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Richard F. Walsh
Cicuit Court of Cook County, Illinois

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*Richard F. Walsh**

I. INTRODUCTION

Legislation is pending in Illinois that would redefine a juvenile, for the purpose of delinquency proceedings, as a person under eighteen years of age.[1] The Illinois Juvenile Court Act presently defines a "delinquent minor" as any minor who violated any law prior to his seventeenth birthday.[2] Thus, seventeen-year-olds are prosecuted as adults in adult criminal court. The proposed changes would add seventeen-year-olds to the definition of delinquent minors so that these teenagers would be prosecuted in juvenile court. If the proposal becomes law, Illinois would join thirty-seven other states, the federal government, and most foreign countries in defining a juvenile as an adolescent less than eighteen years of age.[3]

Previous attempts to raise the age for delinquency in Illinois to include seventeen-year-olds have failed.[4] Attempts to raise the age for delinquents have been vigorously opposed. In Illinois, county governments are responsible for the expenses of holding juveniles prior to trial.[5] Counties must also pay for most of the services provided to delinquents, including the cost of probation supervision and drug treatment.[6] Cook County, which includes the City of Chicago, has been a leader in opposing any changes in age for delinquents because of the

* Judge of the Circuit Court of Cook County, Illinois, and Adjunct Professor of Law, The John Marshall Law School. This Article is in partial fulfillment of the requirements for the Master of Judicial Studies degree program at the University of Nevada, Reno.

1. H. 1517, 95th Gen. Assem. (Ill. 2007).

2. 705 ILL. COMP. STAT. 405/5–105 (2006).

3. ANNE L. STAHL ET AL., NAT'L CENTER FOR JUVENILE JUSTICE, JUVENILE COURT STATISTICS 2001–2002, 9 (2005); European Economic and Social Committee, *Opinion of the European Economic and Social Committee on the prevention of juvenile delinquency. Ways of dealing with juvenile delinquency and the role of the juvenile justice system in the European Union*, 2006 O.J. (C 110) 75.

4. *E.g.*, S. 0458, 94th Gen. Assem. (Ill. 2007).

5. 705 ILL. COMP. STAT. ANN. 405/6–7 (West 2006).

6. *Id.* § 405/6–5.

fear of vastly increased expenses to the county. Other counties have also voted to oppose the age change proposal for this reason.[7] This Article will examine two of the issues involved in increasing the age of juveniles to include seventeen-year-olds. First, it will discuss why the age should be increased to treat seventeen-year-olds as juveniles. Second, it will examine whether fears of greatly increased costs to the counties are justified.

For many years, Illinois has defined a juvenile delinquent as a minor who has not attained his or her seventeenth birthday.[8] In response to what was termed a juvenile crime epidemic in the late 1980s, Illinois and most other states amended their juvenile codes and authorized the prosecution of juveniles in many instances in adult criminal court. A dramatic decrease in juvenile crime over the last decade has prompted a reexamination of these "get tough" statutes. This reexamination was also spurred by recent legal and medical literature on the subject of adolescent prosecution in the adult system. Lawyers representing juveniles in adult court have reported on the immaturity and incompetence of their clients. At the same time, medical scientists have discovered that the development of the human brain during adolescence is greatly different than originally believed. Clinical psychologists are explaining deviant juvenile behavior using these new medical findings. In light of these new explanations for juvenile thought and behavior, increasing the age of a juvenile delinquent by one year is not a major proposition.

This Article argues that the cost of implementing the change will be much less than feared; in fact, it may save money overall. The arguments opposing the age change do not consider the procedural differences between charging an adult with a crime and processing a juvenile for an act of delinquency. An examination of the differences between adult criminal law and juvenile law shows that many of the seventeen-year-olds held in jails awaiting trial would not even be charged as juveniles. Of those who are charged, only a few will be held in custody. None will be held for the periods adults spend in custody

7. Charles Keeshan, *County Balks at the Cost of Raising Juvenile Age to 17*, DAILY HERALD, Mar. 21, 2007; Bethany Krajelis, *Measure Would Move Juvenile System Age Cap to 17 for Some*, CHI. DAILY L. BULL., Apr. 27, 2007.

8. *See* People v. McCalvin, 302 N.E.2d 342, 345 (Ill. 1973) ("Except as provided in this section, no boy who was under 17 years of age or girl who was under 18 years of age at the time of the alleged offense may be prosecuted under the criminal laws of this State or for violation of an ordinance of any political subdivision thereof."); People v. Robinson, 314 N.E.2d 585, 592 (Ill. App. Ct. 1974); People v. Wilson, 305 N.E.2d 602, 603 (Ill. App. Ct. 1973).

awaiting trial. Thus, seventeen-year-olds charged as juveniles would not cost counties vast sums in increased expenses.

II. RECENT LEGAL DEVELOPMENTS IN JUVENILE LAW

Beginning in the mid-1980s, violent crime committed by juveniles increased dramatically.[9] By 1993, the rate of homicides committed by juveniles had tripled from a decade earlier.[10] Since the mid-1990s, however, the rate of violent crimes committed by juveniles has dropped dramatically.[11] In Illinois, juvenile crime is at a forty-year low.[12] This decline in juvenile crime in Illinois is consistent with the latest national figures.[13] Many theories have been propounded attempting to explain the increase in crime and the subsequent dramatic decrease. One popular theory states that the reduction of violence in the crack cocaine trade accounts for the drop in juvenile crime.[14] This theory holds that most juvenile violence occurred because of disputes over territories by youth gangs.[15] Federal law enforcement approves this explanation for adolescent violence.[16] Others in law enforcement argue that changes in police practices and reporting procedures and better case processing account for the reductions.[17] Another theory is that simply more aggressive police work has stopped youth violence.[18] Still others write that the legalization of abortion accounts for the drop in juvenile violence.[19] There are even proponents of a theory that the reduction of

9. OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, U.S. DEPT. OF JUSTICE, JUVENILE ARRESTS 1998, 6 (1999).

10. Daniel Cork, *Examining Space-Time Interaction in City-Level Homicide Data: Crack Markets and the Diffusion of Guns Among Youth*, 15 J. OF QUANTITATIVE CRIMINOLOGY 379, 379 (1999).

11. Philip J. Cook & John H. Laub, *After the Epidemic: Recent Trends in Youth Violence in the United States*, 29 CRIME & JUSTICE 1, 7 (2002).

12. Michael J. Sniffen, *Murder Rate Hits Forty-Year Low*, CHI. DAILY L. BULL., Oct. 18, 2005, at 2.

13. OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, U.S. DEPT. OF JUSTICE, JUVENILE ARRESTS 2004, at 6 (2005).

14. Cork, *supra* note 10, at 386.

15. *See* JAMES C. HOWELL, JUVENILE JUSTICE AND YOUTH VIOLENCE 116 (C. Terry Hendrix ed., 1997) ("Their presumed organizational and territorial characteristics established their amenability to drug trafficking.").

16. Alfred Blumstein, *Youth Violence, Guns and the Illicit Drug Industry*, 86 J. CRIM. L. & CRIMINOLOGY 10 (1995).

17. FRANKLIN E. ZIMRING, AMERICAN YOUTH VIOLENCE (1998).

18. Thomas J. Lemmer & Rachel M. Johnston, *Reducing Crime Through Juvenile Delinquency Intervention*, THE POLICE CHIEF, May 2004.

19. John J. Donahue III & Steven D. Levitt, *The Impact of Legalized Abortion on Crime*, 116 Q. J. OF ECON. 379, 380 (2001).

lead in the air we breathe accounts for the reduction in adolescent crime.[20]

Whatever the reasons for the crime epidemic or the causes for the cessation of violence, the period of violence has had a lasting effect on how juveniles are treated in the criminal justice system. Prior to the 1990s, juvenile court was viewed as an institution that emphasized rehabilitation over punishment and that emphasized confidentiality, informality, and the physical separation of children from adult offenders.[21] The Illinois Juvenile Court Act of 1987 and related statutes codified the concept of "parens patriae," providing that all decisions in delinquency cases must be made in the best interest of the minor.[22] The purpose of all juvenile sentences was to treat and rehabilitate the minor.[23] A sentence imposed under the Illinois Juvenile Court Act had to comply with the best interest standard. Under this standard, the commitment of a juvenile to a penal institution was only allowed as a last resort.[24]

With the dramatic increase in violent juvenile crime, many were concerned that juvenile courts were not oriented towards preventing crime and were not treating juvenile offenders severely enough.[25] These concerns resulted in significant changes in juvenile law. From 1992 through 1997, twenty-five states enacted mandatory transfer laws transferring some juvenile offenders to adult court.[26] In the forty largest counties in the United States, 7100 juveniles were adjudicated as adults in felony adult criminal courts by 1998. Forty percent of these juveniles received adult prison sentences.[27]

Consistent with this philosophical shift, in the mid 1990s, Illinois enacted the "Safe Neighborhood" laws.[28] The legislature declared that

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20. Rick Nevin, *How Lead Exposure Relates to Temporal Change in IQ, Violent Crime and Unwed Pregnancy*, 83 ENVTL. RES. 1 (2000).

21. *In re* B.S., 549 N.E.2d 695, 698 (Ill. App. Ct. 1989).

22. Richard Holmgren, *A Primer on the Juvenile Court Act of 1987*, 9 CBA REC. 33, 33 (1995).

23. NAT'L INST. OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, JUVENILE DISPOSITIONS AND CORRECTIONS VOL IX (1977).

