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§33-1

Pretrial Detention

[Schall v. Martin, 467 U.S. 253, 104 S.Ct. 2403, 81 L.Ed.2d 207 \(1984\)](#) State statute, which authorized pretrial detention of accused juvenile delinquents based on a finding of a “serious risk” that the juvenile would commit a crime, was upheld.

[In re Randall M., 231 Ill.2d 122, 896 N.E.2d 1309 \(2008\) 705 ILCS 405/5-410](#) is included in Part 4 of the Juvenile Court Act, which governs the “arrest and custody” of minors. Section 5-410 governs actions of the police between the time of the arrest and the time the minor is brought to court, but does not apply to the trial court’s ruling at a detention hearing for a juvenile offender. Thus, the trial and appellate courts erred by applying §5-410 to define the conditions under which a minor could be detained after a detention hearing.

A minor may be held in a county jail or municipal lockup for no more than 24 hours when arrested for a crime of violence and no more than 12 hours when arrested for other offenses. Once the initial period expires, the minor can remain in the jail or lockup only if the facility complies with certain statutory standards, including prevention of contact by sight or sound between the minor and adult prisoners and compliance with DOC monitoring standards and specified training standards. To detain a minor for more than 40 hours but less than one week, the county jail must comply with temporary detention standards promulgated by DOC and with additional training standards. Finally, to house minors for longer than one week, the county jail must comply with certain DOC standards.

An arrested minor is entitled to a detention hearing before a judicial officer within 40 hours after the arrest. The procedure for that hearing is governed by [705 ILCS 405/5-501](#).

[In re D.T., 287 Ill.App.3d 408, 678 N.E.2d 326 \(1st Dist. 1997\)](#) The trial court lacks authority to hold a detention hearing once a minor is released from custody.

Cumulative Digest Summaries §33-1

[In re Montrell S., 2015 IL App \(4th\) 150205 \(No. 4-15-0205, 8/13/15\)](#)

Under [705 ILCS 405/5-710\(1\)\(a\)\(v\)](#), a minor is to be given credit for time spent in pre-adjudication detention under [705 ILCS 405/5-710\(1\)\(a\)\(x\)](#). Because electronic home detention is one of the forms of detention listed in §5-710, the minor was entitled to pre-sentence credit for 41 days spent on electronic home monitoring while awaiting the adjudicatory hearing. “It would seem . . .that when a minor is released from a juvenile detention center only to be put on electronic home monitoring, the legislature regards the minor as not yet ‘released’ from ‘custody,’” but merely “released from secure custody to non-secure custody.”

Because §5-710(b) does not limit pre-sentence credit to “secure custody,” the minor was entitled to credit for the time he spent on electronic home monitoring against the 26-day suspended term of confinement ordered as a condition of probation. The judgement was modified to provide an additional 26 days of pre-sentence credit.

(Respondent was represented by Assistant Defender Janieen Tarrance, Springfield.)

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§33-2

Notice and Jurisdiction

[In re Gault, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 \(1967\)](#) Juvenile proceedings must meet essentials of due process, including advance written notice of charges, right to counsel, right against self-incrimination, and determination of delinquency based upon sworn testimony subject to

cross-examination.

[In re M.W., 232 Ill.2d 408, 905 N.E.2d 757 \(2009\)](#) The failure to serve the minor's father with notice of an amended delinquency petition did not deprive the court of either subject matter or personal jurisdiction, where the father appeared at a detention hearing and received a copy of the petition, but was not served with a subsequent amendment.

Subject matter jurisdiction refers to the court's power to hear cases of the general class to which the proceedings belong. In delinquency cases, subject matter jurisdiction lies in the circuit court, and becomes effective when the State files the initial petition. Subject matter jurisdiction is not affected by the State's failure to serve a minor's father with notice of the proceeding.

Personal jurisdiction refers to the court's power to impose orders upon individual parties. In juvenile court matters, a party may consent to personal jurisdiction by making a personal appearance, or may have personal jurisdiction imposed by service of a summons. Once the trial court acquires personal jurisdiction over a party, that jurisdiction continues until all issues of fact and law have been determined. Lack of personal jurisdiction does not deprive the court of the power to decide the subject matter of the dispute. However, it deprives the court of the ability to impose judgment on parties over whom it lacks jurisdiction. Although the State failed to serve a summons on the minor's father concerning the original proceeding, the father submitted to personal jurisdiction when he appeared at the detention hearing and was given a copy of the petition. Because personal jurisdiction continues once established, the court had personal jurisdiction over the father despite the State's failure to provide notice of the amended petition.

Although the Juvenile Court Act requires service of an amended petition on parents, the failure to provide such notice did not violate either the father's or minor's due process rights where the father did not claim any error and the minor could not assert his father's due process rights.

Finally, the failure to give the father notice of the amendment did not amount to plain error.

[In re J.P.J., 109 Ill.2d 129, 485 N.E.2d 848 \(1985\)](#) 1. Unless some question regarding the State's failure to identify or locate a noncustodial parent is raised in the circuit court, the matter is waived and diligence by the State may be assumed. Because the minors here failed to raise any question about the State's diligence to locate the noncustodial fathers in the circuit court, "the matter has been waived, and we shall inquire no further."

2. Ch. 37, ¶704-4(2) excuses notice by publication if the order or judgment is not directed against the absent person, the person cannot be served with process other than by publication, and the person having custody of the minor is served personally or by certified mail. In the instant case, the minors' mothers (who had sole custody) received actual notice. Also, the fathers' whereabouts were unknown; thus, the record does not show that any of the fathers could have been served by personal or abode service or by certified mail when the proceedings were commenced. Finally, no order or judgment was directed at the absent fathers. Therefore, service by publication was excused.

[In re J.W., 87 Ill.2d 56, 429 N.E.2d 501 \(1981\)](#) Failure to serve notice on minor's father (by publication) did not deprive the juvenile court of jurisdiction or violate due process where the petition for wardship identified the father and his whereabouts as unknown. Also, the failure to serve formal notice on respondent's mother was not error. Because the mother had actual notice, appeared in court and actively participated in the proceedings, she waived the right to formal notice. The notice requirement does not demand "useless formality."

[In re Pronger, 118 Ill.2d 512, 517 N.E.2d 1076 \(1987\)](#) An amendment to Ch. 38, ¶704-3 (eff. 1/12/87), requiring that summons be directed to the minor's legal guardian or custodian and to each person named as a respondent in the petition, applies retroactively. Here, the trial court did not lack jurisdiction, though the minor involved (respondent's child) was not served with a summons, which was required under Ch. 38, ¶704-3 as it existed at the time the petition (alleging that respondent was an unfit parent) was filed. The service complied with the amended version of ¶704-3, for the trial court appointed a guardian *ad litem* for the minor, and the guardian had been served with a summons.

[People v. D.J.](#), 175 Ill.App.3d 491, 529 N.E.2d 1048 (1st Dist. 1988) An amendment to Ch. 37, §704-3(1) (eff. 1/1/88), which required service of summons on the minor’s legal guardian or custodian and to each person named as respondent, “except that summons need not be directed to a minor respondent under 8 years of age,” applied retroactively. **Pronger** is not dispositive because **Pronger** was based on the 1987 amendment to ¶704-3(1). The father’s rights were violated because he, a named respondent with a known address, was not served with a summons, and the father’s appearance at the dispositional hearing on the supplemental petition did not retroactively alleviate the State’s duty to notify him of the initial petition and proceedings.

[In re J.B.](#), 256 Ill.App.3d 325, 628 N.E.2d 265 (1st Dist. 1993) The failure to notify respondent’s mother of his dispositional hearing required a new dispositional hearing, though respondent’s mother (and father) attended some of the prior (adjudicatory) hearings but only respondent’s father attended the final delinquency hearing, at which time the trial court set the date for the dispositional hearing. The trial court may hold a dispositional hearing only after all party-respondents have been served with notice. Although a parent may waive this requirement by appearing at the dispositional hearing without objecting to lack of notice, attending a [hearing at](#) the adjudicatory stage does not waive the right to notice of the dispositional hearing. The mother’s right to notice was not waived because the father and minor raised no objection to the lack of notice; under the pertinent statute, *all* parties are entitled to notice. Finally, the father’s attendance at the dispositional hearing did not show that the mother merely chose not to attend.

[In re C.H.](#), 277 Ill.App.3d 32, 660 N.E.2d 545 (3d Dist. 1995) The trial court lacked jurisdiction in a delinquency proceeding because the State failed to exercise sufficient diligence in notifying respondent’s father of the proceeding. Although the State claimed that the father’s address was unknown, the predispositional report indicated that he was paying child support and had worked as a prison guard for the past 18 years. Had the State “exercised even a small degree of diligence, it could have discovered the father’s address.” The court distinguished this case from cases where the noncustodial parent did not pay child support and the record suggested that locating the parent would have been difficult. Here, the parent’s child support record and long-time employment in a State job “should have made him easier for the State to locate.” See also, [In re Willie W.](#), 355 Ill.App.3d 297, 838 N.E.2d 5 (2d Dist. 2005) (the State “failed to act with even a modicum of diligence” in notifying the minor’s father of the delinquency petition where the State knew the father’s name and learned of the father’s whereabouts at the first hearing and a social history report listed the father’s address and indicated that he made monthly, court-ordered child support payments; the court chose to reach the issue despite the State’s argument that the minor waived it by failing to challenge the lack of notice before the adjudicatory hearing). See [In re M.W.](#), 232 Ill.2d 408, 905 N.E.2d 757 (2009).

[People v. Pico](#), 287 Ill.App.3d 607, 678 N.E.2d 780 (1st Dist. 1997) 705 ILCS 405/5-6(2), which requires that a law enforcement officer who takes a minor into custody without a warrant must “immediately make a reasonable attempt to notify the parent or other person legally responsible for the minor’s care,” applies to a minor who is arrested as a suspect in a murder. Although the Juvenile Court Act excludes from the definition of “delinquent minor” a person “who at the time of an offense was at least fifteen years of age and who is charged with first degree murder” (705 ILCS 405/5-4(6)(a)), the exclusion arises only *after* the minor is charged with murder. (Rejecting [People v. Sevier](#), 230 Ill.App.3d 1071, 598 N.E.2d 968 (1992)). Because defendant was not charged with murder at the time he was being questioned, “he was nothing more than a possible delinquent minor.” But, a mere violation of §5-6(2)’s notification procedure does not necessarily render a confession involuntary. Because there was no other evidence to indicate that defendant’s statement was involuntary, the court affirmed the trial court’s denial of a motion to suppress.

[In re M.G.](#), 301 Ill.App.3d 401, 703 N.E.2d 594 (1st Dist. 1998) The minor received the statutorily-required five-day-notice of the State’s intent to proceed under the Violent Juvenile Offender Act. (See [705 ILCS 405/5-36\(b\)](#)). The State faxed its notice of intent to M.G.’s attorneys of record within five days after the delinquency petition was filed, although the attorneys and law students working on the case

were unavailable and did not receive the message until after the five-day statutory period expired. Supreme Court Rule 11(a) permits notice to be served on a party's attorney of record, and Rule 11(b)(4) authorizes service via fax to the office of an attorney who has consented to receiving faxed notices. (Although the record did not indicate that M.G.'s attorney had consented to service by fax, the court held that any violation of Rule 11(b)(4) would not vitiate the "actual notice" given to the minor's counsel within the time period specified by §5-36(b)).

Cumulative Digest Case Summaries §33-2

[In re Luis R., 239 Ill.2d 295, 941 N.E.2d 136 \(2010\)](#)

The juvenile court dismissed a petition alleging that the respondent was a delinquent minor on the ground that there was "no jurisdiction under the Juvenile Court Act for this proceeding." The motion to dismiss had asserted that the court lacked jurisdiction over respondent's person. The alleged offense occurred before respondent reached his 17th birthday, but respondent was 21 when the petition was filed.

The Juvenile Court Act contains a section entitled "Exclusive jurisdiction," which provides that proceedings may be instituted under the Act concerning any minor who prior to the minor's 17th birthday has violated or attempted to violate any federal or state law or municipal or county ordinance. [705 ILCS 405/5-120](#). The Act defines a "minor" as "a person under the age of 21 subject to this Act." [705 ILCS 405/5-105\(10\)](#).

The Supreme Court interpreted the court's ruling and the parties' arguments on appeal to address only subject-matter jurisdiction, but concluded that the court had both subject-matter and personal jurisdiction.

Subject-matter jurisdiction is a court's power to hear and determine cases of the general class to which the proceeding in question belongs. Generally, a circuit court's subject-matter jurisdiction is conferred entirely by the state constitution. The Illinois Constitution provides that circuit courts have original jurisdiction of all justiciable matters except in those instances in which the Supreme Court has original and exclusive jurisdiction. [Ill.Const. 1970, Art. VI, § 9. A](#) "justiciable matter" is a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching on the legal relations of parties having adverse legal interests. A defectively-stated claim is sufficient to invoke the court's subject-matter jurisdiction, as subject-matter jurisdiction does not depend on the legal sufficiency of the pleadings.

The Supreme Court held that the delinquency petition alleged the existence of a justiciable matter on its face because it definitely and concretely alleged a claim under the Juvenile Court Act that respondent was delinquent. The Supreme Court recognized that there is a potentially fatal defect in the delinquency petition, but concluded that subject-matter jurisdiction had nothing to do with the legal sufficiency of the petition, only whether it was filed in the proper tribunal. The phrase "exclusive jurisdiction" in § 5-120 of the Juvenile Court Act is only a grant of authority to the State, defining the persons against whom the State can initiate delinquency proceedings. Once the legislature creates a justiciable matter, the circuit court's jurisdiction to adjudicate the matter derives exclusively from the constitution and cannot be limited by statute.

A party has personal jurisdiction imposed on him either by the effective service of summons or consent to personal jurisdiction by his appearance. Respondent consented to the court's jurisdiction over his person when his counsel filed a general appearance on his behalf, even though he was not served with summons.

Because the trial court had both personal and subject-matter jurisdiction, the Supreme Court reversed the order of dismissal and remanded for further proceedings.

[People ex rel Alvarez v. Howard, 2016 IL 120729 \(No. 120729, 12/1/16\)](#)

1. The Supreme Court has original jurisdiction to hear *mandamus* cases. *Mandamus* is an extraordinary remedy used to compel a public official to perform a purely ministerial duty where no exercise of discretion is involved. A writ of *mandamus* will be awarded only if the petitioner establishes a clear right to the relief requested, a clear duty on the part of the public official to act, and clear

authority by the public official to comply with the writ.

A writ of prohibition may be used to prevent a judge from acting where he or she has no jurisdiction or to prevent a judicial act that is beyond the scope of legitimate jurisdictional authority. In order for a writ of prohibition to be issued, four requirements must be met. These requirements include: (1) the action to be prohibited must be judicial or quasi-judicial, (2) the writ must be issued against a court of inferior jurisdiction, (3) the action to be prohibited must be outside either the inferior court's jurisdiction or legitimate authority, and (4) the petitioner must lack any other adequate remedy.

2. Under Illinois retroactivity analysis, the first question is whether the legislature has clearly indicated that an amendment is to be applied retroactively or prospectively. If the legislature failed to express a clear indication of the temporal reach of the statute, Sec. 4 of the Statute on Statutes ([5 ILCS 70/4](#)) provides that procedural changes will be applied retroactively while substantive changes are prospective only. In addition, the Effective Date of Laws Act, which implements the constitutional directive that the General Assembly provide a uniform effective date for laws passed prior to June 1 of a calendar year, provides an effective date for legislation that does not contain an express effective date.

The court rejected the State's argument that by passing Public Act 99-258 in May 2015 with an effective date of January 1, 2016, the legislature expressed an intention that the legislation be applied prospectively only. Because Public Act 99-258 did not contain any effective date, a January 1 effective date was created by the Effective Date of Laws Act and not by the legislature's express provision. Although an expressly-stated delay in the effective date which is contained within the body of the statute may indicate the legislature's intent that the statute is to be applied prospectively, the same is not true where the act contains no effective date and the delayed effective date is the result of the Effective Date Act.

3. Because the legislature did not set forth an effective date in Public Act 99-258, which raised the automatic transfer age for juveniles to 16 and reduced the number of offenses that qualify for automatic transfer, the question of retroactivity is to be determined under §4 of the Statute on Statutes. Because the issue of juvenile transfer is a procedural issue, under §4 the amendment is to be applied retroactively.

4. The court acknowledged that under §4, even new procedural laws are to be applied retroactively only to the extent that is "practicable." However, the court rejected the argument that it was not "practicable" to provide a transfer hearing where the charge was filed properly under the law in effect at the time of the offense.

"Practicable" does not mean the same thing as "convenient," but instead focuses on whether it is "feasible" to apply a statute retroactively. The court found that it was feasible to provide a transfer hearing even where no such hearing would have been required at the time of the offense. The court also noted that the legislature could have chosen to make the statute apply prospectively only but did not.

The court denied the State's petition for a writ of *mandamus* or prohibition to require the trial court to rescind its order requiring a discretionary transfer hearing.

[In re Luis R., 2013 IL App \(2d\) 120393 \(No. 2-12-0393, 6/28/13\)](#)

1. [705 ILCS 405/5-120](#) provides that delinquency proceedings "may be instituted . . . concerning any minor who prior to the minor's 17 birthday has violated or attempted to violate . . . any federal or State law or municipal or county ordinance." The Appellate Court concluded that §5-105(3) was intended by the General Assembly to authorize delinquency proceedings only against persons who are under the age of 21 when proceedings are commenced and who before turning 17 violated or attempted to violate a criminal law. Thus, the State lacked authority to institute delinquency proceedings for two counts of aggravated criminal sexual assault which the respondent allegedly committed at age 14 but the respondent was 21 when the petition was filed.

The court acknowledged that under [In re Luis R., 239 Ill.2d 295, 941 N.E.2d 136 \(2010\)](#), the juvenile court had subject matter jurisdiction, personal jurisdiction, and inherent authority to adjudicate delinquency petitions. The court concluded, however, that the statutory authorization for bringing a delinquency petition does not extend to a person who has reached the age of 21 even if the alleged criminal activity occurred while the person was a minor.

2. The court also rejected the argument that the trial court should have considered the State's motion for discretionary transfer of an individual who had reached the age of 21 before a delinquency

petition was filed, but the petition alleged an offense which occurred while the person was a juvenile. The State argued that the juvenile court had jurisdiction over the proceedings, and therefore could order a discretionary transfer to criminal court.

The court concluded that the prosecution's motion for discretionary transfer to criminal court "is a legal nullity if the motion is filed after the respondent reaches the age of 21." The court also concluded that because the State is not authorized to institute delinquency proceedings against a person who has turned age 21, it is not authorized to file a motion requesting discretionary transfer to criminal court. "The State's authority for requesting a discretionary transfer from juvenile court to criminal court is derived from the [Juvenile Court Act], and without the authority to institute proceedings in the first place, the State may not obtain a transfer under the Act."

(Defendant was represented by Assistant Defender Christopher McCoy, Elgin.)

[People v. Baum, 2012 IL App \(4th\) 120285 \(No. 4-12-0285, 11/8/12\)](#)

Section 5-120 of the Juvenile Court Act, entitled "Exclusive jurisdiction," defines the persons and crimes covered by delinquency proceedings. The State may institute juvenile delinquency proceedings "concerning any minor who prior to the minor's 17th birthday has violated or attempted to violate, regardless of where the act occurred, any federal or State law or municipal or county ordinance." [705 ILCS 405/5-120](#). Subject to enumerated exceptions, "no minor who was under 17 years of age at the time of the alleged offense may be prosecuted under the criminal laws of this State." [705 ILCS 405/5-120](#).

Defendant was no older than 16 when he allegedly committed criminal sexual assault, even though he was 19 when the criminal information was filed against him. Therefore, the State was not authorized to prosecute him as an adult and the court did not err in dismissing the information after the State refused the court's offer to transfer the case to juvenile court.

It was not accurate for the trial court to rule that it lacked jurisdiction rather than that the criminal charges could not be filed because defendant fell outside the class of persons against whom a criminal charge could be filed. The court had subject-matter and personal jurisdiction because: (1) the criminal charges alleged a justiciable matter under the Criminal Code over which circuit courts have the authority to preside, and (2) by appearing in these proceedings, defendant waived any objection based on the court's lack of personal jurisdiction.

[People v. Glazier, 2015 IL App \(5th\) 120401 \(No. 5-12-0401, 8/20/15\)](#)

Seventeen-year-olds charged with first degree murder may not be prosecuted under the Juvenile Court Act, and must be transferred to adult court. [705 ILCS 405/5-130\(1\)\(a\)](#). The Appellate Court rejected the argument that the automatic transfer and exclusive jurisdiction provisions of the Act violate the federal and state constitutions because all 17-year-olds charged with first degree murder are treated as adults, without regard to their youthfulness and individual characteristics.

The court concluded that the State has a legitimate interest in curtailing crime and promoting the safety and welfare of its citizenry, and that a minor does not have a constitutional, common law, or statutory right to be treated as a juvenile. In addition, the legislature has authority to define the limits of juvenile court jurisdiction. The court found that it is neither arbitrary nor unreasonable for the legislature to require criminal prosecution and sentencing for older juveniles charged with the worst crimes, because removing such persons from the juvenile system protects the public.

Furthermore, the "cruel and unusual punishment" clause of the Eighth Amendment is not violated by statutorily excluding 17-year-old homicide defendants from juvenile court. The automatic transfer provision governs only the procedure to be used for adjudicating a juvenile's culpability, and does not determine the specific sentence that will be imposed. The court acknowledged that the Illinois Supreme Court has expressed concern over the lack of judicial discretion with the respect to automatic transfer of juveniles, but held that until the legislature acts it is bound to follow the law as it exists today.

(Defendant was represented by Assistant Defender Daniel Mallon, Chicago.)

[People v. Harmon, 2013 IL App \(2d\) 120439 \(No. 2-12-0439, 10/28/13\)](#)

The exclusive jurisdiction provision of the Juvenile Court Act ([705 ILCS 405/5-120](#)) provides that 17-year-olds charged with felonies must be prosecuted and sentenced as adults, without consideration

of their youthfulness and individual circumstances. The court rejected the argument that the exclusive jurisdiction statute violates the Eighth Amendment and due process under [Roper v. Simmons, 543 U.S. 551 \(2005\)](#) (the Eighth Amendment prohibits death penalty for juvenile offenders), [Graham v. Florida, 560 U.S. 48 \(2010\)](#) (the Eighth Amendment forbids a sentence of life without the possibility of parole for juveniles who did not commit homicide), [J.D.B. v. North Carolina, 564 U.S. ___, 131 S. Ct. 2394 \(2011\)](#) (a child's age if known or objectively apparent to reasonable police officer is relevant in determining whether the child is in custody for **Miranda** purposes), and [Miller v. Alabama, 567 U.S. ___, 132 S. Ct. 2455 \(2012\)](#) (the Eighth Amendment prohibits a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders). Defendant argued that all four cases hold that fundamental differences between juvenile and adult minds make children under 18 less culpable than adults for the same offenses, and that juvenile offenders must therefore be afforded additional constitutional protections.

1. The court found that the exclusive jurisdiction statute does not violate the Eighth Amendment prohibition against "cruel and unusual" punishment. The court stressed that **Roper, Graham, and Miller** hold that the trial court must have an opportunity to consider mitigating circumstances before sentencing juveniles to the "harshest possible penalty." However, the sentencing issues involved in those cases are not raised by the exclusive jurisdiction statute, which concerns only whether the minor will be tried in juvenile or adult court.

The court also noted that Illinois courts have rejected defendant's argument when raised to challenge the automatic transfer provisions of the Juvenile Court Act ([705 ILCS 405/5-130](#)). The court held that the same rationale applies to the exclusive jurisdiction statute.

2. The court also rejected the argument that because minors have a fundamental interest in not being automatically treated as adults, the exclusive jurisdiction provision violates substantive due process under the federal and state constitutions. The court reiterated that the reasoning of Illinois precedent upholding the automatic transfer statute against similar challenges applies to the exclusive jurisdiction provision. The court also noted that **Roper, Graham, and Miller** concerned Eighth Amendment issues rather than due process, and that the statutes involved in those cases involved sentencing rather than the forum in which an alleged offender is tried, the focus of the exclusive jurisdiction statute.

(Defendant was represented by Assistant Defender Brian Koch, Chicago.)

[People v. Markley, 2013 IL App \(3d\) 120201 \(No. 3-12-0201, 1/31/13\)](#)

1. [705 ILCS 405/5-125](#) provides that "any minor alleged to have violated a traffic, boating, or fishing game law . . . may be prosecuted for the violation and if found guilty punished under any statute or ordinance relating to the violation," without reference to Juvenile Court Act procedures, except that any detention must comply with the Juvenile Court Act. The court found that the plain language of the statute affords prosecutors discretion to file traffic charges against minors in either juvenile or adult court. The court rejected the argument that under [People v. Sims, 104 Ill. App. 3d 55, 432 N.E.2d 633 \(4th Dist. 1982\)](#), traffic offenses committed by a juvenile may not be prosecuted in adult court unless the offense is punishable by fine only.

The court noted that **Sims** was decided under a prior version of the concurrent jurisdiction statute, and that the amended version of the statute expressly gives discretion to prosecutors to file traffic violations in either juvenile or adult court.

2. As a matter of first impression, the court rejected the argument that the concurrent jurisdiction statute violates due process because there is no requirement that the minor's youthfulness be considered before a case is filed in adult court. The court concluded that the due process right of a minor to have her age considered before a case is prosecuted in adult court applies where the juvenile court has the power to waive its jurisdiction and allow a minor to be transferred to juvenile court. Section 5-125 does not concern the trial court's power to transfer juvenile cases, but only the prosecutor's discretion in filing cases.

The court also concluded that there is a rational basis for §5-125 because the offenses which can be filed in the criminal court are adult by nature, and that the discretion given to prosecutors under the statute is consistent with the broad discretion generally given to prosecutors to decide whether to file charges and which charges to file.

3. The court also rejected the argument that §5-125 violates the Eighth Amendment and the proportionality clause of the Illinois Constitution. Both the Eighth Amendment and the proportionality clause concern the constitutionality of sentencing statutes. Neither provision affects statutes giving prosecutors discretion to charge certain crimes as adult offenses.

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§33-3

Transfer of Case from Juvenile Court to Adult Criminal Court

[Kent v. U.S., 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed.2d 84 \(1966\)](#) Before the juvenile court waives jurisdiction and transfers a minor's case to criminal court, a hearing must be held with counsel, access to records, and a statement of reasons for the court's order.

[People v. Bombacino, 51 Ill.2d 17, 280 N.E.2d 697 \(1972\)](#) Transfer provision of Juvenile Court Act held constitutional. Accord, [U.S. ex rel. Bombacino v. Bensinger, 498 F.2d 875 \(7th Cir. 1974\)](#). See also, [People v. Sprinkle, 56 Ill.2d 257, 307 N.E.2d 161 \(1974\)](#).

[People v. Taylor, 76 Ill.2d 289, 391 N.E.2d 366 \(1979\)](#) Transfer provision of the Juvenile Court Act does not deny due process though the judge is not required to state his reasons for ordering the transfer, no standard of proof is articulated, relaxed rules of evidence apply, the judge is not required to weigh the specified criteria set out in the Act according to a set formula, and the juvenile may not appeal a transfer order until after trial.

[People v. J.S., 103 Ill.2d 395, 469 N.E.2d 1090 \(1984\)](#) Mandatory juvenile transfer statute, which provides that 15- and 16-year-old defendants must be prosecuted as adults for murder, rape, deviate sexual assault, and armed robbery with a firearm, is not arbitrary or discriminatory and does not violate due process or equal protection, though it distinguishes offenders by age and offense.

[People v. M.A., 124 Ill.2d 135, 529 N.E.2d 492 \(1988\)](#) Provision requiring that minors charged with unlawful use of weapons on school grounds automatically be transferred to the criminal court does not deprive minors of due process or equal protection.

[People v. P.H., 145 Ill.2d 209, 582 N.E.2d 700 \(1991\)](#) The "gang transfer" provision of the Juvenile Court Act, which requires that a case be transferred to criminal court when it is alleged that a minor who is at least 15 years old and who was previously adjudicated delinquent commits a forcible felony in furtherance of gang activity, does not violate double jeopardy, equal protection, substantive due process, procedural due process, or the separation of powers doctrine.

In re R.L., 158 Ill.2d 432, 634 N.E.2d 733 (1994) Provision for mandatory transfer to adult court of minors who are at least 15 and charged with violating certain provisions of the Controlled Substances Act near public housing authority property is constitutional.

[People ex rel. Davis v. Vazquez, 92 Ill.2d 132, 441 N.E.2d 54 \(1982\)](#) When the State appeals from an order denying its motion to transfer to prosecute the minor as an adult, the minor is entitled to either release or bail.

[People v. Morgan, 197 Ill.2d 404, 758 N.E.2d 813 \(2001\)](#) 1. The trial court did not abuse its discretion by transferring a 14-year-old minor for adult prosecution where the offense was committed in an aggressive and premeditated manner and it was unlikely defendant could be rehabilitated by the time he reached 21.

Under the law in effect at the time, a juvenile could be transferred to adult court where the trial

judge found that it was "not in the best interests of the minor or of the public to proceed" in juvenile court. Among the factors to be considered were: (1) whether there was sufficient evidence for an indictment, (2) whether there was evidence that the offense was committed in an aggressive and premeditated manner, (3) the minor's age, (4) the minor's history, (5) whether there were facilities particularly available to the Juvenile Court for treatment and rehabilitation, (6) whether the best interests of the minor and security of the public required incarceration past the age of majority, and (7) whether the minor possessed a deadly weapon when committing the offense. See also, [People v. Bridges, 188 Ill.App.3d 961, 545 N.E.2d 367 \(5th Dist. 1989\)](#) (after discussing the criteria to be considered at a transfer hearing, the court upheld the transfer in this case).

2. The purpose of a transfer proceeding is to balance the best interests of the minor, particularly those relating to potential for rehabilitation, against society's interest in being protected from crimes by minors. In striking this balance the court must weigh the facts of the alleged crime, especially whether it was committed in an aggressive and premeditated manner.

3. The State's burden of proof at a transfer hearing is probable cause.

[People v. Clark, 119 Ill.2d 1, 518 N.E.2d 138 \(1987\)](#) The transfer hearing was insufficient (and the cause remanded for a new hearing) where: neither the judge nor counsel indicated any awareness that a mandatory sentence of natural life was required upon defendant's conviction for two murders and the judge failed to investigate defendant's history, especially with regard to his rehabilitative potential, as well as the availability of any rehabilitative services if jurisdiction was retained under the Juvenile Act. At a transfer hearing, the judge is required to receive sufficient evidence on all the statutory factors, including the juvenile's history and the availability of suitable treatment or rehabilitative services. Here, the judge "gave virtually no consideration to" the above factors. See also, [People v. Langston, 167 Ill.App.3d 854, 522 N.E.2d 304 \(5th Dist. 1988\)](#) (the evidence at the transfer hearing was inadequate to support a transfer determination; although the evidence established lack of family adjustment, lack of family support for treatment or rehabilitation efforts, and that defendant had one minor station adjustment prior to the alleged offense, it did not establish defendant's social adjustment, school adjustment, or mental and physical health, and there was no evidence whatsoever regarding the facilities available to the juvenile court for defendant's treatment or rehabilitation).

[People v. Rahn, 59 Ill.2d 302, 319 N.E.2d 787 \(1974\)](#) Reversible error occurred where defendant, who was 16, was prosecuted directly in the criminal court without the filing of a transfer petition in juvenile court.

[People v. Jones, 81 Ill.2d 1, 405 N.E.2d 343 \(1979\)](#) Defendant was erroneously indicted before the judge ruled on the State's motion to transfer and prosecute defendant as an adult. The error did not require reversal where the trial court decided the transfer motion on the basis of the proper statutory factors and independent of the indictment.

[People v. Jiles, 43 Ill.2d 145, 251 N.E.2d 529 \(1969\)](#) Orders transferring cases from juvenile court are not final judgments and are not appealable.

[People v. Martin, 67 Ill.2d 462, 367 N.E.2d 1329 \(1977\)](#) The State may appeal from a denial of a motion to remove the proceedings from juvenile court. The substantive effect of the order denying removal was to dismiss any future indictment on the charge.

[In re Christopher K., 217 Ill.2d 348, 841 N.E.2d 945 \(2005\)](#) The "law-of-the-case" doctrine does not prohibit the State from filing a motion for extended juvenile jurisdiction after a reviewing court has affirmed the trial court's denial of a motion for discretionary transfer to adult court. The plain language of the EJJ statute does not prohibit the filing of separate motions or specifically require that EJJ and discretionary transfer motions be filed simultaneously. Also, the two motions involve substantially distinct issues, precluding application of the "law-of-the-case" doctrine.

[People v. Brown, 225 Ill.2d 188, 866 N.E.2d 1163 \(2007\)](#) Defendant's transfer from juvenile court to

adult criminal court was void because the statutory provision pursuant to which defendant's transfer was carried out (Safe Neighborhoods Act) was subsequently found to be unconstitutional under the single subject rule. That defendant pleaded guilty did not prevent relief - "[a] guilty plea does not preclude a defendant from challenging a circuit court's judgment as void *ab initio*." Further, a void judgment may be challenged at any time, whether or not defendant can satisfy the requirements of the Post-Conviction Hearing Act. Defendant was entitled to a new transfer hearing, to be governed by the law that was in effect before the Safe Neighborhoods Act was passed, not by a new presumptive transfer statute passed after defendant's conviction. The Court did not need to determine whether application of the new presumptive transfer provision would violate the *ex post facto* clause, because the issue could be resolved on a nonconstitutional ground - that the legislature did not intend to apply the new presumptive transfer provision retroactively. If the conviction stands after the transfer hearing, defendant is prohibited from challenging the negotiated 28-year-sentence he received for attempt murder.

[People v. Sampson, 130 Ill.App.3d 438, 473 N.E.2d 1002 \(4th Dist. 1985\)](#) Statute allowing minors to be prosecuted as adults for traffic offenses, whether or not the violation is punishable by imprisonment, without the protections of the Juvenile Court Act, does not violate equal protection.

[People v. Perea, 347 Ill.App.3d 26, 807 N.E.2d 26 \(1st Dist. 2004\)](#) The presumptive transfer statute does not violate equal protection because persons presumptively transferred are treated more harshly than juveniles transferred under the automatic transfer statute or the extended juvenile jurisdiction statute. Nor is the presumptive transfer statute unconstitutionally vague because it fails to provide sufficient notice that adult sentencing may be required even if the minor is acquitted of the predicate felony for which transfer was ordered. Finally, the presumptive transfer statute does not violate [Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348 \(2000\)](#).

[People v. Brazee, 316 Ill.App.3d 1230, 738 N.E.2d 646 \(2d Dist. 2000\)](#) Under the Juvenile Court Act, a "delinquent minor" is one who commits certain acts before his 17th birthday, except for aggravated criminal sexual assault and several other offenses, for which the offender is treated as a delinquent only if he is under 15. A 15-year-old charged with both aggravated criminal sexual assault and criminal sexual assault is properly tried as an adult. If the minor subsequently pleads guilty only to criminal sexual assault, however, the cause must be returned to juvenile court for sentencing unless the State makes a timely request for adult sentencing.

[People v. Mathis, 357 Ill.App.3d 45, 827 N.E.2d 932 \(1st Dist. 2005\)](#) A minor who is convicted in adult court of only offenses for which mandatory transfer does not apply has been adjudicated delinquent, not convicted of a criminal offense. Therefore, defendant's criminal conviction should be vacated on remand.

[People v. Cooks, 271 Ill.App.3d 25, 648 N.E.2d 190 \(1st Dist. 1995\)](#) 1. The record was sufficient to show that the trial court considered the mandatory life sentence before ordering a transfer; the only reference to the mandatory life sentence occurred during defense counsel's closing argument, when he said that if defendant was convicted he would "spend his natural life in a penitentiary."

2. Also, there is no statutory or judicial presumption that defendants who are 14 or younger should be tried in juvenile court.

[In re Burns, 67 Ill.App.3d 361, 385 N.E.2d 22 \(1st Dist. 1978\)](#) The trial judge did not abuse his discretion in holding that defendant should remain under juvenile court jurisdiction instead of being prosecuted as an adult for armed robbery and murder where the refusal to transfer will serve the minor's best interest while posing only a minimal threat to society.

[In re R.L.L., 106 Ill.App.3d 209, 435 N.E.2d 904 \(4th Dist. 1982\)](#) The trial court denied the State's motion to transfer, after a [hearing at](#) which psychiatric experts agreed that defendant had severe psychological problems and needed long-term psychiatric treatment in a secure facility, finding that "the main purpose of adult facilities is to punish, not to rehabilitate." The court's remarks did not constitute

an “unconstitutional exercise of legislative authority by a member of the judicial branch.” Instead, they merely showed that the trial court felt the minor would have a better chance of receiving psychiatric treatment in a juvenile facility than in an adult facility. The trial court did not abuse its discretion in denying the State’s motion to transfer.

[People v. G.V., 83 Ill.App.3d 828, 404 N.E.2d 374 \(1st Dist. 1980\)](#) 15-year-old defendant pled guilty to robbery the day after his arrest (and after he had spent the night in custody) without first being transferred to adult court. The court vacated defendant’s conviction, finding that he did not knowingly waive his right to be treated as a juvenile. Defendant made no misrepresentation to the court under oath, and there was no undue delay in bringing his correct age to the trial court’s attention. Also, the mere fact that defendant had prior contacts with the juvenile court system does not support the conclusion that he “knew when he was entitled to invoke its protection, how to proceed if he so chose, or what effect a juvenile proceeding rather than a criminal one would have on him or his record.”

[People v. Greve, 83 Ill.App.3d 435, 403 N.E.2d 1230 \(2d Dist. 1980\)](#) The trial court erroneously denied defendant’s motion to transfer back to juvenile court, which defendant filed after waiving the protections of the Juvenile Court Act and electing to be prosecuted as an adult where the request to transfer back to the juvenile court was made 47 days before the date set for trial, was made in good faith on the advice of new counsel, and was not for purposes of delay.

[In re R.L., 282 Ill.App.3d 839, 668 N.E.2d 70 \(1st Dist. 1996\)](#) A trial judge who is considering a motion to transfer a minor to the adult criminal system must conduct a probable cause determination that is independent of the probable cause determination made at the detention hearing, which is held within 36 hours of the minor’s arrest. The judge assigned to hear the transfer motion must “hear” and “determine” the “probable cause issues,” and detention hearings typically occur before defense counsel has had an opportunity to investigate the case. In addition, the ruling at the detention hearing is merely provisional and is subject to change. See also, [In re J.E., 282 Ill.App.3d 794, 668 N.E.2d 1052 \(1st Dist. 1996\)](#).

[People v. Rodriguez, 355 Ill.App.3d 290, 823 N.E.2d 224 \(2d Dist. 2005\)](#) Defendant was tried as an adult under a statute (which has since been repealed) that provided for mandatory transfer where certain conditions were met, including that minor committed the offense in a “public way” within 1,000 feet of a school. On appeal, defendant argued that the crime occurred in a gas station parking lot, and not a “public way.” The appellate court rejected his argument. But seven years later, the appellate court issued a decision, [People v. Dexter, 328 Ill.App.3d 583, 768 N.E.2d 753 \(2d Dist. 2002\)](#), which limited the definition of “public way.” Defendant then filed a motion to vacate his conviction, arguing that **Dexter** rendered his conviction void. The appellate court applied **Dexter** retroactively and agreed. Under **Dexter**, defendant did not commit the crime in a “public way”; therefore, the trial court lacked authority to impose a criminal conviction and sentence, and the Juvenile Court Act’s discretionary transfer provision did not apply absent a finding that it was not in the best interests of the minor or the public to proceed under the Act.

Cumulative Digest Case Summaries §33-3

[People ex rel Alvarez v. Howard, 2016 IL 120729 \(No. 120729, 12/1/16\)](#)

1. The Supreme Court has original jurisdiction to hear *mandamus* cases. *Mandamus* is an extraordinary remedy used to compel a public official to perform a purely ministerial duty where no exercise of discretion is involved. A writ of *mandamus* will be awarded only if the petitioner establishes a clear right to the relief requested, a clear duty on the part of the public official to act, and clear authority by the public official to comply with the writ.

