**Policies and Procedures of the Illinois Juvenile Justice System**

***Illinois Police Agency Model Juvenile Handbook and Procedures Manual***

***DEFINITIONS***

***Abused Minor***. **705 ILCS 405/2-3(2)**

Any minor under 18 years of age whose parent or immediate family member, or any person responsible for the minor's welfare, or any person who is in the same family or household as the minor, or any individual residing in the same home as the minor, or a paramour of the minor's parent:

1. Inflicts, causes to be inflicted, or allows to be inflicted upon such minor physical injury, by other than accidental means, which causes death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function;

2. Creates a substantial risk of physical injury to such minor by other than accidental means which would be likely to cause death, disfigurement, impairment of emotional health, or loss or impairment of any bodily function;

3. Commits or allows to be committed any sex offense against such minor, and extending those definitions of sex offenses to include minors under 18 years of age;

4. Commits or allows to be committed an act of torture upon such minor; or

5. Inflicts excessive corporal punishment.

***6. commits or allows to be committed the offense of involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons as defined in Section 10–9 of the Criminal Code of 1961, upon such minor; or***

***7. allows, encourages or requires a minor to commit any act of prostitution, as defined in the Criminal Code of 1961, and extending those definitions to include minors under 18 years of age.*** **Public Act: 96-1464; Eff: 8-20-09**

A minor shall not be considered abused for the sole reason that the minor has been relinquished in accordance with the Abandoned Newborn Infant Protection Act.

***Adjudicatory hearing.*** **705 ILCS 405/1-3 (1)**

A hearing to determine whether the allegations of a petition under Section 2-13, 3-15 or 4-12 that a minor under 18 years of age is abused, neglected or dependent, or requires authoritative intervention, or addicted, respectively, are supported by a preponderance of the evidence ***or whether the allegations of a petition under Section 5-520 that a minor is delinquent are proved beyond a reasonable doubt***.

***Aftercare release*** **705 ILCS 405/5–105 (1)**

***The conditional and revocable release of an adjudicated delinquent juvenile committed to the Department of Juvenile Justice under the supervision of the Department of Juvenile Justice.* Public Act: 98-0558; Eff: 1-1-14**

**Capable Adult Relative:**

**“Mentally capable adult relative” means a person 21 years-of-age or older who is not suffering from a mental illness that prevents him or her from providing the care necessary to safeguard the physical safety and welfare of a minor who is left in that person's care by the parent or parents or another person responsible for the minor's welfare.**

**“Physically capable adult relative” means a person 21 years-of-age or older who does not have a severe physical disability or medical condition, or is not suffering from alcoholism or drug addiction, that prevents him or her from providing the care necessary to safeguard the physical safety and welfare of a minor who is left in that person's care by the parent or parents or another person responsible for the minor's welfare. Public Act: 96-0168; Eff: 8-10-09**

***Chronic Truant or Habitual Truant.*** **105 ILCS 5/26-2 (a)**

Shall be defined as a child subject to compulsory school attendance and who is absent without valid cause from such attendance for ***5%*** ~~10%~~ or more of the previous 180 regular attendance days. **Public Act: 97-0218; Eff: 7-28-11**

***Concurrent Jurisdiction***. **705 ILCS 405/5-125**

Allows for any minor alleged to have violated a traffic, boating, or fish and game law, or a municipal or county ordinance, may be prosecuted for the violation and if found guilty punished under any statute or ordinance relating to the violation, without reference to the procedures set out in this Article, except that any detention, must be in compliance with 405 / Section 5-501***; and relating to prosecution of a minor under 18 years of age for a municipal or county ordinance violation or a violation of subsection (a) of Section 4 of the Cannabis Control Act or subsection (c) of Section 3.5 of the Drug Paraphernalia Control Act; except that these confidentiality provisions shall not apply to or affect any proceeding to adjudicate the violation.*** **Public Act: 99-0697; Eff: 7-29-16.** For the purpose of this Section, “traffic violation” shall include a violation of Section 9-3 or the Criminal Code relating to the offense of reckless homicide, Section 11-501 of the Illinois Vehicle Code, or any similar county or municipal ordinance.

***Delinquent Act***.

Violation of any law by a juvenile (~~16~~ ***17*** years of age or younger) except for those minors who fall under Excluded jurisdiction section of 705 ILCS 405/5-130.

***Delinquent Minor***. **705 ILCS 405/5-105 (3)**

Any minor who prior to his or her ~~17th~~ ***18th*** **Public Act: 98-0061; Eff: 1-1-14** birthday has violated or attempted to violate, regardless of where the act occurred, any federal or State law, county or municipal ordinance.

***Detention Hearing***. **705 ILCS 405/5-415**

A hearing to determine whether:

1. there is probable cause to belief that the minor is a delinquent minor (10 years of age or older):

2. there is an immediate and urgent necessity for protection of the minor or of the person or property of another;

3. the minor is likely to flee;

A detention hearing must be held within 40 hours exclusive of Saturdays, Sundays and court-designated holidays. The minor must be released from custody at the expiration of the 40-hour period if not brought before a judicial officer within that period; unless:

1. The minor is hospitalized or is receiving treatment for a physical or mental condition; and is unable to be brought before a judge for a detention hearing, the 40 hours begins when the minor is released from the hospital or place of treatment; or

2. The minor has provided false identity or age to the law enforcement officials. The 40-hour period will not commence until the court rules that the minor is subject to the Juvenile Court Act and not subject to prosecution under the Criminal Code.

***3. The 40-hour time period shall be tolled to allow counsel for the minor to prepare for the detention or shelter care hearing, upon a motion filed by such counsel and granted by the court.*** **Public Act: 95-0848; Eff: 1-1-09**

***Excluded Jurisdiction***. **705 ILCS 405/5-130**

The definition of delinquent minor under Section 5-120 (See Exclusive Jurisdiction) of this article shall not apply to any minor who at the time of an offense was at least ~~15~~ ***16*** years of age and who is charged with first degree murder, aggravated criminal sexual assault, ***or (iii) aggravated battery with a firearm as described in Section 12-4.2 or subdivision (e)(1), (e)(2), (e)(3), or (e)(4) of Section 12-3.05 where the minor personally discharged a firearm as defined in Section 2-15.5 of the Criminal Code of 1961 or the Criminal Code of 2012*** ~~armed robbery when the armed robbery was committed with a firearm, or aggravated vehicular hijacking when the hijacking was committed with a firearm~~. These charges and all other charges arising out of the same incident shall be prosecuted under the criminal laws of this state. **Public Act: 99-0258; Eff: 1-1-16**

***Exclusive Jurisdiction***. **705 ILCS 405/5-120**

Proceedings may be instituted under the provisions concerning any minor who prior to the minor's ~~17~~~~th~~ ***18th*** **Public Act: 98-0061; Eff: 1-1-14** birthday has violated or attempted to violate, regardless of where the act occurred, any federal or State law or municipal or county ordinance. Except as provided in Sections 5-125 (Concurrent Jurisdiction), 5-130 (Excluded Jurisdiction), 5-805 (Transfer of Jurisdiction-Mandatory Transfer), and 5-810 (See Extended Jurisdiction Juvenile), no minor who was under 13 years of age at the time of the alleged offense may be prosecuted under the criminal laws of Illinois.

***Neglected Minor***. **705 ILCS 405/2-3 (1)**

Those who are neglected include: (a) any minor under 18 years-of-age whose parent or other person responsible for the minor's welfare does not provide the proper or necessary support, education as required by law, or medical or other remedial care recognized under State law as necessary for a minor's well-being or other care necessary for his/her well-being, including adequate food, clothing and shelter, or who is abandoned by his/her parents or other person responsible for the minor's welfare; (b) or any minor under 18 years-of-age whose environment is injurious to his or her welfare; (c) any newborn infant whose blood or urine contains any amount of a controlled substance; (d) or any minor under the age of 14 years whose parents or other person responsible for the minor’s welfare leaves the minor without supervision for an unreasonable period of time without regard for the mental or physical health, safety, or welfare of the minor; ***(e) any minor who has been provided with interim crisis intervention services under Section 3-5 of this Act and whose parent, guardian, or custodian refuses to permit the minor to return home unless the minor is an immediate physical danger to himself, herself, or others living in the home.* Public Act: 95-0443; Eff: 1-1-08**

**CONFIDENTIALITY OF LAW ENFORCEMENT RECORDS**

***A. Law Enforcement Records*** **705 ILCS 405/5-905**

1. The records of law enforcement officers concerning all minors under ***17 years*** of age must be maintained separate from the records of adults and may not be open to public inspection or their contents disclosed to the public except by order of the court or when the institution of criminal proceeding has been permitted under Section 5-130 or 5-805 or required under Section 5-130 or 5-805 or such as person has been convicted of a crime and is the subject of pre-sentence investigations or when provided by law.

2. Inspection and copying of law enforcement records maintained by agencies which relate to a minor who has been arrested or taken into custody before his or her 17th birthday shall be restricted to the following and when necessary for the discharge of their official duties.