24. *In re* B.S., 549 N.E.2d at 698 ("Commitment is to be used only when less severe placement alternatives would not be in the best interests of the minor and the public.").

25. Donna M. Bishop et al., *Juvenile Justice Under Attack: An Analysis of the Causes and Impact of Recent Reforms*, 10 U. FLA J.L. & PUB. POL'Y 129, 136–37 (1998).

26. OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, U.S. DEPT. OF JUSTICE, TRYING JUVENILES AS ADULTS IN CRIMINAL COURT, AN ANALYSIS OF STATE TRANSFER PROVISIONS (1998).

27. BUREAU OF JUSTICE STATISTICS, U.S. DEPT. OF JUSTICE, SPECIAL REPORT: JUVENILE FELONY DEFENDANTS IN CRIMINAL COURT (2003).

28. 705 ILL. COMP. STAT. 405/5–820 (2006).

in any proceeding involving a juvenile the most important consideration was the community's right to be protected.[29] In construing these new laws, the Illinois Supreme Court declared that public safety and punishment were the overriding concerns of the juvenile justice system.[30] The amendments to the Juvenile Court Act excluded many offenses from the jurisdiction of the juvenile court.[31] Juveniles over fifteen years of age who commit a variety of offenses ranging from murder to schoolyard drug transactions are now automatically charged in adult court and face adult proceedings and penalties. Other provisions of the new laws empowered the prosecutor with the discretion to transfer cases out of juvenile court.[32] The "Safe Neighborhood" laws required mandatory sentencing in some cases that remained under the jurisdiction of the juvenile court.[33]

III. CROSS DISCIPLINARY CONSENSUS THAT SEVENTEEN-YEAR-OLDS ARE NOT SMALL ADULTS

Professionals in multiple disciplines have observed the effects of laws that treated seventeen-year-olds like adults. Ultimately, attorneys, behavioral scientists, members of the medical profession, as well as the Supreme Court of the United States concluded that seventeen-year-olds are not mature enough to be tried as adults.

A. The Criminal Defense Attorneys

It quickly became apparent to the lawyers representing adolescents charged in adult criminal proceedings that juveniles are not merely smaller versions of adults.[34] Adolescents make poor criminals and even poorer defendants. Juveniles readily confess their misdeeds to authority figures such as school counselors and police.[35] When making admissions, juveniles often over-implicate themselves out of misplaced loyalty to their peers.[36] Further, children are more suggestible

29. *Id.* § 405/5-801.

30. *In re* B.L.S., 782 N.E.2d 217, 223 (Ill. 2002).

31. 705 ILL. COMP. STAT. 405/5-130 (2006).

32. *Id.* § 405/5-805.

33. *Id.* § 405/5-750.

34. *See* Marty Beyer, *Immaturity, Culpability, and Competency in Juveniles—A Study of 17 Cases*, CRIM. JUST., Summer 2000, at 27 (describing lawyer-requested interviews of their juvenile clients regarding their thought processes).

35. Patrick M. McMullen, *Questioning the Questions: The Impermissibility of Police Deception in the Interrogation of Juveniles*, 99 NW. U. L. REV. 971, 994, 997 (2005).

36. Malcolm C. Young, *Representing a Child in Adult Criminal Court*, CRIM. JUST., Spring 2000, at 16.

concerning peripheral facts.[37] Children also often make false confessions to end psychologically coercive interrogations.[38]

Furthermore, defense counsel found that many adolescents do not understand the function of their attorney, particularly when the lawyer is a court appointed public defender.[39] One study found that the majority of juveniles in custody, including a number of seventeen-year-olds, believe that their court appointed attorney would share information with the police if he or she did not believe in the juvenile's innocence.[40]

Even more troubling than these issues, defense counsel discovered that adolescents lack the ability to make the reasoned judgments required of an adult charged with a major crime.[41] Most young people are not able to make such reasoned decisions regarding what plea to enter, whether or not to testify, or whether to appeal.[42] Juveniles, because of immaturity and lack of experience, have no concept of spending years in custody.[43] A juvenile's inability to cooperate with his or her attorney is aggravated by the fact that the lawyer often does not realize that the juvenile does not comprehend these alternatives.[44]

B. The Behavioral Scientists

The observations and complaints made by lawyers representing adolescents in adult court led psychologists and other behavioral scientists to develop methods of measuring the maturity and fitness of teenagers to stand trial.[45] One startling discovery was that only twenty-

37. John E.B. Myers et al., *Psychological Research on Children as Witnesses: Practical Implications for Forensic Interviews and Courtroom Testimony*, 28 PAC. L.J. 3, 33 (1996).

38. Jennifer J. Walters, Comment, *Illinois' Weakened Attempt to Prevent False Confessions by Juveniles: The Requirement of Counsel for the Interrogations of Some Juveniles*, 33 LOY. U. CHI. L.J. 487, 505 (2002).

39. Emily Buss, *"You're My What?" The Problem of Children's Misperceptions of their Lawyer's Roles*, 64 FORDHAM L. REV. 1699, 1699, 1706 (1996).

40. Theresa Rajack-Talley et al., *The Knowledge of Detained Juveniles About the Juvenile Justice System*, 56 JUV. AND FAM. CT. J. 30 (2005).

41. McMullen, *supra* note 35, at 992.

42. *See* Robert E. Shepherd, Jr. & Adrienne Volenik, *Juvenile Justice: The Right to Effective Counsel*, CRIM. JUST., Fall 1987, at 33 (listing reasons why juveniles need counsel).

43. *See* Robert E. Shepherd, Jr., *Juvenile Justice: Sentencing a Child for Murder in a "Get Tough" Era*, CRIM. JUST., Spring 2000, at 70 (discussing how today's youth are exposed to violence without consequences or messages of permanence and gravity).

44. A defense attorney who has explained possible alternatives and potential consequences to a juvenile client is less likely to question the competency of the client if the client has chosen or assented to the course of action deemed appropriate by the attorney. Vance L. Cowden & Geoffrey R. McKee, *Competency to Stand Trial in Juvenile Delinquency Proceedings—Cognitive Maturity and the Attorney-Client Relationship*, 33 U. LOUISVILLE J. OF FAM. L. 629, 644 (1995).

45. JOHN PARRY & ERIC Y. DROGIN, CRIMINAL LAW HANDBOOK ON PSYCHIATRIC AND PSYCHOLOGICAL EVIDENCE AND TESTIMONY 107–09 (Amy Allbright ed., 2000).

five percent of tenth grade juveniles entering the adult criminal justice system possessed the mental capacity to understand the proceedings and the long-term consequences of their decisions.[46] Another more recent study found that sixty-eight percent of the fifteen to seventeen-year-old males in custody had some mental health disorder.[47] A study using a diagnostic interview schedule approved by the United States Department of Justice found that over one-third of the adolescents in adult custody suffered from some mental disorder.[48]

In addition to the issue of mental fitness, studies measured the maturity of teenagers to stand trial.[49] One long-range study tested 1400 juveniles over a five-year period to determine whether immaturity affected the juvenile's ability to participate in his or her trial.[50] Many of the adolescents studied had a fundamentally deficient knowledge of the judicial process. Another important consideration is whether juveniles understand the difference between their own attorney and the prosecutor.[51] In one study, a group of seventeen-year-olds in custody all believed that the police have the authority to determine guilt or innocence.[52]

Studies of specific groups like seventeen-year-olds in custody or of larger populations of diverse adolescents were consistent in certain findings. According to these studies, many minors lack the basic mental capacities expected of a defendant in an adult criminal case. Adolescents lack the ability of expression and of logical coherent thought found in adults.[53] Many, if not most, adolescents are incapable of putting facts together and then drawing logical conclusions.[54] One study found that only one in seventeen adolescents seventeen years of age can read with sufficient efficiency to gain information from

46. McMullen, *supra* note 35, at 933–34.

47. David R. Katner, *The Mental Health Paradigm and the MacArthur Study: Emerging Issues Challenging the Competency of Juveniles in Delinquency Systems*, 32 AM. J.L. & MED. 503, 509 (2006).

48. Laurence Steinberg, *Juveniles on Trial: MacArthur Foundation Study Calls Competency into Question*, CRIM. JUST., Fall 2003, at 23.

49. *See* Elizabeth S. Scott & Thomas Grisso, *Developmental Incompetence, Due Process and Juvenile Justice Policy*, 83 N.C. L. Rev. 793, 797 (2005) (describing a trial competency study sponsored by the MacArthur Foundation).

50. Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 LAW & HUM. BEHAV. 333 (2003).

51. Elizabeth S. Scott & Thomas Grisso, *Developmental Incompetence, Due Process and Juvenile Justice Policy*, 83 N.C. L. Rev. 793, 838 (2005).

52. Rajack-Tally, *supra* note 40, at 33.

53. Thomas Riffin, *Competence to Stand Trial Evaluations with Juveniles*, 32 NEW ENG. J. CRIM. & CIV. CONFINEMENT 15, 18–19 (2006).

