



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB2067

Introduced 2/22/2011, by Rep. Michael J. Zalewski

SYNOPSIS AS INTRODUCED:

705 ILCS 405/5-130
720 ILCS 5/24-1.6

Amends the Juvenile Court Act of 1987. Provides that the definition of delinquent minor shall not apply to any minor who at the time of an offense was at least 15 years of age and who is charged with aggravated unlawful use of a weapon where a sentence of periodic imprisonment is prescribed for the offense. Amends the Criminal Code of 1961 relating to the offense of aggravated unlawful use of a weapon. Eliminates from certain first offense Class 4 felony violations of the statute that the offender must be a person 18 years of age or older. Effective immediately.

LRB097 06461 RLC 46543 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Juvenile Court Act of 1987 is amended by
5 changing Section 5-130 as follows:

6 (705 ILCS 405/5-130)

7 Sec. 5-130. Excluded jurisdiction.

8 (1) (a) The definition of delinquent minor under Section
9 5-120 of this Article shall not apply to any minor who at the
10 time of an offense was at least 15 years of age and who is
11 charged with: (i) first degree murder, (ii) aggravated criminal
12 sexual assault, (iii) aggravated battery with a firearm where
13 the minor personally discharged a firearm as defined in Section
14 2-15.5 of the Criminal Code of 1961, (iv) armed robbery when
15 the armed robbery was committed with a firearm, ~~or~~ (v)
16 aggravated vehicular hijacking when the hijacking was
17 committed with a firearm, or (vi) aggravated unlawful use of a
18 weapon where a sentence of periodic imprisonment is prescribed
19 for the offense in Section 24-1.6 of the Criminal Code of 1961.

20 These charges and all other charges arising out of the same
21 incident shall be prosecuted under the criminal laws of this
22 State.

23 (b) (i) If before trial or plea an information or

1 indictment is filed that does not charge an offense specified
2 in paragraph (a) of this subsection (1) the State's Attorney
3 may proceed on any lesser charge or charges, but only in
4 Juvenile Court under the provisions of this Article. The
5 State's Attorney may proceed under the Criminal Code of 1961 on
6 a lesser charge if before trial the minor defendant knowingly
7 and with advice of counsel waives, in writing, his or her right
8 to have the matter proceed in Juvenile Court.

9 (ii) If before trial or plea an information or indictment
10 is filed that includes one or more charges specified in
11 paragraph (a) of this subsection (1) and additional charges
12 that are not specified in that paragraph, all of the charges
13 arising out of the same incident shall be prosecuted under the
14 Criminal Code of 1961.

15 (c) (i) If after trial or plea the minor is convicted of
16 any offense covered by paragraph (a) of this subsection (1),
17 then, in sentencing the minor, the court shall have available
18 any or all dispositions prescribed for that offense under
19 Chapter V of the Unified Code of Corrections.

20 (ii) If after trial or plea the court finds that the minor
21 committed an offense not covered by paragraph (a) of this
22 subsection (1), that finding shall not invalidate the verdict
23 or the prosecution of the minor under the criminal laws of the
24 State; however, unless the State requests a hearing for the
25 purpose of sentencing the minor under Chapter V of the Unified
26 Code of Corrections, the Court must proceed under Sections

1 5-705 and 5-710 of this Article. To request a hearing, the
2 State must file a written motion within 10 days following the
3 entry of a finding or the return of a verdict. Reasonable
4 notice of the motion shall be given to the minor or his or her
5 counsel. If the motion is made by the State, the court shall
6 conduct a hearing to determine if the minor should be sentenced
7 under Chapter V of the Unified Code of Corrections. In making
8 its determination, the court shall consider among other
9 matters: (a) whether there is evidence that the offense was
10 committed in an aggressive and premeditated manner; (b) the age
11 of the minor; (c) the previous history of the minor; (d)
12 whether there are facilities particularly available to the
13 Juvenile Court or the Department of Juvenile Justice for the
14 treatment and rehabilitation of the minor; (e) whether the
15 security of the public requires sentencing under Chapter V of
16 the Unified Code of Corrections; and (f) whether the minor
17 possessed a deadly weapon when committing the offense. The
18 rules of evidence shall be the same as if at trial. If after
19 the hearing the court finds that the minor should be sentenced
20 under Chapter V of the Unified Code of Corrections, then the
21 court shall sentence the minor accordingly having available to
22 it any or all dispositions so prescribed.

23 (2) (Blank).

