THIS APPEAL INVOLVES A DELINQUENT MINOR PROCEEDING UNDER THE JUVENILE COURT ACT
No. 125680

IN THE

SUPREME COURT OF ILLINOIS

	)	Appeal from the Appellate Court
	)	of Illinois, No. 3-19-0346.
	)	
IN THE INTEREST OF	)	There on appeal from the Circuit
	)	Court of the Fourteenth Judicial
	)	Circuit, Rock Island County,
	)	Illinois, No. 18 JD 113.
J.M.A.	)	
	)	Honorable
Petitioner-Appellant	)	Theodore Kutsunis,
	)	Judge Presiding.

REPLY BRIEF FOR PETITIONER-APPELLANT

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CONFIDENTIAL

I. This Court should review the issues raised by J.M.A. pursuant to the public-interest exception.

The State argues that J.M.A.'s claims challenging the validity of his sentence are moot because he has served his sentence (State's Br. at 11). J.M.A. does not dispute that the IDOJJ has discharged him in this case. Nevertheless, this Court should still review his claims because the public-interest exception applies.

The public-interest exception applies where the immediacy or magnitude of the interests involved warrant action by the Court. *In re Shelby R.*, 2013 IL 114994, ¶ 16. Application of the exception requires a clear showing of the following: (1) the issue presented is of a public nature; (2) an authoritative determination of the issue is desirable for the future guidance of public officers; and (3) the issue is likely to recur. *Id.*

The State recognizes that "the public interest exception may apply" to J.M.A.'s claim that section 5-750(a) of the Juvenile Court Act requires an express finding that commitment to the IDOJJ is the least restrictive alternative because "a split has developed among the districts of the Illinois Appellate Court on this question of law and the issue is likely to recur in future juvenile cases" (State's Br. at 9–10). Indeed, the exception does apply to this claim.

Specifically, the issue is of substantial public concern. It involves a dispute regarding the legal basis and procedure for committing children to the IDOJJ. It also involves the safety of both the public and children and the liberty, rehabilitation, and competency development of children in the juvenile justice system. Furthermore, an authoritative determination of the issue is desirable for future guidance because there is a split of authority in the Appellate Court. See *In re Shelby R.*, 2013 IL 114994, ¶ 19 (second element of public-interest exception

is satisfied where the state of the law is confused, such as when there the Appellate Court is divided on an issue); *In re H.L.*, 2016 IL App (2d) 140486-B, ¶¶ 41–56 (holding that the trial court must make an express finding that IDOJJ commitment is the least restrictive alternative before sentencing a child to the IDOJJ); *In re Henry P.*, 2014 IL App (1st) 130241, ¶¶ 52–62 (same); *In re J.M.A.*, 2019 IL App (3d) 190346, ¶¶ 27–31 (expressing disagreement with *H.L.* and *Henry P.* and holding that an express finding is not required). Last, the issue is likely to recur in future cases. There will be future cases where circuit courts sentence children to the IDOJJ. Consequently, those courts will have to first find that IDOJJ commitment is the least restrictive alternative.

The State argues that the public-interest exception does not apply to any of J.M.A.'s remaining arguments because they raise fact-based questions unique to J.M.A.'s case, not questions of a public nature, and do not present a situation where the law is in disarray or of conflicting precedent (State's Br. at 10, 12–13). The State is incorrect.

When this Court decides whether the Act requires an express finding that IDOJJ commitment is the least-restrictive alternative, it will necessarily decide whether it is sufficient that a least-restrictive-alternative finding can be inferred from the record. These two legal questions are inextricably intertwined. Once this Court answers these questions, it then applies the law to the facts of this case to determine whether the circuit court erred by failing to find that IDOJJ commitment was the least restrictive alternative. When reaching the merits of claims under the public-interest exception, this Court does not simply clarify the law without then applying the law to the facts before it to determine whether

a lower court erred. See, *e.g.*, *In re James W.*, 2014 IL 114483, ¶¶ 17–51 (concluding that the public-interest exception applied, resolving legal questions warranting review under the exception, and applying the law to the facts of the case before it to determine whether the circuit court's judgment was fatally infirm and whether the appellate court erred); *In re Andrea F.*, 208 Ill.2d 148, 156–66 (2003) (concluding that the public-interest exception applied, resolving an issue of statutory interpretation, and applying the law to the facts of the case before it to determine whether the circuit court erred).

