

Summer 1998

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### Recommended Citation

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# EXTENDED JURISDICTION JUVENILE PROSECUTION: A NEW APPROACH TO THE PROBLEM OF JUVENILE DELINQUENCY IN ILLINOIS

MARY E. SPRING\*

## INTRODUCTION

Fifteen-year-old Laura<sup>1</sup> sat dazed in the police station. "But I didn't kill anybody!" she pleaded. It made no difference,<sup>2</sup> they told her. Earlier in the evening she went out with her eighteen-year-old boyfriend, Paul, and his friend Jack. Paul and Jack, low on money and bored with just "hanging out," decided to hold up the convenience store down the block. Laura had never done anything like that before. She was a good girl, "the girl next door." Paul convinced her, though, that they were only going to take a few dollars and no one would get hurt. However, during the hold-up, Jack mistook Paul for a guard and shot him. Laura dragged Paul to the car and rushed him to the hospital; he later died. Laura could not believe it when a lawyer told her she would be tried as an adult for Paul's murder. Under Illinois law, no other option exists.<sup>3</sup>

Across the room sat Frank. His thirteen-year-old frame slouched casually in the chair. "Can I go now?"<sup>4</sup> he demanded. Around the same time Laura was rushing Paul to the hospital, Frank was beating a rival gang member in the head with a baseball bat. Frank then stole his jacket. Frank had been here

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1. The hypotheticals in this Comment are loosely based on actual children whom Edward Humes discusses in his recent book. EDWARD HUMES, *NO MATTER HOW LOUD I SHOUT* 10-15 (1996). While the author has changed names and genders of the juveniles and the specifics of the crimes, Hume's work has provided the inspiration for these scenarios. *Id.* This book provides a jolting look at those who are struggling to make a failing juvenile system work. *Id.*

2. See *People v. Graham*, 477 N.E.2d 1342, 1347 (Ill. App. Ct. 1985) (holding that the felony murder rule applies when a co-felon kills another co-felon during the commission of the felony).

3. See 705 ILCS 405/5-4(6)(a) (West 1996) (requiring minors aged 15 and older whom the state alleges committed murder to face prosecution as adults).

4. See HUMES, *supra* note 1, at 14-15 (quoting the real-life child on whom Frank is based as saying, "Can I go home now?").

before; he knew the routine. He also knew there was little the authorities would do to him. They might place him in detention for a year or two, but then he would be back out. "Can I go now or what?" he asked in a mildly annoyed voice.

Juvenile delinquency<sup>5</sup> is a problem that has faced countless generations,<sup>6</sup> but recently it has taken on increasingly violent and epidemic proportions.<sup>7</sup> A tragic reminder of this violence occurred this past March when a thirteen-year-old boy and his eleven-year-old friend sprayed their Jonesboro, Arkansas, schoolyard with gunfire, killing four children, one teacher and wounding ten others.<sup>8</sup> A more common symptom of the problem is illustrated by the recent school locker-room assault conducted by three fifteen-year-olds upon another fifteen-year-old in a suburb of Chicago.<sup>9</sup>

In this centennial year of the Illinois juvenile justice system,<sup>10</sup> it is appropriate and necessary to review how the system treats children like Frank and Laura. Frank represents many of the juvenile system's toughest "clientele."<sup>11</sup> He has little incentive to

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5. Black's defines juvenile delinquency as: "Participation in illegal behavior by a minor who falls under a statutory age limit." BLACK'S LAW DICTIONARY 867 (6th ed. 1990). Illinois utilizes the term "delinquent minor" to describe a child whom the juvenile court finds delinquent. 705 ILCS 405/5-3(1) (West 1996). A delinquent minor is statutorily defined as "any minor who prior to his seventeenth birthday has violated or attempted to violate, regardless of where the act occurred, any federal or state law or municipal ordinance." *Id.* Like Illinois, seven additional states statutorily set the maximum age for juvenile court jurisdiction at 16. HOWARD N. SNYDER & MELISSA SICKMUND, JUVENILE OFFENDERS AND VICTIMS: A NATIONAL REPORT 73 (1995) (listing Georgia, Louisiana, Massachusetts, Michigan, Missouri, South Carolina, and Texas with Illinois). Connecticut, New York, and North Carolina set the maximum age at 15. *Id.* The remaining 39 states and the District of Columbia set the maximum age at 17. *Id.* Most states, however, allow a juvenile court to retain jurisdiction over a minor adjudicated delinquent until age 20 for purposes of appropriately sanctioning the individual. *Id.* Massachusetts and Texas take an even firmer approach, allowing jurisdiction over a delinquent minor to be extended for "disposition purposes" until ages 36 and 56, respectively. *Id.*

6. See Simon Dinitz, *Foreward* to CLEMENS BARTOLLAS, JUVENILE DELINQUENCY vii, (1985) (noting the observations of Socrates and Aristotle decrying the disobedient youths of their day).

7. *An Epidemic of Juvenile Crime*, CHI. TRIB., July 29, 1994, at 18. Teens are responsible for almost 20% of violent crimes. Richard Lacayo, *Teen Crime: Congress Wants to Crack Down on Juvenile Offenders, But Is Throwing Teens Into Adult Courts - And Adult Prisons - the Best Way?*, TIME, July 21, 1997, at 26. Between 1985 and 1995, the juvenile arrest rate for violent crimes increased 67%. *Id.*

8. Corky Siemaszko, *Arkansas Suspect Mom: Tried to Scare 'Em*, N.Y. DAILY NEWS, Apr. 6, 1998, at 18.

9. Karen Cullotta Krause, *Prospect High Players Now Face Felony Charges*, CHI. TRIB., Apr. 30, 1998, at 1 Sec.2.

10. See ILLINOIS JUVENILE COURT ACT, 1899 Ill. Laws 131 (creating the juvenile court system in Illinois).

11. See HUMES, *supra* note 1, at 15 for a description of children like Frank

reform: the juvenile justice system is a revolving door to him.<sup>12</sup> His arrest and juvenile court adjudication will have little effect on the juvenile crime rate. Frank is lost.

Laura is also lost. She will face many years, even life, in prison because Illinois law allows no other alternative.<sup>13</sup> The state transfers many other children like her to criminal court based only on their age and offense.<sup>14</sup> The juvenile justice system cannot rehabilitate many of them: they are too far gone.<sup>15</sup> However, others, like Laura, are still very amenable to treatment, if only the state offered it to them.<sup>16</sup> Locking these children up and "throwing away the key" is not going to solve the problem of juvenile delinquency.<sup>17</sup>

What may solve the problem is a new hybrid form of jurisdiction called extended jurisdiction juvenile prosecution (EJJP). Under EJJP, a child offender receives both a juvenile disposition and an adult criminal sentence that is stayed pending the child's successful completion of the juvenile rehabilitative program.<sup>18</sup> The Illinois General Assembly has recently passed a version of EJJP.<sup>19</sup> This Comment proposes an alternative version that provides more flexibility and broader utilization of EJJP in Illinois.

Part I of this Comment discusses juvenile delinquency and American society's efforts to solve the problem. Part II discusses the problems inherent in the modern juvenile court system, the problems associated with transferring children into the adult criminal court system, and the effectiveness of EJJP. Finally, Part III proposes model legislation for the utilization of EJJP in Illinois.

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and the inability of the juvenile court system to effectively deal with them.

12. See Rita Kramer, *The Juvenile Justice System Is Too Lenient*, in YOUTH VIOLENCE 212, 215 (Bruce Leone et al. eds., 1992) (discussing the lack of consequences for juvenile offenders and the high recidivism rate among juvenile offenders on parole).

13. See 705 ILCS 405/5-4(6)(a) (West 1996) (requiring the state to prosecute children aged 15 and older as adults under these circumstances).

14. See SNYDER & SICKMUND, *supra* note 5, at 154 (reporting an increased use of statutorily imposed waiver based on the offense and the child's age).

15. See Kramer, *supra* note 12, at 215 (discussing the difficulty of rehabilitating hardened offenders).

16. See HUMES, *supra* note 1, at 13-15 (describing a child similar to the hypothetical character Laura who could benefit from treatment in the juvenile system but is barred due to transfer provisions).

17. See ROBERT C. ROWLAND, UNITED STATES POLICY ON REDUCING JUVENILE CRIME 80 (1996) (explaining that preventing children living in poverty from becoming criminals is one approach to decreasing juvenile crime).

18. See, e.g., MINN. STAT. § 260.126 (1997) (providing dual sentencing under EJJP).

19. Ray Long & Mike Cetera, *Philip Warns of Legislature Running Late*, CHI. TRIB., May 19, 1998, at B2.

## I. THE PROBLEM OF JUVENILE DELINQUENCY AND AMERICA'S TREATMENT OF CHILD OFFENDERS

Society's perception of children at any given time has greatly influenced how it has treated juvenile justice.<sup>20</sup> Section A examines the pre-twentieth century American treatment of child offenders. Section B discusses the birth of the juvenile court and its impact on delinquency. Section C examines the recent utilization of transfer statutes to prosecute child offenders as adults. Section D discusses the development and implementation of EJJP.

### A. Pre-Twentieth Century Treatment of Juvenile Offenders In America

Early American law adopted the English common law concerning a minor's criminal liability.<sup>21</sup> Children up to age seven were irrebuttably presumed incapable of forming criminal intent and therefore were immune from prosecution.<sup>22</sup> Children between the ages of seven and fourteen enjoyed a rebuttable presumption of immunity and could only face prosecution if uncontroverted evidence demonstrated that they possessed criminal intent.<sup>23</sup> Society held children aged fourteen and older criminally liable for their transgressions.<sup>24</sup>

Colonial America<sup>25</sup> embraced an uncomplicated view of juvenile justice.<sup>26</sup> Society, looking through the lens of strict Protestant religious doctrine,<sup>27</sup> believed man's inherent sinfulness caused juvenile delinquency.<sup>28</sup> Thus, a favored treatment of juvenile delinquency was "beating the devil" out of the offender.<sup>29</sup> The family assumed the primary responsibility for meting out this

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20. See CLEMENS BARTOLLAS, *JUVENILE DELINQUENCY 18-20* (1985) (explaining the interrelationship between societal responses to juvenile delinquency and the way society viewed children and the root causes of delinquency).

21. MARGARET C. JASPER, *JUVENILE JUSTICE AND CHILDREN'S LAW* 3 (1994).

22. *Id.*

23. *Id.*

24. *Id.*

25. For purposes of this Comment, the Colonial American period extends from the mid-seventeenth century to the early nineteenth century (from the early Puritan settlements to the beginning of the Industrial Revolution).

26. BARTOLLAS, *supra* note 20, at 6.

27. CLEMENS BARTOLLAS ET AL., *JUVENILE VICTIMIZATION: THE INSTITUTIONAL PARADOX* 4 (1976) [hereinafter *JUVENILE VICTIMIZATION*]. Calvinist beliefs focused on the degenerated condition of man and the influence of Satan over him. *Id.*

28. *Id.*

29. *Id.* This is a reflection of the Biblical admonition of spare the rod and spoil the child. *Proverbs* 13:34.

discipline,<sup>30</sup> although the church and the community shared responsibility for overseeing the family and for intervening in serious cases.<sup>31</sup> When family-imposed discipline failed to cure the wayward child, the transgressor faced a myriad of harsh punishments inflicted by the community.<sup>32</sup> These children could expect to be publicly whipped, dunked, placed in stocks, banished, or even executed<sup>33</sup> if society held them to be criminally liable.<sup>34</sup> This uncomplicated juvenile justice system persisted until attitudes and social conditions began to change with the onset of industrialization in the 1820's.<sup>35</sup>

With the Industrial Revolution came a need for child labor that influenced the way society dealt with delinquency.<sup>36</sup> The state, rather than the parent, became the first line of discipline for delinquent children.<sup>37</sup> Institutions known as "houses of refuge" opened as places for punishment where detained children could be inculcated with middle-class values.<sup>38</sup> Harsh conditions prevailed as children suffered adult-style punishments<sup>39</sup> and strict regimens.<sup>40</sup> Upon release, these children went to work as apprentices.<sup>41</sup> The refuge house, not surprisingly, was unsuccessful in stemming the growing tide of juvenile delinquency.<sup>42</sup>

During this period reformers offered an alternative to the refuge house.<sup>43</sup> Believing delinquency resulted from a deficient environment rather than a deficient moral character, these reformers created child-saving societies.<sup>44</sup> These societies sent

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30. JASPER, *supra* note 21, at 3. Early law made parental discipline of children mandatory. *Id.* A parent's failure to discipline effectively often meant removal of the child to a "better" family. *Id.* at 4.

