Deliquency and Due Process: A Review of Illinois Law

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INTRODUCTION

The concept of a court for juveniles only has experienced both vast popularity and general disrepute. Beginning with the juvenile court statute adopted in Illinois in 1899, juvenile court was established in all fifty states. The reformers who created it were appalled "that children could be given long prison sentences and mixed in jails with hardened criminals." Rather, the children were to be "treated" and "rehabilitated" by procedures that were "clinical" and not punitive. With the state proceeding as *parents patriae*, not as prosecutor, the judge dealt with problems of "erring children" as a "wise and kind father." Child offenders were not treated as criminals, but "as misdirected and misguided and needing aid, encouragement, help and assistance."

Though the Illinois statute of 1899 provided minors with a right to trial by jury, legal procedure was seldom considered appropriate in Illinois or elsewhere. Featured as a rehabilitative clinic separate from harsh criminal court procedure and sentencing, juvenile court paid little attention to formality. As the goal was adjustment of erring children by a kindly judge, appointment of attorneys, formal notice of charges, and a laborious adjudicatory process were out of place. Because of the overriding rehabilitative theme, removal of children from their parents and placement in the Department of Corrections were seen merely as necessary clinical techniques in the best interests of the minors. Procedures involving the future of juveniles became summary and represented less than the best efforts of the clinician.

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1. *In re* Gault, 387 U.S. 1, 14 (1967).
2. *Id.* at 15.
3. *Id.* at 16.
5. *Id.* at 139-40, 112 N.E.2d at 700.
The euphoria of the wholesome separateness of juvenile court was interrupted by Kent v. United States⁸ and In re Gault.⁹ In Kent, Justice Fortas made this sobering observation: “There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.”¹⁰

In Gault, criticism of the juvenile court system reached a crescendo. Justice Fortas, speaking for a unanimous Supreme Court, compared juvenile court to the Star Chamber, whose powers “were a trifle in comparison.”¹¹ He stated, “[T]he constitutional and theoretical basis for this peculiar system is - to say the least - debatable.”¹² Justice Fortas noted that one half of juvenile judges had no undergraduate degrees and only 213 of 2,987 were full time judges.¹³ The Gault Court expressed rancor and disdain: “Under our Constitution, the condition of being a boy does not justify a kangaroo court.”¹⁴

In a subsequent case, Justice Douglas concluded that juvenile court practice fell short of its professed goals:

[T]he love and tenderness alone, possessed by the white-coated judge and attendants, were not sufficient to untangle the web of subconscious influences that possessed the troubled youngster. . . . [C]orrectional institutions designed to care for these delinquents often became miniature prisons with many of the same vicious aspects as the adult models . . . . [T]he secrecy of the juvenile pro-

⁸ 383 U.S. 541 (1966). The Kent case concerned a sixteen year old charged with housebreaking, robbery, and rape. The applicable District of Columbia Juvenile Court Act permitted the juvenile judge, in cases of specified crimes, to waive juvenile court jurisdiction and transfer the case to adult court. Waiver was only permitted after “full investigation.” In Kent's case the maximum sentence in juvenile court would have been detention for five years; the maximum sentence in adult court was death. The Supreme Court found the juvenile judge's waiver, which was made without hearing, without affording the minor effective assistance of counsel, and without a statement of reasons, to be violative of the boy's constitutional rights under the District of Columbia statute. Id. at 553-57.


¹⁰ 383 U.S. at 556.

¹¹ 387 U.S. at 18 (quoting Dean Pound who was comparing the power of juvenile courts with that of the Star Chamber).

¹² Id. at 17.

¹³ Id. at 14, n.14.

¹⁴ Id. at 28. The Gault case concerned the adjudication of “delinquency” of Gerald Gault, then fifteen, who had been charged with making lewd telephone calls. There were procedural questions regarding notice, right to counsel, right to confront witnesses, fifth amendment privileges, right to a transcript of the proceedings and the right to appellate review. Id. at 10.
ceedings led to some overreaching and arbitrary actions.15

Fortunately for the juvenile court process, Gault stopped short of absolute condemnation and limited its holding to requiring certain due process rights in juvenile court. Gault held that the juvenile is entitled to proper notice and formal presentation of charges to enable him to defend himself.16 The Court found the minor would be entitled to rights he would enjoy if an adult:

He would be entitled to clear advice that he could be represented by counsel, and, at least if a felony were involved, the State would be required to provide counsel if his parents were unable to afford it. If the court acted on the basis of his confession, careful procedures would be required to assure its voluntariness. If the case went to trial, confrontation and the opportunity for cross-examination would be guaranteed.17

Gault also held that in light of possible "loss of his liberty,"18 the juvenile is guaranteed his fifth amendment right against self-incrimination.19 Gault merely mentioned, but did not rule upon, basic areas of juvenile court practice: "[I]t has been held that the juvenile is not entitled to bail, to indictment by grand jury, to a public trial or to trial by jury."20

These and other areas have been resolved to some extent by post-Gault decisions that have shaped due process rights of minors in juvenile court. There has been no plenary commitment to "all of the procedural requirements of the Constitution and Bill of Rights,"21 as favored by Justice Douglas. The issues appear to have been considered individually and the results have been mixed.

In Illinois, the proceedings remain closed to the general public.22 There continues to be no jury box, although the juvenile judge might

16. 387 U.S. at 33-34.
17. Id. at 29.
18. Id. at 36.
19. Id. at 55.
20. Id. at 14.
move to a court that has one to try a Habitual Juvenile Offender case. The considerations of a detention hearing still vary from adult court bond procedure. The more paternal and less harsh sounding language of juvenile court remains intact: "admissions" are still taken in place of "pleas;" "adjudicatory hearings" are held in place of "trials;" and "dispositions" are made in place of "sentences." Though still an ongoing experiment of law, social science and common sense, the post-Gault juvenile court has undergone significant changes in its structure, procedures and focus. In the fifteen years since the Gault decision, juvenile court has become a hybrid between constitutional court and social clinic.

This article will survey the present status of procedural due process rights of juveniles in Illinois courts. Federal decisions will be noted where appropriate, and reference will be made to both Illinois statutes and case law.

**DUE PROCESS RIGHTS OF JUVENILES IN ILLINOIS COURTS**

**Right to Bail**

The United States Supreme Court has not ruled upon juveniles' entitlement to bail under the due process clause.

Illinois follows the majority rule that a juvenile has no constitutional right to bail pending adjudicatory hearing. In United States ex rel. Burton v. Coughlin, the Seventh Circuit Court of Appeals affirmed the dismissal of a juvenile's request for a writ of habeas corpus. The court stated that there was no need to consider the constitutional question since the Illinois Juvenile Court Act provides an adequate substitute for bail. The Illinois Appellate Court, citing the Burton decision, stated in dictum in In re Beasley, "A minor does not have the right to release on recognizance or bail pending a delinquency adjudication."

In a supervisory order, the Illinois Supreme Court ruled bail is available to the minor pending appeal. In In re Pulido, the court found controlling that there is no statute providing that the Supreme

23. Id. at § 705-12.
25. 463 F.2d 530 (7th Cir. 1972).
26. Id. at 532.
28. Id. at 820, 342 N.E.2d at 806. For a discussion of Illinois minors' right to bail, see Note, Right to Bail for Juveniles, 48 CHI.-KENT L. REV. 99 (1971).
29. 69 Ill. 2d 393, 372 N.E.2d 822 (1978).
Court Rule granting adults bond on appeal is inapplicable in juvenile cases.

Regarding the question of release of juveniles pending adjudicatory hearing, Chapter 37 of the Illinois Revised Statutes provides a specific procedure. A minor may be released by a detention officer of the juvenile court and return to court at a time designated by the officer. If the minor is detained, he must be taken before a judicial officer within thirty-six hours, exclusive of Saturdays, Sundays or designated holidays. The court can order continued detention only if it finds that there is probable cause that the minor is a delinquent as defined in Section 702-2 and that there is immediate and urgent necessity that he be detained. Section 703-6 states: “If the court finds that it is a matter of immediate and urgent necessity for the protection of the minor or the person or property of another that the minor be detained or . . . that he is likely to flee the jurisdiction of the court, it may prescribe detention. . . .” The statute provides that the adjudicatory hearing must be set within ten court days from the date of the order of detention on an original petition and fifteen court days on a revocation petition. Failure to bring the minor to adjudicatory hearing within statutory time requires release from detention, but not dismissal of the delinquency petition.

Section 703-6 presents a separate and distinct statute from section 110-1 to -17 of chapter 38 of the Illinois Revised Statutes pertaining to bail for adults. Thus, as there is a contrary juvenile procedure provided by statute, the Pulido rationale would appear inapplicable to the release of juveniles on bond pending adjudicatory hearing.

