



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB3414

Introduced 2/17/2023, by Rep. Kelly M. Cassidy

SYNOPSIS AS INTRODUCED:

705 ILCS 405/5-805
705 ILCS 405/5-810
730 ILCS 5/5-4.5-105

Amends the Juvenile court Act of 1987. Provides that the judge shall enter an order permitting prosecution under the criminal laws of Illinois unless the judge makes a finding based on clear and convincing evidence that the minor would be amenable to the care, treatment, and training programs available through the facilities of the juvenile court based on an evaluation of: (1) any involvement of the minor in the child welfare system, (2) whether there is evidence the minor was subjected to outside pressure, including peer pressure, familial pressure, or negative influences, and (3) the minor's degree of participation and specific role in the offense. Amends the Unified Code of Corrections. Provides that when a person commits an offense and the person is under 18 years of age at the time of the commission of the offense, the court, at the sentencing hearing shall consider the following additional factors in mitigation in determining the appropriate sentence: (1) the person's family, home environment, educational and social background, including any history of domestic or sexual violence or sexual exploitation; (2) childhood trauma, including adverse childhood experiences, the person's involvement in the child welfare system; (3) involvement of the person in the community; (4) if a comprehensive mental health evaluation of the person was conducted by a qualified mental health professional; and (5) the outcome of the evaluation. Provides that notwithstanding any other provision of law, if the court determines by clear and convincing evidence that the individual against whom the person is convicted of committing the offense previously committed certain human trafficking or sex crimes against the person within 3 years before the offense in which the person was convicted, the court may, in its discretion: (1) transfer the person to juvenile court for sentencing under the Juvenile Court Act of 1987; (2) depart from any mandatory minimum sentence, maximum sentence, or sentencing enhancement; or (3) suspend any portion of an otherwise applicable sentence.

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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 Sections 5-805 and 5-810 as follows:

6 (705 ILCS 405/5-805)

7 Sec. 5-805. Transfer of jurisdiction.

8 (1) (Blank).

9 (2) Presumptive transfer.

10 (a) If the State's Attorney files a petition, at any
11 time prior to commencement of the minor's trial, to permit
12 prosecution under the criminal laws and the petition
13 alleges a minor 15 years of age or older of an act that
14 constitutes a forcible felony under the laws of this
15 State, and if a motion by the State's Attorney to
16 prosecute the minor under the criminal laws of Illinois
17 for the alleged forcible felony alleges that (i) the minor
18 has previously been adjudicated delinquent or found guilty
19 for commission of an act that constitutes a forcible
20 felony under the laws of this State or any other state and
21 (ii) the act that constitutes the offense was committed in
22 furtherance of criminal activity by an organized gang,
23 and, if the juvenile judge assigned to hear and determine

1 motions to transfer a case for prosecution in the criminal
2 court determines that there is probable cause to believe
3 that the allegations in the petition and motion are true,
4 there is a rebuttable presumption that the minor is not a
5 fit and proper subject to be dealt with under the Juvenile
6 Justice Reform Provisions of 1998 (Public Act 90-590), and
7 that, except as provided in paragraph (b), the case should
8 be transferred to the criminal court.

9 (b) The judge shall enter an order permitting
10 prosecution under the criminal laws of Illinois unless the
11 judge makes a finding based on clear and convincing
12 evidence that the minor would be amenable to the care,
13 treatment, and training programs available through the
14 facilities of the juvenile court based on an evaluation of
15 the following:

16 (i) the age of the minor;

17 (ii) the history of the minor, including:

18 (A) any previous delinquent or criminal
19 history of the minor,

20 (B) any previous abuse or neglect history of
21 the minor, ~~and~~

22 (C) any mental health, physical or educational
23 history of the minor or combination of these
24 factors, and

25 (D) any involvement of the minor in the child
26 welfare system;

1 (iii) the circumstances of the offense, including:

2 (A) the seriousness of the offense,

3 (B) whether the minor is charged through
4 accountability,

5 (C) whether there is evidence the offense was
6 committed in an aggressive and premeditated
7 manner,