31. *Id.* at 3.

32. BARTOLLAS, *supra* note 20, at 6.

33. *Id.* Connecticut law in 1650 went so far as to embrace the Old Testament law in Exodus providing for capital punishment for children who cursed or hit their mother or father. CLIFFORD E. SIMONSEN, *JUVENILE JUSTICE IN AMERICA* 16 (3d ed. 1991) (citing the Code of 1650, Being a Compilation of the Earliest Laws and Orders of the General Court of Connecticut). Mercifully, this punishment only extended to children aged 16 and older. *Id.*

34. SIMONSEN, *supra* note 33, at 16.

35. *Id.* at 18.

36. *Id.*

37. BARTOLLAS, *supra* note 20, at 6.

38. SIMONSEN, *supra* note 33, at 19.

39. *Id.* Punishments included ball and chain, bondage, solitary confinement, and whipping. *JUVENILE VICTIMIZATION*, *supra* note 27, at 5.

40. *JUVENILE VICTIMIZATION*, *supra* note 27, at 5.

41. SIMONSEN, *supra* note 33, at 19.

42. *Id.* at 20.

43. *Id.* at 22.

44. *Id.*

delinquent children out West and apprenticed them to farmers.<sup>45</sup> This system successfully reduced subsequent delinquency among participants, but was nonetheless barraged with strong opposition.<sup>46</sup> Refuge houses in the labor-hungry East did not appreciate being deprived of a valuable source of child labor.<sup>47</sup>

State governments began administering reform schools by the mid-nineteenth century.<sup>48</sup> These detention institutions were concerned with providing formal training to delinquent children.<sup>49</sup> However, the poor economy after the Civil War forced these institutions to cut services and operate as little more than warehouses.<sup>50</sup>

Reformers continued reacting to the exploitation of children during the Industrial Revolution.<sup>51</sup> Led by feminist groups such as the Hull House and the Chicago Women's Club, these reformers<sup>52</sup> paved the way for the establishment of the juvenile court system.<sup>53</sup>

### B. The Juvenile Court System

On April 21, 1899, Illinois established the first official juvenile court.<sup>54</sup> The Juvenile Court Act provided that all children under sixteen years old whom the state alleged to be delinquent would face adjudication<sup>55</sup> in a system separate from the adult criminal court.<sup>56</sup> With the emphasis on "the child's need and not the deed,"

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45. *Id.* These apprenticeships differed from refuge house apprenticeships in that no binding agreements took place in these situations. *Id.*

46. *Id.*

47. SIMONSEN, *supra* note 33, at 22.

48. *Id.*

49. *Id.*

50. *Id.*

51. Bradner C. Riggs, *The Juvenile Court In Illinois*, 5 JUV. JUST. COMM. NEWSL. 1 (May 1993).

52. One of these reformers, and also founder of the Hull House, is Jane Addams. SIMONSEN, *supra* note 33, at 27. She believed that the exploitive nature of the Industrial Revolution environment turned children (who were inherently good) into delinquents. *Id.* at 27-28.

53. Riggs, *supra* note 51, at 1.

54. ILLINOIS JUVENILE COURT ACT, 1899 Ill. Laws 131; Riggs, *supra* note 51, at 1. The Illinois Juvenile Court Act provided that at least one Cook County circuit judge would hear all cases arising under the ambit of the Act. ILLINOIS JUVENILE COURT ACT, 1899 Ill. Laws 131 § 3. It also provided that the state must confine children separately from adults, and proscribed jailing children younger than 12 years old. *Id.* §§ 9, 11. The Act authorized the new juvenile court to appoint probation officers to investigate, represent the interest of children before the court, inform the judge as needed, and supervise those children on probation. *Id.* § 12.

55. Adjudication refers to a juvenile court's decision as to whether a youth is delinquent. SIMONSEN, *supra* note 33, at 32. The trial process a child experiences in juvenile court is the adjudicatory hearing. *Id.*

56. ILLINOIS JUVENILE COURT ACT 1899 Ill. Laws 131 § 3. The Act defined delinquency as including any child under age 16 "who violates any law of this State or any city or village ordinance." *Id.* § 1.

the new court had no concern for issues of guilt or innocence, nor did the court seek to punish wrongdoing.<sup>57</sup> The promise of this revolutionary system to cure the problem of delinquency through treatment failed to fully materialize, however.<sup>58</sup> As juvenile crime continued to increase, the juvenile system began to focus more on control than on rehabilitation.<sup>59</sup>

Children in the system did not initially receive the legal rights to due process that adults possessed in the criminal system.<sup>60</sup> In the juvenile system, proceedings were civil in nature; hence, authorities did not believe the process due criminal

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57. SIMONSEN, *supra* note 33, at 230. This paternalistic juvenile system sprung from the doctrine of *parens patriae*, wherein the state assumed the role of a caring parent charged with protecting delinquent children. *Id.* at 14, 228, 230. *Parens patriae* translates into "parent of the country." BLACK'S LAW DICTIONARY 1114 (6th ed. 1990). Originating from English common law with the king's right to assume the role of guardian over those with legal disabilities, the state assumed responsibility to take care of individuals, such as children, who are unable to provide for their own care. *Id.* The purpose clause of the Juvenile Court Act states: "That the care, custody, and discipline of a child shall approximate as nearly as may be that which should be given by its parents . . ." ILLINOIS JUVENILE COURT ACT 1899 Ill. Laws 131 § 21.

58. SIMONSEN, *supra* note 33, at 30.

59. *Id.* at 34-36. Juvenile courts differ widely in their organization and their operation. *Id.* at 229. In Illinois, once police take a child into custody, the police either give the child a station adjustment (they send the child home or informally refer the child to a community social service), release the child to his or her parents pending the filing of a petition, or hold the child in custody pending the filing of a petition. 705 ILCS 405/5-6 (West 1996). If the state does not file a petition, the child returns home and may receive a referral to a community social service. 705 ILCS 405/5-12 (West 1996). If the state files a petition, the state either releases the child to his or her parents pending an adjudicatory hearing or detains the child pending the adjudicatory hearing. 705 ILCS 405/5-8 (West 1996). If the state detains the child, the juvenile court holds a detention hearing to determine whether probable cause exists. 705 ILCS 405/5-10(1), 10(2) (West 1996). This hearing results in either dismissal of the petition, release of the child from custody pending the adjudicatory hearing, or continuance of the child in custody pending the adjudicatory hearing due to a finding of immediate and urgent necessity. *Id.* At the adjudicatory hearing, the juvenile court judge may find the child delinquent or may find the child not delinquent and dismiss the petition. 705 ILCS 405/5-20 (West 1996). The judge also has the option of ordering a continuance under supervision. *Id.* If the judge finds that the child is delinquent, the judge holds a dispositional hearing. *Id.* The judge can order probation, residential placement, treatment for drug addiction, commitment to the Illinois Department of Children and Family Services (DCFS), detention for 30 days, emancipation, or commitment to the Illinois Department of Corrections (DOC). 705 ILCS 405/5-23 (West 1996).

60. SIMONSEN, *supra* note 33, at 256. For example, children did not have the Fifth Amendment right against self-incrimination, the Sixth Amendment right to confront one's accusers, the right to a speedy trial, the right to counsel, and the right to trial by jury. *Kent v. United States*, 383 U.S. 541, 555 (1966); SIMONSEN, *supra* note 33, at 256-57.



proceedings was necessary.<sup>61</sup> The juvenile court and the police had a significant degree of discretion in dealing with delinquents.<sup>62</sup> Unfortunately, while the system forced children to face adjudication without due process, it was simultaneously failing to deliver its promise of rehabilitation.<sup>63</sup>

The United States Supreme Court reacted to this dilemma with a series of important decisions that altered the nature of the juvenile court.<sup>64</sup> Through these decisions children in the system gained the right to notice,<sup>65</sup> the right to effective assistance of counsel,<sup>66</sup> the right to confront and cross-examine accusers,<sup>67</sup> the right against self-incrimination,<sup>68</sup> the right to proof beyond a reasonable doubt before adjudication of delinquency<sup>69</sup> and the right against double jeopardy.<sup>70</sup> However, children did not gain the right to trial by jury.<sup>71</sup> Although coming short of providing children in the juvenile court the full panoply of procedural rights guaranteed to criminal defendants, these decisions effectively transformed the nature of the juvenile court from civil to quasi-criminal.<sup>72</sup>

### C. Treating Children as Adults – Transfer Into the Criminal Court

During the 1970's, society's attitude towards juvenile

61. SIMONSEN, *supra* note 33, at 256-57.

62. *Id.* at 35. For example, the state could have subjected a juvenile to confinement in institutions and detention facilities for an indefinite period of time until that juvenile reached majority and escaped the jurisdiction of the juvenile court. Frank A. Orlando & Gary L. Crippen, *The Rights of Children and the Juvenile Court*, in *JUV. JUST. & PUB. POL'Y* 89, 90 (Ira M. Schwartz ed., 1992).

63. Orlando & Crippen, *supra* note 62, at 91. Justice Abe Fortas commented: "The child receive[s] the worst of both worlds . . . he receive[s] neither the protection accorded to adults nor the solicitous care and regenerative treatment postulated for children." *Kent v. United States*, 383 U.S. 541, 555 (1966).

64. See SIMONSEN, *supra* note 33, at 256-63 (discussing the impact of recent Supreme Court decisions on the nature of the juvenile court).

65. *In re Gault*, 387 U.S. 1, 33 (1967). To comply with due process, the state must give notice that details the charges and must provide this notice well in advance of court proceedings so the minor has a reasonable time to prepare a defense. *Id.*

66. *Id.* at 36. When a child faces a legal proceeding in which he or she is in danger of losing his or her liberty, the child has a right to the "guiding hand of counsel." *Id.*

67. *Id.* at 56.

68. *Id.* at 47. The Court expressed surprise at the thought that Fifth Amendment protection against self-incrimination could be available to "hardened criminals" but not to minors. *Gault*, 387 U.S. at 47.

69. *In re Winship*, 397 U.S. 358, 368 (1970).

70. *Breed v. Jones*, 421 U.S. 519, 541 (1975).

71. *McKeiver v. Pennsylvania*, 403 U.S. 528, 535-36 (1971).

72. SIMONSEN, *supra* note 33, at 257.

delinquency began changing.<sup>73</sup> While at the inception of the juvenile court system children were involved in relatively minor infractions such as shoplifting and burglary, children in the 1970's began committing violent crimes with increasing frequency.<sup>74</sup> In response, states began changing the focus of their efforts in dealing with youth crime from rehabilitation to punishment.<sup>75</sup> One manifestation of this "get tough" approach was the creation in every state of some mechanism for transferring some minors into the criminal court to face adult criminal prosecution.<sup>76</sup> This Section examines the methods available in Illinois for transferring children into the criminal court.

### 1. Discretionary Transfer

Discretionary transfer is widely used as a method for transferring children into adult court.<sup>77</sup> This transfer provision

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73. Mark Curriden, *Hard Times for Bad Kids*, 81 ABA J. 66, 67 (Feb. 1995).

74. Penelope Lemov, *The Assault on Juvenile Justice*, GOVERNING MAG., Dec. 1994, at 26-27. The violent crime arrest rate per 100,000 youth was:

1976 - 150.0  
 1977 - 149.5  
 1978 - 166.5  
 1979 - 160.4  
 1980 - 162.5  
 1981 - 156.5  
 1982 - 150.4  
 1983 - 139.1  
 1984 - 137.3  
 1985 - 137.9  
 1986 - 141.8  
 1987 - 137.9  
 1988 - 142.7  
 1989 - 164.2  
 1990 - 184.8  
 1991 - 195.0  
 1992 - 197.6

*Id.* at 28 (citing U.S. Dept. of Justice statistics).

75. *Id.* at 27.

