CH. 33
JUVENILE PROCEEDINGS

§33-1
Pretrial Detention

United States Supreme Court

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

Illinois Supreme Court

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

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

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

Illinois Appellate Court

In re Montrell S., 2015 IL App (4th) 150205 Under 705 ILCS 405/5-710(1)(a)(v), a minor is to be given credit for time spent in pre-adjudication detention under 705 ILCS 405/5-710(1)(a)(x). Because electronic home detention is one of the forms of detention listed in §5-710, the minor was entitled to pre-sentence credit for 41 days spent on electronic home monitoring while awaiting the adjudicatory hearing. "It would seem . . .that when a minor is released from a juvenile detention center only to be put on electronic home monitoring, the legislature regards the minor as not yet 'released' from 'custody,'" but merely "released from secure custody to non-secure custody."

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

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

§33-2
Notice and Jurisdiction

United States Supreme Court

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

Illinois Supreme Court

In re Kelan W., 2022 IL 128031 The State filed a multi-count delinquency petition against the minor alleging offenses based on conduct which occurred in Illinois and conduct which occurred in Missouri. As to the Missouri-based conduct, the petition alleged in Count I that the minor took a motor vehicle by force or threat of force, while armed with a firearm, in violation of 720 ILCS 5/18-4(a) (aggravated vehicular hijacking) and Missouri Revised Statute § 570.023 (robbery, first degree).

The Court held that under Section 5-120 of the Juvenile Court Act (705 ILCS 405/5-120), the State may bring a delinquency petition against a minor for conduct committed entirely outside of Illinois. Section 5-120 provides in relevant part:

> Proceedings may be instituted under the provisions of the Article concerning any minor who prior to his or her 18th birthday has violated or attempted to violate, regardless of where the act occurred, any federal, State, county or municipal law or ordinance."

The legislature's choice of the word "any" prior to "federal, State, county or municipal law," signaled an intent to allow Illinois to initiate delinquency proceedings for violation of another state's laws. Further, the statute expressly excludes any geographic restriction by allowing for the initiation of delinquency proceedings, "regardless of where the [unlawful conduct] occurred," indicating an intent to extend the reach of Illinois's delinquency proceedings to conduct in another state.

The Court rejected the minor's argument that the capitalization of "State" in the statute was meant to refer to the State of Illinois and not any other state. Likewise, the Court concluded that the statutory limits on adult criminal jurisdiction (to conduct occurring wholly or partly within Illinois) do not bestow any procedural rights which must also apply to juveniles in delinquency proceedings. And, the Court observed that the rehabilitative purpose of the Act is well-served by allowing Illinois to initiate delinquency proceedings in cases involving minors who reside here. Illinois is likely to be in a better position than another state to ensure that the minor has family and community support. And, proceeding in the minor's home state is less disruptive.

The special concurrence agreed with the result but would have held that the use of the capitalized word "State" was meant to refer only to the State of Illinois, consistent with the usage principle contained in the Court's own style manual. Thus, while delinquency proceedings could be initiated in Illinois for conduct committed in another state, that conduct still would have to be a violation of Illinois law.

People ex rel Alvarez v. Howard, 2016 IL 120729 The Supreme Court has original jurisdiction to hear *mandamus* cases. *Mandamus* is an extraordinary remedy used to compel a public official to perform a purely ministerial duty where no exercise of discretion is involved. A writ of *mandamus* will be awarded only if the petitioner establishes a clear right to the relief requested, a clear duty on the part of the public official to act, and clear authority by the public official to comply with the writ.

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

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

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

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

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

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

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

In re Luis R., 239 Ill.2d 295, 941 N.E.2d 136 (2010) The juvenile court dismissed a petition alleging that the respondent was a delinquent minor on the ground that there was "no jurisdiction under the Juvenile Court Act for this proceeding." The motion to dismiss had asserted that the court lacked jurisdiction over respondent's person. The alleged offense occurred before respondent reached his 17th birthday, but respondent was 21 when the petition was filed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Illinois Appellate Court

In re Kelan W., 2021 IL App (5th) 210029 The State filed a delinquency petition against the juvenile respondent, alleging he committed a crime in Missouri that corresponded to aggravated criminal hijacking under Illinois law. The juvenile court granted respondent's motion to dismiss based on a lack of jurisdiction, in particular its inability to enforce the laws of another state. The State appealed, and the Appellate Court reversed.

The legislature defined the jurisdiction of the juvenile court as covering "any minor who prior to his or her 18th birthday has violated or attempted to violate, regardless of where the act occurred, any federal, State, county or municipal law or ordinance." Thus, the plain language of the statute gave the juvenile court jurisdiction over defendant in a case involving violation of Missouri law. While the capitalization of "State" may indicate the legislature intended to reference only Illinois, the modifier "any" rather than "this," and the reference to Federal laws, points to the opposite conclusion.

People v. Glazier, 2015 IL App (5th) 120401 Seventeen-year-olds charged with first degree murder may not be prosecuted under the Juvenile Court Act, and must be transferred to adult court. 705 ILCS 405/5-130(1)(a). The Appellate Court rejected the argument that the automatic transfer and exclusive jurisdiction provisions of the Act violate the federal and state constitutions because all 17-year-olds charged with first degree murder are treated as adults, without regard to their youthfulness and individual characteristics.

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

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

People v. Harmon, 2013 IL App (2d) 120439 The exclusive jurisdiction provision of the Juvenile Court Act (705 ILCS 405/5–120) provides that 17-year-olds charged with felonies must be prosecuted and sentenced as adults, without consideration of their youthfulness and individual circumstances. The court rejected the argument that the exclusive jurisdiction statute violates the Eighth Amendment and due process under **Roper v. Simmons**, 543 U.S. 551 (2005) (the Eighth Amendment prohibits death penalty for juvenile offenders), **Graham v. Florida**, 560 U.S. 48 (2010) (the Eighth Amendment forbids a sentence of life without the possibility of parole for juveniles who did not commit homicide), **J.D.B. v. North Carolina**, 564 U.S. __, 131 S. Ct.2394 (2011) (a child's age if known or objectively apparent to reasonable police officer is relevant in determining whether the child is in custody for **Miranda** purposes), and **Miller v. Alabama**, 567 U.S. __ , 132 S. Ct. 2455 (2012) (the Eighth Amendment prohibits a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders). Defendant argued that all four cases hold that fundamental differences between juvenile and adult minds make children under 18 less culpable than adults for the same offenses, and that juvenile offenders must therefore be afforded additional constitutional protections.

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

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

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

People v. Markley, 2013 IL App (3d) 120201 705 ILCS 405/5-125 provides that "any minor alleged to have violated a traffic, boating, or fishing game law . . . may be prosecuted for the violation and if found guilty punished under any statute or ordinance relating to the violation," without reference to Juvenile Court Act procedures, except that any detention must comply with the Juvenile Court Act. The court found that the plain language of the statute affords prosecutors discretion to file traffic charges against minors in either juvenile or adult court. The court rejected the argument that under **People v. Sims**, 104 Ill. App. 3d 55, 432 N.E.2d 633 (4th Dist. 1982), traffic offenses committed by a juvenile may not be prosecuted in adult court unless the offense is punishable by fine only.

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

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

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

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

In re Luis R., 2013 IL App (2d) 120393 705 ILCS 405/5-120 provides that delinquency proceedings "may be instituted . . . concerning any minor who prior to the minor's 17 birthday has violated or attempted to violate . . . any federal or State law or municipal or county ordinance." The Appellate Court concluded that §5-105(3) was intended by the General Assembly to authorize delinquency proceedings only against persons who are under the age of 21 when proceedings are commenced and who before turning 17 violated or attempted to violate a criminal law. Thus, the State lacked authority to institute delinquency proceedings for two counts of aggravated criminal sexual assault which the respondent allegedly committed at age 14 but the respondent was 21 when the petition was filed.

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

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

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

People v. Baum, 2012 IL App (4th) 120285 Section 5-120 of the Juvenile Court Act, entitled "Exclusive jurisdiction," defines the persons and crimes covered by delinquency proceedings. The State may institute juvenile delinquency proceedings "concerning any minor who prior to the minor's 17th birthday has violated or attempted to violate, regardless of where the act occurred, any federal or State law or municipal or county ordinance." 705 ILCS 405/5-120. Subject to enumerated exceptions, "no minor who was under 17 years of age at the time of the alleged offense may be prosecuted under the criminal laws of this State." 705 ILCS 405/5-120.

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

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

In re M.G., 301 Ill.App.3d 401, 703 N.E.2d 594 (1st Dist. 1998) The minor received the statutorily-required five-day-notice of the State's intent to proceed under the Violent Juvenile Offender Act. (See 705 ILCS 405/5-36(b)). The State faxed its notice of intent to M.G.'s attorneys of record within five days after the delinquency petition was filed, although the attorneys and law students working on the case were unavailable and did not receive the message until after the five-day statutory period expired. Supreme Court Rule 11(a) permits notice to be served on a party's attorney of record, and Rule 11(b)(4) authorizes service via fax to the office of an attorney who has consented to receiving faxed notices. (Although the record did not indicate that M.G.'s attorney had consented to service by fax, the court held that any violation of Rule 11(b)(4) would not vitiate the "actual notice" given to the minor's counsel within the time period specified by §5-36(b)).

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

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

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

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

§33-3
Transfer of Case from Juvenile Court to Adult Criminal Court

United States Supreme Court

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

Illinois Supreme Court

People v. Fort, 2017 IL 118966 705 ILCS 405/5-130(1)(a) provides that a minor who is at least 15 at the time of the offense and who is charged with first degree murder, aggravated criminal sexual assault, aggravated battery with a firearm where the minor personally discharged a firearm, armed robbery committed with a firearm, or aggravated vehicular highjacking committed with a firearm is to be tried as an adult. In addition, "all other charges arising out of the same incident shall be prosecuted" in criminal court. §5-130(1)(a).

If after the trial or plea the trial court finds that the minor committed one of the automatic transfer offenses or another charged offense arising from the same incident, adult sentencing is available. 705 ILCS 405/5-130(1)(c)(I). However, if the minor is convicted only of an uncharged offense, he or she is to be sentenced under the Juvenile Court Act unless the State requests a hearing for the purpose of sentencing as an adult and the trial court grants that motion. 705 ILCS 405/5-130(1)(c)(ii).

Here, defendant was tried in adult court on a charge of first degree murder. The trial court convicted of second degree murder based on the mitigating factor of an unreasonable belief in self-defense. Although defendant was a minor, the State did not file a written motion requesting adult sentencing. Similarly, defendant did not object or argue at the time of sentencing that he should have been sentenced as a juvenile. Instead, defendant received an adult sentence of 18 years.

As a matter of plain error, the Supreme Court found that defendant should have been sentenced under the Juvenile Court Act. The plain language of 705 ILCS 405/5-130(1)(c)(ii) states that if the minor is tried on automatic transfer offenses but is convicted only of an uncharged, non-automatic transfer offense, sentencing is under the Juvenile Court Act unless the State successfully moves for adult sentencing. The court noted that the legislature had good reason to limit adult sentencing only to charged offenses - to prevent the State "from overcharging a minor defendant in order to secure an adult sentence where the evidence does not support a finding of the more serious charge."

Because defendant was charged and tried for first degree murder but was not charged with second degree murder, second degree murder did not qualify as "another charge arising out of the same incident" as the charged offense. Thus, the second degree murder conviction was not covered by the adult sentencing provision of §5-130(1)(a). In the absence of a request by the State for adult sentencing, therefore, the adult sentence is not authorized by the statute and must be vacated.

The court rejected the State's argument that because second degree murder is a "lesser mitigated offense" of first degree murder and requires a finding of a mitigating factor which reduces the offense of first degree murder, the State proved the elements of first degree murder. The court stressed that a person convicted of second degree murder is convicted only of that offense, and is not also convicted of first degree murder. Because the only conviction was for second degree murder, an uncharged offense that is not an automatic transfer offense, juvenile sentencing was required.

Because neither the trial court nor the parties appeared to have been aware that defendant should have been sentenced as a minor, the court found that the proper remedy was to remand the case to the trial court with instructions to vacate defendant's sentence and allow the State to file a petition requesting a hearing for adult sentencing. Should the trial court find at the hearing that defendant is not subject to adult sentencing, the proper remedy is discharge because defendant is over 21 and may no longer be committed as a juvenile.

People v. Hunter & Wilson, 2017 IL 121306 An amendment to the statute changing the requirements for the automatic transfer of juveniles to adult court (705 ILCS 405/5-130), which went into effect after defendant Hunter had been convicted but while his case was pending on direct appeal, was held not to apply retroactively to defendant's case. Section 4 of the Statute on Statutes (5 ILCS 70/4) allows the application of procedural changes in the law to be applied retroactively to ongoing proceedings. It also requires that "the proceedings thereafter" shall conform to the laws in force at the time of the proceedings in question. In defendant's case, the proceedings in the trial court were completed before the transfer statute was amended. Because the proceedings were completed, the amended statute does not apply retroactively to defendant's case.

An amendment allowing a trial court to decline to impose firearm enhancements in sentencing defendants under the age of 18 (730 ILCS 5/5-4.5-105), which went into effect after defendants had been convicted but while their cases were pending on direct appeal, was held not to apply retroactively to defendants' cases. Under section 4 of the Statute on Statutes (5 ILCS 70/4), a punishment mitigated by a new law is applicable only to judgments imposed after the new law takes effect. Since defendants were sentenced before the new law went into effect, the amendment does not apply retroactively to their cases.

People ex rel Alvarez v. Howard, 2016 IL 120729 Under Illinois retroactivity analysis, the first question is whether the legislature has clearly indicated that an amendment is to be applied retroactively or prospectively. If the legislature failed to express a clear indication of the temporal reach of the statute, Sec. 4 of the Statute on Statutes (5 ILCS 70/4) provides that procedural changes will be applied retroactively while substantive changes are prospective only. In addition, the Effective Date of Laws Acts, which implements the constitutional directive that the General Assembly provide a uniform effective date for laws passed prior to June 1 of a calendar year, provides an effective date for legislation that does not contain an express effective date.

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

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

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

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

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

People v. Richardson, 2015 IL 118255 The State charged defendant, who was 17 years old at the time of the offenses, as an adult with criminal sexual assault and criminal sexual abuse. At the time of the offenses, the Juvenile Court Act only applied to minors under 17 years of age. The Act was subsequently amended to apply to minors under the age of 18. The amendment included a savings clause that made the changes in the statute applicable to offenses that occurred on or after the effective date of the amendment. 705 ILCS 405/5-120.

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

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

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

People v. Patterson, 2014 IL 115102 The automatic transfer statute requires juveniles who are at least 15 years old and are charged with one of the enumerated offenses to be prosecuted in adult criminal court. The enumerated offenses are first degree murder, aggravated battery with a firearm (if the minor personally discharged the weapon), armed robbery with a firearm, aggravated vehicular hijacking with a firearm, and aggravated criminal sexual assault. 705 ILCS 405/5-130.

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

Access to juvenile court is not a constitutional right and trying a defendant in juvenile or criminal court is purely a matter of procedure. Even accepting the assertion that criminal courts always involve lengthier sentences and harsher prison conditions, the court found nothing in defendant's argument that would convert a procedural statute into a punitive one, thus there was no Eighth Amendment or proportionate penalties violation.

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

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

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

People v. Brown, 225 Ill.2d 188, 866 N.E.2d 1163 (2007) Defendant's transfer from juvenile court to adult criminal court was void because the statutory provision pursuant to which defendant's transfer was carried out (Safe Neighborhoods Act) was subsequently found to be unconstitutional under the single subject rule. That defendant pleaded guilty did not prevent relief - "[a] guilty plea does not preclude a defendant from challenging a circuit court's judgment as void *ab initio*." Further, a void judgment may be challenged at any time, whether or not defendant can satisfy the requirements of the Post-Conviction Hearing Act.

Defendant was entitled to a new transfer hearing, to be governed by the law that was in effect before the Safe Neighborhoods Act was passed, not by a new presumptive transfer statute passed after defendant's conviction. The Court did not need to determine whether application of the new presumptive transfer provision would violate the *ex post facto* clause, because the issue could be resolved on a nonconstitutional ground - that the legislature did not intend to apply the new presumptive transfer provision retroactively. If the conviction stands after the transfer hearing, defendant is prohibited from challenging the negotiated 28-year-sentence he received for attempt murder.

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

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

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

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

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

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

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

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

People v. Clark, 119 Ill.2d 1, 518 N.E.2d 138 (1987) The transfer hearing was insufficient (and the cause remanded for a new hearing) where: neither the judge nor counsel indicated any awareness that a mandatory sentence of natural life was required upon defendant's conviction for two murders and the judge failed to investigate defendant's history, especially with regard to his rehabilitative potential, as well as the availability of any rehabilitative services if jurisdiction was retained under the Juvenile Act.

At a transfer hearing, the judge is required to receive sufficient evidence on all the statutory factors, including the juvenile's history and the availability of suitable treatment or rehabilitative services. Here, the judge "gave virtually no consideration to" the above factors. See also, **People v. Langston**, 167 Ill.App.3d 854, 522 N.E.2d 304 (5th Dist. 1988) (the evidence at the transfer hearing was inadequate to support a transfer determination; although the evidence established lack of family adjustment, lack of family support for treatment or rehabilitation efforts, and that defendant had one minor station adjustment prior to the alleged offense, it did not establish defendant's social adjustment, school adjustment, or mental and physical health, and there was no evidence whatsoever regarding the facilities available to the juvenile court for defendant's treatment or rehabilitation).

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

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

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

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

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

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

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

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

Illinois Appellate Court

People v. Marks, 2023 IL App (3d) 200445 The juvenile court did not err in transferring defendant's case to adult court. Defendant was charged first degree murder for a shooting committed at age 14. In Illinois, a minor 13 or older may be prosecuted as an adult if the State files a motion requesting transfer and the juvenile court finds probable cause to believe the allegations in the motion are true and proceeding in juvenile court is not in the best interests of the public. 705 ILCS 405/5-805(3)(a). Before approving a transfer, the juvenile court must make factual findings as to the statutory factors listed in section 805(3)(b). On review, the appellate court does not reweigh the factors; rather, it determines whether there was sufficient evidence for the factors relied upon to support the transfer.

Here, the juvenile court considered all the statutory factors before concluding a transfer was appropriate. It considered defendant's age, prior delinquent history, and seriousness of the offense. It appropriately placed greater weight on defendant's criminal history and the seriousness of the current charge. It considered evidence of domestic violence in defendant's household, but noted he was not personally abused. It also considered defendant's mental health, physical health, and education, finding defendant tested on the low end but did not have any disabilities. The juvenile court found probable cause to believe defendant committed a violent, premeditated crime, and that he would not meaningfully participate in any juvenile programs if he remained in juvenile court.

These findings were all based on the evidence and arguments presented from both parties, and therefore were not an abuse of discretion. Defendant challenged the court's finding regarding his test scores, pointing out that the expert admitted he could not determine defendant's true intellectual ability, and also challenged the court's finding that the lack of personal abuse mitigated the domestic violence. But both of these findings were reasonably based on the evidence presented. Finally, the juvenile court did not neglect to consider defendant's rehabilitative potential given his prior delinquency for armed robbery, the commission of the instant offense weeks after being taken off electronic monitoring, his possession of firearms, and his attack on an employee at the juvenile detention center.

People v. Carwell, 2022 IL App (2d) 200495 Defense counsel was ineffective for failing to move for sentencing in juvenile court after defendant pled guilty to murder. The State charged defendant in criminal court pursuant to 705 ILCS 405/5-130(1)(a), the automatic transfer provision. But this provision applies only to juveniles who were at least 16 at the time of the offense. The record here showed defendant was two days shy of his 16th birthday on the day of the offense.

The appellate court first rejected the State's argument that defendant's appeal was precluded by Rule 604(d) and waiver. Defendant was free to challenge his sentencing on appeal despite the fact that the State made concessions as part of the plea agreement, because all concessions related to the charges, not the sentence. The State essentially reduced a charge to eliminate defendant's exposure to the mandatory firearm enhancement; it did not agree to a particular sentence, range, or cap. Thus, defendant could challenge his sentence on appeal without moving to withdraw his plea under Rule 604(d). Nor did the plea itself waive defendant's argument. A plea may have waived an attack on the improper automatic transfer hearing itself, but defendant was still free to attack his sentence and his attorney's performance at the sentencing hearing.

Counsel here could have moved to transfer defendant to juvenile court for sentencing. Under the statute and **People ex rel. Alvarez v. Howard**, 2016 IL 120729, the sentencing court would have been obligated to do so. While the State could move to retransfer under the discretionary transfer provisions, this would have required a hearing. Regardless of whether the trial court would have granted the motion, the absence of a hearing alone is prejudicial because it denied defendant the due process required of the Juvenile Court Act – a hearing before transfer to adult court. The United States Supreme Court has recognized that juvenile transfer hearings are "critically important" and the denial of a statutorily required hearing to a juvenile defendant is akin to structural error. **Kent v. United States**, 383 U.S. 541 (1966).

People v. Harris, 2022 IL App (1st) 192509 Defendant challenged his discretionary transfer to adult court pursuant to 705 ILCS 405/5-805(3). The Appellate Court affirmed.

Defendant alleged that the juvenile court erred in its weighing of the relevant factors listed in section 5-805(3)(b), because the court failed to consider defendant's mental health history. However, the statute requires the juvenile court to "give greater weight to the seriousness of the alleged offense, [and] the minor's prior record of delinquency than to the other factors listed in this subsection." Here, defendant was charged with first-degree murder with a firearm and alleged to have acted as the principal offender. His juvenile record included prior adjudications for armed robbery. These factors supported the decision to transfer defendant to adult court.

The defendant's mental health history did not overcome these factors. The juvenile court found defendant's mental health history insignificant, and the appellate court found no abuse of discretion in this assessment. The juvenile court provided a reasonable explanation for its conclusion, where the defense expert's testimony that defendant suffered from a series of mental health issues conflicted with defendant's diagnostic tests and school records.

People v. Clark, 2020 IL App (1st) 182533 After defendant's jury trial, but before his sentencing, Section 5-130 of the Juvenile Court Act was amended to raise the automatic transfer age from 15 to 16 years old. Defendant was 15 years old at the time of the offense. The trial court denied defendant's request to have his case remanded to the juvenile court for sentencing.

The Appellate Court held that the trial court erred because proceedings were ongoing in the trial court and the amended version of the statute could have been applied with regard to sentencing. Because defendant was over the age of 21 by the time the appeal was decided, however, defendant was no longer subject to the authority of the juvenile court. Accordingly, the Appellate Court remanded the matter to the trial court with directions to vacate defendant's sentence and give the State an opportunity to file a petition for adult sentencing, consistent with **People v. Fort**, 2017 IL 118966. If on remand the trial court finds that defendant is not subject to adult sentencing, then he must be discharged.

People v. Price, 2018 IL App (1st) 161202 The amendment to the automatic transfer provision raising the age to 16 from 15 for first-degree murder, applied to defendant's case where the amendment passed after trial but before sentencing. Under Section 4 of the Statute of Statutes, the procedural amendment applies retroactively to ongoing proceedings. The 15-year-old murder defendant's case had yet to reach final judgment and therefore was still pending when the amendment passed. Defense counsel's failure to request a transfer hearing under these circumstances rendered him ineffective.

In re M.R., 2018 IL App (2d) 170342 Section 5-125 of the Juvenile Court Act provides that any minor found guilty of a traffic violation may be punished as an adult. "Traffic violation" is defined as including reckless homicide, DUI, and any similar county or municipal ordinance. While that list is not exclusive, the Appellate Court found that possession of a stolen motor vehicle (PSMV) is not a traffic violation for purposes of Section 5-125 because PSMV does not involve, or relate to, the use of a highway, which is an essential part of the definition of "traffic."

People v. Ingram, 2018 IL App (4th) 160099 When a juvenile is automatically transferred to adult court because he has been charged with a crime listed in the Excluded

Jurisdiction statute, 705 ILCS 405/5-130, the adult court does not lose jurisdiction by virtue of a guilty plea to another offense not included in the statute. Here, defendant was transferred to adult court when charged with armed robbery with a firearm, then agreed to plead guilty. In exchange, the State agreed to amend the charges to armed robbery with a dangerous weapon, an offense that does not trigger automatic transfer to adult court. The Appellate Court rejected defendant's argument that an amendment to the charging instrument affects the jurisdiction of the adult court. The adult court obtained jurisdiction upon the filing of the initial charge, and the amendment had "no legal effect" on jurisdiction.

The Appellate Court also rejected the defendant's claim that his adult sentence could not stand under 705 ILCS 405/5-130(1)(c)(ii). Under this provision, the State must request a hearing for adult sentencing whenever a juvenile who has been automatically transferred to adult court is convicted of only a lesser offense that would not have triggered automatic transfer. Citing **People v. King**, 241 Ill. 2d 374 (2011), the Appellate Court held that the provision does not apply when the conviction is the result of a negotiated guilty plea.

People v. Rodriguez, 2018 IL App (1st) 141379-B Pursuant to a supervisory order from the Supreme Court, the Appellate Court vacated its prior opinion holding that the amendment increasing the automatic transfer age applied to defendant's case which was pending on appeal at the time the amendment became effective. **People v. Hunter**, 2017 IL 121306, specifically limited application of that amendment to cases pending in the trial court at the time of enactment.

People v. Smolley, 2018 IL App (3d) 150577 In successive post-conviction proceedings, defendant was granted a new sentencing hearing because his original mandatory natural life sentence, imposed for two counts of felony murder committed when defendant was 15 years old, was unconstitutional under the **Miller** line of cases. He was resentenced to 65 years of imprisonment.

The Appellate Court rejected the argument that defendant should receive a discretionary transfer hearing because the automatic transfer age had been raised to 16 in 2016. Relying on **People v. Hunter**, 2017 IL 121306, the Appellate Court held that the amendment did not apply to defendant's case because the original trial court proceedings had concluded in 2005, well before the amendment became effective. Further, defendant was now 29 years old and thus could not be subject to the jurisdiction of the juvenile court.

The Appellate Court ordered a second new sentencing hearing, however, because the record did not indicate that the trial court considered defendant's youth before imposing the *de facto* life sentence of 65 years. While the judge stated he considered the statutory factors in aggravation and mitigation, the record must show that the court considered defendant's youth, immaturity, and potential for rehabilitation before a life sentence may be imposed for an offense committed as a juvenile.

People v. Patterson, 2016 IL App (1st) 101573-B Under 5 ILCS 70/4, where the legislature does not provide a specific provision concerning the retroactive or prospective application of amendatory acts, procedural amendments are to be applied retroactively while substantive amendments are applied prospectively. Where the Juvenile Court Act was amended during the respondent's appeal to increase the minimum age for mandatory transfer from 15 to 16, the legislation did not provide whether the provision was to be applied retroactively, and defendant had been 15 at the time of the offense, the court concluded that the change in age for mandatory transfer constituted a procedural change that was to be applied retroactively to cases on direct appeal.

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

People v. Jackson, 2016 IL App (1st) 141448 Defendant, who was 17 years old at the time of the offense, was tried as an adult, convicted of armed robbery with a firearm, and sentenced to 21 years imprisonment, including a 15-year enhancement for possessing a firearm during the offense.

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

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

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

People v. Glazier, 2015 IL App (5th) 120401 Seventeen-year-olds charged with first degree murder may not be prosecuted under the Juvenile Court Act, and must be transferred to adult court. 705 ILCS 405/5-130(1)(a). The Appellate Court rejected the argument that the automatic transfer and exclusive jurisdiction provisions of the Act violate the federal and state constitutions because all 17-year-olds charged with first degree murder are treated as adults, without regard to their youthfulness and individual characteristics.

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

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

People v. Fiveash, 2014 IL App (1st) 123262 705 ILCS 405/5-120 provides that with certain exceptions, "no minor who was under 17 years of age at the time of the alleged offense may be prosecuted under the criminal laws of this State." The court concluded that the plain language of §5-120 holds only a person who is under the age of 21 at the time of the prosecution may not be criminally prosecuted for offenses that occurred when he or she was under the age of 17. Thus, §5-120 does not prohibit the criminal prosecution of a defendant who was charged at the age of 23 for offenses which he committed at the ages of 14 and 15.

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

In re Luis R., 2013 IL App (2d) 120393 705 ILCS 405/5-120 provides that delinquency proceedings "may be instituted . . . concerning any minor who prior to the minor's 17 birthday has violated or attempted to violate . . . any federal or State law or municipal or county ordinance." The Appellate Court concluded that §5-105(3) was intended by the General Assembly to authorize delinquency proceedings only against persons who are under the age of 21 when proceedings are commenced and who before turning 17 violated or attempted to violate a criminal law. Thus, the State lacked authority to institute delinquency proceedings for two counts of aggravated criminal sexual assault which the respondent allegedly committed at age 14 where the respondent was 21 when the petition was filed.

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

The court also rejected the argument that the trial court should have considered the State's motion for discretionary transfer of an individual who had reached the age of 21 before a delinquency petition was filed, but the petition alleged an offense which occurred while the person was a juvenile. The prosecution's motion for discretionary transfer to criminal court "is a legal nullity if the motion is filed after the respondent reaches the age of 21." Because the State is not authorized to institute delinquency proceedings against a person who has turned 21, it is not authorized to file a motion requesting discretionary transfer to criminal court.

People v. Willis, 2013 IL App (1st) 110233 The Appellate Court agreed that the constitutionality of the automatic-transfer provision of the Juvenile Court Act (705 ILCS 405/5-130) bears revisiting in light of **Roper v. Simmons**, 543 U.S. 551 (2005), **Graham v. Florida**, 560 U.S. 48 (2010), and **Miller v. Alabama**, 567 U.S. 460, 132 S. Ct. 2455 (2012). It saw a nationwide trend that might some day lead to the realization that a mandatory-transfer provision implicates constitutional rights. It recognized the logic of Justice Appleton's dissent in **People v. Pacheco**, 2013 IL App (4th) 110409, *leave to appeal allowed*, No. 116402 (9/25/13), that blanket transfer based on age is a flaw in the statute.

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

People v. Pacheco, 2013 IL App (4th) 110409 In **Roper v. Simmons**, 543 U.S. 551 (2005), the Supreme Court held that the Eighth Amendment bars capital punishment for juvenile offenders. In **Graham v. Florida**, 560 U.S. 48 (2010), the court held that a life sentence without the possibility of parole violates the Eighth Amendment when imposed on juvenile offenders for crimes other than homicide. In **Miller v. Alabama**, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), the court concluded that the Eighth Amendment prohibits a sentencing scheme which mandates a life sentence without the possibility of parole for juvenile offenders, even those convicted of homicide.

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

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

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

People v. Henderson, 2011 IL App (1st) 090923 With certain limited exceptions, a minor under 17 years of age at the time of an alleged offense may not be prosecuted under the criminal laws of Illinois. 705 ILCS 405/5-120. One such exception is where a minor who at the time of the offense was at least 15 years of age and who is charged with an offense under §401 of the Controlled Substances Act while on a public way within 1000 feet of the real property comprising a school. 705 ILCS 405/5-130(2)(a). A criminal conviction of such a minor where a violation of §401 is committed within 1000 feet of a school, but not on a public way, is void because the court lacks the power to impose a criminal conviction where the Juvenile Act mandates a juvenile adjudication.

People v. Moore, 2011 IL App (3d) 090993 705 ILCS 405/5-805(3)(a) permits the transfer of a 13-year-old minor to adult court if the juvenile court determines, in its discretion, that there is probable cause to believe that the allegations in the transfer motion are true and that it is not in the best interests of the public to proceed under the Juvenile Court Act. The purpose of a transfer proceeding is to balance the best interests of the juvenile, particularly in terms of potential for rehabilitation, against the public's interest in being protected from crime.

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

The judge should also consider critical nonstatutory elements, including the sentence that will result if the minor is convicted as an adult.

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

Here, the trial court abused its discretion by ordering that a 13-year-old charged with armed robbery be transferred to adult court. The court found that the judge failed to adequately address two statutory transfer factors (availability and advantages of treatment in the juvenile system and whether the minor possessed a deadly weapon) and one nonstatutory factor (potential sentence if tried as an adult). Since three factors were not supported by the record or properly considered, the juvenile judge abused its discretion by ordering the defendant transferred to adult court. The transfer order was vacated and the cause remanded for further proceedings.

People v. Jardon, 393 Ill.App.3d 725, 913 N.E.2d 171 (1st Dist. 2009) In order to impose an adult sentence on a minor who was prosecuted as an adult but convicted only of an offense for which adult prosecution is not mandatory, the State must request adult sentencing by a written motion filed within 10 days after the verdict is returned. (705 ILCS 405/5-130(1)(c)(ii)). As a matter of plain error, juvenile sentencing was required where the State filed its request for criminal sentencing more than 30 days after the verdict was returned. The court found that the 10-day requirement is mandatory rather than directory, and that an adult sentence imposed pursuant to an untimely request is void rather than merely voidable.

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

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

People v. Rodriguez, 355 Ill.App.3d 290, 823 N.E.2d 224 (2d Dist. 2005) Defendant was tried as an adult under a statute (which has since been repealed) that provided for mandatory transfer where certain conditions were met, including that minor committed the offense in a "public way" within 1,000 feet of a school. On appeal, defendant argued that the crime occurred in a gas station parking lot, and not a "public way." The appellate court rejected his argument. But seven years later, the appellate court issued a decision, **People**

v. Dexter, 328 Ill.App.3d 583, 768 N.E.2d 753 (2d Dist. 2002), which limited the definition of "public way." Defendant then filed a motion to vacate his conviction, arguing that **Dexter** rendered his conviction void. The appellate court applied **Dexter** retroactively and agreed. Under **Dexter**, defendant did not commit the crime in a "public way"; therefore, the trial court lacked authority to impose a criminal conviction and sentence, and the Juvenile Court Act's discretionary transfer provision did not apply absent a finding that it was not in the bests interests of the minor or the public to proceed under the Act.

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

People v. Brazee, 316 Ill.App.3d 1230, 738 N.E.2d 646 (2d Dist. 2000) Under the Juvenile Court Act, a "delinquent minor" is one who commits certain acts before his 17th (now 18th) birthday, except for aggravated criminal sexual assault and several other offenses, for which the offender is treated as a delinquent only if he is under 15. A 15-year-old charged with both aggravated criminal sexual assault and criminal sexual assault is properly tried as an adult. If the minor subsequently pleads guilty only to criminal sexual assault, however, the cause must be returned to juvenile court for sentencing unless the State makes a timely request for adult sentencing.

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

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

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

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

In re R.L.L., 106 Ill.App.3d 209, 435 N.E.2d 904 (4th Dist. 1982) The trial court denied the

State's motion to transfer, after a hearing at which psychiatric experts agreed that defendant had severe psychological problems and needed long-term psychiatric treatment in a secure facility, finding that "the main purpose of adult facilities is to punish, not to rehabilitate." The court's remarks did not constitute an "unconstitutional exercise of legislative authority by a member of the judicial branch." Instead, they merely showed that the trial court felt the minor would have a better chance of receiving psychiatric treatment in a juvenile facility than in an adult facility. The trial court did not abuse its discretion in denying the State's motion to transfer.

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

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

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

§33-4
Right to Counsel

Illinois Supreme Court

In re Jonathan T., 2022 IL 127222 After being adjudicated delinquent for multiple counts of aggravated criminal sexual assault, the minor underwent a sex offender evaluation, during which the evaluator asked "What kind of job is your lawyer doing?" The minor responded, "We don't talk. I'm never prepared for the stand. He does not answer calls." This exchange was included in the evaluator's final report.

The minor argued that the circuit court should have inquired into his complaints about counsel pursuant to **People v. Krankel**, 102 Ill. 2d 181 (1984). The Supreme Court agreed. The Court first confirmed that **Krankel** applies in delinquency proceedings. Like adult criminal defendants, juveniles facing delinquency proceedings have a constitutional right to effective assistance of counsel. But, unlike adult defendants, juveniles do not have the right to file a post-conviction petition and thus are without access to collateral review of their claims of ineffective assistance. Thus, due process requires application of the **Krankel** procedure in delinquency proceedings.

The Supreme Court also clarified that **Krankel** applies to retained counsel. A defendant has the right to the effective assistance of counsel, regardless of whether counsel is retained or appointed. And, the **Krankel** procedure is designed to protect that right. Thus there is no reason to limit it to appointed counsel. This was especially true in the instant case where the minor's family hired his attorney, and the minor's status as a juvenile with limited financial resources and limited experience in the justice system left him at a disadvantage with regard to his ability to simply discharge counsel and hire or request new counsel.

Finally, the Court concluded that the minor's statement to the evaluator was sufficient to trigger the court's duty to conduct a **Krankel** inquiry. The social investigation report, which included the sex offender evaluation, is similar to the pre-sentence investigation report (PSI) required in adult criminal proceedings. Inclusion of a claim of ineffective assistance in a PSI is adequate to require a **Krankel** inquiry, and there is no reason to reach a different conclusion in the context of juvenile delinquency proceedings. The trial court should have inquired into the minor's complaint about counsel. Reversed and remanded with directions to conduct the required **Krankel** inquiry.

People v. Austin M., 2012 IL 111194 In abuse and neglect cases, the trial court is required to appoint a guardian *ad litem*, who serves as an arm of the court. In an abuse and neglect proceeding, the guardian *ad litem* is required to meet with the minor, assess the circumstances, determine what disposition might be in the minor's best interests, and report back to the court. A guardian *ad litem* represents the best interests of the minor and does not function as the attorney for the ward.

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

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

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

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

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

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

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

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

Minors were not entitled to counsel at the ordinance proceedings.

Illinois Appellate Court

In re M.G., 2022 IL App (4th) 210679 The trial court's failure to appoint a GAL, *sua sponte,* for the minor did not constitute second-prong plain error. The plain error doctrine is not "a general savings clause" for review of unpreserved errors, but rather a narrow exception to forfeiture. Second-prong plain error requires the minor to show a clear or obvious error that was so serious it affected the fairness of his trial and challenged the integrity of the judicial process.

The failure to appoint a GAL is reviewed for an abuse of discretion. Here, the record "raise[d] concern," but ultimately the Appellate Court concluded that there was no clear or obvious error. The minor had outstanding warrants in Iowa and Minnesota (where he had run away from home), had a history of depression, and was belligerent and uncooperative while in detention. The minor's parents failed to appear for any of his court proceedings, and the court noted that under the unique circumstances of this case, the best course would have been to appoint a GAL. But, the court ultimately concluded that there was no second-prong plain error. There was no suggestion of what a GAL could have done to make the proceedings more fair for the minor where appointed counsel vigorously defended the minor and obtained a lenient sentence that expedited the minor's return to his home state. The Appellate Court distinguished **In re Austin M.**, 2012 IL 111194, because there, the minor had the right to a defense attorney but instead got an attorney who acted as a GAL, while here there was no question that the minor had defense counsel who gave his undivided loyalty and zealously advocated on the minor's behalf. Thus, because there was no error, there was no plain error.

In re Jonathan T., 2021 IL App (5th) 200247 **Krankel** applies to juvenile proceedings. And generally, to trigger an inquiry, a post-trial allegation of ineffective assistance of counsel does not need to be made in open court or by motion. A complaint about counsel made to a third party and documented in a filing presumed to have been read by the trial court, such as a PSI, may suffice to trigger a **Krankel** hearing.

In this case, petitioner criticized his counsel's performance to an evaluator during his sex offender evaluation, a part of his social investigation. When asked "What kind of job is your lawyer doing?" petitioner answered, "We don't talk. I'm never prepared for the stand. He does not answer calls."

The Appellate Court found the sex offender evaluation and social investigation distinguishable from the PSI. Considering the statutory requirements for a sex offender evaluation, it is not a document whose content would be expected to trigger a **Krankel** inquiry, as the circuit court would not be expected, during its reading of the report, to be looking for claims of ineffective assistance of counsel. While the court did not foreclose the possibility that a complaint made during a sex offender evaluation or social investigation could trigger a **Krankel** inquiry, in this case, the petitioner offered a vague response to a single question, unaccompanied by any complaint in open court. It was not specific or clear enough to alert the circuit court of the need for a **Krankel** inquiry.

In re T.R., 2019 IL App (4th) 190051 A **Krankel** inquiry was required where the minor's mother raised an issue of ineffective assistance of counsel in a letter to the court. Minors are entitled to the effective assistance of counsel, and while juvenile proceedings are not equivalent to criminal proceedings, the Court concluded that it would be anomalous if **Krankel** did not apply in juvenile proceedings. Although the mother's letter was sent after the adjudicatory hearing but before the court had announced its ruling, it was determined to be a "post-trial" claim of ineffective assistance sufficient to trigger **Krankel**. And, because parents have rights under the Juvenile Court Act and are considered parties to the proceedings, the mother had standing to assert the claim.

Because the Court remanded for **Krankel** proceedings, it did not reach the minor's other claims of error. To avoid confusion in the event of a subsequent appeal, the Court specifically retained jurisdiction over the case pursuant to Supreme Court Rule 366(a)(5).

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

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

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

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

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

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

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

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

§33-5
Petitions, Adjudicatory Hearings, Adjudications, and Admissions

§33-5(a)
Generally

United States Supreme Court

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

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

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

Illinois Supreme Court

In re Destiny P., 2017 IL 120796 The equal protection clause guarantees that similarly situated individuals will be treated in a similar fashion unless there is an appropriate reason to treat them differently. The equal protection clause does not forbid the legislature from drawing distinctions between different categories of people, but prohibits doing so on the basis of criteria that is wholly unrelated to the legislation's purpose.

Unless fundamental rights are at issue, rational basis scrutiny is applied to equal protection analysis. Under this standard, legislation does not violate the equal protection clause if any set of facts can be rationally conceived to justify the classification.

As a threshold matter in addressing an equal protection claim, the court must ascertain whether the individual is similarly situated to the comparison group. Two classes are similarly situated only if they are alike in all relevant respects. In making this determination, the court must consider the purpose of the particular legislation.

The minor argued that she was denied equal protection because, as a first time juvenile offender charged with first degree murder, she did not have the right to a jury trial although recidivist juvenile offenders charged as violent juvenile offenders (with two serious violent offenses) and habitual juvenile offenders (three serious offenses) both enjoy the right to jury trials. The Supreme Court concluded that the classes were not similarly situated because violent juvenile offenders and habitual juvenile offenders are: (1) charged with crimes other than first degree murder, and (2) face higher sentences under statutes which have the legislative purpose of imposing more severe punishment on recidivist offenders who have little to gain from the rehabilitative aspects of the Juvenile Court Act.

Because the legislature had a rational basis for providing criminal-type procedures to such recidivist offenders, the distinctions between the classes are not based on criteria wholly unrelated to the purpose of the legislation. Therefore, equal protection was not violated.

People v. Fiveash, 2015 IL 117669 705 ILCS 405/5-120 provides that except as otherwise authorized, "no [person under the age of 21] . . . who was under 17 years of age at the time of the alleged offense may be prosecuted" as an adult. The Supreme Court rejected defendant's argument that §5-120 bars the adult prosecution of a person over the age of 21 for offenses which he committed at age 14 or 15.

The court concluded that §5-120 was intended to prevent adult court prosecution of a person who is under the age of 21, and therefore subject to juvenile court authority, for offenses committed before the age of 17. Because defendant was not under the age of 21 at the time he was prosecuted, he does not come within the terms of §5-120 even though the prosecution concerned offenses allegedly committed at ages 14 and 15.

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

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

In re S.B., 2012 IL 112204 As a matter of first impression, the Supreme Court held that 725 ILCS 5/104-25(a), which provides an "innocence only" proceeding where a criminal defendant is unfit to stand trial and there is no substantial likelihood that fitness will be restored within one year, is incorporated into the Juvenile Court Act despite the fact that the

Act does not refer to an "innocence only" proceeding where a juvenile is unfit. 705 ILCS 405/5-101(3) provides that in delinquency cases, minors have the procedural rights of adults in criminal cases unless rights are specifically precluded by laws which enhance the protection of minors. Because the fitness procedures in the Code of Criminal Procedure are intended to safeguard the due process rights of criminal defendants, and the Juvenile Court Act does not provide greater protections for unfit minors, §104-25(a) applies in delinquency proceedings.

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

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

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

In re Veronica C., 239 Ill.2d 134, 940 N.E.2d 1 (2010) Juvenile delinquency proceedings are comprised of three distinct stages: the findings phase, the adjudicatory phase, and the dispositional phase. The findings phase consists of a trial to determine whether the minor is guilty as charged and should be adjudged delinquent. In a juvenile delinquency case, a finding of guilt and a finding of delinquency are equivalent.

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

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

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

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

In re Samantha V., 234 Ill.2d 359, 917 N.E.2d 487 (2009) The court reiterated that the "one-act, one-crime" rule applies in juvenile proceedings.

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

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

In order to preserve a claim of error for review, a minor must object at trial. However, minors are not required to file post-adjudication motions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Illinois Appellate Court

People v. Esparza, 2014 IL App (2d) 130149 705 ILCS 405/5-120 provides that delinquency proceedings may be initiated against any person who, before his or her 17th birthday, violates or attempts to violate a federal or State law or municipal or county ordinance. Subject to several exceptions which did not apply here, a minor who was under the age of 17 at the time of the alleged offense may not be prosecuted as an adult.

The court concluded that escape is a continuing offense which encompasses the entire period between the time the escape occurs and the time the defendant is returned to custody.

Thus, a defendant who was 16 when he removed an electronic home monitoring bracelet from his ankle but 17 when he was arrested could be prosecuted either as a juvenile or an adult. Where an offense can be prosecuted in either juvenile or criminal court, the prosecutor has discretion to proceed in either venue. Thus, no error occurred when defendant was prosecuted as an adult.

In re Luis R., 2013 IL App (2d) 120393 705 ILCS 405/5-120 provides that delinquency proceedings "may be instituted . . . concerning any minor who prior to the minor's 17 birthday has violated or attempted to violate . . . any federal or State law or municipal or county ordinance." The Appellate Court concluded that §5-105(3) was intended by the General Assembly to authorize delinquency proceedings only against persons who are under the age of 21 when proceedings are commenced and who before turning 17 violated or attempted to violate a criminal law. Thus, the State lacked authority to institute delinquency proceedings for two counts of aggravated criminal sexual assault which the respondent allegedly committed at age 14 but the respondent was 21 when the petition was filed.

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

The court also rejected the argument that the trial court should have considered the State's motion for discretionary transfer of an individual who had reached the age of 21 before a delinquency petition was filed, but the petition alleged an offense which occurred while the person was a juvenile. The prosecution's motion for discretionary transfer to criminal court "is a legal nullity if the motion is filed after the respondent reaches the age of 21." Because the State is not authorized to institute delinquency proceedings against a person who has turned age 21, it is not authorized to file a motion requesting discretionary transfer to criminal court.

