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Annette R. Appell
Attorney & Guardian ad litem, Cook County Office of the IL Public Guardian

Jane D. Wessel

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*Annette R. Appell**
*and Jane D. Wessel***

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I. INTRODUCTION

This Article discusses Illinois court decisions and legislative amendments in the areas of child abuse and neglect, and delinquency during the *Survey* year.[1] There were a number of developments in the area of child abuse and neglect. The Illinois Supreme Court held that the Illinois Child Shield Statute, which permits a court to order a child sex offense victim's testimony to be videotaped outside the courtroom, violates the confrontation clause of

* Attorney and Guardian ad litem, Cook County Office of the Illinois Public Guardian; B.A., 1982, Cornell University; J.D., 1986, Northwestern University, Chicago. Ms. Appell is co-author of section II of this article only.

** B.A., 1980, University of Exeter, England; J.D. candidate, 1991, Loyola University of Chicago.

1. Several important federal cases were decided during the *Survey* year, but they are outside the scope of this article. *See, e.g.*, DeShaney v. Winnebago County Dep't. of Social Servs., 109 S. Ct. 998 (1989) (child has no constitutional right to be protected by state child welfare services from the actions of private individuals); Doe v. Bobbitt, 881 F.2d 510 (7th Cir. 1989) (public officials have qualified immunity from liability for placing a child at risk of harm from private individuals in a foster home). *See also* Shapiro and Viedrah, *Family Law*, 21 LOY. U. CHI. L.J. 417 (1990) for other legal developments affecting juveniles.

the sixth amendment of the United States Constitution.[2] In addition, the Illinois appellate courts addressed the extent of corroborating evidence a trial court must consider to support a finding of abuse based on a minor's prior out-of-court statements.[3] The Illinois legislature amended the Department of Children and Family Services ("DCFS") Enabling Act,[4] which now requires the Department to make efforts to place a child with a close relative whenever possible.

In the field of delinquency proceedings, the Illinois Supreme Court addressed the circumstances under which a court may restrain the press from publishing the name of a minor accused of a serious offense.[5] The Illinois Supreme Court also decided whether a criminal court may properly rule on matters that a juvenile court judge has already determined.[6] In addition, an appellate court emphasized the mandatory nature of the Juvenile Court Act's notice requirements,[7] and reaffirmed the constitutionality of indeterminate sentencing under its provisions.[8] Finally, the Illinois legislature amended the Act's custody and detention provisions.[9]

II. ABUSE AND NEGLECT

A. Videotaped Testimony

The Illinois Supreme Court addressed the constitutionality of the Illinois Child Shield Statute[10] in *People v. Bastien*.[11] The statute permits a court, upon the state's motion, to order the testimony of a child sex offense victim recorded on videotape.[12] The court

2. *See infra* notes 10-38 and accompanying text.

3. *See infra* notes 39-75 and accompanying text.

4. ILL. REV. STAT. ch. 23, para. 5007 (1987), *amended by* 1989 Ill. Legis. Serv. 85-1403 (West) (effective Jan. 1, 1989). *See infra* notes 75-77 and accompanying text.

5. *See infra* notes 78-106 and accompanying text.

6. *See infra* notes 107-45 and accompanying text.

7. ILL. REV. STAT. ch. 37, para. 802-15 (1987). *See infra* notes 146-76 and accompanying text.

8. *See infra* notes 177-89 and accompanying text.

9. ILL. REV. STAT. ch. 37, para. 805-7 (1987), *amended by* 1989 Ill. Legis. Serv. 85-1443 (West) (effective July 1, 1989). *See infra* notes 190-200 and accompanying text.

10. ILL. REV. STAT. ch. 38, para. 106A (1987). For the court's summary of the provisions of this section, see *infra* note 12.

11. 129 Ill. 2d 64, 541 N.E.2d 670 (1989).

12. ILL. REV. STAT. ch. 38, paras. 106A-1 to 106A-2 (1987). Article 106A of the Criminal Code was added by P.A. 85-881, and became effective on January 1, 1988. Paragraph 106A-1 provides:

> This article applies only to a proceeding in the prosecution of an offense of criminal sexual abuse, aggravated criminal sexual abuse, criminal sexual assault, or aggravated criminal sexual assault alleged to have been committed

held that the Child Shield Statute violated the defendant's right to contemporaneous cross-examination as guaranteed by the confrontation clause of the sixth amendment of the United States Constitution.[13]

In *Bastien*, the State charged an adult with the aggravated criminal sexual assault of a child.[14] Pursuant to section 106A, the State moved for leave to record the minor victim's testimony on videotape.[15] The trial court denied the motion and held that the statute violated the defendant's constitutional rights to confrontation and due process, as protected by the sixth and fourteenth amendments.[16] Specifically, the trial court concluded that the statute denied the defendant the opportunity for contemporaneous cross-examination because the defendant was not permitted to cross-examine the witness at the time of the videotaping.[17] The court reasoned that the delay between the videotaping and the trial rendered the right to cross-examine the witness at trial inadequate to safeguard the defendant's right to confrontation.[18] The trial court subsequently denied the State's motion for reconsideration.[19] The Illinois Supreme Court granted the State leave to file a motion for a supervisory order.[20]

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against a child 12 years of age or younger, and applies only to the statements or testimony of the child.

ILL. REV. STAT. ch. 38, para. 106A-1 (1987).

Paragraph 106A-2 dictates the procedure that must be followed when the videotaped testimony is taken and the conditions under which the videotape may be admitted into evidence. ILL. REV. STAT. ch. 38, para. 106A-2 (1987). The *Bastien* court summarized the statutory provision as follows:

> The court may, upon the State's motion, order that the child victim's 'statement or testimony' be videotaped; the attorneys for both sides, the defendant, and the court must be present; the prosecutor or the court may question the child, but may not use leading questions. The videotape may be admissible at trial, provided the witness is available to testify at trial, and the defendant is afforded the opportunity to cross-examine the witness at trial. The statute specifically does not permit the defendant to cross-examine the witness at the videotaping.

129 Ill. 2d at 68-69, 541 N.E.2d at 672. The statute does not provide the criteria a court must consider in determining whether to grant the state's motion.

13. 129 Ill. 2d at 80, 541 N.E.2d at 677.

14. *Id.* at 66, 541 N.E.2d at 671.

15. *Id.*

16. *Id.*

17. *Id.* at 66-67, 541 N.E.2d at 671.

18. *Id.* at 67, 541 N.E.2d at 671. The trial court also held that the statute violated the defendant's right to due process because it allowed the State's evidence to be heard twice, once on videotape and again in live testimony by the victim at trial. In addition, the court held that the statute violated due process because it did not specify the basis upon which a motion for leave to record testimony should be granted by the court. *Id.*

19. *Id.*

20. *Id.* Under a supervisory order, the person having custody of the minor is placed

Before the supreme court, the State contended that the Constitution does not guarantee contemporaneous cross-examination.[21] Accordingly, the State argued that the trial court's holding should be reversed.[22] The Illinois Supreme Court affirmed the trial court's holding and denied the State's motion for a supervisory order.[23] The court stated that the Child Shield Statute meets the constitutional requirement of face-to-face confrontation because the defendant must be present at the videotaping and because he is permitted to cross-examine the victim at trial.[24] The court held, however, that the Child Shield Statute impermissibly infringed on the defendant's right to confrontation because it prohibited cross-examination at the time of the videotaping.[25]

In so holding, the court relied on the policy underlying the right

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under the probation officer's supervision under such terms as the court specifies in its order. ILL. REV. STAT. ch. 37, para. 802-24 (1987).

21. *Bastien*, 129 Ill. 2d at 69, 541 N.E.2d at 672. The defendant also challenged the statute as a violation of guarantees under the Illinois Constitution. The Illinois Supreme Court stated that it would assume, without deciding the issue, that provisions of the Illinois Constitution would be construed to provide the same guarantees as the corresponding provisions of the United States Constitution. *Id.*

22. *Id.* The State also challenged the trial court's holding that the statute violated general due process guarantees. *See supra* note 19. The supreme court affirmed the trial court's holding based on the confrontation clause challenge alone; it did not consider whether the statute also violated the due process clause, generally. 129 Ill. 2d at 80, 541 N.E.2d at 677.

23. *Id.*

24. *Id.* at 73-74, 541 N.E.2d at 674. For its analysis of the face-to-face confrontation issue, the court relied on Coy v. Iowa, 487 U.S. 1012 (1988). 129 Ill. 2d at 73-74, 541 N.E.2d at 674. In *Coy*, the Supreme Court held that the use of a screen to prevent a child witness from seeing the accused when the child was testifying violated the defendant's right under the sixth and fourteenth amendments to have a face-to-face confrontation with his accuser. *Id.* The Court explicitly left open whether such a procedure would be permissible on a showing of necessity in a particular case. *Id.* at 2803. For a detailed analysis of *Coy*, see Clarke and Jacobson, *Juvenile Law*, 20 LOY. U. CHI. L.J. 501, 508 n.65 (1989).

