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SCHOOL SHOOTINGS PERPETRATED BY THE MINORS AND EXTENDED JUVENILE JURISDICTION

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СКУЛШУТИНГ – ОСОБЕННОСТИ ЮВЕНАЛЬНОЙ ЮРИСДИКЦИИ

ABSTRACT. Juvenile delinquency is a problem that has faced countless generations, but recently it has taken on increasingly violent and epidemic proportions. In response to tragic armed attacks, the national debate on how to treat children who commit heinous crimes intensified. Collaboration with police departments, closed-circuit cameras, doors that lock automatically, metal detectors, police officers at school and identification badges have increasingly become distinctive features that properly describe an age of school shootings. This article examines the methods available in USA for transferring children into the criminal court. "Extended jurisdiction juvenile prosecutions" originated in Minnesota in the early 1990's». In 1992, Minnesota created a task force which developed a new method for dealing with violent and chronic child offenders, one which blended the rehabilitative nature of the juvenile system with the procedural rights and sentencing potential of the criminal system». Arkansas extended the blended sentencing concept to any child under the age of fourteen and charged with capital murder or murder in the first degree, which no state had done previously and which was a drastic move away from the *common law*. In the paper are also analyzed the minors who may turn violent from the school harassment. The growing number of U.S. states use a form of blended sentencing, called EJJ prosecutions, in which a juvenile receives both a juvenile sentence and an adult sentence.

KEYWORDS: school shootings, blended sentencing, criminal law, transfer to criminal court, juvenile delinquency.

АННОТАЦИЯ. Преступность несовершеннолетних – это проблема, с которой сталкивались бесчисленные поколения, но в последнее время она приобрела все более жестокие масштабы подобно эпидемии. В ответ на трагические вооруженные нападения, совершаемые несовершеннолетними, активизировались общенациональные дебаты о том, как обращаться с детьми, совершившими тяжкие преступления. Сотрудничество с полицейскими управлениями, камеры видеонаблюдения, автоматически запирающиеся двери, металлодетекторы, полицейские в школах и идентификационные бейджи все чаще становятся отличительными чертами, которые правильно описывают эпоху школьных перестрелок. В данной статье рассматриваются доступные в США методы передачи детей в уголовный суд. «Расширенная юрисдикция в отношении несовершеннолетних» возникла в Миннесоте в начале 1990-х годов. В 1992 году в Миннесоте была создана рабочая группа, которая разработала новый метод борьбы с жестокими и хроническими несовершеннолетними правонарушителями, сочетающий в себе реабилитационный характер ювенальной системы с процессуальными правами и потенциалом вынесения приговоров уголовной системы». Арканзас распространил концепцию смешанного приговора на любого ребенка в возрасте до четырнадцати лет, обвиненного в убийстве, караемом смертной казнью, или убийстве первой степени, чего ранее не делал ни один штат и что было радикальным отходом от общего права. В статье также анализируются несовершеннолетние, которые могут стать агрессивными в результате школьных притеснений. Все большее число штатов США использует форму смешанного приговора, называемую судебным преследованием EJJ, при которой несовершеннолетний получает как наказание для несовершеннолетнего, так и наказание для взрослого.

КЛЮЧЕВЫЕ СЛОВА: расстрел в школах, смешанное наказание, уголовное право, передача в уголовный суд, преступность несовершеннолетних.

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To begin with, the level of education, science, and talents is lowered. A high level of scientific thought is accessible only to the highest abilities! No need for education, enough of science! There's sufficient material even without science for a thousand years to come, but it is necessary to prepare for obedience. As soon as there's just a tiny bit of family or love, there's a desire for property. We will extinguish that desire: we'll give rise to drunkenness, gossip and unheard-of debauchery; we'll stifle every genius in infancy. But one or two generations of debauchery are necessary now, an unheard-of, vile debauchery, that turns men into loathsome, fearful, cruel, selfish baseness [12, p. 484–487].

1.1. Introduction

Armed attacks on educational institutions which result in numerous victims represent a specific phenomenon that stands out from other forms of violence. It can be classified as attacks on the school, which are characterized by the apparent senselessness of actions, unexpectedness, demonstrativeness and lack of logic in the actions of the attacker. It often turns out that the attacker was imperceptible and his behavior did not give cause for concern. Although it is impossible to formulate the psychological profile of the attacker, several theoretical models offer conclusions that have practical significance for preventing such events.

Such attacks are not caused by an accidental and sudden loss of reason. The analysis of the perpetrator of the crime, from a psychopathological point of view, is not corroborated by facts, nor productive in terms of practical prevention. The formation of the "shooter" goes through several phases, accompanied by the transformation of both his social contacts, as well as motives and fantasies. Such transformations are cumulative in nature, gradually leading the personality to the intent and planning of the act of attack. The absence of corrective social influence is related to a decreased ability to cope with difficulties, which, with the constant decline in self-esteem, leads to depression.

In that context, a strong negative experience (unwanted separation, stress, quarrels, conflicts in the family, bullying) can activate revenge fantasies, which over time become obsessive. The attacker seems to be sending a message to the world around him, in which he feels offended and superfluous. The act of attack is accompanied by the following signals: fascination with weapons, glorification of murderers, violent fantasies on the theme of revenge. According to many theorists, the social environment and interpersonal relationships play a leading role in the formation of aggressive intentions of teenagers. Objective characteristics, such as the existence of real conflicts, are not decisive. More important is the subjective experience of the future shooter – asociality, resentment and isolation. According to 18 U.S.C. § 5031, "A juvenile is a person who has not attained 18 years of age, or for the purpose of proceedings and disposition under chapter 403 for an alleged act of juvenile delinquency, a person who has not attained 21 years of age. The "juvenile delinquency" is the violation of a law of the United States committed by a person prior to age 18 which would have been a crime if committed by an adult" [40].

The status of children in the eyes of the law has changed remarkably over the past two centuries. At *common law*, most children accused of breaking the law were treated in the same manner as adults, with a few exceptions. Young children, for instance, had the benefit of the infancy defense, which provided children under the age of seven with immunity from prosecution because the law presumed they were incapable of forming criminal intent.

Children between the ages of seven and fourteen were also presumed to lack criminal capacity, but the prosecution could rebut this by showing that the children knew the difference between right and wrong. Finally, the law considered children over the age of fourteen fully responsible for their actions and punished them as adults [35, p. 221].

The common criminal law did not differentiate between the adult and the minor who had reached the age of criminal responsibility. The fundamental thought in criminal jurisprudence was not, and in most jurisdictions is not, reformation of the criminal, but punishment; punishment as expiation for the wrong; punishment as a warning to other possible wrong-doers. The child was arrested, put into prison, indicted by the grand jury, tried by a petit jury, under all the forms and technicalities of criminal law, with the aim of ascertaining whether it had done the specific act and if it had, then of visiting the punishment of the state upon it [22, p. 185–186].

During the 1970's, society's attitude towards juvenile delinquency began changing. While at the inception of the juvenile court system children were involved in relatively minor infractions such as shoplifting and burglary, children in the 1970's began committing violent crimes with increasing frequency. In response, states began changing the focus of their efforts in dealing with youth crime from rehabilitation to punishment. One manifestation of this "get tough" approach was the creation in every state of some mechanism for transferring some minors into the criminal court to face adult criminal prosecution' [32, p. 1359].