24 (3) (a) The definition of delinquent minor under Section
25 5-120 of this Article shall not apply to any minor who at the
26 time of the offense was at least 15 years of age and who is

1 charged with a violation of the provisions of paragraph (1),
2 (3), (4), or (10) of subsection (a) of Section 24-1 of the
3 Criminal Code of 1961 while in school, regardless of the time
4 of day or the time of year, or on the real property comprising
5 any school, regardless of the time of day or the time of year.
6 School is defined, for purposes of this Section as any public
7 or private elementary or secondary school, community college,
8 college, or university. These charges and all other charges
9 arising out of the same incident shall be prosecuted under the
10 criminal laws of this State.

11 (b) (i) If before trial or plea an information or
12 indictment is filed that does not charge an offense specified
13 in paragraph (a) of this subsection (3) the State's Attorney
14 may proceed on any lesser charge or charges, but only in
15 Juvenile Court under the provisions of this Article. The
16 State's Attorney may proceed under the criminal laws of this
17 State on a lesser charge if before trial the minor defendant
18 knowingly and with advice of counsel waives, in writing, his or
19 her right to have the matter proceed in Juvenile Court.

20 (ii) If before trial or plea an information or indictment
21 is filed that includes one or more charges specified in
22 paragraph (a) of this subsection (3) and additional charges
23 that are not specified in that paragraph, all of the charges
24 arising out of the same incident shall be prosecuted under the
25 criminal laws of this State.

26 (c) (i) If after trial or plea the minor is convicted of

1 any offense covered by paragraph (a) of this subsection (3),
2 then, in sentencing the minor, the court shall have available
3 any or all dispositions prescribed for that offense under
4 Chapter V of the Unified Code of Corrections.

5 (ii) If after trial or plea the court finds that the minor
6 committed an offense not covered by paragraph (a) of this
7 subsection (3), that finding shall not invalidate the verdict
8 or the prosecution of the minor under the criminal laws of the
9 State; however, unless the State requests a hearing for the
10 purpose of sentencing the minor under Chapter V of the Unified
11 Code of Corrections, the Court must proceed under Sections
12 5-705 and 5-710 of this Article. To request a hearing, the
13 State must file a written motion within 10 days following the
14 entry of a finding or the return of a verdict. Reasonable
15 notice of the motion shall be given to the minor or his or her
16 counsel. If the motion is made by the State, the court shall
17 conduct a hearing to determine if the minor should be sentenced
18 under Chapter V of the Unified Code of Corrections. In making
19 its determination, the court shall consider among other
20 matters: (a) whether there is evidence that the offense was
21 committed in an aggressive and premeditated manner; (b) the age
22 of the minor; (c) the previous history of the minor; (d)
23 whether there are facilities particularly available to the
24 Juvenile Court or the Department of Juvenile Justice for the
25 treatment and rehabilitation of the minor; (e) whether the
26 security of the public requires sentencing under Chapter V of

1 the Unified Code of Corrections; and (f) whether the minor
2 possessed a deadly weapon when committing the offense. The
3 rules of evidence shall be the same as if at trial. If after
4 the hearing the court finds that the minor should be sentenced
5 under Chapter V of the Unified Code of Corrections, then the
6 court shall sentence the minor accordingly having available to
7 it any or all dispositions so prescribed.

8 (4) (a) The definition of delinquent minor under Section
9 5-120 of this Article shall not apply to any minor who at the
10 time of an offense was at least 13 years of age and who is
11 charged with first degree murder committed during the course of
12 either aggravated criminal sexual assault, criminal sexual
13 assault, or aggravated kidnaping. However, this subsection (4)
14 does not include a minor charged with first degree murder based
15 exclusively upon the accountability provisions of the Criminal
16 Code of 1961.

17 (b) (i) If before trial or plea an information or
18 indictment is filed that does not charge first degree murder
19 committed during the course of aggravated criminal sexual
20 assault, criminal sexual assault, or aggravated kidnaping, the
21 State's Attorney may proceed on any lesser charge or charges,
22 but only in Juvenile Court under the provisions of this
23 Article. The State's Attorney may proceed under the criminal
24 laws of this State on a lesser charge if before trial the minor
25 defendant knowingly and with advice of counsel waives, in
26 writing, his or her right to have the matter proceed in

1 Juvenile Court.

2 (ii) If before trial or plea an information or indictment
3 is filed that includes first degree murder committed during the
4 course of aggravated criminal sexual assault, criminal sexual
5 assault, or aggravated kidnaping, and additional charges that
6 are not specified in paragraph (a) of this subsection, all of
7 the charges arising out of the same incident shall be
8 prosecuted under the criminal laws of this State.

