Juvenile Delinquency in the Twenty-First Century: Is Blended Sentencing the Middle-Road Solution for Violent Kids?

INTRODUCTION

One need only watch the evening news or read the newspaper to realize that in the last few years, highly publicized juvenile crimes have become regular occurrences.1 Every few months, there is another story about a distraught high school,2 or even grade-school3 student, who has chosen to take out his frustrations on his fellow classmates and teachers.4 In the wake of the Columbine High School shootings in April of 1999,5 both the United States Congress and state legislatures clamored that laws combating juvenile crime

1. See, e.g., Scott Gold et al., Santee School Shootings: 2 Killed, 13 Hurt in School Shooting, L.A. TIMES, Mar. 6, 2001, at A1 (breaking the news of the fifteen-year-old high school student who terrorized his suburban San Diego high school); Robert L. Kaiser and V. Dion Haynes, Teenager Opens Fire in Oregon High School, Police Find Parents Dead at Boy's Home After Spree, CHI. TRIB., May 22, 1998, § 1, at 1 (relating the story of a teenager who fired indiscriminately into the cafeteria of his high school after killing his parents, killing one student and wounding many).

2. See, e.g., Ben Fox, Teen Was Targeting Vice Principal in Rampage, Cops Say, CHI. TRIB., Mar. 24, 2001, § 1, at 6 (reporting that an eighteen-year-old boy who shot five people at his San Diego area school targeted the vice-principal when he arrived at school with a 12-gauge shotgun in his hand and a .22-caliber handgun in his waistband); Santee School Shootings, Past School Shootings, L.A. TIMES. Mar. 6, 2001, at A17 (listing a series of highly publicized school shootings and juvenile crimes that occurred in California and across the nation).

3. See, e.g., Mike Clary, Teen's Life Sentence Sparks Juvenile Punishment Debate, CHI. TRIB., Mar. 21, 2001, § 1, at 11 (covering the story of Lionel Tate, the twelve-year-old Florida boy who killed a six-year-old girl by imitating a professional wrestling move, and was sentenced to life in prison after being found guilty of felony murder with an underlying charge of aggravated child abuse).


5. See 16 Hurt in Colorado School After Gunmen Open Fire, CHI. SUN-TIMES, Apr. 20, 1999, § 1 at 3; Robin McDowell, School Death Toll at 15, Cops Sweep for Bombs, CHI. SUN-TIMES, Apr. 21, 1999, § 1 at 3 (reporting the initial story of the Columbine shooting that took the nation by storm).

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must be strengthened in order to protect society from young criminals.\textsuperscript{6} Illinois was no different. Less than a year earlier, the Illinois General Assembly approved a completely revised version of the Juvenile Court Act, in an attempt to deal effectively with increasingly violent juvenile crime, and crimes involving firearms around schools were statutorily excluded from the juvenile court within a few months of the Columbine shootings.\textsuperscript{7}

As a result of the attention focused on specific incidents of juvenile crime recently, jurisdictions across the country have been forced to reexamine their stance on this important and controversial topic, and various solutions have been proposed.\textsuperscript{8} This article will discuss the history of the juvenile justice system in America, from its English common law origin, through the Progressive Era of the late nineteenth century, to the 1998 revisions in Illinois. In Parts III and IV, the article will focus on current problems with the juvenile system in Illinois, highlighted in the context of a recent Illinois Supreme Court decision, \textit{In re G.O.}\textsuperscript{9}, a case in which a thirteen-year-old boy was adjudicated delinquent for first degree murder and sentenced to the Department of Corrections, without parole, until age twenty-one.\textsuperscript{10} In Part IV, it will point out the pendulum-like historical nature of juvenile law and argue that a balance must be struck between the purely punitive approach of common law England, and the optimistically nurturing approach that created the juvenile justice system in Illinois over one-hundred years ago. This article will specifically address the question of whether it is time to remove the general ban on jury trials, as a matter of right, for juveniles charged with serious crimes.\textsuperscript{11} In Parts II and IV, the merits of extended jurisdiction juvenile prosecution ("EJJP"), one of the most significant recent changes to the Juvenile Court Act, will be explained, and it will be argued that EJJP can, and

\textsuperscript{6} See H.R. Con. Res. 90, 106th Cong. (1999) (explaining that Congress mourns the loss of life at Columbine High School and that it resolves to redouble the effort to prevent juvenile crime and combat school violence); 705 ILL. COMP. STAT. ANNI. 405/5-130(a) (West Supp. 2000) (adding aggravated battery with a firearm committed in or around a school to the list of automatic transfer provisions); see also Lisa Black, \textit{New Laws Target School Violence: Ryan Signs Bills to Increase Security}, CHI. TRIB., June 5, 1999, ¶ 1, at 6.

\textsuperscript{7} See 705 ILL. COMP. STAT. ANN. 405/5-101-820 (1998); Black, supra note 6; infra notes 73-74 and accompanying text.


\textsuperscript{9} 727 N.E.2d 1003 (Ill. 2000).

\textsuperscript{10} Id. at 1005.

\textsuperscript{11} See infra Part IV.
should be utilized in nearly every violent and/or habitual juvenile situation. It will be asserted that EJP is indeed the middle-road solution that best serves both the rehabilitative needs of the juvenile, which the child savers were concerned about in the late nineteenth century, and the punitive reality of twenty-first century life. Furthermore, in Part IV this article will argue that the scenario of In re G. O. illustrates exactly the type of situation in which EJP is most beneficial, and that it should have been utilized in In re G.O., had the new provision been in force when G.O. was charged.

I. HISTORY OF JUVENILES IN THE JUSTICE SYSTEM

A. COMMON LAW SYSTEM

The history of the discipline of juveniles is long and varied, but the emphasis was traditionally on the punishment of misbehaved children. As far back as recorded laws extend, there has been attention focused on the discipline of juveniles. The Hammurabic Code, from 2270 B.C., provided that “[i]f a son strike his father, one shall cut off his hands,” emphasizing the biblical concept of an “eye for an eye” with respect to juvenile misbehavior and crime in general. In fact, the nature of pre-industrial society was generally, that children deserve no special treatment. If children committed crimes, knowing what they did was wrong, they were held accountable to the same extent as adults. By examining the harsh manner in which the common law dealt with juvenile offenders, it is possible to understand the long history Jane Addams was reacting to as she strove to create a juvenile system that recognized the need to nurture and rehabilitate children, rather than simply punish them.

In the Middle Ages in England, the Christian church exercised wide influence with respect to justice. Usually, punishment for crimes was the same for children as for adults. For example, one early seventeenth century writer observed that an infant eight years of age who committed homicide could be hanged if he could differentiate between good and evil, and had

12. See infra text accompanying notes 164-68.
13. See infra note 20 and accompanying text.
14. CLIFFORD E. SIMONSEN, JUVENILE JUSTICE IN AMERICA 5 (3d ed. 1991). Simonsen explains that the Hammurabic Code, which dates from 2270 B.C., was the first attempt to codify laws governing such things as business transactions, property rights, rights of master and slave, and family relationships.
15. Id.
16. See infra notes 21-27 and accompanying text.
17. See infra notes 30-32 and accompanying text.
18. SIMONSEN, supra note 14, at 8.
knowledge of the "perill and danger of that offense." 19 However, before the generally accepted age of discretion (fourteen) some authorities held that execution should not be carried out since the goal of punishment would not be properly effected. 20 A child cannot be deterred by fear of punishment if he cannot comprehend what is wrong or improper.

From the late seventeenth to the nineteenth centuries, the distinctions among children became firmly established. Sir Matthew Hale wrote that, with respect to crimes and punishments, there were four ranks between birth and full capacity. 21 At fourteen, a person was considered pubertas, and suffered the full consequences of their actions, since they were assumed doli capaces, capable of discerning good from evil. 22 While it was clear that under seven, a person was presumed incapaces doli and incapable of being found guilty of a felony, the period between seven and fourteen was less certain. 23 A child between twelve and fourteen was not prima facie presumed to be doli capax, and often children under fourteen were found not guilty of capital offenses. 24 It was the duty of the court and jury, therefore, to decide if the accused child under fourteen was capable of discerning between good and evil, in order to overcome the presumption to the contrary. If so, he could, in fact be convicted and undergo the punishment of death. 25

Similarly, William Blackstone wrote that the law of England privileged minors with respect to common misdemeanors, but at fourteen, he or she had


20. See, e.g., SIR EDWARD COKE, THE THIRD PART OF THE INSTITUTES OF THE LAWS OF ENGLAND: CONCERNING HIGH TREASON, AND OTHER PLEAS OF THE CROWN, AND CRIMINAL CAUSES 4 (London, W. Rawlins, 6th ed. 1680). The goal of punishment generally was that others may "fear to offend," and Coke observed that punishment can be no example to infants who are not of the age of discretion since they cannot discern what is right. Id.

21. SIR MATTHEW HALE, HISTORIA PLACITORUM CORONAE: THE HISTORY OF THE PLEAS OF THE CROWN 17 (Robert H. Small ed., Philadelphia 1847) (1680). The full age of consent for contractual obligations was 21 years, while the four stages of infancy were as follows: Infantia (under 7), Aetas pubertatis proxima (7-11, the middle distance between infancy and puberty), Aetas pubertas (14-17, middle puberty) Pubertas plena (18-20, puberty complete). Hale, as well as Blackstone, considered non-age a defect of will similar to lunacy or idiocy with respect to culpability. Id.

22. Id. at 18.

23. Id. at 19. Hale noted that at eleven a child is more easily presumed to be doli capax, and therefore may suffer as another man, unless "by great circumstances" it appears that he is incapax doli.

24. Id. at 26.

25. Id.
to answer for their transgressions. They could no longer be supposed innocent of any capital crime. The focus, however, was less on age and more on understanding. If the child was under fourteen, though it appeared to the court and jury that he could discern between good and evil, he could have been convicted and made to suffer death. In reality, however, a sentence of death did not necessarily ensure that it would be carried out.

B. THE REHABILITATIVE MOVEMENT AND THE FIRST JUVENILE COURT

In contrast to the harsh treatment of juvenile offenders at common law, the modern era of juvenile justice in America was based on a perceived need to help, rather than punish wayward children. The modern American juvenile system began in Chicago in the late nineteenth century, led by Jane Addams and a group of reformers known as the child savers. She espoused the “recapitulation theory,” which held that through proper guidance and influence, social reformers could transform evil youths into “angels of virtue.” Addams helped found the Hull House to help poor immigrant children in Chicago in the late 1880s. She was determined to induce the state to reverse the practice of neglecting children and throwing them in jail with adults when they committed crimes. The juvenile justice system was created with the laudable goal of saving, rehabilitating and protecting rather than punishing, incarcerating and penalizing our troubled children.

