THIS APPEAL INVOLVES A DELINQUENT MINOR PROCEEDING UNDER THE JUVENILE COURT ACT

No. 121483

IN THE

SUPREME COURT OF ILLINOIS

	)	Appeal from the Appellate Court
	)	of Illinois, No. 1-16-1180.
	)	
IN THE INTEREST OF	)	There on appeal from the Circuit
	)	Court of Cook County, Illinois ,
	)	No. 15 JD 00085.
	)	
JARQUAN B.	)	Honorable
	)	Stuart F. Lubin,
	)	Judge Presiding.
	)	

BRIEF AND ARGUMENT FOR PETITIONER-APPELLANT

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ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

Effective January 1, 2016, a circuit court can no longer commit a minor to the Department of Juvenile Justice (DJJ) for a misdemeanor. 705 ILCS 405/5-710(1)(b) (2016). Despite the clear language of the amended version of section 405/5-710(1)(b), a divided appellate court incorrectly held that the circuit court properly sentenced Jarquan, a minor, to the DJJ on a misdemeanor after the effective date of this statute.. 7

705 ILCS 405/5-710(1)(b) (2016). 7

705 ILCS 405/5-720(4) (2016). 7

1. The best method of determining the intent of a legislature is the language of the statute. The amended version of 405/5-710(1)(b) clearly, unambiguously, and without exception prohibits a court from sentencing a minor to the DJJ for a misdemeanor. 8

People v. Hanna, 207 Ill.2d 486 (2003). 8

In re Justin T., 291 Ill. App.3d 872 (1st Dist. 1997). 8

In re Lance H., 2014 IL 114899. . . . . 8, 9

Paszkowski v. Metropolitan Water Recl. Dist. of Chicago, 213 Ill.2d 1 (2004).. 8

People v. Howard, 228 Ill.2d 428 (2008). 8

5 ILCS 70/1.01 (2016).. 8

705 ILCS 405/5-710(1)(b)(2015).. 9

705 ILCS 405/5-710(1)(b) (2016) (P.A. 99-268). 9

720 ILCS 5/21-2(b) (2014). (C. 6, 19). 9

2. The appellate court erred when it looked for conflicts with other statutes in determining the legislative intent for the clear and unambiguous language of the amended version of section 710(1)(b).. 10

People v. Taylor, 221 Ill.2d 157 (2006). 10, 11

People v. Payne, 277 Ill. App.3d 1000 (2d Dist. 1996).. 11

705 ILCS 405/5-720(4) (2016). 10

3. Even assuming, *arguendo*, that the amended version of section 710(1)(b) is ambiguous, the legislature intended for no juvenile to be sentenced to the DJJ on or after January 1, 2016, regardless of any previous sentences. 11

People v. Horsman, 406 Ill. App.3d 984 (2d Dist. 2011). 12

People v. Maldonado, 402 Ill. App.3d 1068 (2d Dist. 2010). 12

In re Jaime P., 223 Ill.2d 526 (2006). 12

People v. Bradford, 2016 IL 118674. 13

Holly v. Montes, 231 Ill. 2d 153 (2008). 15

Lake Shore Ass'n v. Deutsche Bank Nat. Trust Co., 2015 IL 118372.. 15

People v. Lucas, 231 Ill. 2d 169 (2008).. 15

People ex rel. Madigan v. Burge, 2014 IL 115635. . . . . 15, 16

Johnson v. State Electoral Bd., 53 Ill.2d 256 (1972). 16

Village of Chatham v. County of Sangamon, 216 Ill.2d 402 (2005). . . 16

705 ILCS 405/5-720(4). 16

4. The Statute on Statutes gave Jarquan the right to opt to be sentenced under the amended version of section 710(1)(b). . . . 16

People v. Jackson, 99 Ill.2d 476 (1984). 17

People v. Gancarz, 228 Ill.2d 312.. 17

People v. Reyes, 2016 IL 119271. . . . . 17, 18, 19

People v. Ward, 32 Ill. App.3d 781 (4th Dist. 1975). 17, 19, 20

People v. Gonzalez, 388 Ill. App.3d 1003 (3d Dist. 2009). 18

Miller v. Alabama, 567 U.S. ----, 132 S.Ct. 2455 (2012). 19

5 ILCS 70/1 (2016). 18

730 ILCS 5/5-4.5-105 (2015). 19

5. This matter is properly before this Court, just as it was properly before the appellate court, under the public interest exception to the mootness doctrine.. 20

In re Jabari C., 2011 IL App (4th) 100295. 21

People v. Roberson, 212 Ill.2d 430 (2004). 21

In re Alfred H.H., 233 Ill.2d 345 (2009).. 21

In re Shelby R., 2013 IL 114994. . . . . 21, 22, 23

People v. Rollins, 166 Ill. App.3d 843 (5th Dist. 1988). 22

In re Jamie P., 223 Ill.2d 526 (2006). 23

People v. Campbell, 224 Ill.2d 80 (2007). 24

705 ILCS 405/5-715(1) (2016). 22, 23

730 ILCS 5/5-4.5-55(d) (2016). 22

705 ILCS 405/5-710(1)(b) (2016). 23

NATURE OF THE CASE

Jarquan B., the petitioner-appellant, appeals from his adjudication of delinquency and dispositional order of commitment. An adjudication of delinquency was entered against Jarquan B. for the misdemeanor offense of criminal trespass to vehicle, and the petitioner was sentenced to the Department of Juvenile Justice (DJJ) after his probation was revoked.

This is a direct appeal from the judgment of the court below. No issue is raised challenging the charging instrument.

ISSUES PRESENTED FOR REVIEW

The legislature amended 705 ILCS 405/5-710(1)(b) (effective Jan. 1, 2016) to end the incarceration of minors to the Department of Juvenile Justice (DJJ) for misdemeanor offenses. Can a court sentence a minor to the DJJ where the minor was sentenced on a probation revocation after the effective date of that statute, but adjudicated and originally sentenced prior to the effective date of that statute?

STATUTES AND RULES INVOLVED

705 ILCS 405/5-710(1)(b) (2016):

(b) A minor found to be guilty may be committed to the Department of Juvenile Justice under section 5-750 if the minor is at least 13 years and under 20 years of age, provided that the commitment to the Department of Juvenile Justice shall be made only if a term of imprisonment in the penitentiary system of the Department of Corrections is permitted by law for adults found guilty of the offense for which the minor was adjudicated delinquent. The court shall include in the sentencing order any pre-custody credits the minor is entitled to under section 5-4.5-100 of the Unified Code of Corrections. The time during which a minor is in custody before being released upon the request of a parent, guardian or legal custodian shall also be considered as time spent in custody. (Effective January 1, 2016)

705 ILCS 405/5-720(4) (2016):

(4) If the court finds that the minor has violated a condition at any time prior to the expiration or termination of the period of probation or conditional discharge, it may continue him or her on the existing sentence, with or without modifying or enlarging the conditions, or may revoke probation or conditional discharge and impose any other sentence that was available under section 5-710 at the time of the initial sentence.

5 ILCS 70/4 (2016):

No new law shall be construed to repeal a former law, whether such former law is expressly repealed or not, as to any offense committed against the former law, or as to any act done, any penalty, forfeiture or punishment incurred, or any right accrued, or claim arising under the former law, or in any way whatever to affect

any such offense or act so committed or done, or any penalty, forfeiture or punishment so incurred, or any right accrued, or claim arising before the new law takes effect, save only that the proceedings thereafter shall conform, so far as practicable, to the laws in force at the time of such proceeding. If any penalty, forfeiture or punishment be mitigated by any provisions of a new law, such provision may, by the consent of the party affected, be applied to any judgment pronounced after the new law takes effect. This section shall extend to all repeals, either by express words or by implication, whether the repeal is in the act making any new provision upon the same subject or in any other act.

STATEMENT OF FACTS

On January 12, 2015, the State filed a petition for adjudication of wardship against the minor, Jarquan B. (C. 6) The petition alleged that on December 18, 2014, Jarquan, a minor, committed the misdemeanor offense of criminal trespass to motor vehicle in violation of 720 ILCS 5/21-2. (C. 6) Criminal trespass to motor vehicle is a Class A misdemeanor. 720 ILCS 5/21-2(b) (2014). On February 26, 2015, pursuant to an agreement with the State, Jarquan admitted to the allegations in the petition in exchange for 12 months of court supervision. (R. B2-4; C. 19, 20) On October 13, Jarquan admitted to a supplemental petition to vacate court supervision, with an agreement to be placed on probation for six months. (R. P2-5) The court placed Jarquan on probation for six months per the agreed upon terms on November 5, 2015. (R. Q2-5; C. 79-81)

On November 9, 2015, the State filed a second supplemental petition to revoke probation, alleging that Jarquan violated his probation because he missed school and left his residence. (C. 84) Jarquan admitted to the probation violation on November 17, and the matter was held over for sentencing. (R. S2-6)

On February 11, 2016, a probation officer told the court that Jarquan's probation officer (Ms. Donnelly) wanted to ask for a commitment to the Department of Juvenile Justice (DJJ) in November or December, but opined "that is no longer an option." (R. X3) When the court was discussing possible sentences on February 18, Donnelly told the court that "the law changed making him [Jarquan] less eligible for the Department of Corrections." (R. Y3) The court responded that because Jarquan was placed on probation in November, all sentencing options then available remained open, including the DJJ. (R. Y4) The assistant public defender stated

that it was her understanding that the new law is "retroactive." (R. Y4)

Eventually, on April 26, 2016, the court sentenced Jarquan to the DJJ. (R. EE8; C. 120-21) Jarquan's attorney argued that the law had changed and that minors can no longer be sentenced to the DJJ for misdemeanor adjudications, but the court rejected this argument. (R. EE5)

On April 28, 2016, after the DJJ apparently attempted to refuse to accept Jarquan for admission, the court ordered its April 26 DJJ commitment order to stand. (R. FF2) The court continued: "If he's sent back here again, the department will be held in contempt of court." (R. FF2) The court further stated:

> If the Appellate Court tells me I'm wrong, that's one thing. But the Department of Corrections doesn't decide which court orders they can follow and which they can't follow. He goes back there. And if they send him back again, they can come back here with their toothbrushes. (R. FF2)

On September 30, 2016, a divided appellate court affirmed Jarquan's commitment to the DJJ for a misdemeanor. *People v. Jarquan B.*, 2016 IL App (1st) 161180. The majority acknowledged that the amended version of 705 ILCS 405/5-710(1)(b) is clear in that effective January 1, 2016, it prohibits a court from sentencing a minor to the DJJ for a misdemeanor. *Id.*, at ¶ 19. However, the majority concluded that because another statute (705 ILCS 405/5-720(4)) generally permits a court to impose any sentence upon revocation of probation that was available when the defendant was initially sentenced, and because Jarquan was initially sentenced prior to January 1, 2016, the sentence to the DJJ was proper. *Jarquan B.*, 2016 IL App (1st) 161180 ¶ 31. The majority found that although section 4 of the Statute on Statutes would "ordinarily permit [Jarquan] to elect" to be sentenced under the amended version of section 405/5-710(1)(b), the Statute on

Statutes is inapplicable because it "conflicts" with section 405/5-720(4). *Jarquan B.*, 2016 IL App (1st) 161180 ¶¶ 25, 27.

