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

No. 120796
IN THE
SUPREME COURT OF ILLINOIS

In re DESTINY P., a minor, (PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Cook County, Juvenile Justice Division. No. 14 JD 01625
Petitioner-Appellant,	)	
v.	)	The Honorable Stuart Katz, Judge Presiding.
DESTINY P., a minor,	)	
Respondent-Appellee).	)	

REPLY/CROSS-APPELLEE BRIEF FOR PETITIONER-APPELLANT

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ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

ARGUMENT

I. THE LEGISLATURE DID NOT VIOLATE RESPONDENT'S EQUAL PROTECTION RIGHTS WHEN IT AFFORDED A JURY TRIAL RIGHT TO CHRONIC JUVENILE OFFENDERS CHARGED WITH FIRST DEGREE MURDER UNDER THE HJO AND VJO STATUTES BUT DID NOT AFFORD SUCH A RIGHT TO NON-RECIDIVIST MINORS, LIKE RESPONDENT, WHO ARE CHARGED WITH FIRST DEGREE MURDER AND FACE SENTENCING UNDER THE GENERAL DOJJ STATUTE.

(People's Reply to Respondent's Argument I)

In their opening brief, the People established that the circuit court erroneously held that respondent, and any other juvenile charged with first degree murder under the DOJJ statute[1], must be granted a jury trial right on equal protection grounds. The People demonstrated that the circuit court incorrectly determined that respondent was similarly situated to recidivist juvenile offenders who are afforded a jury trial right under the HJO and VJO statutes. (Peo. Br. 21-32) Under its analysis, the circuit court erroneously discounted the distinct legislative purpose behind the HJO and VJO statutes; failed to identify the proper comparison group (recidivist offenders charged with first degree murder under the HJO and VJO statutes); and inaccurately found that respondent was "worse off" than recidivist juvenile offenders who are sentenced under the HJO and VJO statutes. (Peo. Br. 21-32) Finally, the People demonstrated that, even if these three classes of juveniles are similarly situated, the provision survived rational basis scrutiny

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[1] As in the opening brief, "DOJJ statute" refers to the Department of Juvenile Justice statute, 705 ILCS 405/750(2) (2012), the "HJO statute" refers to the Habitual Juvenile Offender statute, 705 ILCS 405/5-815 (2012), and the "VJO statute" refers to the Violent Juvenile Offender statute, 705 ILCS 405/5-820 (2012).

because the legislature had a legitimate governmental purpose in affording a jury trial right to recidivist offenders under the HJO and VJO statutes while not giving such a right to juveniles charged with first degree murder under the DOJJ statute. (Peo. Br. 33-39) The legislature rationally decided to provide for a jury trial right under the HJO and VJO statutes because these recidivist juvenile offenders are subject to a harsher sentence under a scheme that more closely resembles adult proceedings. (Peo. Br. 35-39)

In defending the circuit court's equal protection ruling, respondent employs the same mistaken reasoning utilized by that court. Consequently, this Court should reverse the circuit court's judgment.

A. The Circuit Court's As-Applied Equal Protection Ruling Must Be Reversed Because Respondent, A First-Time Offender, Is Not Similarly Situated With Recidivist Offenders Charged With First-Degree Murder Under The HJO And VJO Statutes.

Respondent argues that the People mistakenly claim that the proper comparison is between a juvenile facing first degree murder charges under the DOJJ statute and a juvenile facing first degree murder charges under the HJO or VJO statutes. (Resp. Br. 5)[2] Like the circuit court below, respondent believes that "the challenged classification here

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[2] At one point, respondent misconstrues the People's comparison group as "juvenile[s] charged with *a repeat offense of murder*." (Emphasis added.) (Resp. Br. 5-6) But the People's comparison group is not limited to juveniles charged with a repeat offense of murder; it encompasses offenders who have been previously adjudicated delinquent of the qualifying offenses set out in the HJO and VJO statutes and are charged with first degree murder as the triggering offense for that HJO or VJO proceeding. In other words, DOJJ juveniles charged *with murder* and HJO and VJO juveniles charged *with murder* are the only truly "similarly situated" comparator groups for purposes of equal protection. Moreover, a 13-17 year-old repeat offender with a prior murder adjudication would most likely face an EJJ prosecution (705 ILCS 405/5-810 (2012)) or be subject to a discretionary transfer to adult court (705 ILCS 405/5-805 (2012)).

is *within* one group – those facing mandatory incarceration and provided with the right to a jury trial, compared to those facing mandatory incarceration but denied a right to a jury trial." (Emphasis in original) (Resp. Br. 5) Respondent contends that these classes are similarly situated simply because the limited group of juveniles charged with first degree murder under the DOJJ statute and the more general group of every juvenile charged under the HJO and VJO statutes are all subject to the deprivation of liberty occasioned by mandatory commitment. (Resp. Br. 6) Furthermore, by comparing herself to recidivist juvenile offenders charged with less serious offenses under the HJO and VJO statutes, respondent claims that she is subject to a more severe sentence as a first-time offender under the DOJJ statute, and therefore, the absence of a jury trial right "in effect" punishes her for not being a repeat offender. (Resp. Br. 6)

Respondent, like the circuit court, errs by refusing to acknowledge that the appropriate comparison is between juveniles charged with murder under the DOJJ statute and those facing the same charge under the HJO and VJO statutes. In any case, these two groups are not similarly situated precisely because the HJO and VJO juveniles have prior delinquency adjudications, a characteristic the legislature specifically addressed in enacting the HJO and VJO statutes. To permit respondent to distort the comparison group to include recidivist juveniles charged not only with first degree murder but also with lesser offenses exacerbates the differences in comparison with respondent's group: *first-time* juvenile offenders charged with murder.

This Court should reject respondent's argument that facing mandatory incarceration after a delinquency adjudication is sufficient to render non-recidivist DOJJ

juveniles similarly situated to recidivist HJO and VJO juveniles. This Court recently rejected an equal protection challenge that, like respondent's argument here, focused only on similarities of post-adjudication consequences while ignoring differences in the charges faced or the criminal history of the juveniles being compared. In *In re M.A.*, 2015 IL 118049, M.A. was adjudicated delinquent of aggravated domestic battery for stabbing her brother and, as a result, was subject to a mandatory registration requirement under 730 ILCS 154/10(a) (2012), the Murderer and Violent Offender Against Youth Registration Act (Violent Offender Act). 2015 IL 118049, ¶¶ 5, 11. Pursuant to the Violent Offender Act, juveniles were required to register as adults upon turning 17 years old, and *did not* have the opportunity to seek termination of their registration. *Id.* at ¶¶ 19-20, citing 730 ILCS 154/10(a). M.A. claimed that her right to equal protection was violated because juvenile sex offenders had a more lenient registration requirement under 730 ILCS 150/3-5(a), (c) (2012), the Sex Offender Registration Act (Registration Act). 2015 IL 118049, ¶¶ 13, 23. Under the Registration Act, juvenile sex offenders were relieved of the obligation to register as adults upon turning 17 years old, and were allowed an opportunity, after five years, to demonstrate that their obligation to register should be terminated. *Id.* at ¶ 28, citing 730 ILCS 150/3-5(a), (c).

The appellate court found that M.A satisfied the threshold requirement and held that "the disparity in treatment between these 'similarly situated' groups had no rational basis, so that the Violent Offender Act's registration requirement for juveniles violated equal protection." 2015 IL 118049, ¶ 33, citing *M.A.*, 2014 IL App (1st) 132540, ¶ 73. In finding that these two groups were similarly situated, the appellate court acknowledged

that "'[c]learly, the offenses with which the two groups of juveniles are charged are different and require proof of different elements.'" *Id.*, quoting *M.A.*, 2014 IL App (1st) 132540, ¶ 69. However, the appellate court disregarded these differences and found that, "'for purposes of M.A.'s equal protection argument, we believe the appropriate class of persons is juvenile offenders who, as a result of a juvenile adjudication, are required to register with law enforcement authorities.'" *Id.*, quoting 2014 IL App (1st) 132540, ¶ 69.

This Court disagreed with the appellate court and held that juvenile sex offenders subject to the Registration Act were not similarly situated to juvenile violent offenders subject to the Violent Offender Act. 2015 IL 118049, ¶ 29. In reversing, this Court admonished that "[s]imply declaring a group similarly situated does not make it so absent some evidence that the individuals are *in all respects alike*." (Emphasis added.) *Id.* at ¶33. This Court stressed that "[w]hile juveniles adjudicated delinquent under the Registration Act and under the Violent Offender Act may appear to be similarly situated because both statutes require the juveniles to register, a determination that individuals are similarly situated for equal protection purposes cannot be made in the abstract." *Id.* at ¶ 29, citing *People v. Warren*, 173 Ill. 2d 348, 363 (1996). This Court concluded that the evaluation of whether individuals are similarly situated should only be made in light of the purpose of the legislation involved. *Id.* This Court then examined the legislative history of the statutes at issue. *Id.* at ¶¶ 30-31. After noting that the Registration Act had previously covered both juvenile violent offenders and juvenile sex offenders, this Court stated:

> "The purpose of the Violent Offender Act, then, was to remove nonsexual offenders from the Registration Act, as the legislature concluded that it was a greater stigma to be categorized as a sex offender

> than a violent offender. The legislature also recognized that the crimes of the nonsexual offenders had nothing to do with sexual offenses. In other words, the Violent Offender Act was enacted *because* the legislature determined that violent offenders were not similarly situated to sex offenders. The Registration Act and the Violent Offender Act address qualitatively different types of offenders and qualitatively different types of offenses. Consequently, although both juvenile sexual offenders and juvenile violent offenders are required to register under the applicable statutes, the statutes address separate groups of offenders in a manner unique to each group.
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> M.A., a juvenile violent offender, was not similarly situated to a juvenile adjudicated delinquent under the Registration Act. Therefore, it is of no consequence that the registration provisions for juveniles adjudicated delinquent under the Registration Act differ from the registration provisions for juveniles adjudicated delinquent under the Violent Offender Act." *Id.* at ¶¶ 32, 34.

