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TABLE OF CONTENTS

I. INTRODUCTION

During the *Survey* year, the majority of important decisions in the juvenile law area were made at the appellate court level. Most of the factual situations for these cases involved delinquency rather than abuse and neglect. The two Illinois Supreme Court cases decided during the year involved delinquency proceedings. In one supreme court case, the court addressed the recurrent issue of no-

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tice to potential parties in the proceedings.[1] The other case considered whether a minor's right to remain silent was violated when he made an admission during a custodial interrogation.[2]

In the area of juvenile legislation, two important bills recently passed both houses of the Illinois legislature.[3] The legislation proposes additions or changes in the area of investigations of professionals in abuse and neglect cases,[4] and excusable delays in adjudicatory hearings.[5]

II. CASE LAW

A. Notice to Parents

Illinois is distinct among the states in its frequent consideration of notice requirements in juvenile cases over the last decade. Although many states are struggling with definitions of subject matter jurisdiction in juvenile courts, Illinois alone has produced more than a dozen reviewing court decisions regarding jurisdiction of the parties in juvenile cases.[6]

The United States Supreme Court in *In re Gault*[7] ruled that parents are entitled to notice of any delinquency proceedings against

1. *In re* J.P.J., 109 Ill. 2d 129, 485 N.E.2d 848 (1985).

2. People v. R.C., 108 Ill. 2d 349, 483 N.E.2d 1241 (1985).

3. P.A. 84-1318, 1986 Ill. Legis. Serv. 85-1318 (West); H.B. 2785, 84th Ill. Gen. Assem. (1986). *See infra* notes 256-77 and accompanying text.

4. P.A. 84-1318, 84th Ill. Gen. Assem. (1986).

5. H.B. 2785, 84th Ill. Gen. Assem. (1986).

6. For a review of Illinois Supreme Court decisions regarding failure to provide notice to parent or guardian, see generally *In re* J.P.J., 109 Ill. 2d 129, 485 N.E.2d 848 (1985); People v. R.S., 104 Ill. 2d 1, 470 N.E.2d 297 (1984); People v. Taylor, 101 Ill. 2d 377, 462 N.E.2d 478 (1984); People v. R.D.S., 94 Ill. 2d 77, 445 N.E.2d 293 (1983); *In re* J.W., 87 Ill. 2d 56, 429 N.E.2d 501 (1981).

For a review of Illinois appellate court cases in which failure to provide notice to a parent or guardian was deemed to deprive Juvenile Court of jurisdiction, see generally *In re* J.W.M., 123 Ill. App. 3d 1036, 463 N.E.2d 1023 (4th Dist. 1984); *In re* S.W.C., 110 Ill. App. 3d 695, 442 N.E.2d 961 (4th Dist. 1982); *In re* R.P., 97 Ill. App. 3d 889, 423 N.E.2d 920 (3d Dist. 1981); People v. Rollins, 86 Ill. App. 3d 245, 407 N.E.2d 1143 (3d Dist. 1980); *In re* C.G., 69 Ill. App. 3d 56, 387 N.E.2d 4 (3d Dist. 1979); *In re* T.B., 65 Ill. App. 3d 903, 382 N.E.2d 1292 (3d Dist. 1978).

For a review of Illinois appellate court cases in which failure to provide notice to a parent or a guardian was not deemed to deprive the Juvenile Court of jurisdiction, see generally *In re* D.L.F., 136 Ill. App. 3d 873, 483 N.E.2d 1300 (3d Dist. 1985); *In re* G.L., 133 Ill. App. 3d 1048, 479 N.E.2d 1234 (3d Dist. 1985); *In re* L.E.J., 115 Ill. App. 3d 993, 451 N.E.2d 289 (4th Dist. 1983); *In re* Stokes, 108 Ill. App. 3d 637, 439 N.E.2d 514 (1st Dist. 1982); *In re* J.A., 108 Ill. App. 3d 426, 439 N.E.2d 72 (3d Dist. 1982); *In re* D.J.B., 107 Ill. App. 3d 482, 437 N.E.2d 888 (5th Dist. 1982); *In re* Vaught, 103 Ill. App. 3d 802, 431 N.E.2d 1231 (1st Dist. 1981).

7. 387 U.S. 1 (1967).

their child.[8] The Illinois Legislature extended these notice requirements to the parents and guardians of children who are involved in any type of juvenile court proceeding.[9] In *Gault*, the parents resided with the minor child who had been arrested, charged with a delinquent act, and detained in custody, all without notice to the parents.[10] The Arizona juvenile court in *Gault* could have notified the minor's parents of the court proceedings. In contrast, the cases before the Illinois courts over the last decade involved noncustodial, absent and unidentified parents, and court appointed guardians.[11]

During the *Survey* year, the Illinois appellate court addressed the issue of notice to a noncustodial parent.[12] In *In re D.L.F.*,[13] a delinquent minor challenged the trial court's conviction of aggravated battery, aggravated assault, and unlawful use of weapons, by arguing on appeal that notice by publication to his noncustodial father was insufficient, thus violating the requirements of the Juvenile Court Act[14] and due process.[15] The named respondents to the delinquency petitions included the minor, his mother and father, his foster parents, his guardian, the Illinois Department of Children and Family Services, and the Juvenile Detention Center.[16]

In *D.L.F.*, the State served the mother with a summons.[17] She did not appear at the first hearing and was defaulted without objec-

8. *Gault*, 387 U.S. at 33.

9. ILL. REV. STAT. ch. 37, paras. 701-20, 704-3 to -4 (1985).

10. *Gault*, 387 U.S. at 5.

11. *See supra* note 6 and accompanying text. The early appellate decisions encouraged challenges by holding that failure to provide notice under almost any circumstance would deprive the juvenile courts of jurisdiction and thus render findings of delinquency void. *Id.*

This stringent approach and the numerous appeals it fostered mirrored a previous phenomena in Illinois when the appellate courts ruled that an adjudication of wardship, and proof of a minor's age were jurisdictional steps, the absence of which rendered the juvenile courts devoid of jurisdiction. *See In re* Frazier, 60 Ill. App. 3d 119, 376 N.E.2d 643 (1st Dist. 1978) (reversed in *In re* Greene, 76 Ill. 2d 204, 390 N.E.2d 884 (1979)); *In re* Barr, 37 Ill. App. 3d 10, 344 N.E.2d 517 (1st Dist. 1976). Numerous appeals and conflicting appellate decisions followed. The Illinois Supreme Court resolved the conflicting decisions by holding that an adjudication of wardship need not be made explicitly by the trial court. *In re* Jennings, 68 Ill. 2d 125, 368 N.E.2d 864 (1977). It further held that proof of age was not a jurisdictional requirement. *In re* Greene, 76 Ill. 2d 204, 390 N.E.2d 884 (1979).

12. *In re* D.L.F., 136 Ill. App. 3d 873, 483 N.E.2d 1300 (3d Dist. 1985).

13. *Id.*

14. *Id.* at 874-75, 483 N.E.2d at 1301-02 (citing ILL. REV. STAT. ch. 37, paras. 701-1 to 708-4 (1985)).

15. *DLF*, 136 Ill. App. 3d at 875, 483 N.E.2d at 1302.

16. *Id.* at 874, 483 N.E.2d at 1301.

17. *Id.*

tion from the minor.[18] The State did not attempt to notify the father, whose address was listed as unknown.[19] Due to this failure to notify, the trial court found that it lacked jurisdiction and continued the case.[20]

Subsequently, the State mailed notice to the father at his last known address.[21] When the notice was returned with no known forwarding address, the State published notice in Peoria and inquired about the father's whereabouts.[22] When the State could not locate the father, the trial court held the adjudicatory and dispositional hearings without the father. The trial court found the minor to be delinquent and committed him to the Department of Corrections.[23]

On appeal, the appellate court held that the trial court had proper subject matter jurisdiction because the father was not an indispensable party and his parental rights were not directly affected by the proceedings.[24] The court recognized that the minor was benefitted by the presence of counsel, his legal guardian, DCFS, and his foster parents.[25] These parties were better sources of assistance to the minor than an unavailable, uninvolved father.[26] Thus, the appellate court affirmed the minor's conviction, and held that the State's attempted notification violated neither the minor's nor the father's due process rights, nor the notice requirements of the Juvenile Court Act.[27]

One month later, the Illinois Supreme Court addressed and further defined the issue of notice to noncustodial parents.[28] In *In re J.P.J.*,[29] the Illinois Supreme Court consolidated three appeals involving the failure to provide actual notice of juvenile delinquency

18. *Id.* The mother had previously surrendered her parental rights. *Id.*

19. *Id.*

20. *Id.*

21. *Id.* at 874, 483 N.E.2d at 1302.

22. *Id.* The State made inquiries to the Peoria police records, the city directory, and to an assistant state's attorney from Peoria. *Id.*

23. *Id.* at 874-75, 483 N.E.2d at 1302.

24. *Id.* at 876, 483 N.E.2d at 1303. The appellate court noted that the State's efforts in locating and serving the father were duly diligent, and notice by publication was sufficient when the certified mailing to the father was undeliverable. *Id.* at 877, 483 N.E.2d at 1303. The appellate court further stated that the minor, who had no direct contact with the father for over ten years, was unable to provide any additional information regarding the father's whereabouts. *Id.* at 876-77, 483 N.E.2d at 1302-03.

25. *D.L.F.*, 136 Ill. App. 3d at 876, 483 N.E.2d at 1303.

26. *Id.*

27. *Id.* at 875, 483 N.E.2d at 1303.

28. *In re* J.P.J., 109 Ill. 2d 129, 485 N.E.2d 848 (1985).

29. *Id.*

proceedings to the minor's noncustodial parents.[30] In all three situations in *J.P.J.*, the fathers were the noncustodial parents and the named respondents were the minors, the mothers, and the fathers.[31]

All three minors claimed that the statutory and due process requirements of adequate notice were violated, and that the trial court judgments were void for lack of proper subject matter jurisdiction.[32] The main issues addressed by the supreme court were whether the notice requirements of the Juvenile Court Act[33] were satisfied and whether the minors' due process rights were violated.[34] The supreme court concluded that paragraph 704-4(2) of the Juvenile Court Act excused the State from notifying the children's noncustodial parents either in person or by publication[35] because the whereabouts of the fathers were unknown, and the records did not indicate that personal or abode service by certified mail was possible.[36] Therefore, because the noncustodial fathers

30. *Id.* at 132, 485 N.E.2d at 848.

