



## 98TH GENERAL ASSEMBLY

### State of Illinois

2013 and 2014

SB1844

Introduced 2/15/2013, by Sen. John G. Mulroe

#### SYNOPSIS AS INTRODUCED:

705 ILCS 405/5-710

Amends the Juvenile Court Act of 1987. Provides that persons 17 years of age and older who have a petition of delinquency filed against them may be confined in an adult detention facility. Provides that in making a determination whether to confine a person 17 years of age or older who has a petition of delinquency filed against the person, these factors among other matters shall be considered: (1) the age of the person; (2) any previous delinquent or criminal history of the person; (3) any previous abuse or neglect history of the person; (4) any mental health history of the person; and (5) any educational history of the person. Provides that if the underlying offense is a misdemeanor, then only a person 18 years of age or older may be confined in an adult detention facility. Effective immediately.

LRB098 09863 RLC 40021 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 Section 5-710 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 in  
9 respect of wards of the court:

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

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

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

23 (iii) required to undergo a substance abuse

1 assessment conducted by a licensed provider and  
2 participate in the indicated clinical level of care;

3 (iv) placed in the guardianship of the Department  
4 of Children and Family Services, but only if the  
5 delinquent minor is under 15 years of age or, pursuant  
6 to Article II of this Act, a minor for whom an  
7 independent basis of abuse, neglect, or dependency  
8 exists. An independent basis exists when the  
9 allegations or adjudication of abuse, neglect, or  
10 dependency do not arise from the same facts, incident,  
11 or circumstances which give rise to a charge or  
12 adjudication of delinquency;

13 (v) placed in detention for a period not to exceed  
14 30 days, either as the exclusive order of disposition  
15 or, where appropriate, in conjunction with any other  
16 order of disposition issued under this paragraph,  
17 provided that any such detention shall be in a juvenile  
18 detention home and the minor so detained shall be 10  
19 years of age or older. However, the 30-day limitation  
20 may be extended by further order of the court for a  
21 minor under age 15 committed to the Department of  
22 Children and Family Services if the court finds that  
23 the minor is a danger to himself or others. The minor  
24 shall be given credit on the sentencing order of  
25 detention for time spent in detention under Sections  
26 5-501, 5-601, 5-710, or 5-720 of this Article as a

1 result of the offense for which the sentencing order  
2 was imposed. The court may grant credit on a sentencing  
3 order of detention entered under a violation of  
4 probation or violation of conditional discharge under  
5 Section 5-720 of this Article for time spent in  
6 detention before the filing of the petition alleging  
7 the violation. A minor shall not be deprived of credit  
8 for time spent in detention before the filing of a  
9 violation of probation or conditional discharge  
10 alleging the same or related act or acts. The  
11 limitation that the minor shall only be placed in a  
12 juvenile detention home does not apply as follows:

13 Persons 17 years of age and older who have a  
14 petition of delinquency filed against them may be  
15 confined in an adult detention facility. In making a  
16 determination whether to confine a person 17 years of  
17 age or older who has a petition of delinquency filed  
18 against the person, these factors, among other  
19 matters, shall be considered:

20 (A) the age of the person;

21 (B) any previous delinquent or criminal  
22 history of the person;

23 (C) any previous abuse or neglect history of  
24 the person;

25 (D) any mental health history of the person;

26 and

1                   (E) any educational history of the person.

2                   If the underlying offense is a misdemeanor, then  
3                   only a person 18 years of age or older may be confined  
4                   in an adult detention facility;

5                   (vi) ordered partially or completely emancipated  
6                   in accordance with the provisions of the Emancipation  
7                   of Minors Act;

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

12                   (viii) put on probation or conditional discharge  
13                   and placed in detention under Section 3-6039 of the  
14                   Counties Code for a period not to exceed the period of  
15                   incarceration permitted by law for adults found guilty  
16                   of the same offense or offenses for which the minor was  
17                   adjudicated delinquent, and in any event no longer than  
18                   upon attainment of age 21; this subdivision (viii)  
19                   notwithstanding any contrary provision of the law;

20                   (ix) ordered to undergo a medical or other  
21                   procedure to have a tattoo symbolizing allegiance to a  
22                   street gang removed from his or her body; or

23                   (x) placed in electronic home detention under Part  
24                   7A of this Article.

