NO. 98597

In The
Supreme Court of Illinois

In Re Christopher K., a Minor

THE PEOPLE OF THE STATE OF ILLINOIS,

Petitioner-Appellant
v.

CHRISTOPHER K.,

Respondent-Appellee

On appeal from the Illinois Appellate Court, First District, Fifth Division (No. 02-0230), There heard on appeal from the Circuit Court of Cook County, Juvenile Justice Division (No. 99 JD 739), the Honorable Joseph M. Claps, Judge Presiding.

BRIEF OF JUVENILE LAW CENTER; THE CENTER ON CHILDREN AND FAMILIES; THE CENTRAL JUVENILE DEFENDER CENTER; THE CHILDLAW CENTER; THE CHILDREN'S LAW CENTER, INC.; THE CRIMINAL & JUVENILE JUSTICE PROJECT; THE CRIMINAL JUSTICE INSTITUTE; THE GEORGETOWN LAW CENTER JUVENILE JUSTICE CLINIC; THE JUVENILE JUSTICE CENTER OF SUFFOLK UNIVERSITY LAW SCHOOL; THE JUVENILE JUSTICE INITIATIVE OF ILLINOIS; THE MID-ATLANTIC JUVENILE DEFENDER CENTER; THE MIDWEST JUVENILE DEFENDER CENTER; THE NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN; THE NATIONAL JUVENILE DEFENDER CENTER; PHYSICIANS FOR HUMAN RIGHTS; THE SENTENCING PROJECT; VOICES FOR AMERICA'S CHILDREN; AND THE YOUTH LAW CENTER AS *AMICI CURIE* IN SUPPORT OF THE RESPONDENT-APPELLEE

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TABLE OF CONTENTS

B. Conducting separate EJJ and transfer hearings is contrary to the Balanced and Restorative Justice principles embraced by the Illinois Juvenile Court Act.

C. Conducting separate EJJ and transfer hearings is illogical in light of the similarity of the legal questions involved.

D. Conducting separate EJJ and transfer hearings is a waste of judicial resources.

III. Christopher's invocation of his right to counsel must be considered in light of psychological and neurological research which demonstrates relevant and distinct differences between adults and young offenders with respect to this issue.

A. Research shows that juveniles are developmentally distinct from adults in cognitive capacity, decision-making and assertiveness and as such should not be expected to invoke their right to counsel in the same manner as an adult.

B. New and emerging studies of the teenage brain demonstrate that the areas of the brain which govern tasks related to the assertion of a request for counsel are still developing into the late teens and early twenties.

IV. The U.S. Supreme Court has historically viewed minor's constitutional rights through a discrete lens, extending greater protections or fewer rights to minor based upon their distinctive developmental characteristics.

INTRODUCTION

The Extended Juvenile Jurisdiction (EJJ) provision of the Illinois Juvenile Court Act is void for vagueness because the requirement that EJJ-prosecuted youth not "violate the provisions of the juvenile sentence" fails to put juveniles on proper notice as to prohibited conduct and fails to provide even minimal guidance to government actors in its appropriate application and enforcement. Among states with comparable statutory provisions, Illinois stands almost alone in its failure to provide notice and guidelines as to what conduct will trigger imposition of the adult sentence; eight of the ten states with comparable sentencing statutes provide clarifying guidance that is missing from the ambiguous Illinois EJJ statute. The vagueness of its language undermines the EJJ statute's goals of protecting the community and preserving rehabilitative opportunities for youth who can benefit from them. Principles of effective rehabilitation require clear rules and sanctions; and the ambiguity of the EJJ provision allows for youth to be inappropriately stripped of the benefits of the juvenile system on the basis of technical violations that have no bearing on the youths' amenability to rehabilitation.

Additionally, allowing a hearing on an EJJ motion to occur after a motion to transfer a case to criminal court has been heard and denied is contrary to the policies underlying blended sentencing statutes because such statutes were designed to reduce the number of transfers to adult court by providing juvenile court judges with an additional dispositional option. Successive hearings on the same essential issue (whether a juvenile should be subjected to an adult sentence) do not serve to expand the dispositional authority of juvenile courts. Instead, subsequent hearing undercut the ability of a juvenile court to evaluate the appropriateness of transfer or EJJ and compare their relative suitability to the juvenile in question. Furthermore, conducting separate EJJ and transfer hearings undermines the Balanced and Restorative Justice Principles embraced by the Juvenile Court Act because disrupting the finality of the transfer decision harms victims and the community and interferes with the rehabilitation of juveniles. Conducting separate EJJ and

transfer hearings is also illogical in light of the similarity of the legal questions involved and is a waste of judicial resources.

Finally, research in adolescent development supports a finding that Christopher invoked his Fifth Amendment right to counsel when he stated, "I think I should have a lawyer" or "Do I need a lawyer." Academic studies in adolescent psychology demonstrate that there are distinct differences between adults and juveniles such that youth have greater difficulty understanding their Fifth Amendment rights and asserting them in a straightforward, direct manner. In light of these findings, Christopher's statements were a sufficient invocation under prevailing law of his desire to speak to a lawyer and, as a result, further questioning by the police should have ceased. This conclusion is supported by groundbreaking findings in adolescent neurology which demonstrate that the human brain continues to develop well into the late teens and early twenties, particularly in areas governing tasks related to a request for counsel. U.S. Supreme Court case law and jurisprudence also distinguishes between adults and minors by extending greater protections or fewer rights to juveniles based upon their distinct developmental differences and supports consideration of Christopher's 14 years, lack of experience in the criminal justice system and lack of assertiveness before authority as part of the calculus to be undertaken by a court in determining that Christopher had invoked his Fifth Amendment right to counsel.

INTERESTS OF AMICI

The organizations and individuals submitting this brief work with and on behalf of adolescents in a variety of settings. Some provide direct representation to minors who become involved in the juvenile justice and child welfare systems. Some work to create laws and policies that promote the fair treatment and well-being of youth in these systems. Others are health professionals or criminal justice research organizations. They join in this brief to assert that a statute that introduces the specter of a significant adult sentence should provide clear notice and guidelines to juveniles subjected to the suspended sentence and to the government officials

charged with enforcing it, and the decision to transfer a youth to adult court or to impose a suspended adult sentence involve the same essential questions and should be answered by a single judge in a single hearing. They also assert that recent research and studies in adolescent psychology and neurology, as well as U.S. Supreme case law and jurisprudence regarding the constitutional rights and protections of minors, indicate that there are distinct development difference between adults and juveniles which support finding that Christopher did invoke his right to counsel under the Fifth Amendment.

IDENTITY OF AMICI[1]

Juvenile Law Center; The Center on Children and Families; The Central Juvenile Defender Center; The ChildLaw Center; The Children's Law Center, Inc.; The Criminal & Juvenile Justice Project; The Criminal Justice Institute; The Georgetown Law Center Juvenile Justice Clinic; The Juvenile Justice Center of Suffolk University Law School; The Juvenile Justice Initiative of Illinois; The Mid-Atlantic Juvenile Defender Center; The Midwest Juvenile Defender Center; The National Association of Counsel for Children; The National Juvenile Defender Center; Physicians for Human Rights; The Sentencing Project; Voices for America's Children; and The Youth Law Center.

FACTS AND PROCEDURAL HISTORY

Amici adopt the statement of facts set forth in the brief of Appellee-Respondent, Christopher K., a minor.

[1] A brief description of each of the organizations and individuals listed herein appears at Appendix A.

ARGUMENT

I The purposes of the Extended Juvenile Jurisdiction provision of the Juvenile Court Act, 705 ILCS 405/5-810, are undermined by the vagueness of the provision's terms.

The Extended Juvenile Jurisdiction provision of the Juvenile Court Act, (hereinafter "the EJJ statute"), allows a court to designate a proceeding as an extended juvenile jurisdiction (EJJ) prosecution and impose one or more juvenile sentences and a suspended adult sentence. 705 ILL. COMP. STAT. ANN. 405/5-810 (West 2004). The execution of the adult sentence is stayed "on the condition that the offender not violate the provisions of the juvenile sentence." 705 ILL. COMP. STAT. ANN. 405/5-810(4). If, after a hearing, the court finds by a preponderance of the evidence that the minor committed a new offense, execution of the adult sentence is mandatory. 705 ILCS 405/5-810(6). If, after a hearing, the court finds by a preponderance of the evidence that the minor "committed a violation of his or her sentence other than by a new offense," imposition of the adult sentence is discretionary. Id. When execution of the adult sentence is discretionary, the statute also authorizes the court to modify or enlarge the conditions of the juvenile sentence. Id.

Despite the fact that a "violation of his or her sentence" can subject a minor to a substantial sentence in the adult system, the term is not defined in the EJJ statute nor anywhere in the Illinois Juvenile Court Act. The failure to define this broad yet consequential term leaves the EJJ statute void for vagueness and undermines the purposes of the EJJ statute.

EJJ prosecutions have two goals: they are intended to serve "the community's right to be protected," 705 ILL. COMP. STAT. ANN. 405/5-801 (West 2004); and provide eligible minors with a "last chance" to take advantage of the rehabilitative resources of the juvenile court and avoid adult sanctions. Timothy Lavery, *Extended jurisdiction juvenile prosecutions in Illinois*, Illinois Criminal Justice Information Authority, *On Good Authority* (Vol. 6, No. 5, December 2002). See also, 705 ILL. COMP. STAT. ANN. 405/5-101(1)(West 2004)(one of the "important purposes" of Juvenile Court Act is to "rehabilitate"); Michele M. Jochner, *An Overview of the Juvenile Justice Reform Provisions of 1998*, 87 ILL. B.J. 152 (March 1999) (describing "legislative goal" of the

1998 reforms as "balancing the safety of the community and the good of the minor.") The community is best protected when only those EJJ youth who cannot be rehabilitated in the juvenile system are sent to the adult criminal system. If youth are amenable to rehabilitation, public safety is served by retaining those youth in the juvenile system, as the resources of the juvenile system result in lower recidivism rates for minors in the juvenile system, as compared to youth in the adult system. See, e.g, Craig A. Mason, Ph.D. & Shau Chang, *Re-Arrest Rates Among Youth Sentenced in Adult Court*, 17, Evaluation Report for Juvenile Sentencing Advocacy Project, Miami-Dade County Public Defender's Office, (October 2001) ("even after controlling for race, initial charges, and age, those receiving juvenile sanctions were at significantly lower risk of re-offending than were youth receiving adult sentences").

The goals of the Illinois EJJ statute are in keeping with the purposes of comparable "blended sentencing" statutes in other states, statutes that similarly allow for youth under juvenile court jurisdiction to be exposed to adult criminal sanctions. See, e.g., Com. v. Connor C., 38 N.E.2d 731, 738 (Mass.App.Ct. 2000) (the Massachusetts' blended sentencing statute advances "the Legislature's twin goals of protecting the public from dangerous offenders, while emphasizing the rehabilitation of those children who pose a less serious risk to society"); State v. Garcia, 683 N.W.2d 295, 300 (Minn. 2004) (purpose of Minnesota's EJJ statute is to give juveniles "one last chance at rehabilitation in the juvenile system before being subjected to adult sanctions"); MONT. CODE ANN. 41-5-1602 (2004) (citing preamble to Ch. 537 L. 199 for the statement that "extending juvenile jurisdiction with the possibility of an adult sanction…has been shown to be an effective incentive in other states to rehabilitate juveniles to keep them out of the adult correctional system and allow them to pay restitution, finish treatment, and complete their education.") Despite the similarity of purposes, the Illinois EJJ statute stands apart from almost all of the statutes of other comparable states in its total failure to define what kind of misconduct can trigger imposition of the adult sentence.

Due process requires a penal statute to define an offense so that ordinary people can understand what is prohibited and so that those charged with enforcing the statute have minimal guidelines that prevent arbitrary and discriminatory enforcement. Koleander v. Lawson, 461 U.S. 352, 102 S.Ct. 1855, 75 L.Ed.2d 903 (1983); Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 498, 102 S.Ct. 1186, 71 L.Ed.2d 362 (1982). Thus, the due process clause is concerned with two separate issues when determining if a statute is void for vagueness: whether a person has proper notice as to prohibited conduct and whether the statute provides sufficient guidelines to inform government actors in its appropriate application and enforcement. The EJJ statute is void for vagueness in both respects and both the lack of notice and the insufficient guidelines impede the statute's goals.

First, the EJJ statute fails to provide juveniles with proper notice of the prohibited conduct that will trigger execution of the adult sentence. The absence of notice undermines the rehabilitative purpose of the EJJ statute because principles of effective rehabilitation mandate clear rules and sanctions. The need for unambiguous rules is particularly critical in light of recent brain research findings and adolescent development. Moreover, the failure to provide juveniles with notice of what conduct is prohibited provides no additional public safety benefits.

Second, the EJJ statute fails to provide sufficient guidelines to inform government actors in its appropriate application and enforcement. This failure allows youth to be inappropriately stripped of the benefits of the juvenile system on the basis of technical violations that have no bearing on the youths' amenability to rehabilitation. The failure to provide any safeguards against technical violations serving as a proxy for substantive violations undermines the rehabilitative goals of the EJJ statute and may actually be contrary to public safety.

A. The EJJ statute's requirement that juveniles not "violate the provisions of the juvenile sentence" fails to provide juveniles with proper notice of prohibited conduct and this failure undermines the purposes of the EJJ statute

1. The EJJ statute's requirement that juveniles not "violate the provisions of the juvenile sentence" fails to provide juveniles with proper notice of prohibited conduct.