31. *Id.* at 133-34, 485 N.E.2d at 849-50. In J.P.J.'s case, the parents were divorced and the whereabouts of the father were unknown. *Id.* at 133, 485 N.E.2d at 849. The father did not attend any of the hearings and the appellate court held that no notice was required for the father because he was not an indispensable party. *Id.* The trial court found the minor delinquent and committed him to the Department of Corrections. *Id.* The appellate court affirmed this judgment. *Id.*

In K.B.'s case, the parents also were divorced and the father's address was unknown. *Id.* at 133, 485 N.E.2d at 850. The father did not attend any of the hearings. *Id.* At trial the minor admitted to theft and criminal trespass to a motor vehicle, and was remanded to residential placement and ordered to pay restitution. *Id.* The appellate court affirmed. *Id.* The appellate court also held that notice to the custodial mother was sufficient when the noncustodial parent did not have a significant relationship with the child. *Id.* at 134, 485 N.E. 2d at 850.

In J.K.'s case, the minor's parents were separated and the father was listed as living in Chicago. The State attempted to notify him by publication, but it listed the father's name incorrectly. *Id.* The error was never corrected and the father did not attend any of the hearings. *Id.* The trial court found the minor guilty of resisting a peace officer, and committed the minor to the Department of Corrections. *Id.* The appellate court affirmed and further held that whatever error was made regarding notice to the father had been waived. *Id.*

32. *Id.* at 134, 485 N.E.2d at 850.

33. *Id.* at 135, 485 N.E.2d at 850-51 (citing ILL. REV. STAT. ch. 37, para. 704-4 (1985)). Paragraph 704-4 specifies the requirements for notice by certified mail or by publication.

34. *J.P.J.*, 109 Ill. 2d at 134, 485 N.E.2d at 850.

35. *Id.* at 135-37, 485 N.E.2d at 850-51 (citing ILL. REV. STAT. ch. 37, para. 704-4(2) (1985)). The Juvenile Court Act excuses service to a noncustodial parent who cannot be served directly with process, when proper service had been made on the custodial parent, and no order or judgment was issued against the noncustodial parent. ILL. REV. STAT. ch. 37, para. 704-4(2) (1985).

36. *J.P.J.*, 109 Ill. 2d at 135-37, 485 N.E.2d at 850-51. The supreme court in *J.P.J.* also cited to the 1984 Illinois Supreme Court case of *In re* R.S. which held that service on

could not be served directly and no order was issued against them, service by publication was excused under paragraph 704-4(2) of the Juvenile Court Act.[37] The court determined that service was not required when the custodial parent had actual notice, and the noncustodial parent did not have a significant relationship with the child.[38] When these factors existed, there did not appear to be any harm to the minor if the noncustodial parent did not appear at the proceedings.[39] The statutory notice requirements were complied with and the Illinois Supreme Court affirmed all three convictions of the minors.[40]

The Illinois Supreme Court in *J.P.J.* held that because it deter-

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a noncustodial parent was necessary when his or her whereabouts were known. *J.P.J.*, 109 Ill. 2d at 136, 485 N.E.2d 851 (1984) (citing *In re* R.S., 104 Ill. 2d 1, 470 N.E.2d 297 (1984)). In *R.S.*, the minor's mother was a named respondent. Although her address was known, the mother was never served. *R.S.*, 104 Ill. 2d at 3, 470 N.E.2d at 298. The Illinois Supreme Court in *R.S.* held that failure to notify the minor's mother meant the State did not properly invoke the trial court's jurisdiction, thereby rendering the trial court judgment void. *Id.* at 6, 470 N.E.2d at 300. The Illinois Supreme Court, in *J.P.J.*, reasoned that because the court in *R.S.* required service to a noncustodial parent whose whereabouts were known, the holding did not mandate service to a noncustodial parent whose whereabouts were unknown. *J.P.J.*, 109 Ill. 2d at 136, 485 N.E.2d at 852.

37. *J.P.J.*, 109 Ill. 2d at 138-39, 485 N.E.2d at 852.

38. *Id.* at 136-37, 485 N.E.2d at 851. Furthermore, no judgment or order could be entered against the noncustodial parent at the proceedings. *Id.* at 137, 485 N.E.2d at 851.

39. *Id.* at 136, 485 N.E.2d at 851. *See also In re* R. D., 148 Ill. App. 3d 381, 499 N.E.2d 478 (1st Dist. 1986). In this recent delinquency case, the Illinois appellate court held that the State was relieved of its obligation to notify both the noncustodial father and stepfather when the mother was properly served, and notice by publication to the noncustodial parent was excused by paragraph 704-4(2) of the Juvenile Court Act. In addition to relying on *In re* J.P.J., the court in *R. D.* relied on the earlier Illinois Supreme Court case of *In re* J.W., 87 Ill. 2d 56, 429 N.E.2d 501 (1981). The court in *J.W.* held that failure to notify a father by publication, whose whereabouts were unknown and who was not an indispensable party, deprived the court of personal jurisdiction over the father, but did not result in lack of subject matter jurisdiction or deprive the court of jurisdiction over the minor or his mother. *R. D.*, 148 Ill. App. 3d at 385, 499 N.E.2d at 480. Additionally, the court held that if there was no significant relationship between the minor and the noncustodial parent, then notice was probably not necessary. *Id.*

Recent appellate court decisions have also considered the issue of notice with regard to guardians. *See In re* J.A., 145 Ill. App. 3d 816, 495 N.E.2d 1340 (3d Dist. 1986). In *In re* J.A., an abuse and neglect case, the appellate court affirmed the award of temporary custody of two children to the guardianship administrator of DCFS. *Id.* at 820, 495 N.E.2d at 1343. The mother challenged the jurisdiction of the circuit court because service was not made on the legal guardian from DCFS. The court held, however, that the guardian submitted himself to the court's jurisdiction. *Id.* at 819, 495 N.E.2d at 1342. The court held that DCFS had actual notice of the proceedings, and there would be no useful purpose in holding that further technical notice was required. *Id.* The court avoided vacating the orders of the circuit court by finding that there was actual, although not technically correct, notice of the DCFS guardian, which thereby properly invoked the circuit court's jurisdiction. *Id.*

40. *J.P.J.*, 109 Ill. 2d at 140, 485 N.E.2d at 853.

mined that notice requirements were satisfied in all three minors' cases, it did not have to address the minors' additional argument that failure to provide the statutorily required notice would deprive the trial court of jurisdiction.[41] Consequently, the Illinois Supreme Court avoided the question of whether lack of notice to a noncustodial parent poses a jurisdictional problem.[42] Instead, the court held that a statutory provision that, on its face, provides that the juvenile court cannot enter orders against persons over whom it has no personal jurisdiction means that the State need not serve notice by publication to noncustodial parents whose precise address is not known.[43] The issue of whether the State has used diligence to ascertain the noncustodial parent's address is a ques-

41. The supreme court also held that there was no showing of the State's lack of diligence to give notice, and that the burden was upon the minor's counsel at the trial level to raise the issue of failure of notice to a parent. *Id.* at 139, 485 N.E.2d at 852.

42. *Id.* The Illinois Supreme Court might have resolved the lack of notice issues by adopting the approach taken in the Illinois appellate court case of *In re* L.E.J., 115 Ill. App. 3d 993, 451 N.E.2d 289 (4th Dist. 1983). In *L.E.J.*, the court described juvenile court subject matter jurisdiction as follows:

> Under the Constitution of 1970, the circuit court has original jurisdiction 'of all justiciable matters.' ILL. CONST. art. VI, § 9. While that term is not easily defined, in the juvenile court its apparent meaning is an offense for which the juvenile may be accountable. This is what has traditionally been designated as subject matter jurisdiction.

L.E.J., 115 Ill. App. 3d at 996, 451 N.E.2d at 292.

The court then distinguished jurisdiction of the person from jurisdiction of the subject matter:

> Jurisdiction of persons under the Juvenile Court Act is regulated by the statute and is one of the conditions precedent to the exercise of subject matter jurisdiction. (Mears.) To state the matter another way, subject matter jurisdiction is the power of the court to adjudicate; personal jurisdiction is the ability to exercise that power as to particular individuals. Lack of personal jurisdiction does not deprive the court of subject matter jurisdiction; only the ability to exercise its power upon those who have not been brought into court by summons or otherwise.

Id. at 997, 451 N.E.2d at 292.

The appellate court held that the court did have jurisdiction of the minor, the mother and the legal guardian. The court also noted that the absent father was not an indispensable party. *Id.* at 997-98, 451 N.E.2d at 292-93. The juvenile court orders regarding the minor, the mother and the guardian thus were not void. *Id.*

By not adopting the reasoning of *L.E.J.*, and relying instead on a limited statutory provision, the Illinois Supreme Court in *J.P.J.* left the door open to more appeals regarding notice provisions. *J.P.J.*, 109 Ill. 2d at 135, 485 N.E.2d at 850-51 (citing ILL. REV. STAT. ch. 37, para. 704-4(2) (1985)).

43. *J.P.J.*, 109 Ill.2d at 135, 485 N.E.2d at 850-51 (citing ILL. REV. STAT. ch. 37, para. 704-4(2) (1985)). "[N]otice by publication is not required in any case when the person alleged to have legal custody of the minor has been served with a summons personally or by certified mail, but the court may not issue any order or judgment against any person who cannot be served with process other than by publication unless notice by publication is given or unless that person appears." *Id.*

tion of fact which the minor must raise in the juvenile court or waive for appeal.

In separate dissents, two justices strongly objected to this decision, referring to an Illinois Supreme Court decision that formerly held that the State's failure to provide notice to a parent rendered the juvenile proceedings void because the court did not have jurisdiction.[44] Because jurisdictional issues cannot be waived, the dissent argued that the minors' failure to raise the issue of the State's compliance with the notice provisions of the Juvenile Court Act should not result in a waiver of that issue.[45]

B. Notice to Minors

Although the Illinois Supreme Court in *J.P.J.* addressed the issue of notice to a noncustodial parent in a juvenile court proceeding, the issue of proper notice to the minor continued to trouble the Illinois appellate courts during the *Survey* year. The critical issue regarding service of notice to minors involves their presumed incapacity at law. In Illinois, a minor cannot submit himself to the jurisdiction of the court and a guardian has no authority to submit the minor to the jurisdiction of the court by filing an appearance.[46] Therefore, "the symbolic act of actual or constructive service is required."[47]

In *In re Phillip Day,*[48] the State charged the parents with abuse and neglect of their twenty-three-day-old infant, and sought to terminate their parental rights.[49] At the adjudicatory hearing, the trial court found the child was physically abused, and at the dispositional hearing, the court terminated the parental rights.[50] On appeal, the parents asserted that because the minor had never been served with a summons or notice of the proceedings, the trial court lacked proper jurisdiction.[51] The appellate court in *Day* noted that the Illinois Supreme Court had addressed the issue of service on a

44. *J.P.J.*, 109 Ill. 2d at 140-42, 485 N.E.2d at 853 (Moran, J., and Simon, J., dissenting). The dissenters in *J.P.J.* noted that because jurisdiction could not be waived, the majority effectively overruled the holding in *R.S.*. *Id.* at 140-42, 485 N.E.2d at 853-54 (Moran, J., and Simon, J., dissenting).