25                   (b) A minor found to be guilty may be committed to the  
26                   Department of Juvenile Justice under Section 5-750 if the

1 minor is 13 years of age or older, provided that the  
2 commitment to the Department of Juvenile Justice shall be  
3 made only if a term of incarceration is permitted by law  
4 for adults found guilty of the offense for which the minor  
5 was adjudicated delinquent. The time during which a minor  
6 is in custody before being released upon the request of a  
7 parent, guardian or legal custodian shall be considered as  
8 time spent in detention.

9 (c) When a minor is found to be guilty for an offense  
10 which is a violation of the Illinois Controlled Substances  
11 Act, the Cannabis Control Act, or the Methamphetamine  
12 Control and Community Protection Act and made a ward of the  
13 court, the court may enter a disposition order requiring  
14 the minor to undergo assessment, counseling or treatment in  
15 a substance abuse program approved by the Department of  
16 Human Services.

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

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

25 (4) In addition to any other sentence, the court may order  
26 any minor found to be delinquent to make restitution, in

1 monetary or non-monetary form, under the terms and conditions  
2 of Section 5-5-6 of the Unified Code of Corrections, except  
3 that the "presentencing hearing" referred to in that Section  
4 shall be the sentencing hearing for purposes of this Section.  
5 The parent, guardian or legal custodian of the minor may be  
6 ordered by the court to pay some or all of the restitution on  
7 the minor's behalf, pursuant to the Parental Responsibility  
8 Law. The State's Attorney is authorized to act on behalf of any  
9 victim in seeking restitution in proceedings under this  
10 Section, up to the maximum amount allowed in Section 5 of the  
11 Parental Responsibility Law.

12 (5) Any sentencing order where the minor is committed or  
13 placed in accordance with Section 5-740 shall provide for the  
14 parents or guardian of the estate of the minor to pay to the  
15 legal custodian or guardian of the person of the minor such  
16 sums as are determined by the custodian or guardian of the  
17 person of the minor as necessary for the minor's needs. The  
18 payments may not exceed the maximum amounts provided for by  
19 Section 9.1 of the Children and Family Services Act.

20 (6) Whenever the sentencing order requires the minor to  
21 attend school or participate in a program of training, the  
22 truant officer or designated school official shall regularly  
23 report to the court if the minor is a chronic or habitual  
24 truant under Section 26-2a of the School Code. Notwithstanding  
25 any other provision of this Act, in instances in which  
26 educational services are to be provided to a minor in a

1 residential facility where the minor has been placed by the  
2 court, costs incurred in the provision of those educational  
3 services must be allocated based on the requirements of the  
4 School Code.

5 (7) In no event shall a guilty minor be committed to the  
6 Department of Juvenile Justice for a period of time in excess  
7 of that period for which an adult could be committed for the  
8 same act.

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

20 (8.5) A minor found to be guilty for reasons that include a  
21 violation of Section 3.02 or Section 3.03 of the Humane Care  
22 for Animals Act or paragraph (d) of subsection (1) of Section  
23 21-1 of the Criminal Code of 1961 or paragraph (4) of  
24 subsection (a) of Section 21-1 of the Criminal Code of 2012  
25 shall be ordered to undergo medical or psychiatric treatment  
26 rendered by a psychiatrist or psychological treatment rendered



1 by a clinical psychologist. The order may be in addition to any  
2 other order authorized by this Section.

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

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

11 (10) When a court finds a minor to be guilty the court  
12 shall, before entering a sentencing order under this Section,  
13 make a finding whether the offense committed either: (a) was  
14 related to or in furtherance of the criminal activities of an  
15 organized gang or was motivated by the minor's membership in or  
16 allegiance to an organized gang, or (b) involved a violation of  
17 subsection (a) of Section 12-7.1 of the Criminal Code of 1961  
18 or the Criminal Code of 2012, a violation of any Section of  
19 Article 24 of the Criminal Code of 1961 or the Criminal Code of  
20 2012, or a violation of any statute that involved the wrongful  
21 use of a firearm. If the court determines the question in the  
22 affirmative, and the court does not commit the minor to the  
23 Department of Juvenile Justice, the court shall order the minor  
24 to perform community service for not less than 30 hours nor  
25 more than 120 hours, provided that community service is  
26 available in the jurisdiction and is funded and approved by the

