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*On Good Authority* is a periodic briefing on trends and issues in criminal justice research and program evaluation. This report was written by staff Research Analyst Timothy Lavery. It is a summary of an implementation evaluation of the Juvenile Justice Reform Provisions of 1998 conducted by the Authority for the Illinois Juvenile Justice Commission. Copies of the evaluation are available from the Authority's Research and Analysis Unit.

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## Extended jurisdiction juvenile prosecutions in Illinois

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The 1990s were marked with concerns over increasing numbers of serious juvenile offenses. To address these concerns, the governor and General Assembly passed the Juvenile Justice Reform Provisions of 1998 (P.A. 90-590). The reform provisions added a component to the Illinois Juvenile Court Act that targets violent and habitual juvenile offenders (705 ILCS 405/5-801 to 705 ILCS 405/5-820).

The new component begins with a legislative declaration that acknowledges the existence of a small subset of violent and habitual juvenile offenders who, for the sake of community safety, should be treated differently than other juvenile offenders. It describes pre-existing provisions for transferring minors from juvenile court to adult court.

The component also includes a provision that allows state's attorneys to petition the court for extended jurisdiction juvenile (EJJ) prosecution if there is probable cause to believe that a minor at least 13 years old has committed an offense that would be considered a felony if committed by an adult. Minors who are found guilty in EJJ prosecutions receive both a juvenile sentence and an adult sentence. The adult sentence is stayed and not imposed unless the offender violates the conditions of the juvenile sentence. EJJ prosecutions are intended to provide minors who have committed

serious offenses with a last chance to avoid adult sanctions. At the same time, the potential of an adult sentence is intended to serve as a deterrent to future criminal activity.

The Illinois Criminal Justice Information Authority recently completed an implementation evaluation of the reform provisions. This *On Good Authority* summarizes results from the evaluation pertaining to EJJ prosecutions.

### Evaluation methodology

In the evaluation, state's attorneys or assistant state's attorneys who prosecute juvenile cases, public defenders who defend juvenile cases, and juvenile court judges for each Illinois county were asked to complete a survey that included several questions on EJJ. Survey respondents (76 prosecutors, 51 public defenders, and 85 juvenile court judges) answered questions about their participation in and opinions of EJJ prosecutions. Surveys were administered during the spring and summer of 2000.

The evaluation also included a case study describing an EJJ prosecution, including interviews with those involved in the case. Information pertaining to the case also was obtained during the spring and summer of 2000.

## Use of EJJ prosecutions

Survey respondents were asked whether they had ever participated in an EJJ prosecution case. While the provisions had been in effect for more than a year, no more than 12 percent of any profession reported having participated in a case involving an EJJ petition (Figure 1).

In some instances, different types of juvenile justice professionals (prosecutors, judges, or public defenders) who work in the same county reported having participated in a case involving an EJJ petition. In these instances, the professionals may have been referring to the same case, suggesting that the percentages in Figure 1 slightly over-represent the prevalence of EJJ prosecutions.

Overall, survey respondents reported having participated in 18 seemingly different cases involving an EJJ petition. Only a small number of juvenile offenses that occur in Illinois are serious enough to warrant use of the EJJ provisions, and EJJ is not an option considered by prosecutors in most juvenile cases. Nonetheless, compared to the total number of juvenile cases in Illinois involving offenses that could warrant the application of EJJ provisions, this seemed like a small number of different cases.

## Reasons for infrequent use

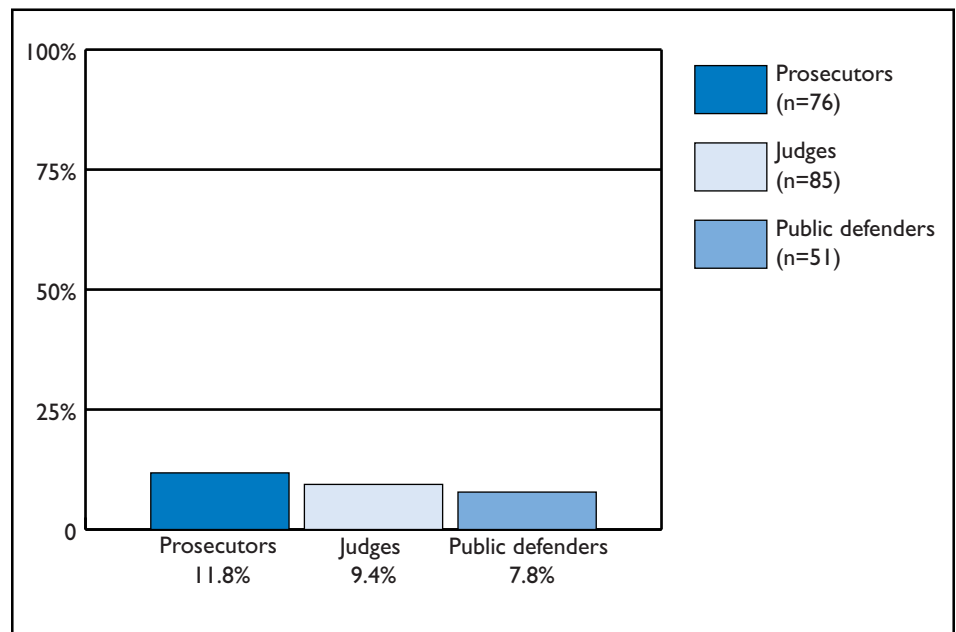
Some juvenile justice professionals who played a role in developing the reform provisions anticipated that EJJ prosecutions would occur infrequently (*The Compiler*, Summer 1999). The evaluation also offered reasons for the infrequent use of EJJ as a prosecutorial tool.

