

2000

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Recommended Citation

Daniel E. Traver, *The Wrong Answer to a Serious Problem: A Story of School Shootings, Politics and Automatic Transfer*, 31 Loy. U. Chi. L. J. 281 (2000).

Available at: <http://lawcommons.luc.edu/lucj/vol31/iss2/6>

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Comment

The Wrong Answer to a Serious Problem: A Story of School Shootings, Politics and Automatic Transfer

I. INTRODUCTION

A recent string of school shootings has captured the attention of America.¹ The epidemic began in Pearl, Mississippi, when a sixteen-year-old boy walked into his high school, approached his ex-girlfriend, pulled out a rifle, and began shooting.² He killed two students, including his ex-girlfriend, and wounded seven others.³ In West Paducah, Kentucky, a fourteen-year-old's assault on an early morning prayer circle in a high school lobby left three dead and five wounded.⁴ In Jonesboro, Arkansas, an eleven-year-old and a thirteen-year-old boy pulled a fire alarm and shot at those exiting the building, taking the lives of four students and one teacher.⁵ In Springfield, Oregon, a freshman boy calmly walked into the school's cafeteria and killed two of his classmates, wounding nineteen others.⁶ Most shockingly, two seniors at

1. See Bob Greene, *Storms Whose Paths No One Can Track*, CHI. TRIB., Sept. 22, 1999, § 5, at 1.

2. See *Teen Accused of Killing 2, Wounding 7 at High School*, CHI. TRIB., Oct. 2, 1997, § 1, at 5 [hereinafter *Teen Accused of Killing 2*]. The gunman stabbed his mother to death before going to Pearl High School and opening fire. See *id.* He was tried and convicted of murder as an adult and is currently serving three life sentences. See *Teen Found Guilty of Killing 2 Classmates in Rampage*, CHI. TRIB., June 13, 1998, § 1, at 3 [hereinafter *Teen Found Guilty of Killing 2*].

3. See *Teen Accused of Killing 2*, *supra* note 2, at 5; *Teen Found Guilty of Killing 2*, *supra* note 2, at 3.

4. See *2 Slain, 6 Wounded at High School: Teen Calmly Opens Fire on Students in Kentucky*, CHI. TRIB., Dec. 2, 1997, § 1, at 3. The gunman was charged with three counts of murder and six other counts related to the shooting at West Paducah High School. See *25 Years Without Parole for Teen Who Killed 3 at School*, CHI. TRIB., Dec. 17, 1998, § 1, at 5. He was tried and sentenced as an adult to life in prison. See *id.* He will be eligible for parole in 2023. See *id.*

5. See Julie Deardorff, *4 Pupils, Teacher Die in Schoolyard Ambush*, CHI. TRIB., Mar. 25, 1998, § 1, at 1. The two shooters were tried as juveniles and sentenced to a state juvenile home for committing the shootings at Westside Middle School. See Julie Deardorff, *2 Young Jonesboro Killers Confined to Juvenile Center*, CHI. TRIB., Aug. 12, 1998, § 1, at 1. They will be released on their 21st birthdays. See *id.*

6. See Robert Kaiser & V. Dion Haynes, *Teenager Opens Fire in Oregon High School: Police Find Parents Dead at Boy's Home After Spree*, CHI. TRIB., May 22, 1998, § 1, at 1. The gunman killed both his parents before entering Thurston High School with three guns and opening fire.

Columbine High School in Littleton, Colorado, conducted an intricately planned massacre, which resulted in the deaths of twelve students, one teacher, and the two gunmen, and injuries to over twenty other students.⁷ The American public reacted to these incidents with disbelief, outrage, and calls for the severe punishment of future violent school offenders.

Responding to these demands, legislatures across the nation proposed new laws intended to prevent school violence by creating harsher punishments for future offenders.⁸ On June 4, 1999, less than six weeks after the Littleton tragedy, Illinois Governor George Ryan targeted these concerns by signing legislation amending the Juvenile Court Act ("Act").⁹ The Act dictates the legal treatment of Illinois' delinquent minors.¹⁰ The bill amended the jurisdictional section of the Act to permit the criminal prosecution of fifteen-year-olds charged with aggravated battery with a firearm in a school setting.¹¹ The new law removes juveniles charged with this crime from the jurisdiction of

See Oregon Teen Admits Murdering 4; Killer of Students, Dad, Mom Could Earn Parole, CHI. TRIB., Sept. 25, 1999, § 1, at 8. He recently pled guilty to four counts of murder and awaits sentencing. *See id.*

7. *See* Judith Graham et al., *Massacre Shatters School – "A Suicide Mission": 2 Gunmen in Black Leave Possibly 25 Dead*, CHI. TRIB., Apr. 21, 1999, § 1, at 1 [hereinafter Graham et al., *Massacre Shatters School*]. The massacre at Columbine High School captivated the nation. *See* Greene, *supra* note 1, at 1. The two seniors, armed with several weapons each, including an illegal automatic pistol and dozens of homemade explosives, walked from room to room as they shot their classmates. *See* Judith Graham et al., *Police Find Arsenal in Devastated School: Guns, Bombs and Bodies Strewn Through Library, Hallways*, CHI. TRIB., Apr. 22, 1999, § 1, at 1 [hereinafter Graham et al., *Police Find Arsenal in Devastated School*]. Both committed suicide before the police could apprehend them. *See id.*

8. *See, e.g.*, ARK. CODE ANN. § 9-27-501 (Michie 1999) (introducing the notion of "blended sentencing" in Arkansas, which allows a judge to impose a criminal sentence on a juvenile that will take effect if the terms of a juvenile sentence are violated); KY. REV. STAT. ANN. ch. 493 § 1-18 (Michie Supp. 1998) (passing a "Safe Schools Act," which allocated funding for violence prevention programs); MISS. CODE ANN. § 97-3-19 (1998) (making murder on educational property a capital offense); *see also* Richard Wolf, *States Act After School Shootings: Some Focus on Prevention; Others Pass Get-Tough Laws*, USA TODAY, May 4, 1999, at 3A (describing legislation passed by Arkansas, Kentucky, and Mississippi in response to high-profile school shootings in those states and discussing proposed legislation in Oregon); *infra* Part II.B (discussing blended sentencing).

9. *See* Act of June 4, 1999, Pub. Act No. 91-15, sec. 5, § 405/5-130(a), 1999 Ill. Legis. Serv. 125, 126 (West) (to be codified at 705 ILL. COMP. STAT. 405/5-130(a)); *see also* Lisa Black, *New Laws Target School Violence: Ryan Signs Bills To Increase Security*, CHI. TRIB., June 5, 1999, § 1, at 6.

10. *See* 705 ILL. COMP. STAT. ANN. 405/5-101 to 5-915 (West 1999). Under the Act, juveniles are tried in Juvenile Court, where a determination is made whether or not a child is a delinquent minor. *See id.* These proceedings are not criminal in nature but are designed to serve a rehabilitative function. *See id.*

11. *See* Act of June 4, 1999, § 405/5-130(a).

juvenile court by means of an automatic transfer provision.¹² Under an automatic transfer provision, transferred minors appear in criminal court based solely on the offense with which they are charged and their age at the time of the offense.¹³ The current legislation, passed with the intent to prevent further school shootings,¹⁴ adds the crime of aggravated battery with a firearm to the other transfer crimes, which include murder, deviant sexual assault and armed robbery.¹⁵

This Comment will chronicle the history of transfer laws in Illinois in light of the goals established by the Illinois Juvenile Court,¹⁶ as well as recent amendments to the Juvenile Court Act that do not involve transfer provisions.¹⁷ Further, this Comment will describe recent studies that analyze the inefficacy of automatic transfer laws, including the new Illinois legislation.¹⁸ This Comment will next discuss the reasoning behind the passage of this particular amendment,¹⁹ and it will analyze the soundness of these reasons.²⁰ Finally, this Comment will argue that the legislature should repeal the amendment in favor of the recent and already existing amendments to the Juvenile Court Act.²¹

12. *See id.* There are four types of transfer provisions discussed in this Comment. The first is discretionary transfer or judicial waiver (hereinafter "judicial transfer"), which allows a juvenile court judge to transfer cases to criminal court on a case-by-case basis. *See* Act of June 4, 1999, Pub. Act No. 91-15, sec. 5, § 405/5-805(3), 1999 Ill. Legis. Serv. 125, 131 (West) (to be codified at 705 ILL. COMP. STAT. 405/5-805(3)). The second is automatic transfer, also referred to as mandatory transfer or legislative transfer (hereinafter "automatic transfer"), which provides guidelines for transfer by statute, based on the age of the accused and the crime charged. *See id.* § 405/5-805(2). The current Illinois legislation, which is the focus of this Comment, is an automatic transfer statute. *See id.* § 405/5-130. The third is presumptive transfer, which shifts the burden of proof to the accused juvenile to avoid being tried in criminal court. *See id.* § 405/5-805(2). The fourth type of transfer is prosecutorial transfer method, or direct-file (hereinafter "direct-file"). *See* Lisa A. Cintron, Comment, *Rehabilitating the Juvenile Court System: Limiting Juvenile Transfers to Adult Criminal Court*, 90 NW. U. L. REV. 1254, 1269 (1996). Illinois has no provision for direct-file transfer. *See id.* at 1270 n.115. This gives the prosecutor unchecked discretion as to whether to try the accused child as a juvenile or an adult. *See id.* at 1269.

13. *See* Act of June 4, 1999, § 405/5-130(a).

14. *See* S.B. 759, 44th Legis. Day 4-5 (Ill. 1999) (comments of Rep. Parke); *see also infra* Part III.B (discussing the role of the Columbine High School massacre in the passage of the recent legislation).

15. *See* Act of June 4, 1999 § 405/5-805, 1999 Ill. Legis. Serv. 125, 130 (West) (to be codified at 705 ILL. COMP. STAT. 405/5-805) (detailing the types of transfer offenses); *id.* § 405/5-130 (listing the offenses that result in automatic transfer).

16. *See infra* Part II.A.

17. *See infra* Part II.B.

18. *See infra* Part II.C.

19. *See infra* Parts III.A-B.

20. *See infra* Part IV.

21. *See infra* Parts IV-V.

II. BACKGROUND

The question of whether a child should be tried in juvenile court or criminal court has been a century-long dilemma in Illinois.²² Automatic transfer provisions are one means by which juvenile offenders have been tried as adults.²³ While the recent Juvenile Justice Reform Act of 1998 ("JJRA") has provided other alternatives,²⁴ and empirical studies have suggested their general inefficacies,²⁵ automatic transfer provisions continue to predominate.

A. *History of Transfer Laws in Illinois*

A group of social reformers that included politicians, lawyers, and social workers founded the Illinois Juvenile Court over one hundred years ago.²⁶ This group advocated for a separate court system for juveniles, arguing that the legal system should treat children differently than adults.²⁷ The legislature passed the first Juvenile Court Act to reflect this goal in 1899.²⁸ Before the establishment of the first Juvenile Court, children regularly faced the harsh conditions of adult prisons.²⁹

22. See *infra* Part II.A.

23. See *infra* Part II.A.1-3.

24. See *infra* Part II.B.

25. See *infra* Part II.C.

26. See Illinois Juvenile Court Act, 1899 Ill. Laws 131 (codified as amended at 705 ILL. COMP. STAT. ANN. 405/1 (West 1999)). The Act provided:

Or if the child is found guilty of any criminal offense and the judge is of the opinion that the best interest requires it, the court may commit the child to any institution within said county incorporated under the laws of this State for the care of delinquent children In no case shall a child be committed beyond his or her minority.

Id. at 134; see also David S. Tanenhaus, *The Evolution of Transfer Out of the Juvenile Court*, in THE CHANGING BORDERS OF JUVENILE JUSTICE: TRANSFER OF ADOLESCENTS TO THE CRIMINAL COURT 1, 7-8 (Jeffrey Fagan & Franklin E. Zimring eds.) (forthcoming 2000) (citing STEVEN L. SCHLOSSMAN, LOVE AND THE AMERICAN DELINQUENT: THE THEORY AND PRACTICE OF "PROGRESSIVE" JUVENILE JUSTICE 49-54 (1977)).

27. See Tanenhaus, *supra* note 26, at 8-10.

28. See Illinois Juvenile Court Act, 1899 Ill. Laws 131.

29. See Steven A. Drizin, *Net of "Automatic Transfer" Growing Too Wide*, CHI. DAILY L. BULL., Apr. 24, 1999, at 1. One of the founders of the Illinois Juvenile Court, Mrs. Lucy L. Flower, related "many pitiful cases of little children confined in the police stations or the jails and of one boy, in the former place, who had been bitten by rats." See Mrs. Joseph T. Bowen, *The Early Days of the Juvenile Court*, in THE CHILD THE LAW AND THE COURT (New Republic 1925), reprinted in *The First Juvenile Court in Chicago (Cook County), Illinois, 1899-1900*, in JUVENILE OFFENDERS FOR A THOUSAND YEARS 450 (Wiley B. Sanders ed., 1970). Conditions in North Carolina prisons from 1869-1899 were similarly troubling:

As a general thing our jails are miserably constructed, and there is little or no attention paid to the division and classification of prisoners. Every offender, or even one accused of crime—the boy of twelve, put in for a street fight, or some slight misdemeanor, and the hardened criminal, deep dyed in infamy, are all thrown together in

The Act changed the punitive focus of the legal system regarding juveniles and stressed the goal of rehabilitation.³⁰ For various reasons, however, Juvenile Court judges and legislators perceived that the court was ill-suited to hear some juvenile cases.³¹ Consequently, both the Juvenile Court and the Illinois General Assembly created provisions that transferred jurisdiction over the delinquent minor to the criminal court in certain situations.³²

The history of Illinois transfer provisions can be divided into three phases.³³ The first phase illustrates the early history of transfer and the motivations behind it.³⁴ This phase begins with the founding of the Illinois Juvenile Court in 1899 and ends in 1966 with the United States Supreme Court's landmark decision on judicial waiver in *Kent v. United States*.³⁵ The second phase reflects the change in the state's preference from judicial waiver to automatic transfer.³⁶ This phase begins with the

filth and idleness, thereby making the jail a seminary of crime and corruption.