45. *Id.* (Moran, J., and Simon, J., dissenting).

46. Bonnell v. Holt, 89 Ill. 71 (1878).

47. *In re* A.J.S. a/k/a A.J.N., No. 4-85-0372, (4th Dist. Jan. 28, 1986) (LEXIS, States library, Ill. file).

48. 138 Ill. App. 3d 783, 486 N.E.2d 307 (4th Dist. 1985).

49. *Id.* at 784, 486 N.E.2d at 307.

50. *Id.* at 785, 486 N.E.2d at 308.

51. *Id.*

noncustodial parent in *In re J.P.J.*[52] Nevertheless, because the supreme court had not yet addressed the issue of service of process on the minor, the appellate court stated that it was compelled to follow the holding of *In re Crouch*.[53] The appellate court in *Crouch* held that failure to notify a known respondent in a juvenile proceeding resulted in the failure to properly invoke the circuit court's jurisdiction, thus making all orders at the trial court level voidable.[54] In the *Day* case, it was clear that the infant was a known respondent and had not been properly notified.[55] Yet, the State argued that this failure to notify the infant did not violate his due process rights.[56] The State claimed that the error was clearly harmless because the infant would not have comprehended such notice. The State further argued that the infant's appointed guardian had actual notice and had appropriately represented the infant's interests.[57] The court in *Day* acknowledged that the actual service on an infant would be meaningless, but concluded that it was for the legislature, and not the court, to provide an alternative means of service for such a child.[58] The court thus chose to adhere to the *Crouch* decision, reversing and remanding the trial court's orders.[59] The court held that those orders were void as to the infant

52. *Id.* at 787, 486 N.E.2d at 309-10 (citing *J.P.J.*, 109 Ill. 2d 139, 485 N.E.2d 848 (1985)). *See supra* notes 28-45 and accompanying text.

53. *Day*, 138 Ill. App. 3d at 786, 486 N.E.2d at 309 (citing *In re* Crouch, 131 Ill. App. 3d 694, 476 N.E.2d 69 (4th Dist.), *appeal denied*, 106 Ill. 2d 554 (1985)).

54. *Crouch*, 131 Ill. App. 3d at 694, 476 N.E.2d at 69.

55. *Day*, 138 Ill. App. 3d at 785, 486 N.E.2d at 308.

56. *Id.*

57. *Id.* at 786, 486 N.E.2d at 309.

58. *Id.* at 787, 486 N.E.2d at 310. *See* 1986 Ill. Legis. Serv. 84-1460, § 1 (West) (to be codified at ILL. REV. STAT. ch. 37, para. 704-3), *infra* notes 261-277 and accompanying text. The Illinois Legislature, in passing the Act addressed the problem of requiring notice to minors which was raised in the *Day* case. It amends ILL. REV. STAT. ch 37, para. 704-3 regarding summonses. The Act deletes the requirement of sending a summons to a minor and instead allows for the summons to be directed to the minor's legal guardian or custodian on behalf of the minor in juvenile court proceedings. *Id.* This change eliminates the problem addressed in the *Day* case by no longer requiring a summons to be served on an infant who would not understand it. While this may rectify the issue in delinquency matters, service to a parent who may be adversarial to the child (for example, in an abuse, neglect, dependency or minor requiring authoritative intervention case) appears to defeat the spirit of the law. There is no assurance that the adversarial parent will tell the child of the court proceedings, although the minor's attorney or guardian ad litem should accomplish this if the child is old enough to understand. ILL. REV. STAT. ch. 37, para. 704-5 (1985). Perhaps a statutory provision similar to that for disabled persons, requiring the guardian ad litem to advise the minor in person of the court proceedings and of the minor's rights in these proceedings would be appropriate. *See* ILL. REV. STAT. ch. 37. paras. 11a-10, -11 (1985).

59. *Day*, 138 Ill. App. 3d at 788, 486 N.E.2d at 310.

minor, and were voidable as to the parents.[60]

A recent appellate court case followed the *Day* decision and required proper notice to a minor in a juvenile proceeding.[61] In *In re A.J.S., a/k/a A.J.N.*,[62] the trial court adjudged the minor to be delinquent, and committed him to the Department of Corrections. The minor was present throughout the trial court proceedings, though neither the minor nor the noncustodial father were served.[63] The appellate court held that although service on the minor would have been effectively meaningless, the court was required to adhere to the prior holdings of *In re Crouch* and *In re Phillip Day*.[64] In relying on *Crouch* and *Day*, the appellate court held that the minor had no power to submit himself to the court's jurisdiction as a defendant or as a respondent until the actual or symbolic act of constructive service.[65] Therefore, because the minor was not properly served with notice, the minor's right to due process was violated.[66]

During the *Survey* year, the Illinois courts frequently addressed the issue of notice in juvenile court proceedings. At present, Illinois law requires actual service of notice to a minor for a juvenile court proceeding. The age of the minor is irrelevant. The presence of the minor in court is not sufficient to confer jurisdiction of the person. The legislature is aware of the problems which the *Day* court and the *A.J.S.* court have highlighted. With the introduction of Public Act 84-1460,[67] the Illinois Legislature attempted to remedy the problematic requirements of service of process on minors.

60. *Id.* at 787, 486 N.E.2d at 310. A void judgment has no legal force or binding effect. A voidable judgment is rendered by a court having jurisdiction, but is irregularly and erroneously rendered. BLACK'S LAW DICTIONARY 1411-12 (5th ed. 1979).

61. *In re* A.J.S., a/k/a A.J.N., No. 4-85-0372 (4th Dist. Jan. 28, 1986) (LEXIS, States library, Ill. file).

62. *Id.*

63. *Id.* With regard to lack of service on the noncustodial father, the appellate court held that such notice was necessary because the minor did have a significant relationship with the father. *Id. See also In re* J.W., 87 Ill. 2d 56, 429 N.E.2d 501 (1981) (notice was not necessary to a noncustodial father who did not have a significant relationship with the minor).

64. *A.J.S.*, No. 4-85-0372 (citing *In re* Crouch, 131 Ill. App. 3d 694, 476 N.E.2d 69 (4th Dist.), *appeal denied*, 106 Ill. 2d 554 (1985)). *In re* Phillip Day, 138 Ill. App. 3d 783, 486 N.E.2d 307 (4th Dist. 1985)). *See supra* notes 48-60 and accompanying text.

65. *A.J.S.*, No. 4-85-0327.

66. *Id.*

67. 1986 Ill. Legis. Serv. 84-1460 (West). *See supra* note 58 and accompanying text. *See infra* notes 261-77 and accompanying text.

C. *Appointment of Counsel*

Two appellate court cases during the *Survey* year addressed appointment of counsel issues in delinquency proceedings.[68] *In re M.L.K.*[69] involved a delinquency proceeding in which the detention hearing was held before counsel was appointed or the minor was advised of his rights.[70]

At the detention hearing, a deputy sheriff testified that the minor had burglarized a school locker room.[71] The sheriff further explained that the minor had admitted to him earlier that he committed this offense in addition to two other burglaries.[72] After this testimony, both the minor and his mother declined to present any evidence.[73] The court then advised the minor of his right to counsel at future hearings and provided the minor with the name of his appointed attorney.[74] The court ordered the minor to be detained until a future hearing could be held.[75] At the adjudicatory hearing, the court held the minor was delinquent, and placed him on probation.[76] On appeal, the minor argued that his right to counsel was denied when the court held the detention hearing before the appointment of counsel or the advisement of his rights.[77]

The appellate court in *M.L.K.* acknowledged that certain due process safeguards applied to minors in juvenile proceedings, even though such proceedings are not criminal proceedings.[78] Juveniles must be represented by counsel during proceedings to determine delinquency.[79] The court in *M.L.K.* cited to *In re Giminez*,[80] not-

68. *In re* M.L.K., 136 Ill. App. 3d 376, 483 N.E.2d 662 (4th Dist. 1985); *In re* R. D., 148 Ill. App. 3d 381, 499 N.E.2d 478 (1st Dist. 1986).

69. 136 Ill. App. 3d 376, 483 N.E.2d 662 (4th Dist. 1985).

70. *Id.* at 378, 483 N.E.2d at 664. The minor was accused of committing three burgaries. *Id.*

71. *Id.* at 378, 483 N.E.2d at 663.

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.* at 377, 483 N.E.2d at 662.

77. *Id.* at 378, 483 N.E.2d at 664.

78. *Id.*

79. *Id.* at 379, 483 N.E.2d at 664 (citing *In re* Gault, 387 U.S. 1 (1967)).

80. *In re* Giminez, 23 Ill. App. 3d 583, 319 N.E.2d 570 (3d Dist. 1974). In 1970, the United States Supreme Court held that a defendant in a criminal proceeding was entitled to legal representation at the preliminary hearing. Coleman v. Alabama, 399 U.S. 1 (1970). In 1974, in *In re* Giminez, the Illinois Appellate Court for the Third District decided that a detention hearing in juvenile court was similar to a preliminary hearing in criminal court, and that a minor at a detention hearing needed legal counsel for reasons similar to a defendant's need for an attorney at a preliminary hearing. *Giminez*, 23 Ill. App. 3d at 585-86, 319 N.E.2d at 572-73.

ing that a detention hearing was comparable to a preliminary hearing in criminal proceedings, and that this was a critical stage in the criminal process which called for the right to counsel.[81] Furthermore, counsel at a detention hearing could perform many functions similar to counsel at a preliminary hearing.[82]

The minor in *M.L.K.* asserted that the lack of counsel at his detention hearing prevented challenges to incriminating State evidence.[83] The appellate court noted that the evidence offered at the adjudicatory hearing was similar to the evidence at the detention hearing. [84] Admitting that the detention hearing was a significant legal step requiring representation by an attorney, the appellate court concluded that the absence of the attorney at the detention hearing did not prejudice the minor in his defense of the delinquency charges.[85] Because counsel did not undermine the State's evidence at the adjudicatory hearing, the court reasoned that he would have been equally ineffective at the detention hearing.[86]

Additionally, the appellate court in *M.L.K.* noted that the Juvenile Court Act allowed for detention when there was an urgent necessity to protect the minor or the person or property of another.[87] According to the Act, individual factors of the minor's situation, including his delinquency record, are to be considered in making this determination.[88] Considering the minor's repeat offender status and his uncontrollable nature, the appellate court held that the provision of counsel at the detention hearing probably would not have affected the minor's detention.[89] Therefore, the court ruled that the minor was not prejudiced by the lack of ap-

81. *M.L.K.*, 136 Ill. App. 3d at 379, 483 N.E.2d at 664 (citing *Giminez*, 23 Ill. App. 3d 583, 319 N.E.2d 570).

