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Mandatory Sentencing for Habitual Juvenile Offenders: People v. J.A.

The Illinois General Assembly designed the Juvenile Court Act to protect and rehabilitate juveniles. The primary purpose of the Juvenile Court Act was rehabilitative and preventative rather than punitive. In response to the increase in violent juvenile crimes, however, the Illinois General Assembly enacted the Habitual Juvenile Offender Act (Act), which subjects “habitual juvenile offenders” to mandatory incarceration in a correctional facility until the age of twenty-one. The Act defines habitual juvenile offenders as juveniles with three adjudications of delinquency. The first two adjudications

2. The purpose of the Juvenile Court Act is stated as follows:
   The purpose of this Act is to secure for each minor subject hereto such care and guidance, preferably in his own home, as will serve the moral, emotional, mental and physical welfare of the minor and the best interests of the community; to preserve and strengthen the minor’s family ties whenever possible, removing him from the custody of his parents only when his welfare or safety or the protection of the public cannot be adequately safeguarded without removal; and, when the minor is removed from his own family, to secure for him custody, care and discipline as nearly as possible equivalent to that which should be given by his parents, and in cases where it should and can properly be done to place the minor in a family home so that he may become a member of the family by legal adoption or otherwise. Id. § 701-2(1). See also Jackson v. Civil Serv. Comm’n, 41 Ill. App. 3d 87, 92, 353 N.E.2d 331, 335 (1st Dist. 1976) (discussing Juvenile Court Act).
5. Id. Section 705-12(a) provides in pertinent part: “Any minor adjudged an Habitual Juvenile Offender shall be committed to the Department of Corrections until his 21st birthday, without possibility of parole, furlough, or non-emergency authorized absence . . . .” Id.
6. Id. Section 705-12(a) provides in pertinent part:
   Any minor having been twice adjudicated a delinquent minor for offenses which, had he been prosecuted as an adult, would have been felonies under the laws of this State, and who is thereafter adjudicated a delinquent minor for a third time shall be adjudged an Habitual Juvenile Offender where:
   1. the third adjudication is for an offense occurring after adjudication on the second; and
   2. the second adjudication was for an offense occurring after adjudication on the first; and
   3. the third offense occurred after January 1, 1980; and
   4. the third offense was based upon the commission of or attempted commission of the following offenses: murder; voluntary or involuntary manslaughter; criminal sexual assault or aggravated criminal sexual assault; aggravated or heinous battery involving permanent disability or disfigurement or great bodily harm to the victim; burglary of a home or other residence intended for use as a temporary or permanent dwelling place for human beings; home invasion; robbery or armed robbery; or aggravated arson.

Id.

Traditionally, the definition of “delinquency” included both criminal conduct and noncriminal
must be for offenses that, had the juvenile been prosecuted as an adult, would have been felonies.\(^7\) The third adjudication of delinquency must be for the commission of certain felonies for which juveniles may be tried as adults.\(^8\)

Recently, in *People v. J.A.*,\(^9\) the Illinois Appellate Court for the First District held that a juvenile offender with two adjudications of delinquency was, at age thirteen, subject to sentencing under the Habitual Juvenile Offender Act.\(^10\) The court also held that an eight-year sentence imposed on a habitual juvenile offender was not cruel and unusual punishment.\(^11\) After examining the history and philosophy of the juvenile court system, this Recent Case addresses three problems with the court’s decision in *J.A.* First, the court misapplied the plain meaning rule, a doctrine of statutory interpretation, in its reading of the Habitual Juvenile Offender Act.\(^12\) Second,
the court's cruel and unusual punishment analysis was incomplete and inconsistent with the United States Supreme Court's decision in Solem v. Helm, which mandates proportionality of sentencing. Finally, the J.A. decision conflicts with the underlying policies of the juvenile court system; the decision will promote sentence disparity in juvenile adjudications. The J.A. court's emphasis on protecting society will frustrate the underlying rehabilitative policy of the juvenile court system.

**History and Philosophy of the Juvenile Court System**

Until the nineteenth century, states treated juvenile offenders the same as they treated adult offenders. In American common law, juveniles younger than age seven were incapable of committing crimes. Juveniles between the ages of seven and fourteen, by contrast, were merely presumed incapable of committing crimes. If the state demonstrated that a juvenile offender between the ages of seven and fourteen could distinguish between right and wrong, then the presumption of incapacity was rebutted and the juvenile stood before the criminal court as an adult. Since there were no separate facilities for juveniles, the juvenile offender was sent to a prison for adults.

In the nineteenth century, as a result of deplorable jail conditions, reformers sought specialized institutions for juveniles. The movement toward separate treatment of juveniles is believed to have begun in 1824 with the formation of the House of Refuge in New York. The founders of the House of Refuge sought to house, educate, and protect juveniles.

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14. *See infra* notes 131-34 and accompanying text.
16. Illinois may not prosecute juveniles younger than thirteen years old as adults. *See Ill. Rev. Stat. ch. 38, § 6-1* (1983). "No person shall be convicted of any offense unless he had attained his 13th birthday at the time the offense was committed."
17. Law and Tactics, supra note 15, at 3.
18. *Id.*
21. *Id.*
22. Act of Mar. 29, 1824, ch. 126, 1824 N.Y. Laws 110. The House of Refuge was designed to care for all kinds of children, whether neglected, wayward, abandoned, or criminal. *See Law and Tactics, supra note 15, at 3; Fox, Juvenile Justice Reform: An Historical Perspective, 22 Stan. L. Rev. 1187 (1970).* Houses of refuge were established in a number of cities by reformers who were eager to keep juvenile offenders separate from adult criminals. H. Lou, Juvenile Courts in the United States 13-19 (1927). For a historical account of the houses of refuge, see Mennel, Origins of the Juvenile Court: Changing Perspective on the Legal Rights of Juvenile Delinquents, 18 Crime & Delinqu. 68 (1972).
House of Refuge held juveniles convicted of crimes, as well as those who were abandoned or neglected. The reformers believed that criminal, abandoned, or neglected juveniles could be rehabilitated if they were removed from their community and home environment. The reformers also believed that the state had a duty to protect the community by intervening in the lives of criminal or abandoned juveniles. The courts soon followed this idea and began to assume guardianship over juvenile offenders under the authority of parens patriae. This doctrine empowered the state to separate juveniles from poor or unfit parents, and to act as a superior parent for these juveniles. Under this doctrine, juveniles were treated not as criminals, but as wards of the state who were not fully responsible for their conduct, and who were capable of being rehabilitated.

