

HB0289



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB0289

by Rep. Arthur Turner

SYNOPSIS AS INTRODUCED:

705 ILCS 405/5-130

Amends the Juvenile Court Act of 1987. Makes a technical change in a Section concerning delinquent minors.

LRB099 06044 RLC 26098 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) (a) The ~~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 15 years of age and who is
11 charged with: (i) first degree murder, (ii) aggravated criminal
12 sexual assault, (iii) aggravated battery with a firearm as
13 described in Section 12-4.2 or subdivision (e) (1), (e) (2),
14 (e) (3), or (e) (4) of Section 12-3.05 where the minor personally
15 discharged a firearm as defined in Section 2-15.5 of the
16 Criminal Code of 1961 or the Criminal Code of 2012, (iv) armed
17 robbery when the armed robbery was committed with a firearm, or
18 (v) aggravated vehicular hijacking when the hijacking was
19 committed with a firearm.

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

23 (b) (i) If before trial or plea an information or indictment

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

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

14 (c) (i) If after trial or plea the minor is convicted of any
15 offense covered by paragraph (a) of this subsection (1), then,
16 in sentencing the minor, the court shall have available any or
17 all dispositions prescribed for that offense under Chapter V of
18 the Unified Code of Corrections.

19 (ii) If after trial or plea the court finds that the minor
20 committed an offense not covered by paragraph (a) of this
21 subsection (1), that finding shall not invalidate the verdict
22 or the prosecution of the minor under the criminal laws of the
23 State; however, unless the State requests a hearing for the
24 purpose of sentencing the minor under Chapter V of the Unified
25 Code of Corrections, the Court must proceed under Sections
26 5-705 and 5-710 of this Article. To request a hearing, the

1 State must file a written motion within 10 days following the
2 entry of a finding or the return of a verdict. Reasonable
3 notice of the motion shall be given to the minor or his or her
4 counsel. If the motion is made by the State, the court shall
5 conduct a hearing to determine if the minor should be sentenced
6 under Chapter V of the Unified Code of Corrections. In making
7 its determination, the court shall consider among other
8 matters: (a) whether there is evidence that the offense was
9 committed in an aggressive and premeditated manner; (b) the age
10 of the minor; (c) the previous history of the minor; (d)
11 whether there are facilities particularly available to the
12 Juvenile Court or the Department of Juvenile Justice for the
13 treatment and rehabilitation of the minor; (e) whether the
14 security of the public requires sentencing under Chapter V of
15 the Unified Code of Corrections; and (f) whether the minor
16 possessed a deadly weapon when committing the offense. The
17 rules of evidence shall be the same as if at trial. If after
18 the hearing the court finds that the minor should be sentenced
19 under Chapter V of the Unified Code of Corrections, then the
20 court shall sentence the minor accordingly having available to
21 it any or all dispositions so prescribed.

22 (2) (Blank).

23 (3)(a) The definition of delinquent minor under Section
24 5-120 of this Article shall not apply to any minor who at the
25 time of the offense was at least 15 years of age and who is
26 charged with a violation of the provisions of paragraph (1),

1 (3), (4), or (10) of subsection (a) of Section 24-1 of the
2 Criminal Code of 1961 or the Criminal Code of 2012 while in
3 school, regardless of the time of day or the time of year, or
4 on the real property comprising any school, regardless of the
5 time of day or the time of year. School is defined, for
6 purposes of this Section as any public or private elementary or
7 secondary school, community college, college, or university.
8 These charges and all other charges arising out of the same
9 incident shall be prosecuted under the criminal laws of this
10 State.

11 (b) (i) If before trial or plea an information or indictment
12 is filed that does not charge an offense specified in paragraph
13 (a) of this subsection (3) the State's Attorney may proceed on
14 any lesser charge or charges, but only in Juvenile Court under
15 the provisions of this Article. The State's Attorney may
16 proceed under the criminal laws of this State on a lesser
17 charge if before trial the minor defendant knowingly and with
18 advice of counsel waives, in writing, his or her right to have
19 the matter proceed in Juvenile Court.

20 (ii) If before trial or plea an information or indictment
21 is filed that includes one or more charges specified in
22 paragraph (a) of this subsection (3) and additional charges
23 that are not specified in that paragraph, all of the charges
24 arising out of the same incident shall be prosecuted under the
25 criminal laws of this State.

26 (c) (i) If after trial or plea the minor is convicted of any

1 offense covered by paragraph (a) of this subsection (3), then,
2 in sentencing the minor, the court shall have available any or
3 all dispositions prescribed for that offense under Chapter V of
4 the Unified Code of Corrections.

