

No. 130173

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court of Illinois, No. 1-20-0917.
)	
Plaintiff-Appellee,	)	There on appeal from the Circuit Court of Cook County, Illinois , No. 19 CR 7197.
-vs-)	
)	
DESHAWN WALLACE,	)	Honorable Ursula Walowski,
)	Judge Presiding.
Defendant-Appellant.)	

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLANT

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Illinois Juvenile Justice Commission. See, Trial and Sentencing of Youth as Adults in the Illinois Justice System: Transfer Data Report (IJJ Report). 25

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NATURE OF THE CASE

Deshawn Wallace was convicted of armed habitual criminal, felony possession of a weapon, and aggravated unlawful use of a weapon after a bench trial and was sentenced to six years in prison.

This is a direct appeal from the judgment of the court below. No issue is raised challenging the charging instrument.

ISSUE PRESENTED FOR REVIEW

Whether an offense committed when Deshawn Wallace was 17 years old is a predicate conviction under the armed habitual criminal statute where a 17-year-old would not be tried in adult court for that offense at the time of Wallace's 2019 armed habitual criminal arrest.

STATUTES AND RULES INVOLVED

705 ILCS 405/5-120 (2019) – Exclusive Jurisdiction

Proceedings may be instituted under the provisions of this Article concerning 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. Except as provided in Sections 5-125, 5-130, 5-805, and 5-810 of this Article, no minor who was under 18 years of age at the time of the alleged offense may be prosecuted under the criminal laws of this State.

The changes made to this Section by this amendatory Act of the 98th General Assembly apply to violations or attempted violations on or after the effective date of this amendatory Act.

705 ILCS 405/5-805, (2019) Transfer of jurisdiction

(2) 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, and, if the juvenile judge assigned to hear and determine motions to transfer a case for prosecution in the criminal court determines that there is probable cause to believe that the allegations in the petition and motion are true, there is a rebuttable presumption that the minor is not a fit and proper subject to be dealt with under the Juvenile Justice Reform Provisions of 1998 (Public Act 90-590), and that, except as provided in paragraph (b), the case should be transferred to the criminal court.

(3) Discretionary transfer.

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

(b) In making its determination on the motion to permit prosecution

under the criminal laws, the court shall consider among other matters:

- (i) the age of the minor;
- (ii) the history of the minor, including:
 - (a) any previous delinquent or criminal history of the minor,
 - (b) any previous abuse or neglect history of the minor, and
 - (c) any mental health, physical, or educational history of the minor or combination of these factors;
- (iii) the circumstances of the offense, including:
 - (A) the seriousness of the offense,
 - (B) whether the minor is charged through accountability,
 - (C) whether there is evidence the offense was committed in an aggressive and premeditated manner,
 - (D) whether there is evidence the offense caused serious bodily harm,
 - (E) whether there is evidence the minor possessed a deadly weapon;
- (iv) the advantages of treatment within the juvenile justice system including whether there are facilities or programs, or both, particularly available in the juvenile system;
- (v) whether the security of the public requires sentencing under Chapter V of the Unified Code of Corrections:
 - (A) the minor's history of services, including the minor's willingness to participate meaningfully in available services;
 - (B) whether there is a reasonable likelihood that the minor can be rehabilitated before the expiration of the juvenile court's jurisdiction;

(C) the adequacy of the punishment or services.

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

720 ILCS 5/24-1.7(a) (2019) – Armed Habitual Criminal

(a) A person commits the offense of being an armed habitual criminal if he or she receives, sells, possesses, or transfers any firearm after having been convicted a total of 2 or more times of any combination of the following offenses:

(1) a forcible felony as defined in Section 2-8 of this Code;

(2) unlawful use of a weapon by a felon; aggravated unlawful use of a weapon; aggravated discharge of a firearm; vehicular hijacking; aggravated vehicular hijacking; aggravated battery of a child as described in Section 12-4.3 or subdivision (b)(1) of Section 12-3.05; intimidation; aggravated intimidation; gunrunning; home invasion; or aggravated battery with a firearm as described in Section 12-4.2 or subdivision (e)(1), (e)(2), (e)(3), or (3)(4) of Section 12-3.05; or

(3) any violation of the Illinois Controlled Substances Act or the Cannabis Control Act that is punishable as a Class 3 felony or higher.

STATEMENT OF FACTS*Background*

In 2008, when Deshawn Wallace was 17 years old, he was charged with and convicted of a Class X armed robbery with a firearm. (Sec. C. 6; R. 95) Eleven years later, in 2019, the State used Wallace's 2008 case to elevate his original Class 3 unlawful possession of a weapon by felon charge to a Class X armed habitual criminal charge. (C. 15, 19) The armed habitual criminal charge alleged that Wallace knowingly possessed a firearm after having been convicted of the offense of unlawful use of a weapon by a felon, under case number 15 CR 5613, and the offense of armed robbery, under case number 08 CR 12591. (C. 15) After a stipulated bench trial, the trial judge found Wallace guilty of armed habitual criminal, unlawful use of a weapon by a felon, and aggravated unlawful use of a weapon. (C. 54, 67; R.85) The judge merged all the counts into the armed habitual criminal conviction and sentenced Wallace to six years in prison. (C. 67; R. 85, 102

On direct appeal, the appellate court affirmed Wallace's convictions and held that prior convictions for offenses that would no longer be automatically prosecuted in adult court nonetheless qualify as predicate offenses for armed habitual criminal. *People v. Wallace*, 2023 IL App (1st) 200917, ¶¶ 1, 31-40.

Pre-Trial Proceedings

Wallace filed a motion to suppress evidence based on an illegal search of his jacket pocket after a routine traffic stop. (C. 36-39) At the suppression hearing, Chicago Police Officer Edward Zeman testified that on May 2, 2019, at around 11:00 a.m., he and his partner saw a car with a missing brake light and conducted a traffic stop. (R. 27-30, 36) Zeman claimed that he saw Wallace, who was seated in the front passenger seat, breathing heavily and avoiding making eye contact.

(R. 34, 40) As he approached the car, he smelled the odor of alcohol and fresh cannabis emanating from it. (R. 31) Zeman did not see any open alcohol containers even though the rear seat passenger confirmed that they had been drinking. (R.31-32) There was a bag of cannabis between the front passenger seat and the center console, next to Wallace's leg. (R. 34, 37) Zeman saw Wallace's left hand, which was by his waist, moving towards the area of the cannabis. (R. 37) Because Zeman saw a bulge in Wallace's front jacket pocket, he conducted a protective pat-down as Wallace sat in the car. (R. 34, 41-42) Zeman felt a hard metal object consistent with a handgun. (R. 42) He recovered a handgun from Wallace's pocket and ordered him out of the car. (R. 33-35, 41) After Wallace said he did not have a Firearm Owners Identification (FOID) card or a Concealed Carry License (CCL), he was arrested. (R. 33, 42)

The State played footage of Zeman's body-worn camera, which showed the traffic stop and search of Wallace's jacket pocket. (R. 42, 45) The trial court denied Wallace's motion to suppress and his motion to reconsider the ruling on the motion to suppress because there was probable cause to search and the search was limited to Wallace's jacket pocket. (R. 48-49)

Bench Trial

Wallace waived his right to a jury trial and proceeded in a stipulated bench trial with the parties agreeing that Officer Zeman would have testified as he did at the suppression hearing. (R. 73-76) The parties also stipulated to Zeman's body-worn camera footage that was admitted into evidence during the motion hearing and that the Illinois State Police certified abstracts established that Wallace did not have a FOID card or CCL. (R. 77; St. Exs. 2-3) As to the certified copies of convictions, the trial judge asked, "Those are stipulated to? Those are your client's

convictions, Ms. [assistant Public Defender]?” (R. 78) Defense counsel replied, “This is correct.” (R. 78) The State rested, and Wallace called Zeman to testify about additional facts related to the stop, including that Wallace did not make any furtive movements or bend down under the seat when Zeman approached. (R. 81) The trial judge found Wallace guilty of all counts and ordered them to be merged into the armed habitual criminal count. (R. 83)

Post-Trial Proceedings

The trial judge denied Wallace’s motion for new trial and sentenced him to six years in prison on the armed habitual criminal count. (C. 60-61, 64-67, 89; R. 88, 102) After the judge denied Wallace’s motion to reconsider sentence, Wallace filed a timely notice of appeal. (C. 70-72, R. 109)

Direct Appeal

On direct appeal, Wallace argued, *inter alia*, that the State failed to prove beyond a reasonable doubt that he had the predicate convictions necessary to sustain his armed habitual criminal conviction because he was only 17 years old when he committed the 2008 armed robbery offense.

The appellate court issued an unpublished order under Supreme Court Rule 23 on September 18, 2023, in which it affirmed Wallace’s armed habitual criminal conviction. The State’s motion to publish was granted on September 20, 2023, and a corrected opinion was issued on September 29, 2023. The appellate court found that the State sufficiently proved Wallace’s armed habitual criminal conviction because his 2008 armed robbery, which he committed at the age of 17, qualified as a predicate felony. *People v. Wallace* 2023 IL App (1st) 200917, ¶ 35. In doing so, the court held that even though the armed robbery would no longer be automatically tried in adult court, it nevertheless qualified as a predicate offense

for armed habitual criminal because the jurisdictional amendments to the Juvenile Court Act are not retroactive. *Id.*, ¶¶ 35-39.

Wallace did not file a petition for rehearing in the appellate court. This Court granted Wallace's petition for leave to appeal on May 29, 2024.

ARGUMENT

Deshawn Wallace's 2008 armed robbery offense was not a qualifying predicate conviction under the armed habitual criminal statute because he was 17 years old at the time that the offense was committed, and a 17-year-old would not be tried in adult court for that offense at the time of his 2019 arrest in this case. The State therefore failed to prove him guilty of being an armed habitual criminal beyond a reasonable doubt.

In the trial court, the State used a 2008 armed robbery committed when Deshawn Wallace was 17 years old as one of the bases for his armed habitual criminal (AHC) conviction. In 2019, when Wallace was arrested and charged with AHC, the 2008 offense would have been resolved through delinquency proceedings rather than in the criminal court because of recent changes in the Juvenile Court Act (JCA), which were motivated by scientific advances in the understanding of adolescents' brain development. 705 ILCS 405/5-120 (2019); 705 ILCS 405/5-805 (2019). This Court recently held in *People v. Stewart*, 2022 IL 126116, ¶¶ 16, 22, when interpreting a similar statute, that the legislature did not intend to punish a defendant now for an offense that could have resulted in a juvenile adjudication had it been committed on the date of the present offense. Given the changes in the JCA and the fact that the plain language of the AHC statute uses the present tense, prior offenses should qualify as predicate offenses only if they would be convictions under the *current* law. 720 ILCS 5.24-1.7(a). Therefore, the appellate court's holding in Wallace's case is wrong because it misinterpreted the legislature's use of the present-tense phrases in the statute and found that a prior conviction may qualify as a predicate offense of AHC even though the prior offense is no longer automatically tried in adult court. *People v. Wallace*, 2023 IL App (1st) 200917,

¶¶ 33-35. Accordingly, this Court should reverse the appellate court's decision and either reverse Wallace's AHC conviction or reduce his conviction to the lesser included offense of unlawful use of a weapon by a felon.

This issue has been presented to this Court once before, in *People v. Gray*, 2024 IL 127815, ¶ 18, though this Court did not fully resolve it because the defendant stipulated both to the fact of the prior conviction and that it qualified as a predicate offense to meet the elements of AHC. *Id.*, ¶¶ 26-27. Further, the defendant in *Gray* suffered no prejudice from the stipulation, as he had other prior predicate offenses from when he was over 17 years old. *Id.*, ¶ 32. In Wallace's case, on the other hand, counsel merely stipulated that Wallace had been convicted of two prior convictions, not that they were qualifying predicate offenses for AHC. (R. 77-78) Moreover, Wallace has no other convictions that could serve as predicates for an AHC conviction. Therefore, this Court is not foreclosed from addressing whether the State proved Wallace's two prior convictions qualified as predicate felonies in light of arguments regarding the statutory interpretation of the AHC statute and the effect of *Stewart*, 2022 IL 126116.

Whether Wallace's 2008 offense constitutes a qualifying predicate conviction under the AHC statute involves a question of statutory construction. As such, it is a question of law subject to *de novo* review. *Stewart*, 2022 IL 126116, ¶ 13; *People v. Baskerville*, 2012 IL 111056, ¶ 18.

A. The present-tense language in the armed habitual criminal statute and society's evolving attitudes towards crime and punishment support a finding that an offense committed when the defendant was a juvenile does not qualify as a predicate felony offense for the present AHC offense.

In order to obtain a conviction for the AHC offense, the State had to prove that Deshawn Wallace had previously been convicted of the two predicate felonies

specified by indictment: unlawful use of a weapon by a felon and armed robbery. (C. 15); 720 ILCS 5/2.4-1.7(a)(2019). Because Wallace was 17 years old when he committed the armed robbery offense, and at present such an offense is not automatically tried in the criminal court, any resultant guilty finding would be a juvenile adjudication, rather than a “conviction.” See 705 ILCS 405/5-120 (2019); see also *People v. Taylor*, 221 Ill. 2d 157, 176 (2006) (noting that juvenile adjudications do not constitute convictions). Accordingly, the State failed to prove beyond a reasonable doubt that his armed robbery offense was a predicate “conviction” under the AHC statute, and this Court should reverse the lower court’s opinion. *Wallace*, 2023 IL App (1st) 200917, ¶¶ 33-35.

This Court has held that when interpreting a statute, the court’s “primary objective is to ascertain and give effect to the intent of the legislature.” *People v. Molnar*, 222 Ill. 2d 495, 518 (2006); *Baskerville*, 2012 IL 111056, ¶ 18. The language of the statute is the best indicator of intent. *People v. Taylor*, 221 Ill. 2d 157, 162 (2006). A clear and unambiguous statute will be applied without the use of aids of statutory construction. *Molnar*, 222 Ill. 2d at 518-19. Courts should not, “under the guise of statutory interpretation, remedy an apparent legislative oversight by rewriting a statute in a way that is inconsistent with its clear and unambiguous language.” *Taylor*, 221 Ill. 2d at 162-63. Further, to the extent this Court finds that the statute *is* ambiguous, it should be “strictly construed in favor of the defendant.” *People v. Robinson*, 172 Ill. 2d 452, 461 (1996). The criminal and penal statutes should “be strictly construed in favor of the accused, and nothing should be taken by intendment or implication beyond the obvious or literal meaning of the statute.” *Taylor*, 221 Ill. 2d at 162 (quoting *People v. Laubscher*, 183 Ill. 2d 330, 337 (1998)). Furthermore, this Court should read the statute as a whole,

construing its meaning in light of other relevant provisions. *People v. Gutman*, 2011 IL 110338, ¶ 12.