The EJJ statute uses vague terms that could arguably require the juvenile's compliance with an unknown number of written and oral rules, regarding both serious and trivial matters. Yet unlike almost all of the other states with comparable statutes, Illinois has no clarifying language to put youth on notice as to which rules have implications for the adult sentence.

The United States Supreme Court has repeatedly struck down vague statutes because they fail to provide persons with proper notice of prohibited conduct. See e.g., Grayned v. City of Rockford, 408 U.S. 104, 108 & n.3, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972); Coates v. City of Cincinnati, 402 U.S. 611, 614, 91 S.Ct. 1686, 29 L.Ed.2d 214 (1971); Papachristou v. City of Jacksonville, 405 U.S. 156, 162, 92 S.Ct. 839, 31 L.Ed.2d 110 (1972). The purpose of the fair notice requirement is to enable a citizen to conform his conduct to the law. Lanzetta v. New Jersey, 306 U.S. 451, 59 S.Ct. 618, 82 L.Ed.2d 888 (1939).

The difficulties faced by a juvenile seeking to conform his conduct to the EJJ statute are real and fundamental. A youth serving an EJJ sentence in Illinois cannot know precisely what is encompassed by his or her responsibility not to "violate the provisions of the juvenile sentence." Are the "provisions of the juvenile sentence" limited to conditions articulated in the disposition order? See, e.g., 705 ILL. COMP. STAT. ANN. 405/5-710 (West 2004) (identifying the kinds of sentencing orders that can be made by the court). Do they include written requirements issued by the probation officer? What about oral directives issued by the probation officer? See, e.g., 705 ILL. COMP. STAT. ANN. 405/6-1(2)(c) (West 2004) (juvenile probation officer duties include making "referrals for medical and mental health service, organized recreation and job placement" and providing "supervision"). Do the "provisions of the juvenile sentence" include the rules or regulations of an institutional placement or the oral directives of institutional staff? See, e.g.,

Division of Juvenile Probation/Detention Services for the 19th Judicial Circuit, Illinois: Resident Orientation, available at www.19thcircuitcourt.state.il.us ("It is the minor's responsibility to learn the rules and regulations of Detention and to cooperate with them.") What about the program requirements of a substance abuse or counseling treatment program or the oral directives of treatment programming staff? See, e.g., *Juvenile Probation Programs Evaluated*, 3, *On Good Authority*, Illinois Criminal Justice Information Authority, Vol. 3, No. 7 (January 2000) (citing "instances of participant expulsion by [substance abuse] treatment providers for noncompliance with treatment rules"). What about the house rules imposed by the juvenile's parents? See, e.g. Mission Statement of the Cook County, IL Juvenile Probation and Court Services Department, available at www.cookcountycourt.org/services/programs/juvenile/ mission.html (juvenile probation department objectives include "encouraging the involvement of parents"). An EJJ juvenile sentenced by the court, supervised by a probation officer, in a juvenile detention facility and participating in a treatment program could be subject to dozens of rules and yet the EJJ statute says nothing about which of these rules could trigger a substantial adult sentence. Furthermore, the EJJ statute gives the juvenile no notice regarding whether a "violation" is limited to intentional or inexcusable compliance failures, or if inadvertent mistakes are qualifying triggers. It should be noted that the only state supreme court to examine the question of what conduct triggers imposition of an adult sentence under an EJJ statute held that a court must "find that the violation was intentional or inexcusable" for the suspended sentence to be executed. State v. B.Y., 659 N.W.2d 763, 768 (Minn. 2003).

Illinois stands almost alone in its failure to provide youth with notice of what conduct is prohibited by the EJJ statute. There are ten states that have passed sentencing laws similar to the Illinois EJJ statute, in that they allow a juvenile court judge to impose a suspended adult sentence, stayed on the condition that the juvenile comply with designated terms. Patrick Griffin, *Trying and Sentencing Juveniles as Adults: An Analysis of State Transfer and Blended Sentencing Laws*, 13, National Center for Juvenile Justice (October 2003) ("Juvenile blended sentencing laws in 11

states follow this [model].). Eight of those ten states (Alaska, Arkansas, Kansas, Michigan, Minnesota, Montana, Ohio, and Vermont) provide explanatory details for their revocation rules in keeping with their constitutional duty to provide juveniles with proper notice of prohibited conduct.[2]

Each of the eight states provide clarification in different ways, and most states provide multiple forms of guidance with in a single statute. For example, in Alaska, imposition of the adult sentence is only mandatory "if the court finds by a preponderance of the evidence that the minor has committed a subsequent felony offense that is a crime against a person or is the crime of arson." ALASKA STAT. § 47.12.160(e) (Michie. 2004). The court has discretion to execute the adult sentence only if it finds by a preponderance of the evidence that the juvenile: (1) committed a felony offense (that is not a crime against a person or the crime of arson); (2) committed a misdemeanor offense against a person that involves injury to a person or the use of a deadly weapon; (3) failed to comply with the terms of a restitution order; (4) failed to engage in or satisfactorily complete a rehabilitation program ordered by the court or required by a facility or juvenile probation officer; or (5) escaped from a juvenile detention facility. ALASKA STAT. § 47.12.160(d). In these limited discretionary cases the minor has the opportunity to prove by a preponderance of the evidence that "mitigating circumstances exist that justify a continuance in the stay of the adult sentence and the minor is amenable to further treatment" in the juvenile system. ALASKA STAT. § 47.12.160(e). In other words, Alaska provides guidance on imposition of the adult sentence by specifying the types of offenses that can trigger imposition of the adult sentence, and specifying the particular provisions of the sentence that have implications for the

[2] Of the ten parallel states, only the terms of revocation in Connecticut and Massachusetts are as impermissibly vague as those in the Illinois EJJ statue. Connecticut does not provide additional detail regarding the conditions of the sentence, but does limit the definition of "offense" to mean a "crime," thereby eliminating the possibility that an offense against institutional rules or the requirements of a treatment program could trigger the sentence. CON. GEN. STAT. ANN. 46b-133c(c). Massachusetts states only that the "adult sentence shall be suspended pending successful completion of a term of probation, which shall include, but not be limited to, the successful completion of the aforementioned commitment to the department of youth services." MASS. GEN. LAW ANN. 119 s 58(b).

suspended sentence. These and other approaches employed by the eight states to clarify the rules of revocation of the juvenile sentence are detailed below:

- **Some states (Arkansas, Kansas, Minnesota, Montana and Vermont), limit the "conditions" or "provisions" that must not be violated to conditions of the <u>dispositional order</u>**. ARK. CODE. ANN. § 9-27-507(a) (Michie. 2004) (court may impose the adult portion of the sentence if the juvenile has violated a "juvenile disposition order"); KAN. STAT. ANN. § 38-1636(f)(2) (2004) (each court is required to "adopt local rules to establish the basic procedures for extended juvenile jurisdiction prosecution in their jurisdictions") and Tenth Judicial District Court Rules, Rule 11(5)(a) (revocation requires a showing that the juvenile has "violated any provisions of the juvenile sentence order."); MINN. STAT. ANN. § 260B.130(4)(2) (West 2004)(adult sentence is "stayed on the condition that the offender not violate the provisions of the disposition order"); MONT. CODE ANN. 41-5-1604 (2004) (adult sentence is "stayed on the condition that the youth not violate the provisions of the disposition order"; VT. STAT. ANN. TIT. 33 § 5529c (2004) (a criminal sentence can only be imposed if a juvenile has "violated the terms of the disposition order" issued by the judge).
- **Some states (Alaska, Minnesota, Michigan and Ohio) specify the <u>types of offenses or conduct</u> that can trigger imposition (either mandatory or permissive) of the adult sentence**. ALASKA STAT. § 47.12.160(d) and(e) (Michie. 2004) (imposition of the adult sentence is only mandatory "if the court finds by a preponderance of the evidence that the minor has committed a subsequent felony offense that is a crime against a person or is the crime of arson," and the only offenses that can trigger a discretionary adult sentence are a felony offense (that is not a crime against a person or the crime of arson) or a misdemeanor offense against a person that involves injury to a person or the use of a deadly weapon); MINN. STAT. ANN. § 260B.130(5) (execution of the adult sentence is only presumed mandatory when the offender was convicted of either an offense for

which the applicable statutes presume a commitment to prison or a felony with a firearm, and the court finds that reasons exist to impose the adult sentence); MICH. COMP. LAWS ANN. § 712A.18i(9) (revocation of the stay is only mandatory when a juvenile on probation "is found by the court to have violated probation by being convicted of a felony or a misdemeanor punishable by imprisonment for more than 1 year, or adjudicated as responsible for an offense that if committed by an adult would be a felony or a misdemeanor punishable by imprisonment for more than 1 year."); OHIO REV. CODE ANN. § 2152.14(E) (court may only impose adult sentence if juvenile commits act that could be charged as a felony or a first degree misdemeanor offense of violence if committed by an adult or engaged in conduct that creates a substantial risk to the safety or security of the institution, the community, or the victim and juvenile's conduct demonstrates that he/she is unlikely to be rehabilitated).

- **Some states (Arkansas and Michigan) specify that the youth must be convicted or adjudicated delinquent for the offense that triggers the adult sentence**. ARK. CODE ANN. § 9-27-507 (if minor "adjudicated delinquent or found guilty of committing a new offense" court can chose to amend or add to the juvenile disposition or impose the full range of adult sentencing available); MICH. COMP. LAWS ANN. § 712A.18i(9) (requires conviction or adjudication of specified offenses for mandatory imposition of adult sentence).
- **Some states (Alaska, Arkansas, Minnesota and Ohio) provide for the court to consider whether the child can rehabilitated in the juvenile system**. ALASKA STAT. § 47.12.160(e)(Michie. 2004) (in discretionary revocations the minor has the opportunity to prove by a preponderance of the evidence that "the minor is amenable to further treatment" in the juvenile system); ARK. CODE ANN. § 9-27-507(a) (one ground for revocation is that the minor "is not amenable to rehabilitation in the juvenile system"); B.Y., 659 N.W.2d at 768-9 (Minnesota statute only allows for imposition of adult

sentence if court "find[s] that the need for confinement outweighs the policies favoring probation"); OHIO REV. CODE ANN. § 2152.14(E) (West 2004) (adult sentence can only be imposed if "the person's conduct demonstrates that the person is unlikely to be rehabilitated during the remaining period of juvenile jurisdiction.")

In contrast to the statutory schemes described above, Illinois does not provide proper notice to EJJ youth regarding what types of "violations" of which "provisions of the juvenile sentence" will trigger imposition of the adult sentence. This failure to provide proper notice of the prohibited conduct renders the EJJ statute void for vagueness.

2. The failure to provide juveniles with proper notice of prohibited conduct undermines the rehabilitative and community protection purposes of the EJJ statute.

The failure to provide juveniles with proper notice of prohibited conduct undermines the goal of rehabilitation. Principles of effective rehabilitation demand that rules are clear and sanctions are consistent. Indeed, juvenile justice scholars have recognized that effective sanctions are characterized by "clear expectations." David E. Arredondo, M.D., *Child Development, Children's Mental Health and the Juvenile Justice System: Principles for Effective Decision-Making*, 14 STAN. L. & POL'Y REV. 13, 22, 23 (2003). See also, Robert E. Henderson, *Blended Sentencing in Montana: A New Way to Look at an Old Problem*, 61 MONT. L. REV. 337, 334 (Summer 2000) (citing A. Javier Trevino, The Sociology of the Law, 18-20 (1996). ("Criminal theorists agree that for criminal sanctions to be effective, the sanction must be swift, severe, and certain."); Kathryn A. Santelmann, Kara Rafferty, *Juvenile Law Developments- "One Last Chance": Applying Adult Standards to Extended Jurisdiction Juvenile Proceedings- State v. B.Y.*, 30 WM. MITCHELL L. REV. 427, 446 (2003) ("Certainty of punishment upon violation of EJJ probation was a critical component of the statute when drafted and passed.").

Even in the adult context it has been observed that "[w]here the conditions of probation are not clearly specified, the probationer may encounter difficulty in obeying them despite a good

faith desire to do so." Leonore H. Tavill, *Scarlet Letter Punishment: Yesterdays' Outlawed Penalty is Today's Probation Condition*, 36 CLEV. ST. L. REV. 613, 630 (1988) (citing N. Cohen & J. Gobert, THE LAW OF PROBATION AND PAROLE 31-91 (1983)). This difficulty is likely to be even more pronounced among juveniles, who are at a different neurobiological stage than adults. New research into the structure and function of the teenage brain, made possible by new technologies such as magnetic resonance imaging (MRI) that allow scientists to study images of the brain, suggest that the teenage brain does not fully develop until the early 20's. Most importantly, the research suggests that the last areas of the brain to develop are the frontal lobes, specifically the pre-frontal cortex, which govern decision-making, judgment, and impulse control. As this area of the brain develops, young adults become more reflective and deliberate decision makers, skills which would help them navigate ambiguous rules and conditions. See, Arredondo at 15 (citing NAT'L RES. COUNCIL & INST. OF MED., JUVENILE CRIME, JUVENILE JUSTICE 16 (Joan McCord *et al.* eds., 2001)); Elizabeth S. Scott and Laurence Steinberg, *Blaming Youth*, 81 TEX. L. REV. 799, 816 (2003) (citing Patricia Spear, *The Adolescent Brain and Age-Related Behavioral Manifestations*, 24 NEUROSCIENCE & BIOBEHAVIORAL REVIEWS 417, 421-23 (2000)); *Teenage Brain: A Work in Progress*, National Institute of Mental Health, (NIH Publication No. 01-4929, January 2001) (available at http://www.nimh.nih.gov/publicat/teenbrain.pdf). See also, In re Stanford, 537 U.S. 968, 972, 123 S.Ct. 472, 474 (2002) (Stevens, J., dissenting) (noting that "[n]euroscientific evidence…make the case even stronger that adolescents are more vulnerable, more impulsive, and less self-disciplined than adults") (internal quotations omitted) (citations omitted).