A writ of prohibition may be used to prevent a judge from acting where he or she has no jurisdiction or to prevent a judicial act that is beyond the scope of legitimate jurisdictional authority. In order for a writ of prohibition to be issued, four requirements must be met. These requirements include:

(1) the action to be prohibited must be judicial or quasi-judicial, (2) the writ must be issued against a court of inferior jurisdiction, (3) the action to be prohibited must be outside either the inferior court's jurisdiction or legitimate authority, and (4) the petitioner must lack any other adequate remedy.

2. Under Illinois retroactivity analysis, the first question is whether the legislature has clearly indicated that an amendment is to be applied retroactively or prospectively. If the legislature failed to express a clear indication of the temporal reach of the statute, Sec. 4 of the Statute on Statutes ([5 ILCS 70/4](#)) provides that procedural changes will be applied retroactively while substantive changes are prospective only. In addition, the Effective Date of Laws Act, which implements the constitutional directive that the General Assembly provide a uniform effective date for laws passed prior to June 1 of a calendar year, provides an effective date for legislation that does not contain an express effective date.

The court rejected the State's argument that by passing Public Act 99-258 in May 2015 with an effective date of January 1, 2016, the legislature expressed an intention that the legislation be applied prospectively only. Because Public Act 99-258 did not contain any effective date, a January 1 effective date was created by the Effective Date of Laws Act and not by the legislature's express provision. Although an expressly-stated delay in the effective date which is contained within the body of the statute may indicate the legislature's intent that the statute is to be applied prospectively, the same is not true where the act contains no effective date and the delayed effective date is the result of the Effective Date Act.

3. Because the legislature did not set forth an effective date in Public Act 99-258, which raised the automatic transfer age for juveniles to 16 and reduced the number of offenses that qualify for automatic transfer, the question of retroactivity is to be determined under §4 of the Statute on Statutes. Because the issue of juvenile transfer is a procedural issue, under §4 the amendment is to be applied retroactively.

4. The court acknowledged that under §4, even new procedural laws are to be applied retroactively only to the extent that is "practicable." However, the court rejected the argument that it was not "practicable" to provide a transfer hearing where the charge was filed properly under the law in effect at the time of the offense.

"Practicable" does not mean the same thing as "convenient," but instead focuses on whether it is "feasible" to apply a statute retroactively. The court found that it was feasible to provide a transfer hearing even where no such hearing would have been required at the time of the offense. The court also noted that the legislature could have chosen to make the statute apply prospectively only but did not.

The court denied the State's petition for a writ of *mandamus* or prohibition to require the trial court to rescind its order requiring a discretionary transfer hearing.

People v. Patterson, 2014 IL 115102 (No. 115102, 10/17/14)

The automatic transfer statute requires juveniles who are at least 15 years old and are charged with one of the enumerated offenses to be prosecuted in adult criminal court. The enumerated offenses are first degree murder, aggravated battery with a firearm (if the minor personally discharged the weapon), armed robbery with a firearm, aggravated vehicular hijacking with a firearm, and aggravated criminal sexual assault. [705 ILCS 405/5-130](#).

Defendant argued that the transfer statute either alone or in conjunction with the consecutive sentencing scheme ([730 ILCS 5/5-8-4\(a\)\(ii\)](#)) and the truth in sentencing statute requiring him to serve at least 85% of his sentence ([730 ILCS 5/3-6-3\(a\)\(2\)\(ii\)](#)), violated (1) the eighth amendment and the proportionate penalties clause of the Illinois Constitution, and (2) state and federal due process, because this statutory scheme does not take the distinctive characteristics of juveniles into account.

1. The eighth amendment protects defendants against cruel and unusual punishments, while the Illinois proportionate penalties clause similarly bars the imposition of unreasonable sentences. [U.S. Const., amend. VIII](#); [Ill. Const. 1970, art. I §11](#). The Illinois proportionate penalties clause is co-extensive with the eighth amendment. Neither clause applies unless a punishment is imposed.

Defendant argued that three recent United States Supreme Court cases, [Roper v. Simmons, 543 U.S. 551 \(2005\)](#), [Graham v. Florida, 560 U.S. 48 \(2010\)](#), and [Miller v. Alabama, 567 U.S. ___ \(2012\)](#), make it unconstitutional to apply adult sentencing standards to juveniles without first taking into account the distinctive characteristics of juveniles.

The court rejected this argument, holding that access to juvenile court is not a constitutional

right and trying a defendant in juvenile or criminal court is purely a matter of procedure. Even accepting the assertion that criminal courts always involve lengthier sentences and harsher prison conditions, the court found nothing in defendant's argument that would convert a procedural statute into a punitive one.

In previous cases, the court had already determined that the purpose of the transfer statute was to protect the public, not to punish defendants. The automatic transfer statute reflects the legislature's reasonable decision that criminal court is the proper venue for juveniles charged with certain felonies, and the court declined to second-guess the validity of the legislature's judgment.

2. The court also rejected defendant's argument that the combination of the transfer statute and the applicable sentencing provisions was unconstitutional as applied to non-homicide offenders. Here defendant was sentenced to three consecutive terms of 12 years imprisonment for a total of 36 years, and must serve at least 85% of his sentence. Although lengthy, the court did not find that term comparable to either the death penalty or natural life imprisonment, the sentences involved in **Roper, Graham, and Miller**. The court thus refused to extend the reasoning of those cases to the sentence imposed in this case.

3. The court also rejected defendant's due process attack. The court noted that it had already previously upheld the automatic transfer statute against a due process challenge in [People v. J.S., 103 Ill. 2d 395 \(1984\)](#) and [People v. M.A., 124 Ill. 2d 135 \(1988\)](#). It found defendant's reliance on **Roper, Graham, and Miller**, to be inapplicable since those cases involved the eighth amendment, not due process.

The dissenting justice would have found that the automatic transfer statute was punitive and violated the eighth amendment and the proportionate penalties clause.

(Defendant was represented by Assistant Defender Chris Kopacz, Chicago.)

[People v. Richardson, 2015 IL 118255 \(No. 118255, 5/21/15\)](#)

The right to equal protection guarantees that similarly situated individuals will be treated in a similar manner unless the State can demonstrate an appropriate reason to treat them differently. When a legislative classification does not affect a fundamental right or discriminate against a suspect class, courts apply a rational basis scrutiny and consider whether the classification bears a rational relationship to a legitimate governmental purpose.

The State charged defendant, who was 17 years old at the time of the offenses, as an adult with criminal sexual assault and criminal sexual abuse. At the time of the offenses, the Juvenile Court Act only applied to minors under 17 years of age. The Act was subsequently amended to apply to minors under the age of 18. The amendment included a savings clause that made the changes in the statute applicable to offenses that occurred on or after the effective date of the amendment. [705 ILCS 405/5-120](#).

Defendant argued that the savings clause violated equal protection because he was similarly situated to 17-year-olds who committed offenses on or after the amendment's effective date, and there was no rational basis to treat him differently.

The Court rejected defendant's argument. It held that the legislative classification in the savings clause was rationally related to the legislature's goal of including 17-year-olds within the jurisdiction of the Juvenile Court Act. By limiting the amendment to offenses committed on or after the effective date, both defendants and courts are on notice as to whether the Act will apply. The savings clause also ensures that cases already in progress would not have to restart in juvenile court and defendants could not manipulate or delay proceedings to take advantage of the amendment.

The Court reversed the trial court's judgment declaring the savings clause unconstitutional as applied to defendant and remanded the cause for further proceedings.

(Defendant was represented by Assistant Defender Sherry Silvern, Elgin.)

[In re Luis R., 2013 IL App \(2d\) 120393 \(No. 2-12-0393, 6/28/13\)](#)

1. [705 ILCS 405/5-120](#) provides that delinquency proceedings "may be instituted . . . concerning any minor who prior to the minor's 17 birthday has violated or attempted to violate . . . any federal or State law or municipal or county ordinance." The Appellate Court concluded that §5-105(3) was intended by the General Assembly to authorize delinquency proceedings only against persons who are under the age of 21 when proceedings are commenced and who before turning 17 violated or attempted to violate a criminal law. Thus, the State lacked authority to institute delinquency proceedings for two counts of

aggravated criminal sexual assault which the respondent allegedly committed at age 14 but the respondent was 21 when the petition was filed.

The court acknowledged that under [In re Luis R., 239 Ill.2d 295, 941 N.E.2d 136 \(2010\)](#), the juvenile court had subject matter jurisdiction, personal jurisdiction, and inherent authority to adjudicate delinquency petitions. The court concluded, however, that the statutory authorization for bringing a delinquency petition does not extend to a person who has reached the age of 21 even if the alleged criminal activity occurred while the person was a minor.

2. The court also rejected the argument that the trial court should have considered the State's motion for discretionary transfer of an individual who had reached the age of 21 before a delinquency petition was filed, but the petition alleged an offense which occurred while the person was a juvenile. The State argued that the juvenile court had jurisdiction over the proceedings, and therefore could order a discretionary transfer to criminal court.

The court concluded that the prosecution's motion for discretionary transfer to criminal court "is a legal nullity if the motion is filed after the respondent reaches the age of 21." The court also concluded that because the State is not authorized to institute delinquency proceedings against a person who has turned age 21, it is not authorized to file a motion requesting discretionary transfer to criminal court. "The State's authority for requesting a discretionary transfer from juvenile court to criminal court is derived from the [Juvenile Court Act], and without the authority to institute proceedings in the first place, the State may not obtain a transfer under the Act."

(Defendant was represented by Assistant Defender Christopher McCoy, Elgin.)

[People v. Fiveash, 2014 IL App \(1st\) 123262 \(No. 1-12-3262, 4/22/14\)](#)

[705 ILCS 405/5-120](#) provides that with certain exceptions, "no minor who was under 17 years of age at the time of the alleged offense may be prosecuted under the criminal laws of this State." The court concluded that the plain language of §5-120 holds only a person who is under the age of 21 at the time of the prosecution may not be criminally prosecuted for offenses that occurred when he or she was under the age of 17. Thus, §5-120 does not prohibit the criminal prosecution of a defendant who was charged at the age of 23 for offenses which he committed at the ages of 14 and 15.

The court rejected the argument that it would be absurd to subject an adult to criminal punishment for a crime that occurred when he was 14, because such punishment would not have been permitted at the time of the offense. The court noted that [705 ILCS 405/5-805\(3\)](#) grants the juvenile court discretion under certain circumstances to allow the criminal prosecution of a minor who is at least 13. Thus, even had defendant been charged when he was 14, he would not necessarily have been immune from criminal prosecution.

Defendant argued that allowing an adult defendant to be tried in criminal court for charges that he allegedly committed as a minor raises the possibility of a disparity in sentencing upon conviction. The court acknowledged that defendant raised a valid concern, but found that the issue was a policy matter to be resolved by the legislative rather than the judicial branch.

[People v. Glazier, 2015 IL App \(5th\) 120401 \(No. 5-12-0401, 8/20/15\)](#)

Seventeen-year-olds charged with first degree murder may not be prosecuted under the Juvenile Court Act, and must be transferred to adult court. [705 ILCS 405/5-130\(1\)\(a\)](#). The Appellate Court rejected the argument that the automatic transfer and exclusive jurisdiction provisions of the Act violate the federal and state constitutions because all 17-year-olds charged with first degree murder are treated as adults, without regard to their youthfulness and individual characteristics.

The court concluded that the State has a legitimate interest in curtailing crime and promoting the safety and welfare of its citizenry, and that a minor does not have a constitutional, common law, or statutory right to be treated as a juvenile. In addition, the legislature has authority to define the limits of juvenile court jurisdiction. The court found that it is neither arbitrary nor unreasonable for the legislature to require criminal prosecution and sentencing for older juveniles charged with the worst crimes, because removing such persons from the juvenile system protects the public.

Furthermore, the "cruel and unusual punishment" clause of the Eighth Amendment is not violated by statutorily excluding 17-year-old homicide defendants from juvenile court. The automatic transfer provision governs only the procedure to be used for adjudicating a juvenile's culpability, and

does not determine the specific sentence that will be imposed. The court acknowledged that the Illinois Supreme Court has expressed concern over the lack of judicial discretion with the respect to automatic transfer of juveniles, but held that until the legislature acts it is bound to follow the law as it exists today.

(Defendant was represented by Assistant Defender Daniel Mallon, Chicago.)

[People v. Henderson, 2011 IL App \(1st\) 090923 \(No. 1-09-0923, 11/17/11\)](#)

With certain limited exceptions, a minor under 17 years of age at the time of an alleged offense may not be prosecuted under the criminal laws of Illinois. [705 ILCS 405/5-120](#). One such exception is where a minor who at the time of the offense was at least 15 years of age and who is charged with an offense under §401 of the Controlled Substances Act while on a public way within 1000 feet of the real property comprising a school. [705 ILCS 405/5-130\(2\)\(a\)](#). A criminal conviction of such a minor where a violation of §401 is committed within 1000 feet of a school, but not on a public way, is void because the court lacks the power to impose a criminal conviction where the Juvenile Act mandates a juvenile adjudication.

Defendant pleaded guilty to a violation of §401 committed within 1000 feet of a school, but that offense does not require as an element that it be committed on a public way. It could not be determined whether defendant's indictment included a public-way allegation because the indictment was not included in the record on appeal. Construing any doubts arising from the missing indictment against the defendant, defendant did not demonstrate that his conviction was void.

(Defendant was represented by Assistant Defender Pamela Rubeo, Chicago.)

[People v. Jackson, 2016 IL App \(1st\) 141448 \(No. 1-14-1448, 9/21/16\)](#)

Defendant, who was 17 years old at the time of the offense, was tried as an adult, convicted of armed robbery with a firearm, and sentenced to 21 years imprisonment, including a 15-year enhancement for possessing a firearm during the offense.

1. On appeal, defendant argued that he was entitled to a new sentencing hearing in juvenile court due to Public Act 99-258 which amended the automatic transfer provision of the Juvenile Court Act ([705 ILCS 405/5-130](#)) to remove armed robbery with a firearm as one of the offenses subject to automatic transfer.

The court rejected defendant's argument. It held that the controlling statutory provision was section 5-120 of the Juvenile Court Act, not section 5-130. At the time of the offense, section 5-130 stated that a defendant charged with a felony must be under 17 years old at the time of the offense to be subject to the juvenile court's jurisdiction. Section 5-130 is more restrictive than section 5-120 and states that a juvenile who is under 17 but over 15 years old is also excluded from juvenile court if he is charged with armed robbery with a firearm.

Public Act 98-61 amended section 5-120 to raise the age of exclusion to 18, but it contains a savings clause stating that it only applies to offenses committed after the effective date of the amendment. Here, defendant was charged with committing a felony when he was 17 years old and before the effective date of Public Act 98-61. He thus did not fall within the juvenile court's jurisdiction.

2. The court also held that defendant was not entitled to be resentenced pursuant to the 730 ILCS 5/5-4.5-105. Section 5-4.5-105 requires a sentencing court to consider specific sentencing factors applicable to juveniles when a defendant is under 18 years old at the time he committed the offense. But this section only applies to offenses committed on or after the effective date of the statute. Here defendant committed the offense prior to the effective date of the statute and thus it does not apply to him.

(Defendant was represented by Assistant Defender Imran Ahmad, Chicago.)

[People v. Jardon, 393 Ill.App.3d 725, 913 N.E.2d 171 \(1st Dist. 2009\)](#)

1. In order to impose an adult sentence on a minor who was prosecuted as an adult but convicted only of an offense for which adult prosecution is not mandatory, the State must request adult sentencing by a written motion filed within 10 days after the verdict is returned. ([705 ILCS 405/5-130\(1\)\(c\)\(ii\)](#)). As a matter of plain error, juvenile sentencing was required where the State filed its request for criminal sentencing more than 30 days after the verdict was returned. The court found that the 10-day

requirement is mandatory rather than directory, and that an adult sentence imposed pursuant to an untimely request is void rather than merely voidable.

2. In addition, a minor who is convicted in an adult prosecution solely for offenses which are not subject to mandatory adult prosecution is regarded as a delinquent minor, and does not have a criminal conviction.

(Defendant was represented by Assistant Defender Pamela Rubeo, Chicago.)

People v. Moore, 2011 IL App (3d) 090993 (No. 3-09-0993, 9/2/11)

1. **705 ILCS 405/5-805(3)(a)** permits the transfer of a 13-year-old minor to adult court if the juvenile court determines, in its discretion, that there is probable cause to believe that the allegations in the transfer motion are true and that it is not in the best interests of the public to proceed under the Juvenile Court Act. The purpose of a transfer proceeding is to balance the best interests of the juvenile, particularly in terms of potential for rehabilitation, against the public's interest in being protected from crime.

In a transfer proceeding, the judge must weigh relevant statutory and nonstatutory factors. Among the relevant statutory factors are the age of the minor, any prior delinquent or criminal history, any history of abuse or neglect, any mental health, physical, or educational history, the circumstances of the offense (including whether there is evidence the minor possessed a deadly weapon), the advantages of treatment within the juvenile justice system (including facilities or programs particularly available in the juvenile system), the security of the public, the minor's history of services, whether the minor is likely to be rehabilitated before juvenile jurisdiction ends, and the adequacy of punishment or services under adult prosecution.

At the transfer hearing, the juvenile judge must receive and consider evidence as to each statutory factor listed under §5-805(3)(a). The judge should also consider critical nonstatutory elements, including the sentence that will result if the minor is convicted as an adult.

The trial court's ruling on a transfer petition is reviewed for abuse of discretion. When considering a transfer order, the reviewing court must determine whether there was sufficient evidence of each statutory factor to support the transfer order. A mere statement that all statutory factors have been considered is insufficient to affirm a discretionary transfer order.

2. Here, the trial court abused its discretion by ordering that a 13-year-old charged with armed robbery be transferred to adult court. The court found that the judge failed to adequately address two statutory transfer factors and one nonstatutory factor.

A. No evidence was presented at the transfer hearing concerning the availability and advantages of treatment in the juvenile system. Although the State presented the defendant's file from a previous juvenile probation disposition, that file merely discussed the services defendant received in the prior case. There was no evidence of the juvenile services that would be available to defendant in the instant case. Similarly, the judge did not consider defendant's prospects of rehabilitation by participating in juvenile services.

B. There was insufficient evidence to determine whether defendant possessed a deadly weapon, one of the statutory factors required to be considered under §5-805(3)(d)(iii)(E). Under Illinois law, the State may prove that a handgun is dangerous (or deadly) for purposes of armed robbery by presenting evidence that the weapon: (1) was loaded and operable, or (2) was used or was capable of being used in a dangerous manner as a bludgeon or club. Here, there was no evidence that the gun was loaded - defendant told detectives that he did not think the gun was loaded, and the officer who recovered the weapon found that the magazine was empty and that the gun was inoperable.

Under these circumstances, the State was required to present evidence that the gun was used or could have been used as a club or bludgeon. Because it failed to do so, the judge erred by failing to consider that the defendant did not possess a deadly weapon.

C. The trial court also failed to consider a critical nonstatutory element - defendant's potential sentence if tried as an adult. There was only a brief reference to the possibility of an enhanced sentence, with no mention that defendant faced a term of six to 30 years imprisonment enhanced by a mandatory 15-year addition for possessing a firearm.

Since three factors were not supported by the record or properly considered, the juvenile judge abused its discretion by ordering the defendant transferred to adult court. The transfer order was

vacated and the cause remanded for further proceedings.

(Defendant was represented by Assistant Defender Tom Karalis, Ottawa.)

People v. Pacheco, 2013 IL App (4th) 110409 (No. 4-11-0409, 6/24/13)

1. In **Roper v. Simmons**, 543 U.S. 551 (2005), the Supreme Court held that the Eighth Amendment bars capital punishment for juvenile offenders. In **Graham v. Florida**, 560 U.S. 48 (2010), the court held that a life sentence without the possibility of parole violates the Eighth Amendment when imposed on juvenile offenders for crimes other than homicide. In **Miller v. Alabama**, 567 U.S. ___, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), the court concluded that the Eighth Amendment prohibits a sentencing scheme which mandates a life sentence without the possibility of parole for juvenile offenders, even those convicted of homicide.

The court concluded that under the reasoning of **Roper**, **Graham** and **Miller**, neither the Eighth Amendment nor the proportionate penalties clause of the Illinois Constitution are violated by the Illinois statute mandating the transfer of juveniles who are at least 15 and who are charged with first degree murder (705 ILCS 405/5-130(1)(a)(i)), the automatic imposition of an adult sentence on a juvenile who is subject to the automatic transfer statute, or the application of truth-in-sentencing provisions to minors who are convicted of murder by accountability. The court concluded that the Supreme Court cases concerned only two sentences, death and life without the possibility of parole. The decisions do not require that legislatures and courts treat youths and adults differently in every respect and at every step of the criminal process.

Similarly, the court concluded that due process is not violated by the automatic transfer statute, although the trial court is not required to make an individualized determination whether a minor should be transferred and subjected to adult sentencing. The court acknowledged that automatic transfer of minors of a certain age to adult court may not be good policy, but held that only the legislative branch can determine whether a policy that meets constitutional requirements should be changed.

2. In dissent, Justice Appleton found that the mandatory transfer of 15 and 16-year-olds to adult court violates **Miller v. Alabama** because the trial court is not permitted to make an individualized determination whether a particular minor should be transferred to adult court.

(Defendant was represented by Assistant Defender Jacqueline Bullard, Springfield.)

People v. Patterson, 2016 IL App (1st) 101573-B (No. 1-10-1573, mod. op. 11/1/16)

Under 5 ILCS 70/4, where the legislature does not provide a specific provision concerning the retroactive or prospective application of amendatory acts, procedural amendments are to be applied retroactively while substantive amendments are applied prospectively. Where the Juvenile Court Act was amended during the respondent's appeal to increase the minimum age for mandatory transfer from 15 to 16, the legislation did not provide whether the provision was to be applied retroactively, and defendant had been 15 at the time of the offense, the court concluded that the change in age for mandatory transfer constituted a procedural change that was to be applied retroactively to cases on direct appeal.

However, the court also found that the cause should be remanded to allow the State an opportunity to file a motion seeking a discretionary transfer of the respondent's case to criminal court. Although the State failed to file such a motion at the time of the original proceeding, the law at that time provided for an automatic transfer, making a motion for discretionary transfer unnecessary. Because the automatic transfer provision no longer applied to the respondent, the State should be allowed an opportunity to seek discretionary transfer.

The cause was remanded to permit the State to file a motion for discretionary transfer if it wished to do so, and for a transfer hearing if such a motion was filed.

(Defendant was represented by Assistant Defender Christopher Kopacz, Chicago.)

People v. Scott, 2016 IL App (1st) 141456 (No. 1-14-1456, 12/15/16)

The State charged defendant, who was 16 at the time of the offense, with armed robbery with a firearm and aggravated robbery. At the time of defendant's trial, when the State charged a juvenile who was at least 15 years old with armed robbery with a firearm, his case was automatically transferred to adult court. 705 ILCS 405/5-130(1)(a). Defendant was tried in adult court, acquitted of armed robbery

but convicted of aggravated robbery. Since defendant was acquitted of the transfer offense, the State moved to have him sentenced as an adult. [705 ILCS 405/5-130\(1\)\(c\)\(ii\)](#) (permitting State to request adult sentencing when defendant has been acquitted of automatic-transfer offense). The court granted the State's request and sentenced defendant to five years imprisonment.

The Appellate Court held that Public Act 99-258, which removed armed robbery with a firearm from the list of automatic transfer offenses applied retroactively to defendant's case. [People ex rel. Alvarez v. Howard, 2016 IL 120729](#). The court found **Howard** controlling even though it had a "slightly" different procedural posture. In [Howard](#), the case was pending before the trial court when Public Act 99-258 was passed, while the present case was pending on appeal when the Act was passed. The court held that "under either circumstance" the same test applies.

The court vacated defendant's sentence and remanded the case to provide the State an opportunity to request that defendant be transferred to adult court. The Appellate Court noted that the State had already successfully requested that defendant be sentenced as an adult. But the decision to transfer a defendant to adult court for trial involves more detailed and extensive considerations than the decision to merely sentence a defendant in adult court. [705 ILCS 405/5-805\(3\)\(b\)](#). The trial court's decision to allow defendant to be sentenced in adult court thus did not necessarily mean that the trial court would allow defendant to be transferred to adult court for trial.

(Defendant was represented by Assistant Defender Whitney Price, Chicago.)

[People v. Willis, 2013 IL App \(1st\) 110233 \(No. 1-11-0233, 9/30/13\)](#)

The Appellate Court agreed that the constitutionality of the automatic-transfer provision of the Juvenile Court Act ([705 ILCS 405/5-130](#)) bears revisiting in light of [Roper v. Simmons, 543 U.S. 551 \(2005\)](#), [Graham v. Florida, 560 U.S. 48 \(2010\)](#), and [Miller v. Alabama, ___ U.S. ___, 132 S. Ct. 2455 \(2012\)](#). It saw a nationwide trend that might some day lead to the realization that a mandatory-transfer provision implicates constitutional rights. It recognized the logic of Justice Appleton's dissent in [People v. Pacheco, 2013 IL App \(4th\) 110409, leave to appeal allowed](#), No. 116402 (9/25/13), that blanket transfer based on age is a flaw in the statute.

But the court adhered to the prevailing case law upholding the constitutionality of the statute, finding it would be a "stretch at the current time" to conclude otherwise.

(Defendant was represented by Assistant Defender Darrel Oman, Chicago.)

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§33-4

Right to Counsel

[People v. Fleming, 134 Ill.App.3d 562, 480 N.E.2d 1221 \(1st Dist. 1985\)](#) The right to counsel attaches upon the filing of a delinquency petition.

[In re B.K., 358 Ill.App.3d 1166, 833 N.E.2d 945 \(5th Dist. 2005\)](#) No *per se* conflict of interest exists merely because an attorney is appointed to both represent a minor named in a delinquency petition and act as the minor's guardian *ad litem*.

[People v. Giminez, 23 Ill.App.3d 583, 319 N.E.2d 570 \(3d Dist. 1974\)](#) Error occurred where defendant was not provided appointed counsel at juvenile "detention hearing." Because a juvenile detention hearing is comparable to a preliminary hearing in a criminal case, the court must inform the juvenile and his parents of the rights to counsel and appointed counsel.

In addition, the right to counsel can be waived only after the court affirmatively finds that "by reason of age, education and information, and all other pertinent facts, the minor was able to and did make an intelligent waiver."

Cause remanded for trial court to "determine whether petitioners were prejudiced by absence of counsel at the detention hearing."

[People v. M.W., 246 Ill.App.3d 654, 616 N.E.2d 710 \(5th Dist. 1993\)](#) The trial court violated Ch. 37, ¶805-10 ([705 ILCS 405/5-10](#)), which required that a minor be represented by counsel at a detention hearing, where the trial court, after appointment counsel, proceeded to a detention hearing without counsel present. The court did not address the State's arguments that the minor waived the error because his subsequent motion to withdraw the admission failed to allege lack of counsel and that the error was harmless, as it remanded the cause for on other grounds.

[In re K.M.B., 123 Ill.App.3d 645, 462 N.E.2d 1271 \(4th Dist. 1984\)](#) Respondent was not denied the right to counsel where her appointed counsel recommended placement outside of the home though she desired to remain in her mother's home. The responsibility of juvenile counsel is different than that of other court-appointed counsel:

“The juvenile counsel must not only protect the juvenile's legal rights but he must also recognize and recommend a disposition in the juvenile's best interest, even when the juvenile himself does not recognize those interests. . . . If protecting a juvenile's best interest requires that the counsel make a recommendation contrary to the juvenile's wishes, then the counsel has . . . a ‘professional responsibility and obligation’ to make that recommendation.”

Cumulative Digest Case Summaries §33-4

[In re Danielle J., 2013 IL 110810 \(No. 110810, 12/19/13\)](#)

Under [705 ILCS 405/5-615\(l\)](#) and [In Veronica C., 239 IL 2d 134, 940 N.E.2d 1 \(2010\)](#), a minor may request a continuance under supervision in a juvenile case before an adjudication of delinquency is made, provided that the minor stipulates to facts supporting the petition and there is no objection by the minor, a parent, a guardian, or the prosecutor. Here, the minor rejected the State's pretrial offer of a continuance under supervision, but requested such a continuance after she was adjudicated delinquent.

The trial court indicated that had the State's Attorney not objected, it would grant a continuance under supervision. The trial court then found that the provision of the statute requiring the State's Attorney's consent to a continuance under supervision was unconstitutional. The State appealed.

1. The Illinois Supreme Court found that the minor lacked standing to challenge the constitutionality of the requirement that the State's Attorney consent to a continuance under supervision. Because the minor was adjudicated delinquent before her attorney requested the continuance, and a continuance under supervision is statutorily precluded once an adjudication occurs, a continuance under supervision could not have been granted even had the prosecutor agreed. Because she was not adversely affected by the State's Attorney's objection to a continuance under supervision, the minor lacked standing.

2. However, the court concluded that defense counsel was ineffective for failing to request a continuance under supervision when it could have been granted, and that the trial court committed plain error where it believed that a continuance under supervision was the appropriate disposition but failed to broach the subject until a continuance was statutorily precluded.

The court remanded the cause for a new first-phase hearing at which the minor is to be properly advised that if she proceeds to trial and is unsuccessful, a continuance of supervision will be subject to the State's Attorney's approval. The minor will then be in a position to make an informed and knowing decision whether to accept the pretrial offer of a continuance under supervision, if that offer is reinstated. If she elects to go to trial, the minor will be able to request a continuance under supervision before the adjudication is announced.

[People v. Austin M., 2012 IL 111194 \(No. 111194, 8/30/12\)](#)

1. In abuse and neglect cases, the trial court is required to appoint a guardian *ad litem*, who serves as an arm of the court. In an abuse and neglect proceeding, the guardian *ad litem* is required to meet with the minor, assess the circumstances, determine what disposition might be in the minor's best

interests, and report back to the court. A guardian *ad litem* represents the best interests of the minor and does not function as the attorney for the ward.

Under [705 ILCS 405/1-5\(1\)](#), when a guardian *ad litem* in an abuse and neglect proceeding is also an attorney, separate counsel need not be appointed to represent the minor “unless the court finds that the minor’s interests are in conflict with what the guardian *ad litem* determines to be in the best interest of the minor.”

2. There is no requirement that a guardian *ad litem* be appointed in delinquency proceedings; however, a guardian *ad litem* may be appointed if the minor has no interested parent or guardian, if the interests of the parents differ from that of the minor, or if counsel believes that the minor is unable to act in his or her own best interests. ([705 ILCS 405/2-17\(3\)](#)) Just as in abuse and neglect cases, in delinquency proceedings the guardian *ad litem* focuses on the best interests of the minor rather than act as the minor’s attorney.

An alleged delinquent minor is statutorily and constitutionally entitled to representation by a defense attorney, and is not permitted to waive representation and proceed without the assistance of counsel. ([705 ILCS 405/5-170\(b\)](#)) Such representation can be rendered only by an attorney “whose singular loyalty is to the defense of the juvenile.” Where a single attorney attempts to fulfill the role of guardian *ad litem* as well as defense counsel, “the risk that the minor’s constitutional and statutory right to counsel will be diluted, if not denied altogether, is too great.” Thus, in a delinquency proceeding a single attorney cannot function both as defense counsel and as guardian *ad litem*.

3. A *per se* conflict of interest exists where the minor’s counsel in a delinquency proceeding simultaneously functions as both defense counsel and guardian *ad litem*. A *per se* conflict of interest occurs where certain facts about a defense attorney’s status engender, in and of themselves, a disabling conflict. If a *per se* conflict is established, reversal of the adjudication is required even if it cannot be shown that the conflict affected the attorney’s actual performance.

4. The court concluded that defense counsel suffered from a *per se* conflict of interest, although he was hired by the parents of two minor respondents to act as defense counsel and not appointed as a guardian *ad litem*, where he mistakenly perceived his role as to provide “hybrid” representation encompassing both representation as defense counsel and focusing on the “best interests” of the minors. Defense counsel made several statements indicating his belief that his role was “seeking the truth” and acting in the minors’ best interests. In addition, counsel failed to correct the trial court’s explanation of counsel’s role as a “classic description of a guardian *ad litem*.”

The court also noted that counsel made no effort to suppress the alleged admission of the only minor who was found guilty, even though the trial court found the admission to be the only credible evidence of guilt. Finally, in closing argument counsel failed to emphasize the contradictory evidence concerning whether the statement had been made or to urge the trial court to discount the alleged statement, giving further credence to the notion that he believed his role to be advancing the minor’s best interests rather than to seek an acquittal.

5. Justices Freeman and Karmeier concurred in the result, finding that the State failed to meet its burden of proof in establishing the *corpus delicti* of the crime. *Corpus delicti* cannot be established solely based on the defendant’s statement. Instead, the statement must be corroborated by independent evidence.

The concurring justices concluded that where the trial court specifically found that the only corroborating evidence offered by the State was not credible, the prosecution failed to carry its burden of proof to prove that a crime had occurred. Thus, the delinquency adjudication should be reversed outright.

The delinquency adjudication was reversed and the cause remanded for further proceedings. (Defendant was represented by Assistant Defender Jacqueline Bullard, Springfield.)

[In re Austin M., 403 Ill.App.3d 667, 941 N.E.2d 903 \(4th Dist. 2010\)](#)

1. The court rejected the argument that defense counsel labored under an actual conflict of interest because the respondent’s parents directed counsel’s representation in a way that was contrary to the respondent’s interests. Defense counsel represented only the respondent; in fact, the trial court specifically admonished the parents that counsel was not representing them. Furthermore, counsel’s remarks during the proceedings did not suggest that his consultation with the parents in any way

contradicted the interests of the minor.

The court also stated that in juvenile cases, defense counsel must not only protect the juvenile's legal rights but also recommend a disposition that is in the juvenile's best interest. The latter duty may require consultation between counsel and the parents.

2. There was no conflict of interest in counsel's dual role as defense attorney and guardian *ad litem*. First, the court rejected the State's argument that counsel did not act as guardian *ad litem*. Although the trial judge never expressly appointed counsel as guardian *ad litem*, both the trial court and defense counsel conceived the attorney's role as guardian *ad litem* (i.e., safeguarding both the minor's and society's best interests), rather than as a traditional defense attorney. Because counsel in fact functioned as guardian *ad litem*, the Appellate Court elected to reach the issue although defense counsel was never formally appointed.

Because [705 ILCS 405/1](#) contemplates that a single attorney can be both guardian *ad litem* and defense counsel "unless the court finds that the minor's interests are in conflict with what the guardian *ad litem* determines to be in the interest of the minor," the court rejected the argument that it is necessarily a conflict of interest for an attorney to act both as guardian *ad litem* and defense counsel. The court acknowledged that other jurisdictions hold that a *per se* conflict exists where one person is both guardian *ad litem* and defense counsel, but concluded that Illinois follows a different rule.

Furthermore, counsel's dual role did not constitute an actual conflict in this case. An actual conflict exists when some specific defect in defense counsel's strategy, tactics or decision making is attributable to a conflict of interest.

Although defense counsel allowed certain testimony to be presented by videotape and waived cross-examination of the witnesses who had been videotaped, the minor expressly waived any objection to that procedure. Furthermore, counsel's actions did not prejudice the minor where the trial court deemed the videotaped testimony unworthy of belief. The court also noted that by agreeing to the videotaped testimony, counsel gained an advantage for the defense by depriving the State of "more persuasive" live testimony.

3. The court rejected the argument that the State failed to prove the minor delinquent beyond a reasonable doubt, finding that the evidence provided a reasonable basis to believe that defendant made a credible admission of sexual misconduct.

(The respondent was represented by Assistant Defender Jacqueline Bullard, Springfield.)

[In re Rodney S., 402 Ill.App.3d 272, 932 N.E.2d 588 \(4th Dist. 2010\)](#)

1. The Appellate Court rejected the argument that a *per se* conflict of interest exists when counsel for a minor-respondent acts in the dual capacity of defense attorney and guardian *ad litem*. The court acknowledged that out-of-state case authority and articles cited by respondent supported that argument, but adhered to view that no conflict exists because proceedings under the Juvenile Court Act are not adversarial in nature. The welfare and best interests of the minor are paramount and it is counsel's duty to protect those interests even if they do not correspond to the wishes of the minor.

2. The term of probation for a delinquent minor may not exceed five years or until the minor reaches the age of 21, whichever is less. An exception to that rule is where the minor is found guilty of a forcible felony. [705 ILCS 405/5-715\(1\)](#). A forcible felony is defined by the Criminal Code in pertinent part as an "aggravated battery resulting in great bodily harm or permanent disability or disfigurement and any other felony which involves the use or threat of physical force or violence against any other individual." [720 ILCS 5/2-8](#).

The minor-respondent was found guilty of aggravated battery based on contact of an insulting or provoking nature, and was sentenced to an 11-year term of probation. The Appellate Court concluded that the conviction did not qualify as a forcible felony that would authorize an 11-year probation term. The aggravated battery did not qualify as a forcible felony under the residual clause because that category was intended to refer to felonies not otherwise specified in the statute. The statute had previously included all aggravated batteries without qualification within the definition of forcible felonies, but had been amended to limit the types of aggravated battery that could qualify as a forcible felony. The Appellate Court acknowledged that there was a split among the districts on this issue, with the Third District holding that any aggravated battery qualified as a forcible felony, [People v. Jones, 226 Ill.App.3d 1054, 590 N.E.2d 101 \(3d Dist. 1992\)](#), and the First and Second Districts holding that only

the limited category of aggravated battery specified by the statute qualified as a forcible felony. [In re Angelique](#), 389 Ill.App.3d 430, 907 N.E.2d 59 (2d Dist. 2009); [People v. Schmidt](#), 392 Ill.App.3d 689, 924 N.E.2d 998 (1st Dist. 1992). The Fourth District concluded that the decisions of the First and Second Districts were better reasoned.

The court vacated the 11-year probation term as void and remanded for resentencing. (Defendant was represented by Assistant Defender Jacqueline Bullard, Springfield.)

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§33-5

Petitions, Adjudicatory Hearings, Adjudications, and Admissions

§33-5(a)

Generally

[In re Gault](#), 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967) Juvenile proceedings must meet essentials of due process, including advance written notice of charges, right to counsel, right against self-incrimination, and determination of delinquency based upon sworn testimony subject to cross-examination. See also, [In re W.D.](#), 194 Ill.App.3d 686, 551 N.E.2d 357 (1st Dist. 1990) (the right to effective cross-examination applies to delinquency proceedings, and respondent was denied a fair hearing where the trial judge improperly limited his cross-examination of a police officer).

[In re Winship](#), 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970) Proof beyond reasonable doubt is required in juvenile proceedings. Accord, [In re Urbasek](#), 38 Ill.2d 535, 232 N.E.2d 716 (1967); [In re T.A.B.](#), 181 Ill.App.3d 581, 537 N.E.2d 419 (2d Dist. 1989).

[McKeiver v. Pennsylvania](#), 403 U.S. 528, 91 S.Ct. 1976, 29 L.Ed.2d 647 (1971) Due process does not require a trial by jury in juvenile proceedings. Accord, [In re Fucini](#), 44 Ill.2d 305, 255 N.E.2d 380 (1970). See also, [People ex rel. Carey v. White](#), 65 Ill.2d 193, 357 N.E.2d 512 (1976) (the Juvenile Court Act precludes the use of a jury at all stages of the juvenile proceeding).

[People v. Norwood](#), 54 Ill.2d 253, 296 N.E.2d 852 (1973) Juvenile records of a State's witness may be used to impeach credibility by showing a possible motive to testify falsely. See also, [Davis v. Alaska](#), 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974).