9 (c) (i) If after trial or plea the minor is convicted of
10 first degree murder committed during the course of aggravated
11 criminal sexual assault, criminal sexual assault, or
12 aggravated kidnaping, in sentencing the minor, the court shall
13 have available any or all dispositions prescribed for that
14 offense under Chapter V of the Unified Code of Corrections.

15 (ii) If the minor was not yet 15 years of age at the time of
16 the offense, and if after trial or plea the court finds that
17 the minor committed an offense other than first degree murder
18 committed during the course of either aggravated criminal
19 sexual assault, criminal sexual assault, or aggravated
20 kidnaping, the finding shall not invalidate the verdict or the
21 prosecution of the minor under the criminal laws of the State;
22 however, unless the State requests a hearing for the purpose of
23 sentencing the minor under Chapter V of the Unified Code of
24 Corrections, the Court must proceed under Sections 5-705 and
25 5-710 of this Article. To request a hearing, the State must
26 file a written motion within 10 days following the entry of a

1 finding or the return of a verdict. Reasonable notice of the
2 motion shall be given to the minor or his or her counsel. If
3 the motion is made by the State, the court shall conduct a
4 hearing to determine whether the minor should be sentenced
5 under Chapter V of the Unified Code of Corrections. In making
6 its determination, the court shall consider among other
7 matters: (a) whether there is evidence that the offense was
8 committed in an aggressive and premeditated manner; (b) the age
9 of the minor; (c) the previous delinquent history of the minor;
10 (d) whether there are facilities particularly available to the
11 Juvenile Court or the Department of Juvenile Justice for the
12 treatment and rehabilitation of the minor; (e) whether the best
13 interest of the minor and the security of the public require
14 sentencing under Chapter V of the Unified Code of Corrections;
15 and (f) whether the minor possessed a deadly weapon when
16 committing the offense. The rules of evidence shall be the same
17 as if at trial. If after the hearing the court finds that the
18 minor should be sentenced under Chapter V of the Unified Code
19 of Corrections, then the court shall sentence the minor
20 accordingly having available to it any or all dispositions so
21 prescribed.

22 (5) (a) The definition of delinquent minor under Section
23 5-120 of this Article shall not apply to any minor who is
24 charged with a violation of subsection (a) of Section 31-6 or
25 Section 32-10 of the Criminal Code of 1961 when the minor is
26 subject to prosecution under the criminal laws of this State as

1 a result of the application of the provisions of Section 5-125,
2 or subsection (1) or (2) of this Section. These charges and all
3 other charges arising out of the same incident shall be
4 prosecuted under the criminal laws of this State.

5 (b) (i) If before trial or plea an information or
6 indictment is filed that does not charge an offense specified
7 in paragraph (a) of this subsection (5), the State's Attorney
8 may proceed on any lesser charge or charges, but only in
9 Juvenile Court under the provisions of this Article. The
10 State's Attorney may proceed under the criminal laws of this
11 State on a lesser charge if before trial the minor defendant
12 knowingly and with advice of counsel waives, in writing, his or
13 her right to have the matter proceed in Juvenile Court.

14 (ii) If before trial or plea an information or indictment
15 is filed that includes one or more charges specified in
16 paragraph (a) of this subsection (5) and additional charges
17 that are not specified in that paragraph, all of the charges
18 arising out of the same incident shall be prosecuted under the
19 criminal laws of this State.

20 (c) (i) If after trial or plea the minor is convicted of
21 any offense covered by paragraph (a) of this subsection (5),
22 then, in sentencing the minor, the court shall have available
23 any or all dispositions prescribed for that offense under
24 Chapter V of the Unified Code of Corrections.