The law of the USA limited juvenile court jurisdiction to children under age 16 in 1971. In doing so, it reestablished what juvenile court jurisdiction had originally been. When the legislature first established juvenile court jurisdiction in 1921, it limited it to children under 16 years of age. The legislature expanded juvenile court jurisdiction in 1935 to include children 16 and 17 years of age who were transferred to juvenile court by town, city, police, or borough courts. This expanded juvenile court jurisdiction remained the same until 1971 when the legislature limited it to children under 16 years of age. That same year, the legislature established youthful offender status, which created an alternative way to deal with 16 and 17 year olds who were accused of committing most crimes [18].

2. Trial of juveniles as adults in criminal court

2.1. Juvenile court jurisdiction

According to 18 U.S.C. § 5032[1], "A juvenile alleged to have committed an act of juvenile delinquency, shall not be proceeded against in any court of the United States unless the Attorney General, after investigation, certifies to the appropriate district court of the United States that: (1) the juvenile court or other appropriate court of a State does not have jurisdiction or refuses to assume jurisdiction over said juvenile with respect to such alleged act of juvenile delinquency, (2) the State does not have available programs and services adequate for the needs of juveniles, or (3) the offense charged is a crime of violence that is a felony or an offense described in the *Controlled Substances Act*[2] or in the *Controlled Substances Import and Export Act*[3], and that there is a substantial Federal interest in the case or the offense to warrant the exercise of Federal jurisdiction". If the Attorney General does not so certify, such juvenile shall be surrendered to the appropriate legal authorities of such State. The term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States [40]. According to section 1111, in accordance with many current statutes, murder is unlawful causing death of another human being with malice aforethought [31, p. 81].

The age limit of juvenile jurisdiction in the U.S. (the last year minors are subject to the juvenile system) is 17 in 46 states and Washington D.C. In 2020, Vermont became the first state in the nation to expand juvenile court jurisdiction to 18. Three states – Georgia, Texas and Wisconsin – now draw the juvenile/adult line at age 16 [27, p. 728]. However, all States allow juveniles under certain conditions to be tried as if they were adults in criminal court by way of one or more transfer mechanisms:

1. Judicial waiver. The juvenile court judge has the authority to waive juvenile court jurisdiction and transfer the case to criminal court.

a) Discretionary waiver- A juvenile court judge may waive jurisdiction and transfer the case to

[1] "Delinquency proceedings in district courts; transfer for criminal prosecution".

[2] Section 401 of the Controlled Substances Act (21 U.S.C. 841).

[3] Sections 1002(a), 1003, 1005, 1009, or 1010(b)(1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 955, 959, 960(b)(1), (2), (3)), section 922(x) or section 924(b), (g), or (h) of this title.

criminal court typically based on factors outlined in the *Kent v. United States*[1]. Judges often consider a youth's past criminal history and severity of the crime at hand when deciding whether to waive the case to criminal court.

b) Mandatory waiver – A juvenile court judge must waive jurisdiction if probable cause exists that the juvenile committed the alleged offense. Juvenile cases that meet criteria for age, severity of offense, and/or prior criminal record are required to be transferred from juvenile court to criminal court. In such cases, the only role of the juvenile court is to verify that the case meets said waiver criteria and make the official transfer.

c) Presumptive waiver – Juveniles who meet established criteria such as age and severity of offense are presumed to be suitable for criminal court rather than juvenile court. If the juvenile/ the juvenile's legal representation does not make a strong enough argument against transfer, their case is automatically transferred to criminal court. The burden of proof shifts from the State to the juvenile to show amenability to juvenile justice system processing. Requires that certain juveniles be waived to criminal court unless they can prove they are suited to juvenile rehabilitation [16].

2. Direct file provisions (also known as concurrent jurisdiction, prosecutorial waiver, prosecutor discretion,) give the prosecutor the discretion to file charges in either the juvenile or criminal court.

3. Statutory exclusion provisions (also referred to as automatic or mandatory transfer) automatically exclude certain juvenile offenders from the juvenile court's original jurisdiction. As they do with all transfer provisions, legislatures typically specify age and offense criteria. However, one application of exclusion– lowering the upper age of original juvenile court jurisdiction – excludes the largest number of juveniles from juvenile jurisdiction. State law excludes some classes of cases involving juvenile age offenders from juvenile court, granting adult criminal court exclusive jurisdiction over some types of offenses. Murder and serious violent felony cases are most commonly "excluded" from juvenile court [17].

Provisions for trying youth are typically limited by age and offense criteria. In states with a combination of transfer mechanism, the exclusion, mandatory waiver, or concurrent jurisdiction provisions generally target the oldest juveniles and/or those charged with the most serious offenses, while those charged with relatively less serious offenses and/or younger juveniles may be eligible for discretionary waiver [18].

By the early 1990s, violent juvenile crime had captured the attention of the nation's policy makers, as well as the public. In the USA had been launched new juvenile justice reform initiatives, often involving reduced judicial discretion and a greater use of adult court for juvenile offenders [39, p. 7]. Many States in the 1990s enacted legislation, making it easier to try juveniles as adults. Regarding the judicial waiver, at the end of the 1997 legislative session, all but five States (Connecticut, Massachusetts, Nebraska, New Mexico, and New York) provided for discretionary waiver of certain juveniles to criminal court. At the end of 1997, 14 States had a mandatory waiver statute in which the juvenile court judge, after finding probable cause, must waive jurisdiction. As of the end of the 1997 legislative session, 14 States and the District of Columbia had presumptive waiver provisions that designate a category of offenders in which waiver to criminal court is rebuttably presumed to be appropriate.

At the end of 1997, 15 States had direct file statutes. In 1996–97, five States modified existing provisions and three States (Arkansas, Massachusetts, and Montana) enacted new laws permitting direct filing. The prosecutor decides which court will have jurisdiction over a case when both the juvenile and criminal courts have concurrent jurisdiction.

With regard to statutory exclusion provisions, some State legislatures have excluded all 17-year-olds or all 16- and 17-year-olds from juvenile jurisdiction, making them adults for purposes of criminal prosecution. As of the end of the 1997 legislative session, 28 States excluded certain categories of juveniles from juvenile court jurisdiction [38, p. 2–5].

The surge in violent youth crime has led USA to increasingly transfer children into criminal court. Some of these children are already so hardened that there is little the juvenile system can do for them. For these children, transfer is the last solution.

2.2. Minimum transfer ages

While most states' raise-the-age efforts have focused on expanding juvenile court jurisdiction up to the age of 18, laws allowing discretionary prosecution of youth and young adults in adult

[1] 383 U.S. 541 (1996).

criminal court can limit these expansions. Thus, increasingly, state legislatures provide statutes to determine minimum transfer ages. However, the specifics vary significantly across states[1]. Some major areas of variation include which system actors have discretion over transfer decisions (e.g., judges or prosecutors) and which crimes are excluded from an age minimum (usually crimes of violence), as well as other factors beyond age that prosecutors are required to consider. As of the end of the 2018 legislative session, 28 states statutorily specify the age at which a youth may be transferred from an adjudication process in juvenile court to adult court. For states with defined transfer ages, these transfer allowances vary from 10 to 15 years of age, with an average transfer age of 13.