8 (D) whether there is evidence the offense
9 caused serious bodily harm,

10 (E) whether there is evidence the minor
11 possessed a deadly weapon,~~+~~

12 (F) whether there is evidence the minor was
13 subjected to outside pressure, including peer
14 pressure, familial pressure, or negative
15 influences, and

16 (G) the minor's degree of participation and
17 specific role in the offense;

18 (iv) the advantages of treatment within the
19 juvenile justice system including whether there are
20 facilities or programs, or both, particularly
21 available in the juvenile system;

22 (v) whether the security of the public requires
23 sentencing under Chapter V of the Unified Code of
24 Corrections:

25 (A) the minor's history of services, including
26 the minor's willingness to participate

1 meaningfully in available services;

2 (B) whether there is a reasonable likelihood
3 that the minor can be rehabilitated before the
4 expiration of the juvenile court's jurisdiction;
5 and

6 (C) the adequacy of the punishment or
7 services.

8 In considering these factors, the court shall give
9 greater weight to the seriousness of the alleged offense
10 and the minor's prior record of delinquency than to the
11 other factors listed in this subsection.

12 (3) Discretionary transfer.

13 (a) If a petition alleges commission by a minor 13
14 years of age or over of an act that constitutes a crime
15 under the laws of this State and, on motion of the State's
16 Attorney to permit prosecution of the minor under the
17 criminal laws, a Juvenile Judge assigned by the Chief
18 Judge of the Circuit to hear and determine those motions,
19 after hearing but before commencement of the trial, finds
20 that there is probable cause to believe that the
21 allegations in the motion are true and that it is not in
22 the best interests of the public to proceed under this
23 Act, the court may enter an order permitting prosecution
24 under the criminal laws.

25 (b) In making its determination on the motion to
26 permit prosecution under the criminal laws, the court

1 shall consider among other matters:

2 (i) the age of the minor;

3 (ii) the history of the minor, including:

4 (A) any previous delinquent or criminal
5 history of the minor,

6 (B) any previous abuse or neglect history of
7 the minor, ~~and~~

8 (C) any mental health, physical, or
9 educational history of the minor or combination of
10 these factors, ~~and~~

11 (D) any involvement of the minor in the child
12 welfare system;

13 (iii) the circumstances of the offense, including:

14 (A) the seriousness of the offense,

15 (B) whether the minor is charged through
16 accountability,

17 (C) whether there is evidence the offense was
18 committed in an aggressive and premeditated
19 manner,

20 (D) whether there is evidence the offense
21 caused serious bodily harm,

22 (E) whether there is evidence the minor
23 possessed a deadly weapon, ~~+~~

24 (F) whether there is evidence the minor was
25 subjected to outside pressure, including peer
26 pressure, familial pressure, or negative

1 influences, and

2 (G) the minor's degree of participation and
3 specific role in the offense;

4 (iv) the advantages of treatment within the
5 juvenile justice system including whether there are
6 facilities or programs, or both, particularly
7 available in the juvenile system;

8 (v) whether the security of the public requires
9 sentencing under Chapter V of the Unified Code of
10 Corrections:

11 (A) the minor's history of services, including
12 the minor's willingness to participate
13 meaningfully in available services;

14 (B) whether there is a reasonable likelihood
15 that the minor can be rehabilitated before the
16 expiration of the juvenile court's jurisdiction;
17 and

18 (C) the adequacy of the punishment or
19 services.

20 In considering these factors, the court shall give
21 greater weight to the seriousness of the alleged offense,
22 the minor's prior record of delinquency than to the other
23 factors listed in this subsection.

24 (4) The rules of evidence for this hearing shall be the
25 same as under Section 5-705 of this Act. A minor must be
26 represented in court by counsel before the hearing may be

1 commenced.

2 (5) If criminal proceedings are instituted, the petition
3 for adjudication of wardship shall be dismissed insofar as the
4 act or acts involved in the criminal proceedings. Taking of
5 evidence in a trial on petition for adjudication of wardship
6 is a bar to criminal proceedings based upon the conduct
7 alleged in the petition.