Thus, in *M.A.*, this Court found that the fact that juvenile violent offenders and juvenile sex offenders faced mandatory registration requirements did not alone establish that the two groups were similarly situated because the purposes behind the Violent Offender and Registration Acts reflected a legislative intent to treat juveniles with different types of delinquency adjudications differently. Here, when the purpose of the HJO and VJO statutes are considered, it is evident that legislature did not view recidivist juveniles "alike in all respects" with first-time offenders, as outlined below. Therefore, like *M.A.*, this Court should hold that the fact that juveniles charged with first degree murder under the DOJJ statute and recidivist juvenile offenders charged under the HJO and VJO statutes face mandatory commitment does not alone establish that the three classes are similarly situated.

As irrefutably established in the People's opening brief (Peo. Br. 25-27), in enacting the HJO and VJO statutes, the legislature sought to address the fact that "a disproportionate amount of serious crime is committed by a relatively small number of juvenile offenders." 705 ILCS 405/5-801 (2012) (legislative declaration). Thus, in enacting the HJO and VJO statutes, the legislature established a framework that permits the removal of certain violent and habitual juvenile offenders from the general DOJJ statute. 705 ILCS 405/5-815(a)-(d) (2012); 705 ILCS 405/5-820(a)-(d) (2012). In addition to addressing a "qualitatively different type of offender," the HJO and VJO statutes operate under an entirely separate scheme that limits the options of the juvenile judge by implementing a harsher sentencing structure than the one found under the DOJJ statute. 705 ILCS 405/5-815(f) (2012); 705 ILCS 405/5-820(f) (2012). In order to secure a more severe sentence under the HJO or VJO statute, the People are required to comply with particular notice and filing requirements, and to prove the validity of the juvenile's alleged prior adjudications at a separate hearing after evidentiary proof is presented at trial. 705 ILCS 405/5-815(b), (c), (e) (2012); 705 ILCS 405/5-820(b), (c), (e) (2012). Respondent does not – and cannot – dispute these legislative distinctions. That, apparently, is why she proposes focusing on shifting the similarly-situated analysis from these significant differences among the juveniles at the time of charging to post-adjudication consequences, even suggesting the HJO and VJO comparison group be broadened to include recidivist juveniles now charged with offenses besides murder. (Resp. Br. 6) But this post-adjudication focus was rejected by this Court in *M.A.*

There can be no doubt that recidivist juveniles charged with murder are not similarly situated to first-time juvenile offenders charged with murder. Under the HJO and VJO sentencing scheme, a recidivist juvenile charged with first degree murder faces a harsher sentence than a first-time offender charged with first degree murder under the DOJJ statute. Under the DOJJ statute, a juvenile charged with first degree murder faces mandatory commitment *without the possibility of parole for five years*. 705 ILCS 405/5-750(2) (2012). In contrast, a recidivist juvenile charged with first degree murder under the HJO and VJO statutes faces mandatory commitment *with no possibility of parole*. 705 ILCS 405/5-815(f) (2012); 705 ILCS 405/5-820(f) (2012). Clearly, the legislative purpose behind the HJO and VJO statutes confirms that the General Assembly did not view recidivist juveniles as "alike in all respects" to first-time offenders charged under the DOJJ statute. Therefore, like the situation in *M.A.*, in this case, the DOJJ statute and the HJO and VJO statutes address "separate groups of offenders in a manner unique to each group."

Respondent errs by proposing that this Court compare first-time juvenile offenders charged with murder, like herself, with recidivist juveniles charged with lesser offenses given that she is subject to a more severe sentence under the DOJJ statute (though as a first-time offender) than the recidivist juvenile offenders charged with, for instance, burglary, under the HJO and VJO statutes. (Resp. Br. 6) Respondent complains that "[m]urder is unquestionably a more severe offense than burglary and more of a threat to the safety of society, but a juvenile first-time offender facing a murder charge and a repeat offender facing a burglary charge, each face mandatory incarceration; however,

only the repeat offender charged with burglary is afforded the right to a jury trial." (Resp. Br. 6) Respondent then protests that this scheme "in effect, punish[es] minors for *not* being repeat offenders." (Emphasis added.) (Resp. Br. 6)

To compare a person charged with first degree murder with one facing a charge for a lesser offense like burglary is a skewed comparison. Respondent fails to cite any caselaw in which a federal or state court invalidated a statute on equal protection grounds where the comparison group is charged with a different offense and sentenced under a different sentencing scheme. In fact, respondent's analysis closely resembles the now-defunct cross-comparison test, which permitted courts to judge penalties of offenses with different elements in assessing claims under the Proportionate Penalties Clause. *People v. Sharpe*, 216 Ill. 2d 481, 516-17 (2005). The cross-comparison test was abandoned as "problematic and unworkable" because it unnecessarily led to the invalidation of otherwise constitutional statutes. *Id.* at 519. ("Those cases that used [cross-comparison] analysis to invalidate a penalty are overruled, and this court will no longer use the proportionate penalties clause to judge a penalty in relation to the penalty for an offense with different elements.").

Like the cross-comparison test, respondent's analysis, which departs from well-established equal protection jurisprudence, is problematic and unworkable because it compares undeniably dissimilar groups. Respondent compares the most years a first-time juvenile offender could spend committed for the offense of first degree murder under the DOJJ with the most years a recidivist juvenile can spend committed for a less serious offense under the HJO and VJO statutes. In this regard, respondent states:

> "If Destiny P., or other 13-17-year-old minors, are found guilty of first degree murder, they would be required to serve a mandatory sentence of incarceration until the age of 21, without the possibility of parole for five years, and are not entitled to day for day credit. 705 ILCS 405/5-750 (West 2016). Whereas, offenders adjudicated under the HJO and VJO statutes are required to be incarcerated until their 21st birthday, with no possibility of parole after five years, however they are given day for day credit. 705 ILCS 405/5-820; 705 ILCS 405/5-815 (West 2016).Thus, the most years spent incarcerated for a juvenile convicted of murder under the DOJJ is five years, if paroled, or eight if not paroled. Whereas, the most years spent incarcerated for juvenile charged under the HJO and VJO statutes would be four years (eight years with day for day good time credit), or eight years if not given day for day credit due to bad behavior." (Resp. Br. 8-9)

In a footnote, respondent acknowledges the fact that recidivist juveniles charged with first degree murder under the HJO and VJO are not eligible for good conduct credit. (Resp. Br. 9, n.2) However, respondent dismisses this statutory feature that delineates the length of commitment for first degree murder under the HJO and VJO statutes by simply noting that "the numerous other offenses that qualify a juvenile to be charged under the HJO or VJO statutes are provided good time credit." (Resp. Br. 9, n.2) Again, respondent fails to provide a reasonable explanation for refusing to compare juveniles currently charged with the same offense: non-recidivist juveniles, like herself, who are charged with first degree murder under the DOJJ statute with recidivist juvenile offenders charged with first degree murder under the HJO and VJO statutes. (Resp. Br. 2-13) Respondent's suggestion ignores this Court's admonition that individuals are not similarly situated unless they are alike in all respects. *M.A.*, 2015 IL 118049, ¶ 33. And respondent's skewed approach obscures that, unlike the sentence that respondent faces under the DOJJ statute, a recidivist juvenile charged with first degree murder is committed until the age of 21 *without the possibility of parole.*

In fact, there is a matching escalation of punishment when comparing the sentencing consequences of first-time offenders charged with a lesser crime like burglary and with first degree murder compared to recidivist juveniles charged with burglary and murder. Under all three statutes, the harshness of the sentence increases in conjunction with the seriousness of the offense. But, contrary to respondent's contention, a recidivist juvenile *always* faces a tougher sentence under the HJO and VJO statutes than he or she would under the DOJJ statute for the same offense.