People v. Rich, 2011 IL App (2d) 101237 The State filed a criminal complaint charging defendant, who was 20 years old, with two counts of aggravated criminal sexual assault occurring when defendant was between 12 and 14 years old. Three months later, while defendant was still 20, he was charged by indictment with the same offenses.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§33-5(b)
Petitions

Illinois Supreme Court

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

In re S.R.H., 96 Ill.2d 138, 449 N.E.2d 129 (1983) Petition charging burglary, which failed to allege that the entry was without authority, was not defective. The charging requirements of Ch. 38, ¶111-3 are not applicable in juvenile proceedings. Instead, a juvenile petition need only satisfy the test used to determine the sufficiency of a criminal charge when challenged for the first time on appeal; allegations are sufficient if they apprised the accused of the precise offense with "sufficient specificity to prepare his defense and allow the pleading of a resulting conviction as a bar to future prosecution arising out of the same conduct." The petition in this case satisfied this test. Compare, **In re Carson**, 10 Ill.App.3d 387, 294 N.E.2d 75 (3d Dist. 1973) (petition failed to inform minor of the delinquent act).

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

Illinois Appellate Court

In re Luis R., 2013 IL App (2d) 120393 (No. 2-12-0393 705 ILCS 405/5-120 provides that delinquency proceedings "may be instituted . . . concerning any minor who prior to the minor's 17 birthday has violated or attempted to violate . . . any federal or State law or municipal or county ordinance." The Appellate Court concluded that §5-105(3) was intended by the General Assembly to authorize delinquency proceedings only against persons who are under the age of 21 when proceedings are commenced and who before turning 17 violated or attempted to violate a criminal law. Thus, the State lacked authority to institute delinquency proceedings for two counts of aggravated criminal sexual assault which the respondent allegedly committed at age 14 but the respondent was 21 when the petition was filed.

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

The court also rejected the argument that the trial court should have considered the State's motion for discretionary transfer of an individual who had reached the age of 21 before a delinquency petition was filed, but the petition alleged an offense which occurred while the person was a juvenile. The prosecution's motion for discretionary transfer to criminal court "is a legal nullity if the motion is filed after the respondent reaches the age of 21." Because the State is not authorized to institute delinquency proceedings against a person who has turned age 21, it is not authorized to file a motion requesting discretionary transfer to criminal court.

§33-5(c)
Adjudicatory Hearings and Adjudications

§33-5(c)(1)
Generally

Illinois Supreme Court

In re Destiny P., 2017 IL 120796 The equal protection clause guarantees that similarly situated individuals will be treated in a similar fashion unless there is an appropriate reason to treat them differently. The equal protection clause does not forbid the legislature from drawing distinctions between different categories of people, but prohibits doing so on the basis of criteria that is wholly unrelated to the legislation's purpose.

Unless fundamental rights are at issue, rational basis scrutiny is applied to equal protection analysis. Under this standard, legislation does not violate the equal protection clause if any set of facts can be rationally conceived to justify the classification.

As a threshold matter in addressing an equal protection claim, the court must ascertain whether the individual is similarly situated to the comparison group. Two classes are similarly situated only if they are alike in all relevant respects. In making this determination, the court must consider the purpose of the particular legislation.

The minor argued that she was denied equal protection because, as a first time juvenile offender charged with first degree murder, she did not have the right to a jury trial although recidivist juvenile offenders charged as violent juvenile offenders (with two serious violent offenses) and habitual juvenile offenders (three serious offenses) both enjoy the right to jury trials. The Supreme Court concluded that the classes were not similarly situated because violent juvenile offenders and habitual juvenile offenders are: (1) charged with crimes other than first degree murder, and (2) face higher sentences under statutes which have the legislative purpose of imposing more severe punishment on recidivist offenders who have little to gain from the rehabilitative aspects of the Juvenile Court Act.

Because the legislature had a rational basis for providing criminal-type procedures to such recidivist offenders, the distinctions between the classes are not based on criteria wholly unrelated to the purpose of the legislation. Therefore, equal protection was not violated.

In re Jonathan C.B., 2011 IL 107750 Under **People v. Boose**, 66 Ill.2d 261, 362 N.E.2d 303 (1977), a defendant may be shackled during court proceedings only if there is a manifest need for restraint. **Boose** specified several factors to be considered by the trial court in determining whether shackling is manifestly necessary. Under **In re Stanley**, 67 Ill.2d 33, 364 N.E.2d 72 (1977), the **Boose** rule is extended to juvenile delinquency proceedings although such proceedings do not occur before a jury.

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

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

705 ILCS 405/5-101(3) authorizes jury trials in delinquency proceedings only if the minor is tried under the extended juvenile jurisdiction provision, as a habitual juvenile offender, or as a violent juvenile offender. Here, a minor charged with delinquency for a sex offense argued that he was constitutionally entitled to a jury trial. The court rejected that argument. Although recent amendments to the Juvenile Court Act have made it more punitive, rehabilitation remains a more important consideration in juvenile proceedings than in the criminal justice system. And, although minors found delinquent based on sex offenses face some of the same collateral consequences as adult offenders, such collateral consequences do not equate a juvenile delinquency determination and an adult criminal conviction. Further, delinquency adjudications for felony sex offenses carry only indeterminate juvenile sentences, and not more serious adult sentences. Finally, minors adjudicated delinquent for sex offenses cannot meet the threshold requirement of showing that they are similarly situated to juveniles subjected to extended juvenile jurisdiction prosecutions or to adult sex offenders, so there is no equal protection violation.

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

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

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

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

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

Illinois Appellate Court

In re Joshua B., 406 Ill.App.3d 513, 941 N.E.2d 1032 (1st Dist. 2011) The Appellate Court found no error where the trial court did not advise a minor respondent in a delinquency proceeding that he had a right to testify, or verify that he knowingly and voluntarily waived that right, based on law applicable to adult criminal proceedings.

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

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

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

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

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

§33-5(c)(2)
Adjudicatory Hearing – Speedy Trial

Illinois Supreme Court

People ex rel. Devine v. Sharkey, 221 Ill.2d 613, 852 N.E.2d 804 (2006) 705 ILCS 405/5-6(1), which provides that an adjudicatory hearing must be held "within 120 days of a written demand for such hearing made by any party," was not intended to allow the prosecution to compel, over minor's objection, a trial within 120 days. For purposes of §5-6(1), the State was not a "party" who could demand a speedy trial.

In re S.G. et al., 175 Ill.2d 471, 677 N.E.2d 920 (1997) 705 ILCS 405/2-14, which provides that the trial court "shall" dismiss without prejudice an abuse, neglect, or dependency petition that is not "heard" within ninety days, mandates dismissal of the petition unless the adjudicatory hearing is *completed* within the statutory time period.
People v. Armour, 59 Ill.2d 102, 319 N.E.2d 496 (1974) Trial court did not lose jurisdiction by failing to set an adjudicatory hearing within 30 days, as required by statute (Ch. 37, ¶704-2).

Illinois Appellate Court

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

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

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

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

§33-5(d)
Admissions

Illinois Supreme Court

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

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

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

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

The trial court's warnings here (concerning the minors' rights to deny the allegations of the petition, to trial, and to confrontation), along with the fact that each minor was represented by counsel who stated he had informed his client of his constitutional rights, support the conclusion that the minors' admissions were voluntary, intelligent, and comported with due process requirements. See, **In re Starks**, 60 Ill.App.3d 934, 377 N.E.2d 590 (4th Dist. 1978) (record failed to satisfy the requirements of **Beasley**); **People v. D.L.B.**, 140 Ill.App.3d 52, 488 N.E.2d 313 (4th Dist. 1986) (lack of admonishments violated **Beasley** where respondent was asked no questions and given no admonition regarding the consequences of the admission, counsel did not claim to have advised the minor of the rights he was waiving, and the court made no attempt to ascertain respondent's knowledge of those rights).

Illinois Appellate Court

In re Isiah D., 2105 IL App (1st) 143507 On appeal from a 2014 order finding him to be a habitual juvenile offender and a violent juvenile offender, the minor respondent argued that the conviction resulting from his guilty plea in 2013 could not be used as a predicate for HJO and VJO status because the plea admonishments had been improper. The court concluded that under **In re J.T.**, 221 Ill.2d 338, 851 N.E.2d 1 (2006), it lacked jurisdiction to consider issues arising from the 2013 plea because respondent failed to file a timely appeal from that proceeding. The court concluded that **J.T.** implicitly overruled **In re J.W.**, 164 Ill.App.3d 826, 518 N.E.2d 310 (1st Dist. 1987), which found that the Appellate Court had jurisdiction to consider the propriety of a prior guilty plea that was used as a predicate in a subsequent case.

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

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

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

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

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

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

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

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

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

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

§33-6
Dispositions (Sentencing)

§33-6(a)
Generally

Illinois Supreme Court

People v. Fort, 2017 IL 118966 705 ILCS 405/5-130(1)(a) provides that a minor who is at least 15 at the time of the offense and who is charged with first degree murder, aggravated criminal sexual assault, aggravated battery with a firearm where the minor personally discharged a firearm, armed robbery committed with a firearm, or aggravated vehicular highjacking committed with a firearm is to be tried as an adult. In addition, "all other charges arising out of the same incident shall be prosecuted" in criminal court. §5-130(1)(a).

If after the trial or plea the trial court finds that the minor committed one of the automatic transfer offenses or another charged offense arising from the same incident, adult sentencing is available. 705 ILCS 405/5-130(1)(c)(I). However, if the minor is convicted only of an uncharged offense, he or she is to be sentenced under the Juvenile Court Act unless the State requests a hearing for the purpose of sentencing as an adult and the trial court grants that motion. 705 ILCS 405/5-130(1)(c)(ii).

Here, defendant was tried in adult court on a charge of first degree murder. The trial court convicted of second degree murder based on the mitigating factor of an unreasonable belief in self-defense. Although defendant was a minor, the State did not file a written motion requesting adult sentencing. Similarly, defendant did not object or argue at the time of sentencing that he should have been sentenced as a juvenile. Instead, defendant received an adult sentence of 18 years.

As a matter of plain error, the Supreme Court found that defendant should have been sentenced under the Juvenile Court Act. The plain language of 705 ILCS 405/5-130(1)(c)(ii) states that if the minor is tried on automatic transfer offenses but is convicted only of an uncharged, non-automatic transfer offense, sentencing is under the Juvenile Court Act unless the State successfully moves for adult sentencing. The court noted that the legislature had good reason to limit adult sentencing only to charged offenses - to prevent the State "from overcharging a minor defendant in order to secure an adult sentence where the evidence does not support a finding of the more serious charge."

Because defendant was charged and tried for first degree murder but was not charged with second degree murder, second degree murder did not qualify as "another charge arising out of the same incident" as the charged offense. Thus, the second degree murder conviction was not covered by the adult sentencing provision of §5-130(1)(a). In the absence of a request by the State for adult sentencing, therefore, the adult sentence is not authorized by the statute and must be vacated.

The court rejected the State's argument that because second degree murder is a "lesser mitigated offense" of first degree murder and requires a finding of a mitigating factor which reduces the offense of first degree murder, the State proved the elements of first degree murder. The court stressed that a person convicted of second degree murder is convicted only of that offense, and is not also convicted of first degree murder. Because the only conviction was for second degree murder, an uncharged offense that is not an automatic transfer offense, juvenile sentencing was required.

Because neither the trial court nor the parties appeared to have been aware that defendant should have been sentenced as a minor, the court found that the proper remedy was to remand the case to the trial court with instructions to vacate defendant's sentence and allow the State to file a petition requesting a hearing for adult sentencing. Should the trial court find at the hearing that defendant is not subject to adult sentencing, the proper remedy is discharge because defendant is over 21 and may no longer be committed as a juvenile.

In re Veronica C., 239 Ill.2d 134, 940 N.E.2d 1 (2010) Juvenile delinquency proceedings are comprised of three distinct stages: the findings phase, the adjudicatory phase, and the dispositional phase. The findings phase consists of a trial to determine whether the minor is guilty as charged and should be adjudged delinquent. In a juvenile delinquency case, a finding of guilt and a finding of delinquency are equivalent.

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

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

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

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

Finally, the statutes did not violate equal protection, for "[t]hese arguments collapse if the county has funds to provide residential placements."

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

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

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

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

Minors were not entitled to counsel at the ordinance proceedings.

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

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

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

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

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

A trial court may properly impose a sentence of incarceration on a minor found in contempt of court, though the Juvenile Court Act does not authorize the incarceration of a minor for violating a court order. A trial court may properly impose a probation sentence on a person found guilty of criminal contempt. The facts of this case justified the imposition of probation and 60 days' incarceration.

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

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

Illinois Appellate Court

People v. Colone, 2024 IL App (1st) 230520 The trial court did not err in imposing a 50-year sentence for a double murder committed at age 16. The defendant forfeited his contention that the trial court erred by improperly relying on the JTDC disciplinary reports without hearing from a live witness.

As for defendant's claim that the court improperly considered mitigating facts as aggravation, the appellate court found no abuse of discretion. The sentencing court detailed its findings as to the factors in section 5-4.5-105(a), and determined that defendant was an intelligent, mature 16-year-old with a difficult family life who committed two murders in a planned, premeditated way. The court found that predicting rehabilitative potential was difficult, but that it did not "see" defendant's potential for rehabilitation. Defendant's issue with the sentencing court's reasoning effectively challenges the weight given to each factor, which is in the court's discretion.

Because the sentencing court based its reasoning on the facts and evidence presented, and considered the appropriate factors, the appellate court held that it did not abuse its discretion, even if it may have weighed some of the factors differently.

People v. Smith, 2022 IL App (4th) 200666 Defendant obtained resentencing pursuant to **Miller**, and was sentenced to 22 years for first degree murder and a consecutive term of six years for armed robbery. On resentencing, the court did not abuse its discretion by imposing a term greater than the statutory minimum for murder. In sentencing defendant to 22 years, the court noted that defendant was the shooter and thus more culpable than his co-defendants. The court also cited the need for deterrence.

On appeal, defendant challenged his sentence, arguing that the circuit court gave improper weight to the factor of deterrence. The Appellate Court affirmed defendant's sentence. Under **Miller** and its progeny, a court is not precluded from considering deterrence in sentencing a juvenile offender. And, here, the court gave little weight to that factor, where defendant's sentence was only two years over the statutory minimum.

People v. Aikens, 2016 IL App (1st) 133578 The proportionate penalties clause of the Illinois Constitution was violated by application of the adult sentencing scheme for attempt murder of a peace officer with a firearm to a 17-year-old who was tried as an adult. The minor was sentenced to the mandatory minimum term totaling 40 years - 20 years for attempted murder of a peace officer plus 20 years for personally discharging a firearm in the course of that offense. In sentencing defendant, the trial court noted that defendant had no prior record and had a difficult upbringing, and that the mandatory minimum sentence "seems to be an unimaginable amount of time . . . for a teenage child." A mitigation specialist testified that defendant had more potential than any client she had evaluated, that defendant had a supportive adopted family, and that the Illinois Institute of Technology had granted defendant early acceptance due to his academic excellence.

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

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

People v. Wilson, 2016 IL App (1st) 141500 Public Act 99-69 provided that "On or after the effective date" of the Act, when a person under the age of 18 commits an offense and is sentenced as an adult the sentencing court must consider a specified list of additional mitigating factors. Defendant was found guilty of attempted first degree murder and aggravated battery with a firearm which he committed at age 17 but about three years before the effective date of P.A. 99-69. On appeal, he argued that he was entitled to remand for a new sentencing hearing because P.A. 99-69 should be applied retroactively.

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

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

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

People v. Johnson, 2013 IL App (1st) 120413 730 ILCS 5/5-5-3.2(b)(1) authorizes an extended term for a defendant who is convicted of any felony after having been previously convicted of the "same or similar class felony or greater class felony" within the past 10 years, excluding time in custody. 730 ILCS 5/5-5-3.2(b)(7) authorizes an extended term for a person who is at least 17, commits "a felony," and within the past 10 years (excluding time in custody) was "adjudicated a delinquent minor . . . for an act which would be a Class X or Class 1 felony if committed by an adult." Thus, under the plain language of the statute, an adult who commits any felony within 10 years of having been adjudicated delinquent for a Class X or Class 1 felony is subject to an extended term, while an adult repeat offender is subject to an extended term only if the second conviction is for "the same or greater class offense" as the original conviction.

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

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

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

In re Raheem M., 2013 IL App (4th) 130585 A court may commit a delinquent minor to the Department of Juvenile Justice, if it finds that "commitment to the Department of Juvenile Justice is the least restrictive alternative based on evidence that efforts were made to locate less restrictive alternatives to secure confinement and the reasons why efforts were unsuccessful in locating a less restrictive alternative to secure confinement." 705 ILCS 405/5-750(1)(b).

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

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

A trial court may not consider a factor inherent in the charged offense in aggravation at sentencing. Respondent committed what normally would be classified as a simple battery but which became an aggravated battery due to the victim's status and the location of the incident. The trial judge improperly allowed these same factors to impact its sentencing judgment as aggravating factors.

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

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

In re Christopher P., 2012 IL App (4th) 100902 The Juvenile Act expressly addresses sentencing credit for juveniles placed in detention. 705 ILCS 405/5-710(1)(a)(v), 1(b). The broader adult sentencing credit requirements of the Unified Code of Corrections also apply to juveniles. 730 ILCS 5/5-4.5-100(b). A juvenile who is committed to the DOJJ for an indeterminate term is entitled to predisposition credit for any part of a day for which he spent some time in custody. He is also entitled to credit for time spent in custody as a condition of probation where he is resentenced upon revocation of probation. The definition of "custody" for purposes of sentencing credit is the legal duty to submit to legal authority, and not actual physical confinement.

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

The fact that treatment center residents received some privileges not accorded to detention center residents did not affect the court's analysis. Whether or not respondent could be prosecuted for escape if he left the detention center, he would be held responsible for that conduct as the record showed that respondent was held in solitary confinement for other infractions of the rules. See also, **In re Darius L.**, 2012 IL App (4th) 120035

In re Jabari C., 2011 IL App (4th) 100295 Juveniles, like adult criminal defendants, are entitled to sentencing credit for each day spent in custody because to deny a juvenile credit could lead to a period of commitment exceeding the maximum time that an adult could serve for the offense.

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

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

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

In re K.D., 407 Ill.App.3d 395, 943 N.E.2d 210 (1st Dist. 2011) A social investigation report prepared for consideration at the 16-year-old minor's sentencing hearing indicated that neither of the minor's parents provided for the minor, nor would they be able to do so in the foreseeable future as neither had a stable living environment. Section 5-710(1)(a)(iv) authorized the court to place the minor in the guardianship of DCFS based on that information without the filing of a separate petition to declare the minor an abused, neglected or dependent minor. The reference to Article II in the statute did not impose the procedural requirements of Article II on the court in the delinquency proceeding. Rather, the statute creates an alternative to an Article II proceeding. Due process is satisfied by notice to the parents of the delinquency proceeding and no separate notice need be given of a proceeding under Article II before a DCFS guardianship can be imposed in a delinquency proceeding.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In re C.Y.B., 109 Ill.App.3d 1110, 411 N.E.2d 952 (4th Dist. 1982) After respondent was found to be a minor in need of supervision, and a date was set for a dispositional hearing, the trial court entered an interim supervision order to the date set for the dispositional hearing.

Respondent was subsequently found in contempt of court and sentenced to four days in a juvenile facility for violating a condition of the supervision order. The supervision order was void. There is no authority in the Juvenile Court Act for an interim order that "short circuits" the procedure of the Act; "the trial court actually entered a form of a dispositional order prior to the dispositional hearing." Contempt reversed.

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

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

§33-6(b)
Commitment to Department of Juvenile Justice (DOJJ, formerly JDOC)

Illinois Supreme Court

In re Jarquan B., 2017 IL 121483 Under section 5-720(4) of the Juvenile Court Act, when a minor's probation is revoked the court may impose any "sentence that was available under Section 5-710 at the time of the initial sentence." 705 ILCS 405/5-720(4). At the time defendant was initially sentenced in this case, section 5-710(1)(b) allowed a court to commit a minor to the Department of Juvenile Justice if adults found guilty of the same offense could be sentenced to incarceration. 705 ILCS 405/5-710(1)(b). On January 1, 2016, section 5-710(1)(b) was amended to preclude a court from committing a minor to the DJJ unless the minor had committed a felony.

Defendant pled guilty to a Class A misdemeanor on February 26, 2015, and was sentenced to 12 months of supervision. After a series of violations, the court revoked defendant's supervision and sentenced him to six months of probation on November 5, 2015. Defendant admitted he violated his probation at a hearing on November 17, 2015. The sentencing hearing was continued until April 26, 2016, where the court committed defendant to the DJJ.

On appeal, defendant argued that because of the amendment to section 5-710(1)(b), the trial court could no longer commit him to the DJJ for a misdemeanor offense. The Supreme Court disagreed. It held that the plain language of section 5-720(4) focused on the sentences available at the time defendant was initially sentenced. At the time defendant was initially sentenced in this case, commitment to the DJJ was an option for misdemeanor convictions that were punishable by imprisonment. Accordingly, the trial court properly committed defendant to the DJJ.

In re Shelby R., 2013 IL 114994 Under 705 ILCS 405/5-710(1)(b), a minor may be committed to the Department of Juvenile Justice only if a term of incarceration is permitted by law for adults who are found guilty of the offense for which the minor was adjudicated delinquent. In addition, 705 ILCS 405/5-710(7) limits the term of commitment for a minor to the maximum sentence which an adult could receive for the same act. The court concluded that because an adult cannot be convicted of the offense of unlawful consumption of alcohol by a minor, and therefore cannot be incarcerated for that offense, a minor who is placed on probation for unlawful consumption of alcohol by a minor cannot be committed to the Department of Juvenile Justice upon revocation of her probation.

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

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

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

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

Illinois Appellate Court

In re D.W., 2023 IL App (1st) 211006 Respondent was charged at age 17 with aggravated vehicular highjacking and seven other offenses. At arraignment, he received *in absentia* admonishments for only three of the eight cases. All charges were designated as extended juvenile jurisdiction (EJJ), and respondent pled guilty to all eight cases. He was sentenced to the Illinois Department of Juvenile Justice (IDJJ), for a period not to exceed his 21st birthday. He also received adult sentences of 21 years in prison for three of the cases, and three years in prison for the remaining five cases, all of which would be stayed pending his compliance with the conditions of his juvenile sentence.

Following release from IDJJ, respondent committed another offense during his aftercare term. The State moved to revoke the stay on the eight adult sentences. Respondent was not present for the hearing on the motion to revoke, and his attorney objected to the proceedings, pointing out that no *in absentia* admonishments were given for five of the cases. The court overruled the objection, finding the admonishments were needed only for trial, not for sentencing. It held an evidentiary hearing, found respondent committed the new offense, and revoked the stay on the adult sentences.

The appellate court first rejected respondent's claim that the State failed to provide notice of the proceedings under 705 ILCS 405/5-625. Section 5-625 requires notice to respondent by certified mail, which did not occur here. But the appellate court held that section 5-625 applies to trials, while the hearing on the motion to revoke the stay of the adult sentences at issue here was more comparable to probation revocation proceedings. These are governed by section 5-720, which requires notice only to the opposing party's attorney. Thus, respondent's claim of a lack of notice was without merit.

The appellate court also held, however, that section 5-625's requirements for *in absentia* proceedings – the State most prove that the respondent (1) was advised of the trial date; (2) was advised that failure to appear could result in trial *in absentia*; and (3) did not appear for trial when the case was called – *do* apply to the instant proceedings. Although section 5-625's language is limited to trials, caselaw interpreting the nearly identical adult version of 5-625 has applied the provision to probation revocation proceedings.

While it's true that substantial compliance will generally suffice for *in absentia* admonishments, the court rejected the State's argument that the circuit court substantially complied by providing admonishments on three of the charges. Respondents are typically lay people, and courts cannot assume that they would understand that admonishments applicable to one charge are applicable to all charges. When accepting waivers of rights, courts require a waiver for each charge; admonishments are no different. Because of the lack of admonishments on the five charges, respondents's absence could not be deemed willful under section 5-625, and the proceedings on those five charges should not have occurred in his absence.

Nor was the error harmless. The respondent's non-willful absence from these proceedings is not a quantifiable error. The court rejected the State's attempt to equate the harmless error analysis applicable to absences from second-stage post-conviction hearings, as those proceedings are purely legal. Here, the court heard evidence, and it is unknown whether that evidence may have changed if respondent were present. Thus, the court vacated the orders lifting the stays on five of the adult sentences, while affirming the remaining three adult sentences.

In re Jonathan T., 2021 IL App (5th) 200247 The circuit court did not fail to comply with the requirements of section 5-750 of the Juvenile Court Act when it sentenced petitioner to the Department of Juvenile Justice. Although the circuit court did not explicitly discuss each of the seven factors required by the statute, it heard evidence relating to each factor and stated that it had considered each factor. The court also correctly found that confinement in the DJJ was the least restrictive alternative in light of petitioner's treatment needs and danger to the community as outlined in the sex offender evaluation and social investigation, and his parents' and communities' inability to provide the support or treatment that was offered in the DJJ. The court noted that petitioner had already turned 19, and so would serve less than three years in confinement for 10 Class X convictions that would normally carry a 60-year minimum.

In re J.M.A., 2019 IL App (3d) 190346 Section 5-750 of the Juvenile Court Act provides that a court may sentence a minor to the Department of Juvenile Justice if it finds that commitment to DOJJ is the "least restrictive alternative" and that secure confinement is necessary after a review of specific statutory factors.

Here, the court did not specifically state that DOJJ commitment was the "least restrictive alternative," but the statutory requirement was satisfied by the court's comments as a whole. The court discussed less restrictive alternatives and explained why they were inappropriate for the minor. The Appellate Court concluded that such a discussion is actually preferable to simply reciting the "magic words" from the statute. The dissenting justice would have required the court to make an express finding that confinement was the least restrictive alternative, noting that requiring such a finding would not be an onerous burden.

In re Ronald J., 2017 IL App (4th) 160855 If the trial court adjudicates a minor to be delinquent for an offense other than first degree murder and if the court makes certain findings, the court may commit the minor to the Department of Juvenile Justice. 705 ILCS 405/5-750(1). One of the those required findings concerns the minor's educational background, including whether the minor has ever been assessed for a learning disability and if so what services were provided, as well as any disciplinary incidents at school. 705 ILCS 405/5-750(1)(D).

The trial court failed to properly consider defendant's educational background when it sentenced him to the Department of Juvenile Justice. The only school-related evidence in the record was that the minor was a freshman in high school, had accumulated a lot of unexcused absences, and had been repeatedly suspended. The record revealed nothing else about his educational background. Until the trial court hears such evidence it lacked the discretion to commit defendant to the Department of Juvenile Justice.

The commitment order was vacated and the case remanded for full compliance with the statute.

In re H.L., 2016 IL App (2d) 140486-B The court noted that in 2012, 75 ILCS 45/5-750(1) was amended to require that before a delinquent minor can be sentenced to the Department of Corrections, the trial court must make an explicit finding that commitment to DOC is the least restrictive alternative. Where the trial court failed to make such an explicit finding, the cause must be remanded for compliance with the procedure required under the Juvenile Court Act.

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

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

In re Justin F., 2016 IL App (1st) 153257 705 ILCS 405/5-750(1) provides that before committing a delinquent to the Department of Juvenile Justice, the trial court must make certain findings and consider several individualized factors. The court held that in this case, the record failed to show that the court considered one of the individualized factors - the availability of services within the Department of Juvenile Justice that will meet the individualized needs of the minor. 705 ILCS 405/5-750(1)(b)(G). Because there was no testimony or any written report in the record addressing this issue, the trial court erred by committing the minor to the Department of Juvenile Justice. The commitment order was vacated and the cause remanded for further proceedings.

In re Henry P., 2014 IL App (1st) 130241 Effective January 1, 2012, the Juvenile Court Act was amended to specifically require that before committing a juvenile to the Department of Juvenile Justice (DJJ), the court must find that such commitment "is the least restrictive alternative," that efforts were made to find less restrictive alternatives, and the reasons why such efforts were unsuccessful. 705 ILCS 405/5-750(1)(b).

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

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

The cause was remanded for resentencing.

In re Raheem M., 2013 IL App (4th) 130585 A court may commit a delinquent minor to the Department of Juvenile Justice, if it finds that "commitment to the Department of Juvenile Justice is the least restrictive alternative based on evidence that efforts were made to locate less restrictive alternatives to secure confinement and the reasons why efforts were unsuccessful in locating a less restrictive alternative to secure confinement." 705 ILCS 405/5-750(1)(b).

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

In re Shelby R., 2012 IL App (4th) 110191 Under the Juvenile Court Act, a minor may be committed to the Department of Juvenile Justice "only if a term of incarceration is permitted by law for adults found guilty of the offense for which the minor was adjudicated delinquent." 705 ILCS 405/5-710(1)(b).

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

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

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

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

In re J.R., 302 Ill.App.3d 87, 704 N.E.2d 809 (1st Dist. 1998) On the date on which the minors allegedly committed first degree murder, a juvenile under the age of 13 could not be committed to the Juvenile Department of Corrections. After the offense was committed, the Juvenile Court Act was amended to permit minors as young as 10 to be committed to DOC. The minors, who were 10 and 11 at the time of the offense, were committed to DCFS, which obtained an order transferring custody to Juvenile DOC. Application of the amended transfer provision to the respondents did not violate the *ex post facto* clauses of the federal or state constitutions.

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

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

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

The evidence at the dispositional hearing indicated that respondent had shown progress since starting a regular program of counseling, his attendance at a school for emotionally disturbed children was excellent, and he expressed a desire to return to school.

Also, his mother was willing to undergo counseling in order to help her son, and a probation officer, a family therapist, and a psychologist opined that respondent would benefit most from a residential treatment alternative.

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

§33-6(c)
Violent or Habitual Juvenile Offender

Illinois Supreme Court

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

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

Illinois Appellate Court

In re S.R., 2025 IL App (1st) 250218 The minor argued that the State's notice to prosecute him as a violent juvenile offender was deficient because (1) he did not have a prior qualifying adjudication at the time the notice was filed where he had pled guilty but had not yet been sentenced in the prior case, and (2) where the notice failed to indicate whether the prior offense was a Class 2 or greater felony. The appellate court held that the circuit court did not err in failing to strike the State's notice.

The Juvenile Court Act requires only that the State serve the minor with notice of intent to prosecute as a violent juvenile offender. 705 ILCS 405/5-820(b). It does not require a description of the predicate offense. Here, while the prior offense of aggravated unlawful use of a weapon can be either a Class 2 or Class 4 offense, depending on the specifics, the notice here provided that the minor was eligible for prosecution as a violent juvenile offender because he previously was adjudicated a delinquent minor of AUUW. This was sufficient to satisfy the State's burden to provide notice under the Act.

Further, under the Act, a minor shall be adjudicated a violent juvenile offender for a Class 2 or greater felony involving violence or a firearm if the minor has previously been adjudicated delinquent for a Class 2 or greater felony involving the use or threat of physical force or violence or a Class 2 or greater felony for which an element of the offense is possession or use of a firearm. The Act requires that the second adjudication be for an offense occurring after adjudication on the first. 705 ILCS 405/5-820(a).

As a matter of first impression, the appellate court concluded that a juvenile's guilty plea to the prior offense satisfies the statutory requirement that the minor be adjudicated delinquent in order to qualify him as a violent juvenile offender. The prior offense need not have proceeded to sentencing to satisfy the requirements of the statute. This interpretation is consistent with how courts have construed the same language in the habitual juvenile offender provision [705 ILCS 405/5-815] of the Act. See **In re Stokes**, 108 Ill. App. 3d 637, 642 (1982), and **In re S.P.**, 297 Ill. App. 3d 234, 236-37 (1998). The dissenting justice would have found that the minor did not yet have a prior qualifying adjudication where he had not yet been sentenced on the prior offense.

To prove the predicate offense here, the State introduced a certified statement of conviction, but the document failed to name the specific offense or class of offense of which the minor had previously been adjudicated delinquent. The minor challenged the proof in the trial court. The judge overruled that objection and found the minor delinquent, relying on his own personal knowledge of the minor's prior plea. On appeal, the court noted that this may have been improper judicial notice because the minor's prior adjudications were not generally known and the State offered no information the court could notice. But, even if it was error for the court to rely on its own personal knowledge, the error was harmless where the record included both the transcript from the prior plea hearing, establishing that the minor pled guilty to Class 2 AUUW, and the minor's judicial admission that the prior adjudication was a Class 2 felony in a memorandum of law filed in support of the minor's motion to strike the State's notice.

In re M.P., 2020 IL App (4th) 190814 The Habitual Juvenile Offender (HJO) statute [705 ILCS 405/5-815] mandates commitment of a juvenile offender to the Department of Juvenile Justice (DOJJ) until his or her 21st birthday if certain elements are proved. Because adjudication as an HJO involves "serious deprivation of liberty," the statute provides the right to a jury trial for minors subject to prosecution as an HJO.

A minor can waive the HJO jury trial right. In evaluating the validity of a minor's jury waiver, courts should look to settled precedent from adult criminal proceedings holding that a jury waiver must be knowingly and understandingly made. An HJO jury waiver does not require any special admonishments about the mandatory DOJJ penalty. Here, where defendant was twice admonished about his right to a jury trial, was told he was being prosecuted as an HJO, had the opportunity to consult with counsel and his mother about whether to proceed to a jury trial or bench trial, and expressed an understanding of the differences between the two types of trials, his jury waiver was valid.

In re Shermaine S., 2015 IL App (1st) 142421 Under the habitual juvenile offender statute, a minor who is adjudicated delinquent for certain serious felonies, such as first degree murder, criminal sexual assault, or robbery, and has two prior felony adjudications, is adjudged an habitual juvenile offender and must be committed to Department of Juvenile justice until his 21st birthday. 705 ILCS 405/5-815.

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

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

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

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

In re Isiah D., 2015 IL App (1st) 143507 On appeal from a 2014 order finding him to be a habitual juvenile offender and a violent juvenile offender, the minor respondent argued that the conviction resulting from his guilty plea in 2013 could not be used as a predicate for HJO and VJO status because the plea admonishments had been improper. The court concluded that under **In re J.T.**, 221 Ill.2d 338, 851 N.E.2d 1 (2006), it lacked jurisdiction to consider issues arising from the 2013 plea because respondent failed to file a timely appeal from that proceeding. The court concluded that **J.T.** implicitly overruled **In re J.W.**, 164 Ill.App.3d 826, 518 N.E.2d 310 (1st Dist. 1987), which found that the Appellate Court had jurisdiction to consider the propriety of a prior guilty plea that was used as a predicate in a subsequent case.

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

In re A.P., 2014 IL App (1st) 140327 The habitual offender provision of the Juvenile Court Act (705 ILCS 405/5-815) requires that a minor who has twice been adjudicated delinquent for offenses which would have been felonies if committed by an adult and who is thereafter adjudicated delinquent for one of several specified offenses must be committed to the Department of Juvenile Justice until his 21st birthday, without the possibility of parole, furlough, or non-emergency authorized absence. The court concluded that the habitual offender provision does not violate the Eighth Amendment or the proportionate penalties clause of the Illinois Constitution although it removes all discretion from the trial court in sentencing minors who are adjudicated habitual juvenile offenders.

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

The court noted that in **Miller v. Alabama**, 567 U.S. 460, 132 S.Ct. 2455, 183 N.E.2d 407 (2012), the United States Supreme Court held that the Eighth Amendment is violated where a mandatory life sentence without the possibility of parole is imposed on a person who was under the age of 18 at the time of the crime. The Appellate Court distinguished **Miller**, however, because it involved minors who were charged and convicted as adults. Furthermore, **Miller** holds only that the Eighth Amendment prohibits mandatory natural life sentences without the possibility of parole, and not that all mandatory sentences are unconstitutional when applied to juveniles.

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

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

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

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

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

§33-6(d)
Juveniles Transferred to Adult Court for Prosecution

Illinois Supreme Court

People v. Hunter & Wilson, 2017 IL 121306 An amendment to the statute changing the requirements for the automatic transfer of juveniles to adult court (705 ILCS 405/5-130), which went into effect after defendant Hunter had been convicted but while his case was pending on direct appeal, was held not to apply retroactively to defendant's case. Section 4 of the Statute on Statutes (5 ILCS 70/4) allows the application of procedural changes in the law to be applied retroactively to ongoing proceedings. It also requires that "the proceedings thereafter" shall conform to the laws in force at the time of the proceedings in question. In defendant's case, the proceedings in the trial court were completed before the transfer statute was amended. Because the proceedings were completed, the amended statute does not apply retroactively to defendant's case.

An amendment allowing a trial court to decline to impose firearm enhancements in sentencing defendants under the age of 18 (730 ILCS 5/5-4.5-105), which went into effect after defendants had been convicted but while their cases were pending on direct appeal, was held not to apply retroactively to defendants' cases. Under section 4 of the Statute on Statutes (5 ILCS 70/4), a punishment mitigated by a new law is applicable only to judgments imposed after the new law takes effect. Since defendants were sentenced before the new law went into effect, the amendment does not apply retroactively to their cases.

People v. King, 241 Ill.2d 374, 948 N.E.2d 1035 (2011) 705 ILCS 405/5-130(1)(a) provides that juvenile delinquency proceedings do not apply where a minor is at least 15 at the time of the offense and is charged with certain specified offenses, including: (1) first degree murder, (2) aggravated criminal sexual assault; (3) aggravated battery with a firearm committed in a school, on the real property comprising a school, within 1,000 feet of the real property comprising a school, at a school related activity, or on, boarding, or departing from any conveyance owned, leased, or contracted by a school or school district to transport students to or from school or a school related activity regardless of the time of day or time of year that the offense was committed; (4) armed robbery when the armed robbery was committed with a firearm, and (5) aggravated vehicular hijacking when the hijacking was committed with a firearm. The above charges, along with "all other charges arising out of the same incident," are to be prosecuted in the criminal courts.

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

Thus, where the defendant was tried in adult court on charges of first degree murder and attempt first degree murder which arose from a single incident, and pleaded guilty to attempt first degree murder in return for dismissal of the first degree murder counts, he stood convicted of an offense "covered by" § 5-130(1)(a). Thus, adult sentencing was available for attempt murder despite the State's failure to file a motion requesting such sentencing within 10 days following the guilty plea.

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

Illinois Appellate Court

People v. Williams, 2026 IL App (4th) 250612 Under 705 ILCS 405/5-130(1)(c)(ii), when a juvenile who is charged with an automatic transfer offense is instead convicted of a non-automatic transfer offense, the State must file a motion seeking adult sentencing "within 10 days following the entry of a finding or the return of a verdict." Here, the 17-year-old defendant was charged with first degree murder, an automatic transfer offense. The jury found him guilty of the lesser-included offense of second degree murder, which is not an automatic transfer offense. The State did not file a motion requesting a hearing on adult sentencing until 50 days after the verdict. The trial court granted the motion, however, reasoning that the 10-day deadline does not run until the court makes an explicit finding that the conviction is not for an automatic-transfer offense. The court imposed a 7-year adult sentence.

On appeal, defendant argued the sentence was invalid as the State failed to move for adult sentencing within 10 days of the verdict. The appellate court agreed with the defendant.

The plain language of the statute triggers the 10-day period from "the entry of a finding or the return of a verdict." While the State attempted to argue that the use of the word "or" means there are essentially two 10-day deadlines, one from the verdict and one from a finding that an offense is not an automatic transfer offense, this would render any deadline from the verdict superfluous. Moreover, the legislative history and context of the statute suggest the "finding" is the finding of guilt, not a finding of non-automatic transfer.

The State relied on **People v. Fort**, 2017 IL 118966, which remanded for the State to file a belated motion for adult sentencing after the supreme court clarified that second degree murder is not an automatic transfer offense. But **Fort** addressed only the appropriate remedy under the unique circumstances of that case, where neither the trial court nor the parties recognized that defendant's second degree murder conviction was subject to juvenile sentencing.

Because the State's motion was untimely, the trial court lacked authority to impose an adult sentence. The cause was remanded for sentencing under Sections 5-705 and 5-710 of the Juvenile Court Act.

People v. Walker, 2018 IL App (3d) 140723-B Defendant's 2013 post-conviction petition, attacking his 1984 life sentence under **Miller**, was untimely. Defendant, 17 at the time of the offense, and given a discretionary life sentence without parole, could have made his arguments as early as 2005, when the USSC issued its decision in **Roper**, wherein the court recognized the greater rehabilitative potential of juveniles under 18.

Even if it were not untimely, defendant's claim lack merit under **Miller** because defendant received a discretionary life sentence and the record showed that when choosing to impose a life sentence, the sentencing court "was aware" of defendant's age. The Appellate Court found support in **People v. Holman**, 2017 IL 120655, which upheld a discretionary life sentence because the sentencing court adequately considered age, maturity, family and home environment, degree of participation in the offense, peer pressure, incompetence, and rehabilitative potential. The Appellate Court here found adequate consideration of these factors because the court knew defendant's age, defense counsel described defendant as a "creature of the streets," and the PSI mentioned prior family counseling "for a variety of family social, sexual, and educational problems."

In a partial dissent, Justice Wright disagreed that the sentencing court considered defendant's level of maturity, but did find sufficient consideration of youth and rehabilitative potential to uphold the sentence under **Miller** and **Holman**.

People v. Ingram, 2018 IL App (4th) 160099 When a juvenile is automatically transferred to adult court because he has been charged with a crime listed in the Excluded Jurisdiction statute, 705 ILCS 405/5-130, the adult court does not lose jurisdiction by virtue of a guilty plea to another offense not included in the statute. Here, defendant was transferred to adult court when charged with armed robbery with a firearm, then agreed to plead guilty. In exchange, the State agreed to amend the charges to armed robbery with a dangerous weapon, an offense that does not trigger automatic transfer to adult court. The Appellate Court rejected defendant's argument that an amendment to the charging instrument affects the jurisdiction of the adult court. The adult court obtained jurisdiction upon the filing of the initial charge, and the amendment had "no legal effect" on jurisdiction.

The Appellate Court also rejected the defendant's claim that his adult sentence could not stand under 705 ILCS 405/5-130(1)(c)(ii). Under this provision, the State must request a hearing for adult sentencing whenever a juvenile who has been automatically transferred to adult court is convicted of only a lesser offense that would not have triggered automatic transfer. Citing **People v. King**, 241 Ill. 2d 374 (2011), the Appellate Court held that the provision does not apply when the conviction is the result of a negotiated guilty plea.

People v. Scott, 2016 IL App (1st) 141456 The State charged defendant, who was 16 at the time of the offense, with armed robbery with a firearm and aggravated robbery. At the time of defendant's trial, when the State charged a juvenile who was at least 15 years old with armed robbery with a firearm, his case was automatically transferred to adult court. 705 ILCS 405/5-130(1)(a). Defendant was tried in adult court, acquitted of armed robbery but convicted of aggravated robbery. Since defendant was acquitted of the transfer offense, the State moved to have him sentenced as an adult. 705 ILCS 405/5-130(1)(c)(ii) (permitting State to request adult sentencing when defendant has been acquitted of automatic-transfer offense). The court granted the State's request and sentenced defendant to five years imprisonment.

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

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

People v. Toney, 2011 IL App (1st) 090933 Where a minor was at least 15 years of age at the time of the offense and is charged with certain offenses, including first-degree murder, such "charges and all other charges arising out of the same incident shall be prosecuted under the criminal laws of this State." 705 ILCS 405/5-130(1)(a). If a minor is convicted of any offense "covered by" §5-130(1)(a), the minor may be sentenced as an adult. 705 ILCS 405/5-130(1)(c)(i). If a minor is convicted of an offense "not covered" by §5-130(1)(a), the minor must be sentenced as a juvenile unless the State timely requests a hearing to determine if the minor should be sentenced as an adult. An offense "covered by" §5-130(1)(a) includes both charges specified in that section, as well as "all other charges arising out of the same incident." **People v. King**, 241 Ill.2d 374, 948 N.E.2d 1035 (2011).

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

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

People v. King, 395 Ill.App.3d 985, 919 N.E.2d 958 (4th Dist. 2009) A minor who is tried as an adult for both first degree murder and an offense which is not required to be prosecuted in adult court, and who is convicted only of the offense for which is adult prosecution is not required, is to be sentenced as a juvenile unless, within 10 days of the conviction, the State requests a hearing at which the court considers specified statutory factors to determine whether adult sentencing is appropriate. The State's failure to make a timely request requires that all further proceedings be conducted under the Juvenile Court Act. An adult sentence imposed in the absence of a timely request by the State is void, and may be challenged for the first time on appeal from denial of a post-conviction petition.

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

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

People v. Price, 2018 IL App (1st) 161202 The amendment to the automatic transfer provision raising the age to 16 from 15 for first-degree murder, applied to defendant's case where the amendment passed after trial but before sentencing. Under Section 4 of the Statute of Statutes, the procedural amendment applies retroactively to ongoing proceedings. The 15-year-old murder defendant's case had yet to reach final judgment and therefore was still pending when the amendment passed. Defense counsel's failure to request a transfer hearing under these circumstances rendered him ineffective.

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

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

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

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

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

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

Illinois Supreme Court

In re M.I., 2013 IL 113776 The Extended Juvenile Jurisdiction (EJJ) statute requires that a hearing be conducted on a motion to designate a proceeding as an EJJ proceeding within 60 days of the filing of the motion. 705 ILCS 405/5-810(2). Because the 60-day limitation is directory rather than mandatory, the failure to comply with that provision of the statute does not invalidate the EJJ determination.

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

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

Illinois Appellate Court

In re Zachary G., 2021 IL App (5th) 190450 The State charged the minor with armed violence and aggravated battery and sought both discretionary transfer to adult court under 705 ILCS 405/5-805(e) and designation as an extended jurisdiction juvenile (EJJ) prosecution under 705 ILCS 405/5-810. Both motions were denied. The State appealed from the denial of the EJJ motion, alleging that the trial court used an erroneous legal standard.

The minor did not dispute that an erroneous legal standard was used where the trial court denied the EJJ motion solely because it had also denied the motion to transfer to adult court. The minor argued, however, that there was no jurisdiction for the State's appeal of the denial of the EJJ motion.

The Appellate Court looked to the reasoning in **People v. DeJesus**, 127 Ill. 2d 486 (1989) and **People v. Martin**, 67 Ill. 2d 462 (1977), recognizing that the State has an appealable interest in pursuing a criminal prosecution as opposed to a delinquency adjudication and that implicit in that interest are the different dispositional alternatives available under each. Because denial of EJJ status deprives the State of the right to seek an adult sentence, the trial court's order terminated criminal prosecution prior to final judgment and is covered by the plain language of Supreme Court Rule 604(a)(1), allowing the State to appeal from such an order.