27. Id. at 593.
28. Id. Blackstone gives an example of a thirteen-year-old girl who was burned for killing her mistress and a ten-year-old boy who was hung after being judged dolis capax due to the fact that he hid the body he killed, thereby showing his “consciousness of guilt.” Id.
29. See SIMONSEN, supra note 14, at 8, 12. A sentence of death could be pardoned by the judge or commuted. These events often went unrecorded. For example, before the American Revolution, a popular alternative to execution was transportation to America (Australia remained a transportation destination until 1875, however).
30. Id. at 27.
31. Id.
32. See generally BARBARA G. POLIKOFF, WITH ONE BOLD ACT: THE STORY OF JANE ADDAMS (1999) (discussing Addams’ biography, the history of the Hull House, and the events that led to the passage of the Juvenile Court Act).
33. Aaron Chambers, Innocence Lost, CHI. DAILY L. BULL., Dec. 16, 1999, at 65; see infra notes 129-30 and accompanying text.
34. See Claudia Worrell, Pretrial Detention of Juveniles: Denial of Equal Protection Masked by the Parens Patriae Doctrine, 95 YALE L.J. 174, 176 (1985). It should be noted that the definition of juvenile is specific: a person subject to juvenile court proceedings because a statutorily defined event was alleged to have occurred while the offender’s age was below the statutorily defined limit, twenty-one in Illinois. A delinquent juvenile, or minor, is any one who prior to his or her seventeenth birthday has violated or attempted to violate any federal, state,
The first juvenile court was established in Illinois in 1899, as a result of the efforts of the child savers. It was based on the doctrine of "parens patriae," that the state has an obligation to assist in the rearing of children. It provided that all children under sixteen charged with violating any state or local law would face adjudication in a court separate from the adult criminal court. Because the hearings did not result in criminal convictions, the child did not receive the full array of procedural protections and constitutional rights afforded to similarly situated adults. However, after more than fifty years of the juvenile system in practice, the United States Supreme Court began to recognize that procedural guarantees were constitutionally necessary for juveniles as well as adults.

C. THE CONSTITUTIONALIZATION OF THE JUVENILE COURT

In Kent v. United States, the first Supreme Court case to require certain procedural protections in juvenile court proceedings, a sixteen-year-old defendant was arrested and charged with raping a woman. Without holding a hearing, obtaining records, or reciting reasons for his decision, the juvenile court judge waived jurisdiction and transferred the case to the United States county or municipal law. See 705 ILL. COMP. STAT. 405/5-105 (1998). For a list of the ages of criminal responsibility for each state, see PATRICIA TORBET ET AL., JUVENILES FACING CRIMINAL SANCTIONS: THREE STATES THAT CHANGED THE RULES 9 (2000), available at http://www.ncjrs.org/pdffiles1/ojjdp/181203.pdf (last visited Mar. 18, 2001) [hereinafter THREE STATES].

35. Illinois Juvenile Court Act, Ch. 23 §§ 169-89, 1899 Ill. Laws 131 (codified as amended at 705 ILL. COMP. STAT. 405/5-101-820 (1998). The Act to regulate the treatment and control of dependent, neglected, and delinquent children was approved by the Illinois General Assembly April 21, 1899, and effective July 1, 1899. Within twelve years, twenty-two states had followed Illinois' example, and by 1925 all but two states had juvenile courts. Maine and Wyoming finally created a juvenile court system by 1945. See SIMONSEN, supra note 14, at 229.

36. "Parens Patriae" literally means "parent of the country." It refers to the traditional role of the State as sovereign and guardian of persons under a legal disability to act for themselves, such as juveniles, the insane, or the unknown. The doctrine originated in the ancient duty of the English sovereign to protect all children within his or her kingdom. See generally 47 AM. JUR. 2D Juvenile Courts and Delinquent and Dependant Children § 35 (1995) (explaining the doctrine of parens patriae within the context of juvenile court proceedings).

37. Illinois Juvenile Court Act, Ch. 23 § 171, 1899 Ill. Laws 131 (codified as amended at 705 ILL. COMP. STAT. 405/5-120 (1998)). The statute provided that "a special court room shall be designated as the juvenile court room . . . and the court may for convenience be called the Juvenile Court." Id.

38. Prior to the late 1960s, juveniles were entitled to only the fundamental due process right of fair treatment, and were denied such rights as bail, indictment by a grand jury, speedy and public trials, trial by jury, immunity against self-incrimination, confrontation of adverse witnesses, and in some cases, representation by counsel. See Kent v. United States, 383 U.S. 541, 555 (1966); infra notes 67-69 and accompanying text.

District Court for the District of Columbia. A jury subsequently found the defendant guilty and he was sentenced to thirty to ninety years in incarceration. On appeal, the defendant contended that juveniles were entitled to the same constitutional guarantees as adults charged with the same crimes. For the first time since the implementation of the juvenile court system, the Supreme Court expressed concerns about its effectiveness, saying that "the child receives the worst of both worlds . . . he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children." The Court held that a child who is potentially to be waived into criminal court by the juvenile court judge is "entitled to a hearing, including access by his counsel to the social records and probation or similar reports which presumably are considered by the court, and to a statement of reasons for the juvenile court's decision." Moreover, the Court stated that care and treatment of delinquent children, the original purpose of the juvenile court system, was not being fulfilled as a result of a lack of personnel and facilities.

A year after Kent, the Supreme Court decided In re Gault, where the Court was asked to consider whether juvenile offenders should be afforded the same due process rights as adults. In its analysis, the Court cited the traditional justifications for denying children constitutional protections: that juvenile hearings were neither adversarial, nor criminal, and that the child was to be rehabilitated by the State acting in its parens patriae capacity. However, despite the purpose of the juvenile system, the Court found that the lack of procedural safeguards was, in reality, producing unconstitutionally arbitrary and capricious rulings. To meet the essentials of due process and fair treatment, the Court held that juveniles are entitled to written notice of the charges against them, the right to counsel, the right to confront and cross-examine witnesses, and the Fifth Amendment privilege against self-incrimination. Many scholars have used Gault as an acknowledgment that the juvenile justice system is no longer rehabilitative, but rather quasi-
criminal, and should therefore be eliminated or substantially reformed to give children more procedural protection.51

The Supreme Court has extended Gault, by holding that juveniles must be found delinquent beyond a reasonable doubt,52 and that the Double Jeopardy Clause prevents the prosecution of a young person in criminal court after he has been previously adjudicated in a juvenile court.53 However, despite being afforded these protections, the Court has held that juveniles are not constitutionally entitled to a jury trial. The United States Supreme Court in McKeiver v. Pennsylvania,54 and the Illinois Supreme Court in In re Fucini, has held that a jury trial is not constitutionally required, as a matter of procedural due process, in a juvenile court proceeding.55 The McKeiver Court indicated that the right to a jury trial would most disrupt the unique nature of the juvenile process.56 Although admitting that the rehabilitative ideal had fallen short of its goals, the Court said that a declaration of delinquency is significantly different from and less "onerous" than a finding of criminal guilt.57 Concluding that the addition of a jury trial would not strengthen the fact-finding function, but would instead damage the juvenile court’s ability to

51. See, e.g., Janet E. Ainsworth, Re-Imagining Childhood and Reconstructing the Legal Order: The Case for Abolishing the Juvenile Court, 69 N.C. L. REV. 1083 (1991); Deborah L. Mills, Note, United States v. Johnson: Acknowledging the Shift in the Juvenile Court System from Rehabilitation to Punishment, 45 DePaul L. REV. 903 (1996) (arguing that it is time to rethink the purposes served by the juvenile courts, in light of the increasingly criminal nature of juvenile proceedings and that juvenile crimes are included in the United States Sentencing Commission Guidelines for punishing recidivism) [hereinafter Acknowledging the Shift]; infra Part IV.

52. In In re Winship, 397 U.S. 358, 359 (1970), the Court did away with the preponderance of the evidence standard in juvenile proceedings, and held that proof beyond a reasonable doubt is among the essentials of due process and fair treatment “when a juvenile is charged with an act which would constitute a crime if committed by an adult.” In Illinois, the case that said juveniles must be proved delinquent beyond a reasonable doubt is In re Urbasek, 232 N.E.2d 716 (Ill. 1967).

55: In re Fucini, 255 N.E.2d 380, 382 (Ill. 1970). In this case, a child who was adjudged delinquent for grand theft of an automobile challenged the constitutionality of the whole Juvenile Court Act because it failed to provide for a jury trial. Id. at 380. The Court in Fucini held that a jury trial would instill “all the clash and clamor of the adversary system that necessarily goes with it,” and would create in mind and memory of the child the same effect as if it were. Id. at 382. The fact that the juvenile is given the option under the Juvenile Court Act to be proceeded against criminally, the court said, should not work to defeat the beneficial aspects of the act. Id.

56. McKeiver, 403 U.S. at 540. Although the Supreme Court in Duncan v. Louisiana, 391 U.S. 145, 149 (1968) held that trial by jury in criminal cases is fundamental to the American scheme of justice, the McKeiver Court refused to see the essentially criminal nature of juvenile courts.

57. McKeiver, 403 U.S. at 540.
function in a unique manner, the Court stated that it was not prepared to abandon the rehabilitative goals and minimal advances of the system by placing the juvenile "squarely in the hands of the criminal process." Thus, the Supreme Court accepted the argument that giving juveniles all the procedural guarantees of the adult criminal trial was tantamount to eliminating the need for a separate system. Most authorities agree, however, that the biggest threat to the intended juvenile system comes, not from granting procedural rights at trial, but from the possibility of incarceration in prison without the rehabilitative social and educational services that juvenile facilities were intended to provide. Consequently, despite decades of criticism, neither the Illinois Supreme Court nor the United States Supreme Court has ruled that juveniles do, in fact, have a right to be tried in front of a jury.

II. THE MODERN TREND: TRANSFER PROVISIONS AND ALTERNATIVES

With the increasing prevalence of guns being used by children during the past decade, and the proliferation of violent crimes committed by our nation's youth, the general reaction by legislators and prosecutors has been to

58. Id. at 547.
59. McKeiver, 403 U.S. at 546 n.6. The Court cited the task force report from the President's Commission on Law Enforcement and Administration of Justice (1967), which had not recommended that a jury trial right be extended to juveniles. Id. The Court concluded that the ideal of separate treatment for juveniles was "still worth pursuing," so it was not going to force the adversary system on the states by granting a jury trial right. Id.
60. See, e.g., Michelle India Baird & Mina B. Samuels, Justice For Youth: The Betrayal of Childhood in the United States, 5 J.L & POL'Y 177, 197-98 (1996) (arguing that prison-like conditions in secure juvenile facilities do not allow for educational or mental and emotional counseling programs as intended); THREE STATES, supra note 34, at 11 (reporting that the under-eighteen prison population nationwide grew 22% between 1991 and 1995).
61. See Steven A. Drizin, Net of Automatic Transfer Growing Too Wide, CHI. DAILY L. BULL., Apr. 21, 1999, at 4 (arguing that since the 1999 high school shootings that resulted in more transfers to criminal court, increasing numbers of kids are being exposed to dangerous conditions of confinement with adults; precisely what Jane Addams feared when she advocated a separate system for juveniles) [hereinafter Automatic Transfer]. See generally CLEMENS BARTOLLAS ETAL., JUVENILE VICTIMIZATION: THE INSTITUTIONAL PARADOX (1976) (arguing that juvenile institutions are failing at rehabilitation for the same reason that children should not be incarcerated with adults: older kids abuse and molest younger kids).
62. See infra notes 157-166 and accompanying text.
63. See, e.g., HOWARD N. SNYDER & MEUSSA SICKMUND, JUVENILE OFFENDERS AND VICTIMS: 1999 NATIONAL REPORT 53-54 (1999) (reporting that the number of murder offenders in each age group between fourteen and seventeen increased substantially from 1984 through 1993, and that all of the increase in homicides by juveniles between the mid-1980s and mid-1990s was firearm related). But see id. at 62 (reporting that serious violence, like sexual assaults, aggravated batteries and assaults by juveniles dropped 33% between 1993 and 1997).
increase the number of kids who are transferred to adult criminal court. As a result, the jurisdiction of the juvenile court has been shrinking, while the danger of incarceration in adult facilities has become very real. This fact, however, does not negate the need for ensuring procedural protection for those children who do, in fact, commit dangerous crimes, but either because of age or a decision by the prosecutor not to bring adult charges, remain in the juvenile court system.