It was suggested by at least one justice professional involved in the reform, and several survey respondents, that a majority of EJJ prosecutions would take place in Cook County, a heavily populated urban county, while sparsely populated and/or rural counties would have little need for the EJJ provisions (Table 1). It was believed that serious juvenile crimes warranting the use of EJJ in Illinois typically occur in larger, urban counties. Survey results suggest that EJJ is used more frequently in urban counties.

Another reason for infrequent use is that EJJ provisions allow minors to request a jury trial. The Illinois Juvenile

Figure 1

EJJ case participation among juvenile justice professionals



Court Act mandates that, with few exceptions, juvenile cases be heard by judges instead of juries. EJJ prosecutions are one such exception. Jury trials require more time and resources than trials heard by judges. It was suggested by at least one juvenile justice professional involved in the reform and several survey respondents that the resource demands of a jury trial would weigh heavily in a state's attorney's decision not to use EJJ prosecutions.

In addition, Illinois laws describing provisions for transferring juvenile cases to adult court (705 ILCS 405/5-805) may conflict with the EJJ provisions. Illinois law distinguishes between mandatory and discretionary transfers. Some minors are automatically transferred to adult court if the prosecutor files a transfer petition and the judge finds probable cause to believe that the allegations against the minor are true. Minors subjected to such transfers may have been considered as candidates for EJJ prosecutions had they remained in the juvenile justice system. One juvenile justice professional involved in the reform suggested that mandatory transfers will play a role in minimizing the number of EJJ prosecutions. In other instances, upon receiving a transfer petition, the court is allowed to decide whether the transfer is appropriate (discretionary transfers).

Discretionary transfers also may decrease the number of EJJ prosecutions.

Survey results suggested two more reasons for EJJ's infrequent use as a prosecutorial tool. First, the results suggested that some juvenile justice professionals were not aware of all aspects of the reform provisions. Juvenile justice professionals were asked to respond to the statement "*I consider myself knowledgeable on the reform provisions*" with an answer of strongly agree, agree, neutral, disagree, or strongly disagree. More than 40 percent of prosecutors, the initiators of EJJ prosecutions, did not strongly agree or agree with the statement. Prosecutors who do not believe that they are knowledgeable on the reform provisions may not be aware of the EJJ provisions. Juvenile justice professionals also were asked, "*What do you think is the purpose of EJJ?*" About 10 percent of prosecutors reported that they did not know.

Second, survey results indicated that a number of juvenile justice professionals are skeptical about the utility of the EJJ provisions. Also, in response to the question "*What do you think is the purpose of EJJ?*", 13 percent of those surveyed said the EJJ provisions were included in the Illinois Juvenile Court Act predominantly for political reasons, or as

a means for legislators to demonstrate to their constituents that they are getting tough on juvenile crime.

### Legal and procedural issues

The case study report identified several legal and procedural issues pertaining to the EJJ provisions. In the case examined, a 16-year-old was prosecuted and sentenced under EJJ after being arrested for aggravated robbery. The minor was sentenced to a two-year juvenile probation sentence, and a five-year adult prison sentence to be stayed unless the minor violated the conditions of the juvenile probation sentence. While serving the juvenile probation sentence, the minor was arrested for retail theft of less than \$150 and was then required to serve the adult prison sentence. Prior to the hearing at which it was determined that the minor would serve the adult sentence, the minor's public defender filed a motion contesting the constitutionality of the EJJ provisions. The motion was denied, but the public defender brought up several interesting issues in the motion regarding the EJJ provisions (Table 2).

The EJJ provisions state that if a minor who is sentenced under EJJ violates the conditions of the juvenile sentence by committing a technical infraction, such as violating a curfew, missing counseling sessions, or skipping meetings with the probation officer, the judge may decide to impose the adult sentence. On the other hand, if a minor who is sentenced under EJJ is arrested for another offense, and the judge finds by a preponderance of the evidence that the minor has committed the offense, the judge *must* impose the adult sentence.