25. *Bastien*, 129 Ill. 2d at 77, 541 N.E.2d at 676. The court failed to cite any authority for the proposition that a right to contemporaneous cross-examination exists under the confrontation clause. *See infra* note 26 and accompanying text. The State argued that no such guarantee exists, relying upon California v. Green, 399 U.S. 149 (1970). 129 Ill. 2d at 74, 541 N.E.2d at 674. In *Green*, the Supreme Court held that the admission of a prior out-of-court statement to prove the defendant's guilt did not violate the confrontation clause if the witness was available to testify at trial. 399 U.S. at 164. In *Bastien*, the Illinois Supreme Court distinguished *Green*. Ill. 2d at 76, 541 N.E.2d at 675. According to the court, *Green* stated that the admission of the prior out-of-court statement at issue would not have violated the confrontation clause, even if the statement had not been subject to cross-examination at the time it was made, because it was a prior inconsistent statement. *Id.* (citing *Green*, 399 U.S. at 158). Thus, as a prior inconsistent statement, the statement in *Green* was not hearsay because it was not introduced to prove the truth of the matter asserted. *Id.* In contrast, the Illinois Supreme Court noted that the videotaped testimony at issue in *Bastien* was pure hearsay. *Id.* at 74, 541 N.E.2d at 674.

to contemporaneous cross-examination.[26] The court noted that delayed cross-examination presents the dangers that a child witness' testimony will be less susceptible to effective cross-examination[27] and that the child may be influenced by prosecutors and relatives between the time the recording is made and cross-examination occurs at trial.[28] Thus, the court reasoned that cross-examination may be less effective in eliciting the truth when the witness is susceptible to outside influences between direct and cross-examination.[29]

The court also noted that, pursuant to the Child Shield Statute, the videotaped testimony is admissible only if the witness is available to testify at trial.[30] The court emphasized that the hearsay rules require a court to hear live testimony in preference to a videotaped statement.[31] The court concluded, therefore, that requiring the witness to be available to testify at trial negated any justification for the videotaped testimony provisions.[32] The court bolstered its conclusion by noting that the statute gives no specific criteria by which the trial court is to decide whether the videotape procedure should be permitted.[33]

Finally, the court concluded that the Child Shield Statute was an invalid legislative exception to the hearsay rule because it allows a

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26. *See supra* note 24. The court did not rely on any case that directly states the right to contemporaneous cross-examination is guaranteed by the confrontation clause. The court cited United States v. Inadi, 475 U.S. 387 (1986), in which the Supreme Court restated the policies that support a right to contemporaneous cross-examination, including the need for the opportunity to view the demeanor of the witness on cross-examination and the requirement that the best form of available evidence must be presented at trial. *Bastien*, 129 Ill. 2d at 78, 541 N.E.2d at 676 (citing *Inadi*, 475 U.S. at 394).

27. 129 Ill. 2d at 76-77, 541 N.E.2d at 675 (citing *Green*, 399 U.S. at 159).

28. *Id.* at 77, 541 N.E.2d at 676.

29. *Id.* at 78-79, 541 N.E.2d at 676-77 (contrasting Perry v. Leeke, 109 S. Ct. 594 (1989). In *Perry*, the Supreme Court held that the defendant was not denied his sixth amendment right to the aid of counsel when the trial court instructed the defendant to refrain from consulting with his attorney during a brief recess between the direct and cross-examination of the defendant. *Perry*, 109 S. Ct. at 601.

30. *Bastien*, 129 Ill. 2d at 78, 541 N.E.2d at 676. *See* ILL. REV. STAT. ch. 38, para. 106A-2(b)(6) (1987).

31. 129 Ill. 2d at 78, 541 N.E.2d at 676 (citing United States v. Inadi, 475 U.S. 387, 394 (1986) (principles of hearsay, applicable to confrontation clause, require a court to rely on best available version of testimony)).

32. *Id.* at 78, 541 N.E.2d at 676. The court noted that a child shield statute's purpose is to protect the child witness from the ordeal of testifying and to eliminate the problems created by the live testimony of a fearful and forgetful witness. *Id.* at 70, 541 N.E.2d at 672-73 (citing Note, *The Testimony of Child Victims in Sex Abuse Prosecutions: Two Legislative Innovations*, 8 HARV. L. REV. 806, 806-08 (1985)). The court ignored this purpose in holding that requiring the witness to be present to testify at trial negates the statute's justification. *See id.* at 78, 541 N.E.2d at 676.

33. *Id.* at 78, 541 N.E.2d at 676.

court to admit an out-of-court statement to prove the truth of a matter asserted.[34] According to the court, the legislature may create such an exception as long as it does not conflict with constitutional guarantees.[35] In this case, however, the legislative exception violated such a guarantee and was therefore unconstitutional.

To comply with the supreme court's holding in *Bastien*, the Illinois legislature could amend the Child Shield Statute to permit the defendant to cross-examine the witness at the time the tape is made. Yet, the court cast doubt on the admissibility of any videotaped testimony when the witness is available to testify at trial, as the current statute requires.[36] The court did not address whether it would uphold a statute that permitted a court to admit a child witness' videotaped testimony into evidence only if the child is unavailable to testify at trial.

The court also did not address whether it would have upheld the statute if it had allowed the videotaped testimony to be admitted only upon a showing of necessity. The court noted that one of the purposes of child shield statutes is to elicit testimony from a fearful and forgetful witness.[37] Thus, the court may have upheld the statute if it had required a showing that the child was so fearful that his testimony could not be elicited, if he were cross-examined contemporaneously with his direct testimony.[38]

B. Corroboration of Child's Prior Allegations of Abuse

Under the Juvenile Court Act ("Act"), out-of-court statements by abused minors are admissible into evidence, but they must be corroborated in order to support a finding of abuse or neglect.[39] The Act further provides a rebuttable presumption that children

34. *Id.* at 74-77, 541 N.E.2d at 674-766. The videotaped testimony of the child victim constitutes an out-of-court statement. This evidence may be admitted at trial in lieu of live testimony, as long as the witness is available for cross-examination at trial. ILL. REV. STAT. ch. 38, para. 106A-2 (1987). For the text of this provision, see *supra* note 12.

35. 129 Ill. 2d at 75, 541 N.E.2d at 675.

36. *Id.* at 78, 541 N.E.2d at 676. *See supra* notes 30-32 and accompanying text.

37. *See supra* note 32 and accompanying text.

38. Such a holding would not conflict with the Supreme Court's decision in Coy v. Iowa, 487 U.S. 1012 (1988) (question explicitly left open as to whether showing of necessity would satisfy requirements of face-to-face confrontation).

39. ILL. REV. STAT. ch. 37, para. 706(4)(c) (1983), *recodified at* ILL. REV. STAT. ch. 37, para. 802-18(4)(c) (Supp. 1988). This section provides that "[p]revious statements made by the minor relating to any allegations of abuse or neglect shall be admissible in evidence. However, no such statement, if uncorroborated and not subject to cross-examination, shall be sufficient in itself to support a finding of abuse or neglect." *Id.* Significantly, the statute fails to specify whether the minor's testimony is sufficient corroboration or whether the corroboration must be independent.

are competent to testify.[40]

During the *Survey* year, the Illinois Appellate Courts for the First and Third Districts each addressed the extent of corroborating evidence required in civil abuse and neglect proceedings to support a child's out-of-court allegations of sexual abuse. The first district held that the testimony of the children themselves was sufficient to corroborate their out-of-court statements.[41] The third district held that when the child is not competent to testify, independent evidence must corroborate both the fact of abuse and the identity of the abuser.[42]

In re Marcus E. arose from an investigation into allegations that two children had been abused by their parents.[43] On a petition for adjudication of wardship, the trial court admitted into evidence counselors' testimony concerning allegations of sexual abuse that the children made to the counselors during their investigation.[44] The court overruled the defense's hearsay objection to admitting these out-of-court statements.[45] The court heard the children's testimony in chambers; the parents' attorneys were present and cross-examined the children, although the parents themselves were not permitted to attend.[46] Having heard the testimony of the counsel-

40. ILL. REV. STAT. ch. 37, para. 704-6(4)(d) (1983), *recodified at* ILL. REV. STAT. ch. 37, para. 802-18(4)(d) (Supp. 1988) provides: "[t]here shall be a rebuttable presumption that a minor is competent to testify in abuse or neglect proceedings. The court shall determine how much weight to give to the minor's testimony, and may allow the minor to testify in chambers with only the court, the court reporter and attorneys for the parties present." *Id.*

41. *In re* Marcus E., 183 Ill. App. 3d 693, 705, 539 N.E.2d 344, 352 (1st Dist. 1989).