A. THE HISTORY OF TRANSFER PROVISIONS

The history of transfer provisions can be divided into roughly three periods. The first period, from 1899 to 1966, involved an uncertainty about the extent of the juvenile court’s jurisdiction in relation to that of the criminal court. Transfer to criminal court during this period only occurred with older, repeat, violent offenders, and transfer was at the discretion of prosecutors or judges. Following Kent in 1966, the second period of transfer began, and judges had sole discretion to transfer children into criminal court during this

64. See BARRY C. FELD, BAD KIDS: RACE AND THE TRANSFORMATION OF THE JUVENILE COURT 208 (1999) [hereinafter BAD KIDS]. Professor Feld maintains that politicians have exploited the fears of the public and demonized wayward children in order to gain support for policies under which youths can be transferred to criminal court and incarcerated. Id.

65. Id.

66. Id. at 240. As a result of changes in waiver laws, excluding certain offenses from the juvenile court, criminal courts sentence increasing numbers of kids to adult correctional facilities. Professor Feld reports that offenders younger than eighteen years of age accounted for about 2% of new court commitments to prisons, according to a 1995 survey from the U.S. General Accounting Office. Id. Although the Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. § 5633 (1994), provides that states must not incarcerate juveniles in any institution where they would have regular contact with adults, in order to obtain federal funding made available under the act, it does not completely ban juvenile incarceration with adults. See JAMES C. HOWELL, JUVENILE JUSTICE & YOUTH VIOLENCE 37-38 (1997) (reporting that states maintain eligibility for federal grant funding under the act by making sufficient progress toward achieving the act’s goals, rather than actual fulfilment of those goals, and that a state’s participation in the JJDP Act Formula Grants Program is voluntary); BAD KIDS, supra note 64, at 176 (noting that the JJDP statute allows states to continue receiving federal funds as long as there is “substantial compliance with JJDP guidelines,” or if the noncompliance was de minimis).


69. Id.
However, juvenile judges were perceived as too lenient by legislators, so in 1982, the Illinois General Assembly passed its first automatic transfer statute. The introduction of automatic transfer provisions represents the third, modern, period in the history of transfer laws. These statutes were designed to make it easier for the prosecutor to try as an adult a juvenile charged with crimes such as first degree murder, or aggravated criminal sexual assault. Increasing numbers of states are enacting such statutes in an effort to get tough on juvenile crime, and automatic transfer continues to be a popular method for dealing with particularly violent juvenile offenders.

70. The Supreme Court in Kent, 383 U.S. at 566, listed the following factors for the judge to weigh in deciding whether to transfer a child into criminal court: (1) the seriousness of the alleged offense to the community (2) whether the offense was committed in an aggressive, violent or willful manner (3) whether the alleged offense was against persons or property, where greater weight is given to offenses committed against persons (4) the prospective merit of the complaint (5) the desirability of trial and disposition of the entire offense in one court when the juvenile’s associates in the alleged offense are adults (6) the maturity of the juvenile, determined by the juvenile’s home, emotional attitude and pattern of living (7) the record and previous history of the juvenile (8) likelihood of rehabilitation of the juvenile. Id. These factors have been adopted by Illinois and can be found in substantially similar form at 705 Ill. Comp. Stat. Ann. 405/5-805(2)(b) (West Supp. 2000), except that in Illinois, the juvenile judge must give "greater weight to the seriousness of the alleged offense and the minor’s prior record of delinquency than to the other factors." Id.

71. See Ill. Rev. Stat. Ch. 37 ¶ 702-7(6)(a) (West Supp. 1982) (codified as amended at 705 Ill. Comp. Stat. Ann. 405/5-130 (West Supp. 2000). The statute provided that any minor at least fifteen years of age, charged with "murder, rape, deviate sexual assault or armed robbery when the armed robbery was committed with a firearm," would be excluded from the juvenile court and tried in adult criminal court. Id.; see also Traver, supra note 67, at 290 (reporting that critics of Kent cited rising juvenile crime and Juvenile Court leniency as evidence that a focus on punishment was needed).

72. 705 Ill. Comp. Stat. Ann. 405/5-130(1)(a) (West Supp. 2000). In 1999, the General Assembly added the crime of aggravated battery with a firearm committed in a school to the list of automatic transfer crimes with Senate Bill 759. See Automatic Transfer, supra note 61 (arguing that the addition of the school offense was unnecessary given that the prosecutor can ask the judge to try juveniles charged with gun crimes as adults and they are presumed to be unfit for juvenile court unless the defendant can prove otherwise under 705 Ill. Comp. Stat. Ann. 405/5-805(2)(a) (West Supp. 2000); Traver, supra note 67, at 315 (arguing that the passage of the new aggravated battery with a firearm provision represents a politically motivated and incorrect answer to dealing with school shootings).

73. See Jeffrey A. Butts & Ojmarrh Mitchell, Brick by Brick: Dismantling the Border Between Juvenile and Adult Justice, 2 Crim. J. 2000 167, 182 (2000), available at http://www.ncjrs.org/criminal_justice2000/vol_2/02f2.pdf (reporting that the popularity of statutory exclusion laws increased significantly in the 1990s, and as of 1997, twenty-eight states statutorily excluded at least some juveniles charged with certain offenses); Howard N. Snyder et al., Juvenile Transfers to Criminal Court in the 1990's: Lessons Learned from Four Studies 4-5 (2000) (reporting that between the 1992 and 1997 legislative sessions, forty-five states expanded their statutory provisions governing the transfer of juveniles to criminal court, and most did so by adding statutory exclusion provisions, lowering minimum ages, adding eligible offenses, or making judicial waiver presumptive).
Currently in Illinois, any juvenile at least fifteen-years-old, charged with one of the specifically-listed crimes, is tried in adult criminal court, and expressly excluded from juvenile court jurisdiction. 74

B. EXTENDED JURISDICTION JUVENILE PROSECUTION

Today, in addition to automatic transfer, there are various methods in place across the country for either transferring children to adult courts, or treating them as adults for sentencing purposes. 75 Illinois has adopted a modern hybrid transfer provision called extended jurisdiction juvenile prosecution ("EJJP"), one of the most significant additions to the Juvenile Court Act that was passed by the legislature with the Juvenile Justice Reform Provisions of 1998. 76 This system provides that a juvenile, at least thirteen-years-old, charged with an offense that would be a felony if committed by an adult, be tried in juvenile court, and given the full panoply of procedural rights, including a jury trial. 77 A "blended" sentence results, whereby the juvenile receives both a juvenile sentence and a stayed adult sentence for the crime, imposed by a juvenile court judge. 78 The juvenile serves his or her sentence in a juvenile facility, and if it is successfully completed, the adult conviction is dropped. 79 However, if the juvenile convicted in an extended

74. 705 ILL. COMP. STAT. ANN. 405/5-130(1)(a) (West Supp. 2000). The statute states that any minor who at the time of the offense was at least fifteen years of age, and is charged with first degree murder, aggravated criminal sexual assault, aggravated battery with a firearm committed in, or around, a school, armed robbery with a firearm, or vehicular hijacking with a firearm, shall be expressly tried under the criminal laws of Illinois, and excluded from Juvenile Court. Id. Additionally, a minor charged with a drug offense in or around a school or a public housing complex is statutorily excluded from the juvenile court. See 705 ILL. COMP. STAT. ANN. 405/5-130(2)(a) (West Supp. 2000).

75. There are generally three ways in which a juvenile could be transferred: (1) judicial waiver, (2) statutory waiver or statutory exclusion, or (3) prosecutorial waiver. See Dennis the Menace, supra note 67, at 384. Illinois has adopted all three methods. See 705 ILL. COMP. STAT. 405/5-130, 405/5-805 (1998). For an explanation of the methodologies behind different forms of transfer provisions, see PATRICIA TORBET ET AL., STATE RESPONSES TO SERIOUS AND VIOLENT JUVENILE CRIME 25-34 (1996) [hereinafter STATE RESPONSES].


77. 705 ILL. COMP. STAT. 405/5-810(3)(1998). The statute provides that a minor subject to extended jurisdiction juvenile prosecution has the right to a jury trial and that the trial shall be open to the public. Although EJJP conceivably applies to any felony, those offenses which fall under the automatic transfer provision are not eligible for EJJP. See 705 ILL. COMP. STAT. 405/5-130 (1998); see also Part IV infra for a discussion of the importance of a jury trial right for juvenile proceedings.

78. 705 ILL. COMP. STAT. 405/5-810(4).

79. 705 ILL. COMP. STAT. 405/5-810(7).
jurisdiction juvenile prosecution violates his or her sentence, or commits a new offense, the court can issue a warrant for the arrest of the juvenile and revoke the stay of the criminal sentence, thereby forcing the juvenile to serve his sentence as an adult.80

EJJP has received acclamation by legal experts,81 and it is being adopted by an increasing number of jurisdictions.82 Its beneficial effects on the juvenile justice system are evident in its flexibility and in reduced recidivism rates for juveniles.83 EJJP is a useful alternative to automatic transfer because it furthers the goals of rehabilitation and accountability, as well as protection of the public from juvenile crime.84 Successful completion of the juvenile sentence lowers recidivism rates, as compared to juveniles incarcerated with
adults, mainly because there are specific educational and social services in place at juvenile facilities, that are not available for incarcerated adults.\(^{85}\) Furthermore, the child appreciates the consequences of his conduct, since he is aware that, should he choose not to abide by the terms of the juvenile sentence, an adult sentence will be imposed upon him.\(^{86}\) Finally, the fact that jurisdiction over the offender is “extended” past the age at which a juvenile would normally be ineligible for adjudication in the juvenile court, provides an increased opportunity to rehabilitate the receptive child.\(^{87}\) EJJP, and hybrid transfer provisions in general, are sensible alternatives to simply trying more kids as adults.\(^{88}\) EJJP works well for young, first-time offenders, like the thirteen-year-old in \textit{G.O.}, as well as for habitual offenders who need a realistic alternative to traditional adult transfer.