82. *M.L.K.*, 136 Ill. App. 3d at 379, 483 N.E.2d at 664. The United States Supreme Court has noted that counsel could perform the following four functions at a preliminary hearing: expose fatal weaknesses of the State's case; use interrogation to create an impeachment tool for use in cross-examination at trial; discover the State's case to help prepare a better trial defense; and at the preliminary hearing, counsel could be influential regarding bail and other such pretrial matters. *Coleman*, 399 U.S. at 9.

83. *M.L.K.*, 136 Ill. App. 3d at 380, 483 N.E.2d at 665.

84. *Id.*

85. *Id.* at 381, 483 N.E.2d at 665.

86. *Id.*

87. *Id.* (citing ILL. REV. STAT. ch. 37, para. 703-6(2) (1985)).

88. ILL. REV. STAT. ch. 37, para. 703-6(2) (1985). Paragraph 703-6(2) provides in relevant part: "Factors to be considered include: the nature and seriousness of the alleged offense; the minor's record of delinquency offenses, including whether the minor has delinquency cases pending; and the availability of noncustodial alternatives, including the presence of a parent or other responsible relatives able and willing to provide supervision and care for the minor." *M.L.K.*, 136 Ill. App. 3d at 381, 483 N.E.2d at 665.

89. *M.L.K.*, 136 Ill. App. 3d at 381, 483 N.E.2d at 665.

pointment of counsel at his detention hearing.[90]

The appellate court's conclusion was bolstered by the court's reminder that the minor had a statutory right to a detention rehearing once he retained an attorney, yet the minor never requested a rehearing.[91] In view of this provision for a rehearing, it is difficult to argue in a case with no rehearing, that the lack of representation in the initial detention hearing prejudiced the minor at trial.

Another appellate court case addressed the issue of an appointed attorney who also served as the juvenile's guardian ad litem.[92] In *In re R.D.*,[93] the court simply reaffirmed the notion that there is no inherent conflict when an attorney in a juvenile proceeding also fills the role of the child's guardian ad litem.[94] The court stated that the juvenile counsel and the guardian ad litem essentially have the same obligations to both the minor and society.[95] This decision follows clear precedent in Illinois.[96] The Illinois Appellate Court for the First District thus affirmed that a court-appointed counsel for a minor has an obligation to act in the best interests of the minor, a responsibility unique from that of other court appointed counsel.

D. Admissions

The Illinois Supreme Court reaffirmed that a statement is inadmissible when made by an accused during custodial interrogation and after the accused has invoked his or her right to remain si-

90. *Id.* at 381, 483 N.E.2d at 666.

91. *Id.* (citing ILL. REV. STAT. ch. 37, para. 703-6(3) (1985)). This statutory provision would have allowed the minor a rehearing without demonstrating prejudice resulting from lack of counsel at his detention hearing. *M.L.K.*, 136 Ill. App. 3d at 381, 483 N.E.2d at 666. The minor had a statutory right to rehearing, yet his counsel neglected to assert this right to the court. *Id.*

92. *In re* R.D., 148 Ill. App. 3d, 381, 499 N.E.2d 478 (1st Dist. 1986). *See also supra* note 39.

93. *R.D.*, 148 Ill. App. 3d 381, 499 N.E.2d 478.

94. *Id.* at 386-87, 499 N.E.2d at 481.

95. *Id.* at 387, 499 N.E.2d at 482.

96. *See, e.g., In re* K.M.B., 123 Ill. App. 3d 645, 462 N.E.2d 1271 (4th Dist. 1984). In *K.M.B.*, the public defender also served as the minor's guardian ad litem during delinquency proceedings. The attorney made recommendations to the trial court that were in conflict with the wishes of the child. The appellate court held that the juvenile counsel must protect the juvenile's legal rights, and also make recommendations in the juvenile's best interest, even when the juvenile himself does not recognize those interests. The appellate court upheld this counsel's dual role, even though counsel, in protecting the juvenile's best interest, made a recommendation contrary to the juvenile's wishes. *K.M.B.*, 123 Ill. App. 3d at 648, 462 N.E.2d at 1273.

lent.[97] The Illinois Supreme Court case of *People v. R.C.*[98] involved a minor's admission of burglary during a custodial interrogation. Before he was questioned at the police station, the interrogating juvenile officer advised him of his *Miranda* rights.[99] The minor stated that he understood his rights and did not wish to talk. The officer responded that although the minor had the right to remain silent, he already had been identified in connection with the burglary.[100] The officer then proceeded to question the minor until the minor admitted to his participation in the burglary.[101] The minor was found guilty at a jury trial and sentenced to the Department of Corrections.[102] The appellate court held that the minor's right to remain silent was violated by the officer's persistent questioning, but that the error was harmless.[103]

The Illinois Supreme Court reversed the conviction and remanded the case for a new adjudicatory hearing.[104] The court held that not only was the minor's right to remain silent violated, but the admission of the minor's confession was not harmless error.[105]

The court asserted that a statement is admissible if, after the suspect was advised of his *Miranda* rights, he voluntarily waived his rights before he made his statement.[106] Furthermore, even if a suspect waived those rights and began to make a statement, the interrogation must cease if the suspect gives any indication that he wishes to remain silent.[107] If questioning continued, any statement made may be admitted only when the suspect's right to remain silent was "scrupulously honored."[108] In applying this rationale to

97. People v. R.C., 108 Ill. 2d 349, 483 N.E.2d 1241 (1985).

98. *Id.*

99. *Id.* at 352, 483 N.E.2d at 1243. According to the court in *Miranda v. Arizona*, prior to custodial interrogation, the suspect must be warned that he has the right to remain silent, that any statement he makes may be used against him, and that he has a right to the presence of an attorney who is either retained or appointed. *See Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

100. *R.C.*, 108 Ill. 2d at 352, 483 N.E.2d at 1243.

101. *Id.*

102. *Id.* at 351, 483 N.E.2d at 1242.

103. *Id.* at 351, 483 N.E.2d at 1243.

104. *Id.* at 356, 483 N.E.2d at 1245.

105. *Id.* The court held that because the confession was the foundation of the State's case the admission of the confession was not harmless beyond a reasonable doubt. *Id.*

106. *Id.* at 353, 483 N.E.2d at 1243 (citing Miranda v. Arizona, 384 U.S. 436 (1966)).

107. *Id.*

108. *R.C.*, 108 Ill. 2d at 353, 483 N.E.2d at 1243 (citing Michigan v. Mosley, 423 U.S. 96 (1976)). In *Mosley*, the United States Supreme Court held that the defendant's right to remain silent was scrupulously honored. The defendant had been advised of his *Miranda* rights before the initial interrogation. When he said he did not want to discuss the crime in question, the police ceased interrogation immediately. Several hours later,

a juvenile in a custodial interrogation, the Illinois Supreme Court in *R.C.* found that the juvenile's right to remain silent had not been scrupulously honored,[109] and held that the minor's confession was inadmissible at trial.[110]

When a minor makes an admission of an offense, that admission must be intelligently and voluntarily made.[111] In *In re S.K.*,[112] the Illinois appellate court ruled that "fundamental fairness" served as the standard for testing whether a minor voluntarily and intelligently admitted to delinquency.[113] In *S.K.*, the minor admitted to the trial judge that he committed the offense of resisting a peace officer.[114] At the dispositional hearing, he was committed to the Department of Corrections.[115] The minor claimed, on appeal, that his admission was not voluntarily or intelligently made because the trial judge had not admonished him of the consequences of his admission.[116]

The court in *S.K.* relied on a previous Illinois Supreme Court holding,[117] to conclude that in juvenile court, a minor who makes an admission of a delinquent act is entitled, at minimum, to that protection which is constitutionally required for admisssions in criminal trials.[118] Thus, the trial judge must ensure that the suspect comprehends the potential consequences resulting from an ad-

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after being read his *Miranda* rights again, the defendant was questioned about an entirely different crime. Thus, because the defendant was read his rights a second time, was questioned by a different officer about a different crime, and a substantial amount of time had passed since the initial interrogation, the Supreme Court held that the defendant's right to remain silent had been scrupulously honored. *Mosley*, 423 U.S. at 104.

109. *R.C.* 108 Ill. 2d at 354, 483 N.E.2d at 1244.

110. *Id.* at 356, 483 N.E.2d at 1245.

111. *In re* S.K., 137 Ill. App. 3d 1065, 1069, 485 N.E.2d 578, 582 (2d Dist. 1985). *See also In re* D.L.B., 140 Ill. App. 3d 52, 56, 488 N.E.2d 313, 315 (4th Dist. 1986) (a minor's due process rights were violated when his admission was neither intelligently or voluntarily made because the trial court did not advise the minor of the possible consequences of such an admission).

112. 137 Ill. App. 3d 1065, 485 N.E.2d 578 (2d Dist. 1985).

113. *Id.* at 1070, 485 N.E.2d at 582.

114. *Id.* at 1066, 485 N.E.2d at 579.

115. *Id.*

116. *Id.*

117. *In re* Beasley, 66 Ill. 2d 385, 362 N.E.2d 1024 (1977), *cert. denied*, 434 U.S. 1016 (1978). In *Beasley*, the Illinois Supreme Court held that when a trial judge accepts an admission of a delinquent act by a minor, the judge is not obligated to follow the requirements of Illinois Supreme Court Rule 402, which was adopted in order to assure procedural rights to defendants in criminal proceedings. *Id.* at 389, 362 N.E.2d at 1026. An admission must be intelligently and voluntarily made, but it need not necessarily be in accordance with Illinois Supreme Court Rule 402.

118. *S.K.*, 137 Ill. App. 3d at 1069, 485 N.E.2d at 581 (citing *In re* Beasley, 66 Ill. 2d 385, 362 N.E.2d 1024 (1977)).

mission.[119] In *S.K.*, the minor was not advised of the possible commitment to the Department of Corrections.[120] Thus, the appellate court held that the minor's admission was not voluntarily or intelligently made.[121]

E. Dispositions

1. Department of Corrections Sentences

During the *Survey* year, a number of Illinois appellate court decisions discussed the appropriateness of dispositions for juvenile offenders, many of which involved sentences to the Department of Corrections. In *In re D.T.*,[122] the Illinois Appellate Court upheld the constitutionality of paragraph 702-7(6) of the Juvenile Court Act, which gives criminal courts jurisdiction over fifteen-year-old and sixteen-year-old defendants charged with murder.[123] In *D.T.*, a minor was charged with murder and prosecuted as an adult in a criminal proceeding pursuant to paragraph 702-7(6) of the Juvenile Court Act.[124] After a bench trial, the minor was found guilty of involuntary manslaughter and sentenced to the Department of Corrections.[125] The minor, on appeal, claimed that paragraph 702-7(6)(c) of the Juvenile Court Act[126] violated the constitutional guarantees of due process and equal protection.[127] The appellate court stated that prior Illinois courts had found paragraph 702-7(6) of the Act to be constitutional and nonviolative of due process and equal protection guarantees.[128] Thus, the reviewing court

119. *S.K.*, 137 Ill. App. 3d at 1069, 485 N.E.2d at 581.