(a) A judge of the circuit court and members of the staff of the court designated by the judge;

(b) Law enforcement officers, probation officers or prosecutors or their staff;

(c) The minor, the minor’s parents or legal guardian and their attorneys, but only when the juvenile has been charged with an offense;

(d) Adult and Juvenile Prisoner Review Boards;

(e) Authorized military personnel;

(f) Persons engaged in bona fide research, with the permission of the judge of juvenile court and the chief executive of the agency that prepared the particular recording; provided that publication of such research results in no disclosure of a minor’s identity and protects the confidentiality of the record;

(g) Individuals responsible for supervision or providing temporary or permanent care and custody of minors pursuant to orders of the juvenile court or directives from officials of the Department of Children and Family Services or the Department of Human Services who certify in writing that the information will not be disclosed to any other party except as provided under law or order of court;

(h) The appropriate school official. Inspection and copying shall be limited to law enforcement records transmitted to the appropriate school official by a local law enforcement agency under 10-20.14 of the School Code concerning a minor enrolled in a school within the school district who has been arrested for any offense classified as a felony or a Class A or B misdemeanor.

3. Law enforcement officers may not disclose the identity of any minor in releasing information to the general public as to the arrest, investigation or disposition of any case involving a minor.

4. Nothing contained in this Section shall prohibit law enforcement agencies when acting in their official capacity from communicating with each other by letter, memorandum, teletype or intelligence alert bulletin or other means the identity or other relevant information pertaining to a person under 17 years of age. The information provided under this subsection shall remain confidential and shall not be publicly disclosed, except as otherwise allowed by law.

5. No person shall disclose information under this Section except when acting in his or her official capacity and as provided by law or order of the court.

***B. Records Control/Accessibility***

1. Juvenile records are required by law to be maintained separately from adult records and may not be open to public inspection or the contents open to the public except by ORDER OF THE COURT, WHEN REQUIRED BY STATUTE, or when the institution of CRIMINAL PROCEEDINGS has been initiated.

(a) In all juvenile cases, a report shall be completed by the responding officer.

(b) Juvenile officers will complete all necessary juvenile report forms to supplement the initial report.

(c) All policing bodies of the State shall furnish the Department (ISP), daily, in the form and detail the Department requires, fingerprints and descriptions of all persons who are arrested on charges of violating any penal statute of this State for offenses that are

classified as felonies and Class A or B misdemeanors and of all minors of the age of 10 and over who have been arrested for an offense which would be a felony if committed by an adult and may forward such fingerprints and descriptions for minors arrested for Class A or B misdemeanors. 20 ILCS 2630/52. Information identifying victims and alleged victims of sex offenses shall not be disclosed or open to public inspection under any circumstances. Nothing in this section shall prohibit the victim or alleged victim of any sex offense from voluntarily disclosing his or her identity.

3. Relevant information, reports and records shall be made available to the Department of Corrections when a juvenile offender has been placed in the custody of the Department of Corrections, Juvenile Division.

4. Nothing in this Section shall prohibit the inspection or disclosure to victims and witnesses of photographs contained in the records of law enforcement agencies when the inspection or disclosure is conducted in the presence of a law enforcement officer for purposes of identification or apprehension of any person in the course of any criminal investigation or prosecution.

**EXPUNGEMENT OF LAW ENFORCEMENT AND JUVENILE COURT RECORDS**

***A. Pursuant to 405 ILCS 5-915 - Delinquency Section***

1. When juveniles have attained the age of 17 or whenever all juvenile court proceedings relating to that person have been terminated, the person may petition the court to expunge law enforcement records relating to incidents occurring before his or her 17th birthday or his or her juvenile court records, or both, but only in the following circumstances:

(a) The minor was arrested but no petition for delinquency was filed.

(b) The minor was charged but found not delinquent.

(c) The minor was placed under supervision (Continuance under supervision) and the order has been successfully terminated.

(d) The minor was adjudicated for an offense which would be a Class B Misdemeanor if committed by an adult.

2. Any person may petition the court to expunge all law enforcement records relating to any incidents occurring before his or her 17th birthday which did not result in proceedings in criminal court and all juvenile court records with respect to any adjudications except those based upon first degree murder and sex offenses which would be felonies if committed by an adult, if the person for whom expungement is sought has had no convictions for any crime since his or her 17th birthday and:

(a) Has attained the age of 21 years; or

(b) 5 years have elapsed since all juvenile court proceedings relating to him or her have been terminated or his or her commitment to Department of Corrections, Juvenile Division pursuant to the Juvenile Court Act has been terminated; whichever is later of (a) or (b).

**NOTE. Expunging juvenile records begins with a decision of the judge and further instructions as described under 705 ILCS 405/5-915 (3)(4)(5) and (6).**

***DCFS DEFINITIONS***

***Physical Abuse*** as defined by ANCRA, (Abused and Neglected Child Reporting Act) occurs when a parent or a person responsible for the child’s welfare:

• “inflicts, causes to be infl icted, or allows to be inflicted upon such child physical injury, by other than accidental means, which causes death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function”. Such common injuries include bruises, human bites, bone fractures, and burns.

• “creates a substantial risk of physical injury” likely to have the physical impacts listed above. Examples in DCFS allegation defi nitions include such incidents as choking or smothering a child, shaking or throwing a small child, and violently pushing or shoving a child into fixed objects. Other circumstances include incidents of domestic violence in which the child was threatened, violations of orders for the perpetrator to remain apart from the child, and a history of past sexual abuse which may place other children at risk.

• “acts of torture” which is defined by DCFS as “deliberately and/or systematically inflicting cruel or unusual treatment which results in physical or mental suffering”.

• “inflicts excessive corporal punishment” is included in ANCRA, but is not specifically further defined by DCFS. However, bruises inflicted on a child, especially a young child, are usually considered as meeting this definition.

• “commits or allows to be committed the offense of female genital mutilation.”

• “causes to be sold, transferred, distributed, or given to such child under 18 years of age, a controlled substance” (i.e. illegal drugs) except when prescribed by a physician.

***Sexual Abuse*** occurs when a person responsible for the child’s welfare commits any of the following acts:

• sexually transmitted diseases are by DCFS defi nition“diseases which were acquired originally as a result of sexual penetration or conduct with an individual who was afflicted”

• sexual penetration includes any contact between the sex organ of one person and the sex organ, mouth, or anus of another person. Typical acts include vaginal, oral and anal sex.

• sexual exploitation is defined by DCFS as “sexual use of a child for sexual arousal, gratification, advantage, or profit”. This includes such acts as explicit verbal enticements, child pornography, self masturbation in the child’s presence, and forcing a child to watch sex acts.

• sexual molestation is defined by DCFS as “sexual conduct with a child when such contact, touching, or interaction is used for arousal or gratification of sexual needs or desires”. Examples include fondling a child or having the child touch the perpetrator sexually.

For both physical and sexual abuse, parents and caretakers are charged with the responsibility to take reasonable steps to stop abuse. If they do not, they may be charged with abuse themselves. (ANCRA)

***Neglect*** occurs when a person responsible for the child deprives or fails to provide the child with adequate food, clothing, shelter, or needed medical treatment. Neglect is also alleged when an adult provides inadequate supervision of a child. This can occur when children are left either unsupervised or in the care of someone unable to supervise due to his/her condition. ANCRA also includes the following when defining neglected child; “a child “who is subjected to an environment which is injurious insofar as (i) the child’s environment creates a likelihood of harm to the child’s health, physical well-being, or welfare and (ii) the likely harm to the child is the result of a blatant disregard of parent or caretaker responsibilities.” Children can suffer injuries that are the result of “blatant disregard” and are considered neglect. According to DCFS, “Blatant disregard” means an incident where the real, significant, and imminent risk of harm would be so obvious to a reasonable parent or caretaker that it is unlikely that a reasonable parent or caretaker would have exposed the child to the danger without exercising precautionary measures to protect the child from harm.

***DCFS JURISDICTION***

The law in Illinois is quite clear about the circumstances under which DCFS can investigate and intervene when abuse or neglect of a child is suspected. The following conditions **must** be present:

1. the victim must be under the age of 18;

2. the alleged perpetrator (the person alleged to have committed the abuse/neglect) must be a parent, step-parent, paramour of the natural parent, guardian, foster parent, immediate family member (siblings and grandparents), any person living in the home of the child, a person who came to know the child through an offi cial capacity or position of trust (such as a teacher, health care professional, or volunteer in a youth program), or a person who is responsible for the welfare of the child (such as a babysitter, day care facility, or residential facility);

3. there must be a specific incident of abuse or neglect or a specific set of circumstances involving suspected abuse or neglect; and

4. there must be either demonstrated harm or a substantial risk of physical or sexual injury to the child.

***JUVENILE JUSTICE CRIMINAL PROCUDURE***

**Policies and Procedures of the Illinois Juvenile Justice System**

***(ILLINOIS CRIMINAL JUSTICE INFORMATION AUTHORITY)***



**I. Incident and Arrest**



**I. Incident**

Involvement in the juvenile justice system begins with an incident in which there is an alleged violation of criminal law or local or municipal ordinance. While most young people violate the law at some point during their adolescence, most incidents often involve minor violations such as truancy, curfew violations, littering, and speeding. A very small proportion of juveniles is actually arrested and enters the juvenile justice system each year.