\section*{III. The Case of In re \textit{G.O.}\(^{89}\)}

\textit{G.O.} was a thirteen-year-old boy living in the City of Chicago, who had never been arrested before, but had the misfortune of being in the wrong place at the wrong time.\(^{90}\) His friend shot and killed a person in a park, and he was ultimately charged by the State with first degree murder and

\begin{itemize}
  \item \textit{See} Lisa M. Wortman, \textit{Does Transfer to Adult Court Work? Recidivism and Juveniles Tried as Adults}, JUV. JUST. COMM. NEWSL., Sept. 1995, at 3 (reporting that the rate of recidivism for juveniles who were prosecuted as adults was significantly higher than for those kids who were adjudicated in the juvenile system); \textit{Violent Youth}, supra note 82, at 1041 (arguing that EJJP gives older juvenile offenders one last chance at utilizing the rehabilitative services unique to the juvenile sentence, such as psychological and educational counseling and job training programs).
  \item In Illinois, when it appears that the child has violated the conditions of the juvenile sentence, the juvenile court may issue a warrant for the arrest of the minor, and after a hearing, order execution of the previously imposed adult criminal sentence. 705 ILL. COMP. STAT. 405/5-810(6). Once the revocation of the stay of the adult criminal sentence has been completed, the juvenile court jurisdiction shall then be terminated. \textit{Id.}
  \item \textit{See Patricia Torbet \& Linda Szymanski, State Legislative Responses To Violent Juvenile Crime: 1996-97 Update 6-7} (1998) (explaining that extended jurisdiction allows the juvenile court to commit a juvenile to the juvenile corrections department for a longer period of time than the court’s original jurisdiction, typically age twenty-one) [hereinafter \textit{UPDATE}].
  \item \textit{See State Responses}, supra note 75, at 15-16 (explaining that the notion of extending the age of the juvenile court’s continuing jurisdiction reflects concerns that placing juveniles in adult facilities is dangerous and ineffective, and that EJJP encourages juveniles to use juvenile justice resources for development while making sure the juvenile is held accountable for his actions); \textit{Part IV infra.}
  \item \textit{G.O.}, 710 N.E.2d at 145.
\end{itemize}
aggravated discharge of a firearm on an accountability theory.\textsuperscript{91} He was arrested and interrogated by the police for approximately three hours before finally relating a story of gang violence where he was used as bait to lure a rival gang member into a deadly trap.\textsuperscript{92} G.O.'s attorney asked for a jury trial, but this request was denied by the juvenile court.\textsuperscript{93} The trial court found G.O. delinquent for first degree murder and committed him to the Illinois Department of Corrections.\textsuperscript{94} At the time G.O. was being tried, only habitual and violent juvenile offenders were allowed a jury trial, based on the reasoning that they were facing a determinate sentence.\textsuperscript{95} G.O. contended that he was denied equal protection of the law by being treated dissimilarly although he was similarly situated to violent and habitual juvenile offenders since he faced incarceration until age twenty-one. The appellate court agreed. The court held that a thirteen-year-old who had never been arrested before was similarly situated with violent and repeat juvenile offenders, and it concluded that there was no rational basis for denying G.O. a jury trial.\textsuperscript{96} The refusal to grant G.O.'s demand for a jury trial was held to violate the Equal Protection Clause of both the United States and Illinois Constitutions.\textsuperscript{97} The court emphasized, however, that its holding was limited to juvenile offenders under fifteen, since those charged with first degree murder over fifteen are subject to automatic transfer.\textsuperscript{98}

\textsuperscript{91} Id. at 143.

\textsuperscript{92} Id. at 147.

\textsuperscript{93} Id. at 143.

\textsuperscript{94} Id.

\textsuperscript{95} G.O.'s attorney filed a formal jury demand on January 6, 1998, before the passage of the Juvenile Justice Reform Act of 1998. Thus, only a violent juvenile offender having been previously adjudicated a delinquent minor for what would have been at least a class 2 felony, and a habitual juvenile offender, one who had been twice adjudicated a delinquent minor were allowed a jury trial. See 705 ILL. COMP. STAT. 405/5-815, 5-820 (1998).

\textsuperscript{96} G.O., 710 N.E.2d at 146. The Court noted that juveniles are not a suspect class, so there is no heightened scrutiny of the statute, and it will therefore invalidate the law only if it is arbitrary or bears no reasonable relationship to a legitimate state goal. Id. at 145; see People v. P.H., 582 N.E.2d 700 (Ill. 1991) (holding that rational basis review is used to examine a statute for equal protection violations where no suspect class is implicated). The United States Supreme Court has determined that, generally, only classification schemes affecting race, ethnicity, nationality, or gender (to a lesser extent) deserve heightened scrutiny where the law must be found to serve either an important or compelling state interest. See, e.g., Craig v. Boren, 429 U.S. 190 (1976); Regents of the Univ. of California v. Bakke, 438 U.S. 265 (1978).

\textsuperscript{97} G.O., 710 N.E.2d at 147; see ILL. CONST. of 1970, art. I, § 2; U.S. CONST. amend. XIV, § 1. The court examined the legislative history of the violent and repeat juvenile offender provisions and determined that the sentencing was the same as that for first-time juvenile murder defendants because the legislative goal was to punish the offender in all three cases. G.O., 710 N.E.2d at 146.

\textsuperscript{98} Id. at 147; see 705 ILL. COMP. STAT. 405/5-130(1)(a) (stating that minors at least fifteen years of age charged with first degree murder are statutorily excluded from the juvenile
The Illinois Supreme Court granted the State’s petition for leave to appeal the appellate court’s ruling, and a decision was handed down in March of 2000. In the period between the appellate court ruling and the supreme court ruling, however, the Illinois Supreme Court had ruled that the act which mandated imprisonment for juveniles adjudged delinquent for first degree murder was unconstitutional. The court held that, due to the Cervantes decision, G.O. was no longer subject to mandatory sentencing, so he is no longer similarly situated to violent and habitual juvenile offenders. Furthermore, the supreme court held that because G.O. was no longer subject to the mandatory minimum sentence, G.O.'s argument, that the process to which he was subjected was more punitive than rehabilitative, failed. Because the law underlying the appellate court’s judgment was rendered void, the supreme court vacated the judgment that G.O. was denied equal protection under the law. The court did not address the question of whether it should reconsider Fucini, and whether juveniles should in fact be given a jury trial right. Furthermore, the court did not consider whether the reenacted version court). It must be noted that, although G.O. raised a due process challenge to the denial of a jury trial, the court was compelled to follow McKeiver, 403 U.S. 528, and In re Fucini, 255 N.E.2d 380, which held that a juvenile was not entitled to a jury trial as a matter of due process. G.O., 710 N.E.2d at 144-45.

99. In re G.O., 727 N.E.2d 1003 (Ill. 2000). The court’s holding on the issue of the voluntariness of a confession, that the respondent must have made the statement freely, without compulsion or inducement, will not be discussed in this comment. See id. at 1012.

100. People v. Cervantes, 723 N.E.2d 265, 274 (Ill. 1999). The court invalidated Public Act 88-680 on the basis of the single subject clause of the Illinois Constitution of 1970. Id. The court held that the act amended fifty-five different Illinois statutes purportedly relating to “neighborhood safety,” but invalidated the entire act since some of the provisions had no relation to neighborhood safety. Id. at 270. Thus, 705 ILL. COMP. STAT. 405/5-33(1.5) (1996) was nullified as unconstitutional. However, the General Assembly has since reenacted the law providing for imprisonment of the minor adjudged delinquent for first degree murder until his or her twenty-first birthday, without the possibility of parole for five years. 705 ILL. COMP. STAT. ANN. 405/5-750(2) (West 1999).


102. Id. The court simply concluded that Cervantes invalidated the mandatory minimum sentencing provision that G.O. was sentenced under, so he was no longer similarly situated with violent and habitual juvenile offenders. Id.

103. Id.

104. 255 N.E.2d 380, 382 (Ill. 1970). Fucini is the Illinois equivalent to the McKeiver decision, making the same argument that a jury trial would destroy the rehabilitative nature of the juvenile court proceeding through adversary competition. For the facts of Fucini, see supra note 55.

105. G.O., 727 N.E.2d at 1007. The majority states that the argument considered by Justice Heiple, whether a jury trial should be granted to juveniles charged with murder, was not before the court and therefore expressed no opinion as to the merits of that argument. Id. at 1007 n.3; see infra notes 114-117 and accompanying text.
of the sentencing provision for juveniles charged with first degree murder\textsuperscript{106} entitles juveniles to a jury trial because G.O. cited to no authority that would permit the court to render an advisory opinion.\textsuperscript{107}

In Justice Heiple’s dissent in \textit{G.O.}, he differed with the majority’s holding and stated that any proceeding where a defendant could be sentenced to multiple years in incarceration were criminal and therefore entitled such a defendant to all the procedural protections afforded to criminal defendants, regardless of whether it is a juvenile proceeding.\textsuperscript{108} Disagreeing with the majority’s conclusion that \textit{Cervantes} resolved G.O.’s constitutional challenge to the denial of his request for a jury trial, Justice Heiple concluded that, even if G.O. was not subject to the mandatory minimum sentence, he was entitled to a jury trial.\textsuperscript{109} Heiple asserted that the basic charge of delinquency is the commission of a criminal offense, and if found guilty, a juvenile can be incarcerated in the Department of Corrections.\textsuperscript{110} This is a “classic case of crime and punishment,” he concluded.\textsuperscript{111} Stating that punishment and public safety are now the juvenile justice system’s overriding concerns, Heiple declared that it was time to reconsider the premise of \textit{McKeiver v. Pennsylvania}.\textsuperscript{112} Although Heiple maintained that rehabilitation remains an important aspect of the juvenile justice system, the same is true of the adult

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\textsuperscript{106} 705 ILL. COMP. STAT. 405/5-750(2).
\textsuperscript{107} \textit{G.O.}, 727 N.E.2d at 1008. The court cited Supreme Court Rule 341(e)(7) and People v. Franklin, 656 N.E.2d 750 (1995) for the proposition that G.O.’s argument about the reenacted statute was waived because G.O. failed to cite authority.
\textsuperscript{108} \textit{G.O.}, 727 N.E.2d at 1014 (Heiple, J., dissenting). Although Duncan v. Louisiana, 391 U.S. 145 (1968) held that there is a category of “petty” offenses which are not subject to the Sixth Amendment jury trial provisions, The Supreme Court held in Baldwin v. New York, 399 U.S. 66 (1970), that no offense can be deemed “petty” for purposes of the jury trial right where imprisonment for more than six months is authorized.
\textsuperscript{109} \textit{G.O.}, 727 N.E.2d at 1015; see ILL. CONST. of 1970, art. I, § 8 (granting accused persons in criminal prosecutions the right to a speedy public trial by an impartial jury); \textit{Duncan}, 391 U.S. at 149 (holding that trial by jury in criminal cases is fundamental to the American scheme of justice, and that the Fourteenth Amendment guarantees the right to a jury trial in all criminal cases which, were they to be tried in federal court, would come within the Sixth Amendment’s guarantee).
\textsuperscript{110} \textit{G.O.}, 727 N.E.2d at 1015 (Heiple, J., dissenting).
\textsuperscript{111} \textit{ld.}
\textsuperscript{112} \textit{ld.} at 1016; see 705 ILL. COMP. STAT. 405/5-101 (1998) (stating that it is the intent of the General Assembly to promote a juvenile justice system that will protect the community, impose accountability for violations of the law, and teach the juvenile about the seriousness of abiding by the law). \textit{McKeiver} focused on the rehabilitative nature of the juvenile proceeding in denying a jury trial right to juveniles, assuming the adversarial system would defeat the rehabilitative nature. See supra notes 54-57 and accompanying text.
\end{flushright}
criminal justice system, so that fact should not be the sole basis of denying rights to juveniles.\(^{113}\)