A law mandating that minors serve the EJJ adult sentence for any new offense may create situations in which the length of the adult sentence does not fit the new offense. The minor's public defender argued that the imposition of EJJ adult sentences for new offenses should reflect the nature of the new offense, and noted that retail theft carries a maximum one-year prison sentence. The judge hearing the case responded by noting that similar laws regarding mandatory transfers to adult court have been appealed and were upheld. The prosecu-

**Table 1**  
Reasons noted for infrequent EJJ use

Reasons
1) EJJ provisions are less useful in sparsely populated and/or rural counties.
2) The provisions allow for jury trials.
3) The provisions conflict with transfer provisions.
4) Some juvenile justice professionals are unaware of the provisions.
5) Some juvenile justice professionals are skeptical as to the utility of EJJ provisions.

**Table 2**  
Legal and procedural issues raised

Issue raised by public defender	Response by prosecutor and judge
Imposing an EJJ adult sentence for new offenses violates the minor's constitutional rights. Instead, the EJJ adult sentence should fit the nature of the new offense.	Similar laws have been appealed and upheld for this reason. Moreover, the minor was fully informed of the consequences of a new offense.
Given the severe consequences faced by EJJ minors who commit new offenses, the standard of proof should be more rigorous. When EJJ minors commit a new offense and, hence, face an adult sentence, the standard of proof at a revocation hearing is less stringent than the standard of proof at a criminal trial.	Illinois law clearly states the standard of proof at probation revocation hearings. The minor's hearing to revoke the juvenile portion of the EJJ sentence is a probation revocation hearing and, thus, subject to this standard.
The provisions do not provide clear guidelines on court processes when EJJ minors are apprehended for a new offense	Illinois law provides clear guidelines on court processes when minors on probation are apprehended for a new offense. The minor are subject to these guidelines.

tor trying the case added that the minor was fully informed in court that any new offense would result in imposition of the adult sentence, and that the severity of the sentence was consistent with the intended purpose of EJJ.

The EJJ provisions also state that when a minor who was sentenced under EJJ is arrested for a new offense, a revocation hearing is held to determine whether or not the minor committed the

new offense. The standard of proof at this hearing is a preponderance of the evidence. If it is more likely true than not true that the minor committed the new offense, he or she must serve the adult sentence. The public defender argued that this standard is unfair. He noted that because defendants at criminal trials face severe consequences, the standard of proof at criminal trials is beyond a reasonable doubt, or with almost absolute

certainty. ‘Beyond a reasonable doubt’ is a more stringent standard of proof than ‘by a preponderance of the evidence.’ Because minors who are sentenced under EJJ face severe consequences when they are arrested for a new offense, the public defender continued, the standard of proof at revocation hearings should be beyond a reasonable doubt. Both the judge and the prosecutor noted that the minor had been sentenced to juvenile probation and Illinois law clearly states that the standard of proof at juvenile probation revocation hearings is by a preponderance of the evidence. They added that this standard has been appealed and upheld.

The public defender also argued that the EJJ provisions fail to provide clear guidelines on several important aspects of the juvenile court process. The public defender noted that when minors involved in the court system are apprehended for a new offense, they have a right to a detention hearing. The EJJ

provisions do not specify this right for minors who are apprehended while serving the juvenile component of an EJJ sentence. In addition, when minors are apprehended while serving a juvenile probation sentence, probation guidelines specify a timeline for a hearing to determine whether that sentence should be revoked. The EJJ provisions provide no timeline for a revocation hearing. Both the judge and the prosecutor noted the Illinois Juvenile Court Act provides clear guidelines for probation revocation hearings, including guidelines for detention hearings and timelines. Because the minor was on juvenile probation when he committed the new offense, he should be subject to these guidelines.

### Conclusion

The EJJ provisions constituted a novel change to the Illinois juvenile justice system made through the Juvenile Justice Reform Provisions of 1998. The theory

underlying EJJ may be sound — to provide certain minors who commit serious offenses with a last chance to avoid the adult criminal justice system. However, data from the Authority’s implementation evaluation of the reform provisions suggests that EJJ prosecutions are occurring infrequently in Illinois. Multiple factors seem to be contributing to the infrequent use of EJJ.

Illinois is not the only state that allows EJJ prosecutions. In 1994, EJJ legislation was passed in Minnesota. In 1997, 220 Minnesota minors were sentenced under the provisions. It may be prudent for state policymakers to look to Minnesota if they attempt to develop strategies that will enhance the utility of EJJ in Illinois. ♦