Youth may enter police custody in a few ways. A police officer may observe a violation of the law or ordinance, have probable cause to believe a violation has occurred, or be called to take a youth into police custody. A police officer has discretion regarding what action he or she takes. A youth may also be taken into police custody on a warrant—an order issued by a judge authorizing the arrest and detention of an individual. Judges issue warrants for the arrest of juveniles who, based on probable cause, have allegedly committed a criminal offense, and when individuals fail to appear in court or perform court-mandated activities. In Illinois, juveniles arrested on warrants are typically detained in a temporary juvenile detention facility, discussed later in this report. Youth also may enter the juvenile justice system through referrals by probation officers, truancy officers, and other outside entities.

**II. Police custody and arrest**

Once taken into police custody and placed under arrest, a youth must be informed of his or her Miranda rights prior to interrogation. Any time a youth is taken into police custody and is not free to leave they have been arrested. However, being arrested does not always mean they will be formally charged. Officers may release juveniles from police custody without further action, either on the street or from a police station to their parent or guardian. Any officer who takes a youth into custody must legally make a reasonable attempt to notify a parent or legal guardian **[705 ILCS 405/2-6]**. At any time when a juvenile is in police custody, parents or guardians may request to see the youth.

When a law enforcement officer takes a youth into custody on a warrant, the officer must take the minor to the nearest juvenile police officer **[705 ILCS 405/2-6(a)]**. A juvenile police officer is a sworn police officer who has completed juvenile officers’ training as prescribed by the Illinois Law Enforcement Training Standards Board **[705 ILCS 405/1-3(17)]**.

An officer may decide to formally charge the youth with a crime. Youth have the right to know what charges are being brought against them, the right to an attorney, and the right to protection from self-incrimination. When an arrest is made, in addition to other departmental records and documents, an arrest card is typically filled out which includes the juvenile’s fingerprint, offenses with which they are being charged, race, gender, age, and other information. The card is then submitted to the Illinois State Police’s Computerized Criminal History (CCH) system. Appendix B includes copies of the arrest cards used by police across the state of Illinois.

Options available to officers at the time of a youth arrest include giving the youth an informal or formal station adjustment, releasing the youth with formal charges sent to the state’s attorney (prosecutor), or formally charging the youth and requesting he or she be screened for detention in a secure facility.

**Diversion opportunities at arrest: Station adjustments**

A station adjustment is an informal handling of a juvenile offender avoiding further juvenile justice system involvement. Youth who are given a station adjustment are not referred to the court for prosecution and are released to a parent or guardian under specified conditions, such as obeying curfew, attending school, performing community service, and/or participating in social services. Informal station adjustments do not require an admission of guilt by the minor, but youth who receive a formal station adjustment must admit involvement in the offense **[705 ILCS 405/5-301]**. Formal station adjustments cannot last more than 120 days, unless the juvenile violates the conditions. At this time, the length may be extended to 180 days, but no longer. Officers monitor the conditions of the adjustment.

A juvenile may receive up to three informal station adjustments for misdemeanors and three informal adjustments for felonies. Combined, youth may not receive more than five informal station adjustments within three years without prior approval from the state’s attorney. Youth may receive up to three formal station adjustments for misdemeanors and two for felonies. Combined, youth may not receive more than four formal station adjustments within three years without prior approval from the state’s attorney. The total number of allowable station adjustments statewide, both formal and informal, may not exceed nine without the state’s attorney’s approval.

**Excluded jurisdiction (automatic transfers to the criminal court)**

Youth are subject to the jurisdiction of the adult criminal court if they are **18 ~~17~~** [**PUBLIC ACT 98–61; Effective: January 1, 2014.]** years of age at the time of the alleged offense unless they are charged with a misdemeanor offense that is alleged to have occurred after January 1, 2010 **[705 ILCS 405/5-120]**.

[§ 5–120. Exclusive jurisdiction. Proceedings may be instituted under the provisions of this Article concerning any minor who **~~prior to the minor's 17th birthday has violated or attempted to violate, regardless of where the act occurred, any federal or State law or municipal or county ordinance, and any minor who~~** prior to his or her 18th birthday has violated or attempted to violate, regardless of where the act occurred, any federal, State, county or municipal law or ordinance **~~classified as a misdemeanor offense. If before trial or plea, an information or indictment is filed that includes one or more charges under the criminal laws of this State and additional charges that are~~** **classified as ~~misdemeanors that are subject to proceedings under this Act, all of the charges arising out of the same incident shall be prosecuted under the criminal laws of this State. If after trial or plea the court finds that the minor committed an offense that is solely classified as a misdemeanor, the court must proceed under Section 5–705 and 5–710 of this Act~~**. Except as provided in Sections 5–125, 5–130, 5–805, and 5–810 of this Article, no minor who was under **18 ~~17~~** years of age at the time of the alleged offense may be prosecuted under the criminal laws of this State. **PUBLIC ACT 98–61; Effective: January 1, 2014.]**

Youth may also be automatically transferred, or waived, to the criminal court **[705 ILCS 405/5-130]**. Youth are excluded from the jurisdiction of the juvenile court and automatically transferred to adult criminal court if they are **16 ~~15~~** years of age or older at the time of the alleged crime and are alleged to have committed first degree murder, aggravated criminal sexual assault, aggravated battery with a firearm as described in Section 12–4.2 or subdivision (e)(1), (e)(2), (e)(3), or (e)(4) of Section 12–3.05 where the juvenile personally discharged the firearm~~, armed robbery committed with a firearm, or aggravated vehicular hijacking committed with a firearm~~. ~~Additionally, youth 15 years of age or older who are alleged to have committed offenses relating to the sale, possession, and manufacturing of certain weapons on school property, regardless of time of year, are also subject to automatic transfers to the adult court [705 ILCS 405/5-130(3)(a)].~~ ***PUBLIC ACT 99–258; Effective: January 1, 2016***

~~Automatic transfers also occur when the youth is at least 13 years of age at the time of the alleged offense and the alleged offense is first degree murder committed during the course of either aggravated criminal sexual assault, criminal sexual assault, or aggravated kidnapping [705 ILCS 405/5-130(4)(a)]. Any juvenile previously tried and convicted in the adult criminal court is automatically transferred to criminal court for subsequent law violations.~~ ***PUBLIC ACT 99–258; Effective: January 1, 2016***

~~Automatic transfer cases originate in the adult court, whereas all other types of juvenile transfers must be presented to a juvenile court judge who determines whether or not to grant the transfer. Additional detail concerning specific transfer provisions and processes are described later in this report.~~ ***PUBLIC ACT 99–258; Effective: January 1, 2016***

**II. Pre-trial**



**II. Pre-trial activities**

Numerous actions occur prior to a juvenile’s trial (adjudication hearing). As a youth awaits trial, he or she may be detained in a secure detention facility, released to a parent or guardian, or be referred to one of several detention alternatives, such as home confinement with electronic monitoring or shelter care. During this time, state’s attorneys (prosecutors) may divert the youth, file a delinquency petition, or file a motion seeking transfer to the criminal court.

Once a juvenile is formally arrested and it has been determined that there could be a petition of delinquency filed or there is probable cause to believe that the youth is delinquent, he or she will receive an initial screening to assess whether it is necessary to detain him or her. Detention centers provide temporary secure confinement of youth awaiting trial.

**Juvenile detention screening**

Police may either release the youth to their parents or guardians or, if the youth is at least 10 years of age, use a detention screening instrument to assess whether to detain the youth. In some jurisdictions, police will refer the youth to the local juvenile detention center to conduct the detention screening. Screeners consider the need for placement in a detention facility based on factors such as flight risk and whether the youth is a danger to himself or the community.

Formal detention screening is usually done by police, a probation department, detention facility, or the state’s attorney’s office. A detention screening determines whether the youth requires detainment in a secure or non-secure detention facility based on the final score. Points are assigned based on the severity of the offense, the youth’s prior involvement with the juvenile justice system, whether or not the youth has missed previous court dates, and the youth’s legal status. In most Illinois jurisdictions, if a youth scores high, they will be detained. If a youth scores in the middle range, the screener may apply a less restrictive or non-secure custody option, such as home confinement with electronic monitoring or placement in a non-secure facility. A non-secure facility is a live-in setting that does not physically restrict the movement of the youth. If a youth scores low, he or she is typically released to a parent or guardian.

Also, detention screeners may seek permission to override the score when aggravating or mitigating factors not found on the instrument are considered. For example, a youth arrested during a domestic dispute may not score high enough to warrant detention, but the screener may request an override to keep the youth from returning to his or her home environment. Screeners also may seek permission to override the score to a non-secure facility or release to a parent or guardian if there is evidence to believe the youth does not pose a risk to him or herself, public safety, nor is a flight risk.

**Pre-trial detention and detention hearing**

If a youth is detained in a secure detention facility, the court must hold a detention hearing within 40 hours, excluding Saturdays, Sundays, and court-designated holidays **[705 ILCS 405/5-501]**. A detention hearing may not be held until the youth has met with legal counsel and the youth must be represented by legal counsel at the hearing. At the hearing, the judge will make a decision about the youth’s custody status.