120. *Id.* at 1070, 485 N.E.2d at 582.

121. *Id.*

122. 141 Ill. App. 3d 1036, 490 N.E.2d 1361 (1st Dist. 1986).

123. *Id.* at 1039, 490 N.E.2d at 1363 (citing ILL. REV. STAT. ch. 37, para. 702-7(6) (1985)). Section (a) of paragraph 702-7(6) provides that if a minor age fifteen or older is charged with murder, aggravated criminal sexual assault, or armed robbery with a firearm, he is automatically transferred to the criminal court and prosecuted as an adult pursuant to the Criminal Code of 1961. ILL. REV. STAT. ch. 37, para. 702-7(6)(a) (1985).

124. *D.T.*, 141 Ill. App. 3d at 1036, 490 N.E.2d at 1361 (citing ILL. REV. STAT. ch. 37, para. 702-7(6)(a) (1985)). *See* People v. J.S., 103 Ill. 2d 395, 469 N.E.2d 1090 (1984) (upholding the constitutionality of paragraph 702-7(6)).

125. *D.T.*, 141 Ill. App. 3d at 1038, 490 N.E.2d at 1363.

126. ILL. REV. STAT. ch. 37, para. 702-7(6)(c) (1985). If a minor was charged pursuant to the provisions of 702-7(6)(a), and was in fact convicted of a different lesser offense, the court can use its discretion to sentence the minor as a juvenile under the Act, or as an adult under Illinois criminal law. For the specified provisions of paragraph 702-7(6)(a), see *supra* note 123.

127. *D.T.*, 141 Ill. App. 3d at 1039, 490 N.E.2d at 1363.

128. *Id.* at 1043, 490 N.E.2d at 1366 (citing People v. Williamson, 131 Ill. App. 3d 321, 475 N.E.2d 938 (1st Dist. 1985)). In *Williamson*, a sixteen-year-old minor was charged with murder and armed violence and was prosecuted as an adult pursuant to the

ruled that the trial court in *D.T.* did not abuse its discretion in sentencing the minor as an adult.[129]

The minor in *D.T.* further claimed that paragraph 702-7(6)(c)[130] violated the due process clause of the Illinois Constitution because it conflicted with the legislative intent of the Act and was not reasonably designed to remedy that which was determined to be a threat to the public.[131] The minor claimed that this section was intended to apply only to serious offenders who committed crimes as defined in 702-7(6)(a),[132] and not to apply to children who committed crimes without felonious intent.[133] The appellate court rejected this argument because paragraph 702-7(6)(c)[134] allows for the court to use its discretion in sentencing the minor as a juvenile or as an adult.[135] Concluding that the statutory provision did not violate the due process clause, the appellate court affirmed the disposition.[136]

In *People v. Clark*,[137] another recent appellate court decision, a minor was tried as an adult pursuant to a juvenile court waiver

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Juvenile Court Act. *Williamson*, 131 Ill. App. 3d at 922, 475 N.E.2d at 939. ILL. REV. STAT. ch. 37, para. 702-7(6)(a) (1985). *See supra* note 123. The minor was found guilty of manslaughter and sentenced as an adult. The minor claimed, on appeal, that paragraph 702-7(6) was unconstitutional because it failed to provide guidelines for the court to determine whether to sentence the minor as an adult or a juvenile. The appellate court held that the section was constitutional because the Juvenile Court Act provided certain standards and guidelines to be used in determining whether to sentence a minor as a juvenile or as an adult. *Williamson*, 131 Ill. App. 3d at 324, 475 N.E.2d at 941.

The appellate court in *Williamson* noted that paragraph 702-7(3)(a) provided standards for determining waiver of juvenile court jurisdiction in the case of minors thirteen years of age or older who commit criminal acts. *Williamson*, 131 Ill. App. 3d at 324-25, 475 N.E.2d at 941 (citing ILL. REV. STAT. ch. 37, para. 702-7(3)(a) (1985)). The six standards set forth by the court include sufficiency of the evidence; the aggressiveness and premeditated manner in which the offense was committed; the minor's age; the minor's history; available treatment facilities; and the best interests of the minor and the security of the public. *Williamson*, 131 Ill. App. 3d at 324-25, 475 N.E.2d at 941.

129. *D.T.*, 141 Ill. App. 3d at 1043, 490 N.E.2d at 1366.

130. ILL. REV. STAT. ch. 37, para. 702-7(6)(c) (1985). *See supra* note 126.

131. *D.T.*, 141 Ill. App. 3d at 1044, 490 N.E.2d at 1367. The defendant claimed that paragraph 702-7(6)(c) was intended to apply only to hardened youth offenders who were a public threat because they had commited murder, armed robbery with a firearm or deviate sexual assault, and that it should not apply to juveniles who had made mistakes without prior intent. *Id.*

132. *See supra* note 123.

133. *D.T.*, 141 Ill. App. 3d at 1044, 490 N.E.2d at 1367.

134. *See supra* note 126.

135. *Id.* at 1044-45, 490 N.E.2d at 1367.

136. *Id.* at 1045, 490 N.E.2d at 1367-68. *See also In re* T.A.C., 138 Ill. App. 3d 794, 486 N.E.2d 375 (4th Dist. 1985) (upholding the minor's commitment to the Department of Corrections stressing the trial court's wide discretion in determining the appropriate disposition).

137. 144 Ill. App. 3d 420, 494 N.E.2d 551 (4th Dist. 1986).

hearing provided for in paragraph 702-7(3) of the Juvenile Court Act.[138] In *Clark,* a fourteen-year-old minor was transferred for prosecution as an adult for two murders, pursuant to paragraph 702-7(3) of the Juvenile Court Act.[139] The minor was found guilty of both murders.[140] The appellate court held that the juvenile court complied with the statutory requirements of paragraph 702-7(3) before waiving jurisdiction of the minor's case to the criminal court.[141]

When the criminal court convicted the minor of two murders, it followed the mandatory provisions of the Illinois Revised Statutes and imposed a sentence of life imprisonment on the fourteen-year-old minor.[142] The appellate court rejected the minor's argument that the juvenile court judge had failed to consider that the waiver to criminal court and conviction of the minor for the two murder charges bound the criminal court to sentence the minor to imprisonment for natural life.[143]

The minor further asserted that a mandatory life sentence for a fourteen-year-old minor violated the due process clause of the Illinois Constitution.[144] The minor claimed that the mandatory life imprisonment requirement set out in the Illinois Revised Statutes was meant to apply to adults who were eligible for, but did not receive, the death penalty.[145] The court rejected the defendant's argument, relying instead on two recent Illinois cases[146] which af-

138. *Clark*, 144 Ill. App. 3d at 421, 494 N.E.2d at 551 (citing ILL. REV. STAT. ch. 37, para. 702-7(3) (1985)). Paragraph 702-7(3) provides for prosecution of a minor, thirteen years old or older, for any offense if, upon motion of a state's attorney and after an investigation, a Juvenile Judge enters an order permitting such prosecution). Prosecution as an adult is permitted when the court finds it is not in the best interest of the minor or society to prosecute the juvenile according to the Juvenile Court Act. The Act specifies criteria to be considered by the court in making this determination. *Id.* at 423, 494 N.E.2d at 553. For a list of those criteria see *supra* note 128.

139. *Clark*, 144 Ill. App. 3d at 421, 494 N.E.2d at 551.

140. *Id.*

141. *Id.* at 427, 494 N.E.2d at 556.

142. *Id.* at 422, 494 N.E.2d at 552 (citing ILL. REV. STAT. ch. 38, para. 1005-8-1(a)(1)(c) (1985)).

143. *Id.* at 428, 494 N.E.2d at 557. The message to defense counsel under these circumstances is clear. At a juvenile court waiver hearing, it is imperative to argue in mitigation that transfer to criminal court and conviction therein will result in a life sentence of imprisonment to an accused minor, whereas trial in juvenile court leaves the judge with options for sentencing.

The dissent argued that the juvenile court abused its discretion in granting the waiver to criminal court on the facts of this case. *Id.* at 433, 494 N.E.2d at 560 (Green, J., dissenting).

144. *Clark*, 144 Ill. App. 3d at 430, 494 N.E.2d at 558 (citing ILL. CONST. art. I, § 2).

145. *Clark* 144 Ill. App. 3d at 430, 494 N.E.2d at 558.

146. *Id.* at 430-31, 494 N.E.2d at 558 (citing People v. Taylor, 102 Ill. 2d 201, 464

firmed life imprisonment sentences for a sixteen and a fifteen-year-old minor respectively.[147] In *Clark,* the appellate court stated that the seriousness of a multiple murder existed regardless of whether the actor was a juvenile or an adult.[148] The court then asserted that if the legislature had intended the offense of murder to be of a less heinous quality when committed by a juvenile, it would have specified this in the statute.[149]

The minor in *Clark* also asserted that mandatory life imprisonment violated eighth[150] and fourteenth amendment[151] rights provided by the United States Constitution.[152] He claimed the disposition was unconstitutional because the statute made no provisions for consideration of mitigating evidence as was required in death penalty cases.[153] Noting that age had been a major mitigating factor in death penalty cases,[154] the court in *Clark* stressed the qualitative difference between the death penalty and life imprisonment.[155] In rejecting the minor's constitutional argument, the appellate court highlighted the public safety interest in life sentences for multiple murders.[156] The court thus affirmed the minor's life sentence holding that the minor was properly transferred to the criminal court according to the Juvenile Court Act.[157]

2. Probation Sentences

During the *Survey* year, three appellate court cases considered issues regarding probation sentences for minors.[158] In *In re*

N.E.2d 1059 (1984) and People v. Rodriguez, 134 Ill. App. 3d 582, 480 N.E.2d 1147 (1st Dist. 1985), *cert. denied,* 106 S. Ct. 1476 (1986)).

147. *Clark,* 144 Ill. App. 3d at 430-31, 494 N.E.2d at 558 (citing *Rodriguez,* 134 Ill. App. 3d 582, 480 N.E.2d 1147). In *Rodriguez,* the court rejected the minor's argument that a life sentence was contradictory to the express intent of the legislature, which exempted minors from the death penalty. The court held that a life sentence was appropriate for a minor because it was qualitatively different from the death penalty. *Rodriguez,* 134 Ill. App. 3d at 593, 480 N.E.2d at 1154.