The Court then agreed with the parties that the trial court applied the wrong standard, and therefore abused its discretion, when it failed to consider the EJJ motion independent of its ruling on the motion to transfer to adult court. Accordingly, it reversed and remanded to the trial court to consider the EJJ motion under the appropriate legal standard.

In re C.C., 2015 IL App (1st) 142306 Under the extended juvenile jurisdiction statute (705 ILCS 405/5–810), upon a finding of guilty the trial court must impose a juvenile court sentence and a conditional adult criminal sentence. If the minor successfully completes the juvenile sentence, the adult sentence is vacated.

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

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

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

In re E.W., 2015 IL App (5th) 140341 A juvenile prosecution for an offense that would be a felony if committed by an adult may be designated as an extended jurisdiction juvenile (EJJ) prosecution. 705 ILCS 405/5-810. An EJJ prosecution has two components. First, the trial court imposes a juvenile sentence which applies unless its terms are violated. Second, the court imposes an adult sentence that is stayed on the condition that the minor complies with the juvenile sentence.

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

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

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

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

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

In re Omar M., 2012 IL App (1st) 100866 The Extended Jurisdiction Juvenile Prosecutions (EJJ) statute allows imposition of both a juvenile sentence and an adult criminal sentence on a juvenile where the court has designated the proceeding as an EJJ proceeding. The designation may be made where the prosecution files a petition alleging commission of a felony offense by a minor 13 and older where the court finds probable cause to believe that the allegations in the petition are true. The minor may rebut the presumptive EJJ designation with clear and convincing evidence that sentencing as an adult would not be appropriate. A minor who is the subject to an EJJ prosecution has the right to a public trial by jury. The adult sentence is stayed, but the stay can be revoked if the minor violates the conditions of the juvenile sentence or commits a new offense. 705 ILCS 405/5-810.

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

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

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

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

Therefore, the EJJ statute is not unconstitutionally vague.

In re M.I., 2011 IL App (1st) 100865 705 ILCS 405/5-810(2) provides time limits for a hearing on the State's motion to designate a juvenile proceeding as an extended juvenile jurisdiction proceeding. Under §810(2), the trial court "shall" conduct a hearing within 30 days after the motion is filed, or within 60 days upon a showing of good cause for the delay.

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

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

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

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

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

§33-6(f)
Probation and Supervision

§33-6(f)(1)
Generally

Illinois Supreme Court

In re Michael D., 2015 IL 119178 The Illinois Constitution confers jurisdiction on the Appellate Court to review final judgments, and authorizes the Supreme Court to provide by rule for appeals from other than final judgements. Supreme Court Rule 660(a) provides that final judgements in delinquency proceedings may be appealed under the rules for criminal appeals.

705 ILCS 405/5-615(1) provides that for certain offenses, juvenile courts may order continuances under supervision. Until 2014, a continuance under supervision could be ordered only where the court had not made a finding of delinquency, the minor admitted or stipulated to facts supporting the petition, and there was no objection from the minor, the minor's attorney, the State's Attorney, or the minor's parent or legal custodian. Effective January 1, 2014, 705 ILCS 405/5-615(1)(b) authorizes juvenile courts to enter continuances under supervision after a finding of delinquency has been made if the court finds that the minor is not likely to commit further crimes, the minor and the public would be best served if the minor were not to receive a criminal record, and in the interests of justice an order of continuance under supervision is more appropriate than a sentence.

Case law holds that a continuance under supervision that is ordered before a delinquency finding is made may not be appealed. The court concluded that the same rule applies to a continuance under supervision ordered after a delinquency finding has been made.

The court noted that in order to be appealable, continuance under supervision orders must constitute final judgments or be the subject of a Supreme Court Rule. A final judgment is one which finally determines the litigation on the merits so that, if it is affirmed, all that remains is to execute the judgement. The court stated that it is difficult to see how an order that is referred to as a "continuance" could be a final judgment. In addition, continuance under supervision orders are entered before the adjudicatory and dispositional phases of the proceeding have occurred. Thus, orders of supervision are clearly not final orders.

The court also found that no Supreme Court Rule allows the appeal of a continuance under supervision. Adult orders of supervision are appealable under Rule 604(b), but that rule by its terms does not apply to juveniles. The only rule which grants any right to an interlocutory appeal in juvenile cases is Rule 662, which applies only to the proceedings that are specifically listed and not to continuances under supervision.

The court also stated that whether Supreme Court Rules should be amended to allow appeals of orders granting continuances under supervision is an issue which should be considered by the Supreme Court Rules Committee.

In re Derrico G., 2014 IL 114463 Under §5-615 of the Juvenile Court Act, the State may object to the entry of an order of continuance under supervision in a juvenile case. 705 ILCS 405/5-615. The circuit court held that this statutory provision was unconstitutional both facially and as applied because it: (1) was arbitrarily enforced in violation of due process; (2) violated the separation of powers clause of the Illinois constitution; and (3) violated equal protection.

The Illinois Supreme Court reversed the circuit court's ruling, holding that the statute was neither facially unconstitutional nor as applied to defendant.

Prosecutorial discretion is firmly entrenched in American law. The Supreme Court noted that several of its cases have held that courts may not require prosecutors to defend their decision to seek the death penalty. If prosecutors have discretion to seek the death penalty, then they clearly have discretion to object to supervision.

Additionally, several factors show that the prosecutor's decision to object to supervision was justified in this case, including: (1) the nature of the offense, (2) battery of a police officer; (3) defendant's prior criminal conduct and pending charges; (4) defendant's family environment, which was not conducive to helping defendant stay out of trouble; (5) defendant's failure to acknowledge the seriousness of the offense; and (6) the fact that this case involved a negotiated guilty plea, where the State dismissed certain charges and recommended a sentence of probation in exchange for the plea.

Taking all these facts into account, the Supreme Court concluded that it was "quite frankly inconceivable that anyone could find" the State's exercise of discretion in this case to be arbitrary and a violation of due process.

The defendant argued that the prosecution's discretion to object to supervision infringed on the circuit court's sentencing authority. The Supreme Court rejected this argument, noting that it had previously decided that a statute which allowed prosecutors to decide when a juvenile would be subjected to prosecution as an adult did not violate separation of powers even though the statute gave the prosecution significant discretion to dictate the range of penalties to which a juvenile would be subject. The discretionary authority afforded the prosecution by §5-615 "pales by comparison."

Furthermore, under the version of the statute in effect here, the court may only continue the case under supervision before proceeding to adjudication. Thus, the State's objection must also occur before adjudication. Since defendant had not been adjudicated when the State objected and sentencing was not an issue, the State did not infringe on the court's right to impose sentence.

Defendant also argued that equal protection was violated by the State's right to object to juvenile supervision but not adult supervision. The court rejected this argument on a number of grounds.

First, defendant could not show that he was similarly situated in all relevant aspects to the adult offenders he compared himself to. Equal protection does not forbid all classifications, only those that apply different treatment to people who are alike in all relevant respects. Here, defendant was not similarly situated to adult offenders charged with a felony, because such adult offenders are not eligible for supervision at all.

Second, defendant entered into a fully negotiated guilty plea. Having received significant consideration in return for his plea, defendant could not repudiate the very sentence he agreed to on the basis that it violated equal protection. The court found that defendant's position violated fundamental principles of fairness in the enforcement of guilty pleas.

Third, minors in delinquency proceedings are not comparable to adult offenders because they are generally not subject to the same deprivation of liberty. Delinquency proceedings are protective and intended to correct and rehabilitate rather than to punish. That difference extends to the role of the State.

The dissent would have held that as applied to this case, §5-615 violated the separation of powers clause. The circuit court had already accepted defendant's guilty plea when it continued the case under supervision. Although the circuit court did not enter a finding of guilt, the acceptance of the guilty plea was itself a conviction. Conviction marks the traditional boundary beyond which the State's constitutionally permissible role in decisions affecting sentencing comes to an end. Accordingly, the State's objection to supervision violated the separation of powers doctrine.

In re Danielle J., 2013 IL 110810 Under 705 ILCS 405/5-615(l) and **In Veronica C.**, 239 IL 2d 134, 940 N.E.2d 1 (2010), a minor may request a continuance under supervision in a juvenile case before an adjudication of delinquency is made, provided that the minor stipulates to facts supporting the petition and there is no objection by the minor, a parent, a guardian, or the prosecutor. Here, the minor rejected the State's pretrial offer of a continuance under supervision, but requested such a continuance after she was adjudicated delinquent.

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

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

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

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

In re Veronica C., 239 Ill.2d 134, 940 N.E.2d 1 (2010) Juvenile delinquency proceedings are comprised of three distinct stages: the findings phase, the adjudicatory phase, and the dispositional phase. The findings phase consists of a trial to determine whether the minor is guilty as charged and should be adjudged delinquent. In a juvenile delinquency case, a finding of guilt and a finding of delinquency are equivalent.

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

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

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

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

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

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

In re T.W., 101 Ill.2d 438, 463 N.E.2d 703 (1984) Ch. 37, ¶704-7(1)(b), which requires the consent of the state's attorney before a court may order a continuance under supervision, upheld. Requiring such consent does not violate the separation of powers doctrine.

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

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

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

Illinois Appellate Court

In re Omar F., 2017 IL App (1st) 171073 Trial courts have broad discretion to impose reasonable probation conditions aimed at fostering rehabilitation and protecting the public, whether or not the conditions are expressly authorized by statute. The court's discretion in setting probation conditions is limited by constitutional safeguards, however. In determining whether a probation condition is proper, the overriding concern is reasonableness.

To be reasonable, a probation condition must not be overly broad considering the desired goal and the means of achieving that goal. A probationary condition is overbroad and therefore unreasonable when there is no valid purpose for a restriction and no means by which the probationer may obtain exemption from the restriction for legitimate purposes.

Where the probationer was ordered to avoid contact with gang members and gang activity, clear his social media of gangs and drugs, and not post or appear in any pictures with gang members, the condition was overbroad and unreasonable. The court acknowledged that the "no gang contact" provision was a valid condition of probation because it was reasonably related to rehabilitation and was expressly authorized by 705 ILCS 405/5-715(2)(s). The court also concluded that the term "contact" could be extended to include an individual's online presence.

However, the blanket order requiring the respondent to "stay away" from and have "no contact" with gang members and remove any social media posts involving gang members was overbroad. The court noted that there was no method by which the respondent could obtain an exemption from the restrictions for legitimate purposes such as those based on familial, employment, or educational relationships, and no explanation of the specific conduct which would result in a probation violation.

The overbroad probation condition constituted plain error under both the first and second prongs of the plain error rule. First, the evidence that defendant was involved in gang activity was closely balanced. Second, because the blanket prohibition against contact with gangs was "simply too general and overbroad to provide a juvenile with clear parameters about how to comply with the conditions of his probation," the integrity of the judicial process was affected.

In re Rodney S., 402 Ill.App.3d 272, 932 N.E.2d 588 (4th Dist. 2010) The term of probation for a delinquent minor may not exceed five years or until the minor reaches the age of 21, whichever is less. An exception to that rule is where the minor is found guilty of a forcible felony. 705 ILCS 405/5-715(1). A forcible felony is defined by the Criminal Code in pertinent part as an "aggravated battery resulting in great bodily harm or permanent disability or disfigurement and any other felony which involves the use or threat of physical force or violence against any other individual." 720 ILCS 5/2-8.

The minor-respondent was found guilty of aggravated battery based on contact of an insulting or provoking nature, and was sentenced to an 11-year term of probation. The Appellate Court concluded that the conviction did not qualify as a forcible felony that would authorize an 11-year probation term. The aggravated battery did not qualify as a forcible felony under the residual clause because that category was intended to refer to felonies not otherwise specified in the statute. The statute had previously included all aggravated batteries without qualification within the definition of forcible felonies, but had been amended to limit the types of aggravated battery that could qualify as a forcible felony. The Appellate Court acknowledged that there was a split among the districts on this issue, with the Third District holding that any aggravated battery qualified as a forcible felony, **People v. Jones**, 226 Ill.App.3d 1054, 590 N.E.2d 101 (3d Dist. 1992), and the First and Second Districts holding that only the limited category of aggravated battery specified by the statute qualified as a forcible felony. **In re Angelique**, 389 Ill.App.3d 430, 907 N.E.2d 59 (2d Dist. 2009); **People v. Schmidt**, 392 Ill.App.3d 689, 924 N.E.2d 998 (1st Dist. 1992). The Fourth District concluded that the decisions of the First and Second Districts were better reasoned.

The court vacated the 11-year probation term as void and remanded for resentencing.

In re Shatavia S., 403 Ill.App.3d 414, 934 N.E.2d 502 (5th Dist. 2010) Based on her admission, the court placed respondent on supervision for one year, with conditions of community service and restitution. 705 ILCS 405/5-615(a) allows a court to enter an order of continuance under supervision for certain offenses upon an admission by the minor and before proceeding to adjudication.

The Appellate Court rejected the State's argument that there was no final judgment from which an appeal could be taken because the case was continued under supervision. The judgment appealed was not an adjudication of delinquency, but the conditions of supervision. Supreme Court Rule 604(b) authorizes an appeal from an order of supervision by a defendant who seeks review of the conditions of supervision.

In re Moses W., 363 Ill.App.3d 182, 842 N.E.2d 783 (2d Dist. 2006) The role of the trial court in juvenile proceedings is broader than in criminal proceedings. Thus, it was proper for the juvenile judge to receive regular reports about the probationer's conduct at a treatment center.

Further, the trial judge's concern about the cost to the county of providing residential treatment did not indicate that he was biased against respondent.

In re T.W., 268 Ill.App.3d 744, 644 N.E.2d 438 (2d Dist. 1994) An order imposing juvenile supervision is appealable. See also, **In re D.R.**, 219 Ill.App.3d 13, 579 N.E.2d 409 (2d Dist. 1991).

In re P.S.B., 174 Ill.App.3d 114, 528 N.E.2d 769 (3d Dist. 1988) The Juvenile Court Act provides for admission to the Department of Alcoholism and Substance Abuse (DASA) where authorized under the Alcoholism and Substance Abuse Act. The trial judge here did not follow the procedure to be followed when a person elects to undergo treatment. The judge committed respondent to DOC after stating that there was insufficient evidence concerning a DASA long-term program. The judge should have considered more evidence regarding the type of treatment offered by both DOC and DASA. Remanded for another dispositional hearing "to consider further evidence of the likelihood of P.S.B.'s rehabilitation and for further evidence concerning the details of long-term treatment. . . ."

People v. C.T., 137 Ill.App.3d 42, 484 N.E.2d 361 (5th Dist. 1985) Probation and incarceration are "alternate dispositions" under the "kinds of dispositional orders" section of the Juvenile Court Act (Ch. 37, ¶705-2(a)); thus, both dispositions cannot be imposed simultaneously.

§33-6(f)(2)
Conditions of and Revocation/Termination of

Illinois Supreme Court

In re Shelby R., 2013 IL 114994 Under 705 ILCS 405/5-710(1)(b), a minor may be committed to the Department of Juvenile Justice only if a term of incarceration is permitted by law for adults who are found guilty of the offense for which the minor was adjudicated delinquent. In addition, 705 ILCS 405/5-710(7) limits the term of commitment for a minor to the maximum sentence which an adult could receive for the same act. The court concluded that because an adult cannot be convicted of the offense of unlawful consumption of alcohol by a minor, and therefore cannot be incarcerated for that offense, a minor who is placed on probation for unlawful consumption of alcohol by a minor cannot be committed to the Department of Juvenile Justice upon revocation of her probation.

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

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

In re Thompson, 79 Ill.2d 262, 402 N.E.2d 609 (1980) A trial court may revoke minor's probation where the violation occurred prior to the expiration of the period of probation but the hearing and finding of delinquency occurred afterward.

Illinois Appellate Court

In re T.B., 2020 IL App (1st) 191041 The condition of respondent's probation prohibiting gang activity, or social media posts furthering gang activity, were neither unreasonable nor unconstitutional. Respondent argued that a gang-focused condition was unreasonable where nothing in his background showed gang involvement. But defendant was a teenager who committed the robbery with a group of peers, and regardless, it is no more unreasonable to restrict gang activity without proof of gang membership than it would be to require school attendance without proof of truancy.

Nor was the condition unconstitutional. Respondent failed to specify how the condition was vague, and unlike probation conditions that limit contact with gang members, there is no overbreadth concerns when the condition specifically targets actual gang activity. Finally, a condition restricting social media use by prohibiting the advancement of gang activity or display of gang signs did not violate freedom of speech, as it was reasonably related to rehabilitation.

In re J.R., 2019 IL App (1st) 190661 Probation conditions restricting social media use were not vague or overbroad. The judge clearly explained that the restrictions applied only to gang-related posts**.** The court had no obligation to specify exceptions for innocuous contact. The restrictions were also reasonably related to the nature of the offense and to the juvenile's rehabilitation, where the record showed he was at least influenced by gangs and used a gun to commit an armed robbery. The restrictions also furthered a compelling state interest of value to the public, and the court had no alternative, less subversive means to accomplish these goals.

In re K.M., 2018 IL App (1st) 172349 Minor challenged probation conditions that he "have no contact with gangs, guns, or drugs" and that he clear his social media of "anything that looks like gangs, guns, or drugs." The blanket no-contact provision was similar to that found unconstitutional in **In re Omar F.**, 2017 IL App (1st) 171073, and would have included even innocent or incidental contact within its scope. The Court remanded for the juvenile court to issue a revised probation order.

The Court upheld the social media restriction, disagreeing with **Omar F.** The Court concluded that the restriction only minimally curtailed the minor's First Amendment rights and that it was reasonably related to rehabilitation.

The dissenting justice would not have reached the issue because it was not raised below. Instead, the dissent would have required the minor to first seek modification of probation from the juvenile court because the Juvenile Court Act provides for ongoing review. The dissent also would have declined to consider the constitutionality of the condition because the minor did not challenge the authorizing statute [705 ILCS 405/5-715(2)(s)].

In re Jawan S., 2018 IL App (1st) 172955 Probation conditions that minor "refrain from all illegal gang, guns, [and] drug activity" and that "none shall be displayed on his social media" were upheld. The Court distinguished **In re Omar F.**, 2017 IL App (1st) 171073, because the condition here was limited to "illegal" activity, as opposed to the broad condition in **Omar F.** which would have included even innocent or incidental contact within its scope. The social media restriction was also proper because its curtailment of First Amendment rights was minimal and was reasonably related to the needs of rehabilitation.

The Court also rejected a challenge to the constitutionality of 705 ILCS 405/5-715(2)(s) which provides that a juvenile court may include a probation condition that a minor refrain from gang contact. The statute is not mandatory, but rather merely authorizes certain probation conditions at the court's discretion. Here, the court properly tailored the no-gang conditions such that they were not overbroad.

In re J'Lavon T., 2018 IL App (1st) 180228 Following adjudication of delinquency for armed robbery, probation conditions that the minor have no gang contact and make no social media posts on anything related to a gang were held to be overbroad. As a general matter, restrictions on gang contact and social media were related to rehabilitation and were valid conditions where the minor's mother said he was hanging with the "wrong crowd" and noted negative peer influences as a reason for his criminal conduct. However, the conditions were overbroad where there was no exception for contact or social media posts with a legitimate purpose, following **In re Omar F.**, 2017 IL App (1st) 171073. The court distinguished **In re R.H.**, 2017 IL App (1st) 171332, where the court upheld a similar social media restriction because there the minor was in a gang, used social media to taunt rival gang members, and posted pictures of himself displaying gang signs and smoking cannabis.

The minor signed the probation order detailing the gang conditions at the dispositional hearing and did not object to the gang conditions in the trial court. The Appellate Court found second-prong plain error review was warranted. The gang conditions were so vague as to affect the integrity of the dispositional hearing, and the trial court failed to provide a fair process for determining what gang-related restrictions were reasonable.

In re Jarquan B., 2017 IL 121483 Under section 5-720(4) of the Juvenile Court Act, when a minor's probation is revoked the court may impose any "sentence that was available under Section 5-710 at the time of the initial sentence." 705 ILCS 405/5-720(4). At the time defendant was initially sentenced in this case, section 5-710(1)(b) allowed a court to commit a minor to the Department of Juvenile Justice if adults found guilty of the same offense could be sentenced to incarceration. 705 ILCS 405/5-710(1)(b). On January 1, 2016, section 5-710(1)(b) was amended to preclude a court from committing a minor to the DJJ unless the minor had committed a felony.

Defendant pled guilty to a Class A misdemeanor on February 26, 2015, and was sentenced to 12 months of supervision. After a series of violations, the court revoked defendant's supervision and sentenced him to six months of probation on November 5, 2015. Defendant admitted he violated his probation at a hearing on November 17, 2015. The sentencing hearing was continued until April 26, 2016, where the court committed defendant to the DJJ.

On appeal, defendant argued that because of the amendment to section 5-710(1)(b), the trial court could no longer commit him to the DJJ for a misdemeanor offense. The Supreme Court disagreed. It held that the plain language of section 5-720(4) focused on the sentences available at the time defendant was initially sentenced. At the time defendant was initially sentenced in this case, commitment to the DJJ was an option for misdemeanor convictions that were punishable by imprisonment. Accordingly, the trial court properly committed defendant to the DJJ.

In re R.H., 2017 IL App (1st) 171332 A condition of probation prohibiting the adjudicated delinquent minor from referencing gangs, guns, or drugs on his social media accounts did not violate his right to free speech. Respondent was found guilty of gun and drug possession, and his social media accounts included photographs of himself holding a gun, flashing gang signs, and smoking cannabis. He challenged this condition as an unlawful content-based restriction on speech.

The Appellate Court agreed the condition was a content-based restriction, but held that it passed the strict scrutiny test applicable to such restrictions, particularly in light of the fact that the rights of minors are not equal to those of adults. The restriction was narrowly tailored, applying only to content directly related to the underlying offenses. The restriction was also a reasonable exercise of the State's role as *parens patriae*, requiring it to act in the minor's best interests and for the minor's own protection. Given respondent's history of criminal behavior, his possession of guns, use of drugs, and involvement with gangs, and his habit of posting pictures of himself engaging in these activities on his social media accounts, the State had a compelling interest in restricting the respondent's social activity on these related topics as a means of preventing further criminal acts, protecting him from the dangers of this behavior, and rehabilitating him.

The dissent would find that the restriction violates due process because the term "gang" is undefined, and because it lacks a *mens rea*, such that respondent may violate probation unwittingly.

In re Austin S., 2015 IL App (4th) 140802 Under the Juvenile Act, the court may place a minor who has been adjudicated guilty of an offense in detention for up to 30 days. 705 ILCS 405/5-710(1)(a)(v). The Juvenile Act defines detention as the temporary care of a minor who requires secure custody for his or the community's protection in a facility designed to physically restrict the minor's movements. 705 ILCS 405/5-105(5).

Here the trial court ordered, as a condition of defendant's probation, that he successfully complete the Adams County Juvenile Detention Center Treatment Program. The treatment program is designed to last about 90 days although some participants stay in the program longer. The Appellate Court held that the trial court's order was void since it mandated a period of detention that exceeded 30 days.

In **Christopher P.**, 2012 IL App (4th) 100902, the court concluded that time spent in the same treatment program at issue in this case was properly classified as custody for sentence credit purposes. The court found that under the treatment program a minor had a legal duty to submit to state authority, his freedom of movement was restricted by locked doors, he was subject to the same policies and conditions as other detention center residents, including solitary confinement and strip searches, and was completely integrated with the other detention center residents.

Based on **Christopher P.**, the Appellate Court held that the treatment program constituted detention as defined by the Juvenile Act. The treatment program, given its regimented structure, surveillance, and lack of privacy, was no different than any other juvenile detention facility. The trial court's order was thus unauthorized and void since it exceeded 30 days.

In re B.P.D., 2014 IL App (3d) Under 705 ILCS 405/5-720(4), upon revocation of probation a minor may receive any sentence that was available at the time of the initial sentence. 705 ILCS 405/5-710(1)(a)(v) authorizes a juvenile sentence of 30 days detention, but requires that the detention be served in a juvenile detention home.

Therefore, a detention sentence ordered upon revocation of juvenile probation must be served in a juvenile detention home. Where the minor was sentenced to five years probation when he was 15, and that probation was revoked when he was 20, the trial court erred by ordering a sentence of five days in the county jail.

Defendant's five-day jail sentence was vacated.

In re J.P., 2019 IL App (1st) 181087 Respondent challenged a condition of probation that restricted her contact with gang members. The Appellate Court rejected the argument, distinguishing **In re Omar F.**, 2017 IL App (1st) 171073, and **In re J'Lavon T.**, 2018 IL App (1st) 180228, because unlike the blanket bans in those cases, the juvenile court here explained that the condition was limited to activity that "further[s] or promotes the function of a street gang." This language narrowed the restriction and kept it from being overbroad in violation of due process.

Nor did the court err in ordering the removal of a gang tattoo from respondent's face, though remand was required to determine whether her other tattoos were gang related and therefore subject to the removal order. Tattoo removal, an authorized probation condition under 705 ILCS 405/5-715, does not violate due process when reasonably related to a juvenile's rehabilitation. Here, defendant's tattoo above her eye identified her as a Latin

King, and her membership in the Latin Kings was directly related to her criminal conduct. Moreover, the removal is related to rehabilitation because it was aimed at making it easier to find gainful employment.

In re Dexter L., 334 Ill.App.3d 557, 778 N.E.2d 371 (2d Dist. 2002) A minor whose probation is revoked may receive any sentence available under 705 ILCS 405/5-710 at the time of the initial sentence. Because §5-710 does not authorize the trial court to sentence a juvenile to county jail and authorizes detention only in a juvenile detention home, the trial court erred by sentencing respondent to the county jail.

In re M.P., 297 Ill.App.3d 972, 697 N.E.2d 1153 (1st Dist. 1998) The Juvenile Court Act does not authorize a juvenile probation condition requiring a 16-year-old to remove gang tattoos from his arms. It is not authorized under 705 ILCS 405/5-24(2)(5), which permits the trial court to require a minor probationer to refrain from direct or indirect contact with specified persons, including members of street gangs. While a trial court has discretion to impose a probation condition that is not expressly authorized by statute, the condition must be reasonably related to the juvenile's rehabilitation. The instant condition was not reasonable. In the absence of any evidence concerning the medical procedure that would be required to remove the tattoos, and in light of cases from other jurisdictions indicating that attempting to remove a tattoo may cause permanent scarring, forcing the minor to have the tattoos removed "may actually hamper" rehabilitation by imposing a "humiliating, not to mention painful, procedure."

In re J.G., 295 Ill.App.3d 840, 692 N.E.2d 1226 (1st Dist. 1998) Although banishment from a particular area is one of 23 specific conditions statutorily authorized for juvenile probation, the banishment order (that minor stay out of Skokie) was improper where there was no connection with the delinquent acts or the minor's rehabilitation.

In re C.T.A., 275 Ill.App.3d 427, 655 N.E.2d 1116 (2d Dist. 1995) The trial court lacked authority to extend respondent's continuance for six months after the initial 24-month continuance had expired. A continuance under supervision "may not" exceed 24 months. The term "may not" is mandatory, not advisory. Because the State's petition to revoke the continuance under supervision was filed after the original 24 month continuance had expired, the order revoking the continuance was reversed. An order revoking a probation sentence that had been imposed upon revocation of the continuance under supervision was also reversed.

In re P.E.K., 200 Ill.App.3d 249, 558 N.E.2d 763 (4th Dist. 1990) Where the trial court required defendant to pay restitution for damage which he did to a cemetery and also to perform 500 hours of public service at rural cemeteries (including cleaning and repairing tombstones and mowing grass), the public service requirement was a separate condition of probation. Thus, the minor was not required to repair the specific damage which he had caused and was not entitled to credit against restitution for his public service work.

Also, the trial judge erred by failing to set forth a method or time limit of payment, as is required; the cause was remanded for the judge to set the conditions for payment of restitution.

In re C.D., 198 Ill.App.3d 144, 555 N.E.2d 751 (4th Dist. 1990) Where respondent was nine at the time of the dispositional order, it was error to include a period of detention as a condition of probation even though the detention would have been served after respondent became 10. Ch. 37, ¶805-23(1)(a)(5) permits detention only where the juvenile is at least 10 years of age, and the relevant date for determining age is the date of the dispositional order. **People v. C.T.**, 137 Ill.App.3d 42, 484 N.E.2d 361 (5th Dist. 1985) (the "catch-all" provision of the "probation" section (Ch. 37, ¶705-3(2)(q)), which requires the minor to "comply with other conditions as may be ordered by the court," does not allow incarceration as a condition of probation).

In re Rider, 113 Ill.App.3d 1000, 447 N.E.2d 1384 (4th Dist. 1983) As part of an order of protective supervision regarding a minor, the trial court ordered the father to complete a drug and alcohol treatment program. The procedure used to determine the father's alleged alcohol problem of the father was improper. The information relied upon by the trial court was obtained during an *in camera* proceeding at which the father was not permitted to be present. "[F]undamental fairness requires that such an order not be entered before the person to be subjected to the order has a reasonable opportunity to present evidence and be heard on the matter."

In re R.J.W., 76 Ill.App.3d 159, 394 N.E.2d 1064 (4th Dist. 1979) After finding that respondent had committed the acts charged in the delinquency petition, the trial judge continued the case with respondent placed on supervision pursuant to Ch. 37, ¶704-7(1). The court upheld the finding of delinquency, but reversed the order committing respondent to DOC, a sentence the trial judge imposed after finding that respondent violated a condition of supervision (that he "make payment to the court clerk to reimburse the county for fees paid to the minor's court appointed attorney") and after considering respondent's two recent prior convictions. The condition was improperly imposed. Without deciding whether reimbursement for attorney's fees as ordered here may ever be properly made a condition of criminal or juvenile probation or other disposition, the court held it was an improper condition of a continuance under Ch. 37, ¶704-7(1). Also, the two convictions were subsequently reversed (one by judgment notwithstanding the verdict and the other by the appellate court). The cause was remanded for a new dispositional hearing because the court was "not assured that the trial judge would have committed respondent if he had known the convictions were reversed and that respondent couldn't be sanctioned for failure to make reimbursement for attorney's fees."

People v. G.L.C., 74 Ill.App.3d 411, 393 N.E.2d 113 (4th Dist. 1979) Respondent's probation was revoked on the grounds that respondent committed disorderly conduct and failed to report to his probation officer on three occasions. But, the State failed to prove, by a preponderance of the evidence, that respondent committed disorderly conduct. Also, the failure to report on only three occasions "is simply not a sufficient ground to revoke probation and to transfer custody of the minor to the Department of Corrections." Remanded with directions to reinstate probation.

In re Serna, 67 Ill.App.3d 406, 385 N.E.2d 87 (1st Dist. 1978) In placing respondent on six months' supervision, the judge told him to "stay out of trouble," "listen" to his mother and his probation officer, and follow the rules he would be given. Supervision was later revoked on the basis that respondent violated the terms and conditions of supervision by not attending school. Revocation was reversed. Respondent cannot be found to have violated the "rules" because there was no showing that such rules were ever given to him. Also, the judge's admonishments to "stay out of trouble" and listen to his mother and probation officer, although good advice, "sweep so broadly that the respondent necessarily was required to guess whether his truancy from school would fall within their scope."

In re R.R., 64 Ill.App.3d 818, 381 N.E.2d 1187 (2d Dist. 1978) Order revoking probation after respondent failed to appear on a date set for "a review of" the trial court's prior ruling that respondent had violated probation was reversed where there was no petition to revoke probation pending when the trial court committed the minor to DOC, where a disposition had already been made on the prior probation violation which provided the basis for the commitment, and where respondent was not given notice of the nature of the proceeding (on the date on which the trial court revoked his probation). Remanded for respondent to be restored to probation under the terms of the June 3 order.

In re Sturdivant, 44 Ill.App.3d 410, 358 N.E.2d 80 (1st Dist. 1976) Juvenile's admission, which was the basis of probation revocation, was involuntary where it was based on the judge's unfulfilled promise that defendant would be placed in a UDIS (United Delinquency Intervention Services) program (but, because there were no openings, defendant was committed to the Department of Corrections). Reversed and remanded for the court to either perform the promise or allow defendant to withdraw his admission and plead anew.

§33-6(g)
Miller-Roper-Graham Issues

§33-6(g)(1)
Generally

United States Supreme Court

Jones v. Mississippi, ____ U.S. ____ (No. 18-1259) In **Miller v. Alabama**, 567 U.S. 460 (2012), the Court held that the eighth amendment prohibits imposition of a mandatory life sentence for a juvenile offender. Subsequently, in **Montgomery v. Louisiana**, 577 U.S. 190 (2016), the Court held that **Miller** applies retroactively. Jones argued that under **Miller** and **Montgomery**, the eighth amendment requires that there be a finding that a juvenile offender is permanently incorrigible before a discretionary life sentence can be imposed.

Jones was convicted of murdering his grandfather in 2004 when he was just 15 years old. At the time, the offense carried a mandatory life sentence. Subsequently, Jones challenged his life sentence in post-conviction proceedings based on **Miller** and **Montgomery** and obtained a new sentencing hearing. At resentencing, the judge again imposed a life sentence, noting that he had discretion to impose a lesser term but that he had reviewed factors "relevant to the child's culpability" and believed a life sentence was appropriate.

The Supreme Court majority disagreed with Jones's argument that a sentencer must make a finding of permanent incorrigibility before imposing a discretionary life sentence on a juvenile. No such express finding is required, nor is the court required to give a sentencing explanation with an "implicit finding" on the record. The constitution is satisfied by the existence of a discretionary sentencing system, and nothing more is required by the eighth amendment. **Miller** requires a procedure by which youth and its attendant characteristics are considered along with other mitigating factors, but it does not require that a specific finding be made. And, **Montgomery** did nothing to add to **Miller's** requirements.

The Court noted that States are free to impose additional limits on juvenile sentencing, such as banning life for juvenile offenders altogether, requiring specific factual findings, or mandating sentencing explanations be made on the record. As-applied proportionality claims remain available, as well, but Jones did not present such a claim here.

The dissent characterized the majority opinion as abandoning **Miller** and **Montgomery**. The dissenting justices would have required a finding that the juvenile is one of those rare children for whom life without parole is a constitutionally permissible sentence in order to affirm such a sentence.

Montgomery v. Louisiana, 577 U. S. ___, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016) Under **Teague v. Lane**, 49 U. S. 288 (1989), federal courts must give retroactive effect to new substantive rules of constitutional law. Substantive rules include rules which forbid criminal punishment of certain primary conduct as well as those which prohibit a certain category of punishment for a class of defendants because of their status or offense.

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

Under **Miller v. Alabama**, 567 U. S. 460, 132 S.Ct. 2455 (2012), a juvenile convicted of homicide cannot be sentenced to life imprisonment without the possibility of parole unless the trial court first considers the minor's special circumstances in light of the principles and purposes of juvenile sentencing. **Miller** did not bar a life sentence without parole in all cases, but limited such sentences to juvenile offenders whose crimes reflect "irreparable corruption."

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

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

Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 183 L.Ed.2d 407 (2012) The Eighth Amendment's prohibition of cruel and unusual punishment guarantees individuals the right not to be subjected to excessive sanctions. This flows from the precept that criminal punishment should be graduated and proportioned to both the offender and the offense.

Two strands of precedent reflect the court's concern with proportionate punishment. The first adopted categorical bans on sentencing practices based on mismatches between the culpability of a class of offenders and the severity of a penalty. This line of cases includes **Roper v. Simmons**, 543 U.S. 551 (2005) (invalidating the death penalty for juvenile offenders), and **Graham v. Florida**, 560 U.S. 48, 130 S. Ct. 2011, 176 L.Ed.2d 825 (2010) (invalidating life without parole for non-homicide juvenile offenders). The second line of precedent prohibits mandatory imposition of capital punishment and requires that the sentencer consider the characteristics of the offender and the details of the offense before sentencing him to death.

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

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

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

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

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

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

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

Illinois Supreme Court

People v. Wilson, 2023 IL 127666 The circuit court properly denied defendant leave to file a successive post-conviction petition. Defendant's petition alleged that a discretionary, *de facto* life sentence imposed on a juvenile, without an explicit consideration of youth and its attendant characteristics, and without an explicit finding of permanent incorrigibility, violated the eighth amendment.

Pursuant to **Miller v. Alabama**, 567 U.S. 460 (2012), a sentencing court must consider youth and its attendant characteristics before sentencing a juvenile to life in prison, and a life sentence is only appropriate for juveniles who are determined to be permanently incorrigible. But **Miller** "did not impose a formal fact-finding requirement." **Jones v. Mississippi**, 141 S. Ct. 1307 (2021). As long as the court has the discretion to impose a sentence shorter than life, and doesn't expressly refuse as a matter of law to consider the defendant's youth, the sentence is constitutional.

Here, the record showed that the sentencing court had discretion to impose a sentence shorter than *de facto* life, and that it considered a range of factors, including defendant's age, prior to imposing a 59-year sentence. Thus, the sentence comported with the eighth amendment. The supreme court remanded to the appellate court for consideration of defendant's proportionate penalties claim.

Finally, the supreme court agreed that **People v. Holman**, 2017 IL 120655, must be overruled. **Holman** required an on-the-record consideration of youth and attendant characteristics before the imposition of a life sentence on a juvenile. In light of **Jones**, this holding no longer accurately reflects eighth amendment law.

People v. Jones, 2021 IL 126432 A five-justice majority held that a juvenile defendant who faces a mandatory natural life sentence, and pleads guilty to a negotiated *de facto* life sentence, cannot allege that the subsequent holding in **Miller v. Alabama**, 567 U.S. 460 (2012), rendered the plea invalid. Defendant alleged that under **Miller**, the mandatory life sentence he faced at the time he pled guilty was now unconstitutional, and because **Miller** is retroactive, he pled under false pretenses. Moreover, defendant received a *de facto* life sentence without consideration of his youth and attendant circumstances. The majority disagreed.

A guilty plea agreement forecloses any claim of error. By entering into the contract, defendant waived any future favorable legal developments. The majority relied on two federal cases which held that guilty pleas that spared the defendant the potential for the death penalty were not invalidated by later changes in the law which made the death penalty inapplicable to the defendants. Thus, the plea must be considered voluntary despite the subsequent change in law.

Finally, the majority found no error in the 50-year sentence itself, where **Jones v. Mississippi**, 593 U.S. ___ (2021) authorizes the imposition of a discretionary life sentence as long as the court was not precluded from considering the defendant's youth and attendant circumstances. Here, the court could have rejected the plea agreement had therefore exercised discretion in accordance with **Jones**.

The dissenting justices would have found the plea invalid where defendant was deprived of the protections provided by **Miller.** Defendant pled guilty for a crime committed at age 16 and agreed to a *de facto* life sentence after waiving his right to a pre-sentence investigation report and a hearing on mitigation and aggravation. Without these facts, the sentencing court could not have possibly considered the **Miller** factors. Furthermore, the federal cases are distinguishable because in both cases, the defendants faced only the possibility of the death penalty, while in the instant case the defendant faced a mandatory, unconstitutional life sentence. Regardless, the instant case cannot be compared to cases involving adults, because juveniles are different according to United States Supreme Court precedent. Finally, the court stressed that having made no findings with regard to any of the **Miller** factors, the sentencing court's imposition of a 50-year sentence was unconstitutional.

People v. Lusby, 2020 IL 124046 Defendant received a 130-year aggregate sentence for a murder, aggravated criminal sexual assault, and home invasion he committed at age 16. The sentencing hearing took place in 2001, when defendant was 21 years old. He alleged in a 2014 post-conviction petition that the sentencing court violated the eighth amendment because it did not adequately consider his youth before imposing the *de facto* life sentence. The

Appellate Court reversed, finding the sentencing court's generalized references to youth failed to comply with **Miller**.

The Supreme Court reversed, holding the sentencing court adequately considered defendant's youth. In **Holman,** the court outlined five factors relating to youth that should be considered before finding the defendant permanently incorrigible and therefore eligible for a life sentence: (1) age and accompanying immaturity; (2) family and home environment; (3) degree of participation and peer pressure; (4) incompetence in dealing with the justice system; (5) and prospects for rehabilitation. The sentencing court here considered at least some information relating to all of these factors.

First, both parties "highlighted" defendant's age at the sentencing hearing, and the sentencing court noted age was a "factor." Second, the Court found adequate information about defendant's home life from the PSI, which noted he had a good relationship with his parents. Third, defendant committed the crime as principal and there was no evidence of peer pressure. Fourth, the sentencing court heard no evidence of incompetence, defendant had obtained a GED, and his testimony was clear. Finally, regarding rehabilitation, the sentencing court heard evidence of criminal history from both before and after this offense.

People v. Nieto, 2016 IL App (1st) 121604-B Upon conviction for murder and aggravated battery committed at age 17, defendant received an aggregate 78-year term. After dismissal of a post-conviction petition, he raised a **Miller** claim for the first time on appeal. In an initial opinion, the Appellate Court remanded for a new sentencing hearing. The Supreme Court issued a supervisory order, requiring the Appellate Court to vacate the decision and issue a new decision in light of **Buffer** and **Holman**.

The Appellate Court again remanded for resentencing. Initially, the court reiterated that it was excusing defendant's forfeiture. While the supervisory order did not mention forfeiture, nothing in the caselaw in the four years since the initial opinion changed the court's mind that an as-applied **Miller** claim may be raised for the first time on appeal from the dismissal of a post-conviction petition, as long as the record is sufficiently developed. In fact, **Holman** itself made this rule more explicit.

Buffer confirmed that the court was correct in its first decision, where it held that defendant received a life sentence for purposes of **Miller.** As for **Holman,** and the question of whether the sentencing court sufficiently applied the **Miller** factors, the court again found a need for resentencing. The sentencing court here merely mentioned defendant's "young age" without acknowledging the attendant characteristics of youth.

People v. Holman, 2017 IL 120655 Under the Eighth Amendment prohibition of cruel and unusual punishment, criminal punishment must be proportioned to both the offender and the offense. Thus, the Eighth Amendment prohibits mandatory life sentences for juveniles who commit murder. **Miller v. Alabama**, 567 U.S. 460 (2012) **Miller** is based on the concept that juveniles are less mature and responsible than adults and more vulnerable to negative influence and peer pressure.

In addition, because juveniles are more malleable than adults, criminal activity by juveniles is less indicative of irretrievable depravity than is generally the case with adults. The **Miller** court concluded that the constitution requires a sentencing process which considers an offender's youth and characteristics before a sentence of life imprisonment without the possibility of parole can be imposed.

In Illinois any life sentence imposed on a juvenile, whether mandatory or discretionary, violates the Eighth Amendment unless the trial court considered youth and its attendant characteristics. Thus, an Illinois court may sentence a juvenile defendant to life without parole only if the minor's conduct shows irretrievable depravity, permanent incorrigibility, or irreparable corruption beyond the possibility of rehabilitation.

In making this determination, the trial court must consider: (1) defendant's youth and attendant circumstances including chronological age, any evidence of particular immaturity, impetuosity, and failure to appreciate risks and consequences, (2) defendant's family and home environment, (3) the degree of defendant's participation in the offense and any evidence of familial or peer pressures that may have affected him, (4) defendant's incompetence, including his inability to deal with police officers or prosecutors or his own attorneys, and (5) defendant's prospects for rehabilitation.

Where before **Miller** was decided defendant received a discretionary life sentence without the possibility of parole, whether a **Miller** violation occurred depends on whether the trial court considered evidence of defendant's youth at the original sentencing hearing. Where the trial court stated that it had considered the evidence at trial and the presentence report, it was aware of defendant's age, and it heard some evidence concerning defendant's mental problems and family background, the trial court sufficiently considered defendant's youth-related characteristics to comply with **Miller**.

People v. Hunter & Wilson, 2017 IL 121306 An amendment to the statute changing the requirements for the automatic transfer of juveniles to adult court (705 ILCS 405/5-130), which went into effect after defendant Hunter had been convicted but while his case was pending on direct appeal, was held not to apply retroactively to defendant's case. Section 4 of the Statute on Statutes (5 ILCS 70/4) allows the application of procedural changes in the law to be applied retroactively to ongoing proceedings. It also requires that "the proceedings thereafter" shall conform to the laws in force at the time of the proceedings in question. In defendant's case, the proceedings in the trial court were completed before the transfer statute was amended. Because the proceedings were completed, the amended statute does not apply retroactively to defendant's case.

An amendment allowing a trial court to decline to impose firearm enhancements in sentencing defendants under the age of 18 (730 ILCS 5/5-4.5-105), which went into effect after defendants had been convicted but while their cases were pending on direct appeal, was held not to apply retroactively to defendants' cases. Under section 4 of the Statute on Statutes (5 ILCS 70/4), a punishment mitigated by a new law is applicable only to judgments imposed after the new law takes effect. Since defendants were sentenced before the new law went into effect, the amendment does not apply retroactively to their cases.

People v. Reyes, 2016 IL 119271 Defendant, who was 16 years old at the time of the offense, was tried as an adult and convicted of first degree murder and two counts of attempted murder. The trial court imposed a mandatory minimum sentence of 45 years for first degree murder which included a 25-year mandatory firearm enhancement. The court also sentenced defendant to 26 years for the two attempt murder convictions, both of which included a 20-year mandatory firearm enhancement. All of the sentences were required to run consecutively resulting in a mandatory minimum sentence of 97 years. Defendant was required to serve a minimum of 89 years before he would be eligible for release.

The Illinois Supreme Court held that defendant's sentence was a *de facto* mandatory life sentence that was unconstitutional under **Miller v. Alabama**, 567 U.S. 460, 132 S.Ct. 2455 (2012). A mandatory term-of-years sentence that cannot be served in one lifetime has the same practical effect as an actual mandatory life sentence. In either situation the defendant will die in prison. **Miller** held that a juvenile may not be sentenced to a mandatory unsurvivable prison term unless the court first considers his youth, immaturity, and potential for rehabilitation.

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

The court vacated defendant's sentence and remanded for a new sentencing hearing under the newly enacted sentencing scheme in 730 ILCS 5/5-4.5-105 which requires the sentencing court to take into account specific factors in mitigation when sentencing a juvenile. Additionally, the court has discretion to not impose the firearm enhancements. Without those enhancements defendant's minimum aggregate sentence would be 32 years, a term that is not a *de facto* life sentence.

People v. Davis, 2014 IL 115595 The Eighth Amendment to the United States Constitution prohibits the imposition of cruel and unusual punishments. This prohibition flows from the basic principle that criminal punishment should be graduated and proportioned to the offender and the offense. In applying the Eighth Amendment to juveniles, the United States Supreme Court has recognized three general ways that juveniles differ from adults: (1) they lack maturity and have an underdeveloped sense of responsibility; (2) they are more vulnerable to negative influences and outside pressure; and (3) their character is not as well formed. **Roper v. Simmons**, 543 U.S. 551 (2005); **Graham v. Florida**, 560 U.S. 48 (2010); **Miller v. Alabama**, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012).