Justice Hyman dissented and found that the amended version of section 405/5-710(1)(b) is ambiguous when read in conjunction with section 405/5-720(4). *Jarquan B.*, 2016 IL App (1st) 161180 ¶¶ 40-42. After observing that the legislative history is pertinent when construing an ambiguous statute, Justice Hyman concluded that the legislative history for the amended version of section 405/5-710(1)(b) evidences an intent to prohibit all sentences to the DJJ for minors convicted of misdemeanors effective January 1, 2016. *Id.*, at ¶¶ 43-47. Finally, Justice Hyman also would have held that the Statute on Statutes allowed Jarquan to elect whether to be sentenced under the amended version of section 405/5-710(1)(b), and observed that the Statute on Statutes is an aid in statutory construction. *Id.*, at ¶¶ 48-53.

Jarquan filed a petition for rehearing with the appellate court, which was denied on October 18, 2016, with Presiding Justice Hyman dissenting. A petition for leave to appeal was filed with this Court on October 26, 2016, and this Court allowed leave to appeal on January 5, 2017.

ARGUMENT

Effective January 1, 2016, a circuit court can no longer commit a minor to the Department of Juvenile Justice (DJJ) for a misdemeanor. 705 ILCS 405/5-710(1)(b) (2016). Despite the clear language of the amended version of section 405/5-710(1)(b), a divided appellate court incorrectly held that the circuit court properly sentenced Jarquan, a minor, to the DJJ on a misdemeanor after the effective date of this statute.

Pursuant to the amended version of 705 ILCS 405/5-710(1)(b) (effective Jan. 1, 2016), the Illinois legislature put an absolute prohibition on committing juveniles who are adjudicated delinquent for misdemeanors to the DJJ. Nevertheless, when Jarquan was sentenced on April 26, 2016, on a violation of misdemeanor probation after the effective date of the amended statute, the circuit court committed him to the DJJ, in direct violation of the statute. Despite finding the amended statute unambiguous, the majority of the First District Appellate Court affirmed his sentence in a published decision that misconstrued or disregarded relevant rules and statutes directing how to interpret statutes.

Jarquan's sentence to the DJJ is in violation of the clear language of the amended version of section 405/5-710(1)(b), which on its face prohibits sentencing a juvenile to the DJJ for a misdemeanor on or after January 1, 2016. Further, even if the amended version of section 405/5-710(1)(b) is deemed to be ambiguous in light of 705 ILCS 405/5-720(4) (2016), which generally authorizes a judge to impose any sentence on vacating juvenile probation that could have been imposed when the minor was initially sentenced, the canons of statutory construction reveal a legislative intent to prohibit sending any juvenile to the DJJ for a misdemeanor on or after January 1, 2016. Finally, Jarquan had the right to elect to be sentenced under the amended version of section 405/5-710(1)(b) per the Statute on Statutes.

For the reasons more specifically set forth below, this Court should reverse the divided opinion of the appellate court which affirmed Jarquan's sentence to the DJJ for a misdemeanor.

1. The best method of determining the intent of a legislature is the language of the statute. The amended version of 405/5-710(1)(b) clearly, unambiguously, and without exception prohibits a court from sentencing a minor to the DJJ for a misdemeanor.

The cardinal rule guiding a court in statutory construction, to which all other rules are subordinate, is to ascertain and give effect to the intent of the legislature. *People v. Hanna*, 207 Ill.2d 486, 497 (2003); See also the Statute on Statutes, 5 ILCS 70/1.01 (2016) ("All general provisions, terms, phrases and expressions shall be liberally construed in order that the true intent and meaning of the General Assembly may be fully carried out"). "Legislative intent is clear when the language of the provision is plain and unambiguous and it will be given effect as written without resorting to other aids for construction." *In re Justin T.*, 291 Ill. App.3d 872, 877 (1st Dist. 1997). See also *In re Lance H.*, 2014 IL 114899 ¶ 11 ("Where the language is plain and unambiguous we apply the statute without resort to further aids of statutory construction."). When the language of a statute is not ambiguous, the law is to be enforced as enacted by the legislature. *Paszkowski v. Metropolitan Water Recl. Dist. of Chicago*, 213 Ill.2d 1, 6 (2004). Statutory construction is a question of law, and the standard of review is *de novo*. *People v. Howard*, 228 Ill.2d 428, 432 (2008).

At issue here is the language of the newer version of 705 ILCS 405/5-710(1)(b). Prior to January 1, 2016, this statute allowed a minor to be committed to the Department of Juvenile Justice (DJJ) for a jailable misdemeanor conviction. 705 ILCS 405/5-710(1)(b)(2015). Then, a DJJ commitment was permissible "if a *term*

of incarceration is permitted by law for adults." 705 ILCS 405/5-710(1)(b)(2015) (emphasis added). However, effective January 1, 2016, this statute was amended to provide that a "commitment to the Department of Juvenile Justice shall be made *only if a term of imprisonment in the penitentiary* system of the Department of Corrections is permitted by law for adults found guilty" of the same offense. 705 ILCS 405/5-710(1)(b) (2016) (P.A. 99-268)(emphasis added). Thus, prior to January 1, 2016, minors could be committed to the DJJ for a misdemeanor, whereas effective January 1, 2016, minors can no longer be committed to the DJJ for a misdemeanor.

The amended statute at issue here is clear and unambiguous, and it therefore must be interpreted without resorting to additional canons of statutory construction. *In re Lance H.*, 2014 IL 114899 ¶ 11. The amended statute asserts that a minor "may be committed to" the DJJ "provided" that "the commitment" "shall be made only if" an adult could be sentenced to prison for the same offense. 705 ILCS 405/5-710(1)(b) (2016). Nothing in the amended statute states that a juvenile may be committed to the DJJ after January 1, 2016 if he admitted to a petition to revoke probation before that date, or if he was initially sentenced before that date. Under the plain language of the statute, effective January 1, 2016, courts are no longer permitted to impose a DJJ commitment for a misdemeanor.

Because the trial judge here "committed" Jarquan to the DJJ *after* the effective date of the changed law, the sentence is impermissible. Jarquan was initially sentenced to court supervision on February 26, 2015, for the Class A misdemeanor offense of criminal trespass to vehicle. 720 ILCS 5/21-2(b) (2014). (C. 6, 19) The court revoked Jarquan's supervision, and on November 5, 2015, Jarquan was

sentenced to probation. (C. 79) On November 17, 2015, Jarquan admitted to a probation violation. (R. S2-6) However, Jarquan was not sentenced on this probation violation until April 26, 2016, well after the effective date of the amended version of 405/5-710(1)(b). (R. EE7-8) That day, the court impermissibly committed Jarquan to the DJJ for a Class A misdemeanor, in violation of the clear and unambiguous language of the amended version of section 710(1)(b). (R. EE7-8; C. 120-1)

2. The appellate court erred when it looked for conflicts with other statutes in determining the legislative intent for the clear and unambiguous language of the amended version of section 710(1)(b).

Because the amended version of section 710(1)(b) is clear and unambiguous, and because it clearly prohibited sentencing Jarquan to the DJJ for a misdemeanor, the circuit and appellate court erred by not applying the statute as written. Again, where a statute is not ambiguous it "must be applied as written without resort to further aids or tools of interpretation." *People v. Taylor*, 221 Ill.2d 157, 162 (2006). The majority in the appellate court correctly concluded that the amended version of section 710(1)(b) is clear and unambiguous. *In re Jarquan B.*, 2016 II, App (1st) 161180 ¶ 19. This finding should have ended the matter with the appellate court concluding that the sentence to the DJJ was improper. Instead, the majority of the appellate court affirmed and proceeded to apply some rules of statutory construction, but not others.

Specifically, the appellate court looked to another statute, 705 ILCS 405/5-720(4) (2016), which provides that after revoking probation, a court is generally authorized to "impose any other sentence that was available under Section 5-710 at the time of the initial sentence." Because Jarquan was originally sentenced to court supervision prior to January 1, 2016, the appellate court reasoned that

the circuit court had the authority to sentence Jarquan to the DJJ for a misdemeanor *after* the effective date of the amended version of 405/5-710(1)(b), which clearly and unambiguously prohibits such a sentence. *Jarquan B.*, 2016 IL App (1st) 161180 ¶ 31.

The appellate court and the circuit court both erred by applying aids of statutory construction to the clear and unambiguous amended version of section 710(1)(b). By looking to 720(4) to help interpret the amended version of section 710(1)(b), the circuit court and the majority of the appellate court improperly applied the doctrine of *in pari materia*. The doctrine of *in pari materia* "provides that when two statutes address the same subject, they should be construed together." *People v. Payne*, 277 Ill. App.3d 1000, 1002 (2d Dist. 1996)."The doctrine of *in pari materia* applies *only if the statutory section is ambiguous*." *Id.* at 1003 (emphasis added). See also *People v. Taylor*, 221 Ill.2d 157, 162-3 (2006) (observing "where the statute in question is clear and unambiguous reference to other statutes *in pari materia* for purposes of construction is unnecessary."); *People v. Taylor*, 221 Ill.2d 157, 162-3 (2006) (finding that where a statute is not ambiguous it "must be applied as written without resort to further aids or tools of interpretation," including without resorting to the doctrine of *in pari materia*). Thus, the majority improperly applied the doctrine of *in pari materia* to the clear and unambiguous amended version of section 710(1)(b).

3. Even assuming, *arguendo*, that the amended version of section 710(1)(b) is ambiguous, the legislature intended for no juvenile to be sentenced to the DJJ on or after January 1, 2016, regardless of any previous sentences.

Although Jarquan agrees with the majority of the First District Appellate Court that the amended version of section 710(1)(b) is not ambiguous, the majority

implicitly treated the amended version of section 710(1)(b) as if it was ambiguous by using certain tools of statutory construction applicable only to ambiguous statutes. Assuming, *arguendo*, that the amended version of section 710(1)(b) is ambiguous, the majority improperly applied the rules of statutory interpretation.

If a statute can be understood in two or more different ways, "the statute will be deemed ambiguous, and the court may consider extrinsic aids of construction to discern the legislature's intent." *People v. Horsman*, 406 Ill. App.3d 984, 987 (2d Dist. 2011). One such aid is the rule of lenity, which requires that "any ambiguity in a criminal statute must be resolved in the way that favors the accused." *People v. Maldonado*, 402 Ill. App.3d 1068, 1074 (2d Dist. 2010). Penal statutes under the Juvenile Court Act are also to be strictly construed in favor of the accused. *In re Jaime P.*, 223 Ill.2d 526, 539 (2006). The majority did not consider the rule of lenity in construing the amended version of section 710(1)(b). Application of the rule of lenity to the amended version of section 710(1)(b) leads to the conclusion that it is applicable to sentences imposed upon revocation of probation when the original sentence was imposed prior to January 1, 2016. The amended version of section 710(1)(b) merely eliminates one of many sentencing alternatives from the trial judge. A judge has the right to impose any sentence upon revocation that was available at the time of the original sentence per section 720(4) *except* effective January 1, 2016, a judge can no longer sentence a minor to the DJJ on a misdemeanor per the amended version of section 710(1)(b). This is the only possible conclusion one can reach if strictly construing the language of these statutes in favor of the accused. Under the rule of lenity, the amended version of section 710(1)(b) does not conflict with section 720(4); rather, it merely limits section 720(4)

by eliminating the option of the DJJ for misdemeanors.