76. Marcy Rasmussen Podkopacz & Barry C. Feld, *Criminology: The End of the Line: An Empirical Study of Judicial Waiver*, 86 J. CRIM. L. 449, 450 (1996). Some transfer provisions have been around for quite a while. SNYDER & SICKMUND, *supra* note 5, at 85. Arkansas, California, Colorado, Florida, Georgia, Kentucky, North Carolina, Ohio, Oregon, and Tennessee have had transfer mechanisms in place since 1920. *Id.* Delaware, Indiana, Maryland, Michigan, Nevada, New Hampshire, New Mexico, Rhode Island, South Carolina, and Utah have allowed transfer since the 1940's. *Id.*

77. ILLINOIS JUD. CONF. STUDY COMM. ON JUV. JUST., JUVENILE LAW BENCHMARK 98 (1992)[hereinafter ILLINOIS JUD. CONF.]. As of 1995, all but two states (Nebraska and New York) had discretionary transfer provisions. SNYDER & SICKMUND, *supra* note 5, at 85. Illinois adopted discretionary transfer in 1973. Lisa M. Wortman, *Does Transfer to Adult Court Work? Recidivism and Juveniles Tried as Adults*, JUV. JUST. COMM. NEWSL., Sept. 1995, at 1, 2.

grants the juvenile court discretion to transfer jurisdiction over a child to criminal court.<sup>78</sup> In making a transfer decision, the juvenile court must first consider several factors, including the chance of rehabilitating the child and the threat to society posed by the child.<sup>79</sup>

In Illinois, the state's attorney may move for discretionary transfer if a child at least thirteen years old is alleged to have committed any crime.<sup>80</sup> In deciding whether to transfer the child into criminal court to face prosecution as an adult, the juvenile court must consider whether probable cause exists, whether the alleged act involved premeditation and aggression, whether the child's age and previous history warrant transfer, whether adequate juvenile facilities exist for treating this child, whether public safety and the child's best interests dictate that the child needs to be detained past the age of minority, whether the minor possessed a deadly weapon during the commission of the alleged offense and whether the offense alleged is a felony under Section 5 of the Cannabis Control Act<sup>81</sup> committed on or near school property.<sup>82</sup> Although the juvenile court must consider each of these factors,<sup>83</sup> it may weigh each factor differently<sup>84</sup> and may grant transfer even if some factors do not weigh against the child.<sup>85</sup>

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78. Barry C. Feld, *Criminalizing the Juvenile Court: A Research Agenda for the 1990's*, in JUVENILE JUSTICE AND PUBLIC POLICY 59, 66 (Ira M. Schwartz ed., 1992).

79. *Id.* The Supreme Court enumerated these factors in *Kent*: (1) the seriousness of the offense/public safety considerations; (2) the aggressiveness or premeditation of the offense; (3) whether the offense was against persons or property; (4) the merit of the case; (5) whether the child allegedly had adult accomplices charged with the crime; (6) the maturity of the child; (7) the child's previous history; and (8) public safety factors and the likelihood of successful rehabilitation of the child. *Kent v. United States*, 383 U.S. 541, 566-67 (1966).

80. 705 ILCS 405/5-4(3)(a) (West 1996). Prosecutorial waiver is another method which 13 states utilize. Podkopacz & Feld, *supra* note 76, at 450. In this method, the prosecutor alone chooses between juvenile court adjudication and criminal court prosecution when both forums share concurrent jurisdiction. *Id.* at 450 & n.4. Illinois abolished prosecutorial waiver in 1973 in response to the Supreme Court's decision in *Gault*. Wortman, *supra* note 77, at 2.

81. The Cannabis Control Act provides: "It is unlawful for any person knowingly to manufacture, deliver, or possess with intent to deliver, or manufacture, cannabis." 720 ILCS 550/5 (West 1996). Cannabis is the scientific term for what is also known as marijuana. BLACK'S LAW DICTIONARY 206 (6th ed. 1990).

82. 705 ILCS 405/5-4(3)(b) (West 1996). These criteria roughly correspond with the criteria which the United States Supreme Court set forth for states to follow in making transfer determinations. *Kent*, 383 U.S. at 566-67; *People v. Clark*, 518 N.E.2d 138, 141 (Ill. 1987).

83. *Clark*, 518 N.E.2d at 143.

84. *People v. Newell*, 481 N.E.2d 1238, 1242 (Ill. App. Ct. 1985).

85. *People v. Williamson*, 475 N.E.2d 938, 941 (Ill. App. Ct. 1985).

## 2. Automatic Transfer

Automatic transfer is the statutorily imposed exclusion of certain children from juvenile court jurisdiction.<sup>86</sup> All cases arising under these statutes must be filed in criminal court.<sup>87</sup> Some states have automatic transfer statutes that operate by lowering the age at which a child charged with an offense can be excluded from juvenile court jurisdiction.<sup>88</sup> Other states statutorily waive jurisdiction for children who have a juvenile or criminal history of prior felonies.<sup>89</sup> More states, however, statutorily waive jurisdiction for minors who have committed violent offenses.<sup>90</sup> These statutes complete the shifting of society's focus from the child's *need* back to his or her *deed*: no matter the child's circumstances or the situation involved, the decision to subject the child to adult criminal prosecution is made solely on the nature of the alleged offense.<sup>91</sup>

In Illinois, there are four categories of children who face automatic transfer into criminal court.<sup>92</sup> These include: (1) a child fifteen years old or older<sup>93</sup> whom the state alleges committed "first degree murder, aggravated criminal sexual assault, armed robbery . . . with a firearm, aggravated vehicular highjacking . . . with a firearm," or certain weapons offenses while on school grounds;<sup>94</sup> (2)

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86. ILLINOIS JUD. CONF., *supra* note 77, at 96. Legislative waiver began across the country in the 1970's. SNYDER & SICKMUND, *supra* note 5, at 85. As of 1995, half of all the states have enacted legislative waiver provisions. *Id.* Illinois first adopted legislative waiver in 1982 in response to an increase in juvenile crime in the latter part of the 1970's. Wortman, *supra* note 77, at 2. Some states have "reverse" transfer mechanisms: children who are subject to criminal court prosecution due to legislative waiver provisions can be transferred back to juvenile court jurisdiction. SNYDER & SICKMUND, *supra* note 5, at 85.

87. *See, e.g.*, ILLINOIS JUD. CONF., *supra* note 77, at 96 (stating that under Illinois law, all charges that fall under the ambit of automatic transfer statutes must be filed in the criminal court).

88. Joseph F. Yeckel, Note, *Violent Juvenile Offenders: Rethinking Federal Intervention on Juvenile Justice*, 51 WASH. U. J. URB. & CONTEMP. L. 331, 336 n.30 (1997).

89. *Id.*

90. *Id.* Typically, these violent offenses include murder, rape, assault, and robbery. *Id.*

91. *See* SIMONSEN, *supra* note 33, at 230 (using the phrase "child's need . . . child's deed"); Feld, *supra* note 78, at 50.

92. ILLINOIS JUD. CONF., *supra* note 77, at 96-98.

93. The court determines the child's age for purposes of jurisdiction as his or her age at the time of the alleged offense. 705 ILCS 405/5-4(6)(a) (West 1996).

94. 705 ILCS 405/5-4(6)(a) (West 1996). This statute describes school grounds as anywhere "in the building or on the grounds of any elementary or secondary school, community college, college or university." *Id.* These school grounds weapons offenses include: selling, manufacturing, buying, possessing, or carrying any "bludgeon, black-jack, slung-shot [sic], sand-club, sand-bag, metal knuckles, throwing star, or any . . . switchblade knife . . . or a ballistic

a child fifteen years old or older whom the state alleges committed certain drug-related offenses on or near school or public housing agency property;<sup>95</sup> (3) any child fifteen years old or older whom the state alleges escaped from a penal institution or violated bail bond, when the court had previously transferred that child to criminal court due to discretionary transfer, voluntary transfer,<sup>96</sup> or the two above-mentioned automatic transfer provisions;<sup>97</sup> and (4) any child thirteen years old or older whom the state alleges committed first degree murder while committing criminal sexual assault, aggravated criminal sexual assault, or aggravated kidnapping.<sup>98</sup>

### 3. Hybrid Transfer Provisions

In addition to discretionary and automatic transfer, Illinois has a hybrid transfer provision known as presumptive transfer.<sup>99</sup> The state's attorney may seek presumptive transfer of any child fifteen years old or older whom the state alleges committed a Class X felony (except armed violence), "aggravated discharge of a firearm," and certain armed violence offenses.<sup>100</sup> The juvenile court then holds a hearing to determine if probable cause exists.<sup>101</sup> A finding of probable cause creates a rebuttable presumption that the juvenile court should transfer jurisdiction of the child to the criminal court.<sup>102</sup> In deciding whether this presumption in favor of transfer is rebutted, the juvenile court considers a set of factors similar to the factors used in making discretionary transfer decisions.<sup>103</sup>

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knife." 720 ILCS 5/24-1(1) (West 1996). These offenses also include: carrying a tear gas gun, bomb, or "any object containing noxious liquid gas or substance." 720 ILCS 5/24-1(3) (West 1996). In addition, these offenses include: carrying or possessing "any pistol, revolver, stun gun or taser or other firearm" in a vehicle or concealed on himself or herself. 720 ILCS 5/24-1(4) (West 1996). Finally, these offenses also include: carrying or personally possessing "any pistol, revolver, stun gun or taser or other firearm" on public property. 720 ILCS 5/24-1(10) (West 1996).

95. 705 ILCS 405/5-4(7)(a) (West 1996). These drug offense include knowingly manufacturing, delivering, or possessing with the intent to deliver peyote, barbituric acid, amphetamine, methamphetamine, LSD, pentazocine, morphine, cocaine, heroin, methaqualone, or PCP. 720 ILCS 570/401 (West 1996).

96. 705 ILCS 405/5-4(5) (West 1996). A minor aged 13 or older can move for transfer to criminal court before juvenile court adjudicatory hearings have begun. *Id.*

97. 705 ILCS 405/5-4(8)(a) (West 1996).

98. 705 ILCS 405/5-4(9)(a) (West 1996).

99. Wortman, *supra* note 77, at 2.

100. 705 ILCS 405/5-4(3.3)(a) (West 1996).

101. *Id.*

102. *Id.*

103. *Id.* at (b). These factors include: (1) the seriousness and circumstances of the alleged offense; (2) the child's age; (3) the child's level of criminal sophistication; (4) the chances rehabilitation in the juvenile system will be

Concerns over gang activity motivated the Illinois General Assembly to create another hybrid transfer provision, mandatory transfer.<sup>104</sup> Mandatory transfer, which only operates on children fifteen years old or older, is invoked when the state's attorney files a motion alleging either: (1) the child committed a forcible felony in promotion of an illegal gang-related activity and has a previous felony delinquency adjudication; or (2) the child committed a felony in promotion of an illegal gang-related activity and has a previous forcible felony delinquency adjudication.<sup>105</sup> The juvenile court then decides only if probable cause exists.<sup>106</sup> If the juvenile court finds probable cause, it must transfer jurisdiction of the child to the criminal court.<sup>107</sup>

As children have begun committing more and more acts of violence,<sup>108</sup> transfer of jurisdiction has become a favored method of dealing with child offenders.<sup>109</sup> Indeed, transfer has proven to be very popular with the public.<sup>110</sup> The slogan "If you're old enough to do the crime, you're old enough to do the time," captures today's sentiment.<sup>111</sup> Politicians have not failed to take notice.<sup>112</sup> Presently, Congress is considering a bill to financially coerce states to prosecute more children as adults,<sup>113</sup> and Illinois has several

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successful before the child leaves its jurisdiction; (5) the child's delinquency record; (6) the presence of aggression or premeditation in the offense alleged; and (7) whether the juvenile system has the resources necessary for rehabilitating the child. *Id.*

104. *Illinois v. P.H.*, 582 N.E.2d 700, 710 (Ill. 1991).

105. 705 ILCS 405/5-4(3.1), (3.2) (West 1996).

106. *Id.*

107. 705 ILCS 405/5-4(3.1), (3.2) (West 1996).

108. SNYDER & SICKMUND, *supra* note 5, at 104. Between 1988 and 1991 the national arrest rate of children whom the state alleged committed violent crimes (murder, manslaughter, rape, robbery, and aggravated assault) increased 38%. *Id.* Between 1983 and 1992, the number of children arrested for weapons violations increased 117%, the number of children arrested for murder increased 128%, the number of children arrested for aggravated assault increased 95%, and the number of children arrested for assault increased 106%. *Id.* at 108.