Toward the end of the nineteenth century, an effort was underway to establish a separate system of justice for juveniles. In 1899, the State of Illinois established the first juvenile court in the nation. The principal aim of the Illinois Juvenile Court was the rehabilitation of juveniles. Many

24. LAW AND TACTICS, supra note 15, at 3.
25. Id. at 4. The reformers believed that only those children who could be rehabilitated should be committed to the House of Refuge:
   This limitation was conceived as a mandate to the courts that they commit to the House only those who could still be rescued. Those who could not be rescued were to be prevented from contaminating the saving process. The reformers were convinced that it was necessary to close their House to prematurely corrupted and corrupting young persons.
Fox, supra note 22, at 1190.
26. S. DAVIS, supra note 6, at 19.
27. Id.
33. Note, supra note 23, at 542. See ILL. REV. STAT. ch. 37, § 701-2(l) (1983) (purpose of
states subsequently enacted juvenile court acts that were designed to impress upon the juvenile courts the objective of rehabilitating the juvenile.\footnote{34}

**The Illinois Juvenile Court Act**

Under the Illinois Juvenile Court Act,\footnote{35} the state is allowed to prosecute violent juvenile offenders as adults.\footnote{36} The decision to prosecute a juvenile as an adult, however, is not within the sole discretion of the Illinois state's attorney.\footnote{37} The state's attorney's decision is subject to the objection of the judge presiding in the juvenile division where the case is brought.\footnote{38} Although there is a judicial check on the state's attorney's discretion to prosecute juveniles as adults, a belligerent state's attorney can petition to prosecute a juvenile as an adult, even on the juvenile's first offense.\footnote{39}

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\footnote{34} Illinois Juvenile Court Act is protection and rehabilitation of juvenile). Rehabilitative goals were emphasized to such an extent that courts were not concerned with the guilt or innocence of the child. Note, *supra* note 23, at 542.

\footnote{35} Note, *supra* note 23, at 543. Justice in the contemporary juvenile court system is administered differently than in the criminal court system. For example, juveniles are charged with crimes not by complaint, but by petition. W. Stapelton & L. Tettelbaum, In Defense of Youth 15-16 (1972). Instead of a trial, there is an adjudicatory hearing that is the "functional equivalent of the trial in the regular criminal or civil process." S. Davis, *supra* note 6, at 124. At an adjudicatory hearing, the juvenile court determines such matters as whether the juvenile committed the alleged delinquent act or, in a neglect or abandonment proceeding, whether the juvenile is in fact neglected or abandoned. *Id.* at 123-24. Unlike the criminal system, the rules of evidence are relaxed at the dispositional hearing, so that the juvenile court can hear as much information as possible about the juvenile in order to render a suitable disposition. *Id.* at 153. A juvenile offender is categorized as a delinquent, rather than a criminal. *See supra* note 30. Finally, juvenile court proceedings are kept confidential to prevent the juvenile from suffering the stigma of a criminal record. *See* Geis, Publicity and Juvenile Court Proceedings, 30 Rocky Mt. L. Rev. 101 (1958); Mahoney, The Effect of Labeling Upon Youths in the Juvenile Justice System: A Review of the Evidence, 8 L. & Soc'y Rev. 583 (1974).

\footnote{36} See id. § 702-7(3), which provides in pertinent part:

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 ... 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.

\footnote{37} See People v. Caudell, 28 Ill. App. 3d 916, 329 N.E.2d 802 (5th Dist. 1975).

\footnote{38} See ILL. REV. STAT. ch. 37, § 702-7(3) (1983 & Supp. 1984). If a juvenile court judge makes such an objection, the chief judge of the circuit court ultimately decides how the juvenile will be prosecuted. See People v. Brookshaw, 12 Ill. App. 3d 221, 225, 299 N.E.2d 20, 24 (3d Dist. 1973).

\footnote{39} See 81st General Assembly of Illinois, Senate Debates, May 21, 1979 at 52-53 (available from Illinois Secretary of State).

One ... of the evils, I think, of the [juvenile court] system is that an angry prosecutor in retribution can even on the first offense take a juvenile offender and try him as an adult and the reason that most of them do it, is because they don't really have alternatives in dealing with them ... .

*Id.* (statement of Sen. DeAngelis).
Two policy concerns influenced the Illinois General Assembly’s reformulation of the state’s juvenile justice system. First, some lawmakers criticized the breadth of the prosecutor’s discretion in handling juvenile offenders. State officials expressed concern that juveniles who had not committed serious or violent offenses could be prosecuted as adults. Second, the General Assembly sought to protect the public from juvenile offenders who regularly commit serious offenses, but who were not prosecuted as adults. These concerns contributed to the passage of the Habitual Juvenile Offender Act in 1979. Although juvenile rehabilitation was the predominant goal, the Act also reduced prosecutorial discretion and increased juvenile sentences to protect society from repeat offenders. The Act applies only to juvenile offenders who commit a third offense identified as a serious crime in the statute, and imposes a mandatory sentence of incarceration until the age of twenty-one for any juvenile adjudged a habitual juvenile offender.

Under the Act, a juvenile offender with three adjudications of delinquency is committed to a correctional facility. Once committed to the facility, there is no possibility of parole. The period of confinement is determined by subtracting the date of commitment from the date of the habitual juvenile offender’s twenty-first birthday. The habitual juvenile offender, however, may lessen the period of confinement by earning one day of good conduct credit for each day served. The statute allows the state to choose between prosecuting a juvenile offender as an adult or as a habitual juvenile offender. If the state elects the first alternative, the juvenile court judge must

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40. Id. at 53.
41. See 81st General Assembly of Illinois, House Debates, June 21, 1979 at 104 (available from Illinois Secretary of State).