42. *In re* D.P., 176 Ill. App. 3d 456, 457-58, 531 N.E.2d 162, 163 (3d Dist. 1988), *appeal denied*, 125 Ill. 2d 565, 537 N.E.2d 808 (1989).

43. 183 Ill. App. 3d at 696-97, 539 N.E.2d at 346.

44. *Id.* at 697-99, 539 N.E.2d at 346-48. The counselors were officials of the DCFS and of HELP, an agency that specializes in cases of sexual abuse. One counselor testified that both children of the alleged abusers had related incidents of abuse. Marla, who was four years old, told the counselor that her father had sexually abused her. Marcus, who was seven years old, told the counselor that his father had hit him on the penis and on the head. The counselor also testified that the children's mother told her that she removed the children from their father's home when she discovered the abuse. In a later interview with the same counselor, Marcus described incidents when his father sexually abused him and when he witnessed his father molesting Marla. Marcus also told a counselor that his mother participated in the incidents of abuse. *Id.* at 697-99, 539 N.E.2d at 347-48.

45. *Id.* at 697, 539 N.E.2d at 346.

46. *Id.* at 704, 539 N.E.2d at 351. The children's testimony in chambers contradicted some details of the prior statements testified to by the counselors, and both children contradicted themselves during the course of their testimony. For example, in chambers, Marcus denied that he had ever seen his father abuse Marla, but later he stated that he, Marla, and their father would engage in sexual activities together. Marla first stated that her father had not abused her, but later in chambers she repeated her previous allegations against him. *See id.* at 700, 539 N.E.2d at 348-49.

ors in the courtroom and that of the children in chambers, the trial court held that the State had proven its allegations of abuse against both parents.[47] The children subsequently were made wards of court.[48]

In separate appeals, both parents contended that the counselors' testimony constituted uncorroborated hearsay.[49] The parents argued that the trial court's findings of abuse based on such evidence violated their constitutional rights because the court gave the hearsay evidence the weight of substantive evidence.[50] The court characterized the parents' arguments as challenges based on a denial of their sixth amendment rights to confront and cross-examine their accusers.[51]

The first district rejected the parents' arguments and held that the children were subjected to both confrontation and cross-examination at trial even though the parents did not directly confront the children when they testified.[52] The court reasoned that the parents' attorneys were present when the children testified and had questioned the children regarding their prior statements and trial testimony.[53] The court also emphasized that neglect proceedings are civil matters, not criminal. Accordingly, the court held that the sixth amendment's direct confrontation guarantee does not apply to civil neglect proceedings, when the court's main concern is the minor's welfare rather than the guilt of the accused.[54]

In reaching its holding, the court acknowledged that the statute does not permit a court to find that a child has been abused on the strength of the hearsay evidence alone, without corroborating evidence.[55] The court noted that the only corroborating evidence presented in the trial court was the testimony of the children them-

47. *Id.* at 701, 539 N.E.2d at 349.

48. *Id.*

49. *Id.* at 702, 539 N.E.2d at 350.

50. *Id.* The parents also argued that the trial court improperly admitted certain expert testimony and that the prosecution committed other errors in questioning the mother. *Id.* at 708-09, 539 N.E.2d at 354-55. The court rejected these arguments. *Id.*

51. *Id.* at 703, 539 N.E.2d at 351. The parents contended that they were denied the opportunity to cross-examine the children because the children's testimony was given in chambers and the parents were not permitted to be present. *See supra* note 46 and accompanying text.

52. *Id. See supra* note 46 and accompanying text.

53. 183 Ill. App. 3d at 704, 539 N.E.2d at 351.

54. *Id.* (citing ILL. REV. STAT. ch. 37, para. 704-6 (1987), *recodified at* ILL. REV. STAT. ch. 37, para. 802-18 (Supp. 1988)).

55. *Id.* at 705, 539 N.E.2d at 352 (citing *In re* Brunken, 139 Ill. App. 3d 232, 487 N.E.2d 397 (1985) (corroborating evidence must make it more probable than not that child was abused, and must be more than testimony of out-of-court statements)).

selves.[56] In addition, the children's testimony was not entirely consistent with their prior statements, and both children contradicted themselves as they testified.[57] In spite of these inconsistencies, the court held that there was sufficient evidence to support the trial court's finding that the father had abused the children.[58] The court explained that the Act does not require a finding of abuse to be independently corroborated as long as the finding is supported by a preponderance of the evidence, as it was held to be in this case.[59]

In *In re D.P.*, the third district also addressed the extent of corroborating evidence required to support a very young child's out-of-court allegations that her father had sexually abused her and subjected her to an injurious environment.[60] The court held that when a child victim is incompetent to testify, the minor's previous statements concerning both the fact of abuse and the abuser's identity must be independently corroborated.[61]

At an adjudicatory hearing, the trial court dismissed the State's petition for a finding of sexual abuse.[62] The fact that D.P. was sexually abused was fully corroborated by independent medical evidence.[63] There was no corroborating evidence of the abuser's

56. 184 Ill. App. 3d at 705, 539 N.E.2d at 352. Although the children testified in the judge's chambers, the appellate court characterized this testimony as trial testimony. *Id.*

57. *See id.* at 700, 539 N.E.2d at 348-49. *See supra* note 46 and accompanying text.

58. 183 Ill. App. 3d at 707, 539 N.E.2d at 353. The court noted that the attorneys' questions may have led the children to give the answers they believed were expected of them or may simply have confused the children. *Id.* at 706, 539 N.E.2d at 352-53. According to the court, although it contained contradictions, the evidence supported the conclusion that it was more probable than not that the alleged abuse did occur. *Id.*

59. *Id.* at 705, 539 N.E.2d at 352 (citing *In re* T.H., 148 Ill. App. 3d 877, 499 N.E.2d 988 (3d Dist. 1986) (child's testimony need not be clear and convincing, or supported by independent corroborating evidence, to sustain finding of abuse)). The court held that the trial court's finding that the father had abused his children was not against the manifest weight of the evidence. *Id.* at 707, 539 N.E.2d at 353. The court held that the evidence against the mother did not support the trial court's finding that she participated in the abuse or knowingly permitted it to occur. *Id.* The court determined that the parents were unable to provide the children with a safe environment, and thus the court affirmed the trial court's placement of the children in foster care. *Id.* at 710, 539 N.E.2d at 355.

60. 176 Ill. App. 3d 456, 531 N.E.2d 162 (1988). In this case, the two-and-a-half year old child was taken to the hospital complaining of vaginal soreness. The child's complaints continued, and she told her mother and her aunt that her father had caused the pain. The child told her aunt that her father had sexually abused her. *Id.* at 457, 531 N.E.2d 163.

61. *Id.* at 458, 531 N.E.2d at 163.

62. *Id.* at 456, 531 N.E.2d at 162.

63. *Id.* at 457, 531 N.E.2d at 162. A physician physically examined the minor and concluded that the child had been sexually abused. *Id.* at 459, 531 N.E.2d at 164 (Heiple, J., dissenting). This medical evidence was neither contradicted nor impeached. *Id.* at 457, 531 N.E.2d at 162.

identity, however, nor any opportunity to cross-examine the child with regard to her out-of-court statements.[64]

On appeal, the Third District Court of Appeals held that when a child victim is incompetent to testify, both the abuse itself and the identity of the abuser must be independently corroborated.[65] The court stated that if courts did not require corroboration both issues would be decided on pure hearsay evidence, thus denying the alleged abuser his right to cross-examine his accuser.[66]

Justice Heiple dissented from the majority's opinion in *In re D.P.*[67] He reasoned that to require independent corroboration when the victim is not competent to testify defeats the purpose of the Juvenile Court Act's section permitting prior statements to be admitted.[68] Justice Heiple stated that the Act permits a finding of abuse even when the minor is incompetent to testify, and it protects the minor from the ordeal of testifying in open court, thus seeking to balance the welfare of minors and the interests of those who are accused of abuse.[69] He concluded that the Act would be meaningless if it were read to require that all elements of the offense must be independently corroborated.[70]

The opinions in *In re Marcus E.* and *In re D.P.* are distinguishable on the basis of minors' competency to testify.[71] The court in *In re D.P.*, in which the victim was not competent to testify, held that the victim's out-of-court statements were not corroborated because no other evidence of the abuser's identity was presented.[72] In

64. *Id.* at 457, 531 N.E.2d at 162. Significantly, the two-and-a-half year old minor was deemed incompetent to testify. *Id.* at 457, 531 N.E.2d at 162. By contrast, the abused minors in *In re* Marcus E. were presumed competent to testify, although their testimony was given in the judge's chambers and their parents were not permitted to be present. 183 Ill. App. 3d 704, 539 N.E.2d at 351. *See supra* notes 46 and 51 and accompanying text. In addition, the *Marcus E.* court held that the children's testimony adequately supported their prior out-of-court statements, even though it was partly contradictory. *Id.* at 707, 539 N.E.2d at 353. *See supra* note 58 and accompanying text.