[In re R.A.B.](#), 197 Ill.2d 358, 757 N.E.2d 887 (2001) Under 705 ILCS 405/5-36(d), a minor charged with violent juvenile offender status has the right to a jury trial. The Juvenile Court Act has no provision requiring that a jury waiver be in writing. But, a jury waiver is valid only where it is made "knowingly" and "understandingly." No specific admonition or advice is required for an effective jury waiver - whether a waiver is valid depends on the facts and circumstances of each case. A jury waiver by defense counsel may be valid where defendant is present and fails to object. In addition, an oral jury waiver made understandingly in open court is binding.

Because the minor was never informed in open court that he had the right to a jury trial and the question of waiving the jury was never discussed in his presence, the purported jury waiver was not knowing and voluntary. Also, neither "vague references" to the nature of a stipulated bench trial nor an admonishment of the rights to a hearing and confrontation specifically informed the minor that he could demand a jury trial.

The minor's failure to object when his attorney referred to a stipulated bench trial did not establish a valid jury waiver - the record contained no indication that respondent was aware of his right to a jury trial, and there was no discussion in open court concerning a jury waiver. Also, the minor's experience with juvenile proceedings did not establish that he knew of his right to a jury trial on a

violent juvenile offender petition.

[In re Marsh](#), 40 Ill.2d 53, 237 N.E.2d 529 (1968) Exclusionary rules apply to juvenile proceedings; indigent juvenile is entitled to free transcript.

[In re G.O.](#), 191 Ill.2d 37, 727 N.E.2d 1003 (2000) On appeal from the appellate court's holding that minors facing delinquency proceedings based on first degree murder, and who were thereby subject to mandatory commitment to DOC until age 21, were denied equal protection because they could not demand a jury trial, the Court held that the argument had been vitiated by [People v. Cervantes](#), 189 Ill.2d 80, 723 N.E.2d 265 (1999), in which the public act imposing the commitment requirement was found to be unconstitutional.

Also, the court declined to decide whether the right to due process guarantees a jury trial because the mandatory commitment provision rendered the juvenile process more "punitive" than "rehabilitative." The minor was no longer subject to mandatory commitment and had not argued that, in general, the juvenile justice system is more "punitive" than "rehabilitative."

In dissent, Justice Heiple found that the juvenile justice system is more "punitive" than "rehabilitative" and that the right to a jury trial should therefore be afforded to persons subjected to delinquency petitions.

[People ex rel. Carey v. Chrastka](#), 83 Ill.2d 67, 413 N.E.2d 1269 (1980) The Supreme Court upheld the Habitual Juvenile Offender Act (Ch. 37, ¶701-1 et seq.).

1. The Act is not invalid for failing to require a trial by jury with regard to the two prior adjudications that trigger application of the Act.

2. The Act does not violate due process by allowing the question of the prior adjudication to be determined by a judge rather than a jury.

3. The filing of a petition under this Act does not improperly apprise a jury of the juvenile's prior adjudications; the Act provides that such adjudications shall not be alleged in the petition, and it is unreasonable and speculative to assume that a juror would realize that the filing of the petition indicates prior adjudications.

4. A juvenile is not improperly prejudiced by the fact that his prior adjudications may be introduced to impeach him if he chooses to testify. The Act is carefully drafted to avoid unfair prejudice, and permits use of prior adjudications only for impeachment according to the rules applicable to impeachment in adult court.

5. The Act does not constitute an *ex post facto* law by allowing use of adjudications that occurred before the Act's effective date to be used to trigger its application. The Act does not transform the prior adjudications into criminal convictions or impose sanctions for them where none existed previously, but "only allows consideration of prior adjudications for purpose of establishing matters in aggravation to support the disposition authorized by the Act for a third serious offense."

6. The Act does not violate due process by giving prosecutors unbridled discretion to determine whether an individual will be prosecuted under the Act.

[People v. T.C.](#), 384 Ill.App.3d 870, 894 N.E.2d 876 (1st Dist. 2008) The court rejected the argument that a juvenile should be afforded the right to a jury trial on an adjudication of delinquency which requires lifetime sex offender registration.

[People v. Arnold](#), 323 Ill.App.3d 102, 751 N.E.2d 573 (1st Dist. 2001) 1. 14-year-old waived his right to be tried as a juvenile for robbery and attempt robbery where he misrepresented his age throughout guilty plea proceedings, a probation sentence, and revocation proceedings, and disclosed his true age only after he was charged with escape from adult boot camp.

2. Defendant also waived his right to be tried as a juvenile for escape from adult boot camp where he had misrepresented his age for more than a year, throughout the proceedings leading to his commitment to boot camp. A juvenile's consistent misrepresentations of his age can constitute waiver even for purposes of a subsequent prosecution.

[In re R.G.](#), 283 Ill.App.3d 183, 669 N.E.2d 1225 (2d Dist. 1996) Motion for substitution of judge in juvenile case should be filed under the procedures used for criminal cases.

[In re R.L.K.](#), 67 Ill.App.3d 451, 384 N.E.2d 531 (4th Dist. 1978) The compulsory joinder and double jeopardy provisions of the Criminal Code (as well as the constitutional protections against double jeopardy), apply to both MINS (minor in need of supervision) cases and juvenile delinquency proceedings.

[People v. Julio, C.](#), 386 Ill.App.3d 46, 897 N.E.2d 846 (1st Dist. 2008) The trial court abused its discretion by dismissing a juvenile delinquency proceeding as a sanction for a discovery violation. The court added, however, that in an extended juvenile jurisdiction proceeding for which the respondent had the right to a jury trial, a limiting instruction based upon [Illinois Pattern Jury Instruction Civil, No. 5.01](#) would have been appropriate.

[People v. Bradley](#), 352 Ill.App.3d 291, 815 N.E.2d 1209 (3d Dist. 2004) Violations of the Child Curfew Act ([720 ILCS 555/1\(a\)](#)) may not be prosecuted criminally. The legislature intended to require that violations of statutes which are punishable only by a fine must be prosecuted under the Juvenile Court Act.

[In re Luis R.](#), 388 Ill.App.3d 730, _____ N.E.2d _____ (No. 2-08-0036, 2/23/09) The State may not initiate delinquency proceedings under the Juvenile Court Act where respondent is 21 or older, even where the offenses allegedly occurred while defendant was a minor. The court did not decide whether a minor who commits a crime may be prosecuted under the criminal law after he reaches age 21, but noted that a “defensible argument” can be made that Illinois law permits such prosecutions.

Cumulative Digest Case Summaries §33-5(a)

[In re S.B.](#), 2012 IL 112204 (No. 112204, 10/4/12)

1. As a matter of first impression, the Supreme Court held that [725 ILCS 5/104-25\(a\)](#), which provides an “innocence only” proceeding where a criminal defendant is unfit to stand trial and there is no substantial likelihood that fitness will be restored within one year, is incorporated into the Juvenile Court Act despite the fact that the Act does not refer to an “innocence only” proceeding where a juvenile is unfit. [705 ILCS 405/5-101\(3\)](#) provides that in delinquency cases, minors have the procedural rights of adults in criminal cases unless rights are specifically precluded by laws which enhance the protection of minors. Because the fitness procedures in the Code of Criminal Procedure are intended to safeguard the due process rights of criminal defendants, and the Juvenile Court Act does not provide greater protections for unfit minors, §104-25(a) applies in delinquency proceedings.

2. The court also concluded that a minor who is found “not not guilty” in a discharge hearing is required to register under the Sex Offender Registration Act. Section 2 of the Act, in its relevant parts, defines a “sex offender” as a person who is charged with a sex offense and “is the subject of a finding not resulting in an acquittal” at a discharge hearing under [725 ILCS 5/104-25\(a\)](#), or who is adjudicated delinquent based on an act which would constitute one of several criminal offenses if committed by an adult. Because §104-25(a) is incorporated into the Juvenile Court Act, and a person who is found “not not guilty” is not acquitted, registration is required under the plain language of the Registration Act.

3. The court noted, however, that only juveniles who are found delinquent are allowed to petition to terminate their sex offender registration upon showing that the minor poses no risk to the community. ([730 ILCS 150/3-5\(c\),\(d\)](#)). Because a literal interpretation of the relevant statutes would result in an unfit minor who has been found “not not guilty” being unable to petition to terminate registration, and thus having fewer rights than juveniles who were actually adjudicated delinquent, the court concluded that the legislature could not have intended to exclude juveniles who were found “not not guilty” from seeking termination of the sex offender registration. The court noted that it has authority to read into statutes language omitted by oversight, and elected to correct the legislature’s oversight by allowing juveniles who are found “not not guilty” to seek termination of the sex offender registration requirement under

the same conditions as minors adjudicated delinquent for sex offenses.

The court also found that the legislature made a similar oversight with respect to the limitations that are contained in the Sex Offender Community Notification Law ([730 ILCS 152/121](#)) related to the dissemination of sex offender registration information with respect to adjudicated delinquents. It held that §121 of that Act should be read to include juveniles found “not not guilty” following a discharge hearing.

[In re Veronica C., 239 Ill.2d 134, 940 N.E.2d 1 \(2010\)](#)

1. Juvenile delinquency proceedings are comprised of three distinct stages: the findings phase, the adjudicatory phase, and the dispositional phase. The findings phase consists of a trial to determine whether the minor is guilty as charged and should be adjudged delinquent. In a juvenile delinquency case, a finding of guilt and a finding of delinquency are equivalent.

If a finding of delinquency is entered, the matter proceeds to sentencing, which consists of the adjudication and dispositional phases. At the adjudication phase, the trial court determines whether it is in the best interests of the minor and the public to make the minor a ward of the court. At the dispositional phase, the trial court fashions an appropriate sentence to serve the best interests of the minor and the public.

2. The trial court may order a continuance under supervision until such time as the proceeding reaches the adjudicatory stage. An order of continuance under supervision requires that the minor admit the facts supporting the petition and that no objection be raised by the minor, his or her parents, guardian, or legal custodian, the minor’s attorney, or the State’s Attorney. ([705 ILCS 405/5-615 \(1\), \(2\)](#)).

3. Where the trial court had found the respondent guilty and set the cause for the adjudicatory and dispositional phases, the point at which a continuance of supervision could be ordered had passed. Thus, although the State objected to supervision when asked by the trial court, supervision could not have been granted even had the State consented.

4. Because a party may raise a constitutional challenge to a statute only if it affects him, the minor respondent lacked standing to argue that the separation of powers doctrine and equal protection are violated by [705 ILCS 405/5-615](#), which allows the State to block the trial court from granting a continuance under supervision.

(Defendant was represented by Assistant Defender Steve Wiltgen, Elgin.)

[In re Samantha V., 234 Ill.2d 359, 917 N.E.2d 487 \(2009\)](#)

1. The court reiterated that the “one-act, one-crime” rule applies in juvenile proceedings.

A charging document which fails to differentiate between separate acts which could arguably provide the basis for separate convictions is viewed as having charged the same conduct under different theories of liability. Because the petition did not differentiate between separate acts of the minor, and at trial the State failed to elicit any testimony or make any argument based on separate conduct, adjudications of delinquency for aggravated battery causing great bodily harm and aggravated battery on a public way were deemed to have been based on the same conduct. Thus, the “one-act, one-crime” doctrine was violated.

2. Where multiple convictions or adjudications are entered in violation of the “one-act, one-crime” doctrine, the respondent should be sentenced only for the most serious offense. Generally, the most serious offense is the one for which the legislature authorized the greater sentence. If the sentences are identical, the more serious offense is the one carrying the more culpable mental state. Where identical punishments are imposed and the same mental state is involved for both offenses, the cause should be remanded for the trial court to determine which offense is more serious.

3. In order to preserve a claim of error for review, a minor must object at trial. However, minors are not required to file post-adjudication motions. (See also **WAIVER – PLAIN ERROR – HARMLESS ERROR**, §§56-1(a), 56-2(b)(6)(a).)

[People v. Austin M., 2012 IL 111194 \(No. 111194, 8/30/12\)](#)

1. In abuse and neglect cases, the trial court is required to appoint a guardian *ad litem*, who serves as an arm of the court. In an abuse and neglect proceeding, the guardian *ad litem* is required to meet with the minor, assess the circumstances, determine what disposition might be in the minor’s best

interests, and report back to the court. A guardian *ad litem* represents the best interests of the minor and does not function as the attorney for the ward.

Under [705 ILCS 405/1-5\(1\)](#), when a guardian *ad litem* in an abuse and neglect proceeding is also an attorney, separate counsel need not be appointed to represent the minor “unless the court finds that the minor’s interests are in conflict with what the guardian *ad litem* determines to be in the best interest of the minor.”

2. There is no requirement that a guardian *ad litem* be appointed in delinquency proceedings; however, a guardian *ad litem* may be appointed if the minor has no interested parent or guardian, if the interests of the parents differ from that of the minor, or if counsel believes that the minor is unable to act in his or her own best interests. ([705 ILCS 405/2-17\(3\)](#)) Just as in abuse and neglect cases, in delinquency proceedings the guardian *ad litem* focuses on the best interests of the minor rather than act as the minor’s attorney.

An alleged delinquent minor is statutorily and constitutionally entitled to representation by a defense attorney, and is not permitted to waive representation and proceed without the assistance of counsel. ([705 ILCS 405/5-170\(b\)](#)) Such representation can be rendered only by an attorney “whose singular loyalty is to the defense of the juvenile.” Where a single attorney attempts to fulfill the role of guardian *ad litem* as well as defense counsel, “the risk that the minor’s constitutional and statutory right to counsel will be diluted, if not denied altogether, is too great.” Thus, in a delinquency proceeding a single attorney cannot function both as defense counsel and as guardian *ad litem*.

3. A *per se* conflict of interest exists where the minor’s counsel in a delinquency proceeding simultaneously functions as both defense counsel and guardian *ad litem*. A *per se* conflict of interest occurs where certain facts about a defense attorney’s status engender, in and of themselves, a disabling conflict. If a *per se* conflict is established, reversal of the adjudication is required even if it cannot be shown that the conflict affected the attorney’s actual performance.

4. The court concluded that defense counsel suffered from a *per se* conflict of interest, although he was hired by the parents of two minor respondents to act as defense counsel and not appointed as a guardian *ad litem*, where he mistakenly perceived his role as to provide “hybrid” representation encompassing both representation as defense counsel and focusing on the “best interests” of the minors. Defense counsel made several statements indicating his belief that his role was “seeking the truth” and acting in the minors’ best interests. In addition, counsel failed to correct the trial court’s explanation of counsel’s role as a “classic description of a guardian *ad litem*.”

The court also noted that counsel made no effort to suppress the alleged admission of the only minor who was found guilty, even though the trial court found the admission to be the only credible evidence of guilt. Finally, in closing argument counsel failed to emphasize the contradictory evidence concerning whether the statement had been made or to urge the trial court to discount the alleged statement, giving further credence to the notion that he believed his role to be advancing the minor’s best interests rather than to seek an acquittal.

5. Justices Freeman and Karmeier concurred in the result, finding that the State failed to meet its burden of proof in establishing the *corpus delicti* of the crime. *Corpus delicti* cannot be established solely based on the defendant’s statement. Instead, the statement must be corroborated by independent evidence.

The concurring justices concluded that where the trial court specifically found that the only corroborating evidence offered by the State was not credible, the prosecution failed to carry its burden of proof to prove that a crime had occurred. Thus, the delinquency adjudication should be reversed outright.

The delinquency adjudication was reversed and the cause remanded for further proceedings.

(Defendant was represented by Assistant Defender Jacqueline Bullard, Springfield.)

People v. Fiveash, 2015 IL 117669 (No. 117669, 9/24/15)

1. [705 ILCS 405/5-120](#) provides that except as otherwise authorized, “no [person under the age of 21] . . . who was under 17 years of age at the time of the alleged offense may be prosecuted” as an adult. The Supreme Court rejected defendant’s argument that §5-120 bars the adult prosecution of a person over the age of 21 for offenses which he committed at age 14 or 15.

The court concluded that §5-120 was intended to prevent adult court prosecution of a person who is under the age of 21, and therefore subject to juvenile court authority, for offenses committed before

the age of 17. Because defendant was not under the age of 21 at the time he was prosecuted, he does not come within the terms of §5-120 even though the prosecution concerned offenses allegedly committed at ages 14 and 15.

The court noted that accepting the defense argument would prevent any prosecution of defendant for alleged sex offenses against a minor, and would create an absurd result by contradicting the legislature's express intent to extend the statute of limitations for such offenses to 10 years after the victim reaches the age of 18.

2. The court also noted that the charges were brought within a few days after authorities learned of the incident, which was after defendant had turned 21. Because Illinois courts do not issue advisory opinions, the court expressed no opinion concerning the possibility that a prosecutor might intentionally delay filing charges until a defendant turned 21 in order to ensure that the prosecution would occur in adult court and that a longer sentence would be available.

[In re Luis R., 2013 IL App \(2d\) 120393 \(No. 2-12-0393, 6/28/13\)](#)

1. 705 ILCS 405/5-120 provides that delinquency proceedings "may be instituted . . . concerning any minor who prior to the minor's 17 birthday has violated or attempted to violate . . . any federal or State law or municipal or county ordinance." The Appellate Court concluded that §5-105(3) was intended by the General Assembly to authorize delinquency proceedings only against persons who are under the age of 21 when proceedings are commenced and who before turning 17 violated or attempted to violate a criminal law. Thus, the State lacked authority to institute delinquency proceedings for two counts of aggravated criminal sexual assault which the respondent allegedly committed at age 14 but the respondent was 21 when the petition was filed.

The court acknowledged that under In re Luis R., 239 Ill.2d 295, 941 N.E.2d 136 (2010), the juvenile court had subject matter jurisdiction, personal jurisdiction, and inherent authority to adjudicate delinquency petitions. The court concluded, however, that the statutory authorization for bringing a delinquency petition does not extend to a person who has reached the age of 21 even if the alleged criminal activity occurred while the person was a minor.

2. The court also rejected the argument that the trial court should have considered the State's motion for discretionary transfer of an individual who had reached the age of 21 before a delinquency petition was filed, but the petition alleged an offense which occurred while the person was a juvenile. The State argued that the juvenile court had jurisdiction over the proceedings, and therefore could order a discretionary transfer to criminal court.

The court concluded that the prosecution's motion for discretionary transfer to criminal court "is a legal nullity if the motion is filed after the respondent reaches the age of 21." The court also concluded that because the State is not authorized to institute delinquency proceedings against a person who has turned age 21, it is not authorized to file a motion requesting discretionary transfer to criminal court. "The State's authority for requesting a discretionary transfer from juvenile court to criminal court is derived from the [Juvenile Court Act], and without the authority to institute proceedings in the first place, the State may not obtain a transfer under the Act."

(Defendant was represented by Assistant Defender Christopher McCoy, Elgin.)

[People v. Esparza, 2014 IL App \(2d\) 130149 \(No. 2-13-0149, 8/19/14\)](#)

705 ILCS 405/5-120 provides that delinquency proceedings may be initiated against any person who, before his or her 17th birthday, violates or attempts to violate a federal or State law or municipal or county ordinance. Subject to several exceptions which did not apply here, a minor who was under the age of 17 at the time of the alleged offense may not be prosecuted as an adult.

The court concluded that escape is a continuing offense which encompasses the entire period between the time the escape occurs and the time the defendant is returned to custody. Thus, a defendant who was 16 when he removed an electronic home monitoring bracelet from his ankle but 17 when he was arrested could be prosecuted either as a juvenile or an adult. Where an offense can be prosecuted in either juvenile or criminal court, the prosecutor has discretion to proceed in either venue. Thus, no error occurred when defendant was prosecuted as an adult.

(Defendant was represented by Assistant Defender Jaime Montgomery, Elgin.)

[People v. Rich, 2011 IL App \(2d\) 101237 \(No. 2-10-1237, 11/3/11\)](#)

The State filed a criminal complaint charging defendant, who was 20 years old, with two counts of aggravated criminal sexual assault occurring when defendant was between 12 and 14 years old. Three months later, while defendant was still 20, he was charged by indictment with the same offenses.

When defendant turned 21, the State filed a superseding indictment charging the same offenses. The trial court granted a motion to dismiss the indictment, finding that because defendant was at most 14 when the offenses were committed, he could be prosecuted only under the Juvenile Court Act. Under [In re Luis R., 388 Ill.App.3d 730, 924 N.E.2d 990 \(2d Dist. 2009\)](#), delinquency proceedings may not be commenced against an adult regardless of his or her age at the time of the offense.

The Appellate Court affirmed the dismissal of the indictment.

1. First, under [720 ILCS 5/6-1](#), a criminal conviction cannot be entered for an offense which occurred when the defendant was under the age of 13. Thus, the trial court properly dismissed an indictment which alleged that defendant committed aggravated criminal sexual assault when he was 12 years old.

2. Alternatively, the trial court properly dismissed [the indictment concerning offenses allegedly committed when the defendant was 13 or 14](#). The Juvenile Court Act ([705 ILCS 405/5-120](#)) governs crimes committed by minors who were under the age of 17 at the time of the offenses. Unless one of four exceptions apply, acts committed by a minor are not subject to criminal prosecution.

The four exceptions include: (1) violations of traffic, boating, or fishing and game laws; (2) offenses subject to automatic transfer provisions which mandate adult prosecution for specified offenses where the minor was at least 15 years old at the time of the offense; (3) where the State successfully moves to transfer the offense to adult criminal court; and (4) where the State successfully moves to extend juvenile court jurisdiction, which permits the imposition of a sentence under the Code of Corrections in addition to a sentence under the Juvenile Court Act, with the adult sentence stayed so long as offender complies with the juvenile sentence.

[Because the alleged offenses occurred when the defendant was 13 or 14](#), the automatic transfer exception did not apply. Although aggravated criminal sexual assault is subject to automatic transfer when the defendant was 15 at the time of the offenses, the court concluded that the General Assembly did not intend to apply the automatic transfer provisions to crimes which were committed by minors under the age of 15, even if the defendant has become an adult by the time the charges are initiated.

3. Furthermore, neither the third nor fourth exceptions applied where the State failed to file timely motions to either transfer the cause to adult court or to extend juvenile jurisdiction. The court stressed that the State would not have been left without a remedy had it acted properly. The State first filed criminal charges some six months before defendant turned 21; had it instituted juvenile proceedings instead, it would have had ample time before defendant turned 21 to seek either transfer to adult court or extended juvenile jurisdiction. Under either scenario, the proceedings could have continued after the defendant reached 21. “[W]hile the State is correct that it was not *required* to file against defendant an initial petition or a motion to transfer or extend jurisdiction under the Act, its failure to do so precludes prosecution after defendant’s twenty-first birthday.”

4. The court declined to decide whether a defendant who has turned 21 can be charged with an automatic transfer offense which was committed when the defendant was 15 or older.

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**§33-5(b)
Petitions**

[In re S.R.H., 96 Ill.2d 138, 449 N.E.2d 129 \(1983\)](#) Petition charging burglary, which failed to allege that the entry was without authority, was not defective. The charging requirements of Ch. 38, ¶111-3 are not applicable in juvenile proceedings. Instead, a juvenile petition need only satisfy the test used to determine the sufficiency of a criminal charge when challenged for the first time on appeal; allegations are sufficient if they apprised the accused of the precise offense with “sufficient specificity to prepare his defense and allow the pleading of a resulting conviction as a bar to future prosecution arising out of the same conduct.” The petition in this case satisfied this test. Compare, [In re Carson, 10 Ill.App.3d 387,](#)

[294 N.E.2d 75 \(3d Dist. 1973\)](#) (petition failed to inform minor of the delinquent act).

[In re J.J., 142 Ill.2d 1, 566 N.E.2d 1345 \(1991\)](#) Under the Juvenile Court Act, the circuit court has the authority and the duty to determine whether the best interests of the minor will be served by dismissing a petition alleging abuse. If the circuit court determines that dismissing the petition will serve the minor's best interests, the court should allow the State's motion to dismiss. If the court concludes that dismissing the petition will not serve the minor's best interests, it should deny the State's motion and the State must proceed on the petition.

[People v. Turner, 66 Ill.App.3d 661, 384 N.E.2d 89 \(1st Dist. 1978\)](#) Finding of delinquency reversed because the delinquency petition was filed before the time of the alleged offense. The court rejected the State's contentions that this was a simple variance and that proof of the precise date as alleged is unnecessary.

Cumulative Digest Case Summaries §33-5(b)

[In re Luis R., 2013 IL App \(2d\) 120393 \(No. 2-12-0393, 6/28/13\)](#)

1. [705 ILCS 405/5-120](#) provides that delinquency proceedings "may be instituted . . . concerning any minor who prior to the minor's 17 birthday has violated or attempted to violate . . . any federal or State law or municipal or county ordinance." The Appellate Court concluded that §5-105(3) was intended by the General Assembly to authorize delinquency proceedings only against persons who are under the age of 21 when proceedings are commenced and who before turning 17 violated or attempted to violate a criminal law. Thus, the State lacked authority to institute delinquency proceedings for two counts of aggravated criminal sexual assault which the respondent allegedly committed at age 14 but the respondent was 21 when the petition was filed.

The court acknowledged that under [In re Luis R., 239 Ill.2d 295, 941 N.E.2d 136 \(2010\)](#), the juvenile court had subject matter jurisdiction, personal jurisdiction, and inherent authority to adjudicate delinquency petitions. The court concluded, however, that the statutory authorization for bringing a delinquency petition does not extend to a person who has reached the age of 21 even if the alleged criminal activity occurred while the person was a minor.

2. The court also rejected the argument that the trial court should have considered the State's motion for discretionary transfer of an individual who had reached the age of 21 before a delinquency petition was filed, but the petition alleged an offense which occurred while the person was a juvenile. The State argued that the juvenile court had jurisdiction over the proceedings, and therefore could order a discretionary transfer to criminal court.

The court concluded that the prosecution's motion for discretionary transfer to criminal court "is a legal nullity if the motion is filed after the respondent reaches the age of 21." The court also concluded that because the State is not authorized to institute delinquency proceedings against a person who has turned age 21, it is not authorized to file a motion requesting discretionary transfer to criminal court. "The State's authority for requesting a discretionary transfer from juvenile court to criminal court is derived from the [Juvenile Court Act], and without the authority to institute proceedings in the first place, the State may not obtain a transfer under the Act."

(Defendant was represented by Assistant Defender Christopher McCoy, Elgin.)

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§33-5(c)

Adjudicatory Hearings and Adjudications

§33-5(c)(1)

Generally

[In re Greene](#), 76 Ill.2d 204, 390 N.E.2d 884 (1979) Age is not an element that must be proved beyond a reasonable doubt to support an adjudication of delinquency. Where the State alleges in the petition that the respondent was 17 at the time of the alleged offense, the court has authority to proceed under the Juvenile Court Act. Unless the respondent specifically challenges the authority of the court to proceed against him as a juvenile, he is deemed to have consented to the juvenile proceedings and to have waived any objections to juvenile sanctions.

[In re Jennings](#), 68 Ill.2d 125, 368 N.E.2d 864 (1977) The trial judge's adjudicatory order appointing a guardian for children was not invalid for failing to specifically adjudge the children to be "wards of the court"; the findings were sufficient to show such result. See also, [In re Scott](#), 62 Ill.App.3d 367, 379 N.E.2d 72 (1st Dist. 1978).

[People v. Taylor](#), 221 Ill.2d 157, 850 N.E.2d 134 (2006) A juvenile adjudication does not constitute a felony "conviction" for purposes of offenses which include a prior conviction as an element. Thus, defendant could not be charged with attempt escape based on a juvenile adjudication for robbery. Accordingly, the conviction for attempt escape was reversed. See also, [People v. Taylor](#), 353 Ill.App.3d 462, 818 N.E.2d 728 (1st Dist. 2004) (720 ILCS 5/31-6(a)), which defines the offense of "escape" as an intentional escape from a penal institution by a person who has been convicted of or charged with a felony, does not apply to a juvenile who has a prior delinquency adjudication based on a felony).

[People v. Brazee](#), 333 Ill.App.3d 43, 775 N.E.2d 652 (2d Dist. 2002) A minor who is subject to mandatory adult prosecution but convicted only of offenses which are not subject to mandatory transfer has merely been adjudicated delinquent, and not convicted of a criminal offense. The trial court erred by ordering that a minor who pleaded guilty to criminal sexual assault - an offense for which criminal prosecution is not mandated - in return for dismissal of an aggravated criminal sexual assault charge should be deemed to be a convicted felon.

[In re L.B.](#), 276 Ill.App.3d 43, 657 N.E.2d 705 (2d Dist. 1995) The same restrictions apply to delinquency petitions as to criminal charges; therefore, a delinquency finding may be based only on the crime alleged in the petition or on a lesser included offense. Because unlawful use of a weapon is not a lesser-included offense of aggravated discharge of a firearm, the crime charged, respondent's adjudication order was reversed.

[In re Mareno](#), 43 Ill.App.3d 556, 357 N.E.2d 592 (1st Dist. 1976) While multiple convictions based on the same act are improper in criminal cases, there is no authority concerning whether the same rule applies to juvenile proceedings. Regardless, this case did not involve multiple convictions, but rather a single delinquency finding. Where only a single petition for adjudication of wardship is filed, there can be but one finding of delinquency, though that finding may be predicated on multiple offenses arising from the same conduct. See also, [In re W.C.](#), 167 Ill.2d 307, 657 N.E.2d 908 (1995) (dispositional order that said defendant had been found delinquent based on two counts of first degree murder should be modified to reflect that only one murder had occurred; though minor could resort to the record if a question later arose about the basis of the delinquency finding, modifying the order on direct appeal would serve "the interests of justice and judicial economy").

Cumulative Digest Case Summaries §33-5(c)(1)

In re Jonathan C.B., ___ Ill.2d ___, ___ N.E.2d ___ (2011) (No. 107750, 6/30/11)

1. Under [People v. Boose](#), 66 Ill.2d 261, 362 N.E.2d 303 (1977), shackling of a defendant during trial tends to prejudice the jury against the accused, restrict the ability to assist counsel during trial, and offend the dignity of the judicial process. Therefore, a defendant may be shackled during court proceedings only if there is a manifest need for restraint. **Boose** specified several factors to be considered by the trial court in determining whether shackling is manifestly necessary.

Under [In re Stanley](#), 67 Ill.2d 33, 364 N.E.2d 72 (1977), the **Boose** rule is extended to juvenile delinquency proceedings although such proceedings do not occur before a jury. Here, the minor argued

that the trial judge has a *sua sponte* duty to inquire whenever a child appears in court in shackles, or in the alternative that plain error occurs where a juvenile is shackled for trial without the benefit of a **Boose** hearing.

The Supreme Court concluded that where the only reference in the record to shackling occurred when the minor was called to testify, at which point the trial court stated “[y]ou may take off the shackles,” the record did not support the conclusions that the judge was aware that the minor had been shackled throughout the trial or that the shackles were put back on after the minor testified. Because the alleged error was allowing the minor to remain shackled without a **Boose** hearing, there was no indication that the judge knew the minor was shackled before he was called to testify, and the trial judge is presumed to know and follow the law unless the record affirmatively indicates otherwise, “we presume that the trial court acted properly and did not commit error with regard to [the minor’s] shackling.”

The court reiterated, however, that “if a trial court *is aware or becomes aware* that a defendant, whether adult or juvenile, is shackled, the trial court must conduct a **Boose** hearing to determine whether there is a manifest need for the restraint.”

In dissenting opinions, Justices Kilbride, Freeman and Burke found that it “strains credulity” (J. Freeman) to believe that the trial judge learned that the minor was shackled only when the minor testified on the third day of trial. Justice Burke also criticized the majority for ignoring the State’s concession that **Boose** error occurred and presuming instead that no error occurred.

2. [705 ILCS 405/5-101\(3\)](#) authorizes jury trials in delinquency proceedings only if the minor is tried under the extended juvenile jurisdiction provision, as a habitual juvenile offender, or as a violent juvenile offender. Here, a minor charged with delinquency for a sex offense argued that he was constitutionally entitled to a jury trial.

A. The court rejected the argument that because amendments to the Juvenile Court Act have made delinquency proceedings equivalent to criminal prosecutions, a minor is entitled to a jury trial under the Illinois constitution. The court acknowledged that under recent amendments to the Juvenile Court Act, punishment and protection of the public are included within the purposes of juvenile delinquency proceedings. The court found, however, that rehabilitation remains a more important consideration in juvenile proceedings than in the criminal justice system. The court also noted that it has repeatedly found that delinquency proceedings are not the equivalent of criminal prosecutions, and declined to overrule such precedent.

The court also observed that although minors found delinquent based on sex offenses face some of the same collateral consequences as adult offenders, such as the requirement to submit DNA samples and the absence of confidentiality of court records, such collateral consequences do not equate a juvenile delinquency determination and an adult criminal conviction.

B. For similar reasons, the court rejected the argument that because minors accused of sex offenses are subject to more serious sanctions than other delinquent minors, they are entitled to jury trials as a matter of due process and equal protection under the Illinois and federal constitutions. The court acknowledged that minors accused of sex offenses are denied the benefit of confidentiality of court records, but noted that such minors have a diminished expectation of privacy. The court also noted that the lack of confidentiality and collateral consequences such as the requirement to submit DNA samples and ineligibility for expungement are related to rehabilitation because such measures identify persons who are at risk for recidivism.

Furthermore, delinquency adjudications for felony sex offenses carry only indeterminate juvenile sentences, and not more serious adult sentences. Finally, the court reiterated precedent that sex offender registration is a public safety measure rather than a punishment mandating the right to a jury trial, and found that in any event juvenile offender registration is less onerous than adult registration because the information is available to a smaller group of persons and juveniles may petition to terminate the registration requirement.

In rejecting defendant’s argument, the court also noted that accepting the minor’s argument would offend principles of *stare decisis* by overruling long-standing precedent concerning the nature of juvenile delinquency proceedings. The minor “has failed to provide this court with good cause or compelling reasons to depart from our prior decisions.”

C. The Court rejected the argument that because minors adjudicated delinquent of sex offenses are similarly situated to persons who have the right to a jury trial under extended juvenile

jurisdiction and as adult offenders, the absence of the right to a jury trial in sex offense delinquency proceedings violates equal protection. The equal protection clause prohibits disparate treatment of similarly situated individuals. Unless fundamental rights are at issue, equal protection challenges are resolved under the “rational basis” test, which considers whether the challenged classification bears a rational relationship to a legitimate governmental purpose.

The court concluded that minors adjudicated delinquent for sex offenses cannot meet the threshold requirement of showing that they are similarly situated to juveniles subjected to extended juvenile jurisdiction prosecutions or to adult sex offenders. Minors found delinquent under extended juvenile jurisdiction and adult sex offenders face severe deprivations of their liberty, including mandatory incarceration and adult sentences. By contrast, a minor adjudicated delinquent for a sex offense does not face the possibility of an adult criminal sentence, and instead receives a sentence that automatically terminates at age 21.

The court also rejected the argument that equal protection principles are triggered because juvenile sex offenders may face a future loss of liberty under the Sexually Violent Persons Act; commitment under the Act requires a separate, successful action by the State and proof of additional elements that are not common to all sex offenses.

Defendant’s adjudications for criminal sexual assault and attempt robbery were affirmed.
(Defendant was represented by Assistant Defender Catherine Hart, Springfield.)

[In re Joshua B., 406 Ill.App.3d 513, 941 N.E.2d 1032 \(1st Dist. 2011\)](#)

The Appellate Court found no error where the trial court did not advise a minor respondent in a delinquency proceeding that he had a right to testify, or verify that he knowingly and voluntarily waived that right, based on law applicable to adult criminal proceedings. See **WITNESSES**, §57-5.

The Appellate Court rejected the argument that, because juvenile offenders have no right to file post-conviction petitions, they should be provided greater protections than adult criminal defendants. The same concerns regarding interference with the attorney-client relationship that weigh against adoption of a requirement that a trial judge advise a criminal defendant of his right to testify also weigh against such a requirement for a juvenile offender, who is required to be represented by counsel.

The court further directed that if the minor respondent communicates to appellate counsel that his trial counsel did not advise him of his right to testify, appellate counsel should include that assertion in the appellant’s brief even though that claim has no support in the record, noting that the matter is outside of the record and that he is unable to raise the matter before the trial court. This would allow the State to respond to the claim, and provide the Appellate Court with a basis to determine whether to consider the claim.

(Defendant was represented by Assistant Defender Brian Carroll, Chicago.)

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§33-5(c)(2)

Adjudicatory Hearing – Speedy Trial

[People v. Armour, 59 Ill.2d 102, 319 N.E.2d 496 \(1974\)](#) Trial court did not lose jurisdiction by failing to set an adjudicatory hearing within 30 days, as required by statute (Ch. 37, ¶704-2).

[In re S.G. et al., 175 Ill.2d 471, 677 N.E.2d 920 \(1997\)](#) **[705 ILCS 405/2-14](#)**, which provides that the trial court “shall” dismiss without prejudice an abuse, neglect, or dependency petition that is not “heard” within ninety days, mandates dismissal of the petition unless the adjudicatory hearing is *completed* within the statutory time period.

[People ex rel. Devine v. Sharkey, 221 Ill.2d 613, 852 N.E.2d 804 \(2006\)](#) **[705 ILCS 405/5-6\(1\)](#)**, which provides that an adjudicatory hearing must be held “within 120 days of a written demand for such

hearing made by any party,” was not intended to allow the prosecution to compel, over minor’s objection, a trial within 120 days. For purposes of §5-6(1), the State was not a “party” who could demand a speedy trial.

[In re J.A., 241 Ill.App.3d 402, 609 N.E.2d 986 \(2d Dist. 1993\)](#) One year after the State filed a delinquency petition (alleging that respondent committed arson), the cause was set for an adjudication hearing. But, the prosecutor failed to appear on the day of the hearing; the trial court, finding that the prosecutor’s actions were inexcusable, postponed the hearing and told the State to personally contact its witnesses to ensure their availability and to notify the court and the defense if there were any problems obtaining the witnesses. At the hearing, the State’s primary witness was unavailable. The judge refused to continue the case, so the State sought leave to withdraw the petition. But, the State refiled the petition one week later, though it did not serve minor respondent for three months. In light of the interests served by the Juvenile Court Act and the minor’s rights, the trial court properly granted a defense motion to dismiss the petition. The minor was an above-average student with no other juvenile record, and he and his father had missed time from school and work to appear at several hearings. Also, four years had elapsed since the incident, which appeared to have been merely a "childish prank which went awry." Finally, restitution was available, the prosecution ignored the judge's specific orders to have its witnesses ready or inform the court ahead of time, and the State failed to exercise due diligence in serving the refiled petition.

[In re A.J., 135 Ill.App.3d 494, 481 N.E.2d 1060 \(1st Dist. 1985\)](#) A 700-day delay in bringing the respondent-minors to an adjudicatory hearing violated due process. Because of the lengthy delay, the Court presumed the existence of actual and substantial prejudice. See also, [People v. F.H., 190 Ill.App.3d 321, 546 N.E.2d 637 \(1st Dist. 1989\)](#) (a 12-month delay between the filing of the delinquency petition and the commencement of the adjudicatory hearing constituted a fundamental deprivation of respondent’s due process rights).

[People v. A.L., 169 Ill.App.3d 581, 523 N.E.2d 970 \(1st Dist. 1988\)](#) A nearly seven-month delay in bringing minor to trial violated due process and warranted dismissal of the petition with prejudice. Though the State did not deliberately attempt to delay the proceedings to prejudice respondent, the appellate court presumed prejudice. Also, the minor twice demanded trial.

[In re C.T., 120 Ill.App.3d 922, 458 N.E.2d 1089 \(1st Dist. 1983\)](#) The juvenile court has authority to dismiss a petition for adjudication of wardship on the basis of delay in violation of due process. The dismissal was improper here because the State’s delay did not result in actual and substantial prejudice.

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§33-5(d) Admissions

[In re Beasley, 66 Ill.2d 385, 362 N.E.2d 1024 \(1977\) Illinois Supreme Court Rule 402](#), which requires certain admonishments at guilty pleas, does not apply in juvenile proceedings. But, the due process rule does apply to such proceedings. Due process is satisfied where it is “apparent from the record that the minors were aware of the consequences of their admissions; that is, that they understood their rights against self-incrimination, their rights to confront their accusers and their rights to a trial; that by the admissions they waived these rights and that the waiver conferred upon the court the authority to treat them in a manner authorized by the Juvenile Court Act.”