109. *Id.* at 154. Discretionary transfer (judicial waiver) of jurisdiction alone has increased 68% from 1988 (7000 cases) to 1992 (11,700 cases). *Id.*

110. Poll results from 1996 show that 75% of Americans are in favor of prosecuting juveniles as adults. ROWLAND, *supra* note 17, at 43-44. Even Senator Carol Moseley-Braun (D-Ill.), a noted champion of liberal causes, has registered her support for transferring certain juveniles into the criminal court system. *Id.* at 44.

111. Lemov, *supra* note 74, at 27.

112. *Id.* Perhaps the old adage is true: "You don't need a weatherman to know which way the wind blows." BOB DYLAN, BRINGING IT ALL BACK HOME (Columbia, 1965).

113. See H.R. 3, 105th Cong. (1997) (limiting federal grants to states which provide prosecutorial or legislative waiver applicable to children aged 15 or older whom the state alleges committed violent crimes). The House of Representatives passed this bill on May 8, 1997, and the bill is now pending in

bills pending extending the reach of transfer provisions.<sup>114</sup> Yet, even with the increased use of transfer provisions, juvenile crime continues to pose major problems to society.<sup>115</sup>

*D. Extended Jurisdiction Juvenile Prosecution: Blending Juvenile Court Dispositions With Criminal Court Sentences*

Some states have responded to juvenile crime by experimenting with innovative techniques for sentencing child offenders.<sup>116</sup> One of these responses is a form of blended sentencing known as extended jurisdiction juvenile prosecution (EJJP).<sup>117</sup> EJJP originated in Minnesota in the early 1990's.<sup>118</sup> In 1992, Minnesota created a task force which developed a new method for dealing with violent and chronic child offenders, one which blended the rehabilitative nature of the juvenile system with the procedural rights and sentencing potential of the criminal system.<sup>119</sup> In creating this new method, the task force was fueled

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the Senate. *Id.*

114. See H.R. 182, 90th Gen. Assembly, Reg. Sess. (Ill. 1997) (extending automatic transfer for weapons offenses on school grounds to include weapons offenses within 1000 feet of schools); see also H.R. 1358, 90th Gen. Assembly, Reg. Sess. (Ill. 1997) (extending presumptive transfer to include unlawful use of weapons and violations of the Illinois Controlled Substances Act); H.R. 1361, 90th Gen. Assembly, Reg. Sess. (Ill. 1997) (extending automatic transfer to include children 13 years or older whom the state alleges committed home invasion); H.R. 1362, 90th Gen. Assembly, Reg. Sess. (Ill. 1997) (extending mandatory transfer to include children 13 years or older whom the state alleges committed a felony when that child has two previous felony delinquency adjudications).

115. Lacayo, *supra* note 7, at 26. By 1995, the arrest rate for children whom the state alleges committed violent crimes increased 67% from its 1985 rate. *Id.* If the increasing trend in the crime rate continues, the number of children whom the state alleges committed a violent crime will increase about 100% from 1992 levels by the year 2010, while the number of children whom the state alleges committed murder will increase 145% from 1992 levels by that date. SNYDER & SICKMUND, *supra* note 5, at 111; Stephen Goode, *Juvenile Crime Comes of Age*, WASH. TIMES, Feb. 5, 1996, at 10. While popular support for transfer is the public's response to juvenile violence, only 34% of all cases nationwide which the juvenile court transferred by discretionary transfer (judicial waiver) in 1992 were for violent crimes against people. SNYDER & SICKMUND, *supra* note 5, at 154. The remaining 66% of these cases were for property offenses, public order offenses, and drug offenses. *Id.*

116. PATRICIA TORBET ET AL., STATE RESPONSES TO SERIOUS AND VIOLENT CRIME 11 (1996).

117. *Id.* at 12. Blended sentencing involves the blending of juvenile dispositions and criminal sentences in such a manner that a child offender is sentenced as a juvenile, as an adult, or as both. *Id.* at 11.

118. See generally Barry C. Feld, *Violent Youth and Public Policy: A Case Study of Juvenile Justice Law Reform*, 79 MINN. L. REV. 965, 1038-51 (1995) [hereinafter *Case Study*] (discussing the circumstances surrounding the development and adoption of EJJP in Minnesota in detail).

119. *Id.* at 986. The new system enables the juvenile court to operate much like the criminal court while still offering access to rehabilitative services. *Id.*

with a determination to strengthen the rehabilitative power of the juvenile system and keep as many children as could be saved out of adult prison.<sup>120</sup> In 1994, Minnesota adopted the new method proposed by the task force.<sup>121</sup> Several other states have since adopted EJJP in their efforts to alleviate the problem of juvenile crime.<sup>122</sup>

EJJP eligibility varies by jurisdiction but generally extends to children between ages fourteen and seventeen whom the state alleges committed serious offenses.<sup>123</sup> Depending on the alleged offense and the age of the child, either the prosecutor or the juvenile court designates EJJP of a child offender.<sup>124</sup> An EJJP-designated child stands trial in the juvenile court.<sup>125</sup> Unlike children facing traditional juvenile court adjudication, an EJJP-designated child receives the full panoply of procedural rights, including trial by jury, that defendants receive in criminal court prosecutions.<sup>126</sup>

If the child is convicted or pleads guilty, then the juvenile court imposes two sentences on the child: a traditional juvenile

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The task force developed this "new transitional component between the juvenile and the adult systems" while trying "[t]o avoid re-creating a false dichotomy." *Id.* at 1038.

120. Regina Akers, *Kansas Considers Tougher Sentences for Young Inmates; If Passed, New Rules Could Give Some Youths Two-Part Sentences*, KAN. CITY STAR, Jan. 25, 1996, at C2. Both state legislators and judges from Minnesota consider EJJP to be a conservative measure because of its focus on rehabilitation. *Id.* The task force was dissatisfied with the limited options available for dealing with young offenders, especially the artificial constraints inherent in exclusive prosecution under either the criminal or the juvenile justice system. *Case Study, supra* note 118, at 1038. This dissatisfaction resulted, in part, from a recognition that teenagers possess a wide range of maturity levels which necessitates a similarly wide range of available responses to teenage crime. *Id.*

121. *Case Study, supra* note 118, at 987. The bill encompassing the task force's recommendations won unanimous approval from both houses of Minnesota's legislature on April 29, 1994. *Id.* On May 5, 1994, Minnesota's governor, Arne Carlson, signed the bill into law. *Id.*

122. CONN. GEN. STAT. § 46b-133c (1997); KAN. STAT. ANN. § 38-16,126 (1997); MONT. CODE ANN. § 41-5-1602 (1997).

123. *See, e.g.*, CONN. GEN. STAT. § 46b-133c(a) (1997) (allowing EJJP of serious repeat child offenders aged 14 and older who face felony charges); MINN. STAT. § 260.126 (1997) (allowing EJJP of children between ages 14 and 17 who face felony charges). *But see* MONT. CODE ANN. § 41-5-1602 (1997) (allowing EJJP of children aged 12 and older who face charges of committing a felony with a firearm).

124. MINN. STAT. § 260.126 (1997); MONT. CODE ANN. § 41-5-1602 (1997). *But see* CONN. GEN. STAT. § 46b-133c (1997) (allowing only the juvenile court to designate EJJP).

125. MINN. STAT. § 260.126 (1997).

126. *Id.* *But see* CONN. GEN. STAT. § 46b-133c(f) (1997) (mandating criminal court prosecution of EJJP-designated children who refuse to waive their right to a jury trial).



court disposition and an adult criminal sentence.<sup>127</sup> The court stays the adult criminal sentence as long as the child successfully completes the juvenile disposition in the juvenile system.<sup>128</sup> However, if the child commits a new offense before completing the juvenile disposition or breaks a term of the disposition, then the juvenile court has authority to revoke the stay and order the implementation of the adult sentence.<sup>129</sup> Before such revocation may occur, the court must inform the child of the reasons for revoking the stay and must afford the child an opportunity to contest the revocation in a hearing in which the child is entitled to legal representation.<sup>130</sup> If the court finds that the child in fact re-offended or broke a term of the juvenile disposition, one form of EJJP requires the court to revoke the stay and order implementation of the adult sentence,<sup>131</sup> while another form of EJJP grants the court discretion to maintain the stay and allow EJJP status to continue if warranted by mitigating circumstances.<sup>132</sup>

While EJJP is still relatively new, this form of blended sentencing is already promising to reduce recidivism among child offenders.<sup>133</sup> The overwhelming majority of children prosecuted under EJJP are successfully completing their juvenile dispositions.<sup>134</sup> Some of these children credit EJJP with deterring them from negative behavior and even with turning their lives around.<sup>135</sup> EJJP is emerging as an effective weapon in the arsenal

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127. MINN. STAT. § 260.126 (1997).

128. *Id.*

129. *Id.*

130. *Id.*

131. KAN. STAT. ANN. § 38-16,126 (1997).

132. CONN. GEN. STAT. § 46b-133c (1997); MINN. STAT. § 260.126 (1997); MONT. CODE ANN. § 41-5-1602 (1997).

133. See 'Blended Sentences' for Youths, L.A. TIMES, July 1, 1996, at B4 [hereinafter *Blended Sentences*] (reporting a lower recidivism rate for EJJP youth than for transferred youth in Minnesota).

134. Pam Belluck, *Fighting Youth Crime, Some States Blend Adult and Juvenile Justice*, N.Y. TIMES, Feb. 11, 1998, at A1. During the first year and a half of EJJP implementation in Minnesota, out of a total of 339 EJJP-designated children 297 children have refrained from re-offending or breaking a dispositional term. *Id.* Although 42 children have failed under EJJP, their failure was often due to such minor probation infractions such as marijuana use, quitting employment, and missing appointments. *Id.* Perhaps many of these children might have succeeded under EJJP if the juvenile court had exercised its discretion to allow their EJJP status to continue.

135. See, e.g., *id.* (discussing the experiences of some EJJP youth in Minnesota). One child had a history of auto theft and drug dealing when he was sentenced under EJJP for threatening a person with a gun. *Id.* After successfully completing the first year and a half of his juvenile disposition, the high school senior explained, "There are times when I think that I just want to have a joint, have a drink, make some money somehow, but I just think, it'll pass." Belluck, *supra* note 134, at A24. Another child who was sentenced

in the war against youth crime.

## II. EXCLUSIVE UTILIZATION OF THE JUVENILE JUSTICE SYSTEM AND THE CRIMINAL JUSTICE SYSTEM CANNOT EFFECTIVELY SOLVE THE PROBLEM OF JUVENILE DELINQUENCY

For one hundred years, Illinois has depended on the juvenile justice system to rehabilitate young offenders.<sup>136</sup> In recent years, however, Illinois has responded to a surge in youth violence by transferring an increasing number of children into the criminal court system.<sup>137</sup> Unfortunately, neither the juvenile justice system nor the criminal justice system acting alone have been successful in combatting the problem of juvenile crime.<sup>138</sup>

This Part analyzes the ineffectiveness of exclusively utilizing the juvenile justice system or the adult criminal justice system in response to the problem of juvenile crime. Section A examines the lack of accountability in the juvenile justice system. Section B addresses the deficiencies inherent in the transfer of children into the adult criminal court, focusing on the failure of the criminal justice system to rehabilitate children whom the system could otherwise save. Section C discusses how EJJP will effectively address the problem of juvenile violence by rendering young offenders accountable for their conduct and by giving older, but still malleable, children "one last chance" at rehabilitation.

### A. *The Juvenile Justice System Cannot Alone Stem the Tide of Juvenile Crime*

The hypothetical character Frank portrayed in the Introduction of this Comment exemplifies one of the juvenile justice system's greatest challenges. While the system aims to rehabilitate delinquent children, it often fails to attain that goal with its toughest "clientele": the chronic and the potentially violent juvenile offender.<sup>139</sup> Chronic offenders face repeated adjudication in the system, yet they continue committing even more delinquent acts.<sup>140</sup> These children have little incentive to reform.<sup>141</sup> They are

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under EJJP for assaulting other teenagers learned self-control while serving out his juvenile disposition. *Id.* In discussing his experience he stated, "I got a nice job. I'm in college. I got people depending on me and I don't want to let them down." *Id.*

136. Riggs, *supra* note 51, at 1.

137. Wortman, *supra* note 77, at 3.

138. Yeckel, *supra* note 88, at 355-56.

139. See Kramer, *supra* note 12, at 214 (criticizing the juvenile court system for failing to effectively deal with young violent offenders).