65. *In re* D.P., 176 Ill. App. 3d at 458, 531 N.E.2d at 163 (citing *In re* Brunken, 139 Ill. App. 3d 232, 487 N.E.2d 397 (1985) (out-of-court statements must be corroborated either by cross-examination of the minor or by independent evidence)). For the text of the statute requiring corroboration, see *supra* note 42.

66. 176 Ill. App. 3d at 458, 531 N.E.2d at 163.

67. *Id.* at 458-59, 531 N.E.2d at 163-64 (Heiple, J., dissenting).

68. *Id.* at 459, 531 N.E.2d at 164 (Heiple, J., dissenting). For the text of the statute, see *supra* note 39.

69. *Id.* at 458-59, 531 N.E.2d at 164 (Heiple, J., dissenting).

70. *Id.* at 459, 531 N.E.2d at 164. Justice Heiple noted that independent corroboration of the abuser's identity will only be available when there is an eyewitness or when the abuser confesses. Therefore, to require such corroboration imposes a nearly impossible burden of proof on the minor. *Id.*

71. *See supra* notes 40 and 64 and accompanying text.

72. *See supra* note 64 and accompanying text.

In re Marcus E., however, the testimony of the abused children themselves corroborated the hearsay evidence.[73] These decisions are consistent with previous decisions which have stated that evidence of prior out-of-court statements must be corroborated either by cross-examination of the child victims or by independent evidence.[74] Justice Heiple's dissenting opinion is consistent with the first district's *In re Marcus E.* opinion, in that both opinions focus on the need to protect the child from abuse.

C. Legislation

During the *Survey* year, the legislature amended the Department of Children and Family Services Enabling Act.[75] The amendment requires the DCFS to investigate the possibility of placing a child with a close relative and whether such a placement is appropriate.[76] The DCFS must justify any decision to place a child elsewhere.[77] It is not apparent from the amended statute's face whether the DCFS also has the burden of showing that it cannot find such a relative. The nature and extent of the DCFS' burden of proof under this amendment may become a subject of dispute; however, there were no cases addressing this issue during the *Survey* period.

III. DELINQUENCY

A. Publication of Minor's Name

In *In re a Minor v. Daily Journal*,[78] the Illinois Supreme Court addressed whether a newspaper may be forbidden to report the

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73. *See supra* note 59 and accompanying text.

74. *See, e.g., In re* Brunken, 139 Ill. App. 3d 232, 487 N.E.2d 397 (5th Dist. 1985) (on which both decisions rely).

75. ILL. REV. STAT. ch. 23, para. 5007 (1987), *amended by* 1989 Ill. Legis. Serv. 85-1403 (West) (effective Jan. 1, 1989).

76. *Id.* The amendment adds a subsection, which provides:

> (b) In placing a child under this Act, a close relative who comes forward or can be identified and who goes through an immediate preliminary approval by the Department shall be selected as the preferred care provider. The close relative must then agree to and subsequently participate in and be qualified in a complete review by the Department. For the purpose of this subsection, "close relative" shall include a parent, grandparent, uncle, aunt, adult brother and adult sister. It shall be the burden of the Department to justify the child's placement elsewhere.

Id.

77. *Id.*

78. 127 Ill. 2d 247, 537 N.E.2d 292 (1989). For further discussion, see Raphael, *Press Appeals from Gag Orders: The Illinois Supreme Court's New Standard*, 78 ILL. B.J. 88 (1990).

name of a minor charged in closed delinquency proceedings when the minor's name has already entered the public domain.[79] The court held that, because there was no evidence of any "serious and imminent threat of harm" to the minor, the trial court improperly ordered the newspaper not to publish the minor's name.[80]

In *Daily Journal*, a minor was arrested in connection with a fatal shooting. The police chief and several city council members revealed the minor's name to a Kankakee Daily Journal reporter two days after the shooting.[81] The following day, the minor appeared before the trial court and was charged with the shooting.[82] Mistakenly believing that the courtroom was closed to the press, the reporter did not attend the hearing.[83] The reporter later discussed the hearing, and the facts surrounding the charge against the minor, with a juvenile probation officer who used the minor's name freely.[84] The Daily Journal subsequently published the minor's name in a report of this first hearing, in accordance with the newspaper's policy to publish the names of minors charged with serious felonies.[85]

The reporter attended a second hearing, in which the trial court ordered reporters not to publish the minor's name.[86] Ignoring the court's order, the Daily Journal then published the minor's name a second time. It also reported where the minor would be housed.[87] For violating its order, the trial court barred the Daily Journal from further proceedings, unless the newspaper agreed not to publish the minor's name.[88] The newspaper moved to vacate the trial

79. 127 Ill. 2d at 250, 537 N.E.2d at 293.

80. *Id.* at 270, 537 N.E.2d at 302.

81. *Id.* at 251-52, 537 N.E.2d at 293-94. The police chief and city council members freely disclosed the minor's name to the reporter at a city council meeting. *Id.*

82. *Id.* at 252, 537 N.E.2d at 294.

83. *Id. See infra* note 88 for the statutory provisions regarding public access to juvenile trials.

84. 127 Ill. 2d at 252, 537 N.E.2d at 294. The probation officer told the reporter what happened at the hearing and freely discussed the minor's family life with the reporter. *Id.*

85. *Id.*

86. *Id. See infra* note 88 for the statutory provision that permits the court to prohibit disclosure of the minor's name.

87. 127 Ill. 2d at 252, 537 N.E.2d at 294.

88. *Id.* at 252-53, 537 N.E.2d at 294. In support of its order, the trial court cited section 1-20 of the Juvenile Court Act, ILL. REV. STAT. ch. 37, para. 701-20(6) (1985), *recodified at* ILL. REV. STAT. ch. 37, para. 801-5(6) (1987) [hereinafter referred to in this section of the Article as "the Act."]. This section provides:

> The general public except for the news media and the victim shall be excluded from any hearing and, except for the persons specified in this Section, only persons . . . who in the opinion of the court have a direct interest in the case or in

court's order, but the trial court denied the motion, stating that it prohibited publication of the minor's name and whereabouts to protect the minor from threats of harm.[89] The Daily Journal appealed the court's orders.[90] On the day that the newspaper filed the appeal, the trial court held a hearing at which the newspaper agreed not to publish the minor's name while the appeal was pending.[91] The appellate court subsequently dismissed the appeal on procedural grounds, without reaching the merits of the case.[92]

Before the supreme court, the newspaper contended that the trial court's orders unconstitutionally abridged the freedom of the press.[93] In response, the State argued that the appeal should be dismissed because the underlying proceedings had been completed and the case was therefore moot.[94] The State also contended that the trial court's orders did not constitute appealable interlocutory

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> the work of the court shall be admitted to the hearing. However, the court may, for the minor's protection and for good cause shown, prohibit any person or agency present in court from further disclosing the minor's identity.

Id.

89. 127 Ill. 2d at 253, 537 N.E.2d at 294. The court stated that threats against the minor had circulated generally in the community. *Id.* Thus, the court concluded that the publication of the minor's name and whereabouts might lead to the minor's harm. The trial judge stated, "[h]ow serious a threat that would be, I suppose your guess is as good as mine." *Id.*

90. *Id.* at 253, 537 N.E.2d at 294.

91. *Id.*

92. *Id.* at 254, 537 N.E.2d at 294-95. The appellate court held that the trial court's order was merely administrative and therefore not appealable under Supreme Court Rule 307(a)(1). *Id.* Judge Heiple dissented from the decision of the appellate court, stating that the trial court's orders were appealable and that the orders were unconstitutional as a restraint on the newspaper's exercise of its first amendment rights. *Id.* at 254, 537 N.E.2d at 295 (Heiple, J., dissenting).

93. *Id.* at 264, 537 N.E.2d at 299. The newspaper challenged the orders' validity as a violation of both the first amendment of the United States Constitution and the comparable provision of the Illinois Constitution, article 1, section 4. *Id.* at 264, 537 N.E.2d at 299. The court addressed only the federal constitutional challenge. *See id.* at 264-70, 537 N.E.2d at 299-302.

