



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB1607

Introduced 2/8/2023, by Sen. Chapin Rose

SYNOPSIS AS INTRODUCED:

705 ILCS 405/5-130
705 ILCS 405/5-410

Amends the Juvenile Court Act of 1987. Provides that any minor 10 years of age or older arrested or taken into custody under the Act for vehicular hijacking or aggravated vehicular hijacking shall be detained in an authorized detention facility until a detention or shelter care hearing is held to determine if there is probable cause to believe that the minor is a delinquent minor and that: (1) secure custody is a matter of immediate and urgent necessity for the protection of the minor or of the person or property of another; (2) the minor is likely to flee the jurisdiction of the court; or (3) the minor was taken into custody under a warrant. Provides that, if the court makes that determination, the minor shall continue to be held until the disposition of an adjudicatory hearing under the Delinquent Minors Article of the Act. Provides that a minor who at the time of the offense was at least 16 years of age and who is charged with certain aggravated vehicular hijacking violations or certain armed robbery violations is not subject to the Act and shall be prosecuted under the criminal laws of the State.

LRB103 25269 RLC 51613 b

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 5-130 and 5-410 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 16 years of age and who is
11 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 (e)(1),
14 (e)(2), (e)(3), or (e)(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, (iv)
17 aggravated vehicular hijacking under paragraph (4), (5), or
18 (6) of subsection (a) of Section 18-4 of the Criminal Code of
19 2012, or (v) armed robbery under paragraph (2), (3), or (4) of
20 subsection (a) of Section 18-2 of the Criminal Code of 2012.

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

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

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

16 (c) (i) If after trial or plea the minor is convicted of any
17 offense covered by paragraph (a) of this subsection (1), then,
18 in sentencing the minor, the court shall sentence the minor
19 under Section 5-4.5-105 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
7 sentenced under Chapter V of the Unified Code of Corrections.
8 In making its determination, the court shall consider among
9 other matters: (a) whether there is evidence that the offense
10 was committed in an aggressive and premeditated manner; (b)
11 the age of the minor; (c) the previous history of the minor;
12 (d) 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 under Section 5-4.5-105 of the
22 Unified Code of Corrections.

23 (2) (Blank).

24 (3) (Blank).

25 (4) (Blank).

26 (5) (Blank).

1 (6) (Blank).

2 (7) The procedures set out in this Article for the
3 investigation, arrest and prosecution of juvenile offenders
4 shall not apply to minors who are excluded from jurisdiction
5 of the Juvenile Court, except that minors under 18 years of age
6 shall be kept separate from confined adults.

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

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

21 (10) If, prior to August 12, 2005 (the effective date of
22 Public Act 94-574), a minor is charged with a violation of
23 Section 401 of the Illinois Controlled Substances Act under
24 the criminal laws of this State, other than a minor charged
25 with a Class X felony violation of the Illinois Controlled
26 Substances Act or the Methamphetamine Control and Community

1 Protection Act, any party including the minor or the court sua
2 sponte may, before trial, move for a hearing for the purpose of
3 trying and sentencing the minor as a delinquent minor. To
4 request a hearing, the party must file a motion prior to trial.
5 Reasonable notice of the motion shall be given to all parties.
6 On its own motion or upon the filing of a motion by one of the
7 parties including the minor, the court shall conduct a hearing
8 to determine whether the minor should be tried and sentenced
9 as a delinquent minor under this Article. In making its
10 determination, the court shall consider among other matters:

11 (a) The age of the minor;

12 (b) Any previous delinquent or criminal history of the
13 minor;

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

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

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

23 Any material that is relevant and reliable shall be
24 admissible at the hearing. In all cases, the judge shall enter
25 an order permitting prosecution under the criminal laws of
26 Illinois unless the judge makes a finding based on a

1 preponderance of the evidence that the minor would be amenable
2 to the care, treatment, and training programs available
3 through the facilities of the juvenile court based on an
4 evaluation of the factors listed in this subsection (10).

5 (11) The changes made to this Section by Public Act 98-61
6 apply to a minor who has been arrested or taken into custody on
7 or after January 1, 2014 (the effective date of Public Act
8 98-61).

9 (Source: P.A. 98-61, eff. 1-1-14; 98-756, eff. 7-16-14;
10 99-258, eff. 1-1-16.)

11 (705 ILCS 405/5-410)

12 Sec. 5-410. Non-secure custody or detention.

13 (1) Any minor arrested or taken into custody pursuant to
14 this Act who requires care away from his or her home but who
15 does not require physical restriction shall be given temporary
16 care in a foster family home or other shelter facility
17 designated by the court.