That kid with 12 or 14 felonies to his string who goes out and commits aggravated rape or goes out and commits armed robbery, or yes, even murder, [should be] put . . . in the Department of Corrections with no chance of payroll [sic] in a juvenile detention facility until his 21st birthday. Rehabilitation has not worked and society deserves to be protected from this repeat felon.

Id. (remarks of Rep. Davis).

42. Ill. Rev. Stat. ch. 37, § 705-12 (1983 & Supp. 1984). Although Public Act 81-1104 enacting the Habitual Juvenile Offender Act does not contain a statement of the purpose of the Act, it is clear from both the Senate and House debates that these concerns were key factors in promulgating the statute.

45. See supra notes 4, 6-7 and accompanying text.
47. Id.
48. Id. § 705-12(a). Section 705-12(a) states that "commitment as an Habitual Juvenile Offender shall be . . . the difference between the date of commitment and the minor’s 21st birthday . . . ." Id.
49. Id. § 705-12(a). The habitual juvenile offender statute requires that the same procedures used to determine the allowance or revocation of good conduct credit for adult prisoners also apply in determining good conduct credit for habitual juvenile offenders. Id.
50. Id.
determine whether the interests of the juvenile and the public are better served by prosecuting the juvenile as an adult. If the state chooses the second alternative, the juvenile court judge must determine whether the prerequisites for prosecuting the juvenile as a habitual juvenile offender are met. The Habitual Juvenile Offender Act is the only statute under the Juvenile Court Act that mandates a right to trial by jury for a juvenile. A juvenile prosecuted as a habitual juvenile offender may waive the right to a jury trial by demanding a bench trial, in open court and with the advice of counsel.

51. See supra note 36.
Section 705-12(c) provides:
If the court finds that the prerequisites established in Section (a) hereof have been proven, it shall adjudicate the minor an Habitual Juvenile Offender and commit him to the Department of Corrections until his 21st birthday, without possibility of parole, furlough, or non-emergency authorized absence.

Id.

The decision whether to prosecute a juvenile as an adult or as a habitual juvenile offender is significant because the sentences imposed under each alternative may vary. For example, if the state decided to prosecute a thirteen year old juvenile as an adult for committing a third robbery, the convicted juvenile would face a sentence of three to seven years in a correctional facility. ILL. REV. STAT. ch. 38, § 1005-8-1(a)(5) (1983) (robbery is a class 2 felony, ILL. REV. STAT. ch. 38, § 18-1 (1983)). If the state prosecuted the same juvenile as a habitual juvenile offender, the juvenile would face a mandatory sentence of eight years in a correctional facility, with no possibility of parole. ILL. REV. STAT. ch. 37, § 705-12(a) (1983 & Supp. 1984). If the juvenile's counsel perceives this dilemma, they may file a motion to have the case transferred from juvenile to adult court. Id. § 702-7(5).


Many constitutional privileges enjoyed by adults in criminal proceedings have been applied to juveniles in delinquency proceedings. Since the Supreme Court's decision in In re Gault, 387 U.S. 1 (1967), a juvenile in a delinquency proceeding is entitled to the following: (1) proper notice of the charges, id. at 33-34; (2) a right to counsel, id. at 34-42; (3) a right to confront and cross-examine witnesses, id. at 42-46; and (4) a privilege against self-incrimination, id. at 55. Numerous commentators have discussed the Gault decision's impact on the juvenile court system. See GAULT: WHAT NOW FOR THE JUVENILE COURT? (V. Nordin ed. 1968); Note, Constitutional Law—Extension of Due Process Guarantees to Juveniles, 14 LOY. L. REV. 195 (1968); Note, Constitutional Rights of Juveniles: Gault and Its Application, 9 WM. & MARY L. REV. 492 (1968); The Supreme Court, 1966 Term, 81 HARV. L. REV. 112, 171 (1967).

The United States Supreme Court, however, subsequently ruled that the due process clause does not require trial by jury in state juvenile court delinquency proceedings. McKeeve v. Pennsylvania, 403 U.S. 528, 545 (1971). The Illinois Supreme Court has also ruled that under the Juvenile Court Act, a juvenile does not have a right to trial by jury. People ex rel. Carey v. Whit, 65 Ill. 2d 193, 202, 357 N.E.2d 512, 516 (1976). Thus, the Habitual Juvenile Offender Act is unique in affording a juvenile a right to trial by jury.

54. ILL. REV. STAT. ch. 37, § 705-12(b) (1983 & Supp. 1984). Section 705-12(b) provides in pertinent part that "[t]rial . . . shall be by jury unless the minor demands, in open court and with advice of counsel, a trial by the court without jury." Id.
The procedures of the Habitual Juvenile Offender Act resemble those of Illinois' adult habitual criminal statute. The policies behind these acts nevertheless differ. The primary purpose behind sentencing juvenile offenders is to rehabilitate them. The primary purpose for imposing sanctions on adult criminals, however, is to protect society. Under the adult habitual criminal statute, upon a third conviction for a class X felony or murder, an offender is adjudged a habitual criminal. The adult habitual criminal statute

55. ILL. REV. STAT. ch. 38, § 33B-1(a) (1983). The statute provides:

Every person who has been twice convicted in any state or federal court of an offense that contains the same elements as an offense now classified in Illinois as a Class X felony or murder, and is thereafter convicted of a Class C felony or murder, committed after the 2 prior convictions, shall be adjudged an habitual criminal.

Id.

56. See supra notes 2, 23 and accompanying text. See also 81st General Assembly of Illinois, Senate Debates, May 21, 1979 at 53 (available from Illinois Secretary of State) (statement of Sen. Washington): "[T]he basic philosophy for treating juveniles . . . slightly different . . . was that young people are more rehabilitatible [sic] than older people."

