

Chapter 6: Juvenile Justice Procedures in Illinois

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(Information in this section is condensed from 705 ILCS 405 unless otherwise noted)

In Illinois, both parents and juveniles who appear in court have rights typical of those on other states. Upon appearing in court for the first time, the juvenile court judge is required to explain these rights to the parties involved. All parties will also be provided with a written copy of “Rights of Parties” at the initial appearance or in combination with a summons and the Petition informing the parties when and where to appear in court. The document also indicates that the juvenile must have a lawyer each and every time he/she appears in court and that one will be appointed if the juvenile or his/her parents cannot afford one. Further, the document indicates that those juveniles who cannot speak English have a right to an interpreter. Finally, the document explains the entire process from the first appearance in court through the dispositional/sentencing phase (compare this information with that provided in Chapter 6).

Although the majority of juvenile offenders in Illinois are handled by the juvenile court, those charged with specific serious crimes can be transferred to criminal court for prosecution as an adult. There are three circumstances when the court will order a minor to be tried in criminal court:

Petitioned Transfer: When a motion has been made to and granted by the juvenile court to transfer the case to criminal court. Since 1973, in the case of minors who are at least 13 years old (at the time of the alleged offense), the State’s Attorney may petition the juvenile court judge to transfer a delinquency case to criminal court. At the hearing on the motion of waiver (see *Kent v. United States*), the judge will consider evidence that the offense was committed in an aggressive and premeditated manner, the previous history of the minor, age, rehabilitative options available, and the best interests of both the minor and the community. As of 1990, the juvenile court judge is required to consider possession of a deadly weapon during the commission of the offense as an aggravating factor when considering the transfer.

Automatic Transfer: When Illinois law mandates that the juvenile be transferred to criminal court for prosecution. Since 1982, Illinois law has required automatic transfers of minors who have attained the age of 15, and charged with Murder, Aggravated Criminal Sexual Assault, or Armed Robbery with a Firearm. Since then, the state has added several offenses that qualify for automatic transfer, including certain drug and weapon violations if they occur on or near school or public housing property, certain gang-related crimes, and aggravated vehicular hijacking with a firearm.

Presumptive Transfer: When there is probable cause that a juvenile has committed a Class X Felony, and the minor is unable to convince a juvenile court judge that he/she is amenable to the care, treatment, and training programs available in the juvenile system. Since 1995, the State’s Attorney has been empowered to petition for a presumptive transfer for most Class X Felonies and some other limited circumstances. This type of transfer shifts the burden of rebutting the presumption to the minor, which is created by a finding of probable cause that the case should be moved to criminal court.

If convicted in criminal court, the minor will be sentenced in accordance with Illinois Criminal Statutes. The juvenile will be sent to an Illinois Youth Center (most likely IYC-Joliet) until he/she attains the age of 17, at which time the offender will be transferred to an adult correctional center for the duration of the period of incarceration. A juvenile who has previously been tried in criminal court and convicted of a crime is thereafter subject to criminal prosecution.

Detention: In Illinois, any minor 10 years of age or older arrested under the provisions of the Juvenile Court Act as a delinquent may be detained in a secure custody facility if it is a matter of immediate and urgent necessity for the protection of the minor, or the person or property of another, or the minor is likely to flee the jurisdiction of the court, or the court has issued a warrant.

If a minor is arrested or taken into custody without a warrant, the minor must be turned over to a designated juvenile police officer who must make a reasonable attempt to notify the parent or other person responsible for the minor's care of the minor's offenses and where he/she is being held.

If the juvenile police officer believes that further detention is necessary, the officer must contact the appropriate court officer who will make the final determination whether detention is necessary. Many Illinois juvenile courts use a "Detention Screening Instrument" if the arresting officer is requesting or questioning the appropriateness of further detention. The screening instrument takes into consideration factors such as present offense, past offenses, current court status, and amount of supervision in the home. If the score is above a certain level, the minor must be detained. The minor must also be detained if he or she is believed to be a danger to themselves or others.

A minor detained under the circumstances listed above, or under a warrant, must be brought before a judicial officer within 40 hours for a detention hearing, excluding Saturdays, Sundays, and court holidays.

The minor must be released from custody at the expiration of the 40 hour period if not brought before a judicial officer in that time period.

Trial or Adjudicatory Hearing: When a petition has been filed alleging the minor is a delinquent, in general an adjudicatory hearing must be held within 120 of the filing.

If the minor is in detention, the adjudicatory hearing must be held within 30 days or on the earliest possible date that allows compliance with notification of a parent, guardian, or custodian, but no later than 45 days from the date of the order directing detention.

Before or during the adjudicatory hearing, a minor may make a plea of guilty after being informed of the consequences of his or her plea and the maximum penalties that may be imposed upon acceptance of the plea.

When there is a court trial, the court determines whether the minor is a delinquent minor based upon the evidence presented by all parties. The standard of proof and rules of evidence in the nature of criminal proceedings in Illinois are applicable in that determination.

After hearing the evidence, the court shall make a finding of guilty or not of the charges stated in the petition. If the finding is "not guilty," the petition is dismissed and the minor released from custody and/or other restrictions. If there is a finding of guilty, the court will set a date for a sentencing (dispositional) hearing to determine what disposition is in the best interests of the minor and the public. At this time, a Social History Investigation Report may be ordered.

Sentencing or Dispositional Hearing: At the sentencing hearing, the court decides whether the minor will be made a ward of the court. If he/she is made a ward of the court, the court determines the disposition best serving the minor and the public. All evidence helpful in determining the best disposition, including the Social History Investigation Report, and/or other written or oral reports may be admitted and considered by the court.

Various dispositions are available to the court. These include conditional discharge, probation, residential placement, substance abuse treatment, guardianship by the Department of Children and Family Services if under a certain age, mental health treatment, a period of detention up to 30 days, and finally commitment to the Department of Juvenile Justice may be ordered if the minor is over 13 years of age and if a term of incarceration is permitted by law for adults found guilty of the offense for which the minor is adjudicated delinquent.

Appeals: Appeals from judgments in delinquency proceedings are generally governed by rules applicable to criminal cases. That is, the minor has 30 days from the date on which the sentence is imposed to file a motion with the trial court for appeal.

It is essential that those involved in the juvenile justice network be completely familiar with appropriate procedures for dealing with juveniles and with the rules governing other members of the juvenile justice system. This awareness helps to ensure that the interests of juveniles will be protected within the guidelines established by society as well as ensuring that juvenile justice practitioners properly prepare cases for prosecution and additional official processing.

Every state has a juvenile court act spelling out appropriate procedures for dealing with juveniles from the initial apprehension through final disposition. In looking at several juvenile court acts, we have seen that there are many uniformities in these acts as well as many points of disagreement. Uniformities are often the result of Supreme Court decisions, while differences often result from legislative efforts in the individual states. It is crucial, therefore, for all juvenile justice practitioners to become familiar with the juvenile court act under which they operate so that the best interests of juveniles, other practitioners, and society may be served to the maximum extent possible.

Review Questions

1. In Illinois, under what circumstances must a minor be represented by an attorney in court?
2. What are the three circumstances under which the juvenile court judge will order a minor to be tried in criminal court?
3. In Illinois, are there circumstances under which a minor may be incarcerated in a facility for juveniles and then transferred to an adult facility to serve out any remaining sentence? If so, what are they?
4. Which comes first in Illinois- the adjudicatory hearing or the dispositional hearing?
5. What rules govern the right of minors to appeal court decisions in Illinois?