An “armed habitual criminal” is someone who possesses a firearm “after having been convicted” a total of two or more times of any combination of the following offenses:

- (1) a forcible felony *as defined* in Section 2-8 of *this* Code;
- (2) unlawful use of a weapon by a felon; aggravated unlawful use of a weapon; aggravated discharge of a firearm; vehicular hijacking; aggravated vehicular hijacking; aggravated battery of a child *as described* in Section 12-4.3 or subdivision (b)(1) of Section 12-3.05; intimidation; aggravated intimidation; gunrunning; home invasion; or aggravated battery with a firearm as described in Section 12-4.2 or subdivision (e)(1), (e)(2), (e)(3), or (3)(4) of Section 12-3.05; or
- (3) any violation of the Illinois Controlled Substances Act or the Cannabis Control Act that *is punishable* as a Class 3 felony or higher.

720 ILCS 5/24-1.7(a) (emphases added). Because the plain language in the predicate conviction element in all of three subsections – “as defined,” “as described,” and “is punishable” – are in the present tense, they require courts to determine if the predicate offense is a “conviction” at the time of the current AHC offense.

To be convicted of AHC, a defendant must possess a firearm “after *having been convicted* a total of two or more times of any combination” of the relevant predicate offenses. 720 ILCS 5/24-1.7(a) (emphasis added). In finding that Wallace’s prior conviction, committed as a juvenile, qualified as a predicate felony, the appellate court focused on the phrase “having been convicted,” and found that the phrase is a perfect passive participle construction and grammatically, it is the equivalent of saying, “if he/she was convicted.” *Wallace*, 2023 IL App (1st) 20917, ¶ 33. The court, however, started out on the wrong foot because the source it used to come to its textual conclusion is primarily concerned with translating

participial constructions from Latin into English. *Id.* (citing Participles, The Latin Library, <https://thelatinlibrary.com/101/Participles.pdf> (last visited Jul. 17, 2024) [<https://perma.cc/7ZNR-RB64>]).¹ And that same source cautions that participles “must always bear in mind their tense and voice.” *See id.*

Furthermore, the phrase “having been convicted” is in the present perfect tense (in gerund form), which denotes “action beginning in the past and continuing to the present.” E.g., *Hayashi v. Illinois Dept. of Financial and Professional Regulation*, 2014 IL 116023, ¶ 17. As explained in this Court’s cases, present participial phrases describe actions that began in the past and continue to the present. *In re Gwynne P.*, 215 Ill. 2d 340, 357-58 (2005) (when the State filed a petition asserting that two parents were unfit, this Court construed the phrase “has prevented” in the relevant statute to mean that the trial court had to consider the effect of the parents’ incarceration at “the time when the matter is being considered by the trial court.”) So the appellate court’s decision below is simply grammatically incorrect when it equates “having been convicted” with “if he/she was convicted.” *See id.*; *Wallace*, 2023 IL App (1st) 20917, ¶ 33.

The appellate court’s reasoning is also flawed because the court focused on the wrong phrase. The statutory analysis of the phrase “having been convicted” is irrelevant to this Court’s analysis as to whether Wallace’s 2008 offense qualifies as predicate offense for AHC. The phrase “after having twice been convicted” in the Class X statute, which was at issue in *Stewart*, 2022 IL 126116, is written in the same tense as the phrase “having been convicted” in the AHC statute. 730

¹ Counsel was unable to access the page the appellate court relied on using the regular link, but was able to access it using the permalink.

ILCS 5/5-4.5-95(b); 720 ILCS 5/24-1.7(a). This Court did not even consider the phrase “after having twice been convicted” when determining whether a prior offense, which would have resulted in a juvenile adjudication had it been committed on the date of the present offense, was a qualifying offense for Class X sentencing. *Stewart*, 2022 IL 126116, ¶¶ 19-23. Therefore, following *Stewart*, the grammatical structure of the phrase is not dispositive to the issue before this Court.

Rather, the relevant phrases are those contained in the subsections of the AHC statute. The statutory phrase, “forcible felony *as defined* in Section 2-8 of *this Code*,” 720 ILCS 5/24-1.7(a)(1) (emphases added), denotes the present tense. On its own, the word “defined” does not speak to the past or present tense because it is being used, not as a simple past-tense verb, but as a past participle modifying the noun “forcible felony.” See *Bernal v. NRA Group, LLC*, 930 F.3d 891, 895 (7th Cir. 2019) (past-participial modifiers that describe nouns are “tenseless” because the verb does not itself indicate timing). The United States Supreme Court has explained that when past participles are used as adjectives, they typically “describe the present state of a thing.” *Henson v. Santander*, 582 U.S. 79, 84 (2017). In order to shift the meaning of a participial adjective into the past or future, language surrounding it has to provide the necessary context to do so. See *Bernal*, 930 F.3d at 895 (using the examples of a person “arrested yesterday” or a document “submitted *after* today”) (emphasis added). Additionally, the phrase “this Code” in subsection (a)(1) directs this Court to look at the law at the time of the AHC offense. Therefore, this Court should presume the phrase “as defined” carries its most natural meaning: an adjective “describ[ing] the present state of a thing,” which here would be a forcible felony at the time the AHC offense was committed.

A division of the First District Appellate Court came to the same conclusion

in *People v. Dawson*, 2022 IL App (1st) 190422. This Court denied the State’s petition for leave to appeal, but vacated the decision and remanded for reconsideration in light of *Gray*, 2024 IL 127815. See *Dawson*, No. 1-19-0422 (order entered July 18, 2024). Wallace maintains that *Dawson* is still persuasive authority. The *Dawson* defendant was convicted of armed habitual criminal based on predicate robberies that he committed in 2013 when he was 17 years old. *Id.*, ¶¶ 22, 23. In conducting its analysis, the appellate court focused on the present tense nature of the language in subsection (a)(1) in the AHC statute. *Id.*, ¶ 47. Subsection (a)(1) requires the State to prove that the defendant has a conviction for a forcible felony “as defined in Section 2-8 of this Code[.]” *Id.*, ¶¶ 22, 47 (citing 720 ILCS 5/24-1.7(a)(1) (West 2016)). According to the appellate court, “as defined” means as presently defined. And that present tense “is further reinforced by the use of the word ‘this,’ in ‘this Code.’” *Id.*, ¶ 47. Because “a statute must be interpreted as a whole, [...] [i]t would make little sense to interpret one sub-subsection as requiring an offense that ‘is’ currently punishable, while interpreting another sub-subsection to refer to a past time.” *Id.* In light of the finding in *Gray* regarding stipulations, on remand the *Dawson* court is likely to consider whether trial counsel was ineffective for stipulating that the prior armed robberies were qualifying predicate offenses for AHC. *Id.* at ¶ 48. This Court should apply the analysis of *Dawson* because it addressed the same question now presented in Wallace’s case and because its reasoning comports both with the statutory text of the AHC statute and society’s evolving attitudes toward crime and punishment of juveniles.

Although the Fourth District Appellate Court in *People v. Irrelevant*, 2021 IL App (4th) 200626, reached the opposite result, it misinterpreted the AHC statute’s use of the present-tense phrases. In *Irrelevant*, the appellate court found that the

court must look to whether the underlying offense was a conviction at the time it was committed, not to the status of the underlying offense at the time the AHC was committed. *Id.*, ¶ 35. In reaching this result, the court held that there is “no support under the plain and unambiguous language of the armed habitual criminal statute” to consider whether an offense would be tried in juvenile or adult court, despite acknowledging that the AHC statute had to be read in the present tense. *Id.*, ¶ 37. *Irrelevant*, therefore, is not well-reasoned because the AHC statute says the prior offense must result in a conviction under “this Code,” not a prior version of the code. 720 ILCS 5/24-1.7(a). Consequently, the only way to determine if a conviction results in a qualifying conviction “as defined” under “this Code,” is to look at *this* Code – the current law, as the *Dawson* court found. This Court should follow *Dawson*’s reasoning because it properly construes the present-tense phrases and the purpose of the AHC statute.

Subsection (a)(3) of the AHC statute, which uses the phrase “is punishable” as a Class 3 or higher felony in subsection (a)(3) also employs the present tense, further confirming that this Court must examine the statute of a predicate offense in the present time. In fact, the State in *People v. Gray*, 2024 IL 127815, conceded that the use of the present tense in subsection (a)(3) indicates that the analysis of whether a prior offense is a qualifying predicate must focus on the current law and society’s evolving attitudes toward crime and punishment. (*Gray*, St. Br. 23-24) In its opening brief before this Court, the State asserted the following:

To be sure, as the appellate court noted, subparagraph 3 uses ***the present tense*** in the phrase ‘is punishable as a Class 3 or higher felony’ violation of the drug statutes. *Gray*, 2021 IL App (1st) 191086, ¶ 11.

* * *

[T]he use of the present tense ‘is’ means that ***the analysis focuses***

on the current version of the Controlled Substances Act and Cannabis Control Act. By focusing on the current version of those statutes, ***the legislature allowed for the fact that society's attitudes towards drugs can change over time.*** See, generally, *People v. Stribling*, 2022 IL App (3d) 210098, ¶ 17 (discussing changes to Illinois drug laws over the last decade, and noting some offenses are no longer crimes and the felony classifications of some drug offenses have been downgraded). Therefore, for example, the legislature intended to allow for the possibility that ***if a defendant was once convicted of a Class 3 drug offense, but that same offense is later statutorily re-classified as a Class 4 felony, the prior conviction would not be considered a qualifying prior conviction.*** (*Gray*, St. Br. 23-24) (emphases added).

The State's concession is inconsistent with its arguments in *Gray* and in Wallace's case that subparagraph (1) is not meant to consider the current status of the predicate offense. There is also no reason to treat the Controlled Substances Act, the Cannabis Control Act, and the AHC statute differently. Just as the legislature allowed for the fact that society's attitudes towards drugs can change over time, it also allows for the fact that society's attitudes towards juvenile offenses have evolved over time. Consequently, if the defendant's age at the time of the predicate offense is later statutorily re-classified to make the age subject to juvenile jurisdiction, the prior conviction should not be considered a qualifying prior conviction. Importantly, by limiting the transfer of juveniles to adult courts, the legislature recognized the lesser culpability of juvenile offenders. 705 ILCS 405/5-120 (2019); 705 ILCS 405/5-130 (2019); 705 ILCS 405/5-130(8) (2019).

Subsection (a)(1) is similarly supported by the present tense in the plain language of the AHC statute. The use of the phrases "as defined" and "as described," without the additional qualification of "at the time of the offense," indicates that those offenses should be evaluated as they are defined and described in the Illinois Criminal Code as it *is* written, not as it *was* written. *Dawson*, 2022 IL App (1st) 190422, ¶ 47 ("[A]s defined' means as presently defined."); see *Gray*, 2021 IL App

(1st) 191086, ¶ 16 (finding that because subsection (a)(3) of the AHC statute requires each prior be a conviction “that is punishable” as a Class 3 or higher, the prior offense had to be a conviction that is now punishable as a Class 3 felony).

Furthermore, it is only logical for the language of the AHC statute to be read in the present-tense since the statute references various parts of the Criminal Code that are also in the present tense. 720 ILCS 5/24-1.7(a). Because this Court “presumes that the legislature did not intend to create absurd, inconvenient, or unjust results,” *People v. Jackson*, 2011 IL 110615, ¶ 12, it would be illogical to interpret the statute as applying the Criminal Code as it existed at various points in its history. In other words, it would be absurd, inconvenient, and unjust for a court to use the current statutory language from the AHC statute, the forcible felony statute, the unlawful use of a weapon by a felon statute, and the Controlled Substances Act, but use the outdated and abrogated juvenile court statute. The plain language of the present tense indicates that the relevant moment in time is now – that is, the time when the current offense of AHC was committed.

The plain language of the statute requiring offenses to qualify under the *current* law also comports with the legislature’s purpose in enacting the AHC statute. See *Baskerville*, 2012 IL 111056, ¶ 18. Courts have repeatedly held that the legislature’s intent in creating this offense was to punish an offender, not for his *past* crimes, but for his *current* offense, and according to his *current* level of dangerousness. See, e.g., *People v. Davis*, 408 Ill. App. 3d 747, 751-52 (1st Dist. 2011) (collecting cases finding “that the armed habitual criminal statute does not punish a defendant for his prior convictions, but rather for a new and separate subsequent crime”). Because the statute punishes offenders based on their current level of dangerousness, as established by their prior offenses, it follows that the

dangerousness of the offender is determined by the *current* classification of those prior offenses. So, reading the present perfect phrase “having been convicted” together with “as defined” in “this Code” in 720 ILCS 5/24-1.7(a)(1), to have a present-tense meaning is consistent with the legislature’s goals in enacting the AHC statute. *Dawson*, 2022 IL App (1st) 190422, ¶ 47 (“[A]s defined’ means as presently defined.”)

Notably, the legislature voiced similar rationales when amending the JCA: “we need to ensure that we have systems in place that protect those who are young and do things out of [...] out of maybe naiveté or stupidity versus them who do things out of malice or violence. [...] [T]here are times when Illinois has to join the chorus of what states are doing in terms of criminal justice and ensure that we are creating accurate safeguards.” 98th Ill. Gen. Assem., House Proceedings, Apr. 16, 2013, at 55² (statements of Representative Zalewski). The amendment was also meant to provide “a chance to change these kid[s]’ lives. They make mistakes. [The legislature would] rather not have them going to the criminal court house in Cook County or DuPage County, Lake County on that first felony which is a burglary where they’ve made a terrible mistake.” 98th Ill. Gen. Assem., House Proceedings, April 16, 2013, at 54-55 (statements of Representative Durkin).

Instructive here is *People v. Stewart*, in which this Court held that past offenses committed as a minor can no longer be used to trigger Class X sentencing under the recidivist statute. *Stewart*, 2022 IL 126116, ¶¶ 11, 22. While *Stewart* interprets a different statute, its analysis is still relevant because the provisions of Class X sentencing and AHC statutes are both written in the present tense.

² Wallace uses the pagination reflected in the copy of this debate’s transcript available at <http://www.ilga.gov>.