To support his position, Justice Heiple asserted that, in addition to the fundamental shift in purpose from the original juvenile court to the modern juvenile justice system, the trend has been to add virtually all of the constitutional requirements of the adversarial criminal court to juvenile delinquency proceedings.\(^{114}\) Furthermore, he contended that \textit{Fucini} does not foreclose G.O.'s argument because it interpreted the jury trial provision under the 1870, rather than the 1970 Constitution.\(^{115}\) The jury trial provision in the 1970 Constitution, unlike the one from 1870, does not require that the right exist at common law prior to 1870 to be recognized.\(^{116}\) Thus, given these considerations, Heiple concluded that it was a denial of equal justice to disallow G.O., and all juveniles facing similar incarceration, the right to a jury trial when adults and other juveniles are afforded such a right.\(^{117}\)

IV. ANALYSIS

A. THE SIGNIFICANCE OF \textit{IN RE G.O.}

The factual scenario in \textit{G.O.} reveals what is wrong with the juvenile justice system today.\(^{118}\) We need to utilize a system that can effectively

\(^{113}\) Justice Heiple cited the Illinois Constitution, which stated that "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." \textit{G.O.}, 727 N.E.2d at 1016 n.8 (Heiple, J., dissenting) (quoting ILL CONST. of 1970, art. I, § 11).

\(^{114}\) \textit{G.O.}, 727 N.E.2d at 1016 (Heiple, J., dissenting); see cases cited, supra notes 46-53, and accompanying text; \textit{Violent Youth}, supra note 82, at 1101-03 (arguing that the McKeiver decision was incorrect because it ignored the fact that procedural safeguards prevent governmental oppression, and that juvenile court judges are more likely to convict than a jury of detached citizens, based on statistical data comparing similar cases in juvenile and adult court).

\(^{115}\) \textit{G.O.}, 727 N.E.2d at 1016 (Heiple, J., dissenting).

\(^{116}\) The 1870 Constitution stated that "[t]he right of trial by jury as heretofore enjoyed, shall remain inviolate," which required the right to exist at common law to be recognized by the 1870 Constitution. \textit{Id.} at 1016 (quoting ILL CONST. of 1870, art. II, § 5). By contrast, the 1970 Constitution, as amended by the Eighth Amendment in 1994, specifically grants the right to a jury in criminal cases. ILL CONST. of 1970, art. I, § 8. The jury trial provision in § 13, therefore, has consequently been interpreted as applying solely to civil cases. \textit{G.O.}, 727 N.E.2d at 1017 n.9 (Heiple, J., dissenting).

\(^{117}\) \textit{G.O.}, 727 N.E.2d at 1017 (Heiple, J., dissenting). Justice Heiple cites the provisions allowing a jury trial for violent and habitual offenders as evidence that the incorporation of all the procedural rights available to adults will not vitiate the justification for a separate adult and juvenile justice system. \textit{Id.; see 705 ILL. COMP. STAT. 405/5-815(d), 5-820(d) (1998).}

\(^{118}\) Despite the fact that juvenile crime has actually been falling, the law has gotten more punitive, and more and more kids are being either prosecuted as adults, imprisoned with adults, or both. \textit{See FEDERAL BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES: 1999
punish and deter violent and habitual offenders without sweeping first-time offenders like G.O. into incarceration unnecessarily. On one hand, society would like to think the ideal of Jane Addams, that we can have a separate system for juveniles focused on rehabilitation rather than retribution, is still an attainable, practicable goal. 119 On the other hand, each time a school shooting occurs, there is a public outcry to toughen laws in order to hold juveniles accountable for their actions. 120 Furthermore, there is a desire to keep these particularly dangerous children away from the public at large. 121 Most people would agree that a reversion to the common law system for juveniles, where a minor could potentially be subjected to the death penalty as an adult if he knew what he did was wrong, is too barbaric. 122 However, it is equally unrealistic to think that every juvenile delinquent is amenable to treatment and therefore should never be transferred to adult court. 123 Thus, a middle-road solution that can accommodate many juveniles, offering

UNIFORM CRIME REPORTS 11, 211 (2000) (reporting that the violent crime rate fell 23% from 1995 to 1999 nationally, and that juvenile violent crime arrests decreased 8% from 1998 to 1999 while juvenile arrests overall from 1995 to 1999 fell by 9% nationally); Steve Chapman, Despite What You Hear, The Kids are All Right, CHI. TRIB., Dec. 21, 2000, § 1, at 27 (reporting that in the last six years, the rate of homicide arrests in the ten-to-seventeen age group has dropped by 68%, reaching the lowest level since 1966, and that the juvenile arrest rate for murder, rape, robbery and aggravated assault is down by 36%; yet Florida, which leads the country in trying teens as adults, has a juvenile crime rate 48% higher than the national average); THREE STATES, supra note 34, at 11.

119. See, e.g., Donald P. O'Connell, Heading Off Juvenile Crime is the Key, CHI. DAILY L. BULL., Apr. 24, 1999, at 4 (stressing the need to remember one of the fundamental concepts espoused by Addams: that there must be a separate system based on children's potential for positive change); see supra notes 31-34 and accompanying text.

120. See supra notes 1-5 and accompanying text; David Finney, Back to the Drawing Boards, at http://www.abcnnews.go.com/sections/us/DailyNews/gunhouse990618.html (March 7, 2001) (reporting that public opinion polls show people want tougher gun control and juvenile crime laws). See generally Julie Delcour, No Warning Label: The Dangers That Lurk Among Us, TULSA WORLD, Aug. 27, 2000, § 1, at 1 (chronicling the public outrage over the strangulation of a seven-year-old girl, the rape of her twelve year old playmate and the desire to make juveniles' criminal records public information in an effort to hold them accountable).

121. See, e.g., Crack Down, supra note 81, at 367 (arguing that popular efforts to "get tough" on crime have resulted in longer criminal sentences, increased prison populations, and disproportional incarceration of racial minority offenders); Anamaria Wilson, Lock 'Em Up! Minority Youths Are More Likely to Face Trial as Adults, TIME, Feb. 14, 2000, at 68 (contending that minority youths arrested for crimes are twice as likely to be detained as their white counterparts, and that there is a public sentiment that minority juvenile offenders should be detained).

122. See supra notes 19-26 and accompanying text.

123. See STATE RESPONSES, supra note 75, at 11 (noting that sentencing reform across the country came about because of public safety concerns about a subset of juvenile offenders, those who commit violent offenses, and consequently focus has been shifted to offense-based sentencing, rather than offender based).
procedural protections, and an escape mechanism for truly resistant, violent youths, is needed.\textsuperscript{124}

B. THE NEED FOR A JURY TRIAL

Justice Heiple argued in \textit{G.O.} that the time for disallowing a jury trial right for juveniles has come to an end.\textsuperscript{125} He was correct on this issue. For the most of the twentieth-century, there has been a clear trend toward criminalization of the juvenile system, and a shifting of purpose, from rehabilitation to retribution and punishment.\textsuperscript{126} Secondly, there has been a fallacy since \textit{McKeiver} that jury trials will effectively end the hope of rehabilitation because they would entail delay, formality and the clamor of the adversary system, which would erase the possibility of an intimate, informal, protective proceeding.\textsuperscript{127} This is simply not true. The real threat to the juvenile justice system arises from the possibility of incarceration with adults,\textsuperscript{128} not from merely granting procedural guarantees.\textsuperscript{129} Indeed, the problem with automatic transfer provisions, especially, is that they often lead

\textsuperscript{124} See \textit{id.} at 11-16 (describing the various versions of blended sentencing, where either the juvenile court, or the adult court tries the case, but both have the option of imposing a juvenile sentence or an adult sentence based on the offense and the characteristics of the offender).

\textsuperscript{125} See \textit{supra} notes 108-112 and accompanying text.

\textsuperscript{126} See \textit{Acknowledging the Shift, supra} note 51, at 940 and accompanying text; 705 ILL. COMP. STAT. 405/5-101 (1998) (stating that it is the intent of the Illinois General Assembly to promote a juvenile justice system that will protect the community, impose accountability for violations of the law); Barry C. Feld, \textit{Abolish the Juvenile Court: Youthfulness, Criminal Responsibility and Sentencing Policy}, 88 J. CRIM. L. & CRIMINOLOGY 68, 79 (1997) (arguing that efforts to get tough as a result of the rise in youth homicide and gun violence in the late 1980s signal a fundamental shift in purpose from treatment to punishment, from rehabilitation to retribution, and from immature child to responsible criminal) [hereinafter \textit{Abolish the Juvenile Court}].

\textsuperscript{127} \textit{McKeiver}, 403 U.S. at 528-29; see \textit{supra} notes 56-59 and accompanying text.

\textsuperscript{128} A Justice Policy Institute national survey found that, as a result of automatic transfer laws, which lead to adult criminal sentences, juveniles are eight times more likely to commit suicide in adult jails, five times more likely to report being raped or attacked, twice as likely to report being beaten by prison staff, and 50% more likely to be attacked with a weapon, \textit{at} http://www.cjcj.org/jpi/riskspr.html (last visited 3/14/01); see Barry C. Feld, \textit{Juvenile and Criminal Justice Systems' Responses to Youth Violence}, 24 CRIME & JUST. 189, 213 (1998) (reporting that youths waived to criminal court often receive substantial sentences of imprisonment, including life without parole or the death penalty and that waived violent youth receive sentences four or five times longer than do their retained juvenile counterparts).

\textsuperscript{129} See \textit{Automatic Transfer, supra} note 61 (arguing that as a result of Illinois' increased reliance on automatic transfer laws, including the passage of Senate Bill 759, which added aggravated battery with a firearm to the list of automatic transfer crimes, increasing numbers of kids are being exposed to the harsh and dangerous conditions of confinement in adult institutions); \textit{Dennis the Menace, supra} note 67, at 404-405.
to incarceration with adults,\(^{130}\) which is precisely what Jane Addams feared the most, as she fought to create a better and more humane alternative for Illinois' troubled children.\(^{131}\) Once outside of the juvenile facility, the child loses access to rehabilitative services like educational help and social counseling.\(^{132}\) Allowing a jury trial for juveniles, however, would not affect the access to these rehabilitative services. Indeed, the whole point of EJJP is that juveniles can have a jury and still receive rehabilitative services.\(^{133}\)

Various courts have recognized the unique danger of juvenile incarceration in adult facilities. The Court in *McKeiver*, for example, recognized the danger of treating children like adults, even though it denied juveniles the right to a jury trial.\(^{134}\) Likewise, the court in *Osorio v. Rios*\(^{135}\) noted the inherent danger of crowding juveniles with adults in jails, especially without affording those juveniles all the procedural protections afforded to adults.\(^{136}\) The *Osorio* Court noted that it was dealing with removal of the child on a permanent or semi-permanent basis from the *parens patriae* juvenile world to the punishments of the adult criminal world.\(^{137}\) It concluded that the statute at issue violated the Equal Protection Clause of the United States Constitution because it permitted a child to be punished indistinguishably from an adult without the same procedural safeguards.\(^{138}\)

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130. See Snyder & Sickmund, supra note 63, at 208-09 (1999) (reporting that the number of youths under eighteen in jails rose 35 percent from 1994 to 1997, that youths under eighteen accounted for 2% of new court commitments to state adult prisons, and that there were 9100 jail inmates under age eighteen in 1997, over three-quarters of which were convicted or awaiting trial as adult criminal offenders).