The trial court’s warnings here (concerning the minors’ rights to deny the allegations of the petition, to trial, and to confrontation), along with the fact that each minor was represented by counsel who stated he had informed his client of his constitutional rights, support the conclusion that the minors’ admissions were voluntary, intelligent, and comported with due process requirements. See, [In re Starks, 60 Ill.App.3d 934, 377 N.E.2d 590 \(4th Dist. 1978\)](#) (record failed to satisfy the requirements of

Beasley); [People v. D.L.B., 140 Ill.App.3d 52, 488 N.E.2d 313 \(4th Dist. 1986\)](#) (lack of admonishments violated **Beasley** where respondent was asked no questions and given no admonition regarding the consequences of the admission, counsel did not claim to have advised the minor of the rights he was waiving, and the court made no attempt to ascertain respondent's knowledge of those rights).

[In re A.G., 195 Ill.2d 313, 746 N.E.2d 732 \(2001\)](#) 1. Due process protections are in place in delinquency proceedings even if [Rule 402](#) was held inapplicable in **Beasley**.

2. The attorney certificate requirement of Supreme Court Rule 604(d) applies where a delinquent minor files a motion to reconsider a disposition or withdraw an admission to a delinquency petition.

[In re Haggins, 67 Ill.2d 102, 364 N.E.2d 54 \(1977\)](#) Juvenile's admission to the battery count of a delinquency petition was upheld. There was a sufficient factual basis for the admission, and the juvenile's statement that he "guessed he was going to be struck" was insufficient to require further inquiry into the possibility of self-defense.

[In re Timothy P., 388 Ill.App.3d 98, 903 N.E.2d 28 \(1st Dist. 2009\)](#) 1. To satisfy due process, the record must show that a minor who admits to a delinquency petition understands the consequences of the admission. Merely informing a delinquent that he or she might be committed to DOC is inadequate to establish a reasonable understanding of the terms of the plea. Because a commitment to DOC can last until age 21, but cannot exceed the maximum adult sentence for the same offense, the trial court should clearly state that the minor may be sentenced to an indeterminate term which is not to exceed the maximum sentence possible for an adult, and also expressly state what that maximum term could be.

2. Where the minor admitted to a delinquency petition after having been informed that he was subject to "five years probation, 30 days in detention and time in the Department of Corrections," the admonishment was inadequate to ensure that the minor understood the consequences of his admission. The admission was vacated and the cause remanded to the trial court for the minor to plead anew.

[People v. M.W., 246 Ill.App.3d 654, 616 N.E.2d 710 \(5th Dist. 1993\)](#) Although formal guilty plea admonishments are not required in a juvenile admission hearing, due process requires that the minor be sufficiently questioned to assure that he understands the consequences of the admission. The admonishments here were insufficient because M.W. was not adequately informed of his right against self-incrimination or his rights to confrontation and trial. Also, he was not told that an admission would waive his rights. Even if the court could consider the admonishments given at the detention hearing, those admonishments were incomplete and would not have satisfied due process requirements.

[In re D.S., 122 Ill.App.3d 326, 461 N.E.2d 527 \(1st Dist. 1984\)](#) There was no record of sufficient admonishments where respondents appeared in court with their mothers and counsel, where counsel, immediately after appointment, asked for leave to enter admissions to the petitions, stating that she informed respondents of their rights, and where the judge accepted the admissions following a stipulated factual basis without the judge or counsel asking respondents any questions. Reversed and remanded to permit respondents to withdraw their admissions and proceed with new adjudication and dispositional hearings.

[In re S.B., 128 Ill.App.3d 75, 470 N.E.2d 39 \(1st Dist. 1984\)](#) Where the trial judge admonished the juvenile as to the possible dispositional orders, including commitment to the Juvenile Division of DOC, acceptance of the admission did not violate due process on the ground that the judge did not admonish him that the court was not bound by the prosecutor's recommendation of probation. Also, there was a sufficient showing of a factual basis to satisfy due process.

[In re S.K., 137 Ill.App.3d 1065, 485 N.E.2d 578 \(2d Dist. 1985\)](#) Respondent's admission was not voluntarily and intelligently made because the trial judge never advised respondent of any of the possible dispositions, including the fact that he could be placed in the Department of Corrections. The presence of defense counsel could not be "relied upon to assure that respondent was aware of the consequences of his admission." The record does not indicate counsel informed respondent of the

potential disposition and “a voluntary and intelligent waiver cannot be presumed from a silent record.”

[In re J.G., 182 Ill.App.3d 234, 537 N.E.2d 1360 \(1st Dist. 1989\)](#) It was not apparent from the record that respondent’s admission was intelligently made, because the record did not show that respondent understood the consequences of his admission. Counsel’s representation that he informed respondent of his trial rights and dispositional alternatives alone does not create a presumption that respondent had the requisite knowledge.

[In re J.W., 164 Ill.App.3d 826, 518 N.E.2d 310 \(1st Dist. 1987\)](#) The court reversed the habitual offender adjudication because the record of one of the prior adjudications showed it was based on an admission made without the admonishments required by [In re Beasley, 66 Ill.2d 385, 362 N.E.2d 1024 \(1977\)](#). The record of the prior adjudication showed that the judge failed to ascertain whether respondent understood his rights against self-incrimination and to confrontation and failed to inform him he was waiving those rights by making an admission.

Because the prior adjudication of delinquency was based on an admission that had not been determined to be voluntarily and intelligently made, it “was not sufficiently reliable to permit its subsequent use in establishing that the minor respondent was a habitual offender.”

Cumulative Digest Case Summaries §33-5(d)

In re Isiah D., 2105 IL App (1st) 143507 (No. 1-14-3507, 6/8/15)

On appeal from a 2014 order finding him to be a habitual juvenile offender and a violent juvenile offender, the minor respondent argued that the conviction resulting from his guilty plea in 2013 could not be used as a predicate for HJO and VJO status because the plea admonishments had been improper. The court concluded that under [In re J.T., 221 Ill.2d 338, 851 N.E.2d 1 \(2006\)](#), it lacked jurisdiction to consider issues arising from the 2013 plea because respondent failed to file a timely appeal from that proceeding. The court concluded that [J.T.](#) implicitly overruled [In re J.W., 164 Ill.App.3d 826, 518 N.E.2d 310 \(1st Dist. 1987\)](#), which found that the Appellate Court had jurisdiction to consider the propriety of a prior guilty plea that was used as a predicate in a subsequent case.

The court noted that because minors have not been held to come within the Post-Conviction Hearing Act, respondent was effectively left without a remedy unless the Supreme Court saw fit to exercise supervisory authority.

(Respondent was represented by Assistant Defender Kathleen Weck, Chicago.)

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§33-6

Dispositions (Sentencing)

§33-6(a)

Generally

[People ex rel. Devine v. Stralka, 226 Ill.2d 445, 877 N.E.2d 416 \(2007\)](#) The Juvenile Court Act does not authorize the trial judge to vacate a dispositional order merely because the minor has complied with sentencing conditions. The trial court erred by vacating the delinquency adjudication because the minor had successfully completed 11 months of her one-year probation sentence. Prohibition and *mandamus* were appropriate vehicles to challenge the trial court’s order vacating the delinquency adjudication.

[People ex rel. Carey v. Chrastka, 83 Ill.2d 67, 413 N.E.2d 1269 \(1980\)](#) The Habitual Juvenile Offender Act does not violate due process or equal protection, constitute cruel and unusual punishment, infringe on judicial sentencing power, or violate [Art. I, §11 of the Illinois Constitution](#) by providing for mandatory confinement of a habitual juvenile offender until the age of 21.

[In re J.W.](#), 204 Ill.2d 50, 787 N.E.2d 747 (2003) Juvenile sex offenders are required to register under the Sex Offender Registration Act. See also, [In re J.R.](#), 341 Ill.App.3d 784, 793 N.E.2d 687 (1st Dist. 2003) (the Sex Offender and Child Murder Community Notification Law ([730 ILCS 152/101](#) *et seq.*) does not violate substantive or procedural due process when applied to a juvenile sex offender, and the Sex Offender Registration Act ([730 ILCS 150/1](#) *et seq.*) does not violate procedural due process when applied to a juvenile).

[In re G.B.](#), 88 Ill.2d 36, 430 N.E.2d 1096 (1981) 1. The remedies authorized under the Juvenile Court Act for violations of court orders do not limit the court's contempt power. The court may properly use contempt "as an alternate procedure to those provided for in the act." Therefore, the judge here could properly hold minor (who was in need of supervision because he was habitually truant from school) in contempt of court when he failed to attend school.

2. A trial court may properly impose a sentence of incarceration on a minor found in contempt of court, though the Juvenile Court Act does not authorize the incarceration of a minor for violating a court order.

3. A trial court may properly impose a probation sentence on a person found guilty of criminal contempt.

4. The facts of this case justified the imposition of probation and 60 days' incarceration.

[City of Urbana v. Andrew N.B.](#), 211 Ill.2d 456, 813 N.E.2d 132 (2004) The Juvenile Court Act permits prosecution of some offenses as municipal ordinance violations, but minors sentenced to supervision for ordinance violations may not be held in contempt of court.

[705 ILCS 405/5-125](#), which provides that a minor alleged to have violated a municipal or county ordinance may be prosecuted for the violation and, if convicted, punished as provided by the ordinance (except that any detention must comply with the Juvenile Court Act) does not violate equal protection. Minors prosecuted under the Juvenile Court Act are entitled to appointed counsel and to additional procedural protections, while those prosecuted as ordinance violators have no right to appointed counsel unless the ordinance calls for incarceration. Because the possibility of incarceration is a reasonable basis on which to distinguish proceedings which carry greater procedural protections than those which do not, there is no equal protection violation.

Minors were not entitled to counsel at the ordinance proceedings.

[In re Baker](#), 71 Ill.2d 480, 376 N.E.2d 1005 (1978) §§2-2(b) and 2-3(d) of the Juvenile Court Act, which pertain to delinquency minor and minor in need of supervision, constitute an alternative procedure for a minor's violation of court orders and do not restrict the court's contempt power. Here, the contempt finding for the minor's running away in violation of the trial court's order was upheld because there was a factual basis for the holding. But, the finding of contempt was improperly used to adjudge the minor "delinquent" under §2-2, for "delinquent" only includes minors who violate statutory law. Finding of contempt affirmed; adjudication of delinquency reversed.

[In re Rodney H.](#), 223 Ill.2d 510, 861 N.E.2d 623 (2006) Provisions of the Juvenile Court Act and Children and Family Services Act, which prohibit DCFS from accepting guardianship of delinquent minors over the age of 13, do not violate the proportionate penalties clause of the Illinois Constitution. Because Illinois law creates a range of options to deal with juvenile delinquents, different punishments are not created based on age.

Also, the fact that Cook County's fund to pay for residential placement of juvenile delinquents had been exhausted when the trial court sought to place minor in residential placement did not render unconstitutional the statutory provisions directing counties to create reasonable funds to pay for such care and allow courts to order disbursements from those funds. The Court declined to decide whether there is a duty to provide residential placement, noting that the "purported constitutional problem" disappears when a county has sufficient funds to pay for residential placement. The problem created by Cook County's failure to appropriate sufficient funds "is better levied against the county, who is not a party to this appeal and further declined to offer an opinion on any constitutional issue below."

Finally, the statutes did not violate equal protection, for "[t]hese arguments collapse if the county

has funds to provide residential placements.”

The cause was remanded for further proceedings. On remand, the court was free to terminate the minor’s wardship because the respondent is no longer a minor.

[In re B.L.S., 202 Ill.2d 510, 782 N.E.2d 217 \(2002\)](#) 1. Habitual juvenile offenders, like other persons serving determinate sentences, are entitled to full credit for time served in pretrial custody.

2. A social investigation report is required before committing a minor to DOC. See also, [In re Starks, 60 Ill.App.3d 934, 377 N.E.2d 590 \(4th Dist. 1978\)](#) (the statutory requirement that the judge consider a written report of social investigation prior to commitment to the Department of Corrections cannot be waived). The trial court is not authorized to dispense with a social investigation report merely because it lacks sentencing discretion once the minor is found delinquent. Thus, the trial court erred by sentencing the minor without a social investigation report, although the only disposition available for a habitual juvenile offender is commitment to DOC until age 21. But, the error was harmless because the social investigation report “would have served no purpose” in light of the absence of any sentencing alternative.

[In re J.T., 221 Ill.2d 338, 851 N.E.2d 1 \(2006\)](#) A juvenile committed to DOC for an indeterminate term is entitled to credit for time spent in custody while awaiting disposition. See also, [In re B.L.S., 325 Ill.App.3d 96, 757 N.E.2d 637 \(3d Dist. 2001\)](#) (a minor who is adjudicated an habitual juvenile offender and committed to the Department of Corrections until age 21 is entitled to credit for time spent in predispositional confinement).

[People v. Miller, 202 Ill.2d 328, 781 N.E.2d 300 \(2002\)](#) The proportionate penalties clause of the Illinois Constitution was violated where the operation of three statutes resulted in a mandatory natural life sentence for a 15-year-old who was convicted of first degree murder as an accomplice but who acted only as a lookout.

[In re J.B., 138 Ill.App.3d 958, 487 N.E.2d 52 \(1st Dist. 1985\)](#) A criminal court judge has the power to enter an adjudication of delinquency, and may also enter a criminal conviction and juvenile punishment.

[People v. A.L.J., 129 Ill.App.3d 715, 473 N.E.2d 132 \(4th Dist. 1985\)](#) The trial court erred by making the finding of wardship at the adjudicatory hearing. Under Ch. 37, ¶¶704-8(2) & 705-1, the wardship determination is to be made at the dispositional hearing. Determination of wardship and commitment order were vacated and the cause remanded for a new dispositional hearing. See also, [In re S.K., 137 Ill.App.3d 1065, 485 N.E.2d 578 \(2d Dist. 1985\)](#); [In re P.E.K., 200 Ill.App.3d 249, 558 N.E.2d 763 \(4th Dist. 1990\)](#) (error in adjudicating wardship at the dispositional hearing, rather than the adjudicatory hearing, is harmless where the judge considered the dispositional evidence before entering the dispositional order and the improper timing of the adjudication had no bearing on the ultimate decision).

[In re Driver, 46 Ill.App.3d 574, 360 N.E.2d 1202 \(4th Dist. 1977\)](#) The trial court committed reversible error by refusing to allow defense counsel to introduce evidence concerning the minor’s best interests as to wardship. Such error foreclosed the trial court from “making a totally informed determination.” Reversed and remanded.

[In re D.B., 303 Ill.App.3d 412, 708 N.E.2d 806 \(1st Dist. 1999\)](#) 1. A new dispositional hearing was required because the trial court failed to require that a written social investigation report be prepared within 60 days before the dispositional hearing, as was required.

2. A psychological report prepared 10 months before the hearing was not a satisfactory substitute for a social investigation report. The written report of social investigation must cover several matters in addition to the minor’s psychological and emotional problems, including the minor’s: (1) physical and mental history and condition, (2) family situation and background, (3) economic status, (4) education, (5) occupation, (6) personal habits, and (7) history of delinquency or criminality. Other mandatory subjects include special resources that might be available to assist in rehabilitation and “any other matters which may be helpful to the court or which the court directs to be included.”

3. A written report supplemented with testimony on matters that would be contained in a social investigation report does not satisfy the requirements of the Juvenile Court Act. In so holding, the court distinguished [In re R.D., 84 Ill.App.3d 203, 405 N.E.2d 460 \(3d Dist. 1980\)](#).

4. The failure to prepare a social investigation report was not waived even though the issue was not raised at trial.

[In re M.R.H., 326 Ill.App.3d 565, 761 N.E.2d 336 \(3d Dist. 2001\)](#) The trial court erred by finding that it had no authority to consider a motion for non-adjudication after a finding of guilt. At a sentencing hearing, the juvenile court must determine whether it is in the best interest of the minor and the public that he or she be made a ward of the court. The determination of best interests must be made before the entry of a dispositional order, and need not occur before a delinquency adjudication. The cause was remanded for a hearing to determine whether it was in the best interest of the minor and public that he be made a ward of the court.

[In re E.J., 78 Ill.App.3d 918, 397 N.E.2d 918 \(4th Dist. 1979\)](#) After respondent was adjudicated delinquent, he was ordered committed to the Department of Corrections. But, the commitment order was not executed. Respondent was subsequently arrested, at which point the commitment order was executed without a new dispositional hearing. The trial court erred by failing to appoint counsel and conduct a new dispositional hearing before ordering execution of the order. If sound reasons justified execution of the old dispositional order, they should have been presented on the record. Because they were not, the court vacated the dispositional order and remanded for a new dispositional hearing.

[In re F.G., 318 Ill.App.3d 709, 743 N.E.2d 181 \(1st Dist. 2000\)](#) Where defendant was adjudicated delinquent and committed to DOC for a mandatory five-year term, but the act creating the mandatory commitment was later declared unconstitutional under the single subject rule, defendant was entitled to resentencing under the previous law, which did not require DOC commitment. A statute that is deemed unconstitutional in its entirety is void “ab initio.” The court rejected the argument that [P.A. 90-590](#), which was enacted during defendant’s appeal and reimposed the mandatory five-year commitment, could be applied to this case. See also, [In re R.T., 313 Ill.App.3d 422, 729 N.E.2d 889 \(1st Dist. 2000\)](#).

[In re Justin L.V., 377 Ill.App.3d 1073, 882 N.E.2d 621 \(4th Dist. 2007\)](#) 1. [705 ILCS 405/5-750\(3\)](#), which provides that the juvenile court may require the custodian or guardian of a delinquent minor to periodically report to the court, and that the court may change the custody arrangements, applies to a minor who has been adjudicated delinquent and committed to the Juvenile Department of Corrections. Thus, the trial court had authority to *sua sponte* conduct a review 60 days after the initial commitment. Where at the *sua sponte* hearing, counsel made an oral request to vacate the commitment to DOC and place the minor on probation, counsel moved “for a change in custody of the minor,” as contemplated by §5-750(3). Although the request was oral rather than written, the State raised no objection to the form of the request and presented argument on the merits. However, defense counsel should “avoid any doubt” concerning a request to change custody by filing a written motion.

2. The trial court’s denial of a motion to vacate a commitment to DOC is a final order for purposes of appeal.

3. The court lacked authority to consider respondent’s argument that he was entitled to 62 additional days’ credit for time served in custody while awaiting arraignment and while on home confinement.

[People v. Bradley, 352 Ill.App.3d 291, 815 N.E.2d 1209 \(3d Dist. 2004\)](#) Where the statute creating the offense provides for only a fine as a sanction, sentences of conditional discharge and community service are void.

[In re J.S.L., 197 Ill.App.3d 148, 553 N.E.2d 1135 \(2d Dist. 1990\)](#) The trial court lacked jurisdiction to enter a dispositional order committing respondent-minor to the Department of Convictions where it did not explicitly find respondent delinquent. A finding of delinquency could not be implied from the record. Though the preprinted form on which the commitment order was entered stated that respondent had been “previously adjudicated delinquent,” this was insufficient; the preprinted form also stated that the supposed adjudication of delinquency had been “noted by written order previously entered,” yet there was no written finding of delinquency in the record.

The court also rejected the State’s contention that the written commitment order itself should be treated as a finding of delinquency.

And, the court declined to imply a finding of delinquency because the trial judge would not have proceeded to disposition had he not found respondent delinquent.

[People v. M.W., 246 Ill.App.3d 654, 616 N.E.2d 710 \(5th Dist. 1993\)](#) The trial judge erred by basing the disposition, in part, on his experiences with other members of M.W.'s family instead of solely on the minor's conduct.

[In re C.Y.B., 109 Ill.App.3d 1110, 411 N.E.2d 952 \(4th Dist. 1982\)](#) After respondent was found to be a minor in need of supervision, and a date was set for a dispositional hearing, the trial court entered an interim supervision order to the date set for the dispositional hearing. Respondent was subsequently found in contempt of court and sentenced to four days in a juvenile facility for violating a condition of the supervision order. The supervision order was void. There is no authority in the Juvenile Court Act for an interim order that “short circuits” the procedure of the Act; “the trial court actually entered a form of a dispositional order prior to the dispositional hearing.” Contempt reversed.

Cumulative Digest Case Summaries §33-6(a)

[Graham v. Florida, ___ U.S. ___, 130 S.Ct. 2011, 176 L.Ed.2d 825 \(2010\)](#) (No. 08-7412, 5/17/10)

The Supreme Court concluded that the “cruel and unusual punishment” clause of the 8th Amendment prohibits a sentence of life imprisonment without the possibility of parole for a juvenile offender who is convicted of an offense other than homicide. The court concluded that there are both national and global consensuses against such sentences even in jurisdictions which authorize life sentences for juveniles, that juveniles are less mature and therefore less culpable for their actions than adults, and that a case-by-case approach would be insufficient to satisfy constitutional concerns.

[Montgomery v. Louisiana, ___ U. S. ___, 136 S.Ct. 718, ___ L.Ed.2d ___ \(2016\)](#) (No. 14-280, 1/25/16)

1. Under **Teague v. Lane**, 49 U. S. 288 (1989), federal courts must give retroactive effect to new substantive rules of constitutional law. Substantive rules include rules which forbid criminal punishment of certain primary conduct as well as those which prohibit a certain category of punishment for a class of defendants because of their status or offense.

The court concluded that when a new substantive rule of constitutional law controls the outcome of a case, the States are constitutionally required to give retroactive effect to that rule in State collateral proceedings. The court stressed that substantive constitutional rules place certain persons or punishments beyond the State’s criminal enforcement power, and that by definition a conviction or sentence is unlawful where it is created by an unconstitutional provision.

2. Under **Miller v. Alabama**, 567 U. S. ___, 132 S.Ct. 2455 (2012), a juvenile convicted of homicide cannot be sentenced to life imprisonment without the possibility of parole unless the trial court first considers the minor’s special circumstances in light of the principles and purposes of juvenile sentencing. **Miller** did not bar a life sentence without parole in all cases, but limited such sentences to juvenile offenders whose crimes reflect “irreparable corruption.”

The court concluded that **Miller** announced a substantive rule because it barred the imposition of a mandatory life sentence without parole upon juvenile offenders “whose crimes reflect the transient immaturity of youth.” Thus, **Miller** rendered life without parole an unconstitutional penalty for a class of defendants because of their status.

Because **Miller** announced a substantive rule, it must be applied retroactively in state collateral review proceedings. The court noted, however, that giving **Miller** retroactive effect does not require States to relitigate sentences or convictions in every case in which a juvenile offender received life without parole. Instead, a **Miller** violation may be remedied by permitting juvenile homicide offenders to be considered for parole.

[In re Veronica C., 239 Ill.2d 134, 940 N.E.2d 1 \(2010\)](#)

1. Juvenile delinquency proceedings are comprised of three distinct stages: the findings phase, the adjudicatory phase, and the dispositional phase. The findings phase consists of a trial to determine whether the minor is guilty as charged and should be adjudged delinquent. In a juvenile delinquency case, a finding of guilt and a finding of delinquency are equivalent.

If a finding of delinquency is entered, the matter proceeds to sentencing, which consists of the adjudication and dispositional phases. At the adjudication phase, the trial court determines whether it is in the best interests of the minor and the public to make the minor a ward of the court. At the dispositional phase, the trial court fashions an appropriate sentence to serve the best interests of the minor and the public.

2. The trial court may order a continuance under supervision until such time as the proceeding reaches the adjudicatory stage. An order of continuance under supervision requires that the minor admit the facts supporting the petition and that no objection be raised by the minor, his or her parents, guardian, or legal custodian, the minor’s attorney, or the State’s Attorney. ([705 ILCS 405/5-615 \(1\), \(2\)](#)).

3. Where the trial court had found the respondent guilty and set the cause for the adjudicatory and dispositional phases, the point at which a continuance of supervision could be ordered had passed. Thus, although the State objected to supervision when asked by the trial court, supervision could not have been granted even had the State consented.

4. Because a party may raise a constitutional challenge to a statute only if it affects him, the minor respondent lacked standing to argue that the separation of powers doctrine and equal protection are violated by [705 ILCS 405/5-615](#), which allows the State to block the trial court from granting a continuance under supervision.

(Defendant was represented by Assistant Defender Steve Wiltgen, Elgin.)

[People v. Reyes, 2016 IL 119271 \(No. 119271, 9/22/16\)](#)

Defendant, who was 16 years old at the time of the offense, was tried as an adult and convicted of first degree murder and two counts of attempted murder. The trial court imposed a mandatory minimum sentence of 45 years for first degree murder which included a 25-year mandatory firearm enhancement. The court also sentenced defendant to 26 years for the two attempt murder convictions, both of which included a 20-year mandatory firearm enhancement. All of the sentences were required to run consecutively resulting in a mandatory minimum sentence of 97 years. Defendant was required to serve a minimum of 89 years before he would be eligible for release.

The Illinois Supreme Court held that defendant’s sentence was a *de facto* mandatory life sentence that was unconstitutional under [Miller v. Alabama, 567 U.S. ___, 132 S.Ct. 2455 \(2012\)](#). A mandatory term-of-years sentence that cannot be served in one lifetime has the same practical effect as an actual mandatory life sentence. In either situation the defendant will die in prison. **Miller** held that a juvenile may not be sentenced to a mandatory unsurvivable prison term unless the court first considers his youth, immaturity, and potential for rehabilitation.

Here defendant was 16 when he committed the offense and since he must serve 89 years, he will remain in prison until he is 105. Defendant’s sentence is therefore a mandatory *de facto* life sentence.

The court vacated defendant’s sentence and remanded for a new sentencing hearing under the newly enacted sentencing scheme in 730 ILCS 5/5-4.5-105 which requires the sentencing court to take into account specific factors in mitigation when sentencing a juvenile. Additionally, the court has discretion to not impose the firearm enhancements. Without those enhancements defendant’s minimum

aggregate sentence would be 32 years, a term that is not a *de facto* life sentence.

(Defendant was represented by Assistant Defender Fletcher Hamill, Elgin.)

In re A.C., 2016 IL App (1st) 153047 (No. 1-15-3047, 5/18/16)

The combination of the Sex Offender Registration Act ([730 ILCS 150/1](#)) and the Sex Offender Community Notification Law ([730 ILCS 152/101](#)) (SORA) as applied to juveniles does not violate due process or the eighth amendment/proportionate penalties clauses of the federal and Illinois constitutions. SORA does not violate substantive due process since it does not affect fundamental rights and there is a rational relationship between SORA's restrictions and the State's legitimate interests. SORA does not violate procedural due process since SORA only applies after a criminal conviction and there is no need for further hearings. And SORA does not violate the eighth amendment/proportionate penalties clause since it does not involve punishment.

In re Christopher P., 2012 IL App (4th) 100902 (No. 4-10-0902, 9/12/12)

The Juvenile Act expressly addresses sentencing credit for juveniles placed in detention. [705 ILCS 405/5-710\(1\)\(a\)\(v\)](#), 1(b). The broader adult sentencing credit requirements of the Unified Code of Corrections also apply to juveniles. 730 ILCS 5/5-4.5-100(b). A juvenile who is committed to the DOJJ for an indeterminate term is entitled to predisposition credit for any part of a day for which he spent some time in custody. He is also entitled to credit for time spent in custody as a condition of probation where he is resentenced upon revocation of probation. The definition of "custody" for purposes of sentencing credit is the legal duty to submit to legal authority, and not actual physical confinement.

The trial court ordered that respondent complete the county treatment program as a condition of his probation. This program qualifies as time spent in custody under 730 ILCS 5/5-4.5-100(b) for which respondent is entitled to sentencing credit because he had a legal duty to submit to state authority while in the treatment program. The program is housed inside the county detention center and program residents are under the state's physical control. Important to the Appellate Court's conclusion were the following facts: (1) respondent was ordered by the court to participate in the program; (2) respondent was held beyond the scheduled 90-day period at the discretion of detention center officials, not the court; (3) respondent was subject to solitary confinement for policy violations; (4) respondent was subject to strip searches upon return from home visits; (5) respondent's freedom of movement was restricted by locked external and internal doors, including lockdown at night; (6) respondent was subject to the same policies and conditions as detention center residents, who do receive sentencing credit; and (7) respondent was completely integrated with detention center residents for purposes of school, meals, and uniforms.

The fact that treatment center residents received some privileges not accorded to detention center residents did not affect the court's analysis. Whether or not respondent could be prosecuted for escape if he left the detention center, he would be held responsible for that conduct as the record showed that respondent was held in solitary confinement for other infractions of the rules.

(Respondent was represented by Assistant Defender Jacqueline Bullard, Springfield.)

In re Darius L., 2012 IL App (4th) 120035 (No. 4-12-0035, 9/12/12)

The Juvenile Act expressly addresses sentencing credit for juveniles placed in detention. [705 ILCS 405/5-710\(1\)\(a\)\(v\)](#), 1(b). The broader adult sentencing credit requirements of the Unified Code of Corrections also apply to juveniles. 730 ILCS 5/5-4.5-100(b). A juvenile who is committed to the DOJJ for an indeterminate term is entitled to predisposition credit for any part of a day for which he spent some time in custody. He is also entitled to credit for time spent in custody as a condition of probation where he is resentenced upon revocation of probation. The definition of "custody" for purposes of sentencing credit is the legal duty to submit to legal authority, and not actual physical confinement.

The trial court ordered that respondent complete the county treatment program as a condition of his probation. This program qualifies as time spent in custody under 730 ILCS 5/5-4.5-100(b) for which respondent is entitled to sentencing credit because he had a legal duty to submit to state authority while in the treatment program. The program is housed inside the county detention center and program residents are under the state's physical control. Important to the Appellate Court's conclusion were the following facts: (1) respondent was ordered by the court to participate in the program; (2) respondent was held beyond the scheduled 90-day period at the discretion of detention center officials, not the court; (3)

respondent's freedom of movement was restricted by locked external and internal doors, including lockdown at night; (4) respondent was subject to the same policies and conditions as detention center residents, who do receive sentencing credit; and (5) respondent was completely integrated with detention center residents for purposes of school, meals, and uniforms.

The fact that treatment center residents received some privileges not accorded to detention center residents did not affect the court's analysis. Whether or not respondent could be prosecuted for escape if he left the detention center, he would be held responsible for that conduct because he would be in violation of his probation and subject to a revocation proceeding. While §5-4.5-100(b) allows but does not require sentencing credit for time spent confined for psychiatric or substance abuse treatment, the treatment program did not qualify as psychiatric or substance abuse treatment, but was designed for general "areas of concern."

(Respondent was represented by Assistant Defender Jacqueline Bullard, Springfield.)

In re Isiah D., 2105 IL App (1st) 143507 (No. 1-14-3507, 6/8/15)

On appeal from a 2014 order finding him to be a habitual juvenile offender and a violent juvenile offender, the minor respondent argued that the conviction resulting from his guilty plea in 2013 could not be used as a predicate for HJO and VJO status because the plea admonishments had been improper. The court concluded that under [In re J.T., 221 Ill.2d 338, 851 N.E.2d 1 \(2006\)](#), it lacked jurisdiction to consider issues arising from the 2013 plea because respondent failed to file a timely appeal from that proceeding. The court concluded that [J.T.](#) implicitly overruled [In re J.W., 164 Ill.App.3d 826, 518 N.E.2d 310 \(1st Dist. 1987\)](#), which found that the Appellate Court had jurisdiction to consider the propriety of a prior guilty plea that was used as a predicate in a subsequent case.

The court noted that because minors have not been held to come within the Post-Conviction Hearing Act, respondent was effectively left without a remedy unless the Supreme Court saw fit to exercise supervisory authority.

(Respondent was represented by Assistant Defender Kathleen Weck, Chicago.)

In re Jabari C., 2011 IL App (4th) 100295 (No. 4-10-0295, 12/2/11)

Juveniles, like adult criminal defendants, are entitled to sentencing credit for each day spent in custody because to deny a juvenile credit could lead to a period of commitment exceeding the maximum time that an adult could serve for the offense.

At issue here is whether a juvenile was entitled to credit for an arrest that did not involve the minor's admission to the juvenile detention center, but two weeks later resulted in a station adjustment. Police officers were dispatched to respondent's school to investigate a report about students smoking cannabis, searched respondent's locker, and subjected him to an interview during which he made an admission. The social investigation report characterized the events of that date as an "arrest."

"Custody" for purposes of adult sentencing credit is defined as the "legal duty to submit" to legal authority, which does not require actual physical confinement. When a person is arrested, he has a "legal duty to submit" to the control of the arresting officer.

Respondent had a legal duty to submit to the control of the officers when he was arrested in the course of their investigation at his school, even though he was not admitted to the juvenile detention center on that date. Therefore, his arrest met the definition of custody, and he was entitled to one day of credit against his sentence for the date of his arrest.

(Respondent was represented by Assistant Defender Jacqueline Bullard, Springfield.)

In re K.D., 407 Ill.App.3d 395, 943 N.E.2d 210 (1st Dist. 2011)

In a delinquency proceeding, a court may place a minor who is a ward of the court in the "guardianship of the Department of Children and Family Services, but only if the delinquent minor is under 15 years of age or, pursuant to Article II of the [Juvenile Court] Act [pertaining to abused, neglected and dependent minors,] a minor for whom an independent basis of abuse, neglect, or dependency exists. An independent basis exists when the allegations or adjudication of abuse, neglect, or dependency do not arise from the same facts, incident, or circumstances which give rise to a charge or adjudication of delinquency." [705 ILCS 405/5-710\(1\)\(a\)\(iv\)](#).

A social investigation report prepared for consideration at the 16-year-old minor's sentencing

hearing indicated that neither of the minor's parents provided for the minor, nor would they be able to do so in the foreseeable future as neither had a stable living environment. Section 5-710(1)(a)(iv) authorized the court to place the minor in the guardianship of DCFS based on that information without the filing of a separate petition to declare the minor an abused, neglected or dependent minor. The reference to Article II in the statute did not impose the procedural requirements of Article II on the court in the delinquency proceeding. Rather, the statute creates an alternative to an Article II proceeding. Due process is satisfied by notice to the parents of the delinquency proceeding and no separate notice need be given of a proceeding under Article II before a DCFS guardianship can be imposed in a delinquency proceeding.

[In re M.A., 2014 IL App \(1st\) 132540 \(No. 1-13-2540, 5/28/14\)](#)

The subsections of the Illinois Murderer and Violent Offender Against Youth Registration Act, [730 ILCS 154/1 et seq.](#), that make the Act automatically applicable to juveniles are facially unconstitutional since they violate procedural due process and equal protection.

1. The Act applies to juveniles who have been adjudicated delinquent for committing or attempting to commit a variety of violent crimes when the victim is under age 18, including aggravated battery and aggravated domestic battery, the offenses at issue here. The registration period lasts for 10 years. The juvenile must register within five days after entry of the sentencing order and must register as an adult within 10 days of turning 17 years old. There is no provision for a juvenile to be taken off the registry.

The Act requires the police to send the registration information to the offender's school district, and to all child care facilities, colleges and libraries in the county. The Act allows the police to disclose the offender's information to "any person likely to encounter a violent offender." Once the juvenile turns 17 and registers as an adult, the registration information is accessible to the public through a statewide database.

The 10-year period is automatically extended for another 10 years when an offender violates any registration requirement. Failure to register is a Class 3 felony and each subsequent violation is a Class 2 felony.

2. Procedural due process claims challenge the procedures used to deny a person life, liberty, or property. The primary components of due process are notice and an opportunity to be heard. In assessing procedural due process claims, courts consider the following factors: (1) the private interest affected by the official action; (2) the risk of erroneous deprivation of such interest; (3) the probable value of additional or substitute procedures; and (4) the State's interest, including the fiscal and administrative burdens of new or additional procedures.

Since the Act affects liberty and privacy interests, but does not entirely deprive a juvenile of those rights, it does not impair any fundamental constitutional rights. Thus, its provisions are analyzed under the rational basis test.

The mandatory requirement that juveniles who commit certain offenses must register as adults under the Act violates procedural due process. The Act automatically requires juvenile offenders to register as adults, with its attendant statewide publication of registration information, without any individualized assessment of their continuing risk to society.

While the initial registration following conviction might not violate due process under the rational basis test, the requirement that juveniles register as adults without any further process does. This is especially true given the transitory nature of youth and the absence of any significant administrative burdens that would be imposed in requiring a hearing to determine whether juveniles remain a danger to society at the time of adult registration.

3. An equal protection challenge asks whether a statute treats similarly situated individuals in a similar manner. Equal protection does not prohibit the legislature from drawing proper distinctions among different categories of people. Unless fundamental rights are at issue, the classification does not violate equal protection if it bears a rational relationship to the purpose of the statute.

The registration provisions for juvenile violent offenders against youth violate equal protection when compared to the registration procedures for juvenile sex offenders. The two groups are similarly situated because, although they were convicted of different offenses, they both belong to the same class of juvenile offenders who are required to register with the police.

The disparate treatment of the two groups does not bear a rational relationship to the purposes of the Act. The goal of registering both groups is the same: protection of the public. Juvenile sex offenders, however, do not have to register as adults and may petition to be taken off the registry after five years. The same legislative purposes would be served by providing these features to juvenile violent offenders against youth. The failure to do so results in disparate treatment for violent offenders and thus violates equal protection.

4. Although the Act violates procedural due process and equal protection, it does not violate substantive due process. A statute violates substantive due process if it impermissibly restricts a person's life, liberty, or property interests. In the absence of a fundamental right, the statute need only show a rational relationship to the legislative purpose behind its enactment.

In [In re J.W., 204 Ill.2d 50 \(2003\)](#), the Illinois Supreme Court rejected a substantive due process challenge to the registration provisions for juvenile sex offenders, finding a rational relationship between registering juvenile sex offenders and the need to protect the public. The result in [In re J.W.](#) controls this case. There is a rational relationship between registering juvenile violent offenders against youth and protecting the public. The Act thus does not violate substantive due process.

5. The dissent agreed that the Act did not violate substantive due process, but disagreed with the majority's conclusion that it violated procedural due process and equal protection. The dissent argued that the registration requirements are a collateral consequence of an adjudication of delinquency and juveniles receive due process during their adjudicatory hearings. There is thus no procedural due process violation.

Moreover, juvenile violent offenders against youth are not comparable to juvenile sex offenders, so disparate treatment does not violate equal protection. In providing early termination to sex offenders, the legislature recognized that many sex offenses by juveniles were the result of sexually immature rather than predatory conduct. The legislature has not recognized any similar concern with violent behavior by juveniles. Accordingly, there is a rational basis to treat the two groups differently.

(Defendant was represented by Assistant Defender Rachel Moran, Chicago.)

[In re Raheem M., 2013 IL App \(4th\) 130585 \(No. 4-13-0585, 12/10/13\)](#)

1. A court may commit a delinquent minor to the Department of Juvenile Justice, if it finds that "commitment to the Department of Juvenile Justice is the least restrictive alternative based on evidence that efforts were made to locate less restrictive alternatives to secure confinement and the reasons why efforts were unsuccessful in locating a less restrictive alternative to secure confinement." [705 ILCS 405/5-750\(1\)\(b\)](#).

The trial court did not comply with this requirement prior to committing respondent to the DOJJ. The court had no evidence before it of efforts made to locate less restrictive alternatives and did not state the reasons why such efforts were unsuccessful. Merely reciting such findings in a form order is insufficient to comply with the statute. "Actual efforts must be made, evidence of those efforts must be presented to the court, and, if those efforts prove unsuccessful, an explanation must be given why the efforts were unsuccessful." References in the social history report to available community resources if the respondent were sentenced to probation did not suffice where those resources were never even contacted with regard to respondent.

2. Sentencing errors can be reviewed for plain error where the evidence was closely balanced or the error was sufficiently grave that the defendant was deprived of a fair sentencing hearing. Because the requirements of [705 ILCS 405/5-750\(1\)\(b\)](#) ensure that trial courts treat DOJJ sentences as a last resort, failure to comply with those requirements is such a serious error that the appellate court may excuse forfeiture based on the second prong of plain-error analysis. The appellate court was mindful that respondent had no other means of relief from this error given the state of the law regarding whether juveniles are entitled to seek relief under the Post-Conviction Hearing Act.