720 ILCS 5/24-1.7(a); 730 ILCS 5/5-4.5-95(b). In *Stewart*, this Court noted that a conflict in the appellate court indicated an ambiguity in the recidivist statute as to whether courts are to consider the status of the predicate offenses at the time they were committed or at the time of the present offense. *Stewart*, 2022 IL 126116, ¶ 21. This Court looked to the 2021 amendment to the recidivism statute, requiring the first offense to be committed after 21 years of age. *Id.*, ¶¶ 19-20. This Court concluded the amendment indicated a legislative intent to clarify the law, not an intent to change the law. *Id.*, ¶ 22. In other words, the legislature had always intended that a juvenile adjudication should not be used to trigger Class X sentencing. *Id.*

Although it is true that the legislature has not amended the AHC statute to clarify that the statute was never intended to apply to predicate felonies committed by those under 21, the lack of amendment does not suggest that the legislature did not intend to exclude prior convictions of juvenile offenders in adult court for the offense of AHC. As noted in *Stewart*, the legislature’s amendment of a statute in the face of a “split in the appellate court” on the interpretation of an ambiguous statute can show an “intent[] to resolve the conflict in the appellate court and clarify the meaning of the original statute.” *Stewart*, 2022 IL 126116, ¶ 22. In the contrapositive, the legislature’s silence in the face of unanimous case law can tacitly “acquiesce[]” in the courts’ interpretation of the statute. *People v. Johnson*, 2019 IL 123318, ¶ 14. Here, even if the AHC statute were similarly ambiguous, there was not yet any split in interpreting the statute when the legislature passed Public Act 101-652 on February 22, 2021: The appellate court decision in *Gray* was first issued in unpublished form on September 27, 2021; *Irrelevant* dates from December 8, 2021. Therefore, the legislature’s silence evinced

by a lack of amendment to the AHC statute does not establish that a defendant's age at the time of the prior offenses should not be considered in determining whether it constitutes a qualifying offense.

If this Court finds the AHC statute ambiguous, the rule of lenity requires courts to construe this ambiguity in favor of the defendant. *People v. Perry*, 224 Ill. 2d 312, 333 (2007). As noted in *Stewart*, a statute “is deemed ambiguous if it is capable of being understood by reasonably well-informed persons in two or more different ways.” *Stewart*, 2022 IL 126116, ¶ 13 (citing *Solon v. Midwest Medical Records Ass'n, Inc.*, 236 Ill. 2d 433, 440 (2010)). That is arguably the case here where *Dawson* found that the legislature had not intended for an offense committed as a juvenile to be used as a qualifying offense to support an AHC conviction, while *Wallace* and *Irrelevant* reached the opposite result. Therefore, any ambiguity should be construed in favor of *Wallace*. *Perry*, 224 Ill. 2d at 333.

Irrelevant and *Wallace*, moreover, were wrongly decided because the appellate courts construed the language of subsection 24-1.7(a)(1) of the AHC statute to be plain and unambiguous. *Irrelevant*, 2021 IL App (4th) 200626, ¶ 35; *Wallace*, 2023 IL App (1st) 200917, ¶ 33. This Court in *Stewart* found that the similar language in the Class X sentencing statute *was ambiguous*. *Stewart*, 2022 IL 126116, ¶¶ 16-17 (emphasis added). Since both the Class X sentencing statute and the AHC statute are written in the same present tense and are silent as to whether a prior offense, which would now be adjudicated in juvenile court, is a qualifying offense for the purposes of the statutes, it follows that the AHC statute is also ambiguous. When a statute is ambiguous, a court may look beyond the language employed and consider the purpose of the law, the evils that law was designed to remedy, and legislative history to discern legislative intent. *In re B.C.*, 176 Ill.2d

536, 542-43 (1997). *Stewart* demonstrates that the legislature did not intend to punish adult defendants indefinitely for offenses that were juvenile acts. *Stewart*, 2022 IL 126116, ¶¶ 18, 22. As to the AHC statute, the State conceded in its opening brief in *Gray* that the legislature intended for the analysis of subsection (a)(3) to focus on “*the current version*” of Illinois drug laws because it “*allowed for the fact that the society’s attitudes towards drugs can change over time.*” (*Gray*, St. Br. 24) (emphasis added). Therefore, subsection (a)(1) should also be interpreted by looking at the current law and society’s attitudes towards juvenile brain development and culpability. The only logical conclusion is that a prior offense, which would now be adjudicated in juvenile court, is not a forcible felony that qualifies as a predicate conviction for an AHC offense.

Furthermore, the legislature’s silence in the face of a split in the appellate court is inherently ambiguous – as elsewhere – even if the legislature somehow privately intended its silence to support one of the two sides of the split, observers could not determine which. For example, the lack of an amendment to the AHC statute might indicate that the legislature did intend for the statute to encompass convictions of juveniles in adult court. Or it might indicate that the legislature agreed with the appellate decision in *Gray*, 2021 IL App (1st) 191086, and did not believe an additional amendment was necessary. Or it might indicate that the legislature merely did not want to go further than the appellate decision in *Gray* to exclude any convictions obtained under the age of 21, as it did with the Class X recidivism statute. See Pub. Act 101-625 § 10-280 (eff. July 1, 2021). In the face of an appellate split, the legislature’s lack of an amendment offers this Court no signal.

Because two different interpretations of subsection 24-1.7(a)(1) are possible

in light of the split amongst *Irrelevant*, *Wallace*, and *Dawson* – one of which operates in favor of the accused – this Court should adopt the reasoning in *Stewart* as it affords defendants the benefit of the rule of lenity. Therefore, should this Court find ambiguity in subsection (a)(1), this Court should apply the rule of lenity and conclude that Wallace’s 2008 armed robbery, which he committed at age 17, could not serve as a predicate felony conviction for the AHC offense.

B. Wallace’s 2008 offense does not qualify as a predicate forcible felony conviction because in 2019, armed robbery committed by a 17-year old would not be automatically tried in the adult criminal courts, and any question of a discretionary transfer is unlikely and speculative.

As argued above, the State failed to prove beyond a reasonable doubt that Deshawn Wallace was guilty of AHC because his 2008 offense is not a qualifying predicate offense. By looking at the amendments to the JCA at the time of Wallace’s 2019 arrest for AHC, as this Court did in *Stewart*, this Court should find that the legislature intended to exclude most juveniles charged with armed robbery from being tried in adult criminal courts. Consequently, Wallace’s 2008 armed robbery would have presumptively remained in the juvenile courts. Like the defendant in *Dawson*, Wallace challenged sufficiency of the evidence, which means that the burden is not on Wallace to prove an his 2008 offense was a juvenile proceeding. *Dawson*, 2022 IL App (1st) 190422, ¶ 46. Furthermore, for the reasons stated below, the State will be unable to meet that burden given that it is unlikely that Wallace’s 2008 offense would have been discretionarily transferred to adult criminal court. And the State should not be permitted to use an offense which now would not be transferred to support a AHC conviction because juvenile adjudications are not convictions. *People v. Taylor*, 221 Ill. 2d 157, 176-78 (2006).

In 2008, when Wallace was 17 years old, he was convicted of a felony armed

robbery. (C. 15; Sec. C. 4, 6; St. Ex. 5) In 2008, a 17-year-old charged with felony armed robbery was automatically tried and convicted in adult court. 705 ILCS 405/4-120 (2008); 705 ILCS 405/5-130(1)(a)(iv)(2008). Effective in 2014, however, the legislature changed the definition of “juvenile” for purposes of criminal prosecution: “Except as provided in Sections 5-125, 5-130, 5-805, and 5-810 of this Article, no minor who was under 18 years of age at the time of the alleged offense may be prosecuted under the criminal laws of this State.” 705 ILCS 405/5-120 (2014); Pub. Act 98-61 (eff. January 1, 2014). In 2019, armed robbery was not one of the enumerated offenses that were automatically transferred to adult court. 705 ILCS 405/5-130(1)(a)(2019). Thus, under the law in effect at the time of Wallace’s arrest in this case in 2019, a 17-year-old charged with an armed robbery would have been presumptively tried as a juvenile. 705 ILCS 405/5-130(1)(a) (2019). Such an offense, then, cannot result in a predicate “conviction” under the AHC statute. See *Taylor*, 221 Ill. 2d at 176-78 (a juvenile adjudication is not a “conviction”).

Nor would Wallace’s case be transferred under the presumptive, or discretionary transfer provisions. Since Wallace did not commit the 2008 offense in furtherance of illegal drug activity and did not have a prior adjudication or conviction for a forcible felony, the offense would not be subject to presumptive transfer. 705 ILCS 405/5-805(2)(a) (2021); (Sec. C. 6, 8) And nothing in the record suggests that Wallace would be subject to discretionary transfer under the laws in effect in 2019. 705 ILCS 405/5-805(3) (2019).

The discretionary transfer provision in effect in 2019 explicitly requires the court to consider a wide variety of factors about the juvenile offender’s social history, rehabilitative potential, and circumstances of the offense. 705 ILCS

405/5-805(3)(b) (2019). The discretionary transfer statute provides, “In considering these factors, the court shall give greater weight to the seriousness of the alleged offense, the minor’s prior record of delinquency than to the other factors listed in this subsection.” *Id.* As of June 20, 2008, the date of Wallace’s arrest for the armed robbery, he had no adjudications of delinquency or prior felony convictions. (Sec. C. 6)

Furthermore, Wallace was the type of adolescent that the new laws are meant to protect from the adult criminal court. 705 ILCS 405/5-805(3)(b)(ii). As laid out in his pre-sentence investigation report, Wallace was raised by a single mother, who kicked him out of the house when he started drinking and smoking at the age of 17. (Sec. C. 7) At this time he joined the New Breeds gang and dropped out of school. (Sec. C. 8) However, while incarcerated, he obtained a GED in 2009. (Sec. C. 7) The discretionary transfer statute specifically requires the trial court to consider whether there is a reasonable likelihood that the minor can be rehabilitated before the expiration of the juvenile court’s adjudication. 705 ILCS 405/5-805(3)(b)(v)(B). Under these circumstances, discretionary transfer of Wallace’s 2008 offense would be inappropriate.

This conclusion is further supported by statistical data gathered by the Illinois Juvenile Justice Commission. See, Trial and Sentencing of Youth as Adults in the Illinois Justice System: Transfer Data Report (IJJ Report), attached at Appendix.³ The IJJ Report reflects that statewide, only *two* armed robbery cases were subject to §5-805 motion transfer to adult court in 2018, one in LaSalle County

³ I J J R e p o r t a v a i l a b l e o n l i n e a t <https://ijjc.illinois.gov/wp-content/uploads/2021/12/2018-Juvenile-Transfer-Report-v1-NP.pdf>

and the second in Madison County. IJJ Report, p.p. 32, 34. And in Cook County, where Wallace was convicted of armed robbery, the *only* charges that were transferred in 2018 under §5-805 were for aggravated unlawful use of a weapon and aggravated vehicular hijacking. IJJ Report, p. 25.

Not only is it unlikely that Wallace would be subject to discretionary transfer, any possibility of transfer is only speculative. *ee Dawson*, 2022 IL App (1st) 190422, ¶33 (The court acknowledged that the defendant could have been transferred “*if* the State had petitioned and *if* the trial court had granted the petition” but ultimately rejected this argument, because “there is no way to know for certain what would have happened.”) Therefore, the burden is not on a defendant to prove that an offense would remain a juvenile proceeding. *Id.*, ¶ 46; see *In re Zachary G.*, 2021 IL App (5th) 190450, ¶ 30 (“The State maintains the burden of proof in a discretionary transfer motion”); compare 705 ILCS 405/5-805(2)(a) (2019) (juvenile’s burden to rebut presumption that his case should be transferred to adult court) with 705 ILCS 405/5-805(3) (2019) (State must establish probable cause for the juvenile’s discretionary transfer to adult court). The statistical data suggests that Wallace would not have been transferred to criminal court in 2019, and a consideration of his background makes it even less likely he would have been transferred. Therefore, his 2008 conviction would have resulted in a juvenile adjudication.

C. Alternatively, if this Court should find that trial counsel stipulated to the sufficiency of Wallace’s 2008 offense as a predicate felony under the armed habitual criminal statute, this Court should reach this issue as a claim of ineffective assistance of counsel.

At the stipulated bench trial, Wallace’s counsel stipulated that State Exhibits 4 and 5, which were two certified copies of convictions, were her client’s convictions.

(R. 77-78) The appellate court concluded that “defense counsel merely stipulated that defendant had been convicted of the two prior offenses, but did not stipulate they were ‘qualifying.’” *People v. Wallace*, 2023 IL App (1st) 200917, ¶ 43. By contrast, in *Gray*, this Court did not reach the defendant’s sufficiency claim because this Court found that defense counsel stipulated that the defendant had “two prior qualifying felony convictions for the purposes of sustaining the charge of armed habitual criminal.” *Gray*, 2024 IL 127815, ¶¶ 27-34. Since Wallace’s counsel only stipulated to the facts of the convictions, not that they qualified as predicate offenses for AHC, there is no stipulation that forecloses Wallace’s sufficiency challenge to his AHC conviction.

If this Court were to find that defense counsel stipulated that Wallace had previously been convicted of two qualifying felony offenses, this Court should find that counsel was ineffective. A criminal defendant has the right to the effective assistance of counsel. U.S. Const. amends. VI, XIV; Ill. Const. 1970, art. I, § 8; *Strickland v. Washington*, 466 U.S. 668, 684-86 (1984). Defense counsel provides ineffective assistance when his representation falls below an objective standard of reasonableness, and when the deficiencies in his presentation undermine confidence in the outcome of the proceedings or deprive the defendant of a fair trial. *Strickland*, 466 U.S. at 687-89; *People v. Albanese*, 104 Ill. 2d 504, 524-27 (1984).

Because Wallace’s 2008 armed robbery was not a qualifying predicate conviction as he was 17 years old when he committed it, defense counsel would be ineffective for stipulating that Wallace had been previously convicted of two offenses that were qualifying under the laws of Illinois. (R. 77-78) This would be objectively unreasonable as Wallace’s 2008 armed robbery conviction could not

serve as a predicate offense because, as argued above, it was not a conviction under the Act. *People v. Coleman*, 2015 IL App (4th) 131045, ¶¶ 71, 78 (finding defense counsel ineffective for stipulating to the existence of over 900 grams of cocaine where the stipulation was factually unfounded). Counsel's performance was also deficient because she failed to rely on *Miles*, in which the First District appellate held that the defendant's prior offense, committed when he was 15, could not be used to enhanced his sentence to a Class X offense. *Miles*, 2020 IL App (1st) 180736, ¶¶ 11, 22. The decision in *Miles* was issued in January 17, 2020, more than a month before Wallace's stipulated bench trial. (R. 73) In addition, *People v. Smith*, 2019 IL App (1st) 162414-U, ¶¶ 8-9, 16, in which the First District appellate court held the defendant's prior offense, which he committed when he was 17 years old, was not a qualifying offense for Class X sentencing because the same offense would have presumptively led to a juvenile adjudication, was issued even earlier, in July 2019.⁴ Counsel is presumed to know the law, *People v. Perkins*, 229 Ill. 2d 34, 51 (2007), but here failed to do so. Further, to the extent that counsel's stipulation was due to a misapprehension of the law, counsel's failure to object was not strategic. See *People v. Wright*, 111 Ill. 2d 18, 31 (1986) (failing to make an argument because of a mistake about the controlling law is objectively deficient performance).