In addition, developmental factors differentiate juveniles from adults in ways that may influence juveniles' ability to conform their behavior to unknown rules and regulations. "Evidence suggests that adolescents use information differently from adults, they may consider fewer options than adults, they are less likely to behave consistently across different problem-solving situations especially when subject to stress or ambiguity, and they differ from adults in

how they value perceived consequences in the decision-making process." Jill Ward, *Deterrence's Difficulty Magnified: The Importance of Adolescent Development in Assessing the Deterrence Value of Transferring Juveniles to Adult Court*, 7 U.C. DAVIS J. JUV. L. & POL'Y 253, 270-271 (Summer 2003)(citations omitted, emphasis added). See also, Elizabeth S. Scott and Thomas Grisso, *The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform*, 88 J. CRIM. L. & CRIMINOLOGY 137, 164-5 (Fall 1997) ("First, adolescents may use information differently than adults. They may consider different or fewer options in thinking about their choices or in identifying consequences…These differences may be most evident in…settings where information is not provided and individuals must make choices based on their own knowledge and experience.") (citations omitted, emphasis added). The possibility that juveniles may not fully understand vague rules or requirements was recognized by the Minnesota Supreme Court, when it observed that although the child was warned of a curfew it was possible he did not understand the harsh sanctions that could follow a violation. B.Y., 659 N.W.2d at 772.

The vague terms of the EJJ statute cannot further rehabilitative goals if their very ambiguity conflicts with principles of effective rehabilitation. The problems posed by vague conditions for adults may be exacerbated by the neurobiological and developmental differences between youth and adults. In addition, common sense suggests that vague conditions in the juvenile context can have no more effect on public safety than ambiguous probation provisions have in the adult context.

B. The EJJ statute fails to provide minimal guidelines to government officials as to when a "violation" of "the provisions of the juvenile sentence" should result in the imposition of the adult sentence and this failure undermines the purposes of the EJJ statute.

1. The EJJ statute fails to provide minimal guidelines to government officials as to when a "violation" of "the provisions of the juvenile sentence" should result in the imposition of the adult sentence.

Not only does the EJJ statute fail to provide a minor with appropriate guidance as to prohibited conduct, it also fails to provide any guidance to government officials as to when a "violation" of "the provisions of the juvenile sentence" should result in the imposition of the adult sentence. A statute must establish minimal guidelines to govern law enforcement. Kolender, 461 U.S. at 358. Where a criminal statute fails to provide such minimal guidelines, it "may permit a standard-less sweep that allows policeman, prosecutors, and juries to pursue their personal predilections," Id. (internal quotation and citation omitted) and "furnishes a convenient tool for 'harsh and discriminatory enforcement by local prosecuting officials'" Papachristou, 405 U.S. at 170 (quoting Thornhill v. Alabama, 310 U.S. 88, 97-98 (1940)).

As described in detail above, the majority of states with blended sentencing statutes similar to Illinois' provide significantly more guidance to courts regarding when the adult sentence should be imposed. Some states specify that the conditions whose violations can trigger the adult sentence are only those conditions stated in the dispositional order. Other states specify the kind of crimes or misconduct that can trigger the adult sentence, such as certain kinds of felonies, or certain person offenses, or escape from a juvenile detention facility. Some states specify that the youth must be convicted or adjudicated delinquent for the offense that triggers the adult sentence, and other states require the court to consider whether the child can rehabilitated in the juvenile system. Unlike eight of the ten states with comparable statutes, Illinois fails to provide any of these clarifying guidelines.

The absence of guiding standards is also illustrated by the failure of the EJJ statute to consider possible mitigating factors that support a continuation of the juvenile sentence. In

contrast, Alaska, Connecticut and Minnesota all allow the court to consider whether mitigating circumstances exist that justify a continuance in the stay of the adult sentence. ALASKA STAT. § 47.12.160(e)(minor has the opportunity to prove by a preponderance of the evidence that "mitigating circumstances exist that justify a continuance in the stay of the adult sentence); CONN. GEN. STAT. ANN. § 46b-133c(e)(court can decide not to impose adult sentence if it "determines there are mitigating circumstances that justify continuing the stay of execution and specifically states such mitigating circumstances in writing for the record"); MINN..JUV. CT. RULE 19.11(2)(A) (minor has right to "present mitigating circumstances or other reasons why the violation, if proved, should not result in revocation"). Finally, the lack of standards is compounded by the fact that the Illinois EJJ statute uses the relatively low evidentiary standard of preponderance of the evidence, in contrast to other states that require revocation findings to be proven by clear and convincing evidence. See, MINN. JUV. CT. RULE 19.11(2)(A) and (3)(A); OHIO REV. CODE ANN. § 2152.14(E).

Under the vague terms of the Illinois EJJ statute, a judge considering execution of an adult sentence has no standards by which to determine whether or not the triggering misconduct must be a violation of the dispositional order; whether misconduct must result in a conviction or adjudication; or whether mitigating circumstances or the minor's continuing potential for rehabilitation should be considered. Without any of the guidelines that other states have found necessary to include in similar statutes, the Illinois EJJ statute opens the door to arbitrary and discriminatory enforcement.

2. The failure to provide minimal guidelines to government officials as to when a "violation" of "the provisions of the juvenile sentence" should result in the imposition of the adult sentence undermines the rehabilitative and community protection purposes of the EJJ statute.

The EJJ statute's failure to articulate standards to guide the court's imposition of an adult sentence means that nothing precludes the assignment of youth to the adult system on the basis of technical, non-rehabilitation-related transgressions. As demonstrated below, imposing adult

sentences on youth who may still be amenable to rehabilitation on the basis of technical violations undermines the rehabilitative and community protection purposes of the EJJ statute.

The EJJ statute is intended to provide minors who can be rehabilitated with a "last chance" to take advantage of the rehabilitative resources of the juvenile court and avoid adult sanctions. See Lavery at 1. The statute is also designed to serve "the community's right to be protected," by shifting youth who demonstrate their unsuitability for the juvenile system to the adult criminal system. 705 ILL. COMP. STAT. ANN.§ 405/5-801. It follows that the transgressions that trigger execution of the adult sentence should have some relationship to the rehabilitative potential of the minor or the risks to the safety of the community.

(a) Technical violations do not necessarily indicate rehabilitative failures or public safety risks

The distinction between technical violations and misconduct that warrants imposition of the adult sentence was clearly made by the Minnesota Supreme Court in State v. B.Y., 659 N.W.2d 763 (Minn. 2003). As stated earlier, Minnesota is the only jurisdiction where the state's highest court has addressed the question of when a "violation" should lead to revocation. In B.Y., a juvenile was appealing the imposition of the adult sentence under the Minnesota EJJ statute. The adult sentence had been executed on the basis of a curfew violation; the curfew was "apparently implemented by the probation officer." Id. at 766. The court held that a probation requirement that was "not a provision of the disposition order" could not be the basis for executing the adult sentence. Id. at 769. The court reasoned that a probation violation may be "an anomaly in what has otherwise been a path to rehabilitation." Id. at 770. Furthermore, it was "probable that such a violation is not evidence that [the juvenile] is likely to return to criminality." Id. The court concluded that "for a court to revoke probation and execute a previously stayed adult sentence for technical violations of EJJ probation, the violations must demonstrate that the offender cannot be counted on to avoid antisocial activity." Id. at 772

(quotations and citations omitted). As the Minnesota Supreme Court Justices observed, "[t]he public is not particularly well served by automatic incarceration on a technical violation." Id. Indeed, the absence of a correlation between technical violations and criminal proclivity has been acknowledged as well in the adult criminal system. As the Office of Research and Evaluation for the Federal Bureau of Prisons has recognized:

> Criminologists have long been skeptical of prison misconduct as an indicator of criminal proclivity for at least two reasons. First, criminologists have been concerned with the amount of discretion exercised by correctional staff in enforcing prison rules….Second, the theoretical importance of prison misconduct is unclear because prison rule infraction and law violation may not share the same etiology. Prison rules have been questioned as overly restrictive and encompassing behaviors that are legal in other contexts.

Scott D. Camp et.al., *The Influence of Prisons on Inmate Misconduct: A Multilevel Investigation*, 4-5, Office of Research and Evaluation, Federal Bureau of Prisons, Washington, DC (2003)(citations omitted).

Moreover, technical violations by juveniles are often influenced or provoked by the institutional environment itself. Some forms of technical misconduct may be part of an individual's difficulty adjusting to a new set of institutional rules and responsibilities. In fact, juvenile justice literature is replete with material documenting the difficulty youth have adjusting to institutional life. See, e.g., Last One Over the Wall: The Massachusetts Experiment in Closing Reform Schools, Jerome G. Miller, Ohio State Univ. Press (1991).

The point that technical violations are not always related to rehabilitation or public safety is illustrated by quantitative research on probation violations. Research shows that technical violations tell the court more about the intensity of the supervision than about the rehabilitative potential of the juvenile. See, e.g., Marcy R. Podkopacz and Barry C. Feld, *The Back-Door to Prison: Waiver Reform, "Blended Sentencing," and the Law of Unintended Consequences*, 91 J. CRIM. L. & CRIMINOLOGY 997, 1060 (Summer 2001).("Revocations for technical violations more likely represent the effects of intensive supervision rather than additional criminal activity"); Sharyn B. Adams & David E. Olson, Ph.D., *Results from the 2000 Illinois Juvenile Probation*

Outcome Study, 24, Illinois Criminal Justice Information Authority and Rich Adkins, Administrative Office of the Illinois Courts (September 2002) ("One important thing to consider" regarding "technical violations is that the more conditions included in a juvenile probationer's sentence…the more chances there are for technical violations").

By way of example, consider the study of three intensive juvenile probation programs conducted by the Illinois Criminal Justice Information Authority. *The impact of intensive juvenile probation programs*, 1, *On Good Authority* (Vol. 6, No. 1, August 2002). In one intensive probation program "more than 80 percent of [program] participants received at least one disciplinary action from staff while in the program" and "about 65 percent of the participants received at least one technical violation." Id. at 2. Yet 53 percent of the juveniles exited the program "successfully." Id. Clearly there is not an exact match between technical violations and the ability to successfully complete a juvenile disposition. Furthermore, another intensive supervision program in the same study also had 65 percent of participants receive at least one technical violation, but only 16 percent of those participants successfully completed the program. Id. at 3. The two programs had identical rates of technical violations but dramatically different program completion rates. Finally, another study of probation also conducted by the Illinois Criminal Justice Information Authority found that "[s]tatewide, about 40 percent of all juvenile probationers discharged during the study period had at least one technical violation during their period of supervision." Adams & Olson at 24. Clearly, technical violations are not directly correlated with amenability to the juvenile system.

(b) The vagueness of the EJJ statute further diminishes the likelihood that "violations" can reliably serve as indicators of rehabilitative failures or risks to public safety.

The disutility of technical violations as a measure of rehabilitation or risks to public safety is exacerbated by the reality that youth are not on notice of what transgressions can trigger revocation. As explained above, EJJ youth could inadvertently and excusably violate a probation

or institutional rule of which they were not aware or did not fully assimilate. The fact that a juvenile, for example, possessed one more personal effect than permitted by institutional rules, when the juvenile was either unaware of the rule or unaware that a violation could lead to revocation, tells the court little about the minor's amenability to treatment in the juvenile system or the risk he poses to the public. In such a case, imposition of the adult sentence would not serve the goals of the EJJ statute.

In some states with parallel statutes, the risk that violations having no bearing on rehabilitation or safety will act as adult sentence triggers is allayed by the court's responsibility to consider mitigating factors or the minor's potential for rehabilitation. See, e.g., OHIO REV. CODE ANN. § 2152.14(E) (West 2004) (adult sentence can only be imposed if "the person's conduct demonstrates that the person is unlikely to be rehabilitated during the remaining period of juvenile jurisdiction."); CONN. GEN. STAT. ANN. § 46b-133c(e)(court can decide not to impose adult sentence if it "determines there are mitigating circumstances that justify continuing the stay of execution and specifically states such mitigating circumstances in writing for the record"). See also, ALASKA STAT. § 47.12.160(e) (Michie. 2004) (rehabilitation and mitigating factors); ARK. CODE ANN. § 9-27-507(a) (Michie. 2004) (rehabilitation); MINN. JUV. CT RULE 19.11(2)(A) (mitigating circumstances). Illinois' failure to require the court to consider either amenability to rehabilitation or mitigating factors represents another opportunity for technical violations to become the basis of unwarranted and/or arbitrary enforcement.

(c) Inappropriate transfers to the adult system on the basis of violations unrelated to rehabilitation or risk actually threaten public safety

Research shows that inappropriately shifting youth from the juvenile to the adult system not only fails to *improve* public safety, it actually *threatens* public safety. "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." Christian Sullivan, *Juvenile Delinquency in the Twenty-First Century: Is Blended Sentencing the Middle-Road Solution for Violent Kids?*, 21 N. ILL. U. L. REV. 483, 495-6 (2001) (citations omitted). In fact, "[f]ive recent large-scale studies indicate that juveniles tried in criminal court have greater recidivism rates after release than juveniles tried in juvenile court. Richard E. Redding, J.D., Ph.D., *Recidivism Rates in Juvenile Versus Criminal Court*, Juvenile Justice Fact Sheet, Institute of Law, Psychiatry, & Public Policy, University of Virginia (2000). The five studies all controlled for variables such as the seriousness of offense that could explain away the results. Id. Again, one reason that recidivism rates are lower for youth in the juvenile as compared to adult system may be "because the rehabilitation efforts of the juvenile justice system are more effective." Id. Another "possibility is that the negative social lessons reinforced through the experience of the adult system serve to institutionalize, rather than dissuade, future criminal activity." Ward at 274.

