

HB2305



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB2305

by Rep. Justin Slaughter

SYNOPSIS AS INTRODUCED:

705 ILCS 405/5-710
705 ILCS 405/5-750

Amends the Juvenile Court Act of 1987. Provides that an adjudged delinquent for the offense of first degree murder may be committed to the Department of Juvenile Justice when he or she is 14 years old (rather than 13 years old).

LRB101 09190 SLF 54284 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 Sections 5-710 and 5-750 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, and
11 5-815, a minor who is found guilty under Section 5-620 may
12 be:

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

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

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

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

21 (v) placed in detention for a period not to exceed
22 30 days, either as the exclusive order of disposition
23 or, where appropriate, in conjunction with any other
24 order of disposition issued under this paragraph,
25 provided that any such detention shall be in a juvenile
26 detention home and the minor so detained shall be 10

1 years of age or older. However, the 30-day limitation
2 may be extended by further order of the court for a
3 minor under age 15 committed to the Department of
4 Children and Family Services if the court finds that
5 the minor is a danger to himself or others. The minor
6 shall be given credit on the sentencing order of
7 detention for time spent in detention under Sections
8 5-501, 5-601, 5-710, or 5-720 of this Article as a
9 result of the offense for which the sentencing order
10 was imposed. The court may grant credit on a sentencing
11 order of detention entered under a violation of
12 probation or violation of conditional discharge under
13 Section 5-720 of this Article for time spent in
14 detention before the filing of the petition alleging
15 the violation. A minor shall not be deprived of credit
16 for time spent in detention before the filing of a
17 violation of probation or conditional discharge
18 alleging the same or related act or acts. The
19 limitation that the minor shall only be placed in a
20 juvenile detention home does not apply as follows:

21 Persons 18 years of age and older who have a
22 petition of delinquency filed against them may be
23 confined in an adult detention facility. In making a
24 determination whether to confine a person 18 years of
25 age or older who has a petition of delinquency filed
26 against the person, these factors, among other

1 matters, shall be considered:

2 (A) the age of the person;

3 (B) any previous delinquent or criminal
4 history of the person;

5 (C) any previous abuse or neglect history of
6 the person;

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

8 and

9 (E) any educational history of the person;

10 (vi) ordered partially or completely emancipated
11 in accordance with the provisions of the Emancipation
12 of Minors Act;

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

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

25 (ix) ordered to undergo a medical or other
26 procedure to have a tattoo symbolizing allegiance to a

1 street gang removed from his or her body; or
2 (x) placed in electronic monitoring or home
3 detention under Part 7A of this Article.

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

16 (c) When a minor is found to be guilty for an offense
17 which is a violation of the Illinois Controlled Substances
18 Act, the Cannabis Control Act, or the Methamphetamine
19 Control and Community Protection Act and made a ward of the
20 court, the court may enter a disposition order requiring
21 the minor to undergo assessment, counseling or treatment in
22 a substance use disorder treatment program approved by the
23 Department of Human Services.

24 (2) Any sentencing order other than commitment to the
25 Department of Juvenile Justice may provide for protective
26 supervision under Section 5-725 and may include an order of

1 protection under Section 5-730.

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

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

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

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

12 (7) In no event shall a guilty minor be committed to the
13 Department of Juvenile Justice for a period of time in excess
14 of that period for which an adult could be committed for the
15 same act. The court shall include in the sentencing order a
16 limitation on the period of confinement not to exceed the
17 maximum period of imprisonment the court could impose under
18 Article V of the Unified Code of Corrections.

19 (7.5) In no event shall a guilty minor be committed to the
20 Department of Juvenile Justice or placed in detention when the
21 act for which the minor was adjudicated delinquent would not be
22 illegal if committed by an adult.

23 (7.6) In no event shall a guilty minor be committed to the
24 Department of Juvenile Justice for an offense which is a Class
25 4 felony under Section 19-4 (criminal trespass to a residence),
26 21-1 (criminal damage to property), 21-1.01 (criminal damage to

1 government supported property), 21-1.3 (criminal defacement of
2 property), 26-1 (disorderly conduct), or 31-4 (obstructing
3 justice) of the Criminal Code of 2012.

4 (7.75) In no event shall a guilty minor be committed to the
5 Department of Juvenile Justice for an offense that is a Class 3
6 or Class 4 felony violation of the Illinois Controlled
7 Substances Act unless the commitment occurs upon a third or
8 subsequent judicial finding of a violation of probation for
9 substantial noncompliance with court-ordered treatment or
10 programming.

