



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB5916

Introduced 2/10/2010, by Rep. Annazette Collins

SYNOPSIS AS INTRODUCED:

705 ILCS 405/5-410
705 ILCS 405/5-710

Amends the Juvenile Court Act of 1987. Increases the minimum age at which an alleged delinquent minor may be placed in a detention facility from 10 years of age to 13 years of age.

LRB096 18820 RLC 36078 b

FISCAL NOTE ACT
MAY APPLY

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 5-410 and 5-710 as follows:

6 (705 ILCS 405/5-410)

7 Sec. 5-410. Non-secure custody or detention.

8 (1) Any minor arrested or taken into custody pursuant to
9 this Act who requires care away from his or her home but who
10 does not require physical restriction shall be given temporary
11 care in a foster family home or other shelter facility
12 designated by the court.

13 (2) (a) Any minor 13 ~~14~~ years of age or older arrested
14 pursuant to this Act where there is probable cause to believe
15 that the minor is a delinquent minor and that (i) secured
16 custody is a matter of immediate and urgent necessity for the
17 protection of the minor or of the person or property of
18 another, (ii) the minor is likely to flee the jurisdiction of
19 the court, or (iii) the minor was taken into custody under a
20 warrant, may be kept or detained in an authorized detention
21 facility. No minor under 12 years of age shall be detained in a
22 county jail or a municipal lockup for more than 6 hours.

23 (b) The written authorization of the probation officer or

1 detention officer (or other public officer designated by the
2 court in a county having 3,000,000 or more inhabitants)
3 constitutes authority for the superintendent of any juvenile
4 detention home to detain and keep a minor for up to 40 hours,
5 excluding Saturdays, Sundays and court-designated holidays.
6 These records shall be available to the same persons and
7 pursuant to the same conditions as are law enforcement records
8 as provided in Section 5-905.

9 (b-4) The consultation required by subsection (b-5) shall
10 not be applicable if the probation officer or detention officer
11 (or other public officer designated by the court in a county
12 having 3,000,000 or more inhabitants) utilizes a scorable
13 detention screening instrument, which has been developed with
14 input by the State's Attorney, to determine whether a minor
15 should be detained, however, subsection (b-5) shall still be
16 applicable where no such screening instrument is used or where
17 the probation officer, detention officer (or other public
18 officer designated by the court in a county having 3,000,000 or
19 more inhabitants) deviates from the screening instrument.

20 (b-5) Subject to the provisions of subsection (b-4), if a
21 probation officer or detention officer (or other public officer
22 designated by the court in a county having 3,000,000 or more
23 inhabitants) does not intend to detain a minor for an offense
24 which constitutes one of the following offenses he or she shall
25 consult with the State's Attorney's Office prior to the release
26 of the minor: first degree murder, second degree murder,

1 involuntary manslaughter, criminal sexual assault, aggravated
2 criminal sexual assault, aggravated battery with a firearm,
3 aggravated or heinous battery involving permanent disability
4 or disfigurement or great bodily harm, robbery, aggravated
5 robbery, armed robbery, vehicular hijacking, aggravated
6 vehicular hijacking, vehicular invasion, arson, aggravated
7 arson, kidnapping, aggravated kidnapping, home invasion,
8 burglary, or residential burglary.

9 (c) Except as otherwise provided in paragraph (a), (d), or
10 (e), no minor shall be detained in a county jail or municipal
11 lockup for more than 12 hours, unless the offense is a crime of
12 violence in which case the minor may be detained up to 24
13 hours. For the purpose of this paragraph, "crime of violence"
14 has the meaning ascribed to it in Section 1-10 of the
15 Alcoholism and Other Drug Abuse and Dependency Act.

16 (i) The period of detention is deemed to have begun
17 once the minor has been placed in a locked room or cell or
18 handcuffed to a stationary object in a building housing a
19 county jail or municipal lockup. Time spent transporting a
20 minor is not considered to be time in detention or secure
21 custody.

22 (ii) Any minor so confined shall be under periodic
23 supervision and shall not be permitted to come into or
24 remain in contact with adults in custody in the building.