Additionally, it is proper to consider the legislative history when interpreting an ambiguous statute. "Where the language is ambiguous, however, we may consider external sources, such as legislative history, in order to discern the intent of the legislature." *People v. Bradford*, 2016 IL 118674 ¶ 15. This too leads to the conclusion that it was improper for the trial court to sentence Jarquan to the DJJ on a misdemeanor after January 1, 2016. The majority of the appellate court specifically refused to consider the legislative history because it deemed the amended version of section 710(1)(b) clear and unambiguous. *Jarquan B.*, 2016 IL App (1st) 161180 ¶ 20. As was correctly observed by the dissent, the legislative history for the amended version of section 405/5-710(1)(b) evidences a legislative intent that no minor be sentenced to the DJJ for a misdemeanor on or after January 1, 2016. *Jarquan B.*, 2016 IL App (1st) 161180 ¶¶ 44-47. Both the House and Senate debates reveal that the intent of the legislature was to address overcrowding, save the state money, and assure that juvenile misdemeanants are no longer committed to the DJJ.

Senator Raoul asserted that the purpose of amending 405/5-710(1)(b) to prohibit minors convicted of misdemeanor offenses from being committed to the DJJ was to "address the fact that we're committing too many people–too many minors to the Department of Juvenile Corrections, at quite a cost to the State." Senator Raoul continued to explain that the proposed amendment "makes certain that we no longer commit juvenile misdemeanants to the Department of Juvenile Justice." 99th Ill. Gen. Assem., Senate Proceedings, April 22, 2015, at 177-78 (statements of Senator Raoul).

During the House debates, Speaker Nekritz stated that the proposed amendment was "designed to right size our population at the Department of Juvenile Justice" and to "better target resources." 99th Ill. Gen. Assem., House Proceedings, May 28, 2015, at 41 (statements of Representative Nekritz). In response to Speaker Sandack's question whether the Bill was consistent with the Governor's goal of trying to reduce prison populations, Speaker Nekritz replied, "Very much so." 99th Ill. Gen. Assem., House Proceedings, May 28, 2015, at 42 (statements of Representative Nekritz and Sandack). In response to Speaker Ford's question concerning savings in costs, Speaker Nekritz noted that in March 2015 there were 27 minors committed to the DJJ on misdemeanors, and it was estimated that the Bill would save costs by reducing DJJ commitments by 110 per year. 99th Ill. Gen. Assem., House Proceedings, May 28, 2015, at 42-3 (statements of Representative Nekritz and Ford).

Thus, the legislative debates reveal a legislative intent to save the state money, reduce the DJJ population, and, most importantly, to "make[] certain that we no longer commit juvenile misdemeanants to the Department of Juvenile Justice." 99th Ill. Gen. Assem., Senate Proceedings, April 22, 2015, at 177-78 (statements of Senator Raoul). Thus, the commitment of Jarquan to the DJJ after January 1, 2016 is contrary to the goals of saving the state money and reducing the DJJ population, and directly conflicts with the stated purpose of making certain minors convicted of misdemeanors are no longer committed to the DJJ.

Moreover, other rules of statutory construction also lead to a conclusion that it was improper to sentence Jarquan to the DJJ for a misdemeanor. The overarching aim of statutory construction is to give effect to the intent of the

legislature. *Holly v. Montes*, 231 Ill. 2d 153, 159 (2008). There is a presumption that the legislature intended multiple statutes related to the same subject be read harmoniously. *1010 Lake Shore Ass'n v. Deutsche Bank Nat. Trust Co.*, 2015 IL 118372 ¶ 37. "Even when there is an apparent conflict between statutes, they must be construed in harmony if reasonably possible." *Id*. The statutes can be harmonized together in that the amended version of section 710(b)(1) merely imposes one limitation upon a judge's sentencing authority upon revocation of probation per section 720(4). Read in harmony, upon revoking a juvenile's probation, a court has any option available it possessed when the initial sentence was imposed except a sentence to the DJJ for a misdemeanor is no longer an option effective January 1, 2016. Even if there is an apparent conflict, these statutes can be read harmoniously by implementing the plain meaning of the amended version of section 710(b)(1) and barring all sentences to the DJJ for misdemeanors where the minor was sentenced on or after January 1, 2016.

Assuming, *arguendo*, that there is an irreconcilable conflict between the amended version of section 710(b)(1) and section 720(4), the canons of statutory construction also indicate that the amended version of section 710(b)(1) ends any and all sentences of minors to the DJJ for misdemeanors. Courts have a duty to construe conflicting statutes in a way that gives effect to both, if such construction is reasonably possible. *People v. Lucas*, 231 Ill. 2d 169, 182 (2008). "[I]t is a commonplace of statutory construction" that when two conflicting statutes cover the same subject, the specific governs the general. *People ex rel. Madigan v. Burge*, 2014 IL 115635 ¶31." The general/specific canon is perhaps most frequently applied to statutes in which a general permission or prohibition is contradicted by a specific

prohibition or permission. To eliminate the contradiction, the specific provision is construed as an exception to the general one." *Id*. Further, "Where two statutes are irreconcilable, the one which was more recently adopted will abrogate the earlier to the extent that they are inconsistent." *Johnson v. State Electoral Bd.*, 53 Ill.2d 256, 259 (1972).

Here, the specific provision in 405/5-710(1)(b) prohibiting commitments to the DJJ for misdemeanors should be construed as an exception to the general provision in 705 ILCS 405/5-720(4) allowing a court to impose any sentence that would have been permissible when the sentence was previously imposed. Moreover, "when two statutes appear to be in conflict, the one which was enacted later should prevail, as a later expression of legislative intent." *Village of Chatham v. County of Sangamon*, 216 Ill.2d 402, 431 (2005). Thus, the fact that the amended version of 405/5-710(1)(b) was passed after 705 ILCS 405/5-720(4) (which was last amended in 1999) demonstrates a legislative intent to limit misdemeanor sentences to exclude commitments to the DJJ. Further, as is noted above, the amended version of section 710(1)(b) can be read in conjunction with section 720(4) so as to give effect to both statutes. Therefore, the canons of statutory construction clearly lead to the conclusion that the legislature intended for no minor to be sentenced to the DJJ effective January 1, 2016 for any reason.

4. The Statute on Statutes gave Jarquan the right to opt to be sentenced under the amended version of section 710(1)(b).

In addition to the general canons of statutory interpretation noted above, the Statute on Statutes also provides guidance. Section 4 of the Statute on Statutes notes in pertinent part, "If any penalty, forfeiture or punishment be mitigated by any provisions of a new law, such provision may, by the consent of the party

affected, be applied to any judgment pronounced after the new law takes effect." 5 ILCS 70/4 (2016); *Jarquan B.*, 2016 IL App (1st) 161180 ¶ 24. Where an amendment to a statute merely mitigates punishment, a defendant has the right to consent to be sentenced under the amended version of that statute per the Statute on Statutes. *People v. Jackson*, 99 Ill.2d 476, 480-81(1984); *People v. Gancarz*, 228 Ill.2d 312, 318-323.

In *People v. Reyes*, 2016 IL 119271 and *People v. Ward*, 32 Ill. App.3d 781 (4th Dist. 1975), section 4 of the Statute of Statutes was treated as a tool which allows a defendant to elect to be sentenced under a new mitigating statute. Here, the amended version of section 710(1)(b) was a new law that mitigated punishment in that it removed the sentencing option of sending a minor to the DJJ for a misdemeanor offense. As such, with the consent of the minor, Jarquan had the right to elect to be sentenced under the new law barring a sentence to the DJJ for juvenile misdemeanants under the Statute on Statutes. Jarquan was not afforded this option by the circuit court.

In violation of *Reyes* and *Ward*, the appellate court majority did not apply section 4 of the Statute on Statutes as a tool to interpret the amended version of section 710(1)(b) because "section 720(4) [a statute which generally allows a court to impose whatever punishment was available at the time of the initial sentence upon revocation of probation] conflicts with section 4 of the Statute on Statutes." *Jarquan B.*, 2016 IL App (1st) 161180 ¶ 25, 27. This was error.

The Statute on Statutes is a tool used to construe statutes, not a statute to be discarded because it purportedly conflicts with some other statute. Section 1 of the Statute on Statutes expressly asserts that the Statute on Statutes should

be observed "unless such construction would be inconsistent with the manifest intent of the General Assembly or repugnant to the context of the statute." 5 ILCS 70/1 (2016). Therefore, by its own terms, the Statute on Statutes sets forth rules of statutory construction that must be applied absent a clear legislative intent to the contrary. Thus, the Statute on Statutes is not simply another statute to compare to other statutes; rather, it is a guide for how to construe Illinois statutes. "The Statute on Statutes provides rules to be observed in statutory construction." *People v. Gonzalez*, 388 Ill. App.3d 1003 (3d Dist. 2009).

The majority of the appellate court erred when it concluded that section 4 of the Statute on Statutes is inapplicable to interpreting the amended version of section 710(1)(b) in the case at hand. This section of the Statute on Statutes simply instructs courts that a criminal defendant has the right to elect between punitive statutes where the more recent statute mitigated punishment imposed by older statutes. Such is clearly the case here, where the pre-amended version of 710(1)(b) allowed courts to sentence juveniles to the DJJ on misdemeanors, and where the amended version prohibits such a sentence. Even the majority of the appellate court conceded that "section 4 of the Statute on Statutes would ordinarily permit [Jarquan] to elect to be sentenced under" the amended version of section 710(1)(b). *Jarquan B.*, 2016 IL App (1st) 161180 ¶ 25. As Jarquan was sentenced on the petition to revoke probation after January 1, 2016 (the effective date of the amended version of 710(1)(b)), he is entitled to elect to be sentenced under the more favorable amended version of section 710(1)(b).

A case directly on point that was not considered by the appellate court is *People v. Reyes*, 2016 IL 119271. In *Reyes*, this Court vacated a sentence that had

been imposed on a minor because it was a mandatory *de facto* natural life sentence that was imposed in violation of *Miller v. Alabama*, 567 U.S. ——, 132 S.Ct. 2455 (2012). *Id*., at ¶¶ 7-10. The *Reyes* Court next determined the appropriate statute to apply on remand. While the case was pending on appeal, the legislature enacted a new sentencing scheme for defendants who were minors at the time the offense was committed, 730 ILCS 5/5–4.5–105 (2015). That newly enacted statute allowed trial courts to consider what otherwise would have been mandatory firearm sentencing enhancements to be a matter of judicial discretion, upon consideration of various factors. *Id*., at ¶¶ 11. In a unanimous *per curiam* opinion, this Court applied section 4 of the Statute on Statutes and agreed with the parties that Reyes was "entitled, on remand, to be resentenced under the sentencing scheme found in section 5–4.5–105." *Id*., at ¶ 12.