2.3. The minimum age of prosecution and adjudication in juvenile court

States are increasingly setting a minimum age at which youth and young adults can be processed through juvenile courts, but there is significant variation in the minimum age established in statute, offenses excluded from minimum age requirements, and the discretion afforded to prosecutors and judges. Twenty-three states have set a minimum age of adjudication in juvenile court through statute. In these states, children under the minimum age of juvenile court jurisdiction are often served through social service and child welfare systems rather than juvenile courts. Minimum ages in these states range from 6 to 12 and statutory exceptions vary [6]. For example, a Washington statute sets the minimum age of prosecution at 8, but to charge children between 8 and 12 in juvenile court, state prosecutors must prove that they "have sufficient capacity to understand the act." According to Section 9A.04.050[2] of the *Code of Washington*, "Children under the age of eight years are incapable of committing crime. Children of eight and under twelve years of age are presumed to be incapable of committing crime, but this presumption may be removed by proof that they have sufficient capacity to understand the act or neglect, and to know that it was wrong" [41].

In states without a statewide statutory minimum, prosecutors and judges often have discretion about whether to process young people through juvenile courts or to refer them to social service systems. This discretion often revolves around the severity of the offense, accountability and public safety concerns, and the treatment needs of the youth.

3. Legislative responses to school shootings

3.1. Juvenile Justice and Delinquency Prevention Act as Amended by the Juvenile Justice Reform Act of 2018

The *Juvenile Justice and Delinquency Prevention Act of 1974*[3] is a federal law that provides funds to states that follow a series of federal protections, known as the "core protections," on the care and treatment of youth in the justice system. A re-authorization bill, the *Juvenile Justice Reform Act of 2018* [4] was enacted in December 2018. Addition to reauthorizing core parts of the existing JJDPA, the 2018 bill made several significant changes to juvenile justice law [15].

According to Section 223, Subsection 11, "unless a court finds, after a hearing and in writing, that it is in the interest of justice, juveniles awaiting trial or other legal process who are treated as adults for purposes of prosecution in criminal court and housed in a secure facility –

(I) shall not have sight or sound contact with adult inmates; and

(II) except as provided in paragraph (13), may not be held in any jail or lockup for adults;

(ii) in determining under clause (i) whether it is in the interest of justice to permit a juvenile to be held in any jail or lockup for adults, or have sight or sound contact with adult inmates, a court shall consider –

(I) the age of the juvenile;

(II) the physical and mental maturity of the juvenile;

(III) the present mental state of the juvenile, including whether the juvenile presents an imminent risk of harm to the juvenile;

(IV) the nature and circumstances of the alleged offense;

(V) the juvenile's history of prior delinquent acts;

(VI) the relative ability of the available adult and juvenile detention facilities to not only meet the

[1] In 2018, California became the first state in the country to limit transfer eligibility to only 16- and 17-year-olds, meaning youths 15 and younger must be adjudicated in juvenile court [44].

[2] "People capable of committing crimes – Capability of children".

[3] Pub. L. 93–415.

[4] Pub. L. 115–385.

specific needs of the juvenile but also to protect the safety of the public as well as other detained youth; and

(VII) any other relevant factor; and

(iii) if a court determines under clause (i) that it is in the interest of justice to permit a juvenile to be held in any jail or lockup for adults –

(I) the court shall hold a hearing not less frequently than once every 30 days, or in the case of a rural jurisdiction, not less frequently than once every 45 days, to review whether it is still in the interest of justice to permit the juvenile to be so held or have such sight or sound contact; and

(II) the juvenile shall not be held in any jail or lockup for adults, or permitted to have sight or sound contact with adult inmates, for more than 180 days, unless the court, in writing, determines there is good cause for an extension or the juvenile expressly waives this limitation.

According to Section 223, Subsection (13), no juvenile will be detained or confined in any jail or lockup for adults except –

(A) juveniles who are accused of nonstatus offenses and who are detained in such jail or lockup for a period not to exceed 6 hours –

(i) for processing or release;

(ii) while awaiting transfer to a juvenile facility; or

(iii) in which period such juveniles make a court appearance; and only if such juveniles do not have sight or sound contact with adult inmates and only if there is in effect in the State a policy that requires individuals who work with both such juveniles and adult inmates in collocated facilities have been trained and certified to work with juveniles.

According to Section 103, Subsection 42, the term "status offender" means a juvenile who is charged with or who has committed an offense that would not be criminal if committed by an adult [19].

3.2. Westside Middle School shooting

On March 24, 1998, students A. G. (age 11) and M. J. (age 13) drove M. J.'s mother's stolen minivan to Westside Middle School in Jonesboro, Arkansas. The boys were armed with seven firearms stolen from A. G.'s grandfather's house, including two semi-automatic rifles, a bolt-action rifle, and four handguns. Upon arrival, A. G. entered the school and pulled the fire alarm, then ran back to the woods where M. J. had set up their weapons. As students and faculty exited the school, the boys opened fire. When the shots finally subsided, four students and one teacher were dead, and an additional 10 were wounded. The boys fled into the wooded area and were subsequently apprehended by the police.

Prosecutors charged M. J. with five counts of murder and 10 counts of aggravated assault. A. G. was charged with murder, attempted murder, and unlawful firearm possession. Due to their young ages, the Craighead County Prosecutor's office was not able to try them as adults because they did not meet the statutory minimum age for transfer to adult court. Additionally, at the time of the shooting, the law in the state of Arkansas did not include any provisions which would allow a juvenile to serve a life sentence. Within 5 months of the shooting, both boys had been tried and convicted. They were both sentenced to confinement in the Arkansas Department of Youth Services (DYS) Facility until they turned 18 [30, p. 361–363].

In 1971, *Act 38* established the Department of Social and Rehabilitative Services (SRS), a forerunner to the current Department of Human Services. The Office of Juvenile Services was placed under the direction of the Director of SRS. In 1977, the Division of Youth Services was formally created as a division within the present Department of Human Services (DHS). In 1985, *Act 348* merged the Division of Youth Services with the Division of Children and Family Services until *Act 1296* of 1993 reestablished DYS as an independent division [within DHS]. The Division of Youth Services (DYS) was authorized by *Act 1296* to be "devoted entirely to handling the problems of youths involved in the juvenile justice system". DYS became operational in October 1993 and is responsible for client-specific programming and individual treatment programs, serious offender programs for violent youth offenders, providing alternative community-based programming, and other services specified directly by *Act 1296* [13].

According to Section 3. (a) of the *Act 1296*, the Division of Youth Services coordinate communication between the various components of the juvenile justice system, oversee reform of the State 's juvenile justice system, provide services to delinquent and Families-In-Need-of-Services (FINS) youth, conduct research into the causes, nature and treatment of juvenile delinquency and related problems, develop programs for early intervention and prevention of juvenile delinquency, maintain

information files on juvenile delinquents in the state, actively pursue the maximization of federal funding for juvenile delinquency and related programs, and evaluate the effectiveness and efficiency of the programs and services offered by the division and recommend changes to the Governor [4].