18 (2) (a) Any minor 10 years of age or older arrested
19 pursuant to this Act where there is probable cause to believe
20 that the minor is a delinquent minor and that (i) secure
21 custody is a matter of immediate and urgent necessity for the
22 protection of the minor or of the person or property of
23 another, (ii) the minor is likely to flee the jurisdiction of
24 the court, or (iii) the minor was taken into custody under a
25 warrant, may be kept or detained in an authorized detention

1 facility. A minor under 13 years of age shall not be admitted,
2 kept, or detained in a detention facility unless a local youth
3 service provider, including a provider through the
4 Comprehensive Community Based Youth Services network, has been
5 contacted and has not been able to accept the minor. No minor
6 under 12 years of age shall be detained in a county jail or a
7 municipal lockup for more than 6 hours.

8 (a-5) For a minor arrested or taken into custody for
9 vehicular hijacking or aggravated vehicular hijacking, a
10 previous finding of delinquency for vehicular hijacking or
11 aggravated vehicular hijacking shall be given greater weight
12 in determining whether secured custody of a minor is a matter
13 of immediate and urgent necessity for the protection of the
14 minor or of the person or property of another.

15 (b) The written authorization of the probation officer or
16 detention officer (or other public officer designated by the
17 court in a county having 3,000,000 or more inhabitants)
18 constitutes authority for the superintendent of any juvenile
19 detention home to detain and keep a minor for up to 40 hours,
20 excluding Saturdays, Sundays, and court-designated holidays.
21 These records shall be available to the same persons and
22 pursuant to the same conditions as are law enforcement records
23 as provided in Section 5-905.

24 (b-4) The consultation required by paragraph (b-5) shall
25 not be applicable if the probation officer or detention
26 officer (or other public officer designated by the court in a

1 county having 3,000,000 or more inhabitants) utilizes a
2 scorable detention screening instrument, which has been
3 developed with input by the State's Attorney, to determine
4 whether a minor should be detained, however, paragraph (b-5)
5 shall still be applicable where no such screening instrument
6 is used or where the probation officer, detention officer (or
7 other public officer designated by the court in a county
8 having 3,000,000 or more inhabitants) deviates from the
9 screening instrument.

10 (b-5) Subject to the provisions of paragraph (b-4), if a
11 probation officer or detention officer (or other public
12 officer designated by the court in a county having 3,000,000
13 or more inhabitants) does not intend to detain a minor for an
14 offense which constitutes one of the following offenses he or
15 she shall consult with the State's Attorney's Office prior to
16 the release of the minor: first degree murder, second degree
17 murder, involuntary manslaughter, criminal sexual assault,
18 aggravated criminal sexual assault, aggravated battery with a
19 firearm as described in Section 12-4.2 or subdivision (e)(1),
20 (e)(2), (e)(3), or (e)(4) of Section 12-3.05, aggravated or
21 heinous battery involving permanent disability or
22 disfigurement or great bodily harm, robbery, aggravated
23 robbery, armed robbery, ~~vehicular hijacking, aggravated~~
24 ~~vehicular hijacking,~~ vehicular invasion, arson, aggravated
25 arson, kidnapping, aggravated kidnapping, home invasion,
26 burglary, or residential burglary. Any minor 10 years of age

1 or older arrested or taken into custody under this Act for
2 vehicular hijacking or aggravated vehicular hijacking shall be
3 detained in an authorized detention facility until a detention
4 or shelter care hearing is held to determine if there is
5 probable cause to believe that the minor is a delinquent minor
6 and that: (1) secure custody is a matter of immediate and
7 urgent necessity for the protection of the minor or of the
8 person or property of another; (2) the minor is likely to flee
9 the jurisdiction of the court; or (3) the minor was taken into
10 custody under a warrant. If the court makes that
11 determination, the minor shall continue to be held until the
12 disposition of an adjudicatory hearing under this Article.

13 (c) Except as otherwise provided in paragraph (a), (d), or
14 (e), no minor shall be detained in a county jail or municipal
15 lockup for more than 12 hours, unless the offense is a crime of
16 violence in which case the minor may be detained up to 24
17 hours. For the purpose of this paragraph, "crime of violence"
18 has the meaning ascribed to it in Section 1-10 of the
19 Alcoholism and Other Drug Abuse and Dependency Act.

20 (i) The period of detention is deemed to have begun
21 once the minor has been placed in a locked room or cell or
22 handcuffed to a stationary object in a building housing a
23 county jail or municipal lockup. Time spent transporting a
24 minor is not considered to be time in detention or secure
25 custody.

26 (ii) Any minor so confined shall be under periodic

1 supervision and shall not be permitted to come into or
2 remain in contact with adults in custody in the building.