An illustrative study was conducted by the Juvenile Sentencing Advocacy Project of the Miami-Dade County Public Defender's Office. The evaluation found that "youth who received juvenile sanctions through the [pilot program] had dramatically lower re-offense rates than youth who did not receive the juvenile sanctions" and "even after controlling for race, initial charges, and age, those receiving juvenile sanctions were at significantly lower risk of re-offending than were youth receiving other sentences." Craig A. Mason, Ph.D. & Shau Chang, Craig A. Mason, Ph.D. & Shau Chang, *Re-Arrest Rates Among Youth Sentenced in Adult Court*, 17, Evaluation Report for Juvenile Sentencing Advocacy Project, Miami-Dade County Public Defender's Office, (October 2001). There was "no clear evidence of other determining factors differentiating youth receiving juvenile sanctions from youth receiving adult sentences. In fact…the decision often seems to reflect idiosyncrasies and differences between individual judges and prosecutors. These findings clearly point out that arbitrary use of sentences other than juvenile sanctions has a negative impact on children by increasing their risk of re-offending…and on society as a whole by increasing crime rates." Id. at 17-18.

These studies do not suggest that it is never in the interest of public safety to impose adult sentences on juvenile offenders. The research suggests only that the loss of the rehabilitative resources of the juvenile justice system- which have been shown to produce lower recidivism rates as compared to the adult system- is only worthwhile in the case of a minor who has truly demonstrated he cannot be rehabilitated by the juvenile court. Because technical violations are not necessarily correlated with rehabilitation, vague language that does not filter out technical violations from the revocation process does not serve public safety.

Finally, the EJJ statue's vague language may threaten public safety in that it could promote uneven, inappropriate or discriminatory enforcement by juvenile justice professionals, including probation officers and institutional staff. "Throughout the United States, juvenile and criminal justice personnel have observed that 'confusion exists about [blended sentencing] statutes and the rules and regulations governing them." Randi-Lynn Smallheer, *Sentence Blending and the Promise of Rehabilitation: Bringing the Juvenile Justice System Full Circle*, 28 HOFSTRA L. REV. 259, 286 n. 182 (quoting Patricia Torbet et al., *State Responses to Serious and Violent Juvenile Crime*, 15, Off. of Juv. Just. & Delinq. Prevention (1996)). If a probation officer, for example, does not have a clear sense of what kind of rule violations would trigger the adult sentence, he or she may be unwilling to report offenses that do not warrant- in the probation officer's opinion- imposition of that sentence. A juvenile being supervised in this way may fail to learn the important lessons of accountability regarding minor misconduct that would further his or her rehabilitation. Likewise, vague language could lead to uneven violation reporting between probation officers who understand the EJJ rules differently from one another. The EJJ statute's failure to provide minimal guidelines to govern law enforcement decisions "may permit a standard-less sweep that allows policeman, prosecutors, and juries to pursue their personal predilections," Kolender, 461 U.S. at 358. (internal quotation and citation omitted). Furthermore, "[w]hen the adult sentence is imposed because of the juvenile's less serious misconduct ….the ability of the juvenile to associate his original act with his punishment is particularly doubtful."

Chauncey E. Brummer, *Extended Juvenile Jurisdiction: The Best of Both Worlds?,* 54 ARK. L. REV. 777, 779 (2002).

In conclusion, the EJJ statute's vague language creates an opportunity for youth to be inappropriately stripped of their juvenile status, thereby thwarting the rehabilitative goals of the statute and failing to serve the goal of community protection.

II The application of the EJJ provision to Christopher after the trial court had denied a transfer motion under 705 ILCS 405/5-805 (3)(a) (2002) is contrary to the policies and social considerations underlying blended sentencing statutes; contrary to the Balanced and Restorative Justice principles embraced by the Illinois Juvenile Court Act; illogical in light of the similarity of the legal questions involved; and a waste of judicial resources.

A. Conducting separate EJJ and transfer hearings is contrary to policies underlying blended sentencing statutes.

"Blended sentencing" statutes allow youth under juvenile court jurisdiction to be exposed to adult criminal sanctions. Griffin at 1. Ten states have passed blended sentencing laws that are similar to the Illinois EJJ statute, in that they allow a juvenile court judge to impose a suspended adult sentence, stayed on the condition that the juvenile comply with designated terms. Id. at 13. Many of these parallel statutes were enacted with the same goals as the Illinois EJJ statute: meeting the safety needs of the community while providing youth, who might otherwise be transferred to adult court, a "last chance" to take advantage of the rehabilitative resources of the juvenile court. See, Brandi Miles Moore, *Blended Sentencing for Juveniles: The Creation of a Third Criminal Justice System?,* 22 J. OF JUV. L. 126, 135(2001-2002) ("the goal of the blended sentencing statutes is to provide youthful offenders with one last chance to change their lives through the rehabilitation offered in the juvenile system"); Henderson at 347, 339 (observing that with blended sentencing "the rehabilitation goals of the juvenile system are retained, while still providing the State with adequate consequences needed to address chronic and serious delinquent behavior.") As described below, blended sentencing statutes are designed to increase the

dispositional *options* before a judge who is considering the suitability of a minor to the juvenile system; they are not designed to increase the number of *times* the appropriate disposition for a youth should be considered.

In particular, the emphasis of many comparable blended sentencing statutes is on the reduction of the number of transfers to adult court- by providing juvenile courts with a new dispositional option for youth who might otherwise be transferred. For example, "[p]rior to EJJ, the legislative trend in Arkansas was to increase the number of crimes for which a juvenile age fourteen or fifteen could be charged in circuit court. EJJ reversed this trend." Connie Hickman Tanner, *Arkansas's Extended Juvenile Jurisdiction Act: The Balance of Offender Rehabilitation and Accountability*, 22 U. ARK. LITTLE ROCK L. REV. 647, 656 (Summer, 2000). Likewise in Montana, "[i]nstead of sending more children to adult court, the Legislature modernized the juvenile code to provide an alternative option to youth court judges when dealing with delinquent youth – a concept known as blended sentencing." Henderson at 339. In Massachusetts, the transfer statute was completely replaced by the blended sentencing statute. Com. v. Dale D., 730 N.E.2d 278, 280, 281 (Mass. 2000) ("The youthful offender act…repealed [the transfer statute]").

The emphasis on the relationship between EJJ prosecutions and transfer reflects the understanding that it is generally the same pool of serious youthful offenders who will be considered for either outcome. The intention of the blended sentencing statutes was to reduce the pressure to certify all eligible youth by providing the court another dispositional option to consider. Sullivan at 496 (EJJ prosecution is "a realistic alternative to traditional adult transfer"). Podkopacz & Feld at 1010 ("increasing juvenile courts' dispositional jurisdiction could reduce the pressure to certify some youths"). Accordingly, many of the states with parallel blended sentencing statutes provide for the judge to make the decision between EJJ and transfer *at the same time*, pursuant to a *single hearing*. For example, the Arkansas EJJ statute states that "[t]he circuit court may conduct a transfer hearing and an extended juvenile jurisdiction hearing at the same time." ARK. CODE ANN. § 9-27-38(m). In Vermont, the blended sentencing provisions is

always considered in relationship to transfer because the EJJ-like provision is only available by request for juveniles in criminal proceedings. VT. STAT. ANN. TIT.. 33 § 5505(e) and (f). Thus Vermont courts always decide as a part of a single hearing whether to impose an adult sentence or authorize an EJJ sentence.

Courts in Michigan and Massachusetts have likewise described the consideration by the court, at a single hearing, of the appropriateness of either transfer, EJJ, or a pure juvenile sentence. The Michigan Supreme Court stated that "a plain reading of the statute [authorizing blended sentencing] requires that a court deliberately consider whether to enter an order of disposition, impose a delayed sentence, or impose an adult sentence in light of the six factors enumerated … the trial court, on the record, must acknowledge its discretion to choose among the three alternatives." People v. Petty, 665 N.W.2d 443, 448-49 (2003). Similarly, a Massachusetts Appellate Court recently described the blended sentencing legislation as creating "a new category of juveniles, youthful offenders, and a new range of dispositional options as to these offenders." Com. v. Lucret, 792 N.E.2d 141, 142 (2003). According to the court, those dispositional options are to be considered at the same time. "[i]f a child is adjudicated a youthful offender on an indictment, the sentencing judge is authorized to employ one of three alternative approaches. The judge may impose the punishment an adult could receive for that offense. The judge may commit the youthful offender to the custody of the department of youth services (DYS) until the age of twenty-one. Or the judge may impose a "combination sentence," whereby the youthful offender is committed to DYS until the age of twenty-one and also receives an adult sentence." Id. (citations omitted)

In other states, the interrelatedness of EJJ and transfer is reflected by the fact that courts can designate cases as EJJ on the basis of information considered in a transfer hearing. In Minnesota, the Rules of Juvenile Procedure state that EJJ designation is mandatory following a motion for certification in a presumptive certification case when the court finds that the child has shown by clear and convincing evidence that retaining the case in juvenile court serves public

safety. Rule 19.06. EJJ designation is discretionary following a motion for certification in a non-presumptive certification case when the court finds that the state has failed to show by clear and convincing evidence that retaining the case in juvenile court serves public safety and the court determines that EJJ is appropriate (or if the parties agree to EJJ). Rule 19.06. See, e.g., In the Matter of the Welfare of T.C.J., 2004 WL 2857295,1 (Minn.App. 2004) (designation as EJJ prosecution followed denial of certification of minor's charges). Similarly, in Montana, the court can designate a case as EJJ after a hearing on a motion to transfer the case to adult court. MONT. CODE ANN. § 41-5-1602(1)(c). In Kansas as well, if the court decides not to grant a motion to prosecute a juvenile as an adult, the court can designate the proceedings as EJJ. KAN. STAT. ANN. § 38-1636(f)(2). In each of these states the court is considering arguments relevant to both transfer and EJJ and determining which of the two dispositions is most appropriate on the basis of a single hearing.

In contrast, in Christopher's case, the state's motion to transfer was heard in 1999 before Judge Agran; but the motion to designate the case as EJJ was held before a different judge over two years later. Blended sentencing statutes like Illinois' are designed to increase the dispositional options before a judge who is considering the suitability of a minor to the juvenile system. See, e.g., Henderson at 339. They are not designed to increase the number of *times* the appropriate disposition for a youth should be considered. As the Office of Juvenile Justice and Delinquency Prevention has observed, "blended sentencing laws, whether they replace or supplement existing transfer laws, leave juvenile judges with considerable authority to fashion individualized, offender-based dispositions and to consider not only offense seriousness and community safety but also the background and court history of the individual juveniles before them." *Juveniles Facing Criminal Sanctions: Three States that Changed the Rules*, 43-4 (April 2000). Successive hearings on the same essential issue (whether a juvenile should be subjected to an adult sentence) do not serve to expand the dispositional authority of juvenile courts. Instead, subsequent hearing undercut the ability of a juvenile court to evaluate the appropriateness of

transfer or EJJ and compare their relative suitability to the juvenile in question. Thus, to the extent that the Illinois EJJ statute allows for transfer and EJJ hearings to be compartmentalized, it undermines the purposes of blended sentencing statutes to "increase[e] juvenile courts' dispositional jurisdiction." Podkopacz & Feld at 1010.

B. Conducting separate EJJ and transfer hearings is contrary to the Balanced and Restorative Justice principles embraced by the Illinois Juvenile Court Act.

Balanced and Restorative Justice (BARJ) is a philosophical model for juvenile justice systems. "The three priorities of BARJ -- public safety, accountability, and competency development -- recognize both victim and offender restoration as critical goals of community justice." *Guide for Implementing the Balanced and Restorative Justice Model*, Off. Of Juv. Just. & Delinq. Prevention (NCJ 167887). The language of the Illinois Juvenile Court Act embraces BARJ principles by articulating that "[i]t is the intent of the General Assembly to promote a juvenile justice system capable of dealing with the problem of juvenile delinquency, a system that will protect the community, impose accountability for violations of law and equip juvenile offenders with competencies to live responsibly and productively." 705 ILL. COMP. STAT. 405/5-101.

Blended sentencing furthers the goals advanced by the BARJ model in that it balances community safety and accountability (by imposing suspended adult sentences) with the goals of rehabilitation and competence development for juveniles (by keeping youth in the juvenile system). See, Sullivan at 495. ("EJJP…furthers the goals of rehabilitation and accountability, as well as protection of the public from juvenile crime."); *Juveniles Facing Criminal Sanctions: Three States that Changed the Rules*, 38, Off. Of Juv. Just. & Delinq. Prevention Report (April 2000) (noting that EJJ prosecutions are being implemented concurrently with BARJ in Minnesota).

Conducting separate EJJ and transfer hearings undermines the finality of the transfer decision, which in turn undermines the BARJ principles of the Illinois Juvenile Court Act.