Wallace was prejudiced by counsel's stipulation, because a defendant's qualifying prior convictions are an element of the offense of AHC. *People v. Barefield*, 2019 IL App (3d) 160516, ¶ 12. The indictment alleged that Wallace committed the offense of AHC when he knowingly possessed a firearm after having previously

⁴ Unpublished cases are cited not for precedential value but for illustrative purposes. See Supreme Court Rule 23(e); *People v. Petty*, 311 Ill. App. 3d 301, 303 (2nd Dist. 2000).

been convicted of unlawful use of a weapon by a felon in case number 15 CR 5613 and armed robbery in case number 08 CR 12591. (C. 15) Wallace had no other convictions to serve as a predicate for AHC. (Sec. C. 6) Therefore, without the 2008 armed robbery offense, he could not be convicted of AHC.

In *Gray*, the defendant argued that his counsel's agreement to the stipulation constituted ineffective assistance. *Gray*, 2024 IL 127815, ¶¶ 29-32. This Court rejected this argument because Gray had another conviction that could substitute for the conviction that would not result in a juvenile adjudication, and therefore Gray was not prejudiced. *Id.*, ¶ 32. In contrast, here, Wallace did not have another conviction in his background that could substitute for the armed robbery; thus, he was prejudiced by counsel's representation. (Sec. C. 6) Therefore, this Court can review the error as ineffective assistance of counsel.

D. Conclusion

In 2019, a case involving a 17-year-old charged with armed robbery would not be heard in adult court but rather in juvenile court, and the minor therefore would not be convicted of a felony, but rather adjudicated delinquent. The AHC statute requires two prior convictions that qualify as predicates under the current law. Wallace's 2008 armed robbery offense cannot serve as predicate offense for AHC because it would have resulted in a juvenile adjudication at the time of his arrest for the current offense. As such, the State failed to prove beyond a reasonable doubt that Wallace was guilty of being an AHC; in the alternative, defense counsel was ineffective for stipulating that Wallace's prior offenses qualified as predicates for the AHC offense. Accordingly, this Court should vacate the appellate court's decision and either reverse Wallace's AHC conviction, or, in the alternative, reduce the conviction to the lesser-included offense of unlawful use of a weapon by a felon.

CONCLUSION

For the foregoing reasons, Deshawn Wallace, defendant-appellant, respectfully requests that this Court vacate the appellate court's order and either reverse Wallace's armed habitual criminal conviction outright or, in the alternative, reduce it to the lesser-included offense of unlawful use of a weapon by a felon.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342, is 30 pages.

/s/ Stephanie T. Puente
STEPHANIE T. PUENTE
Assistant Appellate Defender

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NOTICE

The text of this opinion may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

2023 IL App (1st) 200917

No. 1-20-0917

Opinion filed September 29, 2023.

First Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
)	
v.	)	No. 19 CR 7197
)	
DESHAWN WALLACE,	)	The Honorable
	)	Ursula Walowski,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court, with opinion.
Presiding Justice Fitzgerald Smith and Justice Coghlan concurred in the judgment and opinion.

OPINION

¶ 1 Following a bench trial, defendant Deshawn Wallace was found guilty of being an armed habitual criminal, in that he possessed a firearm with two prior qualifying felonies, and he was sentenced to six years in prison. Defendant appeals, contending that the trial court erred in denying his motion to suppress because police lacked reasonable suspicion to frisk and then search defendant for weapons. Defendant also contends the State failed to establish the statutory elements of the armed habitual criminal statute beyond a reasonable doubt, therefore requiring reversal of his conviction. We affirm.

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¶ 2

BACKGROUND

¶ 3 Defendant was arrested after police stopped the vehicle in which he was a passenger and ultimately found him in possession of a handgun for which he did not have a firearm owners identification (FOID) card pursuant to the Firearm Owners Identification Card Act (430 ILCS 65/0.01 *et seq.* (West 2018)) or a concealed carry license pursuant to the Firearm Concealed Carry Act (430 ILCS 66/1 *et seq.* (West 2018)), as required. See *People v. McMichaels*, 2019 IL App (1st) 163053, ¶ 28. Defendant was charged with one count of being an armed habitual criminal, along with other offenses.

¶ 4 Prior to trial, defendant filed a motion to suppress the inventoried weapon alleging police lacked probable cause to conduct a search. Defendant called Chicago police officer Edward Zeman, whose direct testimony and cross-examination revealed that he and his partner, a fellow Chicago police officer, were on patrol May 2, 2019, due to a conflict between two street gangs that had resulted in several shootings. Around 11 p.m., they stopped a car that had no rear brake light. Officer Zeman, dressed in plain clothes, approached the front passenger side, where defendant was seated, while his partner approached the driver's side. As Officer Zeman approached, he smelled alcohol and fresh cannabis emanating from the vehicle's interior, which contained three people, including defendant. Officer Zeman noted that it smelled like alcohol and asked if they had been drinking, to which the rear passenger responded, yes. Officer Zeman stated, "it smells like Remy" (a type of alcohol), and the rear passenger said yes and laughed. He then observed a bag of fresh cannabis inside between the front passenger seat and center console, just next to defendant's leg. Officer Zeman noted that it was illegal to have open alcohol inside the car, and the narcotics and alcohol gave him a basis to search the vehicle.

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¶ 5 During the encounter, defendant would not make direct eye contact with Officer Zeman, his breathing was heavy, as his chest was moving up and down, and he “took a big swallow,” all of which Officer Zeman found to be unusual. While defendant’s right hand was in his right lap area, his left hand was moving by his left waist, near the center console towards the cannabis. Officer Zeman then observed a “large bulge” in defendant’s front jacket pocket. That is, he could see both the bulge and cannabis from his vantage point outside the vehicle.

¶ 6 Officer Zeman requested that defendant step out of the vehicle, but defendant did not comply and appeared hesitant to exit the car. Defendant then asked why and offered that he could simply give Officer Zeman his identification instead. Officer Zeman testified again that defendant’s behavior was abnormal. He feared defendant might have a weapon, so he reached into the car and performed a protective pat-down over the bulged area of defendant’s jacket while defendant was still seated. Officer Zeman felt “a hard metal object consistent with a handgun” and then recovered what was later revealed to be a loaded Bursa Thunder semiautomatic handgun from defendant’s jacket pocket as Officer Zeman called over his partner. His partner handcuffed defendant, and Officer Zeman searched the vehicle. Defendant admitted that he did not have a FOID card or concealed carry license. At the suppression hearing, defendant did not establish when he made this admission.

¶ 7 The vehicle’s driver was not arrested, although Officer Zeman believed she received a ticket from his fellow officer. It was later revealed that the stop occurred at 3758 W. Chicago Avenue, and police did indeed recover and inventory the cannabis but not any alcohol.¹ When Officer Zeman first approached the vehicle, the back window was down but not the window by

¹This evidence was revealed at trial, where Officer Zeman briefly testified as a witness for the defense. For the sake of readability, we have included it in the fact section involving the suppression motion.

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defendant. Defendant also did not bend down under his seat or make any “furtive movements.”

Following this evidence, the defense rested.

¶ 8 The State moved to admit Officer Zeman’s body worn camera (body cam), capturing the traffic stop, and it was entered into evidence following a stipulation and played before the court. Consistent with Officer Zeman’s testimony, the video shows him approaching the passenger side of the vehicle and affirms his interchange with the back right passenger, whose window was almost halfway down. Officer Zeman queried, “You all just drinking?” to which the back right passenger answered yes, while looking at Officer Zeman. When Officer Zeman further stated, “It smells like Remy, right” that same passenger laughed, looked away, and said, “Yeah, exactly.” The video also depicts Officer Zeman shining his flashlight and looking into both the rear passenger seat and the front passenger seat. During this time, defendant gave a sideways glance to Officer Zeman and then looked to his left and then straightforward.

¶ 9 The video further shows that as the driver exited the vehicle under the other officer’s direction, Officer Zeman opened the front passenger door. Defendant continued to stare straightforward and only made eye contact after Officer Zeman asked him to “hop out for me.” Defendant hesitated. Instead of complying with the request, he looked down and then straightforward while moving his left hand from the top of the center console down to the area, apparently between his seat and the console, and he looked down toward that area a second time. Defendant also took a visible gulp before turning to Officer Zeman and asking, “for what, you want my ID?” Officer Zeman said no, that he asked defendant to step out because there was open alcohol in the car, although he did not “care about the little bit of weed or whatever that you got there, right.” Defendant looked down as Officer Zeman moved closer to defendant and performed the protective pat down over defendant’s right jacket pocket (which showed a slight

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bulge), unzipping the pocket, and recovering the handgun. Defendant remained seated with his seatbelt on the entire time. Officer Zeman took the handgun and apparently unloaded it while his partner handcuffed defendant, leading him to the police vehicle.

¶ 10 Defendant argued in closing that the police lacked probable cause to support the vehicle stop and search of defendant. The defense noted that Officer Zeman found the cannabis was of no concern, and defendant had the right to question why he was being asked to exit the vehicle. The defense argued, “[i]t was purely a stop to search anybody,” and there was no indication the officer was in danger. The State countered that officers conducted a valid traffic stop for a broken brake light, then smelled cannabis and alcohol emanating from the car, observed defendant’s unusual behavior, as well as the bulge in his right pocket, all of which supported the pat-down and search.

¶ 11 The trial court denied defendant’s motion to suppress. The court found Officer Zeman testified credibly and consistently with the body cam video. The court found the traffic stop was justified by the brake light violation and further found police had reasonable suspicion to perform a protective pat-down of defendant while inside the vehicle given the visible bulge and defendant’s actions. The court explained, “what I find is a significant point i[s] that when [Officer Zeman] reached in[,] he went directly to that jacket pocket and patted it down[,] and he explained the reason for that is because he saw the bulge there that corroborates the officer.” Defendant filed a motion to reconsider, which was denied.

¶ 12 At trial, the parties stipulated that if called, Officer Zeman would testify as at the previous suppression hearing. They also stipulated to the body cam video and records revealing that defendant did not possess a FOID card or a concealed carry license. Finally, the State entered certified copies of conviction showing defendant previously had been convicted of armed

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robbery (No. 08-CR-12591) and unlawful use of a weapon by a felon (No. 15-CR-5613), and the defense stipulated that these were defendant's convictions. The State rested, and the defense called Officer Zeman, who added a few details about the traffic stop. The defense then rested.

¶ 13 At the trial's conclusion, the court found defendant guilty of being an armed habitual criminal (count I), and the other counts were merged into count I.² Defendant moved for a new trial, arguing the court erred in denying the motion to suppress, but this was denied. The court sentenced defendant to six years in prison for being an armed habitual criminal. This appeal followed.

¶ 14 ANALYSIS

¶ 15 Defendant first challenges the denial of his suppression motion. When reviewing the trial court's ruling on a motion to suppress evidence, we ordinarily apply a two-part standard of review. *People v. Eubanks*, 2019 IL 123525, ¶ 33. We give great deference to the court's factual findings and will reverse them only if they are against the manifest weight of the evidence, while we review *de novo* the court's legal ruling on whether evidence should be suppressed. *People v. Cregan*, 2014 IL 113600, ¶ 22. A reviewing court may consider all trial evidence in determining whether the court's decision denying a motion to suppress was correct. *People v. Murdock*, 2012 IL 112362, ¶¶ 35-36. To prevail at the trial level, the defendant bears the burden of producing evidence and establishing a *prima facie* case that the search and seizure was unreasonable before

²The report of proceedings shows that the trial court found defendant guilty on counts I through VI and merged all counts into count I (armed habitual criminal). However, the court noted prior to sentencing that it had found defendant guilty of counts I through IV and VI through VII, which merged into count I. The court stated it found defendant not guilty of count V. The half sheet shows the trial court found defendant guilty of counts I through IV and counts VI through VII, with all counts merging into count I. The mittimus shows the trial court found defendant guilty of counts I through IV and count VI, with all counts merging into count I. We find the oral pronouncement at sentencing controls, and therefore defendant was found guilty of counts I through IV and VI through VII. See *People v. Clark*, 2014 IL App (1st) 123494, ¶ 21.

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the burden then shifts to the State. *Cregan*, 2014 IL 113600, ¶ 23; *People v. Thornton*, 2020 IL App (1st) 170753, ¶ 23. Also, the ultimate burden always remains with the defendant. *Thornton*, 2020 IL App (1st) 170753, ¶ 23.

¶ 16 Defendant does not challenge the initial stop of the vehicle in which he was a passenger, as there was probable cause for the police to believe a traffic violation occurred. See *People v. Hackett*, 2012 IL 111781, ¶ 20. Rather, defendant contends that police lacked reasonable suspicion to perform the subsequent protective pat down of him. He maintains there was no reason to believe he was armed and dangerous.

¶ 17 Both the United States Constitution and the Illinois Constitution protect every person from unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. Reasonableness under the fourth amendment generally requires a warrant supported by probable cause. *People v. Johnson*, 237 Ill. 2d 81, 89 (2010); *Thornton*, 2020 IL App (1st) 170753, ¶ 25. Probable cause exists where the facts and circumstances, considered as a whole, are sufficient to justify the belief by a reasonably cautious person that the defendant is or has been involved in a crime. *People v. Hopkins*, 235 Ill. 2d 453, 472 (2009). Nonetheless, a police officer may detain a person even in the absence of such a warrant with probable cause to arrest. *Thornton*, 2020 IL App (1st) 170753, ¶ 26. Specifically, a limited exception to the warrant requirement under *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968), permits a police officer to briefly stop (and therefore necessarily seize) a person for temporary questioning if he reasonably believes the person has committed, or is about to commit, a crime. *Thornton*, 2020 IL App (1st) 170753, ¶ 26. Notably, the usual traffic stop is analogous to a *Terry* investigative stop. *People v. Jones*, 215 Ill. 2d 261, 270 (2005).