8 (6) When criminal prosecution is permitted under this
9 Section and a finding of guilt is entered, the criminal court
10 shall sentence the minor under Section 5-4.5-105 of the
11 Unified Code of Corrections.

12 (7) The changes made to this Section by this amendatory
13 Act of the 99th General Assembly apply to a minor who has been
14 taken into custody on or after the effective date of this
15 amendatory Act of the 99th General Assembly.

16 (Source: P.A. 99-258, eff. 1-1-16.)

17 (705 ILCS 405/5-810)

18 Sec. 5-810. Extended jurisdiction juvenile prosecutions.

19 (1) (a) If the State's Attorney files a petition, at any
20 time prior to commencement of the minor's trial, to designate
21 the proceeding as an extended jurisdiction juvenile
22 prosecution and the petition alleges the commission by a minor
23 13 years of age or older of any offense which would be a felony
24 if committed by an adult, and, if the juvenile judge assigned
25 to hear and determine petitions to designate the proceeding as

1 an extended jurisdiction juvenile prosecution determines that
2 there is probable cause to believe that the allegations in the
3 petition and motion are true, there is a rebuttable
4 presumption that the proceeding shall be designated as an
5 extended jurisdiction juvenile proceeding.

6 (b) The judge shall enter an order designating the
7 proceeding as an extended jurisdiction juvenile proceeding
8 unless the judge makes a finding based on clear and convincing
9 evidence that sentencing under the Chapter V of the Unified
10 Code of Corrections would not be appropriate for the minor
11 based on an evaluation of the following factors:

12 (i) the age of the minor;

13 (ii) the history of the minor, including:

14 (A) any previous delinquent or criminal history of
15 the minor,

16 (B) any previous abuse or neglect history of the
17 minor, ~~and~~

18 (C) any mental health, physical and/or educational
19 history of the minor, and

20 (D) any involvement of the minor in the child
21 welfare system;

22 (iii) the circumstances of the offense, including:

23 (A) the seriousness of the offense,

24 (B) whether the minor is charged through
25 accountability,

26 (C) whether there is evidence the offense was

1 committed in an aggressive and premeditated manner,

2 (D) whether there is evidence the offense caused
3 serious bodily harm,

4 (E) whether there is evidence the minor possessed
5 a deadly weapon,~~†~~

6 (F) whether there is evidence the minor was
7 subjected to outside pressure, including peer
8 pressure, familial pressure, or negative influences,
9 and

10 (G) the minor's degree of participation and
11 specific role in the offense;

12 (iv) the advantages of treatment within the juvenile
13 justice system including whether there are facilities or
14 programs, or both, particularly available in the juvenile
15 system;

16 (v) whether the security of the public requires
17 sentencing under Chapter V of the Unified Code of
18 Corrections:

19 (A) the minor's history of services, including the
20 minor's willingness to participate meaningfully in
21 available services;

22 (B) whether there is a reasonable likelihood that
23 the minor can be rehabilitated before the expiration
24 of the juvenile court's jurisdiction;

25 (C) the adequacy of the punishment or services.

26 In considering these factors, the court shall give greater

1 weight to the seriousness of the alleged offense, and the
2 minor's prior record of delinquency than to other factors
3 listed in this subsection.

4 (2) Procedures for extended jurisdiction juvenile
5 prosecutions. The State's Attorney may file a written motion
6 for a proceeding to be designated as an extended juvenile
7 jurisdiction prior to commencement of trial. Notice of the
8 motion shall be in compliance with Section 5-530. When the
9 State's Attorney files a written motion that a proceeding be
10 designated an extended jurisdiction juvenile prosecution, the
11 court shall commence a hearing within 30 days of the filing of
12 the motion for designation, unless good cause is shown by the
13 prosecution or the minor as to why the hearing could not be
14 held within this time period. If the court finds good cause has
15 been demonstrated, then the hearing shall be held within 60
16 days of the filing of the motion. The hearings shall be open to
17 the public unless the judge finds that the hearing should be
18 closed for the protection of any party, victim or witness. If
19 the Juvenile Judge assigned to hear and determine a motion to
20 designate an extended jurisdiction juvenile prosecution
21 determines that there is probable cause to believe that the
22 allegations in the petition and motion are true the court
23 shall grant the motion for designation. Information used by
24 the court in its findings or stated in or offered in connection
25 with this Section may be by way of proffer based on reliable
26 information offered by the State or the minor. All evidence

1 shall be admissible if it is relevant and reliable regardless
2 of whether it would be admissible under the rules of evidence.