5 (ii) If after trial or plea the court finds that the minor
6 committed an offense not covered by paragraph (a) of this
7 subsection (3), that finding shall not invalidate the verdict
8 or the prosecution of the minor under the criminal laws of the
9 State; however, unless the State requests a hearing for the
10 purpose of sentencing the minor under Chapter V of the Unified
11 Code of Corrections, the Court must proceed under Sections
12 5-705 and 5-710 of this Article. To request a hearing, the
13 State must file a written motion within 10 days following the
14 entry of a finding or the return of a verdict. Reasonable
15 notice of the motion shall be given to the minor or his or her
16 counsel. If the motion is made by the State, the court shall
17 conduct a hearing to determine if the minor should be sentenced
18 under Chapter V of the Unified Code of Corrections. In making
19 its determination, the court shall consider among other
20 matters: (a) whether there is evidence that the offense was
21 committed in an aggressive and premeditated manner; (b) the age
22 of the minor; (c) the previous history of the minor; (d)
23 whether there are facilities particularly available to the
24 Juvenile Court or the Department of Juvenile Justice for the
25 treatment and rehabilitation of the minor; (e) whether the
26 security of the public requires sentencing under Chapter V of

1 the Unified Code of Corrections; and (f) whether the minor
2 possessed a deadly weapon when committing the offense. The
3 rules of evidence shall be the same as if at trial. If after
4 the hearing the court finds that the minor should be sentenced
5 under Chapter V of the Unified Code of Corrections, then the
6 court shall sentence the minor accordingly having available to
7 it any or all dispositions so prescribed.

8 (4) (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 13 years of age and who is
11 charged with first degree murder committed during the course of
12 either aggravated criminal sexual assault, criminal sexual
13 assault, or aggravated kidnaping. However, this subsection (4)
14 does not include a minor charged with first degree murder based
15 exclusively upon the accountability provisions of the Criminal
16 Code of 1961 or the Criminal Code of 2012.

17 (b) (i) If before trial or plea an information or indictment
18 is filed that does not charge first degree murder committed
19 during the course of aggravated criminal sexual assault,
20 criminal sexual assault, or aggravated kidnaping, the State's
21 Attorney may proceed on any lesser charge or charges, but only
22 in Juvenile Court under the provisions of this Article. The
23 State's Attorney may proceed under the criminal laws of this
24 State on a lesser charge if before trial the minor defendant
25 knowingly and with advice of counsel waives, in writing, his or
26 her right to have the matter proceed in Juvenile Court.

1 (ii) If before trial or plea an information or indictment
2 is filed that includes first degree murder committed during the
3 course of aggravated criminal sexual assault, criminal sexual
4 assault, or aggravated kidnaping, and additional charges that
5 are not specified in paragraph (a) of this subsection, all of
6 the charges arising out of the same incident shall be
7 prosecuted under the criminal laws of this State.

8 (c)(i) If after trial or plea the minor is convicted of
9 first degree murder committed during the course of aggravated
10 criminal sexual assault, criminal sexual assault, or
11 aggravated kidnaping, in sentencing the minor, the court shall
12 have available any or all dispositions prescribed for that
13 offense under Chapter V of the Unified Code of Corrections.

14 (ii) If the minor was not yet 15 years of age at the time of
15 the offense, and if after trial or plea the court finds that
16 the minor committed an offense other than first degree murder
17 committed during the course of either aggravated criminal
18 sexual assault, criminal sexual assault, or aggravated
19 kidnaping, the finding shall not invalidate the verdict or the
20 prosecution of the minor under the criminal laws of the State;
21 however, unless the State requests a hearing for the purpose of
22 sentencing the minor under Chapter V of the Unified Code of
23 Corrections, the Court must proceed under Sections 5-705 and
24 5-710 of this Article. To request a hearing, the State must
25 file a written motion within 10 days following the entry of a
26 finding or the return of a verdict. Reasonable notice of the

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

21 (5)(a) The definition of delinquent minor under Section
22 5-120 of this Article shall not apply to any minor who is
23 charged with a violation of subsection (a) of Section 31-6 or
24 Section 32-10 of the Criminal Code of 1961 or the Criminal Code
25 of 2012 when the minor is subject to prosecution under the
26 criminal laws of this State as a result of the application of

1 the provisions of Section 5-125, or subsection (1) or (2) of
2 this Section. These charges and all other charges arising out
3 of the same incident shall be prosecuted under the criminal
4 laws of this State.

