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Juvenile Law

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Elizabeth E. Clarke and Jacqueline Jacobson***

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I. INTRODUCTION

During the *Survey* year, the field of juvenile law experienced a number of significant developments. The Illinois Legislature was extremely active in this area, recodifying the entire Juvenile Court Act.¹ Substantive changes in both the delinquency and the abuse and neglect contexts also resulted from legislative action.² In addition, the legislature passed three bills concerning child witnesses in criminal proceedings.³

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1. 1987 Ill. Legis. Serv. 85-601 (West). The recodified Juvenile Court Act is entitled the 1987 Juvenile Court Act.

2. See *infra* notes 77-203 and accompanying text.

3. See *infra* notes 45-76 and accompanying text.

The most prominent legislative change, the recodification of the Juvenile Court Act (the "Act"), was initiated by a bi-partisan committee in an attempt to reorganize the provisions of the Act's predecessor, which had been subject to piecemeal amendments over the past twenty years.⁴ As recodified, the Act is divided into seven articles.⁵ In the hope that the recodified Act would be easier to follow, the drafters structured each article for each separate adjudicatory proceeding to include every provision affecting that adjudicatory label.⁶

Illinois courts were equally active during the *Survey* year. The Illinois Supreme Court considered what methods could be utilized to shield a child witness from the trauma associated with testifying in an open courtroom.⁷ The supreme court also considered the adequacy of a judicial transfer hearing in light of due process requirements.⁸ In addition, the supreme court considered the constitutionality of an automatic transfer provision for a juvenile charged with the offense of unlawful use of weapons on school grounds.⁹ Finally, the Illinois Appellate Court for the First District addressed the speedy trial rights of delinquent minors.¹⁰ This Article will highlight these major developments in Illinois in the field of juvenile law.

II. CHILD WITNESSES

A. *Illinois Supreme Court*

The Illinois Supreme Court addressed what methods could be utilized to shield a child witness from the trauma associated with testifying in an open courtroom in *People v. Johnson*.¹¹ The supreme court held that permitting the jury to view videotaped tes-

4. The bi-partisan committee was set up by the Illinois Juvenile Justice Commission and the Illinois State Bar Association's Juvenile Law Committee.

5. The seven articles are: Definitions and General Provisions, ILL. REV. STAT. ch. 37, paras. 801-1 to 801-11 (1987); Abused, Neglected or Dependent Minors, ILL. REV. STAT. ch. 37, paras. 802-1 to 802-31 (1987); Minors Requiring Authoritative Intervention, ILL. REV. STAT. ch. 37, paras. 803-1 to 803-32 (1987); Addicted Minors, ILL. REV. STAT. ch. 37, paras. 804-1 to 804-29 (1987); Delinquent Minors, ILL. REV. STAT. ch. 37, paras. 805-1 to 805-34 (1987); Administration of Juvenile Services, ILL. REV. STAT. ch. 37, paras. 806-1 to 806-11 (1987); Savings, ILL. REV. STAT. ch. 37, para. 807-1 (1987).

6. For example, proceedings affecting delinquent minors are covered in full in article V. ILL. REV. STAT. ch. 37, paras. 805-1 to 805-35 (1987). Thus, the practitioner need not look beyond article V to find provisions applicable to a delinquency proceeding.

7. See *infra* notes 11-44 and accompanying text.

8. See *infra* notes 82-110 and accompanying text.

9. See *infra* notes 111-131 and accompanying text.

10. See *infra* notes 132-160 and accompanying text.

11. 118 Ill. 2d 501, 517 N.E.2d 1070 (1987).

timony of the five-year-old victim constituted reversible error.¹² In *Johnson*, an adult was charged with the offense of aggravated indecent liberties with a child.¹³ The testimony of the five-year-old victim and her seven-year-old brother was recorded on videotape.¹⁴ The prosecutor recorded the videotape outside the presence of the jury and spectators, but intended to present the tape to the jury later.¹⁵ Initially, the defendant was present during the videotaping of the victim's testimony.¹⁶ The child responded to preliminary questions, but became non-responsive when the prosecutor asked her questions about the day she "got hurt."¹⁷ The prosecutor then requested that the defendant be removed from the courtroom.¹⁸ Over an objection by defense counsel, the trial judge ordered the defendant removed from the videotaping room.¹⁹ After presenting the videotape to the jury, the defendant was convicted.²⁰

The defendant appealed his conviction on several grounds.²¹

12. *Id.* at 512, 517 N.E.2d at 1075.

13. *Id.* at 502, 517 N.E.2d at 1071. The child had allegedly suffered external and internal genital injuries. A hospital examination confirmed these allegations. *Id.* at 503, 517 N.E.2d at 1071.

14. *Id.* at 502, 517 N.E.2d at 1071. The recording was in black and white. Throughout most of the recording only the testifying witness was visible. The voices of both the defense and the prosecution and their physical presence generally remained outside the picture. *Id.* at 506, 517 N.E.2d at 1073. The court noted that the quality of the videotape was "less than crystal clear." *Id.*

15. *Id.* at 502, 517 N.E.2d at 1071.

16. *Id.* at 505, 517 N.E.2d at 1072. The defendant was present throughout the entire recording of the victim's brother's testimony. *Id.* at 506, 517 N.E.2d at 1073.

17. *Id.* at 505, 517 N.E.2d at 1072. The prosecutor repeatedly attempted to elicit a response from the child, but she remained silent. *Id.*

18. *Id.* During a recess, after the child refused to speak, the prosecutor told the judge that his witness was "frightened to death." *Id.* The prosecutor argued that the defendant's presence chilled the child's ability to respond to the questions. *Id.* In its opinion, the court noted that after the defendant was excluded, the child responded to the prosecutor's questions. *Id.* The court, however, added that the child eventually became non-responsive again. *Id.*

19. *Id.* The judge permitted the defendant to view the questioning of the child via closed-circuit television in a separate room. *Id.* The court also ordered that the defendant be given a note pad so he could later consult with his attorney. *Id.* The court granted a recess prior to cross examination so that the defense could review any notes taken by the defendant during the questioning of the child. *Id.* The defense counsel objected to the defendant's removal because the defendant, counsel argued, had not acted in any way to influence the child. The defense counsel also alleged that the defendant made no remarks or gestures to the child while she testified. *Id.*

20. *Id.* at 502, 517 N.E.2d at 1071.

21. *Id.* at 507, 517 N.E.2d at 1073. The defendant, in addition to the two arguments described herein (see text *infra* at notes 22-23), argued that the videotaping procedure employed in this case violated his sixth amendment right to counsel. *Id.* In addition, his removal from the courtroom, he argued, conflicted with ILL. REV. STAT. ch. 38, para. 115-11 (1983) (providing for exclusion of disinterested parties from the courtroom while the child testifies). *Johnson*, 118 Ill. 2d at 507, 517 N.E.2d at 1073.

The defendant argued that the videotaping procedure was improper because the witnesses were available to testify in the courtroom.²² He further argued that his expulsion from the recording room during the videotaping violated his sixth amendment right to confrontation.²³

The Illinois Appellate Court for the Fifth District affirmed the conviction,²⁴ citing Illinois Supreme Court Rules 414 and 206(f) as supporting the propriety of the videotape method employed.²⁵ The appellate court reasoned that the trial court had the discretion to permit the videotaping because the procedure was intended to eliminate the child's fear of testifying.²⁶ The appellate court further reasoned that the videotaping method was proper because the child's fear and reluctance to testify rendered her "unavailable" to testify.²⁷

The Illinois Supreme Court reversed and remanded the case, stating that rules 414 and 206(f) do not permit the use of the videotaping method employed by the trial court.²⁸ The supreme court agreed with the appellate court's conclusion that rule 206(f) leaves the introduction of videotaped depositions to the discretion of the trial judge.²⁹ The supreme court, however, added that the trial judge is permitted to exercise this discretion only if the witness is "unavailable" as contemplated by rule 414.³⁰

The Illinois Supreme Court rejected the appellate court's expanded definition of "unavailability" which encompassed fear and

22. *Johnson*, 118 Ill. 2d at 507, 517 N.E.2d at 1073.

23. *Id.* (citing U.S. CONST. amend. VI). The court did not address the merits of the defendant's constitutional claim because it held for the defendant on other grounds. *Id.* Recently, the United States Supreme Court enforced a literal interpretation of the confrontation clause, holding that the core guarantee of the confrontation clause is a face-to-face confrontation with the witness. *Coy v. Iowa*, 108 S. Ct. 2798 (1988). For a further discussion of *Coy*, see *infra* note 65.

24. *People v. Johnson*, 146 Ill. App. 3d 640, 497 N.E.2d 308 (5th Dist. 1986).

25. *Id.* at 646, 497 N.E.2d at 312. Rule 414 permits the use of videotaped depositions as evidence if the witness is unavailable to testify at trial. ILL. S. CT. R. 414, ILL. REV. STAT. ch. 110A, para. 414 (1987). Rule 206(f) provides that the trial court has the discretion to admit videotaped testimony into evidence. ILL. S. CT. R. 206(f), ILL. REV. STAT. ch. 110A, para. 206(f) (1987).

26. *Johnson*, 146 Ill. App. 3d at 646, 497 N.E.2d at 312.