57. There are several justifications for punishing adult criminals. The deterrence policy, the most important justification, treats punishment as a means of discouraging others from similarly violating the law so that society may be protected from further crime. S. KADISH & M. PAULSEN, CRIMINAL LAW AND ITS PROCESSES: CASES AND MATERIALS 3 (3d ed. 1975). Another justification for punishment is to restrain the criminal from committing further crimes. Id. This theory is vital to the protection of society, because it is based on preventing criminals with "dangerous criminal tendencies [from being] in a position where [they] can give indulgence to such propensities . . . which no community should suffer . . . ." Id. Furthermore, reformation or rehabilitation of the criminal is a justification for imposing punishment. Id. at 2. The objective of the reform theory is that a person's criminal disposition can be corrected with psychological treatment and isolation from the community. Id. at 36. Some methods of rehabilitation include instilling the offender with moral guilt, training the offender in work skills, and providing psychotherapy. Id. Finally, retribution is a justification for punishment. Id. at 2. This theory of punishment rests solely upon the foundation of revenge. Id.

The general purposes of the Illinois criminal code are to:

(a) Forbid and prevent the commission of offenses;
(b) Define adequately the act and mental state which constitute each offense, and limit the condemnation of conduct as criminal when it is without fault;
(c) Prescribe penalties which are proportionate to the seriousness of offenses and which permit recognition of differences in rehabilitation possibilities among individual offenders; and
(d) Prevent arbitrary or oppressive treatment of persons accused or convicted of offenses.


58. ILL. REV. STAT. ch. 38, § 33B-1(a) (1983). The Illinois Class X Felony Act became effective on February 1, 1978. This class of felonies includes the following offenses: (1) murder or attempt to commit murder, id. § 8-4(c)(1); (2) aggravated kidnapping for ransom, id. § 10-2(b)(1); (3) exploitation of a child, id. § 11-19.2(c); (4) aggravated criminal sexual assault, ILL. REV. STAT. ch. 38, § 12-14(c) (Supp. 1984); (5) heinous battery, ILL. REV. STAT. ch. 38, § 12-4.1(b) (1983); (6) home invasion, id. § 12-11(b) (1983); (7) aggravated arson, id. § 20-1.1(b);
mandates a life sentence for anyone adjudged a habitual criminal.\(^5\) A mandatory sentence is thus imposed under both the Habitual Juvenile Offender Act and the adult habitual criminal statute.\(^6\) The juvenile’s sentence, however, terminates upon the juvenile’s reaching the age of twenty-one.\(^6\)

Shortly after the Act became law,\(^6\) the Illinois Supreme Court, in People ex rel. Carey v. Chrastka,\(^6\) held that the Habitual Juvenile Offender Act as a whole was constitutional.\(^6\) First, the court decided that the juvenile’s right to a jury trial was not violated, even though a jury did not sit in the previous adjudications of delinquency.\(^6\) Because the prior adjudications were rehabilitative in nature, the right to a jury trial was held not to be required in juvenile proceedings.\(^6\) The court also held that the Act did not violate due process by imposing punishment without a jury trial. The Act provided for the incarceration of juvenile offenders on the basis of two prior adjudications of delinquency by bench rather than jury trials.\(^6\) The Chrastka court concluded that the General Assembly incorporated a right to trial by jury in the Act by providing for jury trials in habitual juvenile offender prosecutions.\(^6\) The court further held that the habitual juvenile offender statute did not violate due process by allowing the state’s attorney to prosecute juveniles as habitual offenders since the statute contained guidelines which limited the prosecutor’s discretion.\(^6\)

(8) armed robbery, id. § 18-1(b); (9) unlawful discharge of metal piercing bullets, id. § 24-3.2(b); (10) treason, id. § 30-1(e); (11) armed violence, id. § 33A-3(a); (12) certain narcotics violations, ILL. REV. STAT. ch. 56 1/2, § 1401(A) (1983 & Supp. 1984); and (13) calculated criminal drug conspiracy, ILL. REV. STAT. ch. 38, § 1405(a) (1983).

The penalty for commission of a class X felony ranges from six to thirty years. Id. § 1005-8-1(a)(3). For a more detailed discussion of the class X felony law, see Aspen, New Class X Sentencing Law: An Analysis, 66 ILL. B.J. 344 (1978).

59. ILL. REV. STAT. ch. 38, § 33B-1(e) (1983) provides “‘[e]xcept when the death penalty is imposed, anyone adjudged an habitual criminal shall be sentenced to life imprisonment.’” Id.

60. Id.; see supra note 5.

61. See supra note 5. Representative Davis, who was the House sponsor of the habitual juvenile offender bill, S.B. 790, argued that the proposed bill differed from the adult habitual criminal statute because “release at 21 is mandated.” 81st General Assembly of Illinois, House Debates, June 19, 1979 at 23 (available from Illinois Secretary of State).


63. 83 Ill. 2d 67, 413 N.E.2d 1269 (1980).

64. Id. at 74, 413 N.E.2d at 1275-77.

65. Id. at 74-75, 413 N.E.2d at 1273.

66. Id. at 74, 413 N.E.2d at 1273.

67. Id. at 75, 413 N.E.2d at 1275.

68. Id. at 74, 413 N.E.2d at 1274. The court also found that the filing of a petition for adjudication as a habitual juvenile offender did not properly apprise a jury of prior adjudications. Id. at 76, 413 N.E.2d at 1274. Furthermore, use of prior adjudications to impeach was held constitutional. Id. at 76-77, 413 N.E.2d at 1274.

69. Id. at 78, 413 N.E.2d at 1275-76. The court also rejected various other constitutional arguments. It concluded that the statute did not usurp the function of the judiciary, under the federal and Illinois constitutions, by delegating the choice of courts to the prosecutor. Id. at
Finally, the court rejected the argument that the mandatory sentence in this case was cruel and unusual punishment.\textsuperscript{70} Although the \textit{Chrastka} court rejected the cruel and unusual punishment argument, the United States Supreme Court's subsequent decision in \textit{Solem v. Helm}\textsuperscript{71} compels a reassessment of the \textit{Chrastka} decision.\textsuperscript{72} The Court in \textit{Solem} announced a test for determining whether a particular sentence was cruel and unusual, as measured by its disproportionalilty to the offense.\textsuperscript{73} The \textit{Solem} test mandates that courts use certain objective factors.\textsuperscript{74} First, the court must compare the gravity of the offense to the harshness of the penalty.\textsuperscript{75} In determining the gravity of the offense, courts may consider the harm caused or threatened to the victim or society.\textsuperscript{76} When measuring the harm caused or threatened, courts should evaluate the seriousness of the crime\textsuperscript{77} by comparing the offense charged with similar offenses.\textsuperscript{78} In addition, courts may consider the culpability of the offender.\textsuperscript{79} When determining culpability, courts should examine the intent or motive of the offender in committing the crime.\textsuperscript{80} Second, the \textit{Solem} Court required sentencing courts to compare the sentence in the subject case to sentences imposed in other cases for the same crime in the

\textsuperscript{70} 413 N.E.2d at 1276. The court also rejected the argument that the statute violated the Illinois constitutional command that the state criminal justice system restore offenders to “useful citizenship.” \textit{Id.} (citing ILL. CONST. art. I, § 11). Finally, the court found no equal protection violations in the sentencing scheme that gave younger offenders longer sentences than older offenders. 83 Ill. 2d at 80-81, 413 N.E.2d at 1276.