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

22 (8.5) A minor found to be guilty for reasons that include a
23 violation of Section 3.02 or Section 3.03 of the Humane Care
24 for Animals Act or paragraph (d) of subsection (1) of Section
25 21-1 of the Criminal Code of 1961 or paragraph (4) of
26 subsection (a) of Section 21-1 of the Criminal Code of 2012

1 shall be ordered to undergo medical or psychiatric treatment
2 rendered by a psychiatrist or psychological treatment rendered
3 by a clinical psychologist. The order may be in addition to any
4 other order authorized by this Section.

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

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

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

1 more than 120 hours, provided that community service is
2 available in the jurisdiction and is funded and approved by the
3 county board of the county where the offense was committed. The
4 community service shall include, but need not be limited to,
5 the cleanup and repair of any damage caused by a violation of
6 Section 21-1.3 of the Criminal Code of 1961 or the Criminal
7 Code of 2012 and similar damage to property located in the
8 municipality or county in which the violation occurred. When
9 possible and reasonable, the community service shall be
10 performed in the minor's neighborhood. This order shall be in
11 addition to any other order authorized by this Section except
12 for an order to place the minor in the custody of the
13 Department of Juvenile Justice. For the purposes of this
14 Section, "organized gang" has the meaning ascribed to it in
15 Section 10 of the Illinois Streetgang Terrorism Omnibus
16 Prevention Act.

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

1 18th birthday. If the minor holds a driver's license or permit
2 at the time of the determination, the court shall provide that
3 the minor's driver's license or permit shall be revoked until
4 his or her 21st birthday, or until a later date or occurrence
5 determined by the court. If the minor holds a driver's license
6 at the time of the determination, the court may direct the
7 Secretary of State to issue the minor a judicial driving
8 permit, also known as a JDP. The JDP shall be subject to the
9 same terms as a JDP issued under Section 6-206.1 of the
10 Illinois Vehicle Code, except that the court may direct that
11 the JDP be effective immediately.

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

1 or youth diversion program.

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

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

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

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

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

22 (d) Any second or subsequent violation not within the
23 12-month time period after the first violation is
24 punishable as provided for a first violation.

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

1 100-759, eff. 1-1-19.)

2 (705 ILCS 405/5-750)

3 Sec. 5-750. Commitment to the Department of Juvenile
4 Justice.

5 (1) Except as provided in subsection (2) of this Section,
6 when any delinquent has been adjudged a ward of the court under
7 this Act, the court may commit him or her to the Department of
8 Juvenile Justice, if it finds that (a) his or her parents,
9 guardian or legal custodian are unfit or are unable, for some
10 reason other than financial circumstances alone, to care for,
11 protect, train or discipline the minor, or are unwilling to do
12 so, and the best interests of the minor and the public will not
13 be served by placement under Section 5-740, or it is necessary
14 to ensure the protection of the public from the consequences of
15 criminal activity of the delinquent; and (b) commitment to the
16 Department of Juvenile Justice is the least restrictive
17 alternative based on evidence that efforts were made to locate
18 less restrictive alternatives to secure confinement and the
19 reasons why efforts were unsuccessful in locating a less
20 restrictive alternative to secure confinement. Before the
21 court commits a minor to the Department of Juvenile Justice, it
22 shall make a finding that secure confinement is necessary,
23 following a review of the following individualized factors:

24 (A) Age of the minor.

25 (B) Criminal background of the minor.

1 (C) Review of results of any assessments of the minor,
2 including child centered assessments such as the CANS.

3 (D) Educational background of the minor, indicating
4 whether the minor has ever been assessed for a learning
5 disability, and if so what services were provided as well
6 as any disciplinary incidents at school.

7 (E) Physical, mental and emotional health of the minor,
8 indicating whether the minor has ever been diagnosed with a
9 health issue and if so what services were provided and
10 whether the minor was compliant with services.

11 (F) Community based services that have been provided to
12 the minor, and whether the minor was compliant with the
13 services, and the reason the services were unsuccessful.

14 (G) Services within the Department of Juvenile Justice
15 that will meet the individualized needs of the minor.

16 (1.5) Before the court commits a minor to the Department of
17 Juvenile Justice, the court must find reasonable efforts have
18 been made to prevent or eliminate the need for the minor to be
19 removed from the home, or reasonable efforts cannot, at this
20 time, for good cause, prevent or eliminate the need for
21 removal, and removal from home is in the best interests of the
22 minor, the minor's family, and the public.

23 (2) When a minor of the age of at least 14 ~~13~~ years is
24 adjudged delinquent for the offense of first degree murder, the
25 court shall declare the minor a ward of the court and order the
26 minor committed to the Department of Juvenile Justice until the

1 minor's 21st birthday, without the possibility of aftercare
2 release, furlough, or non-emergency authorized absence for a
3 period of 5 years from the date the minor was committed to the
4 Department of Juvenile Justice, except that the time that a
5 minor spent in custody for the instant offense before being
6 committed to the Department of Juvenile Justice shall be
7 considered as time credited towards that 5 year period. Upon
8 release from a Department facility, a minor adjudged delinquent
9 for first degree murder shall be placed on aftercare release
10 until the age of 21, unless sooner discharged from aftercare
11 release or custodianship is otherwise terminated in accordance
12 with this Act or as otherwise provided for by law. Nothing in
13 this subsection (2) shall preclude the State's Attorney from
14 seeking to prosecute a minor as an adult as an alternative to
15 proceeding under this Act.