Unable to sentence A. G. and M. J. to life in prison, the judge added on an additional 3 years on federal charges for the aggravated circumstances and weapons violations (known as blended sentencing), so that the boys were transferred to federal prisons upon release from the DYS facility, and held until their 21st birthdays. The boys served their full sentences, and in 2005 and 2007 respectively, M. J. and A. G. were released with clear records. Although A. G. has remained free since his release, M. J. was rearrested on January 1, 2007 after a loaded gun and marijuana were found in his vehicle during a traffic stop and search. A year later, he was convicted by a federal jury and sentenced to 4 years in federal prison for the weapons possession charge [30, p. 361–363].

3.3. The Extended Juvenile Jurisdiction Act (EJJA)

The shooting at Westside Middle School was instrumental in pushing legislative action to allow prosecutors discretion in charging juveniles as adults. In 1999, the Arkansas General Assembly passed *Act 1192* [2], the Extended Juvenile Jurisdiction Act (EJJA). This act allowed prosecutors to charge juveniles under the age of fourteen as adults for offenses of capital murder and first-degree murder, and to include adult sentencing guidelines commensurate with the seriousness of the offense [42].

The concept of "blended sentencing" is an attempt to balance the interest of the juvenile offender with the interests in making juveniles accountable for offenses they commit. Currently, there are five models of blended sentencing. Three of the models provide for jurisdiction in juvenile court, and two models provide for jurisdiction in adult criminal court. Two of the five models are exclusive blends and provide juvenile or criminal courts the authority to impose either a juvenile disposition or an adult criminal sanction.' Two other models are inclusive blends and allow juvenile or criminal courts to impose a juvenile sanction and an adult sentence. Generally, the execution of the adult sentence is stayed. However, if the juvenile commits a new offense while serving his juvenile sentence, the adult sentence will be executed. The final model is a contiguous blend where the juvenile court has jurisdiction to impose a juvenile disposition and an adult sanction. A juvenile sentenced under this model is sent to a juvenile correctional facility and awaits a transfer to an adult correctional facility at a certain age.

Arkansas' Extended Juvenile Jurisdiction ("EJJ") law could best be categorized as a juvenile contiguous and inclusive model. It is contiguous with respect to adjudications for capital murder and first degree murder. For example, a court cannot order an automatic release if an EJJ offender is adjudicated delinquent for these offenses. At a minimum the court must order adult probation. EJJ is also viewed as an inclusive blend with a twist. The juvenile court has exclusive jurisdiction. Once a juvenile is found to have committed a crime that is classified as an EJJ offense, the court enters a juvenile disposition, but instead of entering an adult sentence and staying the execution of the sentence, the court suspends the imposition of an adult sentence pending further review [36, p. 647–648].

Arkansas has a separate court division for children who commit criminal acts. The Arkansas Juvenile Justice System consists of the following entities: local law enforcement, juvenile judicial districts, district prosecuting attorneys, public defenders/appointed attorneys, juvenile detention centers, contracted community-based providers and the Division of Youth Services (DYS).

Children (per Arkansas' juvenile code) ages 10 through 17 who commit acts that would be considered criminal if committed by an adult are referred to as juvenile delinquents. If a juvenile is an adjudicated delinquent, there are several disposition alternatives available to the judge: undergo counseling, probation, community service, electronic monitoring, the C-Step Program, Drug Court, Youth Advocacy Program, detention, or transfer into the custody of DYS. The judge will decide the appropriate disposition. Youth between the ages of 10 and 17 who are adjudicated delinquent and committed to the custody of DYS are committed for an indeterminate period not to exceed 21st birthday. Juvenile court records are not public records and are not subject to release under the Freedom of Information Act. The court proceedings and filings may also be closed and confidential. A crime victim, persons providing victim support, or a victim's representative may be present unless the

judge decides that the person's exclusion is necessary to preserve the confidentiality or fairness of a juvenile proceeding [9].

In response to the Jonesboro shooting, the EJJA revised a number of key provisions to Arkansas' penal code relating to juveniles. One key change involved allowing the state to charge a juvenile of any age with either capital or first-degree murder. Although Arizona allows juveniles under certain conditions to be tried as if they were adults in criminal court, the state has to overcome presumptions of juvenile's lack of fitness to proceed and lack of capacity. In accordance with this change, the state must show that a juvenile understands the charges brought against him, and has the ability to understand the trial process (Arkansas Code Annotated, § 9-27-502). This provision includes the requirement that a court-appointed psychiatrist or clinical physician evaluates the juvenile. Prior to this change, it was presumed that juveniles ages seven to 13 were incompetent to stand trial [30, p. 361–363].

According to the Arkansas Code Annotated, Section 9-27-501, Subsection (a) ("Extended juvenile jurisdiction designation"), the state may request an extended juvenile jurisdiction designation in a delinquency petition or file a separate motion if the:

(1) Juvenile, under thirteen (13) years of age at the time of the alleged offense, is charged with capital murder, § 5-10-101, or murder in the first degree, § 5-10-102, and the state has overcome presumptions of lack of fitness to proceed and lack of capacity as set forth in § 9-27-502;

(2) However, juveniles thirteen (13) years of age at the time of the alleged offense shall have an evaluation pursuant to § 9-27-502, and the burden will be upon the juvenile to establish lack of fitness to proceed and lack of capacity;

Section 9-27-501, Subsection (b), stated that the juvenile's attorney may file a motion to request extended juvenile jurisdiction if the state could have filed pursuant to subsection (a) of this section.

According to Section 9-27-502, Subsection (a) ("Competency – Fitness to proceed – Lack of capacity"), except as provided in subsection (b) of this section, the provisions of § 5-2-301 et seq. shall apply to the following:

(1) In any juvenile delinquency proceeding in which the juvenile's fitness to proceed is put in issue by any party or the court; and

(2) In juvenile delinquency proceedings in which extended juvenile jurisdiction designation has been requested by any party and a party intends to raise lack of capacity as an affirmative defense.

According to Section 9-27-502, Subsection (b), Paragraph (1), for a juvenile under thirteen (13) years of age at the time of the alleged offense and who is charged with capital murder, § 5-10-101, or murder in the first degree, § 5-10-102, there shall be a presumption that the juvenile is unfit to proceed and he lacked capacity to:

(a) Possess the necessary mental state required for the offense charged;

(b) Conform his conduct to the requirements of law; and

(c) Appreciate the criminality of his conduct.

Nevertheless, the prosecution must overcome these presumptions by a preponderance of the evidence.

According to Section 9-27-502, Subsection (b), Paragraph (2), for a juvenile under thirteen (13) years of age and who is charged with capital murder, § 5-10-101, or murder in the first degree, § 5-10-102, the court shall order an evaluation to be performed in accordance with § 5-2-327 or § 5-2-328, or both. Upon an order for evaluation, all proceedings shall be suspended and the period of delay until the juvenile is determined fit to proceed shall constitute an excluded period for the speedy trial provisions of Rule 28 of the Arkansas Rules of Criminal Procedure.