27. *Id.* The Illinois Supreme Court stated that the appellate court expanded the notion of "unavailability" to include fear and reluctance. *Johnson*, 118 Ill. 2d at 508, 517 N.E.2d at 1074.

28. *Johnson*, 118 Ill. 2d at 512, 517 N.E.2d at 1075.

29. *Id.* at 507, 517 N.E.2d at 1073. The court noted that the introduction of videotaped testimony into evidence is within the discretion of the trial court. *Id.* (citing *People v. Zehr*, 103 Ill. 2d 472, 469 N.E.2d 1062 (1984)).

30. *Id.* at 508, 517 N.E.2d at 1073.

reluctance to testify.³¹ The supreme court stated that rule 414 was not intended to allow videotaped testimony of witnesses who were merely afraid or reluctant to testify before a jury.³² Rather, unavailability under the rule is limited to situations involving a witness who is not available to testify because of "privilege, persistent contemptuous refusal to testify, failure of memory, or death or illness."³³

The supreme court's opinion emphasized the integral role that live testimony plays in the truth-finding process.³⁴ For example, public testimony affords the jury the opportunity to observe the behavior of a witness and the veracity of his complaint.³⁵ The court stated that a departure from public testimony deprives an accused of important rights and, therefore, must be predicated upon a showing of special need.³⁶ The court concluded that the child's fear and reluctance to testify did not constitute a strong enough reason to allow a departure from public testimony.³⁷

The supreme court's decision may be limited to the specific facts of the *Johnson* case.³⁸ The court rejected the videotaped testimony because of the questionable reliability of the child's statements.³⁹ Moreover, the court recognized that there are risks inherent in videotaped testimony that enable adults to coach or induce a child into making false accusations.⁴⁰

Nevertheless, the supreme court recognized the merit of a vide-

31. *Id.*

32. *Id.* at 509-10, 517 N.E.2d at 1074.

33. *Id.* at 509, 517 N.E.2d at 1074 (citing FED. R. EVID. 804). Generally, the court looked to the definition of unavailability found in Rule 804 of the Federal Rules of Evidence. *Id.* Although the court noted that Rule 804 is not an exhaustive definition of "unavailable" under Illinois law, the court did not add to the definition of "unavailable." *Id.*

34. *Id.* at 510, 517 N.E.2d at 1074.

35. *Id.* at 508, 517 N.E.2d at 1074.

36. *Id.* at 510, 517 N.E.2d at 1074. Although the court did not define special need, it did state that reluctance to testify does not constitute special need. *Id.*

37. *Id.*

38. *Id.* at 504, 517 N.E.2d at 1072. The court has made it clear, however, that in any situation, a fearful and unwilling child is not equivalent to a child unavailable to testify. *See supra* notes 31-33 and accompanying text.

39. *Johnson*, 118 Ill. 2d at 512, 517 N.E.2d at 1075. The court stated that it discussed the facts relating to the offense in detail to place the child's videotaped testimony in the necessary perspective. *Id.* at 504, 517 N.E.2d at 1072. The court noted that some question existed as to whether the child's aunt had coached the child into naming the defendant as the assailant. *Id.* In addition, the court found the child's testimony confusing and conflicting. *Id.*

40. *Id.* at 512, 517 N.E.2d at 1075. The court found that the equivocal nature of the child's testimony bolstered the defense counsel's theory that the victim had been coached into naming the defendant as her assailant. *Id.*

otaping procedure that enables a child to overcome a fear of testifying.⁴¹ The court acknowledged that departures from normal procedure may be necessary when the testifying witness is a young child.⁴² Any such departures must take into account the defendant's interests and rights.⁴³ The court concluded that the resolution of the difficulties that arise from situations involving young children as witnesses falls within the province of the legislature.⁴⁴

B. Legislation

The Illinois Legislature recently established additional procedures applicable only to sexual abuse or assault proceedings involving child witnesses. Public Act 85-196⁴⁵ amends paragraph 115-11 of the Code of Criminal Procedure, governing persons who may be excluded from the courtroom during a sexual abuse or sexual assault proceeding when the alleged victim is a minor.⁴⁶ As amended, paragraph 115-11 provides for the exclusion of disinterested parties, with the exception of the media, during the victim's testimony when the alleged victim is a minor under eighteen years of age.⁴⁷

Also during the *Survey* period, the Illinois Legislature passed Public Act 85-881, adding three new paragraphs to the Code of Criminal Procedure.⁴⁸ New paragraph 106A governs the pre-trial

41. *Id.* The court stated that the horrible nature of the crime committed against the child presented a difficult case. *Id.* at 511, 517 N.E.2d at 1075. The court recognized that the child's reluctance to testify was genuine. *Id.* The court also recognized that the trial judge ordered the child's testimony recorded in an attempt to overcome the child's reluctance. *Id.*

42. *Id.* at 510, 517 N.E.2d at 1074.

43. *Id.*

44. *Id.* at 510-11, 517 N.E.2d at 1075. The *Johnson* court discussed legislation that was designed to resolve difficulties in the area of child witnesses. *Id.* at 510-12, 517 N.E.2d 1074-75. See *infra* notes 45-76 and accompanying text for a discussion of this legislation.

45. 1987 Ill. Legis. Serv. 85-196 (West) (effective Jan. 1, 1988).

46. ILL. REV. STAT. ch. 38, para. 115-11 (1987).

47. *Id.* Prior to the amendment, paragraph 115-11 provided that in a proceeding involving a minor victim under 13 years of age, the court could exclude all disinterested parties with the exception of the media from the courtroom while the child testified. ILL. REV. STAT. ch. 38, para. 115-11 (1985), amended by 1987 Ill. Legis. Serv. 85-196 (West). Paragraph 115-11 also permits a court to exclude persons, "who, in the opinion of the court, do not have a direct interest in the case." ILL. REV. STAT. ch. 38, para. 115-11 (1987). In *Johnson*, the defendant argued that the videotaping procedure was improper because he was excluded from the courtroom in violation of paragraph 115-11. *Johnson*, 118 Ill. 2d at 507, 517 N.E.2d at 1075. The court refrained from addressing the merits of this contention. *Id.* The method employed in *Johnson* clearly violated paragraph 115-11 by excluding the defendant, who had a direct interest in the case, from the proceeding.

48. 1987 Ill. Legis. Serv. 85-881 (West) (effective Jan. 1, 1988).

recording of a child witness's testimony and the admission of such recorded testimony into evidence.⁴⁹ The paragraph also provides for closed-circuit viewing of a child witness during trial.⁵⁰

Upon motion by the State, new paragraph 106A-2 allows the trial judge to order that a child's testimony be recorded before the beginning of the trial.⁵¹ Paragraph 106A-2, however, specifically requires that the child's testimony be recorded in the presence of the defendant, the court, the attorneys for the defendant, and the prosecution.⁵² During the recording, only the prosecution and the court may question the child.⁵³ Paragraph 106A-2 instructs the presiding judge to rule on evidentiary objections made by defense counsel.⁵⁴ Moreover, paragraph 106A-2 specifies that the defense counsel must be given the opportunity to cross-examine the child witness at the defendant's trial as a condition to the admissibility of the recorded statements at trial.⁵⁵

The videotape is admissible into evidence only if the recording procedures conform to the requirements set forth in paragraph 106A-2(b).⁵⁶ Under paragraph 106A-2(b), the defendant must be allowed to be present at the recording and must be given the op-

49. ILL. REV. STAT. ch. 38, para. 106A (1987).

50. *Id.* The Illinois Supreme Court believes that paragraph 106A represents an attempt by the legislature to resolve problems arising in the child witness context. *Johnson*, 118 Ill. 2d at 511, 517 N.E.2d at 1075. The narrow scope of paragraph 106A appears to support the court's interpretation. Paragraph 106A applies only to sexual abuse or sexual assault proceedings in which the alleged victim is 12 years of age or younger. ILL. REV. STAT. ch. 38, para. 106A-1 (1987). Specifically, paragraph 106A is limited to the following proceedings: criminal sexual abuse, aggravated criminal sexual abuse, criminal sexual assault, or aggravated criminal sexual assault. *Id.* In addition, the procedures set forth in paragraph 106A are limited to the testimony of the alleged victim. *Id.*

51. ILL. REV. STAT. ch. 38, para. 106A-2 (1987). Apparently, the State need not make a showing of special need to obtain an order to record the child's testimony. *See id.* Paragraph 106A-2 states only that the court may order the testimony recorded "upon motion by the state at any time before the trial of the defendant begins." *Id.* In addition, in response to P.A. 85-881, the Illinois Supreme Court stated that "[t]his bill . . . seems to provide general authorization for the videotaping of testimony." *Johnson*, 118 Ill. 2d at 511, 517 N.E.2d at 1075 (1987).

52. ILL. REV. STAT. ch. 38, para. 106A-2 (1987). The *Johnson* court noted that retroactive application of paragraph 106A-2 would be futile because paragraph 106A-2 mandates that the defendant be present during the recording, and the defendant in *Johnson* was excluded from the recording room. *Johnson*, 118 Ill. 2d at 502, 517 N.E.2d at 1071.