54. Steinberg, *supra* note 48, at 23.

specialized texts.[55] Adolescents are incapable of using information received efficiently to make long-range decisions.[56] Teenagers cannot weigh possible long-range outcomes in making decisions.[57]

C. The Medical Scientists

The observations of lawyers and the measured findings of the psychologists concerning the lack of maturity of adolescents were verified in studies by medical scientists. Harvard University and the University of California-Los Angeles are participating in a long-range study mapping the development of the human brain using magnetic resonance imaging ("MRI").[58] Until this study it was believed that the human brain was fully developed and was incapable of change by the age of six. However, the study revealed that the brain undergoes massive changes between the ages of twelve and twenty-one.[59] The frontal lobe of the brain, that portion which controls impulsivity and judgment, goes through many changes called myelination.[60] The frontal lobe is not fully developed until between the ages of eighteen and twenty-two.[61]

Primarily because of these physical changes in the brain during adolescence, children between the ages of twelve and eighteen undergo significant physical, emotional, social, moral, and intellectual changes. These changes vary widely among and within individuals.[62] Adolescence is a period of tremendous plasticity in response to features in the adolescent's environment, including family, peer group, school, and other settings.[63] Medical scientists discovered that brain

55. Kati Haycock & Sandra Huang, *Are Today's High School Graduates Ready?*, THE EDUCATION TRUST: THINKING K–16, Winter 2001, at 5.

56. Kim Taylor-Thompson, *States of Mind/States of Development*, 14 STAN. L. & POL'Y REV. 143, 154 (2003).

57. Elizabeth Cauffman & Laurence Steinberg, *The Cognitive and Affective Influences on Adolescent Decision-Making*, 68 TEMPLE L. REV. 1763, 1773 (1995).

58. Adam Caine Ortiz, *Juvenile Death Penalty: Is it "Cruel and Unusual" in Light of Competency Standards?*, CRIM. JUST., Winter 2003, at 23.

59. *Id.*

60. *Id; see also* Elizabeth R. Sowell, et al., *Mapping Continued Brain Growth and Gray Matter Density Reduction in Dorsal Frontal Cortex: Inverse Relationships during Postadolescent Brain Maturation*, 21 J. NEUROSCIENCE 8819 (2001) (discussing the study of spatial and temporal brain maturation in children, adolescents, and adults).

61. Ortiz, *supra* note 58, at 234.

62. Robert E. Shepard Jr., *Developmental Psychology and the Juvenile Justice Process*, CRIM. JUST., Spring 1999, at 42.

63. Laurence Steinberg & Elizabeth Cauffman, *The Elephant in the Courtroom: A Developmental Perspective on the Adjudication of Youthful Offenders*, 6 VA. J. SOC. POL'Y & L. 389, 393 (1999).

development continues until a person's early twenties. Thus, adolescent behavior during this period is different from adult behavior simply because the brain is different.[64]

The fully developed adult brain enables the adult to make rational choices after weighing the consequences of different alternatives.[65] Adolescents have not developed the maturity of judgment necessary to weigh the possible outcomes in the decision-making process.[66] Because the adolescent brain is not fully developed, young people lack the experience, perspective, and judgment necessary to avoid unwise choices.[67] Even though a juvenile's decision to commit a crime can cause great harm to the victim and to the juvenile, the juvenile usually lacks a full understanding of the consequences of his or her actions.[68] One commentator described the adolescent decision-making process as follows:

> In situations where adults see several choices, adolescents may see only one. This is especially true for those with learning disabilities or lower intelligence. Often adolescents feel cornered and can see no other way out. As a result, their actions show poor judgment and may violate their own moral values. This can even be true for intelligent juveniles. When things do not unfold as they imagined, because of their immaturity, they behave as if they have lost their script and are incapable of adapting another, more reasonable choice.[69]

In most cases, juveniles are not deterred from committing a crime by the fact that they will have to pay for the harm caused.[70] Adolescents do not rationally weigh the cost factors before committing a crime. They are influenced by other considerations such as peer pressure, perceived threats, and their developing self-identity.[71] Peer pressure is especially significant in the juvenile decision making process because the peer

64. Kevin W. Saunders, *A Disconnect Between Law and Neuroscience: Modern Brain Science, Media Influences and Juvenile Justice*, 2005 UTAH L. REV. 695, 697 (2005).

65. Ruth Beyth-Marom et al., *Perceived Consequences of Risky Behavior: Adults and Adolescents*, 29 DEVELOPMENTAL PSYCHOL. 549 (1993).

66. Taylor-Thompson, *supra* note 56, at 154.

67. John Alan Cohan, *A Reexamination of the Juvenile Justice System*, 1 WHITTIER J. CHILD. & FAM. ADVOC. 37, 43 (2002).

68. Barry C. Feld, *Juvenile and Criminal Justice Systems' Responses to Youth Violence*, 24 CRIME & JUST. 189, 249–50 (1998).

69. Beyer, *supra* note 34, at 27.

70. ROBERT H. MNOOKIN & D. KELLY WEISBERG, CHILD, FAMILY AND STATE 1085 (3d ed. 1995).

71. F. Raymond Marks, *Detours on the Road to Maturity: A View of the Legal Conception of Growing Up and Letting Go*, 39 LAW & CONTEMP. PROBS. 78, 92 (1975).

group is an important source of support and role models for many juveniles.[72]

D. The Supreme Court's View in Roper v. Simmons

In *Roper v. Simmons*, the United States Supreme Court held that the Eighth and the Fourteenth Amendments of the United States Constitution prohibit the execution of persons who are under eighteen at the time of the offense.[73] Justice Kennedy, writing for the majority, held that it is cruel and unusual punishment to execute teenagers under eighteen.[74] He reasoned that young people lacked maturity and have not developed the sense of responsibility of an adult, which often results in impetuous and ill-conceived decisions.[75] In reaching this conclusion, the opinion relied heavily on scientific and medical data found in the amicus briefs.[76] During oral argument, the Court explored the question of when the human brain matures.[77] The Court recognized that it could not determine an exact answer but concluded that eighteen is the age where maturity should legally rest.[78]

Courts in Illinois have not extended the findings made in *Roper v. Simmons* beyond death penalty cases because, by statutory definition, anyone who has attained the age of seventeen is an adult for the purposes of the criminal law.[79] However, outside criminal procedure, the legislature has recognized in many instances that persons under eighteen are not mature adults. The General Assembly has enacted numerous statutes to protect both the public and children under eighteen years of age. For example, seventeen-year-olds cannot marry without parental consent.[80] Seventeen-year-olds cannot drive a motor vehicle without meeting certain requirements.[81] Minors under seventeen years old cannot purchase airline tickets.[82] Additionally, there are restrictions

72. *See, e.g.*, Cohan, *supra* note 67, at 43 (discussing the "greater propensity" of children to fall subject to peer pressure and other emotions).

73. Roper v. Simmons, 543 U.S. 551, 578 (2005).

74. *Id.* at 569.

75. *Id.*

76. Deborah W. Denno, *The Scientific Shortcomings of* Roper v. Simmons, 3 OHIO ST. J. CRIM. L. 379, 382 (2006).

77. Aliya Haider, Roper v. Simmons*: The Role of the Science Brief*, 3 OHIO ST. J. CRIM. L. 369, 375 (2006).

78. *Id.* at 374.

79. People v. Griffin, 857 N.E.2d 889, 898–99 (Ill. App. Ct. 2006).

80. 750 ILL. COMP. STAT. 5/203 (2006).

81. 625 ILL. COMP. STAT. 5/6–107 (2006), *amended by* Pub. Act 95–310, § 10, 2007 Ill. Legis. Serv. 2163–65.

82. 720 ILL. COMP. STAT. 5/10–8 (2006).

on their ability to work.[83] Seventeen-year-olds cannot vote,[84] serve on a jury,[85] or make a valid will.[86] They are not allowed to smoke,[87] have their bodies pierced without parental consent,[88] or get a tattoo.[89]

Thus, under Illinois law, a seventeen-year-old is not mature enough to decide on a tattoo or sit on a jury but the same seventeen-year-old is expected to be mature enough to participate in a jury trial as a defendant and to make the mature decisions required of an adult in a criminal proceeding.[90]

IV. OPPONENTS' FEAR THAT THE AGE INCREASE WILL INCREASE COUNTY COSTS

Opponents of the proposal to increase the age for delinquency in Illinois to eighteen do not contest the clinical and scientific findings that seventeen-year-olds are not mature adults and do not have the brain development of an adult. Rather, they oppose the expense that would be incurred by county government in treating seventeen-year-olds as juveniles. They argue that the increase in age would be prohibitively expensive, but do not cite any studies in support of this conclusion.[91]

One opponent of the age increase is the Cook County Judicial Advisory Council, which was created to study and make recommendations regarding improvements in the administration of justice in Cook County, Illinois.[92] The Council has successfully opposed the age change in the past, arguing that the one-year change in age would cost Cook County taxpayers millions of dollars.[93] It argued that the change would require the construction of an entirely new detention facility to house all of the seventeen-year-olds who would be in juvenile custody awaiting trial.[94] The Council also argued that increases in probation staff, drug treatment programs, and other rehabilitative services would add to the county's expenses.[95]

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83. 820 ILL. COMP. STAT. 205/1 (2006).
84. 10 ILL.COMP. STAT. 5/3–1 (2006).
85. 705 ILL. COMP. STAT. 305/2 (2006).
86. 755 ILL. COMP. STAT. 5/4–1 (2006).
87. 720 ILL. COMP. STAT. 675/1 (2006).
88. *Id.* § 5/12–10.1.
89. *Id.* § 5/12–10.
90. 705 ILL COMP. STAT. 405/5–130(1)(a) (2006); *Id.* § 5/120.
91. Keeshin, *supra* note 7.
92. 55 ILL. COMP. STAT. 5/5–18001 through 5/5–18005 (2006).
93. Kay Schroeder, Cook County Judicial Advisory Council, Legislative and Fiscal Analysis of Bill Status of SB 458, at 1 (Apr. 4, 2006) (unpublished report, on file with author).
94. *Id.* at 2.
95. *Id.* at 8.