Endangering the finality of the transfer decision does not serve victims, community safety, or rehabilitation and competency development goals. First, the United States Supreme Court has recognized that "[o]nly with real finality can the victims of crime move forward knowing the moral judgment will be carried out." Calderon v. Thompson**,** 523 U.S. 538, 556 (1998). Second, there is no appreciable gain in public safety if the transfer decision is allowed to be re-litigated. In fact, the community looses out on some of the possible benefits of rehabilitation because "every day a juvenile disposition is delayed means one less day the juvenile justice system has to work with the youth." *Delays in Juvenile Justice: Findings from a National Survey*, Jeffrey A. Butts & Gregory Halemba, 45 JUV. & FAM.CT.J. 31, 32-33 (1994). Furthermore, the United States Supreme Court has observed that

> [f]inality also enhances the quality of judging. There is perhaps nothing more subversive of a judge's sense of responsibility, of the inner subjective conscientiousness which is so essential a part of the difficult and subtle art of judging well, than an indiscriminate acceptance of the notion that all the shots will always be called by someone else.

Calderon v. Thompson**,** 523 U.S. at 555 (quotations and citations omitted). Public safety is not improved if re-litigation encourages judges to feel less responsible for their dispositional decisions.

Finally, undermining the finality of the transfer hearing with a subsequent EJJ motion is contrary to the goals of rehabilitation and competency building. Jeffrey Butts, director of the Urban Institute's Program on Youth Justice, and Gregory Halemba have observed that delays in processing dispositions in juvenile delinquency cases adversely affect adolescents because they "are less capable than adults of anticipating the future consequences of their behavior" *Delays in Juvenile Justice*, 32-33 (1994). In a related publication, the same researchers concluded that

> processing delays in the juvenile justice system may be uniquely harmful. Adolescents are known to be socially, emotionally, and even cognitively different from adults….The nature of adolescence itself may reduce the perceived immediacy of even slightly delayed sanctions. As a result, the juvenile court's impact on the youthful offender may be seriously compromised."

Waiting for Justice: Moving Young Offenders Through the Juvenile Court Process, xv-xvi, National Center for Juvenile Justice (1996). Allowing the same question (whether the adult or

juvenile system is best for a young offender) to be made in a transfer hearing, then disrupted in a subsequent EJJ hearing, is contrary to BARJ principles and thus the purpose of the Illinois Juvenile Court Act.

C. Conducting separate EJJ and transfer hearings is illogical in light of the similarity of the legal questions involved.

In Illinois, all of the factors considered in an EJJ hearing are also considered in a discretionary transfer hearing. 705 ILL. COMP. STAT. 405/5-805(3) (directing the court to consider eight factors: six of which are the factors to be considered in an EJJ hearing under 705 ILL. COMP. STAT. 405/5-810(1), as well as the minor's history of services and the adequacy of the punishment or services available in the juvenile system.) More importantly, the ultimate issue is the same in both EJJ and transfer hearings: whether the juvenile should be subjected to an adult punishment.[3] It is illogical to hold separate hearings to consider the same facts and legal questions. It may be logic that drives states with similar blended sentencing statutes to consider overlapping dispositional criteria in a single hearing. For example, in Arkansas, "[t]he EJJ designation factors and transfer factors the court must consider are almost identical. As a result, an EJJ hearing and transfer hearing may be conducted at the same time." Tanner at 656-7 (emphasis added.) In addition, an Arkansas criminal court can consider and deny transfer on the basis of the transfer factors at ARK. CODE. ANN. § 9-37-318(g) and then decide to transfer a youth to juvenile court as an EJJ case on the basis of the identical EJJ factors at ACA 9-27-503(c). ARK. CODE. ANN. § 9-27-318(i). Similarly, the Massachusetts Supreme Court described a hearing on a

[3] Arguably, the repetition of the EJJ hearing subsequent to the transfer hearing also implicates the double jeopardy clause of the Fifth Amendment. See, Breed v. Jones, 421 U.S. 519, 529 (1975) ("We believe it is simply too late in the day to conclude, as did the District Court in this case, that a juvenile is not put in jeopardy at a proceeding whose object is to determine whether he has committed acts that violate a criminal law and whose potential consequences include both the stigma inherent in such a determination and the deprivation of liberty for many years. . . . [E]ven accepting petitioner's premise that respondent never faced the risk of more than one punishment,' we have pointed out that 'the Double Jeopardy Clause . . . is written in terms of potential or risk of trial and conviction, not punishment.") (citations and quotations omitted).

motion to dismiss an EJJ designation as "the equivalent of a transfer hearing under the former transfer statute." Com. v. Clint C., 715 N.E.2d 1032, 1035 (1999).

In Michigan, the factors to consider for an EJJ designation at MICH. COMP. LAWS § 712A.18(m) (2004) are identical to the factors the court must consider for waiver. MICH. COMP. LAWS § 712A.4(4) Accordingly, the Michigan Supreme court stated that "a plain reading of the [712A.18] requires that a court deliberately consider [and]…acknowledge its discretion to choose among the three alternatives [juvenile disposition, blended sentence or adult sanction]." Petty, 665 N.W.2d at 448-9. Common sense, and the practice in other states of considering the overlapping criteria of EJJ and transfer at the same time, suggest that allowing subsequent hearing on a single issue is illogical.

D. Conducting separate EJJ and transfer hearings is a waste of judicial resources.

Separate hearings on transfer and EJJ require the court to examine the same issue (suitability to the juvenile system) twice, and the duplication results in a waste of judicial resources. See, Jay Folberg, *Family Courts: Assessing the Trade-Offs*, 37 FAM. & CONCILIATION COURTS REV. 448, 449 (October 1999) (noting that in historical development of family courts "[d]isparate judicial attention to the same families in different courts was seen as duplication of judicial resources.") Kilroy v. Superior Court of Los Angeles County, 63 Cal. Rptr. 2d 390, 401 (Cal. Ct. App. 2d Dist. 1997) (noting that in the child welfare context, "excessive re-litigation resulted in conflicting orders, confusion, a waste of judicial resources.") The risk of financial inefficiency may be part of the reason other states with similar statutes decide both dispositional questions at the same hearing. See, e.g., Lucret, 792 N.E.2d at 142 ("the sentencing judge is authorized to employ one of three alternative approaches."). The expenditure of additional judicial resources is particularly unacceptable given that re-litigation of the same issue may harm the victim, the community, and the juvenile offender.

III. Christopher's invocation of his right to counsel must be considered in light of psychological and neurological research which demonstrates relevant and distinct differences between adults and young offenders with respect to this issue

A. Research shows that juveniles are developmentally distinct from adults in cognitive capacity, decision-making and assertiveness and as such should not be expected to invoke their right to counsel in the same manner as an adult

Under the U.S. Supreme Court's decision in Edwards v. Arizona, once a suspect requests legal counsel, law enforcement officials must cease all questioning of the subject until an attorney has been provided or the suspect himself "initiates further communication." Edwards v. Arizona, 451 U.S. 477, 484-485 (1981); *see* Miranda v. Arizona, 384 U.S. 436, 479 (1966).

In this case, Christopher, who was 14 years old, was arrested by two detectives, at around 2 p.m. on January 31, 1999. ROP Vol. 3, 168-169. The officers handcuffed him and read him his Miranda rights, which he waived. ROP Vol. 3, 168, 171-74, 189. They then took him to the Eighth district youth office. ROP Vol. 3, 176. Still handcuffed, ROP Vol. 3, 176, Christopher was placed in the "administrative room" and again advised of his Miranda rights. ROP, Vol. 3, 17-19.

It is at this point, around 3:30 p.m., that Christopher mentioned a need for a lawyer. What is not clear is precisely what he said. The Appeals Court stated:

> Detective Winstead claims that after he read the rights, CK asked if he needed a lawyer. The detective responded that "that's not my call." CK's mother told her son "just tell him the truth." According to CK's mother, CK first indicated he might need to speak to a lawyer, then asked the police if he did.

In re Christopher K., 348 Ill.App.3d 130, 136 (1st Dist. 2004). Christopher never asked his mother any questions about a lawyer. ROP Vol. 5, 23. At 5:30, the two detectives, Christopher's mother and Christopher were joined by a youth investigator, who did not explain what role he filled nor did he explain Christopher's rights to him. ROP Vol. 3, 234-35; ROP, Vol. 4, 18; ROP Vol., 5, 27. After a detective "re-mirandized" Christopher, Christopher answered questions about the shooting incident for 30-40 minutes. At 6:30 pm, an Assistant State's Attorney arrived and introduced himself as "a prosecutor, not his lawyer" but also

"compared [him]self to a public defender." ROP Vol. 4, 105. At 9:30 pm, after two interviews with the state attorney, Christopher agreed to provide a court reported statement. ROP, Vol. 4, 113. Although in his statement Christopher indicated that he understood his rights, including his right to counsel, Christopher testified that he did not understand what his right to an attorney meant and that he was "more focused on trying to get out of the police station." ROP Vol. 15, 17-18. The interrogation ended at around 11pm. ROP, Vol. 5, 88-89.

Developmental and neurobiological differences between adults and minors demonstrate that 14-year-olds have substantially greater difficulty comprehending Miranda and asserting their right to counsel in a straightforward, direct manner. *Amici* submit that in this case, Christopher's query, "Do I need a lawyer" or statement, "I think I need a lawyer," was a sufficient invocation under prevailing law of his desire to speak to a lawyer such that further questioning by the police should have ceased. *See* Davis v. U.S., 512 U.S. 452, 459 (1994); Miranda v. Arizona, 384 U.S. at 479. Indeed, some courts have specifically accepted such language as sufficient to halt the interrogation. State v. Kennedy, 510 S.E. 2d 714 (S.C. 1998) (holding that the phrase "I think I need a lawyer" was an unambiguous invocation of the right to counsel"); State v. Jackson, 497 S.E.2d 409 (N.C. 1998)(holding that the statement "I think I need a lawyer present" was an unambiguous request for counsel); *see also* Davis, 512 U.S. at 459.

Twenty five years ago researchers first demonstrated that juveniles, especially those under the age of 16, do not understand the words of Miranda warnings as adults do, and, in addition, minors do not appreciate the significance and function of Miranda rights. *See,* Thomas Grisso, *Juveniles' Capacities to Waive Miranda Warnings: An Empirical Analysis,* 68 Calif. L. Rev. 1134-1166 (1980) [hereinafter Grisso, *Juvenile Capacities to Waive*]. In the 1980 study by Thomas Grisso, which was cited in the Final Report of the Illinois Juvenile Competency Commission, Grisso found:

- Only 20.9% of juveniles as compared to 42.3% of adults, understand the Miranda warnings.

- 55.3% of juveniles as compared to 21.3% of adults failed to understand at least one of the warnings.
- 63.3% of juveniles, as compared to 37.3% of adults, fail to understand at least one "critical" word in standard Miranda warnings
- Among juveniles, the least understood warning is the right to consult with an attorney prior to responding to police questioning.
- 96% of 14 year old do not have an adequate understanding of the consequences of waiving their rights.

Grisso, *Juvenile Capacities to Waive*, at 1134-66; Juvenile Competency Commission, *Final Report and Recommendations of the Juvenile Competency Commission*, at 81-88 (Aug. 2001).

This is not simply a question of being well-informed. Adolescents do not understand their right to counsel under Miranda as adults do because during the teenage years, youth are just beginning to develop the abilities to abstract, to think of the possible (including alternative possibilities) and to form and test hypotheses about the world around them. Stanley I. Greenspan & John F. Curry, *Extending Piaget's Approach to Intellectual Functioning*, in 1 COMPREHENSIVE TEXTBOOK OF PSYCHIATRY 402, 406-07 (Harold I. Kaplan & Benjamin J. Sadock eds., 7th ed. 2000) (providing an overview of Jean Piaget's cognitive development model, which remains an important theoretical work in the child development field); *see* Barry C. Feld, *Competence, Culpability, and Punishment: Implications of Atkins for Executing and Sentencing Juveniles*, 32 HOFSTRA L. REV. 463, 525-527 (2003); KIDS ARE DIFFERENT: HOW KNOWLEDGE OF ADOLESCENT DEVELOPMENT THEORY CAN AID DECISION-MAKING IN COURT 7 (L. Rosado ed., 2000); Elizabeth S. Scott & Thomas Grisso, *The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform*, 88 J. CRIM. L. & CRIMINOLOGY 137, 157 (1997) [hereinafter Scott & Grisso, *The Evolution of Adolescence*]. As one developmental psychologist has observed, "During the time these processes are developing, it doesn't make sense to ask the average adolescent to think or act like the average adult, because he or she can't – any more than a six-year-old child can learn calculus." Laurence Steinberg, *Juveniles on Trial*, 18 CRIM. JUST. 20, 22 (Fall 2003).

Other research since Grisso's original study further documents this juvenile deficiency in cognitive capacity by focusing on juvenile competency to stand trial and juvenile's comprehension of waiving the right to trial. The 2003 MacArthur Juvenile Adjudicative Competence Study involved 900 youths and 450 adults and found that those juvenile's 15 years old and younger were three times more likely than young adults to have serious deficiencies in their understanding or reasoning about trial processes and defendant decisions. THOMAS GRISSO, DOUBLE JEOPARDY: ADOLESCENT OFFENDERS WITH MENTAL DISORDERS, 107 (2004)[hereinafter Grisso, DOUBLE JEOPARDY]. In a study on minor's comprehension of waiving their right to trial, a group of 50 juveniles, with an average age of 15 years, could correctly define only 5.5% of the common legal terms used in the plea colloquy. Barbara Kaban & Judith C. Quinlan, *Rethinking A "Knowing, Intelligent, and Voluntary Waiver" in Massachusetts' Juvenile Courts*, 5 JOURNAL OF THE CENTER FOR FAMILIES, CHILDREN & THE COURTS 8 (2004).