With regard to J.M.A.'s claim that the circuit court failed to review services within the IDOJJ, the claim is of substantial public concern. It likewise involves a dispute regarding the legal basis and procedure for committing children to the IDOJJ. And it involves the liberty, rehabilitation, and competency development of children in the juvenile justice system. Furthermore, an authoritative determination of the issue is desirable for future guidance of public officers. The Appellate Court is divided about whether a circuit court can sufficiently conduct a review of IDOJJ services that will meet the individualized needs of a child when the record contains no evidence of the specific services that the IDOJJ offers. Compare *In re Justin F.*, 2016 IL App (1st) 153257, ¶¶ 30–31 (holding that the circuit court failed to follow the Act's mandate that it review IDOJJ services that will meet the individualized needs of the minor where the record included no evidence of IDOJJ services) with *In re J.M.A.*, 2019 IL App (3d) 190346, ¶¶ 38–45, 66–72 (holding that the circuit court followed the Act's mandate that it review IDOJJ services that will meet the individualized needs of the minor where the record included no evidence of the specific services offered by the IDOJJ). Even

in the absence of a division in the Appellate Court, there is a need for an authoritative determination of this issue so that courts, prosecutors, and defense attorneys know what it means for a court to "review" services within the IDOJJ that will meet a child's individualized needs. "No greater uncertainty should exist in a delinquent minor proceeding than the circumstances of an individual case may dictate." *In re Shelby R.*, 2013 IL 114994, ¶ 22. Finally, the issue is likely to recur in future cases. Again, circuit courts will continue to sentence children to the IDOJJ. Those courts will have to first review IDOJJ services that will meet the child's individualized needs.

Accordingly, this Court should review the issues raised by J.M.A. pursuant to the public-interest exception.

II. The circuit court violated the Juvenile Court Act by committing J.M.A. to the IDOJJ where the court (A) did not find, either expressly as required by the Act or otherwise, that IDOJJ commitment was the least restrictive alternative and (B) did not review services within the IDOJJ that would meet J.M.A.'s individualized needs, especially his need for mental-health treatment.

The State argues that the Act does not require circuit courts to expressly find that IDOJJ commitment is the least restrictive alternative because section 5-750(1) of the Act does not include the word "express" and had the legislature wanted courts to make an express finding, it would have included the word "express" or "explicit" in section 5-750(1) (State's Br. at 14–15). The State insists that if this Court were to accept J.M.A.'s argument, it would be reading the word "express" into section 5-750(1) (State's Br. at 15).

However, J.M.A.'s argument is not made on the basis of the plain language of section 5-750(1) alone. J.M.A. reads section 5-750(1) in conjunction with section 5-705(4), which provides as follows: "When commitment to the Department of Juvenile Justice is ordered, the court shall state the basis for selecting the particular disposition, and the court shall prepare a statement for inclusion in the record." 705 ILCS 405/5-705(4) (2018).

The State attempts to downplay the significance of section 5-705(4), arguing that it "merely requires the sentencing court to provide its *reasons* for choosing commitment; it does not require that it do so using any particular language" (State's Br. at 16). There are two flaws in the State's argument.

First, by operation of law, a necessary reason why a sentencing court would choose IDOJJ commitment is because it has found it to be the least restrictive sentencing alternative available. If it is not the least restrictive alternative available, IDOJJ commitment cannot be imposed. 705 ILCS 405/5-750(1) (2018). So, by

requiring a sentencing court to state for the record its reasons for choosing IDOJJ commitment, section 5-705(4) requires the court to state for the record that it has found IDOJJ commitment to be the least restrictive alternative.