In **Miller**, the Supreme Court held that because juveniles "are constitutionally different from adults for purposes of sentencing," it is impermissible to impose a mandatory sentence of natural life imprisonment on juveniles under 18.

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

The Illinois Supreme Court rejected this argument since **Miller** was expressly limited to mandatory life sentences imposed on juveniles. Section 5-8-1(a)(1)(c) by contrast can be validly applied to adults and thus it is not unconstitutional in all of its applications.

The Illinois Supreme Court, however, held that **Miller** applies retroactively to cases on collateral review. While **Miller** does not forbid a sentence of life imprisonment, it does require that every minor receive a sentencing hearing where a sentence other than life imprisonment is an available outcome. **Miller** thus places a particular class of persons (juveniles) beyond the State's power to punish with a particular punishment (mandatory life imprisonment).

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

Illinois Appellate Court

People v. Evans, 2026 IL App (1st) 241368 Defendant was convicted of attempt first degree murder and aggravated criminal sexual assault committed at age 17, and sentenced to an aggregate 90 years in prison. Defendant ultimately filed a post-conviction petition citing **Miller v. Alabama**, 567 U.S. 460 (2012), and **People v. Buffer**, 2019 IL 122327. After dismissal, the appellate ordered defendant resentenced in accordance with changes in juvenile sentencing law. At the 2024 resentencing, the trial court reimposed the same 90-year sentence.

By the time of resentencing, 730 ILCS 5/5-4.5-105(a) required 12 statutory mitigating factors that the court must consider when sentencing juveniles. The statute originally required nine factors, but was amended in 2024, adding three factors (factors 9, 10, and 11) to the previous nine-factor version.

At re-sentencing, the State argued that defendant's parole eligibility left him with no viable claim under **Miller**, and cited the circumstances of the offense, and a poor disciplinary record in prison as reasons to uphold the sentence. Defendant relied on the 12 statutory mitigating factors, noting, in part, his involvement in the child welfare system, past mental health evaluations, his alcoholic and abusive mother, who lost custody of him at age 9, and expressions of remorse.

In re-imposing the 90-year term, the sentencing court stated that it considered the record, all aggravating and mitigating factors, and the fact that defendant maintains a meaningful opportunity for release via parole. However, when reading through the applicable mitigating factors, the court referenced only the original nine. Counsel did not object.

On appeal, defendant argued the sentencing court committed plain error by relying on the prior version of the statute and thereby ignoring three of the 12 factors. The State agreed the court used the wrong version, but argued no plain error occurred because the court "implicitly" considered the missing factors (involvement in the child welfare system, involvement in the community, and outcome of any mental health evaluation).

The appellate court found plain error. While the sentencing court considered upbringing and family background as part of the third factor, factor nine concerns involvement in the child welfare system specifically, a distinct environment outside the family context. Folding this factor into another factor would render the new language superfluous. This constituted a material omission here, where defendant's sentencing memo discussed his involvement in the child welfare system. The sentencing court's omissions also violated section 5-4.5-105(b)'s requirement that the court "specify on the record its consideration of the factors under subsection (a)."

Additionally, the court misapplied several factors it did address. First, it equated planning and a lack of a psychiatric condition with lack of impetuosity and maturity. But "impetuosity" and "maturity" in juvenile sentencing refer to juveniles' tendency to prioritize short-term rewards over longer-term risks, and the fact that adolescent brains are not yet fully mature. The absence of a formal diagnosis did not relieve the court of its obligation to evaluate evidence bearing on defendant's developmental maturity and decision-making capacity. Moreover, planning is addressed separately under factor six, establishing that impetuosity is a distinct consideration.

The sentencing court also focused on defendant's disciplinary infractions from his early years in custody without explaining how it evaluated his subsequent two decades of progress, including obtaining his GED, taking college courses, positive response to therapy, and working his way from kitchen staff to lawn care. These facts went toward factor ten on communal involvement and factor four on rehabilitation, a key component of **Miller's** central holding that children who commit even heinous crimes are capable of change.

The cumulative effect of these errors rendered the hearing an unreliable method for evaluating mitigating and aggravating evidence. By focusing on defendant's eligibility for parole rather than a comprehensive and accurate review of the statutory factors, the entire framing of the hearing was unreliable. While the supreme court has narrowed circumstances to which **Miller** applies, the Illinois legislature incorporated them in section 5-4.5-105(a) without regard to the availability of parole. Thus, the errors affected the framework of the resentencing hearing under the second prong of the plain error analysis. The appellate court reversed and remanded for new sentencing hearing.

People v. Bell, 2025 IL App (4th) 240929 The 16 year-old defendant drove a vehicle occupied by four other minors 80 mph in a 30 mph zone and crashed the car. A 16 year-old girl died in the crash. Defendant had a BAL of .141. He entered into an open guilty plea to aggravated DUI and reckless homicide and received the maximum 14-year prison sentence. However, while defense counsel raised several arguments in mitigation, counsel did not argue the youth-based sentencing factors required by 730 ILCS 5/5-4.5-105(a). Defendant argued counsel was ineffective in a motion to reconsider sentence, but the sentencing court denied the motion. The appellate court reversed and remanded.

The failure to raise youth-based sentencing factors during the sentencing hearing rendered counsel's performance ineffective. One youth-based factor is the existence of peer pressure. Here, the State had introduced a video of the event, during which defendant's passengers could be heard yelling "I don't want to die" and "value your life" in the seconds before the crash. The sentencing court placed heavy emphasis on this fact. But, in an affidavit introduced along with the motion to reconsider, one of the occupants of the vehicle averred that this video was taken out of context and that in fact the witness and the victim were encouraging defendant to speed up so as to "catch air."

Defense counsel's explanation of his strategy – he didn't want to shift blame to the victim – did not persuade the appellate court. Omitting to mention peer pressure and other factors of youth rendered counsel ineffective. Notably, defense counsel never mentioned any of the youth-based factors, and at one point stated that all drivers, "whether 16 or 61" have the same level of responsibility, which directly undermines the statute's intent to ensure courts recognize the diminished culpability of youthful offenders. Defense counsel's strategy also prevented him from objecting to several of the victim impact statements from non-representatives, unauthorized by law, further demonstrating its unreasonableness.

The appellate court remanded the matter for a sentencing hearing before a new judge. The judge below denied the motion despite the fact that the new context completely changed the import of the video, which was a major factor in the maximum sentence (the judge stated the video "chilled [him] to the bone" and "bothered the heck out [him]."). The judge also claimed on the order denying the motion that it had in fact considered the youth-based sentencing factors, yet during the hearing, the judge explicitly stated that it was finding only one factor in mitigation – defendant's lack of a prior record. This cast doubt on the judge' ability to fairly sentence defendant on remand.

People v. Woodson, 2024 IL App (1st) 221172 The circuit court abused its discretion by failing to adequately consider defendant's youth and rehabilitative potential at sentencing. The appellate court remedied this error by reducing defendant's sentence.

In a previous post-conviction petition, defendant contended that his aggregate 60-year sentence, imposed in 2003 for a murder and carjacking committed at age 17, was unconstitutional. The appellate court remanded for resentencing in compliance with **People v. Buffer**, 2019 IL 122327, and 730 ILCS 5/5-4.5-105. At the resentencing hearing, defendant presented mitigating evidence showing that he was developmentally disabled, had an IQ of 74, suffered blunt force trauma to the head at age 5, had been abusing marijuana since age 11, and came from a broken family. The defense presented expert testimony suggesting his criminality was a function of his youth and cognitive impairments, and that he was unlikely to re-offend. Three IDOC employees, including its former director, testified that defendant was essentially the hardest-working and most trustworthy inmate they had ever encountered. They detailed the numerous educational and employment achievements he obtained in his 16 years in prison, including barber certification and his status as the "number one barber" in his institution, and his unusually low number of "tickets." The former director concluded that he checked every box for rehabilitation. Three witnesses testified that they could find jobs for defendant upon release, and defendant spoke in allocution to express his remorse for committing the offense.

The circuit court imposed a 40-year term (30 for murder and 10 for carjacking), the maximum under **Buffer**. In response to the mitigating testimony from IDOC employees, the court noted it was giving defendant only a "half mark" because his good behavior and hard work "could just be a way to release [him from] boredom." When considering the statutory required factors of defendant's age, potential for rehabilitation, impetuosity, level of maturity, family history, and prior criminal activity, the court found none of the factors were significantly mitigating. The court reasoned that defendant was almost 18 and the conduct was not impetuous because defendant and his friends had mentioned they wanted to steal a car before leaving the house.

The appellate court majority reduced defendant's sentence to 25 years for murder and 5 for vehicular hijacking. The court found that the circuit court's sentence failed to give adequate weight to **Miller** and the factors required under section 5-4.5-105, which are necessary to ensure juvenile sentences reflect these defendants' diminished culpability and heightened capacity for change. Instead, the sentencing court "deliberately and unreasonably discounted" the significant evidence of defendant's diminished capacity and rehabilitation, stating that none of this evidence "mitigates a murder." This comment, and others made by the sentencing court which emphasized the seriousness of the offense and the need for retribution, ignored the decreased penological justification for the harshest sentences, even for the most serious crimes, when the offender is a juvenile.

A dissent would have found no abuse of discretion given that defendant originally faced a maximum of 95 years, and the sentencing court showed its adequate consideration of defendant's youth and rehabilitative potential by removing the firearm enhancement and reducing defendant's sentence to 40 years. The record demonstrated that the sentencing court considered all of the factors, and that the majority's only quarrel with the sentencing court was with the way those factors were weighed, which is not the role of the reviewing court. The dissent also would have found the 40-year sentence justified by the defense's "imprudent strategy" of attempting to minimize or excuse defendant's role in the offense – blaming his friend, calling defendant a "scapegoat," and describing the shooting as an accident – rather than taking full responsibility. Finally, the dissent criticized the majority's use of Supreme Court Rule 615(b)(4)'s resentencing power, which it felt should be used more sparingly and not in cases where the appellate court is merely re-weighing the factors considered by the sentencing court.

People v. Morris, 2023 IL App (1st) 220035 Defendant was sentenced to an aggregate 100-year sentence for a murder and an attempt murder committed at age 16. In its prior opinion, the court remanded for a new sentencing hearing, finding that, while the sentencing court commented on defendant's youth and upbringing, those observations were not the same as a full consideration of the special characteristics of youth identified by **Miller**.

On remand, the sentencing court imposed the same 100-year sentence, and the appellate court again found error. The hearing took place after the legislature's 2019 amendments to juvenile sentencing law, including the codification of the **Miller** factors. 730 ILCS 5/5-4.5-105(a). The appellate court held that the sentencing court failed to adequately comply with section 5-4.5-105(a).

Before the sentencing hearing began, and throughout the hearing, the judge seemed preoccupied with determining whether or not it could re-impose the 100-year sentence without running afoul of the law. To that end, the judge considered the factors of 5-4.5-105(a) not as tools to help him fashion an appropriate sentence, but rather as, in his words, "certain issues you have to deal with in order to make a life sentence work." Thus, although the judge went through each factor at the hearing, he clearly did so without serious thought, as his comments about each factor were either perfunctory, dismissive, or both. For example, when considering defendant's maturity, the only fact the court mentioned was defendant's attempt to silence witnesses from jail, which he found to be a mature act. When considering age, the sentencing court merely said, "Age, yeah, 16." He similarly brushed aside serious childhood trauma such as sexual abuse and substance abuse in a single sentence, noting that they were self-reported allegations.

A new judge was required to sentence defendant for a third time, as the judge here employed a results-driven approach and showed an inability to "adhere to the legislature's directives regarding the sentencing of youthful offenders, while remaining open to all possible sentences."

People v. Merriweather, 2022 IL App (4th) 210498 Defendant was originally sentenced to 70 years of imprisonment for a murder committed when he was 17 years old. He was awarded resentencing in light of **Miller** and **Buffer**, and a 35-year sentence was imposed. On appeal, defendant argued that the trial court erred in its application of six of the sentencing factors set forth in 730 ILCS 5/5-4.5-105(a). The appellate court disagreed and upheld defendant's sentence.

The sentencing judge addressed all nine of the factors set forth in Section 5-4.5-105 at resentencing and did not err in referring to three of those factors as "aggravating." While the statute does not describe the factors in terms of aggravation, nothing precludes a court from considering them as such. The court properly considered defendant's youth and its attendant characteristics, noted that defendant had shown rehabilitative potential during the years since the offense, and declined to impose the firearm enhancement. Defendant's 35-year sentence was not an abuse of discretion.

People v. Bruce, 2022 IL App (1st) 210811 The sentencing court abused its discretion when, on a remand for resentencing pursuant to **Miller v. Alabama**, it rejected the parties' agreement to a reduction from natural life to 23 years' imprisonment, and instead imposed a 28-year term.

Defendant was convicted for a double-murder committed at age 16. He was found guilty on a theory of accountability, having pushed the gunman to the scene in a wheelchair at the behest of a 25-year-old. Defendant left the scene prior to any shooting. He had significant cognitive impairments, including a 76 IQ. At the resentencing hearing, the defense presented substantial evidence of mitigation and rehabilitation, including the fact that defendant had become a model inmate.

Although a dissent would have affirmed because defendant took part in a murder that had been planned days in advance, the majority did not view the offense as fully thought out. The 25-year-old made a single comment about killing one of the victims, and defendant's role wasn't conceived until the moment he was ordered to push the wheelchair. Defendant never touched the weapon and wasn't there for the shooting, two facts the resentencing judge failed to consider. The trial court also abused its discretion when it refused to consider defendant's explicit apology as evidence of remorse.

When reviewing a trial court's rejection of a plea agreement, the question is not what the trial court would have done were it the prosecuting attorney, but whether the decision of the prosecuting attorney is such a departure from sound prosecutorial principle as to make it an abuse of prosecutorial discretion. The 23-year sentence in this case was not an abuse of prosecutorial discretion where it was supported by defendant's limited role in the offense and the substantial mitigating evidence presented at resentencing.

People v. Watson, 2022 IL App (1st) 192182 Defendant, who was 17 years old at the time of his offense, filed a post-conviction petition arguing that truth in sentencing was unconstitutional as applied to juvenile offenders like him and that, accordingly, his 32-year sentence for first degree murder violated the proportionate penalties clause of the Illinois constitution. The circuit court summarily dismissed defendant's petition, and the Appellate Court affirmed.

The Appellate Court first found that defendant had waived his claim by entering a negotiated plea of guilty, relying on **People v. Jones**, 2021 IL 126432. Additionally, the court held that the truth in sentencing requirement that defendant serve 100% of his sentence for murder did not violate the eighth amendment or **Miller v. Alabama**, 567 U.S. 460 (2012). Defendant's 32-year sentence, even if served at 100%, is not a life sentence under any constitutional measure. Requiring a juvenile offender to serve the full term of a non-life sentence for murder does not violate **Miller**. The court also noted that defendant's reliance on the now-vacated truth-in-sentencing portion of the decision in **People v. Othman**, 2019 IL App (1st) 150823, was misplaced. The reasoning in **Othman** was, at best, *dicta*, even before it was vacated.

People v. Robinson, 2021 IL App (1st) 181653 Defendant pled guilty to murder and attempt murder, committed at age 17, and received concurrent sentences of 35 and 30 years. The defendant's post-conviction petition stated the gist of a claim that his guilty plea was secured by the threat of a now unconstitutional *de facto* life sentence. As in **People v. Parker**, 2019 IL App (5th) 150192, the Appellate Court held that the defendant's belief that he faced a 60-year maximum, rather than a potential 40-year maximum, rendered his plea involuntary.

The Appellate Court rejected the State's argument that defendant's fully negotiated plea foreclosed his claim. Defendant's rights under the eighth amendment in this context were not known at the time he pled guilty; therefore, he could not have voluntarily relinquished them. The court also rejected the State's argument that defendant lacked a claim because he did not receive a *de facto* life sentence, as the key question is not whether he received a life sentence, but whether his decision to accept the plea was involuntary due to the threat of a potential *de facto* life sentence.

People v. Robinson, 2021 IL App (1st) 192289 Defendant's mandatory life sentence for a second aggravated criminal sexual assault, imposed when he was 24 years old, was not unconstitutional despite his mental illnesses. Defendant alleged that his sentence, as applied to a young offender with mental illness, violated the Eighth Amendment and the proportionate penalties clause.

The Appellate Court found only the proportionate penalties claim viable, as the Eighth Amendment as interpreted by **Miller** and its progeny does not apply to defendants older than 17. The Appellate Court further found that defendant presented adequate documentation of his background, including DCFS records, mental illness treatment records, and family history, to warrant review of his as-applied challenge.

The Appellate Court affirmed the sentence, however, relying on **People v. Coty**. 2020 IL 123972. As in **Coty**, where the court affirmed a life sentence imposed on a defendant with severe intellectual disabilities, the Appellate Court here found defendant's mental illness is not inherently mitigating. Given the nature of the crimes, where defendant deceived and lured women to abandoned locations in order to sexually assault them, a sentencing court could reasonably conclude that the risk of future dangerousness outweighs any lessened culpability. Although defendant sought to distinguish **Coty** by pointing out that mental illness, unlike intellectual disability, is treatable, making defendant's prospects for rehabilitation greater than in **Coty**, the record failed to show that he was capable of being treated. The Appellate Court noted that after defendant's first sexual assault, he did not use his time in prison to treat his mental illness or his predilection for violent sexual behavior, but rather received 50 citations for various offenses, including violent altercations.

Regardless, despite the mandatory nature of the sentence, the trial court adequately considered the relevant factors regarding defendant's upbringing, mental illnesses, culpability, future dangerousness, and rehabilitative potential before imposing the sentence.

People v. Johnson, 2021 IL App (3d) 180357 Defendant pled guilty to one count of first degree murder and one count of second degree murder and received an aggregate sentence of 110 years in prison. He was 16 years old at the time of the offenses.

The circuit court erred in denying defendant leave to file his successive post-conviction petition where he set forth a meritorious **Miller** claim. The claim was not waived by the plea. **Miller** set forth a new substantive rule that applies retroactively, and defendant could not have voluntarily relinquished a right that was not available to him at the time that he pled guilty. Because he received a *de facto* life sentence without a finding of permanent incorrigibility or irretrievable corruption, he was entitled to a new sentencing hearing.

People v. Vatamaniuc, 2021 IL App (2d) 180379 The Appellate Court vacated defendant's 54-year sentence for first degree murder and remanded for resentencing because the trial judge never determined that this defendant was beyond the possibility of rehabilitation before imposing that *de facto* life term. While the court did mention the **Miller** factors, "it provided little explanation as to how it applied them to defendant's particular circumstances." The court also noted that on remand the sentencing judge should be aware that the firearm enhancement is discretionary, not mandatory, under 730 ILCS 5/5-4.5-105.

People v. McKinley, 2020 IL App (1st) 191907 Defendant's 39-year sentence for murder, imposed on remand for resentencing in accordance with **Miller**, was an abuse of discretion because the judge gave little regard to defendant's significant rehabilitation. Defendant had obtained his GED, had completed various educational courses, and was on track to earn his bachelor's degree from Northwestern through the school's Prison Education Program. Defendant had been a model inmate and had shown remorse. While the judge stated generally that defendant had rehabilitative potential, he disregarded the extent of defendant's rehabilitation and did not afford it adequate weight. The judge also rejected evidence of peer pressure, gave improper weight to the need to deter future criminal conduct, and erred in concluding that the fact that defendant used a gun in the offense "made him older" than his actual age (which was 16 at the time of the offense).

The Appellate Court concluded that "defendant is the epitome of an offender who has been restored to useful citizenship." While defendant's sentence was constitutional under **Buffer**, it was still an abuse of discretion. The Appellate Court invoked its authority under Supreme Court Rule 615(b)(4) and resentenced defendant to 25 years.

People v. Royer, 2020 IL App (3d) 170794 Defendant received a 60-year sentence for a murder committed at age 16. Defendant filed a post-conviction petition alleging his sentence violated the eighth amendment. The circuit court dismissed, but the Appellate Court majority reversed, finding the sentencing court failed to comply with **Miller** before imposing a *de facto* life sentence.

Before sentencing a juvenile to a life sentence, a sentencing court must not only consider the factors outlined in **People v. Holman**, 2017 IL 120655, it must consider them *as mitigation.* Here, the sentencing court did consider age and immaturity as mitigating factors. But it appeared to consider defendant's traumatic childhood as an aggravating factor, noting that it contributed to his anger and violence. While the State argued that the court did not explicitly consider this factor as aggravating, any ambiguity must be resolved in favor of defendant because "merely having evidence of the **Miller** factors before the court is not enough to show that the court considered it in mitigation."

People v. Wyma, 2020 IL App (1st) 170786 Sentencing hearing for 17-year-old murder defendant complied with **Miller** where the trial court engaged in an "exhaustive review" of defendant's youth and its attendant circumstances, statutory factors applicable to juveniles, and voluminous mitigation evidence presented by the defense. The trial court's finding that defendant's conduct showed irretrievable depravity and permanent incorrigibility was not an abuse of discretion, and defendant's natural life sentence was upheld.

In a special concurrence, one justice expressed support for a change to juvenile sentencing laws in Illinois to preclude a life without parole sentence for a minor under any circumstances. That justice concurred in upholding defendant's life sentence, however, based on binding precedent.

People v. Walls, 2020 IL App (2d) 130761-B The Appellate Court vacated a 43-year sentence imposed on a 16-year-old for first-degree murder. While the sentencing court considered defendant's youth and reviewed the PSI, which contained evidence pertinent to the **Miller** analysis, it also made comments suggesting that it believed defendant had rehabilitative potential. The court implied that it believed defendant may not have had an intent to kill and acted at the behest of adult co-defendants, noted defendant's educational progress in prison, and referred to defendant's friends and family as an important support group for rehabilitation. The court never indicated that it found defendant irreparably corrupt or otherwise beyond rehabilitation. Thus a *de facto* life sentence was not appropriate and the case was remanded for resentencing.

People v. Mahomes, 2020 IL App (1st) 170895 Defendant received a 44-year aggregate sentence for crimes committed at age 17: 30 years for murder consecutive to 14 years for two aggravated batteries The sentencing court mentioned defendant's youth and declined the firearm enhancements, stating that it wanted to avoid imposing a life sentence. The Appellate Court remanded for a new sentencing hearing. While the State argued that the court properly considered the **Miller** factors, the Appellate Court held that the sentencing court did not find defendant beyond rehabilitation, as evidenced by its desire to avoid a life sentence. Although the court thought it had not imposed a life sentence, **Buffer** later held otherwise when it defined a life sentence as anything over 40 years.

People v. Johnson, 2020 IL App (3d) 130543-B Defendant received an 80-year sentence for a murder he committed at age 17. The sentencing court never mentioned youth or its attendant circumstances in announcing its sentence. Instead, the court stated that it was "hard pressed to find any" mitigation. Nor did it indicate that defendant lacked rehabilitative potential. The Appellate Court held that the trial court's imposition of a *de facto* life sentence without first considering the juvenile's youth in mitigation violated the Eighth Amendment. It remanded for a new sentencing hearing pursuant to **Miller.**

People v. Perez, 2020 IL App (1st) 153629-B On remand from the Supreme Court in light of **Buffer,** the Appellate Court found defendant's 53-year sentence for a murder committed at age 17 violated **Miller.** The majority concluded a new sentencing hearing was required because the sentencing court did not sufficiently discuss the defendant's youth as mitigation, any familial or peer pressure, defendant's ability to cooperate with counsel, or find the defendant permanently incorrigible.

The dissenting justice would have found the sentencing court complied with **Miller** because he was represented by a zealous attorney who would have brought the omitted factors to the court's attention if they had been mitigating. The dissent also believed an explicit finding of permanent incorrigibility is not required.

People v. Johnson, 2020 IL App (2d) 170646 The circuit court properly denied defendant's motion for leave to file successive post-conviction petition. While the petition raised both a **Miller** challenge and a proportionate penalties challenge to his 27-year sentence for first degree murder, on appeal defendant argued that the truth-in-sentencing statute – requiring him to serve 100% of his sentence – was unconstitutional on its face and as applied to him.

The Appellate Court rejected the State's argument that defendant's truth-in-sentencing claim was both waived and forfeited. A sentence which violates the constitution can be challenged at any time, and defendant's claim on appeal was that his sentence was unconstitutional based on the reasoning in **Miller**. The court also concluded that the record here was sufficient to review defendant's as-applied challenge even though such challenges generally should be presented in the trial court first.

Ultimately, though, the Appellate Court rejected defendant's claim on the merits. Defendant's 27-year sentence did not bring him under the protections of **Miller** because it was not a *de facto* life term. Further, the record established that the sentencing judge considered defendant's youth and its attendant characteristics, as well as the fact that he was an accomplice and not the principal offender. Finally, the court noted that **People v. Othman**, 2019 IL App (1st) 150823, on which defendant's truth-in-sentencing challenge was based, had since been vacated.

People v. Murphy, 2019 IL App (4th) 170646 Following his convictions for murder and attempt murder, the 16-year-old defendant received consecutive sentences of 40 and 15 years' imprisonment. Although the sentencing court stated that it considered defendant's youth and other factors consistent with **Miller** and **Holman**, it also noted that defendant had some rehabilitative potential. By finding that defendant possessed some rehabilitative potential, the court could not have found defendant permanently incorrigible and eligible for a *de facto* natural life sentence. The case was remanded for a sentence shorter than 40 years, consistent with **Buffer**.

People v. Parker, 2019 IL App (5th) 150192 The trial court erred in denying defendant leave to file a successive petition alleging a **Miller** violation. Defendant pled guilty to first-degree murder, based on accountability, committed at age 16, after the State agreed to a 50-year sentencing cap. Defendant was admonished that the crime carried a sentence up to natural life. He agreed to the cap, pled guilty and received 35 years. In his successive petition, he alleged he received a *de facto* natural life sentence in violation of **Miller**. The circuit court denied leave to file, finding the sentence was not *de facto* life, and that the sentencing court did consider defendant's age in mitigation.

On appeal, defendant conceded that in light of **Buffer**, his sentence is not a *de facto* life sentence. But he argued that his plea was not voluntary where he was not adequately informed of his eligibility for a life sentence or the 50-year cap, neither of which were available absent a finding of incorrigibility. The Appellate Court held that defendant established cause, as his initial petition was filed before **Miller.** It also found prejudice, because **Buffer** would have established that the State's cap represented a *de facto* life sentence, and defendant could not have knowingly agreed to this plea without understanding that neither the maximum nor the sentencing cap would be available absent a finding of incorrigibility.

People v. Stafford, 2018 IL App (4th) 140309-B On remand in light of **People v. Holman**, 2017 IL 120655, the Appellate Court affirmed the 17-year-old defendant's life sentence. As in **Holman**, the sentencing court considered factors in aggravation, mitigation, the PSI, and the defendant's youth, including its belief that juveniles generally deserve a chance to learn from their mistakes, before imposing the discretionary life sentence. The sentencing court's reasoning sufficiently conveyed its belief that defendant fell into the rare class of juveniles who were beyond rehabilitation.

People v. Croft, 2018 IL App (1st) 150043 Defendant's Eighth Amendment challenge to his discretionary life sentence was not barred by *res judicata* because the law had changed since his previous challenge. In a prior PC, the Appellate Court rejected his challenge partly on the ground that his sentence was discretionary. Since then, the Illinois Supreme Court, in **Holman**, 2017 IL 120655, extended the rule of **Miller** to discretionary life sentences and offered further guidance on how to comply with **Miller**.

Nevertheless the Appellate Court concluded that defendant's sentencing hearing complied with **Miller** where the circuit court adequately considered evidence of defendant's youth and attendant characteristics. The court heard evidence as to each of the factors outlined in **Miller** and **Holman**, and concluded that the defendant could not show that his criminal conduct was the product of immaturity and not incorrigibility. The sentencing court knew defendant was 17 at the time of the offense, and none of his witnesses in mitigation testified that he was immature or impetuous. He held jobs and had no criminal history. The court considered the witnesses who testified to his prospects for rehabilitation and knew that the defendant was convicted as an accomplice. Because the court considered the evidence, the Appellate Court was not free to substitute its judgment merely because a different court might have reached a different conclusion about the necessity of a life sentence.

People v. Lusby, 2018 IL App (3d) 150189 Defendant should have been allowed to file a successive post-conviction petition based on **Miller v. Alabama** where he was 16 years old at the time he committed the offenses of first degree murder, home invasion, and aggravated criminal sexual assault in 1996 and was sentenced to a total of 130 years of imprisonment. Defendant established cause for not raising the issue in a prior post-conviction petition because **Miller** had not been decided at that time. While defendant had argued in a motion to reconsider sentence and on direct appeal, that the trial court failed to properly consider his age and rehabilitative potential, the **Miller** argument was not barred by *res judicata* because the specific argument had not been available. Defendant established prejudice because, while the trial court mentioned defendant's age, it did so in a general statement about youth but did not specifically consider defendant's immaturity and family background. Accordingly, defendant's sentence violated the eighth amendment, and a new sentencing hearing is required without the need for further post-conviction proceedings.

People v. Johnson, 2018 IL App (1st) 153266 Regardless of whether a discretionary 40-year sentence on a 15 year-old defendant triggers the protections of **Miller,** defendant's sentencing hearing complied with **Miller** where the circuit court adequately considered evidence of defendant's youth and attendant characteristics. The court heard evidence as to each of the factors outlined in **Miller** and **Holman**, 2017 IL 120655, and concluded that the defendant could not show that his criminal conduct was the product of immaturity and not incorrigibility.

People v. Coty, 2018 IL App (1st) 162383 In a prior appeal, the Appellate Court held that a mandatory natural life sentence for predatory criminal sexual assault ("CSA") violated the proportionate penalties clause as applied to defendant because of his intellectual disability. On remand, the sentencing court imposed a *de facto* life sentence (52 years on a 50 year-old). The defendant appealed, again alleging his sentence violated the proportionate penalties clause.

The **Miller** analysis must apply to adults with intellectual disabilities via **Atkins v. Virginia**, 536 U.S. 304 (2002). Under our community's evolving standards of decency, a *de facto* life sentence imposed on an intellectually disabled adult, without the procedural safeguards of **Miller**, violates the Illinois proportionate penalties clause.

Here, the trial court did not take into consideration the characteristics accompanying an intellectual disability so as to show irretrievable depravity or permanent incorrigibility. The PSI did not mention his disability, and trial counsel failed to have defendant evaluated so as to enlighten the court as to the characteristics of the disability with regard to the relevant factors, including diminished capacity (1) to understand and process information, (2) to communicate, (3) to abstract from mistakes and learn from experience, (4) to engage in logical reasoning, (5) to control impulses, and (6) to understand others' actions and reactions, so as to be more susceptible to manipulation and pressure. The Appellate Court vacated the sentence and remanded for a new sentencing hearing at which the sentencing court should determine whether the disability diminishes both defendant's culpability and the need for retribution.

People v. Walker, 2018 IL App (3d) 140723-B Defendant's 2013 post-conviction petition, attacking his 1984 life sentence under **Miller**, was untimely. Defendant, 17 at the time of the offense, and given a discretionary life sentence without parole, could have made his arguments as early as 2005, when the USSC issued its decision in **Roper**, wherein the court recognized the greater rehabilitative potential of juveniles under 18.

Even if it were not untimely, defendant's claim lack merit under **Miller** because defendant received a discretionary life sentence and the record showed that when choosing to impose a life sentence, the sentencing court "was aware" of defendant's age. The Appellate Court found support in **People v. Holman**, 2017 IL 120655, which upheld a discretionary life sentence because the sentencing court adequately considered age, maturity, family and home environment, degree of participation in the offense, peer pressure, incompetence, and rehabilitative potential. The Appellate Court here found adequate consideration of these factors because the court knew defendant's age, defense counsel described defendant as a "creature of the streets," and the PSI mentioned prior family counseling "for a variety of family social, sexual, and educational problems."

People v. Generally, 2017 IL App (5th) 140489 Defendant, who was 17 years old at the time he committed murder, sought leave to file a successive post-conviction petition arguing that his discretionary natural life sentence violated **Miller v. Alabama**, 567 U.S. 460 (2012). The trial court denied leave to file, and the Appellate Court affirmed.

In **People v. Holman**, 2017 IL 120655, the Illinois Supreme Court held that a discretionary natural life sentence imposed on a juvenile defendant is not unconstitutional as long as the original sentencing judge considered youth and its attendant characteristics in imposing the sentence. Relevant to the reviewing court's consideration is the evidence of defendant's youth and attendant characteristics that was before the trial court at the time of sentencing. Here, the sentencing judge specifically noted the brutal nature of the offense and defendant's history of violent acts. That judge also recognized defendant's difficult upbringing, prior psychiatric treatment, and his young age. Defendant's natural life sentence did not violate **Miller**.

Likewise, because the record showed that the sentencing judge gave extensive consideration to the seriousness of the offense and the defendant's rehabilitative potential, the natural life sentencing statute was not unconstitutional as applied.

People v. Edwards, 2017 IL App (3d) 130190–B Defendant, who was 17 years old at the time of the offense, was convicted of first degree murder and attempt murder. Because of firearm add-ons, the minimum sentences applicable in this case were 45 years for murder and 31 years for attempt murder, and since the sentences were required to be served consecutively, the total mandatory minimum was 76 years. The court sentenced defendant to consecutive terms of 50 years for murder and 40 years for attempt murder, for a total of 90 years.

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

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

(On reconsideration of this issue in response to a supervisory order from the Illinois Supreme Court (ordering the Appellate Court to reconsider its holding in light of **Reyes,** 2016 IL 119271, which held that a minor could not receive a statutorily-mandated *de facto* life sentence), the Appellate Court once again affirmed defendant's sentence. The critical distinction between this case and **Reyes** was that **Reyes** was sentenced to the statute-mandated minimum sentence of 97 years. Here, by contrast, defendant was challenging a sentence he never received.)

People v. Nieto, 2016 IL App (1st) 121604 Under the Post-Conviction Hearing Act, any claim not raised in the original or amended post-conviction petition is waived. This rule is more than a suggestion and reviewing courts generally may not overlook forfeiture caused by defendant's failure to raise the issue in his petition.

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

The Appellate Court affirmed defendant's conviction and sentence on direct appeal, specifically holding that his sentence was not excessive. Defendant filed a post-conviction petition raising several claims, but did not argue that his sentence was unconstitutional. After the trial court dismissed his petition at the first stage, the United States Supreme Court held in **Miller v. Alabama**, 567 U.S. 460 (2012) that the Eighth Amendment prohibited mandatory sentences of life imprisonment for juveniles.

On appeal from the denial of his post-conviction petition, defendant argued for the first time that his sentence was unconstitutional under **Miller**. The Appellate Court examined several cases that followed **Miller** and determined that it could reach defendant's claim. In **People v. Davis**, 2014 IL 115595, the Illinois Supreme Court held that the sentencing statute mandating life sentences was not facially unconstitutional since it could be validly applied to adults. In **People v. Thompson**, 2015 IL 118151, the court held that a judgment based on facially unconstitutional statute is void and may be attacked at any time. The same was not true for an as-applied challenge.

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

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

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

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

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

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

People v. Sanders, 2016 IL App (1st) 121732-B A jury convicted defendant, who was 17 at the time of the offense, of murder and two counts of attempt murder. The trial court sentenced defendant to consecutive terms of 40 years for murder and 30 years for each count of attempt murder, for a total of 100 years imprisonment. In sentencing defendant, the court stated that it could sentence him to natural life, "but because of your young age" and potential for rehabilitation "I am not going to do that." But the court stated that it would impose a sufficiently long sentence so that society would not need to worry about defendant committing similar crimes in the future.

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

The Appellate Court held that the trial court violated the Eighth Amendment by imposing a *de facto* life sentence without considering the special circumstances of defendant's youth. And the Supreme Court decisions in **Graham** and **Miller v. Alabama**, 567 U.S. 460 (2012), substantially changed the law concerning juvenile sentencing thus providing cause and prejudice for filing a successive petition.

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

People v. Baker, 2015 IL App (5th) 110492 The court accepted the State's concession that under **Miller v. Alabama**, 567 U.S. 460, 132 S.Ct. 2455 (2012), the Eighth Amendment was violated by the imposition of mandatory natural life sentences for offenses which defendant committed when he was 15 years old. In remanding for resentencing, the court noted that **Miller** does not foreclose the possibility of life without parole for a juvenile who is convicted of murder provided that the sentencing court has discretion to impose a different penalty and takes into consideration the offender's youth and personal characteristics before imposing sentence.

People v. Pacheco, 2013 IL App (4th) 110409 In **Roper v. Simmons**, 543 U.S. 551 (2005), the Supreme Court held that the Eighth Amendment bars capital punishment for juvenile offenders. In **Graham v. Florida**, 560 U.S. 48 (2010), the court held that a life sentence without the possibility of parole violates the Eighth Amendment when imposed on juvenile offenders for crimes other than homicide. In **Miller v. Alabama**, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), the court concluded that the Eighth Amendment prohibits a sentencing scheme which mandates a life sentence without the possibility of parole for juvenile offenders, even those convicted of homicide.

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

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

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

People v. Chambers, 2013 IL App (1st) 100575 The court rejected defendant's argument that on appeal from denial of post-conviction relief, he could argue for the first time that a mandatory life sentence for a person who was a minor at the time of the offense violates **Miller v. Alabama**, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012). In **Miller**, the Supreme Court held that the Eighth Amendment is violated by mandatory life sentences without parole for persons who were under the age of 18 at the time of their crimes. **Miller** did not prohibit sentencing juveniles to life imprisonment without parole, but held that the mandatory imposition of such a sentence violates the Constitution.

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

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

§33-6(g)(2)
De Facto Life Sentences

Illinois Supreme Court

People v. Dorsey, 2021 IL 123010 Defendant was sentenced to an aggregate term of 76 years in prison for a murder and two attempted murders committed at age 14. The sentence was eligible for day-for-day good conduct credit. Defendant filed a successive post-conviction petition, alleging that his sentence violated **Miller v. Alabama**, 567 U.S. 460 (2012). The Appellate Court affirmed the denial of leave to file, finding that defendant's eligibility for day-for-day sentencing credit meant that he did not receive a *de facto* life sentence.

A six member majority of the Supreme Court affirmed. The majority first held that defendant established cause where he could not have raised his claim earlier. Defendant's direct appeal was decided in 2000, and he filed his initial PC in 2005. The instant successive petition was filed in 2014. The appellate court correctly found that the "cause" prong was established where **Miller** set forth a new substantive rule in 2012 and was not available to defendant in his first petition.

The Supreme Court further held, however, that defendant could not establish prejudice because the day-for-day sentencing scheme meant that defendant did not receive a *de facto* life sentence. **Miller** precludes a life sentence for most juveniles without "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." The day-for-day sentencing scheme gives juveniles that meaningful opportunity. It is guaranteed by statute as long as the defendant complies with good conduct rules. By complying with those rules, defendants can earn an opportunity for early release.

Although defendant argued that the loss of good conduct credit for minor violations of prison rules did not mean a juvenile was not mature or rehabilitated, the Supreme Court disagreed. It is in a defendant's power to shorten his sentence by earning good-conduct credit, and earning such credit allows a defendant the opportunity to exhibit maturity and rehabilitation. And while a juvenile may be stripped of good conduct credit without the approval of courts, the court found no distinction between this scheme and a discretionary parole system, which was explicitly endorsed by **Miller.** The Supreme Court found that several regulations ensured that good conduct credit would not be lost without due process, making the system even more favorable to defendants than parole.

The majority further held that even if it accepted defendant's argument regarding day-for-day credit, his claim would fail in light of the Supreme Court's decision in **Jones v. Mississippi**, 593 U.S. ___, (2021). Under **Jones**, a judge who imposes a discretionary life sentence does not need to make an explicit finding of incorrigibility. As long as the judge had the discretion to consider youth and its attendant circumstances, a life sentence was permissible. Here, defendant's mandatory minimum was 32 years, and the sentencing court had the discretion to consider defendant's youth before it chose to impose the 76-year term.

Finally, the majority refused to reach defendant's argument that his sentence violated the proportionate penalties clause of the Illinois Constitution, finding the claim forfeited and barred by *res judicata*. Defendant did not raise the proportionate penalties argument in his petition for leave to file a successive post-conviction petition or in the petition itself, nor did he raise it in his petition for leave to appeal. Although defendant argued he preserved the claim by raising it in the Appellate Court, the Supreme Court found a mere reference to the proportionate penalties clause, without further argument, was insufficient. And because defendant raised a proportionate penalties argument in his direct appeal, the claim was barred by *res judicata* despite the evolution of the law in subsequent years. **Miller**'s unavailability prior to 2012 at best deprived defendant of "some helpful support" for his state constitutional law claim, which is insufficient to establish "cause."

The dissent would have found the issue of good-conduct credit a factual question inappropriately resolved at the pleading stage. It further would have adhered to precedents that held sentencing credit controlled by prisons is not a part of the sentence. The dissent pointed out that the range of infractions – including "unauthorized movement," "business ventures," and "dangerous written materials" – was so broad and vague that it allowed for arbitrary revocation of credit. Finally, the dissent would have reached the proportionate penalties clause and found it sufficient to reach the second stage, citing the importance of the issue and disagreeing with the majority's conclusion that the claim was not adequately raised in the Appellate Court.

People v. Buffer, 2019 IL 122327 The circuit court erred in summarily dismissing a post-conviction petition alleging that a 50-year sentence on a 16 year-old defendant was unconstitutional. Under **Miller v. Alabama**, 567 U.S. 460 (2012), courts may not impose a life sentence on a juvenile without first considering defendant's youth and its attendant characteristics. Here, defendant alleged that his 50-year sentence constituted a *de facto* life sentence, and asked for a new sentencing hearing because the sentencing court failed to adequately consider his youth.

The Supreme Court agreed, and held that a sentence of 40 years or more imposed on a juvenile represents a *de facto* life sentence. The court reasoned that the legislature set a mandatory minimum of 40 years for juveniles who commits an offense that, if committed by an adult, would justify natural life imprisonment. The court noted that a sentence of 40 years or less imposed on a juvenile offender "provides some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation," in accordance with the requirements of **Miller**. The court granted post-conviction relief and remanded for a new sentencing hearing.

People v. Reyes, 2016 IL 119271 Defendant, who was 16 years old at the time of the offense, was tried as an adult and convicted of first degree murder and two counts of attempted murder. The trial court imposed a mandatory minimum sentence of 45 years for first degree murder which included a 25-year mandatory firearm enhancement. The court also sentenced defendant to 26 years for the two attempt murder convictions, both of which included a 20-year mandatory firearm enhancement. All of the sentences were required to run consecutively resulting in a mandatory minimum sentence of 97 years. Defendant was required to serve a minimum of 89 years before he would be eligible for release.

The Illinois Supreme Court held that defendant's sentence was a *de facto* mandatory life sentence that was unconstitutional under **Miller v. Alabama**, 567 U.S. 460, 132 S.Ct. 2455 (2012). A mandatory term-of-years sentence that cannot be served in one lifetime has the same practical effect as an actual mandatory life sentence. In either situation the defendant will die in prison. **Miller** held that a juvenile may not be sentenced to a mandatory unsurvivable prison term unless the court first considers his youth, immaturity, and potential for rehabilitation.

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

The court vacated defendant's sentence and remanded for a new sentencing hearing under the newly enacted sentencing scheme in 730 ILCS 5/5-4.5-105 which requires the sentencing court to take into account specific factors in mitigation when sentencing a juvenile. Additionally, the court has discretion to not impose the firearm enhancements. Without those enhancements defendant's minimum aggregate sentence would be 32 years, a term that is not a *de facto* life sentence.

Illinois Appellate Court

People v. Tolliver, 2025 IL App (1st) 231485 Defendant received a 52-year sentence for a murder committed at age 17. After the appellate court affirmed his sentence, the supreme court remanded in light of **Buffer**. The appellate court vacated the sentence and remanded for resentencing. Defendant received a 47-year sentence on remand. He appealed, arguing that he received a *de facto* life sentence and that the sentencing court refused to consider his youth.

The appellate court affirmed. Defendant was sentenced under the amended juvenile sentencing provision allowing for parole review after serving 20 years. Therefore, he had a meaningful opportunity for release. **People v. Spencer**, 2025 IL 130015.

Defendant further argued that the sentencing court violated **Miller** when it refused to consider defendant's youth and its attendant circumstances as mitigating evidence at sentencing. Specifically, the sentencing court stated that it did not "see the immaturity on this where he was so impulsive and could not understand consequences." But this comment referred to the sentencing court's belief that the shooting was premeditated rather than impulsive. The appellate court held that this finding was supported by facts showing that defendant waited for his victim on a street corner, dressed in a hoodie with the hood pulled down, approached the victim on foot, pulled out a gun, and fired multiple times.

People v. Deleon, 2025 IL App (1st) 211454 Defendant received a mandatory life sentence for murder and 30 years for attempt murder, committed at age 17. After the statute requiring a life sentence was found unconstitutional, he was resentenced to 100 years for the murder and 30 years for the attempt murder. Following the issuance of **Miller v. Alabama**, 567 U.S. 460 (2012), defendant received another sentencing hearing, after which he received 60 years for murder and a 20 years for attempt murder. He appealed these sentences, arguing they violated the eighth amendment and the proportionate penalties clause of the Illinois Constitution. He also argued his sentence was excessive.

The appellate court affirmed. The court rejected the eighth amendment claim for several reasons. First, a life sentence imposed on a juvenile is constitutional if discretionary and the sentencing court is able to consider youth and its attendant characteristics. **Jones v. Mississippi**, 593 U.S. 98, 105 (2021). Here, the sentencing court had discretion to impose a term less than 40 years (*de facto* life), and the record did not suggest that it refused to consider youth and rehabilitative potential when it chose a term of 80 years.

Second, under section 730 ILCS 5/3-6-3(a)(2.1), defendant is eligible for one day of sentence credit for each day of his imprisonment. Defendant's 80-year sentence, with good-time credit, is effectively a 40-year sentence and he therefore did not receive a life sentence. This is true even in light of the fact that defendant has had two months of good time revoked. Defendant has the ability to regain that credit under 730 ILCS 5/3-3-2(b), 3-6-3(c), and regardless, a sentencing scheme that offers day-for-day credit allowing for a defendant to serve less than *de facto* life is one that offers a meaningful opportunity for release, thus satisfying **Miller**.

Third, in 2019, the legislature enacted a statute providing for parole review with respect to offenses committed by defendants who were under the age of 21. This too would seem to offer a meaningful opportunity for release, and render **Miller** inapplicable. However, because this issue is pending in the supreme court, and because **Miller** is inapplicable for the above reasons, the appellate did not decide whether Illinois' parole system offers a sufficiently meaningful opportunity for release.

