

HB3494



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB3494

Introduced 2/22/2021, by Rep. Aaron M. Ortiz

SYNOPSIS AS INTRODUCED:

705 ILCS 405/5-130

Amends the Juvenile Court Act of 1987. Deletes language providing which laws shall be applied when proceeding against, prosecuting, or sentencing a delinquent minor who was charged with first degree murder, aggravated criminal sexual assault, or aggravated battery with a firearm where the minor personally discharged the firearm.

LRB102 02816 RLC 12824 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 Section 5-130 as follows:

6 (705 ILCS 405/5-130)

7 Sec. 5-130. Excluded jurisdiction.

8 (1) (Blank). ~~(a) The definition of delinquent minor under~~
9 ~~Section 5-120 of this Article shall not apply to any minor who~~
10 ~~at the time of an offense was at least 16 years of age and who~~
11 ~~is charged with: (i) first degree murder, (ii) aggravated~~
12 ~~criminal sexual assault, or (iii) aggravated battery with a~~
13 ~~firearm as described in Section 12-4.2 or subdivision (c) (1),~~
14 ~~(c) (2), (c) (3), or (c) (4) of Section 12-3.05 where the minor~~
15 ~~personally discharged a firearm as defined in Section 2-15.5~~
16 ~~of the Criminal Code of 1961 or the Criminal Code of 2012.~~

17 ~~These charges and all other charges arising out of the~~
18 ~~same incident shall be prosecuted under the criminal laws of~~
19 ~~this State.~~

20 ~~(b) (i) If before trial or plea an information or~~
21 ~~indictment is filed that does not charge an offense specified~~
22 ~~in paragraph (a) of this subsection (1) the State's Attorney~~
23 ~~may proceed on any lesser charge or charges, but only in~~

1 ~~Juvenile Court under the provisions of this Article. The~~
2 ~~State's Attorney may proceed on a lesser charge if before~~
3 ~~trial the minor defendant knowingly and with advice of counsel~~
4 ~~waives, in writing, his or her right to have the matter proceed~~
5 ~~in Juvenile Court.~~

6 ~~(ii) If before trial or plea an information or indictment~~
7 ~~is filed that includes one or more charges specified in~~
8 ~~paragraph (a) of this subsection (1) and additional charges~~
9 ~~that are not specified in that paragraph, all of the charges~~
10 ~~arising out of the same incident shall be prosecuted under the~~
11 ~~Criminal Code of 1961 or the Criminal Code of 2012.~~

12 ~~(e) (i) If after trial or plea the minor is convicted of any~~
13 ~~offense covered by paragraph (a) of this subsection (1), then,~~
14 ~~in sentencing the minor, the court shall sentence the minor~~
15 ~~under Section 5-4.5-105 of the Unified Code of Corrections.~~

16 ~~(ii) If after trial or plea the court finds that the minor~~
17 ~~committed an offense not covered by paragraph (a) of this~~
18 ~~subsection (1), that finding shall not invalidate the verdict~~
19 ~~or the prosecution of the minor under the criminal laws of the~~
20 ~~State; however, unless the State requests a hearing for the~~
21 ~~purpose of sentencing the minor under Chapter V of the Unified~~
22 ~~Code of Corrections, the Court must proceed under Sections~~
23 ~~5-705 and 5-710 of this Article. To request a hearing, the~~
24 ~~State must file a written motion within 10 days following the~~
25 ~~entry of a finding or the return of a verdict. Reasonable~~
26 ~~notice of the motion shall be given to the minor or his or her~~

~~1 eounsel. If the motion is made by the State, the court shall
2 conduct a hearing to determine if the minor should be
3 sentenced under Chapter V of the Unified Code of Corrections.
4 In making its determination, the court shall consider among
5 other matters: (a) whether there is evidence that the offense
6 was committed in an aggressive and premeditated manner; (b)
7 the age of the minor; (c) the previous history of the minor;
8 (d) whether there are facilities particularly available to the
9 Juvenile Court or the Department of Juvenile Justice for the
10 treatment and rehabilitation of the minor; (e) whether the
11 security of the public requires sentencing under Chapter V of
12 the Unified Code of Corrections; and (f) whether the minor
13 possessed a deadly weapon when committing the offense. The
14 rules of evidence shall be the same as if at trial. If after
15 the hearing the court finds that the minor should be sentenced
16 under Chapter V of the Unified Code of Corrections, then the
17 court shall sentence the minor under Section 5-4.5-105 of the
18 Unified Code of Corrections.~~

19 (2) (Blank).

20 (3) (Blank).

21 (4) (Blank).

22 (5) (Blank).

23 (6) (Blank).

24 (7) The procedures set out in this Article for the
25 investigation, arrest and prosecution of juvenile offenders
26 shall not apply to minors who are excluded from jurisdiction

1 of the Juvenile Court, except that minors under 18 years of age
2 shall be kept separate from confined adults.

3 (8) Nothing in this Act prohibits or limits the
4 prosecution of any minor for an offense committed on or after
5 his or her 18th birthday even though he or she is at the time
6 of the offense a ward of the court.

7 (9) If an original petition for adjudication of wardship
8 alleges the commission by a minor 13 years of age or over of an
9 act that constitutes a crime under the laws of this State, the
10 minor, with the consent of his or her counsel, may, at any time
11 before commencement of the adjudicatory hearing, file with the
12 court a motion that criminal prosecution be ordered and that
13 the petition be dismissed insofar as the act or acts involved
14 in the criminal proceedings are concerned. If such a motion is
15 filed as herein provided, the court shall enter its order
16 accordingly.

17 (10) If, prior to August 12, 2005 (the effective date of
18 Public Act 94-574), a minor is charged with a violation of
19 Section 401 of the Illinois Controlled Substances Act under
20 the criminal laws of this State, other than a minor charged
21 with a Class X felony violation of the Illinois Controlled
22 Substances Act or the Methamphetamine Control and Community
23 Protection Act, any party including the minor or the court sua
24 sponte may, before trial, move for a hearing for the purpose of
25 trying and sentencing the minor as a delinquent minor. To
26 request a hearing, the party must file a motion prior to trial.

1 Reasonable notice of the motion shall be given to all parties.
2 On its own motion or upon the filing of a motion by one of the
3 parties including the minor, the court shall conduct a hearing
4 to determine whether the minor should be tried and sentenced
5 as a delinquent minor under this Article. In making its
6 determination, the court shall consider among other matters:

7 (a) The age of the minor;

8 (b) Any previous delinquent or criminal history of the
9 minor;

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

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

14 (e) Whether there is probable cause to support the
15 charge, whether the minor is charged through
16 accountability, and whether there is evidence the minor
17 possessed a deadly weapon or caused serious bodily harm
18 during the offense.

19 Any material that is relevant and reliable shall be
20 admissible at the hearing. In all cases, the judge shall enter
21 an order permitting prosecution under the criminal laws of
22 Illinois unless the judge makes a finding based on a
23 preponderance of the evidence that the minor would be amenable
24 to the care, treatment, and training programs available
25 through the facilities of the juvenile court based on an
26 evaluation of the factors listed in this subsection (10).

1 (11) The changes made to this Section by Public Act 98-61
2 apply to a minor who has been arrested or taken into custody on
3 or after January 1, 2014 (the effective date of Public Act
4 98-61).

5 (Source: P.A. 98-61, eff. 1-1-14; 98-756, eff. 7-16-14;
6 99-258, eff. 1-1-16.)