First Annual Report of the Board of Public Charities of North Carolina, Feb. 1870 (Raleigh, 1870), reprinted in *Delinquent Children in North Carolina, 1869-1899*, in *JUVENILE OFFENDERS FOR A THOUSAND YEARS* 410 (Wiley B. Sanders ed., 1970) [hereinafter "*First Annual Report*"].

30. See Julian W. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 107 (1909). Mack was one of the first Juvenile Court judges in Cook County. See *id.* He stated that in delinquency proceedings, a judge should act "as a wise and merciful father handles his own child whose errors are not discovered by the authorities." *Id.* Mack stressed that the focus was not to be on the offense committed, but that the judge was to concern himself with the juvenile himself or herself, "physically, mentally, (and) morally." See *id.*; see also Illinois Juvenile Court Act, 1899 Ill. Laws 137 (codified as amended at 705 ILL. COMP. STAT. 405/1 (West 1999)). This portion of the Act states:

This act shall be liberally construed to the end that its purpose may be carried out, to wit: That the care, custody and discipline of a child shall approximate as nearly as may be that which should be given by its parents, and in all cases where it can properly be done, the child be placed in an improved family home and become a member of the family by legal adoption or otherwise.

1899 Ill. Laws. 131, 137. Alternatively, the current version of the Act instructs judges:

[T]o secure for each minor subject hereto such care and guidance, preferably in his or her own home, as will serve the safety and moral, emotional, mental, and physical welfare of the minor and the best interests of the community; to preserve and strengthen the minor's family ties whenever possible, removing him or her from the custody of his or her parents only when his or her safety or welfare or the protection of the public cannot be adequately safeguarded without removal.

705 ILL. COMP. STAT. ANN. 405/1-2.

31. See *infra* Parts II.A.1-3 (illustrating various reasons the Juvenile Court was unfit for deciding certain juvenile cases).

32. See *infra* Parts II.A.1-3 (explaining the development of transfer provisions).

33. See *supra* note 12 (describing the different types of transfer provisions in Illinois).

34. See *infra* Part II.A.1 (describing the early history of transfer and the reasoning behind it).

35. *Kent v. United States*, 383 U.S. 541 (1966).

36. See *infra* Part II.A.2 (illustrating how judicial waiver allows the Juvenile Court judge to exercise discretion on whether or not the accused juvenile will be transferred to criminal court,

Kent decision and continues until the passage of the first Illinois automatic transfer law in 1982.³⁷ Finally, the third phase chronicles the rapid growth of Illinois' automatic transfer laws from 1982 to the present and the judicial challenges to these provisions.³⁸

1. Growing Pains: 1899-1966

An overload of children in the Juvenile Court system during the first few years of its existence led to a controversy over who belonged in Juvenile Court versus who belonged in criminal court.³⁹ State prosecutors and Juvenile Court judges disagreed over the extent of the Juvenile Court's jurisdiction.⁴⁰ While the Act dictated that Juvenile Court judges had original and exclusive jurisdiction over all juvenile offenders, state prosecutors insisted on trying serious juvenile offenses, such as armed robbery, in criminal court.⁴¹ Due to this conflict, the Illinois Juvenile Court often failed to exercise its broad right of original and exclusive jurisdiction⁴² over children under the age of seventeen in

while automatic transfer provisions send a juvenile to criminal court based solely on their age and the alleged crime committed).

37. See *infra* Part II.A.2 (describing the effect of the *Kent* decision and the passage of the first automatic transfer law in Illinois).

38. See *infra* Part II.A.3 (analyzing the recent developments in Illinois' automatic transfer laws and the challenges to these laws).

39. See Tanenhaus, *supra* note 26, at 12.

40. See Drizin, *supra* note 29, at 1.

41. See Tanenhaus, *supra* note 26, at 12-13.

42. See *id.* at n.17. Until 1905, Juvenile Court did not have original jurisdiction over children's cases. See *id.* at n.16. The presiding judge of the Juvenile Court had to meet with city officials and request transfer of children's civil and criminal cases to Juvenile Court. See *id.* at 13 n.16. The 1905 amendment to the Juvenile Court Act created a broad original jurisdiction for the Court. See 1905 Ill. Laws 83 (1905). The jurisdictional guidelines included:

[A]ny male child under the age of seventeen years or any female child under the age of eighteen years who violates any law of this State or any city or village ordinance; or who is incorrigible; or who knowingly associates with thieves, vicious or immoral persons; or, who, without just cause and without the consent of its parents or custodian, absents itself from its home or place of abode, or who is growing up in idleness or crime; or who knowingly frequents a house of ill-repute; or who knowingly frequents any policy shop or place where any gaming device is operated; or who frequents any saloon or dram shop where intoxicating liquors are sold; or who patronizes or visits any public pool room or bucket shop; or wanders about the streets in the night time without being on any lawful business or occupation; or who habitually wanders about any railroad yards or tracks or jumps or attempts to jump onto any moving train; or enters any car or engine without lawful authority; or who habitually uses vile, obscene, vulgar, profane or indecent language; or who is guilty of immoral conduct in any public place or about any school house. Any child committing any of these acts herein mentioned shall be deemed a delinquent child and shall be proceeded against as such in the manner hereinafter provided.

Tanenhaus, *supra* note 26, at 12 n.17.

cases where the child was accused of a serious crime or was on probation.⁴³ Specifically, Illinois Juvenile Court judges often “passively” transferred controversial or significant cases to criminal court by refusing to exercise their jurisdictional rights over the minor in the early years of the Juvenile Court system.⁴⁴ When judges actively chose to transfer a delinquent minor to criminal court, the primary motive was not the harsher punishment for the alleged offender.⁴⁵ Rather, these judges transferred more dangerous juveniles to protect other delinquent children from older and more violent offenders.⁴⁶ During this phase, the Juvenile Court deemed such active transfers to be a rare and extreme measure.⁴⁷

In the years following World War II, widespread public fears of a juvenile crime wave made transfer more popular and acceptable.⁴⁸ Legal scholars blamed this crime wave on the flawed rehabilitative purpose of the juvenile justice system and argued that this purpose should be replaced with more punitive measures.⁴⁹ Transfer laws rebutted the criticism that juvenile courts were too lenient.⁵⁰ Studies revealed that while most judges still opposed transfer, the punitive

43. See Tanenhaus, *supra* note 26, at 13 (citing HELEN R. JETER, THE CHICAGO JUVENILE COURT 15 (1922)). Judges feared that if they asserted jurisdiction over serious crimes, such as armed robbery or murder, the constitutionality of the Juvenile Court’s jurisdiction would be called into question. See *id.* If this happened, the judges feared that they would only be allowed concurrent jurisdiction, which would make any child over the age of ten eligible for a criminal trial. See *id.* at 13-14.

44. See *id.* at 15. A “passive transfer” resulted from the Juvenile Court judge’s decision not to exercise jurisdiction of a minor who, by definition, fell within the court’s jurisdictional reach. See *id.* By doing nothing, the judge allowed the child to be tried in criminal court. See *id.*

45. See Drizin, *supra* note 29, at 1.

46. See *id.* Judge William Pritchett aptly stated this philosophy in 1911 when he said:

A child, a boy especially, sometimes becomes so thoroughly vicious and is so repeatedly an offender that it would not be fair to the other children in a delinquent institution who have not arrived at this age of depravity and delinquency to have to associate with him. On very rare and special occasions, therefore, children are held over on a *mitimus* to the criminal court.

Id.

47. See Tanenhaus, *supra* note 26, at 19 (citing HELEN R. JETER, THE CHICAGO JUVENILE COURT 89 (1922)). During the 1920s and 1930s, the percentage of boys transferred by Juvenile Court judges was usually less than 1% per year. See *id.* Between 1915 and 1919, only 70 out of 11,799 cases were transferred. See *id.* All cases involved repeat offenders over the age of sixteen or first-time offenders very near the age of seventeen. See *id.*

48. See *id.* at 29 (citing JAMES GILBERT, CYCLE OF OUTRAGE: AMERICA’S REACTION TO THE JUVENILE DELINQUENT IN THE 1950S 1 (1986)).

49. See *id.*

50. See Elizabeth E. Clarke, *A Case For Reinventing Juvenile Transfer*, 47 JUV. & FAM. CT. J. 1, 7 (1996).

political climate unduly influenced judges' decisions.⁵¹ Judges made transfer decisions based on reasons that contravened the intent of the Juvenile Court Act.⁵² In this atmosphere of heightened public anxiety concerning the leniency of juvenile law and judicial uncertainty as to how to apply it, the United States Supreme Court heard its first case concerning juvenile rights.⁵³

2. *Kent v. United States* and the Guidelines of Transfer: 1966-1982

In *Kent v. United States*, the Supreme Court outlined the criteria for judicial transfer, and unwittingly created an impetus for the first automatic transfer provisions.⁵⁴ Automatic transfer provisions are statutory mandates for the transfer of a case from juvenile court to criminal court based solely on the age of the offender and the crime charged.⁵⁵ *Kent* was the first juvenile court case to reach the Supreme Court, and it concerned the appeal of a decision to transfer a sixteen-year-old charged with housebreaking, robbery and rape to criminal court.⁵⁶ The Court overturned the transfer to criminal court because the minor had not been granted basic due process rights during his transfer hearing.⁵⁷ Although the Court noted the important theoretical objectives of the Juvenile Court, which included guidance and rehabilitation, it reasoned that this did not excuse procedural arbitrariness.⁵⁸ The Court concluded that the increased punishment children might suffer if transferred to criminal court entitled them to some of the procedural protections afforded to adults.⁵⁹ Although the

51. See Tanenhaus, *supra* note 26, at 32 (citing *Transfer of Cases Between Juvenile and Criminal Courts: A Policy Statement*, 8 CRIME & DELINQ. 3-11 (1962)).

52. See *id.* Four of the five key factors that judges were using conflicted with the philosophy of the Juvenile Court. See *id.* Judges transferred cases because of contestable facts that would prolong the hearing, the seriousness of the offense, the hopelessness of the case and for punitive reasons. See *id.* The only acceptable guideline used was the superior resources of the criminal court in the realm of public safety. See *id.*

53. See *Kent v. United States*, 383 U.S. 541 (1966).

54. See *id.*

55. See Clarke, *supra* note 50, at 6.

56. See *Kent*, 383 U.S. at 543.

57. See *id.* at 546.

58. See *id.* at 554-55. The Juvenile Court judge did not decide the multiple motions filed by the minor requesting a hearing in front of the judge, hospitalization for psychiatric difficulties, and access to his Social Service file accumulated during a prior probation period. See *id.* at 545-46. The judge held no hearing and did not confer with the juvenile, his parents or his attorney. See *id.* at 546. He issued a waiver of the minor to criminal court, but made no findings of fact, and listed no reasons for the waiver. See *id.*

59. See *id.* at 553-54. The Court noted that a transferred juvenile could be imprisoned with adults, and exposed to the death penalty. See *id.* at 554.

Court stopped short of holding that a judicial waiver hearing must be identical to a criminal trial, it mandated due process and fair treatment in such proceedings.⁶⁰

The *Kent* decision is significant for two reasons.⁶¹ First, the appendix of the decision contained a list of model guidelines for transfer, which many states, including Illinois, adopted.⁶² Second, the Court's decision unintentionally spawned the first automatic transfer provisions.⁶³ Legislators passed automatic transfer provisions in direct response to the *Kent* decision, reasoning that the rehabilitative ideal endorsed by the *Kent* Court was flawed, and that more punitive solutions for juvenile crime were necessary.⁶⁴ Accordingly, the *Kent* decision not only began defining the constitutional rights of juveniles but also led to the passage of laws that automatically treat them as adults.⁶⁵

60. *See id.* at 562. The Court ruled that Kent was entitled to a hearing, access to his juvenile record and "a statement of reasons for the Juvenile Court" judge's decision to transfer him to criminal court. *Id.* at 557.

61. *See Tanenhaus, supra* note 26, at 34-36.

62. *See Kent*, 383 U.S. at 566. The guidelines included:

1. The seriousness of the alleged offense to the community and whether the protection of the community requires waiver.
2. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner.
3. Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted.
4. The prosecutive merit of the complaint, i.e., whether there is evidence upon which a Grand Jury may be expected to return an indictment
5. The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults
6. The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living.
7. The record and previous history of the juvenile
8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile

Id. at 566-67; *see also* Act of June 4, 1999, Pub. Act. No. 91-15, sec. 5, § 405/5-805(2)(b), 1999 Ill. Legis. Serv. 125, 131 (West) (to be codified at 705 ILL. COMP. STAT. 405/5-805(2)(b)) (listing the current factors a judge must consider in making a judicial transfer decision); Drizin, *supra* note 29, at 1.

