



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004
HB4611

Introduced 02/04/04, by Annazette Collins

SYNOPSIS AS INTRODUCED:

705 ILCS 405/5-130

Amends the Juvenile Court Act of 1987. Permits the court to try a minor as delinquent who would otherwise under statute be automatically tried as an adult, after a hearing and a determination by the court that certain mitigating factors are present (rather than just in cases involving certain controlled substance violations).

LRB093 19447 RLC 45185 b

1 AN ACT in relation to minors.

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 15 years of age and who is
11 charged with first degree murder, aggravated criminal sexual
12 assault, aggravated battery with a firearm committed in a
13 school, on the real property comprising a school, within 1,000
14 feet of the real property comprising a school, at a school
15 related activity, or on, boarding, or departing from any
16 conveyance owned, leased, or contracted by a school or school
17 district to transport students to or from school or a school
18 related activity regardless of the time of day or time of year
19 that the offense was committed, armed robbery when the armed
20 robbery was committed with a firearm, or aggravated vehicular
21 hijacking when the hijacking was committed with a firearm.

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

25 For purposes of this paragraph (a) of subsection (1):

26 "School" means a public or private elementary or secondary
27 school, community college, college, or university.

28 "School related activity" means any sporting, social,
29 academic or other activity for which students' attendance or
30 participation is sponsored, organized, or funded in whole or in
31 part by a school or school district.

32 (b) (i) If before trial or plea an information or

1 indictment is filed that does not charge an offense specified
2 in paragraph (a) of this subsection (1) the State's Attorney
3 may proceed on any lesser charge or charges, but only in
4 Juvenile Court under the provisions of this Article. The
5 State's Attorney may proceed under the Criminal Code of 1961 on
6 a lesser charge if before trial the minor defendant knowingly
7 and with advice of counsel waives, in writing, his or her right
8 to have the matter proceed in Juvenile Court.

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

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

20 (ii) If after trial or plea the court finds that the minor
21 committed an offense not covered by paragraph (a) of this
22 subsection (1), that finding shall not invalidate the verdict
23 or the prosecution of the minor under the criminal laws of the
24 State; however, unless the State requests a hearing for the
25 purpose of sentencing the minor under Chapter V of the Unified
26 Code of Corrections, the Court must proceed under Sections
27 5-705 and 5-710 of this Article. To request a hearing, the
28 State must file a written motion within 10 days following the
29 entry of a finding or the return of a verdict. Reasonable
30 notice of the motion shall be given to the minor or his or her
31 counsel. If the motion is made by the State, the court shall
32 conduct a hearing to determine if the minor should be sentenced
33 under Chapter V of the Unified Code of Corrections. In making
34 its determination, the court shall consider among other
35 matters: (a) whether there is evidence that the offense was
36 committed in an aggressive and premeditated manner; (b) the age

1 of the minor; (c) the previous history of the minor; (d)
2 whether there are facilities particularly available to the
3 Juvenile Court or the Department of Corrections, Juvenile
4 Division, for the treatment and rehabilitation of the minor;
5 (e) whether the security of the public requires sentencing
6 under Chapter V of the Unified Code of Corrections; and (f)
7 whether the minor possessed a deadly weapon when committing the
8 offense. The rules of evidence shall be the same as if at
9 trial. If after the hearing the court finds that the minor
10 should be sentenced under Chapter V of the Unified Code of
11 Corrections, then the court shall sentence the minor
12 accordingly having available to it any or all dispositions so
13 prescribed.

14 (2) (a) The definition of a delinquent minor under Section
15 5-120 of this Article shall not apply to any minor who at the
16 time of the offense was at least 15 years of age and who is
17 charged with an offense under Section 401 of the Illinois
18 Controlled Substances Act, while in a school, regardless of the
19 time of day or the time of year, or any conveyance owned,
20 leased or contracted by a school to transport students to or
21 from school or a school related activity, or residential
22 property owned, operated or managed by a public housing agency
23 or leased by a public housing agency as part of a scattered
24 site or mixed-income development, on the real property
25 comprising any school, regardless of the time of day or the
26 time of year, or residential property owned, operated or
27 managed by a public housing agency or leased by a public
28 housing agency as part of a scattered site or mixed-income
29 development, or on a public way within 1,000 feet of the real
30 property comprising any school, regardless of the time of day
31 or the time of year, or residential property owned, operated or
32 managed by a public housing agency or leased by a public
33 housing agency as part of a scattered site or mixed-income
34 development. School is defined, for the purposes of this
35 Section, as any public or private elementary or secondary
36 school, community college, college, or university. These

1 charges and all other charges arising out of the same incident
2 shall be prosecuted under the criminal laws of this State.