3. The appellate court was also troubled by the trial court's *sua sponte* decision to detain respondent after trial and prior to sentencing. The court made this decision without much information regarding respondent other than that he had been expelled from school as a result of the case before it. This was respondent's first case in juvenile court. He lived with his mother and stepfather, with whom he had a good relationship. He was convicted of aggravated battery of a teacher based on evidence that he threw a chair at a student during a brawl involving several students in the school cafeteria. The chair

made incidental contact with a teacher and no serious injuries resulted. As a consequence of the court's decision to detain, respondent missed his scheduled GED examination.

4. A trial court may not consider a factor inherent in the charged offense in aggravation at sentencing.

Respondent committed what normally would be classified as a simple battery but which became an aggravated battery due to the victim's status and the location of the incident. The trial judge improperly allowed these same factors to impact its sentencing judgment as aggravating factors.

5. The appellate court also criticized the emphasis that the trial court placed on the criminal history of respondent's biological father, which was exhaustively covered in the social history investigative report. Respondent should not be punished for the crimes of his father. These crimes had no relevance especially because respondent had no contact with his father, who was incarcerated out of state.

The appellate court vacated respondent's commitment to the DOJJ and remanded for a hearing in compliance with [705 ILCS 405/5-750\(1\)\(b\)](#).

Steigmann, J., dissented. While the sentencing hearing was "lacking," based on his "understanding of this record," he disagreed that application of the plain-error doctrine was appropriate. (Defendant was represented by Supervisor Arden Lang, Springfield.)

[In re Shermaine S., 2015 IL App \(1st\) 142421 \(No. 1-14-2421, 1/9/15\)](#)

Under the habitual juvenile offender statute, a minor who is adjudicated delinquent for certain serious felonies, such as first degree murder, criminal sexual assault, or robbery, and has two prior felony adjudications, is adjudged an habitual juvenile offender and must be committed to Department of Juvenile Justice until his 21st birthday. [705 ILCS 405/5-815](#).

Defendant argued that the statute violated the Eighth Amendment because it precludes the court from considering individualized factors about the minor, including his youth and attendant circumstances, as required by [Miller v. Alabama, 132 S.Ct. 2455 \(2012\)](#). He also argued that it violated the proportionate penalties clause of the Illinois Constitution which requires a court to consider rehabilitation in imposing sentence.

The Appellate Court rejected both arguments. The court first noted that the Illinois Supreme Court has held that the Eighth Amendment and the proportionate penalties clause do not apply to juvenile proceedings since they only apply to the criminal process and juvenile proceedings are not criminal in nature. [In re Rodney H., 223 Ill. 2d 510 \(2006\)](#). But even if they did apply, the statute would not violate either constitutional provision.

In [People ex rel. Carey v. Chrastka, 83 Ill. 2d 67 \(1980\)](#), the Illinois Supreme Court held that sentencing a habitual juvenile offender until the age of 21 did not violate the Eighth Amendment. **Miller** does not change this result because unlike this case, **Miller** involved juveniles who were tried as adults. Moreover, **Miller** did not prohibit all mandatory penalties, but only mandatory life sentences.

The statute also does not violate the proportionate penalties clause. Although the Illinois Supreme Court stated in [People v. Clemons, 2012 IL 107821](#), that the language of the clause requiring all penalties to have "the objective of restoring the offender to useful citizenship," indicated that it goes beyond the Eighth Amendment, elsewhere, both before and after **Clemons**, the court has held that the clause is co-extensive with the Eighth Amendment. [In re Rodney H.; People v. Patterson, 2014 IL 115102](#). Since the court held in [Chrastka](#) that the statute did not violate the Eighth Amendment, it similarly cannot violate the co-extensive proportionate penalties clause.

(Defendant was represented by Assistant Defender Jonathan Krieger, Chicago.)

[People v. Aikens, 2016 IL App \(1st\) 133578 \(Nos. 1-13-3578 & 1-15-1522, 9/12/16\)](#)

The proportionate penalties clause of the Illinois Constitution was violated by application of the adult sentencing scheme for attempt murder of a peace officer with a firearm to a 17-year-old who was tried as an adult. The minor was sentenced to the mandatory minimum term totaling 40 years - 20 years for attempted murder of a peace officer plus 20 years for personally discharging a firearm in the course of that offense. In sentencing defendant, the trial court noted that defendant had no prior record and had a difficult upbringing, and that the mandatory minimum sentence "seems to be an unimaginable amount of time . . . for a teenage child." A mitigation specialist testified that defendant had more potential than

any client she had evaluated, that defendant had a supportive adopted family, and that the Illinois Institute of Technology had granted defendant early acceptance due to his academic excellence.

1. An “as applied” constitutional challenge requires defendant to show that the statute at issue violates the Constitution as applied to his or her particular case. A challenge under the proportionate penalties clause contends that the penalty in question was not determined according to the seriousness of the offense. A violation may be shown where the penalty imposed is cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community.

The Illinois Supreme Court has not defined what kind of punishment is cruel, degrading, or wholly disproportionate to the offense, because concepts of elemental decency and fairness evolve as society evolves. Thus, to determine whether a penalty shocks the moral sense of the community, courts must consider objective evidence as well as the community’s changing standards of moral decency.

2. Noting that no one was injured in the offense, the court concluded that as applied to defendant the sentencing scheme violated the proportionate penalties clause because defendant had no prior criminal history, was described by the mitigation specialist as full of potential and able to fully rehabilitate as a contributing member of society, and was sentenced to the statutory minimum by the trial court who noted that defendant was young, had no criminal history, and had a “quite troubling” background. The court stressed that recent changes to the Juvenile Court Act, while inapplicable to this case, illustrate a “changing moral compass in our society when it comes to trying and sentencing juveniles as adults.”

Defendant’s sentence was reversed and the cause remanded for resentencing.

(Defendant was represented by Assistant Defender Caroline Bourland, Chicago.)

[People v. Baker, 2015 IL App \(5th\) 110492 \(No. 5-11-0492, 2/6/15\)](#)

The court accepted the State’s concession that under [Miller v. Alabama, 567 U.S. ___, 132 S.Ct. 2455, ___ L.Ed.2d ___ \(2012\)](#), the Eighth Amendment was violated by the imposition of mandatory natural life sentences for offenses which defendant committed when he was 15 years old. In remanding for resentencing, the court noted that **Miller** does not foreclose the possibility of life without parole for a juvenile who is convicted of murder provided that the sentencing court has discretion to impose a different penalty and takes into consideration the offender’s youth and personal characteristics before imposing sentence.

(Defendant was represented by Assistant Deputy Defender Amanda Horner, Mt. Vernon.)

[People v. Chambers, 2013 IL App \(1st\) 100575 \(No. 1-10-0575, 8/13/13\)](#)

The court rejected defendant’s argument that on appeal from denial of post-conviction relief, he could argue for the first time that a mandatory life sentence for a person who was a minor at the time of the offense violates [Miller v. Alabama, ___ U.S. ___, 132 S.Ct. 2455, 183 L.Ed.2d 407 \(2012\)](#). In **Miller**, the Supreme Court held that the Eighth Amendment is violated by mandatory life sentences without parole for persons who were under the age of 18 at the time of their crimes. **Miller** did not prohibit sentencing juveniles to life imprisonment without parole, but held that the mandatory imposition of such a sentence violates the Constitution.

The court noted that under [People v. Williams, 2012 IL App \(1st\) 111145](#), a sentence which violates **Miller** is not void *ab initio*. In addition, because defendant’s petition did not satisfy the cause and prejudice test for successive post-conviction petitions, the court could have considered the issue only if the mandatory life sentence was void.

The court also noted that a sentence is void only if the court which rendered it lacked jurisdiction to do so. Unless a statute is unconstitutional on its face, the fact that the sentence which it authorizes is applied improperly does not mean that the trial court lacked jurisdiction. In reaching its holding, the court rejected the reasoning of [People v. Luciano, 2013 IL App \(2d\) 110792](#), which held that a sentence which violates **Miller** is void.

(Defendant was represented by Assistant Defender Manuel Serritos, Chicago.)

[People v. Dupree, 2014 IL App \(1st\) 111872 \(No. 1-11-1872, 7/30/14\)](#)

The court expressed its concern that “serious constitutional issues” are presented where the convergence of mandatory minimum and mandatory consecutive sentences result in *de facto* life

sentences for juveniles who were under the age of 18 at the time of the offense but who are tried as adults. Because the convictions were reversed for other reasons, however, the court did not reach this issue.

In a concurring opinion, Justice Pucinski found that the imposition of a mandatory *de facto* life sentence on a juvenile offender who was prosecuted as an adult creates constitutional issues under [Miller v. Alabama, 567 U.S. ___, 132 S. Ct. 2455, 183 L.Ed.2d 407 \(2012\)](#), which held that the Eighth Amendment is violated by the mandatory imposition of a life sentence without the possibility of parole on offenders who were under the age of 18 at the time of the offense.

(Defendant was represented by Assistant Defender Rachel Moran, Chicago.)

[People v. Johnson, 2013 IL App \(1st\) 120413 \(No. 1-12-0413, 8/7/13\)](#)

1. [730 ILCS 5/5-5-3.2\(b\)\(1\)](#) authorizes an extended term for a defendant who is convicted of any felony after having been previously convicted of the “same or similar class felony or greater class felony” within the past 10 years, excluding time in custody. [730 ILCS 5/5-5-3.2\(b\)\(7\)](#) authorizes an extended term for a person who is at least 17, commits “a felony,” and within the past 10 years (excluding time in custody) was “adjudicated a delinquent minor . . . for an act which would be a Class X or Class 1 felony if committed by an adult.” Thus, under the plain language of the statute, an adult who commits any felony within 10 years of having been adjudicated delinquent for a Class X or Class 1 felony is subject to an extended term, while an adult repeat offender is subject to an extended term only if the second conviction is for “the same or greater class offense” as the original conviction.

Although the State conceded that the statute was unconstitutional on its face when applied to the defendant, who was convicted of armed robbery while armed with a firearm after having been adjudicated delinquent for residential burglary, the court elected to reject the concession and find that the legislature’s failure to include the phrase “same or greater class felony” in section (b)(7) was inadvertent. The court concluded that the legislative intent underlying both sections (b)(1) and (b)(7) was to impose harsher sentences on offenders whose repeat offenses show that they are resistant to correction. The court found that the legislature could not have intended to authorize an extended term for a repeat offender who is convicted of any felony after having been adjudicated delinquent, but exclude extended term sentences for adult repeat offenders unless the prior conviction was for the same or greater class felony. Thus, the court concluded that the phrase “same or greater class felony” should be read into section (b)(7).

Because defendant’s delinquency adjudication for residential burglary was not for the same or greater class felony as armed robbery while armed with a firearm, defendant was not eligible for an extended term under section (b)(7).

2. The court remanded the cause for resentencing, rejecting the State’s request to merely impose a reduced sentence. While a reviewing court has the power to reduce a sentence imposed by the trial court, this power should be exercised sparingly and with caution. Because the trial court rejected the State’s request for the maximum extended term sentence for which it believed defendant was eligible, the court found that the trial judge might have imposed less than the 30-year maximum non-extended term which actually applied to the offense.

(Defendant was represented by Assistant Defender Benjamin Wimmer, Chicago.)

[People v. Sanders, 2016 IL App \(1st\) 121732-B \(No. 1-12-1732, 6/28/16\)](#)

1. A defendant may file a successive petition if he can show cause and prejudice. [725 ILCS 5/122-1\(f\)](#). To establish cause and prejudice, a defendant must show that an objective impediment precluded him from raising the issue in an earlier proceeding and that the claimed errors resulted in actual prejudice.

2. A jury convicted defendant, who was 17 at the time of the offense, of murder and two counts of attempt murder. The trial court sentenced defendant to consecutive terms of 40 years for murder and 30 years for each count of attempt murder, for a total of 100 years imprisonment. In sentencing defendant, the court stated that it could sentence him to natural life, “but because of your young age” and potential for rehabilitation “I am not going to do that.” But the court stated that it would impose a sufficiently long sentence so that society would not need to worry about defendant committing similar

crimes in the future.

Defendant eventually filed a second successive postconviction petition arguing that the trial court did not properly consider his youth in imposing sentence, and that the recent case of [Graham v. Florida, 560 U.S. 48 \(2010\)](#) changed the law applicable to juvenile sentencing providing cause for his failure to raise the issue earlier. The trial court denied leave to file.

3. The Appellate Court held that the trial court violated the Eighth Amendment by imposing a *de facto* life sentence without considering the special circumstances of defendant's youth. And the Supreme Court decisions in **Graham** and **Miller v. Alabama**, 567 U.S. ___ (2012), substantially changed the law concerning juvenile sentencing thus providing cause and prejudice for filing a successive petition.

The Appellate Court noted that defendant would need to serve at least 49 years of his 100 year sentence before he would be eligible for parole. A prisoner has a life expectancy of only 64 years, meaning defendant would be effectively imprisoned for the rest of his life. But the trial court did not consider the special circumstances of youth in imposing sentence. The Appellate Court reversed the denial of defendant's successive petition and remanded the cause for further proceedings.

(Defendant was represented by Assistant Defender Ben Wimmer, Chicago.)

[People v. Stafford, 2016 IL App \(4th\) 140309 \(No. 4-14-0309, 9/1/16\)](#)

Under [Miller v. Alabama, 567 U.S. ___, 132 S.Ct. 2455 \(2012\)](#), life sentences for juveniles are reserved for those rare juvenile offenders whose crimes reflect irreparable corruption. Here, the trial court did not err by imposing a natural life sentence for four counts of first degree murder and one count of felony murder which occurred when defendant was 17 years old. The trial judge stated that the primary reason for imposing a natural life sentence was to keep the community safe, and at the sentencing hearing defendant's father expressed his concern that if defendant was released more people would be hurt. In addition, the record showed that defendant broke into the home of an acquaintance who had previously shown him kindness and stabbed the acquaintance 45 times because she walked in as he was attempting to steal videotapes.

The court also noted that there had been numerous attempts to assist defendant in dealing with his behavioral issues, that defendant devised a jail escape plan while being held in the present case, and that defendant broke several other jail rules. Although the trial court did not explicitly state that defendant was one of the rare juvenile offenders for whom a life sentence was appropriate, the court found that the trial judge's reasoning conveyed the same conclusion. Therefore, the trial court did not abuse its discretion by imposing a natural life sentence.

(Defendant was represented by Appellate Court James Williams, Springfield.)

[People v. Wilson, 2015 IL App \(4th\) 130512 \(No. 4-13-0512, 12/3/15\)](#)

1. Under [Graham v. Florida, 560 U.S. 48 \(2010\)](#), the "cruel and unusual punishment" clause of the Eighth Amendment is violated by a mandatory life sentence without the possibility of parole for a juvenile offender who did not commit a homicide. Here, the court concluded that **Graham** was violated by imposition of natural life sentences without the possibility of parole on three counts of predatory criminal sexual assault of a child which were committed about six months before defendant's 18th birthday. The natural life sentences were imposed under [720 ILCS 5/12-14.1\(b\)\(1.2\)](#), which mandates sentences of life without parole for convictions of predatory criminal sexual assault of a child which were committed against two or more persons, "regardless of whether the offenses occurred as the result of the same act or several related or unrelated acts."

2. The court rejected the State's request to affirm two natural life sentences for counts of predatory criminal sexual assault of a child which occurred after defendant turned 18. First, because both counts were committed against a single victim, they did not trigger natural life sentencing on their own.

Second, the court rejected the argument that the three counts on which the natural life sentences were vacated because the offenses occurred when defendant was a minor could be used to impose natural life sentences on the two counts which were committed after defendant turned 18. "It is contrary to the analysis in [Graham](#) to permit the conduct for which a defendant could not receive a life sentence to trigger a life sentence for a second offense, committed after defendant's 18th birthday."

(Defendant was represented by Supervisor Martin Ryan, Springfield.)

[People v. Wilson, 2016 IL App \(1st\) 141500 \(No. 1-14-1500, 8/19/16\)](#)

1. Public Act 99-69 provided that “On or after the effective date” of the Act, when a person under the age of 18 commits an offense and is sentenced as an adult the sentencing court must consider a specified list of additional mitigating factors. Defendant was found guilty of attempted first degree murder and aggravated battery with a firearm which he committed at age 17 but about three years before the effective date of P.A. 99-69. On appeal, he argued that he was entitled to remand for a new sentencing hearing because P.A. 99-69 should be applied retroactively.

The Appellate Court rejected this argument, finding that the plain language of the Act indicated that the legislature intended it to be applied only to offenses which occurred after the effective date. Unambiguous statutory language is to be applied as written, without resort to other rules of statutory construction.

2. Defendant also argued that the Eighth Amendment is violated by the exclusive jurisdiction statute (705 ILCS 405/5-120), which provides that 17-year-old accused felons may not be prosecuted under the Juvenile Court Act, and by the combination of the exclusive jurisdiction statute, the mandatory 25 years to life firearm enhancement (720 ILCS 5/8-4(a), (c)(1)(D)), and the truth-in-sentencing provisions. The court rejected these arguments, noting that the Eighth Amendment requires only that where the offender was a juvenile at the time of the offense, the sentencing authority must have an opportunity to consider mitigating circumstances connected to age before imposing a death sentence or a sentence of life imprisonment. Here, the trial court considered the relevant factors in aggravation and mitigation before fashioning the sentence.

Similarly, the combination of acts did not violate the Eighth Amendment. The court noted that Illinois courts have rejected attempts to extend [Miller v. Alabama, 567 U.S. ___, 132 S.Ct. 2455 \(2012\)](#) beyond cases involving mandatory life sentences without the possibility of parole.

(Defendant was represented by Assistant Defender Meredith Baron, Chicago.)

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§33-6(b)

**Commitment to the Department of Corrections (DOC),
Juvenile Division**

[People v. S.L.C., 115 Ill.2d 33, 503 N.E.2d 228 \(1986\)](#) A trial judge may commit a delinquent minor to the Department of Corrections, Juvenile Division, for a determinate period (one year in this case).

[In re Griffin, 92 Ill.2d 48, 440 N.E.2d 852 \(1982\)](#) Respondent minor was adjudicated delinquent and committed to DOC. A minor may be committed to DOC if he is at least 13 years old at the time of the dispositional order, even if he was 12 years old at the time of the offense.

[In re M.G., 301 Ill.App.3d 401, 703 N.E.2d 594 \(1st Dist. 1998\)](#) Neither due process, equal protection, nor the proportionate sentencing requirement is violated by the Violent Juvenile Offender Act, which requires commitment to DOC until age 21 for a minor adjudicated delinquent for the second time for an offense which: (1) would have been a Class 2 or greater felony if committed by an adult, and (2) involved the use or threat of physical force or the element of possession or use of a firearm. The legislature could legitimately conclude that a minor who has committed two serious violent offenses has not benefitted from the rehabilitative resources of the juvenile court system and has little prospect of being restored to meaningful citizenship.

[In re J.R., 302 Ill.App.3d 87, 704 N.E.2d 809 \(1st Dist. 1998\)](#) On the date on which the minors allegedly committed first degree murder, a juvenile under the age of 13 could not be committed to the Juvenile Department of Corrections. After the offense was committed, the Juvenile Court Act was amended to

permit minors as young as 10 to be committed to DOC. The minors, who were 10 and 11 at the time of the offense, were committed to DCF, which obtained an order transferring custody to Juvenile DOC. Application of the amended transfer provision to the respondents did not violate the *ex post facto* clauses of the federal or state constitutions.

[In re K.S.](#), 354 Ill.App.3d 862, 822 N.E.2d 526 (5th Dist. 2004) A trial court that enters a dispositional order committing a minor to the DOC for an indeterminate period must consider whether, if the minor remains in a DOC until she attains the age of 21 years, the commitment period would exceed the maximum sentence that an adult could receive for the same offense. If so, the dispositional order must include a limitation on the period of the commitment so that it does not exceed the maximum period of incarceration for a comparable adult. Here, where the 16-year-old minor was adjudicated delinquent for two misdemeanor thefts for which the maximum adult sentence would be 364 days, §5-710(7) precluded an indeterminate commitment until the minor became 21. See also, [In re Jesus R.](#), 326 Ill.App.3d 1070, 762 N.E.2d 717 (4th Dist. 2002) (minor was improperly committed to DOC until age 21 where he would be required to serve a greater sentence than could be imposed against an adult for the same offense); [In re E.C.](#), 297 Ill.App.3d 177, 696 N.E.2d 846 (4th Dist. 1998) (same; issue was not waived despite the minor's failure to raise it in the trial court).

[In re C.L.P.](#), 332 Ill.App.3d 640, 773 N.E.2d 188 (2d Dist. 2002) 1. Because the maximum sentence for an adult who commits a Class 3 felony is five years, and an indeterminate commitment until age 21 would permit a 14-year-old defendant to be incarcerated for a longer period, the dispositional order was modified to provide that the minor could not remain in DOC for more than five years.

2. [705 ILCS 405/5-750\(3\)](#), which provides for termination of a juvenile's DOC commitment "in accordance with this Act or as otherwise provided by law," does not insure that a minor will be released at the end of what would be the maximum adult sentence. The "better practice would be for a trial court to specify in a dispositional order that an indeterminate period of commitment to the DOC cannot exceed the maximum period of incarceration for an adult who committed the same offense."

[In re S.M.](#), 229 Ill.App.3d 764, 594 N.E.2d 410 (2d Dist. 1992) After respondent's probation was revoked, the trial court found that "the resources that are available to us have been used, all of them. . . . I find that I have no other alternative but to commit you to the Department of Corrections." The commitment was an abuse of discretion because there had been no finding, as was required, that minor's parents were unfit or unable to care for him or that commitment was necessary to protect the public, and the record did not provide any basis on which the necessary findings could be implied. Also, although Illinois law does not require that the least restrictive disposition be used, commitment to DOC should be ordered only when less restrictive alternatives are not in the best interests of the minor or the public.

[In re B.S.](#), 192 Ill.App.3d 886, 549 N.E.2d 695 (1st Dist. 1989) The judge erred in committing respondent to DOC without sufficiently investigating or considering less restrictive placements.

The evidence at the dispositional hearing indicated that respondent had shown progress since starting a regular program of counseling, his attendance at a school for emotionally disturbed children was excellent, and he expressed a desire to return to school. Also, his mother was willing to undergo counseling in order to help her son, and a probation officer, a family therapist, and a psychologist opined that respondent would benefit most from a residential treatment alternative.

In committing respondent to DOC, the trial judge stated that no other alternative had been presented. But, the prosecution and defense were "not fully prepared to advise the court of all possible placement alternatives." Thus, a new dispositional hearing is required. Compare, [In re G.S.](#), 194 Ill.App.3d 740, 551 N.E.2d 337 (1st Dist. 1990) (commitment to DOC upheld).

Cumulative Digest Case Summaries §33-6(b)

[In re Shelby R.](#), 2013 IL 114994 (No. 114994, 9/19/13)

Under [705 ILCS 405/5-710\(1\)\(b\)](#), a minor may be committed to the Department of Juvenile Justice only if a term of incarceration is permitted by law for adults who are found guilty of the offense for which the minor was adjudicated delinquent. In addition, [705 ILCS 405/5-710\(7\)](#) limits the term of commitment for a minor to the maximum sentence which an adult could receive for the same act. The court concluded that because an adult cannot be convicted of the offense of unlawful consumption of alcohol by a minor, and therefore cannot be incarcerated for that offense, a minor who is placed on probation for unlawful consumption of alcohol by a minor cannot be committed to the Department of Juvenile Justice upon revocation of her probation.

The court rejected the argument that other provisions of the Juvenile Court Act permit incarceration of minors upon revocation of probation, finding that such provisions concern the pre-adjudication incarceration of minors who are accused of violating court orders. In addition, even if a juvenile could be incarcerated for violating a court order, the record showed that the minor was incarcerated not for violating the probation order, but on the offense for which probation had been imposed - unlawful consumption of alcohol by a minor.

Because the trial court lacked authority to commit the respondent to the Department of Juvenile Justice upon revocation of her probation for unlawful consumption of alcohol, the order committing the minor to the Department of Juvenile Justice was reversed.

(Defendant was represented by Assistant Defender Jacqueline Bullard, Springfield.)

[In re H.L., 2016 IL App \(2d\) 140486-B \(No. 2-14-0486, 5/12/16\)](#)

1. The court noted that in 2012, 75 ILCS 45/5-750(1) was amended to require that before a delinquent minor can be sentenced to the Department of Corrections, the trial court must make an explicit finding that commitment to DOC is the least restrictive alternative. Where the trial court failed to make such an explicit finding, the cause must be remanded for compliance with the procedure required under the Juvenile Court Act.

2. The court rejected the State's argument that the required finding need not be explicit where the trial court mentioned alternative dispositions in announcing the disposition or where there was evidence that commitment to DOC was the least restrictive disposition. The statutory amendment adopted in 2012 clearly requires an explicit finding, and cannot be rewritten under the guise of interpretation.

The commitment order was reversed and the cause remanded for further proceedings.

(The minor was represented by Assistant Defender Sherry Silvern, Elgin.)

[In re Henry P., 2014 IL App \(1st\) 130241 \(No. 1-13-0241, 5/30/14\)](#)

Effective January 1, 2012, the Juvenile Court Act was amended to specifically require that before committing a juvenile to the Department of Juvenile Justice (DJJ), the court must find that such commitment "is the least restrictive alternative," that efforts were made to find less restrictive alternatives, and the reasons why such efforts were unsuccessful. [705 ILCS 405/5-750\(1\)\(b\)](#).

Here, the trial court failed to comply with the act. It never made a finding or expressly stated that committing defendant to the DJJ was the least-restrictive. And it failed to check the box on the commitment order indicating that the DJJ was the least-restrictive alternative.

Compliance with the act requires an express finding. It is not satisfied by showing that the appellate record demonstrates that the trial court considered less-restrictive alternatives. Since there was no express finding in this case, the court failed to comply with the statute even if the record did show that the court considered less-restrictive alternatives.

The cause was remanded for resentencing.

(Defendant was represented by Assistant Defender Megan Ledbetter, Chicago.)

[In re Jarquan B., 2016 IL App \(1st\) 161180 \(No. 1-16-1180, 9/30/16\)](#)

As of January 1, 2016, a juvenile may not be sentenced to the Department of Juvenile Justice (DJJ) for a misdemeanor offense. [705 ILCS 405/5-710\(1\)\(b\)](#). But a juvenile who violates probation may receive any sentence available at the time of the initial sentence. [705 ILCS 405/5-720\(4\)](#).

Defendant, a juvenile, pled guilty to criminal trespass to a motor vehicle, a Class A misdemeanor, on February 26, 2015, and was sentenced to court supervision. On October 13, 2015, the court found

defendant in violation of his supervision and sentenced him to probation on November 5, 2015. Defendant violated his probation and on April 26, 2016, the court sentenced defendant to the DJJ.

On appeal defendant argued that under section 710(1)(b), the juvenile court had no authority to sentence him to the DJJ. The Appellate Court disagreed. It held that section 720(4) was the controlling statute and thus the juvenile court could impose any sentence available at the time defendant initially pled guilty, which would have included commitment to the DJJ.

The dissent believed the amended version of section 710(1)(b) should control and thus defendant could not be sentenced to the DJJ.

(Defendant was represented by Assistant Defender Darren Miller, Chicago.)

In re Justin F., 2016 IL App (1st) 153257 (No. 1-15-3257, 6/7/16)

[705 ILCS 405/5-750\(1\)](#) provides that before committing a delinquent to the Department of Juvenile Justice, the trial court must make certain findings and consider several individualized factors. The court held that in this case, the record failed to show that the court considered one of the individualized factors - the availability of services within the Department of Juvenile Justice that will meet the individualized needs of the minor. [705 ILCS 405/5-750\(1\)\(b\)\(G\)](#). Because there was no testimony or any written report in the record addressing this issue, the trial court erred by committing the minor to the Department of Juvenile Justice. The commitment order was vacated and the cause remanded for further proceedings.

(Minor was represented by Assistant Defender Kadi Weck, Chicago.)

In re Raheem M., 2013 IL App (4th) 130585 (No. 4-13-0585, 12/10/13)

1. A court may commit a delinquent minor to the Department of Juvenile Justice, if it finds that “commitment to the Department of Juvenile Justice is the least restrictive alternative based on evidence that efforts were made to locate less restrictive alternatives to secure confinement and the reasons why efforts were unsuccessful in locating a less restrictive alternative to secure confinement.” [705 ILCS 405/5-750\(1\)\(b\)](#).

The trial court did not comply with this requirement prior to committing respondent to the DOJJ. The court had no evidence before it of efforts made to locate less restrictive alternatives and did not state the reasons why such efforts were unsuccessful. Merely reciting such findings in a form order is insufficient to comply with the statute. “Actual efforts must be made, evidence of those efforts must be presented to the court, and, if those efforts prove unsuccessful, an explanation must be given why the efforts were unsuccessful.” References in the social history report to available community resources if the respondent were sentenced to probation did not suffice where those resources were never even contacted with regard to respondent.

2. Sentencing errors can be reviewed for plain error where the evidence was closely balanced or the error was sufficiently grave that the defendant was deprived of a fair sentencing hearing. Because the requirements of [705 ILCS 405/5-750\(1\)\(b\)](#) ensure that trial courts treat DOJJ sentences as a last resort, failure to comply with those requirements is such a serious error that the appellate court may excuse forfeiture based on the second prong of plain-error analysis. The appellate court was mindful that respondent had no other means of relief from this error given the state of the law regarding whether juveniles are entitled to seek relief under the Post-Conviction Hearing Act.

3. The appellate court was also troubled by the trial court’s *sua sponte* decision to detain respondent after trial and prior to sentencing. The court made this decision without much information regarding respondent other than that he had been expelled from school as a result of the case before it. This was respondent’s first case in juvenile court. He lived with his mother and stepfather, with whom he had a good relationship. He was convicted of aggravated battery of a teacher based on evidence that he threw a chair at a student during a brawl involving several students in the school cafeteria. The chair made incidental contact with a teacher and no serious injuries resulted. As a consequence of the court’s decision to detain, respondent missed his scheduled GED examination.

4. A trial court may not consider a factor inherent in the charged offense in aggravation at sentencing.

Respondent committed what normally would be classified as a simple battery but which became an aggravated battery due to the victim’s status and the location of the incident. The trial judge

improperly allowed these same factors to impact its sentencing judgment as aggravating factors.

5. The appellate court also criticized the emphasis that the trial court placed on the criminal history of respondent's biological father, which was exhaustively covered in the social history investigative report. Respondent should not be punished for the crimes of his father. These crimes had no relevance especially because respondent had no contact with his father, who was incarcerated out of state.

The appellate court vacated respondent's commitment to the DOJJ and remanded for a hearing in compliance with [705 ILCS 405/5-750\(1\)\(b\)](#).

Steigmann, J., dissented. While the sentencing hearing was "lacking," based on his "understanding of this record," he disagreed that application of the plain-error doctrine was appropriate. (Defendant was represented by Supervisor Arden Lang, Springfield.)

[In re Shelby R., 2012 IL App \(4th\) 110191 \(No. 4-11-0191, 8/22/12\)](#)

Under the Juvenile Court Act, a minor may be committed to the Department of Juvenile Justice "only if a term of incarceration is permitted by law for adults found guilty of the offense for which the minor was adjudicated delinquent." [705 ILCS 405/5-710\(1\)\(b\)](#).

Consumption of alcohol by any person under 21 years of age is a Class A misdemeanor punishable by imprisonment up to a year. [235 ILCS 5/6-20](#). Unlawful consumption of alcohol by a minor falls under the exclusive jurisdiction of Article V of the Juvenile Act. The Act defines an "adult" as a "person 21 years of age or older" and a "minor" as a "person under the age of 21 years subject to this Act." [705 ILCS 405/1-3\(2\) and \(10\)](#). Because it is legally impossible for an adult as defined by the Act to commit the offense of unlawful consumption of alcohol and to be incarcerated for that offense, a minor cannot be committed to the Department of Juvenile Justice for unlawful consumption of alcohol. That an 18-year-old could be subject to imprisonment for unlawful consumption does not affect this analysis as §5-710 is construed using the definitions contained in the Act. The Appellate Court refused to read different words or definitions into the statute.

(Respondent was represented by Assistant Defender Jacqueline Bullard, Springfield.)

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§33-6(c)

Habitual Juvenile Offender

[In re S.P., 297 Ill.App.3d 234, 696 N.E.2d 739 \(1st Dist. 1998\)](#) The Habitual Juvenile Offender Statute applies where a minor has been adjudicated delinquent three times, without regard to whether the prior adjudications resulted in declarations of wardship.

[People v. J.A., 127 Ill.App.3d 811, 469 N.E.2d 449 \(1st Dist. 1984\)](#) Respondent was properly found to be a habitual juvenile offender upon his third adjudication of delinquency although he was only 12 years old (and not subject to prosecution as an adult) at the time of the two prior adjudications.

[In re Stokes, 108 Ill.App.3d 637, 439 N.E.2d 514 \(1st Dist. 1982\)](#) Respondent was properly sentenced under the Habitual Juvenile Offender Act because he had twice previously been adjudicated a delinquent. There is no requirement that the minor be previously adjudged a ward of the court for the Act to apply.

[In re Rivera, 119 Ill.App.3d 966, 457 N.E.2d 505 \(1st Dist. 1983\)](#) Respondent, who was twice adjudicated delinquent and who was thereafter charged in a delinquency petition with having committed burglary, rather than residential burglary, could not be subjected to the provisions of the Habitual Juvenile Offender Act because the Act includes residential burglary, not burglary. Adjudication of delinquency affirmed, and cause remanded for reconsideration of the disposition.

[In re A.P., 2014 IL App \(1st\) 140327 \(No. 1-14-0327, 6/27/14\)](#)

The habitual offender provision of the Juvenile Court Act ([705 ILCS 405/5-815](#)) requires that a minor who has twice been adjudicated delinquent for offenses which would have been felonies if committed by an adult and who is thereafter adjudicated delinquent for one of several specified offenses must be committed to the Department of Juvenile Justice until his 21st birthday, without the possibility of parole, furlough, or non-emergency authorized absence. The court concluded that the habitual offender provision does not violate the Eighth Amendment or the proportionate penalties clause of the Illinois Constitution although it removes all discretion from the trial court in sentencing minors who are adjudicated habitual juvenile offenders.

The Illinois Supreme Court has held that the Eighth Amendment and proportionate penalties clause apply only to the criminal process and therefore do not apply to juvenile proceedings. Here, the court concluded that even if the Eighth Amendment or the proportionate penalties clause applied, the habitual offender act is constitutional.

The court noted that in [Miller v. Alabama, 567 U.S. _____, 132 S.Ct. 2455, 183 N.E.2d 407 \(2012\)](#), the United States Supreme Court held that the Eighth Amendment is violated where a mandatory life sentence without the possibility of parole is imposed on a person who was under the age of 18 at the time of the crime. The Appellate Court distinguished **Miller**, however, because it involved minors who were charged and convicted as adults. Furthermore, **Miller** holds only that the Eighth Amendment prohibits mandatory natural life sentences without the possibility of parole, and not that all mandatory sentences are unconstitutional when applied to juveniles.

Because neither the Eighth Amendment nor the proportionate penalties clause is violated by the habitual juvenile offender provision, the minor's adjudication as a delinquent minor and habitual juvenile offender was affirmed.

(The minor was represented by Assistant Defender Heidi Lambros, Chicago.)

[In re Isiah D., 2105 IL App \(1st\) 143507 \(No. 1-14-3507, 6/8/15\)](#)

On appeal from a 2014 order finding him to be a habitual juvenile offender and a violent juvenile offender, the minor respondent argued that the conviction resulting from his guilty plea in 2013 could not be used as a predicate for HJO and VJO status because the plea admonishments had been improper. The court concluded that under [In re J.T., 221 Ill.2d 338, 851 N.E.2d 1 \(2006\)](#), it lacked jurisdiction to consider issues arising from the 2013 plea because respondent failed to file a timely appeal from that proceeding. The court concluded that **J.T.** implicitly overruled [In re J.W., 164 Ill.App.3d 826, 518 N.E.2d 310 \(1st Dist. 1987\)](#), which found that the Appellate Court had jurisdiction to consider the propriety of a prior guilty plea that was used as a predicate in a subsequent case.

The court noted that because minors have not been held to come within the Post-Conviction Hearing Act, respondent was effectively left without a remedy unless the Supreme Court saw fit to exercise supervisory authority.

(Respondent was represented by Assistant Defender Kathleen Weck, Chicago.)

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§33-6(d)

Sentencing Where Juvenile Has Been Transferred to Adult Court for Prosecution

[People v. DeJesus, 127 Ill.2d 486, 537 N.E.2d 800 \(1989\)](#) Where a juvenile is automatically transferred to criminal court, but not convicted of an offense subject to automatic transfer, the case returns to juvenile court for disposition. Here, the chief judge assigned the case to a juvenile court judge, who held that defendant's case was to proceed under the Juvenile Court Act (because he was 16 years old and charged with first degree murder, but acquitted of murder and convicted of armed robbery with a knife (with which he was also charged, but which is not an offense subject to the automatic transfer provision)). The juvenile judge's order that further proceedings regarding the minor would be under the Juvenile Court Act terminated criminal prosecution prior to final judgment and was appealable.

[People v. Luckett, 295 Ill.App.3d 342, 692 N.E.2d 1345 \(3d Dist. 1998\)](#) 1. If a minor, who was charged with first degree murder and mandatorily prosecuted as an adult, is convicted of a lesser offense, sentencing must be in juvenile court unless the State moves to sentence the minor as an adult and the trial court finds that such sentencing is appropriate. See also, [People v. Brazee, 316 Ill.App.3d 1230, 738 N.E.2d 646 \(2d Dist. 2000\)](#) (where defendant should have been sentenced as a juvenile rather than as an adult, was 21 when his appeal was decided and could no longer be committed to Juvenile DOC, and the State had not made a timely request for sentencing as an adult, the court vacated the sentence and remanded the cause with instructions to sentence defendant to time served); [In re A.T., 303 Ill.App.3d 531, 708 N.E.2d 529 \(2d Dist. 1999\)](#) (where a minor is transferred to adult court based on charges giving rise to a rebuttable presumption that transfer is appropriate but is subsequently convicted only of offenses that do not give rise to a rebuttable presumption, the trial court has discretion to return the case to juvenile court for sentencing).

2. In determining whether adult sentencing is appropriate, the trial court must consider several factors, including: (a) whether the offense was committed in an aggressive and premeditated manner; (b) the minor's age; (c) the minor's history; (d) whether facilities particularly available to the juvenile court or juvenile DOC are suited to the minor's rehabilitation and treatment; (e) whether the best interests of the minor and security of the public require adult sentencing; and (f) whether the minor possessed a deadly weapon while committing the offense. Here, the trial court did not abuse its discretion by sentencing the minor as an adult where the minor committed the crime in an aggressive and premeditated manner and used a deadly weapon, and there was a need to protect the public from further criminal activity.

[People v. Brown, 301 Ill.App.3d 995, 705 N.E.2d 162 \(2d Dist. 1998\)](#) Where case was moved to adult court through discretionary transfer, upon conviction of only lesser included offenses the State may move to retain the minor in adult court and the minor may request a transfer back to juvenile court.

[People v. Mathis, 357 Ill.App.3d 45, 827 N.E.2d 932 \(1st Dist. 2005\)](#) If a minor prosecuted as an adult on a mandatory transfer is found to have committed only offenses for which mandatory transfer is not applicable, defendant cannot be sentenced as an adult without a hearing, pursuant to the State's motion, to sentence defendant as an adult. Defendant may not waive the hearing.

[People v. Perea, 347 Ill.App.3d 26, 807 N.E.2d 26 \(1st Dist. 2004\)](#) Where adult prosecution of a minor who is at least 15 and who is charged with a Class X felony is authorized, adult sentencing is required if the minor is acquitted of the offense which led to his transfer but convicted of a different Class X felony. The trial court lacks authority to order juvenile sentencing in such cases.