Thus, despite the fact that the sentencing law changed well after Reyes was sentenced, this Court concluded that, under section 4 of the Statute on Statutes, he was entitled to be sentenced under the newly enacted, more favorable sentencing statute. The same result should have been reached in the case at bar. As in *Reyes*, section 4 of the Statute on Statutes is applicable, and *Jarquan* was entitled to be sentenced under the new sentencing law which expressly prohibits a commitment to the DJJ for a misdemeanor.

Moreover, the majority opinion is contrary to *People v. Ward*, 32 Ill. App.3d 781 (4th Dist. 1975), which was also not considered. In *Ward*, the defendant was sentenced in 1970 and was again sentenced in 1973 after his probation was revoked. *Id*. at 782. Upon revoking the defendant's probation, the trial court wanted to impose periodic imprisonment, but instead imposed a prison term because it believed

that periodic imprisonment was not permissible because it was not an alternative at the time the defendant was originally sentenced in 1970. *Id*. Specifically, a sentencing statute in *Ward*, virtually identical to section 720(4) deemed determinative by the majority in the case at bar, authorized the trial court to impose upon revocation of probation any sentence that was available "at the time of initial sentencing." *Id*. At the time of initial sentencing, periodic imprisonment was not a sentencing option, but when the defendant was sentenced on his probation revocation, periodic imprisonment was an available disposition. *Id*.

Ward held that the trial court erred when it concluded that periodic imprisonment was an impermissible sentence after revocation of probation. *Ward*, 32 Ill. App.3d at 782. *Ward* applied section 4 of the Statute on Statutes and concluded that a sentence after revocation of probation constitutes a judgment under section 4 of the Statute on Statutes. *Id*., at 783. Because the sentence following the probation revocation was deemed to be a "judgment pronounced after the new law takes effect," section 4 of the Statute on Statutes was applicable, and the defendant should have had the option to elect to be sentenced under the more favorable sentencing statute. *Id*.

5. This matter is properly before this Court, just as it was properly before the appellate court, under the public interest exception to the mootness doctrine.

Finally, the appellate court correctly considered this matter under the public interest exception to the mootness doctrine, *Jarquan B.*, 2016 IL App (1st) 161180 ¶¶ 12-14, and this matter is thus properly before this Court.

"A question is moot when no actual controversy exists or where intervening events occur that render it impossible for the court to grant effectual relief to the

complaining party." *In re Jabari C.*, 2011 IL App (4th) 100295 ¶ 19. Jarquan was released from the DJJ during the pendency of this appeal. Even if this matter is considered to be moot due to Jarquan's release from the DJJ, an appellate court may consider a moot issue on review if it meets the public interest exception to the mootness doctrine. *People v. Roberson*, 212 Ill.2d 430, 436 (2004). In order for the public interest exception to the mootness doctrine to apply, Jarquan must establish that the question presented is of a public nature, a need for authoritative determination to provide future guidance of public officers, and a likelihood the question will recur in the future. *In re Alfred H.H.*, 233 Ill.2d 345, 355-56 (2009). The issue before this Court clearly meets this exception.

The appellate court correctly concluded that the issue in this case is a matter of public concern, that authoritative determination will provide future guidance for public officers, and that the issue is likely to recur. *Jarquan B.*, 2016 IL App (1st) 161180 ¶14. *In re Shelby R.*, 2013 IL 114994 is controlling.

In the case of *In re Shelby R.*, the issue before this Court was whether a commitment to the DJJ for the offense of unlawful consumption of alcohol was permissible after revocation of the minor's probation. The appellate court held that such a commitment is not permissible, and this Court affirmed. *In re Shelby R.*, 2013 IL 114994 ¶ 1. This Court likewise affirmed the finding by the appellate court that, despite the fact that the minor had completed her sentence and had been discharged from parole, the issue was reviewable under the public interest exception to the mootness doctrine. *Id*. at ¶¶ 10, 23. Before this Court, the State did not dispute that the question was of a public nature or that the question was likely to recur. *Id*. at ¶ 17. This Court went on to reject the State's argument that

a need for authoritative determination was not necessary for future guidance of public officers because it was an issue of first impression. *Id.* at ¶¶ 17-23. This Court reasoned that the "liberty interests of minors" posed a significant need for authoritative intervention, as did the need to provide guidance to judges, prosecutors, and defense attorneys by providing a "definitive decision as to the statutory limits of a judge's sentencing authority for underage drinking, a common occurrence." *Id.* at ¶ 22. Thus, this Court concluded, the appellate court correctly applied the public interest exception to the mootness doctrine. *Id.* at ¶ 23.

Here, Jarquan is also challenging the authority to of a court to commit a minor to DJJ. As was the case in *Shelby R.*, there is no question that the issue here is of a public nature, or that the question is likely to recur. Regarding the chance that the question will recur, it should be noted that a juvenile may be placed on probation for five years, and an adult may be placed on probation for a Class A misdemeanor for a term not to exceed two years. 705 ILCS 405/5-715(1) (2016); 730 ILCS 5/5-4.5-55(d) (2016). However, there does not appear to be any authority limiting juvenile probation to the term of the adult counterpart; thus, it appears that a juvenile can be placed on juvenile probation for a misdemeanor for five years. Thus, this issue could recur for years after December 31, 2015. Moreover, the range of minors who have committed misdemeanors is much broader than the range of minors who committed the offense at issue in at issue in *Shelby R* (unlawful consumption of alcohol). Thus, as was the case in *Shelby R.*, the issue here is likely to recur.

Also, upon revocation of probation, a court may impose any length of probation that it could have imposed in the first instance. *People v. Rollins*, 166 Ill. App.3d

843, 845 (5th Dist. 1988). Probation may be extended until the minor turns 21 years of age. *In re Jamie P.*, 223 Ill.2d 526, 540 (2006); 705 ILCS 405/5-715(1) (2016). A minor at least 13 and under 20 years of age may be sentenced to the DJJ. 705 ILCS 405/5-710(1)(b) (2016). Thus, a 13-year-old could be placed on misdemeanor probation on December 31, 2015, have his probation revoked and again be placed on probation at the age of 15, and this cycle could continue until the minor attains the age of 20. For years such a minor would live with the possibility of a sentence to the DJJ being imposed for a misdemeanor, despite clear legislative intent to the contrary, should the appellate court's decision be allowed to stand. The appellate court correctly found, "There are undoubtedly numerous juveniles who, prior to January 1, 2016, are currently serving a sentence of probation for an underlying misdemeanor offense."*Jarquan B.*, 2016 IL App (1st) 161180 ¶ 14. Given this and the ability of a juvenile court to extend misdemeanor probation for years, clearly this issue is likely to recur.

The only disputed issue in *Shelby R.* was whether a case of first impression is excluded from the public interest exception due to a lack of a need for authoritative determination. *Shelby R.* clarified that cases of first impression such as the instant case meet this test so long as liberty interests of minors are at issue and so long as a definitive decision will aid future judges and attorneys on an issue that is a common occurrence. *In re Shelby R.*, 2013 IL 114994 ¶¶ 20-22. Being placed on probation for a misdemeanor in juvenile court in general is certainly at least as common of an occurrence as the sentencing possibilities issue in *Shelby R.* Further, this case involves the same liberty interests of minors that were at issue in *Shelby R.*, and deciding this issue will help judges and attorneys understand

what to do if and when this issue recurs in the future. Accordingly, as was the case in *Shelby R.*, the public interest exception to the mootness doctrine is applicable, and this Court may and should consider this issue.

Thus, the public interest exception to the mootness doctrine to applies because the interpretation of section 710(1)(b) is a question of a public nature, the need for authoritative determination to provide future guidance of public officers is clear, and because there is a likelihood that the question will recur in the future. Therefore, this case is properly before this Court. Additionally, as our courts are currently bound by an incorrect decision that will permit trial courts to continue to send minors to the DJJ for misdemeanors in clear violation of the amended version of section 710(1)(b), it is imperative that this Court address this issue.

Summary

The amended version of section 710(1)(b) means what it says; that is, effective January 1, 2016, a minor can no longer be sentenced to the DJJ on a misdemeanor regardless of whether the initial sentence was prior to the effective date of that statute. The statute is clear and unambiguous. Even assuming, *arguendo*, that the statute is ambiguous, the rules of statutory construction and the legislative debates lead to the conclusion that Jarquan should not have been sentenced to the DJJ and, at a minimum, was entitled to opt out of such a sentence under the Statute of Statutes. As Jarquan has served his entire impermissible sentence to the DJJ, his juvenile case should be terminated. See *People v. Campbell*, 224 Ill.2d 80, 87 (2007) (reversing a misdemeanor conviction without a new trial where new trial would have normally been warranted where defendant served his entire sentence and a new trial would not have been either "equitable nor productive").

CONCLUSION

For the foregoing reasons, Jarquan B. respectfully requests that this Court reverse the judgment of the appellate court and terminate his juvenile case.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Darren E. Miller, certify that this brief conforms to the requirements of Supreme Court Rule 341(a) and (b). The length of this brief, excluding pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 25 pages.

/s/Darren E. Miller
DARREN E. MILLER
Assistant Appellate Defender

APPENDIX TO THE BRIEF

Jarquan B. No. 121483

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No. 121483

IN THE

SUPREME COURT OF ILLINOIS

	)	Appeal from the Appellate Court
	)	of Illinois, No. 1-16-1180.
	)	
IN THE INTEREST OF	)	There on appeal from the Circuit
	)	Court of Cook County, Illinois ,
	)	No. 15 JD 00085.
	)	
JARQUAN B.	)	Honorable
	)	Stuart F. Lubin,
	)	Judge Presiding.
	)	

NOTICE AND PROOF OF SERVICE

TO: Lisa Madigan, Attorney General, 100 W. Randolph St., Chicago, IL 60601;

Ms. Kimberly M. Foxx, State's Attorney, Cook County State's Attorney Office, 300 Daley Center, Chicago, IL 60602;

Jarquan B., 3640 W. Filmore, Chicago, IL 60624

Under the penalties provided in law pursuant to section 1-109 of the Code of Civil Procedure, the undersigned certifies that an electronic copy of the Brief and Argument in the above-entitled cause was submitted to the Clerk of the above Court for filing on January 27, 2017. On that same date, we personally delivered three copies to the Attorney General of Illinois, personally delivered three copies to opposing counsel and mailed one copy to the in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. The original and twelve copies of the Brief and Argument will be sent to the Clerk of the above Court upon receipt of the electronically submitted filed stamped motion.