The Council's position was premised on the single fact that juveniles held in custody must by statute be kept separate from adults.[96] Juvenile facilities must comply with regulations and are subject to inspections and to state approval.[97] The Council determined that from March 2005 to March 2006, 3036 defendants seventeen years of age were incarcerated in the Cook County Jail as adults.[98] Based on this admission figure, the Council hypothesized that on any given day there would be up to 600 seventeen-year-old inmates in the jail.[99] The Council then assumed that all 3036 seventeen-year-olds would be held in juvenile custody if the laws were changed.[100] This assumption was based on the further assumption that all 3036 were charged with the most serious felonies.[101] From these assumptions, the Council concluded that an entire new facility would have to be built at a cost of millions of dollars[102] because the present facility can only house 498 juveniles pursuant to a federal court order.[103]

V. OPPONENTS' CONCERNS THAT COUNTY COSTS WILL INCREASE ARE UNFOUNDED

The argument that changing the age for delinquency would cost Cook County and other counties millions of dollars fails for a number of reasons. First, the argument fails to recognize that the purposes of the adult criminal law and of juvenile law are different. Moreover, the procedures followed in juvenile court are different from those in adult criminal court, which significantly affects the number of juveniles held in custody. Second, the figures used to calculate the estimated expense of the age change were never verified. Nor does the calculation consider which offenses the seventeen-year-olds in custody were charged with. It was assumed that older teenagers are charged with only the most serious offenses and that their crimes were more serious than those charged in juvenile court.[104]

To determine whether the change in age will greatly increase county costs, one must determine exactly how many seventeen-year-olds are

96. ILL. ADM. CODE tit. 20 § 701.70(b)(2) (1988).

97. *Id.* § 702.80(b)(9).

98. Schroeder, *supra* note 93, at 2.

99. *Id.*

100. *Id.* at 3.

101. *Id.* at 5.

102. BOARD OF COMMISSIONERS OF COOK COUNTY, ILLINOIS, REPORT OF THE COMM. ON LEGIS. AND INTERGOVERNMENTAL RELATIONS (April 29, 2005).

103. John Doe v. Cook County, No. 99 C 3945, 1999 WL 1069244 (N.D. Ill. Nov. 22, 1999).

104. Schroeder, *supra* note 93, at 6.

actually booked into the Cook County Jail per year.[105] What crimes were they charged with? How do these charges compare with those brought in juvenile court against sixteen-year-olds? How many seventeen-year-olds are held in custody on a given day? Once this data is known, the actual costs to the counties can be determined.

In the year 2006, 1381 seventeen-year-olds were booked into the Cook County Jail.[106] According to the figures provided by the Cook County Department of Corrections, there were actually only 776 seventeen-year-olds because many were booked more than once during the year.[107] There were 709 males and 67 females.[108] The maximum number of seventeen-year-olds in the jail on a given day was 170.[109] Eighty-three percent of the seventeen-year-olds were awaiting trial on charges of either robbery, burglary (including burglary to automobiles), bodily harm, unlawful use of weapons, or narcotics/cannabis.[110] The percentage and types of offenses mirror those charged in the juvenile courts of Illinois against sixteen-year-olds in 2004.[111] Thirty-five percent of juveniles arrested statewide were sixteen years of age.[112] Thirty-two percent of all youths arrested were charged with property crimes.[113] Twenty-six percent were charged with offenses involving bodily harm.[114] Thirteen percent were involved with drug offenses.[115] Comparing sixteen-year-olds with seventeen-year-olds in custody in Cook County, in the fourth quarter of 2006, there were 396 sixteen-year-olds admitted to the Cook County Juvenile Detention Center.[116] In

105. Cook County is used in this analysis because it is the most populous county in Illinois and has the largest population of seventeen-year-olds in custody. It has been argued on behalf of Cook County that the change will cost it millions.

106. *See* Cook County Department of Corrections, Bookings for the Year 2006 Age 17 and Under (Aug. 1, 2007) (unpublished report, on file with author). Special thanks is owed to Executive Director Salvador Godinez of the Cook County Department of Corrections and his staff for taking the time to prepare the statistics used in this Article.

107. *See id.*

108. *See id.*

109. *See id*

110. *See id.*

111. ILLINOIS CRIMINAL JUSTICE INFORMATION AUTHORITY, JUVENILE JUSTICE SYSTEM AND RISK FACTOR DATA, 2004 ANNUAL REPORT 27 (2004) [hereinfter JUVENILE JUSTICE SYSTEM AND RISK FACTOR DATA]. 2004 is the last year for which data is presently available.

112. *Id.*

113. *Id.*

114. *Id.*

115. No figures are available for unlawful use of weapons or cannabis offenses.

116. COOK COUNTY JUVENILE ALTERNATIVES INITIATIVE, STATISTICAL REPORT 4TH QUARTER 2006, 9–10 (2007) [hereinafter JAI STATISTICAL REPORT].

the same quarter 382 sixteen-year-olds were released.[117] The maximum number of sixteen-year-olds in custody on a given day was ninety-six.[118]

These figures support national figures suggesting that "comparable numbers of 17-year-olds and 16-year-olds were arrested in 2002."[119] Seventeen-year-olds are committing the same crimes at the same rate as their younger brothers. Studies have found that equating increase in serious crime with an increase in maturity is "exactly wrong."[120] This data is significant to the age dispute because of the difference in the way the law treats these teenagers on the basis of a year difference in age. The seventeen-year-old faces adult criminal proceedings. When arrested, an adult is taken before a judge who advises him of the charges and sets bail in an amount that will reasonably assure the defendant's appearance in court.[121] If the defendant cannot post sufficient surety, the defendant remains in custody pending trial. Seventeen-year-olds make poor bail risks. They usually have no funds, in many cases have poor or nonexistent families, and have no financial background.[122]

Opponents of the age change argue that most seventeen-year-olds would be held in custody if treated as juveniles and their vast numbers would require the building of new jails. The evidence shows that, contrary to these arguments, most seventeen-year-olds would not be held as juveniles. There are no provisions for bail pending a hearing in juvenile court.[123] The Illinois Juvenile Court Act of 1987 severely limits the authority of the court to hold a juvenile in custody pending trial.[124] A minor may only be detained for the minor's protection, the protection of the community, or because the minor is a flight risk.[125] The law contemplates that most minors will be released to the custody of a parent or guardian pending trial.[126] In fact, many seventeen-year-olds

117. *Id.*

118. *Id.*

119. ANNE L. STAHL ET AL., U.S. DEPT. OF JUSTICE, JUVENILE COURT STATISTICS 2001–02 10 (2005); *see also* HOWARD N. SNYDER ET AL., U.S. DEPT. OF JUSTICE, JUVENILE OFFENDERS AND VICTIMS 125 (2006) (aggregating data for ages sixteen and seventeen).

120. Joseph P. Allen & Claudia Worrel Allen, *Getting the Elephant Out of the Courtroom: Applying Developmental Perspective to the Disposition of Juvenile Offenders*, 6 VA. J. SOC. POL'Y & L. 419, 421 (1999).

121. 725 ILL. COMP. STAT. 5/109–1 (2006).

122. Young, *supra* note 36, at 16–17.

123. *See* U.S. *ex rel.* Burton v. Coughlin, 463 F.2d 530, 532 (7th Cir. 1972) (stating that "it is unnecessary to reach the question whether there is a constitutional right to bail in juvenile proceedings, since we believe an adequate substitute for bail is provided by the Juvenile Court Act itself").

124. People v. D.T., 678 N.E.2d 326, 329–30 (Ill. App. Ct. 1997).

125. 705 ILL. COMP. STAT. 405/5–105(5) (2006).

126. *Id.* § 405/5–501(2).

are held awaiting trial in adult court while a sixteen-year-old charged with the same offense will be released to the custody of a parent.

The general purposes of the Criminal Code of 1961 are, among others, to forbid and prevent offenses and to prescribe penalties proportionate to the offenses.[127] The purposes of the Juvenile Court Act of 1987 are more complex. The Act is meant to secure both the welfare of the minor and the best interests of the community.[128] To this end, recent amendments to the Juvenile Court Act adopted the concept of balanced and restorative justice.[129] Under these amendments, the legislature declared that the purposes of the Juvenile Court Act are to protect citizens from juvenile crime, to hold juvenile offenders accountable, and to rehabilitate and prevent further delinquent behavior.[130] These amendments illustrate a shift from the goal of rehabilitation to the goals of protecting the public and holding juveniles accountable.[131] Nonetheless, juvenile proceedings are meant to be protective in nature and the purposes of the Juvenile Court Act of 1987 are to correct and rehabilitate and not to punish. No suggestion or taint of criminality attaches to any finding of delinquency.[132]

A. "Pre Trial Procedures" in Juvenile Court Lower Estimated Expenses

Because of the liberal release provisions, the Juvenile Court Act authorizes a number of practices and procedures for use in facilitating the release of a juvenile. These procedures include the assignment of specialized police officers, custody screening, and pretrial monitoring programs.

i. Juvenile Police Officers

If a minor is arrested for an offense that would be a misdemeanor if committed by an adult, the Juvenile Court Act grants to the arresting police officer the discretion to release the minor to a parent or guardian.[133] Approximately ten percent of the seventeen-year-olds held in the County Jail on the dates surveyed were charged with traffic or

127. 720 ILL. COMP. STAT. 5/1–2 (2006).