63. *See Tanenhaus, supra* note 26, at 35-36 (citing CHRISTOPHER P. MANFREDI, *THE SUPREME COURT AND JUVENILE JUSTICE* 171-75 (1998)) (observing that a loss of faith in the rehabilitative ideal of juvenile court in the 1970s, coupled with calls for stricter treatment of juvenile crime, led to the first automatic transfer statutes).

64. *See id.* Rising juvenile crime throughout the 1970s led to a loss of faith in the rehabilitative powers of juvenile courts. *See id.* Legislators responded to demands for "law and order" by passing automatic transfer provisions, which purported to be a stricter measure than the system of judicial waiver mandated by *Kent*. *See id.*; *see also* Clarke, *supra* note 50, at 8.

65. *See Tanenhaus, supra* note 26, at 35-36.

3. The Age of Automatic Transfer: 1982-Present

In 1973, Illinois adopted the system of judicial transfer outlined in *Kent*, and proponents of increased juvenile punishment quickly deemed it inadequate.⁶⁶ In arguing for the passage of the first automatic transfer law in 1982, critics of *Kent* asserted that the rehabilitative ideal endorsed by the *Kent* Court was ineffective.⁶⁷ They pointed to rising juvenile crime and the leniency of the Juvenile Court as signs that juvenile law needed to become more focused on punishment.⁶⁸ The 1982 statute provided that juveniles age fifteen or older charged with murder, rape, deviant sexual assault or armed robbery with a firearm would be tried in criminal court, regardless of the individual circumstances of their crimes.⁶⁹ Three juveniles charged under this new law immediately challenged the constitutionality of the new provision in light of the Supreme Court's decision in *Kent*.⁷⁰ The Illinois Supreme Court upheld the validity of the automatic transfer provision and endorsed its constitutionality despite alleged due process and separation of powers violations.⁷¹

In 1985, the goal of preventing juvenile gang-related crime motivated the passage of the next automatic transfer provision.⁷² The Illinois

66. See Clarke, *supra* note 50, at 7-8.

67. See *id.* at 8.

68. See *id.*

69. See *id.* The prosecutor must only charge the juvenile with the transfer offense and allege that he or she is older than fifteen. See 705 ILL. COMP. STAT. 405/5-130 (West 1999).

70. See *People v. J.S.*, 469 N.E.2d 1090, 1095 (Ill. 1984). The *J.S.* court heard three cases concerning juveniles whose charged offenses resulted in transfer to criminal court. See *id.* at 1092. *J.S.* and *T.F.* were charged with armed robbery with a firearm. See *id.* at 1093. *L.W.* was charged with two counts of deviant sexual assault in the context of a robbery. See *id.* The defendants argued that they were entitled to procedural due process protection under *Kent*, and that a Juvenile Court judge must give their case a full investigation before it could be transferred to criminal court. See *id.* at 1095. The court found that *Kent* was not applicable, stating: "There is no discretionary decision to be made by the juvenile court, and therefore we do not believe that the holding in *Kent* is dispositive herein." *Id.* The court also rejected defendants' separation of powers argument, holding that the automatic transfer provision redefined the statute that the legislature created and did not usurp judicial power. See *id.* at 1096.

71. See *id.*

72. See ILL. REV. STAT. ch. 37, par. 702-7(7)(a) (1985) (codified as amended at 705 ILL. COMP. STAT. 405/5-130(2)(a) (West 1999)); see also *People v. Goldstein*, 562 N.E.2d 1183, 1186-87 (Ill. App. Ct. 5th Dist. 1990) (quoting the Senate floor debate for the automatic transfer section of the Safe Schools Act). Senator Marovitz stated:

Senate Bill 201 is the gang crime package . . . It creates the safe school zones in and around school property and deals severely with the bringing of firearms, . . . the dealing of hard drugs in and around the schools. It deals with adults trying to recruit juveniles . . . into gangs.

Id. at 1187 (citing 84th Illinois General Assembly, Senate Proceedings, July 1, 1985, at 40).

legislature enacted this amendment as a part of the Safe Schools Act.⁷³ Under this legislation, juveniles over age fifteen charged with drug or weapons violations "in or within 1,000 feet of a school" became subject to automatic transfer.⁷⁴ The Illinois Supreme Court rejected a constitutional challenge to this new provision⁷⁵ holding that the equal protection and due process rights of a juvenile charged with weapons possession on school grounds were not violated.⁷⁶

The Illinois legislature added gang-related offenses to the list of automatic transfer crimes in 1989.⁷⁷ As a result of these additions, if a Juvenile Court judge determined that a felony or forcible felony was related to gang activity, then the minor was automatically transferred to criminal court.⁷⁸ Overruling a lower court's determination that the automatic transfer provision violated the separation of powers provision of the Illinois Constitution,⁷⁹ the Illinois Supreme Court upheld this provision against a claim of unconstitutionality by a defendant charged with multiple counts of armed violence in a gang context.⁸⁰

73. See ILL. REV. STAT. ch. 37, par. 702-7(7)(a) (1985) (codified as amended at 705 ILL. COMP. STAT. 405/5-130(2)(a) (West 1999)).

74. *Id.*; Clarke, *supra* note 50, at 8.

75. See *People v. M.A.*, 529 N.E.2d 492, 497 (Ill. 1988). The *M.A.* court held that the automatic transfer provision did not violate the Equal Protection Clause or defendant's due process rights. See *id.* The defendant was charged with weapons possession on school grounds and transferred to criminal court. See *id.* at 492-93. The court held, using a rational basis test, that the transfer law did not violate the defendant's equal protection rights. See *id.* at 496. The court determined that even if some inequality existed, it was overcome by the state's interest in providing safer schools. See *id.* at 495. The court also dismissed the defendant's due process argument by concluding that the legislature had acted rationally in seeking to remedy the ills of school violence. See *id.* at 496.

76. See *id.* at 497.

77. See ILL. REV. STAT. ch. 37, par. 805-4(3.1) (1989) (codified as amended at 705 ILL. COMP. STAT. 405/5-805(1)(b) (West 1999)). Automatic transfer provision that dealt with gang-related offenses differed slightly from other automatic transfer provisions. Specifically, the 1989 transfer provision provides that "the Juvenile Judge designated to hear and determine those motions shall, upon determining that there is probable cause that both allegations are true, enter an order permitting prosecution under the criminal laws of Illinois." Act of June 4, 1999, Pub. Act No. 91-15, sec. 5, § 405/5-805(1)(c), 1999 Ill. Legis. Serv. 125, 131 (West) (to be codified at 705 ILL. COMP. STAT. 405/5-805(1)(c)).

78. See Clarke, *supra* note 50, at 8. In all other cases of automatic transfer, the juvenile in question never sets foot in Juvenile Court. See *id.* at 8-9.

79. See *People v. P.H.*, 582 N.E.2d 700, 703 (Ill. 1991). The *P.H.* court overturned a trial court's determination that depriving the Juvenile Court of jurisdiction violated the separation of powers clause of the Illinois Constitution. See *id.* at 704.

80. See *id.* at 703-04. The Illinois Supreme Court held that whether a minor was tried in Juvenile Court or criminal court was a matter of procedure, not jurisdiction. See *id.* at 706. The defendant was charged with attempted murder, aggravated battery, aggravated battery with a firearm and armed violence. See *id.* at 703. The court also dismissed the defendant's claims of double jeopardy, concluding that the transfer hearing at juvenile court was not tantamount to an adju-

Subsequently, a 1991 amendment to the "Safe Schools" transfer provision also made drug offenses in public housing automatic transfer offenses.⁸¹ Under this amendment, juveniles age fifteen or older are transferred to criminal court if charged with drug violations in or within 1,000 feet of property owned, operated or managed by a public housing authority.⁸² In *People v. R.L.*,⁸³ the Illinois Supreme Court upheld the statute's constitutionality despite the defendants' contentions of Equal Protection Clause violations.⁸⁴ The court found the defendants' evidence of the statute's disproportionate impact on minorities unpersuasive.⁸⁵ The court stated that disproportionate impact alone does not trigger a violation of the Equal Protection Clause.⁸⁶

The public housing transfer provision was the most recent automatic transfer amendment passed by the legislature and upheld by the courts.⁸⁷ In 1995, however, the General Assembly created another type of transfer, the presumptive transfer.⁸⁸ This transfer shifts the burden of proof from the prosecution to the charged juvenile in certain judicial waiver proceedings.⁸⁹ Specifically, the juvenile must present clear and convincing evidence that he or she is amenable to the rehabilitative functions of the Juvenile Court, or the juvenile faces transfer to criminal court.⁹⁰ Prior to the automatic transfer provision passed in 1999,

dicatory hearing. *See id.* at 709. The court found the defendant's argument of a violation of equal protection equally unpersuasive in applying the rational basis test. *See id.* at 709-11. Similarly, the court found contentions of substantive and procedural due process violations unpersuasive, holding that the transfer provision fell within the powers of the legislature, and that the *Kent* decision did not apply. *See id.* at 711-13.

81. *See* ILL. REV. STAT. ch. 37, par. 805-4(7)(a) (1991) (codified as amended at 705 ILL. COMP. STAT. 405/5-130(2)(a) (West 1999)).

82. *See id.*

83. *People v. R.L.*, 634 N.E.2d 733 (Ill. 1994).

84. *See id.* at 739. The court held that the provision passed the rational basis test of equal protection because it was rationally related to a state goal, namely, deterring narcotics trafficking in housing projects. *See id.*

85. *See id.* at 737. The two minor defendants in *R.L.* were charged with drug offenses, including delivery and possession with intent to deliver. *See id.* at 735.

86. *See id.* at 737.

87. *See* ILL. REV. STAT. ch. 37, par. 805-4(7)(a) (1991) (codified as amended at 705 ILL. COMP. STAT. 405/5-130(2)(a) (West 1999)); *see also* Clarke, *supra* note 50, at 8-9.

88. *See* Act of June 4, 1999, Pub. Act No. 91-15, § 405/5-805(2), 1999 Ill. Legis. Serv. 125, 131 (West) (to be codified at 705 ILL. COMP. STAT. 405/5-805(2)).

89. *See id.* The offenses include all Class X felonies other than armed violence, aggravated discharge of a firearm, and various types of armed violence with a firearm. *See id.* If the petition filed by the prosecutor alleges any of these weapons violations and can demonstrate probable cause, presumptive transfer takes effect. *See id.*; *see also supra* note 12 (explaining presumptive transfer).

90. *See* Act of June 4, 1999, § 405/5-805(2)(b)(i-ix). The legislature instructed the judge to follow a list of factors in making this decision, which include:

presumptive transfer applied to aggravated battery with a firearm.⁹¹

Overall, the rapid expansion of automatic transfer provisions from 1982 to 1995 led to a large increase in the number of juveniles transferred to criminal court.⁹² In Cook County, for example, almost all minors are now transferred by means of automatic transfer provisions rather than by other statutory means of transfer.⁹³ Furthermore, the number of automatic transfers has increased each year. For example, automatic transfers increased from 904 transfers in 1993 to 2,775 transfers in 1994.⁹⁴ Finally, the largest percentage of the transferees have been charged with non-violent crimes.⁹⁵ Given this evidence, some Juvenile Court judges believed that the provisions went too far and that other alternatives might be more desirable.⁹⁶

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- (i) The seriousness of the alleged offense;
 - (ii) The minor's history of delinquency;
 - (iii) The age of the minor;
 - (iv) The culpability of the minor in committing the alleged offense;
 - (v) Whether the offense was committed in an aggressive or premeditated manner;
 - (vi) Whether the minor used or possessed a deadly weapon when committing the alleged offense;
 - (vii) The minor's history of services, including the minor's willingness to participate meaningfully in available services;
 - (viii) Whether there is a reasonable likelihood that the minor can be rehabilitated before the expiration of the juvenile court's jurisdiction;
 - (ix) The adequacy of the punishment or services available in the juvenile justice system.

Id. The court gives greater weight to an accused minor's previous criminal record, if any, and the seriousness of the alleged offense, than any of the other listed factors. *See id.*

91. *See* 705 ILL. COMP. STAT. 405/5-4 (West 1996) (repealed 1999). In March of 1998, there were 74 cases in which juveniles were alleged to have committed aggravated battery with a firearm. *See* Mike McInerney, Delinquency Division, Cook County Office of the Public Defender, Transfer Facts (Mar. 3, 1999) (unpublished materials, on file with author). Of the 74 alleged offenses, prosecutors filed 37 petitions to have matters transferred to criminal court by judicial waiver. *See id.* Eleven cases were transferred, five were denied transfer, 14 remained pending and seven petitions were withdrawn or nolle. *See id.* Overall, 15% (11/74) were transferred to criminal court, and in 57% of the cases (42/74), proof was not sufficient to support a petition for transfer to adult court. *See id.*

92. *See* Clarke, *supra* note 50, at 5.

93. *See id.* Clarke reports that 93% (842/904) of the 1993 transfers in Illinois were automatic and 88.3% (799/904) of these transfers were from Cook County. *See id.* Ninety-eight percent (2,717/2,775) of the transfers in 1994 were automatic transfers. *See id.*

94. *See id.* From 1985 to 1992, a total of 2,451 Cook County juveniles were transferred. *See id.*

95. *See* Drizin, *supra* note 29, at 1.