Article 9-27-502, Subsection (b), Paragraph (8) stated that, within thirty (30) days of the receipt of the evaluation report, the court shall first determine whether the juvenile is fit to proceed. The parties may stipulate to the findings and conclusions of the evaluation report and the court may enter an order with respect to fitness based thereon. Otherwise, a hearing shall be conducted and in order for the court to find a juvenile fit to proceed, the prosecution shall be required to prove by a preponderance of the evidence the following:

(1) The juvenile understands the charges and potential consequences;

(2) The juvenile understands the trial process and proceedings against him; and

(3) The juvenile has the capacity to effectively participate with and assist his attorney in a defense to prosecution.

The court shall issue written findings as to whether the prosecution has met its burden with

respect to such issues and whether the juvenile is fit or unfit to proceed.

According to Section 9-27-502, Subsection (a), Paragraph (10), if a juvenile is found fit to proceed, the court shall next conduct a hearing wherein the state shall be required to prove by a preponderance of the evidence that at the time the juvenile engaged in the conduct charged he had the capacity to:

(i) Possess the necessary mental state required for the offense charged;

(ii) Conform his conduct to the requirements of the law; and

(iii) Appreciate the criminality of his conduct.

If the court finds that the state met its burden with regard to the capacity, the court shall schedule a designation hearing as described in § 9-27-503. Such a finding by the court does not prevent the juvenile from raising the affirmative defense of lack of capacity at a subsequent adjudication hearing [10].

EJJ applies to a juvenile, at any age, charged with capital murder or first degree murder. Arkansas extended the blended sentencing concept to any child under the age of fourteen and charged with capital murder or murder in the first degree, which no state had done previously and which was a drastic move away from the *common law*. Prior to EJJ, no one under the age of ten could be adjudicated delinquent. Under *common law*, juveniles under the age of seven were presumed incapable of forming the intent necessary to commit a crime. Juveniles between the ages of seven and thirteen were presumed incapable of forming the intent; however, this presumption could be rebutted by the state. Juveniles age fourteen and above were considered capable of understanding the consequences of their actions and therefore capable of forming intent. EJJ also applies to juveniles age fourteen or fifteen at the time of the alleged offense and charged with offenses enumerated in the statute [36, p. 649–650].

Additional revisions were made with regard to imprisoning juvenile offenders in the EJJA. In accordance with *Federal Juvenile Justice and Delinquency Prevention Act*, the EJJA included provisions for juveniles who could be sentenced to adult prison, requiring that they be segregated from the general DYS population until their transfer to the Department of Corrections (DOC) [1]. However, juveniles were only eligible for transfer to the DOC when they turned 16. During the same legislative session, the Arkansas legislature additionally passed *Act 1272* [3], requiring the Department of Youth Services to establish a separate facility for individuals between the ages of eighteen and twenty-one [30, p. 362–363].

3.4. The Rocori High School shooting

The Rocori High School shooting occurred at Rocori High School on September 24, 2003 in Cold Spring, Minnesota, United States. The shooter was identified as 15 year-old student John Jason McLaughlin, who murdered 14-year-old fellow Seth Bartell and 17-year-old senior Aaron Rollins. Prior to the shooting, McLaughlin, described as "quiet and withdrawn", walked out of a locker room at Rocori High and shot them with a semiautomatic .22-caliber gun he had in his gym bag [21].

Some fellow students who knew Jason, blamed the teasing and rejection he suffered at the school. One sophomore, explained that "he understood how a person could turn violent from the harassment. Because McLaughlin was small, nonmuscular, and shy, he had been teased and taunted the previous year. Jason had not even shot the people who teased him the most; he had apparently shot without caring who was hurt" [7, p. 53–54].

McLaughlin became familiar with firearms through his father. His father enrolled him in a gun safety program and Jason passed the Minnesota Fire and Arm Safety training examination [26]. According to facts established at trial, McLaughlin took his father's semiautomatic .22-caliber pistol to school that day with the intent to "shoot some people." He waited for Bartell in physical education class, followed him down the hallway, and shot at him. When this shot only grazed the intended victim, McLaughlin fired again and hit a bystander, Aaron Rollins. McLaughlin then followed Bartell into the gymnasium, where he fired a third shot from point-blank range that hit his victim in the forehead. He surrendered to school officials, who immediately called the police. Rollins was pronounced dead on arrival at the local hospital, and

[1] The Arizona Department of Corrections, Rehabilitation & Reentry is the statutory law enforcement agency responsible for the incarceration of inmates in 13 prisons in the U.S. state of Arizona. Prior to January 2020, the Department was called the Arizona Department of Corrections. It was established by Laws 1968 (Chapter 198), to consolidate the supervisory staff and administrative functions at the state level of "all matters relating to the institutionalization, rehabilitation, and limited parole functions of all adult and juvenile offenders" [11].

Bartell remained unconscious until his death 16 days later.

During the initial interrogation by police, McLaughlin reported that he had planned the attack for several days in advance, and he had checked the school for metal detectors and security cameras. He told police that he didn't think that the gun would do "very much" harm, and he did not intend to kill anyone. He simply wanted to "hurt Bartell" because he had been teased and bullied by him for years [5]. He thought about possibly fighting Seth Bartell, but he knew that Seth was much bigger and stronger than he was, and that Seth Bartell would just beat him up if he got into a fight with him. Instead, he decided that he would shoot him in the arm or shoulder and cause a small wound with a small bullet that would not seriously harm Seth [26].

McLaughlin was charged with first- and second-degree murder, as well as possession of a dangerous weapon on school property, and he was tried as an adult in the Stearns County District Court. He was found guilty of all three counts following the first phase of a bifurcated bench trial. In the second phase (the mental illness phase), the court heard testimony from six mental health experts: three retained by McLaughlin, one by the State, and two by the court. The three experts hired by McLaughlin returned a diagnosis of schizophrenia, and the three others a diagnosis of major depression in remission and an "emerging personality disorder." Only one expert (hired by the defense) testified that McLaughlin did not know right from wrong and met the criteria for insanity under the M'Naughten rule [5].

According to Minnesota Rules of Criminal Procedure, (Rule 20.01-Competency Proceedings) "The court must appoint at least one examiner as defined in Minnesota Statutes, chapter 253B, or successor statute, to examine the defendant and report to the court on the defendant's mental condition".

If the prosecutor or defense counsel has a qualified examiner, the court, on request, must allow the examiner to observe the examination and examine the defendant. The report of examination must include a diagnosis of the defendant's mental condition. If the defendant is mentally ill or cognitively impaired, the report must contain an opinion of the defendant's capacity to understand the proceedings or participate in the defense [24].

McLaughlin's first expert witness was Dr. Maureen Hackett, a forensic psychiatrist. Hackett was retained by the defense to evaluate whether McLaughlin was competent to stand trial and whether he qualified for a mental illness defense. Hackett diagnosed McLaughlin with "a severe thought disorder best described as schizophrenia, paranoid and disorganized type" and also with "cognitive impairments." At the time of his actions and as a direct result of his mental illness, Jason McLaughlin suffered a defect of reasoning and a serious distortion of reality. In Hackett's opinion, Jason McLaughlin did not know the nature of the act constituting the offense for which he is charged and thus he did not appreciate and he did not know the wrongfulness of his actions on September 24, 2003.