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APPENDIX TO THE BRIEF

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2016 IL App (1st) 161180

SECOND DIVISION
September 30, 2016

No. 1-16-1180

In re JARQUAN B., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Cook County
	)	
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 15 JD 00085
	)	
Jarquan B., a Minor,	)	Honorable
	)	Stuart F. Lubin,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court, with opinion.
Justice Mason concurred in the judgment and opinion.
Presiding Justice Hyman concurred in part and dissented in part, with opinion.

OPINION

¶ 1 Respondent, Jarquan B., was found to be in violation of his misdemeanor probation on November 17, 2015, and was committed to the Department of Juvenile Justice (DJJ). Respondent argues the 2016 amendment to section 710(b)(1) of the Juvenile Court Act of 1987 (Act), precluded the juvenile court from committing him to the DJJ for a misdemeanor offense. 705 ILCS 405/5-710(1)(b) (West 2016). He also argues that the court did not award the proper credit against his sentence for time served on home confinement. For the following reasons, we affirm but modify the mittimus.

¶ 2 BACKGROUND

A5

¶ 3 The State filed a petition for adjudication of wardship for the offense of criminal trespass to a motor vehicle, a Class A misdemeanor (720 ILCS 5/21-2 (West 2014)), after respondent, a minor, was observed driving in a stolen vehicle on December 18, 2014. Respondent entered a plea of guilty on February 26, 2015 and was sentenced to 12 months' court supervision, 30 days stayed detention, and community service. The court informed respondent that if he violated the terms of his supervision, it could enter a finding of delinquency against him and "place [him] on probation, I can hold you in custody for up to 30 days, or I could send you to the Department of Corrections." On the date of the offense the maximum sentence for a Class A misdemeanor was less than one year incarceration. 730 ILCS 5/5-4.5-55 (West 2014).

¶ 4 The State filed a motion to execute the stay of mittimus in July 2015, asking the trial court to hold respondent in the juvenile temporary detention center (JTDC) for leaving his residential placement without permission. The court entered and continued the motion to stay and gave respondent a chance to remain at home while on electronic home monitoring (EHM). Respondent violated his EHM the next day and the court ordered respondent to serve 10 days in JTDC. After he was released, respondent again left his placement without permission and was ordered to serve another 10 days in the JTDC.

¶ 5 On September 28, 2015, the State filed a petition alleging that respondent violated his supervision by leaving his residential placement. On October 13, 2015, respondent admitted to the petition and the court revoked his supervision. At sentencing on November 5, 2015, the court sentenced respondent to six months' probation. The court asked respondent if he understood that based on his admission, the court could have sentenced respondent to the DJJ where he could remain until he turned 21. Respondent answered that he understood.

¶ 6 On November 6, 2015, the State filed a supplemental petition alleging that respondent violated his probation because he missed school and left his residence. Respondent admitted to the supplemental probation violation. The matter was held over for sentencing and during this period respondent reportedly continued to violate the terms of his probation. The court again asked respondent if he was aware that based on his admission to the probation violation, that he could be committed to the DJJ. Respondent stated that he understood.

¶ 7 On December 5, 2015, respondent violated his electronic monitoring and the terms of his probation by leaving his residential placement without permission. An arrest warrant issued two days later. Respondent was arrested on the warrant on February 5, 2016.

¶ 8 On February 18, 2016, the probation department reported to the court that respondent's probation officer had wanted to request commitment to the DJJ in November or December 2015, but opined that the DJJ was no longer an option for respondent. While the court was considering possible sentences, respondent's probation officer told the court that "the law changed making him [respondent] less eligible for the Department of Corrections." The court stated that because respondent was placed on probation in November 2015, all sentences available then, including commitment to the DJJ, were possible. The court told respondent that if he left his placement again without permission, he would be sent to the DJJ.

¶ 9 In mid-March 2016, respondent again left his residential placement without permission and an arrest warrant issued resulting in respondent's arrest about a month later. On April 26, 2016, the juvenile court sentenced respondent to the DJJ. The court rejected defense counsel's argument that the law had changed and minors could no longer be sentenced to the DJJ for misdemeanor adjudications. Respondent was given credit for the 67 days spent in detention,

however, he was not given any credit for the time he was on electronic monitoring or home confinement. On April 28, 2016, the DJJ returned respondent to court apparently refusing to take custody of respondent, resulting in the court ordering its April 26 order committing respondent to the DJJ to stand, explaining that should the DJJ return respondent back to court, "the department [would] be held in contempt of court." Respondent appealed.

¶ 10 ANALYSIS

¶ 11 Effective January 1, 2016, section 710 of the Act was amended to prohibit the commitment of juveniles to the DJJ for misdemeanor offenses. 705 ILCS 405/5-710(1)(b) (West 2016). Respondent argues on appeal that on the date of sentencing, April 26, 2016, the juvenile court lacked the statutory authority to commit him to the DJJ for a violation of his misdemeanor probation.

¶ 12 Initially, the State argues that this issue is moot because respondent has served his sentence in the DJJ and has been released. An issue becomes moot when an actual controversy no longer exists and the interests of the parties no longer are in controversy. *Novak v. Rathnam*, 106 Ill. 2d 478, 482 (1985). If an appeal involves the validity of a sentence, and that sentence has been served, the appeal is rendered moot. *In re Shelby R.*, 2013 IL 114994. However, exceptions to the mootness doctrine exist. Specific to this case is the public interest exception that requires "(1) the existence of a question of a public nature; (2) the desirability of an authoritative determination for the purpose of guiding public officers in the performance of their duties; and (3) the likelihood the question will recur." *People v. McCaskill*, 298 Ill. App. 3d 260, 264 (1998).

¶ 13 In *In re Dexter L.*, 334 Ill. App. 3d 557, 572 (2002), this court applied the public interest exception to the mootness doctrine where a juvenile was found in violation of his probation and was ordered to be detained for 30 days in the county jail. The State argued that the appeal was moot because respondent had already served the 30 days. We concluded that "[t]he detention of a juvenile is a matter of public concern, and an authoritative determination of the issue will guide public officials and juvenile court judges who are likely to face the problem in the future." *Id.* (citing *People v. Clayborn*, 90 Ill. App. 3d 1047, 1052 (1980)). We also reasoned that, due to the time constraints imposed by the Act, the issue was likely to recur with other minors in the future. *Id.* We find the same considerations outlined in *In re Dexter L.*, to be relevant here.

¶ 14 Similar to in *In re Dexter L.*, the issue presented here is a matter of public concern and an authoritative determination of this issue by this court will guide juvenile court judges who are likely to consider this issue in the near future. There are undoubtedly numerous juveniles who, prior to January 1, 2016, are currently serving a sentence of probation for an underlying misdemeanor offense. Those juveniles were eligible to be sentenced to the DJJ at the time of sentencing on their misdemeanor offense and face the potential of being sentenced to the DJJ if found in violation of that probation. We therefore find the public interest exception to the mootness doctrine applies and we will consider the merits of respondent's appeal.

¶ 15 Respondent asserts the "statute" is ambiguous, without specifying what statute, or the basis for his argument. We assume what respondent is referring to is that the language of the 2016 amendment to section 710(1)(b) is ambiguous. Respondent and our dissenting colleague look to the legislative debates surrounding this amendment to discern the intent of the legislature

in support of the argument that respondent's commitment to the DJJ after January 1, 2016 for a violation of misdemeanor probation imposed prior to January 1, 2016 is unauthorized.

¶ 16 Respondent argues that the juvenile court lacked the statutory authority under the Act to commit him to the DJJ for the misdemeanor offense of criminal trespass to vehicle because, as of January 1, 2016, the court no longer had the statutory authority to sentence him to the DJJ for a misdemeanor offense. On February 26, 2015, respondent pled guilty to criminal trespass to vehicle and was sentenced to supervision. On respondent's sentencing date, section 710(1)(b) of the Act authorized the commitment of a juvenile to the DJJ for a misdemeanor offense. 705 ILCS 405/5-710(1)(b) (West 2014). At that time, Section 710 provided:

> " A minor found to be guilty may be committed to the Department of Juvenile Justice under Section 5-750 if the minor is 13 years of age or older, provided that the commitment to the Department of Juvenile Justice shall be made only if a term of incarceration is permitted by law for adults found guilty of the offense for which the minor was adjudicated delinquent." 705 ILCS 405/5-710 (1)(b) (West 2014).

Thereafter, effective January 1, 2016, three months before respondent was committed to the DJJ for a violation of misdemeanor probation, section 710 was amended to provide:

> "A minor found to be guilty may be committed to the Department of Juvenile Justice under Section 5-750 if the minor is at least 13 years and under 20 years of age, provided that the commitment to the Department of Juvenile Justice shall be made only if a term of imprisonment in the penitentiary system of the Department of Corrections is permitted by law for adults found guilty of the offense for which the minor was adjudicated delinquent." 705 ILCS 405/5-710(1)(b) (West 2016).

¶ 17 The primary object of statutory construction is to give effect to the true intent of the legislature. *Holland v. City of Chicago*, 289 Ill. App. 3d 682, 685-86 (1997). "Legislative intent is best determined from the language of the statute itself ***." *General Motors Corp. v. State Motor Vehicle Review Bd.*, 224 Ill. 2d 1, 13 (2007). When the language of a statute is clear and unambiguous, it must be applied without resort to other aids of construction. *Alternate Fuels, Inc. v. Director of the Illinois E.P.A.*, 215 Ill. 2d 219, 238 (2004).

¶ 18 A statute is ambiguous if its meaning cannot be interpreted from its plain language or if it is capable of being understood by reasonably well-informed persons in more than one manner. *Krohe v. City of Bloomington*, 204 Ill. 2d 392, 395-96 (2003). When the language is unambiguous, the law is to be enforced as enacted by the legislature. *Paszkowski v. Metropolitan Water Reclamation Dist. of Greater Chicago*, 213 Ill. 2d 1, 6 (2004).

¶ 19 We find nothing ambiguous in the amendment to section 710(1)(b). As amended, the statute clearly states that a juvenile cannot be sentenced to the DJJ unless "a term of imprisonment in the penitentiary system of the Department of Corrections is permitted by law for adults found guilty of the offense for which the minor was adjudicated delinquent." 705 ILCS 405/5-710(1)(b) (West 2016). It is equally clear that this amended statute became effective January 1, 2016. Therefore, we find no ambiguity exists.

¶ 20 The dissent suggests that the 2016 amended section 710(b)(1) is ambiguous because the legislature did not include language addressing the temporal reach of the amended statute and therefore it has more than one reasonable interpretation. The dissent's discussion of the legislative history of section 710(b)(1) is neither helpful nor required in interpreting the 2016 amendment to section 710(b)(1) where the plain language of the section is clear and

unambiguous. To adopt the position that every amended statute that fails to include express language as to its temporal reach is ambiguous is untenable as it would undoubtedly put every amended Illinois statute at risk for unnecessary attack.

¶ 21 Thus, in our view, the question is not what the straightforward language of amended section 710 means, but to which cases it should apply. In order to resolve this appeal, we must construe another provision of the Act. In addition to section 710, we must also consider section 720(4) of the Act, which governs probation violations. 705 ILCS 405/5–720(4) (West 2014). Section 720(4) provides that where the court finds the minor has violated a term of probation the court may "impose any other sentence that was available under section 710 at the time of the initial sentence." 705 ILCS 405/5–720(4) (West 2014); 705 ILCS 405/5-710 (West 2014).