Given a juvenile's cognitive difficulties, it is even more apparent why a 14-year-old youth like Christopher, is indeed requesting counsel when he states, "Do I need a lawyer," ROP Vol. 4, 19, or "I think I should have a lawyer," Vol. 5, 23, even if his words do not meet the precise adult threshold for such a request. *See* Gallegos v. Colorado, 370 U.S. 49, 54 (1962)("a 14-year-old boy… is not equal to the police in knowledge and understanding of the consequences of the questions and answers being recorded and [who] is unable to know how to protect his own interests or how to get the benefits of his constitutional rights"). It also casts into serious doubt the words of Officer Herhold, that Christopher "perfectly" understood his Miranda rights. ROP Vol. 3, 170. Given the fact that developmentally, Christopher, like most 14-year-olds, cannot be expected to understand the legal function and significance of his right to an attorney, he cannot be expected to request the right to counsel as an adult. What is of critical importance is that he recognized the issue, and furthermore, advocated for himself by requesting counsel.

In addition to limited cognitive capacity, young teens like Christopher demonstrate immature decision-making processes. As compared to adults, juveniles have a limited time

perspective, a tendency to emphasize short-term benefits versus long-term benefits, and a greater willingness to take risks, Thomas Grisso & Laurence Steinberg et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents and Adults' Capacities as Trial Defendants,* 27 LAW & HUMAN BEH. 333, 353-56 (2003),[4] that makes them particularly ill-suited to engage in high stakes risk-benefits analysis.

Furthermore, youth, more than adults, are heavily influenced by non-cognitive, "psychosocial factors," especially their external environment, which can impact adolescent perceptions, judgment and decision-making and limit their capacity for autonomous choice. Elizabeth Cauffman & Laurence Steinberg, *Researching Adolescents' Judgment and Culpability,* in YOUTH ON TRIAL: A DEVELOPMENTAL PERSPECTIVE ON JUVENILE JUSTICE 325, 327-29 (Thomas Grisso & Robert G. Schwartz eds., 2000).[5] At the same time, youth simply have less experience, including interpersonal experience, to draw on than adults, and so on average they have a lesser capacity to respond and react in new and stressful situations. Steinberg & Schwartz, *Developmental Psychology* at 26.[6] Thus, in a situation where an adult perceives multiple possibilities, a teen will tend to perceive only one. Beyer, *Immaturity, Culpability and Competency: A Study of 17 Cases*, 15 CRIM. JUST. 26, 27-28 (2000) at 27; Beyer, *Recognizing the Child*, at 17-18.

Because the adolescent's decision-making is context-specific, Kurt W. Fischer *et al.*, *The Development of Abstractions in Adolescence and Adulthood,* in BEYOND FORMAL OPERATIONS: LATE ADOLESCENT AND ADULT COGNITIVE DEVELOPMENT 43, 57 (Michael L. Commons *et al.*

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[4] *See also* Marty Beyer, *Recognizing the Child in the Delinquent*, 7 KY. CHILD. RTS. J. 16, 17 (Summer 1999) [hereinafter Beyer, *Recognizing the Child*]; KIDS ARE DIFFERENT at 9; Elizabeth S. Scott, *The Legal Construction of Adolescence*, 29 HOFSTRA L. REV. 547, 591-92 (2000); Scott & Grisso, *The Evolution of Adolescence* at 164; Elizabeth S. Scott and Laurence Steinberg, *Blaming Youth*, 81 TEX. L. REV. 799, 816 (2003).

[5] *See also* KIDS ARE DIFFERENT at 8-10; Scott & Grisso, *The Evolution of Adolescence* at 157, 161-64; Laurence Steinberg & Elizabeth Cauffman, *Maturity of Judgment in Adolescence: Psychosocial Factors in Adolescent Decision-Making*, 20 LAW & HUM. BEHAV. 249, 250 (1996) [hereinafter Steinberg & Cauffman, *Maturity of Judgment*); Elizabeth S. Scott *et al.*, *Evaluating Adolescent Decision Making in Legal Contexts*, 19 LAW & HUM. BEHAV. 221, 222-23 (1995) [hereinafter Scott, *Evaluating Adolescent Decision Making].*

[6] *See also* Scott & Grisso, *The Evolution of Adolescence* at 164; Scott, *Evaluating Adolescent Decision Making* at 224-27.

eds., 1984), in addition to being hampered by a limited time perspective and inexperience, a reasonable 14-year-old in Christopher's shoes, who undergoes police interrogation for several hours, ROP Vol. 3, 168; ROP Vol. 15, 17-18, would, unlike an adult, have difficulty seeing past his desire to leave the confines of the interview room. Thus, it is no surprise that Christopher testified that he gave a statement to the state attorney, instead of repeating his request for an attorney, because he wanted to "get out of the police station." ROP, Vol. 5, 84.

Additionally, the interrogation setting is a particularly powerful factor in evaluating a youth's request for counsel. Research and studies have shown that youth in an interrogation are more likely to comply or submit to adult demands, thus making it less likely that a young teen like Christopher would continue to assert his right to counsel after being ignored by law enforcement. Studies confirm that juveniles under 16 are more likely than adults to make choices that reflect a propensity to comply with adult authority figures, such as confessing to police, rather than remaining silent. Grisso & Steinberg, *Juveniles' Competence* at 353- 56.

A teenager confined to an interrogation room by police detectives would likely view that officer in "polarized terms," i.e., as an authority figure who controls his [the teen's] movements and actions. Peter Blos, THE ADOLESCENT PASSAGE: DEVELOPMENTAL ISSUES 152, 156 (1979); Howard Lerner, *Psychodynamic Models* in HANDBOOK OF ADOLESCENT PSYCHOLOGY 53, 66 (Vincent B. Van Hasselt & Michel Hersen eds., 1987) (citation omitted); Robert L. Selman, THE GROWTH OF INTERPERSONAL UNDERSTANDING: DEVELOPMENTAL AND CLINICAL ANALYSES 134 (1980). The teenager would be less likely to consider that the officer has other motives for questioning that are not adverse to the minor's interests or that the minor has the right/power and capacity to stop this process *even if the officer informs him otherwise*. In this stressful situation and given a lack of experience, a 14-year-old youth is unlikely to see any additional options to giving a statement, after his request for an attorney is ignored.

This tendency to comply is compounded by a juvenile suspect's low social status *vis-a-vis* their adult interrogators, societal expectations that they respect authority, and their naiveté in

believing that police officers would not deceive them, all of which may make them more likely to comply with the demands of their interrogators. *See* Feld, *Competence, Culpability, and Punishment; see also* Gerald Robin, *Juvenile Interrogation and Confessions,* 10 J. POL. SCI. & ADMIN. 224, 225 (1982). Children are easily coaxed into saying what adults want to hear, and children in custody are often subjected to coercive tactics, including interruption of their denials, false evidence and raised voices. Stephen J. Ceci, *Why Minors Accused of Serious Crimes Cannot Waive Counsel*, COURT REVIEW, 8, 9 (Winter 2000). Considering the length of Christopher's interrogation, the denial of his request and that the only lawyer he encountered was a prosecutor, it is not surprising that he, at the age of 14, was not forceful about asserting his right to an attorney. It is important to note that after his request for a lawyer was ignored by Det. Winstead, ROP, Vol. 4, 19-20, Christopher proceeded to comply with police demands.

The juvenile tendency to give false confessions is also powerful evidence of how far children will go to comply with adults in authority and indicates how difficult it is for youth to assert their rights to law enforcement officers. For example, one recent study, which subjected juveniles to play interrogations, found that juveniles were significantly more likely to accept responsibility for an act they did not commit than are adults, and that confronting juvenile subjects with false evidence of their guilt[7] only increased the likelihood that they would do so. Allison D. Redlich & Gail S. Goodman, *Taking Responsibility for an Act Not Committed: The Influence of Age and Suggestibility,* 27 LAW & HUMAN BEHAVIOR 141, 151-52 (2003).

Perhaps even more dramatic are recent studies of wrongful convictions, which demonstrate that juveniles falsely confess with some regularity. A study of 328 exonerations since the advent of DNA testing in 1989 found that fifty-one of the exonerations involved false confessions, fourteen of which involved defendants who were under 18 at the time of the crime. Samuel Gross *et al.*, *Exonerations in the United States, 1989 Through 2003* (April 19, 2004), *available at* http://www.law.umich.edu/NewsAndInfo/exonerations-in-us.pdf. A second study by

[7] This is a legally permissible interrogation tactic. *See* Frazier v. Cupp, 394 U.S. 731, 739 (1969).

Professors Richard A. Leo and Steven A. Drizin documented 125 proven false confessions, 101 (81%) of which were false confessions to murder. Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World,* 82 N.C.L. REV. 891, 947 (2004). Forty false confessors were juveniles, many of whom were juveniles aged 16 or older who confessed to murders. Id. at 945.

This juvenile vulnerability to falsely confess has recently been acknowledged by those who train law enforcement in the techniques of interrogation. John E. Reid and Associates, Inc., one of the nation's leading trainers of law enforcement, instructed interrogators to "exercise extreme caution and care when interviewing or interrogating a juvenile..." John Reid & Associates, *False Confession Cases—The Issues,* Monthly Investigator's Tips (April 2004), *available at* http://reid.com/educational_info/r_education.html.

The juvenile propensity for false confession under police pressure indicates youth's willingness to submit to adult/authority/law enforcement pressure and a lack of cognizance as to the long term implications of such a confession. When applied to the instant case and the act of requesting counsel, it also indicates why Christopher was more likely to comply with the officers by answering all questions with "yes." ROP Vol. 3, 168-69, and why he initially waived his rights rather than asserting them. Id. It is unlikely that a 14-year-old juvenile like Christopher would contradict a police officer who brushed aside his request for counsel. Instead, the juvenile predilection to falsely confess speaks directly to the submission, lack of comprehension and diffidence in asserting his right to counsel that Christopher demonstrated on the day of his interrogation.

This psychological and sociological research must inform the Court's examination of the specific circumstances of Christopher's invocation of his right to counsel. The research detailed above demonstrates in both theory and practice, the wide gulf between the relative cognitive capacity, decision-making ability, and tendency to comply of adults and juveniles. Christopher, as a 14-year-old, cannot be expected to think, decide or stand up to authority as an adult would

and as a result, should not be held to the same standard as an adult in making a request for counsel.

Christopher, despite his tender years and a lengthy interrogation, requested an attorney, but he was not heeded and his interrogation continued contrary to law. ROP Vol. 4, 19. In light of recent research and studies on adolescent developmental psychology Christopher's statement, "Do I need a lawyer," ROP Vol. 4, 19, or "I think I should have a lawyer," Vol. 5, 23, is an expression of Christopher's desire for legal representation and fulfills the burden for a 14 year old's request of access to counsel. Davis v. U.S., 512 U.S. at 459 *citing* McNeil v. Wisconsin, 501 U.S. 171, 178 (1991) (holding that the right to counsel "requires, at a minimum, some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney").

B. New and emerging studies of the teenage brain demonstrate that the areas of the brain which govern tasks related to the assertion of a request for counsel are still developing into the late teens and early twenties.

New research into the structure and function of the teenage brain suggests that immature brain development among adolescents contributes to the poor decision making capacity of juveniles. THOMAS GRISSO, DOUBLE JEOPARDY, at 105. Such research gives a medical and "hard evidence" edge to the information above describing the distinct psychological development of teens and as a result further indicates that Christopher, as a 14-year-old, did in fact, invoke his right to counsel.

This research on the adolescent brain, made possible by new technologies such as magnetic resonance imaging (MRI), allows scientists to study images of the brain, and suggests that the teenage brain is structurally still growing, beginning its final push around the age of 16 or 17, and not fully developing until the early 20's. Mary Beckman, *Crime, Culpability and the Adolescent Brain*, 305 SCIENCE 596 (July 30, 2004); D.P. Keating, *Cognitive and Brain Development*, *in* HANDBOOK OF ADOLESCENT PSYCHOLOGY, 45-84 (R. Lerner & L. Steinberg, eds. 2004); Elizabeth R. Sowell et al. *Mapping Continued Brain Growth and Gray Matter*

Density Reduction in Dorsal Frontal Cortex: Inverse Relationships During Post-Adolescent Brain Maturation, 21 J.NEUR.SCI. 8819, 8828 (2001) [hereinafter Sowell, *Mapping Continued Brain Growth*].

Most importantly, the research suggests that the last areas of the brain to develop are the frontal lobes, specifically the pre-frontal cortex, which governs decision-making, foresight, judgment, and impulse control. NITIN GOGTAY et al., *Dynamic Mapping of Human Cortical Development During Childhood Through Early Adulthood*, 101 Proceedings of the National Academy of Sciences in the United States of America, National Institute of Mental Health, Number 21 (May 25, 2004.); Sowell, *Mapping Human Brain Growth*, at 8828.

As this area of the brain develops, young adults become more reflective and deliberate decision makers, thus honing the very skills which they would need to assert their rights or confront sophisticated law enforcement interrogation techniques. *See* David E. Arredondo, *Child Development, Children's Mental Health and the Juvenile Justice System: Principles for Effective Decision-Making*, 14.1 STAN. L. & POL'Y REV. 13, 15 (2003) (*citing* NAT'L RES. COUNCIL & INST. OF MED., JUVENILE CRIME, JUVENILE JUSTICE 16 (Joan McCord *et al.* eds., 2001)); Scott & Steinberg at 816 (*citing* Patricia Spear, *The Adolescent Brain and Age-Related Behavioral Manifestations*), 24 NEUROSCIENCE & BIOBEHAVIORAL REVIEWS 417, 421-23 (2000)); National Institute of Mental Health, *Teenage Brain: A Work in Progress* (NIH Publication No. 01-4929, January 2001); *see also* In re Stanford, 537 U.S. 968, __, (2002) (Stevens, J., dissenting) (noting that "[n]euroscientific evidence of the last few years has revealed that adolescent brains are not fully developed" and "use of magnetic resonance imaging – MRI scans – have provided valuable data that serve to make the case even stronger that adolescents are more vulnerable, more impulsive, and less self-disciplined than adults") (internal quotations omitted) (citations omitted).