128. 705 ILL. COMP. STAT. 405/1–2 (2006).

129. Kulmeet S. Galhotra, *Survey of Illinois Law: Juvenile Delinquency—Protecting the Public*, 28 S. ILL. L.J. 847, 849 (2004).

130. 705 ILL. COMP. STAT. 405/5–101 (2006).

131. *In re* A.G., 746 N.E.2d 732, 735 (Ill. 2001).

132. *In re* Rodney H., 861 N.E.2d 623, 630 (Ill. 2006) (citing *In re* Dow, 393 N.E.2d 1346 (Ill. App. Ct. 1979)).

133. 705 ILL. COMP. STAT. 405/5–405(2) (2006).

liquor violations, which are misdemeanors.[134] If treated as juveniles, some of these seventeen-year-olds would be released to their parents or guardian by the arresting officers and would not be an expense to Cook County.

If a police officer arrests a juvenile without a warrant for an offense that would be a felony if committed by an adult, the officer must turn custody of the minor over to a juvenile police officer.[135] The Juvenile Court Act authorizes a community or group of communities to establish programs for the treatment of juvenile delinquents.[136] Juvenile police officers are specially trained in dealing with adolescent offenders.[137] These officers have wide discretion to decide which programs to use.[138] Every police department in Illinois has at least one qualified juvenile officer.[139] In 2003, these officers handled at least twenty-three percent of all juvenile offenses nationally.[140] The percentage of minors diverted to special programs in Illinois is even higher—approximately one-third of all arrested juveniles are diverted.[141]

ii. Station Adjustments

The juvenile officer also may decide that granting a "station adjustment" is the appropriate disposition. A station adjustment is defined as an informal or formal handling of a juvenile offender.[142] In effect, it is a form of community supervision. In deciding whether to grant a station adjustment, the officer must consider a number of factors, including the seriousness of the offense, the criminal history of the minor, the minor's age, the culpability of the minor, and whether the offense was committed in an aggressive or premeditated manner or whether the minor was armed with a deadly weapon.[143] One survey revealed that juvenile police officers in Illinois consider the age of the

134. Juvenile Justice Initiative, Analysis of 17 Year Olds Currently in Cook County Jail 1 (May 16, 2006).

135. 705 ILL. COMP. STAT. 405/5–405(2) (2006).

136. *Id.* § 405/5–300.

137. *Id.* § 405/1–3(17).

138. ILLINOIS LAW ENFORCEMENT TRAINING AND STANDARDS BOARD, ILLINOIS POLICE AGENCY MODEL JUVENILE HANDBOOK AND PROCEDURES MANUAL 23 (2004).

139. ILLINOIS CRIMINAL JUSTICE SYSTEM AUTHORITY, JUVENILE CRIME AND JUSTICE ACTIVITIES IN ILLINOIS: AN OVERVIEW OF TRENDS 7 (2000).

140. HOWARD SNYDER & MELISSA STRICKLAND, JUVENILE OFFENDERS AND VICTIMS: 2006 NATIONAL REPORT 152 (2006).

141. JUVENILE JUSTICE SYSTEM AND RISK FACTOR DATA, *supra* note 111, at iv.

142. 705 ILL. COMP. STAT. 405/5–105(16) (2006).

143. *Id.* § 405/5–301.

juvenile to be the least important factor in the decision to grant a station adjustment.[144]

The Juvenile Court Act defines two different kinds of station adjustment: informal and formal. An informal adjustment may be granted when a juvenile police officer has probable cause to believe that the minor has committed an offense.[145] The juvenile police officer is then authorized to impose reasonable conditions such as a curfew, restrictions on entering certain geographic locations, restrictions on contact with specific persons, school attendance, restitution, up to twenty-five hours of community service and participation in mediation.[146] If the minor fails to abide by the terms and conditions of the informal station adjustment, the juvenile police officer may impose a formal adjustment or may refer the juvenile to the State's Attorney's Office.[147]

A formal adjustment may be granted when there is probable cause to believe the minor has committed an offense, the minor has admitted to the offense and the minor and the minor's parents have agreed in writing to the adjustment.[148] The written agreement must include a description of the offense, the station adjustment conditions, the consequences for failing to comply with the conditions, an acknowledgement that the police record can be expunged, and an acknowledgement that the minor's admission of the offense could be used as evidence in future court hearings.[149] In addition to all the conditions that may be imposed in an informal station adjustment, a formal adjustment can forbid possession of firearms and require the minor to report as directed by the officer.[150] If the minor does not abide by the conditions, the officer can take various actions, including issuing a warning or extending the time period of the station adjustment, increasing the community service hours, or terminating the adjustment and referring the minor to juvenile court.[151] A juvenile may only be

144. Timothy Lavery, *Police Use of Formal and Informal Station Adjustments for Juveniles in Illinois*, 6 ON GOOD AUTHORITY 1, 3 (2002).

145. 705 ILL. COMP. STAT. 405/5–301(1)(a) (2006).

146. *Id.* § 405/5–301(1)(e).

147. *Id.* § 405/5–301(1)(f).

148. *Id.* § 405/5–301(2)(a)–(b).

149. *Id.* § 405/5–301(2).

150. *Id.* § 405/5–301(2)(d).

151. *Id.* § 405/5–301(2)(i).

granted four station adjustments statewide without the consent of the State's Attorney.[152]

iii. Peer Juries

A juvenile police officer may require that a juvenile participate in a teen or peer jury proceeding as a condition of either a formal or an informal station adjustment.[153] In these proceedings, a jury of the minor's peers decide appropriate sentence for the minor's conduct. The peer jury concept capitalizes on the fact that adolescents are greatly influenced by the attitudes of their peers.[154] To participate in a peer jury proceeding, a juvenile must admit to the charge against him and both the minor and his parents must waive any right to confidentiality.[155] In one peer jury program, the offenses heard ranged from theft to burglary to narcotic violations.[156] A peer jury could require that a minor participate in a drug rehabilitation program.

Station adjustments, formal and informal, with or without peer juries, are popular procedures for the disposition of juvenile offenses. In 1999, the Chicago Police Department adjusted 14,429 cases.[157] Some of the seventeen-year-olds held in the Cook County Jail as narcotics violators would benefit from such diversion programs as station adjustments, peer juries, and drug treatment. These young people would not be held in the Cook County Juvenile Detention Center and would not be a custody expense to the County. In 2004, there were 19,114 juveniles in some form of substance abuse treatment, inpatient or outpatient, in Illinois.[158]

iv. Pretrial Screening

If a juvenile police officer believes a minor should be in custody awaiting trial, the procedures are much different than those for adults under the criminal law. Where the youth is arrested without a warrant, he or she must be delivered to a facility designated by the court.[159] In Cook County, this facility is the Cook County Juvenile Detention

152. *Id.* § 405/5–301(2)(l). The Illinois state police must maintain records of all station adjustments.

153. *Id.* § 405/5–301(2)(d)(iii)(i).

154. Ronald W. Lowe, *Law Related Education: Teen Court—A Jury of a Juvenile's Peers*, 77 MICH. B. J. 800, 800 (1998).

155. Barbara Gilleran Johnson & Daniel Rosman, *Recent Trends in the Non-traditional Alternatives in Juvenile Justice*, 28 LOY. U. CHI. L.J. 719, 723–24 (1997).

156. *Id.* at 728.

157. JUVENILE COMPETENCY COMMISSION, FINAL REPORT 37 (Aug. 2001).

158. JAI STATISTICAL REPORT, *supra* note 116, at 25.

159. 705 ILL. COMP. STAT. 405/5–410(2)(a) (2006).

Center. At the Center, a designated juvenile probation officer reviews the case to determine whether the minor should be held pending a detention hearing.[160] The designated probation officer utilizes a screening instrument approved by the Cook County State's Attorney in deciding whether to hold a minor.[161] This screening instrument is a form that assigns numerical values to such factors as the nature of the offense, prior criminal history, aggravating factors, such as possession of weapons, risk of flight, whether the minor has other pending cases, and also mitigating factors, such as parental control.[162] The screening instrument assigns a total score to the minor, which is used to determine whether there is an urgent and immediate need to hold the minor. The screening instrument plays a primary role in deciding whether the minor should be held, and the probation officer does not exercise much discretion in making this decision.[163] If a minor's score on the screening instrument is low and the State's Attorney concurs, a minor could be released even if he is charged with very serious offenses.[164]

If the minor does not receive a score warranting detention, one of several outcomes may occur. The minor could be released without charge.[165] The minor could be released to a parent pending a hearing.[166] If necessary, the minor may be placed in a nonsecure facility for up to forty hours pending a detention hearing.[167] Alternately, the Cook County Juvenile Probation and Court Services Department has created a number of programs to supervise a minor pending hearing and trial including electronic monitoring, home confinement, and evening reporting. All of these programs are meant to be alternatives to pretrial incarceration.[168]

Undoubtedly, many of the seventeen-year-olds awaiting trial in the Cook County Jail due to their inability to make bond would not be held

160. JUVENILE PROB. & CT. SERVS. DEP'T., CIRCUIT COURT OF COOK COUNTY, SUMMARY OF JUVENILE PROBATION SERVICES PROGRAMS AND INITIATIVES 5 (2006) [hereinafter JUVENILE PROBATION SERVICES].