148. *Clark,* 144 Ill. App. 3d at 431, 494 N.E.2d at 558.

149. *Id.* at 431, 494 N.E.2d at 559. The minor in *Clark* presented no evidence to support the unconstitutionality of a life sentence for a juvenile. *Id.*

150. U.S. CONST. amend VIII.

151. U.S. CONST. amend. XIV.

152. *Clark,* 144 Ill. App. 3d at 422, 494 N.E.2d at 552.

153. *Id.* at 431, 494 N.E.2d at 559 (citing Woodson v. North Carolina, 428 U.S. 280 (1976)).

154. *Clark,* 144 Ill. App. 3d at 431, 494 N.E.2d at 559 (citing Eddings v. Oklahoma, 455 U.S. 104 (1982)).

155. *Clark,* 144 Ill.App. 3d at 431, 494 N.E.2d at 559.

156. *Id.*

157. *Id.* at 421, 494 N.E.2d at 553 (citing ILL. REV. STAT. ch. 37, para. 702-7(3)(a) (1985)). *See supra* notes 128 and 138.

158. *In re* P.A.F., 134 Ill. App. 3d 1066, 481 N.E.2d 861 (5th Dist. 1985); *In re* C.T.,

P.A.F.,[159] a minor on probation for a previous burglary was charged with attempted arson and criminal trespass.[160] He was adjudicated delinquent for the attempted arson and the trespass: a violation of the terms of his probation sentence.[161] The trial court sentenced the minor to the Department of Corrections for the probation violation, and sentenced him to probation for the criminal trespass.[162] Regarding to the probation sentence for the criminal trespass, the trial court found the minor could remain in his parent's custody.[163] Regarding the Department of Corrections sentence for the probation violation, however, the trial court found the minor's parents to be unfit.[164] The minor was to serve this incarceration sentence concurrently with the probation sentence.[165] The juvenile court judge expected the Department of Corrections to release the minor within a year, at which time the minor would be under probation for the second delinquent offense upon his return to his parents' home.

On appeal, the minor asserted that the incarceration sentence and the concurrent probation sentence were in direct conflict with each other.[166] The minor relied on *People v. Merz*,[167] an appellate decision which held that when there are dispositional conflicts with specific findings which would support a less harsh disposition, the less harsh disposition should be imposed.[168] The appellate court in *P.A.F.*, however, distinguished the minor's situation from the *Merz* case, noting that the defendant in *Merz* was unlikely to commit another crime and that the defendant's criminal conduct was the result of unusual circumstances unlikely to recur.[169] In *P.A.F.*, the court observed that the minor's conduct had become increasingly more delinquent, and that prior attempts at probation had failed.[170] The Illinois Appellate Court for the Fifth District thus held that the minor's concurrent sentences were not inherently conflicting,

137 Ill. App. 3d 42, 484 N.E.2d 361 (5th Dist. 1985); *In re* M.L.K., 136 Ill. App. 3d 376, 483 N.E.2d 662 (4th Dist. 1985).

159. 134 Ill. App. 3d 1066, 481 N.E.2d 861.

160. *P.A.F.*, 134 Ill. App. 3d at 1067, 481 N.E.2d at 862.

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

167. 122 Ill. App. 3d 972, 461 N.E.2d 1380 (2d Dist. 1980).

168. *P.A.F.*, 134 Ill. App. 3d at 1067, 481 N.E.2d at 862 (citing People v. Merz, 122 Ill. App. 3d 972, 461 N.E.2d 1380 (2d Dist. 1980)).

169. *P.A.F.*, 134 Ill. App. 3d at 1067, 481 N.E.2d at 862.

170. *Id.* at 1068, 481 N.E.2d at 863.

and affirmed the trial court's disposition.[171] The appellate court approved the trial court's concurrent orders, recognizing that the findings underlying the probation applied to the minor's circumstances after release from the Department of Corrections.

The Illinois appellate court, again sitting in the Fifth District, refused to allow the juvenile court to accomplish a similar result by committing a minor to the Department of Corrections for a determinate time as a condition of his probation.[172] In *In re C.T.*, a juvenile committed a theft and was sentenced pursuant to paragraph 705-2(a) of the Juvenile Court Act.[173] At the dispositional hearing, the minor was sentenced to a five-year term of probation with the condition that he serve the first eight months of that sentence in the Department of Corrections.[174] On appeal, the minor claimed that paragraph 705-2(a) of the Juvenile Court Act did not authorize a commitment to the Department of Corrections as a condition of probation.[175] The appellate court agreed, holding that paragraph 705-2 of the Juvenile Court Act defines incarceration and probation as alternative dispositions which could not be imposed as a combined sentence.[176] The appellate court interpreted the statute to allow a delinquent minor to be sentenced to probation with up to thirty days detention or to be committed to the Department of Corrections.[177] This sentence was an alternative disposition without any provisions allowing for a combined sentence.[178] In analyzing the legislative intent of paragraph 705-2 of the Juvenile Court Act, the court concluded that the rehabilitative purpose of the statute would be thwarted by an interpretation that would allow incarceration as a condition of probation.[179]

Aside from the condition of commitment, a juvenile court can impose numerous conditions as part of a probation order.[180] In *In re M.L.K.*,[181] the trial court sentenced a delinquent minor, found guilty of burglary, to two years probation with several condi-

171. *Id.* at 1070, 481 N.E.2d at 864.

172. *In re* C.T., 137 Ill. App. 3d 42, 484 N.E.2d 361 (5th Dist. 1985).

173. *Id.* (citing ILL. REV. STAT. ch. 37, para. 705-2(a) (1985)). Paragraph 705-2(a) defines the types of dispositional orders which may be made for minors who are wards of the state.

174. *C.T.*, 137 Ill. App. 3d at 43, 484 N.E.2d at 362.

175. *Id.* at 44, 484 N.E. 2d at 363.

176. *Id.* at 46, 484 N.E.2d at 364.

177. *Id.* at 45, 484 N.E.2d at 364.

178. *Id.*

179. *Id.* at 46, 484 N.E.2d at 364. The appellate court vacated the incarceration part of the sentence and remanded the case for a new dispositional hearing. *Id.*

180. ILL. REV. STAT. ch. 37, para. 705-3(2) (1985).

181. 136 Ill. App. 3d 376, 483 N.E.2d 662 (4th Dist. 1985). The court in *M.L.K.* also

tions.[182] The minor claimed that the condition requiring him to maintain at least a "C" average in school was an abuse of the trial court's discretion, and was not reasonably related to his offenses.[183] The appellate court held that the grade requirement was an appropriate condition of probation.[184] The court acknowledged, however, that it should not be a mandatory requirement of probation that a certain grade point average be maintained, but rather that the minor make all reasonable efforts to achieve such an average.[185]

F. Parental Rights

In *In re Sabrina Enis*,[186] an appellate court decision, the court addressed the standards for terminating parental rights.[187] Prior to the termination of parental rights, the juvenile court, at two hearings, found the Enises guilty of two separate incidents of abuse.[188] At these hearings, the State proved physical abuse by a preponderance of the evidence, as required by paragraph 704-6(1) of the Juvenile Court Act.[189] Following the two hearings, the State moved to terminate parental rights pursuant to paragraph 1501D(f) of the Illinois Adoption Act.[190]

The provisions of the Illinois Adoption Act allow for termination of parental rights on the finding of two or more incidents of physical abuse under paragraph 704-8 of the Juvenile Court Act.[191] Under the Adoption Act, the standard of proof required for parental unfitness is clear and convincing evidence.[192] This standard of proof is also a due process requirement mandated by the United

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addressed the issue of appointment of counsel. *See supra* notes 69-91 and accompanying text for a discussion of this issue.

182. *M.L.K.*, 136 Ill. App. 3d at 377, 483 N.E.2d at 663. The conditions of probation included performance of forty hours of public service; payment of restitution; a 10:00 p.m. curfew; regular school attendance; and the maintenance of at least a "C" average in school. *Id.*

183. *Id.* at 377, 381, 483 N.E.2d at 663, 666. The minor's background revealed that he had friends who were "bad influences" out of school, and friends who were classmates and "good influences" in school. *Id.* at 381-82, 483 N.E.2d at 666.

184. *Id.* at 382, 483 N.E.2d at 666.

185. *Id.*

186. 145 Ill. App. 3d 753, 495 N.E.2d 1319 (2d Dist. 1986).

187. *Id.*

188. *Id.* at 755, 495 N.E.2d at 1320.

189. *Id.* at 756, 495 N.E.2d at 1320 (citing ILL. REV. STAT. ch. 37, para. 704-6(1) (1985)).

190. *Enis*, 145 Ill. App. 3d at 756, 495 N.E.2d at 1320 (citing ILL. REV. STAT. ch. 40, para 1501D(f) (1985)).

191. ILL. REV. STAT. ch. 40, para. 1501 D(f)(1985).

192. *Enis*, 145 Ill. App. 3d at 756, 495 N.E.2d at 1320.

States Supreme Court in *Santosky v. Kramer*.[193] In *Enis*, two incidents of physical abuse proved only by a preponderance of the evidence under the Juvenile Court Act, however, had been used to show parental unfitness by clear and convincing proof under the Adoption Act.[194] In effect, the *Enis* court's application of the statutory provision had reduced the burden of proof by replacing clear and convincing evidence with two showings of abuse by only a preponderance of the evidence.

On appeal, the Enises asserted that paragraph 1501D(f) of the Adoption Act violated due process by allowing two abuse incidents shown only by a preponderance of the evidence to ultimately equal the higher standard of clear and convincing proof of parental unfitness.[195] The State, on the other hand, claimed that the legislature could conclude that two findings of physical abuse by a preponderance standard could cumulatively amount to clear and convincing evidence of parental unfitness.[196] The court concluded that paragraph 1501D(f) of the Adoption Act essentially allowed termination of parental rights by less than clear and convincing proof of physical abuse,[197] and that this violated the due process requirements mandated by the *Santosky* court.[198] Accordingly, paragraph 1501D(f) was held unconstitutional.[199]

G. Delays in Adjudicatory Hearings

In *In re A.J.*,[200] four minors claimed they were denied due process when their adjudicatory hearings were delayed almost two years after the filing of their delinquency petitions,[201] pursuant to the State's requests for continuances of the scheduled trial dates.[202] The Illinois Appellate Court for the First District agreed.[203]

193. 455 U.S. 745 (1982). The Court in *Santosky* held that clear and convinving proof was the due process requirement for proving parental unfitness. The Court concluded that the lower preponderance standard allocated the risk of error almost equally between the parents and the State. This allocation of risk would not accurately reflect the parent's prevailing interest in maintaining family cohesion. The Court in *Santosky* held that the higher standard of clear and convincing proof better reflected the importance of a decision that would ultimately terminate parental rights. *Id.* at 769.