131. See supra notes 30-32, 129 and accompanying text; Dennis the Menace, supra note 67, at 376 (explaining the principles espoused by the child-savers).

132. See Extended Jurisdiction, supra note 82, at 1369 (explaining that once a child reaches maximum age, or is incarcerated in an adult facility, he loses access to rehabilitative services from the state).

133. See State Responses, supra note 75, at 16 (stating that blended sentencing is a tool that can be used to encourage juveniles to use resources available to him or her).

134. 403 U.S. at 547. The Court explained that it was not mandating a jury trial for juveniles because it was worried about placing the juvenile squarely in the routine of the criminal process. *Id.* The Court assumed that adult procedures would necessarily require abandonment of the juvenile court's rehabilitative goals. *Id.*


136. *Id.* at 572. The crowding situation in *Osorio* was so bad that even juveniles who had not been waived out of juvenile jurisdiction were being incarcerated with adults for lack of facilities. *Id.* at 573. The Puerto Rican scenario here serves as an example of exactly what should be avoided with respect to juvenile incarceration.

137. *Id.* at 575.

138. *Id.* at 576. The court noted that if a child is jailed like a common criminal, he or she should have all the procedural protections of adults. *Id.*
Similarly, the Minnesota Supreme Court in *State v. Mitchell*\(^\text{139}\) held that, although a life sentence in prison for a fifteen-year-old convicted of first degree murder does not constitute cruel and unusual punishment,\(^\text{140}\) the court was nevertheless concerned about the implications of sending such offenders to prison. The court suggested that, had EJJP been in effect when the offense was committed, this would have been an appropriate situation for such a sentencing option.\(^\text{141}\) Although the defendant in *Mitchell* was two years older than G.O., and was the actual shooter, both cases illustrate scenarios in which EJJP is beneficial.

In *G.O.*, Justice Heiple stated that the majority was incorrect in dismissing G.O.'s claim for a right to a jury trial merely because the mandatory minimum sentencing provision\(^\text{142}\) was held unconstitutional as a violation of the single-subject rule.\(^\text{143}\) There are several reasons why Heiple was correct. First, the Illinois Constitution specifically grants the right to a jury in criminal prosecutions.\(^\text{144}\) Though juvenile proceedings are not specifically criminal, they are certainly quasi-criminal, given the stated intent of the General Assembly to protect the community and impose accountability on the juveniles who break the law.\(^\text{145}\) A minor as young as thirteen may be committed to the Department of Corrections, Juvenile Division, if he is found guilty of an offense that would result in incarceration for an adult.\(^\text{146}\)

139. 577 N.W.2d 481 (Minn. 1998). In *Mitchell*, a fifteen year old participated in a convenience store robbery during which he shot and killed the nineteen-year-old clerk. *Id.* at 483. The trial court sentenced him to the mandatory adult sentence, life imprisonment with no possibility of parole for a minimum of thirty years. *Id.* The defendant then challenged the sentence, saying it constituted cruel and unusual punishment. *Id.*

140. *Id.* at 490.

141. *Id.* at 489. The court noted that the murder here occurred before EJJP had been put into effect in Minnesota, but said it was a valid alternative for children who had committed serious crimes, or were chronic or repeat offenders. *Id.* The court suggested that the trial court should have utilized EJJP, had it been an option, when it considered certification of Mitchell as an adult. *Id.*

142. Implicit in Heiple's reasoning is that mandatory minimum sentencing for juveniles renders the entire system criminal in nature, so that juveniles subject to these sentences, even without transfer to criminal court, need procedural protection. See *generally* Heidi Treiber, *Juvenile Justice: Rehabilitating the System after the Introduction of Mandatory Minimum Sentences*, 3 Suffolk J. Trial & App. Advoc. 175, 189-90 (1998) (arguing that mandatory minimum sentencing should not be implemented in the juvenile system because children need individualized adjudication that takes their age and experience into account, and therefore mandatory minimum sentencing thwarts the goal of rehabilitation).


144. ILL. CONST. of 1970, art. 1, § 8; *G.O.*, 727 N.E.2d at 1015 (Heiple, J., dissenting).


146. 705 Ill. Comp. Stat. Ann. 405/5-710(1)(b) (West 1999 & Supp. 2000). The statute states that a minor found to be guilty may be committed to the Department of Corrections, Juvenile Division, under section 5-750 if the minor is thirteen years of age or older,
Furthermore, one of the stated goals of the Juvenile Justice Reform Provisions of 1998 was to "provide due process" for juveniles charged with crime.\(^{147}\) Although _McKeiver_ does not require states to grant a jury trial right to juveniles, it does allow states to decide to grant that right, if they so choose.\(^{148}\) Moreover, some scholars have acknowledged that the time for overturning _McKeiver_ has come.\(^{149}\)

Aside from the fact that the United States Supreme Court has already granted nearly every procedural right to juveniles, except the jury trial,\(^{150}\) the Illinois General Assembly has granted the right to a trial by jury in an increasing number of instances already.\(^{151}\) Indeed, the appellate court in _G.O._ specifically found that, to grant a jury trial for repeat and violent juvenile offenders, but not for first-time offenders, who are not subject to the automatic transfer provision,\(^{152}\) was a denial of the Fourteenth Amendment's Equal Protection Clause.\(^{153}\) Considering that the Illinois General Assembly has reenacted the provision mandating incarceration for thirteen-year-olds adjudged delinquent for first degree murder, it is a denial of equal protection provided that the commitment to the Department of Corrections, Juvenile Division, shall be made only if a term of incarceration is permitted by law for adults found guilty of the offense for which the minor was adjudicated delinquent. _Id._

\(^{147}\) 705 ILL COMP. STAT. 405/5-101(1)(d) (1998).

\(^{148}\) _McKeiver_, 403 U.S. at 547. The court noted, "we are reluctant to disallow the States to experiment further and to seek in new and different ways the elusive answers to the problems of the young, and we feel that we would be impeding that experimentation by imposing the jury trial." _Id._


\(^{150}\) See cases cited _supra_ notes 46-54; _G.O._, 727 N.E.2d at 1016 (Heiple, J., dissenting).

\(^{151}\) There is a jury trial right for violent and habitual juvenile offenders, as Justice Heiple pointed out, and there is also a jury trial right for those juveniles fortunate enough to be tried using EJJP. _See_ 705 ILL COMP. STAT. 405/5-810(3), 5-815(d), 5-820(d) (1998).

\(^{152}\) Fifteen-year-olds charged with first degree murder, sexual assault or aggravated battery with a firearm near a school, as well as thirteen-year-olds charged with first degree murder during the course of rape or kidnaping (except for juveniles guilty only by accountability) are all automatically transferred to criminal court, and could face adult incarceration. 705 ILL COMP. STAT. ANN. 405/5-130(1)(a), (4)(a) (West Supp. 2000).

\(^{153}\) _G.O._, 710 N.E.2d at 727. Although the Illinois Supreme court held that _Cervantes_ eliminated the similarity between _G.O._ (the first-time offender) and violent and habitual offenders, _G.O._, 727 N.E.2d at 1007, it did not rule on the effect of the reenacted provision, 705 ILL COMP. STAT. 405/5-750(2), which permits incarceration for thirteen-year-old first-time offenders. The practical impact of the reenacted provision is that offenders like _G.O._ are still being denied equal protection of the law if the prosecutor does not choose to file a petition designating the case as an EJJP. 705 ILL COMP. STAT. 405/5-810 (1998).
to allow a jury trial right for violent and habitual offenders facing similar penalties, but not for the first-time offender.\footnote{154}

In the twenty-first century, there is no reasonable basis to withhold a jury trial right from all juveniles.\footnote{155} The differences between the juvenile court and the criminal court have eroded to such an extent that it simply does not make sense to disallow a jury trial right to juveniles facing similar sentences as adults.\footnote{156} The United States Supreme Court in \textit{Duncan v. Louisiana} held more than three decades ago that the right to a trial by jury was one of the most fundamental checks on arbitrary law enforcement and oppressive government known to the American system of justice.\footnote{157} The Supreme Court has also held that "[c]onstitutional rights do not mature and come into being magically only when one attains the state-defined age of majority."\footnote{158} "Minors, as well as adults, are protected by the Constitution and possess constitutional rights."\footnote{159} There is no reason to declare that a jury trial is a fundamental check on arbitrariness in law enforcement for adults, but not for juveniles. In fact, the opposite is true. With the broad discretion juvenile judges have to incarcerate delinquents for years without a formal trial, a jury is needed to ensure such power will not be arbitrarily used.\footnote{160}

\footnote{154. All juveniles face incarceration up to age twenty-one, depending on the offense. 705 ILL. COMP. STAT. 405/5-710(1) (1998). Yet only juveniles deemed "violent" or "habitual," in both cases having at least one prior offense, are allowed a jury trial. 705 ILL. COMP. STAT. 405/5-815, 820 (1998). The law is thus underinclusive, and even under rational basis review, the burden is on the state to show a fair and substantial relation between the object of the legislation and the difference in treatment, based on the actual wording of the statute and the legislative record. See F.S. Royster Guano Co. v. Virginia, 253 U.S. 412 (1920).

155. \textit{See Abolish the Juvenile Court, supra} note 126, at 87-88. (arguing that because judges and juries apply Winship's reasonable doubt standard differently, it is easier to convict youths in juvenile court than in criminal court); Korine L. Larsen, Comment, \textit{With Liberty and Justice For All: Extending the Right to A Jury Trial To The Juvenile Courts, 20 WM. MITCHELL L. REV. 835 (1994) (arguing that juvenile courts mirror criminal proceedings to such an extent that to deny a jury trial right to juveniles amounts to a denial of due process).

156. \textit{See Abolish the Juvenile Court, supra} note 126, at 89 (recognizing that the very existence of blended sentencing represents a significant procedural and substantive convergence with an erosion of the differences between juvenile and criminal courts).

157. \textit{Duncan}, 391 U.S. at 156. Justice Douglas' dissent in \textit{McKeiver} agreed, simply concluding: "the guarantees of the Bill of Rights, made applicable to the States by the Fourteenth Amendment, require a jury trial." \textit{McKeiver}, 403 U.S. at 558 (Douglas, J., dissenting); see \textit{supra} note 56.