Second, the cases that the State relies on for the proposition that the Act does not require a sentencing court to use any particular language are inapposite. The State cites *In re Nathan A.C.*, 385 Ill. App. 3d 1063 (4th Dist. 2008), which relies upon *In re Fields*, 46 Ill. App. 3d 1028 (1st 1977) (State's Br. at 16). Both *Nathan A.C.* and *Fields* predate the 2012 reforms to section 5-750(1), which, as explained in J.M.A.'s opening brief, added, *inter alia*, the requirement that a sentencing court find that IDOJJ commitment is the least-restrictive alternative.

Next, the State argues that requiring an express finding "is antithetical to the idea of an individualized determination and specifically-tailored placement." It insists that the requirement "would effectively change a court's sentencing ruling into a standardized presentation and encourage findings made out of habit rather than individualized consideration" (State's Br. at 16–17). This argument lacks merit. An express finding injects clarity into sentencing to ensure that children are committed to the IDOJJ for the right reason: it is the least-restrictive alternative available. This benefits the children in the juvenile justice system and courts on review. Moreover, sentencing would remain individualized. For example, section 5-750(1) would still require the court to make the finding *on the basis of evidence* that efforts were made to locate less restrictive alternatives to secure confinement and the reasons why those efforts were unsuccessful. 705 ILCS 405/5-750(1) (2018). An express finding made without a consideration of such evidence would violate the Act. See, *e.g.*, *In re Raheem M.*, 2013 IL App (4th) 130585, ¶¶ 46–55 (holding

that the circuit court plainly erred where it did not receive and review evidence regarding efforts to locate less restrictive alternatives and why those efforts were unsuccessful). Additionally, section 5-750(1) would still require the court to review the individualized factors itemized in subsections (A) through (G). 705 ILCS 405/5-750(1)(b)(A)–(G) (2018).

The State next argues that the record "clearly" shows that the circuit court found IDOJJ commitment to be the least restrictive alternative because it "considered alternatives to commitment" and found that commitment was "necessary" and "'the most reasonable sentence'" (State's Br. at 17–18). J.M.A. relies on his opening brief as a reply to this argument but would emphasize a couple points in reply (Op. Br. at 27–30). First, the State conflates the requirement that the court consider less-restrictive alternatives to IDOJJ commitment with the requirement that the court find that IDOJJ commitment is the least restrictive alternative available. These are separate requirements. 705 ILCS 405/5-750(1) (2018). Second, although the court said that IDOJJ commitment was "necessary" and "the most reasonable sentence," a court could still consider IDOJJ commitment to be the most reasonable, necessary sentence when a less restrictive alternative to IDOJJ commitment is available.

The State insists that "[t]he fact that the trial court did not individually rule out every other conceivable alternative [to IDOJJ commitment] does not . . . show that the court failed to make the requisite finding" (State's Br. at 19). However, in the absence of an explicit statement from the court illustrating that it found IDOJJ commitment to be the least restrictive alternative, a reviewing court may only infer from the record that the court found IDOJJ commitment

to be the least-restrictive alternative when the court rules out on the record every less-restrictive alternative to IDOJJ commitment.

As for whether the circuit court reviewed services within the IDOJJ that would meet J.M.A.'s individualized needs, the State argues that "the trial court explicitly stated that it found that the services within IDOJJ would meet respondent's individualized needs" (State's Br. at 20). The problem with this argument is three-fold. First, the Act requires the court to *review* services within the IDOJJ. 705 ILCS 405/5-750(1)(b)(G) (2018). Second, the court did not receive evidence of the specific services that IDOJJ offered; therefore, the court could not have reviewed the services that IDOJJ offered, much less find that services would meet J.M.A.'s individualized needs. Third, the court said that it thought IDOJJ had services to rehabilitate J.M.A. from "bad behavior issues" (R124–25). But every child in the juvenile justice system has behaved poorly. The court's statement was not directed at J.M.A.'s individualized needs.

The State points to the fact that the court reviewed the social history report, which stated that J.M.A. could receive services in the IDOJJ to address poor decision-making skills (State's Br. at 20). However, the social history report did not identify or discuss any specific services in the IDOJJ (C64). Therefore, the court did not actually review IDOJJ services.