194. *Enis*, 145 Ill. App. 3d at 756, 495 N.E.2d at 1320.

195. *Id.*

196. *Id.*

197. *Id.* at 760, 495 N.E.2d at 1323.

198. *Id.* at 759, 495 N.E.2d at 1322. *See supra* note 193.

199. *Enis*, 145 Ill. App. 3d at 762, 495 N.E.2d at 1324.

200. 135 Ill. App. 3d 494, 481 N.E.2d 1060 (1st Dist. 1985).

201. *Id.* at 502, 481 N.E.2d at 1066.

202. *Id.* at 496-97, 481 N.E.2d at 1062-63.

203. *Id.* at 497, 481 N.E.2d at 1063.

The appellate court referred to paragraph 704-2 of the Juvenile Court Act,[204] which provides that an adjudicatory hearing shall be set within thirty days from the filing of a delinquency petition.[205] Because the Act used the word "shall", the appellate court in *A.J.* determined that the Act directed rather than mandated that the hearing be held within the thirty day period,[206] and that a delay beyond this recommended time limit did not necessarily warrant a discharge.[207]

The court in *A.J.* stated that the juvenile court had an inherent authority to dismiss a delinquency petition for due process violations as an independent action, distinct from statutory authority by the Juvenile Court Act.[208] The court then applied the following test to evaluate the reasonableness of the delay.[209] Initially, the respondent must go forward with a clear showing of actual and substantial prejudice resulting from the delay.[210] Second, if the prejudice is evident, the burden shifts to the State to show that the delay was reasonable.[211] The delay must amount to an "unequivocally clear denial of due process."[212] The court must then balance the interests of the defendant and the public in determining whether to discharge the minor defendant.[213] Specific factors con-

204. *Id.* at 498, 481 N.E.2d at 1063 (citing ILL. REV. STAT. ch. 37, para. 704-2 (1985)).

205. *Id.*

206. *A.J.*, 135 Ill. App. 3d at 498, 481 N.E.2d at 1063-64 (citing *In re* Armour, 59 Ill. 2d 102, 104-05, 319 N.E.2d 496, 497 (1974)). The court in *A.J.* followed the prior Illinois decision in *Armour*. The Illinois Supreme Court in *Armour* interpreted paragraph 704-2 of the Juvenile Court Act and held that the legislative intent, in using the term "shall", was to direct, not mandate, that an adjudicatory hearing be held within thirty days of the filing of a delinquency petition. Because the statute did not say the hearing must be held within thirty days, the court in *Armour* determined that the thirty day time period was merely a suggestive limitation. *Id.*

207. *A.J.*, 135 Ill. App. 3d at 498, 481 N.E.2d at 1063.

208. *Id.* at 498, 481 N.E.2d at 1064 (citing *In re* C.T., 120 Ill. App. 3d 922, 926-27, 458 N.E.2d 1089, 1094 (1st Dist. 1983)).

209. *A.J.*, 135 Ill. App. 3d at 498-499, 481 N.E.2d at 1064 (citing *C.T.*, 120 Ill. App. 3d at 927, 458 N.E.2d at 1094). The court in *A.J.*, applied a test that was established in *C.T.*. The appellate court in *C.T.* adopted criteria which was established in *People v. Lawson,* an Illinois criminal court case, to apply to a juvenile court setting. *A.J.*, 135 Ill. App. 3d at 498, 481 N.E.2d at 1064 (citing People v. Lawson, 67 Ill. 2d 449, 367 N.E.2d 1244 (1977)). The court in *C.T.*, used the criteria set forth in *Lawson* and applied a two-step test to evaluate substantial delays in juvenile court. *A.J.*, 135 Ill. App. 3d at 498, 481 N.E.2d at 1064 (citing *C.T.*, 120 Ill. App. 3d at 927, 458 N.E.2d at 1094).

210. *A.J.*, 135 Ill. App. 3d at 498, 481 N.E.2d at 1064 (citing *C.T.*, 120 Ill. App. 3d at 927, 458 N.E.2d at 1094).

211. *Id.*

212. *Id.*

213. *A.J.*, 135 Ill. App. 3d at 498, 481 N.E.2d at 1064 (citing *Lawson*, 67 Ill. 2d at 459, 367 N.E.2d at 1248).

sidered in the balancing include the seriousness of the crime and the length of the delay.[214] Noting that the adjudicatory delay was almost seven hundred days,[215] the court presumed substantial prejudice and determined that the first prong of the test was satisfied.[216] Additionally, the court observed that the Juvenile Court Act's flexible thirty day adjudicatory hearing requirements reflected the legislative intent to resolve juvenile proceedings more quickly than adult criminal matters.[217]

The court in *A.J.* presumed that prejudice existed because of the substantial delay and held that the burden shifted to the State to show the reasonableness of the delay.[218] The State asserted that the victim complainant who was mentally retarded was dependent on his father for transportation,[219] and thus the father's poor health and hospitalization contributed to the delays.[220] The court, however, held that regardless of the legitimacy of the State's delays, the interests of the minors and the interests of society must be balanced.[221] The court in *A.J.* further observed that the purpose of the Juvenile Court Act is preventive and remedial, not punitive.[222] The court held that because the delay was excessive, the minors' interests prevailed.[223] Thus, the appellate court vacated the adjudication of delinquency and discharged the minors on due process grounds.[224]

H. Definition of Correctional Employees

The Illinois appellate court addressed the battery of a correc-

214. *A.J.*, 135 Ill. App. 3d at 498, 481 N.E.2d at 1064.

215. *Id.* at 502, 481 N.E.2d at 1066.

216. *A.J.*, 135 Ill. App. 3d at 498-99, 481 N.E.2d at 1064.

217. *Id.* at 500, 481 N.E.2d at 1065. The court in *A.J.* also noted the recent legislative changes regarding time limits in adjudicatory hearings. *Id.* The court cited to Public Act 83-1517, effective as of July 1, 1985, which states that an adjudicatory hearing must be held within 120 days from the filing of a written demand for such hearing when delinquency petitions have been filed. Ill. Rev. Stat. ch. 37, para. 704-2 (1985).

Subsequent to this case, Public Act 84-12 postponed the effective date of this 120 day overall time limit until April 1, 1986. Currently, House Bill 2785 proposes that only specific exceptions will be allowed to toll the 120 days in which an adjudicatory hearing must be held. *See infra* notes 261-77 and accompanying text.

218. *A.J.*, 135 Ill. App. 3d at 500, 481 N.E.2d at 1065.

219. *Id.*

220. *Id.* at 501, 481 N.E.2d at 1065. There was, however, a six month delay period within the two years when the father was not hospitalized or unable to provide transportation for his child. *Id.* at 502, 481 N.E.2d at 1066.

221. *Id.*

222. *A.J.*, 135 Ill. App. 3d at 501, 481 N.E.2d at 1065.

223. *Id.* at 502, 481 N.E.2d at 1066.

224. *Id.*

tional employee in *In re V.P.*.[225] In *V.P.*, the minor committed a battery against a group home worker at a youth detention home.[226] The trial court found the minor guilty of aggravated battery under paragraph 12-4(b)(6) of the Illinois Criminal Code of 1961,[227] and committed him to the Department of Corrections.[228] According to the statute, a battery against a correctional employee who is engaged in the execution of his official duties, constitutes aggravated battery.[229] The minor claimed that because the detention home was not a correctional institution, and the worker not a correctional worker, he had not committed an aggravated battery.[230] The appellate court disagreed.[231] The court concluded that the youth home in this case was the functional equivalent of a correctional institution, noting that the statute did not define the term correctional institution.[232] The court supported its conclusion by observing that the facilities were restrictive and the home was regulated in accordance with minimum standards established by the Department of Corrections.[233] The court concluded that the legislature intended to afford greater protection to those employees subject to special risks in performing public duties in correctional institutions such as the youth home in this case.[234] The court held that the minor was properly convicted of aggravated battery, and that the youth detention worker, who worked in a restrictive environment, was within the statutorily protected scope of "correctional employees."[235]

I. News Media Coverage in Delinquency Proceedings

The appellate court case of *In re M.B.*[236] addressed the relationship of the first amendment rights of the press to the confidentiality provisions of the Juvenile Court Act.[237] This case attracted the

225. 139 Ill. App. 3d 786, 487 N.E.2d 638 (2d Dist. 1985).
226. *Id.* at 787, 487 N.E.2d at 639.
227. *Id.* (citing ILL. REV. STAT. ch. 38, para. 12-4(b)(6) (1985)).
228. *V.P.*, 139 Ill. App. 3d at 787, 487 N.E.2d at 639.
229. *Id.*
230. *Id.*
231. *Id.* at 790, 487 N.E.2d at 641 (citing ILL. REV. STAT. ch. 38, para. 12-4 (b)(6)(1985)).
232. *Id.*
233. *Id.*
234. *Id.* at 788, 487 N.E.2d at 641.
235. *Id.* at 789, 487 N.E.2d at 641. This decision has little bearing in juvenile cases in which the court can impose dispositional orders for offenses by juveniles that would be misdemeanors if committed by adults.
236. 137 Ill. App. 3d 992, 484 N.E.2d 1154 (4th Dist. 1985).
237. *Id.* For a further discussion of media coverage in juvenile court proceedings, see

media's attention because of the nature of the offense.[238] The trial court entered a protective order pursuant to paragraph 705-5 of the Juvenile Court Act[239] because of the level of public interest in the case, which resulted in many calls threatening the physical safety of the minors.[240] The order restricted the news media from reporting or discussing the delinquency hearings.[241] The court in *M.B.* addressed one news media's motion to vacate the protective order.[242] The media alleged that the order exceeded the trial court's authority under the Juvenile Court Act and was an unconstitutional prior restraint on the freedom of the press.[243] The trial court denied the motion to vacate and the appellate court reversed and granted the motion.[244]

The appellate court noted that paragraph 705-5 of the Juvenile Court Act provided for protective orders limited to persons before the court on original and supplemental petitions,[245] and that the news media was not such a person.[246] The court then considered the validity of the order under paragraph 701-20(6) of the Juvenile Court Act,[247] which excluded the general public from hearings. The Act provides an exception for the news media and persons with direct interests in the case.[248] This paragraph further provides that the court can prohibit any person from disclosing the minor's

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Geraghty and Raphael, *Reporter's Privilege and Juvenile Anonymity: Two Confidential Policies on a Collision Course*, 16 LOY. U. CHI. L.J. 43 (1984).

238. *In re* M.B., 137 Ill. App. 3d at 993, 484 N.E.2d at 1155.