Nor was defendant's sentence excessive or in violation of the proportionate penalties clause. Defendant's proportionate penalties clause claim largely focused on the inadequacy of the youth parole statute, arguing that its intervals of 20 and 10 years do not afford juveniles a meaningful opportunity to demonstrate rehabilitation. The court found this argument irrelevant to the proportionate penalties clause and noted that the sentence was imposed following a lengthy sentencing hearing at which the trial court heard a great deal of evidence, expressly went through the statutory factors, and stated it considered each factor in mitigation and aggravation. The court commented on defendant's allocution, finding it unimpressive, and considered the offense, in which defendant shot at a rival gang member, striking him and killing a seven-year-old girl who was standing on the sidewalk buying ice cream. For the same reason, the sentence was not excessive. While defendant argued that the court should have placed greater weight on defendant's youth and rehabilitative potential, it is not job of the appellate court to re-weigh the evidence on appeal.

People v. Anderson, 2024 IL App (1st) 220864 The circuit court did not violate the eighth amendment when, at re-sentencing ordered pursuant to **Miller**, it reduced defendant's two murder sentences from natural life and 50 years, to 40 and 37 years. Defendant argued that the aggregate 77-year consecutive sentences, imposed for two separate murders committed at age 17, violate the eighth amendment because they amount to a *de facto* life sentence. However, neither of defendant's sentences exceed the 40-year limit set by **Buffer**. Defendant has no constitutional grounds on which to argue that consecutive sentences imposed for separate offenses may be considered a single *de facto* life sentence. Regardless, defendant is statutorily eligible for parole after 20 years, so he has a meaningful opportunity for release. Finally, neither of these sentences were mandatory. See **People v. Wilson**, 2023 IL 127666, citing **Jones v. Mississippi**, 593 U.S. 98, 105 (2021) (discretionary sentencing scheme is constitutionally sufficient).

Nor did the court err in its consideration of the sentencing factors. The court explicitly considered "youth and its attendant characteristics" as well as the factors required by 730 ILCS 5/5-4.5-105(a), before imposing the sentences. Defendant argued that the court ignored or misapplied some of the factors in section 5-4.5-105(a). For example, defendant argued that the court considered a lack of remorse despite the fact that subsection 9 of the statute prohibits the court from considering in aggravation a lack of remorse if defendant does not make a statement in allocution. But this factor was inapplicable, as defendant did speak in allocution, and regardless, the court did not mention a "lack of remorse" in its remarks. The appellate court similarly rejected defendant's contentions that the court deferred to the original sentencing judge's findings; rather, the court merely noted they were "germane" before making its own findings. Finally, there was nothing improper in the sentencing court's consideration that defendant was already eligible for parole, as this is a relevant sentencing factor.

People v. Cavazos, 2023 IL App (2d) 220066 Defendant received a 75-year aggregate sentence, including firearm enhancements, for a murder and attempt murder committed at age 17. In a previous appeal, the case was remanded for re-sentencing pursuant to **People v. Buffer**, 2019 IL 122327. Re-sentencing took place after the legislature enacted juvenile sentencing reform statutes. These statutes required consideration of the **Miller** factors, made the firearm enhancements discretionary, and mandated parole hearings after 20 and 30 years.

The sentencing court on remand imposed a 20-year sentence for murder with no firearm enhancement and no day-for-day sentencing, and a 10- year sentence with a 20-year enhancement, with 85% day-for-day credit, for attempt murder. The aggregate sentence was therefore 50 years. The sentencing court found that defendant had rehabilitative potential, but provided two justifications for its decision to impose a *de facto* life sentence. First, the court noted that with the 85% credit, and with a 13-year credit for time already served on the original sentence, the true sentence was closer to 32 years, and therefore not a *de facto* life sentence. Second, the court reasoned that in light of the new parole statute, defendant would have a meaningful opportunity for release.

The appellate court disagreed with the first rationale. It held that when measuring a juvenile sentence for purposes of an eighth amendment **Miller** challenge or a proportionate penalties challenge, a court considers the entirety of the sentence, and doesn't consider credit for time served. Thus, the relevant sentence at issue is a 50-year sentence.

The appellate court agreed with the second rational. **Miller** and its progeny held that only sentences that do not allow for a meaningful opportunity for release violate the eighth amendment. These cases repeatedly invoked parole as a method states could use to comply with the eighth amendment. Illinois' new juvenile parole statute mandates a parole hearing at 20 years and, if unsuccessful, another chance 10 years later. Even though parole is not guaranteed, and several other states grant juveniles more, and more frequent, opportunities for parole, the Illinois parole statute is nevertheless a meaningful opportunity for juvenile defendants to avoid life in prison.

People v. Campbell, 2023 IL App (1st) 220373 In 2009, defendant was sentenced to a total of 110 years of imprisonment for first degree murder and armed robbery. In 2019, defendant filed a motion for leave to file a successive post-conviction petition challenging that sentence in light of the holding in **People v. Reyes**, 2016 IL 119271, that the protections afforded by **Miller** apply to a term-of-years sentence that constitutes a *de facto* life sentence. The circuit court denied leave to file, concluding that his sentence was a *de facto* life term but that his sentencing hearing had complied with **Miller**.

The appellate court reversed, vacated defendant's sentence, and remanded for a new sentencing hearing before a different judge. Defendant established cause for not raising this issue in his initial post-conviction petition, which was summarily dismissed in early 2012, because **Miller** had not yet been decided at that time. And, it was not until 2016 that the Illinois Supreme Court extended **Miller**'s protections to mandatory *de facto* life sentences in **Reyes**, and not until 2019 when the Court defined a *de facto* life sentence as one exceeding 40 years in **People v. Buffer**, 2019 IL 122327.

And, defendant demonstrated prejudice where the sentencing court had no discretion to sentence him to anything other than a *de facto* life sentence. Given the finding that defendant personally discharged the firearm that killed the victim, the minimum term available was 51 years. The State agreed that this constituted a **Miller** violation but argued that it was harmless because the sentence imposed was so far above the statutory minimum that the discretion to impose something less than natural life would have made no difference. The court rejected that argument, noting that while the sentencing court imposed a term in excess of the 51-year minimum, the court's exercise of discretion is meaningless under **Miller** where it did not have the option to sentence to anything other than a *de facto* life term.

Further, the court noted that even if harmless error did apply, it was not demonstrated here. **Miller** requires consideration of peer pressure which may have affected his participation in the offense, and there was evidence here that defendant felt beholden to, and fearful of, his older co-defendant. And, while a finding of permanent incorrigibility is not required, the court here noted defendant's rehabilitative potential when it imposed the 110-year sentence.

People v. Reyes, 2023 IL App (2d) 210423 Defendant was convicted of murder and two counts of attempt murder committed at age 16. In **People v. Reyes**, 2016 IL 119271, the supreme court found his original sentence of 97 years an unconstitutional mandatory life sentence under **Miller**. On remand, the trial court sentenced defendant to 66 years, and the appellate court vacated the sentence, finding another **Miller** violation. On remand, the trial court again imposed a 66-year sentence.

The appellate court vacated the sentence again. The sentencing court committed several errors in its application of 730 ILCS 5/-4.5-105(a). First, it relied on an Adult Risk Assessment to measure defendant's recidivism risk. Several factors in this assessment were inapplicable to juveniles, including whether defendant lived in a high-crime area, completion of high school, and securing of employment. And the assessment failed to consider the greater rehabilitative potential of young offenders. Also, it was improper to consider the assessment where it was not listed in section 5-4.5-105(a), which allows a sentencing court to consider other evidence, but only in mitigation.

Second, the sentencing court erroneously found defendant was able consider the risks and consequences of his behavior. To the contrary, defendant was 16 at the time of the offense and his low intelligence put his mental age at about two years behind peers of the same age. As the sentencing court itself found, defendant would act impulsively despite suffering adverse consequences, showing that he was unable to consider consequences. Finally, the court improperly gave "great weight" to the aggravating factor that defendant's conduct caused or threatened serious harm, despite the fact that this factor was inherent in the offenses.

Defendant also alleged the *de facto* life sentence was unconstitutional because the sentencing court found some rehabilitative potential and did not find defendant irredeemable. The appellate court declined to consider the issue, finding it could vacate the sentence on non-constitutional grounds.

Finally, given the sentencing court's failure to comply with the first mandate, a majority of the appellate court appointed a different judge on remand. Although the trial court ruled that under **Jones v. Mississippi**, 141 S. Ct. 1307 (2021), it was free to impose a life sentence without an explicit finding of incorrigibility, the appellate court pointed out that **Jones** also held that state courts may require sentencers to make certain additional findings. Here, the mandate of the appellate court explicitly commanded the sentencing court to sentence defendant to life *only* if it determines defendant is beyond rehabilitation.

People v. Hill, 2022 IL App (1st) 171739-B After challenging his natural life sentence under **Miller**, defendant, who was 15 years old at the time of his crimes, was sentenced to terms of imprisonment totaling 60 years, eligible for day-for-day credit. Initially, the appellate court found that his 60-year sentence exceeded the *de facto* life threshold established in **Buffer**, despite the availability of good-time credit. The court was directed to reconsider its decision, however, after the Illinois Supreme Court issued its opinion in **People v. Dorsey**, 2021 IL 123010, which held that courts must consider the possibility of early release in determining whether a sentence is a *de facto* life term. The appellate court then concluded that defendant's 60-year term, subject to good-time credit, was not a *de facto* life sentence which violated **Miller**.

But, the appellate court went on to apply traditional sentencing review and held that the trial court abused its discretion at sentencing. Specifically, the trial court minimized the "veritable mountain" of evidence as to defendant's youth and its attendant characteristics. The appellate court noted that at resentencing, the court heard expert testimony explaining defendant's particular diminished culpability and rehabilitative potential. The expert concluded that defendant's juvenile behavior had virtually no predictive value on his likelihood to re-offend and instead noted that defendant's present-day behavior, which was "exemplary," was far more indicative of his current character.

The appellate court also concluded that deterrence was an inapt consideration where expert testimony demonstrated that defendant's criminal behavior, at the age of 15, was based primarily on the impetuousness of youth, as opposed to considered adult decision-making. Accordingly, a lengthy prison sentence was unlikely to deter other juveniles with the same degree of impetuosity and equally unlikely to deter adults capable of making reasoned decisions about their behavior.

While defendant's offense was serious – he personally shot and killed two individuals – courts must consider both the seriousness of the offense and the objective of restoring the offender the useful citizenship in fashioning an appropriate sentence. Here, the trial court abused its discretion in minimizing the effects of youth on defendant's commission of the offense, as well as his demonstrated ability as an adult to conform his conduct to the requirements of the law. Thus, the matter was remanded for resentencing.

People v. Peacock, 2022 IL App (1st) 170308-B In a successive post-conviction petition, defendant challenged as an unconstitutional *de facto* life sentence his 80-year sentence for a 1995 murder, committed when he was 17 years old. Defendant is eligible for day-for-day credit against his sentence, which means he may be released after serving only half of his sentence, or 40 years. In **People v. Buffer**, 2019 IL 122327, the Supreme Court held that a sentence of 40 years or more imposed on a juvenile is a *de facto* life sentence.

Initially, the Appellate Court found that defendant's 80-year sentence constituted a *de facto* life sentence and remanded for a new sentencing hearing. The State sought leave to appeal, and the Illinois Supreme Court issued a supervisor order directing the Appellate Court to reconsider its decision in light of **People v. Dorsey**, 2021 IL 123010. In **Dorsey**, the defendant was subject to a day-for-day sentencing credit scheme which allowed some meaningful opportunity for release before serving more than 40 years in prison.

On reconsideration, the Appellate Court noted that the defendant here is also entitled to day-for-day credit and could be released after serving 40 years, just short of a *de facto* life sentence. While defendant ultimately may serve more than 40 years, the Court held that under **Dorsey**, the relevant consideration is whether the statutory scheme under which he was sentenced allows the opportunity for release before serving more than 40 years.

The Court also rejected defendant's Illinois proportionate penalties claim, concluding that defendant had not established cause for not raising that claim in his initial post-conviction petition. In reaching this conclusion, the Court followed **Dorsey** and several other cases that have rejected such an argument. The proportionate penalties clause was in existence at the time defendant filed his initial petition, and Illinois has long recognized that sentencing youthful offenders requires consideration of their emotional maturity.

People v. Glazier, 2022 IL App (5th) 120401-B On reconsideration in light of **People v. Buffer**, 2019 IL 122327, the Appellate Court concluded that 60-year sentence imposed on 17-year-old defendant was an unconstitutional *de facto* life sentence. There was no indication that the trial court considered defendant's youth and attendant characteristics at sentencing. The court vacated defendant's sentence and remanded for resentencing under the juvenile sentencing scheme set forth at 730 ILCS 5/5-4.5-105.

People v. Watson, 2021 IL App (1st) 180034 Defendant was convicted of felony murder for her role in setting up a robbery where the victim was ultimately shot and killed by another person. She was 17 years old at the time of the offense. On appeal, defendant challenged the constitutionality of the felony-murder and accountability statutes, arguing that the same principles underlying **Miller**, **Roper**, and **Graham**, should operate to bar conviction of a juvenile for murder based on felony murder or accountability principles if the juvenile did not actually kill the victim or intend for a killing to occur.

The Appellate Court disagreed. First, the court found that there was no historical basis for defendant's argument, and thus no fundamental right or interest at issue. That is, defendant could point to no deeply rooted principle of justice that would prevent juveniles from being convicted of murder where they neither killed nor intended to kill. To the extent defendant relied on the **Miller** trio of cases, they actually undercut any historical argument given that those decisions were based on *evolving* standards of decency.

The court went on to reject defendant's argument under the rational-basis test. Defendant argued that **Miller**, et al., demonstrate that a juvenile cannot be presumed to know or foresee that a death may result from their actions, and thus they cannot be held responsible in the same way as an adult. The court noted, though, that considering the differences between juvenile and adult culpability for purposes of punishment does not justify absolving juveniles from liability completely. Further, felony murder and accountability do not require intent, or even foreseeability regardless of whether the offender is an adult or a juvenile. Thus, there is no basis for treating juveniles differently than adults under those statutes. Accordingly, there was no due process concern with subjecting the instant juvenile to the same criminal liability as an adult would have faced under these same circumstances.

People v. Beck, 2021 IL App (5th) 200252 Defendant was originally sentenced to a total of 120 years for six counts of armed violence committed in 1986 when he was a juvenile. He subsequently obtained resentencing via a successive post-conviction petition based on **Graham v. Florida**, 560 U.S. 48 (2010) (juvenile cannot be sentenced to life for non-homicide offense), and **People v. Buffer**, 2019 IL 122327 (sentence of more than 40 years is *de facto* life sentence). On resentencing, the court imposed a total of 80 years of imprisonment.

The Appellate Court rejected defendant's challenge to his 80-year sentence. The court first held that the new parole statute - 730 ILCS 5/5-4.5-115(b) - affords a juvenile sentenced after June 1, 2019, an opportunity for parole review after serving 10 years of more of his sentence. While this statute was enacted well-after the commission of the offenses and the original sentencing hearing, the Appellate Court held that it applies by its plain language to defendant's case because his resentencing occurred after June 1, 2019. **Graham**'s prohibition on life sentences for non-homicide offenders is specifically limited to life sentences without parole. Because defendant will have the opportunity for parole before serving a life term, his sentence is not unconstitutional.

The court also rejected defendant's assertion that the new parole statute violates the *ex post facto* clause because, without it, he could have been resentenced to no more than 40 years of imprisonment. Under **Graham**, a non-homicide juvenile was only ever entitled to a meaningful opportunity for release before serving a *de facto* life sentence. **Graham** does not require actual release of a non-homicide juvenile offender during his lifetime. The new juvenile parole statute effectuates **Graham** and does not allow a greater sentence than could otherwise have been imposed. And, because defendant is entitled to day-for-day credit on his sentence, he may be released after serving 40 years of his 80-year term, regardless.

People v. Brakes, 2021 IL App (1st) 181737 Defendant, who was a juvenile at the time of his offenses, did not receive a *de facto* life sentence where he was sentenced to 33 years for murder and consecutive terms totaling 12 years for attempt armed robbery. Defendant is eligible for day-for-day credit on the attempt armed robbery sentences. Accordingly, he will be eligible for release after serving 39 years, short of the 40-year minimum established in **Buffer**. Under **People v. Dorsey**, 2021 IL 1123010, a sentence that affords a juvenile an opportunity for release before serving more than 40 years does not constitute a *de facto* life sentence.

People v. Ruiz, 2021 IL App (1st) 182401 Defendant committed one murder in 1994 and received a 30-year sentence. He was found guilty of a second murder and an attempt murder in 1996 and received concurrent mandatory natural life and 30-year sentences. These sentences ran consecutive to the original 30-year sentence. Defendant committed all of his crimes as a juvenile.

The mandatory life sentence was vacated pursuant to **Miller** and on remand, defendant received 50 years, concurrent to the 30-year term for attempt murder and consecutive to the first 30-year murder sentence. The sentencing court, having heard extensive evidence in mitigation and aggravation, stressed that it did not view the 50-year term as a life sentence, as defendant would be eligible for day-for-day credit. The sentencing court explicitly considered each of the **Miller** factors before arriving at the 50-year term. The court denied defendant's motion to reconsider, which alleged that the 50-year term combined with the consecutive 30-year term created an unconstitutional *de facto* life sentence.

Defendant challenged the 50-year sentence as an improper *de facto* life sentence under the eighth amendment. The Appellate Court agreed. Courts have repeatedly held that the availability of statutory good-time sentencing credit is irrelevant to the determination of whether a juvenile defendant has been sentenced to a *de facto* life sentence. To hold otherwise would be to leave it up to IDOC to determine whether defendant serves an unconstitutional *de facto* life sentence. Here, the sentencing court made clear that it did not find defendant incorrigible, as it sought to impose a non-life sentence.

The court vacated the sentence and remanded for a new sentencing hearing. At the new hearing, the sentencing court must consider that defendant will be serving the sentence consecutively to any years remaining on the original 30-year term. Any aggregate sentence, regardless of whether it is imposed for a single or separate crime, which by operation of law exceeds *de facto* life as defined by **Buffer**, is unconstitutional unless it is also made in tandem with a finding that the defendant is beyond rehabilitation.

People v. Simental, 2021 IL App (2d) 190649 The trial court erred in denying defendant leave to file a successive post-conviction petition challenging the 60-year prison sentence he received for a murder committed when he was 16 years old. Defendant's sentence was an improper *de facto* life sentence under **Miller** and **Buffer** even though defendant was eligible for day-for-day credit.

Statutory sentencing credit is irrelevant to determining whether a prison sentence constitutes a *de facto* life sentence. The fact that defendant had since been released from prison was not fatal to his claim either. Defendant was still serving the accompanying term of mandatory supervised release and remained subject to the remainder of his prison term until discharged from MSR.

Rather than remanding for further post-conviction proceedings, the appellate court vacated defendant's sentence and remanded the matter for resentencing.

People v. Benford, 2021 IL App (1st) 181237 Defendant received a 40-year sentence for a murder committed at age 21. He filed a successive post-conviction petition alleging a disproportionate life sentence in light of his severe mental disabilities and youth. The Appellate Court held that a 40-year sentence is not a *de facto* life sentence under **Buffer.** Therefore, defendant could not show prejudice to obtain leave to file his successive post-conviction petition.

People v. Gavin, 2021 IL App (1st) 182085 The court upheld the 17-year-old defendant's murder sentence of 33 years, which ran consecutively to three sentences imposed in prior cases, for a total of 47 years. The prior sentences were subject to day-for-day custody credit, such that the total time served would be 39 years.

Without deciding whether the court could find a *de facto* life sentence by combining the murder sentence with the prior sentences, the court affirmed by finding the operable sentence for purposes of **Buffer** is 39 years. Although the court agreed with prior cases holding that courts should not consider custody credit when determining whether a sentence is a *de facto* life sentence, in this case, defendant had already received the custody credit, having served the prior sentences by the time of this decision. Thus, defendant's term did not constitute a life sentence.

People v. Chambers, 2021 IL App (4th) 190151 The trial court erred in summarily dismissing 18-year-old defendant's post-conviction petition asserting that his 42-year sentence violated **Miller** and its progeny. While it may ultimately be a close call whether defendant's sentencing hearing and resulting term of imprisonment were proper, it was at least arguable under the "extremely undemanding first stage" of post-conviction proceedings.

People v. Helgesen, 2020 IL App (2d) 160823-B After having his natural life sentence vacated under **Miller**, defendant was resentenced to concurrent terms of imprisonment of 90 years each for two counts of first degree murder. The Appellate Court affirmed, concluding that the court properly considered defendant's youth and its attendant characteristics at resentencing. While the judge specifically stated his belief that "if released at some point in time [defendant] will not pose a danger to others," the Appellate Court held that this did not require a sentence less than *de facto* life, declining to follow **People v. Murphy**, 2019 IL App (4th) 170646. The Appellate Court noted that the sentencing court made detailed findings showing that it considered and weighed the **Miller** factors and crafted a proportionate sentence, which is all that is required.

People v. DiCorpo and Henney, 2020 IL App (1st) 172082 Defendants received natural life sentences plus consecutive 30-year sentences for murder and aggravated arson, committed at age 17. Defendants had been found guilty of setting a fire to a home, resulting in the deaths of five children and their father. Both filed post-conviction petitions containing **Miller** challenges. At a hearing on the petitions, the circuit court vacated the natural life sentences and heard extensive aggravation and mitigation relating to each co-defendant. The court found that it could leave the consecutive 30-year sentence intact, is it was not a life sentence. The court imposed a 50-year sentence on Henney, for an aggregate term of 80 years (to be served at 50%), and a 60-year sentence on DiCorpo, for an aggregate term of 90 years (to be served at 50%).

The Appellate Court vacated all of the sentences and remanded for a new sentencing hearing before a new judge. The Court held that when considering whether a sentence imposed on a juvenile is a *de facto* life sentence, courts must consider the aggregate term. And even though day-for-day sentencing credit would put Henney's sentence at exactly 40 years, the Court agreed with **People v. Peacock**, 2020 IL App (1st) 170308, that this credit could not be taken for granted. Thus, both defendant received *de facto* life sentences. Because the circuit did not find that the defendants were permanently incorrigible, the sentences violated the eighth amendment.

The Court further held that re-sentencing must occur before a different judge. The Court was concerned that the judge below minimized the defendants' juvenile status. The judge had noted that defendants were close to their 18th birthdays at the time of the offense, that adults can use poor judgment as well, that some young people are "very mature," and that these defendants "were closer to being legally adults than they were children in my opinion."

People v. Applewhite, 2020 IL App (1st) 142330-B Defendant's 45-year sentence, entered pursuant to a fully negotiated plea agreement for offenses committed in 2001 when he was 17 years old, was an unconstitutional *de facto* life sentence under **People v. Buffer**, 2019 IL 122327. The State conceded that defendant did not waive his right to challenge the constitutionality of his sentence by pleading guilty, and the Appellate Court agreed. And, while defendant's appeal was from the summary dismissal of his post-conviction petition, the court did not remand for further post-conviction proceedings but rather vacated his sentence and remanded for a new sentencing hearing in the interest of judicial economy.

People v. Cavazos, 2020 IL App (2d) 120171-B Defendant's 75-year sentence, consisting of consecutive terms of 45 years for first degree murder and 30 years for attempt murder, was an unconstitutional *de facto* life sentence under **Buffer**. Defendant was 17 years old at the time of the crimes, and he was sentenced prior to **Miller**. The Appellate Court observed that the framework for sentencing juveniles to life imprisonment has evolved since defendant was sentenced here. While the court was aware of defendant's youth at the time of sentencing, "[m]ere *general* consideration of youth is a far cry from evaluating the relevant factors to find that defendant is that rare juvenile whose criminal conduct was indicative of irreparable corruption beyond the possibility of rehabilitation."

People v. Villalobos, 2020 IL App (1st) 171512 In **People v. Buffer**, 2019 IL 122327, the Supreme Court held that "a prison sentence of 40 years or less" provides a juvenile some meaningful opportunity for release. Thus, for purposes of juvenile sentencing, a *de facto* life sentence is *more* than 40 years. A period of mandatory supervisory release is not counted, because the question is when the defendant will be released from prison, not when he completes the totality of his sentence. Therefore, where defendant received exactly 40 years (plus three years of MSR), he could not raise an eighth amendment claim under **Miller**.

The Appellate Court further rejected a proportionate penalties claim, finding the trial court adequately balanced the defendant's youth against the severity of the offense. A 40-year sentence on a 16 year-old did not shock the conscience where defendant participated in a gang-related beating and, after his fellow gang members left the scene, returned to the prone victim and fired several shots into his back. The notion that the court did not adequately consider mitigating factors was further belied by the fact that the court refused to impose the mandatory firearm enhancements, and reduced the initial 50-year sentence by 10 years upon reconsideration.

People v. Luna, 2020 IL App (2d) 121216-B On remand for reconsideration in light of **Buffer**, the Appellate Court held that 61-year sentence imposed on defendant who was 15 at the time of the offense constituted *de facto* life. And, while the trial court considered defendant's youth at sentencing, "the admission of evidence and argument related to the **Miller** factors does not necessarily mean that those factors were adequately considered or evaluated to determine whether defendant was the rare juvenile simply beyond the possibility of rehabilitation."

Here, the sentencing court had no discretion to go beyond the mandatory minimum at the time of sentencing. And, not only did the court not find defendant to be one of the rare juveniles who was beyond rehabilitation, but the record showed rehabilitative potential where defendant received good grades, had strong family support, and related well to his peers. The sentencing judge could not have given adequate consideration to the mitigation in this case because a *de facto* life sentence was mandatory and the court did not have the benefit of the evolving body of law concerning juvenile culpability.

People v. Quezada, 2020 IL App (1st) 170532 Minor defendant's 68-year sentence, to be served at 50%, constituted a *de facto* life sentence under **Buffer**. Following its prior decision in **People v. Peacock**, 2019 IL App (1st) 170308, the Appellate Court held that day-for-day credit should not be considered in determining whether a sentence constitutes *de facto* life because it is a function of IDOC, not the judiciary. Defendant's actual sentence of 68 years far exceeded the 40-year threshold set in **Buffer**, and the possibility that defendant will serve only 34 of those 68 years is within the sole discretion of IDOC. Because the record established that the trial court did not sufficiently consider defendant's youth and attendant characteristics before imposing the 68-year term, the Appellate Court vacated defendant's sentence and remanded for resentencing.

People v. Haynie, 2020 IL App (1st) 172511 At resentencing after defendant's natural life sentence was vacated in light of **Miller**, the trial court imposed consecutive terms of imprisonment of 30 years each for two counts of murder, for a total of 60 years. The Appellate Court concluded that this new sentence constituted a *de facto* life sentence under **Buffer**, which had not yet been decided at the time of resentencing. Since nothing in the record supported a finding that defendant could not be rehabilitated, and the record showed that the court erroneously focused on deterrence in imposing the 60-year-term, the Appellate Court vacated defendant's sentence and again remanded the matter for resentencing.

People v. Figueroa, 2020 IL App (1st) 172390 The trial court erred in denying leave to file a successive post-conviction petition raising a claim under **Miller v. Alabama**. The defendant was 17 years old at the time he committed murder, and subsequently was sentenced to 75 years of imprisonment. While defendant's sentence was subject to day-for-day good-conduct credit, it was a *de facto* life sentence under **Buffer** because day-for-day credit is not guaranteed. IDOC may revoke good-conduct credit for a variety of reasons, including damage to or misuse of State property, disobeying an order, abuse of privileges, possession of unauthorized property, and filing a frivolous lawsuit. IDOC's burden for such revocations is low. Accordingly, the mere possibility that defendant may earn adequate credit to be released in 40 years or less did not take his 75-year-sentence out of **Buffer**'s reach. Because the sentencing court had not complied with **Miller** at the original sentencing hearing, defendant's sentence was vacated and the matter remanded for a new sentencing hearing.

People v. Daniel, 2020 IL App (1st) 172267 In **People v. Buffer**, 2019 IL 122327, the Supreme Court held that "a prison sentence of 40 years or less imposed on a juvenile offender does not constitute a *de facto* life sentence in violation of the eighth amendment." Here, defendant received 70 years in prison, for a murder committed at age 17, but he was eligible for day-for-day sentencing credit. The Appellate Court held that despite defendant's eligibility for a sentence as low as 35 years, his sentence must be considered *de facto* natural life under **Buffer.** Day-for-day credit is not automatic, and the court would not presume that the Department of Corrections would award him all of that credit.

Even though the case was dismissed at the second-stage of post-conviction proceedings, the court remanded for a new sentencing hearing rather than a third-stage evidentiary hearing, as a matter of judicial economy.

People v. Gunn, 2020 IL App (1st) 170542 In **People v. Buffer**, 2019 IL 122327, the Supreme Court held that "a prison sentence of 40 years or less imposed on a juvenile offender does not constitute a *de facto* life sentence in violation of the Eighth Amendment." Here, defendant received 40 years in prison, plus three years' MSR, for a murder committed at age 17. The Appellate Court rejected his claim that he received a *de facto* life sentence in light of the above language from **Buffer**, and notwithstanding the three years of MSR, which are not included as part of the "prison sentence" for purposes of a **Miller** challenge. The court also rejected defendant's proportionate penalties argument, finding no plain error. The court did not believe that failing to mention mitigating factors contained in the PSI rose to the level of plain error, and held that 40 years for a "premeditated, gangland-style execution" does not "shock the moral sense of the community"

People v. Reyes, 2020 IL App (2d) 180237 Upon conviction for murder and two counts of attempt murder committed at age 16, defendant received an aggregate 97-year term. The Illinois Supreme Court held the sentence violated **Miller** and remanded for resentencing, after which defendant received a 66-year term. In this appeal, the Appellate Court held the sentence violated **Miller** because the 66-year term was a life sentence pursuant to **Buffer**, and the sentencing court did not find defendant permanently incorrigible prior to imposing it. The court remanded for resentencing.

People v. Paige, 2020 IL App (1st) 161563 Trial court erred in denying leave to file successive post-conviction petition raising **Miller** claim. Defendant was 16 years old in 1999 when he committed a murder and received a 50-year sentence, which is a *de facto* life term under **Buffer**. While the sentencing judge had considered defendant's age, the court focused its sentencing decision on the severity of the crime and the need to protect the public, without considering defendant's prospects for rehabilitation. Because the court had not determined whether defendant was one of the rarest of juvenile offenders whose crime reflected permanently incorrigibility, his sentence was imposed in violation of **Miller**. The Appellate Court vacated defendant's sentence and remanded for a new sentencing hearing.

People v. Thornton, 2020 IL App (1st) 170677 Defendant's 70-year sentence for first degree murder, subject to day-for-day credit, was a *de facto* life sentence where defendant was 17 years old at the time of the offense. Following **People v. Peacock**, 2019 IL App (1st) 170308, the Appellate Court held that the availability of statutory sentencing credit is irrelevant to the determination of whether a sentence constitutes *de facto* life. Under **Buffer**, that line is drawn at 40 years, which defendant's sentence clearly exceeded. Therefore, the trial court erred in summarily dismissing defendant's post-conviction petition challenging his *de facto* life sentence. Rather than remanding for further post-conviction proceedings on defendant's clearly meritorious claim, the Appellate Court vacated defendant's sentence and remanded for resentencing; the record established that the sentencing judge had made no more than a passing reference to defendant's young age and had not considered youth and its attendant characteristics as required by **Miller**.

People v. Gunn, 2019 IL App (1st) 170542 In **People v. Buffer**, 2019 IL 122327, the Supreme Court held that "a prison sentence of 40 years or less imposed on a juvenile offender does not constitute a *de facto* life sentence in violation of the Eighth Amendment." Here, defendant received 40 years in prison, plus three years' MSR, for a murder committed at age 17. The Appellate Court rejected his claim that he received a *de facto* life sentence in light of the above language from **Buffer**, and notwithstanding the three years of MSR, which are not included as part of the "prison sentence" for purposes of a **Miller** challenge. The court also rejected defendant's proportionate penalties argument, finding no plain error. The court did not believe that failing to mention mitigating factors contained in the PSI rose to the level of plain error, and held that 40 years for a "premeditated, gangland-style execution" does not "shock the moral sense of the community"

People v. Harvey, 2019 IL App (1st) 153581 Following **People v. Buffer**, 2019 IL 153581, there is no question that the 16-year-old defendant's 52-year sentence for first degree murder is a *de facto* life sentence. The trial court's mere awareness of defendant's age and consideration of a presentence investigation report does not show that the court specifically considered defendant's youth and its attendant characteristics. Thus, defendant is entitled to a new sentencing hearing, and at resentencing defendant is entitled to be sentenced under 730 ILCS 5/5-4.5-105, which details specific factors the court must consider in sentencing a minor and allows the court to forego firearm enhancements.

People v. Smolley, 2018 IL App (3d) 150577 In successive post-conviction proceedings, defendant was granted a new sentencing hearing because his original mandatory natural life sentence, imposed for two counts of felony murder committed when defendant was 15 years old, was unconstitutional under the **Miller** line of cases. He was resentenced to 65 years of imprisonment.

The Appellate Court rejected the argument that defendant should receive a discretionary transfer hearing because the automatic transfer age had been raised to 16 in 2016. Relying on **People v. Hunter**, 2017 IL 121306, the Appellate Court held that the amendment did not apply to defendant's case because the original trial court proceedings had concluded in 2005, well before the amendment became effective. Further, defendant was now 29 years old and thus could not be subject to the jurisdiction of the juvenile court.

The Appellate Court ordered a second new sentencing hearing, however, because the record did not indicate that the trial court considered defendant's youth before imposing the *de facto* life sentence of 65 years. While the judge stated he considered the statutory factors in aggravation and mitigation, the record must show that the court considered defendant's youth, immaturity, and potential for rehabilitation before a life sentence may be imposed for an offense committed as a juvenile.

People v. Joiner, 2018 IL App (1st) 150343 A mandatory minimum sentence of 71 years imposed on a 16 year-old for murder and attempt murder with a firearm, resulting in release at age 83, is an unconstitutional *de facto* life sentence. The Appellate Court held that the potential for "geriatric release" is not a substitute for a meaningful chance at rehabilitation under **Miller**, and found that a release at age 83 is well within the range for a *de facto* life sentence in previous cases. The Appellate Court remanded for a sentencing hearing at which the sentencing court must consider defendant's youth and potential for rehabilitation, and apply new sentencing laws making the firearm enhancements discretionary.

People v. Merriweather, 2017 IL App (4th) 150407 Defendant, who was 17 at the time of the offense, was convicted of first degree murder and sentenced to 70 years in prison. Defendant filed a *pro se* motion for leave to file a successive post-conviction petition alleging actual innocence based on newly discovered evidence. On appeal from the denial of the motion, defendant argued for the first time that his sentence was a *de facto* life sentence that was unconstitutional as applied to him.

The Appellate Court, relying on **Thompson,** 2015 IL 118151, held that defendant could not raise an as-applied challenge to his sentence for the first time on appeal. Unlike facial challenges to statutes, as-applied challenges are dependent on the facts and circumstances of each case and thus the appropriate place to raise the issue is in the trial court where the record can be adequately developed. Defendant thus forfeited this issue by failing to raise it in the trial court.

The court specifically declined to follow **Nieto**, 2016 IL App (1st) 121604, which held that courts must overlook the general rule of **Thompson** in cases where a defendant is raising an as-applied challenge to the sentence of a juvenile. The court found that it would be inconsistent to require a fully developed record in adult cases but not in juvenile cases.

The court refused to address defendant's argument but noted that he might be able to raise this issue in a successive post-conviction petition.

People v. Morris, 2017 IL App (1st) 141117 Defendant, who was 16 years old at the time of the offense, was convicted of first degree murder, attempt murder, and aggravated battery with a firearm. Due in part to mandatory firearm enhancements, defendant was sentenced to an aggregate sentence of 100 years in prison and will have to serve at least 93 years and four months of his sentence. He will be 109 years old when he is eligible for release.

The court held that defendant's sentence, which was a *de facto* life sentence, was improper because the trial court did not meaningfully consider defendant's youth and its attendant circumstances before sentencing defendant. The court noted that defendant had a troubled background, a history of mental illness, and a history of drug and alcohol abuse. The trial court did not meaningfully consider those special circumstances and how they related to defendant's youthful characteristics before it sentenced him.

Defendant's sentence was vacated and remanded for resentencing under the provisions of 730 ILCS 5/5-4.5-105 which took effect while his case was on appeal. These provisions (1) require the sentencing court to consider several factors, including age, impetuosity, and level of maturity when sentencing a defendant under age 18, and (2) give the sentencing court discretion to not apply the firearm enhancements. In **People v.**

Reyes, 2016 IL 119271, the Supreme Court held that under the Statute on Statutes (5 ILCS 70/4), a defendant may elect to be sentenced under either the law in effect at the time the offense was committed or the time of sentencing. Here, defendant may elect at resentencing to be sentenced under 5-4.5-105.

People v. Ortiz, 2016 IL App (1st) 133294 Defendant, age 15 at the time of the offense, was tried as an adult under the automatic transfer provision of the Juvenile Court Act (705 ILCS 405/5-130) and was convicted of first degree murder and sentenced to 60 years imprisonment.

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

Since defendant must serve 100% of his 60-year sentence and hence will not be eligible for release until he is 75 years old, his sentence is effectively a life sentence. Although the trial court considered defendant's young age and his personal history in sentencing defendant, it did not consider the corresponding characteristics of his youth as required by **Miller v. Alabama**, 567 U.S. 460, 132 S. Ct. 2455 (2012).

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

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

People v. Gipson, 2015 IL App (1st) 122451 Defendant, who was 15 years old at the time of the offense, was automatically transferred to adult court and convicted of two counts of attempt first-degree murder. The facts at trial showed that defendant approached the driver's side of a car where two victims were sitting and fired shots at one of the victims, hitting him once. At the same time, the co-defendant approached the passenger side of the car and fired shots at the other victim, hitting him several times.

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

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

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

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

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

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

People v. Dupree, 2014 IL App (1st) 111872 The court expressed its concern that "serious constitutional issues" are presented where the convergence of mandatory minimum and mandatory consecutive sentences result in *de facto* life sentences for juveniles who were under the age of 18 at the time of the offense but who are tried as adults. Because the convictions were reversed for other reasons, however, the court did not reach this issue.

In a concurring opinion, Justice Pucinski found that the imposition of a mandatory *de facto* life sentence on a juvenile offender who was prosecuted as an adult creates constitutional issues under **Miller v. Alabama**, 567 U.S. 460, 132 S. Ct. 2455, 183 L.Ed.2d 407 (2012), which held that the Eighth Amendment is violated by the mandatory imposition of a life sentence without the possibility of parole on offenders who were under the age of 18 at the time of the offense.

§33-6(g)(3)
Non-homicide Offenses

United States Supreme Court

Graham v. Florida, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010) The Supreme Court concluded that the “cruel and unusual punishment” clause of the 8th Amendment prohibits a sentence of life imprisonment without the possibility of parole for a juvenile offender who is convicted of an offense other than homicide. The court concluded that there are both national and global consensuses against such sentences even in jurisdictions which authorize life sentences for juveniles, that juveniles are less mature and therefore less culpable for their actions than adults, and that a case-by-case approach would be insufficient to satisfy constitutional concerns.

Illinois Appellate Court

People v. Wilson, 2015 IL App (4th) 130512 Under **Graham v. Florida**, 560 U.S. 48 (2010), the “cruel and unusual punishment” clause of the Eighth Amendment is violated by a mandatory life sentence without the possibility of parole for a juvenile offender who did not commit a homicide. Here, the court concluded that **Graham** was violated by imposition of natural life sentences without the possibility of parole on three counts of predatory criminal sexual assault of a child which were committed about six months before defendant’s 18th birthday. The natural life sentences were imposed under 720 ILCS 5/12-14.1(b)(1.2), which mandates sentences of life without parole for convictions of predatory criminal sexual assault of a child which were committed against two or more persons, “regardless of whether the offenses occurred as the result of the same act or several related or unrelated acts.”

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

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

People v. Gipson, 2015 IL App (1st) 122451 Defendant, who was 15 years old at the time of the offense, was automatically transferred to adult court and convicted of two counts of attempt first-degree murder. The facts at trial showed that defendant approached the driver’s side of a car where two victims were sitting and fired shots at one of the victims, hitting him once. At the same time, the co-defendant approached the passenger side of the car and fired shots at the other victim, hitting him several times.

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

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

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

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

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

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

§33-6(g)(4)
Emerging Adults
Illinois Supreme Court

People v. Hilliard, 2023 IL 128186 Defendant sought post-conviction relief on the basis that his 40 year sentence for attempt murder, which included a 25-year firearm enhancement, violated the proportionate penalties clause of the Illinois constitution as applied to him, in part because he was only 18 years old at the time of the offense. His petition was summarily dismissed.

The Supreme Court affirmed. The Court first clarified the limits of its holdings in **People v. Thompson**, 2015 IL 118151, **People v. Harris**, 2018 IL 121932, and **People v. House**, 2021 IL 125124. In each of those cases, the Court had allowed for the possibility that young adult offenders could raise **Miller**-type as-applied proportionate penalties clause challenges to mandatory life sentences. Here, while defendant was a young adult offender, his 40-year sentence was neither a *de facto* life sentence nor mandatory. Under **People v. Buffer**, 2019 IL 122327, only a sentence that exceeds 40 years constitutes a *de facto* life sentence, while a sentence of exactly 40 years does not. And, regardless, Hilliard's sentence was discretionary; the sentencing court could have imposed a total sentence as low as 31 years had it chosen to do so (6-year minimum for Class X attempt murder plus 25-year enhancement for personally discharging a firearm causing great bodily harm during the offense). Thus, **Thompson**, **Harris**, and **House** provided no support for his claim here.

The Court also rejected defendant's proportionate penalties claim under **People v. Leon Miller**, 202 Ill. 2d 328 (2002). There, the Supreme Court found that the 15-year-old defendant's mandatory life sentence violated the proportionate penalties clause where the convergence of several, separate statutes – specifically Illinois's juvenile transfer statute, accountability statute, and multiple-murder sentencing statute – eliminated the trial court's discretion to consider mitigation such as the defendant's age and degree of participation. Here, on the other hand, defendant acted as the principle, and only, offender, he was an adult, and his sentence was at least partially discretionary.

Finally, the Court rejected defendant's argument that society's evolving standards of decency supported his claim. Defendant pointed to recent legislative changes which allow courts to decline to impose firearm enhancements on juvenile offenders and provide parole review for offenders who were under 21 at the time of their offense. But, as the Court observed, by limiting the reach of those statutes, the legislature made a deliberate judgment that adult offenders, even young adult offenders, should remain subject to the mandatory firearm enhancements and that the youthful offender parole statute should not be applied retroactively. Accordingly, those legislative changes provide no support for defendant's claim here.

While defendant was young at the time of the offense, he deliberately chose to fire multiple shots at the victim, at close range, without provocation, in an attempt to kill him. Accordingly, he failed to state even the gist of a claim that his 40-year sentence was so cruel, degrading, or wholly disproportionate to the offense as to shock the moral sense of the community.

People v. Moore and People v. Williams, 2023 IL 126461 Defendants' successive post-conviction petitions did not sufficiently plead cause, and the supreme court therefore upheld the circuit court's decision to deny leave to file. Defendants alleged in successive petitions that their discretionary life sentences, imposed for murders committed at age 19 in 1997, violated the eighth amendment and the proportionate penalties clause. They argued that their brain development was similar to that of a juvenile and that they were therefore entitled to the sentencing considerations discussed in **Miller v. Alabama**. They argued that, because **Miller** was decided after their sentencing hearings, they could not have brought the claim earlier.

The supreme court found a lack of cause for both claims. **Miller** limited eighth amendment claims to juveniles, but defendants were 19-year-old young adults. Thus, the holding had no bearing on whether defendants could bring an eighth amendment claim prior to the instant petition. As for the proportionate penalties claim, the supreme court has already held that "**Miller**'s announcement of a new substantive rule under the eighth amendment does not provide cause for a [juvenile offender] to raise a claim under the proportionate penalties clause." **People v. Clark**, 2023 IL 127273, ¶ 61, quoting **People v. Dorsey**, 2021 IL 123010, ¶ 74. Thus, "it also does not provide cause for a young adult offender to raise a claim under the proportionate penalties clause."

People v. House, 2021 IL 125124 Defendant filed a post-conviction petition, alleging: (1) a constitutional challenge to his natural life sentence, imposed for a crime committed at age 19; and (2) actual innocence. The petition was dismissed at the second stage. After the Appellate Court found the sentence violated the proportionate penalties clause and ordered a new sentencing hearing, the Supreme Court vacated the opinion and ordered reconsideration in light of **People v. Harris**, 2018 IL 121932. After considering **Harris**, the

Appellate Court found it distinguishable and again remanded for a new sentencing hearing. The State appealed.

The Supreme Court reversed the Appellate Court but remanded the case for second-stage proceedings. First, the Appellate Court's finding of a proportionate penalties violation ran afoul **Harris**, which held that a finding that a statute is unconstitutional as applied can take place only after an evidentiary hearing. Here, as in **Harris**, defendant's petition did not contain any evidence in support of his claim that the evolving science on juvenile maturity and brain development applied to him. Thus, the trial court could not make the factual findings necessary to determine whether he, as a 19 year-old, would be entitled to constitutional protections normally reserved for juveniles. The Appellate Court's belief that the **Harris** holding was limited to as-applied claims on direct review ignores the fact that the key to such claims is the factual development, not procedural posture. The court remanded for new second-stage proceedings to allow defendant to develop the record.

Second, with regard to the actual innocence claim, defendant was entitled to new second stage proceedings because the law has changed since dismissal of his petition. The actual innocence claim was supported by a recantation affidavit. The appellate court affirmed the second-stage dismissal in 2015. Since then, the Supreme Court decided **People v. Robinson**, 2020 IL 123849, which clarified the standards for reviewing actual innocence claims, and **People v. Sanders**, 2016 IL 118123, which reviewed an actual innocence claim premised on recantation. In light of these cases, the State conceded, and the Supreme Court agreed, that new second-stage proceedings were required. Although defendant requested remand to the third-stage due to the improper second-stage dismissal, the court disagreed, as defendant had yet to meet the substantial showing standard that would entitle him to an evidentiary hearing.

Three justices partially dissented, and would have affirmed the dismissal of the proportionate penalties claim without remand for new proceedings. In her own special concurrence/partial dissent, C.J. Burke found that defendant's claim is a facial challenge, where it argues that the statutory scheme requiring a mandatory life sentence precluded the consideration of potentially mitigating circumstances. Such a challenge must fail where the legislature appropriately followed the **Miller** line of cases and drew the line at age 18.

J. Burke and J. Overstreet would have affirmed both because defendant had one opportunity to support his as-applied challenge and failed to do so, and because the determination of a sentencing line between juveniles and adults for mandatory life sentencing is best set as a matter of policy by the legislative branch. These justices noted that even after **Miller**, in 2019, the legislature provided parole review for certain crimes committed by those under 21 but excluded parole review for those like defendant who were subject to mandatory life sentences.