53. ILL. REV. STAT. ch. 38, para. 106A-2 (1987). In light of the United States Supreme Court's decision in *Coy v. Iowa*, preventing the defendant's attorney from questioning the child during the recording may present a confrontation clause problem. *Coy v. Iowa*, 108 S. Ct. 2798 (1988).

54. ILL. REV. STAT. ch. 38, para. 106A-2 (1987).

55. *Id.*

56. ILL. REV. STAT. ch. 38, para. 106A-2(b) (1987).

portunity to view the videotape before it is introduced into evidence.⁵⁷ Also, the recorded statements may not be admitted into evidence if the statements were made in response to questions designed to elicit specific statements.⁵⁸ The child whose testimony was recorded must be present at trial, and the defendant or his attorney must receive an opportunity to cross-examine the child.⁵⁹ Moreover, the recording must be visual and aural.⁶⁰

New paragraph 106A-3 appears to represent an attempt to eliminate or reduce the trauma associated with testifying in an open courtroom.⁶¹ Paragraph 106A-3 permits the trial judge to order that a child's testimony during trial be taken outside the courtroom upon a finding that such a procedure serves the best interests of the child.⁶² While the child testifies, the fact-finder views the examination of the child's testimony via closed-circuit television.⁶³ Paragraph 106A-3 expressly requires that both defense counsel and the defendant be present while the child testifies.⁶⁴ In addition, defense counsel must be afforded the opportunity to question the child.⁶⁵

Another Illinois bill applicable to sexual abuse or sexual assault

57. ILL. REV. STAT. ch. 38, para. 106A-2(b)(5) (1987). The United States Supreme Court recently noted that a witness finds lying more difficult when in the presence of the accused. *Coy*, 108 S. Ct. at 2802.

58. ILL. REV. STAT. ch. 38, para. 106A-2(b)(4) (1987). The requirement appears to address the Illinois Supreme Court's concern that videotaping procedures may enable a parent to induce a child into falsely accusing an alleged assailant. *Johnson*, 118 Ill. 2d at 512, 517 N.E.2d at 1075.

59. ILL. REV. STAT. ch. 38, paras. 106A-2(b)(6), 106A-2(b)(7) (1987).

60. ILL. REV. STAT. ch. 38, para. 106A-2 (1987). Although a visual and aural recording gives the fact-finder an opportunity to witness the demeanor of the testifying child, such a recording may not afford the fact-finder the best opportunity to assess the credibility of the witness's statements. *Johnson*, 118 Ill. 2d at 508, 517 N.E.2d at 1074 (1987). The *Johnson* court stated that public testimony before the fact-finder affords the fact-finder the best opportunity to determine a witness's credibility. *Id.*

61. ILL. REV. STAT. ch. 38, para. 106A-3 (1987). Justice O'Connor characterized procedures such as those in paragraph 106A-3 as measures designed to shield a child victim from the trauma suffered "from exposure to the harsh atmosphere of the typical courtroom." *Coy*, 108 S. Ct. at 2804 (O'Connor, J., concurring).

62. ILL. REV. STAT. ch. 38, para. 106A-3 (1987).

63. *Id.*

64. *Id.* Other persons that may be present include the prosecution, the presiding judge, and any other individuals who, in the court's discretion, would "contribute to the welfare and well being of the child." *Id.*

65. *Id.* Recently, the United States Supreme Court considered the constitutionality of a state procedure designed to shield child witnesses in sexual abuse proceedings. *Coy*, 108 S. Ct. at 2798. In *Coy*, the defendant was charged with sexually assaulting two 13-year-old girls. *Id.* at 2799. The Court held that placing a screen between the defendant and the alleged victim, a child, while the victim testified violated the defendant's sixth amendment right to a face-to-face confrontation with his accuser. *Id.* at 2800. The screen was designed to block the child's view of the defendant while she testified against

him. *Id.* at 2799. The screen enabled the defendant to see the child vaguely but completely blocked the child's view of the defendant. *Id.*

The Court interpreted the confrontation clause to provide a right to a literal face-to-face confrontation. *Id.* at 2800. According to the Court, a face-to-face confrontation means that both the defendant and the witness can see each other while the witness testifies. *Id.* at 2802. The Court stated that the confrontation clause does not require the witness to look directly into the defendant's eyes, but it does require that the witness see the defendant. *Id.* Thus, the screen method violated the confrontation clause because the screen blocked the child's view of the defendant. *Id.* The Court reasoned that a face-to-face confrontation guards against the danger of false accusations. *Id.* The Court stated that compelling a child victim to face his or her assailant may frighten or upset the child. *Id.* The Court also noted, however, that a face-to-face confrontation may "undo the false accuser, or reveal the child coached by a malevolent adult." *Id.*

The Illinois procedures for videotaping and closed-circuit television appear to comply with the face-to-face requirement set forth in *Coy*. In both Illinois procedures, the defendant must be present while the child testifies. ILL. REV. STAT. ch. 38, para. 106A (1987). In addition, both the videotaping and closed-circuit television procedures allow a defense counsel to cross-examine the child. *Id.* The videotaping method, however, does not expressly provide for cross-examination by defense counsel during the recording of the child's testimony. ILL. REV. STAT. ch. 38, para. 106A-2 (1987). Rather, the statute provides that the child be available for cross-examination at trial. *Id.* In *Coy*, the Court stated that "[a] fact which can be primarily established only by witnesses cannot be proved against an accused . . . except by witnesses . . . whom he is entitled to cross examine." *Coy*, 108 S. Ct. at 2800 (citing *Kirby v. United States*, 174 U.S. 47, 55 (1899)). Also, the closed circuit television procedure enables defense counsel to question the child but does not expressly state that the defendant may question the child. ILL. REV. STAT. ch. 38, para. 106A-3 (1987).

The *Coy* Court did not explicitly address whether the fact-finder is required to see the face-to-face confrontation between the witness and the defendant. The Court did state that a criminal defendant is guaranteed "a face-to-face meeting with witnesses before the trier of fact." *Coy*, 108 S. Ct. at 2802. In addition, the Court emphasized that the fact-finder's role in the judicial process is to assess the credibility of the witnesses by drawing conclusions from its observations of the confrontation between the witness and the accused. *Id.* Thus, another potential constitutional conflict arises in that, under both the videotaping and the closed-circuit television methods, the fact-finder may not be able to see the face-to-face confrontation. If the camera focuses solely on the testifying child, then the fact-finder is not able to see the face-to-face confrontation.

Although the Illinois procedures for videotaping and closed-circuit television appear to comport with the face-to-face requirement in *Coy*, the constitutionality of these procedures remains at issue. The Illinois Supreme Court referred to the Illinois procedures as possible solutions to problems arising in the child witness context but declined to rule on the constitutionality of these procedures. *Johnson*, 118 Ill. 2d at 511-12, 517 N.E.2d at 1075. In addition, the United States Supreme Court limited its opinion in *Coy* to the facts of that case. *Coy*, 108 S. Ct. at 2804. In the beginning of the opinion, the Court noted that the statute in question allowed a child to testify either via closed-circuit television or in the courtroom separated from the defendant by a screen. *Id.* at 2799. The Court addressed only the constitutionality of the procedure employed by the prosecution, the screen method. *Id.*

In her concurring opinion, Justice O'Connor specifically stated that the majority's decision did not extend to methods similar to the Illinois procedures of videotaping and closed-circuit television. *Id.* at 2804 (O'Connor, J., concurring). After Justice O'Connor listed the methods employed to shield child witnesses in various states, including videotaping and closed-circuit television procedures, she said "[w]e deal today with the constitutional ramifications of only one such measure." *Id.* Justice O'Connor did state that

proceedings involving child witnesses, Public Act 85-837,⁶⁶ amended paragraph 115-10 of the Code of Criminal Procedure, which governs exceptions to the hearsay rule.⁶⁷ The amendment does not create new exceptions to the hearsay rule in sexual abuse or sexual assault proceedings;⁶⁸ rather, it adds new requirements which must be satisfied before an out-of-court statement by a child may be admissible.⁶⁹ As amended, paragraph 115-10 requires that a judge conduct a hearing, outside the presence of the jury, to ensure the reliability of the child's out-of-court statement.⁷⁰ In addition, the child who made the statement must testify at trial, unless the child is unavailable, in which case the proponent of the child must present the court with corroborative evidence of the statement.⁷¹

If the out-of-court statement is admitted, the judge must instruct the jury to determine the reliability of the statement.⁷² The jury may consider the child's age and maturity, the nature of the statement, and the circumstances under which the statement was made.⁷³ Finally, the party intending to offer the statement into evidence must give the adverse party advance notice of its intentions.⁷⁴

These strict requirements, which must be met before a child's

the standards set forth in *Coy* do not necessarily preclude state legislatures from adopting statutory procedures designed to shield child witnesses. *Id.* She stated that methods which do not exclude the defendant from the room while a child witness testifies probably do not violate the confrontation clause. *Id.* Justice O'Connor noted that certain identified exceptions may permit procedures which do violate the general requirements of the confrontation clause. *Id.* Justice O'Connor noted that the Court has stated on many occasions that the right to a face-to-face confrontation is not an absolute right. *Id.*

66. 1987 Ill. Legis. Serv. 85-837 (West) (effective Jan. 1, 1988).