94. *Id.* at 254, 537 N.E.2d at 295. The court held that the case was not moot because the newspaper retained an interest in publishing the minor's name, even after the juvenile proceedings were completed. *Id.* Additionally, the court stated that, even if the case were moot, it would qualify for review under the public interest exception to the doctrine of mootness. *Id.* at 257, 537 N.E.2d at 296 (citing People *ex rel.* Black v. Dukes, 96 Ill. 2d 273, 449 N.E.2d 856 (1983); People *ex rel.* Wallace v. Labrenz, 411 Ill. 618, 104 N.E.2d 769, *cert. denied*, 344 U.S. 824 (1952); EPA v. Pollution Control Bd., 88 Ill. App. 3d 71, 410 N.E.2d 98 (1st Dist. 1980), *rev'd*, 86 Ill. 2d 390, 427 N.E.2d 162 (1981)). According to the court, the validity of orders under section 1-20(6) of the Act had arisen before and was likely to be questioned again. *Id.* at 257, 537 N.E.2d at 296 (citing *In re* M.B., 137 Ill. App. 3d 992, 484 N.E.2d 1154 (4th Dist. 1985). Moreover, the court stated that this case would qualify for review, even if it were moot, because it involved an event of short duration that may recur and yet evade review. *Id.* at 258, 537 N.E.2d at 296-97 (citing Globe Newspaper Co. v. Superior Court, 457 U.S. 596 (1982) (order excluding

orders.[95]

The court rejected the State's arguments and held that the trial court's orders constituted an impermissible prior restraint upon the freedom of the press.[96] The court stated that a prior restraint is suspect because it prevents the disclosure of truthful information and because one who violates a prior restraint order could be held in contempt, even if the speech is subsequently held protected.[97] The court stated that a judicial order imposing a prior restraint will only be upheld on a showing of strong necessity.[98] The court determined that no such necessity was evident in this case.[99] According to the court, the trial court entered its order on the basis of vague threats, which did not rise to the level of serious and imminent threats of harm.[100]

The court also commented that, even if strong necessity were present in this case, the State's interest was not sufficiently compelling because the minor's name had already been published before the trial court entered its order, thus placing the minor's name in the public domain.[101] Once information has entered the public domain in a legal manner, the state cannot prohibit its further publi-

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press and public from court during testimony of minor rape victim appealable as such orders are likely to recur and yet evade review)).

95. *Id.* at 260, 537 N.E.2d at 297. The court rejected this argument and held that the trial court's orders were interlocutory restraints upon the publication of information, which are reviewable as interlocutory injunctive orders under Illinois Supreme Court Rule 307(a)(1). *See In re* a Minor at 263, 537 N.E.2d at 299; *see also* ILL. S. CT. R. 307(a)(1), ILL. REV. STAT. ch. 110A, para. 307(a)(1) (1987). This holding explicitly overruled JFS v. ABMJ, 120 Ill. App. 3d 261, 458 N.E.2d 76 (1st Dist. 1983), which held that a provisional order impounding public records was not an interlocutory appealable order. *Daily Journal*, 127 Ill. 2d at 253, 537 N.E.2d at 299.

96. *Id.* at 264, 537 N.E.2d at 299. The court emphasized that such a prior restraint is "the most serious and the least tolerable infringement on First Amendment rights." *Id.* at 264-265, 537 N.E.2d at 299-300 (quoting Nebraska Press Assoc. v. Stuart, 427 U.S. 539 (1976)).

97. *Id.* at 265, 537 N.E.2d at 300 (citing Walker v. City of Birmingham, 388 U.S. 307 (1967)).

98. *Id.* at 265, 537 N.E.2d at 300. The court explained "[i]n the context of judicial proceedings, a judicial order restraining speech will not be held invalid as a prior restraint if it is: (1) necessary to obviate a 'serious and imminent' threat of impending harm, which (2) cannot adequately be addressed by other, less speech-restrictive means." *Id.* The court also quoted Judge Learned Hand, who said: "the question is whether 'the gravity of the evil, discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger.'" *Id.* at 266, 537 N.E.2d at 300 (quoting United States v. Dennis, 183 F.2d 201, 212 (2d Cir. 1950), *aff'd*, 341 U.S. 494 (1951)).

99. *Id.* at 269, 537 N.E.2d at 301-02.

100. *Id. See supra* note 89. The court stated that it was sympathetic to the trial court's anxiety, but a finding of a serious and imminent threat of harm must rest on something more than guesswork. *Id.* at 269-70, 537 N.E.2d at 302.

101. *Id.* at 266-69, 537 N.E.2d at 300-1.

cation, even upon a showing of necessity.[102] The court stated that because the minor's name entered the public domain by lawful means,[103] the State could not restrain the publication of this information.[104] The court thus held that the trial court's order was unconstitutional.[105]

The *In re a Minor* court declined to rule on the newspaper's challenge that section 1-20(6) of the Juvenile Court Act was facially unconstitutional. The court implied, however, that it considered the provision constitutional, as long as a trial court properly applied the test of necessity before it imposed any prior restraint.[106]

B. Sentencing

Under the automatic transfer provisions of section 2-7(6)(a) of the Juvenile Court Act, a minor age fifteen or older, who is charged with certain serious felonies, must be prosecuted as an adult in the criminal court.[107] If the criminal court acquits the minor of the offense that led to his transfer to the criminal courts, section 2-7(6)(c) of the Act requires that further proceedings must be conducted under the Act.[108] Under section 2-7(3) of the Act,

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102. *Id.* at 268, 537 N.E.2d at 301 (citing Oklahoma Publishing Co. v. District Court, 430 U.S. 308 (1977) (order restraining publication of accused minor's name unconstitutional when name already widely-published prior to entry of order), and Smith v. Daily Mail Publishing Co., 443 U.S. 97 (1979) (indictment for truthful publication of minor's name discovered through ordinary reportorial techniques violates first amendment)).

103. *Id.*

104. *Id.* at 268-69, 537 N.E.2d at 301 (citing Smith v. Daily Mail Publishing Co., 443 U.S. 97 (1979)).

105. *Id.* at 270, 537 N.E.2d at 302.

106. *See supra* note 98 and accompanying text.

107. ILL. REV. STAT. ch. 37, para. 702-7(6)(a) (1985), *recodified at* ILL. REV. STAT. ch. 37, para. 805-4(6)(a) (Supp. 1988). Section 2-7(6)a of the Juvenile Court Act provides:

> The definition of delinquent minor under Section 5-3 of this Act shall not apply to any minor who at the time of an offense was at least 15 years of age and who is charged with first degree murder, aggravated criminal sexual assault, armed robbery when the armed robbery was committed with a firearm, or violation of the provisions of subsection 24-1(a)(12) of the Criminal Code of 1961, as amended. These charges and all other charges arising out of the same incident shall be prosecuted pursuant to the Criminal Code of 1961, as amended.

Id.

108. ILL. REV. STAT. ch. 37, para. 702-7(6)(c) (1985), *recodified at* ILL. REV. STAT. ch. 37, para. 805-4(6)(c) (Supp. 1988). Section 2-7(6)c of the Act provides:

> If after trial or plea the minor is only convicted of an offense not covered by paragraph (a) of subsection (6) of this Section, such conviction shall not invalidate the verdict or the prosecution of the minor under the criminal laws of this State; however, the court must thereafter proceed pursuant to Sections 5-22 and 5-23 of this Act. In all other circumstances, in sentencing the court shall have

however, a juvenile court may order that certain juveniles age thirteen or older may be prosecuted under the criminal laws if an adjudicatory hearing has not yet been held.[109] In *People v. DeJesus*,[110] the Illinois Supreme Court avoided addressing a potential conflict between sections 2-7(6)(c) and 2-7(3). Instead the court decided whether, in the context of these provisions, a criminal court may properly sentence a minor under the criminal laws after a juvenile court has determined that the child must be sentenced as a juvenile.[111]

The minor in *DeJesus*, a sixteen year old, was charged with armed robbery and first degree murder.[112] As a result of the first degree murder charge, DeJesus was tried on both charges as an adult, pursuant to the Act's automatic transfer provisions.[113] The jury acquitted DeJesus of the murder charge but found her guilty of armed robbery with a knife.[114] Thus, DeJesus was acquitted of the charge that led to the automatic transfer of her case to the criminal courts.[115]

Following the criminal trial, the State moved to permit sentencing for the armed robbery offense under the criminal laws,[116] arguing that DeJesus could be sentenced as an adult under section 2-7(3) of the Juvenile Court Act, notwithstanding the provisions of section 2-7(6)(c), because no adjudicatory hearing had taken place.[117] The State, therefore, maintained that the court had dis-

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available any or all dispositions prescribed for that offense pursuant to Chapter V of the Unified Code of Corrections.

Id.

109. ILL. REV. STAT. ch. 37, para. 702-7(3) (1985), *recodified at* ILL. REV. STAT. ch. 37, para. 805-4(3)(a) (Supp. 1988). Section 2-7(3) of the Act provides:

> If a petition alleges commission by a minor 13 years of age or over of an act which constitutes a crime under the laws of this State, and, on motion of the State's Attorney, a Juvenile Judge, designated by the Chief Judge of the Circuit to hear and determine such motions, after investigation and hearing but before commencement of the adjudicatory hearing, finds that it is not in the best interests of the minor or of the public to proceed under this Act, the court may enter an order permitting prosecution under the criminal laws.

Id.