Illinois Appellate Court

People v. Conwell, 2026 IL App (1st) 240714 Defendant was convicted of two counts of first degree murder and sentenced to a mandatory term of life imprisonment for acts committed in 1997 when he was 18 years and 1 month old. Decades later, defendant sought and was granted leave to file a successive post-conviction petition relying upon **Miller v. Alabama**, 567 U.S. 460 (2012). Subsequently, however, the court dismissed defendant's successive petition on the State's motion. Defendant appealed.

The appellate court reversed, holding that "fundamental fairness and the integrity of the judicial process warranted further proceedings for development of the record." Because defendant's life sentence was mandatory, the sentencing court had no discretion to consider his youth and impose a lesser penalty. Defendant cannot invoke **Miller** itself because he was not a juvenile at the time of the offenses, but, as an emerging adult, he may challenge his mandatory life sentence as unconstitutional as applied under the proportionate penalties clause of the Illinois constitution if he can demonstrate he is akin to a juvenile.

In support of his claim, defendant presented individualized evidence of his psychological history and developmental background. Citing this evidence and the evolving law in the area of emerging-adult sentencing, the appellate court found defendant had established cause for not raising his claim sooner. While the supporting evidence may have been available earlier, its constitutional significance as evidence of diminished culpability could not have been meaningfully litigated at the time of his original post-conviction proceedings in 2002. At that time, there was no developed legal pathway for an emerging adult to raise a proportionate penalties claim grounded in youth-related characteristics, particularly with regard to a mandatory life sentence. And, defendant demonstrated prejudice where he was just a month past his 18th birthday at the time of the offenses, "placing him at the threshold of legal adulthood." The sentencing judge found mitigation sufficient to preclude imposition of the death penalty but lacked the ability to give meaningful effect to considerations of youth and mitigating characteristics in choosing an appropriate sentence because a life sentence was the only remaining option.

The appellate court noted it was not expanding **Miller**, invalidating defendant's sentence, or holding his sentence unconstitutional. It merely held that defendant made a sufficient showing to proceed with further factual development of his claim on remand. The dissenting justice would have affirmed on the basis that defendant could have raised his claim previously, even without the benefit of **Miller** and its progeny.

People v. Brewer, 2025 IL App (1st) 240088 The appellate court affirmed the dismissal of a successive post-conviction petition, finding defendant could not show cause. Defendant was convicted of first-degree murder, committed at age 18, and sentenced to an aggregate 80-year term. He sought leave to file a successive post-conviction petition arguing that his sentence violated the proportionate penalties clause because it was imposed without consideration of the characteristics of youth. He asserted that the evolution of caselaw since **Miller** and advances in neuroscience constituted cause for failing to raise the claim earlier and that his age and rehabilitative potential established prejudice. The circuit court denied leave to file.

Although the appellate court previously remanded the case in 2020, finding that defendant met the cause-and-prejudice test, it affirmed the current dismissal because the supreme court in the meantime has made it clear that **Miller** and its progeny do not excuse the failure to raise the claim in earlier proceedings. Both **People v. Dorsey**, 2021 IL 123010, and **People v. Moore**, 2023 IL 126461, foreclosed reliance on **Miller** to establish cause for young adult defendants raising **Miller**-based proportionate penalties claims. Nor did the court agree with defendant's argument that he presented sufficient new factual evidence to establish cause. Defendant attached a 2022 neuroscientific study to his appellate brief, but neither this document, nor an explanation of how its findings pertained to defendant's specific circumstances, were presented below.

The court also rejected defendant's claim that PC counsel provided unreasonable assistance, finding that counsel had raised and litigated the arguments available under existing law and that the record did not show what material counsel failed to provide.

People v. Hewitt, 2025 IL App (1st) 231294 Defendant was sentenced to natural life, plus 30 years, for two first-degree murders and an attempted third murder that he committed when he was 19 years old. He filed a post-conviction petition over 20 years later, alleging that his sentence violates the proportionate-penalties clause of the Illinois Constitution. Defendant based his claim on his status as an emerging adult who suffered from "severe mental illness" at the time of his crimes.

The appellate court upheld the dismissal of the petition. (The circuit court erroneously denied leave to file under the mistaken impression that the petition was successive; it was an initial petition, so the appellate court reviewed it as a first-stage dismissal).

First, defendant forfeited the claim by failing to raise it at sentencing or on appeal. Although some confusion has persisted on this point due to language in **People v. Harris**, 2018 IL 121932, suggesting a freestanding proportionate-penalties claim could be raised for the first time in a post-conviction petition, the primary holding of **Harris** was that the claim was forfeited. Subsequent holdings, such as **People Dorsey**, 2021 IL 123010, confirmed this, even where the claim cites **Miller.** Here, all relevant information to a proportionate-penalties challenge based on defendant's status as an emerging adult was available at these prior proceedings. Therefore the claim is forfeited. Defendant's only recourse was to raise trial and appellate counsel's ineffectiveness for failing to raise the claim earlier, but defendant did not do so here.

Additionally, the appellate court found the claim without merit. Despite a difficult childhood and some mental health issues, defendant's sentence was not grossly disproportionate to his culpability. Defendant was the principal shooter in a double murder, which he planned in advance, motivated by revenge, and he admitted he intended to kill as many people as possible. In short, his case "falls on the wrong side of every significant line the law has drawn in this area."

People v. Green-Hosey, 2025 IL App (2d) 240284 Following a post-conviction evidentiary hearing, the trial court granted defendant a new sentencing hearing on the basis that he made a substantial showing of a constitutional violation under the proportionate penalties clause as applied to him. Specifically, the court found that defendant's individual characteristics required the application of **Miller** principles where he was 18 years old at the time of the offenses and subject to a mandatory minimum *de facto* life sentence and that his original sentencing hearing was not **Miller** compliant. The State appealed, and the appellate court affirmed.

The post-conviction court's decision was not manifestly erroneous. Defendant presented expert testimony from Dr. Garabino to support his claim. And, while Dr. Garabino's conclusions were based on defendant's self-reported, unverified information, there was no basis to suggest that information was incorrect simply because defendant provided it. Indeed, defendant had provided much of the same information during the original presentence investigation, thus corroborating the basis for Dr. Garabino's opinion. Likewise, the fact that other courts in other cases had found Dr. Garabino's testimony unconvincing was irrelevant to the credibility assessment made here, at the conclusion of a full evidentiary hearing. The State's disagreement with the court's credibility findings does not render them improper.

A proportionate penalties claim may succeed if the defendant shows that the punishment for the offense is cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community. As society evolves, so do concepts of decency and fairness that shape the moral sense of a community. In **People v. Clark**, 2023 IL 127273, the Illinois supreme court recognized that an emerging adult may be able to make out a proportionate penalties claim based on the concerns articulated in **Miller**. Where a defendant subject to a mandatory *de facto* life sentence demonstrates both that his individual circumstances required application of **Miller** and that his sentencing hearing lacked **Miller** safeguards, he has met his burden. It is not necessary that the court separately make an explicit finding that defendant's sentence shocks the moral sense of the community.

Finally, while the court here exercised discretion at sentencing, the judge did not have discretion to consider a sentence less than *de facto* life, which is the kind of discretion contemplated by **Miller**.

People v. Garcia, 2024 IL App (2d) 210488-B Defendant filed a *pro se* post-conviction petition raising an emerging adult proportionate penalties claim. Defendant had been sentenced to 62 years of imprisonment for a murder committed when he was 18 years old. Attached to defendant's petition was a report from a developmental psychologist who had reviewed documents concerning defendant's social history and who opined that defendant "appear[ed] to be the embodiment of the developmental issues that constitute the focal points of the Supreme Court's decision in *Miller v. Alabama*." The circuit court summarily dismissed that petition.

In a prior opinion in this matter, the appellate court reversed and remanded, relying on **People v. Holman**, 2017 IL 120655. **People v. Garcia**, 2022 IL App (2d) 210488. Subsequently, however, the Supreme Court decided **People v. Wilson**, 2023 IL 127666, which held that **Holman** was no longer good law. The Supreme Court then ordered the appellate court to vacate its original judgment in this case and reconsider in light of **Wilson**.

On reconsideration, the appellate court again reversed and remanded for further proceedings. In **Wilson**, the Supreme Court acknowledged that Illinois's proportionate penalties clause is a viable alternative for sentencing challenges predicated on **Miller**'s concerns about the immaturity of young adult offenders. That is, a young adult may make out a proportionate penalties challenge to his sentence where he can show that his own specific characteristics place him in the same category as a juvenile offender and that his sentence was imposed without proper consideration of his youth and its attendant characteristics.

Here, the psychologist's report was sufficient to substantiate defendant's claim that he was developmentally equivalent to a juvenile and thus entitled to **Miller**-type protections under the proportionate penalties clause of the Illinois constitution. And, defendant's claim was not foreclosed under **Wilson** because the statutory scheme under which he was sentenced mandated that he receive a *de facto* life sentence of at least 45 years (20-year minimum for first degree murder plus a 25-year firearm enhancement). While the sentencing court had the discretion to consider defendant's youth and its attendant characteristics, it had no discretion to impose anything less than a *de facto* life sentence. Thus, while the sentencing court imposed a sentence in excess of the 45-year minimum, any discretion that the court exercised was meaningless under **Miller**'s principles where it had no choice but to impose a term greater than *de facto* life.

People v. Horshaw, 2024 IL App (1st) 182047-B Defendant argued in a successive post-conviction petition that his aggregate 66-year prison term for a murder and attempted murder committed at age 18 violated the eighth amendment and the Illinois proportionate penalties clause. The circuit court denied leave to file. The appellate court originally held that defendant demonstrated both cause and prejudice with respect to his proportionate penalties claim. The State filed a petition to leave to appeal, and the supreme court remanded the case for reconsideration in light of its opinion in **People v. Moore**, 2023 IL 126461.

The appellate court held that defendant's claim must now fail because **Moore** held that **Miller** and its progeny did not provide cause for the failure to raise a proportionate penalties claim in an initial petition. Defendant argued that **Moore** was distinguishable because it involved a discretionary life sentence, while defendant received a mandatory-minimum life sentence. The appellate court held that **Moore** did not limit its holding to discretionary sentences.

The appellate court did express reservations about **Moore**. The court suggested that it was unrealistic to expect a *pro se* young adult to put together a comprehensive proportionate penalties argument before **People v. Thompson,** 2015 IL 118151, and **People v. Harris**, 2018 IL 121932, opened the door to such claims. **Moore** leaves defendant in "no-man's land" – his "proportionate penalties claim was raised too late, but he was also sentenced too early to benefit from the legislature's recent enactment that is derived from these very same principles about the culpability of emerging adults and evolving neuroscience about brain development." Nevertheless, the appellate court was bound by the decisions of the supreme court, and the denial of leave to file was affirmed.

People v. Leach, 2024 IL App (4th) 230298 The trial court did not err in denying leave to file defendant's successive post-conviction petition arguing that his 60-year sentence for first degree murder violated the proportionate penalties clause of the Illinois constitution where he was 20 years old at the time of the offense. Defendant could not establish cause for his proportionate penalties claim by relying on **Miller** and its progeny. He could have brought his youth-based proportionate penalties claim under the law as it existed previously. And, regardless, defendant's sentence did not violate the proportionate penalties clause where the record showed that the trial court was aware of, and considered, defendant's young age and rehabilitative potential at sentencing.

People v. Buford, 2023 IL App (1st) 201176 The appellate court affirmed the summary dismissal of a post-conviction petition challenging a discretionary 90-year sentence imposed for a murder defendant committed at age 22. Defendant argued that his sentence was unconstitutional under the proportionate penalties clause of the Illinois Constitution because his intellectual disabilities rendered him similar to a juvenile. He alleged that his IQ was between 52 and 62, he was unable obtain his GED while incarcerated due to "his lack of intellect and short attention" span, and he was addicted to PCP and wine from the age of 17 until his incarceration.

Defendant's *de facto* life sentence was discretionary, and in **People v. Clark**, 2023 IL 127273, the supreme court held that the reasoning in **Miller** does not apply to discretionary sentences. Nor does it apply to those with intellectual disabilities. **People v. Coty**, 2020 IL 123972.

Moreover, defendant had a death penalty hearing, at which the sentencing court was able to consider a wide range of aggravating and mitigating evidence before choosing to impose an extended term. Finally, the court was skeptical that anyone 21 or older could be afforded the protections of **Miller**; the only case to find a such a claim to be non-frivolous, **People v. Savage**, 2020 IL App (1st) 173135, has become an "outlier," and the legislature has since limited its youthful sentencing reforms to those under 21.

People v. French, 2022 IL App (1st) 220122 The trial court did not err in denying defendant leave to file a successive post-conviction petition arguing that his 70-year sentence violated the proportionate penalties clause of the Illinois constitution. Defendant was 20 years old in

August 2010 when he committed the offense. He was sentenced in 2014, and filed his initial post-conviction petition in 2019. In **People v. Dorsey**, 2021 IL 123010, the Illinois Supreme Court held that **Miller**'s announcement of a new substantive rule under the eighth amendment did not provide cause for a defendant to raise a claim under the proportionate penalties clause. The court concluded that under **Dorsey**, defendant could not establish cause for not raising his claim in his initial petition. The court also rejected defendant's argument that he lacked evidentiary support for the claim when he filed his initial petition and only obtained such support in June 2021, when he received a doctor's report. Defendant had ample time to develop the necessary evidentiary support sooner, and his delayed investigation of the claim did not satisfy the cause requirement.

People v. Herring, 2022 IL App (1st) 210355 Defendant, convicted of a double murder committed at age 19, filed a post-conviction petition alleging his mandatory natural life sentence violated the proportionate penalties clause of the Illinois Constitution. He alleged that the mandatory sentence precluded the court from considering youth as a mitigating factor, which he claimed was constitutionally necessary because he suffered from "impulse control disorders and possibly attention deficit disorder," and research showed the brain immaturity of emerging adults.

A majority of the appellate court reversed the summary dismissal of the petition, finding the allegations sufficient to state an arguable claim under the proportionate penalties clause. In **People v. Harris,** 2018 IL 121932 and **People v. Thompson**, 2015 IL 118151, the supreme court held that an emerging adult may argue in a post-conviction petition that a life sentence imposed without adequate consideration of youth violates the proportionate penalties clause as applied. Defendant here alleged he was immature and had diminished capacity relating to risk-taking and impulse control. These were not mere conclusory allegations, but even if they were, a first stage dismissal is appropriate only where defendant "can prove no set of facts to support a claim entitling him [or her] to relief." And while no documentation supported the claims about his intellectual disabilities, it would be unreasonably burdensome to require an inmate to obtain the type of expert opinion required to support these claims. Finally, while the sentencing court claimed to consider all mitigating factors, and knew defendant's age, this was arguably insufficient given the mandatory nature of the sentence and trial counsel's concession that the court could not consider defendant's age.

The dissent would have affirmed, because defendant's references to his diminished capacity, immaturity, and intellectual disability came in the context of a claim that he could not understand the charges. The dissent also would have found the absence of supporting documentation fatal to the petition.

People v. Searles, 2022 IL App (1st) 210043 An appellate court majority remanded defendant's post-conviction petition for second-stage proceedings. Defendant argued that his 75-year *de facto* life sentence, imposed for a murder and robbery he committed at age 20, violated the proportionate penalties clause.

At his original sentencing hearing, defendant submitted evidence of the abusive nature of his upbringing, leading to drug abuse by age 11, and two stays at a mental health facility starting at age 12. In his successive petition, defendant alleged that his mental capacity at age 20, coupled with his history of mental illness and drug abuse, would have caused him to have the same impetuosity, level of maturity, susceptibility to peer pressure, and potential for rehabilitation as a minor. In arguing that the *de facto* life sentence violated the proportionate penalties clause, defendant cited **People v. Othman**, 2019 IL App (1st) 150823 (Truth in Sentencing Act unconstitutional as applied to juvenile defendants), **People v. Buffer**, 2019 IL 122327, and 730 ILCS 5/5-4.5-115(b), the recently enacted under-21 parole statute, which guarantees a parole hearing after 20 years for anyone under 21 who is sentenced after June 1, 2019.

The court found that the petition made a sufficient showing of cause based on the fact that the law defendant cited, including the under-21 parole statute, was unavailable at prior proceedings. Defendant also made a *prima facie* showing of prejudice because the record showed the sentencing court focused primarily on the crime itself and the age of the victim, with only a passing mention of mitigating evidence. Moreover, the crime involved relevant factors such as peer pressure and "juvenile thinking" in that three young people planned to scare an adult into giving them money so that they could throw a hotel party. Where the sentencing court did not consider defendant's youth or potential for rehabilitation prior to imposing a life sentence, and where a similarly situated defendant would now be offered the chance at parole after 20 years, remand for second-stage proceedings was required.

People v. Guerrero, 2022 IL App (1st) 210400 The trial court did not err when it summarily dismissed defendant's *pro se* post-conviction petition, which argued that a 45-year sentence for a murder committed at age 22 violates the Illinois Constitution's proportionate penalties clause as applied to him.

Defendant's petition cited a single case, **People v. Savage**, 2020 IL App (1st) 173135, which held that a proportionate penalties claim involving someone over the age of 21 could advance to the second stage. The petitioner in **Savage**, however, detailed facts about his personal life which justified treating him as a minor, including cognitive deficiencies likely stemming from a drug addiction which began at age 9. Defendant here, on the other hand, merely cited studies about the cognitive development of young adults in general, and provided no personal information about his background that would support treating him as a minor despite his age. Defendant was raised by two parents, was described as smart, and had no history of cognitive issues. Moreover, unlike the petitioner in **Savage**, defendant offered no remorse or evidence of rehabilitative potential, having committed another serious offense after the murder.

Finally, the court noted that two years after its holding, **Savage** continues to be the only case suggesting **Miller** protections may apply to a person over 21, while several other cases since then have rejected the argument. The holdings of these subsequent cases have gained support from the legislature, which has drawn a line at 21 when codifying **Miller** protections.

People v. Walker, 2022 IL App (1st) 201151 Defendant, who was 20 years old at the time he committed first degree murder, was properly denied leave to file successive post-conviction petition challenging his 53-year sentence as unconstitutional as applied under the proportionate penalties clause of the Illinois constitution. Defendant failed to establish cause for not raising this claim in his initial post-conviction petition, which had been filed in 2015. The court relied on **People v. Dorsey**, 2021 IL 123010, in support of its conclusion that while the law and science supporting defendant's claim has continued to evolve since 2015, that evolution does not provide a new basis to challenge his sentence. Denial of leave to file was affirmed.

People v. Everett, 2022 IL App (1st) 201169 The circuit court properly denied defendant's motion for leave to file a successive post-conviction petition. Defendant argued that his 51-year sentence, imposed for a murder and attempted murder committed at age 23, violated the proportionate penalties clause of the Illinois Constitution. Defendant asserted that the clause extends the protections of **Miller** to young adults whose brains have not fully developed.

Although cases such as **House** and **Harris** support the theory that the proportionate penalties clause may extend the protections of **Miller** to young adults, the defendants in those cases were under 21. The Appellate Court here found "no legal, societal, or penological support exists for extending the juvenile protections set forth in **Miller** to young adults over the age of 21." Because a 51-year sentence – the statutory minimum – does not otherwise offend the proportionate penalties clause in a case involving murder and attempted murder, defendant could not satisfy the prejudice prong of the cause-and prejudice test.

People v. Thomas, 2022 IL App (1st) 200164 An Appellate Court majority affirmed the summary dismissal of defendant's post-conviction petition. Defendant alleged that his 80-year sentence violated the proportionate penalties clause because he was 18 years-old at the time of the offenses. While defendant cited a doctor's opinion that the brain of an 18 year-old is not fully developed, the petition failed to allege how the specific circumstances of his background entitled him to the protections granted to juveniles pursuant to **Miller**.

A dissenting justice agreed that the petition lacked the requisite factual details to warrant relief, but pointed out that a first stage petition need only set forth the gist of a constitutional claim. The dissent believed that the majority erred in relying on cases upholding the denial of successive petitions. And it failed to consider that the necessary factual details could be developed at the second stage.

People v. Thompson, 2022 IL App (1st) 200463 An Appellate Court majority affirmed the summary dismissal of defendant's post-conviction petition. Defendant alleged that his 80-year sentence for first-degree murder violated the proportionate penalties clause because he was 18 years-old at the time of the offense. But defendant committed the offense before the enactment of truth-in-sentencing laws, so he was eligible for day-for-day sentencing credit and release after 40 years. Because **Buffer** held that a *de facto* life sentence is any term greater than 40 years, defendant here could not complain that he did not receive a meaningful opportunity for release. Nor would the majority consider the three-year term of MSR a part of the sentence. The majority noted that in **Buffer** the defendant received an MSR term as well, but the Supreme Court there did not consider that term in determining the length of defendant's sentence for purposes of **Miller**.

The defendant asked for a remand to the second stage in order to develop additional details in support of his proportionate penalties claim, citing the supreme court's decisions in **People v. Harris**, 2018 IL 121932, and **People v. House**, 2021 IL 125124. The majority refused, noting that in both cases the defendants had received a life sentence. Defendant countered that a 40-year sentence imposed on a young adult has a greater chance of being a life sentence than a 40-year sentence imposed on a juvenile, citing **People v. Ruiz**, 2020 IL App (1st) 163145, but the majority declined to follow **Ruiz** and held that it would adhere to **Buffer** even in young adult cases, until the Supreme Court says otherwise.

A dissenting justice pointed out that defendant had already committed an infraction while in prison which could prohibit the awarding of day-for-day credit, meaning he will like spend more than 40 years in prison. In light of this fact, and the contents of the petition, which included several documents demonstrating the neurological differences between young adult brains and adult brains and a mitigation report which detailed specific circumstances and details of defendant's life and upbringing, the dissent would have found an arguable proportionate penalties claim and remanded for second-stage proceedings.

People v. Hemphill, 2022 IL App (1st) 201112 The trial court did not err in denying defendant leave to file a successive post-conviction petition raising an emerging-adult proportionate penalties claim. Defendant was 21 years old at the time he committed a murder. He was sentenced to 40 years of imprisonment. Defendant's 40 year sentence was not a *de facto* life term under **Buffer** because a sentence must exceed 40 years to fit within **Buffer**'s rule. And, even if it was a *de facto* life sentence, defendant was not entitled to **Miller**-like protections. While **Miller**'s protections have been extended under the proportionate penalties clause to some individuals who were 18 or 19 years old at the time of their offenses, the overwhelming majority of courts have refused to extend those same protections to those 21 and older. And, much of the evidence upon which defendant relied in support of his successive petition had already been presented and considered at sentencing. Defendant could not establish cause or prejudice, and thus the denial of leave to file was affirmed.

People v. Aceituno, 2022 IL App (1st) 172116 Because defendant pled guilty, the circuit court properly denied his post-conviction as-applied challenge to his 48-year sentence imposed for a murder committed shortly after his 18th birthday. Defendant alleged that his claim met the cause-and-prejudice test because he pled guilty before **Miller** and its progeny rendered life sentences inappropriate for most juveniles. The Appellate Court found **People v. Jones**, 2021 IL 126432, dispositive.

In **Jones**, the Supreme Court held that a knowing and voluntary guilty plea waives any constitutional challenge based on subsequent changes in the applicable law. Here, the record showed a voluntary and knowing plea, and defendant did not allege otherwise. And while defendant's plea here was only partly negotiated, **Jones** does not delineate between open and negotiated pleas. Finally, **Miller** held only that a sentencing court must exercise discretion before imposing a life sentence. As in **Jones** the trial court here exercised discretion when deciding whether to accept the plea, and in sentencing defendant, thus satisfying the **Miller** standard.

People v. Johnson, 2022 IL App (3d) 180357-B Defendant, who was 16 years old at the time of the offenses, pled guilty to one count of second degree murder and one count of first degree murder, in exchange for the State's recommendation of consecutive sentences of 20 years and 90 years, respectively. At the plea hearing, the State advised that if convicted on the original charges, defendant would have been sentenced to a mandatory natural life term.

Defendant filed a successive post-conviction petition raising a **Miller** claim that his *de facto* life sentence was unconstitutional because it was imposed without consideration of youth and its attendant characteristics. The trial court dismissed the petition on the basis that defendant had entered into a fully negotiated plea. The Appellate Court originally concluded that defendant's plea did not waive his **Miller** claim, but the Illinois Supreme Court directed the Appellate Court to reconsider in light of **People v. Jones**, 2021 IL 126432. On reconsideration, the court found that it was bound by **Jones** and thus concluded that defendant had waived any **Miller** claim by pleading guilty. The court noted that the trial court was able to exercise its discretion in deciding whether to impose the sentence recommended by the State as part of the plea agreement. The dismissal of defendant's petition was affirmed.

People v. Green, 2022 IL App (1st) 200749 Defendant committed murder and attempt murder at age 21 and was sentenced to 100 years in prison, with day-for-day credit. He alleged in a successive post-conviction petition that his sentence violated the eighth amendment and proportionate penalties clause because it did not adequately account for his age and intellectual disabilities. Defendant pointed to testimony from his sentencing hearing about two head injuries he suffered before age 11 and a third head injury when he was 18, which led to moderate brain damage, an IQ of 74, significant deficits in attention and concentration, and impaired mental flexibility.

While the State conceded cause because the caselaw defendant cited was unavailable at the time he filed his previous petition, the Appellate Court found defendant failed to show prejudice. Defendant did not present sufficient evidence to support his general statement that **Miller** and its progeny applied to him. He cited studies on the brains of young adults, but did not provide any details connecting those studies to his own brain beyond his alleged intellectual disabilities. In light of **People v. Coty**, 2020 IL 123972, defendant could not rely on those intellectual disabilities to establish diminished culpability. Nor did he assert how his youth impacted his actions in shooting two police officers, particularly where he admitted at the time that his decision was a calculated attempt to escape arrest and avoid prison time.

People v. Wilson, 2022 IL App (1st) 192048 Defendant's petition made a substantial showing of an as-applied proportionate penalties violation where he presented sufficient evidence that the 65-year sentence he received for a crime committed at age 19 was cruel, degrading, or so disproportionate as to shock the moral sense of the community.

In **People v. House**, 2021 IL 125124, the supreme court remanded a similar proportionate penalties claim to the second stage so that defendant could present "evidence relating to how the evolving science on juvenile maturity and brain development applie[d] to [the defendant's] specific facts and circumstances." Here, in addition to the evolving science on juvenile maturity, defendant's petition included various assessments and reports of his mental health, educational performance, and behavioral issues throughout his childhood. Therefore, the petition made a sufficient connection between the applicable science and his own characteristics as a 19-year-old offender.

The dissenting justice would have affirmed the sentence because defendant was the principal offender, and because the sentencing court considered sufficient characteristics of youth at the original sentencing hearing. The majority noted, however, that **House** stated that the focus should be on development of the record as to defendant's level of brain development, not whether he was the principal or accomplice. The majority also found that the postconviction petition contained additional information not considered by the sentencing court.

People v. Howard, 2021 IL App (2d) 190695 Defendant failed to establish cause and prejudice for filing a successive post-conviction petition challenging his discretionary life sentence imposed for an offense committed in 1983 when he was 20 years old. Defendant's claim was predicated on the proportionate penalties clause of the Illinois constitution and could have been raised in his initial post-conviction petition given that it was well-established even then that youth was relevant to sentencing. The later emergence of additional support for such a claim, in **Miller** and its progeny, did not establish cause for failing to bring the claim earlier.

Further, defendant's claim, while premised on the proportionate penalties clause, was not a constitutional claim but rather an argument that the court abused its discretion by not giving greater weight to defendant's youth at sentencing. Thus, it was not cognizable in a post-conviction petition. And, regardless, defendant's claim would fail where the sentencing judge considered defendant's youth and rehabilitative potential in imposing a discretionary life sentence. Thus, defendant could not establish prejudice. The court noted that it had rejected similar claims in **People v. LaPointe**, 2018 IL App (2d) 160903, and **People v. Hoover**, 2019 IL App (2d) 170070.

People v. Hilliard, 2021 IL App (1st) 200112 Defendant failed to state the gist of a claim that application of a mandatory 25-year firearm enhancement to him violated the proportionate penalties clause of the Illinois constitution. Defendant was 18 years old at the time of the offense, and therefore was not a juvenile. Further, defendant received a 40-year sentence (15 years for attempt murder coupled with the 25-year firearm enhancement), which was not a *de facto* life sentence under **Buffer**.

And, the court rejected defendant's argument that the absence of discretion as to the firearm enhancement, alone, was enough to violate **Miller** and its progeny. Nothing in **Miller** suggests that a mandatory sentence imposed on a juvenile offender violates the eighth amendment where that sentence does not constitute *de facto* life. Thus, even if defendant was a juvenile, he would not be entitled to **Miller**-type protections. The summary dismissal of defendant's post-conviction petition was affirmed.

People v. Washington, 2021 IL App (4th) 200196 The Appellate Court rejected several constitutional attacks on a 32-year sentence imposed pursuant to a negotiated guilty plea for a murder committed at age 19.

Defendant agreed to plead guilty in exchange for a sentencing cap of 35 years. The trial court admonished defendant that he faced a term of 20-60 years that could be extended to natural life if the crime was found brutal and heinous. Defendant received 32 years. He filed a post-conviction petition alleging that: (1) his plea was involuntary given recent changes in jurisprudence concerning the sentencing of emerging adults; (2) the truth-in-sentencing laws violate the proportionate penalties clause; and (3) the trial court's threat of a life sentence rendered the plea involuntary. The circuit court summarily dismissed.

The Appellate Court affirmed. The recent changes in juvenile and emerging adult sentencing laws did not apply to defendant's case. These cases clearly state that the eighth amendment does not apply to 19-year-old defendants. And defendant did not receive a *de facto* life sentence. As for the truth-in-sentencing provision, defendant again cited only cases involving juveniles with life sentences. Although the legislature has recently created parole opportunities for those who commit murder prior to age 21, the statute applies prospectively.

Finally, the court rejected the idea that the threat of a life sentence rendered the plea involuntary. None of the cases cited by defendant, including **People v. Parker**, 2019 IL App (5th) 150192, involved a non-juvenile or any defendant sentenced to less than a *de facto* life sentence.

People v. Horshaw, 2021 IL App (1st) 182047 Defendant, who was 18 years old at the time he committed first degree murder and attempt murder, should have been granted leave to file successive post-conviction petition challenging constitutionality of his mandatory minimum 66-year aggregate sentence under the proportionate penalties clause of the Illinois constitution.

In reaching its decision, the court noted that **People v. House**, 2019 IL App (1st) 110580-B, was currently pending in the Illinois Supreme Court but concluded that **House** was unlikely to impact the outcome here because it involved a second-stage dismissal, while the instant case involved denial of leave to file a successive post-conviction petition. Instead, the court looked to similar Appellate Court decisions, those involving denial of leave to file a successive petition by a young adult (18-21 years of age) who received a natural life sentence (actual or *de facto*) and alleged it was imposed without consideration of the **Miller** factors making the sentence unconstitutional as applied under the proportionate penalties clause. What the court found was a clear split of authority on the question.

Ultimately, the court concluded that defendant made a *prima facie* showing of cause for not raising this claim in his original petition, which was filed in 2013. The instant successive petition was based on **Miller**, which was not made retroactive on collateral review until 2014 in **People v. Davis**, 2014 IL 115595. Further, not until 2019, in **Buffer**, was it established that a sentence over 40 years constituted a *de facto* life sentence.

With regard to prejudice, the court rejected the State's reliance on defendant's status as a principal offender, rather than an accountable co-defendant. Such a consideration may be relevant to whether defendant can ultimately establish that he should be treated similarly to a juvenile with regard to the **Miller** factors, but it is not relevant at the leave-to-file stage. Here, defendant's pleadings were sufficiently specific to meet the prejudice requirement where defendant cited "previously unavailable science and social science research that has brought about a 'change in law' regarding sentences of youthful offenders." It is not necessary for a defendant to present his own expert opinion to satisfy the pleading requirements of the Act. It was sufficient that defendant alleged that he could establish the existence of facts personal to him which warranted consideration of the **Miller** factors.

People v. Haines, 2021 IL App (4th) 190612 The Appellate Court affirmed the denial of leave to file a successive petition which alleged that a 55-year sentence for a murder committed at age 18 was unconstitutional. First, the claim was forfeited where defendant did not file a post-sentencing motion in the trial court. Second, defendant could not show cause for failing to raise the issue in his first petition.

While defendant argued that **Miller** had not been decided at the time of his initial petition, defendant's claim did not depend on **Miller**. Defendant was 18 at the time of the murder, and **Miller** applies only to those under age 18. Nor could defendant show cause by relying on **People v. Harris**, 2018 IL 121932. **Harris** found that an 18 year-old may be able to raise a proportionate penalties challenge to a life-sentence based on the discussion of youth and brain research cited in **Miller**. But Illinois courts have long held that a proportionate penalties challenge may be based on inadequate consideration of youth. Although **Harris** made this argument easier, the claim was available at the time of his first petition.

People v. Haywood, 2021 IL App (1st) 190809 The trial court did not err in summarily dismissing defendant's post-conviction petition. Defendant was 20 years old at the time he committed a murder, and he received a 50-year sentence after pleading guilty to that offense. In his petition, defendant raised a proportionate penalties challenge to his sentence, relying on **Miller v. Alabama**, 567 U.S. 460 (2012) and **People v. Harris**, 2018 IL 121932. The Appellate Court concluded that defendant had failed to adequately support his claim.

Under **Harris**, an emerging adult defendant bears the burden of demonstrating that his particular circumstances fall under **Miller**; his young age, alone, is not enough. Here, defendant cited his young age as well as the fact that his co-defendant, who was also his 17-year-old brother, had been granted a new sentencing hearing after **Miller**. While defendant claimed as additional support that he had no felony criminal history and that his brother was equally culpable for the offense, those claims were clearly refuted by the record and prior Appellate Court decisions. Accordingly, given the scarcity of support for defendant's proportionate penalties claim, dismissal of his petition was appropriate.

People v. Kruger, 2021 IL App (4th) 190687 The Appellate Court affirmed the denial of defendant's third motion for leave to file a successive post-conviction petition which alleged that his natural life sentence violated the proportionate penalties clause of the Illinois constitution based, in part, on **Miller** and its progeny where defendant was 21 years old at the time he committed the offense of murder. In reaching its decision, the Appellate Court agreed with the State that defendant could not show prejudice because **Miller**-based proportionate penalties claims are limited to young adults between the ages of 18 and 20, relying on **People v. Humphrey**, 2020 IL App (1st) 172837.

People v. Zumot, 2021 IL App (1st) 191743 Defendant, who was 19 year old at the time he committed murder, stated the gist of a claim that his 45-year sentence was a *de facto* life sentence imposed without consideration of his youth and attendant characteristics and thereby violated the proportionate penalties clause of the Illinois constitution as applied to him. Of note, the sentencing judge stated that defendant was eligible for a life sentence, but he did not think such a sentence was appropriate. Defendant's petition also included facts about his post-sentencing conduct, and the Appellate Court found that information relevant to the question of whether defendant possessed rehabilitative potential on par with that of a juvenile. The Appellate Court reversed and remanded for further proceedings on defendant's post-conviction petition.

People v. Ortega, 2021 IL App (1st) 182396 The majority affirmed defendant's mandatory life sentence for a second murder committed at age 19. Defendant alleged that the court should have held an evidentiary hearing to consider whether defendant's sentence violated the proportionate penalties clause, as in **People v. Harris**, 2018 121932. Although defendant alleged that the circuit court did not adequately consider his youth prior to finding defendant permanently incorrigible, defendant did not raise a proportionate penalties claim below. Counsel challenged the sentence only under the eight amendment, and the sentencing court provided a thorough analysis of the claim by considering the offense, and evidence of mitigation and aggravation, prior to imposing the mandatory sentence.

The dissent would have remanded for an evidentiary hearing, noting that the sentencing court repeatedly referenced defendant's previous murder conviction despite the fact that the appellate court in that case found repeated prosecutorial misconduct and other trial errors. (The dissent here dissented in that case as well, and would have reversed defendant's conviction, while the majority found harmless error.) The dissent agreed with defendant that the judge did not adequately consider youth, and believed that additional circumstances of the case – the recent death of defendant's father, his use of alcohol and drugs at the time of the offense, the length of time defendant will spend behind bars – warranted a remand for a new sentencing hearing before a different judge.

People v. Ford, 2021 IL App (5th) 170259 An Appellate Court majority rejected as premature defendant's claim that a 55-year sentence for a murder committed at age 18 violated the proportionate penalties clause. The majority reasoned that defendant did not raise an as-applied constitutional challenge or offer any evidence as to the unconstitutionality of the sentence at the sentencing hearing below. The only information regarding the defendant's background was contained in the PSI and its attachments.

Thus, the record did not contain evidence or findings from the trial court as to how the evolving science on juvenile maturity and brain development applied to the defendant's specific facts and circumstances. As in **People v. Harris**, 2018 IL 121932, the majority suggested defendant raise the claim anew in a post-conviction petition.

A dissenting justice believed the record was adequate to determine that defendant lacked the maturity of an adult. The record contained substantial evidence not contained in the **Harris** record. This evidence included a history of physical abuse, substance abuse, and mental illness. The facts of the crime also demonstrated the impact of peer pressure. Forcing a young defendant with mental health issues to navigate the post-conviction process, where the protections of counsel are diminished, would be unjust. The dissent would have vacated the sentence and remanded for a new sentencing hearing.

People v. Williams, 2021 IL App (1st) 190535 Defendant's post-conviction petition alleged that his mandatory life sentence, imposed for multiple murders committed at age 22, violated the proportionate penalties clause. The petition included scientific research indicating that the mitigating attributes of youth may persist until one's mid-twenties.

The Appellate Court majority affirmed the first-stage dismissal. The majority held that the petition failed to adequately establish that defendant continued to experience the mitigating attributes of youth at the time of the offense. The majority distinguished **People v. Savage**, 2020 IL App (1st) 173135, where the defendant argued that a lifelong drug addiction made him more readily influenced by peers and more volatile. Unlike the allegations in **Savage**, defendant did not demonstrate how the science of brain development and juvenile maturity applied to his specific circumstances. Defendant did not allege any facts particular to him that rendered him the functional equivalent of a juvenile. He cited only general articles finding that the brain continues to mature into one's mid-twenties. The facts of the case also exhibited none of the impulsivity or reckless decision-making associated with juveniles. Rather, defendant planned and participated in the robbery in which five people were killed.

A dissenting justice believed that while **Savage** is factually distinguishable, it does provide a non-frivolous basis upon which defendant could argue that his sentence was unconstitutional. The dissent would have found the petition met the low threshold for first-stage petitions, which need not set forth the claim in its entirety and need only present a limited amount of detail. The dissent noted that because defendant knew he faced a mandatory life sentence, he made no statement in allocution, did not participate in the PSI process, and waived all arguments in mitigation.

People v. Jones, 2021 IL App (1st) 180996 Sentence vacated and matter remanded for new sentencing hearing where defendant, who was convicted of first degree murder, was 19 years old at the time of the offense and received a *de facto* life sentence of 50 years of imprisonment. Defendant was convicted under an accountability theory while the actual shooter was acquitted by a separate jury.

Defendant did not forfeit his proportionate penalties claim by failing to raise it at sentencing. He could not have raised a claim under **Buffer** or **House** at sentencing where those cases had not been decided yet. The dissenting justice would have affirmed, noting that defendant had planned the crime with his co-defendant, was armed, and held a 12-year-old girl at gunpoint during the incident.

People v. Glinsey, 2021 IL App (1st) 191145 Defendant received a 45-year sentence for a murder committed at age 18. His successive post-conviction petition asserted a proportionate penalties claim. The Appellate Court majority held that the petition satisfied the "very low threshold" for obtaining leave to file a successive petition. Defendant was a mere 11 days past his 18th birthday, was not the main "motivating" actor behind the offense, was convicted under a theory of accountability, and was a member of a gang since age 12 and, thereby, potentially subject to its peer pressure. Although defendant's sentence was discretionary, the sentencing court did not explicitly consider defendant's age or any age-related factors.

The dissent would have found the petition lacked the necessary specific allegations required for an "as-applied" challenge.

People v. Cortez, 2021 IL App (4th) 190158 The Appellate Court affirmed the summary dismissal of defendant's post-conviction petition challenging his natural life sentence for a murder committed when he was 18 years old. An as-applied constitutional challenge to an emerging adult's life sentence requires that the defendant show (1) that his personal characteristics at the time of the offense were such that he was "in the same category as juvenile offenders" and (2) that his life sentence was imposed without regard for his youth and its attendant characteristics. To survive summary dismissal, defendant's petition need only have an arguable basis in law and fact.

Here, the court found it was not arguable that defendant's sentencing hearing failed to comply with **Miller**, even assuming defendant was on equal footing with juvenile offenders. Defendant presented extensive mitigating evidence at his three-day sentencing hearing, including evidence from experts regarding his immaturity and impaired development. And the sentencing court's finding that the offense was "horrible" and "almost beyond description" were the equivalent of a finding that defendant's conduct showed irretrievable depravity warranting a life sentence.

People v. Evans, 2021 IL App (1st) 172809 The Appellate Court affirmed the circuit court's denial of leave to file a successive post-conviction petition arguing that defendant's 100-year sentence was unconstitutional where he was 18 years old when he committed murder. **People v. Harris**, 2018 IL 121932 provides a mechanism for young adult offenders to demonstrate that the principles of **Miller v. Alabama** and its progeny apply to them. But, while defendant here mentioned the proportionate penalties clause of the Illinois constitution "in passing," the only argument he made was that his sentence violated the eighth amendment – a claim which is not available to him since he was not under 18 at the time. A defendant must plead "specific and individual characteristics" to pursue **Miller**-type relief under the proportionate penalties clause, and the failure to do so here justified denial of leave to file a successive petition.

People v. Chambers, 2021 IL App (4th) 190151 The trial court erred in summarily dismissing 18-year-old defendant's post-conviction petition asserting that his 42-year sentence violated **Miller** and its progeny. While it may ultimately be a close call whether defendant's sentencing hearing and resulting term of imprisonment were proper, it was at least arguable under the "extremely undemanding first stage" of post-conviction proceedings.

People v. Kulpin, 2021 IL App (2d) 180696 Defendant received a 60-year sentence for a murder committed at age 20. He also received a three-year consecutive sentence for concealment of a homicidal death. He was eligible for an extended-term up to 100 years.

Because defendant was not under 18, the sentencing court had no obligation to consider the **Miller/Holman** factors prior to sentencing. Defendant's attempt to extend the **Miller** protections based on scientific studies showing its principles applicable to young adults constituted an as-applied challenge which was not raised below and therefore forfeited. A similar argument raised under the proportionate penalties clause of the Illinois constitution was also deemed forfeited.

Defendant further argued that the sentencing court violated the proportionate penalties clause by failing to consider rehabilitation. While this claim had been preserved by a reference to rehabilitation in the motion to reconsider sentence, it lacked merit. The sentencing court did consider rehabilitative potential as evidence by its decision not to impose an extended term. Further reduction was not warranted in light of a psychologist's report, and a history of repeated domestic violence, both of which suggested limited rehabilitative potential.

Finally, the Appellate Court rejected defendant's excessive sentence claim. Although the record showed defendant was raised in an abusive household, he had not shown any remorse or responsibility and continued to pose a danger such that a 60-year term for murder was not excessive.

People v. Lenoir, 2021 IL App (1st) 180269 The circuit court erred in denying defendant leave to file his successive post-conviction petition challenging the constitutionality of his life sentence. Defendant received a 48-year sentence for a murder committed at age 18. Defendant established cause because he filed his initial petition prior to **Miller**, and before the Illinois Supreme Court suggested in **People v. Harris**, 2018 IL 121932 that young adults could attempt to raise a **Miller** claim in a post-conviction petition.

As to prejudice, defendant's case was analogous to **People v. House**, 2019 IL App (1st) 110580-B. Defendant was convicted under a theory of accountability and consistently maintained he merely drove the actual shooters to the scene and did not intend to assist them in a murder. While one co-defendant testified that defendant actively participated by pointing out the victim as a rival gang member, this co-defendant received a favorable plea deal for his testimony. Under these circumstances, defendant established prejudice even considering that his life sentence was discretionary.

A majority of the court upheld the denial of leave to file actual innocence and police coercion claims, finding the affidavits in support of those claims were not newly discovered. The partial dissent disagreed, noting that one of the alibi witnesses explained he was afraid of gang repercussions if he had come forward earlier, and that this is an acceptable explanation for not coming forward earlier under Supreme Court precedent. The partial dissent would have also found the witness who could corroborate the police coercion claim to be newly discovered despite that witnesses' averment that defendant saw him at the police station. The partial dissent believed the court should have taken as true the defendant's assertion that he did not discover this witness until a later FOIA request.

People v. Harris, 2020 IL App (5th) 160454 The fact that a juror and the victim's father worked for the same company was not enough, standing alone, to disqualify the juror. They worked in different departments and had minimal interaction with one another. And, while they had a distant familial relationship, it was of little consequence where there was no showing that the juror was biased.

People v. Ross, 2020 IL App (1st) 171202 The trial court erred in denying defendant leave to file a successive post-conviction petition challenging his 50-year sentence for murder and attempt armed robbery committed when he was 19 years old. Defendant demonstrated cause for not raising his claim in his original petition, filed after the decisions in **Miller** and **House** were issued, but before **Reyes**, because it was not until **Reyes** that **Miller** was extended to *de facto* life sentences in Illinois. And, it was only in **Buffer**, in 2019, that the Supreme Court clarified that a sentence over 40 years constituted *de facto* life. The court also found that defendant established prejudice given "the recent trend in treating offenders under 21 years old differently than adults" at sentencing. In reaching this conclusion, the court specifically rejected the notion that defendant should be precluded from claiming his sentence is unconstitutional because he acted alone and was not convicted under an accountability theory. The matter was remanded for further post-conviction proceedings.

People v. Franklin, 2020 IL App (1st) 171628 A majority of the Appellate Court held that the trial court erred when it denied defendant leave to file a successive post-conviction petition alleging his life sentence, imposed for a murder committed at age 18, violated the proportionate penalties clause of the Illinois Constitution.

Defendant had no prior criminal history and suffered from mental illness at the time he killed his six-month old son. He also had an abusive upbringing and suffered multiple incidents of head trauma. The sentencing court cited unspecified mitigating factors when it declined to impose the death penalty, but never mentioned defendant's age. Under these circumstances, defendant should have been granted leave to file a successive petition to either show that he was the "functional equivalent" of a juvenile due to mental illness and other circumstances, such that his sentence violated the proportionate penalties clause.

In dissent, Justice Burke wrote that she would find the **Miller** claim foreclosed by the fact that defendant was over age 18, and reject the proportionate penalties claim based on the fact that defendant was over 18, acted as principal, and received a discretionary life sentence.