67. ILL. REV. STAT. ch. 38, para. 115-10 (1987).

68. *Id.* Paragraph 115-10 allows the following evidence as exceptions to the hearsay rule:

[T]estimony by such child of an out of court statement made by such child that he or she complained of such act to another; and testimony of an out of court statement made by such child describing any complaint of such act or matter or detail pertaining to any act which is an element of an offense which is the subject of a prosecution for a sexual act perpetrated upon a child.

ILL. REV. STAT. ch. 38, paras. 115-10(a)(1), 115-10(a)(2) (1987).

69. ILL. REV. STAT. ch. 38, para. 115-10 (1987).

70. ILL. REV. STAT. ch. 38, para. 115-10(a)(1) (1987). The judge considers the content of the statement, the time when the statement was made, and the circumstances in which the statement was made to determine the reliability of the statement. *Id.*

71. ILL. REV. STAT. ch. 38, paras. 115-10(2)(b)(A), 115-10(2)(B) (1987).

72. ILL. REV. STAT. ch. 38, para. 115-10(b)(2)(c) (1987).

73. *Id.* The fact-finder's determination is not limited to these factors. *Id.*

74. ILL. REV. STAT. ch. 38, para. 115-10(b)(2)(d) (1987). The adverse party must be notified of the contents of the statement within a reasonable time. *Id.*

out-of-court statement will qualify as a hearsay exception, reflect the legislature's attempt to safeguard the defendant's interest in a fair trial.⁷⁵ However, the specific hearsay exception for the out-of-court statements of a child relating to an act of sexual abuse or assault may also reflect the importance placed on hearsay evidence in cases involving child witnesses.⁷⁶ Thus, paragraph 115-10 reflects an attempt to balance the interests of the defendant against the necessity of permitting exceptions to the hearsay rule when the person making the out-of-court statements is a child.

III. DELINQUENCY

A. *Transfer*

Currently, minors may be transferred to the adult court either automatically or judicially.⁷⁷ Pursuant to the automatic transfer provision, a minor who is at least fifteen years old when an offense is committed and who is charged with a serious felony shall be transferred automatically to the adult court.⁷⁸ In contrast, the judicial transfer provision, applicable to minors at least thirteen years of age at the time of an offense, requires a hearing in which the State must establish certain statutory elements to the satisfaction of the juvenile court judge before a minor may be transferred to the adult court.⁷⁹ Any such transfer of a minor to adult court also must comport with the due process protections afforded mi-

75. Most of the requirements appear to be designed to ensure the reliability of a child's statement. See *supra* notes 69-74 and accompanying text.

76. ILL. REV. STAT. ch. 38, para. 115-10(a) (1987). Paragraph 115-10(a) specifically delineates a hearsay exception for sexual abuse or assault proceedings in which the alleged victim is a child under 13 years old. *Id.*

77. ILL. REV. STAT. ch. 37, para. 805-4(3)(a) (1987) (judicial transfer); ILL. REV. STAT. ch. 37, para. 805-4(6)(a) (1987) (automatic transfer).

78. ILL. REV. STAT. ch. 37, para. 805-4(6)(a) (1987). The serious offenses listed in paragraph 805-4(6)(a) include first degree murder, aggravated criminal sexual assault, armed robbery with a firearm, and unlawful use of weapons under ILL. REV. STAT. ch. 38, para. 24-1(a)(12) (1987). ILL. REV. STAT. ch. 37, para. 805-4(6)(a) (1987).

79. ILL. REV. STAT. ch. 37, para. 805-4(3) (1987), *amended by* 1988 Ill. Legis. Serv. 85-1209 (West) (to be codified at ILL. REV. STAT. ch. 37, para. 805-4(3)(a)). Pursuant to paragraph 805-4(3), the juvenile court judge, in making his decision to transfer the minor, must consider whether it is within both the minor's and society's best interest to try the minor as an adult. *Id.* The factors the judge considers in making the determination include the minor's age, previous history, and whether the minor committed the offense in an aggressive and premeditated manner. ILL. REV. STAT. ch. 37, para. 805-4(3)(a) (1987), *amended by* 1988 Ill. Legis. Serv. 85-1209 (West) (to be codified at ILL. REV. STAT. ch. 37, para. 805-4(3)(b)). In addition, the juvenile court judge is instructed to determine whether the best interests of the minor and the public would be served by incarcerating the minor beyond the age of majority and whether rehabilitative facilities are available. *Id.*

nors in transfer proceedings by *Kent v. United States*.⁸⁰ According to the *Kent* decision, due process compels a juvenile court judge to make a "full investigation" of all statutory requirements in the applicable statute governing transfer.⁸¹

1. Judicial Transfer

In *People v. Clark*,⁸² the Illinois Supreme Court, for the first time, reversed a judicial transfer of a minor to the adult court.⁸³ In *Clark*, a minor was charged with a double murder and would have been transferred automatically to the adult court if he was at least fifteen years old at the time he allegedly committed the offense.⁸⁴ Because the minor was only fourteen years old at the time of the alleged offense, the case came before the juvenile court judge on the State's petition to transfer the minor.⁸⁵ The juvenile court judge agreed to transfer the case to the adult court despite the fact that all parties appeared to be unaware that conviction in adult court would automatically subject the minor to a sentence of natural life imprisonment.⁸⁶ The minor was ultimately convicted in the adult court of all charges brought against him.⁸⁷

On appeal, the minor argued that he did not receive a legally adequate transfer hearing.⁸⁸ A divided appellate court concluded that sufficient evidence existed to try the juvenile as an adult and,

80. 383 U.S. 541 (1966). The due process requirements set forth in *Kent* limit the juvenile court judge's discretion to waive jurisdiction over a minor. *Id.* at 553.

81. *Id.* at 561. Due process also requires that the judge issue a statement with the transfer order to show that a full investigation was conducted and that the juvenile court did not transfer the minor without first carefully considering whether to transfer the minor. *Id.*

82. 119 Ill. 2d 1, 518 N.E.2d 138 (1987).

83. *Id.* at 21, 518 N.E.2d at 147. In an earlier decision, the Illinois Supreme Court reversed the juvenile court's denial of the State's petition to transfer a minor. *People v. M.D.*, 101 Ill. 2d 73, 461 N.E.2d 367 (1984).

84. *Clark*, 119 Ill. 2d at 13, 518 N.E.2d at 143.

85. *Id.* The State's petition, in addition to the double murder charges, charged the minor with two counts of home invasion and residential burglary and one count of aggravated criminal sexual assault. *Id.* at 5, 518 N.E.2d at 139-40.

86. *Id.* at 15, 518 N.E.2d at 144. The Illinois Supreme Court did not find any evidence in the record indicating knowledge of the mandatory sentence of life imprisonment. *Id.* Moreover, the defendant's plea of guilty on the two murder counts, in exchange for dismissal of all other charges, was withdrawn by the State because of the trial court's failure to inform the minor of the mandatory natural life sentence for the double murder charges. *Id.*

87. *Id.* at 6, 518 N.E.2d at 140. The minor's first trial resulted in a mistrial. *Id.* On retrial, the jury found the minor guilty of residential burglary, robbery, home invasion, aggravated criminal sexual assault, and murder. *Id.*

88. *Id.*

therefore, affirmed the convictions.⁸⁹

The Illinois Supreme Court found that the transfer decision in *Clark* was based on an inadequate factual record.⁹⁰ The court further found that the juvenile court judge abused his discretion by failing to comply with the due process protections afforded to minors by *Kent v. United States*.⁹¹ The court noted that the statutory requirements governing judicial transfer in Illinois are based on the procedural due process requirements set forth in *Kent*.⁹² The court interpreted *Kent* to require that a juvenile court judge determine whether sufficient evidence supports each statutory factor justifying a transfer.⁹³ Thus, the "mere recitation" by a juvenile judge that all statutory factors have been met constitutes a violation of due process.⁹⁴

The *Clark* court concluded that the judicial transfer hearing did not comport with the requirements of procedural due process.⁹⁵ The court set forth three grounds as the basis for its decision.⁹⁶ First, the juvenile court judge did not adequately determine whether the retention of juvenile jurisdiction or transfer to the adult court would serve the best interests of both the minor and the public.⁹⁷ Specifically, the judge failed to balance the sentence of incarceration until age twenty-one with the sentence of natural life imprisonment.⁹⁸ The court reasoned that "no informed judgment can be made about the disposition which will best serve the alleged juvenile offender and society where, as here, there is not the slightest consideration of how either society or the defendant would ben-

89. *People v. Clark*, 144 Ill. App. 3d 420, 432, 494 N.E.2d 551, 559 (4th Dist. 1986).

90. *Clark*, 119 Ill. 2d at 18-19, 518 N.E.2d at 145.

91. *Id.* at 16, 518 N.E.2d at 144. For a discussion of *Kent*, see *supra* notes 80-81 and accompanying text.

92. *Clark*, 119 Ill. 2d at 12, 518 N.E.2d at 143. The court noted that "*Kent* was the catalyst for the present version of 2-7(3) which governs transfer proceedings." *Id.* (citing ILL. REV. STAT. ch. 37, para. 702-7(3) (1985), *recodified at* ILL. REV. STAT. ch. 37, para. 805-4(3)(1987)). See *supra* notes 77-79 for the statutory requirements governing judicial transfer.