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

14 (ii) If before trial or plea an information or indictment
15 is filed that includes one or more charges specified in
16 paragraph (a) of this subsection (5) and additional charges
17 that are not specified in that paragraph, all of the charges
18 arising out of the same incident shall be prosecuted under the
19 criminal laws of this State.

20 (c) (i) If after trial or plea the minor is convicted of any
21 offense covered by paragraph (a) of this subsection (5), then,
22 in sentencing the minor, the court shall have available any or
23 all dispositions prescribed for that offense under Chapter V of
24 the Unified Code of Corrections.

25 (ii) If after trial or plea the court finds that the minor
26 committed an offense not covered by paragraph (a) of this

1 subsection (5), the conviction shall not invalidate the verdict
2 or the prosecution of the minor under the criminal laws of this
3 State; however, unless the State requests a hearing for the
4 purpose of sentencing the minor under Chapter V of the Unified
5 Code of Corrections, the Court must proceed under Sections
6 5-705 and 5-710 of this Article. To request a hearing, the
7 State must file a written motion within 10 days following the
8 entry of a finding or the return of a verdict. Reasonable
9 notice of the motion shall be given to the minor or his or her
10 counsel. If the motion is made by the State, the court shall
11 conduct a hearing to determine if whether the minor should be
12 sentenced under Chapter V of the Unified Code of Corrections.
13 In making its determination, the court shall consider among
14 other matters: (a) whether there is evidence that the offense
15 was committed in an aggressive and premeditated manner; (b) the
16 age of the minor; (c) the previous delinquent history of the
17 minor; (d) whether there are facilities particularly available
18 to the Juvenile Court or the Department of Juvenile Justice for
19 the treatment and rehabilitation of the minor; (e) whether the
20 security of the public requires sentencing under Chapter V of
21 the Unified Code of Corrections; and (f) whether the minor
22 possessed a deadly weapon when committing the offense. The
23 rules of evidence shall be the same as if at trial. If after
24 the hearing the court finds that the minor should be sentenced
25 under Chapter V of the Unified Code of Corrections, then the
26 court shall sentence the minor accordingly having available to

1 it any or all dispositions so prescribed.

2 (6) The definition of delinquent minor under Section 5-120
3 of this Article shall not apply to any minor who, pursuant to
4 subsection (1) or (3) or Section 5-805 or 5-810, has previously
5 been placed under the jurisdiction of the criminal court and
6 has been convicted of a crime under an adult criminal or penal
7 statute. Such a minor shall be subject to prosecution under the
8 criminal laws of this State.

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

14 (8) Nothing in this Act prohibits or limits the prosecution
15 of any minor for an offense committed on or after his or her
16 18th birthday even though he or she is at the time of the
17 offense a ward of the court.

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

1 accordingly.

2 (10) If, prior to August 12, 2005 (the effective date of
3 Public Act 94-574), a minor is charged with a violation of
4 Section 401 of the Illinois Controlled Substances Act under the
5 criminal laws of this State, other than a minor charged with a
6 Class X felony violation of the Illinois Controlled Substances
7 Act or the Methamphetamine Control and Community Protection
8 Act, any party including the minor or the court sua sponte may,
9 before trial, move for a hearing for the purpose of trying and
10 sentencing the minor as a delinquent minor. To request a
11 hearing, the party must file a motion prior to trial.
12 Reasonable notice of the motion shall be given to all parties.
13 On its own motion or upon the filing of a motion by one of the
14 parties including the minor, the court shall conduct a hearing
15 to determine whether the minor should be tried and sentenced as
16 a delinquent minor under this Article. In making its
17 determination, the court shall consider among other matters:

18 (a) The age of the minor;

19 (b) Any previous delinquent or criminal history of the
20 minor;

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

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

24 (e) Whether there is probable cause to support the
25 charge, whether the minor is charged through
26 accountability, and whether there is evidence the minor

1 possessed a deadly weapon or caused serious bodily harm
2 during the offense.

3 Any material that is relevant and reliable shall be
4 admissible at the hearing. In all cases, the judge shall enter
5 an order permitting prosecution under the criminal laws of
6 Illinois unless the judge makes a finding based on a
7 preponderance of the evidence that the minor would be amenable
8 to the care, treatment, and training programs available through
9 the facilities of the juvenile court based on an evaluation of
10 the factors listed in this subsection (10).

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

15 (Source: P.A. 97-1150, eff. 1-25-13; 98-61, eff. 1-1-14;
16 98-756, eff. 7-16-14.)