\textsuperscript{71} Id. at 81, 413 N.E.2d at 1276.

\textsuperscript{72} 103 S. Ct. 3001 (1983).

\textsuperscript{73} Id. at 3011. See Note, \textit{Solem v. Helm: Proportionality Review of Recidivist Sentencing is Required By the Eighth Amendment,} 33 \textit{DEPAUL L. REV.} 149 (1983): “In construing the cruel and unusual punishments clause, the United States Supreme Court has long recognized that a punishment should be proportional to the crime for which it is imposed.” \textit{Id.} at 149.

\textsuperscript{74} 103 S. Ct. at 3010.

\textsuperscript{75} \textit{Id.}

\textsuperscript{76} \textit{Id.} at 3011. The Court noted that courts were competent to determine the gravity of an offense since courts have traditionally made these judgments. \textit{Id.}

\textsuperscript{77} \textit{Id.}

\textsuperscript{78} \textit{Id.} For example, courts are justified in viewing armed robbery as more serious than robbery. \textit{Id.} Courts may also consider the magnitude of the crime: “Stealing a million dollars is viewed as more serious than stealing a hundred dollars.” \textit{Id.}

\textsuperscript{79} \textit{Id.}

\textsuperscript{80} \textit{Id.} For example, most courts would conclude that negligent conduct is less serious than intentional conduct. \textit{Id.} Furthermore, most courts would find murder more serious if it were committed pursuant to a contract as opposed to being committed out of passion. \textit{Id.}
same jurisdiction. Courts may consider whether more aggravated crimes are subject to the same penalty or lesser penalties. Finally, courts must compare the sentence imposed in the particular case to sentences imposed for commission of the same crime in other jurisdictions. One factor in this comparison is whether the defendant can be paroled before the end of the scheduled sentence. The Illinois Appellate Court for the First District applied the Solem standard in a juvenile case, People v. J.A.

THE J.A. DECISION

Facts and Procedural History

On August 31, 1982, J.A. and three friends spotted Jeffery Pryor while walking down 55th and Garfield Streets on Chicago's south side. Pryor was accosted by the teenagers, one of whom was J.A; Pryor was robbed of ten dollars and a bag of chicken. The police later arrested J.A. and his friends.

81. Id. at 3010.
82. Id. Although it is difficult to determine whether the length of a particular sentence is disproportionate to the offense, courts are competent to make these judgments. Id. at 3011-12.
83. Id. at 3011. The court stated that it was proper for courts to "look to the practices in other jurisdictions in deciding where lines between sentences should be drawn." Id. at 3012.
84. Id. at 3014. The court of appeals reviewed the life imprisonment sentence imposed on Helm and considered the nature of his sentence and sentences imposed for commission of the same offense in other states. Id. at 3006. The court concluded that the sentence imposed on Helm was "grossly disproportionate to the nature of the offense." Id. The court of appeals directed the district court to issue a writ of habeas corpus unless the state resentenced Helm. Id.

The United States Supreme Court granted certiorari to consider the Eighth Amendment question. Id. The Court applied its three-part test to determine whether the sentence imposed on Helm was so disproportionate that it violated the Eighth Amendment, and concluded the following: (1) that Helm's no account check for $100.00 was among the less serious offenses and that Helm's sentence, life imprisonment without parole, was the most severe punishment that South Dakota could impose on any criminal, except for capital punishment, id. at 3012-13; (2) that there was a large group of very serious offenses for which life imprisonment was not authorized, id. at 3014; and (3) that the sentence imposed on Helm was much more severe than sentences imposed for commission of the same offense in 48 out of 50 other states. Id. at 3014-15. Thus, the United States Supreme Court affirmed the court of appeals' decision. Id. at 3016. For a more detailed discussion of the Solem decision, see 14 U. BALT. L. REV. 177 (1984), The Supreme Court, 1982 Term, 97 HARV. L. REV. 70, 127 (1984), and 74 J. CRIM. L. & CRIMINOLOGY 1372 (1983).

86. 127 Ill. App. 3d at 813, 469 N.E.2d at 450. When they approached Pryor, the victim, Daniels attempted to snatch the bag of chicken from him. Pryor, however, refused to give up his food. Appellant's Brief, supra note 85, at 8.
87. 127 Ill. App. 3d at 813, 469 N.E.2d at 450.
88. Appellant's Brief, supra note 85, at 9.
J.A. was charged with robbery, having allegedly taken ten dollars and food from Jeffrey Pryor by force. The juvenile court granted the state's motion to prosecute J.A., a thirteen-year-old, under the Habitual Juvenile Offender Act because J.A. had two prior adjudications for robbery when he was age twelve. J.A. testified that he was ten feet from the incident and did not participate. Two of J.A.'s friends, who were present at the incident, corroborated this testimony. After a hearing on J.A.'s alleged delinquent conduct, J.A. was adjudicated a ward of the court and subsequently committed to the Illinois Department of Corrections, Juvenile Division, until his twenty-first birthday.

The Appellate Court's Rationale

On appeal, the Illinois Appellate Court for the First District held that the trial court properly allowed the state to use J.A.'s prior adjudications of delinquency in invoking the habitual juvenile offender statute, even though those adjudications occurred when J.A. was twelve. The appellate court also held that the sentence did not constitute cruel and unusual punishment.