The State next argues that J.M.A. "does not argue that IDOJJ lacks psychiatric services or that it is ill-equipped to provide mental health care" (State's Br. at 20). But, in the absence of evidence presented to the circuit court of mental-health services offered by the IDOJJ, J.M.A. will not assume that the IDOJJ has mental-health services that will meet his individualized needs. The very fact that

the legislature requires courts to review IDOJJ services that will meet a child's individualized needs demonstrates that after review, a court may find that IDOJJ services will not meet a child's individualized needs. As for the State's claim that J.M.A. has not argued that the IDOJJ is ill-equipped to meet his mental-health needs, he has actually cited sources standing for this very proposition. Specifically, numerous authorities provide that child commitment, including commitment in the IDOJJ specifically, is detrimental to children with mental illness (Op. Br. at 21–23). Indeed, one source, the Northwestern Pritzker School of Law's Children and Family Justice Center, provides that the IDOJJ has historically struggled to meet the needs of children with mental illness and that due to the IDOJJ's adult-prison model, "'no amount of improvement of the mental health services within the current Illinois youth prisons will be sufficient'" (Op. Br. at 23, quoting Arielle W. Tolman, *Harm Instead of Healing: Imprisoning Youth with Mental Illness*, Children and Family Justice Center, Community Safety & The Future of Illinois' Youth Prisons Vol. 5 (March 2020), at 2).

Finally, the State emphasizes that the social history report did not conclude that J.M.A.'s delinquency stemmed from his mental-health conditions; "did not recommend any specialized [mental-health] treatment beyond compliance with his prescribed medication regimen and meeting with a psychiatrist"[1]; and did not include J.M.A.'s mental health as a risk factor (State's Br. at 20). Consequently, the State insists that the record illustrates that J.M.A.'s delinquent behavior

[1] Actually, the juvenile intake officer did not recommend any mental-health treatment for J.M.A. in the social history report. She merely documented the treatment recommendation given to J.M.A. by the Robert Young Mental Health Center following his diagnostic assessment on July 9, 2018 (C57, 61–63).

"stemmed from poor decision-making skills," consistent with the opinions of the juvenile intake officer and the circuit court (State's Br. at 20). Contrary to the impression that the State attempts to give this Court, these aspects of the social history report are actually an indictment of the juvenile justice system's failure to appreciate, and its dismissal of, behavioral mental-health disorders in child sentencing.

As explained in J.M.A.'s opening brief, both J.M.A.'s mother and his doctors linked his poor behavior to his behavioral mental-health disorders and a lack of follow through with proper treatment (Op. Br. at 34, citing C55, 57, 61, 117–18). Furthermore, scientific authorities, including the Mayo Clinic—one of the most prominent hospitals in the world—link ADHD and ODD to poor behavior, poor school and work performance, impulse-control problems, delinquency, substance abuse, and suicide (Op. Br. at 36–37).

The social history report's failure to even identify J.M.A.'s ADHD and ODD as "risk factors" is troubling and should concern everyone involved in this case. Instead, the State uses it as a sword to dismiss the significance of J.M.A.'s mental health. When scientific authorities, including world leaders in medicine, recognize as elementary principles the adverse behavioral consequences of ADHD and ODD, and the negative risks these behavioral mental-health disorders pose on the future of children when the disorders are left untreated, it is unacceptable that a juvenile intake officer giving a sentencing recommendation, the circuit court, the Illinois Appellate Court, and, now, the Illinois Attorney General's Office all fail to recognize and prioritize them for child sentencing.

Accordingly, for the reasons provided in J.M.A.'s opening brief and this reply brief, J.M.A. respectfully requests that this Court reverse the Appellate Court's judgment.

CONCLUSION

For the foregoing reasons, J.M.A. respectfully requests that this Court reverse the Appellate Court's judgment.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this reply brief, excluding pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 12 pages.

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NOTICE AND PROOF OF SERVICE

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On July 14, 2020, the Reply Brief was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the petitioner-appellant in an envelope deposited in a U.S. mail box in Ottawa, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Reply Brief to the Clerk of the above Court.

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