Although this research is in its infancy, early results do suggest a strong link between age and brain's decision-making ability. This link indicates that a 14 year old may not have the neurological capabilities of an adult and thus, it is unreasonable to expect such a minor to assess

the situation, assert his rights or use the words that an adult would in the same situation. THOMAS GRISSO, DOUBLE JEOPARDY, 105.

IV. The U.S. Supreme Court has historically viewed minor's constitutional rights through a discrete lens, extending greater protections or fewer rights to minor based upon their distinctive developmental characteristics.

That minors are "different" is a principle that permeates our law. As Justice Frankfurter so aptly articulated, "[C]hildren have a very special place in life which law should reflect. Legal theories and their phrasing in other cases readily lead to fallacious reasoning if uncritically transferred to determination of a state's duty towards children." May v. Anderson, 345 U.S. 528, 536 (1953)(Frankfurter, J., concurring). Accordingly, the U.S. Supreme Court has consistently considered the developmental and social differences of youth in measuring the scope and breadth of minors' constitutional rights for the last sixty years. This consideration of minor's rights lends itself to a broader interpretation of the Fifth Amendment right to counsel for 14-year-old who is being interrogated, has limited experience and diminished decision making skills.

The Supreme Court plainly recognized the differences between children and adults in the context of the right to counsel in Gallegos v. Colorado, when the court stated, "A 14-year-old boy, no matter how sophisticated… is unable to know how to protect his own interests or how to get the benefits of his constitutional rights." 370 U.S. 49, 54 (1962) (finding statement taken from a 14-year-old boy outside of his parent's presence to be involuntary); *see also* Little v. Arkansas, 435 U.S. 957, 958-59(Marshall, J., dissenting) (stating that a 13-year-old's waiver of her right to counsel and subsequent confession were invalid) The Court has repeatedly noted that minors generally lack critical knowledge and experience, and have a lesser capacity to understand, much less exercise, their rights. Gallegos, 370 U.S. at 49.

Thus, in In re Gault, 387 U. S. 1, 55 (1967), where the Court extended many key constitutional rights to minors subject to delinquency proceedings in juvenile court, the Court reiterated its earlier concerns about youth's special vulnerability: "the greatest care must be taken

to assure that [a minor's] confession was voluntary, in the sense that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair."

In cases involving juvenile confessions the Court has also recognized that minors are generally less mature than adults and, therefore, are more vulnerable to coercive interrogation tactics. As the Court stated in Haley v. Ohio, 332 U.S. 596 (1948), in suppressing the defendant's statement, a 15 year old defendant:

> cannot be judged by the more exacting standards of maturity. That which would leave a man cold and unimpressed can overawe and overwhelm a lad… [W]e cannot believe that a lad of tender years is a match for the police in such a contest. He needs counsel and support if he is not to become the victim first of fear, then of panic.

332 U.S. at 599-600.

More recently, in the Supreme Court's *per curiam* decision in Kaupp v. Texas, 538 U.S. 626 (2003), the Court held that a 17-year-old's confession must be suppressed following an illegal arrest (absent undisclosed intervening evidence in the record) under the Fourth and Fourteenth Amendments. The Court applied earlier precedents in considering the defendant's status as a 17-year-old in its analysis:

> A 17-year-old boy was awakened in his bedroom at three in the morning by at least three police officers, one of whom stated "we need to go and talk." .... [The boy's] 'Okay' in response to Pinkins' statement is no showing of consent under the circumstances. Pinkins offered [the boy] no choice, and a group of police officers rousing an adolescent out of bed in the middle of the night with the words 'we need to go and talk' presents no option but 'to go.' There is no reason to think [the boy's] answer was anything more than 'a mere submission to a claim of lawful authority.'

538 U.S. at 631 (citations omitted).

The Court's holdings in the above-cited cases, that minors in comparison with adults are generally less mature, more submissive in the face of police authority, and lack critical

knowledge and experience, belie the Illinois Appeals Court's assertion that Christopher did not invoke his Fifth Amendment right to counsel when he asked, "Do I need a lawyer" or "I think I should have a lawyer." In re Christopher K., 348 Ill.App.3d at 151-52. Fourteen-year-old Christopher would have been vulnerable in any interrogation setting, let alone one in which he was held in a room with four adults, ROP Vol. 4, 18. The lower court ignored Christopher's age and the situation in which he found himself, In re Christopher K., 348 Ill.App.3d at 151-52, and by doing so turned a blind eye to the developmental and situational differences between adults and minors acknowledged by these decisions of the U.S. Supreme Court. These differences are well documented in academic research, *see Part 3 supra,* and are objectively knowable facts about adolescence and, therefore, appropriately considered when determining whether a 14 year old invoked his right to counsel.

The Supreme Court's more protective stance toward youth who are invoking their rights or are held in an interrogation setting parallels its distinctive view of children and adolescents in other areas of criminal procedure. For example, the Court has emphasized the juvenile court's core principles of individualized rehabilitation and treatment, noting that youth, because they are still *malleable* and in development, are more amenable to such rehabilitative interventions than adults. McKeiver v Pennsylvania, 403 U.S. 528, 540 (1971); Gault, 387 U.S. at 15-16. *See also* BARRY C. FELD, BAD KIDS: RACE AND THE TRANSFORMATION OF THE JUVENILE COURT 92 (1999) (noting that the malleability of youth is central to the rehabilitative model of the juvenile court).

Elsewhere in criminal procedure, the Court's recognition of the differences between youth and adults has led it to uphold practices directed at youth that it would not countenance if directed at adults. For instance, the Supreme Court has repeatedly held that the Fourth Amendment may be relaxed when dealing with youth in public schools because youth as a class are in need of adult guidance and control. The Court has upheld the constitutionality of warrantless searches by school officials of students' belongings upon reasonable suspicion that a

student has violated school rules or the law, New Jersey v. T.L.O., 469 U.S. 325, 341-42 (1985); upheld random, suspicionless drug testing of student athletes, Vernonia Sch. Dist. v. Acton, 515 U.S. 646, 654 (1995); and upheld random, suspicionless drug testing of students engaged in extracurricular activities, Board of Ed. of Ind. Sch. Dist. No. 92 of Pottawatomie Cnty. v. Earls, 536 U.S. 822, 838 (2002).

In support of these rulings, the Court has noted, "[t]raditionally at common law, and still today, unemancipated minors lack some of the most fundamental rights of self-determination – including even the right of liberty in its narrow sense, i.e., the right to come and go at will. They are subject, even as to their physical freedom, to the control of their parents or guardians." Vernonia, 515 U.S. at 654 (citation omitted). This echoes the Court's earlier declaration in Schall v. Martin, 467 U.S. 253, 265 (1984), in explaining the rejection of a constitutional challenge to the preventive detention of juveniles charged with delinquent acts, that "juveniles, unlike adults, are always in some form of custody. Children, by definition, are not assumed to have the capacity to care for themselves. They are assumed to be subject to the control of their parents, and if parental control falters, the State must play its part as *parens patriae*..." (citations omitted). Cf. Vernonia, 513 U.S. at 655 (when parents place their children in school they delegate custodial power to the latter, permitting the school a degree of supervision and control over their children that could not be exercised over free adults); T.L.O., 469 U.S. at 339 (same).

It is especially noteworthy that according to a plurality of the Supreme Court in U.S. v. Thompson, juveniles under the age of 15 years cannot be executed because they "are not capable of acting with the degree of culpability to justify the ultimate penalty." U.S. v. Thompson, 487 U.S. 815, 823 (1988). In its opinion, the Court noted that the states have adopted a vast array of restrictions on minor's rights to participate in adult activities[8] and in doing stated:

[8] These laws reflect a broad national consensus that minors lack the requisite maturity and judgment to engage in activities as significant as voting, military combat, or serving on a jury but as trivial as gambling, getting a tattoo or entering a tanning salon. *See* State Age Requirements for Various Activities, posted on Juvenile Law Center's website at www.jlc.org/agerequirements.

> It would be ironic if these assumptions that we so readily make about children as a class – about their inherent difference from adults in their capacity as agents, as choosers, as shapers of their own lives – were suddenly unavailable in determining whether it is cruel and unusual to treat children the same as adults for purposes of inflicting capital punishment.

Id. at 825 n. 23.

The Supreme Court has also endorsed more protective constitutional distinctions between minors and adults outside the context of criminal procedure. In a series of cases involving state restrictions on minors' abortion rights, the Supreme Court has made legal distinctions between minors and adults, and found that "during the formative years of childhood and adolescence, *minors often lack . . . experience, perspective, and judgment*," Bellotti v. Baird, 443 U.S. 622, 635 (1979) (emphasis added), as well as "the ability to make fully informed choices that take account of both immediate and long-range consequences." Id. at 640; *see also* Hodgson v. Minnesota, 497 U.S. 417, 444 (1990) ("The State has a strong and legitimate interest in the welfare of its young citizens, whose *immaturity, inexperience, and lack of judgment* may sometimes impair their ability to exercise their rights wisely.") (emphasis added). For this reason, the Court has held that states may choose to require that minors consult with their parents before obtaining an abortion. *See* Hodgson, 497 U.S. at 458 (O'Connor, J., concurring in part) (noting that liberty interest of minor deciding to bear child can be limited by parental notice requirement, given that immature minors often lack ability to make fully informed decisions); Bellotti, 443 U.S. at 640 (noting that because minors often lack capacity to make fully informed choices, the state may reasonably determine that parental consent is desirable).

The Court has also curtailed the liberty interests of minors in other settings. Particularly illustrative is Parham v. J.R., 442 U.S. 584 (1979), where the Court rejected a constitutional challenge to Georgia's civil commitment scheme that authorized parents and other third parties to involuntarily commit children under the age of 18. In curtailing children's liberty interests in this

context, the Court noted that "[m]ost children, even in adolescence, simply are not able to make sound judgments concerning many decisions...." Id. at 603.

In addition, the Supreme Court also has distinguished children from adults under the First Amendment. In Ashcroft v. American Civil Liberties Union, 124 S.Ct. 2783 (2004), the Court was unanimous that protecting minors from harmful images on the Internet, due to their immaturity, is a compelling government interest. Id. at 2792; id. at 2801 (Breyer, J., dissenting). In Ginsburg v. New York, 390 U.S. 629, 637 (1968), the Court upheld a state statute restricting the sale of obscene material to minors. Such a restriction was permissible for youth, as compared to adults, because "a child – like someone in a captive audience – is not possessed of that full capacity for individual choice which is the presupposition of First Amendment guarantees." Id. at 649-50 (Stewart, J., concurring) (footnotes omitted). *See also* Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 273 (1988) (holding that public school authorities may censor school-sponsored publications). Similarly, the Court has upheld a state's right to restrict when a minor can work, on the premise that "[t]he state's authority over children's activities is broader than over the actions of adults." Prince v. Massachusetts, 321 U.S. 158, 168 (1944).

In Santa Fe Indep. Sch. Dist. v. Doe, 530 U.S. 290 (2000), the Supreme Court held that prayers authorized by a vote of the student body and delivered by a student prior to the start of public high school football games violated the Establishment Clause. The Court stressed "the immense social pressure" on students "to be involved in the extracurricular event that is American high school football." Id. at 311. As the Court described it, "the choice between attending these games and avoiding personally offensive religious rituals is in no practical sense an easy one," Id. at 312, and, in the high school setting, "the delivery of a pregame prayer has the improper effect of coercing those present to participate in an act of religious worship." Id. By contrast, the Court has upheld against an Establishment Clause challenge the delivery of prayers at the start of legislative sessions, where the audience that is present invariably is made up almost

exclusively of adults. Marsh v. Chambers, 463 U.S. 783 (1983); *see* Lee, 505 U.S. at 597 (distinguishing between "atmosphere" at legislative sessions and public high schools).

In sum, in an unbroken line of decisions extending more than half a century, the Supreme Court has distinguished minors from adults under the law, noting that minors are, *inter alia*, (1) always in someone's custody and not at liberty to come and go at will; (2) less mature; (3) deficient in judgment and perspective; (4) more susceptible to the appearance or assertion of authority; (5) less able to think rationally in stressful situations; (6) less experienced and thus less knowledgeable; and (7) more malleable.

Viewing Christopher's right to counsel against this historic backdrop, the Supreme Court of Illinois should find that Christopher's young age of 14 years, lack of experience in the criminal justice system and lack of assertiveness before authoritative figures of law enforcement who were present at his interrogation are all part of the calculus to be undertaken by a court in determining that Christopher had invoked his Fifth Amendment right to counsel when he stated "I think I should have a lawyer," ROP Vol. 5, 23, or "Do I need a lawyer." ROP Vol. 4, 19. That Christopher was actively misled by the state's attorney, who identified himself as "like a public defender," ROP Vol. 4, 105, in addition to Christopher's testimony that he did not understand his Miranda rights, ROP Vol. 15, 17-18, only further demonstrates his youthful vulnerability to the power of law enforcement and explains his failure to repeat his request for counsel.