161. 705 ILL. COMP. STAT. 405/5–410(2)(b–4) (2006).

162. TIMOTHY LAVERY ET AL., PRETRIAL JUVENILE DETENTION SCREENING PRACTICES IN ILLINOIS app. A (July 2004).

163. Erica Hughes, *Examining Pretrial Juvenile Detention Screening Practices in Illinois*, ILL. CRIM. JUST. INFO. AUTHORITY RES. BULL., July 2004, at 3–5.

164. *See* 705 ILL. COMP. STAT. 405/5–410(2)(b–5) (2006) (including crimes of first degree murder and criminal sexual assault, among others).

165. *Id.*

166. *Id.* § 405/5–410(4).

167. *Id.* § 405/5–410(3).

168. *See* ILLINOIS POLICE AGENCY MODEL JUVENILE HANDBOOK AND PROCEDURES MANUAL, *supra* note 138, at 12 (describing forms of non-secure custody).

as juveniles because of a low score on the screening instrument. These minors would not be a custody expense to the County.

v. Probation Adjustment and Mediation

During the screening process, the probation officer may hold a preliminary conference with the view of adjusting the case without filing a petition.[169] The probation officer could offer a period of informal probation of up to one year. This period could include any and all of the conditions of court-imposed probation and require the minor to participate in a residential treatment program, special education program, or other rehabilitative program.[170] In deciding whether to grant a probation adjustment, the probation officer must consider the allegations against the minor, the minor's and his or her family's history, the education and employment status of the minor, the availability of special resources or services to aid the minor, the attitude of the complainant and the community toward the minor, and the present attitude of the minor.[171] In 2004, the latest year for which figures are available, there were 2194 instances in which informal probation was granted in Illinois.[172]

In addition to granting a probation adjustment, the screening probation officer could refer the minor to a community mediation program.[173] The purpose of a mediation program is to deal with the minor's delinquency in a speedy and informal manner within the community. Its goal is to impress upon the minor the seriousness of his or her actions upon the victim and upon the community.[174] Often the victim will participate in the mediation session. To be eligible to participate in the mediation program, the minor must admit responsibility for the acts.[175] The mediator may require the minor and, if appropriate, members of the minor's family to participate in counseling including drug or alcohol treatment. The mediator can also order restitution and up to 100 hours of community service.[176]

169. 705 ILL. COMP. STAT. 405/5–305(1) (2006).

170. *Id.* § 405/305(5).

171. *See id.* § 405/305(6) (referencing factors in 705 ILL. COMP. STAT. 405/5–405(4) (2006)).

172. JUVENILE JUSTICE SYSTEM AND RISK FACTOR DATA, *supra* note 111, at 44.

173. 705 ILL. COMP. STAT. 405/5–310(1) (2006).

174. *Id.*

175. 705 ILL. COMP. STAT. 405/5–310(3)(b) (2006). The State's Attorney is to maintain a list of qualified mediators. 705 ILL. COMP. STAT. 405/5–310(2). Funding for the Cook County State's Attorney's highly successful mediation program has been cut because of budget constraints.

176. 705 ILL. COMP. STAT. 405/5–310(4) (2006).

Informal probation and mediation were instituted as part of the balanced and restorative justice approach to juvenile delinquency.[177] Instead of focusing on deterrence, the restorative justice approach focuses on the increased participation of victims, offenders, and the community in the legal system in order to restore victims and the community to the status quo ante. It attempts to alter the behavior of offenders by requiring admission of guilt, acceptance of responsibility, and reparation of damages. The approach rejects retribution and punishment as a policy for the juvenile justice system.[178]

B. Procedures Upon Arraignment Lower Estimated Costs

If the juvenile officer, the screening instrument, and the State's Attorney all concur that a minor should be charged and held pending trial, a petition is filed with the court. The petition must charge the minor with a violation of federal, state, county, or municipal law.[179] The minor must be brought before a judge within forty hours of his or her arrest for arraignment and a detention hearing.[180] The forty-hour requirement is tolled by any delay caused by the minor, such as an issue as to true age, medical treatment, or hospitalization.[181] If the minor is not brought before the court within forty hours, the minor must be released from custody.[182] Failure to comply with the forty-hour requirement is not a violation of due process and does not warrant dismissal of the petition.[183]

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177. *See* Betsy Clarke, *Juvenile Justice: A New Philosophy of Restorative Justice: The Judicial Reform Act of 1998*, 13 CHI. B. ASS'N REC. 22, 22 (Jan. 1999) (describing the origins of the Juvenile Justice Reform Act).

178. Darren Bush, *Law and Economics of Restorative Justice: Why Restorative Justice Cannot and Should Not Be Solely About Restoration*, 2003 UTAH L. REV. 439, 440–41 (2003).

179. *See* 705 ILL. COMP. STAT. 405/5–415(2) (2006) (citing 705 ILL. COMP. STAT. 405/5–520 (2006)).

180. *Id.* § 405/5–415(1).

181. *Id.*

182. *Id.* § 405/5–415(3).

183. *See In re* Austin D., 831 N.E.2d 1206, 1214 (Ill. App. Ct. 2005) (concluding that a probable cause finding that child was abused, neglected, or dependent at temporary custody hearing was not a substantive ruling); *In re* McCall, 438 N.E.2d 1269, 1271 (Ill. App. Ct. 1982) (concluding that the dismissal of charges against minor defendants was not a proper remedy for the State's failure to hold a detention hearing within thirty-six hours after minors were taken into custody); People v. Clayborn, 414 N.E.2d 157, 160 (Ill. App. Ct. 1980) (holding that failure to provide a juvenile who is in temporary custody with a detention hearing within the thirty-six-hour limitation imposed by the statute does not deprive the court of jurisdiction over the juvenile).

The minor must be represented by an attorney at the detention hearing.[184] At the hearing the court must decide whether there is probable cause to believe that the minor committed the acts of juvenile delinquency charged in the petition.[185] If the court finds probable cause, the court must further find that there is urgent and immediate necessity to hold the minor in secure detention for the protection of the minor, for the protection of the person or property of another, or because the minor is likely to flee the jurisdiction of the court.[186] In deciding whether there is urgent and immediate necessity, the court must consider the seriousness of the offense, the minor's prior record, the minor's history of court appearances, and the availability of non-custodial alternatives.[187]

If the court does not find that there is urgent and immediate necessity to hold the minor, the minor must be released to a parent.[188] If a parent or guardian does not appear within seven days, the court may order that the minor be transferred to the Illinois Department of Human Services or to a child welfare agency.[189]

In an adult criminal proceeding, the judge must set bond after finding probable cause.[190] In a juvenile proceeding, even after finding probable cause and finding urgent and immediate necessity to hold the minor, the court still has other options to secure custody pending trial.[191] The Juvenile Probation and Court Services Department in Cook County has created several programs that may be used by the court as alternatives to detention.[192] These programs would be applicable to seventeen-year-olds if they were considered juveniles and many of the seventeen-year-olds presently in custody as adults would be released to these programs.

184. 705 ILL. COMP. STAT. 405/5-501 (2006); *In re* M.W., 616 N.E.2d 710, 711-12 (Ill. App. Ct. 1993) (minor sought reversal after court appointed counsel to the minor and then proceeded with the hearing in the absence of that appointed counsel).

185. 705 ILL. COMP. STAT. 405/5-501 (2006).

186. *Id.* § 405/5-501(2).

187. *Id.*

188. *Id.*

189. 705 ILL. COMP. STAT. 405/5-501(6) (2006). The Department's goal is the reunification of the family. While attempting reunification, a minor may be placed in a group home or in foster care for up to twenty-one days. ILL. DEP'T. OF HUMAN SERVS., RELEASE UPON REQUEST in COMMUNITY HEALTH AND PREVENTION PROGRAM MANUAL (2008), http://www.dhs.state.il.us/page.aspx?Item=27446.

190. 725 ILL. COMP. STAT. 5/110-4 (2006 and West Supp. 2007).

191. *See* 705 ILL. COMP. STAT. 405/5-501(2) (2006) (describing the availability of non-custodial alternatives).

192. *See* JUVENILE PROBATION SERVICES, *supra* note 160, at 12 (describing alternatives).

i. Electronic Monitoring

Another option pending trial is to release the minor on electronic monitoring, a form of home detention.[193] The minor must wear an ankle bracelet that tracks the minor's whereabouts or at least indicates whether the minor is at home as required.[194] The program is jointly managed by the Cook County Sheriff's Department and the Cook County Juvenile Probation and Court Services Department.[195] The program has a capacity of 110 minors per day and is intended to last for a period of twenty-one days or until trial.[196] The cost of the program is $50.00 per day, much less than the $153.00 per day cost of secure juvenile detention.[197] Since its inception in 1996, the program has enrolled 6094 minors.[198] Ninety-four percent have successfully competed the program.[199] In 2006, only three percent of the juveniles on electronic monitoring were rearrested for a new offense while enrolled in the program.[200]

ii. Home Confinement and Evening Reporting Centers

As another alternative to secure detention, the court could place the minor on home confinement. Home confinement restricts the minor to home, to be monitored by a special unit of probation officers. The minor must remain in the residence unless he or she is attending school, has a medical emergency, or is attending religious services with a parent.[201] A parent must approve any visitors, and a parent or probation officer must approve use of the telephone.[202]

The home confinement program is intended to last forty-five days or until trial. The cost of the home confinement program is $25.00 per day.[203] The average daily participation in home confinement is 117.[204]

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193. *See* 730 ILL. COMP. STAT. 5/5–8A–3(f)(1) (2006) (noting that electronic monitoring is an available option for pre-trial or pre-adjudicatory detention).