Cumulative Digest Case Summaries §33-6(d)

[Miller v. Alabama, 567 U.S. ___, ___ S. Ct. ___, ___ L.Ed.2d ___, 2012 WL 2368659 \(No. 10-9646, 6/25/12\)](#)

1. The Eighth Amendment's prohibition of cruel and unusual punishment guarantees individuals the right not to be subjected to excessive sanctions. This flows from the precept that criminal punishment should be graduated and proportioned to both the offender and the offense.

Two strands of precedent reflect the court's concern with proportionate punishment. The first adopted categorical bans on sentencing practices based on mismatches between the culpability of a class of offenders and the severity of a penalty. This line of cases includes [Roper v. Simmons, 543 U.S. 551 \(2005\)](#) (invalidating the death penalty for juvenile offenders), and [Graham v. Florida, 560 U.S. ___, 130 S. Ct. 2011, ___ L.Ed.2d ___ \(2010\)](#) (invalidating life without parole for non-homicide juvenile offenders). The second line of precedent prohibits mandatory imposition of capital punishment and requires that the sentencer consider the characteristics of the offender and the details of the offense before sentencing him to death.

2. The confluence of these two lines of precedent leads to the conclusion that mandatory life-without-parole sentences for offenders under 18 violate the Eighth Amendment.

Roper and **Graham** establish that children are constitutionally different than adults for the sentencing purposes as they have diminished culpability and greater prospects for reform. Mandatory life-without-parole statutes prohibit assessment of whether the law's harshest term of imprisonment proportionately punishes a juvenile offender. They contravene **Roper** and **Graham**'s foundational principle that imposition of life without parole on juveniles cannot proceed as though they were not children.

Graham's treatment of juvenile life sentences as analogous to capital punishment makes relevant the second line of cases demanding individualized sentencing when imposing the death penalty. A sentencer must have the ability to consider the mitigating qualities of youth. Mandatory penalties by their nature preclude consideration of an offender's age and the wealth of characteristics and circumstances attendant to it, by treating every child like an adult. By making youth and all that accompanies it irrelevant to imposition of the harshest prison sentence, mandatory penalties pose too great a risk of disproportionate punishment.

3. This holding does not effectively overrule [Harmelin v. Michigan, 501 U.S. 957 \(1991\)](#), which upheld mandatory life without parole for adult offenders. Sentencing rules permissible for adults may not be so for children. Just as death is different, children are different too.

The fact that 29 jurisdictions have some form of mandatory life imprisonment for juvenile offenders does not defeat an Eighth Amendment challenge. The absence of a national consensus is relevant when the court considers a categorical bar to a form of punishment, not where, as here, it only requires that the sentencer follow a certain process. Moreover, fewer states allow mandatory life for homicide offenders than allowed mandatory life for non-homicide offenders in **Graham**. And, as in **Graham**, the fact that juvenile transfer statutes were enacted independently of mandatory life statutes makes it impossible to conclude that legislators actually endorsed the penalty of mandatory life without parole for children.

4. The presence of some discretion in some jurisdictions' transfer statutes is insufficient to eliminate the Eighth Amendment violation. The question at transfer hearings and the resources available may differ dramatically from the issue at post-trial sentencing. The ruling may reflect only a choice between light sentencing as a juvenile and standard sentencing as an adult. The discretion available to a judge at the transfer stage therefore cannot substitute for discretion at post-trial sentencing in adult court.

Breyer, J., joined by Sotomayor, J., concurred. Sentencing a juvenile to natural life without a finding that the juvenile killed or intended to kill the victim, violates the Eighth Amendment, whether its application is mandatory or discretionary.

[People v. Davis, 2014 IL 115595 \(No. 115595, 3/20/14\)](#)

1. The Eighth Amendment to the United States Constitution prohibits the imposition of cruel and unusual punishments. This prohibition flows from the basic principle that criminal punishment should be graduated and proportioned to the offender and the offense. In applying the Eighth Amendment to juveniles, the United States Supreme Court has recognized three general ways that juveniles differ from adults: (1) they lack maturity and have an underdeveloped sense of responsibility; (2) they are more vulnerable to negative influences and outside pressure; and (3) their character is not as well formed. [Roper v. Simmons, 543 U.S. 551 \(2005\)](#); [Graham v. Florida, 560 U.S. 48 \(2010\)](#); [Miller v. Alabama, 567 U.S. ___, 132 S.Ct. 2455, 183 L.Ed.2d 407 \(2012\)](#).

In [Miller](#), the Supreme Court held that because juveniles "are constitutionally different from adults for purposes of sentencing," it is impermissible to impose a mandatory sentence of natural life imprisonment on juveniles under 18. A mandatory sentence precludes consideration of mitigating circumstances such as: the juvenile's age; his family and home environment; the circumstances of the offense, including the extent of his participation; his ability to interact with police, prosecutors, and to assist in his defense; the effect of family or peer pressure; and the possibility of rehabilitation.

For these reasons, a sentencing court must have the opportunity to consider mitigating circumstances before imposing a sentence of natural life imprisonment on a juvenile. The Supreme Court refused to declare categorically that a juvenile can never receive natural life imprisonment, but believed such sentences will be uncommon.

2. Defendant argued that under **Miller** the statutory scheme mandating natural life

imprisonment in this case was facially unconstitutional. If a new constitutional rule renders a statute facially unconstitutional, the statute is void ab initio, meaning that the statute was constitutionally infirm and unenforceable from the moment it was enacted. Any sentence imposed under an unconstitutional statute is void and may be attacked at any time. A facial challenge is the hardest to mount since a statute is facially unconstitutional only if there are no set of circumstances in which the statute could be validly applied.

Defendant was sentenced pursuant to section 5-8-1(a)(1)(c) of the Unified Code of Corrections which provides that if a defendant is convicted of murdering more than one individual, the court shall sentence him to natural life imprisonment. Defendant argued that this provision is facially unconstitutional because it never permits a sentencer to consider any of the mitigating factors required by **Miller**.

The Illinois Supreme Court rejected this argument since **Miller** was expressly limited to mandatory life sentences imposed on juveniles. Section 5-8-1(a)(1)(c) by contrast can be validly applied to adults and thus it is not unconstitutional in all of its applications. Additionally, the transfer statute in effect when defendant was tried provided for a permissive transfer that specifically required the court to consider all relevant circumstances attendant to defendant's age, as required by **Miller**, before transferring the juvenile to adult court. Ill. Rev. Stat. 1989, ch. 37, ¶805-4. Under these circumstances, the sentencing scheme, including the transfer statute, was not facially unconstitutional.

3. The Illinois Supreme Court, however, held that **Miller** applies retroactively to cases on collateral review. In **Teague v. Lane**, 489 U.S. 288 (1989) (adopted in Illinois in **Flowers**, 138 Ill. 2d 218 (1990)), the Supreme Court held that new constitutional rules generally do not apply retroactively to cases on collateral review. But substantive rules that narrow the scope of a criminal statute or that place particular conduct or persons beyond the State's power to punish are not subject to **Teague's** bar. **Schirro v. Summerlin**, 542 U.S. 348 (2004).

While **Miller** does not forbid a sentence of life imprisonment, it does require that every minor receive a sentencing hearing where a sentence other than life imprisonment is an available outcome. **Miller** thus places a particular class of persons (juveniles) beyond the State's power to punish with a particular punishment (mandatory life imprisonment). **Miller** thus declared a new substantive rule not subject to **Teague's** retroactivity bar.

4. Defendant established cause and prejudice allowing him to raise this issue for the first time in a successive post-conviction petition. **Miller's** new substantive rule, which was decided after defendant filed his prior post-conviction petition, constitutes cause because it was not available earlier to counsel. It constitutes prejudice because it applies retroactively to defendant's sentencing hearing, rendering his mandatory life sentence unconstitutional. The court vacated defendant's mandatory life sentence and remanded for a new sentencing hearing. The trial court may still sentence defendant to life imprisonment so long as the sentence is discretionary rather than mandatory.

5. Defendant's natural life sentence did not violate the proportionate penalties clause or the due process clause of the Illinois Constitution. Ill. Const., art. I, §§2,11. These arguments were raised and rejected previously, **Davis**, No. 1-93-1821 (1995) (unpublished order under Supreme Court Rule 23); **Davis**, 388 Ill. App.3d 869 (2009), and hence are res judicata and cannot be relitigated.

6. In **Graham v. Florida**, 560 U.S. 48 (2010), the United States Supreme Court held that life imprisonment may not be imposed on a juvenile who did not commit homicide. Defendant argued that his sentence was unconstitutional under **Graham** because he did not kill or intend to kill. The Illinois Supreme Court rejected this argument, holding that **Graham** by its own terms does not apply to this case because defendant was convicted of murdering two victims.

People v. King, 241 Ill.2d 374, 948 N.E.2d 1035 (2011)

705 ILCS 405/5-130(1)(a) provides that juvenile delinquency proceedings do not apply where a minor is at least 15 at the time of the offense and is charged with certain specified offenses, including: (1) first degree murder, (2) aggravated criminal sexual assault; (3) aggravated battery with a firearm committed in a school, on the real property comprising a school, within 1,000 feet of the real property comprising a school, at a school related activity, or on, boarding, or departing from any conveyance owned, leased, or contracted by a school or school district to transport students to or from school or a school related activity regardless of the time of day or time of year that the offense was committed; (4)

armed robbery when the armed robbery was committed with a firearm, and (5) aggravated vehicular hijacking when the hijacking was committed with a firearm. The above charges, along with “all other charges arising out of the same incident,” are to be prosecuted in the criminal courts.

Where none of the above offenses are charged, prosecution must be in the juvenile court unless the minor files a written waiver of juvenile proceedings. ([705 ILCS 5/130\(1\)\(b\)\(i\)](#)).

If a minor prosecuted in adult court is convicted only of an offense which is “not covered by” subsection (1)(a), adult sentencing is available only if within 10 days of the verdict or entry of judgment, the State requests a hearing concerning adult sentencing. ([705 ILCS 5/130\(1\)\(c\)\(ii\)](#)). The trial court must conduct a hearing to determine whether such a request should be granted.

The court concluded that § 5-130(1)(a) “covers” not only the specified offenses which mandate adult prosecution, but all charges arising from the same incident. Thus, where the defendant was tried in adult court on charges of first degree murder and attempt first degree murder which arose from a single incident, and pleaded guilty to attempt first degree murder in return for dismissal of the first degree murder counts, he stood convicted of an offense “covered by” § 5-130(1)(a). Thus, adult sentencing was available for attempt murder despite the State’s failure to file a motion requesting such sentencing within 10 days following the guilty plea.

The trial court’s imposition of an adult sentence for attempt first degree murder was affirmed. (Defendant was represented by Assistant Defender Mike Vonnahmen, Springfield.)

[People v. Aikens, 2016 IL App \(1st\) 133578 \(Nos. 1-13-3578 & 1-15-1522, 9/12/16\)](#)

The proportionate penalties clause of the Illinois Constitution was violated by application of the adult sentencing scheme for attempt murder of a peace officer with a firearm to a 17-year-old who was tried as an adult. The minor was sentenced to the mandatory minimum term totaling 40 years - 20 years for attempted murder of a peace officer plus 20 years for personally discharging a firearm in the course of that offense. In sentencing defendant, the trial court noted that defendant had no prior record and had a difficult upbringing, and that the mandatory minimum sentence “seems to be an unimaginable amount of time . . . for a teenage child.” A mitigation specialist testified that defendant had more potential than any client she had evaluated, that defendant had a supportive adopted family, and that the Illinois Institute of Technology had granted defendant early acceptance due to his academic excellence.

1. An “as applied” constitutional challenge requires defendant to show that the statute at issue violates the Constitution as applied to his or her particular case. A challenge under the proportionate penalties clause contends that the penalty in question was not determined according to the seriousness of the offense. A violation may be shown where the penalty imposed is cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community.

The Illinois Supreme Court has not defined what kind of punishment is cruel, degrading, or wholly disproportionate to the offense, because concepts of elemental decency and fairness evolve as society evolves. Thus, to determine whether a penalty shocks the moral sense of the community, courts must consider objective evidence as well as the community’s changing standards of moral decency.

2. Noting that no one was injured in the offense, the court concluded that as applied to defendant the sentencing scheme violated the proportionate penalties clause because defendant had no prior criminal history, was described by the mitigation specialist as full of potential and able to fully rehabilitate as a contributing member of society, and was sentenced to the statutory minimum by the trial court who noted that defendant was young, had no criminal history, and had a “quite troubling” background. The court stressed that recent changes to the Juvenile Court Act, while inapplicable to this case, illustrate a “changing moral compass in our society when it comes to trying and sentencing juveniles as adults.”

Defendant’s sentence was reversed and the cause remanded for resentencing.

(Defendant was represented by Assistant Defender Caroline Bourland, Chicago.)

[People v. Edwards, 2015 IL App \(3d\) 130190 \(No. 3-13-0190, 5/6/15\)](#)

Defendant, who was 17 years old at the time of the offense, was convicted of first degree murder and attempt murder. Because of firearm add-ons, the minimum sentences applicable in this case were 45 years for murder and 31 years for attempt murder, and since the sentences were required to be served consecutively, the total mandatory minimum was 76 years. The court sentenced defendant to consecutive

terms of 50 years for murder and 40 years for attempt murder, for a total of 90 years.

Defendant argued that his 76-year mandatory minimum sentence was unconstitutional under [Miller v. Alabama, 132 S.Ct. 2455 \(2012\)](#). The Appellate Court disagreed. Defendant's sentence of 90 years was 14 years over the mandatory minimum, and the Court found no authority allowing a defendant to argue that a sentence he did not actually receive was unconstitutional.

Moreover, **Miller** did not hold that a juvenile could never be sentenced to life imprisonment. It instead held that a mandatory sentence of life imprisonment was unconstitutional since the court had no discretion to consider mitigating factors. Here, the trial court sentenced defendant to a term of imprisonment above the mandatory minimum, and thus [Miller](#) did not apply.

Defendant's sentence was affirmed.

(Defendant was represented by Assistant Defender Bryon Kohut, Ottawa.)

People v. Gipson, 2015 IL App (1st) 122451 (No. 1-12-2451, 5/27/15)

1. Defendant, who was 15 years old at the time of the offense, was automatically transferred to adult court and convicted of two counts of attempt first-degree murder. The facts at trial showed that defendant approached the driver's side of a car where two victims were sitting and fired shots at one of the victims, hitting him once. At the same time, the co-defendant approached the passenger side of the car and fired shots at the other victim, hitting him several times.

The trial court found that the 20-year enhancement applied to both of defendant's convictions under [720 ILCS 5/8-4\(c\)\(1\)\(C\)](#), requiring that 20 years be added to the sentence where the defendant "personally discharged a firearm" during the commission of the offense. The court imposed the minimum sentence of 26 years (including the 20-year firearm enhancement) for both convictions, to be served consecutively for a total of 52 years.

2. Defendant argued that the automatic transfer statute combined with the sentencing provisions violated the Eighth Amendment as applied to him. The Court rejected this argument, holding that defendant's 52-year sentence was not a *de facto* sentence of life imprisonment. Taking into account available sentencing credit, the Court determined that defendant could be released from prison at age 60, while the average life expectancy for someone in his position was 67.8 years. Defendant thus could, and likely would, spend the last several years of his life outside of prison. The Court found that, strictly speaking, defendant's sentence did not constitute life imprisonment and thus did not violate the Eighth Amendment.

3. The Court agreed, however, that the statutory scheme was unconstitutional as applied to defendant under the proportionate penalties clause of the Illinois Constitution. The Illinois Constitution states that "all penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." [Ill. Const. 1970, art. I, § 11](#). To show a violation of the clause, a defendant must show that the penalty is degrading, cruel "or so wholly disproportionate to the offense that it shocks the moral sense of the community." The clause provides a limitation on punishment beyond the eighth amendment.

The Court found that defendant's penalty shocked the moral sense of the community. Although this was a serious offense, and one of the victims suffered severe injuries, there were numerous factors that diminished "the justification for a 52-year prison term." The incident was not planned long before it occurred, but was instead the result of rash decision making. Defendant was a mentally ill juvenile who was prone to impulsive behavior, and wanted to impress his older co-defendant. And defendant did not personally inflict serious harm, even though that was primarily the result of bad aim.

The court found it meaningful that defendant had been found unfit to stand trial and thus was clearly not "at his peak mental efficiency" when the offense occurred. Defendant's inability to process information may have affected his judgment, which diminished his culpability and the need for retribution. At the same time, defendant's mental health had improved in the recent past, showing he may yet be rehabilitated. And the trial judge clearly would have imposed a shorter sentence if that had been possible. The Court found it "unsettling" that the trial court's discretion in sentencing a juvenile was frustrated by the mandatory minimum in the case. "Under these circumstances, defendant's sentence shocks the conscience and cannot pass constitutional muster."

As a remedy, the court ordered the trial court on remand to impose any appropriate Class X sentence without the mandatory firearm enhancement.

(Defendant was represented by Assistant Defender David Harris, Chicago.)

[People v. Holman, 2016 IL App \(5th\) 100587-B \(5-10-0587, 3/3/16\)](#)

1. Under United States Supreme Court case law, the Eighth Amendment prohibits a mandatory natural life sentence without the possibility of parole for offenses committed by juveniles. The Eighth Amendment requires that the sentencing court take into account factors which differentiate children from adults, including that juveniles are less mature than adults, are more likely to be rehabilitated, are more susceptible to outside influences, and have both diminished culpability and heightened capacity for change.

The court noted a conflict in authority concerning the duty of a court sentencing a juvenile to consider mitigating evidence. Some jurisdictions have required the sentencing court to consider a specified list of mitigating factors, while other jurisdictions require only that mitigation be considered, without mandating a specific list of factors. Still other jurisdictions provide that the Eighth Amendment is satisfied so long as the sentencing court has discretion to impose a sentence other than natural life without the possibility of parole.

The Appellate Court resolved this conflict by finding that the sentencing court must consider mitigating circumstances relating to a juvenile defendant's youth but need not consider a specified list of factors. Thus, the Eighth Amendment is satisfied if the record shows that the trial court considered mitigating circumstances concerning the juvenile's situation.

2. The court rejected defendant's argument that at sentencing, the trial court failed to consider mitigating circumstances. Defendant was sentenced to natural life without the possibility of parole for a murder which occurred five weeks before he turned 18.

The court concluded that the sentencing court was aware of several mitigating factors which were mentioned in the presentence report, and knew that defendant was a juvenile at the time of the offense. A sentencing court is presumed to take into account mitigating evidence which is before it.

In addition, there was substantial aggravating evidence. Under these circumstances, the trial court's statement that it found "no mitigating factors" did not indicate that it had refused to consider mitigating evidence related to the minor's youth.

3. The court rejected the argument that **Miller** should be extended to require a categorical bar against discretionary sentences of natural life in prison without the possibility of parole for offenses committed by juveniles. The court found that there is no reason to believe that the "societal standards of decency" have evolved since [Miller v. Alabama, 567 U.S. ___, 132 S. Ct. 2455, 183 L.Ed. 2d 407 \(2012\)](#) and [Montgomery v. Louisiana, 577 U.S. ___, 136 S. Ct. 718, 193 L.Ed. 2d 599 \(2016\)](#) so as to require the Appellate Court to go beyond the scope of those opinions.

(Defendant was represented by Assistant Defender Robert Burke, Mt. Vernon.)

[People v. Jackson, 2016 IL App \(1st\) 141448 \(No. 1-14-1448, 9/21/16\)](#)

Defendant, who was 17 years old at the time of the offense, was tried as an adult, convicted of armed robbery with a firearm, and sentenced to 21 years imprisonment, including a 15-year enhancement for possessing a firearm during the offense.

1. On appeal, defendant argued that he was entitled to a new sentencing hearing in juvenile court due to Public Act 99-258 which amended the automatic transfer provision of the Juvenile Court Act ([705 ILCS 405/5-130](#)) to remove armed robbery with a firearm as one of the offenses subject to automatic transfer.

The court rejected defendant's argument. It held that the controlling statutory provision was section 5-120 of the Juvenile Court Act, not section 5-130. At the time of the offense, section 5-130 stated that a defendant charged with a felony must be under 17 years old at the time of the offense to be subject to the juvenile court's jurisdiction. Section 5-130 is more restrictive than section 5-120 and states that a juvenile who is under 17 but over 15 years old is also excluded from juvenile court if he is charged with armed robbery with a firearm.

Public Act 98-61 amended section 5-120 to raise the age of exclusion to 18, but it contains a savings clause stating that it only applies to offenses committed after the effective date of the amendment. Here, defendant was charged with committing a felony when he was 17 years old and before the effective date of Public Act 98-61. He thus did not fall within the juvenile court's jurisdiction.

2. The court also held that defendant was not entitled to be resentenced pursuant to the 730 ILCS 5/5-4.5-105. Section 5-4.5-105 requires a sentencing court to consider specific sentencing factors applicable to juveniles when a defendant is under 18 years old at the time he committed the offense. But this section only applies to offenses committed on or after the effective date of the statute. Here defendant committed the offense prior to the effective date of the statute and thus it does not apply to him.

(Defendant was represented by Assistant Defender Imran Ahmad, Chicago.)

[People v. Jackson, 2016 IL App \(1st\) 143025 \(No. 1-14-3025, 9/30/16\)](#)

Defendant, who was 16 at the time of the offense, was convicted of first degree murder in adult court. Because he personally discharged a firearm that proximately caused death, defendant was subject to a 25-years-to-life firearm enhancement, making his sentencing range 45 years to life. Defendant was ultimately sentenced to 50 years imprisonment.

The court found that defendant's sentence did not violate the Eighth Amendment's prohibition on cruel and unusual punishments. The court noted that the Illinois Supreme Court held that juveniles may be sentenced to life imprisonment so long as the sentence is discretionary. **[People v. Davis, 2014 IL 115595](#)**. Here defendant was subject to minimum sentence of 45 years and received a discretionary sentence of 50 years. There was thus no Eighth Amendment violation.

(Defendant was represented by Assistant Defenders Sharon Nissim, Chicago, and Yasemin Eken, Elgin.)

[People v. King, 395 Ill.App.3d 985, 919 N.E.2d 958 \(4th Dist. 2009\)](#)

1. A minor who is tried as an adult for both first degree murder and an offense which is not required to be prosecuted in adult court, and who is convicted only of the offense for which is adult prosecution is not required, is to be sentenced as a juvenile unless, within 10 days of the conviction, the State requests a hearing at which the court considers specified statutory factors to determine whether adult sentencing is appropriate. The State's failure to make a timely request requires that all further proceedings be conducted under the Juvenile Court Act. An adult sentence imposed in the absence of a timely request by the State is void, and may be challenged for the first time on appeal from denial of a post-conviction petition.

2. The court rejected the State's argument that defendant could not challenge the validity of his adult sentence while preserving the benefit of having entered a negotiated plea which included that sentence in return for dismissing another charge. Because **[705 ILCS 405/5-130\(1\)\(c\)\(ii\)](#)** requires the State to request adult sentencing hearing "after trial or plea," the State must make a timely request for adult sentencing even if the minor explicitly agrees to an adult sentence in a negotiated plea.

Because the defendant had attained 21 years of age and could no longer be committed as a juvenile, the trial court was directed to vacate the criminal conviction, enter an adjudication of delinquency, and impose a sentence of "time served" as of defendant's 21st birthday.

(Defendant was represented by Assistant Defender Mike Vonnahmen, Springfield.)

[People v. Nieto, 2016 IL App \(1st\) 121604 \(No. 1-12-1604, 3/23/16\)](#)

1. Under the Post-Conviction Hearing Act, any claim not raised in the original or amended post-conviction petition is waived. This rule is more than a suggestion and reviewing courts generally may not overlook forfeiture caused by defendant's failure to raise the issue in his petition.

2. A jury convicted defendant, who was 17 years old at the time of the offense, of first degree murder and aggravated battery with a firearm, and additionally found that defendant personally discharged a firearm which proximately caused death, making the minimum sentence 51 years imprisonment. The court sentenced defendant to 78 years imprisonment. In imposing sentence, the court stated that it had considered defendant's "young age" and the fact that everyone can change their lives.

The Appellate Court affirmed defendant's conviction and sentence on direct appeal, specifically holding that his sentence was not excessive. Defendant filed a post-conviction petition raising several claims, but did not argue that his sentence was unconstitutional. After the trial court dismissed his petition at the first stage, the United States Supreme Court held in **[Miller v. Alabama, 567 U.S. ___ \(2012\)](#)** that the Eighth Amendment prohibited mandatory sentences of life imprisonment for juveniles.

On appeal from the denial of his post-conviction petition, defendant argued for the first time that his sentence was unconstitutional under **Miller**. Defendant conceded that he did not raise this issue in his petition, but argued that an as-applied constitutional challenge to a sentence can be raised for the first time on appeal.

3. The Appellate Court examined several cases that followed **Miller** and determined that it could reach defendant's claim. In [People v. Davis, 2014 IL 115595](#), the Illinois Supreme Court held that the sentencing statute mandating life sentences was not facially unconstitutional since it could be validly applied to adults. In [People v. Thompson, 2015 IL 118151](#), the court held that a judgment based on facially unconstitutional statute is void and may be attacked at any time. The same was not true for an as-applied challenge.

But **Thompson** also discussed [People v. Luciano, 2013 IL App \(2d\) 110792](#), which held that an as-applied sentencing challenge by a juvenile could be raised at any time. The Supreme Court did not expressly find that **Luciano** was incorrect in its forfeiture holding, but instead distinguished it on the merits since the defendant in [Thompson](#) was not a juvenile. The Appellate Court thus concluded that "considered as a whole, **Thompson** implies that courts must overlook forfeiture and review juveniles' as-applied Eighth Amendment challenges under **Miller**."

Additionally, in [Montgomery v. Louisiana, 577 U.S. ____ \(2016\)](#), the United States Supreme Court held that **Miller** announced a substantive rule that barred life sentences for all but the rarest of juvenile defendants, and courts lack authority to leave in place a sentence which violates a substantive rule. **Thompson** and **Montgomery** thus suggest that forfeiture cannot apply to juvenile defendants raising **Miller** claims.

4. The Appellate Court held that defendant's sentence was unconstitutional as applied to him. Since defendant would not be released from prison until he is 94 years old, the court found that he effectively received a natural life sentence.

Montgomery held that a life sentence was impermissible "for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." Even if a court considers a defendant's age, as the court did here, a life sentence is still impermissible for a defendant whose crime "reflects unfortunate yet transient immaturity."

Here the trial court's reasoning in imposing sentence did not comport with the factors required by **Miller** and **Montgomery**. The trial court considered defendant's young age but did not consider the corresponding characteristics of his youth. His sentence thus violated **Miller**.

Although relief following a first-stage dismissal typically involves remand for second-stage proceedings, the proper relief for this claim was to vacate defendant's sentence and remand for resentencing.

(Defendant was represented by Assistant Defender Jeff Svehla, Chicago.)

[People v. Ortiz, 2016 IL App \(1st\) 133294 \(No. 1-13-3294, 10/17/16\)](#)

1. Defendant, age 15 at the time of the offense, was tried as an adult under the automatic transfer provision of the Juvenile Court Act ([705 ILCS 405/5-130](#)) and was convicted of first degree murder and sentenced to 60 years imprisonment.

2. The court held that defendant's sentence violated the Eighth Amendment. A juvenile's mandatory or discretionary sentence of life imprisonment is constitutionally valid only where the sentencing judge takes into consideration his youth and attendant characteristics to determine whether the defendant is the rarest of juvenile offenders whose crimes reflect permanent incorrigibility.

The court held that since defendant must serve 100% of his 60-year sentence and hence will not be eligible for release until he is 75 years old, his sentence is effectively a life sentence. Although the trial court considered defendant's young age and his personal history in sentencing defendant, it did not consider the corresponding characteristics of his youth as required by [Miller v. Alabama, 567 U.S. ____, 132 S. Ct. 2455 \(2012\)](#).

3. The court also held that the recent amendments to the automatic transfer provisions applied retroactively to defendant's case. These amendments took effect while defendant's case was on appeal and raised the minimum age for mandatory transfer to criminal court from 15 to 16 years. The court found that where, as here, the legislature does not provide an explicit provision establishing the effective date of the amendments, the general savings clause of section 4 of the Statutes on Statutes ([5 ILCS 70/4](#))

applies, and states that amendments that are procedural in nature may be applied retroactively. The amendments to the automatic transfer statute are procedural in nature and thus may apply retroactively to defendant's case.

The court vacated defendant's sentence and remanded the cause for the State to have the opportunity to file a petition for a discretionary transfer to adult court. If a hearing is held and the trial court determines that defendant's case should be transferred to adult court, then the court must hold a new sentencing hearing.

(Defendant was represented by Assistant Defender Elena Penick, Elgin.)

People v. Pacheco, 2013 IL App (4th) 110409 (No. 4-11-0409, 6/24/13)

1. In **Roper v. Simmons**, 543 U.S. 551 (2005), the Supreme Court held that the Eighth Amendment bars capital punishment for juvenile offenders. In **Graham v. Florida**, 560 U.S. 48 (2010), the court held that a life sentence without the possibility of parole violates the Eighth Amendment when imposed on juvenile offenders for crimes other than homicide. In **Miller v. Alabama**, 567 U.S. ___, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), the court concluded that the Eighth Amendment prohibits a sentencing scheme which mandates a life sentence without the possibility of parole for juvenile offenders, even those convicted of homicide.

The court concluded that under the reasoning of **Roper**, **Graham** and **Miller**, neither the Eighth Amendment nor the proportionate penalties clause of the Illinois Constitution are violated by the Illinois statute mandating the transfer of juveniles who are at least 15 and who are charged with first degree murder (705 ILCS 405/5-130(1)(a)(i)), the automatic imposition of an adult sentence on a juvenile who is subject to the automatic transfer statute, or the application of truth-in-sentencing provisions to minors who are convicted of murder by accountability. The court concluded that the Supreme Court cases concerned only two sentences, death and life without the possibility of parole. The decisions do not require that legislatures and courts treat youths and adults differently in every respect and at every step of the criminal process.

Similarly, the court concluded that due process is not violated by the automatic transfer statute, although the trial court is not required to make an individualized determination whether a minor should be transferred and subjected to adult sentencing. The court acknowledged that automatic transfer of minors of a certain age to adult court may not be good policy, but held that only the legislative branch can determine whether a policy that meets constitutional requirements should be changed.

2. In dissent, Justice Appleton found that the mandatory transfer of 15 and 16-year-olds to adult court violates **Miller v. Alabama** because the trial court is not permitted to make an individualized determination whether a particular minor should be transferred to adult court.

(Defendant was represented by Assistant Defender Jacqueline Bullard, Springfield.)

People v. Reyes, 2015 IL App (2d) 120471 (No. 2-12-0471, 5/6/15)

Defendant, who was 16 years old at the time of the offense, was convicted of first degree murder and two counts of attempt first degree murder. He was sentenced 45 years imprisonment for first degree murder and 26 years for each count of attempt murder, all sentences to run consecutively for a total of 97 years. Defendant would have to serve 89 years of that term and would not be eligible for MSR until he was 105 years old.

Defendant argued that his 97-year sentence was a *de facto* natural life sentence that would be unconstitutional under **Miller v. Alabama**, 132 S.Ct. 2455 (2012). The Appellate Court disagreed, declining to extend **Miller** to this case. Unlike the **Miller** defendants, who were sentenced to natural life without the possibility of parole based on single murder convictions, here defendant received consecutive sentences based on multiple counts and multiple victims. Moreover, "defendant did not receive the most severe of all possible penalties, such as the death penalty or life without the possibility of parole."

Defendant's sentence was affirmed.

(Defendant was represented by Assistant Defender Kathy Hamill, Elgin.)

People v. Scott, 2016 IL App (1st) 141456 (No. 1-14-1456, 12/15/16)

The State charged defendant, who was 16 at the time of the offense, with armed robbery with

a firearm and aggravated robbery. At the time of defendant's trial, when the State charged a juvenile who was at least 15 years old with armed robbery with a firearm, his case was automatically transferred to adult court. [705 ILCS 405/5-130\(1\)\(a\)](#). Defendant was tried in adult court, acquitted of armed robbery but convicted of aggravated robbery. Since defendant was acquitted of the transfer offense, the State moved to have him sentenced as an adult. [705 ILCS 405/5-130\(1\)\(c\)\(ii\)](#) (permitting State to request adult sentencing when defendant has been acquitted of automatic-transfer offense). The court granted the State's request and sentenced defendant to five years imprisonment.

The Appellate Court held that Public Act 99-258, which removed armed robbery with a firearm from the list of automatic transfer offenses applied retroactively to defendant's case. [People ex rel. Alvarez v. Howard, 2016 IL 120729](#). The court found **Howard** controlling even though it had a "slightly" different procedural posture. In [Howard](#), the case was pending before the trial court when Public Act 99-258 was passed, while the present case was pending on appeal when the Act was passed. The court held that "under either circumstance" the same test applies.

The court vacated defendant's sentence and remanded the case to provide the State an opportunity to request that defendant be transferred to adult court. The Appellate Court noted that the State had already successfully requested that defendant be sentenced as an adult. But the decision to transfer a defendant to adult court for trial involves more detailed and extensive considerations than the decision to merely sentence a defendant in adult court. [705 ILCS 405/5-805\(3\)\(b\)](#). The trial court's decision to allow defendant to be sentenced in adult court thus did not necessarily mean that the trial court would allow defendant to be transferred to adult court for trial.

(Defendant was represented by Assistant Defender Whitney Price, Chicago.)

[People v. Toney, 2011 IL App \(1st\) 090933 \(No. 1-09-0933, 9/19/11\)](#)

Where a minor was at least 15 years of age at the time of the offense and is charged with certain offenses, including first-degree murder, such "charges and all other charges arising out of the same incident shall be prosecuted under the criminal laws of this State." [705 ILCS 405/5-130\(1\)\(a\)](#). If a minor is convicted of any offense "covered by" §5-130(1)(a), the minor may be sentenced as an adult. [705 ILCS 405/5-130\(1\)\(c\)\(i\)](#). If a minor is convicted of an offense "not covered" by §5-130(1)(a), the minor must be sentenced as a juvenile unless the State timely requests a hearing to determine if the minor should be sentenced as an adult. An offense "covered by" §5-130(1)(a) includes both charges specified in that section, as well as "all other charges arising out of the same incident." [People v. King, 241 Ill.2d 374, 948 N.E.2d 1035 \(2011\)](#).

Defendant was charged with first-degree murder as an adult, but was convicted of second-degree murder. Second-degree murder is a lesser mitigated offense of first-degree murder, requiring proof of all of the elements of first-degree murder plus the presence of a mitigating factor. While second-degree murder is not one of the offenses listed in §5-130(1)(a), it is a charge "covered by" that section, because it necessarily arose out of the same incident as the first-degree murder charge. Therefore, the State was not required to request a hearing to determine whether the defendant should be sentenced as an adult before defendant could be sentenced as an adult for second-degree murder.

Although [King](#) involved a guilty plea, §5-130(1)(c)(i) by its terms applies both "after trial or plea," and there is no indication in the statute or the [King](#) decision that the "covered by" language applies differently in either circumstance. Neither the statute nor **King** limits the statute's application to charges formally charged in the charging instrument that arise out of the same incident. Moreover, the State did not need to separately charge defendant with second-degree murder in order to obtain a conviction for that offense, as it was defendant's burden to prove the mitigating factor that would reduce the offense to second-degree murder.

(Defendant was represented by Assistant Defender Daniel Mallon, Chicago.)

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§33-6(e) Extended Juvenile Jurisdiction (EJJ)

[In re Matthew M., 335 Ill.App.3d 276, 780 N.E.2d 723 \(2d Dist. 2002\)](#) 1. Under [705 ILCS 405/5-810](#), the State may ask the trial court to designate a juvenile proceeding as an EJJ. An EJJ designation allows the trial court, upon finding the minor guilty, to impose both a juvenile and a conditional adult sentence. If the minor violates the conditions of the juvenile sentence or commits a new offense, the adult sentence must be served.

2. A proceeding may be designated as an EJJ prosecution only if the State alleges that the minor is at least 13, the offense would have been a felony if committed by an adult, and there is probable cause to believe that the allegations in the delinquency petition and motion are true. If the trial court finds probable cause to believe that the allegations are true, it must designate the proceeding as an EJJ prosecution unless it finds, based on clear and convincing evidence, that adult sentencing would not be appropriate due to the seriousness of the alleged offense, the minor's history of delinquency, the minor's age or culpability in committing the alleged offense, the presence or absence of aggression or premeditation in committing the offense, and whether the minor used or possessed a deadly weapon.

3. The EJJ statute does not violate [Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348 \(2000\)](#), because a minor can receive an adult sentence based solely on the trial court's finding that there is probable cause to believe the State's allegations and a lack of clear and convincing evidence that adult sentencing would be inappropriate.

[In re Christopher K., 217 Ill.2d 348, 841 N.E.2d 945 \(2005\)](#) The court refused to consider defendant's claims that the extended juvenile jurisdiction statute is unconstitutionally vague and violates **Apprendi**, finding that both issues were moot.

Cumulative Digest Case Summaries §33-6(e)

[In re M.I., 2013 IL 113776 \(No. 113776, 5/23/13\)](#)

1. The Extended Juvenile Jurisdiction (EJJ) statute requires that a hearing be conducted on a motion to designate a proceeding as an EJJ proceeding within 60 days of the filing of the motion. [705 ILCS 405/5-810\(2\)](#). Because the 60-day limitation is directory rather than mandatory, the failure to comply with that provision of the statute does not invalidate the EJJ determination.

2. The Extended Juvenile Jurisdiction (EJJ) statute does not violate [Apprendi v. New Jersey, 530 U.S. 466 \(2000\)](#). An EJJ hearing does not adjudicate guilt or determine a specific sentence. The trial court only makes a procedural determination whether a juvenile should receive an adult sentence that is stayed pending successful completion of a juvenile sentence. The stayed sentence is based on the criminal offense for which the juvenile was convicted by the finder of fact and does not exceed the maximum for the offense provided by the Code of Corrections.

(Respondent was represented by Assistant Defender Emily Filpi, Chicago.)

[In re C.C., 2015 IL App \(1st\) 142306 \(No. 1-14-2306, 1/6/15\)](#)

Under the extended juvenile jurisdiction statute ([705 ILCS 405/5-810](#)), upon a finding of guilty the trial court must impose a juvenile court sentence and a conditional adult criminal sentence. If the minor successfully completes the juvenile sentence, the adult sentence is vacated.

If the minor commits a new offense, the adult sentence must be implemented. In addition, if the juvenile violates the conditions of the juvenile sentence in some way other than by committing a new offense, the trial court has discretion to revoke the juvenile sentence and implement the adult sentence.

Defendant was committed to Department of Juvenile Justice until he was 21, with a conditional adult sentence of 45 years in the Department of Corrections. He appealed, arguing that the 45-year-sentence violated the Eighth Amendment and the proportionate penalties provision of the Illinois Constitution.

The court concluded that because the State had not filed a petition to revoke the stay on the adult sentence or accused the minor of violating the conditions of his juvenile sentence, the minor had not suffered any injury due to the adult sentence. Therefore, he lacked standing to challenge that sentence.

(Defendant was represented by Assistant Defender Heidi Lambros, Chicago.)

[In re E.W., 2015 IL App \(5th\) 140341 \(No. 5-14-0341, 2/23/15\)](#)

A juvenile prosecution for an offense that would be a felony if committed by an adult may be designated as an extended jurisdiction juvenile (EJJ) prosecution. [705 ILCS 405/5-810](#). An EJJ prosecution has two components. First, the trial court imposes a juvenile sentence which applies unless its terms are violated. Second, the court imposes an adult sentence that is stayed on the condition that the minor complies with the juvenile sentence.

Defendant was adjudicated delinquent after he pleaded guilty in an EJJ proceeding. After defendant entered a guilty plea on the juvenile portion of the proceeding, a negotiated five-year probation term was imposed as the juvenile sentence. Defendant then entered an open plea to the adult portion of the EJJ proceeding. The trial court imposed an adult sentence of 15 years imprisonment and lifetime MSR.