¶ 22 Respondent argues that after January 1, 2016, section 710(1)(b) and section 720(4) are in conflict such that his commitment to the DJJ was unauthorized. The dissent identifies the essence of a conflict based on its belief that the amendment to section 710(1)(b) operates to preclude the juvenile court from imposing a sentence that was "available at [the time] of sentencing." In our view, section 720(4) applies because respondent was committed due to a finding that he violated his terms of probation and section 720(4) could not be more clear: a juvenile who violates probation may receive any other sentence "available under section 5-710 *at the time of the initial sentence*" which, in respondent's case, is commitment to the DJJ. (Emphasis added.) 705 ILCS 405/5-720(4) (West 2014). According to the version of section 710(1)(b) in effect at the time respondent pled guilty to criminal trespass to vehicle, respondent could have been committed to the DJJ for the misdemeanor offense. 705 ILCS 405/5-710(1)(b) (West 2014). When section 710 was amended the legislature could have, but did not, amend section 720(4) to prohibit

commitment to the DJJ for a violation of probation. Therefore, the juvenile court's order committing respondent to the DJJ for a violation of his probation was authorized. To find otherwise would be to ignore the clear legislative intent expressed in section 720(4) of the Act. 705 ILCS 405/5-720(4) (West 2014).

¶ 23 Where two statutes are allegedly in conflict, a court has a duty to interpret the statutes in a manner that avoids an inconsistency and gives effect to both statutes, where such an interpretation is reasonably possible. *Ferguson v. McKenzie*, 202 Ill. 2d 304, 311-12 (2001). As noted above, generally when two statutes are in conflict, the more specific should take precedence over the more general and the more recently enacted statute should be applied over the earlier enacted statute. *Barragan*, 216 Ill. 2d at 451. However, statues must be in direct conflict to apply the more recently enacted statute over the earlier enacted statute. *Byrne v. City of Chicago*, 215 Ill. App. 3d 698, 709-10 (1991).

¶ 24 In considering whether amended section 710(1)(b) applies to respondent's commitment for violation of his probation we find the analysis in *Landgraf v. USI Film Products*, 511 U.S. 244 (1994), instructive. "The *Landgraf* analysis consists of two steps. First, if the legislature has expressly prescribed the statute's temporal reach, the expression of legislative intent must be given effect absent a constitutional prohibition. Second, if the statute contains no express provision regarding its temporal reach, the court must determine whether the new statute would have retroactive effect ***." *Allegis Realty Investors v. Novak*, 223 Ill. 2d 318, 330-31 (2006). However, Illinois courts will rarely need to go beyond the first step of the *Landgraf* analysis because section 4 of the Statute on Statutes (5 ILCS 70/4 (West 2000)) provides direction on the temporal reach of every statutory amendment. *Caveney*, 207 Ill. 2d at 92. Section 4 states:

> "No new law shall be construed to repeal a former law, whether such former law is expressly repealed or not, as to any offense committed against the former law, or as to any act done, any penalty, forfeiture or punishment incurred, or any right accrued, or claim arising under the former law, or in any way whatever to affect any such offense or act so committed or done, or any penalty, forfeiture or punishment so incurred, or any right accrued, or claim arising before the new law takes effect, save only that the proceedings thereafter shall conform, so far as practicable, to the laws in force at the time of such proceeding. *If any penalty, forfeiture or punishment be mitigated by any provisions of a new law, such provision may, by the consent of the party affected, be applied to any judgment pronounced after the new law takes effect.*" (Emphasis added.) 5 ILCS 70/4 (West 2010).

Pursuant to this section, "legislative enactments can constitute a substantive change or a procedural change, or they can mitigate the sentence." *People v. Jackson*, 2016 IL App (1st) 141448, ¶ 31 (citing *People v. Gancarz*, 228 Ill. 2d 312, 319, 321-22 (2008)).

¶ 25 In this case, the amendment to section 710(1)(b) merely mitigated the sentence to which respondent could be subject. Given that the amendment took effect before respondent was sentenced on his probation violation, section 4 of the Statute on Statutes would ordinarily permit him to elect to be sentenced under it. See *People v. Calhoun*, 377 Ill. App. 3d 662, 664 (2007) (" '[Where] any punishment is mitigated by the provisions of a new law, a defendant can consent to the application of the new provision if it became effective prior to his sentencing.' " (quoting *People v. Land*, 178 Ill. App. 3d 251, 260 (1988))).

¶ 26 But this does not end our inquiry, as we must consider this section in concert with section 720(4) of the Act, which requires the court, upon a finding that the minor has violated a term of probation, to impose a sentence "*that was available under Section 5-710 at the time of the initial sentence.*" 705 ILCS 405/5-720(4) (West 2014) (Emphasis added.)

¶ 27 Although the parties do not recognize or address it, section 720(4) conflicts with section 4 of the Statute on Statutes. While section 4 would permit respondent to take advantage of the mitigated sentence that amended section 710 provides, section 720(4) requires respondent to be sentenced under the original version of section 710 in effect at the time of his initial sentencing.

¶ 28 Where two statutes are in conflict, a court has a duty to interpret the statutes in a manner that avoids an inconsistency and gives effect to both statutes, where such an interpretation is reasonably possible. *Ferguson v. McKenzie*, 202 Ill. 2d 304, 311-12 (2001). Generally, the more specific statute should take precedence over the more general and the more recently enacted statute should be applied over the earlier enacted statute. *Barragan v. Casco Design Corp.*, 216 Ill. 2d 435, 451 (2005). Stated differently, the more specific statute should be construed as an exception to the more general one. *People ex rel. Madigan v. Burge*, 2014 IL 115636, ¶ 31.

¶ 29 Section 720(4) is certainly more specific than section 4 of the Statute on Statutes: the former prescribes the sentence for juvenile probation revocation (405 ILCS 5/720(4) (West 2014)), while the latter generally addresses penalties and punishments for all crimes (5 ILCS 70/4 (West 2014)). Moreover, section 720(4) of the Act, with an effective date of January 1, 1999, is more recent than section 4 of the Statute on Statutes, which has an effective date of July 1, 1874. Thus, we construe section 720(4) as an exception to section 4 and conclude that

pursuant to section 720(4), respondent was not entitled to be sentenced under amended section 710.

¶ 30 Here, it is undisputed that respondent pled guilty to the offense of criminal trespass to vehicle in February 2015 and that criminal trespass to vehicle is a Class A misdemeanor punishable by up to a year imprisonment. 705 ILCS 405/5-710(1)(b) (West 2014) (a minor may be committed to the DJJ only if a term of incarceration is permitted by law for adults found guilty of the offense for which the minor was adjudicated delinquent); 730 ILCS 5/5-4.5-55 (West 2014). Respondent pled guilty and was sentenced to 12 months' supervision. On October 13, 2015, respondent was found in violation of his supervision. On November 3, 2015, respondent's supervision was revoked and he was placed on six months' probation. Respondent was admonished by the juvenile court, at least twice, that a violation of his probation could result in his being committed to the DJJ.

¶ 31 The plain language of section 720(4) of the Act states that a minor found in violation of probation may be subjected to any sentence available at the time of his initial sentence allowed by section 710 of the Act. 705 ILCS 405/5-720(4) (West 2016). According to the version of section 710(1)(b) in effect at the time respondent pled guilty to criminal trespass to vehicle, respondent could have been committed to the DJJ for the misdemeanor offense. 705 ILCS 405/5-710(1)(b) (West 2014). The amendment effective January 1, 2016 did not preclude the trial court from committing respondent to the DJJ for a violation of probation, as the amendment occurred subsequent to the date of sentencing on the original offense, February 26, 2015. Therefore, the juvenile court's order committing respondent to the DJJ for a violation of his

probation was authorized. To find otherwise would be to ignore the clear legislative intent expressed in section 720(4) of the Act. 705 ILCS 405/5-720(4) (West 2014).

¶ 32 Our supreme court has stated that the law in effect at the time of the offense governs unless there is " 'an express statutory provision stating an act is to have retroactive effect.' " *People v. Davis*, 97 Ill. 2d 1, 22-23 (1983) (quoting *Village of Wilsonville v. SCA Services, Inc.*, 86 Ill. 2d 1, 18 (1981)). The legislature could have chosen to make the amendment to section 710(1)(b) retroactive, but chose not to do so and such a result under the facts of this case is not warranted under well-settled principals of statutory construction. As such, we find that the juvenile court properly committed respondent to the DJJ for violating his probation.

¶ 33 Respondent next argues and the State agrees that respondent should be given credit for the 41 days that he spent on electronic monitoring. Pursuant to our authority under Illinois Supreme Court Rule 615(b)(1), and our ability to correct a mittimus without remand (see *People v. Hill*, 408 Ill. App. 3d 23, 31 (2011)), we correct respondent's mittimus to reflect 41 days of presentence credit.

¶ 34 CONCLUSION

¶ 35 For the foregoing reasons, we affirm the judgment of the juvenile court, but correct the mittimus.

¶ 36 Affirmed as modified.

¶ 37 PRESIDING JUSTICE HYMAN, concurring in part and dissenting in part.

¶ 38 The Illinois legislature amended the Juvenile Court Act to preclude minors from being sentenced to the DJJ for misdemeanor offenses after January 1, 2016. Nonetheless, on April 26, 2016, the circuit court sentenced Jarquan B. to the DJJ for a misdemeanor—trespass to vehicle

(720 ILCS 5/21-2(b) (West 2014)). This sentence directly conflicts with both the language of the amendment and the legislature's intent in adopting it. Thus, I respectfully dissent from that part of the majority's decision affirming Jarquan's sentence and would remand for resentencing.

¶ 39 Before January 1, 2016, a minor convicted of a misdemeanor could be sentenced to the DJJ, while an adult who committed the same offense could not be sentenced to the Department of Corrections. In recognition of this sentencing disparity and in an effort to reduce the number of juveniles in DJJ custody, as of January 1, 2016, minors would no longer be committed to the DJJ for misdemeanor offenses. 705 ILCS 405/5-710(1)(b) (West 2016). Thus, a minor who is found guilty of the Class A misdemeanor of criminal trespass to a motor vehicle, as Jarquan was, cannot be sentenced to the DJJ. Jarquan's case poses a dilemma, however, because he committed the offense before the amendment's January 1, 2016 effective date but was sentenced after. Does the amendment preclude the trial court from sentencing him to the DJJ?

