



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB4778

by Rep. Luis Arroyo

SYNOPSIS AS INTRODUCED:

55 ILCS 5/3-6039
705 ILCS 405/5-710
705 ILCS 405/5-805

Amends the Counties Code. Provides that a juvenile convicted of aggravated vehicular hijacking may participate in a juvenile impact incarceration program. Amends the Juvenile Court Act of 1987. Provides a minor found to be guilty for a violation of aggravated vehicular hijacking may be sentenced to a home detention program, electronic monitoring, an alternative school program, or boot camp rather than be committed to the Department of Juvenile Justice for detention. Provides that a minor found to be guilty for a second or subsequent violation of aggravated vehicular hijacking shall not be sentenced to probation but shall be committed to the Department of Juvenile Justice for detention. Permits the presumptive transfer of a juvenile to criminal court of a minor who is 15 years of age or older if the offense charged is a subsequent offense for aggravated vehicular hijacking.

LRB100 17775 SLF 32953 b

1 AN ACT concerning juveniles.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Counties Code is amended by changing Section
5 3-6039 as follows:

6 (55 ILCS 5/3-6039)

7 Sec. 3-6039. County juvenile impact incarceration program.

8 (a) With the approval of the county board, the Department
9 of Probation and Court Services in any county shall have the
10 power to operate a county juvenile impact incarceration program
11 for eligible delinquent minors. If the court finds that a minor
12 adjudicated a delinquent meets the eligibility requirements of
13 this Section, the court may in its dispositional order approve
14 the delinquent minor for placement in the county juvenile
15 impact incarceration program conditioned upon his or her
16 acceptance in the program by the Department of Probation and
17 Court Services. The dispositional order also shall provide that
18 if the Department of Probation and Court Services accepts the
19 delinquent minor in the program and determines that the
20 delinquent minor has successfully completed the county
21 juvenile impact incarceration program, the delinquent minor's
22 detention shall be reduced to time considered served upon
23 certification to the court by the Department of Probation and

1 Court Services that the delinquent minor has successfully
2 completed the program. If the delinquent minor is not accepted
3 for placement in the county juvenile impact incarceration
4 program or the delinquent minor does not successfully complete
5 the program, his or her term of commitment shall be as set
6 forth by the court in its dispositional order. If the
7 delinquent minor does not successfully complete the program,
8 time spent in the program does not count as time served against
9 the time limits as set forth in subsection (f) of this Section.

10 (b) In order to be eligible to participate in the county
11 juvenile impact incarceration program, the delinquent minor
12 must meet all of the following requirements:

13 (1) The delinquent minor is at least 13 years of age.

14 (2) The act for which the minor is adjudicated
15 delinquent does not constitute a Class X felony, except a
16 first-time offender of Section 18-4 of the Criminal Code of
17 2012, criminal sexual assault, first degree murder,
18 aggravated kidnapping, second degree murder, armed
19 violence, arson, forcible detention, aggravated criminal
20 sexual abuse or a subsequent conviction for criminal sexual
21 abuse.

22 (3) The delinquent minor has not previously
23 participated in a county juvenile impact incarceration
24 program and has not previously served a prior commitment
25 for an act constituting a felony in a Department of
26 Juvenile Justice juvenile correctional facility. This

1 provision shall not exclude a delinquent minor who is
2 committed to the Illinois Department of Juvenile Justice
3 and is participating in the county juvenile impact
4 incarceration program under an intergovernmental
5 cooperation agreement with the Illinois Department of
6 Juvenile Justice.

7 (4) The delinquent minor is physically able to
8 participate in strenuous physical activities or labor.

9 (5) The delinquent minor does not have a mental
10 disorder or disability that would prevent participation in
11 the county juvenile impact incarceration program.

12 (6) The delinquent minor is recommended and approved
13 for placement in the county juvenile impact incarceration
14 program in the court's dispositional order.

15 The court and the Department of Probation and Court
16 Services may also consider, among other matters, whether the
17 delinquent minor has a history of escaping or absconding,
18 whether participation in the county juvenile impact
19 incarceration program may pose a risk to the safety or security
20 of any person, and whether space is available.

21 (c) The county juvenile impact incarceration program shall
22 include, among other matters, mandatory physical training and
23 labor, military formation and drills, regimented activities,
24 uniformity of dress and appearance, education and counseling,
25 including drug counseling if appropriate, and must impart to
26 the delinquent minor principles of honor, integrity,

1 self-sufficiency, self-discipline, self-respect, and respect
2 for others.