16 (3) Except as provided in subsection (2), the commitment of
17 a delinquent to the Department of Juvenile Justice shall be for
18 an indeterminate term which shall automatically terminate upon
19 the delinquent attaining the age of 21 years or upon completion
20 of that period for which an adult could be committed for the
21 same act, whichever occurs sooner, unless the delinquent is
22 sooner discharged from aftercare release or custodianship is
23 otherwise terminated in accordance with this Act or as
24 otherwise provided for by law.

25 (3.5) Every delinquent minor committed to the Department of
26 Juvenile Justice under this Act shall be eligible for aftercare

1 release without regard to the length of time the minor has been
2 confined or whether the minor has served any minimum term
3 imposed. Aftercare release shall be administered by the
4 Department of Juvenile Justice, under the direction of the
5 Director. Unless sooner discharged, the Department of Juvenile
6 Justice shall discharge a minor from aftercare release upon
7 completion of the following aftercare release terms:

8 (a) One and a half years from the date a minor is
9 released from a Department facility, if the minor was
10 committed for a Class X felony;

11 (b) One year from the date a minor is released from a
12 Department facility, if the minor was committed for a Class
13 1 or 2 felony; and

14 (c) Six months from the date a minor is released from a
15 Department facility, if the minor was committed for a Class
16 3 felony or lesser offense.

17 (4) When the court commits a minor to the Department of
18 Juvenile Justice, it shall order him or her conveyed forthwith
19 to the appropriate reception station or other place designated
20 by the Department of Juvenile Justice, and shall appoint the
21 Director of Juvenile Justice legal custodian of the minor. The
22 clerk of the court shall issue to the Director of Juvenile
23 Justice a certified copy of the order, which constitutes proof
24 of the Director's authority. No other process need issue to
25 warrant the keeping of the minor.

26 (5) If a minor is committed to the Department of Juvenile

1 Justice, the clerk of the court shall forward to the
2 Department:

3 (a) the sentencing order and copies of committing
4 petition;

5 (b) all reports;

6 (c) the court's statement of the basis for ordering the
7 disposition;

8 (d) any sex offender evaluations;

9 (e) any risk assessment or substance abuse treatment
10 eligibility screening and assessment of the minor by an
11 agent designated by the State to provide assessment
12 services for the courts;

13 (f) the number of days, if any, which the minor has
14 been in custody and for which he or she is entitled to
15 credit against the sentence, which information shall be
16 provided to the clerk by the sheriff;

17 (g) any medical or mental health records or summaries
18 of the minor;

19 (h) the municipality where the arrest of the minor
20 occurred, the commission of the offense occurred, and the
21 minor resided at the time of commission;

22 (h-5) a report detailing the minor's criminal history
23 in a manner and form prescribed by the Department of
24 Juvenile Justice; and

25 (i) all additional matters which the court directs the
26 clerk to transmit.

1 (6) Whenever the Department of Juvenile Justice lawfully
2 discharges from its custody and control a minor committed to
3 it, the Director of Juvenile Justice shall petition the court
4 for an order terminating his or her custodianship. The
5 custodianship shall terminate automatically 30 days after
6 receipt of the petition unless the court orders otherwise.

7 (7) If, while on aftercare release, a minor committed to
8 the Department of Juvenile Justice is charged under the
9 criminal laws of this State with an offense that could result
10 in a sentence of imprisonment within the Department of
11 Corrections, the commitment to the Department of Juvenile
12 Justice and all rights and duties created by that commitment
13 are automatically suspended pending final disposition of the
14 criminal charge. If the minor is found guilty of the criminal
15 charge and sentenced to a term of imprisonment in the
16 penitentiary system of the Department of Corrections, the
17 commitment to the Department of Juvenile Justice shall be
18 automatically terminated. If the criminal charge is dismissed,
19 the minor is found not guilty, or the minor completes a
20 criminal sentence other than imprisonment within the
21 Department of Corrections, the previously imposed commitment
22 to the Department of Juvenile Justice and the full aftercare
23 release term shall be automatically reinstated unless
24 custodianship is sooner terminated. Nothing in this subsection
25 (7) shall preclude the court from ordering another sentence
26 under Section 5-710 of this Act or from terminating the

1 Department's custodianship while the commitment to the
2 Department is suspended.

3 (Source: P.A. 99-268, eff. 1-1-16; 100-765, eff. 8-10-18.)