1 county board of the county where the offense was committed. The  
2 community service shall include, but need not be limited to,  
3 the cleanup and repair of any damage caused by a violation of  
4 Section 21-1.3 of the Criminal Code of 1961 or the Criminal  
5 Code of 2012 and similar damage to property located in the  
6 municipality or county in which the violation occurred. When  
7 possible and reasonable, the community service shall be  
8 performed in the minor's neighborhood. This order shall be in  
9 addition to any other order authorized by this Section except  
10 for an order to place the minor in the custody of the  
11 Department of Juvenile Justice. For the purposes of this  
12 Section, "organized gang" has the meaning ascribed to it in  
13 Section 10 of the Illinois Streetgang Terrorism Omnibus  
14 Prevention Act.

15 (11) If the court determines that the offense was committed  
16 in furtherance of the criminal activities of an organized gang,  
17 as provided in subsection (10), and that the offense involved  
18 the operation or use of a motor vehicle or the use of a  
19 driver's license or permit, the court shall notify the  
20 Secretary of State of that determination and of the period for  
21 which the minor shall be denied driving privileges. If, at the  
22 time of the determination, the minor does not hold a driver's  
23 license or permit, the court shall provide that the minor shall  
24 not be issued a driver's license or permit until his or her  
25 18th birthday. If the minor holds a driver's license or permit  
26 at the time of the determination, the court shall provide that

1 the minor's driver's license or permit shall be revoked until  
2 his or her 21st birthday, or until a later date or occurrence  
3 determined by the court. If the minor holds a driver's license  
4 at the time of the determination, the court may direct the  
5 Secretary of State to issue the minor a judicial driving  
6 permit, also known as a JDP. The JDP shall be subject to the  
7 same terms as a JDP issued under Section 6-206.1 of the  
8 Illinois Vehicle Code, except that the court may direct that  
9 the JDP be effective immediately.

10 (12) If a minor is found to be guilty of a violation of  
11 subsection (a-7) of Section 1 of the Prevention of Tobacco Use  
12 by Minors Act, the court may, in its discretion, and upon  
13 recommendation by the State's Attorney, order that minor and  
14 his or her parents or legal guardian to attend a smoker's  
15 education or youth diversion program as defined in that Act if  
16 that program is available in the jurisdiction where the  
17 offender resides. Attendance at a smoker's education or youth  
18 diversion program shall be time-credited against any community  
19 service time imposed for any first violation of subsection  
20 (a-7) of Section 1 of that Act. In addition to any other  
21 penalty that the court may impose for a violation of subsection  
22 (a-7) of Section 1 of that Act, the court, upon request by the  
23 State's Attorney, may in its discretion require the offender to  
24 remit a fee for his or her attendance at a smoker's education  
25 or youth diversion program.

26 For purposes of this Section, "smoker's education program"

1 or "youth diversion program" includes, but is not limited to, a  
2 seminar designed to educate a person on the physical and  
3 psychological effects of smoking tobacco products and the  
4 health consequences of smoking tobacco products that can be  
5 conducted with a locality's youth diversion program.

6 In addition to any other penalty that the court may impose  
7 under this subsection (12):

8 (a) If a minor violates subsection (a-7) of Section 1  
9 of the Prevention of Tobacco Use by Minors Act, the court  
10 may impose a sentence of 15 hours of community service or a  
11 fine of \$25 for a first violation.

12 (b) A second violation by a minor of subsection (a-7)  
13 of Section 1 of that Act that occurs within 12 months after  
14 the first violation is punishable by a fine of \$50 and 25  
15 hours of community service.

16 (c) A third or subsequent violation by a minor of  
17 subsection (a-7) of Section 1 of that Act that occurs  
18 within 12 months after the first violation is punishable by  
19 a \$100 fine and 30 hours of community service.

20 (d) Any second or subsequent violation not within the  
21 12-month time period after the first violation is  
22 punishable as provided for a first violation.

23 (Source: P.A. 96-179, eff. 8-10-09; 96-293, eff. 1-1-10;  
24 96-1000, eff. 7-2-10; 97-1150, eff. 1-25-13.)

25 Section 99. Effective date. This Act takes effect upon  
26 becoming law.