Residential Burglary: Under the DOJJ statute, a non-recidivist offender adjudicated delinquent for residential burglary faces a mandatory minimum of five years of probation. 705 ILCS 405/5-715(1) (2012). Under appropriate circumstances, a non-recidivist offender adjudicated delinquent of residential burglary may be committed to the DOJJ for a period of time up to the age of 21. 705 ILCS 405/5-750(3) (2012). Such a juvenile may be paroled and placed in aftercare release at any time. 705 ILCS 405 ILCS 405/5-750(3) (2012). In contrast, under the HJO statute, if a recidivist offender is adjudicated delinquent of residential burglary, he is not eligible for probation and faces a mandatory commitment until the age of 21 (or eight years at most) with *no possibility of parole*. 705 ILCS 405/5-815(f) (2012). Although such a juvenile has no possibility of parole, the legislature allows a recidivist juvenile to earn good conduct credit like adult offenders. 705 ILCS 405/5-815(f) (2012). In fact, the HJO and VJO statutes incorporate the Code of Corrections statute governing good conduct credit for adult prisoners. 730 ILCS 5/3-6-3 (2012). Under that statute, a recidivist juvenile offender committed to the DOJJ for the offense of residential burglary is permitted to earn day-for-day credit. 730

ILCS 5/3-6-3(a)(2.1) (2014) Hence, a recidivist juvenile will serve eight years if not given day-for-day credit due to his bad behavior or, at best, four years (eight years at 50%). This side-by-side comparison reveals that a recidivist juvenile facing charges for residential burglary is subject to a harsher sentencing scheme because he faces *mandatory* commitment of four to eight years, while a non-recidivist offender may be sentenced to a five-year period of probation or committed to the DOJJ for up to eight years under the DOJJ statute – but may be paroled *at any time*.

Armed Robbery: A non-recidivist juvenile who is found delinquent of armed robbery under the DOJJ statute, faces a mandatory minimum sentence of five years of probation. 705 ILCS 405/5-715(1) (2012). Under appropriate circumstances, a non-recidivist offender adjudicated delinquent of residential burglary may be committed to the DOJJ for a period of time up to the age of 21, 705 ILCS 405/5-750(3) (2012), but may be may be paroled and placed on aftercare release at any time, 705 ILCS 405/5-750(3) (2012). In contrast, a recidivist juvenile found delinquent of armed robbery under the HJO or VJO statute faces a mandatory commitment until the age of 21 with *no possibility of parole*. 705 ILCS 405/5-815(f) (2012); 705 ILCS 405/5-820(f) (2012). Although such a juvenile has no possibility of parole, he can earn good conduct credit but no more than 4.5 days of credit in a month, because armed robbery is a Class X offense. 730 ILCS 5/3-6-3(a)(2)(iii) (2012); see also 720 ILCS 5/18-2(b) (2012). Thus, a recidivist juvenile who is adjudicated delinquent of armed robbery, faces eight years if not given good time credit or, at best, six years, nine months, and 18 days (eight years at 85%). As in the case of residential burglary, a recidivist juvenile offender facing armed robbery charges is subject

to a more severe sentencing scheme: the recidivist offender faces *mandatory* commitment of between 6 years, nine months, and 18 days up to eight years, while a non-recidivist offender, again, may be sentenced to a five-year period of probation or DOJJ commitment of up to eight years but with parole possible *at any time*.

At this juncture, it bears repeating the difference in sentencing between the DOJJ and HJO and VJO statutes on the offense of first degree murder. Because first degree murder is the most serious offense, a juvenile who commits murder is subjected to a tougher sentence under all three statutes, but the potential sentence received under both the HJO and VJO statutes is harsher than the sentence imposed under the DOJJ statute. Under the DOJJ statute, a non-recidivist juvenile offender faces mandatory commitment until the age of 21 without possibility of parole for five years. 705 ILCS 405/5-750(2) (2012). In other words, the DOJJ provision imposes a mandatory minimum sentence of five years without good conduct credit, which may mean release before the age of 21 depending on the juvenile's age. In sharp contrast, under the HJO and VJO, a recidivist juvenile offender found delinquent of murder is subject to mandatory commitment until the age of 21 *without the possibility of parole* and without good conduct credit. See 730 ILCS 5/3-6-3(a)(2)(i) (2012). Thus, a 13-year-old recidivist juvenile offender must serve eight years, a 14-year-old will serve 7 years, etc. Again, under the HJO and VJO, a recidivist offender facing first degree murder charges is subjected to a harsher sentencing scheme than non-recidivist juvenile offenders who face charges on the same offense.

As made evident by the comparison of these three offenses (residential burglary, armed robbery and first degree murder), when a more serious offense is at issue, the

distinction between the sentences received under the DOJJ statue and the HJO and VJO sentencing scheme narrows because of the gravity of the offense. But, it is undeniable that the HJO and VJO sentences are always more severe because there is no possibility of parole under the HJO and VJO statutes for all three offenses and no possibility of probation for the two lesser offenses. Thus, juveniles facing a given charge under the HJO and VJO statutes *always* face harsher sentences then juveniles facing that charge under the DOJJ statute. This Court should reject respondent's suggestion to compare recidivist and non-recidivist juveniles facing *different* charges under the three statutes.

Nevertheless, respondent would have this Court disregard the true comparison group—recidivist juvenile offenders charged with first degree murder under the HJO and VJO statute—and compare her with recidivist juvenile offenders charged with a different and less serious offense. However, as demonstrated, respondent's improper comparison does not accurately reflect the operation of the HJO and VJO statutes and distorts the legislature's intent in enacting those statutes. It also masks the reality that respondent, in fact, faces a more lenient sentence under the DOJJ statute than a recidivist juvenile would face under the HJO and VJO *for the same offense*. By comparing the sentence for first degree murder under the DOJJ statute with a sentence for a different and less serious offense under the HJO and VJO statutes, the circuit court invalidated a statute on equal protection grounds when the comparison groups were not "alike in all respects," thereby rendering the threshold requirement meaningless, and potentially engaging in the now-defunct cross-comparison analysis at its core. The charges filed against respondent require the People to prove the elements of first degree murder, but she compares herself

to a recidivist juvenile charged with a lesser offense like residential burglary. Thus, respondent's skewed comparison suffers from the same infirmities that plagued the cross-comparison test previously employed under the proportionate penalties clause. Respondent should not be permitted to resurrect the cross-comparison test under the guise of an equal protection claim because such an approach needlessly encroaches on the legislature's right to fashion delinquency proceedings. See *Sharpe*, 216 Ill. 2d at 522. (this Court "caution[ed] that the cross-comparison challenge will not simply resurface as a due process challenge"); *People v. Rizzo*, 2016 IL 118599, ¶ 42, n.5 (same).

Finally, respondent relies on *In re G.O.*, 304 Ill. App. 3d 719 (1st Dist. 1999), *reversed and vacated on other grounds, In re G.O.*, 191 Ill. 2d 37, 44-46 (2000), to support her abstract analysis of the statues at issue and her claim that she faces a more severe sentence as a first-time offender. (Resp. Br. 6-8) However, as the People demonstrated in their opening brief (Peo. Br. 32), the appellate court's threshold finding in *G.O.* was plagued with the same analytical errors committed by the circuit court and advanced by respondent in this Court. A proper analysis demonstrates that first-time juvenile offenders charged with first degree murder under the DOJJ statute are not similarly situated to recidivist juvenile offenders charged with first degree murder under the HJO and VJO statute. Accordingly, the People ask this Court to reverse the circuit court's equal protection ruling on the basis that it erred in finding that respondent satisfied the threshold inquiry.

B. The Legislative Determination To Afford A Jury Trial To Recidivist Juveniles Adjudicated Under HJO And VJO Statutes, And Not All Other Juveniles Charged With First Degree Murder, Is Rationally Related To A Legitimate Government Purpose.

In their opening brief, the People also established that, even if respondent satisfied the threshold inquiry, the legislative scheme that affords a jury trial to recidivist juveniles adjudicated under the HJO and VJO statutes, while not affording such a right to juveniles charged with first degree murder under the DOJJ statute, categorically survives the rational basis test. (Peo. Br. 33-39) The People demonstrated that the legislature granted a jury trial right to violent and habitual offenders because they were subjected to a harsher and more adult-like sentencing scheme under the HJO and VJO statutes than non-recidivist juveniles adjudicated under the DOJJ statute. (Peo. Br. 35-39) In her response, respondent disregards the unique statutory framework adopted in the HJO and VJO statutes and argues that there is no rational basis to differentiate between the recidivist juveniles facing the mandatory commitment under the HJO and VJO statutes and non-recidivist juveniles facing mandatory commitment for first degree murder under the DOJJ statute. (Resp. Br. 13-17) According to respondent, the legislative reasoning for providing the right to a jury trial in the HJO and VJO statues applies to the adjudication of first degree murder under the DOJJ statue. (Resp. Br. 15-16) In support of her position, respondent primarily relies on the appellate opinion *In re G.O.*, 304 Ill. App. 3d 719 (1st Dist. 1999) and the dissent in *In re G.O.*, 191 Ill. 2d 37, 44-46 (2000) (Heiple, J. dissenting). (Res. Br. 15-16) Respondent's reasoning and authority fail to undermine the People's contention that legislature had a rational basis to afford a jury trial right to

recidivist juvenile offenders in HJO and VJO proceedings, while not affording such a right to non-recidivist juvenile offenders facing mandatory commitment for first degree murder under the DOJJ statute.

