

HB3428



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB3428

Introduced 2/22/2021, by Rep. Will Guzzardi

SYNOPSIS AS INTRODUCED:

705 ILCS 405/5-710
705 ILCS 405/5-750

Amends the Juvenile Court Act of 1987. Provides that an adjudged delinquent for the offense of first degree murder may be committed to the Department of Juvenile Justice when he or she is 14 years old (rather than 13 years old).

LRB102 03838 RLC 13852 b

A BILL FOR

1 AN ACT concerning courts.

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 Sections 5-710 and 5-750 as follows:

6 (705 ILCS 405/5-710)

7 Sec. 5-710. Kinds of sentencing orders.

8 (1) The following kinds of sentencing orders may be made
9 in respect of wards of the court:

10 (a) Except as provided in Sections 5-805, 5-810, and
11 5-815, a minor who is found guilty under Section 5-620 may
12 be:

13 (i) put on probation or conditional discharge and
14 released to his or her parents, guardian or legal
15 custodian, provided, however, that any such minor who
16 is not committed to the Department of Juvenile Justice
17 under this subsection and who is found to be a
18 delinquent for an offense which is first degree
19 murder, a Class X felony, or a forcible felony shall be
20 placed on probation;

21 (ii) placed in accordance with Section 5-740, with
22 or without also being put on probation or conditional
23 discharge;

1 (iii) required to undergo a substance abuse
2 assessment conducted by a licensed provider and
3 participate in the indicated clinical level of care;

4 (iv) on and after January 1, 2015 (the effective
5 date of Public Act 98-803) ~~this amendatory Act of the~~
6 ~~98th General Assembly~~ and before January 1, 2017,
7 placed in the guardianship of the Department of
8 Children and Family Services, but only if the
9 delinquent minor is under 16 years of age or, pursuant
10 to Article II of this Act, a minor under the age of 18
11 for whom an independent basis of abuse, neglect, or
12 dependency exists. On and after January 1, 2017,
13 placed in the guardianship of the Department of
14 Children and Family Services, but only if the
15 delinquent minor is under 15 years of age or, pursuant
16 to Article II of this Act, a minor for whom an
17 independent basis of abuse, neglect, or dependency
18 exists. An independent basis exists when the
19 allegations or adjudication of abuse, neglect, or
20 dependency do not arise from the same facts, incident,
21 or circumstances which give rise to a charge or
22 adjudication of delinquency;

23 (v) placed in detention for a period not to exceed
24 30 days, either as the exclusive order of disposition
25 or, where appropriate, in conjunction with any other
26 order of disposition issued under this paragraph,

1 provided that any such detention shall be in a
2 juvenile detention home and the minor so detained
3 shall be 10 years of age or older. However, the 30-day
4 limitation may be extended by further order of the
5 court for a minor under age 15 committed to the
6 Department of Children and Family Services if the
7 court finds that the minor is a danger to himself or
8 others. The minor shall be given credit on the
9 sentencing order of detention for time spent in
10 detention under Sections 5-501, 5-601, 5-710, or 5-720
11 of this Article as a result of the offense for which
12 the sentencing order was imposed. The court may grant
13 credit on a sentencing order of detention entered
14 under a violation of probation or violation of
15 conditional discharge under Section 5-720 of this
16 Article for time spent in detention before the filing
17 of the petition alleging the violation. A minor shall
18 not be deprived of credit for time spent in detention
19 before the filing of a violation of probation or
20 conditional discharge alleging the same or related act
21 or acts. The limitation that the minor shall only be
22 placed in a juvenile detention home does not apply as
23 follows:

24 Persons 18 years of age and older who have a
25 petition of delinquency filed against them may be
26 confined in an adult detention facility. In making a

1 determination whether to confine a person 18 years of
2 age or older who has a petition of delinquency filed
3 against the person, these factors, among other
4 matters, shall be considered:

5 (A) the age of the person;

6 (B) any previous delinquent or criminal
7 history of the person;

8 (C) any previous abuse or neglect history of
9 the person;

10 (D) any mental health history of the person;
11 and

12 (E) any educational history of the person;

13 (vi) ordered partially or completely emancipated
14 in accordance with the provisions of the Emancipation
15 of Minors Act;

16 (vii) subject to having his or her driver's
17 license or driving privileges suspended for such time
18 as determined by the court but only until he or she
19 attains 18 years of age;

20 (viii) put on probation or conditional discharge
21 and placed in detention under Section 3-6039 of the
22 Counties Code for a period not to exceed the period of
23 incarceration permitted by law for adults found guilty
24 of the same offense or offenses for which the minor was
25 adjudicated delinquent, and in any event no longer
26 than upon attainment of age 21; this subdivision

1 (viii) notwithstanding any contrary provision of the
2 law;

3 (ix) ordered to undergo a medical or other
4 procedure to have a tattoo symbolizing allegiance to a
5 street gang removed from his or her body; or

6 (x) placed in electronic monitoring or home
7 detention under Part 7A of this Article.