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

12 (ii) If before trial or plea an information or indictment
13 is filed that includes one or more charges specified in
14 paragraph (a) of this subsection (2) and additional charges
15 that are not specified in that paragraph, all of the charges
16 arising out of the same incident shall be prosecuted under the
17 criminal laws of this State.

18 (c) (i) If after trial or plea the minor is convicted of
19 any offense covered by paragraph (a) of this subsection (2),
20 then, in sentencing the minor, the court shall have available
21 any or all dispositions prescribed for that offense under
22 Chapter V of the Unified Code of Corrections.

23 (ii) If after trial or plea the court finds that the minor
24 committed an offense not covered by paragraph (a) of this
25 subsection (2), that finding shall not invalidate the verdict
26 or the prosecution of the minor under the criminal laws of the
27 State; however, unless the State requests a hearing for the
28 purpose of sentencing the minor under Chapter V of the Unified
29 Code of Corrections, the Court must proceed under Sections
30 5-705 and 5-710 of this Article. To request a hearing, the
31 State must file a written motion within 10 days following the
32 entry of a finding or the return of a verdict. Reasonable
33 notice of the motion shall be given to the minor or his or her
34 counsel. If the motion is made by the State, the court shall
35 conduct a hearing to determine if the minor should be sentenced
36 under Chapter V of the Unified Code of Corrections. In making

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

17 (3) (a) The definition of delinquent minor under Section
18 5-120 of this Article shall not apply to any minor who at the
19 time of the offense was at least 15 years of age and who is
20 charged with a violation of the provisions of paragraph (1),
21 (3), (4), or (10) of subsection (a) of Section 24-1 of the
22 Criminal Code of 1961 while in school, regardless of the time
23 of day or the time of year, or on the real property comprising
24 any school, regardless of the time of day or the time of year.
25 School is defined, for purposes of this Section as any public
26 or private elementary or secondary school, community college,
27 college, or university. These charges and all other charges
28 arising out of the same incident shall be prosecuted under the
29 criminal laws of this State.

30 (b) (i) If before trial or plea an information or
31 indictment is filed that does not charge an offense specified
32 in paragraph (a) of this subsection (3) the State's Attorney
33 may proceed on any lesser charge or charges, but only in
34 Juvenile Court under the provisions of this Article. The
35 State's Attorney may proceed under the criminal laws of this
36 State on a lesser charge if before trial the minor defendant

1 knowingly and with advice of counsel waives, in writing, his or
2 her right to have the matter proceed in Juvenile Court.

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

9 (c) (i) If after trial or plea the minor is convicted of
10 any offense covered by paragraph (a) of this subsection (3),
11 then, in sentencing the minor, the court shall have available
12 any or all dispositions prescribed for that offense under
13 Chapter V of the Unified Code of Corrections.

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

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

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

28 (ii) If before trial or plea an information or indictment
29 is filed that includes first degree murder committed during the
30 course of aggravated criminal sexual assault, criminal sexual
31 assault, or aggravated kidnaping, and additional charges that
32 are not specified in paragraph (a) of this subsection, all of
33 the charges arising out of the same incident shall be
34 prosecuted under the criminal laws of this State.

35 (c) (i) If after trial or plea the minor is convicted of
36 first degree murder committed during the course of aggravated

1 criminal sexual assault, criminal sexual assault, or
2 aggravated kidnaping, in sentencing the minor, the court shall
3 have available any or all dispositions prescribed for that
4 offense under Chapter V of the Unified Code of Corrections.

5 (ii) If the minor was not yet 15 years of age at the time of
6 the offense, and if after trial or plea the court finds that
7 the minor committed an offense other than first degree murder
8 committed during the course of either aggravated criminal
9 sexual assault, criminal sexual assault, or aggravated
10 kidnaping, the finding shall not invalidate the verdict or the
11 prosecution of the minor under the criminal laws of the State;
12 however, unless the State requests a hearing for the purpose of
13 sentencing the minor under Chapter V of the Unified Code of
14 Corrections, the Court must proceed under Sections 5-705 and
15 5-710 of this Article. To request a hearing, the State must
16 file a written motion within 10 days following the entry of a
17 finding or the return of a verdict. Reasonable notice of the
18 motion shall be given to the minor or his or her counsel. If
19 the motion is made by the State, the court shall conduct a
20 hearing to determine whether the minor should be sentenced
21 under Chapter V of the Unified Code of Corrections. In making
22 its determination, the court shall consider among other
23 matters: (a) whether there is evidence that the offense was
24 committed in an aggressive and premeditated manner; (b) the age
25 of the minor; (c) the previous delinquent history of the minor;
26 (d) whether there are facilities particularly available to the
27 Juvenile Court or the Department of Corrections, Juvenile
28 Division, for the treatment and rehabilitation of the minor;
29 (e) whether the best interest of the minor and the security of
30 the public require sentencing under Chapter V of the Unified
31 Code of Corrections; and (f) whether the minor possessed a
32 deadly weapon when committing the offense. The rules of
33 evidence shall be the same as if at trial. If after the hearing
34 the court finds that the minor should be sentenced under
35 Chapter V of the Unified Code of Corrections, then the court
36 shall sentence the minor accordingly having available to it any

1 or all dispositions so prescribed.