159. \textit{Id.}

160. \textit{See Duncan}, 391 U.S. at 155-56. The Court explained that the framers of the Constitution provided a jury in criminal cases as a safeguard against the "corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge." \textit{Id.} These considerations are no less important for minors facing incarceration than for adults.
Furthermore, the original version of the Juvenile Court Act allowed a jury trial, so the Illinois General Assembly could not have considered a jury trial, in itself, enough to defeat the rehabilitative nature of the separate system.\textsuperscript{161} Considering the addition of the jury trial right to greater classes of juveniles with the reform provisions of 1998, there is no legitimate purpose furthered by classifying among juveniles for granting a jury trial.\textsuperscript{162} Therefore, as Justice Heiple argued, \textit{In re Fucini}, holding that juveniles are not entitled to a jury trial, should be overruled and the jury trial right should be extended to all juveniles as a matter of equal justice and fundamental fairness.\textsuperscript{163} Illinois should thus follow an increasing number of jurisdictions that have already deemed the right to a jury trial, as a check on the power and arbitrariness of the judge and the prosecutor, essential for juveniles as well as adults.\textsuperscript{164}

C. EXTENDED JURISDICTION JUVENILE PROSECUTION AS A MIDDLE-ROAD SOLUTION

The practical significance of \textit{In re G.O.} is that it exemplifies the kind of juvenile that would potentially benefit from EJJP.\textsuperscript{165} G.O. was a thirteen year old first-time offender, found guilty of first degree murder on an accountability theory.\textsuperscript{166} G.O. was initially adjudicated delinquent and committed to the Department of Corrections, without the possibility of parole, until the age of twenty-one.\textsuperscript{167} Had G.O. been tried using EJJP, he would have...

\textsuperscript{161} Illinois Juvenile Court Act, Ch. 23 § 170, 1899 Ill. Laws 131 (repealed 1966) (granting a right to a jury of six in delinquency proceedings); see supra text accompanying notes 35-37.
\textsuperscript{162} A jury trial has been extended to the EJJP via the reform provisions of 1998, rather than to violent and habitual offenders exclusively. 705 ILL. COMP. STAT. 405/5-810(3) (1998). See generally F.S. Royster Guano Co. v. Virginia, 253 U.S. 412 (1920) (holding that, where no suspect class is involved for purposes of equal protection, the classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced will be treated alike).
\textsuperscript{163} G.O., 727 N.E.2d at 1016-17 (Heiple, J., dissenting). In addition to the argument that \textit{Fucini} has no bearing on the argument for a jury trial right because it was decided before the 1970 Constitution, supra text accompanying notes 93-94, the criminalization of the juvenile system applies, as does the assertion that procedural protection will not unduly impair the juvenile court’s distinctive values. See Larsen, supra note 155, and accompanying text.
\textsuperscript{164} See Larsen, supra note 155, at 856 n.189. (reporting that nearly one-third of the states have granted jury trials, as of right, in juvenile proceedings). For updated information on states granting jury trial rights, see National Center for Juvenile Justice Statistics, supra note 8.
\textsuperscript{165} Any minor thirteen or older, as G.O. was, who has committed a felony, is potentially eligible for EJJP. 705 ILL. COMP. STAT. 405/5-810(1); see supra text accompanying notes 77-83.
\textsuperscript{166} G.O., 710 N.E.2d at 143.
\textsuperscript{167} Id.; see Treiber, supra note 142, at 190.
been allowed to serve his time in a juvenile facility, and thus have access to the full rehabilitative services available, while at the same time allowing for imposition of an adult sentence if he chose not to take advantage of the benefits of the juvenile facility. There would have been no need to worry about being denied equal protection as compared to similarly situated habitual and violent juvenile offenders, because G.O. would have had a jury trial open to the public under EJJP. Consequently, EJJP would have been particularly beneficial for G.O., as for many other violent and habitual juvenile offenders.

Although there has been a general decrease in all types of crime in Illinois as in other states, there is no question that the threat of serious crime by juveniles represents a clear and present danger. As the line between juvenile and criminal court continues to blur, Illinois needs to find a middle-road solution that ensures fair procedural protection for juveniles charged with serious crimes and the flexibility to tailor punishments to the offense while considering the unique characteristics of the offender. The Illinois General Assembly should more fully utilize EJJP to ensure that first-time offenders like G.O. are not swept into the adult criminal courts without a second thought. It must be realized that it is possible to maintain the functional distinction between the juvenile and criminal systems and yet afford youngsters a fair trial, without being subjected to the whims of the prosecutor. We should accept the reality that the two systems are inextricably linked, and begin to fully employ the benefits of both systems.

As Professor Feld has observed, trying juveniles with adult procedural safeguards in juvenile court preserves both access to juvenile treatment

168. See 705 ILL. COMP. STAT. 405/5-810 (1998); supra notes 85-88 and accompanying text.
169. 705 ILL. COMP. STAT. 405/5-810(3); G.O., 727 N.E.2d at 1006; see supra notes 77-79 and accompanying text.
171. See news articles cited supra notes 1-5.
172. See Extended Jurisdiction, supra note 82, at 1384 (concluding that EJJP combines the most effective elements of juvenile and adult systems to address increasingly complex youth crime).
173. As Heiple maintained, Illinois should not treat the failure to provide a jury trial in delinquency proceedings as a method of shielding the juvenile from the adult criminal justice system. G.O., 727 N.E.2d at 1017 (Heiple, J., dissenting); see Larsen, supra note 155, at 874 and accompanying text.
174. See Extended Jurisdiction, supra note 82, at 1384 and text accompanying notes 77-83.
resources and allows for imposition of stiffer penalties, if the juvenile fails to respond to the rehabilitative system, or re-offends.175

There are ways to improve the current Illinois version of EJJP, however. First, the General Assembly should amend the automatic transfer provisions, the use of which often results in children actually serving time in adult prisons,176 and extend the scope of EJJP even to those children currently subject to automatic transfer provisions.177 The General Assembly should make it clear that EJJP is potentially available, even for juveniles who have committed automatic transfer offenses, should the circumstances of the case warrant EJJP.178 There does not have to be an adult sentence merely because a juvenile has been transferred to adult court.179 Secondly, the juvenile should not be subjected to the sole discretion of the prosecutor, as is the case with the

175. See Violent Youth, supra note 82, at 1123.
176. See Snyder & Sickmund, supra note 63, at 210 (reporting that there was a 29% increase in the number of under-eighteen youth newly admitted to state adult prison systems in Illinois between 1992 and 1996, while in Arkansas, a state that allows the criminal court judge to impose either a juvenile or a criminal sentence, the number of under-eighteen youth admitted to adult prisons dropped 85% between 1992 and 1996); State Responses, supra note 75, at 13-14; Dennis the Menace, supra note 67, at 404-405 and text accompanying note 60.
177. Although the wording of the EJJP statute allows any minor over thirteen charged with a felony to be potentially eligible for EJJP, upon an evaluation by the judge, it conflicts with the automatic transfer provision, which says that certain offenses “shall be prosecuted under the criminal laws of this state.” 705 Ill. Comp. Stat. 405/5-130(1)(a), 405/5-810(1) (1998).
178. See Extended Jurisdiction, supra note 82, at 1380 (reporting that the proposed version of EJJP, Ill. S. 363, 90th Gen. Assembly, Reg. Sess. (Ill. 1997-98), included extending EJJP to children who would otherwise face automatic transfer). There is no clear wording of this concept in the current statute, however.
179. Consider the case of People v. Kolakowski, No. 1-97-4293, 2001 WL 99453, at *1, 13 (Ill. App. Ct. Jan. 30, 2001), in which a thirteen-year-old girl, transferred to adult court for murdering an eighty-nine-year-old man while sleeping in his home, was sentenced to forty years in prison. Despite her tender age, the reviewing court relied on the fact that she and her boyfriend killed the victim with a brick and a knife, and concluded that the discretionary transfer and forty-year adult sentence was appropriate. Id. at *7, 13. EJJP was never suggested in this case, even though the defendant had no previous history of criminal activity, and a psychiatrist recommended residential treatment. Id. at *6, 7. Under the proposed change to EJJP suggested in this article, the trial judge could have imposed the same adult sentence, but stayed, pending the outcome of a juvenile sentence replete with rehabilitative treatment. Even a criminal court judge should be able to sentence in this manner when necessary, without an EJJP motion from the prosecutor. See State Responses, supra note 75, at 13-14 (noting that Arkansas and Missouri allow a criminal court judge to impose either a juvenile or criminal sentence); e.g., Mo. Ann. Stat. § 211.073 (West Supp. 2001). A blended sentence in this case would have been inherently more just than merely locking up a thirteen-year-old first-time offender for forty years.
current EJJP provision. The judge should be able to determine if EJJP is appropriate without a petition from the State’s Attorney first being filed. There should be guidelines implemented so that the local application of EJJP can be more uniform and less susceptible to the politics of individual State’s Attorneys’ offices, such as those who want to appear particularly tough on juvenile crime by seeking transfer to criminal court whenever possible. Such a “checks and balances” system would certainly be more equitable than simply allowing the prosecutor to choose whether or not to file a petition to try the case using EJJP.

One drawback to blended sentencing, as a whole, is that it can create confusion as to which statute to actually apply to a particular case, and what the juvenile’s status is during case processing and subsequent placement. While it is difficult to eliminate this confusion without eradicating the entire juvenile justice system, allowing a criminal court to consider a juvenile sentence in lieu of a strictly criminal sentence for juveniles who have been transferred to criminal court, provides a flexibility that benefits juveniles

180. See Donna M. Bishop & Charles E. Frazier, Transfer of Juveniles to Criminal Court: A Case Study and Analysis of Prosecutorial Waiver, 5 NOTRE DAME J.L. ETHICS & PUB. POL’Y 281, 301 (1991) (arguing in favor of judicial waiver because young prosecutors are not in as good a position to make competent decisions about transferring juveniles as are judges); Dennis the Menace, supra note 67, at 396; see also Donald P. O’Connell, Heading Off Juvenile Crime is Key, CHI. DAILY L. BULL., Apr. 24, 1999, at 4 (arguing that courts making decisions about juvenile transfers should function as a part of the community rather than in isolation from the community, and that more intense judicial administrative attention for juvenile proceedings is needed).

181. 705 ILL. COMP. STAT. 405/5-810(1); see also Governor Edgar’s Amendatory Veto Message to Ill. S. 363, reprinted in JOURNAL OF THE SENATE 1366-69, Apr. 28, 1998 (arguing that the judge should be able to consider the rehabilitative potential of the minor in determining whether transfer to adult court should be allowed); Janan Hanna, Mandatory Life Term for Teen Rejected: Judge Turns Aside Law; High Court to Get Appeal, CHI. TRIB., June 22, 2000, § 1, at 1 (recounting Professor Randolph Stone’s statement that judges need more discretion in Illinois at all levels of a case involving a juvenile murder accomplice).

182. See THREE STATES, supra note 34, at 44 (reporting that a study of EJJP in Minnesota revealed significant differences in application of the statute based on habits in particular counties, and that there was noticeable difference in use of the statute in rural versus urban settings).

183. See generally Richard E. Redding, Juveniles Transferred to Criminal Court: Legal Reform Proposals Based on Social Science Research, 1997 UTAH. L. REV. 709, 754 (arguing that a convergence of juvenile and adult sentencing would reduce the dangers inherent in discretionary transfer).