93. *Clark*, 119 Ill. 2d at 18, 518 N.E.2d at 145.

94. *Id.* The court stated that "mere recitation" violates due process because of the *Kent* Court's holding that due process requires a "full investigation" of all the relevant statutory factors. *Id.* (citing *Kent*, 383 U.S. at 552-53).

95. *Id.* at 16, 518 N.E.2d at 145.

96. *Id.*

97. *Id.* (citing ILL. REV. STAT. ch. 37, para. 702-7 (1985), *recodified at* ILL. REV. STAT. ch. 37, para. 804-4(3)(a)(4) (1987), *amended by* 1988 Ill. Legis. Serv. 85-1209 (West) (to be codified at ILL. REV. STAT. ch. 37, para. 805-4(3)(b)(4)).

98. *Id.* The court noted that the juvenile court judge could not make this determination because no evidence in the record showed that the judge understood that the transfer would result in a term of natural life imprisonment. *Id.*

efit by his incarceration until death.”⁹⁹

Second, the juvenile court judge made his decision to transfer the minor without detailed information of the background of the minor.¹⁰⁰ The court noted that the judge examined evidence of only three minor encounters between the juvenile and the authorities.¹⁰¹ Further, the juvenile court judge did not examine any information relating to the defendant’s social adjustments, school adjustments, or mental and physical health.¹⁰²

Third, the juvenile court judge made his decision to transfer the minor without considering the minor’s potential for rehabilitation and the availability of rehabilitative facilities.¹⁰³ The judge did not consider the defendant’s prior history in determining whether the minor could be rehabilitated.¹⁰⁴ Instead, the juvenile court judge relied on the unsupported opinion of a probation officer who stated that the minor had no potential for rehabilitation.¹⁰⁵ Moreover, the court noted that the juvenile court judge relied on the same probation officer’s unsupported opinion that no facilities for rehabilitation were available.¹⁰⁶ The supreme court held that even ab-

99. *Id.* at 16, 518 N.E.2d at 144-45.

100. *Id.* at 16, 518 N.E.2d at 145 (citing ILL. REV. STAT. ch. 37, para. 702-7(3) (1985), *recodified at* ILL. REV. STAT. ch. 37, para. 805-4(3)(a)(4) (1987), *amended by* 1988 Ill. Legis. Serv. 85-1209 (West) (to be codified at ILL. REV. STAT. ch. 37, para. 805-4(3)(b)(4)).

101. *Id.* at 18, 518 N.E.2d at 146. A police officer testified that the defendant, at age 10, unsuccessfully attempted to steal some toy cars. *Id.* at 9, 518 N.E.2d at 141-42. The officer noted that the defendant did not actively attempt to steal the toy cars, but rather acted as a shield while his friend attempted to steal the cars. *Id.* The second offense occurred when the defendant was 12 years old and involved a theft of under \$150. *Id.* The third offense involved a disorderly conduct charge against the defendant at the age of 13. *Id.*

102. *Id.* at 19, 518 N.E.2d at 146. The court stated that the transfer proceeding in *Clark* was a “stark contrast” to usual proceedings. *Id.* The court compared the transfer hearing in *Clark* to the hearing in *People v. Liggett*, 90 Ill. App. 3d 663, 413 N.E.2d 534 (4th Dist. 1980). *Id.* In *Liggett*, the juvenile court judge examined reports and testimony received from a psychologist, a psychiatrist, and a probation officer. *Liggett*, 90 Ill. App. 3d at 665-67, 413 N.E.2d at 536-38. Other cases cited in *Clark* include *In re Burns*, 67 Ill. App. 3d 361, 385 N.E.2d 22 (1st Dist. 1978), and *People v. Underwood*, 50 Ill. App. 3d 908, 365 N.E.2d 1370 (4th Dist. 1977).

103. *Clark*, 119 Ill. 2d at 19, 518 N.E.2d at 146.

104. *Id.* The court noted that the information relied upon by the juvenile court judge, which involved three other encounters that the juvenile had with the law, did not reveal a prior criminal history. *Id.* The court added that only one of the alleged offenses “was supported by facts revealing that the defendant engaged in criminal conduct.” *Id.* at 18-19, 518 N.E.2d at 146.

105. *Id.* The court noted that the officer had never met with the juvenile before the transfer hearing. In addition, the probation officer had not interviewed the juvenile. *Id.*

106. *Id.* The officer gave no evidence to support his view that no rehabilitation facilities existed. The Illinois Supreme Court noted that the juvenile court judge did not question the officer’s view or ask for evidence supporting his view. *Id.*

sent any evidence regarding a juvenile's ability to be rehabilitated, a juvenile court judge has a duty to conduct an investigation into the potential for rehabilitation.¹⁰⁷ Based on the juvenile court judge's failure to conduct such an investigation, the Illinois Supreme Court reversed the transfer of the minor to the adult court.¹⁰⁸

The *Clark* decision reaffirms the constitutional requirement that juveniles must be afforded due process in judicial transfer proceedings. Moreover, along with the supreme court's earlier decision in *People v. M.D.*,¹⁰⁹ the *Clark* decision represents an emerging trend toward closer appellate review of judicial transfer decisions.¹¹⁰

2. Automatic Transfer

In *People v. M.A.*,¹¹¹ the Illinois Supreme Court upheld the constitutionality of the automatic transfer provision as applied to minors who are at least fifteen years old at the time of an offense, and who are charged with unlawful use of weapons on school grounds.¹¹² The Illinois Supreme Court overturned the trial court's conclusion that the automatic transfer of minors charged with unlawful use of weapons on school grounds violated equal protection and due process.¹¹³ The court refused to strictly scruti-

107. *Id.* at 19, 518 N.E.2d at 146. The court noted that even after defense counsel objected that there was no basis for deciding against the potential for rehabilitation, the judge failed to conduct an investigation regarding potential for rehabilitation. *Id.*

108. *Id.* at 21, 518 N.E.2d at 147. For examples of transfer hearings that the Illinois Supreme Court considered legally adequate, see *People v. M.D.*, 101 Ill. 2d 73, 461 N.E.2d 367 (1984), and *People v. Taylor*, 76 Ill. 2d 289, 391 N.E.2d 366 (1979).

109. 101 Ill. 2d 73, 461 N.E.2d 367 (1984). See *supra* note 83.

110. The *Clark* decision was recently followed by the Fifth District in *People v. Langston*, 167 Ill. App. 3d 854, 522 N.E.2d 304 (5th Dist. 1988). The *Langston* court appears to have expanded the *Clark* decision. The *Langston* case was not a situation in which the juvenile court judge was unaware of the minor's potential sentence if transferred to the adult court. In addition, the transfer hearing in *Langston* involved testimony that established the minor's inability to adjust with his family, the family's lack of support for treatment and rehabilitation of the minor, and the minor's conviction on a prior offense. *Id.* at 856, 522 N.E.2d at 307. Nevertheless, the Fifth District overturned the transfer order, relying on *Clark* for support. *Id.* The appellate court held that the testimony was insufficient to support a transfer because the testimony did not reveal the defendant's mental and physical history or his social and school adjustment. *Id.*

111. 124 Ill. 2d 135, 529 N.E.2d 492 (1988).

112. Paragraph 805-4(6)(a) requires that a minor charged with unlawful use of weapons on school grounds be automatically transferred to the adult court. ILL. REV. STAT. ch. 37, para. 805-4(6)(a) (1987). A person does not actually have to use the weapon on school grounds to be charged with unlawful use of weapons on school grounds. Rather, "use" as defined by paragraph 24-1(a)(12) of the Criminal Code includes carrying or possessing a weapon, on or about the body, while on school grounds. ILL. REV. STAT. ch. 38, para. 24-1(a)(12) (1987).

113. *M.A.*, 124 Ill. 2d at 147, 529 N.E.2d at 497. The case was on direct appeal to the

nize the automatic transfer provision in deciding the provision's constitutionality.¹¹⁴ Instead, the court stated that the strict scrutiny standard does not apply to cases involving juveniles.¹¹⁵ Thus, the court adopted the rational basis standard to determine the constitutionality of the automatic transfer provision.¹¹⁶

In *M.A.*, the defendant, a minor charged with unlawful use of weapons on school grounds, was automatically transferred to the adult court.¹¹⁷ On direct appeal, the defendant argued that the legislature arbitrarily created a class comprised of minors charged with the unlawful use of weapons on school grounds which, therefore, violated equal protection.¹¹⁸ According to the defendant, the classification was arbitrary because the classification deprived some minors of the benefits of the Juvenile Court Act (the "Act") while other similarly-situated persons retained the benefits of the Act.¹¹⁹ Specifically, the defendant contended that an offender commits the same offense regardless of whether the offender is on school grounds.¹²⁰ Therefore, the legislature arbitrarily denied benefits to juveniles charged with the unlawful use of weapons on school grounds while allowing juveniles charged with unlawful use of weapons on non-school grounds to retain the benefits of the Act.¹²¹

The defendant further argued that the classification violated equal protection because the legislature acted capriciously by adding the offense of unlawful use of weapons to the automatic transfer provision, while excluding other more serious offenses from the

Illinois Supreme Court because the trial court declared the statute unconstitutional as applied. *Id.* at 138, 529 N.E.2d at 493.