Defendant was subsequently found to have violated the conditions of the juvenile probation term on the ground that he failed to comply with sex offender counseling when he refused to admit that he was guilty of acting in an inappropriate manner. The trial court revoked the juvenile sentence and imposed the 15-year adult sentence.

1. The court concluded that where the juvenile sentence was revoked and the adult sentence placed in effect, the minor had standing under the Post-Conviction Hearing Act to challenge the voluntariness of his guilty plea. Although the Post-Conviction Hearing Act is not generally applicable in juvenile proceedings, when the trial court imposed an adult prison sentence the case was brought within the scope of the post-conviction act.

2. In addition, the post-conviction petition presented the gist of a constitutional issue in that the minor's plea was involuntary due to the trial court's failure to give proper admonishments during the juvenile portion of the plea. The court found that defendant was improperly admonished concerning the right to a jury trial, the minimum and maximum sentences, the MSR requirement, and the right to persist in a plea of not guilty. The court acknowledged that during the guilty plea admonishments for the adult sentence the trial court attempted to correct the erroneous admonishments that had been made in the juvenile portion of the proceeding. However, it concluded that the errors were not corrected where the minor had already entered his plea on the juvenile portion and was not asked whether he wished to persist in that plea.

The trial court's order summarily dismissing the post-conviction petition was reversed and the cause remanded for further proceedings.

(Defendant was represented by Assistant Deputy Defender Amanda Horner, Mt. Vernon.)

[In re M.I., 2011 IL App \(1st\) 100865 \(No. 1-10-0865, 12/23/11\)](#)

1. [705 ILCS 405/5-810\(2\)](#) provides time limits for a hearing on the State's motion to designate a juvenile proceeding as an extended juvenile jurisdiction proceeding. Under §810(2), the trial court "shall" conduct a hearing within 30 days after the motion is filed, or within 60 days upon a showing of good cause for the delay.

The Appellate Court concluded that the time limitation was intended to be directory only. Thus, the failure to hold a timely hearing did not prohibit the trial court from subsequently conducting a hearing and granting the motion for an EJJ proceeding.

2. The minor, who was adjudicated delinquent under the EJJ statute and given both a juvenile sentence and a stayed adult sentence to be imposed only if he failed to successfully complete the juvenile sentence, lacked standing to challenge the constitutionality of the EJJ statute. The minor claimed that the statute was unconstitutionally vague because it failed to give sufficient notice of the conduct which would result in violation of the juvenile sentence and imposition of the stayed adult sentence. The minor also claimed that the statute lacked sufficient guidelines for the trial court to determine whether the juvenile sentence should be revoked.

A party has standing to challenge the constitutionality of a statute only if he has sustained or is in danger of sustaining a direct injury as a result of the statute. Because there had been no allegation that the respondent had violated the juvenile sentence and no reason to believe that the stayed adult sentence would ever be imposed, the court concluded that the challenge was premature. Thus, defendant lacked standing to challenge the constitutionality of the statute until such time as he was required to serve the adult sentence.

(Defendant was represented by Assistant Defender Emily Filpi, Chicago.)

[In re Omar M., 2012 IL App \(1st\) 100866 \(No. 1-10-0866, 6/29/12\)](#)

The Extended Jurisdiction Juvenile Prosecutions (EJJ) statute allows imposition of both a juvenile sentence and an adult criminal sentence on a juvenile where the court has designated the proceeding as an EJJ proceeding. The designation may be made where the prosecution files a petition alleging commission of a felony offense by a minor 13 and older where the court finds probable cause to believe that the allegations in the petition are true. The minor may rebut the presumptive EJJ designation with clear and convincing evidence that sentencing as an adult would not be appropriate. A minor who is the subject to an EJJ prosecution has the right to a public trial by jury. The adult sentence is stayed, but the stay can be revoked if the minor violates the conditions of the juvenile sentence or commits a new offense. 705 ILCS 405/5-810.

1. The EJJ statute does not violate Apprendi v. New Jersey, 530 U.S. 466 (2000). First, EJJ prosecutions are not adjudicatory, but dispositional. The EJJ procedure does not determine the minor's guilt or the specific sentence he will receive. It only determines the forum in which his guilt may be adjudicated. Adjudicatory hearings are subject to the due process requirement of proof beyond a reasonable doubt. Dispositional hearings are not.

Second, even if **Apprendi** did apply to EJJ prosecutions, the statute is constitutional. **Apprendi** requires that any fact other than the fact of a prior conviction that increases the penalty beyond the prescribed statutory maximum be submitted to a jury and proved beyond a reasonable doubt. The statutory maximum for **Apprendi** purposes is not the maximum punishment allowed in the juvenile system. It is the sentence allowed in criminal court. Moreover, in an EJJ prosecution, a jury is required to find every element required for the statutory sentence beyond a reasonable doubt.

2. To survive a vagueness challenge, a law must provide people of ordinary intelligence with the opportunity to understand what conduct is prohibited, and it must provide a reasonable standard to law enforcement officials and to the judiciary to prevent arbitrary and discriminatory legal enforcement.

The EJJ statute explicitly provides that the minor may be required to serve the adult sentence if he violates the "conditions" of his sentence, and shall be required to serve the adult sentence if he commits a new "offense." Where the court orders provisions such as probation or drug counseling in addition to a juvenile detention term, those provisions are part of the EJJ prosecution "conditions." Where no provisions are imposed other than detention, the term "conditions" refers only to the minor's completion of the sentence and adherence to the Department of Corrections rules and regulations during that time. "Offense" is equally plain and unambiguous, meaning "criminal offense," or "all international, federal, or state offenses that are considered criminal within the State of Illinois." There is no precedent for finding a different vagueness standard for statutes related to juveniles.

Therefore, the EJJ statute is not unconstitutionally vague.

(Respondent was represented by Assistant Defender Heidi Lambros, Chicago.)

[People v. Wilson, 2016 IL App \(1st\) 141500 \(No. 1-14-1500, 8/19/16\)](#)

1. Public Act 99-69 provided that "On or after the effective date" of the Act, when a person under the age of 18 commits an offense and is sentenced as an adult the sentencing court must consider a specified list of additional mitigating factors. Defendant was found guilty of attempted first degree murder and aggravated battery with a firearm which he committed at age 17 but about three years before the effective date of P.A. 99-69. On appeal, he argued that he was entitled to remand for a new sentencing hearing because P.A. 99-69 should be applied retroactively.

The Appellate Court rejected this argument, finding that the plain language of the Act indicated that the legislature intended it to be applied only to offenses which occurred after the effective date. Unambiguous statutory language is to be applied as written, without resort to other rules of statutory construction.

2. Defendant also argued that the Eighth Amendment is violated by the exclusive jurisdiction statute (705 ILCS 405/5-120), which provides that 17-year-old accused felons may not be prosecuted under the Juvenile Court Act, and by the combination of the exclusive jurisdiction statute, the mandatory 25 years to life firearm enhancement (720 ILCS 5/8-4(a), (c)(1)(D)), and the truth-sentencing provisions. The court rejected these arguments, noting that the Eighth Amendment requires

only that where the offender was a juvenile at the time of the offense, the sentencing authority must have an opportunity to consider mitigating circumstances connected to age before imposing a death sentence or a sentence of life imprisonment. Here, the trial court considered the relevant factors in aggravation and mitigation before fashioning the sentence.

Similarly, the combination of acts did not violate the Eighth Amendment. The court noted that Illinois courts have rejected attempts to extend [Miller v. Alabama, 567 U.S. ___, 132 S.Ct. 2455 \(2012\)](#) beyond cases involving mandatory life sentences without the possibility of parole.

(Defendant was represented by Assistant Defender Meredith Baron, Chicago.)

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§33-6(f)

Probation and Supervision

§33-6(f)(1)

Generally

[In re J.N., 91 Ill.2d 122, 435 N.E.2d 473 \(1982\)](#) The trial court's order of "supervision" and a continuance of one year was "in substance and realistically" a dispositional order placing the minor on probation or conditional discharge. Thus, the continuance order was a final judgement. See also, [In re M.W.W., 125 Ill.App.3d 833, 466 N.E.2d 588 \(2d Dist. 1984\)](#) (order for continuance under supervision, entered after the court found minor guilty of the charged offense but before an express adjudication of delinquency, was in reality a dispositional order; but, the trial court lacked authority to enter the order, for a dispositional order may not be entered until after the court adjudges the minor a ward of the court and the court expressly found that the best interests of the minor and public did not require wardship of the court).

[In re Jaime P., 223 Ill.2d 526, 861 N.E.2d 966 \(2006\) 705 ILCS 405/5-715\(1\)](#) was intended to limit the probation term for a delinquent minor to 5 years or age 21, whichever is less, but to prohibit the trial court from granting early termination of probation to a person who has been found delinquent based on first degree murder, a Class X felony, or a forcible felony. (The only exception to the rule that juvenile jurisdiction terminates at age 21 is for EJJ prosecutions.) The Court rejected the appellate court's finding that delinquents who commit first degree murder, a Class X felony, or a forcible felony are not subject to automatic termination of probation at age 21.

Respondent, who at the age of 17 had been placed on five years' probation for a Class X felony, should have had her probation terminated automatically at age 21. (The juvenile court has authority to enforce a restitution order for seven years, and after that time a restitution order may be enforced under the Code of Civil Procedure.)

[In re Sneed, 72 Ill.2d 326, 381 N.E.2d 272 \(1978\)](#) 1. A juvenile's probation under Ch. 37, ¶705-2(3) cannot be extended without a hearing and finding that the minor violated a condition of probation. The conditions of probation may be modified without a finding of a violation, but only after a hearing.

2. A juvenile probation term must be for a definite period. The Act "does not authorize or contemplate an indefinite or continuing probation for five years or until the minor attains the age of 21 years whichever is less." See [In re T.E., 85 Ill.2d 326, 423 N.E.2d 910 \(1981\)](#) (probation orders setting an indefinite term of probation are void (and a void order can be attacked at any time); because the probation orders were void, respondents were not validly on probation when they were charged with probation violations and the revocation orders, therefore, were also void). See also, [In re R.R., 92 Ill.2d 423, 442 N.E.2d 253 \(1982\)](#).

[In re T.W., 101 Ill.2d 438, 463 N.E.2d 703 \(1984\)](#) Ch. 37, ¶704-7(1)(b), which requires the consent of the state's attorney before a court may order a continuance under supervision, upheld. Requiring such

consent does not violate the separation of powers doctrine.

[In re P.S.B.](#), 174 Ill.App.3d 114, 528 N.E.2d 769 (3d Dist. 1988) The Juvenile Court Act provides for admission to the Department of Alcoholism and Substance Abuse (DASA) where authorized under the Alcoholism and Substance Abuse Act. The trial judge here did not follow the procedure to be followed when a person elects to undergo treatment. The judge committed respondent to DOC after stating that there was insufficient evidence concerning a DASA long-term program. The judge should have considered more evidence regarding the type of treatment offered by both DOC and DASA. Remanded for another dispositional hearing “to consider further evidence of the likelihood of P.S.B.’s rehabilitation and for further evidence concerning the details of long-term treatment. . . .”

[In re T.W.](#), 268 Ill.App.3d 744, 644 N.E.2d 438 (2d Dist. 1994) An order imposing juvenile supervision is appealable. See also, [In re D.R.](#), 219 Ill.App.3d 13, 579 N.E.2d 409 (2d Dist. 1991).

[People v. C.T.](#), 137 Ill.App.3d 42, 484 N.E.2d 361 (5th Dist. 1985) Probation and incarceration are “alternate dispositions” under the “kinds of dispositional orders” section of the Juvenile Court Act (Ch. 37, ¶705-2(a)); thus, both dispositions cannot be imposed simultaneously.

[In re Moses W.](#), 363 Ill.App.3d 182, 842 N.E.2d 783 (2d Dist. 2006) The role of the trial court in juvenile proceedings is broader than in criminal proceedings. Thus, it was proper for the juvenile judge to receive regular reports about the probationer’s conduct at a treatment center.

Further, the trial judge’s concern about the cost to the county of providing residential treatment did not indicate that he was biased against respondent.

Cumulative Digest Case Summaries §33-6(f)(1)

[In re Danielle J.](#), 2013 IL 110810 (No. 110810, 12/19/13)

Under [705 ILCS 405/5-615\(l\)](#) and [In Veronica C.](#), 239 IL 2d 134, 940 N.E.2d 1 (2010), a minor may request a continuance under supervision in a juvenile case before an adjudication of delinquency is made, provided that the minor stipulates to facts supporting the petition and there is no objection by the minor, a parent, a guardian, or the prosecutor. Here, the minor rejected the State’s pretrial offer of a continuance under supervision, but requested such a continuance after she was adjudicated delinquent.

The trial court indicated that had the State’s Attorney not objected, it would grant a continuance under supervision. The trial court then found that the provision of the statute requiring the State’s Attorney’s consent to a continuance under supervision was unconstitutional. The State appealed.

1. The Illinois Supreme Court found that the minor lacked standing to challenge the constitutionality of the requirement that the State’s Attorney consent to a continuance under supervision. Because the minor was adjudicated delinquent before her attorney requested the continuance, and a continuance under supervision is statutorily precluded once an adjudication occurs, a continuance under supervision could not have been granted even had the prosecutor agreed. Because she was not adversely affected by the State’s Attorney’s objection to a continuance under supervision, the minor lacked standing.

2. However, the court concluded that defense counsel was ineffective for failing to request a continuance under supervision when it could have been granted, and that the trial court committed plain error where it believed that a continuance under supervision was the appropriate disposition but failed to broach the subject until a continuance was statutorily precluded.

The court remanded the cause for a new first-phase hearing at which the minor is to be properly advised that if she proceeds to trial and is unsuccessful, a continuance of supervision will be subject to the State’s Attorney’s approval. The minor will then be in a position to make an informed and knowing decision whether to accept the pretrial offer of a continuance under supervision, if that offer is reinstated. If she elects to go to trial, the minor will be able to request a continuance under supervision before the adjudication is announced.

[In re Derrico G., 2014 IL 114463 \(No. 114463, 8/4/14\)](#)

Under §5-615 of the Juvenile Court Act, the State may object to the entry of an order of continuance under supervision in a juvenile case. [705 ILCS 405/5-615](#). The circuit court held that this statutory provision was unconstitutional both facially and as applied because it: (1) was arbitrarily enforced in violation of due process; (2) violated the separation of powers clause of the Illinois constitution; and (3) violated equal protection.

The Illinois Supreme Court reversed the circuit court's ruling, holding that the statute was neither facially unconstitutional nor as applied to defendant.

1. For a statute to be facially unconstitutional, there must be no set of circumstances under which the statute would be valid. If a statute is constitutional as applied to a defendant, it usually cannot be challenged on the ground that it might be unconstitutional as applied to others. In other words, if the statute is constitutional as applied to defendant, "his facial challenge necessarily fails."

2. Prosecutorial discretion is firmly entrenched in American law. The Supreme Court noted that several of its cases have held that courts may not require prosecutors to defend their decision to seek the death penalty. If prosecutors have discretion to seek the death penalty, then they clearly have discretion to object to supervision.

Additionally, several factors show that the prosecutor's decision to object to supervision was justified in this case, including: (1) the nature of the offense, (2) battery of a police officer; (3) defendant's prior criminal conduct and pending charges; (4) defendant's family environment, which was not conducive to helping defendant stay out of trouble; (5) defendant's failure to acknowledge the seriousness of the offense; and (6) the fact that this case involved a negotiated guilty plea, where the State dismissed certain charges and recommended a sentence of probation in exchange for the plea.

Taking all these facts into account, the Supreme Court concluded that it was "quite frankly inconceivable that anyone could find" the State's exercise of discretion in this case to be arbitrary and a violation of due process.

3. The separation of powers clause of the Illinois Constitution provides that none of the three branches of government "shall exercise powers properly belonging to another." [Ill. Const. 1970 art. II, §1](#). The purpose of this provision is to ensure that the whole power of more than one branch does not reside in the same hands. But the provision was not designed to achieve a complete divorce among the three branches, and it does not divide governmental powers into rigid, mutually exclusive compartments. The three branches are parts of a single operating government and there will be areas where their functions overlap. As such, the separation of powers clause was not designed to effect a complete divorce between the branches.

The defendant argued that the prosecution's discretion to object to supervision infringed on the circuit court's sentencing authority. The Supreme Court rejected this argument, noting that it had previously decided that a statute which allowed prosecutors to decide when a juvenile would be subjected to prosecution as an adult did not violate separation of powers even though the statute gave the prosecution significant discretion to dictate the range of penalties to which a juvenile would be subject. The discretionary authority afforded the prosecution by §5-615 "pales by comparison."

Furthermore, under the version of the statute in effect here, the court may only continue the case under supervision before proceeding to adjudication. Thus, the State's objection must also occur before adjudication. Since defendant had not been adjudicated when the State objected and sentencing was not an issue, the State did not infringe on the court's right to impose sentence.

4. The equal protection clause requires the government to treat similarly situated individuals in a similar fashion unless it can demonstrate an appropriate reason to treat them differently. But the clause does not forbid the legislature from drawing proper distinctions among different categories of people unless it does so on the basis of criteria wholly unrelated to the legislation's purpose.

Defendant argued that equal protection was violated by the State's right to object to juvenile supervision but not adult supervision. The court rejected this argument on a number of grounds.

First, defendant could not show that he was similarly situated in all relevant aspects to the adult offenders he compared himself to. Equal protection does not forbid all classifications, only those that apply different treatment to people who are alike in all relevant respects. Here, defendant was not similarly situated to adult offenders charged with a felony, because such adult offenders are not eligible for supervision at all.

Second, defendant entered into a fully negotiated guilty plea. Having received significant consideration in return for his plea, defendant could not repudiate the very sentence he agreed to on the basis that it violated equal protection. The court found that defendant's position violated fundamental principles of fairness in the enforcement of guilty pleas.

Third, minors in delinquency proceedings are not comparable to adult offenders because they are generally not subject to the same deprivation of liberty. Delinquency proceedings are protective and intended to correct and rehabilitate rather than to punish. That difference extends to the role of the State.

The dissent would have held that as applied to this case, §5-615 violated the separation of powers clause. The circuit court had already accepted defendant's guilty plea when it continued the case under supervision. Although the circuit court did not enter a finding of guilt, the acceptance of the guilty plea was itself a conviction. Conviction marks the traditional boundary beyond which the State's constitutionally permissible role in decisions affecting sentencing comes to an end. Accordingly, the State's objection to supervision violated the separation of powers doctrine.

[In re Michael D., 2015 IL 119178 \(Docket No. 119178, 12/17/15\)](#)

1. The Illinois Constitution confers jurisdiction on the Appellate Court to review final judgments, and authorizes the Supreme Court to provide by rule for appeals from other than final judgements. Supreme Court Rule 660(a) provides that final judgements in delinquency proceedings may be appealed under the rules for criminal appeals.

2. [705 ILCS 405/5-615\(1\)](#) provides that for certain offenses, juvenile courts may order continuances under supervision. Until 2014, a continuance under supervision could be ordered only where the court had not made a finding of delinquency, the minor admitted or stipulated to facts supporting the petition, and there was no objection from the minor, the minor's attorney, the State's Attorney, or the minor's parent or legal custodian. Effective January 1, 2014, [705 ILCS 405/5-615\(1\)\(b\)](#) authorizes juvenile courts to enter continuances under supervision after a finding of delinquency has been made if the court finds that the minor is not likely to commit further crimes, the minor and the public would be best served if the minor were not to receive a criminal record, and in the interests of justice an order of continuance under supervision is more appropriate than a sentence.

3. Case law holds that a continuance under supervision that is ordered before a delinquency finding is made may not be appealed. The court concluded that the same rule applies to a continuance under supervision ordered after a delinquency finding has been made.

The court noted that in order to be appealable, continuance under supervision orders must constitute final judgments or be the subject of a Supreme Court Rule. A final judgment is one which finally determines the litigation on the merits so that, if it is affirmed, all that remains is to execute the judgement. The court stated that it is difficult to see how an order that is referred to as a "continuance" could be a final judgment. In addition, continuance under supervision orders are entered before the adjudicatory and dispositional phases of the proceeding have occurred. Thus, orders of supervision are clearly not final orders.

The court also found that no Supreme Court Rule allows the appeal of a continuance under supervision. Adult orders of supervision are appealable under Rule 604(b), but that rule by its terms does not apply to juveniles. The only rule which grants any right to an interlocutory appeal in juvenile cases is Rule 662, which applies only to the proceedings that are specifically listed and not to continuances under supervision.

4. The court also stated that whether Supreme Court Rules should be amended to allow appeals of orders granting continuances under supervision is an issue which should be considered by the Supreme Court Rules Committee.

(Defendant was represented by Assistant Defender Christopher Kopacz, Chicago.)

[In re Veronica C., 239 Ill.2d 134, 940 N.E.2d 1 \(2010\)](#)

1. Juvenile delinquency proceedings are comprised of three distinct stages: the findings phase, the adjudicatory phase, and the dispositional phase. The findings phase consists of a trial to determine whether the minor is guilty as charged and should be adjudged delinquent. In a juvenile delinquency case, a finding of guilt and a finding of delinquency are equivalent.

If a finding of delinquency is entered, the matter proceeds to sentencing, which consists of the adjudication and dispositional phases. At the adjudication phase, the trial court determines whether it is in the best interests of the minor and the public to make the minor a ward of the court. At the dispositional phase, the trial court fashions an appropriate sentence to serve the best interests of the minor and the public.

2. The trial court may order a continuance under supervision until such time as the proceeding reaches the adjudicatory stage. An order of continuance under supervision requires that the minor admit the facts supporting the petition and that no objection be raised by the minor, his or her parents, guardian, or legal custodian, the minor's attorney, or the State's Attorney. ([705 ILCS 405/5-615 \(1\), \(2\)](#)).

3. Where the trial court had found the respondent guilty and set the cause for the adjudicatory and dispositional phases, the point at which a continuance of supervision could be ordered had passed. Thus, although the State objected to supervision when asked by the trial court, supervision could not have been granted even had the State consented.

4. Because a party may raise a constitutional challenge to a statute only if it affects him, the minor respondent lacked standing to argue that the separation of powers doctrine and equal protection are violated by [705 ILCS 405/5-615](#), which allows the State to block the trial court from granting a continuance under supervision.

(Defendant was represented by Assistant Defender Steve Wiltgen, Elgin.)

[In re Michael D., 2015 IL App \(1st\) 143181 \(No. 1-14-3181, 3/20/15\)](#)

Except where a Supreme Court rule provides for an interlocutory appeal, the Appellate Court only has jurisdiction to review final judgments. In criminal cases, the final judgment is the sentence. Similarly, in juvenile cases, the final judgment is the dispositional order. The Appellate Court held that an order of continuance under supervision entered after a finding of delinquency in a juvenile case was not a final judgment.

The trial court may terminate juvenile supervision at any time, and may also vacate the finding of delinquency, if warranted by the conduct of the minor and the ends of justice. Under these circumstances, there was no final judgment providing the Appellate Court with jurisdiction.

Defendant's appeal was dismissed for lack of jurisdiction.

(Defendant was represented by Assistant Defender Chris Kopacz, Chicago.)

[In re Rodney S., 402 Ill.App.3d 272, 932 N.E.2d 588 \(4th Dist. 2010\)](#)

1. The Appellate Court rejected the argument that a *per se* conflict of interest exists when counsel for a minor-respondent acts in the dual capacity of defense attorney and guardian *ad litem*. The court acknowledged that out-of-state case authority and articles cited by respondent supported that argument, but adhered to view that no conflict exists because proceedings under the Juvenile Court Act are not adversarial in nature. The welfare and best interests of the minor are paramount and it is counsel's duty to protect those interests even if they do not correspond to the wishes of the minor.

2. The term of probation for a delinquent minor may not exceed five years or until the minor reaches the age of 21, whichever is less. An exception to that rule is where the minor is found guilty of a forcible felony. [705 ILCS 405/5-715\(1\)](#). A forcible felony is defined by the Criminal Code in pertinent part as an "aggravated battery resulting in great bodily harm or permanent disability or disfigurement and any other felony which involves the use or threat of physical force or violence against any other individual." [720 ILCS 5/2-8](#).

The minor-respondent was found guilty of aggravated battery based on contact of an insulting or provoking nature, and was sentenced to an 11-year term of probation. The Appellate Court concluded that the conviction did not qualify as a forcible felony that would authorize an 11-year probation term. The aggravated battery did not qualify as a forcible felony under the residual clause because that category was intended to refer to felonies not otherwise specified in the statute. The statute had previously included all aggravated batteries without qualification within the definition of forcible felonies, but had been amended to limit the types of aggravated battery that could qualify as a forcible felony. The Appellate Court acknowledged that there was a split among the districts on this issue, with the Third District holding that any aggravated battery qualified as a forcible felony, [People v. Jones, 226 Ill.App.3d 1054, 590 N.E.2d 101 \(3d Dist. 1992\)](#), and the First and Second Districts holding that only

the limited category of aggravated battery specified by the statute qualified as a forcible felony. [In re Angelique](#), 389 Ill.App.3d 430, 907 N.E.2d 59 (2d Dist. 2009); [People v. Schmidt](#), 392 Ill.App.3d 689, 924 N.E.2d 998 (1st Dist. 1992). The Fourth District concluded that the decisions of the First and Second Districts were better reasoned.

The court vacated the 11-year probation term as void and remanded for resentencing. (Defendant was represented by Assistant Defender Jacqueline Bullard, Springfield.)

[In re Shatavia S.](#), 403 Ill.App.3d 414, 934 N.E.2d 502, 2010 WL 3330897 (5th Dist. 2010)

Based on her admission, the court placed respondent on supervision for one year, with conditions of community service and restitution. [705 ILCS 405/5-615\(a\)](#) allows a court to enter an order of continuance under supervision for certain offenses upon an admission by the minor and before proceeding to adjudication.

The Appellate Court rejected the State's argument that there was no final judgment from which an appeal could be taken because the case was continued under supervision. The judgment appealed was not an adjudication of delinquency, but the conditions of supervision. Supreme Court Rule 604(b) authorizes an appeal from an order of supervision by a defendant who seeks review of the conditions of supervision.

(Respondent was represented by Assistant Defender Paige Strawn, Mt. Vernon.)

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§33-6(f)(2)

Conditions of and Revocation/Termination of

[In re Thompson](#), 79 Ill.2d 262, 402 N.E.2d 609 (1980) A trial court may revoke minor's probation where the violation occurred prior to the expiration of the period of probation but the hearing and finding of delinquency occurred afterward.

[In re M.P.](#), 297 Ill.App.3d 972, 697 N.E.2d 1153 (1st Dist. 1998) The Juvenile Court Act does not authorize a juvenile probation condition requiring a 16-year-old to remove gang tattoos from his arms. It is not authorized under [705 ILCS 405/5-24\(2\)\(5\)](#), which permits the trial court to require a minor probationer to refrain from direct or indirect contact with specified persons, including members of street gangs. While a trial court has discretion to impose a probation condition that is not expressly authorized by statute, the condition must be reasonably related to the juvenile's rehabilitation. The instant condition was not reasonable. In the absence of any evidence concerning the medical procedure that would be required to remove the tattoos, and in light of cases from other jurisdictions indicating that attempting to remove a tattoo may cause permanent scarring, forcing the minor to have the tattoos removed "may actually hamper" rehabilitation by imposing a "humiliating, not to mention painful, procedure."

[In re J.G.](#), 295 Ill.App.3d 840, 692 N.E.2d 1226 (1st Dist. 1998) Although banishment from a particular area is one of 23 specific conditions statutorily authorized for juvenile probation, the banishment order (that minor stay out of Skokie) was improper where there was no connection with the delinquent acts or the minor's rehabilitation.

[In re P.E.K.](#), 200 Ill.App.3d 249, 558 N.E.2d 763 (4th Dist. 1990) Where the trial court required defendant to pay restitution for damage which he did to a cemetery and also to perform 500 hours of public service at rural cemeteries (including cleaning and repairing tombstones and mowing grass), the public service requirement was a separate condition of probation. Thus, the minor was not required to repair the specific damage which he had caused and was not entitled to credit against restitution for his public service work.

Also, the trial judge erred by failing to set forth a method or time limit of payment, as is required; the cause was remanded for the judge to set the conditions for payment of restitution.

[In re C.D.](#), 198 Ill.App.3d 144, 555 N.E.2d 751 (4th Dist. 1990) Where respondent was nine at the time of the dispositional order, it was error to include a period of detention as a condition of probation even though the detention would have been served after respondent became 10. Ch. 37, ¶805-23(1)(a)(5) permits detention only where the juvenile is at least 10 years of age, and the relevant date for determining age is the date of the dispositional order. [People v. C.T.](#), 137 Ill.App.3d 42, 484 N.E.2d 361 (5th Dist. 1985) (the “catch-all” provision of the “probation” section (Ch. 37, ¶705-3(2)(q)), which requires the minor to “comply with other conditions as may be ordered by the court,” does not allow incarceration as a condition of probation).

[In re Serna](#), 67 Ill.App.3d 406, 385 N.E.2d 87 (1st Dist. 1978) In placing respondent on six months’ supervision, the judge told him to “stay out of trouble,” “listen” to his mother and his probation officer, and follow the rules he would be given. Supervision was later revoked on the basis that respondent violated the terms and conditions of supervision by not attending school. Revocation was reversed. Respondent cannot be found to have violated the “rules” because there was no showing that such rules were ever given to him. Also, the judge’s admonishments to “stay out of trouble” and listen to his mother and probation officer, although good advice, “sweep so broadly that the respondent necessarily was required to guess whether his truancy from school would fall within their scope.”

[In re R.R.](#), 64 Ill.App.3d 818, 381 N.E.2d 1187 (2d Dist. 1978) Order revoking probation after respondent failed to appear on a date set for “a review of” the trial court’s prior ruling that respondent had violated probation was reversed where there was no petition to revoke probation pending when the trial court committed the minor to DOC, where a disposition had already been made on the prior probation violation which provided the basis for the commitment, and where respondent was not given notice of the nature of the proceeding (on the date on which the trial court revoked his probation). Remanded for respondent to be restored to probation under the terms of the June 3 order.

[In re C.T.A.](#), 275 Ill.App.3d 427, 655 N.E.2d 1116 (2d Dist. 1995) The trial court lacked authority to extend respondent’s continuance for six months after the initial 24-month continuance had expired. A continuance under supervision “may not” exceed 24 months. The term “may not” is mandatory, not advisory. Because the State’s petition to revoke the continuance under supervision was filed after the original 24 month continuance had expired, the order revoking the continuance was reversed. An order revoking a probation sentence that had been imposed upon revocation of the continuance under supervision was also reversed.

[People v. G.L.C.](#), 74 Ill.App.3d 411, 393 N.E.2d 113 (4th Dist. 1979) Respondent’s probation was revoked on the grounds that respondent committed disorderly conduct and failed to report to his probation officer on three occasions. But, the State failed to prove, by a preponderance of the evidence, that respondent committed disorderly conduct. Also, the failure to report on only three occasions “is simply not a sufficient ground to revoke probation and to transfer custody of the minor to the Department of Corrections.” Remanded with directions to reinstate probation.

[In re Sturdivant](#), 44 Ill.App.3d 410, 358 N.E.2d 80 (1st Dist. 1976) Juvenile’s admission, which was the basis of probation revocation, was involuntary where it was based on the judge’s unfulfilled promise that defendant would be placed in a UDIS (United Delinquency Intervention Services) program (but, because there were no openings, defendant was committed to the Department of Corrections). Reversed and remanded for the court to either perform the promise or allow defendant to withdraw his admission and plead anew.

[In re R.J.W.](#), 76 Ill.App.3d 159, 394 N.E.2d 1064 (4th Dist. 1979) After finding that respondent had committed the acts charged in the delinquency petition, the trial judge continued the case with respondent placed on supervision pursuant to Ch. 37, ¶704-7(1). The court upheld the finding of delinquency, but reversed the order committing respondent to DOC, a sentence the trial judge imposed after finding that respondent violated a condition of supervision (that he “make payment to the court

clerk to reimburse the county for fees paid to the minor's court appointed attorney") and after considering respondent's two recent prior convictions. The condition was improperly imposed. Without deciding whether reimbursement for attorney's fees as ordered here may ever be properly made a condition of criminal or juvenile probation or other disposition, the court held it was an improper condition of a continuance under Ch. 37, ¶704-7(1). Also, the two convictions were subsequently reversed (one by judgment notwithstanding the verdict and the other by the appellate court). The cause was remanded for a new dispositional hearing because the court was "not assured that the trial judge would have committed respondent if he had known the convictions were reversed and that respondent couldn't be sanctioned for failure to make reimbursement for attorney's fees."

[In re Dexter L., 334 Ill.App.3d 557, 778 N.E.2d 371 \(2d Dist. 2002\)](#) A minor whose probation is revoked may receive any sentence available under [705 ILCS 405/5-710](#) at the time of the initial sentence. Because §5-710 does not authorize the trial court to sentence a juvenile to county jail and authorizes detention only in a juvenile detention home, the trial court erred by sentencing respondent to the county jail.

[In re Rider, 113 Ill.App.3d 1000, 447 N.E.2d 1384 \(4th Dist. 1983\)](#) As part of an order of protective supervision regarding a minor, the trial court ordered the father to complete a drug and alcohol treatment program. The procedure used to determine the father's alleged alcohol problem of the father was improper. The information relied upon by the trial court was obtained during an *in camera* proceeding at which the father was not permitted to be present. "[F]undamental fairness requires that such an order not be entered before the person to be subjected to the order has a reasonable opportunity to present evidence and be heard on the matter."

Cumulative Digest Case Summaries §33-6(f)(2)

[In re Shelby R., 2013 IL 114994 \(No. 114994, 9/19/13\)](#)

Under [705 ILCS 405/5-710\(1\)\(b\)](#), a minor may be committed to the Department of Juvenile Justice only if a term of incarceration is permitted by law for adults who are found guilty of the offense for which the minor was adjudicated delinquent. In addition, [705 ILCS 405/5-710\(7\)](#) limits the term of commitment for a minor to the maximum sentence which an adult could receive for the same act. The court concluded that because an adult cannot be convicted of the offense of unlawful consumption of alcohol by a minor, and therefore cannot be incarcerated for that offense, a minor who is placed on probation for unlawful consumption of alcohol by a minor cannot be committed to the Department of Juvenile Justice upon revocation of her probation.

The court rejected the argument that other provisions of the Juvenile Court Act permit incarceration of minors upon revocation of probation, finding that such provisions concern the pre-adjudication incarceration of minors who are accused of violating court orders. In addition, even if a juvenile could be incarcerated for violating a court order, the record showed that the minor was incarcerated not for violating the probation order, but on the offense for which probation had been imposed - unlawful consumption of alcohol by a minor.

Because the trial court lacked authority to commit the respondent to the Department of Juvenile Justice upon revocation of her probation for unlawful consumption of alcohol, the order committing the minor to the Department of Juvenile Justice was reversed.

(Defendant was represented by Assistant Defender Jacqueline Bullard, Springfield.)

[In re: Austin S., 2015 IL App \(4th\) 140802 \(No. 4-14-0802, 2/9/15\)](#)

Under the Juvenile Act, the court may place a minor who has been adjudicated guilty of an offense in detention for up to 30 days. [705 ILCS 405/5-710\(1\)\(a\)\(v\)](#). The Juvenile Act defines detention as the temporary care of a minor who requires secure custody for his or the community's protection in a facility designed to physically restrict the minor's movements. [705 ILCS 405/5-105\(5\)](#).

Here the trial court ordered, as a condition of defendant's probation, that he successfully complete the Adams County Juvenile Detention Center Treatment Program. The treatment program

is designed to last about 90 days although some participants stay in the program longer. The Appellate Court held that the trial court's order was void since it mandated a period of detention that exceeded 30 days.

[In Christopher P., 2012 IL App \(4th\) 100902](#), the court concluded that time spent in the same treatment program at issue in this case was properly classified as custody for sentence credit purposes. The court found that under the treatment program a minor had a legal duty to submit to state authority, his freedom of movement was restricted by locked doors, he was subject to the same policies and conditions as other detention center residents, including solitary confinement and strip searches, and was completely integrated with the other detention center residents.

Based on **Christopher P.**, the Appellate Court held that the treatment program constituted detention as defined by the Juvenile Act. The treatment program, given its regimented structure, surveillance, and lack of privacy, was no different than any other juvenile detention facility. The trial court's order was thus unauthorized and void since it exceeded 30 days.

(Defendant was represented by Assistant Defender Janieen Terrance, Springfield.)

[In re B.P.D., 2014 IL App \(3d\) 120781 \(No. 3-12-0781, 1/23/14\)](#)

Under [705 ILCS 405/5-720\(4\)](#), upon revocation of probation a minor may receive any sentence that was available at the time of the initial sentence. [705 ILCS 405/5-710\(1\)\(a\)\(v\)](#) authorizes a juvenile sentence of 30 days detention, but requires that the detention be served in a juvenile detention home.

Therefore, a detention sentence ordered upon revocation of juvenile probation must be served in a juvenile detention home. Where the minor was sentenced to five years probation when he was 15, and that probation was revoked when he was 20, the trial court erred by ordering a sentence of five days in the county jail.

Defendant's five-day jail sentence was vacated.

(Defendant was represented by Assistant Defender Jay Wiegman, Ottawa.)

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§33-7

Appellate Concerns

§33-7(a)

Post-Trial, Post-Plea, and Post-Sentencing Motions in Juvenile Court

[In re W.C., 167 Ill.2d 307, 657 N.E.2d 908 \(1995\)](#) 1. Respondent in a delinquency case is not required file a "post-hearing" motion to preserve alleged errors for review. See also, [In re M.Z., 296 Ill.App.3d 669, 695 N.E.2d 587 \(4th Dist. 1998\)](#). While an alleged error is waived if no objection is made during the delinquency proceedings, the written post-trial motion requirement has not been "incorporated" into delinquency appeals.

[In re A.G., 195 Ill.2d 313, 746 N.E.2d 732 \(2001\)](#) Following an admission, defense attorney must file certificate of compliance with Rule 604(d). See also, [In re J.W., 204 Ill.2d 50, 787 N.E.2d 747 \(2003\)](#).

[In re William M., 206 Ill.2d 595, 795 N.E.2d 269 \(2003\)](#) 1. Juvenile must file a motion to withdraw an admission or reconsider the disposition where the adjudication is based on the minor's admission to a delinquency petition. See also, [In re J.L.R., 301 Ill.App.3d 498, 703 N.E.2d 977 \(2d Dist. 1998\)](#) (because Rule 604(d) applies to delinquency proceedings, the admonishment requirements of Rule 605(b) also apply; where the trial court failed to admonish the minor that he could appeal only if he filed an appropriate motion concerning his admission, the cause was remanded for proper admonishments and to allow the minor to file a motion); [In re J.G., 182 Ill.App.3d 234, 537 N.E.2d 1360 \(1st Dist. 1989\)](#).

2. The filing of a post-admission motion is not a jurisdictional requirement for an appeal, however. Thus, an appeal need not necessarily be dismissed merely because the appellant failed to file

an appropriate post-dispositional motion.

3. In adult cases, strict compliance with Supreme Court Rule 604(d) is required. Therefore, the failure to file an appropriate post-plea motion requires dismissal of an appeal and forces defendant to present his claims in post-conviction proceedings. Because it is an open question whether the Post-Conviction Hearing Act applies to juveniles, however, and a juvenile might have no remedy other than a direct appeal, dismissal of the appeal would be “too harsh a sanction.” Instead, where “a juvenile defendant fails to comply with the written motion requirements of Rule 604(d) prior to filing an appeal, the appellate court has no discretion and must remand the cause to the circuit court for strict compliance with Rule 604(d).” See also, [In re B.K., 358 Ill.App.3d 1166, 833 N.E.2d 945 \(5th Dist. 2005\)](#) (because a juvenile cannot file a post-conviction petition if defense counsel fails to file a 604(d) motion, Rule 604 is not applied as strictly in juvenile proceedings as in adult cases).