8 (b) A minor found to be guilty may be committed to the
9 Department of Juvenile Justice under Section 5-750 if the
10 minor is at least 14 ~~13~~ years and under 20 years of age,
11 provided that the commitment to the Department of Juvenile
12 Justice shall be made only if the minor was found guilty of
13 a felony offense or first degree murder. The court shall
14 include in the sentencing order any pre-custody credits
15 the minor is entitled to under Section 5-4.5-100 of the
16 Unified Code of Corrections. The time during which a minor
17 is in custody before being released upon the request of a
18 parent, guardian or legal custodian shall also be
19 considered as time spent in custody.

20 (c) When a minor is found to be guilty for an offense
21 which is a violation of the Illinois Controlled Substances
22 Act, the Cannabis Control Act, or the Methamphetamine
23 Control and Community Protection Act and made a ward of
24 the court, the court may enter a disposition order
25 requiring the minor to undergo assessment, counseling or
26 treatment in a substance use disorder treatment program

1 approved by the Department of Human Services.

2 (2) Any sentencing order other than commitment to the
3 Department of Juvenile Justice may provide for protective
4 supervision under Section 5-725 and may include an order of
5 protection under Section 5-730.

6 (3) Unless the sentencing order expressly so provides, it
7 does not operate to close proceedings on the pending petition,
8 but is subject to modification until final closing and
9 discharge of the proceedings under Section 5-750.

10 (4) In addition to any other sentence, the court may order
11 any minor found to be delinquent to make restitution, in
12 monetary or non-monetary form, under the terms and conditions
13 of Section 5-5-6 of the Unified Code of Corrections, except
14 that the "presentencing hearing" referred to in that Section
15 shall be the sentencing hearing for purposes of this Section.
16 The parent, guardian or legal custodian of the minor may be
17 ordered by the court to pay some or all of the restitution on
18 the minor's behalf, pursuant to the Parental Responsibility
19 Law. The State's Attorney is authorized to act on behalf of any
20 victim in seeking restitution in proceedings under this
21 Section, up to the maximum amount allowed in Section 5 of the
22 Parental Responsibility Law.

23 (5) Any sentencing order where the minor is committed or
24 placed in accordance with Section 5-740 shall provide for the
25 parents or guardian of the estate of the minor to pay to the
26 legal custodian or guardian of the person of the minor such

1 sums as are determined by the custodian or guardian of the
2 person of the minor as necessary for the minor's needs. The
3 payments may not exceed the maximum amounts provided for by
4 Section 9.1 of the Children and Family Services Act.

5 (6) Whenever the sentencing order requires the minor to
6 attend school or participate in a program of training, the
7 truant officer or designated school official shall regularly
8 report to the court if the minor is a chronic or habitual
9 truant under Section 26-2a of the School Code. Notwithstanding
10 any other provision of this Act, in instances in which
11 educational services are to be provided to a minor in a
12 residential facility where the minor has been placed by the
13 court, costs incurred in the provision of those educational
14 services must be allocated based on the requirements of the
15 School Code.

16 (7) In no event shall a guilty minor be committed to the
17 Department of Juvenile Justice for a period of time in excess
18 of that period for which an adult could be committed for the
19 same act. The court shall include in the sentencing order a
20 limitation on the period of confinement not to exceed the
21 maximum period of imprisonment the court could impose under
22 Chapter V ~~5~~ of the Unified Code of Corrections.

23 (7.5) In no event shall a guilty minor be committed to the
24 Department of Juvenile Justice or placed in detention when the
25 act for which the minor was adjudicated delinquent would not
26 be illegal if committed by an adult.

1 (7.6) In no event shall a guilty minor be committed to the
2 Department of Juvenile Justice for an offense which is a Class
3 4 felony under Section 19-4 (criminal trespass to a
4 residence), 21-1 (criminal damage to property), 21-1.01
5 (criminal damage to government supported property), 21-1.3
6 (criminal defacement of property), 26-1 (disorderly conduct),
7 or 31-4 (obstructing justice) of the Criminal Code of 2012.

8 (7.75) In no event shall a guilty minor be committed to the
9 Department of Juvenile Justice for an offense that is a Class 3
10 or Class 4 felony violation of the Illinois Controlled
11 Substances Act unless the commitment occurs upon a third or
12 subsequent judicial finding of a violation of probation for
13 substantial noncompliance with court-ordered treatment or
14 programming.