25 (iii) Upon placement in secure custody in a jail or
26 lockup, the minor shall be informed of the purpose of the

1 detention, the time it is expected to last and the fact
2 that it cannot exceed the time specified under this Act.

3 (iv) A log shall be kept which shows the offense which
4 is the basis for the detention, the reasons and
5 circumstances for the decision to detain and the length of
6 time the minor was in detention.

7 (v) Violation of the time limit on detention in a
8 county jail or municipal lockup shall not, in and of
9 itself, render inadmissible evidence obtained as a result
10 of the violation of this time limit. Minors under 17 years
11 of age shall be kept separate from confined adults and may
12 not at any time be kept in the same cell, room or yard with
13 adults confined pursuant to criminal law. Persons 17 years
14 of age and older who have a petition of delinquency filed
15 against them may be confined in an adult detention
16 facility. In making a determination whether to confine a
17 person 17 years of age or older who has a petition of
18 delinquency filed against the person, these factors, among
19 other matters, shall be considered:

20 (A) The age of the person;

21 (B) Any previous delinquent or criminal history of
22 the person;

23 (C) Any previous abuse or neglect history of the
24 person; and

25 (D) Any mental health or educational history of the
26 person, or both.

1 (d) (i) If a minor 12 years of age or older is confined in a
2 county jail in a county with a population below 3,000,000
3 inhabitants, then the minor's confinement shall be implemented
4 in such a manner that there will be no contact by sight, sound
5 or otherwise between the minor and adult prisoners. Minors 12
6 years of age or older must be kept separate from confined
7 adults and may not at any time be kept in the same cell, room,
8 or yard with confined adults. This paragraph (d) (i) shall only
9 apply to confinement pending an adjudicatory hearing and shall
10 not exceed 40 hours, excluding Saturdays, Sundays and court
11 designated holidays. To accept or hold minors during this time
12 period, county jails shall comply with all monitoring standards
13 promulgated by the Department of Corrections and training
14 standards approved by the Illinois Law Enforcement Training
15 Standards Board.

16 (ii) To accept or hold minors, 12 years of age or older,
17 after the time period prescribed in paragraph (d) (i) of this
18 subsection (2) of this Section but not exceeding 7 days
19 including Saturdays, Sundays and holidays pending an
20 adjudicatory hearing, county jails shall comply with all
21 temporary detention standards promulgated by the Department of
22 Corrections and training standards approved by the Illinois Law
23 Enforcement Training Standards Board.

24 (iii) To accept or hold minors 12 years of age or older,
25 after the time period prescribed in paragraphs (d) (i) and
26 (d) (ii) of this subsection (2) of this Section, county jails

1 shall comply with all programmatic and training standards for
2 juvenile detention homes promulgated by the Department of
3 Corrections.

4 (e) When a minor who is at least 15 years of age is
5 prosecuted under the criminal laws of this State, the court may
6 enter an order directing that the juvenile be confined in the
7 county jail. However, any juvenile confined in the county jail
8 under this provision shall be separated from adults who are
9 confined in the county jail in such a manner that there will be
10 no contact by sight, sound or otherwise between the juvenile
11 and adult prisoners.

12 (f) For purposes of appearing in a physical lineup, the
13 minor may be taken to a county jail or municipal lockup under
14 the direct and constant supervision of a juvenile police
15 officer. During such time as is necessary to conduct a lineup,
16 and while supervised by a juvenile police officer, the sight
17 and sound separation provisions shall not apply.

18 (g) For purposes of processing a minor, the minor may be
19 taken to a County Jail or municipal lockup under the direct and
20 constant supervision of a law enforcement officer or
21 correctional officer. During such time as is necessary to
22 process the minor, and while supervised by a law enforcement
23 officer or correctional officer, the sight and sound separation
24 provisions shall not apply.

25 (3) If the probation officer or State's Attorney (or such
26 other public officer designated by the court in a county having

1 3,000,000 or more inhabitants) determines that the minor may be
2 a delinquent minor as described in subsection (3) of Section
3 5-105, and should be retained in custody but does not require
4 physical restriction, the minor may be placed in non-secure
5 custody for up to 40 hours pending a detention hearing.