If the judge at the detention hearing finds there is probable cause to believe the youth is delinquent, continuation of pre-trial detention may be ordered if:

1. Secure custody is of immediate and urgent necessity for the minor’s protection or the protection of another person or his or her property.

2. The minor is likely to flee the jurisdiction of the court.

3. The minor was arrested under a warrant **[705 ILCS 405/5-501]**.

Only youth 10 years of age or older can be held in a youth detention center. No minor under 12 years of age shall be detained in a county jail or a municipal lockup for more than 6 hours. **[705 ILCS 405/5–410]** If the detention hearing upholds the detainment of the youth, he or she may remain in the detention facility until trial in the juvenile court or for 30 days, whichever comes first. In certain situations, such as with cases involving great bodily harm, pre-trial detention stays may be increased to a maximum of 70 days. If a youth’s trial has not yet been heard by the time of maximum stay, the youth must be released from pre-trial detention **[705 ILCS 405/5-501(5)]**.

In Illinois, juvenile detention centers are operated by counties. There are 17 Illinois detention centers located in Adams, Cook, Champaign, DuPage, Franklin, Kane, Knox, Lake, LaSalle, Madison, McLean, Peoria, Sangamon, St. Clair, Vermilion, Will, and Winnebago counties. Most detention centers will provide temporary secure confinement to juveniles in neighboring counties.

**Alternatives to pre-trial detention**

Some alternatives to pre-trial detention are available to the juvenile court. Often they are used in conjunction with one another. These options, depending on the jurisdiction and resources of the court, include home confinement, electronic monitoring, evening reporting centers, and non-secure facilities.

**Home confinement**

Home confinement requires that the juvenile remain at his or her own residence, with the exception of approved leave. Approved leave typically only consists of attending school or work, religious services, and court-ordered programming, or receiving medical services. Home confinement allows for minimal disruption in the juvenile’s life during the pre-trial proceedings. Home confinement is typically monitored by a probation officer who will confirm youth are in their designated places with random checks and other methods. Home confinement is often paired with electronic monitoring (using an ankle bracelet) to assist the probation officer in ensuring the juvenile is complying with the conditions of the home confinement.

**Electronic monitoring**

Electronic monitoring uses telemetry devices to verify that offenders are at specified locations. The devices, commonly used in conjunction with home confinement, assist probation officers in ensuring offenders are in compliance with home confinement requirements. Electronic monitoring systems may be either active or passive, but both devices require the offender to have a home telephone landline or cellular phone. Active electronic monitoring devices emit signals verifying the offender’s whereabouts. Passive monitoring systems make random calls to the offender’s home or specified location throughout the day and use voice verification devices to ensure the offender is there. Both passive and active monitoring systems can emit signals to the probation officer if the offender enters a restricted zone, a method most commonly used to enforce orders of protection.

Global Positioning Systems (GPS) also can track offenders, providing probation officers and other authorities with the location of an individual at any time. If the offender strays from allowed zones, or into a restricted zone, authorities are immediately notified. Some jurisdictions have indicated that these systems are less easy to tamper with than other electronic monitoring systems. The introduction of GPS monitoring can be costly, which may prevent many jurisdictions from adopting the technique.

**Evening and day reporting centers**

Evening and day reporting centers are another common alternative to pre-trial detention. Evening and day reporting centers are often used for youth awaiting dispositions for offenses that include, but are not limited to, probation violations and warrant arrests. Youth are often assigned to home confinement along with a reporting program. Evening reporting center programs transport youth to a facility every evening during the week, typically from 3 p.m. until 9 p.m. During this time, the youth participates in structured activities, completes school work, and participates in group counseling. Youth do not attend these programs on the weekend; however, home confinement orders prevent youth from leaving their homes during that time. Programming and restrictions at day reporting centers are typically the same, with operational hours of 8 a.m. to 8 p.m.

**Juvenile intake screening**

Juvenile intake screenings are typically conducted by state’s attorney’s offices, often with the assistance of the juvenile probation department. A juvenile intake screening is the process through which the prosecutor determines the appropriate next action after an arrest and a detention decision has been made. Prosecutors decide whether to file a delinquency petition, enter the youth into a diversion program, give the youth a probation adjustment (informal probation supervision), or transfer the case to adult criminal court. In some jurisdictions, the juvenile probation department can make some diversion decisions.

**Diversion opportunities prior to the filing of a delinquency petition**

After arrest and screening, youth can be diverted from further system involvement. The youth may receive a probation adjustment or be offered the opportunity to enter into a diversion program. Pre-trial diversion decisions can be made by probation departments, state’s attorneys, and juvenile court judges.

**Probation adjustment (informal probation supervision)**

A youth may receive a probation adjustment (or informal probation supervision) in lieu of the state’s attorney filing a petition of delinquency. Typically, informal probation supervision lasts 12 months. If the youth has refrained from any additional law violations or non-compliance with supervisory mandates (such as attending school or refraining from drug use) during that period, he or she is released from informal probation without further action **[705 ILCS 405/5-305]**.

**Restorative justice programs**

A prosecutor may offer youth the opportunity to enter into a restorative justice diversion program. Restorative justice diversion programs include community mediation panels and mediation programs, victim-offender conferencing, restorative justice circles, referrals for services, counseling, restitution, or other community-based programs that hold the youth accountable for their actions and provide opportunities for rehabilitation and restoration without further juvenile justice system involvement. Community mediation panels are established by state’s attorneys to provide opportunities for neighborhoods and community members to be involved in addressing juvenile delinquency, while helping youth understand the seriousness of their actions and the effect they have on the community **[705 ILCS 405/5-310]**.

**Filing of a delinquency petition**

If a state’s attorney files a delinquency petition, the youth will have to proceed through the juvenile court process. Delinquency petitions include all relevant case information, including evidence and facts about the alleged offense; name, age, and residence of the minor; names and residences of the minor’s parents, guardian, or legal custodian; and date of shelter care or detention hearing, if applicable **[705 ILCS 405/5-520]**. A petition argues, in the interest of the minor, for the adjudication of the minor as a ward of the juvenile court, making the resources and processes of the juvenile court available to the youth. The petition does not specify proposed dispositions.

Before trial, new information may come to light that results in the state’s attorney dismissing the petition entering into a plea agreement or referring the youth to a diversionary program.

**Transfers to the adult court**

In addition to automatic transfers in which juveniles begin the trial process in adult criminal court, juveniles can be transferred through the use of discretionary and presumptive transfers or mandatorily transferred according to Illinois criminal law statutes. In these types of transfers, the prosecutor files a transfer motion and a juvenile court judge decides whether the motion should be granted. Youth transferred to the adult criminal court are afforded all the due process rights guaranteed adults, including the right to a jury trial, which youth tried in juvenile court do not have, except in certain circumstances—habitual juvenile offenders, violent juvenile offenders, and extended juvenile jurisdiction prosecution.

**Mandatory transfer** Mandatory Transfers eliminated by P.A. 99-0258 (Eff: 1-1-16)

~~Mandatory transfer laws move youth to the adult court upon alleged commission of certain offenses. However, unlike automatic transfers, mandatory transfer requests must be heard by a juvenile court judge who makes the determination of whether there is probable cause that the allegations against the youth are true, and accordingly enters an order permitting prosecution under adult criminal law.~~

~~Mandatory transfers occur when a youth is at least 15 years of age or older and is alleged to have committed:~~

~~• Any forcible felony3 when the youth had been previously adjudicated delinquent for another felony and the current alleged forcible felony was related to gang activity.~~

~~• Any felony when the youth had been previously adjudicated delinquent for a forcible felony and the current alleged felony was related to gang activity.~~

~~• Any offenses that would qualify for a presumptive transfer and the youth had been previously adjudicated delinquent for a forcible felony [705 ILCS 405/5-805(1)(c)].~~

~~• Aggravated discharge of a firearm in a school, on school property, within 1,000 feet of a school, at a school activity, or in a school vehicle. 3 Under Illinois criminal law, forcible felonies include: first degree murder, second degree murder, predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, robbery, burglary, residential burglary, aggravated arson, arson, aggravated kidnapping, kidnapping, aggravated battery resulting in great bodily harm or permanent disability or disfigurement, and any other felony which involves the use or threat of physical force or violence against any individual [720 ILCS 5/2-8].~~

**Presumptive transfer**

A presumptive transfer occurs when a youth 15 years-of-age or older has allegedly committed a Class X felony other than armed violence, or if they allegedly committed aggravated discharge of a firearm, or other offenses specified by statute **[705 ILCS 405/5-805(2)]**. A petition is filed by the state’s attorney to permit the prosecution of the youth under adult criminal law. Presumptive transfers will occur for these youths unless a juvenile court judge makes a finding based on clear and convincing evidence that the youth is amenable to the care, treatment, and training programs available through the juvenile court **[705 ILCS 405/5-805(2)]**.