In People v. Woodruff, the supreme court commented on the detention statute without ruling upon its constitutionality. The court

31. Id.
32. Id. at § 703-6(2).
33. Id. at § 704-2.
34. Id. at § 705-3(4).
35. People v. Clayborn, 90 Ill. App. 3d 1047, 414 N.E.2d 157 (1st Dist. 1980); People v. Dean, 52 Ill. App. 3d 383, 367 N.E.2d 419 (5th Dist. 1977). In Dean, the statute required a hearing within fifteen days to determine revocation of probation. The juvenile was detained from November 13 until December 8 and hearing was not held until the following January 12. Id. at 384, 367 N.E.2d at 420. The appellate court found violation of the rule was not jurisdictional and did not require dismissal. Id. at 385, 367 N.E.2d at 421-22.
36. 88 Ill. 2d 10, 430 N.E.2d 1120 (1981). The court held time spent in juvenile detention is not included for purposes of the running of the statutory period of 120 days within which the
noted that the statute "permits a juvenile offender to be detained only upon specific findings of the court, and strict time limitations are imposed." 37 The Illinois Supreme Court recently stated agreement with prior appellate decisions: "We conclude that Section 4-2 establishes a maximum period of time that a minor can be detained pending judicial action on the merits of his case. Section 4-2 mandates not discharge, but release when the statutory period has been exceeded." 38

Under the Illinois Revised Statutes, an adult may not be held without bond simply because he presents a threat to another person or another person's property, or that he would likely flee the jurisdiction. Those considerations, which foreclose the release of the minor, are merely considerations as to the amount of bond under the criminal code. 39

Burden of Proof

The United States Supreme Court held in In re Winship: 40 "In sum, the constitutional safeguard of proof beyond a reasonable doubt is as much required during the adjudicatory stage of a delinquency proceeding as are those constitutional safeguards applied in Gault—notice of charges, right to counsel, rights of confrontation and examination, and the privilege against self-incrimination." 41

The requirement of proof beyond a reasonable doubt to prove an original delinquency petition has been the law in Illinois since In re Urbasek, 42 decided three years before Winship. Though the Illinois Supreme Court considered in Urbasek that juvenile court procedure was "not penal but protective," 43 the court found that Gault creates "a spirit that transcends the specific issues there involved." 44 The court

defendant (here the minor who was transferred to adult court) must be brought to trial. Id. at 15, 430 N.E.2d at 1125.

37. Id. at 19, 430 N.E.2d at 1124.
38. People ex rel Davis v. Vasquez, 92 Ill. 2d 132, 145, 441 N.E. 2d 54, 59 (1982). In Vasquez, the supreme court ruled, "[W]e hold that minors detained on a charge of delinquency have the right to bail when the State appeals an order of the juvenile court denying a motion to prosecute them as adults." Id. at 152, 441 N.E.2d at 62. In a dissenting opinion, Justice Simon asserted that the statute required release rather than bail which could result in further detention. "[A] juvenile who is being confined is entitled to release pending his adjudicatory hearing, if the hearing is not held within the specified period . . . The majority concedes that under normal circumstances this is true, but finds an exception in this case." Id. at 153, 441 N.E. 2d at 63.

41. Id. at 368.
42. 38 Ill. 2d 535, 232 N.E.2d 716 (1967).
43. Id. at 539, 232 N.E.2d at 718.
44. Id. at 541, 232 N.E.2d at 719. Indeed, the factual underpinnings of the two cases are quite different. Gerald Gault, age fifteen, was charged with making lewd telephone calls, while
held the statutory requirement of proof by a preponderance of the evidence violated due process. The court stated:

Though the purpose of industrial training schools for boys, such as that at St. Charles in Illinois, is to rehabilitate and train youths whose misconduct has brought them to these institutions, the incarcerated juveniles' liberty of action is restrained just as effectively as that of the adult inmates serving terms in State and Federal prisons.45

As in adult cases, a probation revocation need be proved only by a preponderance of the evidence.46 Also, as in adult cases, voluntariness of a confession may be considered at a probation revocation hearing.47

The statute for transfer of a case from juvenile court to adult court does not establish a specific burden of proof.48 Rather, section 702-7 sets forth criteria for the juvenile court to consider in determining whether or not to transfer.49 The Illinois Supreme Court has ruled that the juvenile judge may use his discretion to determine whether transfer is proper. The court found in People v. Taylor50 that the six criteria of the statute are "specific enough to satisfy due process."51 The ultimate test is whether there was an "abuse of discretion."52 In Taylor, the attorney for the minor argued that evidence should be at least clear and

eleven year old Robert Urbasek was alleged to have murdered a playmate, also eleven. Id. at 537, 232 N.E.2d at 717. The Urbasek ruling voided the section of the then current Illinois Juvenile Court Act (§ 701-4, § 704-6) which had incorporated a preponderance of the evidence standard. Id. at 542, 232 N.E.2d at 720.

45. Id. at 541, 232 N.E.2d at 719.
49. The criteria are stated as follows:

(a) In making its determination on a motion to permit prosecution under the criminal laws, the court shall consider among other matters: (1) whether there is sufficient evidence upon which a grand jury may be expected to return an indictment; (2) whether there is evidence that the alleged offense was committed in an aggressive and premeditated manner; (3) the age of the minor; (4) the previous history of the minor; (5) whether there are facilities particularly available to the Juvenile Court for the treatment and rehabilitation of the minor; and (6) whether the best interest of the minor and the security of the public may require that the minor continue in custody or under supervision for a period extending beyond his minority. The rules of evidence shall be the same as under Section 5-1 of this Act, but no hearing on such motion may be commenced unless the minor is represented in court by counsel. (b) If criminal proceedings are instituted, the petition shall be dismissed insofar as the act or acts involved in the criminal proceedings are concerned. Taking of evidence in an adjudicatory hearing in any such case is a bar to criminal proceedings based upon the conduct alleged in the petition.

Id. at § 702-7(3)(a). For a general discussion of provisions for transferring minors from juvenile court to adult court, see Note, Relinquishment of Jurisdiction for Purposes of Criminal Prosecution of Juveniles, 8 No. Ky. L. Rev. 377 (1981).
51. Id. at 300, 391 N.E.2d at 371.
52. Id. at 300-01, 391 N.E.2d at 371.
convincing. The supreme court disagreed, stating, "The transfer hearing not being adjudicatory, the procedural safeguards required at criminal trials and adjudications of delinquency are not mandated by due process."\(^{53}\) Section 702-7 has been upheld against constitutional attack in two decisions by the Seventh Circuit Court of Appeals.\(^{54}\)

The Illinois Appellate Court stated in *People v. Cater*:\(^{55}\)
The determinative standard to satisfy due process is fundamental fairness. Fundamental fairness does not require the juvenile judge to exercise his discretion with any degree of mathematical certainty. Not all of the factors set forth in the transfer statute need be resolved against the juvenile to satisfy a waiver of juvenile court jurisdiction.\(^{56}\)

**Trial by Jury**

In *DeBacker v. Brainard*,\(^{57}\) a 1969 *per curiam* decision dismissing the writ of certiorari, the United States Supreme Court declined to address whether there was right to trial by jury in juvenile court. Justices Black and Douglas dissented. Justice Douglas reasoned, “Given the fundamental nature of the right to jury trial as expressed in *Duncan* and *Bloom*, there is, as I see it, no constitutionally sufficient reason to deprive the juvenile of this right.”\(^{58}\)

Two years after *DeBacker*, the Supreme Court speaking through Justice Blackmun found in *McKeiver v. Pennsylvania*\(^{59}\) that a minor tried in juvenile court has no constitutional right to trial by jury. The majority opinion disagreed with Justice Douglas’ dissent in *DeBacker* that the right to trial by jury is “fundamental.” The majority opinion in *McKeiver* stated, “[O]ne cannot say that in our legal system the jury is a necessary component of accurate factfinding.”\(^{60}\) The *McKeiver* majority agreed with Justice Fortas in *Gault* and Justice Douglas in his dissent in *DeBacker* that the stated goals of juvenile court fall short in practice. The majority conceded, “Too often the juvenile court judge falls far short of that stalwart, protective, and communicating figure the system envisaged.”\(^{61}\)