140. See Mary Wisniewski Holden, *State's Prosecutors Eyeing Bill For Juvenile Justice Reforms*, CHI. LAW., Feb. 1997, at 8 (discussing recidivism among juvenile offenders in Illinois); Cf. Kramer, *supra* note 12, at 215 (stating that police were arresting delinquent boys for committing violent crime while on parole); Paul J. McNulty, *Natural Born Killers*, POLY REV.,

savvy to the fact that in the juvenile justice system child offenders are not accountable for their acts.<sup>142</sup>

The lack of accountability of juvenile offenders in the juvenile justice system is a result of the defining attribute of the system itself.<sup>143</sup> The system is a "juvenile" system; thus, by definition, it can only maintain wardship<sup>144</sup> over children it has adjudicated delinquent until they reach the age of nineteen<sup>145</sup> or twenty-one.<sup>146</sup>

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Winter 1995, at 84, 87 (discussing news reports about teenagers with long arrest records committing more violence).

141. *Cf.* Kramer, *supra* note 12, at 215 (arguing that the juvenile court system promotes recidivism by demonstrating to delinquents "that they can get away" with criminal activity).

142. *See* ROWLAND, *supra* note 17, at 44 (citing Senator Carol Moseley-Braun's observation that the present juvenile court system does not deter violent youths); *see also* Kramer, *supra* note 12, at 215 (discussing the attitudes of child offenders toward the juvenile justice system); *cf.* Holden, *supra* note 140, at 8 (identifying a concern of Illinois legislators that the juvenile system needs to hold child offenders accountable for their conduct).

143. *Cf.* Stephen Wizner, *Struggling For A Future: Juvenile Violence, Juvenile Justice: On Youth Crime And The Juvenile Court*, 36 B.C. L. REV. 1025, 1026 (1995) (discussing the inability of the juvenile court to rehabilitate child offenders or protect society due to its lack of authority to provide services or commitment for a long enough period of time); McNulty, *supra* note 140, at 86 (berating the lack of accountability in the juvenile system due to the absence of meaningful consequences for criminal actions).

144. *See* 705 ILCS 405/1-3(16) (West 1996) (defining a ward of the court as a minor "subject to the dispositional powers of the court under this Act" after a court determination that such status is in the best interests of the child and the public).

145. 705 ILCS 405/5-34(1) (West 1996). This includes most juveniles. *Id.*

146. 705 ILCS 405/5-33(1.5) (West 1996) (setting age 21 for children at least 13 years old whom the court has adjudicated delinquent of first degree murder); 705 ILCS 405/5-35(f) (setting age 21 for habitual juvenile offenders); 705 ILCS 405/5-36(f) (setting age 21 for violent juvenile offenders); 705 ILCS 405/5-34(1)(a) (setting age 21 for juveniles over which a court has found good cause to extend wardship). Illinois defines a "habitual juvenile offender" as a minor whom the juvenile court has adjudicated delinquent twice for felonies before adjudicating delinquent a third time for committing or attempting to commit "first degree murder, second degree murder or involuntary manslaughter; criminal sexual assault or aggravated criminal sexual assault; aggravated or heinous battery involving permanent disability or disfigurement or great bodily harm to the victim; burglary of a home or other residence . . . ; robbery or armed robbery; or aggravated arson." 705 ILCS 405/5-35(f)(a). This definition applies only to children whose third offense occurred after January 1, 1980. *Id.* at 35(a). Additionally, this definition only applies when the third offense occurred subsequent to the second adjudication, and the second offense occurred subsequent to the first adjudication. *Id.* Illinois defines a "violent juvenile offender" as a minor whom the juvenile court has: (1) adjudicated delinquent of a felony Class 2 or greater which involves using or threatening "physical force or violence against" another person; or (2) adjudicated delinquent twice for a felony Class 2 or greater (the second offense occurring subsequent to the first adjudication, and the second offense occurring "on or after January 1, 1995") when the use or the possession of a firearm is an element of the offense. 705 ILCS 405/5-

Once a delinquent child reaches this maximum age, the Illinois juvenile justice system loses control over that individual, and that individual loses access to rehabilitative services.<sup>147</sup> Children, especially younger children who are less likely to face transfer, know that they can continue to commit delinquent acts and have all responsibility for such acts vanish at age twenty-one.<sup>148</sup> Likewise, no matter how promising a treatment may be and how desperately a certain child may need this treatment in order to turn that child's life around, the juvenile justice system has only a very limited time in which to effectuate the child's rehabilitation.<sup>149</sup> Many times this short period is not enough.<sup>150</sup> The unfortunate result is that young offenders leave the system before achieving rehabilitation.<sup>151</sup>

Adding to this lack of accountability is the premature release of delinquent children from their dispositional placements.<sup>152</sup> In Illinois, the average child committed to the Department of Corrections spent only 308 days in custody.<sup>153</sup> National data, which incorporate Illinois statistics, demonstrate that most children committed to a correctional facility in the juvenile system

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36(e). Under 705 ILCS 405/5-34(1), a court can extend wardship over a child adjudicated delinquent until age 21 when the court finds that this extension is necessary to serve the best interests of both the child and the public. 705 ILCS 405/5-34(1). This finding must be based on evidence as opposed to the independent judgment of the judge. *Id.*

147. 705 ILCS 405/5-34(1) (West 1996).

148. See ROWLAND, *supra* note 17, at 44 (clarifying Senator Carol Moseley-Braun's statement that under the present system children "can shoot someone with impunity at 14 years of age" as meaning that child predators are not deterred from murdering others since they know they will escape adult punishment); see also Curriven, *supra* note 73, at 66 (quoting juvenile court prosecutor William McGee as stating, "These kids think [the system is] a joke. They have no respect for the system.").

149. See 705 ILCS 405/5-34(1) (West 1996) (allowing juvenile court officials only a time period as long as the difference between the child's age and 21 to effect rehabilitation).

150. See COORDINATING COUNCIL ON JUV. JUST. & DELINQ. PREVENTION, COMBATING VIOLENCE AND DELINQUENCY: THE NATIONAL JUVENILE JUSTICE ACTION PLAN SUMMARY 5 (1996) [hereinafter COORDINATING COUNCIL] (suggesting extending wardship past age 21 for children who need more access to rehabilitative services); see also TORBET ET AL., *supra* note 116, at 15 (presenting the argument that the time allowed in the juvenile system to rehabilitate child offenders is insufficient).

151. See Holden, *supra* note 140, at 8 (stating that 10.6% of individuals released from the Illinois Department of Corrections Juvenile Division in 1992 entered the Illinois Department of Corrections Adult Division within three years).

152. See Kramer, *supra* note 12, at 214 (alleging that violent child offenders perceive no consequences to their actions because rehabilitative efforts by the juvenile court system are "ineffective" and "short in duration").

153. SNYDER & SICKMUND, *supra* note 5, at 177. This data refers to children released from custody in 1992. *Id.*

gain early release through parole; only two percent of released delinquents leave correctional facilities because they have reached the age at which wardship legally must terminate.<sup>154</sup> Even repeat offenders and violent youths can leave Illinois correctional facilities early.<sup>155</sup> Children who have committed first degree murder are eligible for parole after only five years commitment to the Department of Corrections.<sup>156</sup> Habitual juvenile offenders and violent juvenile offenders can serve substantially less time than commitment until age twenty-one.<sup>157</sup> Thus, the critical time in which the juvenile system has to rehabilitate these children is often much shorter than would appear from the original dispositional orders.<sup>158</sup>

These policies of terminating wardship at age twenty-one and releasing violent children early have a profound impact on the children involved and on society. The system arrests youth, adjudicates them delinquent, and releases them early, even if they have committed violent offenses.<sup>159</sup> These children have not had long enough access to treatment to become rehabilitated.<sup>160</sup> Instead, they discover there is nothing the juvenile system can do to them that will have long-lasting consequences on their lives.<sup>161</sup>

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154. *Id.* Researchers collected this data from 29 states, including Illinois, and the data refers to children released from custody in 1992. *Id.* Interestingly, more children left state juvenile correctional systems through escape, death, or transfer to another non-criminal jurisdiction than through "aging out," i.e., becoming an adult. *Id.*

155. See 705 ILCS 405/5-33(1.5) (West 1996) (prescribing commitment of murderous children to the Department of Corrections with a parole option after the specified period); see also 705 ILCS 405/5-35(f) (West 1996) (permitting "good conduct credit" for habitual juvenile offenders); 705 ILCS 405/5-36(f) (West 1996) (permitting "good conduct credit" for violent juvenile offenders).

156. 705 ILCS 405/5-33(1.5) (West 1996). This provision only applies to children aged 13 and older. *Id.*

157. 706 ILCS 405/5-35(f), 36(f) (West 1996). These provisions purport to require commitment to the Department of Corrections of habitual juvenile offenders and violent juvenile offenders until age 21 with no possibility of parole. *Id.* However, these children are allowed to accrue one day of "good conduct credit" for each day the child served which the system applies as a reduction in their terms of commitment. *Id.* Conceivably, a child offender in one of these two categories could spend only half the "required" time in custody. See *id.* (explaining "good conduct credit" reductions in Department of Corrections commitments).

158. See *id.* (allowing a built-in early release mechanism).

159. See ROWLAND, *supra* note 17, at 44 (discussing the results of a study which found that the juvenile justice system is failing to impose commitments of sufficient duration on violent child offenders).

160. See *id.* (discussing the disturbing number of boys arrested for committing violent acts while on parole); see also Holden, *supra* note 140, at 8 (stating that the recidivism rate for juveniles leaving the Illinois Department of Corrections in 1992 was 35% over a three year period).

161. ROWLAND, *supra* note 17, at 215.

Armed with the knowledge that they are not accountable for their actions, these children go back on the streets and commit more crimes.<sup>162</sup> Tragically, these new offenses are often more violent than earlier transgressions.<sup>163</sup> Then the cycle continues: arrest, adjudication, disposition, release, crime.

The current system not only fosters recidivism among delinquent children, but it also encourages other youths to engage in illegal acts.<sup>164</sup> Children who witness their peers commit an assortment of crimes only to return to the streets learn that there are no personal consequences to violence, at least none to be feared from the state.<sup>165</sup> Thus, an effective implement of crime prevention is effectively emasculated.

For many children the system works.<sup>166</sup> Many children released from the custody of the juvenile system never return.<sup>167</sup> While these success stories are undeniably true, it is also true that some children fall through the cracks.<sup>168</sup> These are the children the state must reach to solve the problem of juvenile delinquency. The juvenile justice system cannot solve the problem on its own.

#### B. *The Criminal Court Is Not A Panacea*

The surge in violent youth crime has led Illinois to increasingly transfer children into criminal court.<sup>169</sup> Some of these children are already so hardened that there is little the juvenile

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162. See *supra* note 160 (discussing the high recidivism rate for child offenders in Illinois).

163. McNulty, *supra* note 140, at 86.

164. See ROWLAND, *supra* note 17, at 213 (implying that children learn about the ineffectiveness of the juvenile system by observing the lenient way it treats delinquent minors).

165. *Id.*

166. See James R. Covington III, *Legislative Activity In Juvenile Justice*, JUV. JUST. COMM. NEWSL., Oct. 1996, at 1, 6 (discussing study results finding that children whom the state adjudicates in the juvenile court system have a lower recidivism rate than children whom the state prosecutes in the criminal court); see also *Juvenile Act Amendments "Discouraging"*, JUV. JUST. COMM. NEWSL., Sept. 1996, at 9 (stating that legislators seeking to reform the Illinois Juvenile Court Act are not looking at the aspects of the juvenile system that work); cf. Riggs, *supra* note 51, at 3 (commenting that the recent "get tough" attitude in Illinois politics is contrary to the welfare of the child offender and the community).

167. See SNYDER & SICKMUND, *supra* note 5, at 158 (stating that most children adjudicated delinquent are never adjudicated again in the system); see also Holden, *supra* note 140, at 8 (discussing statistics that show that 65% of Illinois youths released from the Department of Corrections do not return to either the juvenile system or the criminal system within three years).

168. See Curriden, *supra* note 73, at 67 (citing juvenile court judge Bertrand Poritsky's observation that the juvenile system is allowing delinquent, yet "impressionable," children to slip away).