P.A. 99-0258 (Eff: 1-1-16) Presumptive transfer. (a) If the State's Attorney files a petition, at any time prior to commencement of the minor's trial, to permit prosecution under the criminal laws and the petition alleges a minor 15 years of age or older of an act that constitutes a forcible felony under the laws of this State, and if a motion by the State's Attorney to prosecute the minor under the criminal laws of Illinois for the alleged forcible felony alleges that (i) the minor has previously been adjudicated delinquent or found guilty for commission of an act that constitutes a forcible felony under the laws of this State or any other state and (ii) the act that constitutes the offense was committed in furtherance of criminal activity by an organized gang, ~~the commission by a minor 15 years of age or older of: (i) a Class X felony other than armed violence; (ii) aggravated discharge of a firearm; (iii) armed violence with a firearm when the predicate offense is a Class 1 or Class 2 felony and the State's Attorney's motion to transfer the case alleges that the offense committed is in furtherance of the criminal activities of an organized gang; (iv) armed violence with a firearm when the predicate offense is a violation of the Illinois Controlled Substances Act, a violation of the Cannabis Control Act, or a violation of the Methamphetamine Control and Community Protection Act; (v) armed violence when the weapon involved was a machine gun or other weapon described in subsection (a)(7) of Section 24-1 of the~~

**Discretionary transfer**

A motion for discretionary transfer is made by the state’s attorney to allow for prosecution of a youth 13 years of age or older under criminal law. While there are no specific offenses associated with a discretionary transfer, the court will consider many factors before granting such a transfer, including the seriousness of the offense and the minor’s prior record of delinquency **[705 ILCS 405/5-805(3)]**.

**Extended juvenile jurisdiction prosecution**

The prosecutor can file a petition to designate juvenile proceedings as an extended juvenile jurisdiction (EJJ) prosecution. This process is sometimes referred to as blended sentencing, in which a juvenile receives both juvenile and adult sentences if the youth pleads or is found guilty.

EJJ requires that the youth be at least 13 years of age charged with any felony, and there is probable cause to believe the allegations in the petition are true. A judge will grant a motion for EJJ prosecution with probable cause unless he or she is able to make a finding based on clear and convincing evidence that sentencing in criminal court would not be appropriate for the minor based on seriousness of the current offense, history of delinquency, age, culpability of the minor in committing the alleged offense, whether the offense was committed in an aggressive or premeditated manner, and whether the minor used or possessed a deadly weapon when committing the offense **[705 ILCS 405/5-810]**.

If a motion for EJJ prosecution is granted, the hearing must be held within 60 days and the youth has a right to a trial by jury. If found guilty, the youth will receive both juvenile and adult criminal sentences. The adult sentence is stayed until the youth successfully completes the provisions of the juvenile sentence, at which point the adult sentence is vacated. If the youth does not successfully complete the provisions of the juvenile sentence, the state’s attorney can file a petition stating that the youth violated his or her juvenile sentence and a judge may require the youth to serve the adult criminal sentence.

**Fitness to stand trial**

At any time during juvenile court proceedings, either attorney or the judge may raise the issue of a youth’s fitness to stand trial. When a bona fide doubt is raised, the judge will order an examination to determine the youth’s fitness to stand trial. No statutory regulations exist for these instances in the Illinois Juvenile Court Act, and the statutory procedures and requirements used in the adult criminal court are followed.

Fitness evaluations are ordered by the judge when there is a concern that a youth’s mental or physical condition may interfere with their ability to understand the nature of the court proceedings or compromise their ability to cooperate with their attorneys. It is important to note that a youth who possesses a mental illness, a physical condition, or a developmental disability is not necessarily unfit to stand trial. Determinations are made based on whether these conditions interfere with the youth’s ability to understand the nature and purpose of, and participate in, the proceedings.

When a bona fide issue of a youth’s fitness is raised, the judge will order the youth to be evaluated by a qualified licensed physician, clinical psychologist, or psychiatrist **[725 ILCS 5/104-13(a)]**. These evaluations may be conducted while the youth is in custody or out on bond. The recommendation of the evaluation is then submitted to the judge, the defense attorney, and the state’s attorney, and a fitness hearing is held. The findings include whether or not the youth is deemed unfit to stand trial and, if so, whether or not a substantial probability exists that the youth can be restored to fitness within the statutory time frame of one year. During the hearing, expert testimony by evaluators will be heard. If the parties stipulate to the results of the evaluation, the court will issue an order reflecting that finding.

If a youth is determined fit to stand trial, the court process will proceed. If a youth is found unfit to stand trial, the youth will then be remanded by the judge to the Illinois Department of Human Services, Division of Mental Health (DMH). DMH will then make the determination as to what services or treatment the youth needs in order to be fit to stand trial. A youth must be made fit within one year and the services may be inpatient or outpatient.

If a youth is not determined fit to stand trial after one year, DMH will report to court whether the youth remains unfit but is making progress towards fitness or if fitness cannot be achieved. If a youth is determined unfit to stand trial and unable to achieve fitness, the State may drop charges with prejudice, pursue a civil commitment, or the case may proceed to a discharge hearing. During the discharge hearing, the judge may find the youth not guilty by reason of insanity, not guilty, or not acquit the youth. If the judge does not acquit the youth and DMH believes the youth can achieve fitness, the judge can order him or her to a term of extended treatment. Statutory limitations exist governing how long a youth may remain in extended treatment based on the offense committed **[725 ILCS 5/104-23]**.

**III. Trial or plea**



**III. Trial or plea**

Plea agreements occur when the state’s attorney and juvenile defendant agree to a sentence and the youth pleads guilty. Plea agreements must be approved by the judge. If approved, a sentencing hearing will be set.

Trials (adjudicatory hearings), occur in juvenile court only if:

•The youth has pled not guilty.

•The youth was not diverted from the system.

•The youth did not sign a plea agreement.

•The prosecutor did not dismiss all charges against the youth.

As juveniles do not have a constitutional right to a jury trial (determined by the 1971 U.S. Supreme Court case McKeiver v. Pennsylvania [403 U.S. 528, 545 (1971)]), only bench trials are conducted. Trials must be held within 120 days of the youth’s demand for trial, although in some circumstances this time may be extended 30 days **[705 ILCS 405/5-601(1)]**. However, in cases of habitual juvenile offenders **[705 ILCS 405/5-815]**, violent juvenile offenders **[705 ILCS 405/5-820]**, and extended juvenile jurisdiction prosecution **[705 ILCS 405/5-810]**, the statutes provide the right to a jury trial.

During a trial, the judge determines whether the allegations against a youth are supported by evidence beyond a reasonable doubt. If the judge does not find sufficient evidence, the case will be dismissed (with no finding of guilt) and the youth will be released with no further action by the court.

If the judge finds that the allegations are supported by evidence beyond a reasonable doubt, the youth will be found guilty (adjudicated delinquent). At this point, the judge has several sentencing options. Typically, judges set a date for a sentencing hearing. During the time between the trial and the sentencing hearing, social investigations are ordered that assist judges in making sentencing decisions. However, sometimes judges will waive the social investigation and proceed immediately to sentencing, especially if there is a plea agreement.

Social investigation reports ordered by the court must be submitted to all parties a minimum of three days prior to the sentencing hearing. Social investigation reports, often conducted by probation officers, include relevant information about the juvenile, including, but not limited to the youth’s physical and mental history and condition, family situation and background, socio-economic status, education, occupation, personal habits, history of delinquency or criminality, and available resources for the youth **[705 ILCS 405/5-701]**.

**Diversion options at trial**

Judges and prosecutors have options for diverting youth from further juvenile justice system involvement after a delinquency petition has been filed. Many jurisdictions in Illinois are incorporating restorative justice programs as diversionary options at trial.

**Continuance under supervision**

In Illinois, the court may order a continuance under supervision which may not exceed a 24-month period for youth alleged to be delinquent, unless the alleged offense is first degree murder, a Class X felony, or a forcible felony―offenses ineligible for continuances under supervision. During the time of the continuance, the youth must follow conditions of supervision determined by the court and monitored by a probation officer **[705 ILCS 405/5-615]**. If the youth successfully completes supervision, he or she will not be adjudicated delinquent and will be released. If the youth does not successfully complete the supervision, he or she will be adjudicated delinquent and sentenced. A continuance under supervision may not be ordered if any party—the state’s attorney, defense attorney, defendant, or the youth’s parents or legal guardian—objects.

**Court supervision**

A youth may be diverted with court supervision, also known as deferred prosecution, which suspends the judgment in a case. If the youth complies with the conditions set by the court, he or she will be released without further prosecution. Typical conditions of court supervision are refraining from any additional involvement with the juvenile justice system or law violating behavior. Before court supervision is ordered, a judge typically determines whether the youth will be adequately supervised by parents or guardians while the case is pending. Youth who receive court supervision are not monitored by a probation officer.

**Not guilty by reasons of insanity or guilty but mentally ill**

Youth may enter a plea of not guilty by reason of insanity. This is an affirmative defense presented by the attorney for the youth. Such a plea asserts that the youth’s mental state at the time of the offense results in the youth lacking substantial capacity to appreciate the criminality of his or her act **[720 ILCS 5/6-2]**. If a youth is found not guilty by reason of insanity, a hearing will be held to determine whether the youth is in need of mental health services on an inpatient basis **[705 ILCS 405/5-605(3)(b)]** or whether they require outpatient treatment services. There are statutory limitations on how long a youth may receive inpatient mental health services.