Under Illinois law, a juvenile younger than age thirteen cannot, under any circumstances, be prosecuted as an adult. J.A. argued that under this theory the application of the habitual juvenile offender statute was restricted to delinquency adjudications that occurred between the ages of thirteen and seventeen because the prior adjudications of delinquency must have been for "offenses which had [the juvenile] been prosecuted as an adult, would have been felonies." The state argued that the habitual juvenile offender statute classifies not by age, but by the type of crime. To interpret the

89. 127 Ill. App. 3d at 812, 469 N.E.2d at 450.
91. 127 Ill. App. 3d at 812, 469 N.E.2d at 450. J.A.'s prior adjudications occurred in October and December, 1981, when he was twelve years old for two robberies that totalled $36.00. Id. at 815, 469 N.E.2d at 452.
92. Appellant's Brief, supra note 85, at 8.
93. Id.
94. 127 Ill. App. 3d at 812, 469 N.E.2d at 450.
95. Appellant's Brief, supra note 85, at 5.
96. 127 Ill. App. 3d at 813-14, 469 N.E.2d at 451.
97. Id. at 814-15, 469 N.E.2d at 452.
98. See supra note 16 and accompanying text.
99. Id. at 813-14, 469 N.E.2d at 451. Appellant argued that since he was twelve years old at the time of his two prior adjudications, he could not be prosecuted as an adult under any circumstances. Thus, the requirements of § 705-12 were not met. Section 705-12(a) provides in pertinent part: "Any minor having been twice adjudicated a delinquent minor for offenses which had he been prosecuted as an adult, would have been felonies under the laws of this State . . . shall be judged an Habitual Juvenile Offender . . . ." Ill. Rev. Stat. ch. 37, § 705-12(a) (1983 & Supp. 1984) (emphasis added).
101. 127 Ill. App. 3d at 813, 469 N.E.2d at 451.
language of the statute, the court applied the "plain and ordinary meaning" standard. Under this standard, the court concluded that the statutory language described the type of offense that must be committed before invoking the Habitual Juvenile Offender Act. Since J.A.'s prior adjudications were for robbery, a crime identified in the Act, the adjudications could serve as bases for adjudication under the Act.

J.A. also argued that the imposition of an eight year sentence was cruel and unusual punishment for robbing another boy of ten dollars and a bag of chicken. The J.A. court concluded that the Solem standard should be applied to determine whether the sentence was cruel and unusual. The court applied the Solem criteria to test the sentence's proportionality: the gravity of the offense compared to the harshness of the penalty, the sentence imposed on others for the same crime in the same jurisdiction, and the sentence imposed for the same crime in other jurisdictions. The court concluded that robbery was a sufficiently serious offense to support the sentence imposed. Moreover, the severity of the sentence was justified because the defendant was a recidivist. The court therefore determined that the sentence imposed was not cruel and unusual.

**Analysis**

The J.A. court used the wrong process to interpret the Habitual Juvenile Offender Act and incorrectly applied the "plain and ordinary meaning" rule. The plain meaning rule applies only to language that is plain and unambiguous. The language of the habitual juvenile offender statute, however, is ambiguous. According to section 705-12(a) of the statute, to be a habitual juvenile offender, a juvenile must have two prior adjudications of delinquency for "offenses which, had he been prosecuted as an adult, 102. Id. 103. Id. at 814, 469 N.E.2d at 451. The J.A. court, relying on Chrastka, also rejected J.A.'s argument that consideration of his prior adjudications denied him due process and equal protection. J.A. argued that "had his prior offenses occurred after his 13th birthday, he could have transferred the cases to the criminal court to be tried as an adult, thereby circumventing the habitual juvenile offender statute." Id.

Furthermore, J.A. argued that the statute "illogically imposes the harshest and longest penalty on the young and least serious offender." Id. However, in rejecting this argument, the J.A. court stated: "We do not believe that the fortuitous disparity of the terms of confinement of habitual juvenile offenders which results from the variance in age of such individuals serves to invalidate the means chosen to effectuate the purpose of the Act." Id.

104. Id. at 814, 469 N.E.2d at 452. 105. Id. 106. Id. at 815, 469 N.E.2d at 452. 107. Id. 108. See 2A N. Singer, Statutes and Statutory Construction 46.01 (4th ed. 1984). The plain meaning rule is applied, "[w]here the language is plain and admits of no more than one meaning . . . ." Id. at 73.
The emphasized language is ambiguous because it is susceptible to at least two interpretations. First, the language could be interpreted as defining the type of offense that the juvenile must commit in order to invoke the habitual juvenile offender statute. Under this interpretation, any prior adjudication of delinquency for such an offense could be used to satisfy the statutory prerequisite, as was done in the J.A. case. A second interpretation of the language is that the clause requires both that the juvenile be at least thirteen and subject to prosecution as an adult, and that the juvenile have committed the type of offense included in the Habitual Juvenile Offender Act. The J.A. court should not have applied the plain meaning rule to interpret the statute because the language of the statute is susceptible to more than one meaning.

The J.A. court's interpretation of one clause in the statute also did not give effect to the language of the statute as a whole. The phrase "prosecuted as an adult," as applied in the statute, is meaningless under the J.A. court's interpretation. The court concluded that the statute's language, as a whole, defines only the type of crime to which the statute will apply. Through this interpretation, the court gave effect to the words "would have been felonies" while neglecting the words "prosecuted as an adult." Such erroneous application of the plain meaning rule renders the court's interpretation of the statute suspect.