3 (3) Trial. A minor who is subject of an extended
4 jurisdiction juvenile prosecution has the right to trial by
5 jury. Any trial under this Section shall be open to the public.

6 (4) Sentencing. If an extended jurisdiction juvenile
7 prosecution under subsection (1) results in a guilty plea, a
8 verdict of guilty, or a finding of guilt, the court shall
9 impose the following:

10 (i) one or more juvenile sentences under Section
11 5-710; and

12 (ii) an adult criminal sentence in accordance with the
13 provisions of Section 5-4.5-105 of the Unified Code of
14 Corrections, the execution of which shall be stayed on the
15 condition that the offender not violate the provisions of
16 the juvenile sentence.

17 Any sentencing hearing under this Section shall be open to the
18 public.

19 (5) If, after an extended jurisdiction juvenile
20 prosecution trial, a minor is convicted of a lesser-included
21 offense or of an offense that the State's Attorney did not
22 designate as an extended jurisdiction juvenile prosecution,
23 the State's Attorney may file a written motion, within 10 days
24 of the finding of guilt, that the minor be sentenced as an
25 extended jurisdiction juvenile prosecution offender. The court
26 shall rule on this motion using the factors found in paragraph

1 (1) (b) of Section 5-805. If the court denies the State's
2 Attorney's motion for sentencing under the extended
3 jurisdiction juvenile prosecution provision, the court shall
4 proceed to sentence the minor under Section 5-710.

5 (6) When it appears that a minor convicted in an extended
6 jurisdiction juvenile prosecution under subsection (1) has
7 violated the conditions of his or her sentence, or is alleged
8 to have committed a new offense upon the filing of a petition
9 to revoke the stay, the court may, without notice, issue a
10 warrant for the arrest of the minor. After a hearing, if the
11 court finds by a preponderance of the evidence that the minor
12 committed a new offense, the court shall order execution of
13 the previously imposed adult criminal sentence. After a
14 hearing, if the court finds by a preponderance of the evidence
15 that the minor committed a violation of his or her sentence
16 other than by a new offense, the court may order execution of
17 the previously imposed adult criminal sentence or may continue
18 him or her on the existing juvenile sentence with or without
19 modifying or enlarging the conditions. Upon revocation of the
20 stay of the adult criminal sentence and imposition of that
21 sentence, the minor's extended jurisdiction juvenile status
22 shall be terminated. The on-going jurisdiction over the
23 minor's case shall be assumed by the adult criminal court and
24 juvenile court jurisdiction shall be terminated and a report
25 of the imposition of the adult sentence shall be sent to the
26 Department of State Police.

1 (7) Upon successful completion of the juvenile sentence
2 the court shall vacate the adult criminal sentence.

3 (8) Nothing in this Section precludes the State from
4 filing a motion for transfer under Section 5-805.

5 (Source: P.A. 99-258, eff. 1-1-16.)

6 Section 10. The Unified Code of Corrections is amended by
7 changing Section 5-4.5-105 as follows:

8 (730 ILCS 5/5-4.5-105)

9 Sec. 5-4.5-105. SENTENCING OF INDIVIDUALS UNDER THE AGE OF
10 18 AT THE TIME OF THE COMMISSION OF AN OFFENSE.

11 (a) On or after the effective date of this amendatory Act
12 of the 99th General Assembly, when a person commits an offense
13 and the person is under 18 years of age at the time of the
14 commission of the offense, the court, at the sentencing
15 hearing conducted under Section 5-4-1, shall consider the
16 following additional factors in mitigation in determining the
17 appropriate sentence:

18 (1) the person's age, impetuosity, and level of
19 maturity at the time of the offense, including the ability
20 to consider risks and consequences of behavior, and the
21 presence of cognitive or developmental disability, or
22 both, if any;

23 (2) whether the person was subjected to outside
24 pressure, including peer pressure, familial pressure, or

1 negative influences;

2 (3) the person's family, home environment, educational
3 and social background, including any history of parental
4 neglect, domestic or sexual violence, sexual exploitation,
5 physical abuse, or other childhood trauma including
6 adverse childhood experiences (or ACEs);

7 (4) the person's potential for rehabilitation or
8 evidence of rehabilitation, or both;

9 (5) the circumstances of the offense;

10 (6) the person's degree of participation and specific
11 role in the offense, including the level of planning by
12 the defendant before the offense;

13 (7) whether the person was able to meaningfully
14 participate in his or her defense;

15 (8) the person's prior juvenile or criminal history;

16 ~~and~~

17 (9) the person's involvement in the child welfare
18 system;

19 (10) involvement of the person in the community;

20 (11) if a comprehensive mental health evaluation of
21 the person was conducted by a qualified mental health
22 professional, the outcome of the evaluation; and

23 12 ~~(9)~~ any other information the court finds relevant
24 and reliable, including an expression of remorse, if
25 appropriate. However, if the person, on advice of counsel
26 chooses not to make a statement, the court shall not

1 consider a lack of an expression of remorse as an
2 aggravating factor.

3 (b) The trial judge shall specify on the record its
4 consideration of the factors under subsection (a) of this
5 section.

6 (c) Notwithstanding any other provision of law, if the
7 court determines by clear and convincing evidence that the
8 individual against whom the person is convicted of committing
9 the offense previously committed a crime under Section 10-9,
10 Section 11-1.20, Section 11-1.30, Section 11-1.40, Section
11 11-1.50, Section 11-1.60, Section 11-6, Section 11-6.5,
12 Section 11-6.6, Section 11-9.1, Section 11-14.3, Section
13 11-14.4 or Section 11-18.1 under Criminal Code of 2012 against
14 the person within 3 years before the offense in which the
15 person was convicted, the court may, in its discretion:

16 (1) transfer the person to juvenile court for
17 sentencing under Section 5-710 of the Juvenile Court
18 Act of 1987;

19 (2) depart from any mandatory minimum sentence,
20 maximum sentence, or sentencing enhancement; or

21 (3) suspend any portion of an otherwise applicable
22 sentence;

23 (d) Subsection (c) shall be construed as prioritizing the
24 successful treatment and rehabilitation of persons under 18
25 years of age who are sex crime victims who commit acts of
26 violence against their abusers. It is the General Assembly's

1 intent that these persons be viewed as victims and provided
2 treatment and services in the community, juvenile or family
3 court system.

4 (e) ~~(b)~~ Except as provided in subsection (f) ~~(e)~~, the
5 court may sentence the defendant to any disposition authorized
6 for the class of the offense of which he or she was found
7 guilty as described in Article 4.5 of this Code, and may, in
8 its discretion, decline to impose any otherwise applicable
9 sentencing enhancement based upon firearm possession,
10 possession with personal discharge, or possession with
11 personal discharge that proximately causes great bodily harm,
12 permanent disability, permanent disfigurement, or death to
13 another person.

14 (f) ~~(e)~~ Notwithstanding any other provision of law, if the
15 defendant is convicted of first degree murder and would
16 otherwise be subject to sentencing under clause (iii), (iv),
17 (v), or (vii) of subparagraph (c) of paragraph (1) of
18 subsection (a) of Section 5-8-1 of this Code based on the
19 category of persons identified therein, the court shall impose
20 a sentence of not less than 40 years of imprisonment, except
21 for persons convicted of first degree murder where subsection
22 (c) applies. In addition, the court may, in its discretion,
23 decline to impose the sentencing enhancements based upon the
24 possession or use of a firearm during the commission of the
25 offense included in subsection (d) of Section 5-8-1.

26 (Source: P.A. 99-69, eff. 1-1-16; 99-258, eff. 1-1-16; 99-875,

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1 eff. 1-1-17.)