Respondent accurately points out that Juvenile Court Act "itself provides no explanation for the inclusion of the right to a jury trial for HJO and VJO offenders, and not those charged with murder." (Resp. Br. 14) But, according to respondent, "Senator Hawkinson, one of the sponsors of the legislation providing that right to HJO and VJO offenders, explained 'you're giving them the right to a jury trial for extended due process *in [this] situation*[.]" (Emphasis in original.) (Resp. Br. 14), quoting 90th Ill. Gen. Assem., Senate Proceedings, January 29, 1998, at 33. Relying on this quotation, respondent asserts that Senator Hawkinson's referral to 'their situation' can no doubt be a reference to the potential for 'severe incarceration.'" (Resp. Br. 14), citing *In re Jonathon C.B.*, 2011 IL 107750, ¶ 117. Respondent then argues that "the same analysis is also applicable to [her], a juvenile facing 'severe deprivations of liberty: mandatory incarceration,' but is simply charged under a different section of the Act." (Resp. Br. 14), quoting *C.B.*, 2011 IL 107750, ¶ 117.

Senator Hawkinson's statement, which was made in 1998, fails to support respondent's position. The senator's statement did not address the legislative intent in enacting the HJO and VJO statute. Nor can they be interpreted in that manner. The HJO statute came into effect and became law in **1979** (Pub. Act 81-1104 (eff. Oct. 31, 1979)), while the VJO statute was enacted in **1994** (Pub. Act 88-678 (eff. Dec. 15, 1994)). In **1998**, Senator Hawkinson was commenting on the jury trial right afforded to juveniles

under the Extended Juvenile Jurisdiction statute (EJJ statute). (705 ILCS 405/5-810 (2012) (Pub. Act 90-590 (eff. June 9, 1998). When placed in proper context, there is no question that his comments in the debate were solely directed at the EJJ statute. In this regard, Senator Hawkinson stated:

> "But to address the broader question of the EJJ, I was initially real leery of this, and when a former drafter – before the State's Attorney got involved, out of the City of Chicago, there came a draft to have this provision in, I indicated I didn't think I'd support it, because really what it does is it gives an additional chance. Right now these kids are being transferred to adult court – right now. But with this EJJ, you give the prosecutor and the court one more option to have the extended juvenile jurisdiction sentence with the alternative adult sentence. *So I think you're really giving the young person an additional chance with EJJ, plus you're giving them the right to a jury trial for extended due process in this situation.* So that's the group it's designed for, those who are currently at the presumptive transfer level or above, who under today's laws are being transferred to adult court because this – there isn't this option." (Emphasis added.) 90th Ill. Gen. Assem., Senate Proceedings, Jan. 29, 1998, at 33.

It is plainly evident that the phrase "in this situation" referred to the blended juvenile and adult criminal sentences that are implemented in an EJJ prosecution. The EJJ statute requires a trial judge to impose a juvenile sentence, and an adult criminal sentence that is stayed pending successful completion of the terms of the juvenile sentence. 705 ILCS 405/5-810(4) (2012). In light of the imposition of an adult sentence, the senator aptly determined that due process warranted a jury trial right in juvenile court. Here, respondent does not face an adult sentence - blended or otherwise. Nor do recidivist juvenile offenders prosecuted under the HJO or VJO statutes. Consequently, Senator's Hawkinson's comments are entirely irrelevant to the issue at hand. In fact, throughout these proceedings, the circuit court and both parties recognized that the EJJ statute was

not relevant to the instant equal protection case, because juveniles prosecuted under the EJJ statute face an adult sentence. (C.L. 200-04) (Resp. Br. 3, n.1)

Although the HJO and VJO statutes do not explicitly set forth the reason for granting the right to a jury trial in their proceedings, the rational basis for the legislature's decision can be gleamed from the statutes themselves. See *People v. Collins*, 214 Ill. 2d 206, 214 (2005) (language of statute is best and most reliable indicator of legislative intent). As stated earlier, the purpose behind the enactment of the HJO and VJO statutes is to address the fact that "a disproportionate amount of serious crime is committed by a relatively small number of juvenile offenders." 705 ILCS 405/5-801 (2012). Both statutes give the State's Attorney the exclusive authority to remove qualifying recidivist juvenile offenders from the sentencing provisions of the DOJJ statute and subject them to a more severe HJO and VJO sentencing scheme. 705 ILCS 405/5-815(a), (c) (2012); 705 ILCS 405/5-820(a), (c) (2012). The HJO and VJO sentencing scheme limits the discretion of the trial court because it requires the imposition of mandatory commitment until the age of 21 without the possibility of parole and incorporates the good conduct credit statute applicable to adults. 705 ILCS 405/5-815(f) (2012); 705 ILCS 405/5-820(f) (2012). In contrast to the DOJJ statute, under the HJO and VJO framework, the sentence of probation is not available, even for the lesser qualifying offenses, like burglary. *Id.* Additionally, the good conduct credit statute greatly impacts the length of time that a recidivist offender will actually serve for a particular offense. See 730 ILCS 5/3-6-3. In the context of first degree murder, a recidivist juvenile is statutorily barred from earning good conduct credit and must complete the full term of his mandatory commitment. In

sharp contrast, the DOJJ respondent will be eligible for parole after the completion of five years of commitment and can later earn the termination of her parole prior to her 21st birthday. 705 ILCS 405/5-750(2) (2012).

In light of the People's exclusive authority to initiate the HJO and VJO proceedings and trigger the more severe mandatory sentencing scheme of these statutes (thus limiting the juvenile court's discretionary options at sentencing), it was reasonable for the legislature to include certain procedural safeguards, like the right to a jury trial. As another safeguard, the HJO and VJO statutes require that the People serve upon a recidivist juvenile written notice of intention to prosecute under the HJO or VJO statute within 5 judicial days of the filing of any delinquency petition. 705 ILCS 405/5-815(b) (2012); 705 ILCS 405/5-820(b) (2012). The statutes also forbid the inclusion of the prior adjudication in the delinquency petition charging the triggering offense and bar their admission at trial unless permitted under the rules of evidence for impeachment purposes. 705 ILCS 405/5-815(e) (2012); 705 ILCS 405/5-820(e) (2012). Additionally, after the admission of facts in the petition of adjudication of delinquency at trial, the statutes give the juvenile the right to a separate hearing addressing the validity of the prior adjudications. *Id.* Thus, when placed in proper context, it is clear that the legislature had a rational basis for affording a jury trial right (and other procedural safeguards) to juveniles prosecuted under the HJO and VJO statutes, while not affording a jury trial right to juvenile offenders facing sentencing under the DOJJ statute. The legislature recognized that, unlike first-time offenders, these repeat offenders pose a certain danger to the public because they have demonstrated an inability or refusal to rehabilitate,

warranting a harsher and more adult-like sentencing scheme. Consequently, the legislature granted these offenders the right to a jury trial.

Nevertheless, respondent argues that there is no rational basis for granting a jury trial only to the HJO and VJO offenders because protecting the public from crime is "a shared legislative purpose behind the treatment of these three classes of juvenile offenders, and comparable, if not worse, potential liberty deprivations to juveniles adjudicated delinquent based on first degree murder." (Resp. Br. 16) It is true that in fashioning the sentences for first degree murder under all three statutes, the legislature recognized that the commission of murder is the most serious offense, which warrants greater intervention in the offender's life to hold the offender accountable for the crime, and to provide the structured setting that advances rehabilitation as well as protects the public. But the legislature also recognized a distinction between a first-time offender charged with murder and a recidivist offender charged with murder by imposing a more severe sentence on the latter given past inability to rehabilitate. Unlike the mandatory commitment with possibility of parole after five years set forth the DOJJ, the HJO and VJO statutes eliminate any possibility of early release via parole or good conduct credit in murder cases. Unlike the situation in the HJO and VJO statutes, the DOJJ statute still leaves the trial court with discretion in first degree murder cases because a juvenile offender is given the opportunity to be placed on parole after five years and to, subsequently, seek termination of parole before his or her 21st birthday. Thus, the inclusion of a jury trial right in the HJO and VJO prosecution was rational and had the

legitimate purpose of providing an additional procedural safeguard in proceedings that would lead to harsher sentences.

In response, respondent cites the appellate decision in *In re G.O.*, as persuasive authority. (Resp. Br. 15-16), citing 304 Ill. App. 3d 719, *reversed and vacated on other grounds*, *In re G.O.*, 191 Ill. 2d at 44-46. However, like respondent's analysis here, in *G.O.*, the appellate court wrongly concluded that "[t]he juvenile found delinquent on a first degree murder charge [under the DOJJ] probably is worse off than the other two offenders since the [latter] receive day-for-day time." 304 Ill. App. 3d at 727. The appellate court's finding that the rational basis test was not satisfied was based on its conclusion that recidivist juveniles charged with murder faced *lesser* or "nearly identical" sentences compared to first-time juvenile offenders. *Id.* at 727-28. But as demonstrated in detail above, recidivist juveniles face harsher sentences and were specifically targeted for a distinct legislative framework precisely because of their repeat offending. The appellate court's analysis in *G.O.* should not be adopted.