96. *See* Clarke, *supra* note 50, at 5. An informal survey at a 1996 conference of Juvenile Court judges indicated that the delegates thought automatic transfer had gone far enough. *See id.* One committee member, noting the increase in juvenile transfer coupled with no increase in deterrent effect, recommended other legislative alternatives to automatic transfer. *See id.*

B. A Departure From Transfer: The Juvenile Justice Reform Act of 1998

In 1998, the Illinois legislature responded to criticism concerning various sections of the Act, including automatic transfer provisions, by enacting the most comprehensive set of reforms in Juvenile Court history.⁹⁷ The many amendments, entitled "The Juvenile Justice Reform Act" ("JJRA"), adopted a new philosophy of balanced and restorative justice concerning juvenile offenders and did not include automatic transfer provisions.⁹⁸ The JJRA purports to give attention to three different interests: the accused juvenile's needs, the victim's rights and needs, and the community's safety.⁹⁹ This change in philosophy emerged in response to both the questionable effectiveness of the current system and the emergence of recurring headline-making juvenile crime.¹⁰⁰

The JJRA introduced the central concept of extended jurisdiction juvenile prosecutions ("EJJP").¹⁰¹ EJJP allows a Juvenile Court judge to impose a "blended sentence" on minors age thirteen or older charged

97. See Juvenile Justice Reform Provisions of 1998, Pub. Act No. 90-590, Ill. Legis. Serv. 1289 (West); Michele M. Jochner, *An Overview of the Juvenile Justice Reform Provisions of 1998*, 87 ILL. B.J. 152, 152 (1999).

98. See Daniel Dighton, *Balanced and Restorative Justice in Illinois*, THE COMPILER, Winter 1999, at 4, 4-5. The balanced and restorative justice ("BARJ") model consists of two concepts. See Illinois Criminal Justice Information Authority, *Panel Q & A on Juvenile Justice Reform*, THE COMPILER, Winter 1999, at 1, 9. "Restorative justice" stresses a juvenile offender's responsibilities in restoring his or her community to its state before the offense was committed. See *id.* The "balanced justice" aspect of the BARJ model requires the juvenile justice system to give equal attention to three goals: public safety, juvenile accountability, and juvenile rehabilitation. See *id.* The principle architect of the JJRA stated that the BARJ model was superior to previous systems that exclusively emphasized rehabilitation or punishment. See *id.* Catherine Ryan, Chief of the Juvenile Justice Bureau, Cook County State's Attorney's Office, stated: "We must change our thinking and modes of working from an offender-focused system to one in which we work in active partnership with the community to achieve the goals of public safety and offender accountability, while developing the competency of the juvenile." *Id.*

99. See Dighton, *supra* note 98, at 4.

100. See Christi Parsons, *Tougher Sentencing for Youths Awaits Edgar OK*, CHI. TRIB., Feb. 4, 1998, § 1, at 10. The high-profile deaths of Chicago-area children Robert "Yummy" Sandifer and Eric Morse spurred, in part, the JJRA. See *id.* Sandifer, an eleven-year-old gang member, was executed by members of his own gang in apparent retaliation for his murder of a neighborhood girl. See *id.* Morse, a five-year-old, was dropped to his death from the 14th floor of a housing project by a ten-year-old and an eleven-year-old for refusing to steal candy. See *id.*

101. See 705 ILL. COMP. STAT. 405/5-810 (West 1998); Jochner, *supra* note 97, at 158. In addition to EJJP, the Act also mandated creation of juvenile justice counsels, local groups which will advise county boards on the status of juvenile delinquency prevention programs. See Dighton, *supra* note 98, at 15. It also created a more detailed records system for juvenile offenders and placed a limit on station adjustments (non-judicial sanctions dispensed by police officers). See *id.*

with offenses that do not evoke the automatic transfer provisions of the Juvenile Court Act.¹⁰² If the minor successfully completes the juvenile sentence, the adult sentence will never come into effect.¹⁰³ If the minor violates the terms of the juvenile sentence, however, the court will impose an adult sentence upon a preponderance of the evidence.¹⁰⁴ Several states passed laws promulgating blended sentencing, and at least one state, Arkansas, did so in response to the recent high-profile school shootings.¹⁰⁵ Illinois legislators hoped the JJRA would not only stem the flow of current violent juvenile crime while guaranteeing adequate criminal sanctions but also act as an opportunity for juvenile rehabilitation.¹⁰⁶

102. See § 405/5-810. The drafters of the JJRA wanted aggravated battery with a firearm to become an automatic transfer crime as a result of the legislation, but they abandoned this notion. See James R. Covington III, *Legislative Activity in Juvenile Justice*, JUV. JUST. (Ill. State Bar Ass'n., Chicago, IL.), Oct. 1996, at 7-8 (indicating that the Illinois State's Attorneys Association recommended the addition of aggravated battery with a firearm to the list of automatic transfer crimes and recommended the creation of EJJP).

103. See § 405/5-810.

104. See *id.*

105. See Extended Juvenile Jurisdiction Act, Pub. Act No. 1192, 1999 Ark. Adv. Legis. Serv. 1740 (Lexis) (codified at ARK. CODE ANN. § 9-27-501 to -510 (Lexis 1999)). Arkansas passed the Extended Juvenile Jurisdiction Act ("EJJA") in the wake of the Jonesboro school shootings, in which an eleven-year-old and a thirteen-year-old killed four fellow middle school students and a teacher. See David Firestone, *Despite Anger at Killings, State Carefully Crafts Law*, THE OREGONIAN, Apr. 11, 1999, at A4. Recognizing that many stringent juvenile crime laws are passed in response to highly publicized crimes, state leaders consulted prosecutors, defense attorneys and child development specialists while drafting the EJJA. See *id.* The EJJA allows prosecution of a child of any age for murder, but only if the prosecutor can indicate that the child has the necessary mental state for the crime alleged, appreciates the criminal nature of his or her conduct, and could conform his or her conduct to the law. See Extended Juvenile Jurisdiction Act, Pub. Act No. 1192. Judges are also allowed to use blended sentencing, like the JJRA in Illinois. See *id.*; 705 ILL. COMP. STAT. 405/5-810 (West 1998). A public defender who consulted on the EJJA revealed the intent of the Arkansas legislature: "the Legislature agreed that you can't change the entire criminal justice system just to fit a certain set of facts, no matter how bad they happened to be." Firestone, *supra*, at A4.

106. See Dighton, *supra* note 98, at 4 (discussing the goals of the JJRA in light of the BARJ system). But see Illinois Criminal Justice Information Authority, *supra* note 98, at 13. Although high expectations surrounded the passage of EJJP, critics speculated that it would not be utilized often enough to make a difference. See *id.* Dallas Ingemunson, Chairman of the Illinois Juvenile Justice Commission, stated that "[EJJP]" is a very smart approach for serious juvenile offenders. The imposition of both juvenile and criminal sanctions allows the young person a last opportunity to be treated by the juvenile system, but holds him or her very responsible for taking advantage of that opportunity." *Id.* Catherine Ryan, Chief of the Juvenile Justice Bureau, Cook County State's Attorney's Office, and principle architect of the JJRA, remarked that "[t]here is a small universe of serious crimes and juvenile offenders where [EJJP] prosecutions will be best utilized. This fact, coupled with the resource demands of the juvenile's right to request a jury trial, will cause many state's attorneys not to use [EJJP] prosecutions very often." *Id.*

C. Empirical Studies on the Efficacy of Automatic Transfer Laws

Empirical studies evaluating the effectiveness of automatic transfer provisions support Illinois' temporary shift away from these laws in the JJRA.¹⁰⁷ Numerous studies have evaluated the effectiveness of transfer provisions.¹⁰⁸ Although most older studies focused on judicial waiver, current studies devote their attention to the inefficacy of automatic transfer provisions.¹⁰⁹ These studies describe general characteristics of juvenile crimes frequently transferred, such as crimes committed in groups.¹¹⁰ This research also shows that the goals of legislatures, namely deterrence and reduced juvenile crime, are not fulfilled by passing transfer laws.¹¹¹ Furthermore, experts attempted to determine the impact of the statutes on minorities, especially those residing in urban areas, but have reached varying conclusions.¹¹² Finally, experts analyzed recidivism in transferred minors as compared to their non-transferred counterparts and found no benefit to transfer provisions.¹¹³

1. General Characteristics: Group Crime

Illinois prosecutors transfer many groups of minors accused of committing the same crime to criminal court by charging them all with the same offense.¹¹⁴ By using the accountability provisions of the Criminal Code, prosecutors are able to relegate the entire group to criminal court, regardless of how little one group member may have been involved.¹¹⁵ Research indicates that prosecutors may misapply

107. See *infra* Parts II.C.1-4 (discussing empirical studies of automatic transfer provisions); see also *supra* Part II.B (describing the JJRA).

108. See JAMES C. HOWELL, *JUVENILE JUSTICE & YOUTH VIOLENCE* 90-111 (1997) (summarizing studies done on transfer provisions, including judicial waiver, automatic transfer, and direct-file transfer); David L. Myers, *Excluding Violent Youths from Juvenile Court: The Effectiveness of Legislative Waiver* (visited Nov. 11, 1999) <http://www.preventingcrime.org/r2/chapter1_1.htm> (summarizing previous transfer research).

109. See HOWELL, *supra* note 108, at 99-100 (summarizing the studies on transfer provisions and deterrence). As one sociologist put it, "[t]ransfer is a sociolegal policy based on very little information." *Id.* at 108-09.

110. See *infra* Part II.C.1 (explaining that many juvenile offenders commit group crimes for which all members of the group are charged equally).

111. See *infra* Part II.C.2 (describing the effect of transfer provisions on the legislative goal of deterrence).

112. See *infra* Part II.C.3 (discussing the impact of transfer provisions on minority groups).

113. See *infra* Part II.C.4 (outlining the effects of transfer provisions on rates of recidivism).

114. See Drizin, *supra* note 29, at 1.

115. See 720 ILL. COMP. STAT. 5/5-1 to -5 (West 1998). Accountability provisions allow prosecutors to charge an alleged offender for another's crime when "[h]aving a mental state described by the statute defining the offense, he causes another to perform the conduct, and the other person in fact or by reason of legal incapacity lacks such a mental state." *Id.* § 5/5-2(a). Accountability can also be used against an alleged offender if "the statute defining the offense

this power because a major characteristic of juvenile delinquency is the tendency for children to commit crimes in groups.¹¹⁶ An early study concerning juvenile offenders in Cook County revealed that groups of offenders committed over 80% of all juvenile crime.¹¹⁷ Data from studies involving New York City and Los Angeles juvenile offenders corroborated the Cook County findings.¹¹⁸ Accordingly, experts have concluded that peer pressure is a large factor in juvenile group crime and the actual amount of criminal behavior could vary from group member to group member.¹¹⁹

2. Deterrence

Besides analyzing general trends in juvenile crime, researchers focused on the specific goals behind the passage of transfer laws and whether the laws met those goals.¹²⁰ Deterrence is a primary reason behind the passage of automatic transfer provisions, yet several studies found little empirical support for this rationale.¹²¹ One study focused on a New York transfer law, which lowered the age of automatic transfer for murder to thirteen and other violent offenses to fourteen.¹²² A ten-year comparison of juvenile arrest rates in New York and Philadelphia

makes him so accountable," or "[e]ither before or during the commission of an offense, and with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense." *Id.* § 5/5-2(b)-(c); *see also* Drizin, *supra* note 29, at 1 (describing the effects of accountability provisions on a hypothetical carload of accused juvenile offenders).

116. *See* Franklin E. Zimring, *Kids, Groups and Crime: Some Implications of a Well-Known Secret*, 72 J. CRIM. L. & CRIMINOLOGY 867, 867 (1981).

117. *See id.* at 868. The 1931 study was based on every child who appeared as a delinquent minor in Juvenile Court in 1928. *See id.*

118. *See id.* at 871. The 1981 New York City study found that 1,078 of 1,329 delinquent minors committed their crimes as members of a group. *See id.* This 81% rate compares to the Cook County study conducted fifty years before. The individual crimes assessed in the New York City study were gun robbery (78/87 group offenders, or 90%), other robbery (333/383, 87%), burglary (491/571, 86%), rape (8/16, 50%), sodomy (13/17, 77%), assault (146/243, 60%) and homicide (9/11, 78%). *See id.* The 1979 Los Angeles study showed that in armed robbery offenses, 82% (85/103) of juvenile crimes were committed by multiple juvenile offenders. *See id.* at 872.

119. *See id.*; *see also* Drizin, *supra* note 29, at 1.

120. *See* Eric L. Jensen & Linda K. Metsger, *A Test of the Deterrent Effect of Legislative Waiver on Violent Juvenile Crime*, 40 CRIME & DELINQ. 96, 98 (1994).

121. *See id.* at 98-99; *see also* HOWELL, *supra* note 108, at 108; Myers, *supra* note 108, at <http://www.preventingcrime.org/r2/chapter1_2.htm>.