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53. Id. at 303, 391 N.E.2d at 372.
54. United States v. Sielaff, 598 F.2d 1064 (7th Cir. 1979); Bombacino v. Bensinger, 498 F.2d 875 (7th Cir. 1974).
56. Id. at 987, 398 N.E.2d at 32.
58. Id. at 38.
59. 403 U.S. 528 (1971).
60. Id. at 543.
61. Id. at 544.
Though practical experience showed juvenile court falling short of its goal, the *McKeiver* majority found that injecting jury trial into juvenile court would “remake the juvenile proceeding into a fully adversary process and [would] put an effective end to what has been the idealistic prospect of an intimate, informal, protective proceeding.”62 The Court in rejecting a juvenile’s right to trial by jury also implicitly rejected his having a sixth amendment right to public trial. The *McKeiver* Court stated, “[I]t would bring with it into that system the traditional delay, the formality, and the clamor of the adversary system and, possibly, the public trial.”63 Four Justices dissented in *McKeiver*, including Justice Brennan who pointed to “juveniles who fear that delinquency proceedings will mask judicial oppression.”64

One year prior to the *McKeiver* decision, the Illinois Supreme Court ruled in *In re Fucini*65 that the juvenile does not possess a constitutional right to trial by jury. Using language strikingly similar to that later to be used by the majority in *McKeiver*, the supreme court found trial by jury “not crucial to a system of juvenile justice.”66

The Illinois Supreme Court had occasion to rule on the minor’s right to trial by jury on statutory grounds in a 1976 decision. The juvenile judge in *People ex rel. Carey v. White*67 had granted the minor’s trial by jury on the basis of his interpretation of the Juvenile Court Act. He stated, “The procedural rights assured to the minor shall be the rights of adults unless specifically precluded by laws which enhance the protection of such minors.”68 Counsel for the minor argued that there was no specific preclusion of trial by jury by the statute. The Illinois Supreme Court ruled that since 1966 the legislature had specifically eliminated a juvenile’s right to trial by jury, which had existed in the original 1899 Act and was in effect for sixty-seven years.69 The supreme court granted the writ of mandamus against the juvenile court judge and restated that there was no right to trial by jury, including an advisory jury, under Illinois juvenile court law.70

It can be argued that under Illinois law the juvenile has not been deprived of right to trial by jury at all. Under chapter 37, section 702-
7(5), he has the absolute right upon filing a motion to have his case transferred from juvenile to adult court.\textsuperscript{71} If he is the movant, he need not show the criteria for transfer under section 702-7 that would be required of the State. Upon having his case transferred to adult court, he would have an absolute right to trial by jury. If the State, as movant, succeeds in obtaining transfer to adult court, the juvenile again enjoys all rights of those in adult court, including the right to trial by jury. If the State elects to proceed against a juvenile as an Habitual Juvenile Offender,\textsuperscript{72} and the juvenile elects not to request transfer to the adult court, the statute provides for trial by jury for the minor in juvenile court.\textsuperscript{73} This is the sole statutory exception providing trial by jury for the minor in juvenile court.

\textit{Pleadings}

The cornerstone of \textit{Gault} is that the minor be given notice of charges, an opportunity to be represented by counsel, and the right to defend himself in a proceeding which is more than summary and arbitrary.\textsuperscript{74} The charges against the minor in juvenile court must be described with certainty and particularity.\textsuperscript{75} In \textit{In re Carson},\textsuperscript{76} the juvenile was charged with passing a “bad check.” His conviction was reversed on the basis that there was no certainty or particularity of pleading that would give the juvenile adequate notice of charges against him.\textsuperscript{77} But in \textit{In re D.L.B.},\textsuperscript{78} where no objection was made at trial to what the court characterized as a “travesty of a charging instrument,” the objection was waived on appeal.\textsuperscript{79} The Illinois Appellate Court held in \textit{In re Bryant}:\textsuperscript{80}

Due process of law requires that a juvenile, in the same manner as an adult, be notified of the charges against him. The charges must “set forth with particularity the misconduct upon which the delinquent petition was based”, so that the juvenile will be able to prepare a proper defense and conduct “such investigation [of the charges] as may be necessary.”\textsuperscript{81}

\textsuperscript{71} People v. Jiles, 43 Ill. 2d 145, 251 N.E.2d 529 (1969); People v. Greve, 83 Ill. App. 3d 435, 403 N.E.2d 1230 (2d Dist. 1980).
\textsuperscript{72} See ILL. REV. STAT. ch. 37, § 705-12 (1981).
\textsuperscript{73} Id. at § 705-12-4.
\textsuperscript{74} See supra note 16 and accompanying text.
\textsuperscript{75} In re Carson, 10 Ill. App. 3d 387, 294 N.E.2d 75 (3d Dist. 1973).
\textsuperscript{76} Id.
\textsuperscript{77} Id. at 389, 294 N.E.2d at 77.
\textsuperscript{79} Id. at 77-78, 429 N.E.2d at 617.
\textsuperscript{80} 18 Ill. App. 3d 887, 310 N.E.2d 713 (1st Dist. 1974).
\textsuperscript{81} Id. at 892, 310 N.E.2d at 716.
Exceptions to the particularity rule have appeared where the defect in pleading is a "formal defect" only. In *People v. Longley*, failure of the State to allege that a weapon was concealed was found to be a formal defect in connection with an unlawful use of weapon charge. Though the petition must meet the requirements of an indictment, the court stated: "We are of the opinion that the respondent was fully informed of the charge and he has no solid ground upon which to complain."

In another case involving pleadings, the State failed to allege the words "without authority" in a petition alleging burglary. After adjudicatory hearing, the minor's motion for dismissal was denied. The juvenile court disposition was reversed because the pleading was "fatafly defective." The Illinois Appellate Court has also held that proving delivery of drugs to an individual other than the one named in the petition was a non-fatal variance subject to amendment, as long as the variance did not surprise defendant or prevent him from properly preparing a defense.

It would appear that fatal variances in pleadings requiring dismissal are those going to the essence of the charge which prevent the juvenile from preparing a defense. Grammatical errors, misnomers, and misstatement of the section number of the criminal statute may be non-fatal variances or formal defects.

**Confessions**

In *Fare v. Michael C.*, a sixteen and a half year old probationer was arrested for murder. He was given his *Miranda* rights and he thereupon requested to see his probation officer. The police officer denied his request and a confession followed. The United States Supreme Court held that the request to speak to one's probation officer is not a request for legal assistance requiring the cessation of questioning, and that such a request does not constitute a per se request to remain silent. The Court held that the voluntariness of the waiver of

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83. Id. at 409, 306 N.E.2d at 530.
85. Id. at 278, 435 N.E.2d at 884.
88. See Miranda v. Arizona, 384 U.S. 436 (1966), in which the Supreme Court outlined the notice of rights required before conducting interrogation.
89. 442 U.S. at 722.
90. Id. at 723.
the juvenile's rights to remain silent and to consult with an attorney would be decided by a totality-of-the-circumstances test. The majority further found that the State, which carries the burden, in fact showed voluntariness under the totality-of-the-circumstances. Justice Marshall in a dissenting opinion joined by Justices Brennan and Stevens, stated: "As this Court has consistently recognized, the coerciveness of the custodial setting is of heightened concern where, as here, a juvenile is under investigation." The majority, on the other hand, stated, "We discern no persuasive reasons why any other approach is required where the question is whether a juvenile has waived his rights, as opposed to whether an adult has done so." Thus, the totality-of-the-circumstances approach applies to juveniles as well as adults and "includes evaluation of the juvenile's age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of his fifth amendment rights, and the consequences of waiving those rights." The majority argued in favor of applying the totality-of-the-circumstances test to minors as well as adults on the basis that juvenile courts were particularly well situated to protect minors' rights:

There is no reason to assume that such courts—especially juvenile courts with their special expertise in this area—will be unable to apply the totality-of-the-circumstances analysis so as to take into account those special concerns that are present when young persons often with limited experience and education and with immature judgment, are involved. Where the age and experience of a juvenile indicate that his request for his probation officer or his parents is, in fact, an invocation of his right to remain silent, the totality approach will allow the court the necessary flexibility to take this into account in making a waiver determination. At the same time, that approach refrains from imposing rigid restraints on police and courts in dealing with an experienced older juvenile with an extensive prior record who knowingly and intelligently waives Fifth Amendment rights and voluntarily consents to interrogation.

The foregoing statement indicates that a juvenile's request for his parent does not necessarily require a cessation of questioning by the police. Fare states that a totality-of-the-circumstances approach

91. Id. at 725.
93. 442 U.S. at 725.
94. Id.
95. Id. at 725-26.
would, depending on the facts, allow the court to find or not find that the request to talk to a parent was a request to remain silent.