McLaughlin's second expert was Dr. James Gilbertson, a forensic psychologist, whom McLaughlin retained to evaluate whether he should be certified as an adult. He also diagnosed McLaughlin with a psychotic disorder. In relation to the M'Naghten test, Gilbertson said, "the totality of the evidence convinces me that McLaughlin was aware of the nature of his act, the outcome of his act, and that it was morally wrong." McLaughlin's third expert was Dr. Richard Lentz, a psychiatrist, who confirmed Hackett's diagnosis, but he offered no opinion on whether McLaughlin would meet the M'Naghten standard [34].

Dr. Michael Koch, a psychiatrist retained by the court, testified that his role was to determine whether McLaughlin was competent to stand trial. Koch said he diagnosed McLaughlin with a depressive disorder in remission and an emerging personality disorder. He said that while other mental health professionals diagnosed McLaughlin as schizophrenic, Koch rejected this diagnosis for several reasons: (1) McLaughlin's mental health appeared to improve steadily after McLaughlin stopped taking antipsychotic and antidepressant medications; (2) staff at the St. Peter Security Hospital – where McLaughlin resided for 55 days during the Rule 20 evaluation period – did not see any evidence of psychotic behavior; and (3) McLaughlin's self-reported auditory, visual, and tactile hallucinations were inconsistent with the typical experience of schizophrenic patients. Koch also testified that he thought it was likely that McLaughlin was malingering [33].

According to Rule 20.02 (Defense of Mental Illness or Cognitive Impairment – Mental Examination):

The trial court may order the defendant's mental examination if:

(a) the defense notifies the prosecutor of its intent to assert a mental illness or cognitive impairment defense pursuant to Rule 9.02, subd. 1(5);

(b) the defendant in a misdemeanor case pleads not guilty by reason of mental illness or cognitive impairment; or

(c) the defendant offers evidence of mental illness or cognitive impairment at trial.

If the court orders a mental examination of the defendant, it must appoint at least one examiner as defined in Minnesota Statutes, chapter 253B, or successor statute, to examine the defendant and report to the court on the defendant's mental condition. If any party has retained an examiner, the examiner must be permitted to observe the mental examination and examine the defendant.

The examiner must forward a written examination report to the court, which must contain a diagnosis of the defendant's mental condition. If directed by the court, the report must include an opinion as to whether, because of mental illness or cognitive impairment, the defendant, at the time of committing the alleged criminal act, was laboring under such a defect of reason as not to know the nature of the act or that it was wrong [24].

Katheryn Cranbrook, a forensic psychologist, testified for the state. The state retained Cranbrook to evaluate McLaughlin for the certification process and, later, to evaluate whether McLaughlin met the M'Naghten standard. She said that in her opinion, at the time of the M'Naghten evaluation, McLaughlin was suffering from a major depressive disorder and, likely, an emerging personality disorder. As to some of the symptoms observed by other experts, Cranbrook told the district court that McLaughlin was malingering. She stated that the onset of schizophrenia at McLaughlin's age was uncommon, that "positive" symptoms such as hallucinations – which are well known as easy to feign– generally appear after a group of "negative" symptoms that McLaughlin did not display, and that a notable discrepancy occurred between the symptoms McLaughlin reported and the behavior others observed. Cranbrook concluded, to a reasonable degree of psychological certainty, that McLaughlin knew the nature of his criminal acts and knew that the acts were legally and morally wrong. She based these conclusions on the facts that, among other things, McLaughlin had completed firearms training and knew that weapons were dangerous, he expected to be charged with assault with a deadly weapon [34].

Dr. Kelly Wilson, a forensic psychologist retained by the court, evaluated McLaughlin to determine whether he met the M'Naghten standard. She told the court that she agreed with Cranbrook's diagnosis that McLaughlin was suffering from a major depressive disorder in remission and an emerging personality disorder. She said that to a reasonable degree of psychological certainty, she believed that McLaughlin knew the nature of his criminal acts at the time he committed them [33].

After six days of testimony, the court concluded that Mr. McLaughlin could not be excused from criminal responsibility because he "had cognitive awareness that shooting the victims was morally wrong". McLaughlin was sentenced to life in prison for the death of Bartell, to be served consecutively with a 144-month sentence for the death of Rollins. Following the trial, he appealed his convictions and sentences to the Supreme Court of Minnesota, who affirmed the district court's convictions and sentences for first- and second-degree murder.[1]

In his appeal, McLaughlin had asserted an insanity defense and argued that, on the basis of recent brain development research, the application of the M'Naughten rule to adolescents violates the Due Process Clause of the Minnesota Constitution. To support this contention, he cited *Roper v. Simmons*[2], the landmark U.S. Supreme Court case holding that the execution of defendants for offenses committed before age 18 is unconstitutional [28].

The legal test of insanity in Minnesota is the M'Naughten rule, which is codified in Minn. Stat. §611.026 (2004): "A person shall not be excused from criminal liability except upon proof that at the time of committing the alleged criminal act the person was laboring under such a defect of reason, from one of these causes, as not to know the nature of the act, or that it was wrong" [25].

He asserted that, despite having a cognitive appreciation of wrongfulness, adolescents cannot control their actions in the same way as adults, and therefore M'Naughten is the wrong test of insanity in this population [1]. He urged the court to adopt an alternative test to M'Naughten that would rec-

[1] State v. McLaughlin, 725 N.W.2d 703 (Minn. 2007).

[2] 543 U.S. 551 (2005).

ognize the unique vulnerability of young persons to the "irresistible impulse." The Supreme Court of Minnesota upheld the district court's ruling, primarily because the issue of the constitutionality of the M'Naughten rule was raised by McLaughlin for the first time on appeal. The constitutionality of a statute cannot be raised for the first time on appeal, and so the court was "procedurally barred from reviewing a defendant's constitutional challenge" in this case. It stated that the validity of McLaughlin's claim depended entirely on highly technical facts that were not raised before the district court, and therefore no factual record on the issue existed for the supreme court to consider on appeal. It stated further that the Roper brief was not directly related to the issue of the constitutionality of M'Naughten in adolescents and it therefore could not substitute for such a record. Furthermore, the court declined to issue a judicial ruling on the insanity defense because in the past it has "stated unambiguously that any changes to M'Naughten must come from the legislature" [20, p. 146].

3.5. Extended jurisdiction juvenile prosecutions

EJJP originated in Minnesota in the early 1990's." In 1992, Minnesota created a task force which developed a new method for dealing with violent and chronic child offenders, one which blended the rehabilitative nature of the juvenile system with the procedural rights and sentencing potential of the criminal system." In creating this new method, the task force was fueled with a determination to strengthen the rehabilitative power of the juvenile system and keep as many children as could be saved out of adult prison. In 1994, Minnesota adopted the new method proposed by the task force, by passing *The Juvenile Justice Crime Bill (HF 2074)*[1]. Several other states have since adopted EJJP in their efforts to alleviate the problem of juvenile crime [32, p. 1364–1365].