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¶ 18 In addition, it is well established that following a lawful traffic stop, police can, as a matter of course, order the driver and any passengers out of the vehicle while completing the stop without violating any fourth amendment protections. *Maryland v. Wilson*, 519 U.S. 408, 415 (1997); *People v. Sorenson*, 196 Ill. 2d 425, 433 (2001). During the stop, officers may also question the driver and passengers, provided the inquiries do not unnecessarily extend the duration of the stop. *People v. Sutton*, 2020 IL App (1st) 181616, ¶ 21. An officer may then subject a person to a limited search for weapons (“frisk”) only if he reasonably believes that person is armed and dangerous. *Sorenson*, 196 Ill. 2d at 433; 725 ILCS 5/108-1.01 (West 2018). This search is for the protection of the police officer and others in the vicinity, not to gather evidence. *Sorenson*, 196 Ill. 2d at 432. Whether the vehicle stop was valid is a separate inquiry from whether the weapons frisk was valid. *Sorenson*, 196 Ill. 2d at 433.

¶ 19 For the frisk, reasonable suspicion must be based on commonsense judgment and inferences about human behavior. *People v. Salgado*, 2019 IL App (1st) 171377, ¶ 31. Nervous, evasive behavior or unusual conduct is a pertinent fact in determining reasonable suspicion, as is the fact that the stop occurred in a high crime area. *Id.* ¶¶ 25, 31. Moreover, a “bulge in a validly stopped suspect’s clothing is a circumstance which is generally sufficient to warrant a frisk.” *People v. Morales*, 221 Ill. App. 3d 13, 18 (1991). In judging a police officer’s conduct, we apply an objective standard, considering whether the facts available to the officer at the moment of the seizure justify the action taken. *Hackett*, 2012 IL 111781, ¶ 29.

¶ 20 Here, the totality of the circumstances justified Officer Zeman’s limited search for weapons from defendant. See *Salgado*, 2019 IL App (1st) 171377, ¶ 32; *McMichaels*, 2019 IL App (1st) 163053, ¶¶ 22-23. First, Officer Zeman was justified in ordering the occupants out of the vehicle while completing the stop. Moreover, he had probable cause to search the vehicle for

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alcohol given the smell emanating from inside and the fact that the back passenger essentially admitted to consuming alcohol therein. See *Wilson*, 519 U.S. at 415; *Sorenson*, 196 Ill. 2d at 433.

¶ 21 Second, defendant's hesitation following this lawful request, combined with Officer Zeman's observations that defendant refused to make direct eye contact during the encounter, exhibited heavy breathing, made a large gulp, moved his left hand by the center consul and his left waist, and significantly, had a large bulge in his front jacket pocket, presented Officer Zeman with reasonable suspicion that defendant was presently armed and dangerous. See *Pennsylvania v. Mims*, 434 U.S. 106, 112 (1977) (*per curiam*) (finding a large bulge in the defendant's jacket pocket justified the protective pat down); *McMichaels*, 2019 IL App (1st) 163053, ¶ 23; *Salgado*, 2019 IL App (1st) 171377, ¶¶ 31-32. This was so much so that Officer Zeman reached into the car to perform the protective pat-down over the bulged area as defendant was seated, and Officer Zeman specifically testified that he feared defendant had a weapon. *Cf. People v. Smith*, 2015 IL App (1st) 131307, ¶ 36 (noting, the defendant's furtive movement in the vehicle, alone, was insufficient to support the vehicle search, where the officer failed to offer specific and articulable facts supporting that he feared for his safety); *People v. Surlis*, 2011 IL App (1st) 100068, ¶¶ 10, 40 (finding the protective pat-down search unlawful where officers testified they do " 'protective pat downs on basically everybody' " and the defendant did not display conduct creating fear or a threat of violence).

¶ 22 Officer Zeman then felt a hard metal object consistent with a handgun, and on further search, his suspicions were confirmed since defendant was indeed carrying a semiautomatic handgun, admittedly without the appropriate licensure. In addition, it was late evening, officers were patrolling the area due to a gang conflict resulting in several shootings, and Officer Zeman testified that in his experience, defendant's behavior was unusual. See *Salgado*, 2019 IL App

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(1st) 171377, ¶ 25; *cf. People v. Davis*, 352 Ill. App. 3d 576, 581-83 (2004) (finding the officer had no reason to believe the defendant was armed and dangerous, where the defendant was compliant with the officer's requests, it was not a high crime area, the defendant only exhibited some nervousness, and he could have placed his hand in his pocket for any number of innocent reasons).

¶ 23 Again, “when an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or others, the officer may conduct a pat-down search to determine whether the person is in fact carrying a weapon.” *Sorenson*, 196 Ill. 2d at 432; *Salgado*, 2019 IL App (1st) 171377, ¶ 17. Indeed, it is well recognized that roadside encounters between police and suspects are especially hazardous. *Smith*, 2015 IL App (1st) 131307, ¶ 24. Plus, we give due weight to the specific reasonable inferences an officer is entitled to draw from the facts in light of his experience. *Sorenson*, 196 Ill. 2d at 433. The trial court did just that, finding Officer Zeman credible and his actions objectively reasonable based on the specific and articulable facts that defendant was illegally armed. See *Wilson*, 519 U.S. at 411 (noting, the touchstone of a fourth amendment analysis is always reasonableness); *McMichaels*, 2019 IL App (1st) 163053, ¶ 22 (noting the *Terry* standard). While any of these factors alone might not have been sufficient to justify the search, together they were sufficient. The opposite conclusion is not warranted, and therefore, the trial court's finding was not against the manifest weight of the evidence. See *Davis*, 352 Ill. App. 3d at 579. Defendant did not fulfill his burden of producing evidence establishing that the search and seizure were unreasonable. See *Cregan*, 2014 IL 113600, ¶ 23; *Thornton*, 2020 IL App (1st) 170753, ¶ 23.

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¶ 24 In reaching this conclusion, we reject defendant's suggestion that the officers were required to first determine if defendant was carrying a FOID card and concealed carry license before conducting the protective pat-down, search for weapons, and detention pursuant to *Terry*. In so arguing, defendant relies on two cases that have since been vacated and do not represent authoritative law. See *Salgado*, 2019 IL App (1st) 171377, ¶ 33 (rejecting a similar argument). He also relies on an Illinois dissent and inapposite cases from other jurisdictions. Thus, he has not adequately supported his contention with binding or relevant authority, violating our supreme court rules. See Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020) (requiring an appellant's argument to contain the contentions of the appellant and reasons therefor, with citation of the authorities relied on, and noting points not argued are forfeited and shall not be raised in the reply brief).

¶ 25 Notwithstanding that, the existence of a possible innocent explanation, like defendant's possession of the required gun licenses, did not negate reasonable suspicion in this case given the totality of factors presented to the police. See *supra* ¶¶ 21-23; *McMichaels*, 2019 IL App (1st) 163053, ¶ 32; *People v. Thomas*, 2019 IL App (1st) 170474, ¶ 39. Defendant's hesitancy and unusual behavior, together with his failure to volunteer that he had the requisite gun licensure, inspired suspicion that defendant illegally possessed the gun. See *McMichaels*, 2019 IL App (1st) 163053, ¶ 38; *People v. Hood*, 2019 IL App (1st) 162194, ¶ 71. Absolute certainty was not required, and the frisk in this case was no more than necessary to secure officer safety given the practical considerations of everyday life, as a dead or shot police officer cannot request licensure. See *Salgado*, 2019 IL App (1st) 171377, ¶ 36; *McMichaels*, 2019 IL App (1st) 163053, ¶¶ 34-35 (noting, public policy demands that police must be safe in the performance of their duties).

¶ 26 Last, defendant did not offer evidence or argument about when the detention in this case transformed into an arrest or exactly when officers established that defendant lacked the requisite

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licensure. See *People v. Colyar*, 2013 IL 111835, ¶ 46 (handcuffing does not automatically transform a *Terry* stop into an illegal arrest); *McMichaels*, 2019 IL App (1st) 163053, ¶ 37. As a result, his claim that officers *arrested* him first without inquiring about the gun licensure is not well-taken. As set forth, the burden of establishing an unreasonable search and seizure remained with defendant.

¶ 27 Defendant also argues the body cam footage did not corroborate Officer Zeman's testimony that defendant was breathing heavily or in an unusual pattern. He maintains the body cam footage established that defendant avoided making eye contact in part due to Officer Zeman waving a flashlight in his face.

¶ 28 Having viewed the body cam video in full, we disagree. The video shows defendant displaying nervous, evasive behavior that was very much at odds with the back passenger, who made ready eye contact with Officer Zeman, notwithstanding that the flashlight was shown in his face several times. This weakens defendant's flashlight argument. We also note that the video mostly shows defendant from a side view and the shoulder up, so would not capture heavy breathing or every detail perceived by Officer Zeman. For example, there were periods when defendant was obscured by the glare of the flashlight or Officer Zeman was not directly facing him with his body worn camera. Notwithstanding that, the video does capture the visible gulp defendant takes before further delaying his exit from the vehicle. Moreover, the trial court found Officer Zeman credible and that the video corroborated Officer Zeman's testimony in significant respects without contradicting it. We cannot say that determination is against the manifest weight of the evidence.

¶ 29 For all these reasons, defendant's fourth amendment claim fails.

¶ 30 *Armed Habitual Criminal*

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¶ 31 Defendant next contends he was improperly convicted of being an armed habitual criminal because the State failed to establish a necessary predicate conviction. Defendant notes the facts are not in dispute but only whether those facts satisfy the elements of the armed habitual criminal statute. The interpretation of a statute presents a question of law, which we review *de novo*. *People v. Bradford*, 2016 IL 118674, ¶¶ 14-15; *People v. Allen*, 322 Ill. App. 3d 724, 725 (2001). Section 24-1.7 of the Criminal Code of 2012 (Code) (720 ILCS 5/24-1.7 (West 2018)) provides:

“(a) A person commits the offense of being an armed habitual criminal if he *** possesses *** any firearm after having been convicted a total of 2 or more times of any combination of the following offenses:

- (1) a forcible felony as defined in Section 2-8 of this Code;
- (2) unlawful use of a weapon by a felon; aggravated unlawful use of a weapon; aggravated discharge of a firearm; vehicular hijacking; aggravated vehicular hijacking; aggravated battery of a child as described in Section 12-4.3 or subdivision (b)(1) of Section 12-3.05; intimidation; aggravated intimidation; gunrunning; home invasion; or 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; or
- (3) any violation of the Illinois Controlled Substances Act or the Cannabis Control Act that is punishable as a Class 3 felony or higher.”³

Being an armed habitual criminal is a Class X felony. *Id.*

³ “ ‘Conviction’ means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense, rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.” 720 ILCS 5/2-5 (West 2018).

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¶ 32 Here, defendant's conviction for armed habitual criminal was based on the two prior predicate offenses of unlawful use of a weapon by a felon (case No. 15-CR-5613) and armed robbery with a firearm (case No. 08-CR -12591). Armed robbery with a firearm is a forcible felony under the armed habitual criminal statute. See *id.* §§ 2-8, 24-1.7(a)(1).⁴ Defendant challenges only the State's reliance on the armed robbery offense. He argues that he was age 17 when he committed the armed robbery with a firearm, and at present, any resultant guilty finding would be a juvenile adjudication, rather than a "conviction." See 705 ILCS 405/5-120 (West 2018); *People v. Stewart*, 2022 IL 126116, ¶ 22; see also *People v. Taylor*, 221 Ill. 2d 157, 176 (2006) (noting, juvenile adjudications do not constitute convictions). He therefore contends the State failed to prove beyond a reasonable doubt that his armed robbery offense was a predicate "conviction" under section 24-1.7 of the Code. We disagree.

¶ 33 We look first to the plain language of section section 24-1.7, so as to give effect to the legislature's intent. The best indication of legislative intent is the statutory language, given its plain and ordinary meaning. *People v. McChriston*, 2014 IL 115310, ¶ 15. Where, as here, the language of the statute is clear and unambiguous, we will apply the statute without resort to further aids of statutory construction. *Id.* In addition, we will not read into the statute exceptions, conditions, or limitations not expressed by the legislature. *In re N.C.*, 2014 IL 116532, ¶ 50. Section 24-1.7 provides that a defendant is guilty of being an armed habitual criminal "after having been convicted" of several enumerated predicate felonies, including "a forcible felony as

⁴ " 'Forcible felony' means treason, 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 kidnaping, kidnaping, 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 (West 2018).

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defined in Section 2-8 of this Code.”⁵ (720 ILCS 5/24-1.7 (West 2018)). “[H]aving been convicted” is a perfect passive participle construction and is used to emphasize that a first action (here, a conviction) has been completed before the second action begins (being found an armed habitual criminal). See *Participles*, The Latin Library, <https://thelatinlibrary.com/101/Participles.pdf> (last visited Sept. 28, 2023) [<https://perma.cc/7ZNR-RB64>]. Grammatically, it is the equivalent of saying, “if he/she *was* convicted.”

¶ 34 In addition, under subsection (a)(1) of the armed habitual criminal statute (“a forcible felony as defined in Section 2-8 of this Code” (720 ILCS 5/24-1.7 (West 2018))), the predicate offense still must constitute a crime when the defendant illegally possesses the very firearm that triggers application of the armed habitual criminal statute. For example, armed robbery was a forcible felony when defendant committed that crime in 2008, and it remained a forcible felony when defendant committed the offense of being an armed habitual criminal in 2019. See *id.* § 2-8. As such, it could rightfully serve as a qualifying predicate conviction underlying defendant’s present offense. Indeed, it is well established that a defendant found guilty of being an armed habitual criminal is punished for the new and separate crime of possessing a firearm, not for his prior acts or convictions. *People v. Bailey*, 396 Ill. App. 3d 459, 463 (2009); *People v. Leonard*, 391 Ill. App. 3d 926, 931 (2009). The prior convictions serve only as elements of the new crime. *Bailey*, 396 Ill. App. 3d at 463; *Leonard*, 391 Ill. App. 3d at 931; see also *People v. Davis*, 408 Ill. App. 3d 747, 751 (2011) (noting, “[a] defendant’s prior crimes count as elements of a violation of the armed habitual criminal statute”).

⁵ Again, “conviction” means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense, rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury. 720 ILCS 5/2-5 (West 2018).