As pointed out in the dissent by Justice Powell,96 this approach seems to be a departure from *Gallegos v. Colorado*97 and other cases, which state that the greatest care must be taken to determine if a confession of a juvenile is voluntary. In *Gallegos*, Justice Douglas, speaking for the majority, reversed a conviction of a fourteen year old for robbery and murder. Douglas pointed out that a confession was obtained from the minor after his mother was denied the right to see him. Justice Douglas described the circumstances as "secret inquisitorial processes."98 Justice Clark, in his dissent, argued there were no secret inquisitorial processes in that the mother was told that the day she requested to speak with her son was not a regular visiting day and that she agreed to return on the next visiting day.99 Furthermore, Justice Clark pointed out that the confession by the juvenile occurred shortly after he was taken into custody and was not the result of wearing down and intimidating the minor.100 Though the majority opinion in *Gallegos* did not specifically state that refusing to allow a parent to see a child under interrogation requires suppression of a confession, the majority decision categorized the procedures as "secret inquisitorial processes." A fair inference is that granting the mother permission to see her son would have removed the taint.

By striking dicta, the *Fare* majority stated that a minor’s request to see a parent does not necessarily require the absolute cessation of questioning,101 as would be the case with his request to talk to an attorney.102 One result may well be giving constitutional protection only to more sophisticated minors who are aware of their rights. These include, with inevitable exceptions, the well-educated middle and upper-class children, the streetwise, and the experienced older juveniles who have learned the system.

Although a request to speak to a parent apparently does not necessarily negate the voluntariness of a confession, it is presently an open

96. *Id.* at 732 (Powell, J., dissenting).
98. *Id.* at 50.
99. *Id.* at 61 (Clark, J., dissenting).
100. *Id.* at 61-62.
101. 442 U.S. at 725. Although the Court was specifically focusing on a juvenile’s request to see his probation officer, and found such a request not to necessarily require cessation of questioning, the majority suggested, "[I]f it were otherwise, a juvenile's request for almost anyone he considered trustworthy enough to give him reliable advice would trigger the rigid rule of *Miranda.*" *Id.* at 723.
question whether the actions of the parent can waive constitutional rights of a child. In *David Lavelle W. v. California*, certiorari was denied in a *per curiam* decision. The minor was taken to the police station for questioning apparently without probable cause and without an arrest warrant. The minor was taken into custody on instruction from his mother to the police. Justice Marshall dissented to the denial of certiorari: "If petitioner had been five years older when the arrest occurred, there would be no question that the judgment below must be reversed."  

Justice Marshall relied upon the landmark decisions of *Dunaway v. New York* and *Wong Sun v. United States*. He pointed out that a substantial issue was presented to the Court—whether a parent can waive the child's constitutional rights. He stated:

> Essential to this claim is the assumption that a parent's right to guide her child's upbringing includes the authority to waive a constitutional right that the child may have. I find this assumption extremely disturbing for I see no way to cabin its implications. If a parent may, without even consulting the child, waive his constitutional rights, then the police may constitutionally coerce confessions from minors so long as the officers have the parents' consent to their action.

Another case which similarly left a lingering question was *Little v. Arkansas*, where the majority denied certiorari. A minor was convicted of the murder of his father and sentenced to life imprisonment. The mother was the initial suspect who, it developed, was lying next to the father in bed during the crime. In a dissent to the denial of certiorari by Justice Marshall, it was argued that the Court should confront the issue of whether before a minor can waive *Miranda* rights he is entitled to competent advice from an adult possessing no significant conflict of interest. It appears that the *Fare* decision, decided a year after the denial of certiorari in *Little*, implicitly answered Justice Marshall's question in the negative.

The *Fare* Court focused on a totality-of-the-circumstances analysis to decide whether the juvenile's "request for his probation officer or his parents is, in fact, an invocation of his right to remain silent . . . ."

Under the *Fare* approach, there is no threshold inquiry into whether or

104. *Id.* at 1045 (Marshall, J., dissenting).
107. 449 U.S. at 1048-49.
109. *Id.*
110. 442 U.S. at 725.
not opportunity for consultation with an adult has been provided, as was the emphasis in *Gallegos*. Rather, there is an after-the-fact determination of voluntariness based on totality-of-the-circumstances. It appears then that there is no absolute requirement that the minor be given opportunity to consult with an independent adult. As indicated in *Fare*, the rights of the juvenile are the same as those of the adult. The juvenile has the right to consult with counsel and to remain silent.111 The juvenile's request to talk to his probation officer, his parents, or some other independent adult does not necessarily indicate, according to *Fare*, his desire to remain silent or to speak with an attorney. In this instance, placing the minor's rights at the level of an adult's operates to diminish what were perceived to have been greater juvenile rights.112

The voluntariness of a juvenile's confession has been judged uniformly in Illinois by the standard of totality-of-the-circumstances. No one factor creates an absolute requirement that a confession be found involuntary. None of the following by itself requires a finding of involuntariness: police abuse, absence of a parent at interrogation, failure to notify parents that the minor is in custody, minor's drug usage before interrogation, failure to notify minor his case can be transferred to adult court, youth of the minor, or the minor's low I.Q.

The leading case in Illinois is *In re Lamb*,113 a 4-3 decision of the Illinois Supreme Court where the minor was hung up in a cell by handcuffs and allegedly struck by a police officer. The court's finding brings into play not only the rule of totality-of-the-circumstances, but manifest weight of the evidence as the standard of review: "After a full consideration of the totality of the circumstances surrounding respondent's confession, we believe the trial court's finding that it was voluntarily given is clearly not contrary to the manifest weight of the evidence."114

In another case, a minor admitted a rape when answering his father at a police station interrogation.115 The trial court's holding that the confession was voluntary was affirmed. The supreme court found

111. *Id.*
114. *Id.* at 389, 336 N.E.2d at 756.
that "[t]he father's testimony [did] not reveal his being used as a police instrumentality."  

Where a minor smoked marijuana in the afternoon and evening immediately before interrogation, appeared drugged and swore a great deal, but walked properly, the totality-of-the-circumstances test in In re Shutters resulted in upholding the confession. The drugged condition was considered "merely one of the factors." The determination of voluntariness was found not against the manifest weight of the evidence that the defendant knowingly and intelligently waived his right to remain silent.

In People v. Prude, a murder case transferred to adult court, the minor claimed the police's failure to tell him of the possibility of transfer to adult court made his confession involuntary. An additional argument was that though the juvenile knew the victim was shot three times, he did not know the victim had died. Citing Lamb and the totality test, the Illinois Supreme Court in Prude reversed the trial court's suppression of the confession: "We consider, however, that the circumstance that an accused is a juvenile does not of itself require that he be advised he may be prosecuted as if he were an adult before he may knowingly waive his right to remain silent."

**Notification and Presence of Parents**

Section 703-2 of the Juvenile Court Act requires that the arresting officer "shall immediately make a reasonable attempt to notify the parent or other person legally responsible" that the minor is in custody and where he is being held. The statute contains no sanction for noncompliance.

The Illinois Supreme Court held in People v. Steptore that unexplained failure to comply with section 703-2 requirements did not compel suppressing the minor's confession.

The People admit that the officers who arrested and questioned defendant did not comply with section 3-2. The record shows beyond question that defendant, prior to making the statement, was admon-

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116. *Id.* at 185, 290 N.E.2d at 233.
117. 56 Ill. App. 3d 184, 370 N.E.2d 1225 (2d Dist. 1977).
118. *Id.* at 188, 370 N.E.2d at 1228.
119. *Id.* at 190, 370 N.E.2d at 1227.
121. *Id.* at 475, 363 N.E.2d at 373.
122. *Id.* at 477, 363 N.E.2d at 374.
123. *Id.* at 476, 363 N.E.2d at 373.
125. 51 Ill. 2d 208, 281 N.E.2d 642 (1972).
lished in detail with respect to his right to remain silent and to have
counsel immediately available, and that defendant understood the
admonition. Under the circumstances, failure to comply with section
3-2 did not render the statement inadmissible.126

In another decision, People v. Baxtrom,127 the sister of the minor
was told by the arresting officer her brother was being taken into cus-
tody and where he would be. The officer inquired whether the father
was at home and was told he was not. No inquiry was made regarding
the mother. The appellate court stated the police have no “affirmative
duty to scour the city” and need make only a “reasonable attempt to
notify the parents.”128 The police’s efforts to contact the parents are
only one factor in judging the totality-of-the-circumstances determin-
ing the voluntariness of the minor’s confession.129

In the case of a sixteen year old orphan charged with murder,130
no attempt was made to notify a responsible adult. It was argued that a
juvenile could not waive rights without counsel of an adult. Employing
a totality-of-the-circumstances test, the First District Appellate Court
stated: “It is clear that juveniles are not free from police investigation
and the failure to have a parent or guardian present during questioning
of a juvenile does not necessarily render statements made at that time
inadmissible.”131