The growing number of states use a form of blended sentencing, called EJJ prosecutions, in which a juvenile receives both a juvenile sentence and an adult sentence. The juvenile has the opportunity to avoid serving the adult sentence and having a criminal record by successfully completing the juvenile sentence. However, if the juvenile commits a new offense while serving his juvenile sentence, the adult sentence will be executed [35, p. 218].

The distinguishing feature of an EJJ prosecution is that a juvenile receives both a juvenile sentence and an adult sentence. The juvenile is given a chance at rehabilitation and the adult sanction is entered only if the court finds that the juvenile violated the original juvenile disposition order or is adjudicated delinquent or found guilty of a new offense [36, p. 647].

In Minnesota, children under the age of 14 are not charged with crimes. If a juvenile is charged with a crime, jurisdiction is vested in the juvenile court system where crimes are defined consistently with adult crimes, but, they are referred to as "juvenile adjudications of delinquency". The positive is that juvenile court is premised on the commitment to rehabilitation, not punishment. This is not to say that a juvenile delinquency proceeding should be taken lightly. These types of actions against children still carry collateral consequences that can last a lifetime, and the outcomes can still be punitive [43].

Unlike children facing traditional juvenile court adjudication, an EJJP designated child receives the full panoply of procedural rights, including trial by jury, that defendants receive in criminal court prosecutions [32, p. 1365].

The changes in the provisions to transfer juveniles to adult court («certification») and the creation of the blended jurisdiction category of juvenile offender are entwined. Both grew from a desire to give the juvenile court tools to address the serious juvenile offender while retaining the court's ability to rehabilitate those juveniles amenable to treatment. Prior to the 1994 changes to the certification statute, juveniles between the ages of fourteen and seventeen could be certified to adult court for any crime[2]. The prosecutor, however, was required to prove by clear and convincing evidence that the child was not suitable for treatment or that public safety would not be served by retention in the juvenile system [29, p. 1306].

There are some cases severe enough to warrant a juvenile to be prosecuted as an adult through a process called extended juvenile jurisdiction. Minnesota Statutes, Section 260B.007, Subdivision 3, stated that "Child" means an individual under 18 years of age and includes any minor alleged to have

[1] The House bill was passed on March 17, 1994. The Senate approved the conference committee report on April 29, 1994 [14, p. 987].

[2] MINN. STAT. § 260.125, subd. 1 (1992).

been delinquent or a juvenile traffic offender prior to having become 18 years of age.

According to Section 260B.130[1] (Extended jurisdiction juvenile prosecutions – EJJ), Subdivision 1, "A proceeding involving a child alleged to have committed a felony offense is an extended jurisdiction juvenile prosecution if:

(1) the child was 14 to 17 years old at the time of the alleged offense, a certification hearing was held, and the court designated the proceeding an extended jurisdiction juvenile prosecution;

(2) the child was 16 or 17 years old at the time of the alleged offense; the child is alleged to have committed an offense for which the Sentencing Guidelines and applicable statutes presume a commitment to prison or to have committed any felony in which the child allegedly used a firearm; and the prosecutor designated in the delinquency petition that the proceeding is an extended jurisdiction juvenile prosecution; or

(3) the child was 14 to 17 years old at the time of the alleged offense, the prosecutor requested that the proceeding be designated an extended jurisdiction juvenile prosecution, a hearing was held on the issue of designation, and the court designated the proceeding an extended jurisdiction juvenile prosecution [23].

The prosecutor must make a motion to proceed in this manner. If EJJ is conferred, the child can receive a juvenile sentence, and an adult sentence (to prison) that can be imposed in certain circumstances [20, p. 145]. Section 260B.130, Subdivision 2. stated that "when a prosecutor requests that a proceeding be designated an extended jurisdiction juvenile prosecution, the court shall hold a hearing under section 260B.163 to consider the request. If the prosecutor shows by clear and convincing evidence that designating the proceeding an extended jurisdiction juvenile prosecution serves public safety, the court shall grant the request for designation" [23].

If the child is convicted or pleads guilty, then the juvenile court imposes two sentences on the child: a traditional juvenile court disposition and an adult criminal sentence. The court stays the adult criminal sentence as long as the child successfully completes the juvenile disposition in the juvenile system. However, if the child commits a new offense before completing the juvenile disposition or breaks a term of the disposition, then the juvenile court has authority to revoke the stay and order the implementation of the adult sentence [32, p. 1365–1366].

According to Subdivision 4., (a) If an extended jurisdiction juvenile prosecution results in a guilty plea or finding of guilt, the court shall:

(1) impose one or more juvenile dispositions under section 260B.198; and

(2) impose an adult criminal sentence, the execution of which shall be stayed on the condition that the offender not violate the provisions of the disposition order and not commit a new offense.

(b) If a child prosecuted as an extended jurisdiction juvenile after designation by the prosecutor in the delinquency petition is convicted of an offense after trial that is not an offense described in subdivision 1, clause (2), the court shall adjudicate the child delinquent and order a disposition under section 260B.198. If the extended jurisdiction juvenile proceeding results in a guilty plea for an offense not described in subdivision 1, clause (2), the court may impose a disposition under paragraph (a) if the child consents [23].

Minnesota is specific in its approach to youthful offender cases. If a juvenile is charged as an adult, the case remains in the Juvenile Court where it continues to be heard by a Juvenile Court Judge who can impose a juvenile sentence or an adult sentence. Section 260B.130 requires that a juvenile charged with a felony has to be 14 to 17 years old to be tried as a youthful offender. The Minnesota statute is unique in that it is a hybrid of the juvenile and adult systems. Minnesota follows the prosecutorial discretion approach in determining which cases should be indicted. In other words, prosecutors have full discretion to requests that a proceeding be designated an extended jurisdiction juvenile prosecution. In youthful offender cases, juvenile court judges are able to give a hybrid or blended juvenile or adult sentence.

According to Section 260B.130, Subdivison 5., Clause (a) "When it appears that a person convicted as an extended jurisdiction juvenile has violated the conditions of the stayed sentence, or is alleged to have committed a new offense, the court may, without notice, revoke the stay and probation and direct that the offender be taken into immediate custody. Clause (c) stated that after the hearing, if the court finds that reasons exist to revoke the

[1] Minnesota Statutes, "Public welfare and related activities", Chapter 260B, Section 260B.130 ("Extended jurisdiction juvenile prosecutions").

stay of execution of sentence, the court shall treat the offender as an adult and order any of the adult sanctions authorized by section 609.14, subdivision 3, except that no credit shall be given for time served in juvenile facility custody prior to a summary hearing. If the offender was convicted of an offense described in subdivision 1, clause (2), and the court finds that reasons exist to revoke the stay, the court must order execution of the previously imposed sentence unless the court makes written findings regarding the mitigating factors that justify continuing the stay.

According to Section 260B.130 (d), "Upon revocation, the offender's extended jurisdiction status and juvenile court jurisdiction are terminated. The ongoing jurisdiction for any adult sanction, other than commitment to the commissioner of corrections, is with the adult court".