¶ 40 In resolving this question, the trial court correctly looked to section 5-720(4) of the Act (705 ILCS 405/5-720(4) (West 2014)), which governs violations of probation. Section 5-720(4) states, in relevant part, that if the court finds that a minor has violated a term of probation, the court may "impose any other sentence that was available under Section 5-710 at the time of the initial sentence." 705 ILCS 405/5-720(4) (West 2014). The trial court determined that because Jarquan admitted to violating his probation, it had authority to impose any sentence it could have imposed when Jarquan was placed on probation, including DJJ commitment. The trial court apparently saw no conflict between section 5-720(4) and the newly amended section 5-710. The majority agrees, concluding that those provisions "are not in conflict and can be read harmoniously." The majority also finds "nothing ambiguous in the amendment to section

710(1)(b)." *Supra* ¶ 19. The majority opinion, in my view, ignores the legislature's expressed intent and abandons settled rules of statutory construction.

¶ 41 As to the issue of ambiguity, the majority asserts that the legislature, in amending section 5-710(1)(b), intended to preclude juveniles from being committed to the DJJ for misdemeanor offenses committed *after* January 1, 2016. Nothing in the amended statute expressly states that it only applies to offenses occurring after January 1, 2016, but the majority contends that if the legislature intended otherwise, it could have so stated. The majority also asserts that the legislature could have amended section 5-720(4) to preclude a trial court from sentencing a minor who violates his probation for an offense committed before January 1, 2016 from being sentenced to the DJJ, but again, chose not to. Thus, the majority concludes that under the plain language of section 5-720(4), a minor who violates his or her probation may be subject to any sentence available at the time of his or her initial sentence, including commitment to the DJJ.

¶ 42 As noted, the legislature did not address whether section 5-710(1)(b) apples only to offenses that occur after January 1, 2016, or can preclude commitment to the DJJ after the amendment's effective date, regardless of when the offense occurred. The amendment's plain language, when read in conjunction with section 5-720(4) of the Act, is amenable to more than one reasonable interpretation and both the State and Jarquan present reasonable, though contrary, interpretations. Our supreme court has defined a statue as "ambiguous" when "it is capable of being understood by reasonably well-informed persons in two or more different senses." *Advincula v. United Blood Services*, 176 Ill. 2d 1, 18 (1996). Because the amendment is open to different plausible interpretations as to its application, it is ambiguous.

¶ 43 When construing a statute, our fundamental objective is to ascertain and give effect to the legislature's intent, best indicated by the plain and ordinary meaning of the statutory language. *People v. Garcia*, 241 Ill. 2d 416, 421 (2011). A reviewing court also may consider the underlying purpose of the statute's enactment, the evils sought to be remedied, and the consequences of construing the statute in one manner versus another. *Id.* "[T]he primacy of legislative intent is paramount, and *all* other rules of statutory construction are subordinate to it." (Emphasis added.) *Id.* at 426; see also *Boston Sand & Gravel Co. v. United States*, 278 U.S. 41, 48 (1928) (plain meaning should be considered "an axiom of experience [rather] than a rule of law and does not preclude consideration of persuasive evidence if it exists"). As Judge Richard Posner reminds us, "Legislators cannot foresee and solve in advance all the problems that will arise in the practical administration of the statutes they enact. The judicial duty of statutory interpretation is not a duty merely to read; it is a duty to help the legislature achieve the aims that can reasonably be inferred from the statutory design, and it requires us to pay attention to the spirit as well as the letter of the statute." *United States v. Markgraf*, 736 F.2d 1179, 1188 (7th Cir. 1984) (Posner, J., dissenting).

¶ 44 Although the majority scoffs at considering legislative history, this court has done so with regularity. In construing statutory language, Illinois courts consider extrinsic aids, including going directly to the legislative history, to resolve the ambiguity and determine legislative intent. *People v. Whitney*, 188 Ill. 2d 91, 97-98 (1999). The legislative history of the amendment supports a finding that the legislature intended that no juvenile be committed to the DJJ after the amendment's effective date.

¶ 45 During the Senate debate, Senator Kwame Raoul stated that the amendment to section 5-710(1)(b) is intended to "address the fact that we're committing *** too many minors to the Department of Juvenile Corrections, at quite a cost to the State." 99th Ill. Gen. Assem., Senate Proceedings, April 22, 2015, at 177 (statements of Senator Raoul). Senator Raoul said that the amendment "makes certain that we no longer commit juvenile misdemeanants to the Department of Juvenile Justice." *Id.*

¶ 46 During the House debate, Representative Elaine Nekritz echoed Senator Raoul, stating that "This legislation is designed to right size our population at the Department of Juvenile Justice and better target our resources ***." 99th Ill. Gen. Assem., House Proceedings, May 28, 2015, at 41 (statements of Representative Nekritz). She stated that one of the amendment's main goals "is to keep those juveniles who have committed misdemeanors out of DJJ." *Id.* When asked by Representative Ron Sandack if the amendment is consistent with the Governor's goal of trying to reduce prison populations, Nekrtiz stated, "Very much so." 99th Ill. Gen. Assem., House Proceedings, May 28, 2015, at 42 (statements of Representative Nekritz). She also agreed that it's an effort "to keep as many people out of the prison system, if possible" and when asked about cost savings, stated that it was estimated the legislation would reduce DJJ commitments by 110 per year. 99th Ill. Gen. Assem., House Proceedings, May 28, 2015, at 42-43 (statements of Representative Nekritz).

¶ 47 These debates show that the legislature intended to reduce the DJJ population, ensure that juveniles are no longer committed to the DJJ for misdemeanor offenses for crimes that if committed as an adult would not result in commitment to the Department of Corrections, and save the state money. In looking to the "evils sought to be remedied, and the purposes to be

achieved" (*Garcia,* 241 Ill. 2d at 426), sentencing Jarquan to the DJJ for a misdemeanor after the effective date of the amendment undermines the amendment's goals and fails to advance the legislature's intent.

¶ 48 The Statute on Statutes (5 ILCS 70/0.01 *et seq.* (West 2014)) also supports a finding that the trial court should have followed the amended section 5-710(1)(b) in sentencing Jarquan rather than the pre-amendment statute. Section 4 of the Statute on Statutes states, in part, "If any penalty, forfeiture or punishment be mitigated by any provisions of a new law, such provision may, by the consent of the party affected, be applied to any judgment pronounced after the new law takes effect." 5 ILCS 70/4 (West 2014). Under section 4 of the Statute on Statutes, legislative enactments can constitute a substantive change or a procedural change or, can mitigate the sentence. *People v. Gancarz*, 228 Ill. 2d 312, 319, 321-22 (2008). And our supreme court has held that where a new sentencing law provides for a lesser penalty than the former law, the defendant is to be sentenced under the new law. *People v. Zboralski*, 33 Ill. App. 3d 912 (1975) (citing *People v. Harvey*, 53 Ill. 2d 585 (1973)).

¶ 49 Because I believe that the amendment to section 5-710(1)(b) precludes any minor from being committed to the DJJ for a misdemeanor after January 1, 2016, I disagree with the majority's assertion that the amendment does not conflict with section 5-720(4). A plain reading of section 5-720(4) suggests that a juvenile who violates probation may receive any other sentence "available under section 5-710 at the time of the initial sentence," which in some instances, like Jarquan's, would presumably include commitment to the DJJ. Section 5-710(1)(b), however, prevents a trial court from committing a juvenile to the DJJ for a

misdemeanor offense any time after January 1, 2016. I would suggest this is the essence of a conflict.

¶ 50 If statutes conflict, courts have a duty to construe them in a way that gives effect to both, if such construction is possible. *People v. Lucas*, 231 Ill. 2d 169, 182 (2008). Generally, when two statutes are in conflict, the more specific takes precedence over the more general and the one enacted later should prevail, as a later expression of legislative intent. *Village of Chatham v. County of Sangamon*, 216 Ill. 2d 402, 431 (2005). Section 5-710(1)(b) was enacted after section 5-720(4), which was last amended in 1999. This indicates a legislative intent to exclude commitment to the DJJ for misdemeanors, when the sentence is imposed after January 1, 2016. Moreover, section 5-710(1)(b) is a specific provision, which prohibits a juvenile from being committed to the DJJ for a misdemeanor offense, while section 5-720(4) is a general provision, allowing a court to impose any sentence that would have been permissible when the sentence was first imposed. Thus, in light of the expressed legislative intent, the more specific language of the amendment and its recent adoption, section 5-710(1)(b) is an exception to the general language of section 5-720(4) and prohibits the trial court from committing Jarquan to the DJJ.

¶ 51 Moreover, and perhaps as telling, if the amendment only applies to minors who committed a misdemeanor after January 1, 2016, then section 5-720(4) conflicts with the plain language of the amendment to section 5-710(1)(b) and the legislature's intent. The majority does not dispute that the legislature amended section 5-710(1)(b) to keep juveniles out of the DJJ for minor offenses.

¶ 52 I agree with the majority that in determining whether amended section 5-710(1)(b) applies to Jarquan's sentence, the analysis in *Landgraf v. USI Film Products*, 511 U.S. 244

(1994), is instructive. I also agree that we do not need to go beyond the first step of the *Landgraf* analysis, because section 4 of the Statute on Statutes provides direction on the temporal reach of every statutory amendment. *Caveney v. Bower*, 207 Ill. 2d 82, 92 (2003). The majority concedes that because the amendment to section 5-710(1)(b) took effect before Jarquan was sentenced on the probation violation, section 4 of the Statute on Statutes "would ordinarily permit him to elect to be sentenced under it." But the majority then raises an issue not addressed by the parties—an apparent conflict between section 4 of the Statute on Statutes and section 5-720(4) of the Act. Applying the rule that the more specific statute should be construed as an exception to the general one (*People ex rel. Madigan v. Burge*, 2014 IL 115635, ¶ 31), the majority concludes that as the more specific, section 5-720(4) is the exception to section 4 of the Statute on Statutes. Hence, section 5-720(4) requires Jarquan be sentenced under the version of section 5-710(b)(1) in effect at the time of his sentencing. This extra complication not only belies the majority's contention that the amendment is not ambiguous, but also the whole argument is a red herring.

¶ 53 The Statute on Statutes is an extrinsic aid of construction applied only if a statute is ambiguous; it is not part of section 5-710. Accordingly, the Statute on Statutes itself does not conflict with provisions of the Juvenile Justice Act. Moreover, by resorting to section 4 of the Statute on Statutes, the majority has, in essence, acknowledged that the temporal reach of amended section 5-710(1)(b), when read in conjunction with section 5-720(4) is ambiguous and cannot be determined by the statute's plain language, as the majority so contends.

¶ 54 As noted, to resolve the conflict between amended section 5-710(1)(b) and section 5-720(4), which has created ambiguity about the amendment's temporal reach, section 4 of the Statute on Statutes permits Jarquan to elect to be sentenced under the amended statute. This

interpretation not only complies with settled rules of statutory construction, but above all, it furthers the intent of the legislature in amending section 5-710(1)(b) to stop the practice of committing juveniles to the DJJ for minor offenses.

¶ 55 While the majority correctly states that statutes should be interpreted "to give effect to the true intent of the legislature," the majority fails to do that very thing. Instead, the majority opts to ignore the amendment and the legislature's intent by applying the prior version of section 5-710(1)(b) to affirm Jarquan's commitment to the DJJ for a misdemeanor. This conflicts with the legislature's intent, as evidenced by the legislative history of amended section 5-710(1)(b), including making sure that minors are no longer committed to the DJJ for misdemeanor offenses that would not result in imprisonment if they were adults.