Finally, relying on Justice Heiple's dissent in *G.O.*, respondent argues that because "'most attributes of the adult criminal justice system are already permanent features of the juvenile justice system,'" "the three classes of juveniles under the Act that face mandatory incarceration if adjudicated delinquent should be granted the right to a jury trial." (Resp. Br. 16), quoting *G.O.*, 191 Ill. 2d at 63-64 (Heiple, J. dissenting). However, this Court has subsequently rejected Justice Heiple's position and found that a jury trial right is not constitutionally compelled under the Illinois Constitution or the United States Constitution. *Jonathon C.B.*, 2011 IL 107750, ¶¶ 90-97. And, as

demonstrated here, the absence of such a right does not violate equal protection. Accordingly, the People ask this Court to reverse the circuit court's judgment and remand the case for further proceedings.

II. RESPONDENT'S CROSS-RELIEF REQUEST THAT JUVENILES CHARGED WITH FIRST DEGREE MURDER UNDER THE DOJJ STATUTE SHOULD BE AFFORDED A DUE PROCESS RIGHT TO A JURY TRIAL SHOULD BE REJECTED UNDER *STARE DECISIS* WHERE SHE FAILS TO PROVIDE A NEW OR COMPELLING REASON TO DEPART FROM THIS COURT'S LONG LINE OF CASES ADHERING TO THE DECISIONS IN *MCKEIVER V. PENNSYLVANIA*, 403 U.S. 528 (1971), AND *IN RE FUCINI*, 44 Ill. 2d 305 (1970).

(The People's Response to Respondent's Argument II)

On cross-appeal, respondent contends that the circuit court erred by finding no due process violation in the absence of a jury trial right for juveniles charged with first degree murder under the DOJJ statute because, according to respondent, they face *mandatory* commitment upon adjudication, a result of the "significant transformation" of the Juvenile Court Act since this Court's decision in *In re Fucini*, 44 Ill. 2d 305 (1970), and the United States Supreme Court in *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971). (Resp. Br. 18) Respondent claims that she presents an issue of first impression because "there is currently no authority regarding the applicability of due process provisions for juveniles charged under the [Juvenile Court Act] with first degree murder and facing the severe punishment of mandatory incarceration, since its radical alternation in 1998." (Resp. Br. 21) In addition to the mandatory nature of her sentence, respondent points to several collateral consequences of an adjudication of delinquency for first degree murder

as additional bases for this Court to recognize a due process right to a jury trial. (Resp. Br. 26-27)

A. Respondent Provides No Basis To Abandon Precedent Confirming That There Is No Federal Due Process Right To A Jury Trial For First-Time Juvenile Offenders Charged With Murder.

Respondent's contention that this case presents a question of first impression is entirely incorrect. In *McKeiver* and *Fucini*, the United States Supreme Court and this Court, respectively, found that the "fundamental fairness" component of the Due Process Clause does not mandate a jury trial in a juvenile proceeding. *McKeiver,* 403 U.S. at 547; *Fucini*, 44 Ill. 2d at 308-09. Subsequently, in a long line of cases, this Court has "consistently and repeatedly rejected the argument that the 1999 amendments to the Juvenile Court Act render delinquency adjudications the equivalent of felony convictions, so that juveniles have a constitutional right to a jury trial under the Act." *In re Jonathon C.B.*, 2011 IL 107750, ¶ 97. Thus, respondent's due process claim should be rejected under principles of *stare decisis*, because she fails to provide a new or compelling reason to depart from this well-established precedent. The fact that respondent's specific charge of first degree murder carries with it a sentence of mandatory commitment does not transform her juvenile case into a criminal prosecution or its equivalent. As observed by the United States Supreme Court, the role (if any) of a jury system in delinquency proceedings is a matter of public policy, better suited to legislative action. *McKeiver,* 403 U.S. at 547. Although respondent may present factors for the legislature to consider, she does not provide a basis for this Court to depart from its precedent and hold that a jury

trial is constitutionally compelled. As such, this Court should reject respondent's request for cross-relief.

This Court reviews the constitutionality of a statute *de novo*. *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 200 (2009). A party challenging a statute "must clearly establish a constitutional violation" to overcome the presumption of constitutionality. *Id.* A statute must be construed in a manner that sustains its constitutionality, if reasonably possible. *Id.*

"The doctrine of *stare decisis* expresses the policy of the courts to stand by precedents and not to disturb settled points. When a question has been deliberately examined and decided, it should be considered settled and closed to further argument." (Internal quotations and citations omitted.) *People v. Williams*, 235 Ill. 2d 286, 294 (2009). Thus, this Court "will not part from precedent merely because the court is of the opinion that it might decide otherwise were the question a new one." *Vitro v. Mihelcic*, 209 Ill. 2d 76, 82 (2004). Any departure from stare *decisis* must be specially justified and prior decisions should not be overruled absent good cause or compelling reasons. *People v. Clemons*, 2012 IL 107821, ¶ 53. Respondent fails to provide a new and compelling reason to depart from the body of precedent that has long held that the "fundamental fairness" component of the Due Process Clause does not mandate a jury trial in delinquency proceedings under either the United States Constitution or the Illinois Constitution. U.S. Const., amend. VI; U.S. Const. amend. XIV; Ill. Const. 1970, art. I, § 2.

Since its enactment in 1966, the Juvenile Court Act provides that juveniles do not have a right to a jury trial unless specifically provided under article V of the Act. 705

ILCS 405/5-101(3) (2012); 705 ILCS 405/5-605(1) (2012).[3] Since 1979, in the unique cases of habitual and violent offenders, the legislature afforded these individuals, as a matter of legislative grace, an opportunity to elect to be tried by jury. See HJO statute (Pub. Act 81-1104 (eff. Oct. 31, 1979)); VJO statute (Pub. Act 88-678 (eff. Dec. 15, 1994)). This Court has long held that jury trials in delinquency proceedings are not constitutionally compelled under the Illinois Constitution because the Juvenile Court Act is of statutory origin and is not "'a proceeding according to the course of the common law in which the right of a trial by jury is guaranteed.'" *Fucini*, 44 Ill. 2d at 310, quoting *Lindsay v. Lindsay*, 257 Ill. 328, 335-336 (1913); Ill. Const. 1970, art. I, § 8. In *Fucini*, in 1970, this Court also held that the Due Process Clause did not require that a jury trial be extended to juvenile court proceedings. 44 Ill. 2d at 310.

Just a year later, the United States Supreme Court held that trial by jury is neither a necessary element of the fundamental fairness guaranteed by the Due Process Clause nor an essential component of accurate fact finding. *McKeiver*, 403 U.S. at 543. Rejecting the claim that a minor is constitutionally entitled to a jury trial, the Supreme Court stated:

> "We are reluctant to disallow the States to experiment further and to seek in new and different ways the elusive answers to the problems of the young * * *. The States, indeed, must go forward. *If, in its wisdom, any State feels the jury trial is desirable in all cases, or in certain kinds, there appears to be no impediment to its installing a system embracing that*

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[3] The original act, entitled the Family Court Act, granted the right to a jury of six in delinquency proceedings. See Hurd's Rev. Stat. 1899, ch. 23, par. 170; Ill. Rev. Stat. 1965, ch. 23, par. 2002. The Family Court Act was replaced, effective January 1, 1966, by Juvenile Court Act.

feature. That, however, is the State's privilege and not its obligation." (Emphasis added.) 403 U.S. at 547.

In finding that a jury trial right was not constitutionally mandated, the Court sought to prevent a dismantling of the separate juvenile justice system that would "place the juvenile squarely in the routine of the criminal process." 403 U.S. at 547. It sought to permit the States the kind of leeway to "experiment" in their efforts to address the "elusive problems of the young." *Id.* The Court was concerned with keeping juvenile justice systems separate rather than any one particular facet of the system. See *United States v. Murray*, 465 F.2d 289 (2d Cir. 1972) (*McKeiver* focused on system itself—not disposition). In this regard, the Supreme Court sought to enable the various States to maintain separate systems "beneficial" to minors while, at the same time, to experiment with different sociological approaches to addressing the "elusive" problem of rising juvenile crime. *Cf. In re Derrico G.*, 2014 IL 114463, ¶ 103 (relying on *McKeiver* and Illinois body of law, concluding that "[w]e have a Juvenile Court Act, separate and apart from the provisions of the Criminal Code and the Code of Corrections, because the legislature has recognized that juveniles are not similarly situated to adults").