[In re J.W., 204 Ill.2d 50, 787 N.E.2d 747 \(2003\)](#) Where juvenile, following admission in juvenile court to two counts of aggravated criminal sexual assault, challenged as unconstitutional the condition that he register as a sex offender for the rest of his life and the condition of probation that he neither live nor be physically present in the town where the offenses occurred, 604(d) motion was not necessary because juvenile was attacking both orders as void.

[In re H.G., 322 Ill.App.3d 727, 750 N.E.2d 247 \(1st Dist. 2001\)](#) Relying on [In re W.C.](#), the court held that no post-sentencing motion is necessary to preserve sentencing issues on appeal. But see Supreme Court Rule 605(a)(3), effective October 1, 2001, which now requires admonitions as to necessity of filing motion to reconsider sentence to preserve sentencing issues.

Cumulative Digest Case Summaries §33-7(a)

[In re Gennell C., 2012 IL App \(4th\) 110021 \(No. 4-11-0021, 5/3/12\)](#)

The purpose of a motion to reconsider sentence in a delinquency case is not to conduct a new sentencing hearing, but to review the appropriateness of the sentence imposed and to correct any errors.

The Juvenile Court Act allows the minor or any person interested in the minor to apply to the court for a change in custody of the minor and the appointment of a new custodian or guardian or the restoration of the minor to the custody of the minor’s parents or former guardian or custodian. No custodian or guardian may be removed without his or her consent until given notice and an opportunity to be heard. [705 ILCS 405/5-745\(3\)](#). This provision can apply where the court appoints the Department of Juvenile Justice (DOJJ) as the guardian for the minor.

A motion to reconsider sentence does not include a request for change in custody under §5-745(3).

After the court adjudicated respondent delinquent and sentenced her to an indeterminate term in the DOJJ, respondent filed a motion to reconsider sentence, asserting that the court had committed errors at the sentencing hearing and that the sentence was excessive. It asked that the court reconsider the sentence and did not present any new evidence.

On appeal from the denial of the motion to consider, the respondent asserted that the court erred in denying her motion for a change of sentence under §5-745(3). Because respondent only asked the court to reconsider her sentence, and did not expressly move or apply for a change in custody under § 5-745(3), the circuit court did not err in refusing to re-evaluate respondent’s commitment to the DOJJ.

(Defendant was represented by Assistant Defender Catherine Hart, Springfield.)

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§33-7(b)

Other

[In re W.W., 97 Ill.2d 53, 454 N.E.2d 207 \(1983\)](#) The appellate court erred in assessing State’s Attorney fees for defending an appeal against the respondent-minor. The assessment statute (Ch. 53, ¶8) does not

indicate an intent to allow such assessments against a juvenile, and the purposes and policy of the Juvenile Court Act would not be furthered by such assessments. See, [In re J.M.S., 92 Ill.App.3d 1141, 416 N.E.2d 734 \(4th Dist. 1981\)](#) (Juvenile Court Act does not authorize restitution, court costs, or fees to the State's Attorney).

[People v. Pulido, 69 Ill.2d 393, 372 N.E.2d 822 \(1978\)](#) Supreme Court Rule 609(b), which governs appeal bond, applies to juvenile cases.

[People v. A.L., 169 Ill.App.3d 581, 523 N.E.2d 970 \(1st Dist. 1988\)](#) Judgement allowing State to strike the juvenile petition with leave to reinstate was a final judgment for purposes of appeal because the SOL procedure here “indefinitely prolongs the possibility of prosecution with no anticipated termination.”

Cumulative Digest Case Summaries §33-7(b)

[In re B.C.P., 2013 IL 113908 \(No. 113908, 6/20/13\)](#)

Supreme Court Rule 660(a), governing appeals in delinquent minor cases, incorporates the criminal appeals rules, but only as to final judgments. Supreme Court Rule 662 allows for certain interlocutory appeals in juvenile cases, but an order granting a motion to suppress is not one of them. Therefore, the provision of Supreme Court Rule 604(a)(1) allowing the State to appeal from an order granting a motion to suppress does not apply to juvenile cases under existing appellate rules.

Exercising its rulemaking authority, the Illinois Supreme Court held that Rule 660(a) should be modified to allow the State to appeal from an interlocutory order suppressing evidence in a juvenile delinquency proceeding. Since the adoption of Rule 660(a), the General Assembly has radically altered the Juvenile Court Act to make the juvenile adjudicatory process more criminal in nature. As a consequence, juveniles receive many of the same protections that criminal defendants receive. In light of this shift, the State has the same interests in appealing a suppression order in a juvenile case that it does in a criminal case: obtaining correction of errors that would otherwise be precluded by the double jeopardy clause; avoiding unfairness in allowing errors favoring the State to be corrected while not allowing correction of errors favoring the defense, resulting in distortion of the development of the law; and eliminating frustration of the primary purpose of a trial—to ascertain the truth of the charges.

Given the compelling case for the need for interlocutory review of suppression orders in juvenile cases, the Supreme Court saw no need to defer the matter to the rules committee. Extending the expedited appeal process provided by Supreme Court Rule 660A to State appeals from suppression orders adequately addressed any concern that delays caused by appeals could interfere with the rehabilitation of the minors.

(Respondent was represented by Assistant Defender Gabrielle Green, Ottawa.)

[In re B.C.P., 2012 IL App \(3d\) 100921 \(No. 3-10-0921, 1/23/12\)](#)

In general, the Appellate Court only has jurisdiction to review an appeal from a final judgment, and does not have jurisdiction to review an interlocutory appeal unless jurisdiction is specifically provided by Supreme Court Rule.

Two Supreme Court Rules provide for appeals in juvenile delinquency proceedings: Rule 660(a) and Rule 662. Rule 660(a) provides that “[a]ppeals from final judgments . . . shall be governed by the rules applicable to criminal cases,” except where otherwise specifically provided. Rule 662 provides for interlocutory appeals, but only under very limited circumstances—when a dispositional order has not been entered within 90 days from either an adjudication of wardship or a revocation of probation or conditional discharge.

The State sought to appeal from an order granting a motion to suppress the statement of a minor in a juvenile delinquency proceeding. Neither Rule 660(a) nor Rule 662 authorize an interlocutory appeal from such an order.

The court refused to read Rule 660(a) to incorporate Rule 604(a)(1), which authorizes the State to appeal from a suppression order in a criminal case. While Rule 660(a) incorporates the rules applicable to criminal cases, it does so only in the context of appeals from final judgments. A suppression

order is not a final judgment. Where the language of the rule was clear and unambiguous, the court could not read into Rule 660 exceptions, limitations, and conditions that the drafters did not intend. If the drafters of the rules had intended to allow an interlocutory appeal from a suppression order in a juvenile proceeding, they would have so provided in Rule 662.

The court dismissed the State's appeal for lack of jurisdiction.

(Defendant was represented by Assistant Defender Kerry Bryson, Ottawa.)

[In re C.C., 2015 IL App \(1st\) 142306 \(No. 1-14-2306, 1/6/15\)](#)

Under the extended juvenile jurisdiction statute ([705 ILCS 405/5–810](#)), upon a finding of guilty the trial court must impose a juvenile court sentence and a conditional adult criminal sentence. If the minor successfully completes the juvenile sentence, the adult sentence is vacated.

If the minor commits a new offense, the adult sentence must be implemented. In addition, if the juvenile violates the conditions of the juvenile sentence in some way other than by committing a new offense, the trial court has discretion to revoke the juvenile sentence and implement the adult sentence.

Defendant was committed to Department of Juvenile Justice until he was 21, with a conditional adult sentence of 45 years in the Department of Corrections. He appealed, arguing that the 45-year-sentence violated the Eighth Amendment and the proportionate penalties provision of the Illinois Constitution.

The court concluded that because the State had not filed a petition to revoke the stay on the adult sentence or accused the minor of violating the conditions of his juvenile sentence, the minor had not suffered any injury due to the adult sentence. Therefore, he lacked standing to challenge that sentence.

(Defendant was represented by Assistant Defender Heidi Lambros, Chicago.)

[In re Henry B., 2015 IL App \(1st\) 142416 \(No. 1-14-2416, 1/26/15\)](#)

In general, the Appellate Court has jurisdiction to review final judgements. However, it lacks jurisdiction to review an interlocutory order unless jurisdiction is afforded by Supreme Court rule. Two rules authorize appeals in juvenile cases. Rule 660(a) provides for appeals from final judgements, and Rule 662 allows an appeal from an interlocutory order where no dispositional order has been entered in 90 days.

The court concluded that where a continuance under supervision is ordered under [705 ILCS 405/5–615](#) without a finding of guilt or a judgement order, neither Rule 660(a) nor Rule 662 authorizes an appeal. Because the Appellate Court lacked jurisdiction, the appeal was dismissed.

[In re Joshua B., 406 Ill.App.3d 513, 941 N.E.2d 1032 \(1st Dist. 2011\)](#)

The Appellate Court found no error where the trial court did not advise a minor respondent in a delinquency proceeding that he had a right to testify, or verify that he knowingly and voluntarily waived that right, based on law applicable to adult criminal proceedings. See **WITNESSES**, §57-5.

The Appellate Court rejected the argument that, because juvenile offenders have no right to file post-conviction petitions, they should be provided greater protections than adult criminal defendants. The same concerns regarding interference with the attorney-client relationship that weigh against adoption of a requirement that a trial judge advise a criminal defendant of his right to testify also weigh against such a requirement for a juvenile offender, who is required to be represented by counsel.

The court further directed that if the minor respondent communicates to appellate counsel that his trial counsel did not advise him of his right to testify, appellate counsel should include that assertion in the appellant's brief even though that claim has no support in the record, noting that the matter is outside of the record and that he is unable to raise the matter before the trial court. This would allow the State to respond to the claim, and provide the Appellate Court with a basis to determine whether to consider the claim.

(Defendant was represented by Assistant Defender Brian Carroll, Chicago.)

[In re Michael D., 2015 IL 119178 \(Docket No. 119178, 12/17/15\)](#)

1. The Illinois Constitution confers jurisdiction on the Appellate Court to review final judgments, and authorizes the Supreme Court to provide by rule for appeals from other than final judgements.

Supreme Court Rule 660(a) provides that final judgments in delinquency proceedings may be appealed under the rules for criminal appeals.

2. [705 ILCS 405/5-615\(1\)](#) provides that for certain offenses, juvenile courts may order continuances under supervision. Until 2014, a continuance under supervision could be ordered only where the court had not made a finding of delinquency, the minor admitted or stipulated to facts supporting the petition, and there was no objection from the minor, the minor's attorney, the State's Attorney, or the minor's parent or legal custodian. Effective January 1, 2014, [705 ILCS 405/5-615\(1\)\(b\)](#) authorizes juvenile courts to enter continuances under supervision after a finding of delinquency has been made if the court finds that the minor is not likely to commit further crimes, the minor and the public would be best served if the minor were not to receive a criminal record, and in the interests of justice an order of continuance under supervision is more appropriate than a sentence.

3. Case law holds that a continuance under supervision that is ordered before a delinquency finding is made may not be appealed. The court concluded that the same rule applies to a continuance under supervision ordered after a delinquency finding has been made.

The court noted that in order to be appealable, continuance under supervision orders must constitute final judgments or be the subject of a Supreme Court Rule. A final judgment is one which finally determines the litigation on the merits so that, if it is affirmed, all that remains is to execute the judgment. The court stated that it is difficult to see how an order that is referred to as a "continuance" could be a final judgment. In addition, continuance under supervision orders are entered before the adjudicatory and dispositional phases of the proceeding have occurred. Thus, orders of supervision are clearly not final orders.

The court also found that no Supreme Court Rule allows the appeal of a continuance under supervision. Adult orders of supervision are appealable under Rule 604(b), but that rule by its terms does not apply to juveniles. The only rule which grants any right to an interlocutory appeal in juvenile cases is Rule 662, which applies only to the proceedings that are specifically listed and not to continuances under supervision.

4. The court also stated that whether Supreme Court Rules should be amended to allow appeals of orders granting continuances under supervision is an issue which should be considered by the Supreme Court Rules Committee.

(Defendant was represented by Assistant Defender Christopher Kopacz, Chicago.)

[In re Michael D., 2015 IL App \(1st\) 143181 \(No. 1-14-3181, 3/20/15\)](#)

Except where a Supreme Court rule provides for an interlocutory appeal, the Appellate Court only has jurisdiction to review final judgments. In criminal cases, the final judgment is the sentence. Similarly, in juvenile cases, the final judgment is the dispositional order. The Appellate Court held that an order of continuance under supervision entered after a finding of delinquency in a juvenile case was not a final judgment.

The trial court may terminate juvenile supervision at any time, and may also vacate the finding of delinquency, if warranted by the conduct of the minor and the ends of justice. Under these circumstances, there was no final judgment providing the Appellate Court with jurisdiction.

Defendant's appeal was dismissed for lack of jurisdiction.

(Defendant was represented by Assistant Defender Chris Kopacz, Chicago.)

[In re Raheem M., 2013 IL App \(4th\) 130585 \(No. 4-13-0585, 12/10/13\)](#)

1. A court may commit a delinquent minor to the Department of Juvenile Justice, if it finds that "commitment to the Department of Juvenile Justice is the least restrictive alternative based on evidence that efforts were made to locate less restrictive alternatives to secure confinement and the reasons why efforts were unsuccessful in locating a less restrictive alternative to secure confinement." [705 ILCS 405/5-750\(1\)\(b\)](#).

The trial court did not comply with this requirement prior to committing respondent to the DOJJ. The court had no evidence before it of efforts made to locate less restrictive alternatives and did not state the reasons why such efforts were unsuccessful. Merely reciting such findings in a form order is insufficient to comply with the statute. "Actual efforts must be made, evidence of those efforts must be presented to the court, and, if those efforts prove unsuccessful, an explanation must be given why the

efforts were unsuccessful.” References in the social history report to available community resources if the respondent were sentenced to probation did not suffice where those resources were never even contacted with regard to respondent.

2. Sentencing errors can be reviewed for plain error where the evidence was closely balanced or the error was sufficiently grave that the defendant was deprived of a fair sentencing hearing. Because the requirements of [705 ILCS 405/5-750\(1\)\(b\)](#) ensure that trial courts treat DOJJ sentences as a last resort, failure to comply with those requirements is such a serious error that the appellate court may excuse forfeiture based on the second prong of plain-error analysis. The appellate court was mindful that respondent had no other means of relief from this error given the state of the law regarding whether juveniles are entitled to seek relief under the Post-Conviction Hearing Act.

3. The appellate court was also troubled by the trial court’s *sua sponte* decision to detain respondent after trial and prior to sentencing. The court made this decision without much information regarding respondent other than that he had been expelled from school as a result of the case before it. This was respondent’s first case in juvenile court. He lived with his mother and stepfather, with whom he had a good relationship. He was convicted of aggravated battery of a teacher based on evidence that he threw a chair at a student during a brawl involving several students in the school cafeteria. The chair made incidental contact with a teacher and no serious injuries resulted. As a consequence of the court’s decision to detain, respondent missed his scheduled GED examination.

4. A trial court may not consider a factor inherent in the charged offense in aggravation at sentencing.

Respondent committed what normally would be classified as a simple battery but which became an aggravated battery due to the victim’s status and the location of the incident. The trial judge improperly allowed these same factors to impact its sentencing judgment as aggravating factors.

5. The appellate court also criticized the emphasis that the trial court placed on the criminal history of respondent’s biological father, which was exhaustively covered in the social history investigative report. Respondent should not be punished for the crimes of his father. These crimes had no relevance especially because respondent had no contact with his father, who was incarcerated out of state.

The appellate court vacated respondent’s commitment to the DOJJ and remanded for a hearing in compliance with [705 ILCS 405/5-750\(1\)\(b\)](#).

Steigmann, J., dissented. While the sentencing hearing was “lacking,” based on his “understanding of this record,” he disagreed that application of the plain-error doctrine was appropriate. (Defendant was represented by Supervisor Arden Lang, Springfield.)

[In re Shatavia S., 403 Ill.App.3d 414, 934 N.E.2d 502, 2010 WL 3330897 \(5th Dist. 2010\)](#)

Based on her admission, the court placed respondent on supervision for one year, with conditions of community service and restitution. [705 ILCS 405/5-615\(a\)](#) allows a court to enter an order of continuance under supervision for certain offenses upon an admission by the minor and before proceeding to adjudication.

The Appellate Court rejected the State’s argument that there was no final judgment from which an appeal could be taken because the case was continued under supervision. The judgment appealed was not an adjudication of delinquency, but the conditions of supervision. Supreme Court Rule 604(b) authorizes an appeal from an order of supervision by a defendant who seeks review of the conditions of supervision.

(Respondent was represented by Assistant Defender Paige Strawn, Mt. Vernon.)

[People v. Henderson, 2011 IL App \(1st\) 090923 \(No. 1-09-0923, 11/17/11\)](#)

With certain limited exceptions, a minor under 17 years of age at the time of an alleged offense may not be prosecuted under the criminal laws of Illinois. [705 ILCS 405/5-120](#). One such exception is where a minor who at the time of the offense was at least 15 years of age and who is charged with an offense under §401 of the Controlled Substances Act while on a public way within 1000 feet of the real property comprising a school. [705 ILCS 405/5-130\(2\)\(a\)](#). A criminal conviction of such a minor where a violation of §401 is committed within 1000 feet of a school, but not on a public way, is void because the court lacks the power to impose a criminal conviction where the Juvenile Act mandates a juvenile

adjudication.

Defendant pleaded guilty to a violation of §401 committed within 1000 feet of a school, but that offense does not require as an element that it be committed on a public way. It could not be determined whether defendant's indictment included a public-way allegation because the indictment was not included in the record on appeal. Construing any doubts arising from the missing indictment against the defendant, defendant did not demonstrate that his conviction was void.

(Defendant was represented by Assistant Defender Pamela Rubeo, Chicago.)

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§33-8

Freedom of the Press and Privacy Issues

[Oklahoma Publishing Co. v. District Court](#), 480 U.S. 308, 97 S.Ct. 1045, 51 L.Ed.2d 355 (1977) State court order which enjoined newspaper from publishing the name or picture of a minor involved in a pending juvenile proceeding was an unconstitutional infringement upon the freedom of the press.

[Smith v. Daily Mail](#), 443 U.S. 97, 99 S.Ct. 2667, 61 L.Ed.2d 399 (1979) The First and Fourteenth Amendments are violated by a state statute creating a crime for a newspaper to publish, without prior consent from the court, the name of any youth charged as a juvenile offender.

[In re St. Louis](#), 67 Ill.2d 43, 364 N.E.2d 61 (1977) The circuit court possessed and properly exercised inherent equitable authority to order the expungement of a minor's record where the minor had been photographed, fingerprinted, and released without being charged.

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§33-9

Miscellaneous Matters

[People v. Chambers](#), 66 Ill.2d 36, 360 N.E.2d 55 (1976) The juvenile curfew statute (Ch. 23, ¶2371) is constitutional.

[People v. Christopherson](#), 231 Ill.2d 449, 899 N.E.2d 257 (2008) [235 ILCS 5/6-16\(a\)\(iii\)](#), which provides that no person shall give alcoholic liquor "to another person under the age of 21 years, except in the performance of religious ceremony or service," applies to minors who supply alcohol to other minors.

[People v. R.G.](#), 131 Ill.2d 328, 546 N.E.2d 533 (1989) The validity of the Minor Requiring Authoritative Intervention provisions of the Juvenile Court Act (Ch. 37, ¶803-1 et. seq.) was upheld against the contentions that such provisions violate substantive and procedural due process and equal protection.

[People ex rel. Davis v. Vazquez](#), 92 Ill.2d 132, 441 N.E.2d 54 (1982) The trial judge had the authority to order the State's Attorney to file a neglect petition in the minor's behalf. Such an order is not an impermissible exercise by the judicial branch of powers belonging exclusively to the executive branch of government.

[In re M.T.](#), 221 Ill.2d 517, 852 N.E.2d 792 (2006) The indecent solicitation of an adult statute applies to a juvenile perpetrator.

[In re Abdullah](#), 85 Ill.2d 300, 423 N.E.2d 915 (1981) The court affirmed the finding that defendant was an unfit father under the Adoption Act (Ch. 40, ¶1501 et seq.) on the basis of "depravity" (¶1501(d)). Three factors established the defendant's depravity: (1) he had been convicted of murder, (2) the murder

victim was the child's mother, and (3) he was sentenced to an extended term, indicating that the murder was accompanied by exceptionally brutal and heinous behavior demonstrating wanton cruelty.

[People v. Rasmussen, 147 Ill.App.3d 656, 498 N.E.2d 285 \(4th Dist. 1986\)](#) Rasmussen was found in contempt of court for violating a protective order in a juvenile case (that he have no contact with an alleged delinquent minor), which was issued under Ch. 37, ¶705-5, which permits such order against any person "who is before the court on the original or supplemental petition." While Rasmussen was present in the courtroom when the order was issued, he had not been named as a respondent in the case and had not been served with a summons. Rasmussen "was not 'before the court' simply by virtue of his physical presence in the courtroom," for the language "before the court" refers only to a person named as a respondent.

Also, an "adult who is properly a respondent in a juvenile case might waive summons by an appearance before the court." However, "fundamental fairness requires" that a court order which affects the right of a person to associate with others "not be entered before the person to be subjected to the order has a reasonable opportunity to present evidence and be heard on the matter." Here, Rasmussen did not have a meaningful opportunity to object to the protective order.

Cumulative Digest Case Summaries §33-9

[In re S.B., 2012 IL 112204 \(No. 112204, 10/4/12\)](#)

1. As a matter of first impression, the Supreme Court held that [725 ILCS 5/104-25\(a\)](#), which provides an "innocence only" proceeding where a criminal defendant is unfit to stand trial and there is no substantial likelihood that fitness will be restored within one year, is incorporated into the Juvenile Court Act despite the fact that the Act does not refer to an "innocence only" proceeding where a juvenile is unfit. [705 ILCS 405/5-101\(3\)](#) provides that in delinquency cases, minors have the procedural rights of adults in criminal cases unless rights are specifically precluded by laws which enhance the protection of minors. Because the fitness procedures in the Code of Criminal Procedure are intended to safeguard the due process rights of criminal defendants, and the Juvenile Court Act does not provide greater protections for unfit minors, §104-25(a) applies in delinquency proceedings.

2. The court also concluded that a minor who is found "not not guilty" in a discharge hearing is required to register under the Sex Offender Registration Act. Section 2 of the Act, in its relevant parts, defines a "sex offender" as a person who is charged with a sex offense and "is the subject of a finding not resulting in an acquittal" at a discharge hearing under [725 ILCS 5/104-25\(a\)](#), or who is adjudicated delinquent based on an act which would constitute one of several criminal offenses if committed by an adult. Because §104-25(a) is incorporated into the Juvenile Court Act, and a person who is found "not not guilty" is not acquitted, registration is required under the plain language of the Registration Act.

3. The court noted, however, that only juveniles who are found delinquent are allowed to petition to terminate their sex offender registration upon showing that the minor poses no risk to the community. ([730 ILCS 150/3-5\(c\),\(d\)](#)). Because a literal interpretation of the relevant statutes would result in an unfit minor who has been found "not not guilty" being unable to petition to terminate registration, and thus having fewer rights than juveniles who were actually adjudicated delinquent, the court concluded that the legislature could not have intended to exclude juveniles who were found "not not guilty" from seeking termination of the sex offender registration. The court noted that it has authority to read into statutes language omitted by oversight, and elected to correct the legislature's oversight by allowing juveniles who are found "not not guilty" to seek termination of the sex offender registration requirement under the same conditions as minors adjudicated delinquent for sex offenses.

The court also found that the legislature made a similar oversight with respect to the limitations that are contained in the Sex Offender Community Notification Law ([730 ILCS 152/121](#)) related to the dissemination of sex offender registration information with respect to adjudicated delinquents. It held that §121 of that Act should be read to include juveniles found "not not guilty" following a discharge hearing.

[In re Michael D., 2015 IL 119178 \(Docket No. 119178, 12/17/15\)](#)

1. The Illinois Constitution confers jurisdiction on the Appellate Court to review final judgments,

and authorizes the Supreme Court to provide by rule for appeals from other than final judgements. Supreme Court Rule 660(a) provides that final judgements in delinquency proceedings may be appealed under the rules for criminal appeals.

2. [705 ILCS 405/5-615\(1\)](#) provides that for certain offenses, juvenile courts may order continuances under supervision. Until 2014, a continuance under supervision could be ordered only where the court had not made a finding of delinquency, the minor admitted or stipulated to facts supporting the petition, and there was no objection from the minor, the minor's attorney, the State's Attorney, or the minor's parent or legal custodian. Effective January 1, 2014, [705 ILCS 405/5-615\(1\)\(b\)](#) authorizes juvenile courts to enter continuances under supervision after a finding of delinquency has been made if the court finds that the minor is not likely to commit further crimes, the minor and the public would be best served if the minor were not to receive a criminal record, and in the interests of justice an order of continuance under supervision is more appropriate than a sentence.

3. Case law holds that a continuance under supervision that is ordered before a delinquency finding is made may not be appealed. The court concluded that the same rule applies to a continuance under supervision ordered after a delinquency finding has been made.

The court noted that in order to be appealable, continuance under supervision orders must constitute final judgments or be the subject of a Supreme Court Rule. A final judgment is one which finally determines the litigation on the merits so that, if it is affirmed, all that remains is to execute the judgement. The court stated that it is difficult to see how an order that is referred to as a "continuance" could be a final judgment. In addition, continuance under supervision orders are entered before the adjudicatory and dispositional phases of the proceeding have occurred. Thus, orders of supervision are clearly not final orders.

The court also found that no Supreme Court Rule allows the appeal of a continuance under supervision. Adult orders of supervision are appealable under Rule 604(b), but that rule by its terms does not apply to juveniles. The only rule which grants any right to an interlocutory appeal in juvenile cases is Rule 662, which applies only to the proceedings that are specifically listed and not to continuances under supervision.

4. The court also stated that whether Supreme Court Rules should be amended to allow appeals of orders granting continuances under supervision is an issue which should be considered by the Supreme Court Rules Committee.

(Defendant was represented by Assistant Defender Christopher Kopacz, Chicago.)

[In re Samantha V., 234 Ill.2d 359, 917 N.E.2d 487 \(2009\)](#)

1. The court reiterated that the "one-act, one-crime" rule applies in juvenile proceedings.

A charging document which fails to differentiate between separate acts which could arguably provide the basis for separate convictions is viewed as having charged the same conduct under different theories of liability. Because the petition did not differentiate between separate acts of the minor, and at trial the State failed to elicit any testimony or make any argument based on separate conduct, adjudications of delinquency for aggravated battery causing great bodily harm and aggravated battery on a public way were deemed to have been based on the same conduct. Thus, the "one-act, one-crime" doctrine was violated.

2. Where multiple convictions or adjudications are entered in violation of the "one-act, one-crime" doctrine, the respondent should be sentenced only for the most serious offense. Generally, the most serious offense is the one for which the legislature authorized the greater sentence. If the sentences are identical, the more serious offense is the one carrying the more culpable mental state. Where identical punishments are imposed and the same mental state is involved for both offenses, the cause should be remanded for the trial court to determine which offense is more serious.

3. In order to preserve a claim of error for review, a minor must object at trial. However, minors are not required to file post-adjudication motions. (See also **WAIVER – PLAIN ERROR – HARMLESS ERROR**, §§56-1(a), 56-2(b)(6)(a).)

[People v. Fiveash, 2015 IL 117669 \(No. 117669, 9/24/15\)](#)

1. [705 ILCS 405/5-120](#) provides that except as otherwise authorized, "no [person under the age of 21] . . . who was under 17 years of age at the time of the alleged offense may be prosecuted" as an

adult. The Supreme Court rejected defendant's argument that §5-120 bars the adult prosecution of a person over the age of 21 for offenses which he committed at age 14 or 15.

The court concluded that §5-120 was intended to prevent adult court prosecution of a person who is under the age of 21, and therefore subject to juvenile court authority, for offenses committed before the age of 17. Because defendant was not under the age of 21 at the time he was prosecuted, he does not come within the terms of §5-120 even though the prosecution concerned offenses allegedly committed at ages 14 and 15.

The court noted that accepting the defense argument would prevent any prosecution of defendant for alleged sex offenses against a minor, and would create an absurd result by contradicting the legislature's express intent to extend the statute of limitations for such offenses to 10 years after the victim reaches the age of 18.

2. The court also noted that the charges were brought within a few days after authorities learned of the incident, which was after defendant had turned 21. Because Illinois courts do not issue advisory opinions, the court expressed no opinion concerning the possibility that a prosecutor might intentionally delay filing charges until a defendant turned 21 in order to ensure that the prosecution would occur in adult court and that a longer sentence would be available.

[People v. Richardson, 2015 IL 118255 \(No. 118255, 5/21/15\)](#)

The right to equal protection guarantees that similarly situated individuals will be treated in a similar manner unless the State can demonstrate an appropriate reason to treat them differently. When a legislative classification does not affect a fundamental right or discriminate against a suspect class, courts apply a rational basis scrutiny and consider whether the classification bears a rational relationship to a legitimate governmental purpose.

The State charged defendant, who was 17 years old at the time of the offenses, as an adult with criminal sexual assault and criminal sexual abuse. At the time of the offenses, the Juvenile Court Act only applied to minors under 17 years of age. The Act was subsequently amended to apply to minors under the age of 18. The amendment included a savings clause that made the changes in the statute applicable to offenses that occurred on or after the effective date of the amendment. [705 ILCS 405/5-120](#).

Defendant argued that the savings clause violated equal protection because he was similarly situated to 17-year-olds who committed offenses on or after the amendment's effective date, and there was no rational basis to treat him differently.

The Court rejected defendant's argument. It held that the legislative classification in the savings clause was rationally related to the legislature's goal of including 17-year-olds within the jurisdiction of the Juvenile Court Act. By limiting the amendment to offenses committed on or after the effective date, both defendants and courts are on notice as to whether the Act will apply. The savings clause also ensures that cases already in progress would not have to restart in juvenile court and defendants could not manipulate or delay proceedings to take advantage of the amendment.

The Court reversed the trial court's judgment declaring the savings clause unconstitutional as applied to defendant and remanded the cause for further proceedings.

(Defendant was represented by Assistant Defender Sherry Silvern, Elgin.)

[In re S.B., 408 Ill.App.3d 516, 945 N.E.2d 102 \(3d Dist. 2011\)](#)

The Sex Offender Registration Act provides that a person who is charged with a sex offense, found unlikely to be fit to stand trial within one year, and not "acquitted" at a discharge hearing is required to register as a sex offender. ([730 ILCS 150/2\(A\)\(1\)\(d\)](#)). [Section 150/2\(A\)\(5\)](#) provides that a juvenile is required to register as a sex offender only if he is adjudicated delinquent for an act which would constitute an act which would require an adult to register. The court concluded that the plain language of the statute showed that the legislature intended that only juveniles who are adjudicated delinquent are required to register.

Thus, a juvenile who is charged with a sex offense, found unlikely to be fit to stand trial within one year, and found "not not guilty" at a discharge hearing is not required to register. The court stated that an absurd result would occur if such juveniles were required to register, because under [730 ILCS 150/3-5](#) they would be unable to petition the circuit court to have the sex offender registration terminated, although juveniles adjudicated delinquent can do so.

(Defendant was represented by Assistant Deputy Defender Verlin Mainz, Ottawa.)

In re Maurice D., 2015 IL App (4th) 130323 (No. 4-13-0323, 5/29/15)

Reiterating Illinois Supreme Court precedent, the Appellate Court rejected arguments that the Eighth Amendment and the proportionate penalties clause are violated where a minor is prosecuted for an imprisonable misdemeanor offense based on engaging in “consensual” sexual activity with a close-in-age minor. The court concluded that because a petition for adjudication of wardship is neither criminal in nature nor a direct action by the State to inflict punishment, the Eight Amendment and the proportionate penalties clause do not apply.

The court also concluded that substantive due process is not violated because such prosecutions are rationally related to the legitimate state purpose of protecting 13 to 16-year-olds from premature sexual experiences.

The court noted, however, that the Illinois Juvenile Justice Commission recently recommended that juveniles be removed from the sex-offender registry and that Illinois stop imposing categorical registration requirements upon juveniles.

(Respondent was represented by Assistant Defender Janieen Terrance, Springfield.)

In re Vincent K., 2013 IL App (1st) 112915 (No. 1-11-2915, 12/12/13)

1. The Appellate Court reiterated precedent that minors who are adjudicated delinquent do not have a right to relief under the Post-Conviction Hearing Act. **In re R.R.**, 75 Ill.App. 3d 494, 394 N.E.2d 75 (2nd Dist. 1979); **In re A.W.H.**, 95 Ill.App 3d 1106, 420 N.E.2d 1041 (5th Dist. 1981). The court acknowledged that amendments to the Juvenile Court Act enacted in 1999 shifted the focus of the Act from the overriding goal of rehabilitation to protection of the public and holding juveniles accountable for violating the law. However, the court rejected the argument that juvenile proceedings are now akin to criminal proceedings and that the Post-Conviction Hearing Act should therefore apply. In the course of its holding, the court noted that the Post-Conviction Hearing Act requires that a petitioner have a “conviction” and be “imprisoned in the penitentiary,” neither of which apply to delinquents.

2. The court rejected the argument that equal protection would be violated if post-conviction procedures are not afforded to persons who are adjudicated delinquent under the extended juvenile jurisdiction statute ([705 ILCS 405/5-810](#)). To be adjudicated delinquent under EJJ, the trial court must find probable cause to believe that a minor is at least 13 years old and has committed an offense which would be a felony if committed by an adult. A minor who is adjudicated under EJJ receives both a juvenile sentence and an adult sentence. The adult sentence takes effect only if the minor violates the terms of the juvenile sentence.

The court concluded that because persons adjudicated delinquent under the EJJ statute are not similarly situated to adults who are imprisoned after being convicted of a crime, the failure to afford post-conviction relief to EJJ minors does not create an equal protection violation. The court noted that unlike an adult offender, an EJJ minor does not have a criminal “conviction” even if his adult sentence becomes effective.

3. The court rejected the argument that post-conviction procedures should be afforded to minors adjudicated delinquent because such persons have no collateral remedy by which to challenge “fundamental unfairness.” The court stated that the relationship between courts and minors subject to the Juvenile Court Act is that of *parens patrie*, and that courts therefore have a duty to intervene in juvenile cases where substantial injustice occurs.

People v. Jardon, 393 Ill.App.3d 725, 913 N.E.2d 171 (1st Dist. 2009)

1. In order to impose an adult sentence on a minor who was prosecuted as an adult but convicted only of an offense for which adult prosecution is not mandatory, the State must request adult sentencing by a written motion filed within 10 days after the verdict is returned. ([705 ILCS 405/5-130\(1\)\(c\)\(ii\)](#)). As a matter of plain error, juvenile sentencing was required where the State filed its request for criminal sentencing more than 30 days after the verdict was returned. The court found that the 10-day requirement is mandatory rather than directory, and that an adult sentence imposed pursuant to an untimely request is void rather than merely voidable.

2. In addition, a minor who is convicted in an adult prosecution solely for offenses which are not

subject to mandatory adult prosecution is regarded as a delinquent minor, and does not have a criminal conviction.

(Defendant was represented by Assistant Defender Pamela Rubeo, Chicago.)

People v. Pacheco, 2013 IL App (4th) 110409 (No. 4-11-0409, 6/24/13)

1. In **Roper v. Simmons**, 543 U.S. 551 (2005), the Supreme Court held that the Eighth Amendment bars capital punishment for juvenile offenders. In **Graham v. Florida**, 560 U.S. 48 (2010), the court held that a life sentence without the possibility of parole violates the Eighth Amendment when imposed on juvenile offenders for crimes other than homicide. In **Miller v. Alabama**, 567 U.S. ___, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), the court concluded that the Eighth Amendment prohibits a sentencing scheme which mandates a life sentence without the possibility of parole for juvenile offenders, even those convicted of homicide.

The court concluded that under the reasoning of **Roper**, **Graham** and **Miller**, neither the Eighth Amendment nor the proportionate penalties clause of the Illinois Constitution are violated by the Illinois statute mandating the transfer of juveniles who are at least 15 and who are charged with first degree murder (705 ILCS 405/5-130(1)(a)(i)), the automatic imposition of an adult sentence on a juvenile who is subject to the automatic transfer statute, or the application of truth-in-sentencing provisions to minors who are convicted of murder by accountability. The court concluded that the Supreme Court cases concerned only two sentences, death and life without the possibility of parole. The decisions do not require that legislatures and courts treat youths and adults differently in every respect and at every step of the criminal process.

Similarly, the court concluded that due process is not violated by the automatic transfer statute, although the trial court is not required to make an individualized determination whether a minor should be transferred and subjected to adult sentencing. The court acknowledged that automatic transfer of minors of a certain age to adult court may not be good policy, but held that only the legislative branch can determine whether a policy that meets constitutional requirements should be changed.

2. In dissent, Justice Appleton found that the mandatory transfer of 15 and 16-year-olds to adult court violates **Miller v. Alabama** because the trial court is not permitted to make an individualized determination whether a particular minor should be transferred to adult court.

(Defendant was represented by Assistant Defender Jacqueline Bullard, Springfield.)

People v. Rich, 2011 IL App (2d) 101237 (No. 2-10-1237, 11/3/11)

The State filed a criminal complaint charging defendant, who was 20 years old, with two counts of aggravated criminal sexual assault occurring when defendant was between 12 and 14 years old. Three months later, while defendant was still 20, he was charged by indictment with the same offenses.

When defendant turned 21, the State filed a superseding indictment charging the same offenses. The trial court granted a motion to dismiss the indictment, finding that because defendant was at most 14 when the offenses were committed, he could be prosecuted only under the Juvenile Court Act. Under **In re Luis R.**, 388 Ill.App.3d 730, 924 N.E.2d 990 (2d Dist. 2009), delinquency proceedings may not be commenced against an adult regardless of his or her age at the time of the offense.

The Appellate Court affirmed the dismissal of the indictment.

1. First, under 720 ILCS 5/6-1, a criminal conviction cannot be entered for an offense which occurred when the defendant was under the age of 13. Thus, the trial court properly dismissed an indictment which alleged that defendant committed aggravated criminal sexual assault when he was 12 years old.

2. Alternatively, the trial court properly dismissed the indictment concerning offenses allegedly committed when the defendant was 13 or 14. The Juvenile Court Act (705 ILCS 405/5-120) governs crimes committed by minors who were under the age of 17 at the time of the offenses. Unless one of four exceptions apply, acts committed by a minor are not subject to criminal prosecution.

The four exceptions include: (1) violations of traffic, boating, or fishing and game laws; (2) offenses subject to automatic transfer provisions which mandate adult prosecution for specified offenses where the minor was at least 15 years old at the time of the offense; (3) where the State successfully moves to transfer the offense to adult criminal court; and (4) where the State successfully moves to extend juvenile court jurisdiction, which permits the imposition of a sentence under the Code of

Corrections in addition to a sentence under the Juvenile Court Act, with the adult sentence stayed so long as offender complies with the juvenile sentence.

[Because the alleged offenses occurred when the defendant was 13 or 14](#), the automatic transfer exception did not apply. Although aggravated criminal sexual assault is subject to automatic transfer when the defendant was 15 at the time of the offenses, the court concluded that the General Assembly did not intend to apply the automatic transfer provisions to crimes which were committed by minors under the age of 15, even if the defendant has become an adult by the time the charges are initiated.

3. Furthermore, neither the third nor fourth exceptions applied where the State failed to file timely motions to either transfer the cause to adult court or to extend juvenile jurisdiction. The court stressed that the State would not have been left without a remedy had it acted properly. The State first filed criminal charges some six months before defendant turned 21; had it instituted juvenile proceedings instead, it would have had ample time before defendant turned 21 to seek either transfer to adult court or extended juvenile jurisdiction. Under either scenario, the proceedings could have continued after the defendant reached 21. “[W]hile the State is correct that it was not *required* to file against defendant an initial petition or a motion to transfer or extend jurisdiction under the Act, its failure to do so precludes prosecution after defendant’s twenty-first birthday.”

4. The court declined to decide whether a defendant who has turned 21 can be charged with an automatic transfer offense which was committed when the defendant was 15 or older.

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