15 (8) A minor found to be guilty for reasons that include a
16 violation of Section 21-1.3 of the Criminal Code of 1961 or the
17 Criminal Code of 2012 shall be ordered to perform community
18 service for not less than 30 and not more than 120 hours, if
19 community service is available in the jurisdiction. The
20 community service shall include, but need not be limited to,
21 the cleanup and repair of the damage that was caused by the
22 violation or similar damage to property located in the
23 municipality or county in which the violation occurred. The
24 order may be in addition to any other order authorized by this
25 Section.

26 (8.5) A minor found to be guilty for reasons that include a

1 violation of Section 3.02 or Section 3.03 of the Humane Care
2 for Animals Act or paragraph (d) of subsection (1) of Section
3 21-1 of the Criminal Code of 1961 or paragraph (4) of
4 subsection (a) of Section 21-1 of the Criminal Code of 2012
5 shall be ordered to undergo medical or psychiatric treatment
6 rendered by a psychiatrist or psychological treatment rendered
7 by a clinical psychologist. The order may be in addition to any
8 other order authorized by this Section.

9 (9) In addition to any other sentencing order, the court
10 shall order any minor found to be guilty for an act which would
11 constitute, predatory criminal sexual assault of a child,
12 aggravated criminal sexual assault, criminal sexual assault,
13 aggravated criminal sexual abuse, or criminal sexual abuse if
14 committed by an adult to undergo medical testing to determine
15 whether the defendant has any sexually transmissible disease
16 including a test for infection with human immunodeficiency
17 virus (HIV) or any other identified causative agency of
18 acquired immunodeficiency syndrome (AIDS). Any medical test
19 shall be performed only by appropriately licensed medical
20 practitioners and may include an analysis of any bodily fluids
21 as well as an examination of the minor's person. Except as
22 otherwise provided by law, the results of the test shall be
23 kept strictly confidential by all medical personnel involved
24 in the testing and must be personally delivered in a sealed
25 envelope to the judge of the court in which the sentencing
26 order was entered for the judge's inspection in camera. Acting

1 in accordance with the best interests of the victim and the
2 public, the judge shall have the discretion to determine to
3 whom the results of the testing may be revealed. The court
4 shall notify the minor of the results of the test for infection
5 with the human immunodeficiency virus (HIV). The court shall
6 also notify the victim if requested by the victim, and if the
7 victim is under the age of 15 and if requested by the victim's
8 parents or legal guardian, the court shall notify the victim's
9 parents or the legal guardian, of the results of the test for
10 infection with the human immunodeficiency virus (HIV). The
11 court shall provide information on the availability of HIV
12 testing and counseling at the Department of Public Health
13 facilities to all parties to whom the results of the testing
14 are revealed. The court shall order that the cost of any test
15 shall be paid by the county and may be taxed as costs against
16 the minor.

17 (10) When a court finds a minor to be guilty the court
18 shall, before entering a sentencing order under this Section,
19 make a finding whether the offense committed either: (a) was
20 related to or in furtherance of the criminal activities of an
21 organized gang or was motivated by the minor's membership in
22 or allegiance to an organized gang, or (b) involved a
23 violation of subsection (a) of Section 12-7.1 of the Criminal
24 Code of 1961 or the Criminal Code of 2012, a violation of any
25 Section of Article 24 of the Criminal Code of 1961 or the
26 Criminal Code of 2012, or a violation of any statute that

1 involved the wrongful use of a firearm. If the court
2 determines the question in the affirmative, and the court does
3 not commit the minor to the Department of Juvenile Justice,
4 the court shall order the minor to perform community service
5 for not less than 30 hours nor more than 120 hours, provided
6 that community service is available in the jurisdiction and is
7 funded and approved by the county board of the county where the
8 offense was committed. The community service shall include,
9 but need not be limited to, the cleanup and repair of any
10 damage caused by a violation of Section 21-1.3 of the Criminal
11 Code of 1961 or the Criminal Code of 2012 and similar damage to
12 property located in the municipality or county in which the
13 violation occurred. When possible and reasonable, the
14 community service shall be performed in the minor's
15 neighborhood. This order shall be in addition to any other
16 order authorized by this Section except for an order to place
17 the minor in the custody of the Department of Juvenile
18 Justice. For the purposes of this Section, "organized gang"
19 has the meaning ascribed to it in Section 10 of the Illinois
20 Streetgang Terrorism Omnibus Prevention Act.