114. *Id.* at 140, 529 N.E.2d at 494. The strict scrutiny standard is applied when the claimant is a member of a "suspect class," thus warranting extra protection from the courts. *Id.* (citing *San Antonio v. Rodriguez*, 411 U.S. 1, 28 (1973)).

115. *Id.* The defendant argued that juveniles are a suspect class commanding extra protection because juveniles are rendered politically powerless by their lack of a right to vote. *Id.* at 139-40, 529 N.E.2d at 493-94. The court disagreed and found that despite the lack of a right to vote, juveniles do not have a history of discrimination against them, and that their lack of a right to vote is not an immutable characteristic. *Id.* at 140, 529 N.E.2d at 493-94.

116. *Id.* The rational basis standard focuses on whether there is a rational basis between the legislature's purpose and the challenged classification. *Id.* at 142, 529 N.E.2d at 495.

117. *Id.* at 137-38, 529 N.E.2d at 493. The minor was 15 years old when he allegedly committed the offense. *Id.*

118. *Id.* at 139, 529 N.E.2d at 493. The court noted that the classification is presumed valid and the defendant, the challenging party, has the burden of proving that the classification is invalid. *Id.* at 141, 529 N.E.2d at 494.

119. *Id.*

120. *Id.*

121. *Id.*

provision.¹²² Moreover, the defendant made this same argument to support his claim that the classification violated due process by capriciously imposing harsher sentences on offenders charged with less serious crimes.¹²³

The Illinois Supreme Court rejected both of the defendant's constitutional claims.¹²⁴ Regarding equal protection, the court stated that a rational basis existed for the legislature to impose automatic transfer on minors charged with the unlawful use of weapons on school grounds.¹²⁵ The court also acknowledged that the same crime is committed whether or not the weapons are unlawfully used on school grounds.¹²⁶ The court, however, noted that the "legislature could have rationally concluded that deterring juveniles from carrying weapons on school grounds is more important because attendance at school is compulsory."¹²⁷

Regarding due process, the court determined that imposing the stricter penalty for the unlawful use of weapons on school grounds was rationally related to the legislature's goal of lessening gang activity and crime in schools.¹²⁸ The court acknowledged the defendant's argument that the legislature did not provide for automatic transfer of juveniles charged with other serious crimes more closely connected with gang activity.¹²⁹ Nevertheless, the court concluded that due process does not require that the legislature adopt the most effective measure.¹³⁰ Rather, due process requires only that the legislature adopt a measure that is rationally related to its

122. *Id.* at 143, 529 N.E.2d at 495. The court disposed of this argument by citing a prior decision upholding the validity of the provision requiring automatic transfer for juveniles charged with rape, murder, sexual assault, and armed robbery, despite the legislature's exclusion of other class X felonies from the automatic transfer provision. *Id.* at 140-41, 529 N.E.2d at 494 (citing *People v. J.S.*, 103 Ill. 2d 395, 469 N.E.2d 1090 (1984)).

123. *Id.* at 144, 529 N.E.2d at 496. In addition, the defendant argued that the purpose behind the legislation was to curb gang activity. The legislature, however, did not include more serious crimes with a closer nexus to gang activity, such as intimidation and compelling gang membership, in the automatic transfer provision. Thus, the defendant concluded that the classification was arbitrary. *Id.* at 145, 529 N.E.2d at 496.

124. *Id.* at 147, 529 N.E.2d at 497.

125. *Id.* at 145, 529 N.E.2d at 496. The court agreed with the State that the purpose of the challenged statutory provisions was to prevent more serious crimes resulting from the presence of weapons on school grounds. *Id.*

126. *Id.* at 142, 529 N.E.2d at 495.

127. *Id.* at 142-43, 529 N.E.2d at 495. The court noted that in the past it had upheld the constitutionality of statutes when the location of the crime warranted a stricter sentence. *Id.*

128. *Id.* at 145-46, 529 N.E.2d at 496-97. The court's articulation of the classification's purpose was based on comments by the sponsors of the bill calling for automatic transfer. *Id.* at 142, 529 N.E.2d at 495.

129. *Id.* at 143, 529 N.E.2d at 495.

130. *Id.* at 144, 529 N.E.2d at 496.

goal.¹³¹

B. *Speedy Trial*

As currently drafted, the Juvenile Court Act grants a minor a statutory right to a speedy trial in delinquency proceedings.¹³² Upon written demand of either party, a hearing must be held within 120 days after the filing of a petition alleging that a minor is a delinquent.¹³³ Absent excusable delay, if a hearing is not held within 120 days, the court may dismiss the petition against the minor with prejudice.¹³⁴

In addition to the statutory right to a speedy trial, the Illinois Appellate Court for the First District recently held that a juvenile has a fundamental due process right to a speedy trial in delinquency proceedings.¹³⁵ In *People v. A.L.*,¹³⁶ the court held that a seven-month delay for an adjudicative hearing violated the minor's right to a speedy trial despite a finding that the State did not intentionally delay the minor's case.¹³⁷

In *A.L.*, a sixteen-year-old minor was made the subject of a petition for adjudication of delinquency.¹³⁸ The petition was filed on September 26, 1984. The minor entered a first demand for trial on November 26, 1984, and a second demand for trial on December 31, 1984.¹³⁹ By April 23, 1985, the delinquency hearing still had not commenced. On that same date, the minor filed a motion to dismiss for failure to provide a speedy trial. In response, the State filed a motion to strike the juvenile petition with leave to reinstate the case. At a hearing on this issue, the court granted the State's motion, thus rendering the petition "stricken on leave"

131. *Id.* The court concluded that it lacked the power to determine whether the problems of gang violence in schools could have been dealt with more effectively. *Id.*

132. ILL. REV. STAT. ch. 37, para. 805-14 (1987). The right to a speedy trial was first granted in 1985. See ILL. REV. STAT. ch. 37, para. 704-2 (1985).

133. ILL. REV. STAT. ch. 37, para. 805-14(1) (1987).

134. ILL. REV. STAT. ch. 37, para. 805-14(a)(1)(F) (1987).

135. *People v. A.L.*, 169 Ill. App. 3d 581, 587, 523 N.E.2d 970, 975 (1st Dist. 1988).

136. *Id.*

137. *Id.* at 585, 523 N.E.2d at 975. The issue was framed in due process terms because the minor's motion to dismiss the petition was dismissed two months before the legislature enacted the statutory right to a speedy trial. *Id.* at 585, 523 N.E.2d at 973. The court's holding in favor of the juvenile on due process grounds absent a deliberate delay of the case indicates that a deliberate ploy to delay a minor's case is not a decisive requirement for finding a due process violation. *Id.* at 585, 523 N.E.2d at 975.

138. *Id.* at 582, 523 N.E.2d at 971. The petition alleged that the juvenile had committed the offenses of battery and criminal damage to property. *Id.*

139. *Id.*

("S.O.L.").¹⁴⁰ After the hearing, the minor filed a motion to reinstate and then to dismiss the petition for failure to provide a speedy trial.¹⁴¹ The trial court denied the motion, and the minor appealed.¹⁴²

The State argued that because the trial court set aside the charges against the minor with leave to reinstate, the matter was not final and appealable and, therefore, the appellate court lacked jurisdiction to review the case.¹⁴³ The appellate court stated that it did have jurisdiction over the minor's case.¹⁴⁴ The court reasoned that because the S.O.L. procedure invoked by the State could prolong the minor's case indefinitely, the judgment was final and appealable.¹⁴⁵ Thus, the court decided that the issue of whether the seven-month delay of the minor's case violated the minor's due process guarantee to a speedy trial was properly before the appellate court.¹⁴⁶

The appellate court considered this issue in light of the purposes of the Juvenile Court Act ("the Act") and prior juvenile case law.¹⁴⁷ The court believed that the primary purpose of the Act is to safeguard the best interests of the minor, his family, and society.¹⁴⁸ Moreover, the court noted that to attain this goal, the Act "must be enforced consistent with principles of fundamental fairness."¹⁴⁹ The court highlighted the failure of the delay to serve either the juvenile's or society's interests.¹⁵⁰ The court believed that the seven-month delay was in direct contrast to the legislative intent that matters against juveniles be resolved quickly and efficiently.¹⁵¹ In addition, the court emphasized that the minor had repeatedly demanded a hearing because he had to leave town to

140. *Id.* The State was granted the S.O.L. almost seven months after the minor's first demand for trial. *Id.*

141. *Id.* at 582, 523 N.E.2d at 971-72.

142. *Id.* at 582, 523 N.E.2d at 972.

143. *Id.* at 583, 523 N.E.2d at 972.

144. *Id.* at 584, 523 N.E.2d at 972.

145. *Id.* The appellate court refused to characterize the S.O.L. procedure as a mere continuance because the S.O.L. procedure, the court noted, allows charges to pend against the minor indefinitely. *Id.* at 582-83, 523 N.E.2d at 971-72. Significantly, the court's decision to reach the merits of the case indicates that the court will not allow the State to utilize the S.O.L. procedure to circumvent the appellate process.

146. *Id.*

147. *Id.* at 585, 523 N.E.2d at 973.

148. *Id.* at 587, 523 N.E.2d at 975. The court did not refer to legislative intent or prior case law in making this determination.