3 (d) Privileges of delinquent minors participating in the
4 county juvenile impact incarceration program, including
5 visitation, commissary, receipt and retention of property and
6 publications, and access to television, radio, and a library,
7 may be suspended or restricted, at the discretion of the
8 Department of Probation and Court Services.

9 (e) Delinquent minors participating in the county juvenile
10 impact incarceration program shall adhere to all rules
11 promulgated by the Department of Probation and Court Services
12 and all requirements of the program. Delinquent minors shall be
13 informed of rules of behavior and conduct. Disciplinary
14 procedures required by any other law or county ordinance are
15 not applicable.

16 (f) Participation in the county juvenile impact
17 incarceration program by a minor adjudicated delinquent for an
18 act constituting a misdemeanor shall be for a period of at
19 least 7 days but less than 120 days as determined by the
20 Department of Probation and Court Services. Participation in
21 the county juvenile impact incarceration program by a minor
22 adjudicated delinquent for an act constituting a felony shall
23 be for a period of 120 to 180 days as determined by the
24 Department of Probation and Court Services.

25 (g) A delinquent minor may be removed from the program for
26 a violation of the terms or conditions of the program or if he

1 or she is for any reason unable to participate. The Department
2 of Probation and Court Services shall promulgate rules
3 governing conduct that could result in removal from the program
4 or in a determination that the delinquent minor has not
5 successfully completed the program. Delinquent minors shall
6 have access to these rules. The rules shall provide that the
7 delinquent minor shall receive notice and have the opportunity
8 to appear before and address the Department of Probation and
9 Court Services or a person appointed by the Department of
10 Probation and Court Services for this purpose. A delinquent
11 minor may be transferred to any juvenile facilities prior to
12 the hearing.

13 (h) If the Department of Probation and Court Services
14 accepts the delinquent minor in the program and determines that
15 the delinquent minor has successfully completed the county
16 juvenile impact incarceration program, the court shall
17 discharge the minor from custody upon certification to the
18 court by the Department of Probation and Court Services that
19 the delinquent minor has successfully completed the program. In
20 the event the delinquent minor is not accepted for placement in
21 the county juvenile impact incarceration program or the
22 delinquent minor does not successfully complete the program,
23 his or her commitment to the Department of Juvenile Justice or
24 juvenile detention shall be as set forth by the court in its
25 dispositional order.

26 (i) The Department of Probation and Court Services, with

1 the approval of the county board, shall have the power to enter
2 into intergovernmental cooperation agreements with the
3 Illinois Department of Juvenile Justice under which delinquent
4 minors committed to the Illinois Department of Juvenile Justice
5 may participate in the county juvenile impact incarceration
6 program. A delinquent minor who successfully completes the
7 county juvenile impact incarceration program shall be
8 discharged from custody upon certification to the court by the
9 Illinois Department of Juvenile Justice that the delinquent
10 minor has successfully completed the program.

11 (Source: P.A. 94-696, eff. 6-1-06.)

12 Section 10. The Juvenile Court Act of 1987 is amended by
13 changing Sections 5-710 and 5-805 as follows:

14 (705 ILCS 405/5-710)

15 Sec. 5-710. Kinds of sentencing orders.

16 (1) The following kinds of sentencing orders may be made in
17 respect of wards of the court:

18 (a) Except as provided in Sections 5-805, 5-810, and
19 5-815, a minor who is found guilty under Section 5-620 may
20 be:

21 (i) put on probation or conditional discharge and
22 released to his or her parents, guardian or legal
23 custodian, provided, however, that any such minor who
24 is not committed to the Department of Juvenile Justice

1 under this subsection and who is found to be a
2 delinquent for an offense which is first degree murder,
3 a Class X felony, or a forcible felony shall be placed
4 on probation;

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

8 (iii) required to undergo a substance abuse
9 assessment conducted by a licensed provider and
10 participate in the indicated clinical level of care;

11 (iv) on and after the effective date of this
12 amendatory Act of the 98th General Assembly and before
13 January 1, 2017, placed in the guardianship of the
14 Department of Children and Family Services, but only if
15 the delinquent minor is under 16 years of age or,
16 pursuant to Article II of this Act, a minor for whom an
17 independent basis of abuse, neglect, or dependency
18 exists. On and after January 1, 2017, placed in the
19 guardianship of the Department of Children and Family
20 Services, but only if the delinquent minor is under 15
21 years of age or, pursuant to Article II of this Act, a
22 minor for whom an independent basis of abuse, neglect,
23 or dependency exists. An independent basis exists when
24 the allegations or adjudication of abuse, neglect, or
25 dependency do not arise from the same facts, incident,
26 or circumstances which give rise to a charge or