People v. Savage, 2020 IL App (1st) 173135 The trial court erred in summarily dismissing a post-conviction petition alleging a proportionate-penalties violation. Defendant was 21 years-old at the time he committed murder and attempt murder, for which he received an aggregate 85-year sentence. The sentencing hearing revealed that defendant had an abusive upbringing, had been addicted to drugs since age 9, and had fallen in with older gang members at a young age. The sentencing court described the crime as a bungled robbery spurred by drug addiction, and explicitly found defendant had rehabilitative potential.

The Appellate Court held that these allegations were sufficient to advance the petition to the second stage. Although an adult, the circumstances of defendant's life may have left him with the emotional and mental development of a much younger person. Defendant's claim that he could show a lessened level of culpability due to his age and background was not frivolous or patently without merit.

People v. Carrion, 2020 IL App(1st) 171001 The trial court did not err in denying defendant leave to file successive post-conviction petition alleging **Miller** violation. Defendant was 19 years old at the time he committed residential burglary and murder. Defendant was the sole offender, and the evidence showed that he killed the victim with a knife after she confronted him burglarizing her apartment.

The Appellate Court concluded that defendant's 55-year sentence did not shock the moral sense of the community and therefore was not cruel or degrading under a proportionate penalties analysis. Defendant was not entitled to **Miller**'s protections because he was an adult at the time of the offenses. And, even if **Miller** were extended to him, defendant's sentencing hearing was compliant where the court heard and considered evidence of defendant's young age, problems with alcohol use, history of being abused, and absence of criminal history. The trial court's comments at sentencing suggested it found defendant irretrievably depraved and beyond the possibility of rehabilitation. And, defendant did not cite any additional facts in his petition that had not already been considered by the trial court.

People v. Bland, 2020 IL App (3d) 170705 Defendant established cause for not raising a **Miller** claim on direct appeal or in an earlier post-conviction petition. **Miller** was not decided until 10 years after defendant was convicted, there had been no suggestion that **Miller** could be applied to individuals 18 years of age and older until 2015, and **Miller** was only extended to *de facto* life sentences in 2016. Defendant, who was 19 years old at the time of the offense, thus had cause for not challenging his 71-year sentence until he sought leave to file a successive post-conviction petition in 2017.

Defendant also established prejudice where his petition alleged he was 19 years old at the time of the offense, was found guilty under a theory of accountability, and had been diagnosed with antisocial personality disorder which included symptoms similar to characteristics of juveniles. The record also failed to show that the trial court considered defendant's youth and its attendant characteristics at sentencing. Accordingly, defendant should have been granted leave to file his successive post-conviction petition.

People v. Gomez, 2020 IL App (1st) 173016 The Appellate Court majority affirmed the denial of leave to file a successive post-conviction petition containing an "emerging adult" proportionate penalties claim. Defendant received a discretionary *de facto* life sentence of 50 years for a murder committed at age 18. The Court found that **People v. Harris**, 2018 IL 121932 does not automatically require an evidentiary hearing in emerging-adult cases, only the opportunity to file a post-conviction petition. Defendant attempted to file one here, but failed to establish cause and prejudice. Even if only accountable (the evidence was disputed as to whether or not defendant was the gunman), defendant was with a fellow gang member "hunting down" rivals before killing someone in a "cruel and cold-blooded" fashion. A 50-year sentence under these circumstances was not so cruel or disproportionate so as to shock the moral conscience of the community.

The dissent would have allowed defendant the opportunity to file the petition and attempt to show that his youth, abusive upbringing, and attempts at rehabilitation could amount to a substantial showing of a proportionate penalties claim.

People v. Jackson, 2020 IL App (1st) 143025-B In a successive post-conviction petition, defendant argued his 50-year sentence for murder committed at age 16 violated **Miller**. Upon remand from the Illinois Supreme Court in light of **Buffer**, the Appellate Court held that defendant was entitled to a new sentencing hearing at which the court would be required to consider the **Miller** factors.

People v. Daniels, 2020 IL App (1st) 171738 Defendant did not waive a proportionate penalties challenge to his sentence by virtue of his having entered a negotiated guilty plea in 1995. Defendant could not have known at the time of his plea that he could argue that the natural life sentence to which he agreed in order to avoid the death penalty was potentially constitutionally disproportionate as applied to him where he was just 18 years old at the time of the offense. The court declined to apply the waiver principles enunciated in **People v. Jackson**, 199 Ill. 2d 286 (2002) to non-**Apprendi** claims.

Defendant established cause for not raising his proportionate penalties challenge previously because the law regarding sentencing of juvenile and young adult offenders has evolved significantly in the time since he was sentenced and filed his original post-conviction petition. Defendant established prejudice where he was 18 years old at the time of the offense, had a history of mental health issues, and had an unusually harsh childhood. Because he had "not yet had the opportunity to ask a court to consider" the fundamental question of whether his life sentence was unconstitutional as applied under recent developments in sentencing youthful offenders, the court reversed the denial of leave to file defendant's successive post-conviction petition and remanded for further proceedings.

People v. Humphrey, 2020 IL App (1st) 172837 The trial court denied defendant leave to file a successive post-conviction petition alleging that his life sentence for offenses committed in 1982, when he was 21 years old, violated the eighth amendment and proportionate penalties clause, and the Appellate Court affirmed. To date, no case has extended **Miller** protections to an individual 21 or older. Further, defendant here was the principal offender rather than an accomplice, and the sentencing judge made a finding that the defendant was beyond rehabilitation.

People v. Minniefield, 2020 IL App (1st) 170541 Trial court erred in denying defendant leave to file successive post-conviction petition alleging that his 50-year sentence for first degree murder violated the proportionate penalties clause where defendant was 19 years old at the time of the offense. Defendant's claim was grounded in the **Miller** line of cases, which established cause for his not having raised it in his original post-conviction petition filed in 2007, several years prior to the decision in **Miller**. And, defendant met the prejudice prong for filing a successive petition where the law presently treats those younger than 21 as minors in a variety of circumstances, including a recent statutory amendment which allows a person convicted of first degree murder to seek parole after 20 years if he or she was under 21 at the time of the offense and was sentenced after that amendment took effect. Further, the Juvenile Court Act allows persons under 21 to be considered "minors," and the State treats those under 21 as minors in other circumstances, including the sale of alcohol and cigarettes, ownership of firearms, and limitations on Class X recidivist sentencing. Accordingly, the court reversed the denial of defendant's motion for leave to file successive petition and remanded the matter for further post-conviction proceedings.

People v. McClurkin, 2020 IL App (1st) 171274 The Appellate Court upheld the circuit court's denial of leave to file a successive petition raising a proportionate penalties claim. Defendant was 24 years-old when he murdered two people, triggering a mandatory life sentence. Because he was an adult and personally murdered the victims, his case was distinguishable from **People v. House**, 2019 IL App (1st) 110580-B, who was still a teenager and found guilty under a theory of accountability. Nor did the fact that defendant had a diagnosed personality disorder alter the analysis, where the disorder was aggravating in the sense that it was not transient.

People v. Johnson, 2020 IL App (1st) 171362 The circuit court erred in denying defendant leave to file his successive post-conviction petition containing an "emerging adult" proportionate penalties claim. Defendant was convicted of murder and given a discretionary life sentence for a crime committed in 1999 at age 19. The Appellate Court first found that defendant established cause. His previous post-conviction petition did raise a **Miller** issue, but the instant petition was filed only after **People v. House** 2015 IL App (1st) 110580 offered support for the extension of **Miller** beyond those under 18 through the Illinois proportionate penalties clause. Thus, defendant's current argument was not yet available until after he already filed his initial petition.

As to prejudice, defendant's eighth amendment challenge could not succeed pursuant to federal authority restricting its protections to juveniles. But his proportionate penalties argument had potential merit. The court refused to distinguish defendant's case from **House** on the basis of his discretionary sentence, finding no relevant distinction between mandatory and discretionary life sentences. The court further found that it would be premature to decide whether the **Miller** factors had already been considered at his sentencing hearing, as defendant at this stage should only be required to plead that the facts of his case warrant their consideration in the first place. Defendant's petition met this standard, and at further post-conviction proceedings the defendant will have to prove both that the **Miller** protections applied to him and that he did not receive them at the initial sentencing hearing.

People v. Ruiz, 2020 IL App (1st) 163145 The circuit court erred in denying defendant leave to file his successive post-conviction petition challenging the constitutionality of his life sentence. Defendant received a 40-year sentence for a murder committed at age 18. The Appellate Court first found that defendant established cause. Defendant was sentenced years before the United States Supreme Court decided **Miller**, and even longer before the Illinois Supreme Court suggested in **People v. Harris**, 2018 IL 121932. that young adults could attempt to show **Miller**'s application to them in post-conviction proceedings.

As to prejudice, defendant's eighth amendment challenge could not succeed pursuant to federal authority restricting its protections to juveniles. But his proportionate penalties argument had potential merit. The court refused to distinguish defendant's case from **People v. House**, 2019 IL App (1st) 110580-B on the basis of his discretionary sentence, finding no relevant distinction between mandatory and discretionary life sentences, or on his greater participation in the offense, noting participation is not a primary focus of **Miller**. The court also rejected the argument that because the 40-year sentence would be permissible on a juvenile without regard to **Miller**, defendant's 40-year sentence could not be unconstitutional. The court reasoned that an 18-year-old defendant who receives a 40-year sentence will not be released until age 58.

Finally, the court refused to consider whether the sentencing court had already sufficiently considered the **Miller** factors, holding that this query is premature and that defendant must first establish that he deserved the protections of **Miller** via the Illinois proportionate penalty clause. Defendant's petition met this pleading standard by setting forth a detailed, well-cited legal argument for why the protections in **Miller**, and in the Illinois cases applying it, should benefit young adults such as himself.

People v. White, 2020 IL App (5th) 170345 Court did not err in denying leave to file successive post-conviction petition raising **Miller** and proportionate penalties claims. Defendant was 20 years old when he committed two counts of first degree murder and was sentenced to mandatory term of natural life. He was not a juvenile, **Miller** protections do not apply to adult offenders. Defendant did not establish that he was more akin to a juvenile than an adult under the circumstances here.

Likewise, defendant's "flat allegation" regarding evolving science on juvenile maturity and brain development was not enough to support a proportionate penalties claim. Defendant was an adult, was the primary offender, and developed and executed an intricate plan to kill his grandmother and her friend, and also to frame the friend for the murder.

People v. Suggs, 2020 IL App (2d) 170632 The Appellate Court declined to extend the protections of the **Miller** line of cases to a defendant who was convicted of murder, attempt murder, and attempt armed robbery, and sentenced to a total of 110 years of imprisonment, for offenses committed when he was 23 years old. While acknowledging that there is support for extending **Miller** to young adults, the court was not willing to do so here. Society draws lines at 18 and 21 for various purposes, and the legislature has endorsed special considerations up to age 21 when it enacted Public Act 100-1182 providing for parole review for certain offenses committed by persons under 21, but the court was not willing to extend those considerations even further.

People v. Carrasquillo, 2020 IL App (1st) 180534 The circuit court erred when it denied defendant leave to file his successive post-conviction petition alleging a *de facto* life sentence imposed on an 18 year-old violated the proportionate penalties clause of the Illinois Constitution.

In 1978, defendant was sentenced to 200 to 600 years in prison, with opportunity for parole after 20 years. Because defendant could not have anticipated the **Miller** line of cases at the time of his first post-conviction petition in 1987, he established cause. Defendant also established prejudice. He has already served a *de facto* life sentence under **Buffer**. There was no evidence the trial court considered his youth. Nor was there recourse for defendant to challenge the parole board's repeated denials, and defendant presented sufficient evidence – including the intimidating presence of police officers at his parole hearings – that he would never be paroled. For these reasons, defendant deserved a chance to develop his claim through post-conviction proceedings.

People v. Handy, 2019 IL App (1st) 170213 The trial court did not err in denying defendant leave to file successive post-conviction petition. Defendant could not demonstrate prejudice where his petition alleged that his 120-year aggregate sentence for crimes committed when he was 18.5 years old was unconstitutional as applied. Defendant was an adult and therefore was not entitled the same Eighth Amendment protections afforded to juveniles under **Miller**. And, defendant could not make out a proportionate penalties claim because he was an active participant in the armed robbery, home invasion, kidnaping and sexual assault, rather than a lookout, and because the sentence here was discretionary and not mandatory, both factors which distinguished the case from **People v. House**, 2019 IL App (1st) 110580-B. The appellate court concluded that although defendant's sentence was "harsh," the trial court properly denied leave to file his successive post-conviction petition.

People v. Harris, 2019 IL App (1st) 110580-B After the Appellate Court found a life sentence applied to the 19-year-old defendant violated the proportionate penalties clause and ordered a new sentencing hearing, the Supreme Court vacated the opinion and ordered reconsideration in light of **People v. Harris**, 2018 IL App (1st) 141744. In **Harris**, the defendant raised, for the first time on direct appeal, an as-applied proportionate-penalties attack on his *de facto* life sentence for a murder committed at age 18. The Supreme Court found the claim premature because, without an evidentiary hearing below, the record did not contain sufficient facts to resolve the claim.

After considering **Harris**, the Appellate Court found it distinguishable. Unlike **Harris**, defendant raised his claim in a post-conviction petition, and had previously alleged his sentence was unconstitutional post-trial and on direct appeal. Also, a key factor in the court's finding of unconstitutionality – defendant's role as a lookout and his guilt under a theory of accountability – is readily apparent from the record. The record was therefore sufficiently developed for an as-applied challenge.

On the merits, the court noted that a similarly culpable co-defendant had been re-sentenced and released, and that defendant received the same sentence as the actual shooter. The court acknowledged that **Roper** drew a line at age 18, but refused to consider this "somewhat arbitrary" designation a bright line rule and, citing studies, decisions from foreign jurisdiction, and recent Illinois legislation, found a "need to expand juvenile sentencing provisions for young adult offenders." After consider defendant's age, his family background, his actions as a lookout as opposed to being the actual shooter, and lack of any prior violent convictions, the court found that a mandatory sentence of natural life, which allows for no consideration of rehabilitation or mitigation, shocks the moral sense of the community. The court remanded for a new sentencing hearing.

People v. Branch, 2018 IL App (1st) 150026 The sentencing court did not abuse its discretion in sentencing an 18 year-old defendant to 40 years in prison for attempted murder with a firearm. Although the Appellate Court has held that the United States Supreme Court's juvenile sentencing jurisprudence, such as **Miller v. Alabama**, 567 U.S. 460 (2012), can apply even if the defendant is 18 or 19 years-old, as in **People v. House**, 2015 IL App (1st) 110580 and **People v. Harris**, 2016 IL App (1st) 141744, the sentences in those cases were life or *de facto* life sentences. Here, defendant is not alleging that a 40-year sentence is unconstitutional as applied, and defendant received neither a *de facto* life sentence nor a mandatory minimum. Rather, because of the 25-year firearm enhancement, the sentence in this case was only nine years above the minimum, and not an abuse of discretion in light of the severity of the offense. But, the Appellate Court did urge the legislature to promulgate new sentencing guidelines for offenders between 18 and 20 years of age.

People v. Pittman, 2018 IL App (1st) 152030 The Appellate Court refused to invalidate defendant's mandatory life sentence under Miller v. Alabama, 567 U.S. 460 (2012), because defendant was not a juvenile where he was 18 years old at the time he killed his girlfriend, her mother, and her younger sister. Nor did the sentence violate the proportionate penalties clause of the Illinois Constitution. Defendant's natural life sentence did not shock the moral sense of the community, and the record would have supported a natural life sentence here even if it was not mandatory.

People v. Rodriguez, 2018 IL App (1st) 160030 The Appellate Court majority held, over dissent, that a mandatory minimum sentence of 45 years for first-degree murder committed by a 15-year-old juvenile, required to run consecutively to an unrelated 20-year sentence for attempted murder committed when defendant was 19, violated **Miller**. The defendant would not be released from prison until age 80, rendering the sentence a *de facto* natural life sentence. Even though the offenses were not part of a single course of conduct, the effect – a mandatory *de facto* life sentence – is the same. Similarly, the fact that defendant was 19 when he committed the attempt murder does not change the fact that the defendant's murder sentence amounted to *de facto* natural life. On remand, the sentencing court will have the discretion to impose or not impose the 25-year firearm enhancement.

People v. LaPointe, 2018 IL App (2d) 160903 The trial court properly denied leave to file a successive post-conviction petition alleging that defendant's discretionary life sentence violated **Miller v. Alabama**, 567 U.S. 460 (2012). Defendant turned 18 about a month before he committed the murder, and **Miller** applies only to those under 18, as made clear by its reliance on **Roper v. Simmons,** 543 U.S. 551 (2005), where the court expressly drew a line between adults and those under 18.

For purposes of a standalone proportionate penalties attack on his sentence, defendant could not rely on the timing of the **Miller** decision to show cause and to avoid the *res judicata* effect of previous attacks on his sentence. His claim that the sentencing court did not consider youth in mitigation could have been raised before **Miller**.

People v. Williams, 2018 IL App (1st) 151373 Mandatory natural life sentence was unconstitutional as applied to 19-year-old defendant's 1994 conviction of two counts of murder on an accountability theory. The trial court erred in denying leave to file a successive post-conviction petition raising a challenge under **Miller v. Alabama** because **Miller** was not decided until 2012, providing cause for not raising the claim in earlier proceedings. And, defendant established prejudice because his mandatory life sentence violated the proportionate penalties clause of the Illinois Constitution as applied to him.

The Court found defendant's case analogous to **People v. House**, 2015 IL App (1st) 110580, which also involved a 19-year-old defendant. The Court looked at scientific studies and concluded there is "no scientific evidence to support the conclusion that at age 18 a defendant's brain is magically transformed to maturity such that it is different than it was the day before his eighteenth birthday. In fact, the scientific evidence suggests the opposite conclusion." The Court continued, "there is no bright line of demarcation regarding brain maturity between a 17-year-old and an 18- or 19-year-old."

While defendant should have been granted leave to file his successive petition, the Appellate Court found remand for further post-conviction proceedings unnecessary because defendant was entitled to relief on his claim. Defendant's natural life sentence was vacated, and the matter was remanded for resentencing.

People v. McKee, 2017 IL App (3d) 140881 Defendant's sentence of mandatory natural life imprisonment for the first degree murder of two people did not violate the Eighth Amendment or the proportionate penalties clause of the Illinois constitution. Defendant, who was 18 years old at the time of the offense and was guilty based on accountability, argued that her sentence was unconstitutional as applied to her. The court held that defendant was an adult at the time of the offense, actively participated in the robbery that led to the murders, helped conceal the offense from a nearby witness, accepted proceeds from the robbery, and asked her father to help dispose of the bodies. Under these facts, a mandatory sentence of natural life imprisonment was not unconstitutional as applied.

People v. Thomas, 2017 IL App (1st) 142557 Defendant, who was 18 years old at the time of the offense, was convicted of first degree murder of one victim, attempt first degree murder of another, and attempt armed robbery. Defendant used a firearm that proximately caused the death of the murder victim and proximately caused great bodily harm to the attempt victim. The court sentenced defendant to the minimum sentence of 45 years for murder (20 years plus a 25-year firearm enhancement), a minimum consecutive term of 31 years for attempt murder (six year plus a 25-year firearm enhancement), and a minimum consecutive term of four years for attempt armed robbery, for a total of 80 years. The parties agreed that defendant would have to serve at least 73 years of imprisonment.

The court, with one dissenting justice, held that defendant's sentence did not violate the eighth amendment or the proportionate penalties clause (the dissenting justice would have found that it violated the proportionate penalties clause). The court first held that cases involving an adult defendant are not comparable to cases involving juveniles, and thus even a lengthy "sentence that approaches the span of a defendant's lifetime," does not violate the eighth amendment when it is imposed on an adult.

People v. Barnes, 2017 IL App (1st) 143902
In sentencing defendant to consecutive 18- and 5-year sentences for home invasion and robbery, the trial court did not abuse its discretion by deeming the complainant's injuries as the "most significant" aggravating factor. Contrary to defendant's claim that the trial court considered only this factor, the court specifically stated that it considered all statutory factors in aggravation and mitigation. The court was not required to specify on the record all of the reasons for the sentence imposed. **Miller** does not mandate a sentence reduction where it applies only to the most severe criminal penalties and regardless, defendant was 19 at the time of the offense.

People v. Ybarra, 2016 IL App (1st) 142407 The proportionate penalties clause of the Illinois Constitution requires all penalties to "be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art I, § 11. A statute may be deemed unconstitutional under this clause if the punishment for the offense is cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community.

Defendant, age 20 at the time of the offense, was convicted of the first degree murder of three people and as such was subject to a mandatory sentence of natural life imprisonment. 730 ILCS 5/5-8-1(a)(1)(c)(ii). Despite the mandatory sentence, defendant introduced substantial mitigating evidence at his sentencing hearing. The trial court acknowledged the mandatory sentence, but also indicated that it reviewed the mitigating evidence. In imposing a natural life sentence, the court stated that even if it had discretion it would still have imposed a life sentence.

The Appellate Court held that defendant's sentence did not violate the proportionate penalties clause as applied to him. Defendant was a legal adult who was convicted of being the actual shooter in the death of three unarmed teenagers. Under these circumstances, a mandatory natural life sentence did not shock the moral sense of the community.

People v. Brown, 2012 IL App (1st) 091940 Both the Eighth Amendment of the federal constitution and the proportionate-penalties clause of the state constitution incorporate the concept of proportionality in criminal sentencing. A proportionality analysis under either provision involves a consideration of evolving standards of decency and fairness to determine the validity of any particular sentence.

Graham v. Florida, 560 U.S. 48, 130 S. Ct. 2011, 176 L.Ed.2d 825(2010), for the first time recognized a categorical limitation on a term-of-years sentence, which had previously been recognized only in the death-penalty context. A categorical challenge requires that a court first consider objective indicia of society's standards, as expressed in legislative enactments and state practice, to determine whether there is a national consensus against the sentencing practice at issue.

Next, guided by the standards elaborated by controlling precedents and by the court's own understanding and interpretation of the constitution's text, history, meaning, and purpose, the court must determine in the exercise of its own independent judgment whether the punishment in question violates the constitution. Community consensus, while entitled to great weight, is not determinative. The court must consider the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question. The court also considers whether the challenged sentencing practice serves legitimate penological goals.

Relying on **Graham**, the defendant challenged the constitutionality of his mandatory sentence of life without parole when imposed on mentally-retarded 19-year-old adults, guilty only by accountability of multiple murders. The Appellate Court dismissed the argument that age should be considered as part of the categorical analysis on the ground that defendant did not "identify why, at age 19, his 'youthfulness' should be considered. In any case, defendant was 19 at the time of the murders and was thus not a minor or a 'youth.'"

Finding no evidence of a national consensus against a mandatory sentence of life without parole for a mentally-retarded adult convicted of multiple murders on an accountability theory, the Appellate Court turned to the second step of the analysis. With respect to defendant's mental retardation, the Appellate Court acknowledged in accordance with **Atkins v. Virginia**, 536 U.S. 304 (2002), that mentally-retarded persons have diminished personal culpability. But, "[d]espite such concerns . . . , this court has previously upheld the mandatory sentencing scheme at issue here in the face of a constitutional challenge brought by a mentally retarded defendant."

While defendant was convicted of the "highest crime[s] known to the law," he was convicted on a theory of "accountability, for which a somewhat lower sense of moral culpability attaches." "Despite this fact, we again note that the very sentence imposed here has previously survived similar constitutional challenges brought by defendants convicted on an accountability theory."

The Appellate Court also considered the fact that defendant was an admitted gang member with a significant criminal history and was aware of the robbery plan, that the co-defendant's gun was loaded, and that the co-defendant intended to kill one of the victims. Although the goal of rehabilitation would not be served by defendant's sentence, the fact that this one goal is not served by the sentence did not render it invalid. The sentence did serve the legitimate goals of retribution for defendant's actual culpability, deterrence, and incapacitation.

§33-6(g)(5)
Illinois Proportionate Penalties Challenges

Illinois Supreme Court

People v. Spencer, 2025 IL 130015 Defendant received an aggregate 100-year sentence for murder, attempt murder, and home invasion, committed when he was 20 years-old. He argued his sentence violated the proportionate penalties clause of the Illinois Constitution because the sentencing court failed to adequately consider youth and its attendant characteristics before imposing a *de facto* life sentence.

The supreme court agreed with the appellate court that the recently enacted parole statute, which grants a chance at parole after 20 years for those convicted of murder committed before they were 21 years-old, offered a meaningful opportunity for release. See 730 ILCS 5/5-4.5-115(j). Therefore defendant did not receive a *de facto* life sentence.

A defendant can raise an as-applied proportionate penalties claim against any sentence, not just a *de facto* or *de jure* natural life sentence. Thus, the appellate court erred when held that, because defendant did not receive a *de facto* life sentence, he could not establish that his sentence violated the proportionate penalties clause.

An as-applied challenge does, however, require a fully developed record. Here, defendant argued that the sentencing court did not adequately consider the goal of rehabilitation in light of defendant's youth and the evolving science of brain development. Based on this general principle that as-applied constitutional claims cannot ultimately succeed absent a sufficiently developed evidentiary record, the supreme court concluded that the proper venue for this as-applied challenge is in a post-conviction proceeding.

People v. White, 2025 IL 129767 Defendant entered an open guilty plea to one count of first degree murder and received a 40-year sentence. More than 20 years later, he filed a *pro se* 2-1401 petition alleging his sentence violated the eighth amendment, and the proportionate penalties clause of the Illinois Constitution. The State did not file a response and the circuit court denied the petition. Defendant raised the proportionate penalties claim on appeal, arguing defendant was a 20-year-old emerging adult at the time of the crime, and that the sentencing court did not consider his youth at sentencing. The appellate court affirmed, holding petitioner's guilty plea waived his sentencing claim.

The supreme court accepted the State's concession that an open guilty plea did not waive the proportionate penalties claim. Prior cases, such as **People v. Jones**, 2021 IL 126432, that have found a guilty plea waived a constitutional challenge to a sentence, did so because the defendant entered in to a fully negotiated plea, which is essentially a contract. While a defendant cannot unilaterally alter a fully negotiated plea without violating contract principles, these principles don't apply to open pleas. This distinction is further evidenced by Rule 604(d), which allows a defendant to file a motion to reconsider the sentence imposed following an open plea. Here, the State did dismiss charges pursuant to the defendant's agreement to enter in to the plea, but he received no assurances as to the sentence. Thus, he did not waive his right to challenge the sentence.

Defendant asked the court to remand to the appellate court so that it could reach the merits. The State asked the court to affirm based on the fact that a 2-1401 petition is not a proper vehicle for a proportionate penalties claim, the claim is meritless, and defendant did not show due diligence.

The supreme court held that the State forfeited its procedural challenge because it failed to respond to the petition in the circuit court. As for the merits, rather than remand to the appellate court, the supreme court chose to decide the issue in the interest of judicial economy.

The supreme court first held that, although defendant did not receive a *de facto* life sentence, he could still raise an as-applied proportionate penalties claim. However, his could not show a 40-year sentence was disproportionate in this case. Defendant argued that a near *de facto* life sentence was disproportionate given his youth and rehabilitative potential, which, he contended, the sentencing court did not adequately consider. The supreme court disagreed. Defendant was not a juvenile, but 20, when he fatally shot an unarmed victim at close range because he would not comply with defendant's demand to tell him the location of another man defendant was chasing. The sentencing court properly reviewed the PSI and heard testimony from defendant's grandmother as well as defendant's statement in allocution. Given the serious offense, the court held a 40-year sentence was not disproportionate.

People v. Hilliard, 2023 IL 128186 Defendant sought post-conviction relief on the basis that his 40 year sentence for attempt murder, which included a 25-year firearm enhancement, violated the proportionate penalties clause of the Illinois constitution as applied to him, in part because he was only 18 years old at the time of the offense. His petition was summarily dismissed.

The Supreme Court affirmed. The Court first clarified the limits of its holdings in **People v. Thompson**, 2015 IL 118151, **People v. Harris**, 2018 IL 121932, and **People v. House**, 2021 IL 125124. In each of those cases, the Court had allowed for the possibility that young adult offenders could raise **Miller**-type as-applied proportionate penalties clause challenges to mandatory life sentences. Here, while defendant was a young adult offender, his 40-year sentence was neither a *de facto* life sentence nor mandatory. Under **People v. Buffer**, 2019 IL 122327, only a sentence that exceeds 40 years constitutes a *de facto* life sentence, while a sentence of exactly 40 years does not. And, regardless, Hilliard's sentence was discretionary; the sentencing court could have imposed a total sentence as low as 31 years had it chosen to do so (6-year minimum for Class X attempt murder plus 25-year enhancement for personally discharging a firearm causing great bodily harm during the offense). Thus, **Thompson**, **Harris**, and **House** provided no support for his claim here.

The Court also rejected defendant's proportionate penalties claim under **People v. Leon Miller**, 202 Ill. 2d 328 (2002). There, the Supreme Court found that the 15-year-old defendant's mandatory life sentence violated the proportionate penalties clause where the convergence of several, separate statutes – specifically Illinois's juvenile transfer statute, accountability statute, and multiple-murder sentencing statute – eliminated the trial court's discretion to consider mitigation such as the defendant's age and degree of participation. Here, on the other hand, defendant acted as the principle, and only, offender, he was an adult, and his sentence was at least partially discretionary.

Finally, the Court rejected defendant's argument that society's evolving standards of decency supported his claim. Defendant pointed to recent legislative changes which allow courts to decline to impose firearm enhancements on juvenile offenders and provide parole review for offenders who were under 21 at the time of their offense. But, as the Court observed, by limiting the reach of those statutes, the legislature made a deliberate judgment that adult offenders, even young adult offenders, should remain subject to the mandatory firearm enhancements and that the youthful offender parole statute should not be applied retroactively. Accordingly, those legislative changes provide no support for defendant's claim here.

While defendant was young at the time of the offense, he deliberately chose to fire multiple shots at the victim, at close range, without provocation, in an attempt to kill him. Accordingly, he failed to state even the gist of a claim that his 40-year sentence was so cruel, degrading, or wholly disproportionate to the offense as to shock the moral sense of the community.

People v. Clark, 2023 IL 127273 Defendant sought leave to file a successive post-conviction petition challenging his 90-year sentence for murder under the proportionate penalties clause of the Illinois Constitution. Defendant committed the offense in 1993 when he was just 24 years old, and, at sentencing, there was extensive evidence that defendant suffered from fetal alcohol syndrome, antisocial personality disorder, and borderline personality disorder, and that he had the intellectual ability of a 13- or 14-year-old. In his successive petition, defendant asserted that the circuit court failed to give sufficient weight to his intellectual disabilities and his young age as mitigating factors before imposing a *de facto* life sentence.

The Post-Conviction Hearing Act contemplates the filing of a single post-conviction petition unless the petitioner can establish "cause and prejudice" for filing a successive petition. "Cause" is defined as an objective factor that impeded the petitioner's ability to raise the claim at issue in his initial post-conviction proceeding. And, "prejudice" requires a showing that the claim at issue so infected the proceedings that the resulting conviction or sentence violated due process.

Defendant failed to demonstrate cause. He previously raised a challenge to his sentence on direct appeal, where he argued that his sentence was excessive in light of his mental conditions, and he cited the proportionate penalties clause in support of that argument at the time. While defendant relied on the more recent **Miller** line of cases in support of his successive post-conviction claim, the Supreme Court rejected that argument, citing its recent holding from **People v. Dorsey**, 2021 IL 123010, that those cases were based on the Eighth Amendment and do not provide cause for a proportionate penalties claim. Further, Illinois law has long recognized the reduced culpability of persons with intellectual disabilities, such that defendant's claim was previously available.

And, defendant's claim would fail as a matter of law even if he could establish cause. Defendant's sentence was discretionary, not mandatory, and the record showed that defendant's intellectual disabilities were the focus of the sentencing hearing. As noted in **People v. Coty**, 2020 IL 123972, evidence of intellectual disabilities can present a "two-edged sword" at sentencing. On the one hand, such evidence may diminish an individual's culpability for his criminal conduct, while on the other hand it may serve to confirm his future dangerousness. Here, the court properly exercised its discretion in sentencing defendant to 90 years after considering extensive evidence of his intellectual disabilities. Accordingly, defendant could not show prejudice.

Defendant also argued that his status as an emerging adult warranted leave to file his successive post-conviction petition. The court rejected that claim because, as with the intellectual disability claim, defendant had argued on direct appeal that his youth and background warranted a lesser sentence, the **Miller** line of cases did not render his claim "new" for purposes of post-conviction purposes, and he could not establish prejudice where the court imposed a discretionary *de facto* life sentence upon giving considerable weight to the seriousness of the offense and Clark's future dangerousness as a function of his intellectual disabilities.

People v. Miller, 202 Ill.2d 328, 781 N.E.2d 300 (2002) The proportionate penalties clause was violated by the operation of three statutes, which mandated a life sentence for a 15-year-old who was convicted of first degree murder as an accomplice, but who had only a moment to contemplate whether to participate in the offense and who acted only as a lookout. See also, **People v. McCoy**, 337 Ill.App.3d 518, 786 N.E.2d 1052 (2d Dist. 2003) (distinguishing **Miller** and holding that the mandatory natural life term for multiple murder does not violate the proportionate penalties clause of the Illinois Constitution, even where defendant was convicted only on the basis of accountability).

Illinois Appellate Court

People v. Conwell, 2026 IL App (1st) 240714 Defendant was convicted of two counts of first degree murder and sentenced to a mandatory term of life imprisonment for acts committed in 1997 when he was 18 years and 1 month old. Decades later, defendant sought and was granted leave to file a successive post-conviction petition relying upon **Miller v. Alabama**, 567 U.S. 460 (2012). Subsequently, however, the court dismissed defendant's successive petition on the State's motion. Defendant appealed.

The appellate court reversed, holding that "fundamental fairness and the integrity of the judicial process warranted further proceedings for development of the record." Because defendant's life sentence was mandatory, the sentencing court had no discretion to consider his youth and impose a lesser penalty. Defendant cannot invoke **Miller** itself because he was not a juvenile at the time of the offenses, but, as an emerging adult, he may challenge his mandatory life sentence as unconstitutional as applied under the proportionate penalties clause of the Illinois constitution if he can demonstrate he is akin to a juvenile.

In support of his claim, defendant presented individualized evidence of his psychological history and developmental background. Citing this evidence and the evolving law in the area of emerging-adult sentencing, the appellate court found defendant had established cause for not raising his claim sooner. While the supporting evidence may have been available earlier, its constitutional significance as evidence of diminished culpability could not have been meaningfully litigated at the time of his original post-conviction proceedings in 2002. At that time, there was no developed legal pathway for an emerging adult to raise a proportionate penalties claim grounded in youth-related characteristics, particularly with regard to a mandatory life sentence. And, defendant demonstrated prejudice where he was just a month past his 18th birthday at the time of the offenses, "placing him at the threshold of legal adulthood." The sentencing judge found mitigation sufficient to preclude imposition of the death penalty but lacked the ability to give meaningful effect to considerations of youth and mitigating characteristics in choosing an appropriate sentence because a life sentence was the only remaining option.

The appellate court noted it was not expanding **Miller**, invalidating defendant's sentence, or holding his sentence unconstitutional. It merely held that defendant made a sufficient showing to proceed with further factual development of his claim on remand. The dissenting justice would have affirmed on the basis that defendant could have raised his claim previously, even without the benefit of **Miller** and its progeny.

People v. Holman, 2026 IL App (5th) 230139 After granting defendant leave to file a fourth successive post-conviction petition, the court ultimately advanced the matter to the third stage for an evidentiary hearing. Following that hearing, the parties presented argument and filed additional pleadings in support of their respective positions. The court then revisited its order granting leave to file and reversed that decision, concluding that defendant had failed to establish cause and prejudice. Defendant appealed.

Agreeing with the reasoning set forth in **People v. Canizalez-Cardena**, 2020 IL App (4th) 180212, the appellate court held that the circuit court erred in vacating its order granting leave to file the successive petition. Determinations of cause and prejudice are to be made without input from the State. Thus, it was improper to reverse course on the issue of leave-to-file after the State filed a motion to dismiss and after a full evidentiary hearing had been held. The appellate court reversed the portion of the court's order vacating denial of leave to file.

Rather than remanding, however, the court went on to affirm, finding that defendant was not entitled to relief as a matter of law. Defendant's petition raised a proportionate penalties challenge to his discretionary sentence of natural life imprisonment for an offense committed when he was 17 years old. In prior post-conviction proceedings, defendant had challenged his sentence under **Miller** and its progeny. The appellate court concluded that defendant could have raised the instant proportionate penalties claim in those proceedings, as well, and thus he failed to establish cause and therefore was not entitled to relief.

People v. Leach, 2024 IL App (4th) 230298 The trial court did not err in denying leave to file defendant's successive post-conviction petition arguing that his 60-year sentence for first degree murder violated the proportionate penalties clause of the Illinois constitution where he was 20 years old at the time of the offense. Defendant could not establish cause for his proportionate penalties claim by relying on **Miller** and its progeny. He could have brought his youth-based proportionate penalties claim under the law as it existed previously. And, regardless, defendant's sentence did not violate the proportionate penalties clause where the record showed that the trial court was aware of, and considered, defendant's young age and rehabilitative potential at sentencing.

People v. Carrasquillo, 2023 IL App (1st) 211241 In his post-conviction petition, defendant contended that his sentence of 200 to 600 years for first degree murder, committed when he was 18 years old, violates the proportionate penalties clause because it amounts to a *de facto* life sentence, entered without consideration of his youth and its attendant characteristics. Although he committed the crime prior to 1977, and was therefore eligible for parole after serving 20 years, defendant argued this was an "illusory" opportunity for release, because the board had rejected more than 30 consecutive parole requests. He alleged that certain board members did so automatically because the victim was a police officer. The circuit court denied the petition after an evidentiary hearing, finding defendant's eligibility for parole took his sentence outside the ambit of **Miller**.

An appellate court majority reversed. It first found that while the mere opportunity for parole may suffice under the eighth amendment and **Miller**, the proportionate penalties clause offers additional protections. The majority endorsed defendant's claim that by denying over 30 consecutive requests for parole, the board had effectively proven that defendant had no meaningful opportunity for release. In support, the appellate court noted that the enormity of the initial sentence sent a signal that defendant should never be paroled, and the fact that both the parole board and the circuit court heard ample evidence of maturity and rehabilitation.

Because defendant was 18 at the time of the offense, he also had to establish that he was entitled to the protections afforded to juveniles. He did so by providing testimony at his evidentiary hearing from a doctor who testified about brain development and others who knew the conditions of his family life and childhood. This testimony established that he was functioning at a maturity level equal to that of a juvenile. Because the record also showed the sentencing court did not consider defendant's youth and its attendant characteristics, a new sentencing hearing was required.

A dissenting justice would have found the circuit court's decision was not manifestly erroneous, where it was not so apparent that defendant would never be granted parole.

People v. French, 2022 IL App (1st) 220122 The trial court did not err in denying defendant leave to file a successive post-conviction petition arguing that his 70-year sentence violated the proportionate penalties clause of the Illinois constitution. Defendant was 20 years old in August 2010 when he committed the offense. He was sentenced in 2014, and filed his initial post-conviction petition in 2019. In **People v. Dorsey**, 2021 IL 123010, the Illinois Supreme Court held that **Miller**'s announcement of a new substantive rule under the eighth amendment did not provide cause for a defendant to raise a claim under the proportionate penalties clause. The court concluded that under **Dorsey**, defendant could not establish cause for not raising his claim in his initial petition. The court also rejected defendant's argument that he lacked evidentiary support for the claim when he filed his initial petition and only obtained such support in June 2021, when he received a doctor's report. Defendant had ample time to develop the necessary evidentiary support sooner, and his delayed investigation of the claim did not satisfy the cause requirement.

People v. Peacock, 2022 IL App (1st) 170308-B In a successive post-conviction petition, defendant challenged as an unconstitutional *de facto* life sentence his 80-year sentence for a 1995 murder, committed when he was 17 years old. Defendant is eligible for day-for-day credit against his sentence, which means he may be released after serving only half of his sentence, or 40 years. In **People v. Buffer**, 2019 IL 122327, the Supreme Court held that a sentence of 40 years or more imposed on a juvenile is a *de facto* life sentence.

Initially, the Appellate Court found that defendant's 80-year sentence constituted a *de facto* life sentence and remanded for a new sentencing hearing. The State sought leave to appeal, and the Illinois Supreme Court issued a supervisor order directing the Appellate Court to reconsider its decision in light of **People v. Dorsey**, 2021 IL 123010. In **Dorsey**, the defendant was subject to a day-for-day sentencing credit scheme which allowed some meaningful opportunity for release before serving more than 40 years in prison.

On reconsideration, the Appellate Court noted that the defendant here is also entitled to day-for-day credit and could be released after serving 40 years, just short of a *de facto* life sentence. While defendant ultimately may serve more than 40 years, the Court held that under **Dorsey**, the relevant consideration is whether the statutory scheme under which he was sentenced allows the opportunity for release before serving more than 40 years.

The Court also rejected defendant's Illinois proportionate penalties claim, concluding that defendant had not established cause for not raising that claim in his initial post-conviction petition. In reaching this conclusion, the Court followed **Dorsey** and several other cases that have rejected such an argument. The proportionate penalties clause was in existence at the time defendant filed his initial petition, and Illinois has long recognized that sentencing youthful offenders requires consideration of their emotional maturity.

People v. Kuehner, 2022 IL App (4th) 200325 Defendant could not establish cause-and-prejudice by alleging that his guilty plea to attempted murder and home invasion, committed at age 17, was not knowing and voluntary. Defendant reasoned that before he pled guilty and received his 35-year sentence, the court told him he faced a 12 to 120-year extended-term sentence. In reality, defendant urged, he faced at most 40 years under the eighth amendment as interpreted by subsequent cases such as **Miller** and **Buffer**. The Appellate Court disagreed. **Miller** and **Buffer** did not impose a sentencing cap of 40 years. Defendant could have been sentenced to 120 years, as long as the sentencing court first considered his youth and attendant circumstances. In any event, the Illinois Supreme Court recently rejected the notion that a guilty plea can be invalidated based on subsequent changes in applicable law. **People v. Jones**, 2021 126432.

Additionally, defendant failed to establish cause for his proportionate penalties claim. Although the eighth amendment jurisprudence in the years since defendant's plea has reshaped juvenile sentencing law, a claim of inadequate consideration of youth under the proportionate penalties clause predated defendant's plea. **Miller** and its progeny may have made such a claim easier, but availability, not ease, is the relevant standard. Regardless, defendant could not show prejudice because a 35-year sentence for being accountable for the severe beating and robbery of a 98-year-old blind and deaf woman is far from disproportionate and does not shock the conscience of the community.

Finally, defendant's argument that he was prejudiced by his automatic transfer to adult court under a since-repealed law "is too speculative to be of any use" because he would still be subject to discretionary transfer.

People v. Ford, 2022 IL App (1st) 172581 Defendant, who was 18 years old and was sentenced to a term of 46-years of imprisonment for first degree murder, argued that his sentence was an improper *de facto* life term imposed in violation of the proportionate penalties clause. The proper vehicle for a young adult between the ages of 18 and 21 to raise an as-applied challenge to a *de facto* life sentence is in a post-conviction proceeding. Defendant here had not developed the record below to support consideration of the issue on direct appeal. Defense counsel was not ineffective for failing to develop this issue at defendant's sentencing hearing, however, because most of the cases supporting the issue were not decided until after defendant had been sentenced. Defendant's sentence was affirmed.

People v. Watson, 2022 IL App (1st) 192182 Defendant, who was 17 years old at the time of his offense, filed a post-conviction petition arguing that truth in sentencing was unconstitutional as applied to juvenile offenders like him and that, accordingly, his 32-year sentence for first degree murder violated the proportionate penalties clause of the Illinois constitution. The circuit court summarily dismissed defendant's petition, and the Appellate Court affirmed.

The Appellate Court first found that defendant had waived his claim by entering a negotiated plea of guilty, relying on **People v. Jones**, 2021 IL 126432. Additionally, the court held that the truth in sentencing requirement that defendant serve 100% of his sentence for murder did not violate the eighth amendment or **Miller v. Alabama**, 567 U.S. 460 (2012). Defendant's 32-year sentence, even if served at 100%, is not a life sentence under any constitutional measure. Requiring a juvenile offender to serve the full term of a non-life sentence for murder does not violate **Miller**. The court also noted that defendant's reliance on the now-vacated truth-in-sentencing portion of the decision in **People v. Othman**, 2019 IL App (1st) 150823, was misplaced. The reasoning in **Othman** was, at best, *dicta*, even before it was vacated.

People v. Figueroa,2022 IL App (1st) 172390-B Defendant filed a successive post-conviction petition alleging his 75-year sentence, imposed for a crime committed at age 17, violated the Eighth Amendment and the proportionate penalties clause. The circuit court denied leave to file. The Appellate Court, in its previous opinion, remanded for a new sentencing hearing. The Supreme Court vacated that opinion, and ordered reconsideration based on **People v. Dorsey**, 2021 IL 123010. In light of **Dorsey**, the Appellate Court affirmed the circuit court's dismissal of the Eighth Amendment claim, because defendant did not receive a *de facto* life sentence where he was eligible for day-for-day credit and he therefore had a meaningful opportunity for release after 37.5 years.

The Appellate Court also affirmed the circuit court's dismissal of the proportionate penalties claim. Although defendant cited **People v. Meneses**, 2022 IL App (1st) 191247-B, which remanded for second-stage proceedings in a case involving a similar claim, the Appellate Court here distinguished **Meneses**. There, the court found no procedural bars to the claim, while here, defendant failed to raise the claim on direct appeal or in two previous post-conviction petitions. Defendant's petition therefore failed to establish cause. As **Dorsey** held, a proportionate penalties claim was available to defendants prior to **Miller**, and while **Miller** may have provided support, it did not sufficiently alter the claim so as to constitute cause for failing to raise it earlier.

People v. Thornton, 2022 IL App (1st) 170677 Defendant's eighth amendment claim, challenging a 70-year sentence imposed for a murder committed at age 17, was properly dismissed at the first stage in light of **People v. Dorsey**, 2021 IL 123010, because defendant was eligible for day-for-day sentencing credit that would give him an opportunity for release after 35 years. Defendant's proportionate penalties claim was likewise without merit. The appellate court noted the crime was considered brutal and heinous, involving abduction, torture, and murder. In light of these facts, and the sentencing court's consideration of a wide range of mitigation evidence, a 70-year sentence with a potential for release after 35 years does not shock the moral sense of the community.