239. *Id.* at 994, 484 N.E.2d at 1156 (citing ILL. REV. STAT. ch. 37, para. 705-5 (1985)).

240. *M.B.*, 137 Ill. App. 3d at 1000, 484 N.E.2d at 1160.

241. *Id.* at 994, 484 N.E.2d at 1156.

242. *Id.*

243. *Id.* at 995, 484 N.E.2d at 1156. *See also* Smith v. Daily Mail Publishing Co., 443 U.S. 97 (1979). *Smith* was one of the two United States Supreme Court cases that addressed the constitutional issue of media privileges in juvenile court. In *Smith*, the Supreme Court ruled unconstitutional a West Virginia statute which provided criminal sanctions for a newspaper's prior written approval by the juvenile court. The Court found that the purported State interest in protecting the minor's identity in order to further rehabilitate him did not justify prohibiting the publication. The court asserted that if the media had lawfully obtained the delinquent juvenile's name, it is a violation of the first amendment right of a free press to prohibit such publication of the name. *Id.* at 104.

See also Oklahoma Publishing Co. v. District Court, 430 U.S. 308 (1977). In *Oklahoma Publishing*, the Supreme Court upheld the constitutional right of the media to publish the name of a delinquent juvenile which the media had obtained at juvenile proceedings that were open to the public. *Id.* at 311-312.

244. *Id.* at 1000, 484 N.E.2d at 1160.

245. *Id.* at 998, 484 N.E.2d at 1159 (citing ILL. REV. STAT. ch. 37, para. 705-5 (1985)).

246. *M.B.*, 137 Ill. App. 3d at 998, 482 N.E.2d at 1159.

247. *Id.* (citing ILL. REV. STAT. ch. 37, para. 701-20(6) (1985)).

248. *M.B.*, 137 Ill. App. 3d at 998-99, 484 N.E.2d at 1159.

identity if the court shows good cause and the necessity for the minor's protection.[249] Because this statute only allows the suppression of the minor's identity, the court asserted that there was a strong constitutional presumption against prior restraints on the press.[250]

In *M.B.*, the minors' identities were widespread public knowledge prior to the restraining order.[251] In addition, the order did not prohibit coverage by news media who obtained information independently and did not attend the hearings.[252] Thus, the court concluded that the order was not the most effective means of protecting the juveniles' physical welfare.[253] The court held that the protective order went beyond statutory authority and was an unlawful prior restraint on the news media in violation of the first amendment of the United States Constitution.[254] The court vacated the order excepting the provision which protected the identity of the minor.[255]

The Illinois appellate court effectively rejected arguments that first amendment rights of the media could be infringed in order to attempt to protect minors from the indignation of the community. As the court pointed out in *M.B.*, the community often knows of a crime and the offender's identity before court hearings begin.

III. LEGISLATION

A. Public Act 84-1318: Investigation of Professionals for Child Abuse and Neglect

Public Act 84-1318 will become effective January 1, 1987.[256] It amends the Abused and Neglected Child Reporting Act.[257] This Act provides for the investigation of professionals[258] who come

249. *Id.* at 999, 484 N.E.2d at 1159.
250. *Id.*
251. *Id.* at 1000, 484 N.E.2d at 1160.
252. *Id.*
253. *Id.*
254. *Id.*
255. *Id.*
256. 1986 Ill. Legis. Serv. 84-1318 (West).
257. *Id.*
258. *Id.* Numerous professionals are specifically covered by the Act: dentists, ILL. REV. STAT. ch. 111, para. 2323(19), (27) (Supp. 1986); nurses, *id.* at para. 3420(8), (11); optometrists, *id.* at para. 3814(v); physical therapists, *id.* at para. 4267(P), (Y); doctors, *id.* at para. 4433(22), (28); physicians' assistants, *id.* at para. 4762(8); podiatrists, *id.* at para. 4922(o)(p); psychologists, *id.* at para. 5316(16), (17); social workers, *id.* at para. 6315(g), (h); athletic trainers, *id.* at para. 7616(p), (x); school personnel, ILL. REV. STAT. ch. 122, para. 10-21.4 (Supp. 1986).

into contact with children, whether in day care centers, schools, or other institutions responsible for the welfare of children.[259] According to the bill, when an incident of abuse has been reported pursuant to the requirements of the Act, the Child Protective Service Unit is to make an initial investigation and determination of whether the report was a good faith indication of abuse or neglect.[260] Prior to this Act, no provisions mandated investigatory procedures with regard to child care professionals. This Act facilitates such protective procedures in areas where child abuse is likely to occur.

The Act provides for revocation of licenses, suspensions, and license issuances for certain professionals who have been named as perpetrators in reports of child abuse and neglect, and who have been shown to cause such abuse by clear and convincing evidence. Nevertheless, this Act is not likely to alter current practice in Illinois, because laws already in effect allow the respective State departments to suspend or revoke certifications or licenses.

B. Public Act 84-1460: Tolls for Adjudicatory Hearings

Public Act 84-1460 passed both houses on June 30, 1986.[261] It amends certain sections of the Juvenile Court Act. An important section of the Act alters paragraph 704-2 with respect to time limits for adjudicatory hearings.[262] This change is in response to *In re Armour*,[263] an Illinois Supreme Court decision, which allowed for the thirty day time provision for adjudicatory hearings to be merely a directory and not a mandatory provision.[264] The purpose of this amendment is to limit excuses for delays in adjudicatory hearings that often occurred as a result of the *Armour* holding.[265]

Paragraph 704-2 of the Juvenile Court Act provides that an adjudicatory hearing must be held within 120 days.[266] This paragraph specifies limited situations which will toll the time period,

259. ILL. REV. STAT. ch. 23, para. 2052 (Supp. 1986).

260. *Id.* at para. 2057.4.

261. 1986 Ill. Legis. Serv. 84-1460 (West).

262. *Id.* at § 1 (to be codified at ILL. REV. STAT. ch. 37, para. 704-2).

263. *In re* Armour, 59 Ill. 2d 102, 319 N.E.2d 496 (1974). *See supra* note 206 and accompanying text.

264. *Id.*

265. This Act has two provisions. One provision will be in effect until January 1, 1988. 1986 Ill. Legis. Serv. 84-1460, § 1 (West) (to be codified at ILL. REV. STAT. ch. 37, para. 704-2(a)). The other provision will be effective following January 1, 1988. 1986 Ill. Legis. Serv. 84-1460, § 1 (West) (to be codified at ILL. REV. STAT. ch. 37, para. 704-2(b)).

266. ILL. REV. STAT. ch. 37, para. 704-2 (1985).

thereby disallowing all other reasons for delays that might arise.[267] The time period only may be tolled by delays caused by the minor, continuances after the determination of a minor's physical incapacity for trial, interlocutory appeals, orders for competency exams, competency hearings, or adjudications of incompetency for trial.[268]

If a minor has more than one delinquency petition pending against him, an adjudicatory hearing on at least one of them must occur within the formerly mentioned time limits.[269] The remaining pending petitions shall be adjudicated within 160 days of the finding on the first petition.[270] In addition, the Act alters the time limits for shelter care hearings.[271] Paragraph 704-2 provides that shelter care hearings must be held within ten judicial days from the date of the order directing detention or shelter care.[272] This Act creates an ultimate time limitation of thirty judicial days from the date of such order.[273]

The Act provides slightly different provisions for adjudicatory hearings beginning January 1, 1988.[274] Though adjudicatory hearing must be held within 120 days from the time one is requested, an additional thirty days will be added if the court determines that the State used due diligence to obtain certain evidence which it could not initially obtain. [275] In addition to the tolling provisions to be enacted prior to 1988, the Act states that if the time constraints are not complied with, any party may motion successfully for the petition to be dismissed with prejudice.[276] The Act also states that no minor shall be kept in shelter care after 120 days from the date of the shelter care order, unless the adjudicatory

267. *See* The Illinois Action for Foster Children, *Illinois Foster Children-Waiting and Wondering* (1986). The Illinois Action for Foster Children ("IAFC"), enacted a courtwatch project from 1982 to 1983. The result of the project revealed substantial delays in juvenile court proceedings. These hearing delays often prolonged the stay of children in temporary care. Public Act 84-1460 limits those delays to specific circumstances. 1986 Ill. Legis. Serv. 84-1460, § 1 (West) (to be codified at ILL. REV. STAT. ch. 37, para. 704-2).

268. 1986 Ill. Legis. Serv. 84-1460, § 1 (West) (to be codified at ILL. REV. STAT. ch. 37, para. 704-2(a)(1)).

269. *Id.*

270. *Id.*

271. 1986 Ill. Legis. Serv. 84-1460, § 1 (West) (to be codified at ILL. REV. STAT. ch. 37, para. 704-2(a)(2)).

272. *Id.*

273. *Id.*

274. 1986 Ill. Legis. Serv. 84-1460, § 1 (West) (to be codified at ILL. REV. STAT. ch. 37, para. 704-2(b)).

275. *Id.*

276. 1986 Ill. Legis. Serv. 84-1460, § 1 (West) (to be codified at ILL. REV. STAT. ch. 37, para. 704-2(b)(2)).

hearing has been held or a continuance was granted for good cause.[277]

Decisions regarding delay in adjudicatory hearings have become less significant because of the statutes which require adjudicatory hearings in juvenile court within 120 days. The primary effect of this Act will be felt in larger urban areas which suffer from crowded juvenile court dockets. Nevertheless, because the majority of juvenile delinquency matters are resolved by dismissal or plea prior to trial, it is likely that the greater pressure for earlier trials will be felt in child abuse cases where numerous witnesses often are necessary to prove circumstantial evidence.

IV. CONCLUSION

During the *Survey* year, the cases in the juvenile law area highlighted a variety of issues. The Illinois courts often focused on the issue of notice in juvenile proceedings. The Illinois legislature has attempted to remedy the strict notice requirements for minors with the passing of Public Act 84-1460. At the appellate level, courts often affirmed incarceration and probation sentences for juvenile offenders. The legislature has become increasingly aware of the growing concern of child abuse. During the *Survey* year, it passed Public Act 84-1318, which provides procedures for investigating professionals who come in contact with children. In sum, the trend in Illinois seems to be a stricter approach toward juvenile offenders, and a more cautious and attentive approach toward victims of child abuse and neglect.

277. 1986 Ill. Legis. Serv. 84-1460, § 1 (to be codified at ILL. REV. STAT. ch. 37, para. 704-2(b)(c)). This act also changes requirements concerning service of process on the minor. 1986 Ill. Legis. Serv. 84-1460, § 1 (West) (to be codified at ILL. REV. STAT. ch. 37, para. 704-3). *See supra* note 58 for the section regarding service of summons on minors.