1 adjudication of delinquency;

2 (v) placed in detention for a period not to exceed
3 30 days, either as the exclusive order of disposition
4 or, where appropriate, in conjunction with any other
5 order of disposition issued under this paragraph,
6 provided that any such detention shall be in a juvenile
7 detention home and the minor so detained shall be 10
8 years of age or older. However, the 30-day limitation
9 may be extended by further order of the court for a
10 minor under age 15 committed to the Department of
11 Children and Family Services if the court finds that
12 the minor is a danger to himself or others. The minor
13 shall be given credit on the sentencing order of
14 detention for time spent in detention under Sections
15 5-501, 5-601, 5-710, or 5-720 of this Article as a
16 result of the offense for which the sentencing order
17 was imposed. The court may grant credit on a sentencing
18 order of detention entered under a violation of
19 probation or violation of conditional discharge under
20 Section 5-720 of this Article for time spent in
21 detention before the filing of the petition alleging
22 the violation. A minor shall not be deprived of credit
23 for time spent in detention before the filing of a
24 violation of probation or conditional discharge
25 alleging the same or related act or acts. The
26 limitation that the minor shall only be placed in a

1 juvenile detention home does not apply as follows:

2 Persons 18 years of age and older who have a
3 petition of delinquency filed against them may be
4 confined in an adult detention facility. In making a
5 determination whether to confine a person 18 years of
6 age or older who has a petition of delinquency filed
7 against the person, these factors, among other
8 matters, shall be considered:

9 (A) the age of the person;

10 (B) any previous delinquent or criminal
11 history of the person;

12 (C) any previous abuse or neglect history of
13 the person;

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

15 and

16 (E) any educational history of the person;

17 (vi) ordered partially or completely emancipated
18 in accordance with the provisions of the Emancipation
19 of Minors Act;

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

24 (viii) put on probation or conditional discharge
25 and placed in detention under Section 3-6039 of the
26 Counties Code for a period not to exceed the period of

1 incarceration permitted by law for adults found guilty
2 of the same offense or offenses for which the minor was
3 adjudicated delinquent, and in any event no longer than
4 upon attainment of age 21; this subdivision (viii)
5 notwithstanding any contrary provision of the law;

6 (ix) ordered to undergo a medical or other
7 procedure to have a tattoo symbolizing allegiance to a
8 street gang removed from his or her body; or

9 (x) placed in electronic monitoring or home
10 detention under Part 7A of this Article.

11 (b) A minor found to be guilty may be committed to the
12 Department of Juvenile Justice under Section 5-750 if the
13 minor is at least 13 years and under 20 years of age,
14 provided that the commitment to the Department of Juvenile
15 Justice shall be made only if the minor was found guilty of
16 a felony offense or first degree murder. The court shall
17 include in the sentencing order any pre-custody credits the
18 minor is entitled to under Section 5-4.5-100 of the Unified
19 Code of Corrections. The time during which a minor is in
20 custody before being released upon the request of a parent,
21 guardian or legal custodian shall also be considered as
22 time spent in custody.

23 (c) When a minor is found to be guilty for an offense
24 which is a violation of the Illinois Controlled Substances
25 Act, the Cannabis Control Act, or the Methamphetamine
26 Control and Community Protection Act and made a ward of the

1 court, the court may enter a disposition order requiring
2 the minor to undergo assessment, counseling or treatment in
3 a substance abuse program approved by the Department of
4 Human Services.

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

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

13 (4) In addition to any other sentence, the court may order
14 any minor found to be delinquent to make restitution, in
15 monetary or non-monetary form, under the terms and conditions
16 of Section 5-5-6 of the Unified Code of Corrections, except
17 that the "presentencing hearing" referred to in that Section
18 shall be the sentencing hearing for purposes of this Section.
19 The parent, guardian or legal custodian of the minor may be
20 ordered by the court to pay some or all of the restitution on
21 the minor's behalf, pursuant to the Parental Responsibility
22 Law. The State's Attorney is authorized to act on behalf of any
23 victim in seeking restitution in proceedings under this
24 Section, up to the maximum amount allowed in Section 5 of the
25 Parental Responsibility Law.