25 (ii) If after trial or plea the court finds that the minor
26 committed an offense not covered by paragraph (a) of this

1 subsection (5), the conviction shall not invalidate the verdict
2 or the prosecution of the minor under the criminal laws of this
3 State; however, unless the State requests a hearing for the
4 purpose of sentencing the minor under Chapter V of the Unified
5 Code of Corrections, the Court must proceed under Sections
6 5-705 and 5-710 of this Article. To request a hearing, the
7 State must file a written motion within 10 days following the
8 entry of a finding or the return of a verdict. Reasonable
9 notice of the motion shall be given to the minor or his or her
10 counsel. If the motion is made by the State, the court shall
11 conduct a hearing to determine if whether the minor should be
12 sentenced under Chapter V of the Unified Code of Corrections.
13 In making its determination, the court shall consider among
14 other matters: (a) whether there is evidence that the offense
15 was committed in an aggressive and premeditated manner; (b) the
16 age of the minor; (c) the previous delinquent history of the
17 minor; (d) whether there are facilities particularly available
18 to the Juvenile Court or the Department of Juvenile Justice for
19 the treatment and rehabilitation of the minor; (e) whether the
20 security of the public requires sentencing under Chapter V of
21 the Unified Code of Corrections; and (f) whether the minor
22 possessed a deadly weapon when committing the offense. The
23 rules of evidence shall be the same as if at trial. If after
24 the hearing the court finds that the minor should be sentenced
25 under Chapter V of the Unified Code of Corrections, then the
26 court shall sentence the minor accordingly having available to

1 it any or all dispositions so prescribed.

2 (6) The definition of delinquent minor under Section 5-120
3 of this Article shall not apply to any minor who, pursuant to
4 subsection (1) or (3) or Section 5-805 or 5-810, has previously
5 been placed under the jurisdiction of the criminal court and
6 has been convicted of a crime under an adult criminal or penal
7 statute. Such a minor shall be subject to prosecution under the
8 criminal laws of this State.

9 (7) The procedures set out in this Article for the
10 investigation, arrest and prosecution of juvenile offenders
11 shall not apply to minors who are excluded from jurisdiction of
12 the Juvenile Court, except that minors under 17 years of age
13 shall be kept separate from confined adults.

14 (8) Nothing in this Act prohibits or limits the prosecution
15 of any minor for an offense committed on or after his or her
16 17th birthday even though he or she is at the time of the
17 offense a ward of the court.

18 (9) If an original petition for adjudication of wardship
19 alleges the commission by a minor 13 years of age or over of an
20 act that constitutes a crime under the laws of this State, the
21 minor, with the consent of his or her counsel, may, at any time
22 before commencement of the adjudicatory hearing, file with the
23 court a motion that criminal prosecution be ordered and that
24 the petition be dismissed insofar as the act or acts involved
25 in the criminal proceedings are concerned. If such a motion is
26 filed as herein provided, the court shall enter its order

1 accordingly.

2 (10) If, prior to August 12, 2005 (the effective date of
3 Public Act 94-574), a minor is charged with a violation of
4 Section 401 of the Illinois Controlled Substances Act under the
5 criminal laws of this State, other than a minor charged with a
6 Class X felony violation of the Illinois Controlled Substances
7 Act or the Methamphetamine Control and Community Protection
8 Act, any party including the minor or the court sua sponte may,
9 before trial, move for a hearing for the purpose of trying and
10 sentencing the minor as a delinquent minor. To request a
11 hearing, the party must file a motion prior to trial.
12 Reasonable notice of the motion shall be given to all parties.
13 On its own motion or upon the filing of a motion by one of the
14 parties including the minor, the court shall conduct a hearing
15 to determine whether the minor should be tried and sentenced as
16 a delinquent minor under this Article. In making its
17 determination, the court shall consider among other matters:

18 (a) The age of the minor;

19 (b) Any previous delinquent or criminal history of the
20 minor;

21 (c) Any previous abuse or neglect history of the minor;

22 (d) Any mental health or educational history of the minor,
23 or both; and

24 (e) Whether there is probable cause to support the charge,
25 whether the minor is charged through accountability, and
26 whether there is evidence the minor possessed a deadly weapon

1 or caused serious bodily harm during the offense.

2 Any material that is relevant and reliable shall be
3 admissible at the hearing. In all cases, the judge shall enter
4 an order permitting prosecution under the criminal laws of
5 Illinois unless the judge makes a finding based on a
6 preponderance of the evidence that the minor would be amenable
7 to the care, treatment, and training programs available through
8 the facilities of the juvenile court based on an evaluation of
9 the factors listed in this subsection (10).

10 (Source: P.A. 94-556, eff. 9-11-05; 94-574, eff. 8-12-05;
11 94-696, eff. 6-1-06.)