122. *See* New York State Juvenile Offender Law, ch. 481, 1978 N.Y. Laws 44, 67 (codified as amended at N.Y. CRIM. PROC. LAW §§ 725.00-725.20 (McKinney 1995)); Simon I. Singer & David McDowall, *Criminalizing Delinquency: The Deterrent Effects of the Juvenile Offender Law*, 22 L. & SOC'Y REV. 521, 522 (1988). Singer and McDowall noted that the Juvenile Offender Law of 1978 had been described as "the most punitive delinquency law in the nation," and was enacted primarily for deterrence. *Id.*

before and after the passage of the law indicated that the transfer provision's severity did not deter juvenile offenders.¹²³ Homicide and assault crimes actually increased in some areas of New York, while decreasing in Philadelphia, demonstrating that the automatic transfer provision had no deterrent value.¹²⁴

These results from New York City, an urban environment, were mirrored by another study that analyzed rural states.¹²⁵ The study compared Idaho, a state with an automatic transfer provision, to Montana and Wyoming, which do not have such provisions.¹²⁶ Analysis of Idaho's 1981 automatic transfer statute demonstrated no deterrent effect as measured by the incidence of violent juvenile crime.¹²⁷ Crime in Idaho actually increased after the passage of the amended statute as compared to crime in Montana and Wyoming.¹²⁸ These two studies comprised the only major inquiries into the link between automatic transfer laws and overall crime rates.¹²⁹ Nevertheless, they triggered demands for a re-evaluation of the perceived deterrent effect of automatic transfer laws.¹³⁰

3. Impact on Minorities

Other research focuses on the impact that transfer laws have on different racial groups, especially urban minorities, and demonstrates less agreement among researchers than in the context of deterrence.¹³¹

123. See Singer & McDowall, *supra* note 122, at 532-33. The researchers found that homicide and assault crimes stayed the same in New York City and increased in upstate New York, after the change in the law, while decreasing in Philadelphia. See *id.* at 529-30. Furthermore, while rape and arson did decrease in New York City and State, those crimes also decreased in Philadelphia and among older New Yorkers over the same period. See *id.* at 530. Robberies increased incrementally in New York, while also increasing in Philadelphia. See *id.* at 531. The authors offered two explanations for their results. See *id.* at 532. First, the law may not have been severe enough to create a deterrent value. See *id.* Given the extreme nature of the law in question, however, the authors wondered how high the risk of punishment must be to create deterrence. See *id.* Second, too little time may have elapsed in order to assess the law's deterrent value. See *id.* at 533. Yet, the law would have to have a very slow-rising deterrent effect to escape detection in the first six years after the law's passage. See *id.*

124. See *id.* at 529-30.

125. See Jensen & Metsger, *supra* note 120, at 100-02.

126. See IDAHO CODE § 16-1806A (1981) (amended and redesignated at IDAHO CODE § 20-509 (1995)); Jensen & Metsger, *supra* note 120, at 99.

127. See Jensen & Metsger, *supra* note 120, at 101.

128. See *id.* at 101-02. The juvenile crime rates decreased 26% in Wyoming and 14% in Montana, but increased 18% in Idaho. See *id.*

129. See Myers, *supra* note 108, at <http://www.preventingcrime.org/r2/chapter1_5.htm>.

130. See HOWELL, *supra* note 108, at 108-09.

131. See Myers, *supra* note 108, at <http://www.preventingcrime.org/r2/chapter1_4.htm> (describing the disparity in findings concerning the disproportionate impact of transfer provisions on

Most of these studies pertain to judicial waiver and not automatic transfer.¹³² Nonetheless, examining judicial waiver studies concerning crimes that have subsequently become automatic transfer offenses in Illinois provides useful data for determining whether transfer provisions evoke a disproportionate impact on minorities.¹³³ Overall, the research primarily indicates that transfer provisions disproportionately affected African-Americans, particularly those who reside in urban areas. Additionally, it reflects that African-Americans are transferred more often by judicial waiver and charged more often with automatic transfer offenses than their Caucasian counterparts.¹³⁴

Furthermore, some research has targeted the disparity in arrest rates between racial groups, finding that based on the overall population, African-Americans comprise a disproportionate number of juvenile delinquents.¹³⁵ One study found that African-Americans make up only 15% of the juvenile population, yet account for 49% of all juvenile violent crime arrests.¹³⁶ Another researcher confirmed this finding, indicating that half of all juvenile arrests were of African-Americans, which is at a rate five times higher than that of Caucasian juveniles.¹³⁷

Research in Illinois encompassed both judicial waiver and automatic transfer statutes and, similar to other studies, revealed a disproportionate impact on minorities, especially those in Cook County.¹³⁸ For example,

minorities).

132. *See id.*; *see also supra* note 12 (illustrating the difference between judicial waiver and automatic transfer).

133. *See* HOWELL, *supra* note 108, at 108 (lamenting the lack of studies on automatic transfer, especially since the majority of studies deal with judicial waiver, which accounts for less than 10% of transferred youth every year); *see also* Myers, *supra* note 108, at <http://www.preventingcrime.org/r2/chapter1_4.htm>. The Myers study demonstrates why examining judicial waiver statistics are instructive. *See id.* at <http://www.preventingcrime.org/r2/chapter8_1.htm> through <http://www.preventingcrime.org/r2/chapter8_8.htm>. Myers is able to analyze juveniles who were judicially waived, versus others who were not, before the law was changed to an automatic transfer provision. *See id.* at <<http://www.preventingcrime.org/r2/press.htm>>. Under current Pennsylvania law, Myers' entire sample would have been sent to criminal court, making similar comparisons impossible. *See id.*

134. *See* Myers, *supra* note 108, at <http://www.preventingcrime.org/r2/chapter1_4.htm>; *see also* Clarke, *supra* note 50, at 11-12 (summarizing Illinois transfer studies on the disproportionate effect on minority youth).

135. *See* Myers, *supra* note 108, at <http://www.preventingcrime.org/r2/chapter1_4.htm> (describing the statistics on African-American arrest rates).

136. *See* HOWELL, *supra* note 108, at 108 (citing H.N. SNYDER & M. SICKMUND, U.S. DEP'T OF JUSTICE, JUVENILE OFFENDERS AND VICTIMS: A NATIONAL REPORT 91 (1995)).

137. *See* Philip J. Cook & John H. Laub, *The Unprecedented Epidemic in Youth Violence, in* YOUTH VIOLENCE 27, 42-43 (Michael Tonry & Mark H. Moore eds., 1998).

138. *See* Clarke, *supra* note 50, at 11-12 (summarizing Illinois transfer studies regarding the disproportionate effect on minority youth).

a 1973 judicial waiver study found that although African-American children had less serious prior criminal involvement than their Caucasian counterparts, they were sent to criminal court at a significantly higher rate.¹³⁹ More recently, an analysis of automatic transfer provisions in Cook County revealed a disproportionate racial impact.¹⁴⁰ The study examined minors transferred from 1992 to 1994 based on race, sex, and type of offense committed.¹⁴¹ Of the 263 minors who were automatically transferred at that time, over 83% were African-American, 11% were Latino, and 5% were Caucasian.¹⁴² African-Americans comprise a minority of Cook County's population (26.8%), and yet they have been transferred at a rate three times greater than the rate of their overall presence in the population (83%).¹⁴³ Compare this with the percentage of Caucasians transferred in Cook County (5%) in relation to their overall presence in the population (67.9%).¹⁴⁴ Similarly, another Illinois study revealed that African-Americans comprised 98% of juveniles transferred from 1991 to 1992 for drug and weapons possession.¹⁴⁵

Other researchers concluded that the dramatic effects revealed in such studies are over-exaggerated.¹⁴⁶ One sociologist contends that poor methodology plagued the 1973 Illinois study and that empirical literature on race in general remains inconclusive.¹⁴⁷ Another study found that although minorities were disproportionately eligible for judicial transfer, the judge actually transferred a larger percentage of

139. See Robert B. Keiter, *Criminal or Delinquent? A Study of Juvenile Cases Transferred to the Criminal Court*, 19 CRIME & DELINQ. 528, 531 (1973). Fifty-nine of the 64 transfers (92%) in Cook County during 1970 were of African-American children. See *id.* Keiter noted that while the only two Caucasians were transferred on murder charges, the African-American children were mostly transferred for gang affiliation. See *id.*

140. See Clarke, *supra* note 50, at 13.

141. See *id.* at 12-13.

142. See *id.* at 13. Clarke cautions about the reliability of the results because several children with Hispanic surnames were listed as Caucasian. See *id.*

143. See U.S. CENSUS BUREAU, *Population Estimates for Counties by Race and Hispanic Origin: July 1, 1998* (last modified Sept. 15, 1999) <www.census.gov/population/estimates/county/crh/crhil.txt>.

144. See Clarke, *supra* note 50, at 13 (listing the percentage of Caucasian children transferred in a recent study).

145. See HOWELL, *supra* note 108, at 100 (citing ELIZABETH E. CLARKE, TREATMENT OF JUVENILES AS ADULTS: A REPORT ON TRENDS IN AUTOMATIC TRANSFER TO CRIMINAL COURT IN COOK COUNTY, ILLINOIS (1994)).

146. See Jeffrey Fagan et al., *Racial Determinants of the Judicial Transfer Decision: Prosecuting Violent Youth in Criminal Court*, 33 CRIME & DELINQ. 259, 276 (1987); Marcy R. Podkopacz & Barry C. Feld, *The End of the Line: An Empirical Study of Judicial Waiver*, 86 J. CRIM. L. & CRIMINOLOGY 449, 481 (1996).

147. See Fagan et al., *supra* note 146, at 266.

Caucasians.¹⁴⁸ That study also concluded that, while minorities were disproportionately impacted by transfer, it was only an indirect effect.¹⁴⁹ This study, however, only examined judicial waiver.¹⁵⁰ If, instead, an automatic transfer provision applied to the offense, every charged offender would be subject to transfer, and minorities would be disproportionately impacted through the sheer number of charged minority juveniles.¹⁵¹

In addition to the studies reflecting the disproportionate effect of automatic transfer laws on minority youth, another study focused primarily on the adverse effect of Illinois automatic transfer provisions on urban minorities.¹⁵² This study examined the effects of the 1985 law, which made drug or weapons violations within 1,000 feet of a school an automatic transfer offense.¹⁵³ The researcher concluded that the transfer law's creation of a 1,000 foot "safe school zone" resulted in excessive criminal penalization of Chicago minorities.¹⁵⁴ When the 1,000 foot zones were extended around each Chicago school, over 82% of the city fell into "safe school zones."¹⁵⁵ Critics of automatic transfer have indicated that because urban minorities are significantly more likely to be transferred than their Caucasian suburban counterparts, automatic transfer provisions are unfair.¹⁵⁶

4. Recidivism

Empirical research overwhelmingly indicates that juvenile offenders transferred to criminal court are more likely to commit another crime

148. See Podkopacz & Feld, *supra* note 146, at 481 n.91. While Podkopacz and Feld discovered that minorities comprised a disproportionate number of juveniles for whom transfer was requested, they had lower odds of actually being transferred than their Caucasian counterparts. *See id.*

149. *See id.*

150. See Fagan et al., *supra* note 146, at 266; Podkopacz & Feld, *supra* note 146, at 461.

151. See *supra* note 12 (defining automatic transfer statutes).

152. See Denise Kane, *The Walls of Samaria* 18 (1993) (unpublished manuscript, on file with author); see also HOWELL, *supra* note 108, at 100 (citing ELIZABETH E. CLARKE, *TREATMENT OF JUVENILES AS ADULTS: A REPORT ON TRENDS IN AUTOMATIC TRANSFER TO CRIMINAL COURT IN COOK COUNTY, ILLINOIS* (1994)).

153. See Kane, *supra* note 152, at 4; see also 37 ILL. REV. STAT. § 702-7(6)(a) (1985) (codified as amended at 705 ILL. COMP. STAT. 405/5-130(2)(a) (West 1999)).

154. See Kane, *supra* note 152, at 18.

155. See *id.* at 8. Kane found that the 868 Chicago public and private schools and colleges occupied 82.79% of the land in Cook County. *See id.* This was compared to 252 schools occupying 16.16% of the land in DuPage County, which lies directly west of Cook County, and 101 schools occupying 4.84% of the land in Lake County, which lies directly north of Cook County. *See id.*

156. See *id.* at 18; see also Clarke, *supra* note 50, at 9.

than their non-transferred counterparts.¹⁵⁷ A 1994 study analyzed 557 Pennsylvania juveniles, of which 138 were transferred to criminal court.¹⁵⁸ The study found that the juveniles sent to criminal court received lengthier sentences.¹⁵⁹ It also found, however, that these juveniles were released from custody sooner than their counterparts in the juvenile detention system.¹⁶⁰ In all, 57% of the waived juveniles returned to the community within four years of their release and before they became adults.¹⁶¹ Moreover, the study revealed that transferred juveniles were more likely to commit another crime upon release.¹⁶² While these results may merely indicate that judges were accurately transferring the most dangerous offenders to criminal court, the study remains relevant due to subsequent changes in Pennsylvania law.¹⁶³ Specifically, Pennsylvania's automatic transfer amendment would remove the current fates of all 557 minors in the study from the judge's discretion and would automatically send these minors to criminal court.¹⁶⁴ The researcher concluded that if judges were accurately transferring the most dangerous offenders to criminal court, there is no reason to remove this power from them.¹⁶⁵

Other studies demonstrate support for the findings of the Pennsylvania recidivism data.¹⁶⁶ A similar study analyzed recidivism in Florida juveniles and revealed that the transferred juveniles recidivated at a higher rate than the non-transferred juveniles.¹⁶⁷ A comparable

157. See Myers, *supra* note 108, at <http://www.preventingcrime.org/r2/chapter1_5.htm> (listing studies on recidivism of transferred juveniles as opposed to their non-transferred counterparts).