Another problem with the J.A. decision is the court's sketchy application of the Solem standard in its determination of whether the sentence imposed was disproportionately severe. The J.A. court's discussion of the first factor, the gravity of the offense, is incomplete. The Solem Court stated that in determining the gravity of the offense, courts should consider the harm caused or threatened to the victim or society. Courts should compare the harm caused to society by the offense committed with the harm caused by

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110. See supra note 16. The Illinois criminal code requires anyone charged with committing a crime to have reached the age of thirteen at the time the crime was committed in order to be prosecuted as an adult. Ill. Rev. Stat. ch. 38, § 6-1 (1983).
111. See H. Black, Handbook on the Construction and Interpretation of the Laws 55 (2d ed. 1911) (plain meaning rule should not be used to interpret statutes that are susceptible to more than one interpretation).
112. See 2A N. Singer, supra note 108. "It is an elementary rule of construction that effect must be given . . . to every word, clause and sentence of a statute. A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant . . . ." Id. at 104. (footnotes omitted). See also G. Endlich, A Commentary on the Interpretation of Statutes 29 (1888) (a construction that fails to give effect to every word is rejected).
113. See supra note 105.
114. 127 Ill. App. 3d at 815, 469 N.E.2d at 452. See supra text accompanying notes 106-07 for the court's application of the Solem standard.
115. See supra text accompanying notes 76-78.
other offenses.\textsuperscript{116} The \textit{J.A.} court did not conduct this comparison. The court did not compare the harm caused by the robbery in this case to the harm caused by similar crimes. For example, had the court compared the subject robbery to armed robbery, it would have concluded that armed robbery is a more serious offense.\textsuperscript{117} \textit{J.A.} should therefore have been sentenced to less time than would have been appropriate in an armed robbery. Furthermore, \textit{J.A.}'s involvement in the robbery was passive and slight.\textsuperscript{118} The \textit{J.A.} court should have considered \textit{J.A.}'s minimal culpability and lessened the gravity of the offense. The court also failed to consider the magnitude of the defendant's crime.\textsuperscript{119} A proper analysis, under \textit{Solem}, would have considered all of these factors. The fact reveal that the gravity of the offense committed by \textit{J.A.} was not severe.

The \textit{J.A.} court also omitted an analysis of the second factor in the \textit{Solem} standard: comparison of the sentence to other sentences imposed on criminals in the same jurisdiction.\textsuperscript{120} In conducting this analysis, courts should consider whether more serious crimes are subject to the same or lesser penalties.\textsuperscript{121} In Illinois, the average sentence for voluntary manslaughter was estimated at 5.1 years in 1980.\textsuperscript{122} The estimated average sentence for burglary was 3.8 years.\textsuperscript{123} The estimated average sentence for armed robbery was 10.0

\begin{footnotes}
\textsuperscript{116} Id.
\textsuperscript{117} See Dembowski v. State, 125 Ind. 250, 252, 240 N.E.2d 815, 817 (1968) (armed robbery more serious than robbery).
\textsuperscript{118} See supra notes 92-93 and accompanying text.
\textsuperscript{119} 103 S. Ct. at 3011. Cf. supra note 78 (one hundred dollar theft not as serious as one million dollar theft). In \textit{Solem}, the Court found that Helm's $100.00 no-account check was not a large amount. \textit{Id.} at 3013.
\textsuperscript{120} 103 S. Ct. at 3010.
\textsuperscript{121} Id.

The Illinois Criminal Sentencing Commission Report publishes statistics on the number of offenses committed by adults with prior records, including juvenile, misdemeanor, and felony records. Illinois Criminal Sentencing Commission, 1982 Report 65 (1982). There is no comparable report that compiles the sentences imposed on juvenile offenders in Illinois. The adult statistics must substitute for the unavailable comparable juvenile statistics. Because the primary purpose of incarcerating juveniles is rehabilitation, see supra note 2, they should not be treated more severely than adults.

\end{footnotes}
years.124 Because J.A. received a much higher sentence than criminals who have committed crimes more serious than robbery, the J.A. court’s omission of this analysis is a serious flaw in its review.

Finally, the J.A. court did not address the third factor of the Solem test: comparison of the sentence to sentences imposed for commission of the same crime in other jurisdictions.125 In New York, for example, the estimated average minimum sentence for robbery in 1982 was 3.2 years and the estimated average maximum was 7.6 years.126 In California, the estimated average sentence for robbery in 1981 was 4.7 years.127 In Indiana, a fixed sentence of 5.0 years is imposed for committing robbery.128 After considering these findings, the J.A. court should have concluded that J.A. would have received a less severe sentence in several other states.

Instead of applying the three-factor Solem test, the court in J.A. merely asserted that the Solem requirements were met.129 This conclusion is troubling because the J.A. court failed to provide any analysis to support it. The court should have applied the Solem standard in its entirety130 and concluded that the eight-year sentence imposed on J.A. was severely disproportionate and therefore constituted cruel and unusual punishment.

The decision in J.A. also conflicts with the underlying policies of the juvenile court system. The purposes behind the Juvenile Court Act are clear: to protect and rehabilitate juveniles.131 The eight-year sentence imposed on J.A. is not rehabilitative. Several scholars who have studied the effects of long sentences on juveniles have concluded that longer sentences are counterproductive to rehabilitation.132 Because the primary policy underlying the

124. ILLINOIS CRIMINAL SENTENCING COMMISSION, 1982 REPORT 33 (1982). The average sentence for armed robbery increased from 8.8 in 1978 to 10.0 in 1980. Id. According to ILL. REV. STAT. ch. 38, § 18-2(b) (1983), armed robbery is a class X felony. The penalty for commission of a class X felony ranges from 6 to 30 years. Id. § 1005-8-1(a)(3).

125. See Solem, 103 S. Ct. at 3010.


127. Id. at 7. These estimates are based on the 1979 and 1981 figures.

128. See IND. CODE § 35-45-5-1 (1979) (robbery is a class C felony); id. § 35-50-2-6 (penalty for commission of a class C felony is fixed at five years).

129. 127 Ill. App. 3d at 815, 469 N.E.2d at 452.

130. See Whitmore v. Maggio, 742 F.2d 230 (5th Cir. 1984) (failure of district court to conduct a Solem analysis to determine whether consecutive sentences of 75 years and 50 years was cruel and unusual punishment resulted in case being remanded).