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¶ 35 Here, it is beyond dispute that defendant committed the predicate offense of armed robbery in 2008 at age 17, and the guilty finding for that offense resulted in a conviction in adult criminal court (not juvenile court). Later, in 2014, the legislature amended the juvenile statute so that an armed robbery offense committed at age 17 would result in only a juvenile adjudication. See *Stewart*, 2022 IL 126116, ¶ 7. While defendant would like us to read that amendment into the armed habitual criminal statute, we cannot. The amendment is not retroactive, and defendant's "invitation is one for the legislature, not this court." *People v. Irrelevant*, 2021 IL App (4th) 200626, ¶ 37; 705 ILCS 405/5-120 (West 2018); see also 5 ILCS 70/4 (West 2018). In other words, no rule of construction authorizes this court to declare that the legislature did not mean what the plain language of the statute imports, nor may we rewrite a statute to add provisions or limitations the legislature did not include. *People v. Smith*, 2016 IL 119659, ¶ 28. In view of the plain language of the armed habitual criminal statute and the fact that it references past convictions for predicate offenses, we conclude that defendant was "convicted" of armed robbery in 2008 (which remained a forcible felony in 2019), and this was sufficient to serve as a predicate offense to being an armed habitual criminal. Accord *Irrelevant*, 2021 IL App (4th) 200626, ¶¶ 35-37; see also *Fitzsimmons v. Norgle*, 104 Ill. 2d 369, 372-73 (1984) (a juvenile defendant subject to adult court may have a "conviction").

¶ 36 In reaching this conclusion, we reject defendant's reliance on *People v. Gray*, 2021 IL App (1st) 191086. In *Gray*, the court held that the defendant's narcotics delivery offense, committed when he was age 17 in 2002, could not serve as a predicate for being an armed habitual criminal based on the plain language of subsection (a)(3) of the armed habitual criminal statute. *Id.* ¶¶ 9-11, 18; see 720 ILCS 5/24-1.7(a)(3) (West 2018) (a predicate offense is "any violation of the Illinois Controlled Substances Act or the Cannabis Control Act that *is punishable*

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as a Class 3 felony or higher” (emphasis added)). *Gray* observed that the narcotics offense, if committed in 2016, would have resulted in a juvenile adjudication and not a conviction due to the 2014 legislative amendment to the juvenile statute. *Gray*, 2021 IL App (1st)191086, ¶ 11; see *Stewart*, 2022 IL 126116, ¶ 7. The court reasoned, “In view of the changes to the Juvenile Court Act of 1987 [(705 ILCS 405/5-120 (West 2016))], for most offenses age of the defendant operates as an element of the offense.” *Gray*, 2021 IL App (1st) 191086, ¶ 15. Honing in on that, plus the present tense language of subsection (a)(3), *Gray* held that the 2002 drug offense was not a predicate offense and that the State failed to prove defendant guilty of being an armed habitual criminal. *Id.* ¶ 16; see also *People v. Dawson*, 2022 IL App (1st) 190422, ¶ 48 (holding armed robbery by a 17-year-old was not a predicate offense for being an armed habitual criminal).

¶ 37 *Gray* is not controlling. We disagree with *Gray* that age operates as an element of the armed habitual criminal offense. Not every prerequisite to a conviction constitutes an element to an offense. Rather, there are two essential elements in all criminal offenses, (1) a voluntary act (720 ILCS 5/4-1 (West 2018)) and (2) a mental state (*id.* § 4-3). *People v. Taylor*, 68 Ill. App. 3d 680, 684 (1979) (“Criminal liability, with the exception of so-called strict liability crimes, is dependent upon the simultaneous occurrence of the defendant’s requisite mental state and the criminal act.”).

¶ 38 Under section 24-1.7 of the Code, an armed habitual criminal is a person who knowingly possesses a firearm after already being convicted of two qualifying offenses. 720 ILCS 5/24-1.7 (West 2018); see also *id.* § 4-2 (defining possession as a voluntary act); *People v. Ramirez*, 2023 IL 128123, ¶ 22 (noting, “when a possessory offense does not prescribe a particular mental state and is not an absolute liability offense, knowledge is the appropriate mental state”). Thus, the

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elements of the offense include (1) knowing possession of a firearm and (2) the aforementioned two past qualifying convictions. Age is simply not included in the “voluntary act,” and as such, is not an element of the offense.⁶ In fact, the statute does not contain any reference to age. *Cf.* 730 ILCS 5/5-4.5-95 (West 2022). Rather, “[a]ge *** is merely the factor which authorizes the application of the juvenile system,” which is part of the unified circuit court. *In re Greene*, 76 Ill. 2d 204, 212-13 (1979). Whether a person is tried in juvenile or criminal court is a matter of procedure. *People v. DeJesus*, 127 Ill. 2d 486, 498 (1989). Thus, as the State notes, “defendant’s age does not change the fact that he was ‘convicted,’ nor does it change the fact that armed robbery is a forcible felony.”

¶ 39 We also find defendant’s reliance on *Stewart*, 2022 IL 126116, misplaced. *Stewart*, while addressing a similar issue involving predicate offenses committed by juveniles, dealt with an entirely different statute, that involving Class X sentencing under the Unified Code of Corrections:

“(b) When a defendant, over the age of 21 years, is convicted of a Class 1 or Class 2 felony, after having twice been convicted in any state or federal court of an offense that contains the same elements as an offense now (the date the Class 1 or Class 2 felony was committed) classified in Illinois as a Class 2 or greater Class felony and those charges are separately brought and tried and arise out of different series of acts, that defendant shall be sentenced as a Class X offender.” 730 ILCS 5/5-4.5-95(b) (West 2016).

¶ 40 Although the Class X sentencing statute similarly required at least two predicate offenses before it could be utilized, that statute addresses a sentencing enhancement and not substantive offenses. See *Leonard*, 391 Ill. App. 3d at 932. The Class X sentencing statute “simply

⁶Age also is not an element of a forcible felony. See 720 ILCS 5/2-8 (West 2018).

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prescribe[s] the circumstances under which a defendant found guilty of a specific crime may be more severely punished because that defendant has a history of prior convictions,” but the convictions are not elements of the most recent felony offense. *People v. Dunigan*, 165 Ill. 2d 235, 242 (1995). The State has no burden to prove these convictions beyond a reasonable doubt. *People v. Levin*, 157 Ill. 2d 138, 156 (1993). Plus, in evaluating the enhancement, the Class X sentencing statute expressly calls for a reassessment of the prior conviction (using the language, “an offense that contains the same elements as an offense now *** classified in Illinois” (730 ILCS 5/5-4.5-95(b) (West 2016))), whereas the armed habitual criminal statute does not. Moreover, in *Stewart*, the supreme court found the Class X sentencing statutory language ambiguous and the matter resolved by subsequent legislation, which added a subsection elucidating that the first qualifying offense for Class X sentencing must have been committed when the person was 21 years of age or older. *Stewart*, 2022 IL 126116, ¶ 22. The court found this legislation was intended to clarify the statute’s meaning. *Stewart* therefore held that “defendant’s 2013 conviction for an offense committed when he was 17 years old was not a qualifying offense for Class X sentencing.” *Id.*

¶ 41 As set forth, we do not find the statute in this case ambiguous, and even if we did, there is no subsequent legislation resolving the matter in defendant’s favor. See *Dawson*, 2022 IL App (1st) 190422, ¶ 23 (discussing the legislative history of the armed habitual criminal statute), *pet. for leave to appeal pending*, No. 129136 (filed Dec. 13, 2022); see also *In re J.L.*, 236 Ill. 2d 329, 341 (2010) (noting, “ ‘where the legislature has employed a term in one place and excluded it in another, it should not be implied where excluded’ ”).

¶ 42 We further note that *Gray* was issued on October 12, 2021. The supreme court issued *Stewart* on October 20, 2022, and then granted the petition for leave to appeal in *Gray* a month

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later, on November 30, 2022. See *Gray*, 2021 IL App (1st) 191086, *appeal allowed*, No. 127815 (Ill. Nov. 30, 2022). To us, this suggests that *Stewart* is not controlling in regard to the armed habitual criminal statute.

¶ 43 Last, we reject defendant's contention that his defense counsel was constitutionally ineffective. Defendant argues that counsel was ineffective "for stipulating that [he] had been convicted of two qualifying felony offenses," but his claim fails for several reasons. First, we observe that defense counsel merely stipulated that defendant had been convicted of the two prior offenses but did not stipulate they were "qualifying." Second, to succeed on such an ineffective assistance claim, the defendant must establish that counsel's representation was deficient and, but for the deficiency, there is a reasonable probability the trial result would have been different. *People v. Domagala*, 2013 IL 113688, ¶ 36. In this case, defendant cannot show that counsel's stipulation was objectively unreasonable under prevailing professional norms given the state of the law at the time of his February 26, 2020, trial. See *id.*; *People v. English*, 2013 IL 112890, ¶ 34. At the time of defendant's trial, "case law squarely supported the principle that a conviction obtained when a criminal defendant was a minor could be used as a qualifying predicate offense and that a conviction is a conviction, regardless of the criminal defendant's age."⁷ See *People v. Williams*, 2021 IL App (1st) 191615, ¶ 30. Again, *Gray* was not decided until 2021. We note that counsel is not incompetent for failing to accurately predict that existing law will change. *English*, 2013 IL 112890, ¶ 34. Defendant therefore has failed to establish defense counsel's deficiency, so his ineffective assistance of counsel claim must fail.

¶ 44

CONCLUSION

⁷We note that *People v. Miles*, 2020 IL App (1st) 180736, which is the only case that could have conceivably supported defendant's current argument, was decided on January 17, 2020, but rehearing was denied on March 25, 2020, after defendant's trial. *Miles* also addressed the Class X sentencing statute, not the armed habitual criminal statute.

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¶ 45 For the reasons stated, we affirm the judgment of the circuit court.

¶ 46 Affirmed.

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People v. Wallace, 2023 IL App (1st) 200917

Decision Under Review: Appeal from the Circuit Court of Cook County, No. 19-CR-7197; the Hon. Ursula Walowski, Judge, presiding.

Attorneys for Appellant: James E. Chadd, Douglas R. Hoff, and Stephanie T. Puente, of State Appellate Defender's Office, of Chicago, for appellant.

Attorneys for Appellee: Kimberly M. Foxx, State's Attorney, of Chicago (Enrique Abraham, Douglas P. Harvath, Stacia Weber, and John E. Nowak, Assistant State's Attorneys, of counsel), for the People.

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**TO THE APPELLATE COURT OF ILLINOIS
IN THE CIRCUIT COURT OF COOK COUNTY
CRIMINAL DIVISION**

PEOPLE OF THE STATE OF ILLINOIS

v.

DESHAWN WALLACE,
Defendant.

No. 19CR 7197
Judge: Walowski
Trial Atty: Randalyn Peterson

NOTICE OF APPEAL

FILED

JUN 26 2020

**DOROTHY BROWN
CLERK OF CIRCUIT COURT**

An Appeal is taken from the order of judgment described below:

APPELLANT'S NAME: DESHAN WALLACE
IR NUMBER: 1672361 DOB: 06/10/1991
APPELLANT'S ADDRESS: IDOC
APPELLANT'S ATTORNEY: STATE APPELLATE DEFENDER
APPELLANT'S ADDRESS: 203 NORTH LASALLE, 24TH FL, CHICAGO, IL 60601
OFFENSE: Armed Habitual Criminal, among others
JUDGEMENT: GUILTY
DATE: February 26, 2020
SENTENCE: 6 years IDOC
DATE OF JUDGMENT OR SENTENCE: 02/26/2020 and 06/26/2020
DATES TO BE TRANSCRIBED: 09/10/2019, 12/09/2019, 02/27/2020, 06/26/2020

s/Randalyn Peterson, APD
APPELLANT (OR ATTORNEY)

**VERIFIED PETITION FOR REPORT OF PROCEEDINGS, COMMON LAW
RECORD AND FOR APPOINTMENT OF COUNSEL ON APPEAL FOR INDIGENT
DEFENDANT**

Under Supreme Court Rules 605-608, appellant asks the Court to order the Official Court Reporter to transcribe an original and copy of the proceedings, file the original with the Clerk and deliver a copy to the appellant; order the Clerk to prepare the Record on Appeal and to Appoint Counsel on Appeal. Appellant, being duly sworn says that at the time of his conviction, he was and is unable pay for the Record to retain counsel for appeals.

S/ Randalyn Peterson, APD
APPELLANT (OR ATTORNEY)

ORDER

IT IS ORDERED The State Appellate Defender of Cook County be appointed as counsel on appeal and the Record and Report of Proceedings be furnished appellant without cost. Dates to be transcribed:

ORDER DATE:

ENTER: Ursula Walowski 2011
JUDGE

ENTERED
JUDGE URSULA WALOWSKI-2011

JUL 30 2020

DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

RECEIVED
AUG 10 2020

PARALEGAL DEPARTMENT
Office of the State Appellate Defender
1st District



Trial and Sentencing of Youth as Adults in the Illinois Justice System: Transfer Data Report

JULY 2021

Illinois Juvenile Justice Commission
<http://ijjc.illinois.gov/>



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Introduction and Methodology

This is the third report prepared by the Illinois Juvenile Justice Commission¹, as required by the Illinois Juvenile Court Act, to provide statewide data on the transfer of youth to adult courts and related court actions to impose adult sentencing provisions on certain youth. It contains data reported for Calendar Year 2018.²

Effective January 2016, the Illinois General Assembly significantly scaled back trial of youth as adults in adult criminal courts in Public Act 99-0258.³ In enacting these provisions, the General Assembly relied on a strong and growing body of research and data indicating that processing and punishing youth like adults harms young people and undermines public safety and community well-being.

As discussed in the Illinois Juvenile Justice Commission’s report *Raising the Age of Juvenile Court Jurisdiction*⁴ (2013), the indiscriminate trial of youth as adults fails to take into account developmental factors including impulsivity, vulnerability to peer pressure, attraction to risk-taking and underdeveloped decision-making skills. These well-established developmental traits render adolescents less culpable for their behavior. At the same time, developmental immaturity makes young people highly responsive to positive, rehabilitative supports and interventions. National research also indicates that trial of youth as adults does not effectively deter juvenile crime and may in fact produce higher rates of offending and recidivism. In enacting Public Act 99-0258, the General Assembly has taken steps to more closely align Illinois law with this research and data.