169. Wortman, *supra* note 77, at 1-3.

system can do for them.<sup>170</sup> For these children, transfer is the last best solution.<sup>171</sup> Many, however, like the hypothetical character Laura from the Introduction of this Comment, are still amenable to treatment if only they had the opportunity for long-term access to it.<sup>172</sup> Unfortunately, they will not receive this treatment in the criminal system.<sup>173</sup> Society, through transfer, has effectively "written off" these children.<sup>174</sup> This sacrifice, however, has failed to alleviate the problem of youth violence.<sup>175</sup>

Rehabilitation is not a major emphasis of the criminal justice system.<sup>176</sup> With its focus on punishment, this system is unconcerned with the needs of children whom the juvenile system has abandoned.<sup>177</sup> These children will enter penal facilities<sup>178</sup> that are unable and unwilling to treat them.<sup>179</sup> While juvenile facilities have programs which foster personal growth and positive

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170. Cf. ROWLAND, *supra* note 17, at 45 (noting the argument that some youth offenders deserve transfer to the adult criminal system).

171. See Curriden, *supra* note 73, at 66 (quoting a juvenile court judge as stating that some children will grow into violent adult criminals no matter what services the juvenile system provides them); cf. Victor L. Streib, *The Death Penalty Should Not Be Imposed On Violent Youths*, in YOUTH VIOLENCE 243, 247 (Bruno Leone et al. eds., 1992) (describing the "defiant, swaggering attitudes" of some child offenders as foreshadowing violent behavior on their parts for the rest of their lives).

172. See *Juvenile Injustice. Trying Juveniles As Adults*, AMERICA, Sept. 28, 1996, at 3 [hereinafter *Juvenile Injustice*] (claiming that transfer use often encompasses children who are highly amenable to treatment in the juvenile system); see also *supra* notes 1-5 and accompanying text discussing Laura's dilemma.

173. See JUVENILE VICTIMIZATION, *supra* note 27, at 388 (stating that the adult justice system offers its charges significantly less rehabilitative services than the juvenile justice system offers its charges).

174. See Hon. Gordon A. Martin, Jr., *The Delinquent And The Juvenile Court: Is There Still A Place For Rehabilitation?*, 25 CONN. L. REV. 57, 58 (1992) (using the term "write these children off").

175. Wortman, *supra* note 77, at 3. Although Illinois has been resorting to transfer increasingly since 1982, juvenile arrests for violent crimes in Illinois rose from 8.9% in 1988 to 12.8% in 1992. *Id.*

176. JUVENILE VICTIMIZATION, *supra* note 27, at 388; Martin, *supra* note 174, at 58.

177. See ROWLAND, *supra* note 17, at 47 (discussing the lack of services for children within the prison system).

178. See SNYDER & SICKMUND, *supra* note 5, at 178 (reporting that 16 is the minimum age in Illinois for imprisonment in the Department of Corrections Adult Division); see also Lisa Stansky, *Age Of Innocence: More And More States Are Telling Teens: If You Do An Adult Crime, You'll Serve Adult Time*, 82 ABA J. 60, 61-62 (Nov. 1996) (stating that federal law proscribing the imprisonment of children with adults is not applicable to children convicted in criminal court). In 1990, Illinois incarcerated 251 children under 18 in adult prison. SNYDER & SICKMUND, *supra* note 5, at 178.

179. See ROWLAND, *supra* note 17, at 47 (commenting on the inability of the criminal system to treat child offenders); see also Wortman, *supra* note 77, at 3 (commenting on the inability of the criminal system to treat child offenders).

socialization, prisons are characterized by their dearth of counseling opportunities, medical treatment, and programs which address dysfunctional family relationships.<sup>180</sup> Furthermore, the adult criminal justice system sorely lacks the opportunities for vocational training and educational advancement that are available in the juvenile justice system.<sup>181</sup> The criminal justice system also fails to provide the intense follow-up services and parole supervision that are necessary elements of the juvenile justice system.<sup>182</sup> The children who are imprisoned in the adult system will eventually re-enter society, but they will lack the rehabilitation and the education they will need to succeed.<sup>183</sup>

This is not to say, however, that these children will not receive an education. The prisons will provide them an excellent education on becoming hardened criminals.<sup>184</sup> Children in prison face a risk of suffering sexual assault five times as great as the risk faced by children in the juvenile justice system.<sup>185</sup> Similarly, they face a risk two times that of youths in the juvenile justice system of being beaten by staff.<sup>186</sup> They also have a fifty percent greater risk of being assaulted with a weapon.<sup>187</sup> Besides becoming fodder for adult sexual predators,<sup>188</sup> these children are internalizing the criminal identity with which they are labeled.<sup>189</sup> These children now have reputations they must live up to and expectations placed upon them which they must fulfill.<sup>190</sup> By the time these children "graduate" from this "school,"<sup>191</sup> they will have

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180. ROWLAND, *supra* note 17, at 47; *see also* Stansky, *supra* note 178, at 62 (quoting Jeffery Fagan, the director of the Center for Violence Research and Prevention at Columbia University, as stating that an imprisoned child does not learn the skills necessary "to become a family member, husband, neighbor, or worker").

181. *Compare* JUVENILE VICTIMIZATION, *supra* note 27, at 508 (discussing the expansive educational programs available in juvenile training schools), with Sander N. Rothchild, Note & Comment, *Beyond Incarceration: Juvenile Sex Offender Treatment Programs Offer Youth A Second Chance*, 4 J.L. & POL'Y 718, 742 n.97 (1996) (explaining that prisons generally do not offer educational programs geared for children).

182. Wortman, *supra* note 77, at 3.

183. *See* Martin, *supra* note 174, at 91 (warning that society will one day have to deal with the children it has "written off"); *see also* Lemov, *supra* note 74, at 29 (describing the predicament of children released from adult prison who lack education and job skills).

184. ROWLAND, *supra* note 17, at 47; Stansky, *supra* note 178, at 62.

185. ROWLAND, *supra* note 17, at 47.

186. *Id.*

187. *Id.*

188. *See id.* (describing adult sentencing of children as having "the unfortunate side effect of . . . handing them over to adult sexual predators").

189. Stansky, *supra* note 178, at 62.

190. *See id.* (referring to the process as being "prisonized").

191. *See id.* at 61-62 (characterizing the criminal justice system as "schools for crimes").



learned what it takes to be a hard-core criminal.<sup>192</sup>

Imprisoning children still amenable to treatment exacts a great toll on society. Society will face losing potentially productive members. Children removed from society for a long period of time will be unable to fulfill their human potential or make any positive contribution to the community.<sup>193</sup> When they eventually re-enter society, these children will lack the education, skills, and motivation necessary to find a job, make a living, and assimilate smoothly into their communities.<sup>194</sup> Even those released after relatively short terms of confinement will find themselves socially and educationally disadvantaged with dim job prospects.<sup>195</sup> Many of them, if given the rehabilitative and educational programs of the juvenile justice system, could benefit society. Instead, many will become a burden. Society must ask itself if it is willing to pay this price.

Society might decide it is willing to pay this awful price as a necessary sacrifice in its war against violence.<sup>196</sup> However, upon making this sacrifice, society will discover that its sanctions have served to increase violent crime instead of alleviating it.<sup>197</sup> When these individuals, whom the state could have rehabilitated but did not, are released without the skills necessary to assimilate, many will rely on the skills they think they need to survive: they will fall back on their education as criminals.<sup>198</sup> Studies demonstrate that children sentenced as adults have a higher incidence of recidivism than similar children adjudicated for the same crime in the juvenile system.<sup>199</sup>

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192. See *id.* at 61 (stating that children released from prison have learned "the ropes" from hardened adult inmates).

193. See TORBET ET AL., *supra* note 116, at 7 (discussing research that indicates that violent child offenders who face prosecution in the adult criminal court receive "substantially longer" terms of commitment than those who face adjudication in the juvenile system).

194. See Stansky, *supra* note 178, at 62 (discussing how incarcerated children do not learn the life skills necessary to assimilate into society).

195. *Id.*; see also Rothchild, *supra* note 181, at 742 (stating that short prison stays greatly harm children).

196. See Feld, *supra* note 78, at 69 (characterizing transferred children as "symbolic scapegoats").

197. See Wortman, *supra* note 77, at 3 (discussing recidivism rates that show that child offenders are more likely to commit further crime if the state prosecutes them in the criminal court rather than adjudicating them in the juvenile system; presenting statistics that show juvenile crime rates in Illinois increased after reliance on transfer).

198. Cf. Stansky, *supra* note 178, at 61 (expressing concern that children released from prison will be "a greater menace to society" due to their training from adult criminals).

199. ROWLAND, *supra* note 17, at 46; see also Wortman, *supra* note 77, at 3 (noting that the rate of recidivism for children whom the state prosecutes as adults is substantially greater than rates for those whom the state adjudicates in the juvenile system); Lemov, *supra* note 74, at 29 (discussing similar

Besides failing to prevent these individuals from committing more crimes, surrendering these children to the criminal justice system fails to deter other youths from engaging in violent acts.<sup>200</sup> In some ways, increased use of transfer might actually result in even younger children committing crime. As older youths in a gang setting are confronted with the prospect of transfer, they might engage younger, transfer-proof children to carry out their orders. As society is losing its youth, the problem of juvenile crime continues.<sup>201</sup> The adult criminal justice system is not a panacea.<sup>202</sup>

### C. EJJP Provides Accountability And Rehabilitation

The inherent weaknesses of both the juvenile justice system and the criminal justice system preclude the successful resolution of the problem of juvenile crime by either system alone.<sup>203</sup> However, overlapping the jurisdictions of the juvenile justice system and the criminal justice system provides an effective and flexible method for dealing with these child offenders who, because of their age or amenability to treatment, should not face outright transfer to the criminal system.<sup>204</sup>

EJJP provides a strong dose of accountability that traditional juvenile court adjudication lacks.<sup>205</sup> Since EJJP provides for the imposition of the stayed adult sentence upon a finding that the child offender has broken the terms of the juvenile disposition or has committed a new offense before termination of the juvenile

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results from a study in New York and New Jersey); Stansky, *supra* note 178, at 62 (describing similar results from a study in Florida).

200. See ROWLAND, *supra* note 17, at 46 (arguing that deterrence is not an effective force on children); see also *Juvenile Injustice*, *supra* note 172, at 3 (noting that peer pressure often overwhelms children).

201. See Wortman, *supra* note 77, at 3 (describing the increase in youth violence even as Illinois has taken a tougher approach towards child offenders).

202. See COORDINATING COUNCIL, *supra* note 150, at 4 (recommending that transfer occur only when the child's behavior indicates the necessity of criminal punishment as determined by the child's background of criminal conduct, the ineffectiveness of past rehabilitative efforts, and the violence of the child's act); see also JAMES O. FINKENAUER, SCARED STRAIGHT AND THE PANACEA PHENOMENON 4 (1982) (using the term "panacea" in reference to attempts to solve the problem of juvenile crime).

203. See Yeckel, *supra* note 88, at 352 (noting that neither the juvenile court system nor the adult criminal court system have been able to solve the problem of juvenile violence).

204. See Stansky, *supra* note 178, at 64 (quoting a North Carolina prosecutor as stating that not all child offenders should be "tossed in [adult] jail").

205. See *Case Study*, *supra* note 118, at 1041 (agreeing with a task force of Minnesota judges and legislators who referred to EJJP with its increased power as "a juvenile court 'on steroids' or one with 'a long handle and a stronger leash'").

disposition, child offenders gain responsibility for their conduct.<sup>206</sup> They are well aware their rejection of rehabilitative efforts carries a steep price.<sup>207</sup> The firm imposition of meaningful consequences (i.e., the activation of the criminal sentence) will motivate these children to take an active role in their own rehabilitation.<sup>208</sup> They will be less likely to engage in further delinquent activity knowing that doing so will have a drastic, immediate effect upon them.<sup>209</sup> Accordingly, they will be more likely to conform to the strictures of their treatment programs since they know that they must.<sup>210</sup> Furthermore, this treatment will be more effective by extending the time in which these EJJP children are subject to juvenile system wardship.<sup>211</sup> Chronic and violent juvenile offenders will no longer be able to scoff at the system.<sup>212</sup> The result will be a decrease in recidivism among those children who can achieve rehabilitation and incarceration for the few who cannot.<sup>213</sup>

In addition to imposing accountability on young violent offenders, EJJP offers older, yet impressionable, child offenders one last chance at rehabilitation.<sup>214</sup> Under current Illinois law, many of these children face automatic or mandatory transfer to the adult criminal court regardless of their individual circumstances or their potential for rehabilitation.<sup>215</sup> With EJJP

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206. See COORDINATING COUNCIL, *supra* note 150, at 5 (describing the accountability under EJJP of child offenders who face an adult sentence if they break the program's requirements); see also *Case Study*, *supra* note 118, at 1041 (describing the consequences of violating a juvenile dispositional condition under EJJP).