194. *See id.* § 5/5–8A–4 (describing the home detection program).

195. JUVENILE PROBATION SERVICES, *supra* note 160, at 11.

196. *Id.* at 12.

197. Ode Jones, Pretrial Detention Alternatives Continuum (May 2007) (unpublished report on file with the author).

198. JUVENILE PROBATION SERVICES, *supra* note 160, at 11.

199. *Id.* (successful completion means that the minor remained arrest-free during the time of the program).

200. Cook County Sheriff Dep't of Cmty. Supervision and Intervention, D.C.S.I. Statistics (2007), *available at* http://www.cookcountysheriff.org/dcsi/stats.html#em_rearrest.

201. JUVENILE PROBATION SERVICES, *supra* note 160, at 13.

202. The unpublished rules of the home confinement program and the conditions for participation in the program are on file with the author.

203. Jones, *supra* note 197 (on file with author).

Since it inception in 1994, 25,788 minors have been placed on home confinement.[205] 92.9% successfully completed the program.[206]

An evening reporting program has been developed by the Probation and Court Services Department with the assistance of the Chicago Public Schools to supervise minors ordered to be on home confinement in the City of Chicago. As a condition of home confinement, the court may require that the minor participate in an evening reporting program. These centers provide supervision from 3:00 P.M. to 9:00 P.M. These are the hours when nationally most juvenile crimes occur.[207] Several evening reporting centers have been established throughout the city.[208]

At the Centers, the juveniles are tutored in homework, fed dinner, participate in sports and other activities, and can receive professional counseling.[209] The program is designed to last for forty-five days or until trial. The cost of the program is $42.00 per day.[210] One hundred sixty-five juveniles can be enrolled in the program at any time and since its inception in 1995, 15,725 juveniles have participated in the program.[211] Ninety percent have completed the program successfully.[212]

iii. Non-secure Shelter

The court has another, although more limited, option other than ordering a minor into custody. Where the court decides that a minor should not be held but a parent or guardian is not available or fails to take custody of the minor, the court may be able to place the minor in a temporary shelter facility. The Juvenile Probation and Court Services Department contracts for two such facilities: one for boys and one for girls. Presently the facilities have capacity for thirty-four juveniles.[213] There are stricter eligibility requirements for these facilities. To be eligible for admission a minor cannot be prescribed any type of psychotropic medication.[214] The minor cannot be charged with or ever

204. JUVENILE PROBATION SERVICES, *supra* note 160, at 11.

205. *Id.*

206. *Id.*

207. HOWARD N. SYNDER & MELISSA SICKMUND, U.S. DEPT. OF JUSTICE, JUVENILE OFFENDERS AND VICTIMS: 1999 NATIONAL REPORT 64–66 (1999), *available at* http://www.ncjrs.gov/html/ojjdp/nationalreport 99/toc.html.

208. JUVENILE PROBATION SERVICES, *supra* note 160, at 18.

209. *Id.* at 17–19.

210. Jones, *supra* note 197 (on file with author).

211. JUVENILE PROBATION SERVICES, *supra* note 160, at 9.

212. *Id.*

213. *Id.* at 11.

214. *Id.*

have been found guilty of a sex crime.[215] The minor cannot be charged with arson.[216] Even with the restrictions, the court has placed 8721 minors in shelter care since 1995 and 96.3% have completed the thirty-day program successfully.[217] The cost of shelter care is $144.00 per day.[218]

Many of the seventeen-year-olds who pass through the Cook County Jail every year and are held because they cannot make bond would qualify for electronic monitoring, home confinement with or without evening reporting, or even shelter care pending trial. The cost of these programs could range from $25.00 per day for a period of forty-five days to $144.00 per day for a period of thirty days. According to the figures of the Judicial Advisory Council, it costs $20,440.00 per year to keep a seventeen-year-old locked up in the Cook County Jail.[219]

C. Trial Procedures in Juvenile Cases Lower Expected Costs

The vast majority of juvenile delinquency cases are disposed of without trial. In 2004, the latest year for which figures are available, there were a total of 45,371 juvenile arrests reported to the Illinois State Police and 21,859 delinquency petitions were filed statewide.[220] Over 23,000 cases were disposed of without any court action; 9535 petitions were filed in Cook County, Illinois.[221] Statewide, however, only 8535 cases went to trial;[222] 3639 of these cases were adjudicated in Cook County.[223]

Presently, the seventeen-year-olds who cannot make bail may languish in the Cook County Jail for many months awaiting trial, thereby adding to the County's expensive board bill.[224] If seventeen-year-olds were considered juveniles, they would remain in custody for a much shorter period of time. Unlike an adult, when a minor is held in

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215. *Id.*

216. *Id.*

217. *Id.* at 11.

218. Jones, *supra* note 197 (on file with author).

219. Schroeder, *supra* note 93, at 3.

220. ILLINOIS JUVENILE JUSTICE COMMISSION, JUVENILE JUSTICE SYSTEM AND RISK FACTOR DATA: 2004 ANNUAL REPORT 157, 162–63 (2007), *available at* http://www.icjia.state.il.us/public/pdf/ResearchReports/Juvenile%20Justice%20Risk%20Factor%20Data%202004%20Annual%20Report.pdf.

221. *Id.* at 162.

222. *Id.* at 163.

223. *Id.*

224. Sally Bauler, *Appellate Review Under the Bail Reform Act*, 1992 U. ILL. L. REV. 483, 485 (1992).

custody pending trial, the minor must be tried within thirty days of the detention order.[225] This thirty-day period may be extended for an additional fifteen days to comply with the notice requirements to the juvenile's parents or guardian.[226] There are also certain specific statutory exceptions extending the thirty-day requirement[227] as well as statutory reasons that will toll the thirty-day requirement.[228] These reasons include a delay occasioned by the minor, an interlocutory appeal, a fitness examination, a hearing, or a finding of unfitness to stand trial.[229]

In the majority of cases, juveniles are either entitled to a trial within thirty days or are entitled to release from custody and the out-of-custody time limits and rules apply.[230] If treated as juveniles, the seventeen-year-olds presently occupying the Cook County Jail would be tried or released. Contrary to the arguments of those opposing the age change, they would not cost the vast sums it costs the County to hold adults in custody.

VI. THE TRUE EFFECT OF RAISING THE AGE FOR JUVENILE DELINQUENCY

Young people who have not attained their eighteenth birthday are still adolescents. They do not have the maturity, experience, or brain development necessary to be considered adults. Lawyers, psychologists, and medical doctors agree that seventeen-year-olds are not mature adults. Even the United States Supreme Court has found that seventeen-year-olds cannot be considered to be mature adults.[231] In accordance with these findings, seventeen-year-old adolescents should be treated as juveniles for the purpose of the criminal law.

Those who oppose changing the juvenile law in Illinois do not contest the scientific findings that seventeen-year-olds are not mature adults. Rather, they argue that the cost of changing the law would be prohibitively expensive. They have conducted a vigorous campaign against the age change based upon one figure: the total intake of

225. 705 ILL. COMP. STAT. 405/5–601(4) (2006).

226. *Id.* § 405/5–525.

227. 705 ILL. COMP. STAT. 504/5–601(4) (2006) allows the court to extend the time for trial for an additional seventy days when the petition alleges an offense involving death, great bodily harm or sexual assault. In a narcotic case the time may be extended up to forty-five days to secure a laboratory report. 705 ILL. COMP. STAT. 405/5–601(5) (2006) allows an extension of time for up to 120 days for DNA testing.

228. Only those reasons enumerated in the statute will toll the time requirements. *In re* S.G., 677 N.E.2d 920, 927 (Ill. 1997).

229. 705 ILL. COMP. STAT. 405/5–601(8) (2006).

230. *Id.* § 405/5–601(4).

231. Roper v. Simons, 543 U.S. 551, 569 (2005).

seventeen-year-olds into the Cook County Jail in a one-year period. Yet they provided no data stating why the seventeen-year-olds were incarcerated or for how long they were incarcerated. More importantly, they failed to consider the differences between adult and juvenile proceedings. An adult either makes bond or stays in custody pending trial. A juvenile, in contrast, may be released without charges by a juvenile police officer, a probation officer, or an assistant state's attorney into station adjustment programs, probation adjustment programs, or mediation. The Cook County Juvenile Probation and Court Services Department, with the assistance of the Annie E. Casey Foundation, has created a number of alternatives the court can use in lieu of incarceration.[232] These include electronic monitoring, home confinement, and evening reporting centers. Furthermore, the length of time required to bring a juvenile to trial is much shorter than for adults.