In In re D. W.S.,132 the appellate court noted “the preferability of
having the parents or other responsible adults present during question-
ing,”133 but found unsuccessful efforts to locate the parents to be suffi-
cient. The minor denied involvement and stated he wished not to
speak with the police officer. Two or two and one half hours later, the
same officer repeated Miranda warnings and resumed interrogation at
a new location.134 Citing Michigan v. Mosley,135 a divided appellate
court ruled that the resumption did not violate the minor’s fifth amend-

126. Id. at 214-15, 281 N.E.2d at 645.
127. 81 Ill. App. 3d 653, 402 N.E.2d 327 (5th Dist. 1980).
128. Id. at 660, 402 N.E.2d at 332 (emphasis in original).
129. Id. The Baxtrom court considered such factors as the officers’ attempt to locate a juvenile
officer, the officers’ duty to investigate crimes, the communication of Miranda warnings, the ability
of the juvenile to understand his rights, the opportunity of the juvenile to contact his parents or
counsel, and the lack of request from the juvenile to have either his parents or attorney present
during questioning. The court concluded that “[t]he question to be resolved is whether the state-
ment was made freely, voluntarily and without compulsion or inducement, of any sort or whether
the appellant’s will was overborne at the time he confessed.” Id. at 661.
131. Id. at 326, 343 N.E.2d at 638.
133. Id. at 1039, 426 N.E.2d at 287.
134. Id. at 1036-37, 426 N.E.2d at 285-86.
ment rights.\textsuperscript{136}

In \textit{In re Bertrand},\textsuperscript{137} the appellate court found that the police did not mislead the minor's father into not coming into the police station and telling the police to proceed with questioning. Nevertheless, the court stated in dictum, "Assuming, arguendo, that police did mislead the father, this cause is not so close as to allow this to be a significant factor in determining the voluntariness of the confession."\textsuperscript{138} Having the parent present was termed "good practice."\textsuperscript{139} However, the court concluded, "[A] juvenile's waiver of rights is not rendered ineffective by failure of his parents to be present."\textsuperscript{140}

\textbf{Age and Mental Disabilities}

The fact of minority does not give the minor immunity from interrogation. The appellate court has held, "[T]he age of the defendant does not ipso facto make a statement inadmissible if it is voluntary."\textsuperscript{141}

In \textit{People v. Simmons},\textsuperscript{142} the Illinois Supreme Court reasoned in a 5-2 decision that a juvenile judge should take "special care in scrutinizing the record"\textsuperscript{143} in determining whether the statement of a "borderline-mentally-retarded boy"\textsuperscript{144} was voluntary. Employing the totality-of-the-circumstances test, the court stated that mental deficiency is a factor in determining voluntariness. Citing \textit{Haley v. Ohio},\textsuperscript{145} a decision later invoked by Justice Marshall's dissenting opinion in the 1980 \textit{Fare v. Michael C.}\textsuperscript{146} opinion, the \textit{Simmons} court found the juvenile court did not use "special care in scrutinizing the record" and remanded the case for rehearing on the motion to suppress.\textsuperscript{147}

Two years after \textit{Simmons}, the appellate court affirmed the juvenile

\textsuperscript{136} 99 Ill. App. 3d at 1038-39, 426 N.E.2d at 287-88.
\textsuperscript{137} 65 Ill. App. 3d 703, 382 N.E.2d 660 (2d Dist. 1978).
\textsuperscript{138} Id. at 705, 382 N.E.2d at 662.
\textsuperscript{139} Id.
\textsuperscript{140} Id.
\textsuperscript{141} In re Morgan, 35 Ill. App. 3d 10, 14, 341 N.E.2d 19, 22 (1st Dist. 1975).
\textsuperscript{142} 60 Ill. 2d 173, 326 N.E.2d 383 (1975).
\textsuperscript{143} Id. at 181, 326 N.E.2d at 387.
\textsuperscript{144} Id. at 181, 326 N.E.2d at 384. A psychiatrist testified at trial that Simmons' I.Q. was 80, a score which placed him in the lowest 20 percentile of the population. Tests also showed Simmons to be quite low in comprehension of social situations, ability to think abstractly and general information.
\textsuperscript{145} 332 U.S. 596 (1948).
\textsuperscript{146} 442 U.S. 707 (1979). \textit{See supra} notes 75-84 and accompanying text.
\textsuperscript{147} 60 Ill. 2d at 181, 326 N.E.2d at 384. Defense counsel had made a motion to suppress an oral statement made by Simmons to a polygraph examiner. The statement was the only testimony offered at trial that defendant had intended to kill rather than frighten the two youths he was charged with murdering. At trial, Simmons had been found guilty by a jury of both murder charges. \textit{Id.} at 175, 326 N.E.2d at 383-84.
court’s finding of voluntariness where one expert testified the minor was functionally illiterate and possessed an I.Q. of 52. The test was totality-of-the-circumstances, though the court cited language from Simmons. The juvenile court’s determination, the appellate court stated, would not be reversed unless it was against the manifest weight of the evidence.

Admissions

The Illinois Supreme Court has ruled in In re Beasley that due process does not require strict adherence by the juvenile court to the requirements for taking a plea under Supreme Court Rule 402. The court considered chapter 37, section 701-2(3) which requires that the minor have the same procedural rights as an adult unless specifically excluded. The court held that the admission must be made “intelligently and voluntarily, though not necessarily in accordance with Rule 402." The Beasley holding was:

[I]t was not necessary that the three minors involved in the present

149. Id. at 290, 364 N.E.2d at 962.
150. Id. at 291, 364 N.E.2d at 962.
152. ILL. REV. STAT. ch. 110A, § 402 (1981). The rule, in pertinent part, requires the judge in adult court to give the following admonitions and make the following determinations:

(a) Admonitions to Defendant. The court shall not accept a plea of guilty without first, by addressing the defendant personally in open court, informing him of and determining that he understands the following:

(1) the nature of the charge;
(2) the minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences;
(3) that the defendant has the right to plead not guilty, or to persist in that plea if it has already been made, or to plead guilty; and
(4) that if he pleads guilty there will not be a trial of any kind, so that by pleading guilty he waives the right to a trial by jury and the right to be confronted with the witnesses against him.

(b) Determining Whether the Plea is Voluntary. The court shall not accept a plea of guilty without first determining that the plea is voluntary. If the tendered plea is the result of a plea agreement, the agreement shall be stated in open court. The court, by questioning the defendant personally in open court, shall confirm the terms of the plea agreement, or that there is no agreement, and shall determine whether any force or threats or any promises, apart from a plea agreement, were used to obtain the plea.

(c) Determining Factual Basis for Plea. The court shall not enter final judgment on a plea of guilty without first determining that there is a factual basis for the plea.

Id. at § 402(a)-(c).
153. The pertinent text of § 701-2(3) is:
(3) In all procedures under this Act, the following shall apply:

a) The procedural rights assured to the minor shall be the rights of adults unless specifically precluded by laws which enhance the protection of such minors.

154. 66 Ill. 2d at 391, 362 N.E.2d at 1027.
appeal be told by the trial judges that their admissions waived their rights against self-incrimination and their rights to confront their accusers, the two Boykin rights that are applicable to juvenile proceedings. It is sufficient to satisfy due process requirements that it be apparent from the record that the minors were aware of the consequences of their admissions; that is, that they understood their rights against self-incrimination, their rights to confront their accusers and their rights to a trial.\textsuperscript{155}

The factual basis of the taking of a plea was the point of controversy in \textit{In re Haggins},\textsuperscript{156} decided by the Illinois Supreme Court. There was no inquiry by the juvenile judge concerning the element of battery regarding “without legal justification.” Such a discrepancy in factual basis was found to be “no violation of due process.”\textsuperscript{157}

Citing \textit{Beasley}, an Illinois appellate court has held that it is not a violation of due process to fail to notify a juvenile that the duration of commitment to the Department of Corrections, Juvenile Division, may last until age twenty-one.\textsuperscript{158} Again, it was held that an admission in juvenile court need not adhere to the strict requirements under Supreme Court Rule 402.\textsuperscript{159}

In \textit{In re Claudio},\textsuperscript{160} a decision raising voluntariness of the admission, the juvenile’s attorney admitted the probation violation on behalf of the juvenile and recited the various rights he had explained to the juvenile. The minor remained silent. The failure of the court to inquire into the minor’s waiver of rights was found not to be a violation of due process. The appellate court stated, however, “\textit{I}t may have been preferable for the trial court to have questioned the minor to establish the knowing and voluntary waiver of rights and to disclose the factual basis.”\textsuperscript{161} In a different case, where the admission to a violation of probation was induced by the judge’s statement that the disposition would not be to the Department of Corrections, a subsequent disposition to the Department of Corrections violated due process.\textsuperscript{162}