207. See Belluck, *supra* note 134, at A24 (quoting a Minnesota youth who was sentenced under EJJP as stating that he has resisted the temptation to take drugs).

208. TORBET ET AL., *supra* note 116, at 16.

209. See *Blended Sentences*, *supra* note 133, at B4 (reporting the apparent success of EJJP in lowering recidivism among child offenders).

210. See Cameron McWhirter & Mark Braykovich, *Solutions: Other States' Laws Having Some Success*, CINCINNATI ENQUIRER, Oct. 22, 1996, at A1 (reporting that out of 112 Minnesota EJJP offenders, only 11 broke the terms of their juvenile dispositions or committed new crimes before their dispositions terminated).

211. See COORDINATING COUNCIL, *supra* note 150, at 5 (discussing extending wardship past age 21 for treatment purposes).

212. See Kramer, *supra* note 12, at 215 (presenting the prevalent attitude among child offenders towards the present juvenile justice system as "They can't do nothing to me, I ain't 16 yet").

213. See *Blended Sentences*, *supra* note 133, at B4 (citing the apparent lower rate of recidivism among EJJP youth).

214. COORDINATING COUNCIL, *supra* note 150, at 5.

215. See 705 ILCS 405/5-4(3.1) (West 1996) (prescribing mandatory transfer for children aged 15 or older who have a prior felony delinquency adjudication and now face allegations of committing a forcible felony in the promotion of illegal gang activity); see also 705 ILCS 405/5-4(3.2) (West 1996) (prescribing mandatory transfer for children aged 15 or older who have a prior forcible felony adjudication and now face allegations of committing a felony in the

available, the juvenile court can take these factors into consideration<sup>216</sup> and offer those children who might yet benefit from the juvenile justice system one final chance at receiving rehabilitative services.<sup>217</sup>

Society would benefit from the implementation of EJJP of older children. First, children who would otherwise be lost will be able to become productive, contributing members of society.<sup>218</sup> Second, society will suffer less crime since those children who successfully complete their juvenile dispositions under EJJP so far have proven less likely to commit additional crimes than those children who have completed sentences in the criminal justice system.<sup>219</sup> Thus, EJJP can effectively address the problem of youth violence by combining the accountability of the criminal justice system with the rehabilitation of the juvenile justice system.<sup>220</sup>

### III. ILLINOIS SHOULD UTILIZE A POWERFUL VERSION OF EJJP

Recognizing that the problem of juvenile delinquency continues to exact a heavy toll despite the resources and dedicated staff in the juvenile justice system and despite increased reliance on transfer to the adult criminal court, the Illinois General Assembly passed its own version of EJJP.<sup>221</sup> This version<sup>222</sup>

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promotion of illegal gang activity); 705 ILCS 405/5-4(6)(a) (West 1996) (applying automatic transfer to children aged 15 or older whom the state alleges committed "first degree murder, aggravated criminal sexual assault, armed robbery . . . with a firearm, aggravated vehicular highjacking . . . with a firearm," or weapons offenses on school grounds); 705 ILCS 405/5-4(7)(a) (West 1996) (applying automatic transfer to children aged 15 or older whom the state alleges dealt drugs on or near school grounds or public housing property); 705 ILCS 405/5-8(a) (West 1996) (applying automatic transfer to children whom the state alleges escaped from a penal institution or violated bail bond after the state had already transferred them under various statutory provisions to the criminal court for other offenses); 705 ILCS 405/5-4(9)(a) (West 1996) (applying automatic transfer to children age 13 or older "charged with first degree murder committed during the course of either aggravated criminal sexual assault, criminal sexual assault, or aggravated kidnaping [sic]").

216. See Akers, *supra* note 120, at C2 (describing how EJJP in Minnesota is utilized on a "case-by-case basis," considering factors such as the child's age and criminal background).

217. See *Case Study*, *supra* note 118, at 1041 (agreeing with Minnesota judges and legislators that EJJP gives some youths "one last chance" at rehabilitation).

218. See Martin, *supra* note 174, at 58 (stating that "society deserves the chance to gain the non-violent citizen" who is capable of being rehabilitated).

219. See *Blended Sentences*, *supra* note 133, at B4 (reporting the apparent success of EJJP in lowering recidivism among child offenders).

220. See COORDINATING COUNCIL, *supra* note 150, at 5 (discussing the ability of EJJP to provide both accountability and rehabilitation).

221. Long & Cetera, *supra* note 19, at B8. After its initial passage, Governor James Edgar sent the bill back to the Illinois General Assembly with an amendatory veto that suggested adding some flexibility to the

represents an excellent first step in implementing EJJP in Illinois. However, this version could be strengthened by allowing more flexibility in the utilization and implementation of EJJP. This Section proposes a model statute instituting a strong form of EJJP in Illinois. Section A sets forth statutory language and explanatory comments extending the option of EJJP designation to a wide range of child offenders, including older children who demonstrate an amenability to treatment but are eligible for automatic transfer. Section B sets forth statutory language and explanatory comments detailing EJJP trial and sentencing guidelines which provide the juvenile court discretion in dealing with re-offending and term-breaking youth while extending wardship over EJJP youth from age twenty-one to age twenty-four.

*A. Proposed 705 ILCS 405/5-4.5(1) EJJP Designation*

(A) (1) THE STATE'S ATTORNEY MAY FILE A MOTION REQUESTING EXTENDED JURISDICTION JUVENILE PROSECUTION OF:

(i) ANY MINOR AGAINST WHOM THE STATE COULD SEEK DISCRETIONARY, PRESUMPTIVE, OR MANDATORY TRANSFER TO THE CRIMINAL COURT;<sup>223</sup> OR

(ii) ANY MINOR WHO WOULD OTHERWISE FACE AUTOMATIC TRANSFER UNDER ILCS 405/5-4.<sup>224</sup>

(2) UPON SUCH MOTION BY THE STATE'S ATTORNEY, THE COURT:

(i) SHALL DESIGNATE EXTENDED JURISDICTION JUVENILE PROSECUTION FOR THOSE MINORS AGAINST WHOM THE STATE COULD SEEK PRESUMPTIVE OR MANDATORY TRANSFER TO THE CRIMINAL COURT AND THOSE MINORS WHO WOULD OTHERWISE FACE MANDATORY TRANSFER UNDER 705 ILCS 405/5-4;<sup>225</sup>

(ii) MAY DESIGNATE EXTENDED JURISDICTION JUVENILE PROSECUTION FOR THOSE MINORS AGAINST WHOM THE STATE COULD SEEK DISCRETIONARY TRANSFER TO THE CRIMINAL COURT IF THE COURT, AFTER A HEARING, DETERMINES THAT THE

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measure. Christi Parsons, *Juvenile Reform Act Gets Edgar Backing*, CHI. TRIB., Apr. 25, 1998, at 5; Telephone Interview with Randall Roberts, Supervisor of the Delinquency Division, Office of the State's Attorney, Juvenile Justice Bureau (Apr. 27, 1998). The General Assembly approved the changes offered by Governor Edgar, and the law will go into effect on January 1, 1999. Long & Cetera, *supra* note 19, at B8.

222. S. 363, 90th Gen. Assembly, Reg. Sess. (Ill. 1997-98). This bill is known as the Juvenile Justice Reform Act. *Id.*

223. See ILL. S. 363 (providing for EJJP designation of certain offenses falling under transfer guidelines); see also discussion *supra* Part I.B. for an elaboration of the guidelines of these transfer provisions.

224. *Id.*

225. See MINN. STAT. § 260.126(1)(2) (1996) (allowing the prosecutor to designate EJJP of presumptive transfer children without judicial consideration of best interest/public safety factors).

EXTENDED JURISDICTION JUVENILE PROSECUTION DESIGNATION SERVES THE CHILD'S BEST INTERESTS AND THE SAFETY OF THE PUBLIC.<sup>226</sup>

(B) THE COURT MAY DESIGNATE EXTENDED JURISDICTION JUVENILE PROSECUTION OF ANY MINOR AGAINST WHOM THE STATE HAS INSTITUTED PRESUMPTIVE OR DISCRETIONARY TRANSFER PROCEEDINGS IF THE COURT, AFTER A HEARING, DETERMINES THAT THIS DESIGNATION SERVES THE CHILD'S BEST INTERESTS AND THE SAFETY OF THE PUBLIC.<sup>227</sup>

(C) WHEN MAKING A DETERMINATION UNDER THIS SECTION BASED UPON THE CHILD'S BEST INTERESTS AND THE SAFETY OF THE PUBLIC, THE COURT SHALL CONSIDER THE FOLLOWING:

(1) THE NATURE OF THE ALLEGED OFFENSE, INCLUDING THE LEVEL OF AGGRESSION OR PREMEDITATION INVOLVED;<sup>228</sup>

(2) THE MINOR'S AGE, BACKGROUND, AND SOPHISTICATION LEVEL;<sup>229</sup>

(3) THE MINOR'S RECORD OF DELINQUENCY AND PRIOR RESPONSES TO TRADITIONAL JUVENILE COURT ADJUDICATION;<sup>230</sup>

(4) THE ADEQUACY AND AVAILABILITY OF JUVENILE COURT RESOURCES FOR EFFECTIVELY TREATING THE MINOR;<sup>231</sup> AND

(5) THE MINOR'S WILLINGNESS TO ENGAGE IN REHABILITATIVE EFFORTS AS DEMONSTRATED BY THE MINOR'S PAST AND PRESENT CONDUCT.<sup>232</sup>

(D) ANY DESIGNATION UNDER THIS SECTION IS SUBJECT TO A FINDING OF PROBABLE CAUSE.<sup>233</sup> A DESIGNATION HEARING SHALL BE HELD WITHIN THIRTY DAYS OF THE FILING OF THE STATE'S DESIGNATION OR TRANSFER MOTION.<sup>234</sup> THE MINOR SHALL BE ENTITLED TO NOTICE AND

226. See MINN. STAT. § 260.126(1)(3) (1996) (allowing discretionary EJJP judicial designation after the court considers public safety factors).

227. See MINN. STAT. § 260.126(1)(1) (1996) (giving the court the power to order EJJP designation of children after a failed transfer attempt); MONT. CODE ANN. § 41-5-1602(1)(c) (1997) (allowing a court to designate EJJP rather than transfer after a transfer hearing).

228. See 705 ILCS 405/5-4(3)(b) (West 1996) (providing this safety factor in discretionary transfer decisions); see also MINN. JUV. CT. PROC. R. 19.05 (1996) (providing for this factor in EJJP decisions).

229. See 705 ILCS 405/5-4(3)(b) (West 1996) (providing for consideration of the child's age and background in discretionary transfer decisions); see also MONT. CODE ANN. § 41-5-1606 (providing for a consideration of a child's sophistication in transfer and EJJP hearings).

230. See MINN. JUV. CT. PROC. R. 19.05 (1996) (providing for a consideration of this factor in EJJP decisions).

231. See 705 ILCS 405/5-4(3)(b) (West 1996) (providing this safety factor in discretionary transfer decisions); see also MINN. JUV. CT. PROC. R. 19.05 (1996) (providing this factor in EJJP decisions).

232. See MINN. JUV. CT. PROC. R. 19.05 (1996) (providing a consideration of this factor in EJJP designation decisions).

233. See S. 363, 90th Gen. Assembly, Reg. Sess. (Ill. 1997-98) (proposing this requirement for any EJJP designation).

234. See MINN. STAT. § 260.126(2) (1996) (providing a designation hearing

EFFECTIVE ASSISTANCE OF COUNSEL AT THIS HEARING.<sup>235</sup>

This provision establishes two methods of EJJP designation. These methods provide flexibility, allowing designation of children who are not appropriate for either criminal prosecution or traditional juvenile court adjudication. Importantly, this provision extends EJJP to include children who would otherwise face automatic transfer.<sup>236</sup> The juvenile system might yet be able to rehabilitate some of these children.<sup>237</sup> Structured with the realization that automatically consigning these children into the criminal justice system will only increase crime, this provision gives the prosecutor the power to choose EJJP over transfer for those children in this category who demonstrate an amenability to treatment.<sup>238</sup>

The creation of a second method of EJJP designation through the direction of the juvenile court pursuant to a presumptive or discretionary transfer hearing eliminates the necessity of forcing the court to make an "either/or" decision resulting in exclusive designation in every case.<sup>239</sup> Some children standing before the court in a discretionary or presumptive transfer hearing will demonstrate that transfer is not proper. However, many of these children are not able to succeed under traditional juvenile court adjudication. This provision will ensure these children do not fall through the cracks.