6 (4) Any minor taken into temporary custody, not requiring
7 secure detention, may, however, be detained in the home of his
8 or her parent or guardian subject to such conditions as the
9 court may impose.

10 (Source: P.A. 93-255, eff. 1-1-04.)

11 (705 ILCS 405/5-710)

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

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

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

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

25 (ii) placed in accordance with Section 5-740, with

1 or without also being put on probation or conditional
2 discharge;

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

6 (iv) placed in the guardianship of the Department
7 of Children and Family Services, but only if the
8 delinquent minor is under 15 years of age or, pursuant
9 to Article II of this Act, a minor for whom an
10 independent basis of abuse, neglect, or dependency
11 exists. An independent basis exists when the
12 allegations or adjudication of abuse, neglect, or
13 dependency do not arise from the same facts, incident,
14 or circumstances which give rise to a charge or
15 adjudication of delinquency;

16 (v) placed in detention for a period not to exceed
17 30 days, either as the exclusive order of disposition
18 or, where appropriate, in conjunction with any other
19 order of disposition issued under this paragraph,
20 provided that any such detention shall be in a juvenile
21 detention home and the minor so detained shall be 13 ~~10~~
22 years of age or older. However, the 30-day limitation
23 may be extended by further order of the court for a
24 minor under age 15 committed to the Department of
25 Children and Family Services if the court finds that
26 the minor is a danger to himself or others. The minor

1 shall be given credit on the sentencing order of
2 detention for time spent in detention under Sections
3 5-501, 5-601, 5-710, or 5-720 of this Article as a
4 result of the offense for which the sentencing order
5 was imposed. The court may grant credit on a sentencing
6 order of detention entered under a violation of
7 probation or violation of conditional discharge under
8 Section 5-720 of this Article for time spent in
9 detention before the filing of the petition alleging
10 the violation. A minor shall not be deprived of credit
11 for time spent in detention before the filing of a
12 violation of probation or conditional discharge
13 alleging the same or related act or acts;

14 (vi) ordered partially or completely emancipated
15 in accordance with the provisions of the Emancipation
16 of Minors Act;

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

21 (viii) put on probation or conditional discharge
22 and placed in detention under Section 3-6039 of the
23 Counties Code for a period not to exceed the period of
24 incarceration permitted by law for adults found guilty
25 of the same offense or offenses for which the minor was
26 adjudicated delinquent, and in any event no longer than

1 upon attainment of age 21; this subdivision (viii)
2 notwithstanding any contrary provision of the law;

3 (ix) ordered to undergo a medical or other
4 procedure to have a tattoo symbolizing allegiance to a
5 street gang removed from his or her body; or

6 (x) placed in electronic home detention under Part
7 7A of this Article.

8 (b) A minor found to be guilty may be committed to the
9 Department of Juvenile Justice under Section 5-750 if the
10 minor is 13 years of age or older, provided that the
11 commitment to the Department of Juvenile Justice shall be
12 made only if a term of incarceration is permitted by law
13 for adults found guilty of the offense for which the minor
14 was adjudicated delinquent. The time during which a minor
15 is in custody before being released upon the request of a
16 parent, guardian or legal custodian shall be considered as
17 time spent in detention.

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

26 (2) Any sentencing order other than commitment to the

1 Department of Juvenile Justice may provide for protective
2 supervision under Section 5-725 and may include an order of
3 protection under Section 5-730.

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

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

21 (5) Any sentencing order where the minor is committed or
22 placed in accordance with Section 5-740 shall provide for the
23 parents or guardian of the estate of the minor to pay to the
24 legal custodian or guardian of the person of the minor such
25 sums as are determined by the custodian or guardian of the
26 person of the minor as necessary for the minor's needs. The

1 payments may not exceed the maximum amounts provided for by
2 Section 9.1 of the Children and Family Services Act.

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

14 (7) In no event shall a guilty minor be committed to the
15 Department of Juvenile Justice for a period of time in excess
16 of that period for which an adult could be committed for the
17 same act.