110. 127 Ill. 2d 486, 537 N.E.2d 800 (1989).

111. *Id.* at 493-94, 537 N.E.2d at 803.

112. *Id.* at 488, 537 N.E.2d at 801. The minor used a knife in the armed robbery.

113. *Id.* For the text of the automatic transfer provision see *supra* note 107. Armed robbery with a knife is not one of the listed offenses that give rise to automatic transfer.

114. 127 Ill. 2d at 488, 537 N.E.2d at 801.

115. *Id.* at 488-89, 537 N.E.2d at 801. If the original charge against DeJesus had been only for armed robbery with a knife, the Juvenile Court Act would have governed all proceedings in the case. *See supra* note 113 and accompanying text.

116. 127 Ill. 2d at 489, 537 N.E.2d at 801.

117. *Id.* at 489, 537 N.E.2d at 802. *See supra* note 109 (text of the provisions of

cretion under section 2-7(3) to proceed under the criminal laws and was not bound to proceed under section 2-7(6)(c) of the Act.[118] In response, DeJesus argued that the plain language of section 2-7(6)(c) required her to be sentenced as a juvenile.[119] According to DeJesus, even if the court held that section 2-7(3) was discretionary, it did not apply to her case because her criminal trial constituted an adjudicatory hearing within the meaning of that section.[120]

The chief judge of the circuit instructed a juvenile court judge to rule on the State's motion.[121] In deciding the motion, the juvenile court concluded that the criminal trial constituted an adjudicatory hearing within the meaning of section 2-7(3), and the discretionary provisions of that section were therefore inapplicable.[122] Accordingly, the court dismissed the State's motion and held that DeJesus should be sentenced as a juvenile pursuant to section 2-7(6)(c).[123] The court indicated that its order was final and appealable.[124] The case was then transferred to the criminal court for disposition under the provisions of the Juvenile Court Act.[125]

Before the criminal court, the State moved to declare section 2-7(6)(c) unconstitutional because it invaded the inherent powers of the judiciary by removing the courts' discretion to proceed under the criminal laws.[126] In the alternative, the State argued that the court should interpret the provisions of section 2-7(6)(c) to be permissive rather than mandatory.[127] The State also renewed its re-

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section 2-7(3). An adjudicatory hearing in a delinquency case is defined in the Act as a hearing to determine whether the allegations contained in the delinquency petition are proved beyond a reasonable doubt. ILL. REV. STAT. ch. 37, para. 801-3(1). The State argued that no such adjudicatory hearing had taken place because DeJesus' trial in criminal court did not constitute a juvenile court adjudicatory hearing under the language of section 2-7(3). 127 Ill. 2d at 489, 537 N.E.2d at 802.

118. *Id.* at 489, 537 N.E.2d at 802. *See supra* notes 108-09 and accompanying text. The State noted that under a prior version of section 2-7(6)(c), the court had discretion to sentence a minor under either the Act or under the criminal laws when the minor was tried as an adult. The State argued that this discretion is implicit in the current version of section 2-7(6)(c), despite the same section's mandatory language. 127 Ill. 2d at 489-90, 537 N.E.2d at 802.

119. *Id.* at 490, 537 N.E.2d at 802. *See supra* note 108 (text of this provision).

120. 127 Ill. 2d at 490, 537 N.E.2d at 802.

121. *Id.* at 489, 537 N.E.2d at 801. The State had argued that the judge who had presided over DeJesus' criminal trial should also hear its motion. *Id.*

122. *Id.* at 490, 537 N.E.2d at 802. The court reasoned that a second adjudicatory hearing would be barred by double jeopardy. *Id.*

123. *Id. See supra* note 108 and accompanying text.

124. 127 Ill. 2d at 490-91, 537 N.E.2d at 802.

125. *Id.* at 491, 537 N.E.2d at 802.

126. *Id.*

127. *Id.*

quest to sentence DeJesus under the criminal laws.[128] DeJesus contended that the State had waived any constitutional challenge to the statute by failing to raise the issue before the juvenile court judge.[129] DeJesus also argued that the juvenile court had already rejected the State's contention that she could be sentenced under the criminal laws, and the criminal court was bound therefore to proceed in accordance with the juvenile court's ruling.[130]

The criminal court permitted the State to raise its constitutional challenge and held that the juvenile court lacked jurisdiction to rule on motions in a case which had been tried in the criminal court.[131] The court stated that section 2-7(6)(c) was unconstitutionally vague because it was inconsistent with the remainder of the Act.[132] Therefore, the court sentenced DeJesus under the criminal laws, despite the juvenile court's ruling to the contrary.[133] DeJesus appealed the criminal court's ruling to the Illinois Supreme Court.[134] Again, DeJesus argued that she should be sentenced in accordance with the juvenile court's ruling because the juvenile court was assigned the responsibility of ruling on the motion.[135]

Considering DeJesus' appeal, the court stated that the criminal court could not properly rule on issues that had already been determined by the juvenile court.[136] Contrary to the criminal court's ruling, the court reasoned that the juvenile court had jurisdiction to rule on the State's motion.[137] Accordingly, the court determined that the juvenile court's order terminated the criminal prosecution; therefore, its order was final and immediately appealable.[138] The court thus concluded that the State should have taken an immediate appeal from the juvenile court's ruling and

128. *Id.*
129. *Id.*
130. *Id.*
131. *Id.* at 493, 537 N.E.2d at 803.
132. *Id.* at 492, 537 N.E.2d at 803.
133. *Id.* at 493, 537 N.E.2d at 803.
134. *Id.* ILL. S. CT. R. 302(a) permits a party to appeal directly to the supreme court when a trial court declares a statute unconstitutional. ILL. REV. STAT. ch. 110A, para. 302(a) (1987).
135. 127 Ill. 2d at 493, 537 N.E.2d at 803.
136. *Id.* at 498, 537 N.E.2d at 805-06.
137. *Id.* at 498, 537 N.E.2d at 806. The court stated that juvenile courts are one division of a unified court system and whether a motion is heard in juvenile court or in criminal court is a question of procedure, not of jurisdiction. *Id.* (citing People v. Green, 104 Ill. App. 3d 278, 432 N.E.2d 937 (1st Dist.), *cert. denied sub nom.* Robinson v. Illinois, 459 U.S. 872 (1982)).
138. *Id.* at 498, 537 N.E.2d at 806.

should not have attempted to circumvent the ruling by raising a new challenge before the criminal court.[139] The court held that the State waived its constitutional challenge to section 2-7(6)(c) when it failed to present it before the juvenile court.[140] In so holding, the court did not consider the constitutionality of the relevant provisions of the Act.[141]

There is clearly a conflict between sections 2-7(6)(c) and 2-7(3) of the Act.[142] Under section 2-7(3), a minor thirteen or fourteen years old may be sentenced under the criminal laws at the discretion of the designated juvenile court judge.[143] On the other hand, under section 2-7(6)(c), a minor age fifteen years or older who is charged with, and acquitted of, one of the serious offenses listed in the Act must be sentenced under the Act.[144] Courts could make more consistent dispositions if both provisions permitted the court to use its discretion in sentencing a minor. It is likely that the inconsistency between these provisions will be challenged in the future,[145] but the Illinois Supreme Court did not indicate in *DeJesus* how it may rule if such a challenge is properly raised.

C. Notice Requirements

Section 5-22 of the Juvenile Court Act provides that parties to delinquency proceedings must receive adequate notice of dispositional hearings.[146] During the *Survey* year, the fourth district ad-

139. *Id.* at 497, 537 N.E.2d at 805. The court stated that the State had "engaged in judge shopping" by attempting to have the criminal court overrule the juvenile court's ruling. *Id.*

140. *Id.* at 498, 537 N.E.2d at 805.

141. *Id.* at 498-99, 537 N.E.2d at 806. The court stated that it would not decide constitutional questions unnecessarily. *Id.* at 499, 537 N.E.2d at 806 (citing Haughton v. Haughton, 76 Ill. 2d 439, 394 N.E.2d 385 (1979)).

142. *See supra* notes 108-09 (text of these provisions).

143. ILL. REV. STAT. ch. 37, para. 702-7(3) (1985), *recodified at* ILL. REV. STAT. ch. 37, para. 805-4(3)(a) (Supp. 1988). *See supra* note 124 and accompanying text. The Act provides considerations that the judge must take into account in reaching his determination. ILL. REV. STAT. ch. 37, para. 805-4(3)(b) (1987).

144. ILL. REV. STAT. ch. 37, para. 702-7(6)(c) (1985), *recodified at* ILL. REV. STAT. ch. 37, para. 805-4(6)(c) (Supp. 1988). *See supra* note 108 and accompanying text.

145. The Illinois Supreme Court addressed the legislature's power to require courts to proceed under the criminal laws or the Juvenile Court Act in People v. J.S., 103 Ill. 2d 395, 469 N.E.2d 1090 (1984) (the legislature created the right to proceedings under the juvenile laws, so it does not rise to the level of a constitutional right).