If a youth is mentally ill but was not insane during the time of the offense, the court may find youth guilty but mentally ill **[705 ILCS 405/5-605(3)(c)]**. Youth found guilty but mentally ill are then sentenced in the juvenile court the same way as a youth found guilty but not mentally ill.

**Failure to appear in court**

If a youth fails to appear in court, the judge will issue a warrant for his or her arrest. Youth arrested on warrants are typically detained in secure detention facilities due to their flight risk.

If a youth fails to appear for trial and the state’s attorney is able to prove with substantial evidence that the youth is willfully avoiding the trial, the court may commence the trial in the youth’s absence, as long as the absent youth is represented by an attorney. If there is a finding of guilt, the court may hold a sentencing hearing for the absent youth. If the youth who was found guilty and sentenced in absentia can prove that the absence was both not his or her fault and due to circumstance beyond his or her control, he or she may request a new trial and/or sentencing hearing **[705 ILCS 405/5-625(5)]**.

**IV. Sentencing**



**V. Sentencing hearing**

Once a youth has been found guilty (adjudicated delinquent), a sentencing hearing is held. There are numerous sentencing options (dispositions) available to a judge at this juncture. During the sentencing hearing, the court determines based on evidence whether it is in the best interests of the youth or the public that he or she be made a ward of the court, giving the court the authority to make decisions on behalf of the youth. If the youth is made a ward of the court, the judge determines which disposition best serves the needs of the youth and the public **[705 ILCS 405/5-705(1)].**

**Probation**

Probation is the most common disposition of the juvenile court. Youth on probation return to the community with court-ordered conditions. Their compliance with these conditions is monitored by a probation officer. While probation can last up to five years, except in some circumstances, or until the youth’s 21st birthday, whichever comes first, typical sentences of juvenile probation in Illinois are 12 to 24 months. However, youth who receive probation sentences for first degree murder, a Class X felony, or a forcible felony receive extended probation sentences for at least five years or until they reach the age of 21, whichever comes first **[705 ILCS 405/5-715(1)]**.

Typical conditions of juvenile probation in Illinois include, but are not limited to [705 ILCS 405/5-715(2)]:

• Refraining from violating any local, state, or federal laws, including curfew violations, traffic violations, and using alcohol or drugs

• Possessing or discharging a firearm

• Not leaving Illinois without permission of the court or the probation officer

• Attending school or obtaining employment

• Attending all scheduled visits with probation officer

• Counseling

• Restitution

• Community service

• Home confinement

• Paying a probation fee

 Youth on probation are required to reside in the home of their parent or guardian unless otherwise specified. Also, youth found guilty of a felony are required to submit a DNA buccal (cheek) swab sample.

**Intensive probation supervision**

Intensive probation supervision (IPS) allows conditional release of a youth under strict probation guidelines. Typically, a sentence of IPS may last for the first year of a multiyear probation sentence. It also may be applied when a youth receives probation for a more serious offense or when the youth has had multiple findings of delinquency. IPS is often used as a last resort before a youth is committed to the Illinois Department of Juvenile Justice for noncompliance when traditional probation services have been exhausted. Under IPS, the youth meets more frequently with a probation officer and has stricter conditions than those set in standard probation cases, such as additional curfews, electronic monitoring, and regular drug testing.

**Conditional discharge**

Conditional discharge orders a youth to comply with specific court mandates without the supervision of a probation officer. If the youth complies with set conditions, such as refraining from further law violating behavior, during the allotted time, he or she will be discharged from the system.

**Periodic imprisonment**

With periodic imprisonment, the offender must report to a county detention center daily for a set period of time, typically overnight and on weekends. This allows the youth to remain in school or maintain employment, causing less disruption while serving a sentence. This sentencing practice is much more common among adults.

**Detention**

Although detention centers are more often used pre-trial, youth detention centers also are used for short periods of detention as part of a sentence. Juvenile detention facilities provide short-term secure confinement. Juvenile detention sentences may not exceed 30 days **[705 ILCS 405/5-710-1(a)(v)]**.

**Home confinement**

Home confinement is typically used prior to trial in conjunction with electronic monitoring. However, youth may be sentenced to home confinement, which requires that the juvenile remain at his or her own residence, with the exception of approved leave. Home confinement is monitored by probation officers who use a variety of methods to confirm youth are in their designated places. Home confinement also may be used when a youth is awaiting a violation of probation or probation revocation hearing.

**Electronic monitoring**

Electronic monitoring uses telemetry devices to verify that offenders are at specified locations. The devices, commonly used in conjunction with home confinement, assist probation officers in ensuring offenders are at approved locations (usually school, work, or home) during specified times.

**Treatment**

Youth may be sentenced to attend treatment programs or counseling for drug and alcohol abuse, sex offenders, or for mental health or medical problems. Treatment sentences may include stays in a residential facility. Oftentimes, sentences of treatment are conditions of probation or conditional release. However, some youth may receive a sentence of treatment alone.

**Incarceration**

Juveniles may be adjudicated a ward of the state and remanded to the custody of the Illinois Department of Juvenile Justice (IDJJ), the state agency that operates Illinois’ juvenile correctional facilities. Sentences to incarceration within a IDJJ facility are the most restrictive sentences and are reserved for more serious offenders and habitual offenders. Youth may only be committed to IDJJ if they are at least 13 years old, and they may remain in IDJJ custody until their 21st birthdays.

IDJJ operates eight Illinois Youth Centers (IYCs). IYC-Warrenville and IYC-Pere Marquette serve females. The remaining six facilities serve male offenders.

IYC-Kewanee serves male youth with special treatment needs, specifically sex offenders and those with severe mental health problems, medical problems, substance abuse problems.

IDJJ also operates a juvenile boot camp, sometimes referred to as an impact incarceration program, at IYC-Murphysboro. IDJJ makes the determination as to whether the youth is eligible for IYC-Murphysboro after sentencing. Boot camp programs are typically used for first-time, non-violent offenders as an alternative to longer incarceration and last 30 to 90 days. Boot camps include a range of physical activity and structured activities that resemble the strict environments of military training. Recently, IDJJ has begun to phase out the para-military structure in place at IYC-Murphysboro and is moving toward a structured program which includes a strong education program, a skill-based curriculum, therapeutic interaction techniques between staff and youth, and evidenced-based programming for youth development.

Sentences to IDJJ are indeterminate, so no set length of time of incarceration is established, except that the youth must be released by his or her 21st birthday, or by the maximum time an adult would serve for the same charge [705 ILCS 405/5-710(7)]. Offender release dates are recommended by IDJJ according to preset guidelines and are ultimately determined by the Prisoner Review Board during an administrative review date (ARD). The ARD is set within 10 days of a youth’s arrival at an IYC and must occur before 11 months of incarceration has passed. The ARD is set based on the offense. Parole **or Aftercare PUBLIC ACT 98–558; Effective January 1, 2014)** release decisions are based on the offender’s behavior during incarceration, criminal history, whether the offender is deemed rehabilitated, and other factors. Average length of stay is six to nine months.

While IDJJ sentences are indeterminate, a committed youth may receive credits that allow for reductions in time served. Good time credits are earned for good behavior and participating in education and self-improvement programs.

When a youth is committed to IDJJ, they enter via a Reception and Classification Center (R&C). R&Cs operate as subdivisions of IYC facilities, and upon entry youth are separated from the general population of the IYC.

R&Cs are designed to provide evaluations and assessments of youth to gauge their specific needs and risk levels. These evaluations help administrators determine where the youth will be sent to serve his or her sentence. Facility decisions are based on their specialized needs, security level, and facility availability.

However, IDJJ may move youth to different IYC facilities at any time during their stay.

IYC-St. Charles is the northern male R&C, IYC-Warrenville is the northern female R&C, IYC-Harrisburg is the southern male R&C, and IYC-Pere Marquette is the southern female R&C.

**Court evaluations and bring-back orders**

Youth may be temporarily committed to IDJJ for court evaluations. Court evaluations are 30, 60, or 90-day commitments used to assess the youth’s needs so a judge can make a more informed sentencing decision. After the temporary commitment period expires, the court determines the youth’s sentence. They may be released from IDJJ custody by a judge with a vacated sentence, or returned to an IYC to serve an indeterminate sentence.

Bring-back orders, used only in Cook County, are temporary commitments to IDJJ with review dates determined by the judge. After the review, the judge may vacate the youth’s sentence or impose a formal sentence.

**Sentences of incarceration for youth tried in adult criminal court**

Youth under the age of **18 ~~17~~** convicted in adult criminal court and sentenced to incarceration will begin to serve their sentences in IDJJ facilities. As of January 1, 2010, youth **18 ~~17~~** years of age charged with misdemeanor offenses are tried in the juvenile court. Youth convicted in the juvenile court of misdemeanor offenses do not typically receive sentences of incarceration unless there are aggravating circumstances, (e.g., the youth has an extensive criminal history). In the adult criminal court, the maximum penalty for a misdemeanor conviction is up to one year in confinement, which is served in a county jail and not in a correctional facility.