Although the decisions permit relative informality in the taking of admissions, the better practice is for the judge to discuss at length with

\textsuperscript{155} \textit{Id.} at 392, 362 N.E.2d at 1027.
\textsuperscript{156} 67 Ill. 2d 102, 364 N.E.2d 54 (1977).
\textsuperscript{157} \textit{Id.} at 107, 364 N.E.2d at 56.
\textsuperscript{159} \textit{Id.}
\textsuperscript{160} 39 Ill. App. 3d 107, 350 N.E.2d 177 (1st Dist. 1976).
\textsuperscript{161} \textit{Id.} at 109, 350 N.E.2d at 178.
\textsuperscript{162} \textit{In re Sturdivant}, 44 Ill. App. 3d 410, 358 N.E.2d 80 (1st Dist. 1976). The court found that due process required either that the judge’s promise to place Sturdivant in a facility other than the Department of Corrections be fulfilled or that the minor be allowed to withdraw his admission. \textit{Id.} at 412, 358 N.E.2d at 81.
the minor his rights, and the possible consequences of waiving his rights within the format of Rule 402.

**Dispositions-Sentences**

Under Illinois law, the juvenile court has jurisdiction over any person under seventeen years of age at the time of the offense and delinquent wardship may remain open until age twenty-one. Juvenile court may entertain a petition for revocation of probation after the minor reaches age seventeen if filed within the probationary period. If filed within the probationary period, the hearing and finding of violation may occur after the period of probation expired. A juvenile under the age of thirteen may not be committed to the Department of Corrections, Juvenile Division. Consequently, one sent to the Department of Corrections just after his thirteenth birthday could theoretically remain there until his twenty-first birthday, or almost eight years later.

Under section 702-2, a delinquent minor is one who violates any federal or state law or municipal ordinance. Consequently, commission of a Class C misdemeanor, punishable in adult court by no more than thirty days, or an ordinance violation carrying no jail sentence, can be the basis of delinquent wardship. As such, it can result in commitment to the Department of Corrections, Juvenile Division. As a practical matter, a minor stands little chance of being committed to the Department of Corrections for a first time disorderly conduct offense. This is especially true in light of the standards for commitment found in section 705-10. Yet, if a minor had an extensive delinquent background, commission of a Class C misdemeanor or an ordinance viola-

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164. Id. at § 705-11.
167. The section states, in pertinent part:
2-2. Delinquent Minor. Those who are delinquent include any minor who prior to his 17th birthday has violated or attempted to violate, regardless of where the act occurred, any federal or state law or municipal ordinance.
168. The standards are set out in § 705-10(1):
(1) When any delinquent has been adjudged a ward of the court under this Act, the court may commit him to the Department of Corrections if it finds that (a) his parents, guardian or legal custodian are unfit or unable, for some other reason than financial circumstances alone, to care for, protect, train or discipline the minor, or are unwilling to do so, and (b) the best interests of the minor and the public will not be served by placement under Section 5-7 [§ 705-7, concerning placement other than with the Department of Corrections].
169. Id. at § 705-10(1).
tion might culminate in commitment to the Department of Corrections. The question then arises whether sentencing a youth for confinement possibly to the age of twenty-one violates due process or equal protection when commission of the same offense by an adult would result in no more than thirty days in the county jail or a fine.

The question was answered by Justice Stevens in United States ex rel. Wilson v. Coughlin,169 a 1973 Seventh Circuit decision. Four juveniles filed petitions for habeas corpus on the basis that they had served more time in the Department of Corrections, Juvenile Division, than authorized by law for adult offenders for comparable offenses. The court stated:

A juvenile delinquent may be incarcerated until his twenty-first birthday, no matter how insignificant the misconduct that resulted in the jurisdictional finding of delinquency, provided that the requisite findings are made at his dispositional hearing, and provided further that he does not demonstrate that his best interests would be served by an earlier release. Thus, a juvenile's indeterminate sentence may be longer than the maximum period of imprisonment for an adult guilty of a like offense. This potential difference in treatment does not invalidate the statutory distinction between adults and juveniles because offsetting benefits generally result in favored treatment for the youthful offender.170

Justice Stevens' observation is well founded. Under juvenile practice, a minor charged in a juvenile court petition with an offense carrying a mandatory sentence in adult court need not receive a mandatory sentence and is eligible for court supervision or probation. If committed to the Department of Corrections, Juvenile Division, such a juvenile would serve no more than that time between his present age and age twenty-one. An exception, of course, arises upon transfer to adult court under section 702-7. Conviction there gives rise to the various sentencing alternatives and determinate sentences of chapter 38.

An exception to the availability of probation or supervision in juvenile court is a disposition under the Habitual Juvenile Offender Act under section 705-12. Though the prosecution under the Act is in juvenile court, the minor is entitled to trial by jury.171 If the State proves its case beyond a reasonable doubt and a third adjudication of delinquent wardship results, the minor must be committed to the Department of Corrections without the possibility of parole, probation or supervi-

169. 472 F.2d 100 (7th Cir. 1973).
170. Id. at 102-03.
171. ILL. REV. STAT. ch. 37, § 705-12(a), (b) (1981).
The statute provides a determinate sentence of confinement to the age of twenty-one along with one day good time for every day served. The supreme court has found the procedure not to violate due process and has granted mandamus against trial courts which found it unconstitutional.\footnote{173}

There has been some movement toward particularity and limitation in the area of juvenile sentencing. For example, Illinois juvenile courts at one time typically placed a minor on juvenile court probation without a specific termination date. Such a practice has been declared void by the Illinois Supreme Court. In \textit{In re Sneed},\footnote{174} the court pointed to section 705-3(1) which states, "The period of probation . . . shall not exceed 5 years or until the minor has attained the age of 21 years, whichever is less."\footnote{175}

The \textit{Sneed} court also stated the following requirements for revocation or extension of probation: "Insofar as we believe sec. 5-3(6) was designed to protect against the loss of liberty without due process, we hold that probation may not be extended or revoked without notice and hearing and a finding that the minor has violated a condition of probation."\footnote{176}

\textbf{Cruel and Unusual Punishment}

In \textit{Eddings v. Oklahoma},\footnote{177} a 5-4 decision in 1982, the United States Supreme Court reversed a death sentence for a sixteen year old convicted of murder. The majority did not ground its decision on a specific eighth amendment basis. The Court stated: "We are concerned here only with the manner of the imposition of the ultimate penalty: the death sentence imposed for the crime of murder upon an emotionally disturbed youth with a disturbed child's immaturity."\footnote{178}

Chief Justice Burger objected because the Court had taken for review the narrow question whether the eighth and fourteenth amendments prohibit a sentence of death on a defendant who was sixteen at the time of the offense.\footnote{179} That question remains unanswered.

\footnote{172} Id. at 705-12(c).
\footnote{173} People ex \textit{rel.} Carey v. Chrastka, 83 Ill. 2d 67, 413 N.E.2d 1269 (1980).
\footnote{174} 72 Ill. 2d 326, 381 N.E.2d 272 (1978).
\footnote{175} \textit{Id}. at 334, 381 N.E.2d at 275 (emphasis in original).
\footnote{176} \textit{Id}. 381 N.E.2d at 275.
\footnote{177} — \textit{U.S. —}, 102 S. Ct. 869 (1982).
\footnote{178} — \textit{U.S. —}, 102 S. Ct. at 877.
\footnote{179} — \textit{U.S. —}, 102 S. Ct. at 879 (Burger, C.J., dissenting).
Double Jeopardy

In Breed v. Jones, decided in 1975, the United States Supreme Court found that trying a juvenile as an adult after adjudicating him a delinquent in juvenile court for the same offense constituted double jeopardy. The Court found that the adjudicatory hearing presented little to distinguish it from "a traditional criminal prosecution." The Court stated:

We do not agree with petitioner that giving respondent the constitutional protection against multiple trials in this context will diminish flexibility and informality to the extent that those qualities relate uniquely to the goals of the juvenile-court system. We agree that such a holding will require, in most cases, that the transfer decision be made prior to an adjudicatory hearing.

The Court observed that were its decision otherwise, the minor would be confronted with the unfortunate choice of cooperating with the juvenile probation officer and thus prejudicing a possible adult prosecution or being uncooperative with the juvenile probation officer and prejudicing a juvenile court disposition.