26 (5) Any sentencing order where the minor is committed or

1 placed in accordance with Section 5-740 shall provide for the
2 parents or guardian of the estate of the minor to pay to the
3 legal custodian or guardian of the person of the minor such
4 sums as are determined by the custodian or guardian of the
5 person of the minor as necessary for the minor's needs. The
6 payments may not exceed the maximum amounts provided for by
7 Section 9.1 of the Children and Family Services Act.

8 (6) Whenever the sentencing order requires the minor to
9 attend school or participate in a program of training, the
10 truant officer or designated school official shall regularly
11 report to the court if the minor is a chronic or habitual
12 truant under Section 26-2a of the School Code. Notwithstanding
13 any other provision of this Act, in instances in which
14 educational services are to be provided to a minor in a
15 residential facility where the minor has been placed by the
16 court, costs incurred in the provision of those educational
17 services must be allocated based on the requirements of the
18 School Code.

19 (7) In no event shall a guilty minor be committed to the
20 Department of Juvenile Justice for a period of time in excess
21 of that period for which an adult could be committed for the
22 same act. The court shall include in the sentencing order a
23 limitation on the period of confinement not to exceed the
24 maximum period of imprisonment the court could impose under
25 Article V of the Unified Code of Corrections.

26 (7.5) In no event shall a guilty minor be committed to the

1 Department of Juvenile Justice or placed in detention when the
2 act for which the minor was adjudicated delinquent would not be
3 illegal if committed by an adult.

4 (7.6) In no event shall a guilty minor be committed to the
5 Department of Juvenile Justice for an offense which is a Class
6 4 felony under Section 19-4 (criminal trespass to a residence),
7 21-1 (criminal damage to property), 21-1.01 (criminal damage to
8 government supported property), 21-1.3 (criminal defacement of
9 property), 26-1 (disorderly conduct), or 31-4 (obstructing
10 justice) of the Criminal Code of 2012.

11 (7.75) In no event shall a guilty minor be committed to the
12 Department of Juvenile Justice for an offense that is a Class 3
13 or Class 4 felony violation of the Illinois Controlled
14 Substances Act unless the commitment occurs upon a third or
15 subsequent judicial finding of a violation of probation for
16 substantial noncompliance with court-ordered treatment or
17 programming.

18 (8) A minor found to be guilty for reasons that include a
19 violation of Section 21-1.3 of the Criminal Code of 1961 or the
20 Criminal Code of 2012 shall be ordered to perform community
21 service for not less than 30 and not more than 120 hours, if
22 community service is available in the jurisdiction. The
23 community service shall include, but need not be limited to,
24 the cleanup and repair of the damage that was caused by the
25 violation or similar damage to property located in the
26 municipality or county in which the violation occurred. The

1 order may be in addition to any other order authorized by this
2 Section.

3 (8.2) A minor found to be guilty for a violation of Section
4 18-4 of the Criminal Code of 2012 may be sentenced to a home
5 detention program, electronic monitoring, an alternative
6 school program, or boot camp rather than be committed to the
7 Department of Juvenile Justice for detention. A minor found to
8 be guilty for a second or subsequent violation of Section 18-4
9 of the Criminal Code of 2012 shall not be sentenced to
10 probation but shall be committed to the Department of Juvenile
11 Justice for detention.

12 (8.5) A minor found to be guilty for reasons that include a
13 violation of Section 3.02 or Section 3.03 of the Humane Care
14 for Animals Act or paragraph (d) of subsection (1) of Section
15 21-1 of the Criminal Code of 1961 or paragraph (4) of
16 subsection (a) of Section 21-1 of the Criminal Code of 2012
17 shall be ordered to undergo medical or psychiatric treatment
18 rendered by a psychiatrist or psychological treatment rendered
19 by a clinical psychologist. The order may be in addition to any
20 other order authorized by this Section.

21 (9) In addition to any other sentencing order, the court
22 shall order any minor found to be guilty for an act which would
23 constitute, predatory criminal sexual assault of a child,
24 aggravated criminal sexual assault, criminal sexual assault,
25 aggravated criminal sexual abuse, or criminal sexual abuse if
26 committed by an adult to undergo medical testing to determine