158. See *id.* at <<http://www.preventingcrime.org/r2/table4.htm>>.

159. See *id.* Myers observed that while 96% of transferred offenders were incarcerated, only 64% of non-transferred offenders did time in jail. See *id.* He also noted that the average time of incarceration for transferred offenders was 3.31 years, compared to 2.45 years for non-transferred offenders. See *id.*

160. See *id.* at <http://www.preventingcrime.org/r2/chapter8_1.htm>.

161. See *id.* at <http://www.preventingcrime.org/r2/chapter8_2.htm>.

162. See *id.* at <http://www.preventingcrime.org/r2/chapter8_3.htm>. Myers found that of the 38% of transferred offenders who recidivated, 24% committed a violent crime. See *id.* at <<http://www.preventingcrime.org/r2/table4.htm>>. Only 29% of the non-transferred offenders recidivated, and of those, only 16% committed violent crimes. See *id.*

163. See *id.* at <http://www.preventingcrime.org/r2/chapter8_4.htm>.

164. See *id.* at <http://www.preventingcrime.org/r2/chapter8_1.htm>.

165. See *id.* at <http://www.preventingcrime.org/r2/chapter8_4.htm>.

166. See Donna M. Bishop et al., *The Transfer of Juveniles to Criminal Court: Does It Make a Difference?*, 42 CRIME & DELINQ. 171, 183 (1996); Podkopacz & Feld, *supra* note 146, at 490-91.

167. See Bishop et al., *supra* note 166, at 183. Thirty percent of the transferred minors were rearrested during the year following their release. See *id.* at 182. Nineteen percent of the non-transferred minors recidivated over the same time period. See *id.*

analysis of Minnesota juveniles yielded similar results.¹⁶⁸ These conclusions indicate that transferring minors to criminal court does not achieve the desired goal of deterring future juvenile crime.¹⁶⁹

Researchers have offered three possible explanations for the phenomenon of higher recidivism among transferred juveniles. First, the juvenile system may have better treatment facilities.¹⁷⁰ Second, transferred youths who were consequently imprisoned could have experienced a form of criminal training in adult prison.¹⁷¹ Third, transfer to criminal court could create an impression in the mind of transferred juveniles that they are indeed criminals.¹⁷² Each of these factors could, in turn, lead to higher rates of recidivism.¹⁷³ In light of the recent studies, the critics contend that the risks of higher recidivism are not worth the rewards of longer incarceration. Accordingly, they advocate a re-examination of the entire transfer system.¹⁷⁴

III. DISCUSSION

A. *The New Transfer Provision*

Despite the doubt and uncertainty surrounding the effectiveness of automatic transfer provisions, Illinois legislators introduced Senate Bill

168. See Podkopacz & Feld, *supra* note 146, at 490-91. Fifty-eight percent of the transferred minors recidivated over a two-year period following their release, of which 35% committed personal felonies. See *id.* at 490. Forty-two percent of the non-transferred minors recidivated over the same time period, with 37% committing personal felonies. See *id.*

169. See Bishop et al., *supra* note 166, at 183; Podkopacz & Feld, *supra* note 146, at 490; Myers, *supra* note 108, at <http://www.preventingcrime.org/r2/chapter8_3.htm>.

170. See Myers, *supra* note 108, at <http://www.preventingcrime.org/r2/chapter8_3.htm> (using current research to speculate that the adult prison system is ill-prepared to meet the needs of juvenile offenders). Additionally, current research indicates that juveniles in adult prisons receive inferior treatment, and are more likely to be violently victimized than their adult counterparts. See *id.* (citing F.P. Reddington & A.D. Sapp, *Juveniles in Adult Prisons: Problems and Prospects*, 20 J. CRIME & JUST. 139 (1997)).

171. See *id.* (noting that all juvenile justice officials interviewed for the study, with the exception of prosecutors, believed that placing juvenile offenders in the presence of adult criminals produced adverse consequences).

172. See *id.* at <http://www.preventingcrime.org/r2/chapter8_4.htm> (citing recent research on "labeling theory," which links the sentence imposed on the juvenile offender with future behavior).

173. See *id.* Myers notes that the imposition of a criminal sentence can lead to difficulties in continuing an education, resuming employment or finding another job. See *id.*

174. See HOWELL, *supra* note 108, at 109-10 (citing C. Rudman et al., *Violent Youth in Adult Court: Process and Punishment*, 32 CRIME & DELINQ. 75 (1986)). "[W]e must ask if we are safer from a youth who has spent one to three years in a system designed to 'treat' him, or from a youth who has spent 10-15 years in a system designed to 'punish' him." *Id.*

759 on February 24, 1999.¹⁷⁵ The Bill proposed an amendment to the Juvenile Court Act making aggravated battery with a firearm in and around a school an automatic transfer offense.¹⁷⁶ Over a short course of legislative debate, the Bill underwent one amendment and passed the General Assembly less than ten weeks after its introduction.¹⁷⁷ Governor George Ryan signed the Bill into law in front of 600 high school students, teachers and politicians on June 4, 1999.¹⁷⁸

The new legislation targeted the crime of aggravated battery with a firearm.¹⁷⁹ While the Criminal Code of 1961 included battery and aggravated battery as original offenses, the Illinois legislature did not address aggravated battery with a firearm until 1989.¹⁸⁰ An Illinois appellate court upheld the constitutional validity of the aggravated battery with a firearm offense even though this new crime only required a minor injury, which differentiated it from ordinary battery and aggravated battery.¹⁸¹ Aggravated battery with a firearm is a Class X

175. See S.B. 759, 11th Legis. Day 33 (Ill. 1999).

176. See *id.* The proposal, as introduced on February 24, 1999, reads:

Amends the Juvenile Court Act of 1987. Provides for adult criminal prosecution of a minor at least 15 years of age who is charged with aggravated battery with a firearm committed in a school, on the real property comprising a school, within 1,000 feet of the real property comprising a school, at a school related activity, or on or within 1,000 feet of a conveyance owned, leased or contracted by a school or school district to transport students to or from school or a school-related activity. Provides that a juvenile judge designated to hear transfer motions must transfer for adult criminal prosecution the case of a minor at least 15 years of age charged with aggravated discharge of a firearm committed on various school properties or on a school conveyance or within 1,000 feet of these properties or conveyances, or at a school related activity if the judge finds probable cause that the allegations are true.

Id. Senator Kirk Dillard was the author and sponsor of the bill. See *id.* Senators Radogno, Parker, Sullivan, Donahue, Nolan, W. Jones, Cronin, Geo-Karis, and Silverstein were added as sponsors. See *id.*

177. See Amendment 1 to S.B. 759 (March 19, 1999) (concerning the "conveyance" part of the bill, and replacing "or within 1,000 feet of" with "boarding or departing from"); Black, *supra* note 9, at 6. Governor Ryan signed the Bill into law at Fenton High School, which one student described as "a great publicity stunt." *Id.*

178. See Black, *supra* note 9, at 6.

179. See Act of June 4, 1999, Pub. Act No. 91-15, sec. 5, § 405/5-130, 1999 Ill. Legis. Serv. 125, 126 (West) (to be codified at 705 ILL. COMP. STAT. 405/5-130). The law's effective date is January 1, 2000. See *id.*

180. See ILL. REV. STAT. ch. 38, par. 12-3 (1961) (codified as amended at 720 ILL. COMP. STAT. 5/12-3) (defining battery); ILL. REV. STAT. ch. 38, par. 12-4 (1961) (codified as amended at 720 ILL. COMP. STAT. 5/12-4(a-b)) (defining aggravated battery); ILL. REV. STAT. ch. 38, par. 12-4.2 (1961) (codified as amended at 720 ILL. COMP. STAT. ANN. 5/12-4.2(a) (West Supp. 1999) (defining aggravated battery with a firearm).

181. See *People v. Tucker*, 637 N.E.2d 477, 478 (Ill. App. Ct. 1st Dist. 1994). The *Tucker* court heard a defendant's appeal from an aggravated battery with a firearm conviction. See *id.* at 478. The defendant argued that because aggravated battery required great bodily harm, while

felony and is punishable by a mandatory prison term of six to thirty years.¹⁸²

Senate Bill 759 made aggravated battery with a firearm an automatic transfer offense if committed

in a school, on the real property comprising a school, within 1,000 feet of the real property comprising a school, at a school-related activity, or on, boarding, or departing from any conveyance owned, leased, or contracted by a school or school district to transport students to or from school or a school-related activity regardless of the time of day or time of year that the offense was committed.¹⁸³

The Bill provides comprehensive definitions for "school" and "school-related activity."¹⁸⁴ Additionally, courts have upheld a broad interpretation of "school" as it is defined in the Juvenile Court Act, indicating that "school" means all parts of a school, such as dorms or libraries.¹⁸⁵ The definition also includes the non-school property within 1,000 feet of a school.¹⁸⁶ Finally, some judicial language indicates that

aggravated battery with a firearm included any injury, no matter how slight, that his constitutional rights to due process and proportionate penalties were violated. *See id.* The court rejected this argument, stating that the legislature had the authority to affix greater penalties based on protection of the public interest and safety. *See id.* at 479.

182. *See* 730 ILL. COMP. STAT. 5/5-8-1(a)(3) (West 1998).

183. Act of June 4, 1999, § 405/5-130(a).

184. *See id.* The definition of "school" as provided by the Act is "a public or private elementary or secondary school, community college, college or university." *Id.* The definition of "school related activity" is "any sporting, social, academic or other activity for which students attendance or participation is sponsored, organized, or funded in whole or in part by a school or school district." *Id.*

185. *See* *People v. Goldstein*, 562 N.E.2d 1183, 1187 (Ill. App. Ct. 5th Dist. 1990). The *Goldstein* decision concerned a juvenile who fell under the 1985 automatic transfer provision concerning drug and weapons offenses in or within 1,000 feet of a school. *See id.* at 1184. The defendant argued that the legislative intent of the statute did not pertain to him, as he was "drawn onto university property" in order to conduct drug transactions with an undercover police officer. *Id.* The language from the automatic transfer statute did not include a definition of "school," so the court was forced to examine legislative intent. *See id.* The court concluded that no "meaningful distinction" could be made between a dorm room, a library or the rest of a university, and all fell within the legislature's intent in passing the transfer law. *See id.* at 1187.

186. *See* *People v. Owens*, 608 N.E.2d 159, 161 (Ill. App. Ct. 1st Dist. 1992). *Owens* concerned an adult who fell under the provisions of the Illinois Controlled Substances Act, which increased the sentence for drug trafficking within 1,000 feet of a school. *See id.* at 169; *see also* 705 ILL. COMP. STAT. 405/5-130(3) (West 1998). At trial, the defendant successfully argued the rule of lenity and since he dealt drugs across the street from Truman College, the legislature did not intend that the law should apply to him. *See Owens*, 608 N.E.2d at 160. The rule of lenity is a common law principle that construes ambiguous criminal statutes in favor of the defendant when legislative history is not available to determine the intent of the drafters of the law. *See id.* In rejecting the trial court's argument, the *Owens* court found that the legislature intended to create safe zones around schools, and that the people in those zones were members of the class the drafters of the Act sought to protect. *See id.* at 161. Additionally, the court found that there was no evidence that the legislature intended to protect rural schools but not city schools. *See id.* at

a school need not be completely built to be subject to the new legislation.¹⁸⁷

B. *The Legislative Intent*

The driving force behind Senate Bill 759, according to its sponsor, was outrage over the Columbine High School shootings.¹⁸⁸ Supporters of the Bill in the General Assembly repeatedly cited the general need to “get tough” on juveniles who fire a weapon on school property,¹⁸⁹ while focusing on the particular instance of the school massacre in Littleton, Colorado.¹⁹⁰ The sponsor of the Bill also questioned the ability of

162.

187. See *People v. Dorris*, 638 N.E.2d 279, 281 (Ill. App. Ct. 4th Dist. 1994). *Dorris* concerned a violation of the 1991 automatic transfer provision concerning drug offenses within 1,000 feet of public housing. See *id.* at 280; see also 705 ILL. COMP. STAT. 405/5-130(3)(a) (West 1998). The defendants were accused of selling an undercover police officer a gram of crack cocaine at a scattered-site public housing unit that was under construction and unoccupied. See *Dorris*, 638 N.E.2d at 280. In finding the defendants guilty, the court analogized the 1,000-foot provision of the automatic transfer statute to similar provisions in transfer laws concerning schools. See *id.* at 281. The court concluded that even though the construction site might contain people who did not live in public housing, the legislature’s purpose of creating a safe zone for area residents made the statute applicable. See *id.* Again, the court analogized this principle to the automatic transfer provisions concerning schools. See *id.*

188. See Aaron Chambers, *Judges Peeved at Sponsor’s Comment on Handling of Juveniles*, CHI. DAILY L. BULL., May 11, 1999, § 1, at 1. Senator Dillard stated:

I think overwhelmingly that the people of Illinois think that anybody with intent who opens fire and butchers children or staff in a public school should be treated as an adult. And I quite frankly do not necessarily trust some judges to deal harshly with a juvenile who opens fire, who has intent. And I don’t think that if you look at a survey of the people of Illinois that they trust these judges either.

Id.; see also Graham et al., *Massacre Shatters School*, *supra* note 7 (describing the Columbine massacre, which occurred on April 20, 1999, and left 12 students, a teacher and the two gunmen dead). Although Dillard cited outrage surrounding Littleton as a reason Senate Bill 759 was being proposed, the original proposal date, February 24, 1999, makes this reason impossible. See Sen. J., 11th Legis. Day 33 (Ill. 1999).