Juveniles tried in adult criminal court and sentenced to corrections receive determinate sentences in which the release date is known. Typically, a youth tried as an adult will be transferred to an adult prison when they turn **18 ~~17~~** years old. However, in some circumstances, IDJJ may request to keep the youth in its facilities beyond his or her **18th ~~17th~~** birthday, particularly if the youth is vulnerable.

***P.A. 99-0258 (Eff: 1-1-16)***

Section 5. The Criminal Code of 2012 is amended by changing Sections 10-2, 11-1.20, 11-1.30, 11-1.40, 12-33, 29D-14.9, and 29D-35 as follows:

(720 ILCS 5/10-2) (from Ch. 38, par. 10-2)

Sec. 10-2. Aggravated kidnaping.

(b) Sentence. \*\*\* ***An offender under the age of 18 years at the time of the commission of aggravated kidnaping in violation of paragraphs (1) through (8) of subsection (a) shall be sentenced under Section 5-4.5-105 of the Unified Code of Corrections.***

A person ***who has attained the age of 18 years at the time of the commission of the offense and who*** is convicted of a second or subsequent offense of aggravated kidnaping shall be sentenced to a term of natural life imprisonment; except that a sentence of natural life imprisonment shall not be imposed under this Section unless the second or subsequent offense was committed after conviction on the first offense. ***An offender under the age of 18 years at the time of the commission of the second or subsequent offense shall be sentenced under Section 5-4.5-105 of the Unified Code of Corrections.***

(720 ILCS 5/11-1.20) (was 720 ILCS 5/12-13)

Sec. 11-1.20. Criminal Sexual Assault.

(b) Sentence.

(1) Criminal sexual assault is a Class 1 felony, except that:

(A) A person who is convicted of the offense of criminal sexual assault \*\*\* not more than 60 years***, except that if the person is under the age of 18 years at the time of the offense, he or she shall be sentenced under Section 5-4.5-105 of the Unified Code of Corrections.***

(B) A person ***who has attained the age of 18 years at the time of the commission of the offense and who*** is convicted of the offense of criminal sexual assault as defined in paragraph (a)(1) or (a)(2) after having \*\*\*shall be sentenced to a term of natural life imprisonment. ***An offender under the age of 18 years at the time of the commission of the offense covered by this subparagraph (B) shall be sentenced under Section 5-4.5-105 of the Unified Code of Corrections.***

(720 ILCS 5/11-1.30) (was 720 ILCS 5/12-14)

Sec. 11-1.30. Aggravated Criminal Sexual Assault.

(d) Sentence. \*\*\* ***An offender under the age of 18 years at the time of the commission of aggravated criminal sexual assault in violation of paragraphs (1) through (10) of subsection (a) shall be sentenced under Section 5-4.5-105 of the Unified Code of Corrections.***

(720 ILCS 5/11-1.40) (was 720 ILCS 5/12-14.1)

Sec. 11-1.40. Predatory criminal sexual assault of a child.

***SIMILAR CHANGES.***

(720 ILCS 5/12-33) (from Ch. 38, par. 12-33)

Sec. 12-33. Ritualized abuse of a child.

***SIMILAR CHANGES.***

(720 ILCS 5/29D-14.9) (was 720 ILCS 5/29D-30)

Sec. 29D-14.9. Terrorism.

***SIMILAR CHANGES.***

(720 ILCS 5/29D-35)

Sec. 29D-35. Hindering prosecution of terrorism.

***SIMILAR CHANGES.***

Section 10. The Unified Code of Corrections is amended by changing Sections 5-4.5-95 and 5-8-1 and by adding Section 5-4.5-105 as follows:

(5) ***Anyone who, having attained the age of 18 at the time of the third offense, is*** ***~~Except when the death penalty is imposed, anyone~~*** adjudged an habitual criminal shall be sentenced to a term of natural life imprisonment.

(730 ILCS 5/5-8-1)  (from Ch. 38, par. 1005-8-1)

Sec. 5-8-1. Natural life imprisonment; enhancements for use of a firearm; mandatory supervised release terms.

(a) Except as otherwise provided in the statute defining the offense or in Article 4.5 of Chapter V, a sentence of imprisonment for a felony shall be a determinate sentence set by the court under this Section, according to the following limitations:

c) the court shall sentence the defendant to a term of natural life imprisonment ***~~when the death penalty is not imposed~~*** if the defendant, ***at the time of the commission of the murder, had attained the age of 18,*** and

(i) has previously been convicted of first degree murder under any state or federal law, or

***~~ii) is a person who, at the time of the commission of the murder, had attained the age of 17 or more and is found guilty of murdering an individual under 12 years of age; or, irrespective of the defendant's age at the time of the commission of the offense, is found guilty of murdering more than one victim, or~~*** \*\*\*.

Section 15. The Unified Code of Corrections is amended by adding Section 5-4.5-105 as follows:

(730 ILCS 5/5-4.5-105 new)

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Sec. 5-4.5-105. SENTENCING OF INDIVIDUALS UNDER THE AGE OF18 AT THE TIME OF THE COMMISSION OF AN OFFENSE.

(a) On or after the effective date of this amendatory Act of the 99th General Assembly, when a person commits an offense and the person is ***under 18 years*** of age at the time of the commission of the offense, the court, at the sentencing hearing conducted under Section 5-4-1, shall consider the following additional factors in mitigation in determining the appropriate sentence:

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|  |

(1) the person's age, impetuosity, and level of maturity at the time of the offense, including the ability to consider risks and consequences of behavior, and the presence of cognitive or developmental disability, or both, if any;

(2) whether the person was subjected to outside pressure, including peer pressure, familial pressure, or negative influences;

(3) the person's family, home environment, educational and social background, including any history of parental neglect, physical abuse, or other childhood trauma;

(4) the person's potential for rehabilitation or evidence of rehabilitation, or both;

(5) the circumstances of the offense;

(6) the person's degree of participation and specific role in the offense, including the level of planning by the defendant before the offense;

(7) whether the person was able to meaningfully participate in his or her defense;

(8) the person's prior juvenile or criminal history; and

(9) any other information the court finds relevant and reliable, including an expression of remorse, if appropriate. However, if the person, on advice of counsel chooses not to make a statement, the court shall not consider a lack of an expression of remorse as an aggravating factor.

(b) Except as provided in subsection (c), the court may sentence the defendant to any disposition authorized for the class of the offense of which he or she was found guilty as described in Article 4.5 of this Code, and may, in its discretion, decline to impose any otherwise applicable sentencing enhancement based upon firearm possession, possession with personal discharge, or possession with personal discharge that proximately causes great bodily harm, permanent disability, permanent disfigurement or death to another person.

(c) Notwithstanding any other provision of law, if the defendant is convicted of first degree murder and would otherwise be subject to sentencing under clause (iii), (iv), (v), or (vii) of subsection (c) of Section 5-8-1 of this Code based on the category of persons identified therein, the court shall impose a sentence of not less than 40 years of imprisonment. In addition, the court may, in its discretion, decline to impose the sentencing enhancements based upon the possession or use of a firearm during the commission of the offense included in subsection (d) of Section 5-8-1.

**Release and post-incarceration supervision**

While IDJJ administrators will recommend youth for parole **or aftercare PUBLIC ACT 98–558; Effective January 1, 2014)**, the Prison Review Board (PRB) makes the final decision on whether to grant parole **or aftercare PUBLIC ACT 98–558; Effective January 1, 2014)** and sets the conditions of a youth’s parole **or aftercare PUBLIC ACT 98–558; Effective January 1, 2014)**.

The PRB consists of 15 full-time members who are appointed by the governor with the advice and consent of State Senate [730 ILCS 5/3-3-1(b)]. At least six members of the PRB must have had at least three years’ experience in the field of juvenile matters [730 ILCS 5/3-3-1(b)]. PRB hearings may be conducted with three or more members on the panel [730 ILCS 5/-3-3-5(a)]. PRB hearings of youth committed to IDJJ must have the majority of its members on the panel with experience in juvenile matters [730 ILCS 5/3-3-5(a)].

A youth’s parole **or aftercare PUBLIC ACT 98–558; Effective January 1, 2014)** conditions typically include attending school, attaining a degree or gainful employment, refraining from law-violating behavior, abstinence from drugs and/or alcohol, and obeying curfew. Youth are monitored by a parole **or aftercare PUBLIC ACT 98–558; Effective January 1, 2014)** officer. Currently, in Illinois, most parole **or aftercare PUBLIC ACT 98–558; Effective January 1, 2014)** officers are adult parole **or aftercare PUBLIC ACT 98–558; Effective January 1, 2014)** officers. However, some districts in Illinois have parole **or aftercare PUBLIC ACT 98–558; Effective January 1, 2014)** officers with only juvenile caseloads. While on parole **or aftercare PUBLIC ACT 98–558; Effective January 1, 2014)**, the youth is still considered to be in the custody of IDJJ. Therefore, a youth will remain on parole **or aftercare PUBLIC ACT 98–558; Effective January 1, 2014)** until their 21st birthday unless IDJJ administrators or the PRB requests that the court discharge the youth from custody (including early discharge from supervision) if they determine that the youth is rehabilitated, not a threat to public safety, and has successfully complied with the conditions of supervised release.