The estimate that increasing the age of delinquency by one year will cost the counties of Illinois millions of dollars is not based on the facts and requires false assumptions. The change will not in any way modify the ability of the state to proceed against individual juveniles in adult court. Many serious offenses will still be excluded from the jurisdiction of the juvenile court.[233] The age change will not impact the mandatory transfer provisions[234] or the presumptive transfer provisions.[235] The court will retain the discretion to transfer other offenses to adult court if the court finds that the protection of the public warrants the transfer.[236] According to the Cook County Judicial Advisory Council, almost one-third of those incarcerated in the Juvenile Temporary Detention Center

232. *See* JUVENILE JUSTICE PROJECT OF THE CORRECTIONS ASSOCIATION OF NEW YORK, RETHINKING JUVENILE DETENTION IN NEW YORK CITY 14–15 (2002), *available at* http://correctionalassociation.org/JJP/publication/rethinking_detention.pdf (examining the contributions made by the Anne E. Casey Foundation to the pretrial programs in Cook County, Illinois).

233. 705 ILL. COMP. STAT. 405/5–130 (2006) excludes from juvenile court jurisdiction the offenses of first degree murder, aggravated sexual assault, armed robbery with a firearm, aggravated vehicular hijacking with a firearm, certain narcotic violations, and certain weapons violations on school property if committed by a minor over fifteen years of age. Also excluded are first-degree murder committed during an aggravated criminal sexual assault, sexual assault or aggravated kidnapping committed by a minor over thirteen years of age.

234. 705 ILL. COMP. STAT. 405/5–805(1) (2006) requires the court transfer a minor over fifteen years of age to adult court when the state requests the transfer and the minor is charged with a felony, has been previously convicted of a forcible felony, and the charged offense was in furtherance of gang activity.

235. 705 ILL. COMP. STAT. 405/5–805(2) (2006) creates a rebuttable presumption that a minor over 15 years of age is "not a fit and proper subject" for adjudication in juvenile court if the minor is charged with certain offenses relating to guns, drugs, or gangs, or a combination of these offenses.

236. 705 ILL. COMP. STAT. 405/5–805(3) (2006).

have cases pending in adult court but must be housed as juveniles.[237] There are sixteen authorized juvenile detention facilities in Illinois.[238] Another could be created within the Cook County Jail to house those minors who are to be tried as adults since no one objects to the expense of housing these minors. As the Council points out, the vast Cook County Jail complex could easily absorb these inmates.[239] Another solution would be to apply the juvenile in custody thirty-day trial requirements to these transfer cases.[240]

A realistic starting point to estimate any increase in county expenses caused by the increase in age is the fact that sixteen and seventeen-year-olds commit the same crimes at the same rate.[241] Thus, the maximum number of seventeen-year-olds held in custody if charged as juveniles on any given day should be similar to sixteen-year-olds. The number of sixteen-year-olds is a maximum of ninety per day.[242] Using the same arithmetic and logic utilized by the Council, one can assume that a maximum of ninety seventeen-year-olds would be held if they were considered juveniles. It will cost the County $84.00 per day to hold each of the ninety seventeen-year-olds in the Juvenile Temporary Detention Center, or a total of $7,560.00 per day.[243] Note, however, that these seventeen-year-olds are not being incarcerated in the Cook County Jail at a cost of $56.00 per day, or a total of $5,040.00 per day.[244] According to this arithmetic, the difference between treating seventeen-year-olds as juveniles rather than adults is $2,520 per day. The State of Illinois will pay twenty-three percent of the expenses of keeping the minors in custody, or $1,739.00.[245] Thus, the total increased cost to Cook County, to include seventeen-year-olds as juveniles is $781.00 per day. For only $781.00 per day, Cook County can join most other states and most civilized countries in prosecuting seventeen-year-old adolescents as juveniles.[246]

Adding seventeen-year-olds to the definition of juveniles will increase some costs to the counties. The counties will need to establish

237. *Id.* § 405/5–501(4). Minors must be held only in a facility authorized for detaining juveniles and only under conditions required by the Act. *Id.*

238. JUVENILE JUSTICE SYSTEM AND RISK FACTOR DATA, *supra* note 111, at 113.

239. Schroeder, *supra* note 93, at 3.

240. *See* 705 ILL. COMP. STAT. 405/5–601(4) (2006) (requiring trial within thirty days of detention order).

241. SNYDER ET AL., *supra* note 119, at 125.

242. JAI STATISTICAL REPORT, *supra* note 116.

243. Schroeder, *supra* note 93, at 4.

244. *Id.*

245. 730 ILL. COMP. STAT. 110/16.1 (2006).

246. European Economic and Social Committee, *supra* note 3.

services for these youths or will have to enlarge already existing programs. The caseloads of probation departments will increase. There will be a need for additional personnel and equipment to monitor those juveniles placed in pretrial programs, such as home confinement or electronic monitoring. There will be a need for additional drug rehabilitation counselors and for more drug programs.

There is a proposal pending in the state legislature to establish a task force to study and to develop a funding structure to accommodate the expansion of the jurisdiction of Illinois juvenile courts to include seventeen-year-olds.[247] This study group will submit a report to the legislature.[248] If this task force recommends that the State pay a greater share of the costs for the services for delinquent minors, most of the opposition to the age increase would disappear.[249] An investment by the State in these programs would save society and the State millions of dollars over the next decade. When the United States Congress enacted the Juvenile Justice and Delinquency Act of 2002, Congress made a rare specific finding that a juvenile delinquent could cost society from $1,500,000 to $2,300,000 from a life of crime.[250] The figures came from a study of the present cost to society caused by a lifetime of crime by one drug abuser who dropped out of high school.[251] The study defined present value as the amount that had to be set aside today to pay for a related series of events that occur now and in the future.[252] The study found that the average career criminal committed sixty-eight to eighty crimes of various levels of seriousness over a ten-year period.[253] On average, four of these crimes were committed while the offender

247. H. 1517, 95th Gen. Assem., Reg. Sess. (Ill. 2007).

248. The Illinois Juvenile Jurisdiction Task Force is to be comprised of two members of the Senate, two members of the House, the Director of the Administrative Office of Illinois Courts, The Cook County State's Attorney, the Cook County Public Defender, the Director of the Illinois Prosecutors Association, the Illinois Appellate Defender, a county board official, and an expert in juvenile justice. H. 1517, 95th Gen Assem., Reg. Sess. (Ill. 2007).

249. Study groups in other states have recommended that their states incur the greater expenses associated with increasing the maximum age of juveniles to eighteen. *E.g.*, *Hearing on H.B. 7246 and S.B. 1196 Before Gen Assem. Comm. on Children* (Conn. Feb. 27, 2007), *available at* http://www.ctkidslink.org/testimony/022707childrejuvjus.pdf; MISS. GEN. ASSEM. COMM. LEGIS. & RES. OVERSIGHT DIV., FISCAL ANALYSIS; CHILDREN AND MINORS, COURTS, EDUCATION, CRIMES AND PUNISHMENT, L. R. No 4076–03, S. 1382 (2004), *available at* http://www.moga.mo.gov/Oversight/OVER04/fishtm/4076-03N.ORG.htm.

250. 42 U.S.C. § 5601(a)(2) (2000), *amended by* 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107–273, § 12202, 116 Stat. 1758.

251. Mark A. Cohen, *The Monetary Value of Saving a High Risk Youth*, 14 J. QUANTATIVE CRIMINOLOGY 5,7 (1998).

252. *Id.* at 9.

253. *Id.* at 28.

was a juvenile.[254] The present cost of resources diverted from productive use and into the drug market to support the offender's habit would be $150,000 to $300,000.[255] The present-day value of productivity losses associated with being a high school drop out came to $243,000 to $380,000.[256] The total present-day value of preventing one adolescent from leaving school and turning to drugs and a life of crime was $1.7 million to $2.3 million.[257] The work of economists and actuaries was reduced to a bill and was submitted to Congress, which formed the basis of the Congressional finding.[258]

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254. *Id.* at 12.
255. *Id.* at 26.
256. *Id.*
257. SNYDER & SICKMUND, *supra* note 207, at 82.
258. Cohen, *supra* note 251, at 17, 24, and 26.

To: American public
For: One lost youth

Description	Cost
Juvenile career (4years @ 1–4 crimes/year)	
Victim costs	$62,000–250,000
Criminal justice costs	$21,000–84,000
Adult career (6years @ 10.6 crimes/year)	
Victim costs	$1,000,000
Criminal justice costs	$335,000
Offender productivity loss	$64,000
Total crime cost	$1.5–$1.8 million
Present value	$1.3–$1.5 million
Drug abuse:	
Resources devoted to drug market	$84,000–$168,000
Reduced productivity loss	$27,600
Drug treatment cost	$10,200
Medical treatment of drug relted illness	$11,000
Premature death	$31,000–$223,000
Criminal justice costs associated with drugs	$40,500
Total drug abuse cost	$200,000–$480,000
Present value	$150,000–$360,000
Cost of high school dropout:	
Lost wage productivity	$300,000
Fringe benefits	$75,000
Nonmarket losses	$95,000–$375,000
Total dropout cost	$470,000–750,000
Present value	$243,000–$380,000
Total loss	$2.2–$3 million
Present value	$1.7–$2.3 million

Id.

VII. CONCLUSION

By increasing the age of delinquents to include seventeen-year-olds and adequately funding the programs necessary to rehabilitate these young people, the State of Illinois will save money. It will also assure that many of the seventeen-year-olds the Cook County Judicial Advisory Council found in the Cook County Jail do not become the drug addicted drop outs who cost the State and the victims of crime millions of dollars as well as immeasurable misery and tragedy.