3 (iii) Upon placement in secure custody in a jail or
4 lockup, the minor shall be informed of the purpose of the
5 detention, the time it is expected to last and the fact
6 that it cannot exceed the time specified under this Act.

7 (iv) A log shall be kept which shows the offense which
8 is the basis for the detention, the reasons and
9 circumstances for the decision to detain, and the length
10 of time the minor was in detention.

11 (v) Violation of the time limit on detention in a
12 county jail or municipal lockup shall not, in and of
13 itself, render inadmissible evidence obtained as a result
14 of the violation of this time limit. Minors under 18 years
15 of age shall be kept separate from confined adults and may
16 not at any time be kept in the same cell, room, or yard
17 with adults confined pursuant to criminal law. Persons 18
18 years of age and older who have a petition of delinquency
19 filed against them may be confined in an adult detention
20 facility. In making a determination whether to confine a
21 person 18 years of age or older who has a petition of
22 delinquency filed against the person, these factors, among
23 other matters, shall be considered:

24 (A) the age of the person;

25 (B) any previous delinquent or criminal history of
26 the person;

1 (C) any previous abuse or neglect history of the
2 person; and

3 (D) any mental health or educational history of
4 the person, or both.

5 (d) (i) If a minor 12 years of age or older is confined in
6 a county jail in a county with a population below 3,000,000
7 inhabitants, then the minor's confinement shall be implemented
8 in such a manner that there will be no contact by sight, sound,
9 or otherwise between the minor and adult prisoners. Minors 12
10 years of age or older must be kept separate from confined
11 adults and may not at any time be kept in the same cell, room,
12 or yard with confined adults. This paragraph (d) (i) shall only
13 apply to confinement pending an adjudicatory hearing and shall
14 not exceed 40 hours, excluding Saturdays, Sundays, and
15 court-designated holidays. To accept or hold minors during
16 this time period, county jails shall comply with all
17 monitoring standards adopted by the Department of Corrections
18 and training standards approved by the Illinois Law
19 Enforcement Training Standards Board.

20 (ii) To accept or hold minors, 12 years of age or older,
21 after the time period prescribed in paragraph (d) (i) of this
22 subsection (2) of this Section but not exceeding 7 days
23 including Saturdays, Sundays, and holidays pending an
24 adjudicatory hearing, county jails shall comply with all
25 temporary detention standards adopted by the Department of
26 Corrections and training standards approved by the Illinois

1 Law Enforcement Training Standards Board.

2 (iii) To accept or hold minors 12 years of age or older,
3 after the time period prescribed in paragraphs (d)(i) and
4 (d)(ii) of this subsection (2) of this Section, county jails
5 shall comply with all county juvenile detention standards
6 adopted by the Department of Juvenile Justice.

7 (e) When a minor who is at least 15 years of age is
8 prosecuted under the criminal laws of this State, the court
9 may enter an order directing that the juvenile be confined in
10 the county jail. However, any juvenile confined in the county
11 jail under this provision shall be separated from adults who
12 are confined in the county jail in such a manner that there
13 will be no contact by sight, sound or otherwise between the
14 juvenile and adult prisoners.

15 (f) For purposes of appearing in a physical lineup, the
16 minor may be taken to a county jail or municipal lockup under
17 the direct and constant supervision of a juvenile police
18 officer. During such time as is necessary to conduct a lineup,
19 and while supervised by a juvenile police officer, the sight
20 and sound separation provisions shall not apply.

21 (g) For purposes of processing a minor, the minor may be
22 taken to a county jail or municipal lockup under the direct and
23 constant supervision of a law enforcement officer or
24 correctional officer. During such time as is necessary to
25 process the minor, and while supervised by a law enforcement
26 officer or correctional officer, the sight and sound

1 separation provisions shall not apply.

2 (3) If the probation officer or State's Attorney (or such
3 other public officer designated by the court in a county
4 having 3,000,000 or more inhabitants) determines that the
5 minor may be a delinquent minor as described in subsection (3)
6 of Section 5-105, and should be retained in custody but does
7 not require physical restriction, the minor may be placed in
8 non-secure custody for up to 40 hours pending a detention
9 hearing.

10 (4) Any minor taken into temporary custody, not requiring
11 secure detention, may, however, be detained in the home of his
12 or her parent or guardian subject to such conditions as the
13 court may impose.

14 (5) The changes made to this Section by Public Act 98-61
15 apply to a minor who has been arrested or taken into custody on
16 or after January 1, 2014 (the effective date of Public Act
17 98-61).

18 (Source: P.A. 100-745, eff. 8-10-18; 101-81, eff. 7-12-19.)