In addition to modifying criteria and processes for transferring youth to adult criminal court, the Act also recognizes the need for current and complete statewide data regarding transfers and related court actions. Prior to the legislation, there was no state-wide repository for information regarding the transfer and trial of youth as adults⁵, the imposition of adult sentences pursuant to “extended juvenile jurisdiction” provisions (EJJ)⁶ or designation of youth as “habitual”⁷ or “violent”⁸ juvenile offenders (HJO or VJO status). Each of these mechanisms can trigger adult approaches to the trial and sentencing of youth. To address this information gap, the Act created

¹ The Illinois Juvenile Justice Commission serves as the federally mandated State Advisory Group to the Governor, General Assembly and the Illinois Department of Human Services. See 20 ILCS 505/17a-5.

² The first annual data report, published in 2018, is available at

http://ijjc.illinois.gov/sites/ijjc.illinois.gov/files/assets/Juvenile%20Transfers%20CY2016%20Report_FINAL.pdf

³ The Act repeals provisions for the transfer of youth ages 15 and under to adult court, limits other “automatic transfers” and expands judicial discretion in transfer decisions for 16 and 17 year olds, except for those charged with first degree murder, aggravated criminal sexual assault or aggravated battery with a firearm. The statute also establishes factors a judge may take into consideration when sentencing a person under 18, including maturity, presence of a developmental disability, home environment, trauma, prior criminal activity (if any) and potential for rehabilitation. (Public Act 99-0258; effective January 2016.)

⁴ <http://ijjc.illinois.gov/rta>

⁵ 750 ILCS 405/5-130 and 750 ILCS 405/5-805

⁶ 750 ILCS 405/5-810

⁷ 750 ILCS 405/5-815

⁸ 750 ILCS 405/5-820

a data reporting provision which requires Circuit Court Clerks to track and report information twice annually on the filing and disposition of these proceedings.⁹ The Act required the Illinois Juvenile Justice Commission to develop “the standards, confidentiality protocols, format, and data depository” for these reports.¹⁰ An explanatory text of the types of motions and proceedings this report covers can be found in Appendix A.

To fulfill this mandate, the Commission and its research partners at the University of Illinois Center for Prevention Research and Development and Loyola University’s Center for Criminal Justice Research, Policy and Practice developed standardized data collection forms designed for use by Circuit Court Clerks in collecting and reporting this data. In the initial reporting period, the Commission also sought and benefitted greatly from dialogue and collaboration with the Illinois Association of Court Clerks and the Administrative Office of the Illinois Courts to develop and test data collection forms and mechanisms.

In developing these forms and reporting protocols, practitioners recognized that the statute requires collection of information that no single criminal justice stakeholder – prosecutor, defender, probation department or Circuit Court Clerk, for example – has readily available in all cases. Thus, meeting the statutory mandates has required collaboration among justice system stakeholders and development of new methods for gathering case-level data.

This report reflects the data reported for Calendar Year 2018 as well as a comparison of the data reported in the first three years. The three-year trend analysis is located at the beginning of the report and provides a three-year comparison of data for each case type as well as offense and demographic data by year. The rest of the report provides all of the data reported for 2018:

- The first section provides aggregated, statewide data on all proceedings to try youth as adults or apply Extended Juvenile Jurisdiction, Violent Juvenile Offender and / or Habitual Juvenile Offender provisions.
- The second section provides more detailed information on each of these categories (Excluded Jurisdiction proceedings, motions to transfer, motions for Extended Juvenile Jurisdiction proceedings and motions for Violent Juvenile Offender or Habitual Juvenile Offender designations).
- The third section provides county-level information for those counties reporting proceedings in one or more of these categories.

Gathering and reporting the required information was complex and challenging for all involved – the research team, Commission staff, Circuit Court Clerks and other state and local partners. However, the diligence and collaboration exhibited by these stakeholders has yielded unprecedented statewide information about youth subject to transfer and trial as adults in Illinois. This information can provide valuable information to policy makers and practitioners who seek

⁹ See 705 ILCS 405/5-822

¹⁰ Statewide transfer data will also facilitate Illinois’ compliance with the federal Juvenile Justice and Delinquency Prevention Act requirement for states to gather and report juvenile justice / criminal justice data at nine key decision points, including trial of youth as adults.

to protect community safety, use resources wisely and improve outcomes for the youth and families of our state.

In reviewing this report, stakeholders should note that, while the statute requires reporting of victim and case disposition information, data reporting has not been complete or consistent enough to include in the reports. Race and ethnicity was also not complete, with large numbers of youth categorized as “other race” or “unknown.” Finally, it should be noted that youth may be subject to multiple proceedings and / or charges. Therefore, the number of proceedings or charges listed may exceed the number of youth in some data tables. Where relevant, case information and individual youth information is presented.

While there are some gaps in reported data, the available data indicates stark and troubling racial disparities in these cases. Of the 106 cases filed in 2018, only 5 were identified as white while 55 were identified as Black/African American. Race and ethnicity data are missing in the 56 cases originating in Cook County. but secondary data on juvenile justice involved youth in Cook County suggest that the great majority of these cases affect Black or Hispanic youth. Taken together, this data indicates profound racial inequities in the transfer of youth to adult courts and the application of enhanced sentencing provisions under Illinois law.

Illinois is the home of the nation’s first juvenile court. First established more than a century ago, juvenile courts are premised on the idea – since confirmed by neuroscience and developmental research – that youth are fundamentally different than adults, and require different interventions and supports. As the Commission has noted in other reports, however, research demonstrates that Black children and youth are often not seen as deserving of protection and care as other children. Analysis of the treatment of children and youth in multiple contexts reveals that Black boys are often perceived as less “innocent”, more blameworthy for their behaviors and less in need of protection and nurturing. One study found that, by the age of 10, Black boys were more likely to be perceived as older than their white peers, more likely to be seen as guilty of a crime and more likely to be deemed deserving of punishment. Not surprisingly, this widespread “adultification” of Black boys is, in turn, associated with lower rates of supportive care and services and higher rates of arrest and referral to justice systems.¹¹

The data in this report, which shows profound racial disparities in transfers to criminal court and enhanced sentencing, requires the immediate and critical attention of juvenile justice system stakeholders and policy makers.

This report is submitted by the Illinois Juvenile Justice Commission in partnership with the Center for Prevention Research and Development at the University of Illinois and the Loyola University Chicago Center for Criminal Justice Research, Policy and Practice in fulfillment of the Commission’s mandate in Public Act 99-0258.

¹¹ See Phillip Atiba Goff et al., The Essence of Innocence: Consequences of Dehumanizing Black Children, 106 j. of persoNality & soC. psyChol. 526 (2014)1 and Rebecca Epstein, Jamilia J. Blake and Thalia Gonzalez, Girlhood Interrupted: The Erasure of Black Girls’ Childhood, Georgetown Law Center on Poverty and Inequality (2017)

Acknowledgements

A special appreciation is extended to Circuit Clerks, State's Attorneys and Public Defenders across Illinois for providing data on filed motions to transfer youth to adult court. Collecting this type of case level data poses varying degrees of complexity depending upon the size and resources of the reporting agencies. There is no one system or database which contains this data. Often times collecting and verifying this data requires multiple contacts to Circuit Clerks and State's Attorneys. Only through the collaboration of these agencies, their hard work and due diligence in collecting this data is this report possible.

Three Year Trend Analysis

The following sections provided a trend analysis for calendar year 2016, 2017 and 2018. This analysis includes a review of motion and designation types filed by year, age, youth, gender and offenses. At this time, analysis by race and ethnicity is not possible due to reporting gaps in these demographic areas.

It is important to note that individual youth may be subject to multiple proceedings and/or charges. Therefore, the number of proceedings or charges may exceed the number of youth in some data tables. Additionally, some categories analyzed have low n. These small n numbers may make percentages less meaningful.

Motion and Designation Type by Year Trend

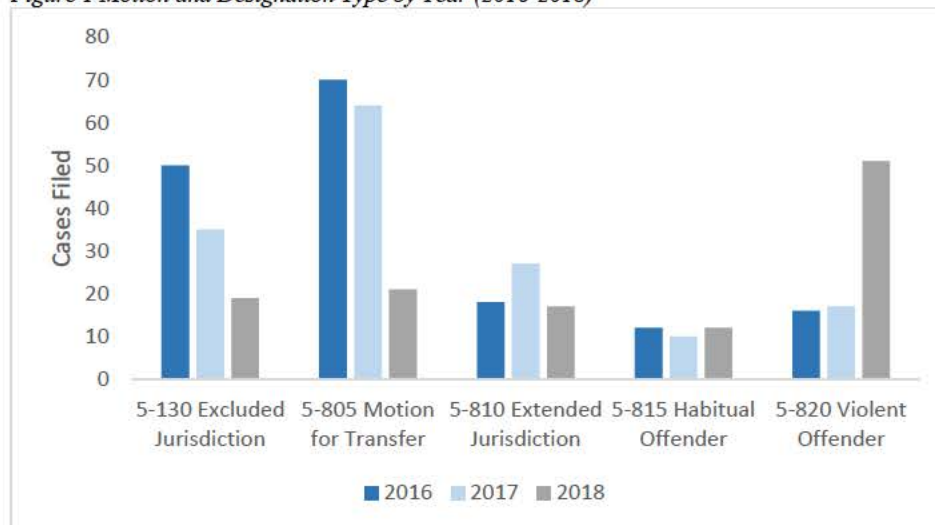
For the reported cases between calendar year 2016 and 2018, Excluded Jurisdiction, Motion for Transfer and Extended Jurisdictions have all decreased. The largest decreases include Excluded Jurisdiction (62%) and Motion for Transfer (70%). The designation of Habitual Offender remained constant. The Violent Offender designation has increased by 219% (Table 1, Figure 1). Overall, the number of cases filed has decreased 36% from 2016 (Table 1).

Table 1 Motion and Designation Type by Cases Filed by Year (#, % Change)

Motion/Designation Type	2016	2017	2018	3 Year % Change
5-130 Excluded Jurisdiction	50	35	19	-62%
5-805 Motion for Transfer	70	64	21	-70%
5-810 Extended Jurisdiction	18	27	17	-6%
5-815 Habitual Offender	12	10	12	0%
5-820 Violent Offender	16	17	51	219%
Total Cases*	165	138	106	-36%

Note: Individual cases may have multiple proceedings and therefore the number of motions may exceed the total number of cases in some data tables.

Figure 1 Motion and Designation Type by Year (2016-2018)



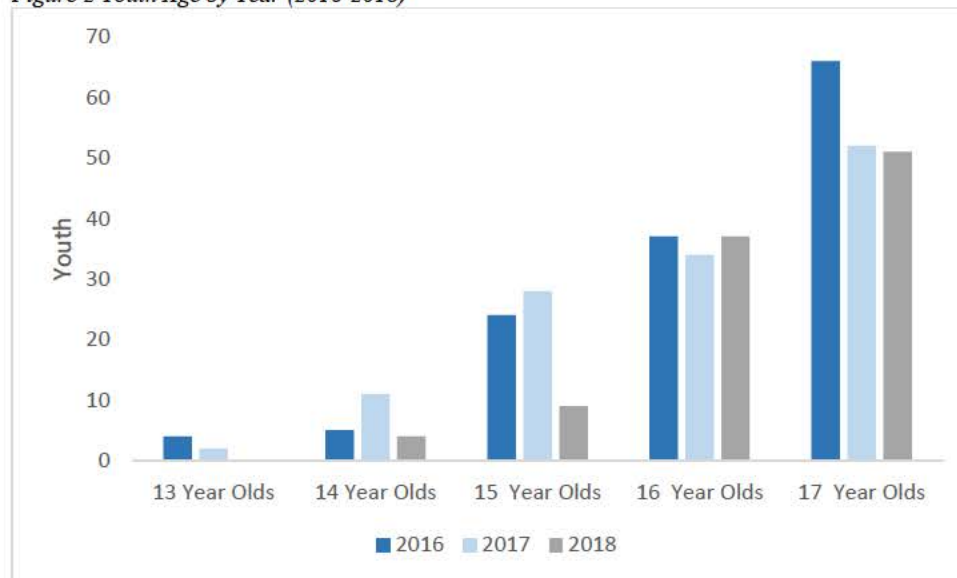
Cases Filed by Age Trend

For the reporting period, youth aged 15 experienced a decrease of 63% cases filed. Youth aged 17 had a decreased of 23% cases filed (Table 2, Figure 2).

Table 2 Youth Age by Cases Filed by Year (2016-2018)

Age at Offense	2016	2017	2018	3 Year % Change
13 Year Olds	4	2	0	-100%
14 Year Olds	5	11	4	-20%
15 Year Olds	24	28	9	-63%
16 Year Olds	37	34	37	0%
17 Year Olds	66	52	51	-23%

Figure 2 Youth Age by Year (2016-2018)



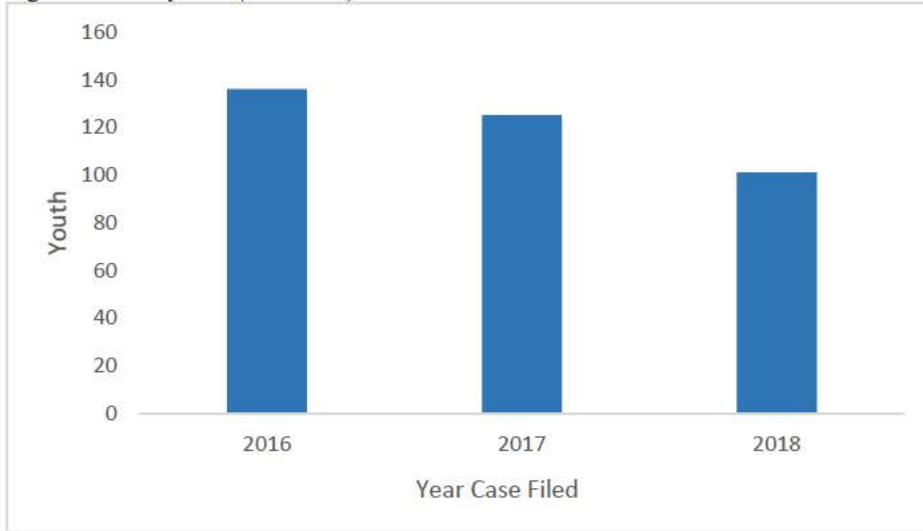
Cases Filed by Youth Trend

For the reporting period of 2016 through 2018, there has been a total of 362 youth with a case filed. For 2016 there was 137 youth, 2017 there was 124 and 2018 there was 100. There has been an overall decrease of 27% from 2016 to 2018 (Table 3, Figure 3)

Table 3 Youth by Year (2016-2018) by % Change

Year	2016	2017	2018	% Change
Youth	137	124	100	-27%

Figure 3 Youth by Year (2016-2018)



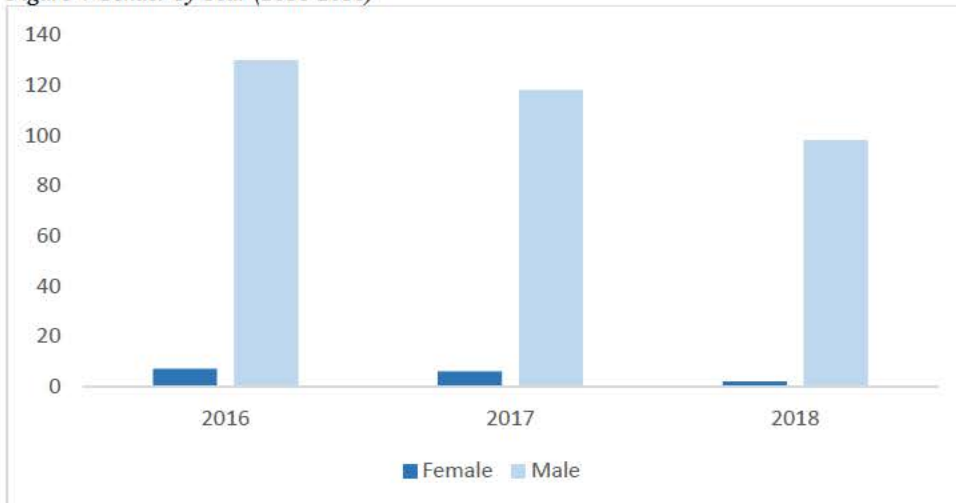
Cased Filed by Gender Trend

For the reporting period of 2016 through 2018, the distribution between male and female youth has remained consistent between years. Male youth over the reporting period have seen a decrease of 25% (Table 4).