184. See, e.g., Donna M. Bishop, Juvenile Offenders in the Adult Criminal Justice System, 27 CRIME & JUST. 81, 125-26 (2000) (arguing that blended sentencing creates confusion as to what philosophy of justice, rehabilitation or retribution, is to be applied, and that criminal court judges lack expertise with respect to juvenile offenders, so they should not have to worry about imposing juvenile verses criminal sentences).

185. See STATE RESPONSES, supra note 75, at 15.
amenable to treatment even if the prosecutor did not seek to designate the proceeding as an EJJP.\textsuperscript{186} A rebuttable presumption that all juvenile cases statutorily excluded from the juvenile court\textsuperscript{187} are also EJPs would simplify the situation, and give the trial judge flexibility in sentencing.\textsuperscript{188} Considering the increasing numbers of juveniles ending up in front of criminal court judges, those judges should be informed as to the juvenile services and sentences available, and use their discretion to avoid harsh adult sentences whenever possible.\textsuperscript{189}

Additionally, the Illinois General Assembly should amend, or repeal, the current violent and habitual juvenile offender provisions so that EJJP is presumptively, and more uniformly, applied to violent and habitual offenders, as those terms are defined in the statute.\textsuperscript{190} Blended sentencing options like EJJP were designed to specifically target violent and habitual offenders,\textsuperscript{191} and to have separate provisions for such offenders without mentioning EJJP as an option for these juveniles creates confusion as to when EJJP should be utilized.\textsuperscript{192} For EJJP to work effectively, such broad, uniform implementation of the sentencing option is essential.\textsuperscript{193} However, in light of one state supreme court decision in which EJJP was held unconstitutional under the state

\textsuperscript{186} Mandatory minimum sentences conflict with the flexibility that EJJP provides. As the case of Leon Miller, in Illinois, or Lionel Tate, in Florida, illustrates, judges would like to have an alternative to adult sentencing after transfer, in the interest of fairness to the young offender. See, e.g., Hanna, \textit{supra} note 181 (reporting the story of a Cook County criminal judge who refused to impose a mandatory life sentence on a fifteen-year-old who had been statutorily excluded from the juvenile court as an accomplice in the shooting deaths of two people); Clary, \textit{supra} note 3.

\textsuperscript{187} See 705 ILL. COMP. STAT. 405/5-130 (1998).

\textsuperscript{188} The factors in the EJJP statute could be reviewed to determine if the offender nonetheless deserves one last chance at a juvenile sentence, rather than incarceration without rehabilitative service availability. See 705 ILL. COMP. STAT. 405/5-810(1)(b). EJJP designation depends on a consideration of the seriousness of the alleged offense, the minor's history of delinquency, the age of the minor, the culpability of the minor in committing the offense, whether it was an aggressive or premeditated offense, and whether the minor used or possessed a deadly weapon when committing the alleged offense. \textit{Id}.

\textsuperscript{189} See Bishop, \textit{supra} note 184, at 125.

\textsuperscript{190} 705 ILL. COMP. STAT. 405/5-815,820 (1998).

\textsuperscript{191} See \textit{THREE STATES}, \textit{supra} note 34, at 27 (reporting that EJJP was introduced in Minnesota specifically to target serious or repeat offenders to give them one last chance at rehabilitation within the juvenile system).

\textsuperscript{192} Both the violent and habitual provisions say that "[n]othing in this [s]ection shall preclude the State's Attorney from seeking to prosecute a [violent or habitual juvenile offender] as an adult," but the possibility of EJJP for such offenders is not mentioned. 705 ILL. COMP. STAT. 405/5-815(a), 405/5-820(g) (1998).

\textsuperscript{193} See \textit{THREE STATES}, \textit{supra} note 34, at 36 (stressing the need for guidelines as to when EJJP should be used to eliminate disparities in application among counties).
constitution's Equal Protection Clause, the Illinois General Assembly should recognize the potentiality of such challenges and amend the Illinois version of EJJP so that juveniles receive credit for the amount of the juvenile sentence served if the adult sentence is later imposed. Such an amendment will increase the fairness in the application of EJJP in Illinois and reduce potential challenges to the statute's constitutionality.

Today, the only effective way to carry out the articulated goal of protecting society, while also attempting to rehabilitate juveniles, is not to worry about the effects of procedural rights, but to focus on the sentences actually imposed on these children. At the same time, we must provide an escape valve for the unamenable juveniles to be dealt with accordingly. Contrary to what one might think, juvenile crime has been falling, giving credence to the possibility that rehabilitation is still viable for the majority of our distraught, delinquent children. On the other hand, some sources indicate that arrest rates for violent juvenile offenders have actually increased

194. See In re S.L.M., 951 P.2d 1365, 1367 (Mont. 1997). The Montana Supreme Court held that EJJP violated equal protection under the Montana Constitution in that all juveniles subject to the provision were at risk for serving an adult sentence in addition to their juvenile disposition, thus treating EJJP offenders more harshly than adults for the same offense. Id. at 1373, 1375. EJJP has since been reenacted, however, with the qualifying statement that ''the combined period of time of a juvenile disposition under (1)(a)(i) plus an adult sentence under subsection (1)(a)(ii) may not exceed the maximum period of imprisonment that could be imposed on an adult convicted of the offense . . . that brought the youth under the jurisdiction of the youth court.'' MONT. CODE ANN. § 41-5-1604(1)(b) (1999). The Illinois General Assembly should adopt a comparable provision as a preventive measure in the event of a similar equal protection challenge.

195. The current version of EJJP does not allow for credit for time served under the juvenile sentence. 705 ILL. COMP. STAT. 405/5-810(6). Thus, a juvenile could argue that the statute violates equal protection in that a juvenile serving part of a juvenile sentence, before having the adult sentence imposed actually serves a longer sentence than a similarly situated adult charged with the same offence. See S.L.M., 951 P.2d at 1373. Indeed, credit for time served is provided for in some states with EJJP. See, e.g., MO. ANN. STAT. § 211.073 (West 1996 & Supp. 2001); ARK. CODE. ANN. § 9-27-507 (Michie 1998 & Supp. 1999).

196. See Dennis the Menace, supra note 67, at 404-05 (arguing that juveniles in adult prisons are more likely to be physically and sexually abused and they receive no educational or social services).

197. See generally Susan A. Burns, Comment, Is Ohio Juvenile Justice Still Serving It's Purpose?, 29 AKRON L. REV. 335, 370 (1996) (arguing that since the implementation of the separate system for juveniles, there have been certain classes of juvenile offenders who are simply beyond the help of juvenile justice laws, and that juvenile justice is alive and well since a majority of juvenile offenders can be rehabilitated).

198. See statistics cited supra note 118.

199. Chapman, supra note 118, at 27.
by a staggering proportion. Innovative techniques, such as blended sentencing, are necessary in order to effectively resolve this intricate dilemma.

Lastly, although money for providing rehabilitative facilities for juveniles is always a concern, it can be done with no less difficulty than creating facilities for adults now. There are many creative possibilities to handle this problem, such as requiring parents of juvenile offenders to pay the state to incarcerate their delinquent children, or even using tobacco settlement money to fund facilities for juvenile offenders.

CONCLUSION

There is no simple answer to the problem of effectively combating juvenile crime in the twenty-first century. Indeed, the answer changes as society changes, becoming more complex with the passage of time. It is just as unrealistic to think that rehabilitation can be achieved for every juvenile offender, as it is to think that locking kids up, just like adults, will solve the problem of youth crime. We must strike a balance between protection from arbitrary punishment of young, troubled citizens and protection of society from truly dangerous threats by its youth, in order to find an effective middle-road solution to violent juvenile crime. As the scenario in In re G.O., illustrates, we need to encourage rehabilitation for habitual offenders and violent offenders alike, rather than simply transferring kids to adult court at younger and younger ages.

While there is no single correct answer to solving juvenile crime, Illinois should recognize that the time for worrying about the procedural distinctions between juvenile and adult court has passed, and that there is actually a

200. Edward E. Brown, Playground or Battleground? The New ABCs, SOC. STUD., Sept. 1, 2000, available at 2000 WL 13145494 (reporting that between 1984 and 1994, the arrest rate of violent juvenile offenders increased by 75%, though the teenage population, overall, did not significantly increase). But see statistics cited supra note 118 (reporting that there was an increase in arrests between the 1980s and 1990s, but that rates dropped from 1995 to 1999).

201. See, e.g., John L. Petterson & John Dvorak, Prisons Accord Appears Likely, Legislature Works to Reduce Crowding, KAN. CITY STAR, Apr. 26, 2000, at B1 (reporting that the legislature planned to use twenty-nine million dollars in tobacco settlement money to fund new incarceration facilities for both juveniles and adults).

202. See id.; Jennifer Sullivan & Timothy O’Hara, Parents to Pay a Bigger Chunk of Juvenile Incarceration Costs, SARASOTA HEROLD-TRIB., July 1, 2000, at BM1 (highlighting the law requiring parents of Florida’s juvenile offenders to pay twenty dollars per day for each child staying in a detention facility, where the judge ultimately decides if parents should pay). But see Tom Ridge, Editorial, If They Build It...How a New Juvenile Prison Could Create Its Own Clientele, PITT. POST-GAZETTE, at A16 (arguing that the new Pennsylvania facility for juvenile offenders with adult sentences, built after enactment of harsher transfer provisions, will ensure that adult crimes equal adult time and will not solve the delinquency problem).
continuum of adolescent behavior that defies labeling and requires graduated penalties to effectively handle as many factual scenarios as possible.\textsuperscript{203} Illinois should more fully exercise new methods of juvenile justice reform, such as EJJP,\textsuperscript{204} to give the juvenile offender every possible chance to help himself or herself, while also providing an escape mechanism for those violent children apparently out of the system’s reach. In this way, those violent, often older and repeat juvenile delinquents, may be held accountable for their actions as any serious criminal offender.

EJJP is certainly one sensible middle-road solution for violent children that balances accountability and rehabilitation. EJJP can effectively address the needs of both the violent, perhaps first-time, juvenile offender, as well as the habitual juvenile offender. Therefore, the current Illinois violent and habitual juvenile provisions should be repealed, in order to more efficiently utilize EJJP, and resolve confusion as to whether EJJP, rather than the violent or habitual offender statute, should be applied.\textsuperscript{205} Judges should have more freedom to utilize these blended sentences, even for those children who have been transferred to criminal court, should the totality of the circumstances warrant such utilization.\textsuperscript{206} Likewise, prosecutors need to have more specific guidelines for when to use EJJP, and judges or defense attorneys should be able to designate a case as an EJJP so that its use will not depend purely on the prosecutor’s discretion.\textsuperscript{207} Judges, prosecutors, and defense attorneys must therefore work with each other, as well as the community, to ensure the fairest, and most effective, justice system possible for our children.

\textbf{CHRISTIAN SULLIVAN}

\textsuperscript{203} See Abolish the Juvenile Court, supra note 126, at 89.
\textsuperscript{204} See supra notes 77-88 and accompanying text.
\textsuperscript{205} See supra notes 190-192 and accompanying text.
\textsuperscript{206} See supra note 181 and accompanying text.
\textsuperscript{207} See supra note 180 and accompanying text.