¶ 56 I would reverse Jarquan's sentence and remand for a new sentencing hearing.

THIS APPEAL INVOLVES A DELINQUENT MINOR PROCEEDING
UNDER THE JUVENILE COURT ACT

18-1180

TO THE APPELLATE COURT OF ILLINOIS
IN THE CIRCUIT COURT OF COOK COUNTY
JUVENILE JUSTICE DIVISION

IN THE INTEREST OF	)	No: 15JD00085
	)	Cal: 58
Jarquan B	)	Judge: Stuart Lubin
A Minor	)	Attorney: Robert Dwyer, Assistant Public Defender

NOTICE OF APPEAL

An Appeal is taken from the Order of Judgment described below:

APPELLANT'S NAME: Jarquan B.
APPELLANT'S ADDRESS: 3640 W. Filmore
Chicago, IL 60624-4309
APPELLANT'S ATTORNEY: Robert Dwyer
OFFENSE: Violation of Probation
JUDGMENT: Guilty
DATE OF JUDGMENT OR SENTENCE: April 26, 2016
SENTENCE: Straight Commitment, Department of Juvenile Justice
credit for 67 days, time considered served

APPELLANT (OR ATTORNEY)

VERIFIED PETITION FOR REPORT OF PROCEEDINGS, COMMON LAW RECORD, AND FOR APPOINTMENT OF COUNSEL ON APPEAL FOR INDIGENT DEFENDANT

Under Supreme Court rules 605-608, Appellant asks the Court to Order the Official Court Reporter to transcribe an original and copy of the proceedings, file the original with the Clerk and deliver a copy to the Appellant; order the Clerk to prepare the Record on Appeal, and to appoint counsel on Appeal. Appellant, being duly sworn, says that at the time of his conviction, he/she was and is unable to pay for the Record or retain counsel for Appeal.

APPELLANT (OR ATTORNEY)

SUBSCRIBED and SWORN TO THIS 4th DAY OF May, 2016

OFFICIAL SEAL
CONNIE BROWN-ALFORD
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:09/20/17

Connie Brown-Alford
NOTARY PUBLIC

ORDER

IT IS ORDERED THAT the State Appellate Defender is appointed as Counsel on Appeal and that the Common Law Record and Report of Proceedings be furnished to Appellant without cost within 45 days of receipt of this Order. Dates to be transcribed (List pre-trial motion date, trial dates, and sentencing or judgment date):2/26/25, 3/16/15, 4/2/15, 4/6/15, 4/9/15, 4/30/15, 7/15/15,7/20/15, 8/6/15, 8/20/15, 9/28/15, 10/1/15, 10/5/15, 10/8/15, 10/13/15, 11/05/15, 11/10/15, 11/17/15, 12/1/15, 12/7/15, 1/7/16, 2/5/16, 2/11/16, 2/18/16, 3/3/16, 3/14/16, 3/31/16, 4/21/16, 4/26/16, 4/28/16

ORDER DATE: 5/4/16 ENTER: [signature] #1554
JUDGE

A-6

C 124

vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Mr. Secretary, take the record. On that question, there are 53 voting Aye, 0 voting Nay, 0 voting Present. Senate Bill 1548, having received the required constitutional majority, is declared passed. Next up is 1560. Senator Raoul. Mr. Secretary, read the bill.

ACTING SECRETARY KAISER:

Senate Bill 1560.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR SULLIVAN)

Senator Raoul.

SENATOR RAOUL:

Thank -- thank you, Mr. President, Ladies and Gentlemen of the Senate. Senate Bill 1560 makes several changes to the Juvenile Court Act. This is a bill to address the fact that we're committing too many people -- too many minors to the Department of Juvenile Justice, at quite a cost to the State. It makes certain that we no longer commit juvenile misdemeanants to the Department of Juvenile Justice, nor do we commit any minors to the Department of Juvenile Justice for an offense that, if they committed it as an adult, they would not be committed to the Department of Corrections. The bill also places limits on the length of time a minor spends in aftercare and it expands the documents that must be provided by courts upon the commitment to the Department of Juvenile Justice. I know of no opposition to the bill.

PRESIDING OFFICER: (SENATOR SULLIVAN)

Thank you. Is there any discussion? Seeing none, the question is, shall Senate Bill 1560 pass. All those in favor will

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vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 55 voting Aye, 0 voting Nay, 0 voting Present. Senate Bill 1560, having received the required constitutional majority, is declared passed. Next up is Senate Bill 1561. Senator Manar. Mr. Secretary, read the bill.

ACTING SECRETARY KAISER:

Senate Bill 1561.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR SULLIVAN)

Senator Manar.

SENATOR MANAR:

Thank you, Mr. President. This bill is a -- an initiative of the School Management Alliance and the Illinois Association of School Boards. It seeks to remove what is an impediment in statute today for school consolidation, dealing specifically with how the school construction grants are scored. I'd be happy to answer any questions about the details of the bill. I know of no opposition.

PRESIDING OFFICER: (SENATOR SULLIVAN)

Thank you. Is there any discussion? Seeing none, the question is, shall Senate Bill 1561 pass. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 55 voting Aye, 0 voting Nay, 0 voting Present. Senate Bill 1561, having received the required constitutional majority, is declared passed. 1562. Senator Brady. Please read the bill, Mr. Secretary.

ACTING SECRETARY KAISER:

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STATE OF ILLINOIS
99th GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES
TRANSCRIPTION DEBATE

57th Legislative Day 5/28/2015

Speaker Lang: "Those in favor of the Gentleman's Bill will vote 'yes'; opposed 'no'. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Evans, Moffitt. Please take the record. There are 114 voting 'yes', 1 voting 'present'. And this Bill, having received the Constitutional Majority, is hereby declared passed. Senate Bill 1560, Representative Nekritz. Please read the Bill."

Clerk Hollman: "Senate Bill 1560, a Bill for an Act concerning criminal law. Third Reading of this Senate Bill."

Speaker Lang: "Representative Nekritz."

Nekritz: "Thank you, Mr. Speaker. This legislation is designed to right size our population at the Department of Juvenile Justice and tar… better target our resources to those who can benefit from the most and to improve efficiencies as well. So, the Bill does four major things. One is it keeps those juveniles who've committed misdemeanors out of DJJ. They're identical to what we do within adult cases. And it also clarifies that for just status offenses, truants, and those kinds of things, that there is no commitment to DJJ as well. It suspends aftercare, which is essentially parole for those with… who have… are on aftercare but have committed another offense and that might send them to the Department of Corrections. Right now they're sent back to DJJ. We're tying to… we want to keep those individuals, because they tend to be older, out of DJJ. It limits the amount of time that a juvenile spends on aftercare to be proportional depending on the crime that they committed. And finally, it expands the documents which be… much… which must be provided by the courts upon commitment to DJJ."

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STATE OF ILLINOIS
99th GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES
TRANSCRIPTION DEBATE

57th Legislative Day 5/28/2015

Speaker Lang: "Mr. Sandack."

Sandack: "Thank you. A few questions of the Sponsor."

Speaker Lang: "Sponsor yields."

Sandack: "Representative Nekritz, would you say that this Bill is consistent with the Governor's goal of trying to reduce prison populations?"

Nekritz: "Very much so. This is a… this is an initiative of the Department of Juvenile Justice."

Sandack: "And it's an attempt to… to right size, if you will, where people are housed and keep as many people out of the prison system if possible if they… and because there's, you know, negative affects for minors particularly going into the… to the adult population."

Nekritz: "I would… yes. I would agree."

Sandack: "Thank you. To the Bill. I think this is a good initiative. It was vetted very carefully and it is consistent with some of the reform initiatives that… that I think both Parties are trying to undertake and that the Governor has sanctioned as good policy as well. So I urge an 'aye' vote."

Speaker Lang: "Mr. Ford."

Ford: "Thank you, Mr. Speaker. Will the Sponsor yield?"

Speaker Lang: "Sponsor yields."

Ford: "Representative, I would like to congratulate you on such a good piece of legislation. This is reform and I think that it's the right thing to do, but there's one question I have. Was there a study done on how much, if this Bill is signed into law, how much it will save the state and the county as a result of passing such a good measure like this?"

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Nekritz: "Representative, I don't know. I don't think I have a dollar amount. I do have some of the numbers on the number of individuals… juveniles that it will keep out of DJJ. So, for example, the… give me just a minute here. So, it… current… on Mar… in March of 2015, there were 27 youths in DJJ who had committed misdemeanors and the… they estimate that this would reduce DJJ commitments by 110 youth annually. So that's keeping the amount for… for misdemeanors. I believe that… that DJJ would say of the… of the individuals who are on aftercare and then commit another crime, which currently sends them back to DJJ instead of having them be held in county jail, that there are 70 of those individuals at any given time."

Ford: "So with this passage of this Bill and if it's signed into law, will there still be services provided for individuals that are misdemeanants that's in the system?"

Nekritz: "Yes. They… I think… they would still get services for misdemeanors. They will not just be released, but they'll be… they'll get more appropriate services. And I believe the data shows that if they're not incarcerated, even if it's at the Department of Juvenile Justice, that the recidi… recidivism rate is lower."

Ford: "I appreciate the legislation. I urge an 'aye' vote."

Speaker Lang: "Those in favor of the Bill will vote 'yes'; opposed 'no'. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Bradley, Cavaletto. Mr. Clerk, please take the record. On this question, there are 79 voting 'yes', 35 voting 'no'. And this Bill, having received the Constitutional Majority, is hereby declared

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passed. Page 10 of the Calendar, Senate Bill 1564, Representative Gabel. Out of the record. Senate Bill 1590, Mr. Tryon. Mr. Tryon. Out of the record. Senate Bill 1591, Mr. Martwick. Please read the Bill."

Clerk Bolin: "Senate Bill 1591, a Bill for an Act concerning education. Third Reading of this Senate Bill."

Speaker Lang: "Mr. Martwick."

Martwick: "Thank you, Mr. Speaker, Ladies and Gentlemen of the House. Senate Bill 1591 is an agreed Bill; there are no opponents. It amends the School Code. It adds a transparency. It requires applicants wishing to establish a new charter school to disclose in their proposal any civil or criminal investigation by law enforcement agency in… into the application. So if there's any current undergoing civil or criminal investigation only initiated by a law… federal, state or a local law enforcement agency that must be disclosed in the application for a new charter school. Happy to answer any questions. I ask for an 'aye' vote."

Speaker Lang: "Mr. Sandack. Sponsor yields."

Sandack: "Thank you. Representative, just out of curiosity, do you have any charter schools in your district?"

Martwick: "I do not."

Sandack: "And how is it that this Bill came to you?"

Martwick: "I'm sorry. Say is that?"

Sandack: "How did you get the Bill that you're proposing today?"

Martwick: "It was a Senate Bill by Senator Collins. I was asked to carry it in the House."

Sandack: "And by whom were you asked, other than Senator Collins?"

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