149. *Id.* The court reasoned that the interests of all the parties are protected when due process and fundamental fairness govern juvenile proceedings. *Id.*

150. *Id.*

151. *Id.* The court stated that the Juvenile Court Act reflects the legislature's intent

attend college.¹⁵²

The appellate court cited prior Illinois decisions as authority for its holding that juveniles are entitled to due process protections such as the right to a speedy trial.¹⁵³ The court noted that juveniles charged with delinquency have a firmly rooted right to fundamental due process.¹⁵⁴

In *A.L.*, the court found that the seven-month delay was substantial and, therefore, that prejudice could be presumed.¹⁵⁵ The presumption of prejudice shifted the burden justifying the delay to the State.¹⁵⁶ The State argued that the seven-month delay was not deliberate and the delay did not prejudice the juvenile;¹⁵⁷ rather, the delay resulted from the juvenile's refusal to appear in court.¹⁵⁸ Moreover, the State argued that the motion to strike with leave to reinstate was not a ploy to delay the case and did not prejudice the juvenile.¹⁵⁹

After reviewing the State's reasons for delay, the court concluded that the State violated the minor's speedy trial right.¹⁶⁰ Sig-

that "matters involving juveniles be resolved more efficiently than those involving adult criminals." *Id.* at 586, 523 N.E.2d at 974.

152. *Id.* The minor's counsel stated that the minor requested a speedy trial because he planned to attend school in Wisconsin and wanted a hearing so he would not miss school. *Id.* The court also emphasized that the battery and criminal damage to property charges were only minor charges. *Id.*

153. *Id.* at 585, 523 N.E.2d at 973.

154. *Id.* at 587, 523 N.E.2d at 973 (citing *In re Gault*, 387 U.S. 1 (1967)). The court cited *In re C.T.*, 120 Ill. App. 3d 922, 458 N.E.2d 1089 (1st Dist. 1983), which established that a trial court may dismiss a juvenile petition if delay has prejudiced the minor to a degree which amounts to a due process violation. The court also cited *In re A.J.*, 135 Ill. App. 3d 494, 481 N.E.2d 1060 (1st Dist. 1985), which held that the court may presume substantial prejudice when the delay was substantial. Generally, the minor must first show actual prejudice. See *People v. Lawson*, 67 Ill. 2d 449, 459, 367 N.E.2d 1244, 1248 (1977).

155. *A.L.*, 169 Ill. 2d at 586, 523 N.E.2d at 974. Apparently, the court found that the delay was substantial not only because of the duration, but also because the delay blocked the defendant's efforts to attend school. See *id.* See *supra* note 152.

156. *A.L.*, 169 Ill. App. 3d at 586, 523 N.E.2d at 974.

157. *Id.*

158. *Id.* The State explained that the minor refused to testify, indicating that although subpoenaed, the juvenile failed to appear in court. *Id.* In addition, the State argued that it moved to strike with leave to reinstate because the juvenile's refusal to testify in court led to the State's motion. *Id.*

159. *Id.* The State characterized the S.O.L. procedure as a continuance. *Id.* The court disagreed. *Id.* See *supra* note 145.

160. *A.L.*, 169 Ill. App. 3d at 587, 523 N.E.2d at 975. The court noted that it lacked the power to reinstate the petition and then dismiss the petition, because the court could not, without violating separation of powers, assume the role of the prosecutor. *Id.* at 583, 523 N.E.2d at 972. Thus, the appellate court reversed and remanded the trial court's order that denied the minor's motion to dismiss. *Id.* at 587, 523 N.E.2d at 975.

nificantly, the *A.L.* decision established that a minor in a delinquency proceeding has a right to a speedy trial beyond the statutory grant. The court held that a juvenile's right to a speedy trial is firmly rooted in fundamental due process guarantees. Thus, the court determined that a seven-month delay in a delinquency proceeding violated due process. Finally, the case demonstrated the court's unwillingness to allow the State to utilize the S.O.L. procedure merely to circumvent a juvenile's right to a speedy trial.

C. Representation of a Juvenile Adjudicated a Delinquent on Custody or Wardship Appeals

In *Kirwan v. Karns*,¹⁶¹ the Illinois Supreme Court considered whether a state appellate defender may represent a delinquent minor on custody or wardship appeals. In *Kirwan*, the parents of a minor, one year after the minor was adjudicated a delinquent, petitioned the court for restoration of custody of the minor and for termination of the court's wardship.¹⁶² After denying the petition, the circuit court appointed a state appellate defender to represent the minor on appeal.¹⁶³ On appeal, the appellate defender filed a motion to withdraw as counsel arguing that the Appellate Defender's Office was not authorized to represent individuals on non-criminal appeals.¹⁶⁴ The appellate defender pointed out that custody and wardship appeals are not governed by criminal law.¹⁶⁵ In response, the State argued that the appeal in this case was criminal in nature because the appeal arose from delinquency proceedings that were criminal in nature.¹⁶⁶

The Illinois Supreme Court held that the appellate defender was

161. 119 Ill. 2d 431, 519 N.E.2d 465 (1988).

162. *Id.* at 432, 519 N.E.2d at 465. The minor's parents petitioned the court for termination of wardship and for restoration of custody of their child pursuant to paragraphs 705-8(3) and 705-11(2) of the Juvenile Court Act. *Id.* (citing ILL. REV. STAT. ch. 37, paras. 705-8(3), 705-11(2) (1985), *recodified at* ILL. REV. STAT. ch. 37, paras. 802-28(3), 805-30(3) (1987)). The State opposed the parents' petition. *Id.* at 433, 519 N.E.2d at 466.

163. *Id.* at 432-33, 519 N.E.2d at 466.

164. *Id.* at 433, 519 N.E.2d at 466 (citing ILL. REV. STAT. ch. 38, para. 208-10(a) (1985)). Paragraph 208-10(a) authorizes the State Appellate Defender to represent indigents only on criminal appeals. ILL. REV. STAT. ch. 38, para. 208-10(a)(1987). The State opposed the appellate defender's petition to withdraw. *Kirwan*, 119 Ill. 2d at 433, 519 N.E.2d at 466.

165. *Kirwan*, 119 Ill. 2d at 433, 519 N.E.2d at 466.

166. *Id.* at 435, 519 N.E.2d at 466. The State based the contention on Supreme Court Rule 660, which provides that appeals from final orders in delinquency proceedings shall be governed by the criminal laws. *Id.* at 434, 519 N.E.2d at 466-67 (citing ILL. S. CT. R. 660, ILL. REV. STAT. ch. 110A, para. 660 (1985)).

not authorized to represent the minor on the appeals in this case.¹⁶⁷ The court categorized the custody and wardship appeal as non-criminal in nature.¹⁶⁸ Moreover, the court refused to characterize the custody and wardship appeal as an ancillary criminal proceeding merely because the appeal arose out of a delinquency proceeding.¹⁶⁹

IV. LEGISLATION

A. *Delinquent Minors*

The Illinois Legislature added a new paragraph to chapter 23 of the County Shelter and Detention Home Act.¹⁷⁰ As amended, paragraph 2682 now provides that a juvenile court judge may place any minor within the province of the Juvenile Court Act in home detention.¹⁷¹

Another bill affecting the disposition of delinquent minors amended paragraphs 705-2 and 705-3 of the Juvenile Court Act.¹⁷² As amended, paragraph 705-2 now provides that a delinquent minor convicted of a class X felony who is not committed to the Department of Corrections must be placed on probation.¹⁷³ The amended version of paragraph 705-3 requires that probation for delinquent minors convicted of a class X felony be extended for a period of at least five years.¹⁷⁴

The legislature also amended paragraph 702-8 of the Juvenile Court Act, which governs the confidentiality of a juvenile's law enforcement records.¹⁷⁵ Prior to the amendment, juveniles were entitled to the confidentiality of all fingerprints or photographs.¹⁷⁶ Paragraph 702-8(2) formerly provided that the fingerprints or pho-

167. *Id.* at 435, 519 N.E.2d at 466-67. The court disagreed with the State's interpretation of Rule 660. *Id.* Rule 660, the court explained, applies only to delinquency proceedings concerning the adjudication of delinquency. *Id.* at 435, 519 N.E.2d at 467.

168. *Id.* Custody and wardship appeals are not criminal in nature because the appeals are not taken from an adjudication of delinquency. *Id.*

169. *Id.*

170. 1987 Ill. Legis. Serv. 85-637 (West) (effective Sept. 20, 1987).

171. ILL. REV. STAT. ch. 23, para. 2682 (1987). Paragraph 2682 is limited to minors under the jurisdiction of the Juvenile Court Act; thus, minors transferred to the adult court are excluded. *Id.*

172. 1987 Ill. Legis. Serv. 85-739 (West) (effective Jan. 1, 1988).

173. ILL. REV. STAT. ch. 37, para. 705-2 (1985), amended by 1988 Ill. Legis. Serv. 85-1209 (West) (to be codified at ILL. REV. STAT. ch. 37, para. 805-23(1)(a)(1)).

174. ILL. REV. STAT. ch. 37, para. 705-3 (1985), amended by 1988 Ill. Legis. Serv. 85-1209 (West) (to be codified at ILL. REV. STAT. ch. 37, para. 805-24(1)).