**Successful completion of sentence**

If a youth successfully completes the sentence, in that he or she does not violate any of the conditions of the sentence or community supervision, the youth will be discharged from the juvenile justice system. All juvenile records are sealed. Many youths are eligible for juvenile record expungement.

**Unsuccessful completion of sentence**

A youth who does not comply with the conditions of a sentence may have their probation, parole **or Aftercare PUBLIC ACT 98–558; Effective January 1, 2014)**, or other sentence revoked, or re-enter the juvenile justice system for new offenses.

**Violations of probation and revocation**

Probation is viewed as a community-based alternative to incarceration, but a sentence of probation is considered a privilege. Probation may be revoked for noncompliance with sentence conditions, such as attending school or obtaining employment, and are referred to as technical violations. If a youth is alleged to have violated the conditions of probation, the probation officer files a violation of probation petition with the court of the sentencing judge. The judge will conduct a probation revocation hearing, in which evidence of the violation alleged in the petition will be heard. A youth has the right to counsel at these hearings **[705 ILCS 405/5-720(3)]**. At the hearing, the judge may find insufficient evidence of a violation and the youth will continue with his or her probation as ordered. If there is enough evidence to determine there was a violation of the probation orders, the judge may impose or change the conditions of the youth’s probation, or revoke probation and re-sentence the youth.

Probation officers also have diversionary options available to them. When a youth violates probation, the probation officer may choose to provide the youth with intermediate sanctions **[705 ILCS 405/5-720(7)]**. Intermediate sanctions are adopted by the chief judge of each circuit court. Intermediate sanctions include, but are not limited to, home confinement, electronic monitoring, and intensive probation supervision.

**Violations of parole or Aftercare (PUBLIC ACT 98–558; Effective January 1, 2014) and revocation**

Parole **or aftercare PUBLIC ACT 98–558; Effective January 1, 2014)** is the supervised early release of a youth from incarceration. Youths released from IDJJ in advance of their 21st birthday are automatically placed on parole **or aftercare PUBLIC ACT 98–558; Effective January 1, 2014)**, unless they have had their sentences vacated by a judge. Parole **or aftercare PUBLIC ACT 98–558; Effective January 1, 2014)** supervision requires compliance with specific conditions of release determined by the PRB. If there is an alleged violation of parole **or aftercare PUBLIC ACT 98–558; Effective January 1, 2014)**, the youth is entitled to a probable cause hearing within 10 days of apprehension [20 IL ADC 1610.140(b)(3)]. However, a hearing officer can continue the preliminary hearing for up to an additional two weeks to permit the production of witnesses and materials relevant to the hearing [20 IL ADC 1610.140(b)(3)]. During this time, the youth’s case will be scheduled to be heard at the next scheduled PRB hearing at the facility in which the youth is confined, provided that the youth’s re-incarceration was at least 30 days prior to the next scheduled meeting [20 IL ADC 1610.150].

If probable cause is found, the youth will receive a final revocation hearing, conducted before at least three members of the panel to determine if the allegations are true. The interview for the parole **or aftercare PUBLIC ACT 98–558; Effective January 1, 2014)** revocation of a juvenile must be conducted by a member qualified in juvenile matters [20 IL ADC 1610.10(c)(2)]. The member will interview the youth, any witnesses, and any persons who appear in support of the charge [20 IL ADC 1610.150]. If the PRB determines that there was a violation of the youth’s parole **or aftercare PUBLIC ACT 98–558; Effective January 1, 2014)**, they may change or impose additional conditions of parole **or aftercare PUBLIC ACT 98–558; Effective January 1, 2014)** or revoke parole **or aftercare PUBLIC ACT 98–558; Effective January 1, 2014)**.

As established in Goldberg v Kelly, youth have the right to have counsel at both the preliminary and parole **or aftercare PUBLIC ACT 98–558; Effective January 1, 2014)** revocation hearings [397 U.S. 254 (1970); 20 IL ADC 1610.140(c)]. However, the state is not required to provide counsel for those who cannot obtain their own [Gagnon v Scarpelli, 411 U.S. 778, 790 (1973)].

Parole **or aftercare PUBLIC ACT 98–558; Effective January 1, 2014)** can be revoked for committing a new offense or for technical violations, such as failing to attend school or abiding by curfew. Youth who commit and are adjudicated delinquent for new offenses while on parole **or aftercare PUBLIC ACT 98–558; Effective January 1, 2014)** may lose parole **or aftercare PUBLIC ACT 98–558; Effective January 1, 2014)** and be re-committed to the custody of IDJJ. However, if the judge and the PRB agree, the youth may receive an additional sentence while continuing on parole **or aftercare PUBLIC ACT 98–558; Effective January 1, 2014)**.

Parole **or aftercare PUBLIC ACT 98–558; Effective January 1, 2014)** agents also have graduated sanctions available to them, such as electronic monitoring and home confinement. IDJJ also operates a Halfway Back program in its IYC-Chicago facility. The Halfway Back program allows youth who have committed minor violations of their parole **or aftercare PUBLIC ACT 98–558; Effective January 1, 2014)** (such as curfew violations or absences from school) to return to IDJJ for a short stay and be re-released on parole **or aftercare PUBLIC ACT 98–558; Effective January 1, 2014)**, if the parole **or aftercare PUBLIC ACT 98–558; Effective January 1, 2014)** agent chooses to offer this intermediate sanction to the youth. Decisions of entrance into the program are determined by IDJJ and the PRB.

**V. Discharge**



**V. Discharge**

If all the conditions of the sentence imposed are met successfully, the juvenile will be discharged from court wardship. However, violations of conditions of the sentence can result in revocation of the sentence, additional sentences, re-entering the juvenile justice system, and receiving additional and/or stricter conditions. Juvenile court jurisdiction originates for youth who are alleged to have committed offenses prior to their **18th ~~17th~~** birthdays, or prior to their 18th birthdays for misdemeanor offenses that are alleged to have occurred after January 1, 2010.

Juveniles tried and sentenced in the juvenile court prior to their **~~17th or~~** 18th birthdays can remain under court jurisdiction for the remainder of their sentence. However, if at any time prior to their **18th ~~17th~~** birthday they are transferred and convicted in an adult criminal court, any future law violating behavior will result in the adult criminal court being the original court of jurisdiction.

On the youth’s 21st birthday, juvenile court wardship will terminate, regardless of the youth’s sentencing status **[705 ILCS 405/5-755(1)]**. Once youth are discharged from the juvenile justice system, their records are sealed.

**VI. Expungement**

All juvenile records are sealed to ensure that juvenile criminal history records will not be available to certain entities, such as potential employers, once the juvenile becomes an adult. Sealed records are still available to law enforcement, judges, state’s attorneys, the military, and other specific individuals. However, some youth are eligible to expunge their juvenile criminal records, removing them in their entirety from any court or law enforcement systems **[705 ILCS 405/5-915]**.

A youth’s records are eligible for expungement if the youth is at least 18 years of age and the youth:

• Was arrested and not charged.

• Was charged but not adjudicated delinquent.

• Successfully completed court supervision.

• Was adjudicated delinquent for an offense that would be a misdemeanor, petty, or business offense if committed by an adult.

Felony records may not be expunged except for those showing charges of Class 4 drug possession of cannabis (less than 500 grams), Class 4 possession of a controlled substance, Class 4 prostitution convictions, and Class 4 convictions under the Methamphetamine Precursor Control Act **[720 ILCS 648/15]** or the Steroid Control Act.

Youth may qualify to expunge their juvenile criminal records if they were arrested but not convicted of first degree murder or any felony sex offenses. If a youth was arrested but not convicted for the aforementioned offenses, they may expunge their juvenile records if they are at least 21 years of age and:

• Have not been convicted for any offense since their **18th ~~17th~~** birthdays,

• It has been at least five years since their last juvenile court proceeding.

• If committed to IDJJ, been at least five years since discharge from IDJJ.

The steps to expunge juvenile records include filing three forms with the court and paying a fee. Forms include:

1) A petition for expungement.

2) A notice of expungement.

3) An order with the clerk of the circuit court within which the youth was convicted.

After 45 days, the youth must contact the clerk to determine the status of their petition. During these 45 days, judges and state’s attorneys have the ability to challenge the youth’s petition for expungement. If the court grants the petition for expungement, the juvenile will pay a fee and the Illinois State Police will remove the youth’s records. However, expungement statutes do not require state’s attorneys or other prosecutor’s offices to destroy internal office records, files, or databases. Additionally, law enforcement, state’s attorneys, other prosecutors, and the Illinois Department of Corrections may require disclosure of expunged juvenile records if an individual applies for employment with these agencies **[705 ILCS 405/5-915(8)(a)]**.

In 2009, Illinois passed legislation making all juveniles charged with misdemeanors eligible for expungement, regardless of the outcome of the case. For youth charged with misdemeanors, a motion for expungement must be filed by the youth’s counsel within 30 days of the judgment on the case. If a motion for expungement is filed, the court will set an expungement review hearing to occur within a month of the youth’s 18th birthday or within a month of completion of the sentence, whichever is later.