131. See supra note 2.

132. See C. BARTOLLAS & S. MILLER, THE JUVENILE OFFENDER: CONTROL, CORRECTION, AND TREATMENT (1978); C. BARTOLLAS, S. MILLER & S. DINITZ, JUVENILE VICTIMIZATION: THE INSTITUTIONAL PARADOX (1976); B. FELD, NEUTRALIZING INMATE VIOLENCE: JUVENILE OFFENDERS IN INSTITUTIONS (1977); H. POLSKY, COTTAGE SIX (1962). Incarcerating a juvenile offender for a long period of time can impair the juvenile's rehabilitation. See Hoffman, Purposes and Philosophy of Sentencing, 75 F.R.D. 287, 293 (1977) (incarcerating juvenile beyond time that institutional staff and parole authorities consider adequate can hurt juvenile). This is because
criminal code is to protect society from adult criminals, long sentences for adult criminals may be justified. The predominant policy in the juvenile court system, however, is to rehabilitate juvenile offenders. Therefore, in determining the length of a sentence, a competent juvenile court should take into consideration the negative effect that a long incarceration period will have on the juvenile offender. The J.A. court failed to consider this effect. The J.A. court’s key aim was apparently to protect society from J.A., rather than to rehabilitate him. Because the court failed to consider the rehabilitative effect of the sentence imposed, the J.A. decision conflicts with the underlying policies of the juvenile court system.

**IMPACT**

One of the effects of the J.A. decision is that it will contribute to increasing sentence disparity in juvenile court proceedings. By misapplying the plain meaning rule, the court concluded that the habitual juvenile offender statute may be applied to all prior adjudications of a juvenile delinquent. If future juvenile courts follow this construction of the habitual juvenile offender statute, prior adjudications of delinquency that occur when a juvenile was younger than thirteen years old would satisfy the prerequisites of the statute. Thus, a juvenile who has two prior adjudications of delinquency at

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133. See supra note 57.

134. See supra note 132.

135. The causes of sentence disparity are related to the judiciary’s exercise of discretion in setting sentences. By allowing the judiciary a “zone of discretion” in determining the lengths of sentences, disparity results. See Haddad, *Commentary: Some Lessons From the History of Illinois Sentencing Laws*, 2 N. Ill. U.L. Rev. 19, 25 (1981). Disparity is further amplified by the courts’ authority to choose an alternative to incarceration. Id. at 28. Probation, conditional discharge, and work release are some examples of alternatives to incarceration. Id. at 27. When a court must choose “between probation and, for example, a four-year . . . sentence, the possibility of disparity is greatly increased.” Id. at 28.

Furthermore, there is evidence that courts have utilized legally irrelevant factors such as social characteristics in making sentence determinations. See Thornberry, *Sentencing Disparities in the Juvenile Justice System*, 70 J. Crim. L. & Criminology 164 (1979). Irrelevant and even discriminatory factors, such as race and socioeconomic status, have been relied upon by the courts, and increase the opportunity for disparate sentencing. Id. In his 1973 study, Thornberry concluded that blacks and members of the lower socioeconomic strata received more severe sentences in the juvenile court system than whites and members of the higher socioeconomic strata, when the “legally relevant variables of the seriousness of the offense and the individual’s prior delinquent record were held constant.” Id.

136. For prerequisites of the statute, see supra note 5.
the age of nine, and who is adjudged a habitual juvenile offender upon the third adjudication of delinquency at the age of ten, would be incarcerated in a correctional facility for eleven years without parole.\textsuperscript{137} In contrast, a juvenile who has two prior adjudications of delinquency at the age of sixteen, and who is adjudged a habitual juvenile offender upon the third adjudication of delinquency at the age of seventeen, would be incarcerated in a correctional facility for only four years.\textsuperscript{138} Since a juvenile at age ten is probably more subject to rehabilitation than a juvenile at age seventeen, the result is anomalous. Future juvenile courts that follow the \textit{J.A.} court's interpretation of the habitual juvenile offender statute will impose disparate sentences upon juveniles because younger juvenile offenders will always receive longer sentences than older juvenile offenders.

The \textit{J.A.} decision will detract from the juvenile court system's goal to rehabilitate juvenile offenders.\textsuperscript{139} Rehabilitation will be frustrated if future juvenile courts follow the \textit{J.A.} court's approach to the \textit{Solem} analysis. The \textit{J.A.} court's incorrect application of the \textit{Solem} standard allowed the imposition of a sentence that was cruel and unusual, in violation of the Eighth Amendment. Juvenile offenders will not be rehabilitated by imposing sentences that are cruel and unusual. The \textit{J.A.} court also placed too much emphasis on protecting society from the habitual juvenile offender. Rehabilitation efforts will be frustrated if sentencing courts focus primarily on protecting society rather than on rehabilitating the juvenile. Consequently, the rehabilitation goals of the juvenile court system will be subverted if future courts follow the \textit{J.A.} decision and neglect the rehabilitative goals of sentencing.

There are three solutions to the problems posed by the \textit{J.A.} court's construction of the Habitual Juvenile Offenders Act. First, other courts can apply the \textit{Solem} test more precisely than the \textit{J.A.} court did, in order to mitigate the possible harshness of sentences imposed under the Act. Second, the General Assembly can amend the statute to eliminate the ambiguity. The General Assembly can limit the types of convictions that can be used to support the prosecution of a juvenile under the Act. Finally, the General Assembly can repeal the Act, since it has proven to be unfair and counterproductive in practice.

**Conclusion**

The \textit{J.A.} court held that prior adjudications of delinquency that occur before a juvenile reaches the age of thirteen can be used to invoke the Habitual Juvenile Offender Act. The court erred in applying the plain meaning rule to ambiguous language in the statute. By interpreting the

\begin{itemize}
  \item \textsuperscript{137} See supra note 5.
  \item \textsuperscript{138} Id.
  \item \textsuperscript{139} See supra note 2.
\end{itemize}
statute to apply to all prior adjudications of delinquency, regardless of the age of the juvenile when the adjudications occurred, the decision will increase disparate sentences among juvenile offenders.

Furthermore, the court held that the mandatory sentence imposed on a habitual juvenile offender did not constitute cruel and unusual punishment. Because of the lack of a precise application of the Solem standard, the court's holding is erroneous and serves only to enforce a sentence that is cruel and unusual. The decision undermines the rehabilitation goals of the juvenile court system. Because the decision placed too much emphasis on protecting society from the juvenile offender rather than on rehabilitating the juvenile offender, the court set a precedent for ignoring the policies that underlie the juvenile court system.

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