189. See S.B. 759, 44th Legis. Day 2-3 (Ill. 1999) (comments of Rep. J. Turner). Turner rose to confirm the purpose of Senate Bill 759 from its House sponsor, Representative B. Schmitz:

And I would presume that the purpose for that [Bill] is because if someone 15 years of age or older, who is still in the juvenile category, were to take a firearm on school grounds or within a 1000 feet of school grounds, [sic] you want some very meaningful prosecution, some strict prosecution. And you want to transfer that to the adult court And as I understand it then, this is a ‘get tough on crime’ Bill. Get tough, in fact, on juveniles who use guns or take guns on school grounds.

Id.

190. See S.B. 759, 44th Legis. Day 4-5 (Ill. 1999) (comments of Rep. Parke). Parke inquired if the Bill would have been useful following the shootings in Littleton, Colorado: “Would this . . . Bill been able to be applied to the tragedy in Colorado? Would this have a role to play in that situation if those . . . deranged people had not taken their own lives?” *Id.* Parke concluded by offering his support for the Bill:

This is an excellent Bill. This is part of the Attorney General’s package to try and stem

Juvenile Court judges to react with the appropriate harshness in deciding whether to transfer juveniles who fire a gun in a school setting.¹⁹¹

The limited opposition to Senate Bill 759 focused on the lack of necessity for the provision in light of the JJRA, as well as the general inefficacy of transfer provisions.¹⁹² Opponents in both the Senate and the House voiced concern that the proposed Bill demonstrated a lack of confidence in the large overhaul of the Juvenile Court Act conducted in 1998.¹⁹³ Furthermore, Assembly members raised concerns regarding the general efficacy of transfer provisions.¹⁹⁴ Supporters of the Bill,

violence with young people. I think this is a tool that is necessary. The majority, the great majority of us, voted on the House version of this legislation. And I would ask the Body to continue to support this and put it on the desk of the Governor and let the Governor sign it, so that we can further use this to protect our society and especially our children in schools against young people who are . . . who have become deranged and use a weapon as a only means of violence to solve their problems.

Id.

191. See Chambers, *supra* note 188, at 1.

192. See Senate Roll Call, S.B. 759, 27th Legis. Day (Ill. 1999). The Bill passed the Senate with 52 yeas, 1 nay, 5 present and 1 not voting. See *id.*; see also S.B. 759, 44th Legis. Day 8 (Ill. 1999) (comments of Speaker Hartke). Senate Bill 759 passed the House with 95 yeas, 12 nays and 7 present. See S.B. 759, 44th Legis. Day (Ill. 1999).

193. See S.B. 759, 27th Legis. Day 1-2 (Ill. 1999) (comments of Sen. Obama). Senator Obama articulated his reasons for not supporting the Bill:

I did just want to point out that last year when we worked—guided so ably by Senator Hawkinson—on this Bill, the sense was that we had more or less completed an overhaul of the Code and that we were going to pause for a moment, see how that worked before we moved on. And I guess I'd like to point out that here we are, a year later, doing the exact same thing that we had been doing prior to the changes we initiated last year and that is to increase penalties further for juveniles and try them further as adults and expand the number of offenses. So, for that reason, I'm going to be voting Present.

Id. Representative Currie, in House debate, echoed the concern in stating:

[I]t's not clear to me that this does anything but to further confuse the Juvenile Justice Reform Act of last year We talked about blended sentences in the Juvenile Justice Reform Act last year. Let's give them a chance to work. That was a solution, perhaps, to the problem the promoters of this Bill are trying to address. I don't think this Bill does the job.

S.B. 759, 44th Legis. Day 1-2 (Ill. 1999).

194. See S.B. 759, 27th Legis. Day 1-2 (Ill. 1999) (comments of Sen. Obama). Senator Obama questioned why this Bill was before the Senate when a similar proposal had been rejected a year ago:

Part of the reason that we negotiated it out of that original bill was at least the sense of some of us that there really is no proof or indication that automatic transfers and increased penalties for juvenile offenses have, in fact, proven to be more effective in reducing juvenile crime or cutting back on recidivism.

Id. Representative Currie expressed similar concerns:

We do know the transfer of juveniles to adult court does not work the way that promoters think it will. They are more likely, children who've been tried in adult court, to come back out of prison and commit more offenses than youths who are tried in the ju-

however, dismissed these concerns and garnered overwhelming support in both Houses of the General Assembly.¹⁹⁵ Accordingly, Governor Ryan signed the Bill into law less than a month later.¹⁹⁶

IV. ANALYSIS

The passage of Bill 759 in response to the recent disturbing trend of school shootings marks an inappropriate response to a very serious problem. First, the new automatic transfer provision represents a political response to a high-profile, but rare, crisis.¹⁹⁷ Second, the new legislation suffers from the same faults that plague all automatic transfer laws.¹⁹⁸ Most notably, this transfer provision will disproportionately impact urban minorities while seeking to prevent high-profile school shootings perpetuated almost exclusively by Caucasian suburban teenagers.¹⁹⁹ Finally, the new legislation contravenes the original purpose of the Juvenile Court by turning its back on the rehabilitative ideal and possibly exposing juveniles to the harsh conditions of adult prisons.²⁰⁰

A. *The Wrong Political Response to a Serious Problem*

The new automatic transfer provision represents an imprudent and politically-motivated solution to a very serious problem.²⁰¹ The

venile system.

S.B. 759, 44th Legis. Day 1-2 (Ill. 1999). Currie also noted her concern that automatic transfer provisions do not guarantee longer sentences for transferred juveniles, and that the Bill would result in high expenses due to the costs of trying juveniles as adults, and would needlessly clog criminal courts. *See id.*

195. *See* Senate Role Call, S.B. 759, 27th Legis. Day (Ill. 1999); House Role Call, S.B. 759, 44th Legis. Day (Ill. 1999). The Bill passed the General Assembly by a combined total of 147 yeas, 13 nays, 12 present and 1 not voting.

196. *See* S.B. 759, 27th Legis. Day 2-3 (Ill. 1999) (comments of Sen. Dillard). Dillard cited a number of supporters of both the JJRA and Senate Bill 759, including Catherine Ryan, Chief of the Juvenile Justice Bureau, Cook County State's Attorney's Office, Dick Devine, Cook County State's Attorney, and Jim Ryan, Illinois Attorney General, in concluding that the Bill's supporters were "clearly people concerned and attuned with juveniles and their behavior. So this doesn't come out of thin air." *Id.*

197. *See infra* Part IV.A (criticizing the new automatic transfer provision).

198. *See infra* Part IV.B (stating that the automatic transfer provision for battery with a firearm disregards the peer pressure element of juvenile crime and will fail to deter future crime).

199. *See infra* Part IV.B (outlining how Illinois' newest automatic transfer provision suffers from the same shortcomings as other automatic transfer laws).

200. *See infra* Part IV.C (discussing how the purpose of the newly enacted automatic transfer provision fails to fulfill the purpose of the original Juvenile Court Act).

201. *See* Elizabeth Donahoe et al., *School House Hype: School Shootings and the Real Risks Kids Face in America* (visited Oct. 8, 1999) <<http://www.cjcj.org/jpi/schoolhouse.htm>>; Robin Templeton, *First, We Kill All the 11-year-olds* (visited Oct. 8, 1999)

legislature passed the new law due to the rash of high-profile school shootings that have rocked America in the last seventeen months.²⁰² The logic of the legislature's actions, however, flies in the face of statistics indicating the low incidence of school violence in America today.²⁰³ The number of Americans killed by lightning every year actually exceeds the number of children who are killed by gun violence in schools.²⁰⁴ In the past, other states have resisted the public outcry for excessively punitive juvenile laws following high-profile crimes but, as in 1998, the Illinois General Assembly did not.²⁰⁵ Consequently, the politically-motivated legislation will most likely yield an ineffective law.²⁰⁶

This error is all the more glaring in light of the General Assembly's massive amendments to the Juvenile Court Act less than one year ago and the existing transfer provisions prior to the passage of the new law.²⁰⁷ First, the Juvenile Justice Reform Act implemented the largest overhaul of the Juvenile Court Act in Illinois history, and more importantly, it has not existed long enough to effectively determine whether it will be successful.²⁰⁸ The amendments created a new system

<<http://www.salon.com/news/1998/05/27news.htm>>.

202. See S.B. 759, 44th Legis. Day 4-5 (Ill. 1999) (quoting comments of Representative Parke during the House floor debate on Senate Bill 759, which became the new automatic transfer law); see also Chambers, *supra* note 188, at 1 (reporting that the sponsor of the legislation, Senator Kirk Dillard, was outraged and motivated by the school shootings in Littleton, Colorado).

203. See Donahoe et al., *supra* note 201, at <<http://www.cjcj.org/jpi/schoolhouse.htm>>. Eighty-five percent of all American communities reported no juvenile homicides in 1995, and 93.4% recorded one or no juvenile arrests for murder. See *id.*

204. See *id.* (citing National Climatic Data Center, *1996 Annual Summaries* (1997) (reporting that 88 people were killed by lightning in 1997)). Forty people (including some adults) were shot and killed in schools during this same time period. See *id.* These figures included the high-profile school shootings in Pearl, Mississippi, West Paducah, Kentucky, Springfield, Oregon and Jonesboro, Arkansas. See *id.*; see also *supra* notes 1-7 and accompanying text (describing these school shootings).

205. See *supra* notes 101-06 and accompanying text (describing the "blended sentencing" law, which has been lauded for its fair and balanced approach towards juvenile crime, that Arkansas implemented following the Jonesboro school shootings); see also Parsons, *supra* note 100, at 10 (detailing the high-profile crimes which spurred the Illinois General Assembly into passing the Juvenile Justice Reform Act in 1998); *The Right Result For The Wrong Reason*, CHI. TRIB., Sept. 1, 1999, § 1, at 20 (calling the General Assembly's decision to build a maximum security prison for juveniles "a testament to the folly of basing public policy on politically motivated panic-peddling").

206. See *infra* Part IV.B (discussing the general inefficacy of automatic transfer provisions in deterring juvenile crime).

207. See *supra* Part II.B (discussing the 1998 amendments to the Juvenile Court Act, which constituted the largest overhaul of the Act in Juvenile Court history); *supra* Part II.A.2-3 (chronicling the history and extent of automatic transfer provisions in Illinois before the current legislation).

208. See Juvenile Justice Reform Provisions of 1998, Pub. Act No. 90-590, 1998 Ill. Laws

of trying and rehabilitating juvenile offenders, while purposely excluding a proposed aggravated battery with a firearm transfer provision.²⁰⁹ A centerpiece of the JJRA was "blended sentencing," which allows a Juvenile Court judge to impose a criminal sentence on top of a juvenile sentence if the youth violates that juvenile sentence.²¹⁰ In instances where a minor was charged with aggravated battery with a firearm, Juvenile Court judges could demonstrate the seriousness of the minor's offense by imposing a severe adult sentence, while at the same time allowing for the possibility of rehabilitation by insuring that the services of the Juvenile Court were at the child's disposal.²¹¹ Marketed as a final incentive for juveniles to change their ways, the possible benefits of blended sentencing cannot be properly evaluated in light of the new transfer provision.²¹²

Second, existing transfer provisions adequately insured that the school violence the General Assembly sought to punish would be dealt with in criminal court.²¹³ Prior to the passage of the new legislation, aggravated battery with a firearm was a presumptive transfer offense.²¹⁴ It placed the burden of proof on the accused minor to demonstrate that he or she should be tried in Juvenile Court.²¹⁵ Data from this time period indicated that, while prosecutors had been successful in transferring juveniles charged with this offense to criminal court, in over half the cases prosecutors did not have enough evidence to file a petition requesting transfer.²¹⁶ Under the new automatic transfer provision, a lack of evidence will not be a bar to transfer.²¹⁷ While

1035-1281 (West); Jochner, *supra* note 97, at 152.

209. See *supra* notes 98, 99, 102 and accompanying text (describing the BARJ model of juvenile delinquency, which the Juvenile Court adopted in 1998, and discussing the rejection of an aggravated battery with a firearm transfer provision as a part of that legislation).

210. See *supra* notes 101-06 and accompanying text (explaining "blended sentencing," as promulgated by the Illinois General Assembly).

211. See Drizin, *supra* note 29, at 1; Letter from James R. Covington III, Director of Legislative Affairs, Illinois State Bar Association, to Governor George Ryan, Governor of the State of Illinois 1 (May 20, 1999) (on file with author) [hereinafter "Covington Letter"].

212. See Covington Letter, *supra* note 211, at 2.

213. See Drizin, *supra* note 29, at 1.

214. See 705 ILL. COMP. STAT. 405/5-805(2) (1998) (defining presumptive transfer); see also *supra* notes 88-90 and accompanying text (chronicling the history of presumptive transfer and explaining its usage).

215. See § 405/5-805(2).

216. See *supra* note 91 (containing the full breakdown of statistical data for aggravated battery with a firearm presumptive transfers in March, 1998, and indicating that in 42 of the 79 cases, prosecutors did not have enough information to file a petition for transfer to criminal court).