175. 1987 Ill. Legis. serv. 85-635 (West) (effective Jan. 1, 1988).

176. ILL. REV. STAT. ch. 37, para. 702-8 (1985), recodified at ILL. REV. STAT. ch. 37, para. 801-7 (1987).

tographs of juveniles could not be transmitted to the Department of State Police.¹⁷⁷ As amended, paragraph 702-8(2) now allows law enforcement officers to transmit a juvenile's fingerprints or description to the state police.¹⁷⁸ This provision, however, applies only to minors who allegedly commit the offense of unlawful use of weapons or a forcible felony.¹⁷⁹

B. *Truant Minors*

During the *Survey* period, the legislature passed a bill that attempts to curb chronic truancy.¹⁸⁰ The provisions of the bill apply only to counties with less than two million inhabitants.¹⁸¹ The bill places the jurisdiction of truant minors in need of supervision under the Juvenile Court Act.¹⁸² The bill added paragraph 803-33, which defines a truant minor in need of supervision.¹⁸³ A truant minor in need of supervision is a chronic truant to whom services and programs have been provided in an effort to reduce truancy, but such programs and services have either failed to reduce truancy or have been refused by the truant.¹⁸⁴

New paragraph 803-33(b), which governs dispositional orders in relation to chronic truants, sets forth a variety of dispositional alternatives.¹⁸⁵ For example, a truant minor may now be subject to a fine, in excess of five dollars but not to exceed one hundred dollars, for each unexcused absence from school.¹⁸⁶ Further, the juvenile court judge may suspend the truant minor's driver's license or driving privileges.¹⁸⁷

177. ILL. REV. STAT. ch. 37, para. 702-8(2) (1985), *recodified at* ILL. REV. STAT. ch. 37, para. 801-7(B) (1987).

178. ILL. REV. STAT. ch. 37, para. 702-8(2) (1985), *recodified at* ILL. REV. STAT. ch. 37, para. 801-7(B)(1987), *amended by* 1988 Ill. Legis. Serv. 85-1209 (West) (to be codified at ILL. REV. STAT. ch. 37, para. 801-7(B)(2)).

179. *Id.*

180. 1988 Ill. Legis. Serv. 85-1235 (West) (effective July 1, 1988).

181. 1988 Ill. Legis. Serv. 85-1235 (West) (to be codified at ILL. REV. STAT. ch. 37, para. 803-33). The population restriction excludes only Cook County from coverage. *Id.*

182. *Id.* Prior to the amendment, the Department of Children and Family Services retained exclusive jurisdiction over chronic truants. *Id.*

183. *Id.*

184. 1988 Ill. Legis. Serv. 85-1235 (West) (to be codified at ILL. REV. STAT. ch. 37, para. 803-33(a)).

185. 1988 Ill. Legis. Serv. 85-1235 (West) (to be codified at ILL. REV. STAT. ch. 37, para. 803-33(b)).

186. 1988 Ill. Legis. Serv. 85-1235 (West) (to be codified at ILL. REV. STAT. ch. 37, para. 803-33(b)(4)). The statute deems each unexcused absence from school a separate offense for which the fine may be imposed. *Id.*

187. 1988 Ill. Legis. Serv. 85-1235 (West) (to be codified at ILL. REV. STAT. ch. 37, para. 803-33(b)(6)).

The legislature also has set forth dispositional alternatives to be imposed on the parents of truant minors. New paragraph 802-18(5) governs evidentiary matters in abuse and neglect hearings against a minor's parents in which a failure to provide an education is alleged.¹⁸⁸ Paragraph 802-18(5) provides that the presentation of proof that a minor under thirteen years old is a chronic truant establishes a prima facie case of neglect against the minor's parent or legal guardian.¹⁸⁹ If the minor is over thirteen years of age and proven to be a chronic truant, then such proof raises a rebuttable presumption of neglect.¹⁹⁰ Paragraph 802-18(5), however, is also limited to counties with less than two million inhabitants.¹⁹¹

C. Abuse and Neglect Proceedings

Recent legislation in the area of abuse and neglect proceedings reflects the growing concern over the preservation of the family unit.¹⁹² The Illinois Legislature has recognized that delay in adjudication of abuse and neglect proceedings poses a serious threat to family stability and the interests of the minor. The legislature enacted Public Act 85-1029 because "delay in the adjudication of abuse, neglect or dependency cases frustrates the effort to establish permanent homes for children in need."¹⁹³

In order to ensure family stability and efficient adjudication of abuse and neglect proceedings, Public Act 85-1029 amended paragraph 802-14 of the Juvenile Court Act to include the right to a speedy trial.¹⁹⁴ As amended, paragraph 802-14 requires that a hearing must be held within 120 days after the filing of the petition that alleges that a minor is abused, neglected, or dependent.¹⁹⁵ Also, one thirty-day continuance may be granted if good cause is

188. 1988 Ill. Legis. Serv. 85-1209 (West) (to be codified at ILL. REV. STAT. ch. 37, para. 802-18(5)).

189. *Id.* This provision is only applicable when the minor shown to be a chronic truant is subject to "compulsory school attendance." *Id.*

190. *Id.* This provision also applies only to chronic truants subject to compulsory school attendance as defined by the School Code of 1961 as amended, ILL. REV. STAT. ch. 122, paras. 1-1 to 36-1 (1987). 1988 Ill. Legis. Serv. 85-1209 (West) (to be codified at ILL. REV. STAT. ch. 37, para. 802-18(5)).

191. *Id.*

192. 1988 Ill. Legis. Serv. 85-1029 (West) (effective July 1, 1988).

193. *Id.*

194. ILL. REV. STAT. ch. 37, para. 802-14 (1987).

195. ILL. REV. STAT. ch. 37, para. 802-14(b)(1)(A) (1987). Time begins to run when a motion to start time is made. *Id.*

shown.¹⁹⁶ Finally, the amended version of paragraph 802-14 provides that the court will dismiss the petition with prejudice, upon motion by any party after a written demand, if the adjudicatory hearing was not held within 120 days.¹⁹⁷

Public Act 85-720 is another bill directed at a more efficient adjudication of abuse and neglect proceedings.¹⁹⁸ Public Act 85-720 amended paragraph 704-3 of the Juvenile Court Act, which governed service of process in abuse and neglect proceedings.¹⁹⁹ Prior to the amendment, paragraph 704-3 required that a summons be directed to each person named as a respondent in a petition for abuse, neglect, or dependency.²⁰⁰ The Illinois Supreme Court believed that the requirements of paragraph 704-3 often led to the absurd result that the court lacked jurisdiction because of a failure to serve process on an infant.²⁰¹ Moreover, the court has recognized that the legislature intended to cure the problem by amending paragraph 704-3.²⁰² In response to the court's concern over this possible jurisdictional problem, Public Act 85-720 amends paragraph 704-3 to allow a summons to be served on a minor's guardian ad litem, instead of directly on the minor, when the minor is under eight years old.²⁰³

V. CONCLUSION

During the *Survey* period, the field of juvenile law experienced a number of significant developments. Both the Illinois Supreme Court and the Illinois Legislature specifically addressed current conflicts and concerns arising in the child witness context. The Illinois Legislature passed three bills which appear to represent an

196. *Id.* For the purposes of this provision, good cause does not include the convenience of either party. ILL. REV. STAT. ch. 37, para. 802-14(b)(2) (1987).

197. ILL. REV. STAT. ch. 37, para. 802-14(B) (1987).

198. 1987 Ill. Legis. Serv. 85-720 (West) (effective Jan. 1, 1988).

199. ILL. REV. STAT. ch. 37, para. 704-3 (1985), *recodified at* ILL. REV. STAT. ch. 37, para. 802-15 (1987).

200. *Id.*

201. The Illinois Supreme Court expressed this belief in *In re Pronger*, 118 Ill. 2d 512, 520-21, 517 N.E.2d 1076, 1079 (1987). The *Pronger* court held that the amended version of paragraph 704-3 could be applied retroactively. *Id.*

202. The *Pronger* court quoted from the legislative debates on this bill to support the statutory interpretation. *Id.* The court quoted Representative Bowman, the sponsor of Public Act 85-720, as stating that this amendment "takes care of a very pressing problem that was created when the State Supreme Court overturned a lower court decision for failure to serve service [sic - notice] on a two month old infant." *Id.* (citing HOUSE PROCEEDINGS, 84th Ill. Gen. Assem., May 15, 1986, at 42).

203. ILL. REV. STAT. ch. 37, para. 704-3 (1985), *amended by* 1988 Ill. Legis. Serv. 85-1209 (West) (to be codified at ILL. REV. STAT. ch. 37, para. 802-15(1)) (the recodified section will incorporate changes made by 1987 Ill. Legis. Serv. 85-720 (West)).

attempt to resolve the difficulties arising when a child witness is called to testify in a sexual abuse or sexual assault proceeding. In addition, the Illinois Legislature and the Illinois courts of review were extremely active in the areas of delinquency and abuse and neglect. Much of the legislation and the case law in the delinquency context reflects a tougher stance taken against juveniles charged with violent or serious crimes. At the same time, case law and legislation during the *Survey* period reflect concern over safeguarding the constitutional rights of juveniles and furthering the goals of the Juvenile Court Act.