Respondent first contends that *McKeiver*'s due process holding is outdated because it fails to consider "significant transformations" made under the Juvenile Justice Reform Provisions of 1999, which became effective on January 1, 1999. (Resp. Br. 18) Respondent points out that, as a result of the 1999 amendment, juveniles charged with first degree murder under the DOJJ face *mandatory* commitment upon adjudication. (Resp. Br. 18) However, in a long line of cases, this Court rejected the contention that the 1999 amendments undermined the applicability of *McKeiver*. See *Jonathon C.B.*,

2011 IL 107750, ¶ 97 (in rejecting federal and state due process claims, court noted that it "consistently and repeatedly rejected the argument that the 1999 amendments to the Juvenile Court Act render delinquency adjudications the equivalent of felony convictions, so that juveniles have a constitutional right to a jury trial under the Act"); *In re A.G.*, 195 Ill. 2d 313, 317 (2001); (noting that, even in light of significant amendments, the Act is "still not criminal in nature and is to be administered in a spirit of humane concern for, and to promote the welfare of, the minor"); *People v. Taylor*, 221 Ill. 2d 157, 170 (2006) (recognizing that "[t]he policy that seeks to hold juveniles accountable for their actions and to protect the public does not negate the concept that rehabilitation remains a more important consideration in the juvenile justice system than in the criminal justice system and that there are still significant differences between the two, indicating that 'the ideal of separate treatment of children is still worth pursuing'"), quoting *McKeiver*, 403 U.S. at 546 n.6; *In re Lakisha M.*, 227 Ill. 2d 263, 270 (2008) (repeating that "it is undoubtedly true that a delinquency adjudication is still not the legal equivalent of a felony conviction despite the amendments to the Act"); *Konetski*, 233 Ill. 2d at 200, 202 (citing *McKeiver*, acknowledging that "[t]he Supreme Court has held the due process clause does not require the right to a jury trial in juvenile delinquency proceedings"); *In re Derrico G.*, 2014 IL 114463, ¶ 103 (relying on *McKeiver* to conclude that "[j]uvenile proceedings are fundamentally different from criminal proceedings"); *In re M.I.*, 2013 IL 113776, ¶ 47 (citing *McKeiver*, observing that the Supreme Court has traditionally given states wider latitude in adopting particular trial and sentencing procedures for juveniles, including whether to have a jury trial at all). Based on this body of precedent, it is undeniable that,

even after the 1999 amendment to the Juvenile Court Act, this Court has determined that *McKeiver* remains good law and controls the interpretation of the federal Due Process Clause.

B. This Court Should Decline To Expand The Due Process Right Under The Illinois Constitution To Mandate Jury Trials For Juveniles In Respondent's Position.

Cognizant of this Court's adherence to *McKeiver*, respondent argues that, "even if this Court decides *McKeiver* is not outdated and is still bound by its holding, the Illinois Constitution provides a due process right to a jury trial in this case." (Resp. Br. 21) Respondent correctly notes that this Court has held that the Illinois due process right can provide broader protection than federal due process. (Resp. Br. 19), citing *People v. Washington*, 171 Ill. 2d 475, 485-86 (1996). Illinois courts analyze the Illinois Constitution in "limited lockstep" with the federal constitution. *People v. Caballes*, 221 Ill. 2d 282, 309-10 (2006). See also *Hope Clinic for Women, Ltd. v. Adams*, 2011 IL App (1st) 101463, ¶ 68 (noting that the equal protection, due process, and search and seizure clauses of the Illinois Constitution are "synonymous" with their "federal counterparts"). Under the limited lockstep approach, a court will look first to the federal Constitution, and only if federal law provides no relief will the court determine then turn to the state Constitution for a "unique state history or state experience." *Caballes*, 221 Ill. 2d at 309-10. Thus, the lockstep approach allows for consideration of "state tradition and values as reflected by long-standing state case precedent." *Id.* at 314.

Here, in conformance with federal law, Illinois precedent does not recognize a right to a jury trial in delinquency cases under the Due Process Clause. Notably, when this

Court first addressed the issue in *Fucini*, the decision of *McKeiver* had not yet been issued. Yet, *Fucini*'s reasoning was remarkably consistent with the analysis employed in *McKeiver*. In this regard, *Fucini* found that delinquency proceedings "must comport with essential requirements of procedural due process." *In re Fucini*, 44 Ill. 2d 305, 308 (1970), citing *In re Gault*, 387 U.S. 1, 13 (1967). The Court recognized that a juvenile has a due process right to receive notice of the charges, right to counsel, right of confrontation and the right of protection against self-incrimination, and right to be proven guilty beyond a reasonable doubt. *Fucini*, 44 Ill. 2d at 308, citing *Kent* v. *United States*, 383 U.S. 541, 562 (1966); *Gault*, 387 U.S. at 13. Agreeing with *Kent*, *Fucini* made clear that it "'[did] not mean * * * to indicate that the hearing to be held must conform with all of the requirements of a criminal trial or even of the usual administrative hearing; but we do hold that the hearing must measure up to the essentials of due process and fair treatment." *Fucini*, 44 Ill. 2d at 309, quoting *Kent*, 383 U.S. at 562. *Fucini* then held that due process rights do not include a jury trial right in delinquency proceedings, because it "[saw] no useful function to be obtained by adding still more formality into the juvenile process." 44 Ill. 2d at 309.

Clearly, *Fucini*, and later cases affirming its holding, establish that Illinois is in lockstep with the federal Due Process Clause regarding the absence of a right to jury trial in juvenile delinquency cases. See *Jonathon C.B.*, 2011 IL 107750, ¶ 97 (rejecting argument that 1999 amendments to Juvenile Court Act "render delinquency adjudications the equivalent of felony convictions, so that juveniles have a constitutional right to a jury trial under the Act."); *A.G.*, 195 Ill. 2d at 317 (holding Act is "still not criminal in

nature"); *Taylor*, 221 Ill. 2d at 170 (recognizing that concept that rehabilitation remains more important consideration in juvenile justice system than in criminal justice system); *Lakisha M.*, 227 Ill. 2d at 270 (repeating that "it is undoubtedly true that a delinquency adjudication is still not the legal equivalent of a felony conviction despite the amendments to the Act"); *Konetski*, 233 Ill. 2d at 202 (Due Process Clause does not require the right to a jury trial in juvenile delinquency proceedings). Hence, it has been well-settled, for over 45 years, that the federal and state Due Process Clauses are in sync and that neither body of law has departed from the precedent set forth in *McKeiver* and *Fucini*. This Court should refuse to depart from this precedent on principles of *stare decisis*.

To avoid this outcome, respondent tenuously claims that "there is no authority regarding the applicability of due process provisions for juveniles charged under the Act with murder and facing severe punishment of mandatory incarceration, since the radical alteration in 1998." (Resp. Br. 21) To support her claim that this is an open question, respondent cites to *G.O.*, where this Court declined to address the exact issue because the former, but identical, version of the DOJJ provision was found facially invalid under the single subject rule. (Resp. Br. 21), citing *G.O.*, 191 Ill. 2d at 44, n.3. In declining to address the due process claim, this Court stated: "We do not hold that a due process argument is foreclosed by *Fucini*." *G.O.*, 191 Ill. 2d at 44, n. 3.

But respondent disregards the significance of the post-*G.O.* precedent in which this Court has "consistently and repeatedly rejected the argument that the 1999 amendments to the Juvenile Court Act render delinquency adjudications the equivalent of

felony convictions, so that juveniles have a constitutional right to a jury trial under the Act." *In re Jonathon C.B.*, 2011 IL 107750, ¶ 97. Although respondent acknowledges that this Court, in *Jonathon C.B.* and *Konetski*, considered and rejected post-*G.O.* due process claims seeking the right to a jury trial in juvenile cases, she alleges that "neither addressed the due process violation in the instant case." (Resp. Br. 21) However, *Jonathon C.B.* squarely considered whether the 1999 amendments transformed delinquency proceedings into criminal-like proceedings compelling jury trials under the Due Process Clause. In that case, this Court engaged in a detailed analysis of its post-*G.O.* precedent and emphatically rejected the argument that the 1999 amendments called into question *McKeiver* or *Fucini*. In fact, this Court stated that "[t]o adopt Jonathon's position would require this Court to stray from principles of *stare decisis*." *Jonathon C.B.*, 2011 IL 107750, ¶ 109. This Court reaffirmed that:

> "'The policy that seeks to hold juveniles more accountable for their actions and to protect the public does not negate the concept that rehabilitation remains a more important consideration in the juvenile justice system than in the criminal justice system and that there are still significant differences between the two.'" 2011 IL 107750, ¶ 93, quoting *Taylor*, 221 Ill. 2d at 166-67.

In reaffirming its post-*G.O.* precedent, *Jonathon C.B.* addressed and rebutted Justice Heiple's dissent in *G.O.*, 191 Ill. 2d 37. 2011 IL 107750, ¶ 90. In his dissent, Justice Heiple found that a juvenile had a right to a jury trial under the Illinois Constitution because most attributes of the adult criminal justice system were already permanent features of the juvenile justice system. This Court found this position had already been addressed:

> "Since the amendments to the Act were enacted in 1999, this court has considered the impact of those amendments in various contexts.

> Nonetheless, this court has declined to adopt the position set forth in Justice Heiple's dissent in *In re G.O.*, This court has consistently rejected the argument that the amendments rendered the Act punitive and equivalent to a criminal prosecution." *Id.* at ¶ 91.

