighteen years old, and it does so by requiring the adult court to transfer the case to a juvenile court even when the juvenile court lacks jurisdiction to receive the case. This interpretation disjoints the legislature's jurisdictional scheme in a few respects.

[25] First, it creates a jurisdictional black hole because it requires the adult criminal court to transfer cases like this one to a juvenile court which the Supreme Court has held cannot receive the case. *Id.* It is one thing for the legislature to determine that at some point adults should no longer be subject to legal proceedings for acts they committed as youths. Presumably, the legislature could implement that policy judgment through a statute of limitations, or it might create some other sort of cut-off date for prosecution that is based on the defendant's age. But it would be peculiar for the legislature to implement such a policy judgment through a gap in subject matter jurisdiction, and it would be even more peculiar to implement that judgment by directing one court not to dismiss a case, but rather to transfer the case to another court that lacks subject matter jurisdiction for the sole purpose of then dismissing the case for lack of jurisdiction (and then allowing the first court to skip that step by dismissing the case itself).

[26] Second, and relatedly, while the Transfer Statute directs adult criminal courts to transfer certain cases to juvenile courts, the majority's analysis allows the adult courts to instead dismiss cases if they conclude juvenile courts would lack subject matter jurisdiction. It is unclear what authority would support one trial-level court dismissing a case based on a different court's lack of subject matter jurisdiction.

[27] Third, while the majority notes its most important consideration is how the Transfer Statute fits into the purposes of the legislature's statutory scheme, that consideration cuts both ways. In particular, the majority relies heavily on the legislature's determination that juveniles are generally treated as a special class due to their immaturity, underdeveloped sense of responsibility, incomplete character formation, and susceptibility to peer pressure, but that does not account for the fact that the legislature has made exceptions, and whether juveniles are treated as a special class sometimes turns on what conduct is alleged. The creation of the juvenile court departs from the common law, where juveniles were treated the same as adults in criminal proceedings, *Bible v. State*, 254 N.E.2d 319, 320 (Ind. 1970), and for some crimes the legislature has reverted towards the common law.

[28] Relevant here, all agree the legislature directed that defendants like Pemberton are presumptively to be tried in adult court because he was at least sixteen years old when the alleged child molesting occurred. Ind. Code § 31-30-3-5. Under the majority's interpretation of the Transfer Statute, juveniles like Pemberton presumptively should be tried as adults, unless they are actually adults when

they are tried, in which case, they can't be tried at all. That sort of self-defeating scheme cannot advance any discernable legislative purpose. None of this is to say a rebuttable presumption of waiver should be treated as an irrebuttable presumption, at least not while the accused is still a child. Rather, the point is that the Transfer Statute cannot be interpreted with only the general treatment of juveniles as a special class in mind, and any consideration of legislative purpose must also account for the fact that the legislature made clear defendants like Pemberton should typically be tried in adult criminal courts.

[29] The majority worries my interpretation of the Transfer Statute could result in a scenario, for example, where a seventeen-year-old commits a Level 6 felony theft by shoplifting and is then prosecuted in adult court when they turn twenty-one because the statute of limitations would not have run yet. This concern is misplaced for two reasons.

[30] To begin with, as I interpret the Transfer Statute, it does not speak to that question at all. If the defendant in that scenario were to be prosecuted in the adult criminal court, some other statute would have to confer jurisdiction. The majority suggests there is no such statute because Indiana Code section 31-30-1-1(a) grants "exclusive original jurisdiction" over delinquent acts to the juvenile court. As they interpret section 31-30-1-1, acts which would be criminal offenses if committed by adults are defined by Indiana law as delinquent acts when committed by individuals under age eighteen, and the juvenile court has exclusive jurisdiction over those acts with exceptions which do not apply here.

[31] The majority may be right about that, and we may soon learn when the Supreme Court issues its decision in *State v. Neukam*, 178 N.E.3d 795 (Ind. 2021), which presents that question. But I would not get ahead of the Supreme Court in answering it here because that was not the basis of Pemberton’s motion to dismiss, he does not discuss that statute on appeal, and there are reasons to question whether that statute deprived the adult court of jurisdiction, including our Supreme Court’s statement in the past that both adult criminal courts and juvenile courts have subject matter jurisdiction “[w]hen a juvenile commits acts which would constitute a crime if he were an adult.” *Twyman v. State*, 459 N.E.2d 705, 708 (Ind. 1984).<sup>10</sup>

[32] Also, the question of whether it is good policy to prosecute the hypothetical seventeen-year-old felony shoplifter in adult court is beyond the judicial purview. I leave that for the legislature to determine, suggesting only that if they conclude the defendant should not be prosecuted in adult court, that legislative directive would likely take the form of a statute of limitations or some other age-based prosecutorial cut-off, not a direction to an adult court to first exercise subject matter jurisdiction by deciding to transfer the case, and then to transfer the case to a court which lacks jurisdiction to receive it.

[33] In sum, if the adult criminal court lacked subject matter jurisdiction here, I do not believe the Transfer Statute was the reason, so I would reverse the trial

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<sup>10</sup> Pemberton does not challenge the adult criminal court’s personal jurisdiction.

court's order dismissing the case on that basis without expressing an opinion as to whether other statutes deprive the court of jurisdiction. I therefore respectfully dissent.