In Swisher v. Brady, a decision by the United States Supreme Court in 1978, a statutorily created master heard a juvenile case and found the juvenile not responsible. The statute provided that if no exceptions were filed by the State or the juvenile, the master's decision was to be confirmed, modified or remanded by the juvenile judge. The State filed exceptions. Without hearing additional proof, the juvenile court found the juvenile to be responsible, rejecting the findings and recommendations of the master. Chief Justice Burger, speaking for the majority, found that the procedure was not a violation of double jeopardy. The Court reasoned that there was no final decision until the juvenile court judge ruled. In a vigorous dissent by Justice Marshall, joined by Justices Brennan and Powell, the procedure was categorized as double jeopardy or unacceptable continuing jeopardy. Justice Marshall stated that the procedure was akin to a review of a trial court's decision by a reviewing court.

181. Id. at 530.
182. Id. at 535-36.
183. Id. at 540. Relying on Gault, In re Winship and McKeiver, the Court regarded this dilemma as being at odds with the goal that adjudicatory hearings in juvenile court be informal and nonadversarial. Id.
185. Id. at 215.
186. Id. at 222 (Marshall, J., dissenting).
The leading double jeopardy case in Illinois is *In re Vitale*. In *Vitale*, the juvenile pleaded guilty to traffic charges of failing to reduce speed and was fined. On the following day, the States Attorney filed a petition for adjudication of delinquency based upon a charge of involuntary manslaughter. The latter arose out of the same occurrence for which the minor was fined in traffic court. The minor brought a motion to dismiss the juvenile proceedings on the basis of double jeopardy. The motion was granted and the State appealed. The Illinois Supreme Court affirmed the trial court, stating: "So here the two separate statutory offenses of failing to reduce speed and involuntary manslaughter need not be identical, either in their basic ingredients or in their proof to be the 'same' within the double jeopardy clause."

But in another case, where the juvenile court previously made a disposition of a probation violation and subsequently employed the same violation as a basis of commitment to the Department of Corrections, the commitment was reversed on due process grounds.

In a case where the juvenile judge erroneously dismissed the petition for what was a non-fatal variance in pleading, the Second District of the Illinois Appellate Court stated that the judge was in error, but that the error could not be corrected as double jeopardy attached. The court stated, "The doctrine of double jeopardy applies to delinquency proceedings as it does to criminal proceedings."

Proceeding against a minor on a Minor Otherwise in Need of Supervision [MINS] petition has been held to bar the state on double jeopardy.


188. *Id.* at 237, 375 N.E.2d at 90. The United States Supreme Court granted certiorari in 1978 to vacate the judgment and remand the case to the Illinois Supreme Court for a determination by the state court whether its judgment was based on federal constitutional law or state constitutional law. 439 U.S. 974 (1978). After the Illinois court certified its decision was based on federal constitutional law, the Supreme Court once again granted certiorari. 444 U.S. 823 (1979). In a five-four decision, the Court once again remanded the case to the Illinois Supreme Court to determine the relationship, under Illinois law, of the crimes of manslaughter and failure to reduce speed to avoid an accident. 447 U.S. 410 (1980). The majority held that if failure to reduce speed to avoid an accident was an element required to be proved under Illinois law in order to find a person guilty of manslaughter with an automobile, then Vitale could not be subjected to another adjudication because his conviction of the lesser included offense bars his subsequent trial on the greater offense. *Id.* at 421.


191. *Id.* at 1052, 379 N.E.2d at 940.

192. Minor Otherwise in Need of Supervision, ILL. REV. STAT. ch. 37, § 702-3 (1981). The language of § 702-3 read as follows prior to January 1, 1983:

§ 2-3. Minor Otherwise in Need of Supervision. Those otherwise in need of supervision include (a) any minor under 18 years of age who is beyond the control of his parents, guardian or other custodian; (b) any minor subject to compulsory school attendance who is habitually truant from school; and (c) any minor who is an
jeopardy grounds from proceeding on the same facts against the minor on a delinquency petition.\textsuperscript{193} This is an especially significant result, as MINS cases have been uniformly treated as non-criminal in nature.

An Illinois appellate court ruled in \textit{People v. Ray}\textsuperscript{194} that a six month continuance in juvenile court did not preclude the State from petitioning to transfer the case to adult court and prosecuting the minor there. The decision pointed out that the juvenile court “never made a finding of fact as to the allegations in the petition.”\textsuperscript{195} The opinion does not mention whether the lengthy continuance was a disposition of court supervision under section 704-7. Clearly, if the juvenile judge hears evidence and finds the minor responsible, a subsequent placing of the minor on section 704-7 supervision is a disposition and double jeopardy attaches. Under \textit{Breed v. Jones},\textsuperscript{196} hearing of any evidence at the adjudicatory hearing, or taking of an admission, with nothing more, creates jeopardy.\textsuperscript{197} Section 702-7(3) reflects the judicial rule: “Taking of evidence in an adjudicatory hearing in any such case is a bar to criminal proceedings based upon the conduct alleged in the petition.”\textsuperscript{198} Where no evidence is taken at an adjudicatory hearing and no admission is taken, the granting of section 704-7 supervision may not create jeopardy. This clearly would be the result under \textit{Ray}. However, the Illinois Supreme Court held in 1982\textsuperscript{199} that placing a juvenile on section 704-7 supervision can be a disposition if the substantial result is to place the minor on “conditional discharge.”\textsuperscript{200} That rationale might well create jeopardy and render \textit{Ray} anachronistic.

\textit{People v. Smith}\textsuperscript{201} presents an interesting factual situation. Smith was charged in adult court with armed robbery but was convicted of misdemeanor theft and other misdemeanor charges. It developed that the defendant was a minor and had lied about his age. The conviction was vacated and the case sent to juvenile court. In turn, the juvenile court transferred the case to adult court under section 702-7. The minor was convicted of armed robbery in adult court. The Illinois addict, as defined in the “Drug Addiction Act”; and (d) on or after January 1, 1974, any minor who violates a lawful court order made under this Act. MINS jurisdiction is repealed as of January 1, 1983, and is replaced by Minor Requiring Authoritative Intervention jurisdiction. S.B. 623, § 2-3, 82d Gen. Ass. (1982).
195. \textit{Id}. at 749, 366 N.E.2d at 961.
197. Sims v. Engle, 619 F.2d 598 (6th Cir. 1980).
200. \textit{Id}. at 128, 435 N.E.2d at 476.
201. 59 Ill. 2d 236, 319 N.E.2d 760 (1974).
Supreme Court held, "Under these circumstances defendant cannot complain that he has been subjected to double jeopardy." However, the conviction for armed robbery was reversed on the basis that the charge was *nolle prosequied* in the first adult court proceeding. It appears that the first adult proceeding, procured as it was by the minor's concealing his age, did not bar a new trial but did limit the range of offenses for which the minor could be convicted.

In a hearing on a motion to transfer a juvenile to adult court, the juvenile court's denial of that motion may set the stage for double jeopardy. A subsequent adjudicatory hearing in juvenile court creates jeopardy under *Breed v. Jones*. Thus, the State's going forward at the adjudicatory hearing bars the juvenile's prosecution in criminal court, which the State preferred, and makes mandatory determinate sentences and other consequences of adult court unavailable. It is at this point that the State must consider an interlocutory appeal.

The Illinois Supreme Court has ruled that the interlocutory decision not to transfer to adult court is appealable and that juvenile court proceedings may be stayed in the interim. The court's recent rulings to this effect place such a case in undetermined status during the pendency of appeal. If proceedings are stayed, the case may not proceed in juvenile court and it may not proceed in adult court because of the juvenile court's refusal to transfer.

The prosecution argued unsuccessfully in *People v. Boclaire* that section 702-7 violates the separation of powers doctrine because the court's decision determined in which court the States Attorney could prosecute. Also analogous is *People v. Woodward,* in which the appellate court found that there was no constitutional right of the minor to prosecution in juvenile court, but "where a minor is so prosecuted he is entitled to the fundamental requirements of due process."

Denial of a motion to transfer was held not an abuse of discretion where the minor was charged with murder and was in need of long

202. *Id.* at 241, 319 N.E.2d at 763.
203. *Id.* at 241-42, 319 N.E.2d at 763-64.
204. People *ex rel.* Davis v. Vasquez, 92 Ill. 2d 132, 441 N.E.2d 54 (1982); People v. Martin, 67 Ill. 2d 462, 367 N.E.2d 1329 (1977). However, the juvenile court's interlocutory decision permitting transfer to adult court remains unappealable. People v. Taylor, 76 Ill. 2d 289, 391 N.E.2d 366 (1979); People v. Jiles, 43 Ill. 2d 145, 251 N.E.2d 529 (1969). In People *ex rel.* Davis v. Vasquez, the court stated, "In *People v. Taylor* (1979), 76 Ill. 2d 289, this court reaffirmed the holding in *Jiles* that the minor has no right to an immediate appeal of an order permitting transfer to adult court." 92 Ill. 2d at 141, 441 N.E.2d at 57.
207. *Id.* at 354, 395 N.E.2d at 1205.
term psychiatric treatment. The juvenile court judge stated that the purpose of the adult Department of Corrections was to punish and not rehabilitate. The State unsuccessfully argued that the statement violated the separation of powers doctrine by being an unconstitutional exercise of legislative authority by a judge.