2 (5) (a) The definition of delinquent minor under Section
3 5-120 of this Article shall not apply to any minor who is
4 charged with a violation of subsection (a) of Section 31-6 or
5 Section 32-10 of the Criminal Code of 1961 when the minor is
6 subject to prosecution under the criminal laws of this State as
7 a result of the application of the provisions of Section 5-125,
8 or subsection (1) or (2) of this Section. These charges and all
9 other charges arising out of the same incident shall be
10 prosecuted under the criminal laws of this State.

11 (b) (i) If before trial or plea an information or
12 indictment is filed that does not charge an offense specified
13 in paragraph (a) of this subsection (5), the State's Attorney
14 may proceed on any lesser charge or charges, but only in
15 Juvenile Court under the provisions of this Article. The
16 State's Attorney may proceed under the criminal laws of this
17 State on a lesser charge if before trial the minor defendant
18 knowingly and with advice of counsel waives, in writing, his or
19 her right to have 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 (5) 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
27 any offense covered by paragraph (a) of this subsection (5),
28 then, in sentencing the minor, the court shall have available
29 any or all dispositions prescribed for that offense under
30 Chapter V of the Unified Code of Corrections.

31 (ii) If after trial or plea the court finds that the minor
32 committed an offense not covered by paragraph (a) of this
33 subsection (5), the conviction shall not invalidate the verdict
34 or the prosecution of the minor under the criminal laws of this
35 State; however, unless the State requests a hearing for the
36 purpose of sentencing the minor under Chapter V of the Unified

1 Code of Corrections, the Court must proceed under Sections
2 5-705 and 5-710 of this Article. To request a hearing, the
3 State must file a written motion within 10 days following the
4 entry of a finding or the return of a verdict. Reasonable
5 notice of the motion shall be given to the minor or his or her
6 counsel. If the motion is made by the State, the court shall
7 conduct a hearing to determine if whether the minor should be
8 sentenced under Chapter V of the Unified Code of Corrections.
9 In making its determination, the court shall consider among
10 other matters: (a) whether there is evidence that the offense
11 was committed in an aggressive and premeditated manner; (b) the
12 age of the minor; (c) the previous delinquent history of the
13 minor; (d) whether there are facilities particularly available
14 to the Juvenile Court or the Department of Corrections,
15 Juvenile Division, for the treatment and rehabilitation of the
16 minor; (e) whether the security of the public requires
17 sentencing under Chapter V of the Unified Code of Corrections;
18 and (f) whether the minor possessed a deadly weapon when
19 committing the offense. The rules of evidence shall be the same
20 as if at trial. If after the hearing the court finds that the
21 minor should be sentenced under Chapter V of the Unified Code
22 of Corrections, then the court shall sentence the minor
23 accordingly having available to it any or all dispositions so
24 prescribed.

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

32 (7) The procedures set out in this Article for the
33 investigation, arrest and prosecution of juvenile offenders
34 shall not apply to minors who are excluded from jurisdiction of
35 the Juvenile Court, except that minors under 17 years of age
36 shall be kept separate from confined adults.

1 (8) Nothing in this Act prohibits or limits the prosecution
2 of any minor for an offense committed on or after his or her
3 17th birthday even though he or she is at the time of the
4 offense a ward of the court.

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

15 (10) If a minor is subject to any of the provisions of
16 ~~subsection (2) of this Section, other than a minor charged with~~
17 ~~a Class X felony violation of the Illinois Controlled~~
18 ~~Substances Act,~~ any party including the minor or the court sua
19 sponte may, before trial, move for a hearing for the purpose of
20 trying and sentencing the minor as a delinquent minor. To
21 request a hearing, the party must file a motion prior to trial.
22 Reasonable notice of the motion shall be given to all parties.
23 On its own motion or upon the filing of a motion by one of the
24 parties including the minor, the court shall conduct a hearing
25 to determine whether the minor should be tried and sentenced as
26 a delinquent minor under this Article. In making its
27 determination, the court shall consider among other matters:

28 (a) The age of the minor;

29 (b) Any previous delinquent or criminal history of the
30 minor;

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

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

34 (e) Whether there is probable cause to support the charge,
35 whether the minor is charged through accountability, and
36 whether there is evidence the minor possessed a deadly weapon

1 or caused serious bodily harm during the offense.

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

10 (Source: P.A. 91-15, eff. 1-1-00; 91-673, eff. 12-22-99; 92-16,
11 eff. 6-28-01; 92-665, eff. 1-1-03.)