

HB2128



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB2128

Introduced 2/7/2023, by Rep. Barbara Hernandez

SYNOPSIS AS INTRODUCED:

705 ILCS 405/5-805
705 ILCS 405/5-130 rep.

Amends the Juvenile Court Act. Repeals a provision excluding certain minors accused of committing specified crimes from the jurisdiction of the juvenile court. In provisions concerning presumptive transfers, provides that a State's Attorney may file a petition for transfer to criminal court for a minor who is at least 16 years of age and charged with first degree murder, aggravated criminal sexual assault, or specified instances of aggravated battery with a firearm.

LRB103 25363 RJT 51708 b

A BILL FOR

1 AN ACT concerning juvenile court.

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 5-805 as follows:

6 (705 ILCS 405/5-805)

7 Sec. 5-805. Transfer of jurisdiction.

8 (1) (Blank).

9 (2) Presumptive transfer.

10 (a) If a petition is filed under this subsection by
11 the State's Attorney and the juvenile judge assigned to
12 hear and determine motions to transfer a case for
13 prosecution in the criminal court determines that there is
14 probable cause to believe that the allegations in the
15 petition and motion are true, there is a rebuttable
16 presumption that the minor is not a fit and proper subject
17 to be dealt with under the Juvenile Justice Reform
18 Provisions of 1998 (Public Act 90-590), and that, except
19 as provided in paragraph (b), the case should be
20 transferred to the criminal court. The State's Attorney
21 may file a petition, at any time prior to commencement of
22 the minor's trial, to permit prosecution under the
23 criminal laws and alleging that: ~~If the State's Attorney~~

1 ~~files a petition, at any time prior to commencement of the~~
2 ~~minor's trial, to permit prosecution under the criminal~~
3 ~~laws and the petition alleges~~

4 (1) the minor is at least 16 years of age and
5 charged with first degree murder, aggravated criminal
6 sexual assault, or aggravated batter with a firearm as
7 described in Section 12-4.2 or subdivision (e)(1),
8 (e)(2), (e)(3), or (e)(4) of Section 12-3.05 where the
9 minor personally discharged a firearm as defined in
10 Section 2-15.5 of the Criminal Code of 1961 or the
11 Criminal Code of 2012; or

12 (2) a minor 15 years of age or older committed of
13 an act that constitutes a forcible felony under the
14 laws of this State, and if a motion by the State's
15 Attorney to prosecute the minor under the criminal
16 laws of Illinois for the alleged forcible felony
17 alleges that (i) the minor has previously been
18 adjudicated delinquent or found guilty for commission
19 of an act that constitutes a forcible felony under the
20 laws of this State or any other state and (ii) the act
21 that constitutes the offense was committed in
22 furtherance of criminal activity by an organized gang,
23 ~~and, if the juvenile judge assigned to hear and~~
24 ~~determine motions to transfer a case for prosecution~~
25 ~~in the criminal court determines that there is~~
26 ~~probable cause to believe that the allegations in the~~

1 ~~petition and motion are true, there is a rebuttable~~
2 ~~presumption that the minor is not a fit and proper~~
3 ~~subject to be dealt with under the Juvenile Justice~~
4 ~~Reform Provisions of 1998 (Public Act 90-590), and~~
5 ~~that, except as provided in paragraph (b), the case~~
6 ~~should be transferred to the criminal court.~~

7 (b) The judge shall enter an order permitting
8 prosecution under the criminal laws of Illinois unless the
9 judge makes a finding based on clear and convincing
10 evidence that the minor would be amenable to the care,
11 treatment, and training programs available through the
12 facilities of the juvenile court based on an evaluation of
13 the following:

14 (i) the age of the minor;

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

16 (A) any previous delinquent or criminal
17 history of the minor,

18 (B) any previous abuse or neglect history of
19 the minor, and

20 (C) any mental health, physical or educational
21 history of the minor or combination of these
22 factors;

23 (iii) the circumstances of the offense, including:

24 (A) the seriousness of the offense,

25 (B) whether the minor is charged through
26 accountability,

1 (C) whether there is evidence the offense was
2 committed in an aggressive and premeditated
3 manner,

4 (D) whether there is evidence the offense
5 caused serious bodily harm,

6 (E) whether there is evidence the minor
7 possessed a deadly weapon;

8 (iv) the advantages of treatment within the
9 juvenile justice system including whether there are
10 facilities or programs, or both, particularly
11 available in the juvenile system;

12 (v) whether the security of the public requires
13 sentencing under Chapter V of the Unified Code of
14 Corrections:

15 (A) the minor's history of services, including
16 the minor's willingness to participate
17 meaningfully in available services;

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

21 (C) the adequacy of the punishment or
22 services.

23 In considering these factors, the court shall give
24 greater weight to the seriousness of the alleged offense
25 and the minor's prior record of delinquency than to the
26 other factors listed in this subsection.

1 (3) Discretionary transfer.

2 (a) If a petition alleges commission by a minor 13
3 years of age or over of an act that constitutes a crime
4 under the laws of this State and, on motion of the State's
5 Attorney to permit prosecution of the minor under the
6 criminal laws, a Juvenile Judge assigned by the Chief
7 Judge of the Circuit to hear and determine those motions,
8 after hearing but before commencement of the trial, finds
9 that there is probable cause to believe that the
10 allegations in the motion are true and that it is not in
11 the best interests of the public to proceed under this
12 Act, the court may enter an order permitting prosecution
13 under the criminal laws.

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

17 (i) the age of the minor;

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

19 (A) any previous delinquent or criminal
20 history of the minor,

21 (B) any previous abuse or neglect history of
22 the minor, and

23 (C) any mental health, physical, or
24 educational history of the minor or combination of
25 these factors;

26 (iii) the circumstances of the offense, including:

- 1 (A) the seriousness of the offense,
2 (B) whether the minor is charged through
3 accountability,
4 (C) whether there is evidence the offense was
5 committed in an aggressive and premeditated
6 manner,
7 (D) whether there is evidence the offense
8 caused serious bodily harm,
9 (E) whether there is evidence the minor
10 possessed a deadly weapon;
11 (iv) the advantages of treatment within the
12 juvenile justice system including whether there are
13 facilities or programs, or both, particularly
14 available in the juvenile system;
15 (v) whether the security of the public requires
16 sentencing under Chapter V of the Unified Code of
17 Corrections:
18 (A) the minor's history of services, including
19 the minor's willingness to participate
20 meaningfully in available services;
21 (B) whether there is a reasonable likelihood
22 that the minor can be rehabilitated before the
23 expiration of the juvenile court's jurisdiction;
24 (C) the adequacy of the punishment or
25 services.

26 In considering these factors, the court shall give

1 greater weight to the seriousness of the alleged offense,
2 the minor's prior record of delinquency than to the other
3 factors listed in this subsection.

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

8 (5) If criminal proceedings are instituted, the petition
9 for adjudication of wardship shall be dismissed insofar as the
10 act or acts involved in the criminal proceedings. Taking of
11 evidence in a trial on petition for adjudication of wardship
12 is a bar to criminal proceedings based upon the conduct
13 alleged in the petition.

14 (6) When criminal prosecution is permitted under this
15 Section and a finding of guilt is entered, the criminal court
16 shall sentence the minor under Section 5-4.5-105 of the
17 Unified Code of Corrections.

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

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

23 (705 ILCS 405/5-130 rep.)

24 Section 10. The Juvenile Court Act of 1987 is amended by
25 repealing Section 5-130.