This section does not apply to a child excluded from the definition of delinquent child under section 260B.007, subdivision 6, paragraph b ("child who has violated a federal law or a law of another state and whose case has been referred to the juvenile court if the violation would be an act of delinquency if committed in this state or a crime or offense if committed by an adult") [23].

In the most serious of cases, juveniles over the age of 16 at the time of the crime, can be prosecuted as adults. The process for this is called Certification to Adult court. A motion is filed by the prosecutor to initiate these proceedings. In a case this serious, the winning or losing of a certification case may occur when the lawyer can successfully prevent certification to adult court. The certification proceeding involves the calling of witnesses, cross-examination of those witnesses, and expert reports prepared by the Government, and by the juvenile's defense team [20, p. 145–146].

4. The unconstitutionality of the EJJ process

The People of the State of Illinois v. J.W.[1] is the case that has challenged the constitutionality of the revocation process in the EJJ statute. Thirteen-year-old J.W. did not want to leave her great-grandmother's house to go live with her mother and her mother's boyfriend in their new apartment. She killed her mother in the car, stabbing her with a knife. A thirteen-year-old girl charged with first-degree murder for killing her mother and found guilty in the subsequent EJJ proceeding. J.W. received an adult sentence of thirty-five years in prison and a juvenile sentence of at least five years in a juvenile detention center. If she does not violate the juvenile sentence, J.W. will be released by the time she turns twenty-one years old [37].

On appeal, she claimed that the EJJ statute was unconstitutionally vague for two reasons. First, she argued that it did not provide notice as to what acts constituted violations that would trigger the adult sentence. Second, she argued that the judge had no guidance in deciding whether to impose the adult sentence or to continue the juvenile sentence. The appellate court, however, did not reach the merits of the claim because it determined that J.W. lacked standing. J.W. did not have standing because she had not yet suffered a direct injury from the statute, nor was she in immediate danger of injury because the adult sentence had not yet been imposed. In fact, the adult sentence would never be imposed if J.W. successfully completed her juvenile sentence. Thus, while *Illinois v. J.W.* first raised concerns regarding the constitutionality of the statute, the court did not resolve the case on the merits [8].

J.W. also argued that the EJJ designation violated *Apprendi v. New Jersey*[2], because the judge did not make a finding determining an EJJ proceeding beyond a reasonable doubt, and that the judge abused his discretion in designating her case as an EJJ proceeding because she was only thirteen and it was her first offense. The appellate court held that the EJJ designation did not violate *Apprendi* because that designation did not purport to establish any element of the crime of first-degree murder. In addition, the judge did not abuse his discretion in designating the proceeding as an EJJ prosecution instead of a normal juvenile proceeding because, although it was J.W.'s first offense, she stabbed her mother over 200 times with three different knives. The seriousness of the offense and her culpability overrode her age and lack of prior offenses [35, p. 250].

"*In re J.W.*" argues that the EJJ process is unconstitutional because it is impermissibly vague. In order to protect the public, judges should work towards keeping as many juveniles out of the adult system as possible because juveniles in the adult system may be vulnerable and tend to have higher recidivism rates than those retained in the juvenile system.

Exposing a minor to the adult system has grave consequences, and thus it should only be a last re-

[1] *In re J.W.*, 804 N.E.2d 1094, 1096 (III. App. Ct. 2004).

[2] 530 U.S. 66 (2000).

sort. Rehabilitation is not a major emphasis of the criminal justice system. With its focus on punishment, this system is unconcerned with the needs of children whom the juvenile system has abandoned. These children will enter penal facilities that are unable and unwilling to treat them. While juvenile facilities have programs which foster personal growth and positive socialization, prisons are characterized by their dearth of counseling opportunities, medical treatment, and programs which address dysfunctional family relationships. Furthermore, the adult criminal justice system sorely lacks the opportunities for vocational training and educational advancement that are available in the juvenile justice system. The criminal justice system also fails to provide the intense follow-up services and parole supervision that are necessary elements of the juvenile justice system. The children who are imprisoned in the adult system will eventually reenter society, but they will lack the rehabilitation and the education they will need to succeed [32, p. 1373].

Conclusion. U. S. States are increasingly setting a minimum age at which youth and young adults can be processed through juvenile courts, but there is significant variation in the minimum age established in statute, offenses excluded from minimum age requirements, and the discretion afforded to prosecutors and judges. In states without a statewide statutory minimum, prosecutors and judges often have discretion about whether to process young people through juvenile courts or to refer them to social service systems. This discretion often revolves around the severity of the offense, accountability and public safety concerns, and the treatment needs of the youth. All States allow juveniles under certain conditions to be tried as if they were adults in criminal court by way of one or more transfer mechanisms. According to statutory exclusion provisions, State law excludes some classes of cases involving juvenile age offenders from juvenile court, granting adult criminal court exclusive jurisdiction over some types of offenses. Murder and serious violent felony cases are most commonly "excluded" from juvenile court.

By the early 1990s, violent juvenile crime had captured the attention of the nation's policy makers, as well as the public. In the USA had been launched new juvenile justice reform initiatives, often involving reduced judicial discretion and a greater use of adult court for juvenile offenders. "Extended jurisdiction juvenile prosecutions" originates from the Minnesota's *Juvenile Justice Crime Bill of 1994.* The growing number of states use a form of blended sentencing, called EJJ prosecutions, in which a juvenile receives both a juvenile sentence and an adult sentence. The juvenile has the opportunity to avoid serving the adult sentence and having a criminal record by successfully completing the juvenile sentence. However, if the juvenile commits a new offense while serving his juvenile sentence, the adult sentence will be executed. The prosecutor must make a motion to proceed in this manner. If the prosecutor shows by clear and convincing evidence that designating the proceeding an extended jurisdiction juvenile prosecution serves public safety, the court shall grant the request for designation".

The *Arkansas's Extended Juvenile Jurisdiction Act of 1999* extended the blended sentencing concept to any child under the age of fourteen and charged with capital murder or murder in the first degree, which no state had done previously and which was a drastic move away from the *common law*. Once a juvenile is found to have committed a crime that is classified as an EJJ offense, the court enters a juvenile disposition, but instead of entering an adult sentence and staying the execution of the sentence, the court suspends the imposition of an adult sentence pending further review.

Case law has challenged the constitutionality of the EJJ process, because it is impermissibly vague. In *State v. McLaughlin,* according to the appellant, the application of the M'Naughten rule to adolescents violates the Due Process Clause of the Minnesota Constitution. In *the People of the State of Illinois v. J.W.*, the appellant stated that EJJ statute did not provide notice as to what acts constituted violations that would trigger the adult sentence. The judge had no guidance in deciding whether to impose the adult sentence or to continue the juvenile sentence. Exposing a minor to the adult system has grave consequences, and thus it should only be a last resort. With its focus on punishment, the criminal justice system is unconcerned with the needs of children whom the juvenile system has abandoned. While juvenile facilities have programs which foster personal growth and positive socialization, prisons are characterized by their dearth of counseling opportunities, medical treatment, and programs which address dysfunctional family relationships.

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