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 shall
20 be ordered to perform community service for not less than 30
21 and not more than 120 hours, if community service is available
22 in the jurisdiction. The community service shall include, but
23 need not be limited to, the cleanup and repair of the damage
24 that was caused by the violation or similar damage to property
25 located in the municipality or county in which the violation
26 occurred. The order may be in addition to any other order

1 authorized by this Section.

2 (8.5) A minor found to be guilty for reasons that include a
3 violation of Section 3.02 or Section 3.03 of the Humane Care
4 for Animals Act or paragraph (d) of subsection (1) of Section
5 21-1 of the Criminal Code of 1961 shall be ordered to undergo
6 medical or psychiatric treatment rendered by a psychiatrist or
7 psychological treatment rendered by a clinical psychologist.
8 The order may be in addition to any other order authorized by
9 this Section.

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

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

18 (10) When a court finds a minor to be guilty the court
19 shall, before entering a sentencing order under this Section,
20 make a finding whether the offense committed either: (a) was
21 related to or in furtherance of the criminal activities of an
22 organized gang or was motivated by the minor's membership in or
23 allegiance to an organized gang, or (b) involved a violation of
24 subsection (a) of Section 12-7.1 of the Criminal Code of 1961,
25 a violation of any Section of Article 24 of the Criminal Code
26 of 1961, or a violation of any statute that involved the

1 wrongful use of a firearm. If the court determines the question
2 in the affirmative, and the court does not commit the minor to
3 the Department of Juvenile Justice, the court shall order the
4 minor to perform community service for not less than 30 hours
5 nor more than 120 hours, provided that community service is
6 available in the jurisdiction and is funded and approved by the
7 county board of the county where the offense was committed. The
8 community service shall include, but need not be limited to,
9 the cleanup and repair of any damage caused by a violation of
10 Section 21-1.3 of the Criminal Code of 1961 and similar damage
11 to property located in the municipality or county in which the
12 violation occurred. When possible and reasonable, the
13 community service shall be performed in the minor's
14 neighborhood. This order shall be in addition to any other
15 order authorized by this Section except for an order to place
16 the minor in the custody of the Department of Juvenile Justice.
17 For the purposes of this Section, "organized gang" has the
18 meaning ascribed to it in Section 10 of the Illinois Streetgang
19 Terrorism Omnibus Prevention Act.

20 (11) If the court determines that the offense was committed
21 in furtherance of the criminal activities of an organized gang,
22 as provided in subsection (10), and that the offense involved
23 the operation or use of a motor vehicle or the use of a
24 driver's license or permit, the court shall notify the
25 Secretary of State of that determination and of the period for
26 which the minor shall be denied driving privileges. If, at the

1 time of the determination, the minor does not hold a driver's
2 license or permit, the court shall provide that the minor shall
3 not be issued a driver's license or permit until his or her
4 18th birthday. If the minor holds a driver's license or permit
5 at the time of the determination, the court shall provide that
6 the minor's driver's license or permit shall be revoked until
7 his or her 21st birthday, or until a later date or occurrence
8 determined by the court. If the minor holds a driver's license
9 at the time of the determination, the court may direct the
10 Secretary of State to issue the minor a judicial driving
11 permit, also known as a JDP. The JDP shall be subject to the
12 same terms as a JDP issued under Section 6-206.1 of the
13 Illinois Vehicle Code, except that the court may direct that
14 the JDP be effective immediately.

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

1 (a-7) of Section 1 of that Act, the court, upon request by the
2 State's Attorney, may in its discretion require the offender to
3 remit a fee for his or her attendance at a smoker's education
4 or youth diversion program.

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

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

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

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

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

25 (d) Any second or subsequent violation not within the
26 12-month time period after the first violation is

1 punishable as provided for a first violation.

2 (Source: P.A. 95-337, eff. 6-1-08; 95-642, eff. 6-1-08; 95-844,
3 eff. 8-15-08; 95-876, eff. 8-21-08; 96-179, eff. 8-10-09;
4 96-293, eff. 1-1-10; revised 9-15-09.)