1 whether the defendant has any sexually transmissible disease
2 including a test for infection with human immunodeficiency
3 virus (HIV) or any other identified causative agency of
4 acquired immunodeficiency syndrome (AIDS). Any medical test
5 shall be performed only by appropriately licensed medical
6 practitioners and may include an analysis of any bodily fluids
7 as well as an examination of the minor's person. Except as
8 otherwise provided by law, the results of the test shall be
9 kept strictly confidential by all medical personnel involved in
10 the testing and must be personally delivered in a sealed
11 envelope to the judge of the court in which the sentencing
12 order was entered for the judge's inspection in camera. Acting
13 in accordance with the best interests of the victim and the
14 public, the judge shall have the discretion to determine to
15 whom the results of the testing may be revealed. The court
16 shall notify the minor of the results of the test for infection
17 with the human immunodeficiency virus (HIV). The court shall
18 also notify the victim if requested by the victim, and if the
19 victim is under the age of 15 and if requested by the victim's
20 parents or legal guardian, the court shall notify the victim's
21 parents or the legal guardian, of the results of the test for
22 infection with the human immunodeficiency virus (HIV). The
23 court shall provide information on the availability of HIV
24 testing and counseling at the Department of Public Health
25 facilities to all parties to whom the results of the testing
26 are revealed. The court shall order that the cost of any test

1 shall be paid by the county and may be taxed as costs against
2 the minor.

3 (10) When a court finds a minor to be guilty the court
4 shall, before entering a sentencing order under this Section,
5 make a finding whether the offense committed either: (a) was
6 related to or in furtherance of the criminal activities of an
7 organized gang or was motivated by the minor's membership in or
8 allegiance to an organized gang, or (b) involved a violation of
9 subsection (a) of Section 12-7.1 of the Criminal Code of 1961
10 or the Criminal Code of 2012, a violation of any Section of
11 Article 24 of the Criminal Code of 1961 or the Criminal Code of
12 2012, or a violation of any statute that involved the wrongful
13 use of a firearm. If the court determines the question in the
14 affirmative, and the court does not commit the minor to the
15 Department of Juvenile Justice, the court shall order the minor
16 to perform community service for not less than 30 hours nor
17 more than 120 hours, provided that community service is
18 available in the jurisdiction and is funded and approved by the
19 county board of the county where the offense was committed. The
20 community service shall include, but need not be limited to,
21 the cleanup and repair of any damage caused by a violation of
22 Section 21-1.3 of the Criminal Code of 1961 or the Criminal
23 Code of 2012 and similar damage to property located in the
24 municipality or county in which the violation occurred. When
25 possible and reasonable, the community service shall be
26 performed in the minor's neighborhood. This order shall be in

1 addition to any other order authorized by this Section except
2 for an order to place the minor in the custody of the
3 Department of Juvenile Justice. For the purposes of this
4 Section, "organized gang" has the meaning ascribed to it in
5 Section 10 of the Illinois Streetgang Terrorism Omnibus
6 Prevention Act.

7 (11) If the court determines that the offense was committed
8 in furtherance of the criminal activities of an organized gang,
9 as provided in subsection (10), and that the offense involved
10 the operation or use of a motor vehicle or the use of a
11 driver's license or permit, the court shall notify the
12 Secretary of State of that determination and of the period for
13 which the minor shall be denied driving privileges. If, at the
14 time of the determination, the minor does not hold a driver's
15 license or permit, the court shall provide that the minor shall
16 not be issued a driver's license or permit until his or her
17 18th birthday. If the minor holds a driver's license or permit
18 at the time of the determination, the court shall provide that
19 the minor's driver's license or permit shall be revoked until
20 his or her 21st birthday, or until a later date or occurrence
21 determined by the court. If the minor holds a driver's license
22 at the time of the determination, the court may direct the
23 Secretary of State to issue the minor a judicial driving
24 permit, also known as a JDP. The JDP shall be subject to the
25 same terms as a JDP issued under Section 6-206.1 of the
26 Illinois Vehicle Code, except that the court may direct that

1 the JDP be effective immediately.

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

18 For purposes of this Section, "smoker's education program"
19 or "youth diversion program" includes, but is not limited to, a
20 seminar designed to educate a person on the physical and
21 psychological effects of smoking tobacco products and the
22 health consequences of smoking tobacco products that can be
23 conducted with a locality's youth diversion program.

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

26 (a) If a minor violates subsection (a-7) of Section 1

1 of the Prevention of Tobacco Use by Minors Act, the court
2 may impose a sentence of 15 hours of community service or a
3 fine of \$25 for a first violation.

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

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

12 (d) Any second or subsequent violation not within the
13 12-month time period after the first violation is
14 punishable as provided for a first violation.

15 (Source: P.A. 99-268, eff. 1-1-16; 99-628, eff. 1-1-17; 99-879,
16 eff. 1-1-17; 100-201, eff. 8-18-17; 100-431, eff. 8-25-17.)