146. ILL. REV. STAT. ch. 37, para. 805-22(2) (1987). Section 5-22 provides in part that "[n]otice in compliance with Sections 5-15 and 5-16 must be given to all parties-respondents prior to proceeding to a dispositional hearing." *Id.* Section 5-15 of the Juvenile Court Act lists the requirements for service of summons and petition as follows:

> Service of a summons and petition shall be made by: (a) leaving a copy thereof with the person summoned at least 3 days before the time stated therein for

dressed the application of these notice requirements in two separate decisions. In *In re D.L.W.*,[147] the court held that the notice requirements are mandatory, and proper notice must be given to a minor's parents in a timely manner. In *In re S.L.S.*,[148] the court held that the failure to notify a non-custodial parent of a dispositional hearing was not cured by that parent's subsequent appearance without objection.

In *In re D.L.W.*, a delinquency petition was filed alleging that the minor D.L.W. had committed burglary, misdemeanor theft, and felony damage to property.[149] D.L.W. and his parents were properly served, and he and his mother appeared personally at the hearings. At the dispositional hearing, the court ordered D.L.W. to serve an eighteen month period of probation.[150]

One year later, a petition to revoke D.L.W.'s probation was filed, alleging that D.L.W. had been involved in the theft of an automobile.[151] At hearings attended by the minor and his mother, the court issued a temporary detention order, and the minor admitted the petition's factual allegations.[152] He did not appear at the subsequent dispositional hearing, and the court issued a warrant for his apprehension. The juvenile authorities later apprehended D.L.W.[153]

The court held a dispositional hearing on the afternoon following D.L.W.'s detention. The officer who accompanied D.L.W. to the hearing informed the court that he had notified the minor's mother of the hearing by telephone that morning.[154] The minor's parents did not appear at the hearing. Despite the parents' ab-

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appearance; (b) leaving a copy at his usual place of abode with some person of the family, of the age of 10 years or upwards, and informing that person of the contents thereof, provided the officer or other person making service shall also send a copy of the summons in a sealed envelope with postage fully prepaid, addressed to the person summoned at his usual place of abode, at least 3 days before the time stated therein for appearance; or (c) leaving a copy thereof with the guardian or custodian of a minor, at least 3 days before the time stated therein for appearance.

ILL. REV. STAT. ch. 37, para. 805-15(5) (1987). Section 5-16 of the Act provides for service by certified mail or by publication when personal or substitute service cannot be made for one of the listed reasons. ILL. REV. STAT. ch. 37, para. 805-16 (1987).

147. 187 Ill. App. 3d 566, 571, 543 N.E.2d 542, 546 (4th Dist. 1989).

148. 181 Ill. App. 3d 453, 456-57, 536 N.E.2d 1355, 1357-58 (4th Dist.), *appeal denied sub nom.*, S.L.S. v. S.L.S., 545 N.E.2d 131 (1989).

149. 187 Ill. App. 3d at 568, 543 N.E.2d at 544.

150. *Id.* at 569, 543 N.E.2d at 545.

151. *Id.*

152. *Id.* at 570, 543 N.E.2d at 545.

153. *Id.*

154. *Id.* Such notification clearly violates the Act's notice requirements. *See supra*

sence, the court proceeded with the hearing; it granted the petition to revoke D.L.W.'s probation and committed him to the Department of Corrections.[155]

D.L.W. appealed the trial court's orders, arguing that the notice given to his parents did not meet the Act's requirements.[156] The appellate court reversed the trial court's orders and held that the failure to give proper notice of the dispositional hearing to the minor's parents constituted reversible error.[157] The court emphasized that the notice requirements are mandatory and stated that these requirements cannot be ignored merely because it is expedient to do so.[158]

In re S.L.S.[159] again presented the fourth district with a question concerning the Juvenile Court Act's notice requirements.[160] The court held that the failure to notify the minor's non-custodial parent of a delinquency hearing was not cured by that parent's subsequent notification and appearance without objection at a later dispositional hearing.[161]

A delinquency petition was filed against S.L.S., alleging that he had obstructed justice and had driven without a valid driver's license.[162] The court held an adjudicatory hearing in which the minor admitted the charge of obstructing justice.[163] The other charge was dismissed, and the court held that S.L.S. was a delinquent minor.[164] S.L.S.'s mother was properly served, and she attended the adjudicatory hearing.[165] The minor's non-custodial father, however, was not served with notice of the adjudicatory hearing and he did not appear.[166]

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note 146 and accompanying text. The notice here was not timely, nor was it given by any of the prescribed methods.

155. 187 Ill. App. 3d at 571, 543 N.E.2d at 546.

156. *Id.* *See supra* note 146 and accompanying text.

157. 187 Ill. App. 3d at 571, 543 N.E.2d at 546. The court relied on its prior holding in *In re* J.I.D., 177 Ill. App. 3d 1036, 463 N.E.2d 1023 (1988), in which it held that failure to comply with statutory notice provisions is reversible error. 187 Ill. App. 3d at 571, 543 N.E.2d at 546.

158. *Id.* at 571-72. 543 N.E.2d at 546. The court asserted that the notice requirements are clear and must be complied with prior to proceeding with adjudicatory and dispositional hearings. *Id.*

159. 181 Ill. App. 3d 453, 536 N.E.2d 1355 (4th Dist. 1989).

160. ILL. REV. STAT. ch. 37, para. 805-15(5) (Supp. 1988). For the text of the notice provisions, see *supra* note 146.

161. 181 Ill. App. 3d at 456-57, 536 N.E.2d at 1357-58.

162. *Id.* at 453, 536 N.E.2d at 1356.

163. *Id.* at 453-54, 536 N.E.2d at 1356.

164. *Id.* at 454, 536 N.E.2d at 1356.

165. *Id.*

166. *Id.*

A supplemental delinquency petition was filed, charging S.L.S. with aggravated battery.[167] Both parents were properly served and appeared before the court. The court dismissed the supplemental petition and conducted a dispositional hearing on the original petition, at which the court committed S.L.S. to the Department of Corrections.[168] S.L.S. appealed the court's order, arguing that the trial court lacked jurisdiction to enter the decree of delinquency because the minor's father was not served with proper notice of the original adjudicatory hearing.[169]

In considering this appeal, the court stated that notice must be served on a parent whose address is available, even though the parent is non-custodial and has no close relationship with the minor.[170] According to the court, the notice requirements' purpose is to provide the minor with assistance from his parents at significant delinquency proceedings.[171] The court concluded that this purpose could not be accomplished by the parent's appearance at subsequent hearings and reversed the trial court's dispositional order.[172]

In re D.L.W.[173] and *In re S.L.S.*[174] illustrate the Illinois courts' insistence that service of process strictly conform with the statutory notice requirements. Specifically, service must be properly made on the parents of a minor in juvenile delinquency proceedings and must be served in a timely manner by one of the methods

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167. *Id.* at 458, 536 N.E.2d at 1358 (McCullough, J., dissenting).

168. *Id.*

169. *Id.* at 454, 536 N.E.2d at 1356.

170. *Id.* at 456, 536 N.E.2d at 1357. The court relied on People v. R.S., 104 Ill. 2d 1, 470 N.E.2d 297 (1984), in which the supreme court reversed a finding of delinquency because service was not made on a non-custodial parent. *In re* S.L.S., 181 Ill. App. 3d at 456, 536 N.E.2d at 1357. The *R.S.* court held that the failure to serve notice deprived the court of subject-matter jurisdiction. *R.S.*, 104 Ill. 2d at 6, 470 N.E.2d at 300. A three-justice minority concurred in the result but found that the failure was merely reversible error, not jurisdictional. *Id.* at 7, 470 N.E.2d at 300 (Goldenhersh, J., specially concurring). The *S.L.S.* court considered both the majority and the concurring opinions in *R.S.* and held that the trial court's order should be reversed on either basis. *S.L.S.*, 181 Ill. App. 3d at 456, 536 N.E.2d at 1357-58.

171. *Id.* at 456-57, 536 N.E.2d at 1358.

172. *Id.* In dissent, Presiding Justice McCullough stated that the parent had waived service of process by subsequently appearing without objection. *Id.* at 457-58, 536 N.E.2d at 1358-59 (McCullough, P.J., dissenting) (citing People v. Land, 169 Ill. App. 3d 342, 523 N.E.2d 711 (4th Dist.) , *appeal denied*, 122 Ill. 2d 586, 530 N.E.2d 257 (1988) (notice waived by subsequent appearance)).

173. 187 Ill. App. 3d 566, 543 N.E.2d 542 (4th Dist. 1989). *See supra* notes 149-58 and accompanying text.