12 Section 10. The Criminal Code of 1961 is amended by
13 changing Section 24-1.6 as follows:

14 (720 ILCS 5/24-1.6)

15 Sec. 24-1.6. Aggravated unlawful use of a weapon.

16 (a) A person commits the offense of aggravated unlawful use
17 of a weapon when he or she knowingly:

18 (1) Carries on or about his or her person or in any
19 vehicle or concealed on or about his or her person except
20 when on his or her land or in his or her abode, legal
21 dwelling, or fixed place of business, or on the land or in
22 the legal dwelling of another person as an invitee with
23 that person's permission, any pistol, revolver, stun gun or
24 taser or other firearm; or

1 (2) Carries or possesses on or about his or her person,
2 upon any public street, alley, or other public lands within
3 the corporate limits of a city, village or incorporated
4 town, except when an invitee thereon or therein, for the
5 purpose of the display of such weapon or the lawful
6 commerce in weapons, or except when on his or her own land
7 or in his or her own abode, legal dwelling, or fixed place
8 of business, or on the land or in the legal dwelling of
9 another person as an invitee with that person's permission,
10 any pistol, revolver, stun gun or taser or other firearm;
11 and

12 (3) One of the following factors is present:

13 (A) the firearm possessed was uncased, loaded and
14 immediately accessible at the time of the offense; or

15 (B) the firearm possessed was uncased, unloaded
16 and the ammunition for the weapon was immediately
17 accessible at the time of the offense; or

18 (C) the person possessing the firearm has not been
19 issued a currently valid Firearm Owner's
20 Identification Card; or

21 (D) the person possessing the weapon was
22 previously adjudicated a delinquent minor under the
23 Juvenile Court Act of 1987 for an act that if committed
24 by an adult would be a felony; or

25 (E) the person possessing the weapon was engaged in
26 a misdemeanor violation of the Cannabis Control Act, in

1 a misdemeanor violation of the Illinois Controlled
2 Substances Act, or in a misdemeanor violation of the
3 Methamphetamine Control and Community Protection Act;
4 or

5 (F) (blank); or

6 (G) the person possessing the weapon had a order of
7 protection issued against him or her within the
8 previous 2 years; or

9 (H) the person possessing the weapon was engaged in
10 the commission or attempted commission of a
11 misdemeanor involving the use or threat of violence
12 against the person or property of another; or

13 (I) the person possessing the weapon was under 21
14 years of age and in possession of a handgun as defined
15 in Section 24-3, unless the person under 21 is engaged
16 in lawful activities under the Wildlife Code or
17 described in subsection 24-2(b)(1), (b)(3), or
18 24-2(f).

19 (b) "Stun gun or taser" as used in this Section has the
20 same definition given to it in Section 24-1 of this Code.

21 (c) This Section does not apply to or affect the
22 transportation or possession of weapons that:

23 (i) are broken down in a non-functioning state; or

24 (ii) are not immediately accessible; or

25 (iii) are unloaded and enclosed in a case, firearm
26 carrying box, shipping box, or other container by a

1 person who has been issued a currently valid Firearm
2 Owner's Identification Card.

3 (d) Sentence.

4 (1) Aggravated unlawful use of a weapon is a Class 4
5 felony; a second or subsequent offense is a Class 2 felony
6 for which the person shall be sentenced to a term of
7 imprisonment of not less than 3 years and not more than 7
8 years.

9 (2) Except as otherwise provided in paragraphs (3) and
10 (4) of this subsection (d), a first offense of aggravated
11 unlawful use of a weapon committed with a firearm ~~by a~~
12 ~~person 18 years of age or older~~ where the factors listed in
13 both items (A) and (C) of paragraph (3) of subsection (a)
14 are present is a Class 4 felony, for which the person shall
15 be sentenced to a term of imprisonment of not less than one
16 year and not more than 3 years.

17 (3) Aggravated unlawful use of a weapon by a person who
18 has been previously convicted of a felony in this State or
19 another jurisdiction is a Class 2 felony for which the
20 person shall be sentenced to a term of imprisonment of not
21 less than 3 years and not more than 7 years.

22 (4) Aggravated unlawful use of a weapon while wearing
23 or in possession of body armor as defined in Section 33F-1
24 by a person who has not been issued a valid Firearms
25 Owner's Identification Card in accordance with Section 5 of
26 the Firearm Owners Identification Card Act is a Class X

1 felony.

2 (e) The possession of each firearm in violation of this
3 Section constitutes a single and separate violation.

4 (Source: P.A. 95-331, eff. 8-21-07; 96-742, eff. 8-25-09;
5 96-829, eff. 12-3-09; 96-1107, eff. 1-1-11.)

6 Section 99. Effective date. This Act takes effect upon
7 becoming law.