To guard against the improper designation of EJJP in borderline cases, this provision prescribes a list of factors determinative of the child's best interests and the safety of the public that the court must examine prior to an EJJP designation.<sup>240</sup> However, when the child is not in such a borderline position due to the serious nature of the offense charged, there arises an irrebuttable presumption that, upon a finding of probable cause, the child should face EJJP. Therefore, once the state's attorney files a motion requesting EJJP designation of children who fall under the guidelines of presumptive, mandatory, or automatic

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within 30 days of the filing of the state's motion to designate); *see also* ILL. S. 363 (proposing a designation hearing within 30 days of the filing of the state's motion to designate).

235. *See* ILL. S. 363 (proposing notice rights under these circumstances).

236. This would require amending 705 ILCS 405/5-4 to allow EJJP designation of children whom the state is presently statutorily required under automatic transfer guidelines to exclude from juvenile court jurisdiction.

237. *See* discussion *supra* Part II.B.

238. *See* discussion *supra* Part II.B.

239. *See* MINN. STAT. § 260.126(1) (1996) (providing for EJJP designation through transfer hearings); *see also* MONT. CODE ANN. § 41-5-1602 (1997) (providing for EJJP designation through transfer hearings); Lemov, *supra* note 74, at 54 (quoting Minnesota Senator Patrick McGowan as stating that states do not have to make this "either/or" decision).

240. *See* MINN. JUV. CT. PROC. R. 19.05 (1996) (providing a list of factors the court must consider before making a discretionary EJJP designation).

transfer, the court must order EJJP designation upon a finding of probable cause.

*B. Proposed 705 ILCS 405/5-4.5(2) EJJP Trial and Sentencing*

(A) A MINOR WHOM THE STATE PROSECUTES UNDER THIS SECTION SHALL BE ENTITLED TO THE SAME DUE PROCESS RIGHTS AFFORDED TO DEFENDANTS IN THE CRIMINAL COURT.<sup>241</sup>

(B) UPON A PLEA OR FINDING OF GUILT, THE COURT SHALL IMPOSE:

(1) A JUVENILE DISPOSITION UNDER 705 ILCS 405/5-23; AND

(2) A SENTENCE UNDER THE CRIMINAL CODE OF 1961.<sup>242</sup> THE COURT SHALL STAY THE ADULT SENTENCE PENDING THE MINOR'S SUCCESSFUL COMPLETION OF THE JUVENILE DISPOSITION, AT WHICH TIME THE COURT SHALL VACATE THE ADULT SENTENCE.<sup>243</sup>

(C) UPON A PLEA OR FINDING OF GUILT FOR AN OFFENSE NOT INCLUDED UNDER THE EXTENDED JURISDICTION JUVENILE PROSECUTION DESIGNATION, THE COURT MAY SENTENCE THE MINOR UNDER THIS SECTION IF THE MINOR CONSENTS.<sup>244</sup> ABSENT SUCH CONSENT, THE COURT MUST GIVE THE MINOR A JUVENILE DISPOSITION UNDER 705 ILCS 405/5-23.<sup>245</sup>

(D) WARDSHIP OVER A MINOR WHOM THE COURT SENTENCES UNDER THIS SECTION MAY EXTEND UNTIL THE MINOR'S TWENTY-FOURTH BIRTHDAY.<sup>246</sup>

(E) IF THE STATE ALLEGES THAT A MINOR WHOM THE COURT HAS SENTENCED UNDER THIS SECTION HAS VIOLATED A CONDITION OF THE MINOR'S JUVENILE DISPOSITION OR HAS COMMITTED A NEW OFFENSE, THE COURT MAY ORDER THE PLACEMENT OF THE MINOR INTO CUSTODY.<sup>247</sup> THE COURT SHALL PROVIDE THE MINOR AND THE MINOR'S ATTORNEY WRITTEN NOTICE OF THE STATE'S ALLEGATIONS.<sup>248</sup>

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241. See MINN. STAT. § 260.126(3) (1996) (providing the right to jury trial and effective assistance of counsel in EJJP trials); see also S. 69, 77th Leg., Reg. Sess. (Kan. 1997) (amending Kansas law to provide all procedural rights to an EJJP defendant).

242. See MINN. STAT. § 260.126(4) (1996) (providing for dual sentencing under EJJP); see also ILL. S. 363 (proposing dual sentencing under EJJP in Illinois). 705 ILCS 405/5-23 provides juvenile dispositions pursuant to a delinquency adjudication. 705 ILCS 405/5-23 (West 1996).

243. See MINN. STAT. § 260.126(4)(2) (1996) (staying the adult sentence); see also ILL. S. 363 (staying the adult sentence).

244. See MINN. STAT. § 260.126(4) (1996) (providing a similar measure). This provision is meant to facilitate plea-bargaining in appropriate instances, whereby the state dismisses the charge for the EJJP-covered offense in return for the child pleading guilty to a lesser, non-covered offense and consenting to dual sentencing. See *Case Study*, *supra* note 118, at 1046 (discussing how Minnesota's similar statute works).

245. See MINN. STAT. § 260.126(4) (1996) (providing a similar measure).

246. See MONT. CODE ANN. § 41-5-205(3) (1997) (extending wardship over EJJP youth until age 25).

247. See MINN. STAT. § 260.126(5) (1996) (providing a similar measure).

248. *Id.*



THE COURT SHALL HOLD A HEARING TO DETERMINE THE VERACITY OF THESE ALLEGATIONS, AT WHICH TIME THE STATE MUST PROVE ITS ALLEGATIONS BY A PREPONDERANCE OF THE EVIDENCE.<sup>249</sup> AT THIS HEARING THE MINOR AND THE MINOR'S ATTORNEY MAY SUBMIT EVIDENCE CONTESTING THE STATE'S ALLEGATIONS AND EVIDENCE OF MITIGATING CIRCUMSTANCES.<sup>250</sup> IF THE COURT FINDS THAT THE STATE HAS PROVEN ITS ALLEGATIONS BY A PREPONDERANCE OF THE EVIDENCE, THE COURT MAY ORDER IMMEDIATE EXECUTION OF THE ADULT SENTENCE.<sup>251</sup> THE COURT MAY CONTINUE THE STAY UPON THE ADULT SENTENCE IF THE COURT FINDS MITIGATING FACTORS JUSTIFY THIS CONTINUATION.<sup>252</sup> THIS FINDING SHALL BE MADE IN WRITING AND SHALL PROVIDE A DETAILED EXPLANATION OF THE REASONS UNDERLYING THE CONTINUATION.<sup>253</sup>

This provision provides full procedural rights and dual sentencing for EJJP youth. Notably, it gives the juvenile court discretion in dealing with EJJP-convicted youth who re-offend or break a dispositional term.<sup>254</sup> The goal of EJJP is to offer serious child offenders one last chance at rehabilitation while meting out adult punishment to those who waste this chance.<sup>255</sup> This goal is not advanced when a child has diligently and actively engaged himself or herself in the treatment program, but perhaps inadvertently or even negligently has broken a dispositional term or has committed a relatively minor infraction resulting in mandatory implementation of the adult sentence.<sup>256</sup> This provision furthers the goal of EJJP by giving the court the option of imposing the adult sentence or continuing the stay.<sup>257</sup> To prevent

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249. See MONT. CODE ANN. § 41-5-1605(2) (1997) (providing for a revocation hearing in which the state must prove its allegations by a preponderance of the evidence).

250. See *id.* (providing this right to EJJP youth in a revocation hearing).

251. See CONN. GEN. STAT. § 46b-133c(e) (1997) (giving the court discretion in deciding whether to order execution of the adult sentence).

252. See *id.* (allowing the court to continue the stay upon a consideration of mitigating factors).

253. See *id.* (requiring written findings when the court does not order execution of the adult sentence).

254. In his amendatory veto of ILL. S. 363, Governor James Edgar suggested that juvenile court judges should have discretion in revoking the stay or maintaining the stay of the adult sentence for EJJP-designated children who violate a dispositional term. Telephone Interview with Randall Roberts, Supervisor of the Delinquency Division, Office of the State's Attorney, Juvenile Justice Bureau (Apr. 27, 1998).

255. *Case Study, supra* note 118, at 1041.

256. See *id.* at 1047 (describing the apprehension of some Minnesota task force members that requiring implementation of the adult sentence for "technical violations or trivial offenses" would be too "rigid").

257. See CONN. GEN. STAT. § 46b-133c(e) (1997) (giving the court this option); see also MINN. STAT. § 260.126(5) (1996) (giving the court this option for children whom the prosecutor has designated); MINN. R. CRIM. PROC. 27.04(3)(3)(b) (1996) (giving the court this option for all EJJP youth).

"one last chance" from developing into many last chances, this provision requires the court to make written findings regarding decisions continuing the stay.<sup>258</sup> Therefore, this provision furthers the goal of EJJP without compromising the integrity of the program.<sup>259</sup>

This provision also extends juvenile court wardship over EJJP-designated youth from the current maximum age of twenty-one to twenty-four.<sup>260</sup> Extending wardship in this manner will serve several functions. First, it will give these youths more time to access rehabilitative services.<sup>261</sup> Providing a solid three years more of services will increase the likelihood these youths have achieved rehabilitation and are ready to re-enter society. Second, extending wardship will provide more accountability. The older EJJP youth, knowing that he or she will face criminal incarceration, will be unlikely to commit another offense during these extra years of oversight. Research demonstrates that as delinquent youths get older, they commit far fewer offenses or stop committing offenses altogether. Thus, this additional oversight will bridge the gap and guide these youths until they have matured. Finally, extending wardship will encourage the utilization of EJJP rather than transfer for older, yet treatable, children.<sup>262</sup> Understandably, judges might be reluctant to order EJJP of an older child if they think any resulting sentence will be inadequately short, even if the child is otherwise appropriate for EJJP.<sup>263</sup> Extending wardship will alleviate these concerns and allow judges to designate EJJP for older children when appropriate.<sup>264</sup>

## CONCLUSION

Juvenile delinquency has long been a problem in American society. America has responded in accordance with its changing

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258. See CONN. GEN. STAT. § 46b-133c(e) (1997) (requiring the court to make written findings when declining to implement the adult sentence of a re-offending or term-breaking youth); see also MINN. STAT. § 260.126(5) (1996) (requiring the court to make written findings when declining to revoke the stay of youths whom the prosecutor has designated for EJJP); *Case Study*, *supra* note 118, at 1049 (describing this requirement as a means of preventing "one last chance" from developing into more last chances).

259. See *Case Study*, *supra* note 118, at 1049 (describing this requirement of written findings as a way to preserve the meaningfulness of EJJP).

260. See MONT. CODE ANN. § 41-5-205(3) (1997) (providing for juvenile court wardship over EJJP youth until age 25).

261. See discussion *supra* Part II.A.

262. See *Case Study*, *supra* note 118, at 1040 (stating that prolonging wardship will alleviate the perceived need to transfer older youths).

263. See *id.* (describing the short period for wardship over older youths as a motivating factor in transfer decisions).

264. See *id.* (stating that prolonging wardship will address judicial concerns leading to the use of transfer for older youths).

perceptions of children. The latest change reflected in some states is EJJP, a system in which certain child offenders receive both a juvenile disposition and a stayed adult sentence. EJJP recognizes that neither the juvenile justice system nor the criminal justice system have been successful in addressing the complex problem of youth crime. EJJP combines the most effective elements of each system, rehabilitating young offenders by holding them accountable.

Illinois should fully utilize EJJP in its struggle to eradicate youth crime. This is a struggle Illinois cannot afford to lose. The model statute provided in this Comment will make sure that children like Laura are not automatically lost in the criminal justice system, and that children like Frank do not continue to take advantage of the juvenile justice system with impunity.