Additionally, it appears that, in *Jonathon C.B.*, Justice Burke's dissenting opinion construed the majority's decision as encompassing delinquency proceedings where a juvenile faced commitment until the age of 21. See *Jonathon C.B.*, 2011 IL 107750, ¶¶178-217 (Burke, J., dissenting). Relying, in part, on the analysis set forth by the appellate court in *G.O.* and later expressed by Justice Heiple in this Court, Justice Burke concluded that jury trial rights were granted in EJJ prosecutions and in HJO and VJO proceedings because such proceedings resulted in sentences that were a severe deprivation of liberty. Justice Burke then found that Jonathon had suffered a serious deprivation of liberty when he was sentenced to an indeterminate term which automatically terminated on his 21st birthday. *Id.* at ¶¶ 200-11. Consistent with respondent's argument here, Justice Burke stated:

> "The revisions to our Juvenile Court Act have turned juvenile delinquency proceedings into an adversarial system in which punishment of the minor and protection of society are the primary goals. The protective *parens patriae* ideals, which were the hallmark of the juvenile justice system which existed when *Fucini* and *McKeiver* were decided, have given way to a new reality—one in which juveniles are treated more like adult criminal defendants. I conclude, therefore, that when a minor is charged and tried in juvenile court for having committed an offense that would be a felony if committed by an adult, and the minor is subject to the possibility of being confined for more than six months, it can scarcely be denied that the delinquency prosecution is the legal equivalent of a criminal prosecution. Accordingly, it is my view that the right to a jury trial, granted to an accused 'in criminal prosecutions' by article I, section 8, must apply to juveniles who are tried within the juvenile justice system on charges that they violated a criminal statute when an adult charged with the same offense would have such a right." *Id.* at ¶ 217.

No other justice joined this dissent. Justice Burke's dissent confirms that this Court has already considered and rejected that the 1999 amendments triggered a due process right to a jury trial for juveniles.

C. Respondent's Emphasis On The Mandatory Nature Of Commitment And The Collateral Consequences She Faces Does Not Justify A Jury Trial Right.

Disregarding the scope of the majority opinion, respondent insists that the mandatory nature of the commitment she faces in this case separates her case from *In re Jonathon C.B.* But whether a particular term of "imprisonment" or "incarceration" is mandatory has not been the driving force behind the jury trial right. If respondent is correct that a juvenile detention disposition is the functional equivalent of a term of imprisonment (which the People strongly dispute), it should matter not whether that term is *discretionary* or *mandatory*. For purposes of the jury trial right, what matters is the potential length of that term of incarceration: whether the *potential* punishment includes a maximum lengthy prison sentence (over 6 months' incarceration). In other words, for the adult criminal system, offenses carrying a maximum of no more than six months' incarceration are considered "petty" offenses for which the jury trial right does not attach. See *Baldwin v. New York*, 399 U.S. 66, 69 (1970) (no offense can be deemed "petty" for purposes of right to trial by jury where imprisonment for more than six months is authorized); *Williams v. Florida*, 399 U.S. 78 (1970); *Frank v. United States*, 395 U.S. 147, 150-52 (1969) (no jury trial was required when trial judge suspended sentence and placed defendant on probation for three years); *Blanton v. City of North Las Vegas*, 489 U.S. 538, 545 (1989) (no jury trial required when maximum sentence is six months in

jail, fine not to exceed $1,000, 90-day driver's license suspension, and attendance at an alcohol abuse education course); *Glover v. United States*, 531 U.S. 198, 203 (2001) (describing preceding jury trial right cases as having "limited the right to jury trial to offenses where the *potential* punishment was imprisonment for six months or more" (emphasis added)). See also *Cheff v. Schnackenberg*, 384 U.S. 373 (1966) (sentences exceeding six months for criminal contempt may not be imposed by federal courts unless jury trial has been received or waived); *SKS & Assocs. v. Dart*, 2012 IL App (1st) 103504, ¶ 21 ("[a] defendant in an indirect criminal contempt proceeding is entitled to a jury trial *** if the potential penalty may exceed six months' incarceration or a fine greater than $500"), quoting *City of Rockford v. Suski*, 307 Ill. App. 3d 233, 247 (2d Dist. 1999).

Respondent's proposal that the "mandatory" nature of the punishment should somehow control the question of whether a jury trial is constitutionally required ignores the fact that many juveniles are exposed to *discretionary* periods of more than 6 months of juvenile detention. If respondent is correct that juvenile detention is the legal equivalent of imprisonment or incarceration warranting a jury trial right, then her position mandates jury trials in *every* juvenile adjudication proceeding with the potential for detention longer than six months. But she does not make this argument. Instead, she conditions her demand for a jury trial right on the *limited* but ultimately irrelevant detail of *mandatory* detention, all the while insisting that this "punishment" is indeed the equivalent of *incarceration*, thus constitutionally occasioning the right to a jury.

The jury trial right, however, was fashioned at a time when virtually all punishment was mandatory, based strictly on the crime committed, so the difference

between mandatory and discretionary punishment is not relevant for purposes of the constitutional right to a jury trial. *United States v. Grayson*, 438 U.S. 41, 45-46 (1978). Discussing *Williams v. New York*, 337 U.S. 241, 247 (1949), *Grayson* noted that at the time of the framing, when "imprisonment had only recently emerged as an alternative to the death penalty, confinement in public stocks, or whipping in the town square, the period of incarceration was generally prescribed with specificity by the legislature" and each crime had a fixed, or mandatory, period of imprisonment. *Grayson*, 438 U.S. at 45. Only later did the "excessive rigidity of the [mandatory or fixed sentence] system" give way in some jurisdictions to a scheme permitting the sentencing judge -- or jury -- to consider aggravating and mitigating circumstances surrounding an offense, and, on that basis, to select a sentence within a range defined by the legislature. *Id.* at 46. Accordingly, whether a particular punishment is mandatory has not been the driving force behind the jury trial right. Rather, as noted, the right has been dependent and conditioned upon whether the potential for punishment exceeds 6 months of incarceration and thus is "serious." Based on this long-established construction of the jury trial right, an acceptance of respondent's position would call into question this Court's precedent from *Fucini* to the *Jonathon C.B.* For this reason alone a jury trial is not warranted. In any case, consistent with this Court's precedent, a juvenile's commitment to the DOJJ is not the equivalent to incarceration, but rather is a necessary adjunct to the protection and rehabilitation of the juvenile offender. See *Jonathon C.B.*, 2011 IL 107750, ¶ 90 ("This court has consistently rejected the argument that the amendments rendered the Act punitive and equivalent to a criminal prosecution.").

Additionally, there may be unintended consequences of inserting a jury trial right in delinquency cases beyond the limited circumstances authorized by the legislature. Jury trials would insert unnecessary complications into the proceedings that have no relevance to questions of guilt and sentencing – for example, addition of the jury selection process– that would delay the resolution of delinquency cases. See *In re A.S.*, 2017 IL App (1st) 161259, ¶¶ 29-30 (on appeal after initial remand for a new hearing under *Batson v. Kentucky*, 476 U.S. 79 (1986), HJO offender's adjudication of delinquency for residential burglary reversed and remanded for new trial based on a *Batson* violation). Additionally, the right to a jury trial pierces the confidentiality of juvenile proceedings, which was a key factor in creating a separate juvenile justice system. See 705 ILCS 405/1-5(6) (2016) (limiting public access to proceedings under Juvenile Court Act).

In further support of her request of a jury trial right, like the minor in *Jonathon C.B.*, respondent argues that the following collateral consequences of an adjudication of delinquency for first degree murder render the proceedings more akin to criminal prosecutions: (1) disqualification of juveniles and their families from public housing; (2) mandatory submission of DNA samples for inclusion in adult statewide and national databases; (3) public disclosure of previously private information (705 ILCS 405/5-901(5)(a) (2016); (4) admission of juvenile adjudications for purposes of federal criminal sentencing; and (5) prohibition of expungement of court and law enforcement records of juveniles adjudicated delinquent of murder and felony sex offenses. (Resp. Br. 26-27) In rejecting this very argument, this Court stated:

> "[T]he fact that in a narrow set of delineated circumstances delinquent minors face some of the same collateral consequences as convicted adult criminals does not equate a delinquency adjudication with a criminal

> conviction. As the court recognized in *In re J.W.*, 204 Ill. 2d 50, 75, [] (2003), requiring a juvenile sex offender to register, and allowing very limited public access to notification concerning the juvenile's status as a sex offender, does not constitute punishment. Further, with regard to confidentiality, 'while it is undoubtedly true that a delinquency adjudication is still not the legal equivalent of a felony conviction despite the amendments to the Act, it does not follow inexorably that a juvenile adjudicated delinquent for committing a felony offense does not have a diminished expectation of privacy.' *Lakisha M.*, 227 Ill. 2d at 270-71. Addressing DNA evidence, *Lakisha M.* expressly recognized that 'maintaining a delinquent juvenile's genetic analysis information in state and national data banks for law enforcement purposes advances, rather than conflicts with, the goals of our Juvenile Court Act.' *Id.* at 274." 2011 IL 107750, ¶ 89.

This Court's reasoning, in *Jonathon C.B.*, applies equally to the collateral consequences resulting from an adjudication of delinquency for murder. Nor does the collateral consequence regarding public housing transform juvenile proceedings into criminal prosecutions.