174. 181 Ill. App. 3d 453, 536 N.E.2d 1355 (4th Dist.1989). *See supra* notes 159-72 and accompanying text.

the Act prescribes.[175] Failure to serve a minor's parent constitutes reversible error, even when the parent is non-custodial and has no close relationship with the minor.[176]

D. Indeterminate Commitment

Section 5-33(2) of the Juvenile Court Act allows a court to commit a minor to the Department of Corrections for an indeterminate period, which is terminable at the discretion of the Department or when the minor reaches the age of twenty-one.[177] In *In re T.L.B.*,[178] the fourth district held that indeterminate commitment under this provision does not violate constitutional guarantees.[179] The court ruled that the state has a compelling interest in treating delinquent minors differently from adult offenders.[180] Therefore, the court concluded that the difference in their treatment does not offend equal protection guarantees.[181]

The minor in *In re T.L.B.* was ordered to serve a period of probation pursuant to delinquency petition proceedings.[182] He subsequently violated the terms of his probation. The court revoked T.L.B.'s probation and committed him to the Department of Corrections for an indeterminate term.[183] T.L.B. appealed from the trial court's order, on the grounds that sentencing for an indeterminate term violated constitutional equal protection guarantees.[184] T.L.B. argued that indeterminate sentencing permits a state to commit minors for a longer term than similarly situated adults and

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175. *D.L.W.*, 187 Ill. App. 3d at 577, 543 N.E.2d at 546. *See supra* notes 157-58 and accompanying text.

176. *S.L.S.*, 181 Ill. App. 3d at 456, 536 N.E.2d at 1357-58. *See supra* note 169 and accompanying text.

177. ILL. REV. STAT. ch. 37, para. 805-33(2) (1987). Section 5-33(2) provides:

> The commitment of a delinquent to the Department of Corrections shall be for an indeterminate term which shall automatically terminate upon the delinquent attaining the age of 21 years unless the delinquent is sooner discharged from parole or custodianship is otherwise terminated in accordance with this Act or as otherwise provided for by law.

Id.

178. 184 Ill. App. 3d 213, 539 N.E.2d 1340 (4th Dist. 1989), *appeal denied*, 545 N.E.2d 132 (1989).

179. *Id.* at 224, 539 N.E.2d at 1347.

180. *Id.* at 223, 539 N.E.2d at 1347 (citing *In re* T.D., 81 Ill. App. 3d 369, 372-73, 401 N.E.2d 275, 277 (2d Dist. 1980)).

181. *Id.*

182. *Id.* at 214, 539 N.E.2d at 1341.

183. *Id.*

184. *Id.* at 214, 539 N.E.2d at 1341-42. T.L.B. challenged his sentence as violations of the equal protection clauses of both the United States Constitution and the Illinois Constitution. *Id.*

that the State lacked a compelling interest to do so.[185]

In deciding this issue, the court emphasized that the main purpose of the Act's sentencing scheme is to correct the minor's conduct and to provide the minor with guidance and rehabilitation.[186] The court noted that the legislature enacted section 5-33(2) to further this purpose by giving the Department of Corrections discretion to determine when a minor should be released from custody.[187] The court reasoned that the difference in treatment between adult offenders and juvenile delinquents is consistent with the different purposes underlying the Act and the criminal laws.[188] Therefore, the court held that the minor's indeterminate sentence did not violate the minor's constitutional right to equal protection.[189]

E. Legislation

During the Survey period, The Illinois Legislature amended the Juvenile Court Act's provisions concerning the custody and detention of delinquent minors.[190] The amendment provides that a minor may not be detained for longer than six hours in a county jail or municipal lock-up.[191] It also restricts a detained minor's con-

185. *Id.* at 214-15, 539 N.E.2d at 1342. The minor also contended that the trial court abused its discretion by imposing the sentence because it failed to consider less severe placement alternatives. *Id.* at 214, 539 N.E.2d at 1341. The appellate court held that the evidence supported the sentence imposed by the trial court. *Id.* at 219, 539 N.E.2d at 1344.

186. *Id.* at 215, 539 N.E.2d at 1342.

187. *Id.* at 220, 539 N.E.2d at 1345. In 1986, the Act was amended to reverse the Illinois Supreme Court's decision in *In re* S.L.C., 115 Ill. 2d 33, 503 N.E.2d 228 (1986), which held that a trial court had power to commit a minor to the Department of Corrections for a determined period. *In re* T.L.B. at 219-21, 539 N.E.2d 1345-46 (quoting 84TH ILL. GEN. ASSEM., HOUSE PROCEEDINGS, Dec. 5, 1986, 14-15 (debates on S.B. 1565)). The court declared that the state has a compelling interest in allowing discretion over sentencing under the Act. *Id.* at 223, 539 N.E.2d at 1347.

188. *Id.* at 223, 539 N.E.2d at 1347 (quoting *In re* T.D., 81 Ill. App. 3d 369, 371, 401 N.E.2d 275, 276 (2d Dist. 1980)).

189. *Id.* at 224, 539 N.E.2d at 1347. The court cited several cases that addressed the validity of indeterminate sentencing prior to the 1986 amendment of the Act. *See supra* note 187. These prior cases upheld the provisions against equal protection challenges. *See In re* T.D., 81 Ill. App. 3d 369, 401 N.E.2d 275 (2d Dist. 1980); *In re* F.L.W., 73 Ill. App. 3d 355, 391 N.E.2d 1070 (4th Dist. 1979); *In re* Blakes, 4 Ill. App. 3d 567, 281 N.E.2d 454 (3d Dist. 1972). In *T.L.B.*, the court affirmed these earlier rulings, finding that the 1986 amendment of the Act did not affect the validity of these decisions. 184 Ill. App. 3d at 224, 539 N.E.2d at 1347.

190. ILL. REV. STAT. ch. 37, para. 805-7 (1987), *amended by* 1989 Ill. Legis. Serv. 85-1443 (West) (effective July 1, 1989).

191. ILL. REV. STAT. ch. 37, para. 805-7(2)(C) (1987), *amended by* 1989 Ill. Legis. Serv. 85-1443 (West) (effective July 1, 1989). No such time restrictions existed prior to this amendment.

tacts with adult offenders during the minor's period of confinement.[192] The period of any non-secure custody pending a detention hearing is limited to thirty-six hours.[193] The conditions under which a minor is held in home custody are left to the court's discretion.[194]

The legislature also amended paragraph 805-10 of the Act.[195] At a detention or shelter care hearing, the DCFS must now provide the court with documentation to show that it has made reasonable efforts to eliminate the need to remove the minor from his home.[196] Under the amendment, if the court concludes that temporary custody of the minor is necessary, it may order that services be provided to ameliorate the condition that necessitated the minor's removal from his home.[197] The court's findings must be in writing,[198] and it must provide a copy of its findings to the parents, guardian, custodian, or temporary custodian, and to the minor.[199] The amendment also sets forth the grounds on which an interested party may move to modify or vacate the temporary custody order.[200]

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192. *Id.* The amendment requires that the minor must be kept under constant supervision, without contact with any adult in custody at the facility. The minor must be informed of the reason for his detention, and its expected duration. Detention officials must also keep a detailed log of the detention. No similar restrictions existed prior to this amendment.

193. ILL. REV. STAT. ch. 37, para. 805-7(3) (1987), *amended by* 1989 Ill. Legis. Serv. 85-1443 (West) (effective July 1, 1989).

194. ILL. REV. STAT. ch. 37, para. 805-7(4) (1987), *amended by* 1989 Ill. Legis. Serv. 85-1443 (West) (effective July 1, 1989).

195. ILL. REV. STAT. ch. 37, para. 805-10(2) (1987), *amended by* 1989 Ill. Legis. Serv. 85-1443 (West) (effective July 1, 1989).

196. *Id.*

197. *Id.*

198. *Id.*

199. *Id.*

200. ILL. REV. STAT. ch. 37, para. 805-10(8) (1987), *amended by* 1989 Ill. Legis. Serv. 85-1443 (West) (effective July 1, 1989). Such a motion may be made on the following grounds:

> (a) It is no longer a matter of immediate and urgent necessity that the minor remain in detention or shelter care; or
>
> (b) There is a material change in the circumstances of the natural family from which the minor was removed; or
>
> (c) A person, including a parent, relative or legal guardian,is capable of assuming temporary custody of the minor; or
>
> (d) Services provided by the Department of Children and Family Services or a child welfare agency or other service provider have been successful in eliminating the need for temporary custody.

Id.

IV. CONCLUSION

The developments in the field of juvenile law during the *Survey* period demonstrate the Illinois courts' and legislature's concern with the rights of minors in Illinois. The cases that arose during this period also illustrate the difficult balance that the legislature and the courts must strike between the rights of minors and the constitutional rights of other individuals. The legislature's amendments to the Juvenile Court Act reflect an ongoing desire to preserve the family unit and to disrupt it only when it is absolutely necessary.