21 (11) If the court determines that the offense was
22 committed in furtherance of the criminal activities of an
23 organized gang, as provided in subsection (10), and that the
24 offense involved the operation or use of a motor vehicle or the
25 use of a driver's license or permit, the court shall notify the
26 Secretary of State of that determination and of the period for

1 which the minor shall be denied driving privileges. If, at the
2 time of the determination, the minor does not hold a driver's
3 license or permit, the court shall provide that the minor
4 shall not be issued a driver's license or permit until his or
5 her 18th birthday. If the minor holds a driver's license or
6 permit at the time of the determination, the court shall
7 provide that the minor's driver's license or permit shall be
8 revoked until his or her 21st birthday, or until a later date
9 or occurrence determined by the court. If the minor holds a
10 driver's license at the time of the determination, the court
11 may direct the Secretary of State to issue the minor a judicial
12 driving permit, also known as a JDP. The JDP shall be subject
13 to the same terms as a JDP issued under Section 6-206.1 of the
14 Illinois Vehicle Code, except that the court may direct that
15 the JDP be effective immediately.

16 (12) (Blank).

17 (Source: P.A. 100-201, eff. 8-18-17; 100-431, eff. 8-25-17;
18 100-759, eff. 1-1-19; 101-2, eff. 7-1-19; 101-79, eff.
19 7-12-19; 101-159, eff. 1-1-20; revised 8-8-19.)

20 (705 ILCS 405/5-750)

21 Sec. 5-750. Commitment to the Department of Juvenile
22 Justice.

23 (1) Except as provided in subsection (2) of this Section,
24 when any delinquent has been adjudged a ward of the court under
25 this Act, the court may commit him or her to the Department of

1 Juvenile Justice, if it finds that (a) his or her parents,
2 guardian or legal custodian are unfit or are unable, for some
3 reason other than financial circumstances alone, to care for,
4 protect, train or discipline the minor, or are unwilling to do
5 so, and the best interests of the minor and the public will not
6 be served by placement under Section 5-740, or it is necessary
7 to ensure the protection of the public from the consequences
8 of criminal activity of the delinquent; and (b) commitment to
9 the Department of Juvenile Justice is the least restrictive
10 alternative based on evidence that efforts were made to locate
11 less restrictive alternatives to secure confinement and the
12 reasons why efforts were unsuccessful in locating a less
13 restrictive alternative to secure confinement. Before the
14 court commits a minor to the Department of Juvenile Justice,
15 it shall make a finding that secure confinement is necessary,
16 following a review of the following individualized factors:

17 (A) Age of the minor.

18 (B) Criminal background of the minor.

19 (C) Review of results of any assessments of the minor,
20 including child centered assessments such as the CANS.

21 (D) Educational background of the minor, indicating
22 whether the minor has ever been assessed for a learning
23 disability, and if so what services were provided as well
24 as any disciplinary incidents at school.

25 (E) Physical, mental and emotional health of the
26 minor, indicating whether the minor has ever been

1 diagnosed with a health issue and if so what services were
2 provided and whether the minor was compliant with
3 services.

4 (F) Community based services that have been provided
5 to the minor, and whether the minor was compliant with the
6 services, and the reason the services were unsuccessful.

7 (G) Services within the Department of Juvenile Justice
8 that will meet the individualized needs of the minor.

9 (1.5) Before the court commits a minor to the Department
10 of Juvenile Justice, the court must find reasonable efforts
11 have been made to prevent or eliminate the need for the minor
12 to be removed from the home, or reasonable efforts cannot, at
13 this time, for good cause, prevent or eliminate the need for
14 removal, and removal from home is in the best interests of the
15 minor, the minor's family, and the public.

16 (2) When a minor of the age of at least 14 ~~13~~ years is
17 adjudged delinquent for the offense of first degree murder,
18 the court shall declare the minor a ward of the court and order
19 the minor committed to the Department of Juvenile Justice
20 until the minor's 21st birthday, without the possibility of
21 aftercare release, furlough, or non-emergency authorized
22 absence for a period of 5 years from the date the minor was
23 committed to the Department of Juvenile Justice, except that
24 the time that a minor spent in custody for the instant offense
25 before being committed to the Department of Juvenile Justice
26 shall be considered as time credited towards that 5 year

1 period. Upon release from a Department facility, a minor
2 adjudged delinquent for first degree murder shall be placed on
3 aftercare release until the age of 21, unless sooner
4 discharged from aftercare release or custodianship is
5 otherwise terminated in accordance with this Act or as
6 otherwise provided for by law. Nothing in this subsection (2)
7 shall preclude the State's Attorney from seeking to prosecute
8 a minor as an adult as an alternative to proceeding under this
9 Act.