D. Respondent's Arguments Are Properly Viewed As Policy Questions Better Left To The General Assembly.

Citing a secondary source, respondent asserts that a juvenile committed to a facility in the Illinois Department Juvenile Justice faces a "bleak existence," including housing conditions that resemble adult prisons, and limited education and rehabilitation programs. (Resp. Br. 25-26), citing Mark D. Hassakis and Lisa Jacobs, *What if it Were Your Child*, Illinois Bar Journal, Vol. 99, 8-9 (January 2011). Such circumstances, if accurate, would be faced by all minors committed to the juvenile facilities and should be addressed by the legislature. However, the conditions, as well as other adverse

consequences, are not a basis for this Court to overturn over four decades of precedent, which unequivocally states that jury trials are not compelled by the Due Process Clause.[4]

Illinois's Juvenile Court Act is a creation of the legislature; and as a result, the legislature is in the best position to effect changes that are not constitutionally mandated. *Fucini*, 44 Ill. 2d at 310. As envisioned by *McKeiver*, in Illinois, the legislature has exercised its prerogative to experiment with the role of jury trials in delinquency proceedings. At its inception, the Illinois juvenile justice system included a jury trial in delinquency proceedings. See Hurd's Rev. Stat. 1899, ch. 23. In 1966, the legislature

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[4] Respondent also points to *In re L.M.*, 286 Kan. 460, 472-74 (2008) where the court held that the right to a jury trial was guaranteed to all citizens under the Sixth and Fourteenth Amendment. (Resp. Br. 23) However, in *Jonathon C.B.*, this Court refused to follow *L.M.*'s holding and reasoning. 2011 IL 107750, ¶ 110. Respondent also cites 10 states that grant juveniles a jury trial right. (Resp. Br. 23, n. 3) However, the majority of states do not grant such right to minors facing charges in juvenile court. See ARIZ. R. JUV. P. 6 (2017); *Richard M. v. Superior Court*, 4 Cal.3d 370, 376 (Cal. 1971), *People v. Nguyen*, 46 Cal. 4th 1007, 1019-20 (Cal. 2009); CONN. GEN. STAT. ANN. § 54-76e (2014); *State v. Wilson*, 545 A.2d 1178, 1182 (Del. 1988); D.C. CODE § 16-2316 (2017); FLA. R. JUV. P. 8.110(c) (2017); GA. CODE ANN., § 15-11-17 (2016); HAW. REV. STAT. § 571-41 (2014); Burns Ind. Code Ann. § 31-32-6-7(a) (2017); IOWA CODE § 232.47 (2016), *In the Interest of A.K., Minor Child*, 825 N.W.2d 46, 51 (Iowa 2013); KY. REV. STAT. ANN. § 610.070(1) (2017); LA. CHILD. CODE ANN. Art. 808 (2013); ME. REV. STAT. ANN. Tit. 15, § 3310 (2017); Md. COURTS AND JUDICIAL PROCEEDINGS Code Ann. § 3-808 (2017); MISS. CODE ANN. § 43-21-203 (2017); MO. ANN. STAT. § 211-171 (2014); MO. ANN. STAT. § 211.181(2104); NEB. REV. STAT. § 43-279 (2014); NEV. REV. STAT. § 62D.010(1)(c) (2014); N.J. STAT. ANN. § 2A:4A-40 (1982); N.Y. FAM. CT. ACT §§ 340.1-347.1 (2014); N.C. GEN. STAT. § 7B-3503 (2014); N.D. CENT. CODE § 27-20-24(1) (2014); OR. REV. STAT. § 419C.400 (2012); 42 PA. CONS. STAT. § 6336 (2012); R.I. GEN. LAWS § 14-1-30 (2010); S.C. CODE ANN. § 63-19-1410 (2008); S.D. CODIFIED LAWS § 26-7A-30 (1991); S.D. CODIFIED LAWS § 26-7A-34 (1991); TENN. CODE ANN. § 37-1-124 (2010); UTAH CODE ANN. § 78A-6-114 (2008); VT. STAT. ANN. Tit. 33, § 5110 (2009); WASH. REV. CODE ANN. § 13.04.021(2) (1999); and WIS. STAT. ANN. § 938.31(4) (West 2009).

omitted the right to a jury trial in delinquency cases, until 1979 when such a jury trial right was afforded to juveniles prosecuted under the HJO and VJO statutes. See HJO statute, 705 ILCS 405/5-815 (2012) (eff. Oct. 31, 1979); VJO statute, 705 ILCS 405/5-820 (2012) (eff. Dec. 15, 1994).

Significantly, the legislature has demonstrated a willingness to consider policy changes suggested by this Court in juvenile cases. For instance, in *People ex rel. Devine v. Stralka*, 226 Ill. 2d 445, 463 (2007), this Court held that a juvenile court judge did not have the discretion to vacate findings of delinquency because vacatur in effect constituted an order of supervision, which was not permitted after a finding of guilt or over the State's objection pursuant to 705 ILCS 405/5-615(1) (2004). In a specially concurring opinion, Justice Burke opined that Section 5-615(1) contributed to the erosion of the *parens patriae* character of the Juvenile Court Act and made the Act more punitive in nature. See *Stralka*, 226 Ill. 2d at 466 (Burke, J., specially concurring, joined by Freeman and Fitzgerald, JJ.). The legislature responded and amended Section 5-615, effective January 1, 2014, to permit an order of supervision after a finding of guilt and gave authority to juvenile court judges to enter an order of supervision over the People's objection. 705 ILCS 405/5-615 (2014).

More recently, the legislature made a series of amendments indicating its acceptance of recent scientific and sociological studies that revealed significant differences between children and adults. See *Miller v. Alabama*, 132 S. Ct. 2455, 2464 (2012). In summary, these studies demonstrated that (1) children lack maturity and have an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and

heedless risk-taking; (2) children have a limited control over their environment and are more susceptible to negative influences and outside pressures, including from family members and peers; and (3) a child's character is not as well formed as an adult's. See *Miller*, 132 S. Ct. at 2464. In response, the legislature amended the Juvenile Court Act (705 ILCS 405/5-120 (2012) by raising the age of exclusive juvenile jurisdiction from 17 to 18 years of age. See 705 ILCS 405/5-120 (2014); Pub. Act 98-61 (eff. Jan. 1, 2014).

Subsequently, in *People v. Patterson*, this Court rejected a constitutional challenge to the automatic transfer statute, 705 ILCS 405/5-130 (2008), but stated:

> "While modern research has recognized the effect that the unique qualities and characteristics of youth may have on juveniles' judgment and actions, the automatic transfer provision does not. Indeed, the mandatory nature of that statute denies this reality. Accordingly, we strongly urge the General Assembly to review the automatic transfer provision based on the current scientific and sociological evidence indicating a need for the exercise of judicial discretion in determining the appropriate setting for the proceedings in these juvenile cases." (Internal citation omitted.) *Patterson*, 2014 IL 115102, ¶ 111.

Afterward, the legislature made significant changes to the scope of section 5-130, raising the age for automatic transfer from 15 to 16 and reducing the number of offenses that qualify for automatic transfer by eliminating subsections (iv) and (v). 705 ILCS 405/5-130 (2016); Pub. 99-258 (eff. Jan. 1, 2016). This Court could make a policy suggestion to the General Assembly about the jury right, if appropriate, but policy concerns should not be confused with due process violations. In any case, respondent overlooks that these recent reforms have tempered the 1999 amendments.

In summary, over four decades of jurisprudence from this Court and the United States Supreme Court have held that a jury trial right is not required in delinquency

proceedings under due process principles. *Stare decisis* requires that the same result here because respondent fails to provide any good cause or compelling reason to depart from this precedent -- the mere fact that the legislature has chosen to include *mandatory* detention for some offenders is not, alone, good cause. The various arguments respondent makes are policy questions better suited for the legislature's consideration and action. The legislature is in the best position to consider public policy regarding the juvenile justice system, and as it has demonstrated in the recent past, it is amenable to considering input from experts and addressing concerns raised by this Court. Thus, this Court should find no due process violation in the absence of a jury trial right for juveniles charged with first degree murder under the DOJJ statute. See *In re M.I.*, 2013 IL 113776, ¶ 47 (noting that, under United States Constitution, the Supreme Court "has traditionally given states wider latitude in adopting particular trial and sentencing procedures for juveniles—including whether to have a jury trial at all." (Internal quotations omitted.)).

Accordingly, the People ask this Court to reverse the circuit court's equal protection ruling, and to affirm the court's rejection of respondent's due process claim.

CONCLUSION

The People of the State of Illinois respectfully request that this Court reverse the circuit court's judgment declaring 705 ILCS 405/5-101(3) (2012) and 705 ILCS 405/5-605(1) (2012) unconstitutional on equal protection grounds as applied to first-time juveniles, like respondent, who are charged with first degree murder. This Court should also deny respondent's request for cross-relief on due process grounds, and remand the cause for further proceedings.

Respectfully Submitted,

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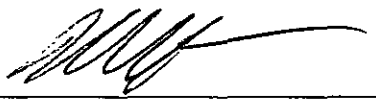
CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341 (a) and (b). The length of this brief, excluding the 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 43 pages.

By: 

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