People v. Meneses, 2022 IL App (1st) 191247-B The 16-year-old defendant stated a colorable claim that his 60-year sentence violated Illinois' proportionate penalties clause such that he should have been permitted leave to file a successive post-conviction petition. While defendant was eligible for day-for-day credit on his 60-year sentence, the Appellate Court concluded that the availability of good time was not fatal to defendant's proportionate penalties claim even after **People v. Dorsey**, 2021 IL 123010. The proportionate penalties clause provides greater protections than the eighth amendment, and under that broader protection defendant met the low threshold to file a successive petition. Specifically, the record demonstrated that the sentencing court believed deterrence was a mandatory consideration when defendant was sentenced. But, evolving standards of decency suggest that deterrence may have little to no place in sentencing children given that adolescent brains have not yet matured in areas related to higher-order executive functions, including impulse control and risk avoidance. The Appellate Court reversed and remanded for second-stage post-conviction proceedings.

People v. Hill, 2022 IL App (2d) 200416 The truth-in-sentencing provisions, requiring defendant to serve 100% of his 40-year sentence for a murder committed at age 17, did not violate the proportionate penalties clause of the Illinois Constitution.

Defendant argued that the truth-in-sentencing provision limited the sentencing court's discretion to such an extent that it interfered with the rehabilitation requirements of the proportionate penalties clause. But the sentencing court had sufficient discretion in this case. It already exercised discretion when it reduced the sentence from 48 to 40 years in light of **Buffer**, and declined to impose the firearm enhancement. If the court felt constrained by truth-in-sentencing, it could have simply reduced the sentence to 20 years. Instead, the sentencing court properly concluded that a 40-year term was appropriate for defendant, who was the principal offender in the murder of an innocent cab driver.

People v. Howard, 2021 IL App (2d) 190695 Defendant failed to establish cause and prejudice for filing a successive post-conviction petition challenging his discretionary life sentence imposed for an offense committed in 1983 when he was 20 years old. Defendant's claim was predicated on the proportionate penalties clause of the Illinois constitution and could have been raised in his initial post-conviction petition given that it was well-established even then that youth was relevant to sentencing. The later emergence of additional support for such a claim, in **Miller** and its progeny, did not establish cause for failing to bring the claim earlier.

Further, defendant's claim, while premised on the proportionate penalties clause, was not a constitutional claim but rather an argument that the court abused its discretion by not giving greater weight to defendant's youth at sentencing. Thus, it was not cognizable in a post-conviction petition. And, regardless, defendant's claim would fail where the sentencing judge considered defendant's youth and rehabilitative potential in imposing a discretionary life sentence. Thus, defendant could not establish prejudice. The court noted that it had rejected similar claims in **People v. LaPointe**, 2018 IL App (2d) 160903, and **People v. Hoover**, 2019 IL App (2d) 170070.

People v. Hilliard, 2021 IL App (1st) 200112 Defendant failed to state the gist of a claim that application of a mandatory 25-year firearm enhancement to him violated the proportionate penalties clause of the Illinois constitution. Defendant was 18 years old at the time of the offense, and therefore was not a juvenile. Further, defendant received a 40-year sentence (15 years for attempt murder coupled with the 25-year firearm enhancement), which was not a *de facto* life sentence under **Buffer**.

And, the court rejected defendant's argument that the absence of discretion as to the firearm enhancement, alone, was enough to violate **Miller** and its progeny. Nothing in **Miller** suggests that a mandatory sentence imposed on a juvenile offender violates the eighth amendment where that sentence does not constitute *de facto* life. Thus, even if defendant was a juvenile, he would not be entitled to **Miller**-type protections. The summary dismissal of defendant's post-conviction petition was affirmed.

People v. Kruger, 2021 IL App (4th) 190687 The Appellate Court affirmed the denial of defendant's third motion for leave to file a successive post-conviction petition which alleged that his natural life sentence violated the proportionate penalties clause of the Illinois constitution based, in part, on **Miller** and its progeny where defendant was 21 years old at the time he committed the offense of murder. In reaching its decision, the Appellate Court agreed with the State that defendant could not show prejudice because **Miller**-based proportionate penalties claims are limited to young adults between the ages of 18 and 20, relying on **People v. Humphrey**, 2020 IL App (1st) 172837.

People v. Robinson, 2021 IL App (1st) 192289 Defendant's mandatory life sentence for a second aggravated criminal sexual assault, imposed when he was 24 years old, was not unconstitutional despite his mental illnesses. Defendant alleged that his sentence, as applied to a young offender with mental illness, violated the Eighth Amendment and the proportionate penalties clause.

The Appellate Court found only the proportionate penalties claim viable, as the Eighth Amendment as interpreted by **Miller** and its progeny does not apply to defendants older than 17. The Appellate Court further found that defendant presented adequate documentation of his background, including DCFS records, mental illness treatment records, and family history, to warrant review of his as-applied challenge.

The Appellate Court affirmed the sentence, however, relying on **People v. Coty**. 2020 IL 123972. As in **Coty**, where the court affirmed a life sentence imposed on a defendant with severe intellectual disabilities, the Appellate Court here found defendant's mental illness is not inherently mitigating. Given the nature of the crimes, where defendant deceived and lured women to abandoned locations in order to sexually assault them, a sentencing court could reasonably conclude that the risk of future dangerousness outweighs any lessened culpability. Although defendant sought to distinguish **Coty** by pointing out that mental illness, unlike intellectual disability, is treatable, making defendant's prospects for rehabilitation greater than in **Coty**, the record failed to show that he was capable of being treated. The Appellate Court noted that after defendant's first sexual assault, he did not use his time in prison to treat his mental illness or his predilection for violent sexual behavior, but rather received 50 citations for various offenses, including violent altercations.

Regardless, despite the mandatory nature of the sentence, the trial court adequately considered the relevant factors regarding defendant's upbringing, mental illnesses, culpability, future dangerousness, and rehabilitative potential before imposing the sentence.

People v. Glinsey, 2021 IL App (1st) 191145 Defendant received a 45-year sentence for a murder committed at age 18. His successive post-conviction petition asserted a proportionate penalties claim. The Appellate Court majority held that the petition satisfied the "very low threshold" for obtaining leave to file a successive petition. Defendant was a mere 11 days past his 18th birthday, was not the main "motivating" actor behind the offense, was convicted under a theory of accountability, and was a member of a gang since age 12 and, thereby, potentially subject to its peer pressure. Although defendant's sentence was discretionary, the sentencing court did not explicitly consider defendant's age or any age-related factors.

The dissent would have found the petition lacked the necessary specific allegations required for an "as-applied" challenge.

People v. Villalobos, 2020 IL App (1st) 171512 In **People v. Buffer**, 2019 IL 122327, the Supreme Court held that "a prison sentence of 40 years or less" provides a juvenile some meaningful opportunity for release. Thus, for purposes of juvenile sentencing, a *de facto* life sentence is *more* than 40 years. A period of mandatory supervisory release is not counted, because the question is when the defendant will be released from prison, not when he completes the totality of his sentence. Therefore, where defendant received exactly 40 years (plus three years of MSR), he could not raise an eighth amendment claim under **Miller**.

The Appellate Court further rejected a proportionate penalties claim, finding the trial court adequately balanced the defendant's youth against the severity of the offense. A 40-year sentence on a 16 year-old did not shock the conscience where defendant participated in a gang-related beating and, after his fellow gang members left the scene, returned to the prone victim and fired several shots into his back. The notion that the court did not adequately consider mitigating factors was further belied by the fact that the court refused to impose the mandatory firearm enhancements, and reduced the initial 50-year sentence by 10 years upon reconsideration.

People v. Franklin, 2020 IL App (1st) 171628 A majority of the Appellate Court held that the trial court erred when it denied defendant leave to file a successive post-conviction petition alleging his life sentence, imposed for a murder committed at age 18, violated the proportionate penalties clause of the Illinois Constitution.

Defendant had no prior criminal history and suffered from mental illness at the time he killed his six-month old son. He also had an abusive upbringing and suffered multiple incidents of head trauma. The sentencing court cited unspecified mitigating factors when it declined to impose the death penalty, but never mentioned defendant's age. Under these circumstances, defendant should have been granted leave to file a successive petition to either show that he was the "functional equivalent" of a juvenile due to mental illness and other circumstances, such that his sentence violated the proportionate penalties clause.

In dissent, Justice Burke wrote that she would find the **Miller** claim foreclosed by the fact that defendant was over age 18, and reject the proportionate penalties claim based on the fact that defendant was over 18, acted as principal, and received a discretionary life sentence.

People v. Savage, 2020 IL App (1st) 173135 The trial court erred in summarily dismissing a post-conviction petition alleging a proportionate-penalties violation. Defendant was 21 years-old at the time he committed murder and attempt murder, for which he received an aggregate 85-year sentence. The sentencing hearing revealed that defendant had an abusive upbringing, had been addicted to drugs since age 9, and had fallen in with older gang members at a young age. The sentencing court described the crime as a bungled robbery spurred by drug addiction, and explicitly found defendant had rehabilitative potential.

The Appellate Court held that these allegations were sufficient to advance the petition to the second stage. Although an adult, the circumstances of defendant's life may have left him with the emotional and mental development of a much younger person. Defendant's claim that he could show a lessened level of culpability due to his age and background was not frivolous or patently without merit.

People v. Carrion, 2020 IL App(1st) 171001 The trial court did not err in denying defendant leave to file successive post-conviction petition alleging **Miller** violation. Defendant was 19 years old at the time he committed residential burglary and murder. Defendant was the sole offender, and the evidence showed that he killed the victim with a knife after she confronted him burglarizing her apartment.

The Appellate Court concluded that defendant's 55-year sentence did not shock the moral sense of the community and therefore was not cruel or degrading under a proportionate penalties analysis. Defendant was not entitled to **Miller**'s protections because he was an adult at the time of the offenses. And, even if **Miller** were extended to him, defendant's sentencing hearing was compliant where the court heard and considered evidence of defendant's young age, problems with alcohol use, history of being abused, and absence of criminal history. The trial court's comments at sentencing suggested it found defendant irretrievably depraved and beyond the possibility of rehabilitation. And, defendant did not cite any additional facts in his petition that had not already been considered by the trial court.

People v. Gomez, 2020 IL App (1st) 173016 The Appellate Court majority affirmed the denial of leave to file a successive post-conviction petition containing an "emerging adult" proportionate penalties claim. Defendant received a discretionary *de facto* life sentence of 50 years for a murder committed at age 18. The Court found that **People v. Harris**, 2018 IL 121932 does not automatically require an evidentiary hearing in emerging-adult cases, only the opportunity to file a post-conviction petition. Defendant attempted to file one here, but failed to establish cause and prejudice. Even if only accountable (the evidence was disputed as to whether or not defendant was the gunman), defendant was with a fellow gang member "hunting down" rivals before killing someone in a "cruel and cold-blooded" fashion. A 50-year sentence under these circumstances was not so cruel or disproportionate so as to shock the moral conscience of the community.

The dissent would have allowed defendant the opportunity to file the petition and attempt to show that his youth, abusive upbringing, and attempts at rehabilitation could amount to a substantial showing of a proportionate penalties claim.

People v. Daniels, 2020 IL App (1st) 171738 Defendant did not waive a proportionate penalties challenge to his sentence by virtue of his having entered a negotiated guilty plea in 1995. Defendant could not have known at the time of his plea that he could argue that the natural life sentence to which he agreed in order to avoid the death penalty was potentially constitutionally disproportionate as applied to him where he was just 18 years old at the time of the offense. The court declined to apply the waiver principles enunciated in **People v. Jackson**, 199 Ill. 2d 286 (2002) to non-**Apprendi** claims.

Defendant established cause for not raising his proportionate penalties challenge previously because the law regarding sentencing of juvenile and young adult offenders has evolved significantly in the time since he was sentenced and filed his original post-conviction petition. Defendant established prejudice where he was 18 years old at the time of the offense, had a history of mental health issues, and had an unusually harsh childhood. Because he had "not yet had the opportunity to ask a court to consider" the fundamental question of whether his life sentence was unconstitutional as applied under recent developments in sentencing youthful offenders, the court reversed the denial of leave to file defendant's successive post-conviction petition and remanded for further proceedings.

People v. Woods, 2020 IL App (1st) 163031 Trial court did not err in denying leave to file successive post-conviction petition alleging proportionate penalties violation where 17-year-old defendant had received 33-year sentence for attempt murder. Sentence was not *de facto* life, and mandatory firearm enhancement did not shock the conscience of the community. At sentencing, the court acknowledged defendant's youth and minimal criminal record but found that his actions warranted a serious sentence. The 33-year sentence allows a meaningful opportunity for rehabilitation and did not violate the proportionate penalties clause.

People v. Gunn, 2020 IL App (1st) 170542 In **People v. Buffer**, 2019 IL 122327, the Supreme Court held that "a prison sentence of 40 years or less imposed on a juvenile offender does not constitute a *de facto* life sentence in violation of the Eighth Amendment." Here, defendant received 40 years in prison, plus three years' MSR, for a murder committed at age 17. The Appellate Court rejected his claim that he received a *de facto* life sentence in light of the above language from **Buffer**, and notwithstanding the three years of MSR, which are not included as part of the "prison sentence" for purposes of a **Miller** challenge. The court also rejected defendant's proportionate penalties argument, finding no plain error. The court did not believe that failing to mention mitigating factors contained in the PSI rose to the level of plain error, and held that 40 years for a "premeditated, gangland-style execution" does not "shock the moral sense of the community"

People v. Minniefield, 2020 IL App (1st) 170541 Trial court erred in denying defendant leave to file successive post-conviction petition alleging that his 50-year sentence for first degree murder violated the proportionate penalties clause where defendant was 19 years old at the time of the offense. Defendant's claim was grounded in the **Miller** line of cases, which established cause for his not having raised it in his original post-conviction petition filed in 2007, several years prior to the decision in **Miller**. And, defendant met the prejudice prong for filing a successive petition where the law presently treats those younger than 21 as minors in a variety of circumstances, including a recent statutory amendment which allows a person convicted of first degree murder to seek parole after 20 years if he or she was under 21 at the time of the offense and was sentenced after that amendment took effect. Further, the Juvenile Court Act allows persons under 21 to be considered "minors," and the State treats those under 21 as minors in other circumstances, including the sale of alcohol and cigarettes, ownership of firearms, and limitations on Class X recidivist sentencing. Accordingly, the court reversed the denial of defendant's motion for leave to file successive petition and remanded the matter for further post-conviction proceedings.

People v. Womack, 2020 IL App (3d) 170208 Defendant committed attempt murder with a firearm at age 16. In a successive post-conviction petition, he alleged that under **Miller** and recent Illinois cases, the 20-year firearm enhancement added to his 18-year sentence violated the proportionate penalties clause of the Illinois Constitution as applied to him.

Over a dissent, the Appellate Court agreed with recent cases, such as **People v. Barnes**, 2018 IL App (5th) 140378 and **People v. Aikens**, 2016 IL App (1st) 133578, which held that the mandatory imposition of firearm enhancements for juveniles no longer reflects Illinois's evolving standard of decency. Under the proportionate penalties clause, the juvenile status of defendant at the time of the offense and the circumstance surrounding the incident should have some relevance in determining whether to impose the mandatory 20-year firearm enhancement. Thus, defendant's petition met the cause-and-prejudice test and the court remanded for second-stage proceedings.

People v. White, 2020 IL App (5th) 170345 Court did not err in denying leave to file successive post-conviction petition raising **Miller** and proportionate penalties claims. Defendant was 20 years old when he committed two counts of first degree murder and was sentenced to mandatory term of natural life. He was not a juvenile, **Miller** protections do not apply to adult offenders. Defendant did not establish that he was more akin to a juvenile than an adult under the circumstances here.

Likewise, defendant's "flat allegation" regarding evolving science on juvenile maturity and brain development was not enough to support a proportionate penalties claim. Defendant was an adult, was the primary offender, and developed and executed an intricate plan to kill his grandmother and her friend, and also to frame the friend for the murder.

People v. Carrasquillo, 2020 IL App (1st) 180534 The circuit court erred when it denied defendant leave to file his successive post-conviction petition alleging a *de facto* life sentence imposed on an 18 year-old violated the proportionate penalties clause of the Illinois Constitution.

In 1978, defendant was sentenced to 200 to 600 years in prison, with opportunity for parole after 20 years. Because defendant could not have anticipated the **Miller** line of cases at the time of his first post-conviction petition in 1987, he established cause. Defendant also established prejudice. He has already served a *de facto* life sentence under **Buffer**. There was no evidence the trial court considered his youth. Nor was there recourse for defendant to challenge the parole board's repeated denials, and defendant presented sufficient evidence – including the intimidating presence of police officers at his parole hearings – that he would never be paroled. For these reasons, defendant deserved a chance to develop his claim through post-conviction proceedings.

People v. Johnson, 2020 IL App (2d) 170646 The circuit court properly denied defendant's motion for leave to file successive post-conviction petition. While the petition raised both a **Miller** challenge and a proportionate penalties challenge to his 27-year sentence for first degree murder, on appeal defendant argued that the truth-in-sentencing statute – requiring him to serve 100% of his sentence – was unconstitutional on its face and as applied to him.

The Appellate Court rejected the State's argument that defendant's truth-in-sentencing claim was both waived and forfeited. A sentence which violates the constitution can be challenged at any time, and defendant's claim on appeal was that his sentence was unconstitutional based on the reasoning in **Miller**. The court also concluded that the record here was sufficient to review defendant's as-applied challenge even though such challenges generally should be presented in the trial court first.

Ultimately, though, the Appellate Court rejected defendant's claim on the merits. Defendant's 27-year sentence did not bring him under the protections of **Miller** because it was not a *de facto* life term. Further, the record established that the sentencing judge considered defendant's youth and its attendant characteristics, as well as the fact that he was an accomplice and not the principal offender. Finally, the court noted that **People v. Othman**, 2019 IL App (1st) 150823, on which defendant's truth-in-sentencing challenge was based, had since been vacated.

People v. Handy, 2019 IL App (1st) 170213 The trial court did not err in denying defendant leave to file successive post-conviction petition. Defendant could not demonstrate prejudice where his petition alleged that his 120-year aggregate sentence for crimes committed when he was 18.5 years old was unconstitutional as applied. Defendant was an adult and therefore was not entitled the same Eighth Amendment protections afforded to juveniles under **Miller**. And, defendant could not make out a proportionate penalties claim because he was an active participant in the armed robbery, home invasion, kidnaping and sexual assault, rather than a lookout, and because the sentence here was discretionary and not mandatory, both factors which distinguished the case from **People v. House**, 2019 IL App (1st) 110580-B. The appellate court concluded that although defendant's sentence was "harsh," the trial court properly denied leave to file his successive post-conviction petition.

People v. Gunn, 2019 IL App (1st) 170542 In **People v. Buffer**, 2019 IL 122327, the Supreme Court held that "a prison sentence of 40 years or less imposed on a juvenile offender does not constitute a *de facto* life sentence in violation of the Eighth Amendment." Here, defendant received 40 years in prison, plus three years' MSR, for a murder committed at age 17. The Appellate Court rejected his claim that he received a *de facto* life sentence in light of the above language from **Buffer**, and notwithstanding the three years of MSR, which are not included as part of the "prison sentence" for purposes of a **Miller** challenge. The court also rejected defendant's proportionate penalties argument, finding no plain error. The court did not believe that failing to mention mitigating factors contained in the PSI rose to the level of plain error, and held that 40 years for a "premeditated, gangland-style execution" does not "shock the moral sense of the community"

People v. Hoover, 2019 IL App (2d) 170070 The trial court properly denied leave to file a successive post-conviction petition raising a proportionate penalties challenge to defendant's natural life sentence for first degree murder committed when he was 22 years old. Following

People v. LaPointe, 2018 IL App (2d) 160903, the Appellate Court found that defendant could not establish cause because he could have raised the claim in a prior post-conviction petition. The claim was not dependent on **Miller** and its progeny because youth has always been a pertinent factor in sentencing. Defendant also could not show prejudice because a claim that the court failed to consider youth at sentencing is not a claim of constitutional deprivation under the proportionate penalties clause. A proportionate penalties claim requires that the sentence be wholly disproportionate to the offense, and on the facts here such a claim would fail on its merits.

People v. Aikens, 2016 IL App (1st) 133578 The proportionate penalties clause of the Illinois Constitution was violated by application of the adult sentencing scheme for attempt murder of a peace officer with a firearm to a 17-year-old who was tried as an adult. The minor was sentenced to the mandatory minimum term totaling 40 years - 20 years for attempted murder of a peace officer plus 20 years for personally discharging a firearm in the course of that offense. In sentencing defendant, the trial court noted that defendant had no prior record and had a difficult upbringing, and that the mandatory minimum sentence "seems to be an unimaginable amount of time . . . for a teenage child." A mitigation specialist testified that defendant had more potential than any client she had evaluated, that defendant had a supportive adopted family, and that the Illinois Institute of Technology had granted defendant early acceptance due to his academic excellence.

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

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

People v. Aikens, 2016 IL App (1st) 133578 The proportionate penalties clause of the Illinois Constitution was violated by application of the adult sentencing scheme for attempt murder of a peace officer with a firearm to a 17-year-old who was tried as an adult. The minor was sentenced to the mandatory minimum term totaling 40 years - 20 years for attempted murder of a peace officer plus 20 years for personally discharging a firearm in the course of that offense. In sentencing defendant, the trial court noted that defendant had no prior record and had a difficult upbringing, and that the mandatory minimum sentence "seems to be an unimaginable amount of time . . . for a teenage child." A mitigation specialist testified that defendant had more potential than any client she had evaluated, that defendant had a supportive adopted family, and that the Illinois Institute of Technology had granted defendant early acceptance due to his academic excellence.

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

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

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

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

In re Shermaine S., 2015 IL App (1st) 142421 Habitual Juvenile Offender statute does not violated the Eighth Amendment even though it precludes the court from considering individualized factors about the minor, including his youth and attendant circumstances, as required by **Miller v. Alabama**, 132 S.Ct. 2455 (2012). It also does not violate the proportionate penalties clause of the Illinois Constitution which requires a court to consider rehabilitation in imposing sentence.

The Eighth Amendment and the proportionate penalties clause do not apply to juvenile proceedings since they only apply to the criminal process and juvenile proceedings are not criminal in nature. **In re Rodney H.**, 223 Ill. 2d 510 (2006). But even if they did apply, the statute would not violate either constitutional provision.

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

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

People v. Gipson, 2015 IL App (1st) 122451 Defendant, who was 15 years old at the time of the offense, was automatically transferred to adult court and convicted of two counts of attempt first-degree murder. The facts at trial showed that defendant approached the driver's side of a car where two victims were sitting and fired shots at one of the victims, hitting him once. At the same time, the co-defendant approached the passenger side of the car and fired shots at the other victim, hitting him several times.

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

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

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

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

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

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

§33-6(h)
Sex Offender Registration of Juveniles

Illinois Supreme Court

In re S.B., 2012 IL 112204 As a matter of first impression, the Supreme Court held that 725 ILCS 5/104-25(a), which provides an "innocence only" proceeding where a criminal defendant is unfit to stand trial and there is no substantial likelihood that fitness will be restored within one year, is incorporated into the Juvenile Court Act despite the fact that the Act does not refer to an "innocence only" proceeding where a juvenile is unfit. 705 ILCS 405/5-101(3) provides that in delinquency cases, minors have the procedural rights of adults in criminal cases unless rights are specifically precluded by laws which enhance the protection of minors. Because the fitness procedures in the Code of Criminal Procedure are intended to safeguard the due process rights of criminal defendants, and the Juvenile Court Act does not provide greater protections for unfit minors, §104-25(a) applies in delinquency proceedings.

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

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

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

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

Illinois Appellate Court

In re A.C., 2016 IL App (1st) 153047 The combination of the Sex Offender Registration Act (730 ILCS 150/1) and the Sex Offender Community Notification Law (730 ILCS 152/101) (SORA) as applied to juveniles does not violate due process or the eighth amendment/proportionate penalties clauses of the federal and Illinois constitutions. SORA does not violate substantive due process since it does not affect fundamental rights and there is a rational relationship between SORA's restrictions and the State's legitimate interests. SORA does not violate procedural due process since SORA only applies after a criminal conviction and there is no need for further hearings. And SORA does not violate the eighth amendment/proportionate penalties clause since it does not involve punishment.

In re Maurice D., 2015 IL App (4th) 130323 Reiterating Illinois Supreme Court precedent, the Appellate Court rejected arguments that the Eighth Amendment and the proportionate penalties clause are violated where a minor is prosecuted for an imprisonable misdemeanor offense based on engaging in "consensual" sexual activity with a close-in-age minor. The court concluded that because a petition for adjudication of wardship is neither criminal in nature nor a direct action by the State to inflict punishment, the Eight Amendment and the proportionate penalties clause do not apply.

Substantive due process is not violated because such prosecutions are rationally related to the legitimate state purpose of protecting 13 to 16-year-olds from premature sexual experiences.

The court noted, however, that the Illinois Juvenile Justice Commission recently recommended that juveniles be removed from the sex-offender registry and that Illinois stop imposing categorical registration requirements upon juveniles.

§33-7
Appellate Concerns

§33-7(a)
Post-Trial, Post-Plea, and Post-Sentencing Motions in Juvenile Court

Illinois Supreme Court

In re Samantha V., 234 Ill.2d 359, 917 N.E.2d 487 (2009) In order to preserve a claim of error for review, a minor must object at trial. However, minors are not required to file post-adjudication motions.

In re William M., 206 Ill.2d 595, 795 N.E.2d 269 (2003) Juvenile must file a motion to withdraw an admission or reconsider the disposition where the adjudication is based on the minor's admission to a delinquency petition. See also, **In re J.L.R.**, 301 Ill.App.3d 498, 703 N.E.2d 977 (2d Dist. 1998) (because Rule 604(d) applies to delinquency proceedings, the admonishment requirements of Rule 605(b) also apply; where the trial court failed to admonish the minor that he could appeal only if he filed an appropriate motion concerning his admission, the cause was remanded for proper admonishments and to allow the minor to file a motion); **In re J.G.**, 182 Ill.App.3d 234, 537 N.E.2d 1360 (1st Dist. 1989).

The filing of a post-admission motion is not a jurisdictional requirement for an appeal, however. Thus, an appeal need not necessarily be dismissed merely because the appellant failed to file an appropriate post-dispositional motion.

In adult cases, strict compliance with Supreme Court Rule 604(d) is required. Therefore, the failure to file an appropriate post-plea motion requires dismissal of an appeal and forces defendant to present his claims in post-conviction proceedings. Because it is an open question whether the Post-Conviction Hearing Act applies to juveniles, however, and a juvenile might have no remedy other than a direct appeal, dismissal of the appeal would be "too harsh a sanction." Instead, where "a juvenile defendant fails to comply with the written motion requirements of Rule 604(d) prior to filing an appeal, the appellate court has no discretion and must remand the cause to the circuit court for strict compliance with Rule 604(d)." See also, **In re B.K.**, 358 Ill.App.3d 1166, 833 N.E.2d 945 (5th Dist. 2005) (because a juvenile cannot file a post-conviction petition if defense counsel fails to file a 604(d) motion, Rule 604 is not applied as strictly in juvenile proceedings as in adult cases).

In re J.W., 204 Ill.2d 50, 787 N.E.2d 747 (2003) Where juvenile, following admission in juvenile court to two counts of aggravated criminal sexual assault, challenged as unconstitutional the condition that he register as a sex offender for the rest of his life and the condition of probation that he neither live nor be physically present in the town where the offenses occurred, 604(d) motion was not necessary because juvenile was attacking both orders as void.

In re A.G., 195 Ill.2d 313, 746 N.E.2d 732 (2001) Following an admission, defense attorney must file certificate of compliance with Rule 604(d). See also, **In re J.W.**, 204 Ill.2d 50, 787 N.E.2d 747 (2003).

In re W.C., 167 Ill.2d 307, 657 N.E.2d 908 (1995) 1. Respondent in a delinquency case is not required file a "post-hearing" motion to preserve alleged errors for review. See also, **In re M.Z.**, 296 Ill.App.3d 669, 695 N.E.2d 587 (4th Dist. 1998). While an alleged error is waived if no objection is made during the delinquency proceedings, the written post-trial motion requirement has not been "incorporated" into delinquency appeals.

Illinois Appellate Court

In re Jonathan T., 2021 IL App (5th) 200247 **Krankel** applies to juvenile proceedings. And generally, to trigger an inquiry, a post-trial allegation of ineffective assistance of counsel does not need to be made in open court or by motion. A complaint about counsel made to a third party and documented in a filing presumed to have been read by the trial court, such as a PSI, may suffice to trigger a **Krankel** hearing.

In this case, petitioner criticized his counsel's performance to an evaluator during his sex offender evaluation, a part of his social investigation. When asked "What kind of job is your lawyer doing?" petitioner answered, "We don't talk. I'm never prepared for the stand. He does not answer calls."

The Appellate Court found the sex offender evaluation and social investigation distinguishable from the PSI. Considering the statutory requirements for a sex offender evaluation, it is not a document whose content would be expected to trigger a **Krankel** inquiry, as the circuit court would not be expected, during its reading of the report, to be looking for claims of ineffective assistance of counsel. While the court did not foreclose the possibility that a complaint made during a sex offender evaluation or social investigation could trigger a **Krankel** inquiry, in this case, the petitioner offered a vague response to a single question, unaccompanied by any complaint in open court. It was not specific or clear enough to alert the circuit court of the need for a **Krankel** inquiry.

In re Gennell C., 2012 IL App (4th) 110021 The purpose of a motion to reconsider sentence in a delinquency case is not to conduct a new sentencing hearing, but to review the appropriateness of the sentence imposed and to correct any errors.

The Juvenile Court Act allows the minor or any person interested in the minor to apply to the court for a change in custody of the minor and the appointment of a new custodian or guardian or the restoration of the minor to the custody of the minor's parents or former guardian or custodian. No custodian or guardian may be removed without his or her consent until given notice and an opportunity to be heard. 705 ILCS 405/5-745(3). This provision can apply where the court appoints the Department of Juvenile Justice (DOJJ) as the guardian for the minor.

A motion to reconsider sentence does not include a request for change in custody under §5-745(3).

After the court adjudicated respondent delinquent and sentenced her to an indeterminate term in the DOJJ, respondent filed a motion to reconsider sentence, asserting that the court had committed errors at the sentencing hearing and that the sentence was excessive. It asked that the court reconsider the sentence and did not present any new evidence.

On appeal from the denial of the motion to consider, the respondent asserted that the court erred in denying her motion for a change of sentence under §5-745(3). Because respondent only asked the court to reconsider her sentence, and did not expressly move or apply for a change in custody under § 5-745(3), the circuit court did not err in refusing to re-evaluate respondent's commitment to the DOJJ.

In re H.G., 322 Ill.App.3d 727, 750 N.E.2d 247 (1st Dist. 2001) Relying on **In re W.C.**, the court held that no post-sentencing motion is necessary to preserve sentencing issues on appeal. But see Supreme Court Rule 605(a)(3), effective October 1, 2001, which now requires admonitions as to necessity of filing motion to reconsider sentence to preserve sentencing issues.

§33-7(b)
Other

Illinois Supreme Court

In re Michael D., 2015 IL 119178 The Illinois Constitution confers jurisdiction on the Appellate Court to review final judgments, and authorizes the Supreme Court to provide by rule for appeals from other than final judgements. Supreme Court Rule 660(a) provides that final judgements in delinquency proceedings may be appealed under the rules for criminal appeals.

Effective January 1, 2014, 705 ILCS 405/5-615(1)(b) authorizes juvenile courts to enter continuances under supervision after a finding of delinquency has been made if the court finds that the minor is not likely to commit further crimes, the minor and the public would be best served if the minor were not to receive a criminal record, and in the interests of justice an order of continuance under supervision is more appropriate than a sentence.

Case law holds that a continuance under supervision that is ordered before a delinquency finding is made may not be appealed. The court concluded that the same rule applies to a continuance under supervision ordered after a delinquency finding has been made.

The court noted that in order to be appealable, continuance under supervision orders must constitute final judgments or be the subject of a Supreme Court Rule. A final judgment is one which finally determines the litigation on the merits so that, if it is affirmed, all that remains is to execute the judgement. The court stated that it is difficult to see how an order that is referred to as a "continuance" could be a final judgment. In addition, continuance under supervision orders are entered before the adjudicatory and dispositional phases of the proceeding have occurred. Thus, orders of supervision are clearly not final orders.

The court also found that no Supreme Court Rule allows the appeal of a continuance under supervision. Adult orders of supervision are appealable under Rule 604(b), but that rule by its terms does not apply to juveniles. The only rule which grants any right to an interlocutory appeal in juvenile cases is Rule 662, which applies only to the proceedings that are specifically listed and not to continuances under supervision.

In re B.C.P., 2013 IL 113908 Supreme Court Rule 660(a), governing appeals in delinquent minor cases, incorporates the criminal appeals rules, but only as to final judgments. Supreme Court Rule 662 allows for certain interlocutory appeals in juvenile cases, but an order granting a motion to suppress is not one of them. Therefore, the provision of Supreme Court Rule 604(a)(1) allowing the State to appeal from an order granting a motion to suppress does not apply to juvenile cases under existing appellate rules.

Exercising its rulemaking authority, the Illinois Supreme Court held that Rule 660(a) should be modified to allow the State to appeal from an interlocutory order suppressing evidence in a juvenile delinquency proceeding. Since the adoption of Rule 660(a), the General Assembly has radically altered the Juvenile Court Act to make the juvenile adjudicatory process more criminal in nature. As a consequence, juveniles receive many of the same protections that criminal defendants receive. In light of this shift, the State has the same interests in appealing a suppression order in a juvenile case that it does in a criminal case: obtaining correction of errors that would otherwise be precluded by the double jeopardy clause; avoiding unfairness in allowing errors favoring the State to be corrected while not allowing correction of errors favoring the defense, resulting in distortion of the development of the law; and eliminating frustration of the primary purpose of a trial–to ascertain the truth of the charges.

Given the compelling case for the need for interlocutory review of suppression orders in juvenile cases, the Supreme Court saw no need to defer the matter to the rules committee. Extending the expedited appeal process provided by Supreme Court Rule 660A to State appeals from suppression orders adequately addressed any concern that delays caused by appeals could interfere with the rehabilitation of the minors.

In re W.W., 97 Ill.2d 53, 454 N.E.2d 207 (1983) The appellate court erred in assessing State's Attorney fees for defending an appeal against the respondent-minor. The assessment statute (Ch. 53, ¶8) does not indicate an intent to allow such assessments against a juvenile, and the purposes and policy of the Juvenile Court Act would not be furthered by such assessments. See, **In re J.M.S.**, 92 Ill.App.3d 1141, 416 N.E.2d 734 (4th Dist. 1981) (Juvenile Court Act does not authorize restitution, court costs, or fees to the State's Attorney).

People v. Pulido, 69 Ill.2d 393, 372 N.E.2d 822 (1978) Supreme Court Rule 609(b), which governs appeal bond, applies to juvenile cases.

Illinois Appellate Court

In re C.C., 2015 IL App (1st) 142306 Under the extended juvenile jurisdiction statute (705 ILCS 405/5–810), upon a finding of guilty the trial court must impose a juvenile court sentence and a conditional adult criminal sentence. If the minor successfully completes the juvenile sentence, the adult sentence is vacated.

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

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

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

In re Henry B., 2015 IL App (1st) 142416 In general, the Appellate Court has jurisdiction to review final judgements. However, it lacks jurisdiction to review an interlocutory order unless jurisdiction is afforded by Supreme Court rule. Two rules authorize appeals in juvenile cases. Rule 660(a) provides for appeals from final judgements, and Rule 662 allows an appeal from an interlocutory order where no dispositional order has been entered in 90 days.

The court concluded that where a continuance under supervision is ordered under 705 ILCS 405/5–615 without a finding of guilt or a judgement order, neither Rule 660(a) nor Rule 662 authorizes an appeal. Because the Appellate Court lacked jurisdiction, the appeal was dismissed.

In re Raheem M., 2013 IL App (4th) 130585 A court may commit a delinquent minor to the Department of Juvenile Justice, if it finds that "commitment to the Department of Juvenile Justice is the least restrictive alternative based on evidence that efforts were made to locate less restrictive alternatives to secure confinement and the reasons why efforts were unsuccessful in locating a less restrictive alternative to secure confinement." 705 ILCS 405/5-750(1)(b).

The trial court did not comply with this requirement prior to committing respondent to the DOJJ. Sentencing errors can be reviewed for plain error where the evidence was closely balanced or the error was sufficiently grave that the defendant was deprived of a fair sentencing hearing. Because the requirements of 705 ILCS 405/5-750(1)(b) ensure that trial courts treat DOJJ sentences as a last resort, failure to comply with those requirements is such a serious error that the appellate court may excuse forfeiture based on the second prong of plain-error analysis. The appellate court was mindful that respondent had no other means of relief from this error given the state of the law regarding whether juveniles are entitled to seek relief under the Post-Conviction Hearing Act.

People v. Henderson, 2011 IL App (1st) 090923 With certain limited exceptions, a minor under 17 years of age at the time of an alleged offense may not be prosecuted under the criminal laws of Illinois. 705 ILCS 405/5-120. One such exception is where a minor who at the time of the offense was at least 15 years of age and who is charged with an offense under §401 of the Controlled Substances Act while on a public way within 1000 feet of the real property comprising a school. 705 ILCS 405/5-130(2)(a). A criminal conviction of such a minor where a violation of §401 is committed within 1000 feet of a school, but not on a public way, is void because the court lacks the power to impose a criminal conviction where the Juvenile Act mandates a juvenile adjudication.

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

In re Joshua B., 406 Ill.App.3d 513, 941 N.E.2d 1032 (1st Dist. 2011) The Appellate Court found no error where the trial court did not advise a minor respondent in a delinquency proceeding that he had a right to testify, or verify that he knowingly and voluntarily waived that right, based on law applicable to adult criminal proceedings.

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

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

In re Shatavia S., 403 Ill.App.3d 414, 934 N.E.2d 502 (5th Dist. 2010) Based on her admission, the court placed respondent on supervision for one year, with conditions of community service and restitution. 705 ILCS 405/5-615(a) allows a court to enter an order of continuance under supervision for certain offenses upon an admission by the minor and before proceeding to adjudication.

The Appellate Court rejected the State's argument that there was no final judgment from which an appeal could be taken because the case was continued under supervision. The judgment appealed was not an adjudication of delinquency, but the conditions of supervision. Supreme Court Rule 604(b) authorizes an appeal from an order of supervision by a defendant who seeks review of the conditions of supervision.

People v. A.L., 169 Ill.App.3d 581, 523 N.E.2d 970 (1st Dist. 1988) Judgement allowing State to strike the juvenile petition with leave to reinstate was a final judgment for purposes of appeal because the SOL procedure here "indefinitely prolongs the possibility of prosecution with no anticipated termination."

§33-8
Freedom of the Press and Privacy Issues

United States Supreme Court

Oklahoma Publishing Co. v. District Court, 480 U.S. 308, 97 S.Ct. 1045, 51 L.Ed.2d 355 (1977) State court order which enjoined newspaper from publishing the name or picture of a minor involved in a pending juvenile proceeding was an unconstitutional infringement upon the freedom of the press.

Smith v. Daily Mail, 443 U.S. 97, 99 S.Ct. 2667, 61 L.Ed.2d 399 (1979) The First and Fourteenth Amendments are violated by a state statute creating a crime for a newspaper to publish, without prior consent from the court, the name of any youth charged as a juvenile offender.

Illinois Supreme Court

In re St. Louis, 67 Ill.2d 43, 364 N.E.2d 61 (1977) The circuit court possessed and properly exercised inherent equitable authority to order the expungement of a minor's record where the minor had been photographed, fingerprinted, and released without being charged.

§33-9
Miscellaneous Matters

Illinois Supreme Court

In re S.B., 2012 IL 112204 As a matter of first impression, the Supreme Court held that 725 ILCS 5/104-25(a), which provides an "innocence only" proceeding where a criminal defendant is unfit to stand trial and there is no substantial likelihood that fitness will be restored within one year, is incorporated into the Juvenile Court Act despite the fact that the Act does not refer to an "innocence only" proceeding where a juvenile is unfit. 705 ILCS 405/5-101(3) provides that in delinquency cases, minors have the procedural rights of adults in criminal cases unless rights are specifically precluded by laws which enhance the protection of minors. Because the fitness procedures in the Code of Criminal Procedure are intended to safeguard the due process rights of criminal defendants, and the Juvenile Court Act does not provide greater protections for unfit minors, §104-25(a) applies in delinquency proceedings.

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

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

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

People v. Christopherson, 231 Ill.2d 449, 899 N.E.2d 257 (2008) 235 ILCS 5/6-16(a)(iii), which provides that no person shall give alcoholic liquor "to another person under the age of 21 years, except in the performance of religious ceremony or service," applies to minors who supply alcohol to other minors.

In re M.T., 221 Ill.2d 517, 852 N.E.2d 792 (2006) The indecent solicitation of an adult statute applies to a juvenile perpetrator.

People v. R.G., 131 Ill.2d 328, 546 N.E.2d 533 (1989) The validity of the Minor Requiring Authoritative Intervention provisions of the Juvenile Court Act (Ch. 37, ¶803-1 et. seq.) was upheld against the contentions that such provisions violate substantive and procedural due process and equal protection.

People ex rel. Davis v. Vazquez, 92 Ill.2d 132, 441 N.E.2d 54 (1982) The trial judge had the authority to order the State's Attorney to file a neglect petition in the minor's behalf. Such an order is not an impermissible exercise by the judicial branch of powers belonging exclusively to the executive branch of government.

In re Abdullah, 85 Ill.2d 300, 423 N.E.2d 915 (1981) The court affirmed the finding that defendant was an unfit father under the Adoption Act (Ch. 40, ¶1501 et seq.) on the basis of "depravity" (¶1501(d)). Three factors established the defendant's depravity: (1) he had been convicted of murder, (2) the murder victim was the child's mother, and (3) he was sentenced to an extended term, indicating that the murder was accompanied by exceptionally brutal and heinous behavior demonstrating wanton cruelty.

People v. Chambers, 66 Ill.2d 36, 360 N.E.2d 55 (1976) The juvenile curfew statute (Ch. 23, ¶2371) is constitutional.

Illinois Appellate Court

In re M.P., 2020 IL App (4th) 190814 The Habitual Juvenile Offender (HJO) statute [705 ILCS 405/5-815] mandates commitment of a juvenile offender to the Department of Juvenile Justice (DOJJ) until his or her 21st birthday if certain elements are proved. Because adjudication as an HJO involves "serious deprivation of liberty," the statute provides the right to a jury trial for minors subject to prosecution as an HJO.

A minor can waive the HJO jury trial right. In evaluating the validity of a minor's jury waiver, courts should look to settled precedent from adult criminal proceedings holding that a jury waiver must be knowingly and understandingly made. An HJO jury waiver does not require any special admonishments about the mandatory DOJJ penalty. Here, where defendant was twice admonished about his right to a jury trial, was told he was being prosecuted as an HJO, had the opportunity to consult with counsel and his mother about whether to proceed to a jury trial or bench trial, and expressed an understanding of the differences between the two types of trials, his jury waiver was valid.

In re Maurice D., 2015 IL App (4th) 130323 Reiterating Illinois Supreme Court precedent, the Appellate Court rejected arguments that the Eighth Amendment and the proportionate penalties clause are violated where a minor is prosecuted for an imprisonable misdemeanor offense based on engaging in "consensual" sexual activity with a close-in-age minor. The court concluded that because a petition for adjudication of wardship is neither criminal in nature nor a direct action by the State to inflict punishment, the Eight Amendment and the proportionate penalties clause do not apply.

Substantive due process is not violated because such prosecutions are rationally related to the legitimate state purpose of protecting 13 to 16-year-olds from premature sexual experiences.

The court noted, however, that the Illinois Juvenile Justice Commission recently recommended that juveniles be removed from the sex-offender registry and that Illinois stop imposing categorical registration requirements upon juveniles.

In re Vincent K., 2013 IL App (1st) 112915 The Appellate Court reiterated precedent that minors who are adjudicated delinquent do not have a right to relief under the Post-Conviction Hearing Act. **In re R.R.**, 75 Ill.App. 3d 494, 394 N.E.2d 75 (2nd Dist. 1979); **In re A.W.H.**, 95 Ill.App 3d 1106, 420 N.E.2d 1041 (5th Dist. 1981). The court acknowledged that amendments to the Juvenile Court Act enacted in 1999 shifted the focus of the Act from the overriding goal of rehabilitation to protection of the public and holding juveniles accountable for violating the law. However, the court rejected the argument that juvenile proceedings are now akin to criminal proceedings and that the Post-Conviction Hearing Act should therefore apply. In the course of its holding, the court noted that the Post-Conviction Hearing Act requires that a petitioner have a "conviction" and be "imprisoned in the penitentiary," neither of which apply to delinquents.

The court rejected the argument that equal protection would be violated if post-conviction procedures are not afforded to persons who are adjudicated delinquent under the extended juvenile jurisdiction statute (705 ILCS 405/5-810). To be adjudicated delinquent under EJJ, the trial court must find probable cause to believe that a minor is at least 13 years old and has committed an offense which would be a felony if committed by an adult. A minor who is adjudicated under EJJ receives both a juvenile sentence and an adult sentence. The adult sentence takes effect only if the minor violates the terms of the juvenile sentence.

The court concluded that because persons adjudicated delinquent under the EJJ statute are not similarly situated to adults who are imprisoned after being convicted of a crime, the failure to afford post-conviction relief to EJJ minors does not create an equal protection violation. The court noted that unlike an adult offender, an EJJ minor does not have a criminal "conviction" even if his adult sentence becomes effective.

The court rejected the argument that post-conviction procedures should be afforded to minors adjudicated delinquent because such persons have no collateral remedy by which to challenge "fundamental unfairness." The court stated that the relationship between courts and minors subject to the Juvenile Court Act is that of *parens patrie,* and that courts therefore have a duty to intervene in juvenile cases where substantial injustice occurs.

People v. Rasmussen, 147 Ill.App.3d 656, 498 N.E.2d 285 (4th Dist. 1986) Rasmussen was found in contempt of court for violating a protective order in a juvenile case (that he have no contact with an alleged delinquent minor), which was issued under Ch. 37, ¶705-5, which permits such order against any person "who is before the court on the original or supplemental petition." While Rasmussen was present in the courtroom when the order was issued, he had not been named as a respondent in the case and had not been served with a summons. Rasmussen "was not 'before the court' simply by virtue of his physical presence in the courtroom," for the language "before the court" refers only to a person named as a respondent.

Also, an "adult who is properly a respondent in a juvenile case might waive summons by an appearance before the court." However, "fundamental fairness requires" that a court order which affects the right of a person to associate with others "not be entered before the person to be subjected to the order has a reasonable opportunity to present evidence and be heard on the matter." Here, Rasmussen did not have a meaningful opportunity to object to the protective order.

Updated: July 8, 2026