The U.S. Supreme Court's insights into the immaturity, unassertiveness and vulnerability of juveniles has resulted in constitutional protections and safeguards for youth, including those who are 16 and 17 years of age. The Court's jurisprudence regarding a minor's constitutional rights, which clearly demonstrates that they are distinct from an adult's constitutional rights, should surely apply in the instant case in which Christopher, as a 14-year-old, asserted his Fifth Amendment right to counsel.

CONCLUSION

For the foregoing reasons, *Amici Curiae* Juvenile Law Center, *et.al*., respectfully request that this Court uphold the decision of the First District of the Illinois Appellate Court vacating the adult sentence and reducing Christopher's sentence to commitment to the Juvenile Department of Corrections until the age of twenty-one. In addition, *Amici Curiae* Juvenile Law Center, *et.al*., respectfully request that this Court reverse the remainder of the Illinois Appellate Court decision and hold that: 1) The EJJ statute is unconstitutionally vague 2) Christopher's fifth amendment right to counsel was violated. In the alternative, *Amici Curiae* Juvenile Law Center, *et.al*., request that this Court remand the cause to the Illinois Appellate Court, First District, for resolution of the remaining issues raised but not addressed in that court.

Respectfully submitted,

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APPENDIX A

IDENTITY OF *AMICI CURIAE*

Juvenile Law Center (JLC) is one of the oldest legal service firms for children in the United States, founded in 1975 to advance the rights and well being of children in jeopardy. JLC pays particular attention to the needs of children who come within the purview of public agencies – for example, abused or neglected children placed in foster homes, delinquent youth sent to residential treatment facilities or adult prisons, or children in placement with specialized services needs. JLC works to ensure children are treated fairly by systems that are supposed to help them, and that children receive the treatment and services that these systems are supposed to provide. We believe the juvenile justice and child welfare systems should be used only when necessary, and work to ensure that the children and families served by those systems receive adequate education, and physical and mental health care. JLC is a non-profit public interest firm. Legal services are provided at no cost to our clients.

The **Center on Children and Families** (CCF) is an interdisciplinary academic center located at University of Florida's Fredric G. Levin College of Law. CCF's mission is to promote quality research, skilled advocacy and sound policies for children and youth, in Florida and across the nation. CCF's affiliated clinical programs, including Gator TeamChild and the Child Welfare Clinic, engage students and faculty in advocacy for and direct representation of abused and neglected children as well as in representation of youths in the juvenile justice system. CCF's faculty include widely published experts on child abuse and neglect, criminal law, juvenile justice, child development, conflict resolution and constitutional law. CCF supports developmentally informed and constitutionally sound laws and policies regarding children in the juvenile justice system.

The **Central Juvenile Defender Center**, a training, technical assistance and resource development project, is housed at the Children's Law Center, Inc. In this context, it provides assistance on indigent juvenile defense issues in Ohio, Kentucky, Tennessee, Indiana, Arkansas, Missouri, and Kansas. This issue is relevant to our organization because we provide assistance and technical support to public defenders and other juvenile defense organizations, including organizations and defenders in states with similar blended sentencing laws.

The **ChildLaw Center** is a program of the Loyola University Chicago School of Law, whose mission is to prepare law students and lawyers to be ethical and effective advocates for children and promote justice for children through interdisciplinary teaching, scholarship and service. Through its Child and Family Law Clinic, the ChildLaw Center also routinely provides representation to child clients in domestic relations, child protection, juvenile justice and other types of cases involving children. The ChildLaw Center maintains a particular interest in matters affecting the disposition of children whose lives are regulated by the juvenile courts of Illinois.

The **Children's Law Center, Inc.** in Covington, Kentucky has been a legal service center for children's rights since 1989, protecting the rights of youth through direct representation, research and policy development and training and education. The Center provides services in Kentucky and Ohio, and has been a leading force on issues such as access to and quality of representation for children, conditions of confinement, special education and zero tolerance issues within schools, and child protection issues. It has produced several major publications on children's rights, and utilizes these to train attorneys, judges and other professionals working with children. This issue is relevant to our organization because we provide assistance and technical support to

public defender and other juvenile defense organizations, including organizations and defenders in states with similar blended sentencing laws.

The **Criminal & Juvenile Justice Project** is a clinical program at the University of Chicago Law School designed to educate law and social work students while providing quality representation to children accused of criminal and delinquent behavior. In addition to individual client service, the Project's mission includes the development and support of criminal and juvenile justice policy initiatives.

The **Criminal Justice Institute** (CJI) is a curriculum-based clinical program in criminal law at Harvard Law School. Four clinical instructors supervise third-year law students, who represent indigent children and youth in juvenile delinquency proceedings and indigent defendants in district court criminal proceedings. CJI also sponsors national conferences on criminal and juvenile justice issues and is active in legislative and policy reform in areas affecting disadvantaged youth and adults. The issues that are raised in this case – considering the EJJ statute's role in preserving the rehabilitative potential of juvenile court for young people adjudicated delinquent and considering the developmental differences between a minor and adult when assessing whether a minor has invoked his right to counsel -- are directly relevant to constitutionally adequate representation of young people and thus present questions of immediate importance to CJI. It is in the interest of the clients of CJI and the fair administration of justice, that the views of *amici* be presented in order to contribute to this Court's full consideration of all aspects of the important issues raised in this case.

The **Georgetown Law Center Juvenile Justice Clinic** is one of the oldest clinical legal education programs focusing on the needs of children. Since our founding in 1973, we have provide legal representation to children in all types of cases. Clinic staff have also testified before Congressional and state legislative committees concerning the transfer of juvenile court jurisdiction, the law of confessions and children's competency. They have also conducted research and written extensively on these issues. Currently, two full time faculty and two graduate students serve as counsel for children in delinquency and criminal cases. Staff attorneys are supplemented each year by fourteen law students who also provide representation in delinquency cases.

The mission of the **Juvenile Justice Center of Suffolk University Law School** is to provide vigorous, high quality representation of children in the juvenile court system, using a multi-disciplinary approach that includes supportive social services and education advocacy. This approach to delinquency defense increases positive outcomes for court-involved youth. The Center also monitors and actively advocates on state policies that affect how youth are sent to court and the consequences of their court involvement.

The **Juvenile Justice Initiative** (JJI) of Illinois is a non-profit, non-partisan, inclusive statewide coalition of state and local organizations, advocacy groups, legal educators, practitioners, community service providers and child advocates supported by private donations from foundations, individuals and legal firm. JJI as a coalition establishes or joins broad-based collaborations developed around specific initiatives to act together to achieve concrete improvements and lasting changes for youth in the justice system, consistent with the JJI mission statement. Our initiatives seek to create a constituency for youth in the justice system with an emphasis on promoting intervention strategies, ensuring fairness for youth in the justice system, and building community resources for comprehensive continuums of services and sanctions to reduce reliance on confinement. Our collaborations work in concert with other organizations, advocacy groups, concerned individuals and state and local government entities throughout

Illinois to ensure that fairness and competency development are public and private priorities for youth in the justice system.

The **Mid-Atlantic Juvenile Defender Center** (MAJDC) is a multi-faceted juvenile defense resource center that has served the District of Columbia, Maryland, Puerto Rico, Virginia and West Virginia since 2000. We are committed to working within communities to ensure excellence in juvenile defense and promote justice for all children. MAJDC promotes research and policy development throughout the region by conducting state-based assessments of juvenile indigent defense delivery systems. Following the assessment, MAJDC staff work to ensure the report is used to educate the public about issues related to the delivery of indigent defense services for juveniles and assists the public defender systems in responding to assessment recommendations. MAJDC also responds to the needs of juvenile defenders by coordinating training programs, providing technical assistance and maintaining a list-serve of juvenile defenders to respond to defender questions. MAJDC is a 501(c)(3) non-profit organization. MAJDC is interested in the issues raised in this case because we work to promote an environment in which children in the juvenile justice system are treated with respect, dignity and fairness and roadblocks are not put in the way of their constitutional right to legal counsel.

The **Midwest Juvenile Defender Center** (MJDC) provides assistance and support to attorneys, judges, social workers, and others who work with children who are involved in the delinquency and/or criminal court systems. Forms of assistance include hosting and coordinating training sessions, providing research support on juvenile related issues, participating in state assessments of indigent defense, and keeping members abreast of developing law, policy developments, and developmental-social-programmatic research relating to juveniles. The Midwest Region includes the states of Illinois, Iowa, Michigan, Minnesota, Nebraska, North Dakota, South Dakota and Wisconsin.

Founded in 1977, the **National Association of Counsel for Children** (NACC) is a 501(c)(3) non-profit child advocacy and professional membership association dedicated to enhancing the well being of America's children. The NACC works to strengthen the delivery of legal services to children, enhance the quality of legal services affecting children, improve courts and agencies serving children, and advance the rights and interests of children. NACC programs which serve these goals include training and technical assistance, the national children's law resource center, the attorney specialty certification program, the model children's law office program, policy advocacy, and the *amicus curiae* program. Through the *amicus curiae* program, the NACC has filed numerous briefs involving the legal interests of children in state and federal appellate courts and the Supreme Court of the United States. The NACC uses a highly selective process to determine participation as *amicus curiae. Amicus* cases must past staff and Board of Directors review using the following criteria: the request must promote and be consistent with the mission of the NACC; the case must have widespread impact in the field of children's law and not merely serve the interests of the particular litigants; the argument to be presented must be supported by existing law or good faith extension the law; there must generally be a reasonable prospect of prevailing. The NACC is a multidisciplinary organization with approximately 2000 members representing all 50 states and the District of Columbia. NACC membership is comprised primarily of attorneys and judges, although the fields of medicine, social work, mental health, education, and law enforcement are also represented.

The **National Juvenile Defender Center** was created to ensure excellence in juvenile defense and promote justice for all children. The National Juvenile Defender Center responds to the critical need to build the capacity of the juvenile defense bar in order to improve access to counsel and quality of representation for children in the justice system. The National Juvenile

Defender Center gives juvenile defense attorneys a more permanent capacity to address important practice and policy issues, improve advocacy skills, build partnerships, exchange information, and participate in the national debate over juvenile justice. The National Center provides support to public defenders, appointed counsel, child advocates, law school clinical programs and non-profit law centers to ensure quality representation and justice for youth in urban, suburban, rural and tribal areas. The National Center offers a wide range of integrated services to juvenile defenders and advocates, including training, technical assistance, advocacy, networking, collaboration, capacity building and coordination.

Since 1986, **Physicians for Human Rights** (PHR) has conducted scientific investigations and research on human rights violations and their health effects in over fifty countries. One of PHR's programs is Health and Justice for Youth, a project which seeks to raise awareness that young people are "works in progress," whose ongoing development, mental health and physical well-being are crucial to their own and society's future. Health professionals have a central role to play in public dialogue and decision-making on juvenile justice policy. They bring their expertise in child and adolescent development, pediatrics, psychiatry and neurology to bear on questions germane to juvenile and adult court proceedings, including adolescents' level of responsibility for criminal conduct in view of their developmental status, mental health needs of youth in the juvenile justice system, and medical treatment standards in detention facilities. A key issue that Physicians for Human Rights is currently addressing is the inappropriate and harmful imposition of adult sentences on young offenders, in light of scientific knowledge of adolescents' still-developing emotional and intellectual capacities and amenability to rehabilitative treatment.

The Sentencing Project was founded in 1986 as an independent non-profit organization working for a fair and effective criminal justice system by promoting alternatives to incarceration, reforms in sentencing laws and practices, and more effective use of community-based and public services to achieve reductions in crime. To these ends, The Sentencing Project contributes research, analysis and observations of the criminal justice system to the public debate on crime and punishment. Since 1999, The Sentencing Project has observed and spoken against the trend toward prosecuting and sentencing increased numbers of juveniles in adult criminal court as a result of laws liberalizing transfer to adult court and punishment of children as if they were adults. As an authority in the sentencing process and in sentencing advocacy, The Sentencing Project has provided technical assistance to programs designed to reduce the transfer of children to adult court, notably in the Public Defender office in Dade County (Miami) Florida, developed recommendations for public defender programs which represent juveniles in adult court, and published articles which describe the disadvantages faced by juveniles in adult court compared to adults prosecuted for the same crimes.

Voices for America's Children is a national organization committed to working at the state and local levels to improve the well-being of children. Founded in 1984 by a small group of child advocates, Voices is the only nationwide network of state and local multi-issue child advocacy organizations that speak out on behalf of children. With member organizations in almost every state, the District of Columbia, and many cities and counties, Voices provides a voice for the voiceless - children - in city halls and state capitals across the country. Voices and its members are working to create a society that recognizes and protects the right of every child, including those involved with the juvenile justice system. Voices and its members have a long track record of working to improve the juvenile system and to foster the safety and well-being of children in its care.

The **Youth Law Center** (YLC) is a national public interest law firm with offices in San Francisco and Washington, DC, that has worked since 1978 on behalf of children in juvenile

justice and child welfare systems. YLC has worked with judges, prosecutors, defense counsel, probation departments, corrections officials, sheriffs, police, legislators, community groups, parents, attorneys, and other child advocates in California and throughout the country, providing public education, training, technical assistance, legislative and administrative advocacy, and litigation to protect children from violation of their civil and constitutional rights. YLC has worked for more than two decades to promote individualized treatment and rehabilitative goals in the juvenile justice system, protection of due process rights of youth at risk, effective programs and services for youth at risk and in trouble, consideration of the developmental differences between children and adults, and racial fairness in the justice system. YLC is particularly interested in adolescent development issues, having worked on such issues for 25 years, including helping to develop a comprehensive training curriculum on adolescent development for juvenile court personnel with the support of the John D. and Catherine T. MacArthur Foundation.