

HB5339



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB5339

Introduced 1/31/2022, by Rep. Patrick Windhorst

SYNOPSIS AS INTRODUCED:

705 ILCS 405/5-130

Amends the Juvenile Court Act of 1987. Provides that the definition of delinquent minor shall not apply to any minor who at the time of an offense was at least 16 years of age and who is charged with vehicular hijacking or aggravated vehicular hijacking.

LRB102 22550 RLC 31691 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 definition of delinquent minor under Section
9 5-120 of this Article shall not apply to any minor who at the
10 time of an offense was at least 16 years of age and who is
11 charged with: (i) first degree murder, (ii) aggravated
12 criminal sexual assault, ~~or~~ (iii) aggravated battery with a
13 firearm as described in Section 12-4.2 or subdivision (e)(1),
14 (e)(2), (e)(3), or (e)(4) of Section 12-3.05 where the minor
15 personally discharged a firearm as defined in Section 2-15.5
16 of the Criminal Code of 1961 or the Criminal Code of 2012, (iv)
17 vehicular hijacking, or (v) aggravated vehicular hijacking.

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

21 (b)(i) If before trial or plea an information or
22 indictment is filed that does not charge an offense specified
23 in paragraph (a) of this subsection (1) the State's Attorney

1 may proceed on any lesser charge or charges, but only in
2 Juvenile Court under the provisions of this Article. The
3 State's Attorney may proceed on a lesser charge if before
4 trial the minor defendant knowingly and with advice of counsel
5 waives, in writing, his or her right to have the matter proceed
6 in Juvenile Court.

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

13 (c) (i) If after trial or plea the minor is convicted of any
14 offense covered by paragraph (a) of this subsection (1), then,
15 in sentencing the minor, the court shall sentence the minor
16 under Section 5-4.5-105 of the Unified Code of Corrections.

17 (ii) If after trial or plea the court finds that the minor
18 committed an offense not covered by paragraph (a) of this
19 subsection (1), that finding shall not invalidate the verdict
20 or the prosecution of the minor under the criminal laws of the
21 State; however, unless the State requests a hearing for the
22 purpose of sentencing the minor under Chapter V of the Unified
23 Code of Corrections, the Court must proceed under Sections
24 5-705 and 5-710 of this Article. To request a hearing, the
25 State must file a written motion within 10 days following the
26 entry of a finding or the return of a verdict. Reasonable

1 notice of the motion shall be given to the minor or his or her
2 counsel. If the motion is made by the State, the court shall
3 conduct a hearing to determine if the minor should be
4 sentenced under Chapter V of the Unified Code of Corrections.
5 In making its determination, the court shall consider among
6 other matters: (a) whether there is evidence that the offense
7 was committed in an aggressive and premeditated manner; (b)
8 the age of the minor; (c) the previous 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
12 security of the public requires sentencing under Chapter V of
13 the Unified Code of Corrections; and (f) whether the minor
14 possessed a deadly weapon when committing the offense. The
15 rules of evidence shall be the same as if at trial. If after
16 the hearing the court finds that the minor should be sentenced
17 under Chapter V of the Unified Code of Corrections, then the
18 court shall sentence the minor under Section 5-4.5-105 of the
19 Unified Code of Corrections.

20 (2) (Blank).

21 (3) (Blank).

22 (4) (Blank).

23 (5) (Blank).

24 (6) (Blank).

25 (7) The procedures set out in this Article for the
26 investigation, arrest and prosecution of juvenile offenders

1 shall not apply to minors who are excluded from jurisdiction
2 of the Juvenile Court, except that minors under 18 years of age
3 shall be kept separate from confined adults.

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

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

18 (10) If, prior to August 12, 2005 (the effective date of
19 Public Act 94-574), a minor is charged with a violation of
20 Section 401 of the Illinois Controlled Substances Act under
21 the criminal laws of this State, other than a minor charged
22 with a Class X felony violation of the Illinois Controlled
23 Substances Act or the Methamphetamine Control and Community
24 Protection Act, any party including the minor or the court sua
25 sponte may, before trial, move for a hearing for the purpose of
26 trying and sentencing the minor as a delinquent minor. To

1 request a hearing, the party must file a motion prior to trial.
2 Reasonable notice of the motion shall be given to all parties.
3 On its own motion or upon the filing of a motion by one of the
4 parties including the minor, the court shall conduct a hearing
5 to determine whether the minor should be tried and sentenced
6 as a delinquent minor under this Article. In making its
7 determination, the court shall consider among other matters:

8 (a) The age of the minor;

9 (b) Any previous delinquent or criminal history of the
10 minor;

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

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

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

20 Any material that is relevant and reliable shall be
21 admissible at the hearing. In all cases, the judge shall enter
22 an order permitting prosecution under the criminal laws of
23 Illinois unless the judge makes a finding based on a
24 preponderance of the evidence that the minor would be amenable
25 to the care, treatment, and training programs available
26 through the facilities of the juvenile court based on an

1 evaluation of the factors listed in this subsection (10).

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

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