10 (3) Except as provided in subsection (2), the commitment
11 of a delinquent to the Department of Juvenile Justice shall be
12 for an indeterminate term which shall automatically terminate
13 upon the delinquent attaining the age of 21 years or upon
14 completion of that period for which an adult could be
15 committed for the same act, whichever occurs sooner, unless
16 the delinquent is sooner discharged from aftercare release or
17 custodianship is otherwise terminated in accordance with this
18 Act or as otherwise provided for by law.

19 (3.5) Every delinquent minor committed to the Department
20 of Juvenile Justice under this Act shall be eligible for
21 aftercare release without regard to the length of time the
22 minor has been confined or whether the minor has served any
23 minimum term imposed. Aftercare release shall be administered
24 by the Department of Juvenile Justice, under the direction of
25 the Director. Unless sooner discharged, the Department of
26 Juvenile Justice shall discharge a minor from aftercare

1 release upon completion of the following aftercare release
2 terms:

3 (a) One and a half years from the date a minor is
4 released from a Department facility, if the minor was
5 committed for a Class X felony;

6 (b) One year from the date a minor is released from a
7 Department facility, if the minor was committed for a
8 Class 1 or 2 felony; and

9 (c) Six months from the date a minor is released from a
10 Department facility, if the minor was committed for a
11 Class 3 felony or lesser offense.

12 (4) When the court commits a minor to the Department of
13 Juvenile Justice, it shall order him or her conveyed forthwith
14 to the appropriate reception station or other place designated
15 by the Department of Juvenile Justice, and shall appoint the
16 Director of Juvenile Justice legal custodian of the minor. The
17 clerk of the court shall issue to the Director of Juvenile
18 Justice a certified copy of the order, which constitutes proof
19 of the Director's authority. No other process need issue to
20 warrant the keeping of the minor.

21 (5) If a minor is committed to the Department of Juvenile
22 Justice, the clerk of the court shall forward to the
23 Department:

24 (a) the sentencing order and copies of committing
25 petition;

26 (b) all reports;

1 (c) the court's statement of the basis for ordering
2 the disposition;

3 (d) any sex offender evaluations;

4 (e) any risk assessment or substance abuse treatment
5 eligibility screening and assessment of the minor by an
6 agent designated by the State to provide assessment
7 services for the courts;

8 (f) the number of days, if any, which the minor has
9 been in custody and for which he or she is entitled to
10 credit against the sentence, which information shall be
11 provided to the clerk by the sheriff;

12 (g) any medical or mental health records or summaries
13 of the minor;

14 (h) the municipality where the arrest of the minor
15 occurred, the commission of the offense occurred, and the
16 minor resided at the time of commission;

17 (h-5) a report detailing the minor's criminal history
18 in a manner and form prescribed by the Department of
19 Juvenile Justice; and

20 (i) all additional matters which the court directs the
21 clerk to transmit.

22 (6) Whenever the Department of Juvenile Justice lawfully
23 discharges from its custody and control a minor committed to
24 it, the Director of Juvenile Justice shall petition the court
25 for an order terminating his or her custodianship. The
26 custodianship shall terminate automatically 30 days after

1 receipt of the petition unless the court orders otherwise.

2 (7) If, while on aftercare release, a minor committed to
3 the Department of Juvenile Justice who resides in this State
4 is charged under the criminal laws of this State, the criminal
5 laws of any other state, or federal law with an offense that
6 could result in a sentence of imprisonment within the
7 Department of Corrections, the penal system of any state, or
8 the federal Bureau of Prisons, the commitment to the
9 Department of Juvenile Justice and all rights and duties
10 created by that commitment are automatically suspended pending
11 final disposition of the criminal charge. If the minor is
12 found guilty of the criminal charge and sentenced to a term of
13 imprisonment in the penitentiary system of the Department of
14 Corrections, the penal system of any state, or the federal
15 Bureau of Prisons, the commitment to the Department of
16 Juvenile Justice shall be automatically terminated. If the
17 criminal charge is dismissed, the minor is found not guilty,
18 or the minor completes a criminal sentence other than
19 imprisonment within the Department of Corrections, the penal
20 system of any state, or the federal Bureau of Prisons, the
21 previously imposed commitment to the Department of Juvenile
22 Justice and the full aftercare release term shall be
23 automatically reinstated unless custodianship is sooner
24 terminated. Nothing in this subsection (7) shall preclude the
25 court from ordering another sentence under Section 5-710 of
26 this Act or from terminating the Department's custodianship

1 while the commitment to the Department is suspended.

2 (Source: P.A. 100-765, eff. 8-10-18; 101-159, eff. 1-1-20.)