17 (705 ILCS 405/5-805)

18 Sec. 5-805. Transfer of jurisdiction.

19 (1) (Blank).

20 (2) Presumptive transfer.

21 (a) If the State's Attorney files a petition, at any
22 time prior to commencement of the minor's trial, to permit
23 prosecution under the criminal laws and the petition
24 alleges a minor 15 years of age or older who commits a
25 subsequent violation of Section 18-4 of the Criminal Code

1 of 2012 or of an act that constitutes a forcible felony
2 under the laws of this State, and if a motion by the
3 State's Attorney to prosecute the minor under the criminal
4 laws of Illinois for the alleged forcible felony alleges
5 that (i) the minor has previously been adjudicated
6 delinquent or found guilty for commission of an act that
7 constitutes a forcible felony under the laws of this State
8 or any other state and (ii) the act that constitutes the
9 offense was committed in furtherance of criminal activity
10 by an organized gang, and, if the juvenile judge assigned
11 to hear and determine motions to transfer a case for
12 prosecution in the criminal court determines that there is
13 probable cause to believe that the allegations in the
14 petition and motion are true, there is a rebuttable
15 presumption that the minor is not a fit and proper subject
16 to be dealt with under the Juvenile Justice Reform
17 Provisions of 1998 (Public Act 90-590), and that, except as
18 provided in paragraph (b), the case should be transferred
19 to the criminal court.

20 (b) The judge shall enter an order permitting
21 prosecution under the criminal laws of Illinois unless the
22 judge makes a finding based on clear and convincing
23 evidence that the minor would be amenable to the care,
24 treatment, and training programs available through the
25 facilities of the juvenile court based on an evaluation of
26 the following:

- 1 (i) the age of the minor;
- 2 (ii) the history of the minor, including:
- 3 (A) any previous delinquent or criminal
- 4 history of the minor,
- 5 (B) any previous abuse or neglect history of
- 6 the minor, and
- 7 (C) any mental health, physical or educational
- 8 history of the minor or combination of these
- 9 factors;
- 10 (iii) the circumstances of the offense, including:
- 11 (A) the seriousness of the offense,
- 12 (B) whether the minor is charged through
- 13 accountability,
- 14 (C) whether there is evidence the offense was
- 15 committed in an aggressive and premeditated
- 16 manner,
- 17 (D) whether there is evidence the offense
- 18 caused serious bodily harm,
- 19 (E) whether there is evidence the minor
- 20 possessed a deadly weapon;
- 21 (iv) the advantages of treatment within the
- 22 juvenile justice system including whether there are
- 23 facilities or programs, or both, particularly
- 24 available in the juvenile system;
- 25 (v) whether the security of the public requires
- 26 sentencing under Chapter V of the Unified Code of

1 Corrections:

2 (A) the minor's history of services, including
3 the minor's willingness to participate
4 meaningfully in available services;

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

8 (C) the adequacy of the punishment or
9 services.

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

14 (3) Discretionary transfer.

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

1 (b) In making its determination on the motion to permit
2 prosecution under the criminal laws, the court shall
3 consider among other matters:

4 (i) the age of the minor;

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

6 (A) any previous delinquent or criminal
7 history of the minor,

8 (B) any previous abuse or neglect history of
9 the minor, and

10 (C) any mental health, physical, or
11 educational history of the minor or combination of
12 these factors;

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 (iv) the advantages of treatment within the
25 juvenile justice system including whether there are
26 facilities or programs, or both, particularly

1 available in the juvenile system;

2 (v) whether the security of the public requires
3 sentencing under Chapter V of the Unified Code of
4 Corrections:

5 (A) the minor's history of services, including
6 the minor's willingness to participate
7 meaningfully in available services;

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

11 (C) the adequacy of the punishment or
12 services.

13 In considering these factors, the court shall give
14 greater weight to the seriousness of the alleged offense,
15 the minor's prior record of delinquency than to the other
16 factors listed in this subsection.

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

21 (5) If criminal proceedings are instituted, the petition
22 for adjudication of wardship shall be dismissed insofar as the
23 act or acts involved in the criminal proceedings. Taking of
24 evidence in a trial on petition for adjudication of wardship is
25 a bar to criminal proceedings based upon the conduct alleged in
26 the petition.

1 (6) When criminal prosecution is permitted under this
2 Section and a finding of guilt is entered, the criminal court
3 shall sentence the minor under Section 5-4.5-105 of the Unified
4 Code of Corrections.

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

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