217. See Act of June 4, 1999, Pub. Act No. 91-15, sec. 5, § 405/5-805(1), 1999 Ill. Legis. Serv. 125, 130-31 (West) (to be codified in 705 ILL. COMP. STAT. 405/5-805(1)(d)) (defining automatic transfer and explaining that a minor who is automatically transferred to criminal court

existing transfer provisions ensured that school violence would not go unpunished, the new transfer provision only guarantees that the JJRA will go unevaluated.²¹⁸

B. The General Inefficacy of Automatic Transfer Provisions

In addition to ignoring the Juvenile Court's rehabilitative purpose, the automatic aggravated battery with a firearm transfer provision suffers from the same shortcomings exhaustively detailed in empirical studies on other automatic transfer laws.²¹⁹ Perhaps most importantly, transfer provisions evoke a disproportionate impact on urban minorities.²²⁰ The legislative intent behind the new aggravated battery with a firearm transfer provision involved the prevention of school violence, namely the high-profile school shootings that have plagued America in the last seventeen months.²²¹ Caucasian children in a suburban environment, a group not historically impacted by automatic transfer provisions, however, committed all of the shootings.²²² In the last seventeen months, seven Caucasian children and teenagers residing in rural or suburban towns have killed twenty-two of their Caucasian classmates and two of their Caucasian teachers.²²³ None of the gunmen, and only one of the victims, was a minority.²²⁴ While researchers argue over the overall disproportionate effect transfer provisions have on minorities, research on children in Cook County convincingly demonstrates the

is done so based only on his or her age at the time of the statutory offense charged by the prosecutor).

218. See Drizin, *supra* note 29, at 1.

219. See Covington Letter, *supra* note 211, at 1.

220. See Clarke, *supra* note 50, at 11-12 (summarizing Illinois transfer studies on the disproportionate effect on minority youth); Kane, *supra* note 152, at 18-19.

221. See S.B. 759, 44th Legis. Day 5 (Ill. 1999) (comments of Rep. Parke). Representative Parke asked the legislature:

[T]o continue to support this and put it on the desk of the Governor and let the Governor sign it, so that we can further use this to protect our society and especially our children in schools against young people who are . . . who have become deranged and use a weapon as a only means of violence to solve their problems.

Id.

222. See Jill Nelson, *White Lies* (visited Oct. 7, 1999) <www.salon.com/news/features/1999/05/04/lies/index/html> (discussing the role of race in the post-Columbine news coverage, and noting that the gunmen in all recent high-profile school shootings have been white); see also Clarke, *supra* note 50, at 11-12 (showing that urban minorities are subjected more often to automatic transfer laws than their Caucasian suburban counterparts).

223. See *supra* notes 1-7 and accompanying text (describing the school shootings in Pearl, Mississippi, West Paducah, Kentucky, Jonesboro, Arkansas, Springfield, Oregon and Littleton, Colorado).

224. See Nelson, *supra* note 222 (identifying the single minority victim as Columbine High School senior Isaiah Shoels).

biased effect of transfer provisions.²²⁵ Accordingly, the primary effect of the new legislation in Illinois will most likely be on Chicago area minority children, who will be unfairly and disproportionately impacted by a law that was not intended to impact them.²²⁶

Also, automatic transfer provisions disregard the peer pressure element of juvenile crime and treat all juveniles identically.²²⁷ Using accountability provisions, prosecutors are able to insure that a group of juveniles involved in a shooting will all be tried in criminal court.²²⁸ The minor who did not know his friend was carrying a weapon will be treated the same as the shooter.²²⁹ Studies demonstrate that overwhelming amounts of juveniles commit crimes in groups and act under the influence of peer pressure.²³⁰ Nonetheless, automatic transfer provisions disregard this important characteristic of juvenile crime.²³¹

Finally, transfer provisions do not deter future juvenile crime as they may also lead to higher rates of recidivism among transferred minors.²³² Empirical data resoundingly shows that automatic transfer provisions do not lead to a decrease in the juvenile crime they are expressly designed to prevent.²³³ In some instances, the crime rate actually increases.²³⁴ Furthermore, recidivism rates for transferred minors are consistently higher than those of their counterparts who appear in Juvenile Court.²³⁵ According to empirical studies on recidivism, the new legislation will most likely fail to lower the rate of school violence, while most likely increasing the recidivism rate of juvenile offenders who are punished under the new law.²³⁶

225. See Clarke, *supra* note 50, at 4; Kane, *supra* note 152, at 18.

226. See Clarke, *supra* note 50, at 11-12; see also *supra* note 190 (discussing the prevention of recent school shootings like the massacre in Littleton, Colorado as the motivating force behind the new legislation).

227. See Drizin, *supra* note 29, at 1.

228. See 720 ILL. COMP. STAT. 5/5-2 (1998); Covington Letter, *supra* note 211, at 2.

229. See Covington Letter, *supra* note 211, at 2.

230. See *supra* notes 114-19 and accompanying text (discussing the role of peer pressure in juvenile crime).

231. See Zimring, *supra* note 116, at 867; see also *supra* notes 114-19 and accompanying text (describing empirical studies on juveniles and group crime).

232. See Myers, *supra* note 108, at <http://www.preventingcrime.org/r2/chapter1_2.htm>.

233. See Jensen & Metsger, *supra* note 120, at 98-99; Singer & McDowell, *supra* note 122, at 522; Myers, *supra* note 108, at <http://www.preventingcrime.org/r2/chapter1_2.htm>.

234. See Singer & McDowell, *supra* note 122, at 532-33.

235. See Bishop et al., *supra* note 166, at 171; Podkopacz & Feld, *supra* note 146, at 490-91; Myers, *supra* note 108, at <http://www.preventingcrime.org/r2/chapter1_2.htm>.

236. See Podkopacz & Feld, *supra* note 146, at 491.

C. *The Forgotten Purpose of Juvenile Court*

The Illinois General Assembly's decision to add aggravated battery with a firearm to the list of automatic transfer offenses contravenes the original intent of the founders of the Juvenile Court by rejecting the rehabilitative ideal and possibly relegating juveniles to adult prisons.²³⁷ The original Juvenile Court Act changed the focus of the legal system from punishment to rehabilitation and sought to prevent juveniles from being exposed to the harsh conditions of adult prisons.²³⁸

The new automatic transfer provision turns its back on the rehabilitative ideal.²³⁹ Regardless of each juvenile's individual involvement in the crime and other particular circumstances of their case, transfer laws arbitrarily send all minors to criminal court based solely on their age and the crime with which they are charged.²⁴⁰ Both successful "graduates" of Juvenile Court, as well as the mainstream media, criticized these laws as completely contrary to the original goals of the Juvenile Court.²⁴¹

Additionally, transfer provisions expose juveniles to the harsh conditions of adult prisons, a situation that sparked the passage of the first Juvenile Court Act one hundred years ago.²⁴² Today's prisons are every bit as dangerous to today's juveniles as they were to those one

237. See *supra* notes 26-32 and accompanying text (defining the intent of the founders of Juvenile Court).

238. See Mack, *supra* note 30, at 107 (discussing the rehabilitative ideal of Juvenile Court); Bowen, *supra* note 29, at 449-53 (detailing the "many pitiful cases" of juveniles confined in Illinois prisons).

239. See Drizin, *supra* note 29, at 1.

240. See *id.*

241. A recently released book profiles the stories of "graduates" of the Juvenile Court system—children who for various reasons found themselves in trouble with the law at an early age, yet managed to have profound success as adults in various fields. See Bob Beamon, *Second Chances: Locking up Kids Robs Them of Their Future—and Robs the Future of Them*, CHI. TRIB., Sept. 2, 1999, § 1, at 31 (describing the juvenile court experiences of Bob Beamon, a former gang member who was spared from adult prison by a Juvenile Court judge, and later went on to win a gold medal in the Olympics and shatter the world long jump record); Bernadine Dorn & Steven A. Drizin, *A Second Chance: Juvenile Delinquents Who Transformed Themselves and History*, CHI. TRIB., Mar. 4, 1999, § 1, at 15 (relating the successful life stories of former delinquents turned baseball hall-of-famers Babe Ruth and Satchel Paige and former delinquent-turned-singer Ella Fitzgerald); Terrence Hallinan, *Juveniles Deserve a Second Chance*, USA TODAY, Aug. 25, 1999, at 13A (describing the life experiences of Terrence Hallinan, who was banished from his home county by a Juvenile Court judge and went on to become District Attorney of San Francisco); *You Can't Legislate Adulthood*, CHI. TRIB., Mar. 28, 1999, § 1, at 30 (arguing that the proposed aggravated battery with a firearm automatic transfer provision "flies in the face" of the reasoning that led to the establishment of the Juvenile Court).

242. See *supra* note 29 (describing the harsh conditions of adult prisons in Chicago at the turn of the century, a condition which motivated the passage of the first Juvenile Court Act).

hundred years ago.²⁴³ Juveniles are almost eight times more likely to commit suicide in adult prisons than their counterparts in juvenile detention facilities.²⁴⁴ They are five times more likely to be sexually assaulted by fellow inmates and two times more likely to be physically assaulted by prison employees.²⁴⁵ Although current Illinois law mandates that juveniles and adult inmates remain separated, pending federal legislation would expose all automatically transferred to these debilitating conditions.²⁴⁶ By transferring juveniles to criminal court, the new legislation not only decreases the likelihood of a child's future success, but increases the chances of violence against the juvenile incarcerated in an adult prison.²⁴⁷

V. PROPOSAL

Until the efficacy of automatic transfer provisions is established, the Illinois General Assembly should repeal the current aggravated battery with a firearm transfer law and reinstate the discretion to transfer a juvenile accused of this crime to criminal court to the Juvenile Court judge. Currently, Juvenile Court judges do not hesitate to transfer serious cases of aggravated battery with a firearm to criminal court, and they are also better equipped to react to the differing circumstances of each juvenile's case.²⁴⁸ Furthermore, the repeal of the new transfer provision would demonstrate confidence in the JJRA of 1998 and allow a more complete analysis of the effectiveness of those massive

243. See HOWELL, *supra* note 108, at 109; Jason Ziedenberg & Vincent Schiraldi, *The Risks Juveniles Face When They Are Incarcerated With Adults* (last visited Oct. 7, 1999) <<http://www.cjcj.org/jpi/risks.htm>>.

244. See Ziedenberg & Schiraldi, *supra* note 243 (finding that the suicide rate of juveniles detained in adult prisons was 7.7 times the suicide rate of juveniles in juvenile detention centers and that the suicide rate of juveniles in juvenile detention centers was lower than the suicide rate of the general population).

245. See *id.* The study reported that five times as many juveniles held in adult prisons responded affirmatively to the question "has anyone attempted to sexually attack or rape you?" than minors held in juvenile detention centers. *Id.* Due to the typically diminutive size of most juvenile offenders, "[t]hey will become somebody's 'girlfriend' very, very fast." *Id.*

246. See 730 ILL. COMP. STAT. 5/3-10-7 (1998). Juveniles and adults are separated until the juvenile turns twenty-one. See *id.* The Director of the Illinois Department of Corrections, however, may transfer a juvenile over the age of seventeen to adult prison if "the interests of safety, security and discipline" require it. *Id.*; see also Ziedenberg & Schiraldi, *supra* note 243, at <<http://www.cjcj.org/jpi/risks.htm>> (discussing the proposed juvenile justice legislation, which proposes to withhold federal funds from states unless they transfer large numbers of juvenile offenders to adult prisons).

247. See Ziedenberg & Schiraldi, *supra* note 243, at <<http://www.cjcj.org/jpi/risks.htm>>.

248. See *supra* note 91 (containing the full breakdown of statistical data for aggravated battery with a firearm presumptive transfers in March, 1998, and indicating that in 11 of the 79 cases, judges transferred juveniles to criminal court).

amendments.²⁴⁹ Finally, although the General Assembly should react quickly and decisively to violent crimes such as school shootings, they should not be so eager to turn their back on the original rehabilitative ideal of the Juvenile Court.²⁵⁰ Rather, they should follow the lead of states like Arkansas, which allow Juvenile Court judges to determine the fate of juvenile delinquents in a system similar to the JJRA passed by the Illinois General Assembly.²⁵¹ Although juveniles who enter classrooms with guns blazing deserve to be punished to the full extent of the law, automatic transfer provisions unfairly punish thousands of less culpable children. Therefore, such provisions should be rejected.²⁵²

VI. CONCLUSION

The passage of the new aggravated battery with a firearm automatic transfer provision represents a politically-motivated wrong answer to the serious question of how to deal with the high-profile school shootings of the past seventeen months. Moreover, current studies demonstrate that automatic transfer provisions generally do not deter juvenile crime; rather, they disproportionately impact urban minorities and lead to higher rates of recidivism for punished minors. Finally, the new legislation contravenes the original intent of the founders of the Juvenile Court. The transfer provision turns its back on the rehabilitative ideal and may expose juveniles to the harsh conditions of adult prisons. The Illinois General Assembly should repeal this new law and reinvest Juvenile Court judges with the discretion to transfer violent offenders like school shooters to criminal court. This would demonstrate confidence in the JJRA of 1998, which constituted the largest overhaul of the Juvenile Court Act in its one hundred year history, and stress juveniles' accountability for their crimes. More importantly, however, the repeal of the aggravated battery with a firearm transfer provision would allow Juvenile Court judges to punish children who intended to shoot their classmates as adults, without restricting Juvenile Court judges' ability to help rehabilitate a child who was in the wrong place at the wrong time.

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249. See Drizin, *supra* note 29, at 1; Covington Letter, *supra* note 211, at 2.

250. See *supra* notes 26-30 and accompanying text (discussing the intent of the founders of the Juvenile Court).

251. See *supra* notes 101-06 and accompanying text (describing the blended sentencing law, which has been praised for its fair and balanced approach towards juvenile crime, that Arkansas implemented following the Jonesboro school shootings).

252. See Drizin, *supra* note 29, at 1 (describing how less culpable offenders are sent to criminal court using automatic transfer provisions).