Recent Legislation

Much of the foregoing discussion is greatly affected by recent legislation removing certain offenses from juvenile court jurisdiction. Section 702-7 was amended in the summer of 1982 to read under subsection (6)(a), “The definition of delinquent minor under section 2-2 of this Act shall not apply to any minor who at the time of an offense was at least 15 years of age and who is charged with murder, rape, deviate sexual assault or armed robbery when the armed robbery was committed with a firearm.” Thus, the States Attorney can select juvenile court or adult court by virtue of which charges he prefers. Initiating the prosecution in adult court eliminates both the need to seek transfer from juvenile court and, in the event of denial of the transfer request, the subsequent attachment of jeopardy in an undesired forum.

Offenses not specifically excluded remain in juvenile court. It would appear, for example, that charging only robbery, rather than armed robbery with a firearm, leaves the case in juvenile court and requires the state to petition for transfer under section 702-7. It should also be noted that certain mandatory sentence offenses have not been excluded from juvenile court jurisdiction. These include aggravated kidnapping, heinous battery, aggravated arson, home invasion, treason, armed violence with a firearm, and residential burglary. These remain in juvenile court and can be transferred only in accordance with section 702-7.

Confidentiality of Juvenile Proceedings

As mentioned in the McKeiver decision, were the minor to have a trial by jury, such a right could lead to a public hearing which would defeat the confidentiality intended by the juvenile court proceedings. In Illinois, the court records of the minor must be kept confidential and not divulged even to victims except where the minor has been adjudic-

209. Id. at 212, 435 N.E.2d at 907.
cated a delinquent and where "specific court approval" is given. 212 Records of law enforcement officers may not be opened for public inspection except as provided in several exceptions set forth in section 702-8. 213

A juvenile court may order photographs, fingerprints and other law enforcement records expunged. Initially, this was accomplished through "inherent equitable authority" 214 and is now accomplished by statutory authorization under section 702-10.

The confidentiality of juvenile information does not prohibit impeachment of a witness who has been adjudicated a delinquent ward. In People v. Norwood, 215 the Illinois Supreme Court stated: "In our opinion this statute is not to be construed as prohibiting access to the records of juvenile delinquents when those records are sought in order to impeach the credibility of the juvenile as a witness by showing a possible motive for testifying falsely." 216 A 1982 revision to section 702-10 similarly permits such impeachment. "Evidence and adjudications" in delinquency cases are also admissible in criminal bail or fitness matters and civil proceedings arising out of the incident giving rise to the juvenile proceedings. 217

First amendment rights of the media have come into play in a conflicting role with the juvenile's right of anonymity. Two decisions of the United States Supreme Court have ruled in favor of the media's first amendment positions. In Smith v. Daily Mail Publishing Company, 218 a newspaper published the name of a juvenile charged with murder in a juvenile court proceeding. A statute made publishing of the name of a juvenile offender a misdemeanor. The statute was found unconstitutional because the State's interest in protecting the minor's anonymity was outbalanced by the media's first amendment rights. 219

In Oklahoma Publishing Company v. District Court, 220 the press was present at a minor's hearing and published his name. As he left the court building, his picture was taken. Thereafter, the juvenile court enjoined the media from publishing or broadcasting the name or pic-

213. These exceptions would include court order, after institution of criminal proceedings under section 702-7, for a pre-sentence investigation after conviction of a crime, and on application for probation. Ill. Rev. Stat. ch. 37, § 702-8(3) (1981).
215. 54 Ill. 2d 253, 296 N.E.2d 852 (1973).
216. Id. at 257, 296 N.E.2d at 854.
219. Id. at 104-05.
ture of the minor. The United States Supreme Court held that the order constituted a prior restraint such as was barred in *Nebraska Press Association v. Stuart*.

Emphasizing that the name and picture were "publicly revealed" and not unlawfully obtained, the Court concluded that the order violated the first amendment. The media is specifically authorized by statute to be present at Illinois juvenile proceedings.

The trend is clearly toward diminished juvenile court confidentiality. The legislature's 1982 amendments to section 702-8 through section 702-10 make juvenile records accessible to many agencies for many different purposes. Only extraordinary facts will permit juvenile confidentiality, which is not a constitutionally protected right, to outbalance highly valued first amendment rights.

**Conclusion**

Today's juvenile court requires not only the "stalwart, protective, and communicating figure," but also a judge who is versed in constitutional and criminal law. Fulfilling responsibilities under these two roles compels the judge to switch from one mental process to another many times during his day in juvenile court. In his role as protector of the best interests of the minor, it may become apparent to him that certain services are necessary for the minor and the minor's family. But the court does not have occasion to order the services when a motion to suppress is granted or the State fails to prove the minor responsible beyond a reasonable doubt.

Though a culpable minor's "beating the system" undermines the rehabilitative process, dismissal of his case may be required on constitutional or evidentiary grounds. In this respect, post-*Gault* emphasis upon guaranteeing due process rights has become a less than trusting partner of the stated pre-*Gault* emphasis of benevolent concern and protection. Often, the objectives of one orientation conflict with those of the other.

222. 430 U.S. at 311-12.
224. People v. Jiles, 43 I11. 2d 145, 251 N.E.2d 529 (1969). The Illinois Supreme Court stated:

While there would probably be almost universal agreement that it is desirable for a State to maintain a juvenile court and to establish special facilities for the treatment of a separate category of 'juvenile delinquents,' we are aware of nothing in the constitution of the United States or of this State that requires a State to do so.

Id. at 148, 251 N.E.2d at 531. If access to a system of juvenile courts is not constitutionally required, then, impliedly, the special protections offered by statutes enacting such systems, e.g., juvenile confidentiality, are not constitutionally preserved.
The fifteen years since *Gault* have seen a balancing between infusing due process rules into the juvenile court process to make it more fair and less subject to abuse, and eschewing certain due process rules that make it overly adversarial. The decisions regarding standard of proof, pleadings, dispositions and double jeopardy demonstrate due process has taken firm hold in juvenile court. The decisions regarding bond, jury trial and public trial illustrate an effort to avoid "traditional delay, formality, and the clamor of the adversary system" and continue juvenile court as a workshop seeking to redirect and rehabilitate minors. The result is a hybrid requiring juvenile court to consider and protect diverse rights.

The perception of juvenile court has changed dramatically from the time of *Gault* to the present. The view of Justices Fortas and Douglas at the time of *Gault* was that juvenile court was at best an incompetent bungler and at worst an oppressor of the juveniles whose rights it was obliged to protect. More recently, the United States Supreme Court in *Fare* commented that today's juvenile court is particularly well equipped to protect the minor's rights in considering voluntariness of confessions. The improvement in expertise often produces new criticism that juvenile court is too protective of juvenile offenders.

Due process has likewise undergone many modifications in the fifteen years since *Gault*. In 1966, *Miranda v. Arizona*[^225] and *Mapp v. Ohio*[^226] appeared to be at the forefront of further expansion of accuseds' rights. However, the passing of fifteen years has demonstrated the narrowing and refining of those rights. The decisions pertaining to confessions of minors reflect that direction. *Gallegos v. Colorado* and *Haley v. Ohio*, cited prominently in Justice Fortas' opinion in *Gault*, are more recently cited by the dissent in *Fare*.

The legislature's withdrawal of certain offenses from juvenile court jurisdiction demonstrates that juvenile court is recognized as advantageous to the minor and that its consequences are perceived as disproportionate to the seriousness of the excluded offenses. Juvenile court remains apart from class X and other determinate sentencing, save that created under the special circumstances specified by the Habitual Juvenile Offender Act. The maximum loss of freedom continues to be to age twenty-one. Many significant alternatives to incarceration have been developed since *Gault's* challenge that juvenile court become genuinely oriented toward rehabilitation as well as protective of due pro-

cess rights. As a result, little use is made of the juvenile's absolute right to transfer his case to adult court. Were the *Gault* Court sitting today, it might well recognize that juvenile court is presently the minor's best choice for fair treatment and rehabilitation.
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