Table 4 Gender by Year (% Total) by 2016-2018 % Change

Gender	2016	% Total	2017	% Total	2018	% Total	% Change
Male	130	95%	118	95%	98	98%	-25%
Female	7	5%	6	5%	2	2%	-71%
Total	137	100%	124	100%	100	100%	-27%

Figure 4 Gender by Year (2016-2018)



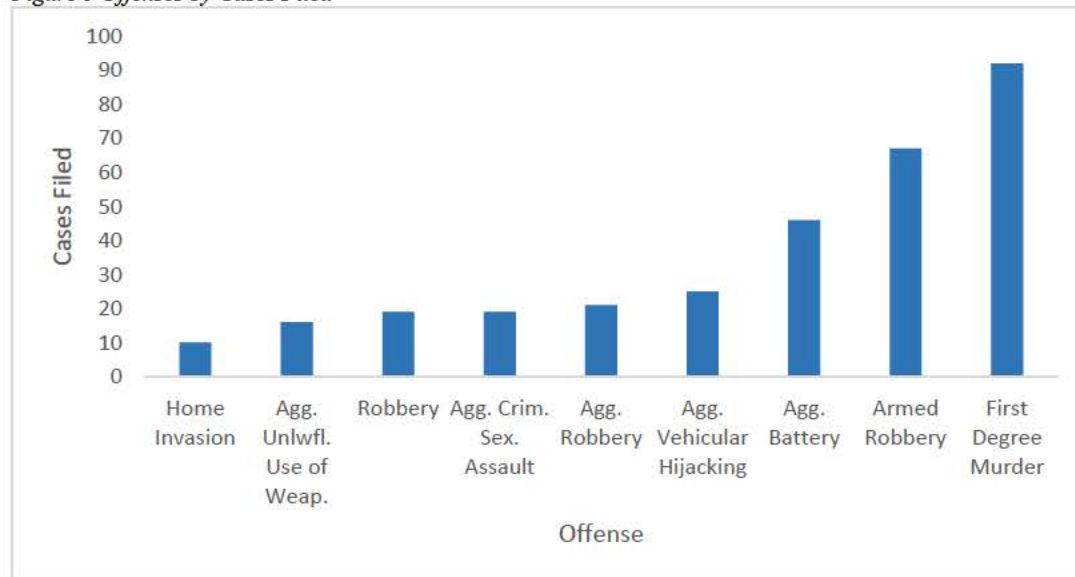
Offenses by Year

For the reporting period, ten offenses represented 75% of all cases filed from 2016 through 2018 (Table 5). The offense of First Degree Murder charged in 22% of all cases filed. Armed Robbery (16%) and Aggravated Battery (11%) represent the next two highest charged offenses (Table 5).

Table 5 Offense by Cases Filed (2016-2018) by % Total

Offense	2016-2018	
	Cases	% Total
First Degree Murder	92	22%
Armed Robbery	67	16%
Agg. Battery	46	11%
Agg. Vehicular Hijacking	25	6%
Agg. Robbery	21	5%
Robbery	19	5%
Agg. Crim. Sex. Assault	19	5%
Agg. Unlawf. Use of Weap.	16	4%
Home Invasion	10	2%

Figure 5 Offenses by Cases Filed



For the reporting period, 2016 through 2018, cases filed in which First Degree Murder was the underlying offense decreased by 60%, cases filed with Aggravated Criminal Sexual Assault decreased 82%, cases filed with Home Invasion decreased 80%, cases filed with Aggravated Battery decreased 45% and Aggravated Robbery decreased 67% (Table 6). Cases filed with the underlying offense of Aggravated Vehicular Hijacking has seen an increase of 150% (Table 6).

Table 6 Offenses by Cases by % Total by % Change (2016-2018)

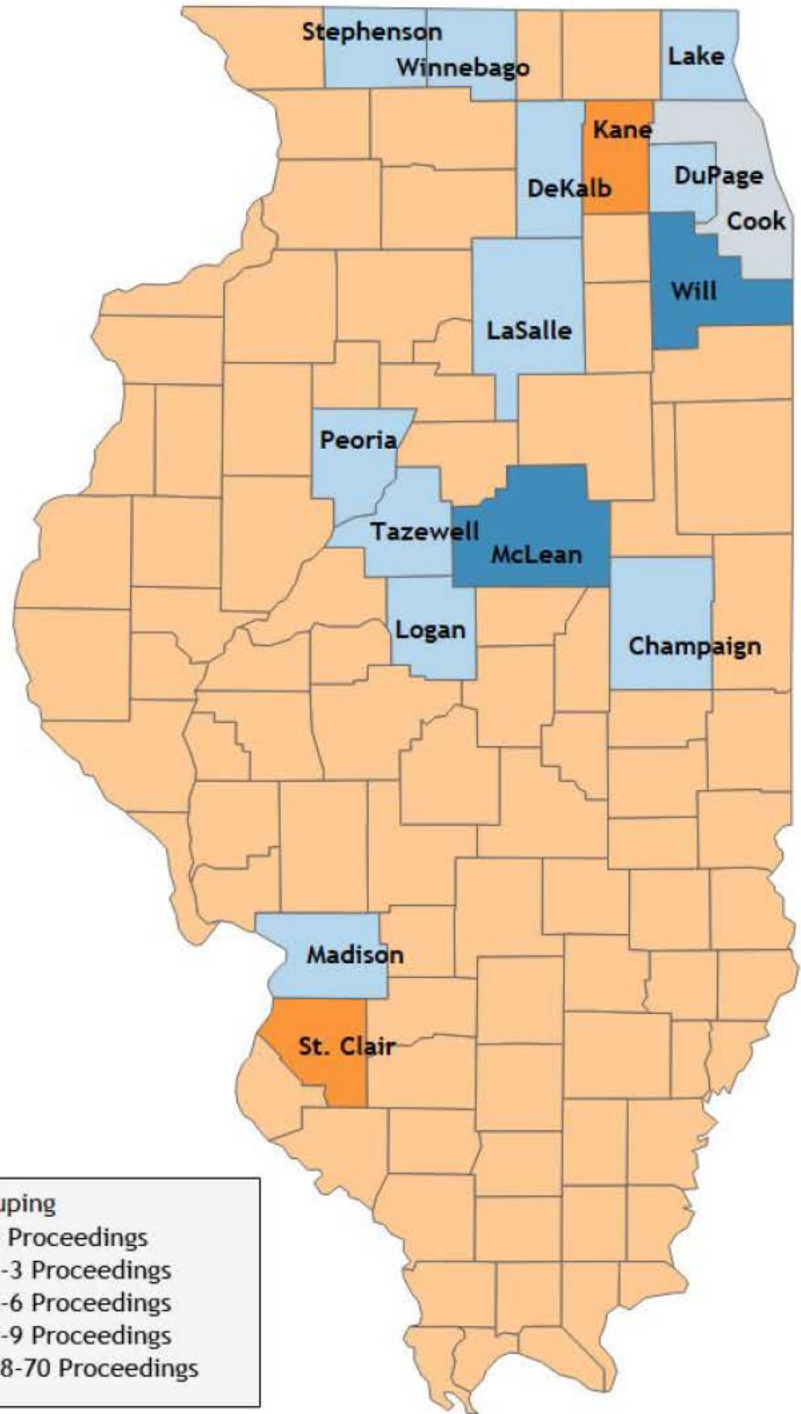
Offense ¹	2016	%	2017	%	2018	%	2016-2018
	Cases	Total	Cases	Total	Cases	Total	% Change
First Degree Murder	40	24%	37	26%	16	14%	-60%
Armed Robbery	23	14%	22	16%	22	20%	-4%
Agg. Battery	22	13%	12	9%	12	11%	-45%
Agg. Vehicular Hijacking	4	2%	11	8%	10	9%	150%
Agg. Robbery	12	7%	5	4%	4	4%	-67%
Robbery	7	4%	4	3%	8	7%	14%
Agg. Crim. Sex. Assault	11	7%	6	4%	2	2%	-82%
Agg. Unlawful Use of Weap.	2	1%	4	3%	10	9%	400%
Home Invasion	5	3%	4	3%	1	1%	-80%

¹ Certain offenses have a low n of cases filed. These small n numbers may make percentages less meaningful.

Illinois Juvenile Transfers at a Glance

For the reporting period of January 1, 2018 through December 31, 2018, 16 Illinois counties reported data on motions to transfer youth to adult courts, designation of violent offenders and habitual offenders. Whereas, 86 counties reported zero motions/designations for the reporting period. An interactive Illinois county map located to the right provides a link to the county report. The table below shows the counties, which reported motions/designations, that county's total number of cases and total number of youth.

	# Cases	# Youth
Champaign	2	2
Cook	68	65
DeKalb	2	2
DuPage	2	2
Kane	7	7
Lake	1	1
LaSalle	1	1
Logan	1	1
Madison	1	1
McLean	4	4
Peoria	1	1
St. Clair	8	5
Stephenson	1	1
Tazewell	1	1
Will	4	4
Winnebago	2	2
State Total	106	100



NOTE: Individual youth may be subject to multiple proceedings/charges. Therefore, the number of proceedings/charges may exceed the number of youth in some data tables.

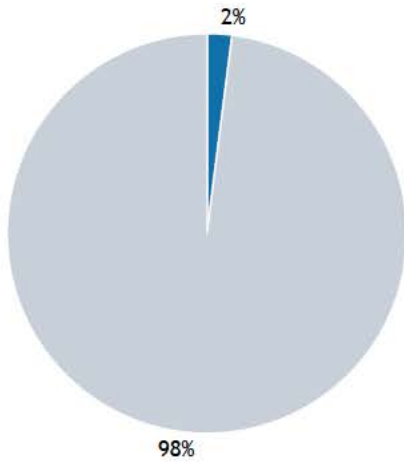
Demographics for all Proceedings Calendar Year 2018

Youth by Age



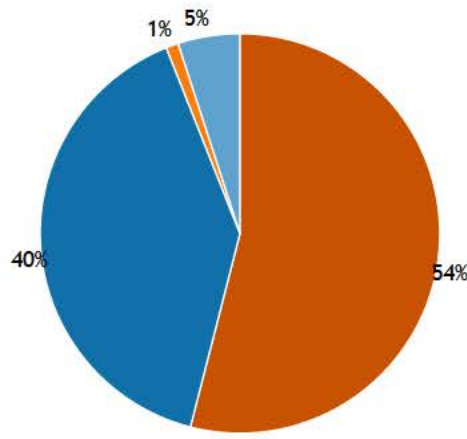
Total Distinct Youth: 100

Gender



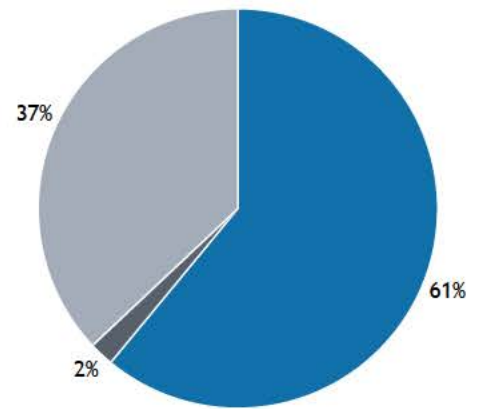
Female
Male

Race



Unknown
Black/ Afr Amer.
Other
White

Ethnicity



Unknown
Hispanic
Non-Hispanic

Female	2
Male	98
Grand Total	100

Unknown	54
Black/ Afr Amer.	40
White	5
Other	1
Grand Total	100

Unknown	61
Non-Hispanic	37
Hispanic	2
Grand Total	100

NOTE: Individual youth may be subject to multiple proceedings/charges. Therefore, the number of proceedings/charges may exceed the number of youth in some data tables.

Charges by Age Calendar Year 2018

14 Year Olds

Agg. Battery	| 1
Agg. Crim. Sex. Assault	| 1
Armed Robbery	| 1
Unlwl. Use of Weap.	| 1
Age Group Total	| 4

15 Year Olds

Armed Robbery	| 2
First Degree Murder	| 2
Agg. Discharge of a Fir.	| 1
Agg. Vehicular Hijacking	| 1
Escape	| 1
Robbery	| 1
Vehicular Hijacking	| 1
Age Group Total	| 9

16 Year Olds

First Degree Murder	| 8
Armed Robbery	| 8
Agg. Battery	| 6
Agg. Unlwl. Use of Weap.	| 5
Robbery	| 4
Agg. Vehicular Hijacking	| 4
Unlawful Possession of Stolen Mot.	| 2
Agg. Robbery	| 2
Vehicular Hijacking	| 1
Concealment of Homicidal Death	| 1
Burglary	| 1
Aggravated Flee/Attempt to Elud.	| 1
Agg. Poss. of Stolen Fir.	| 1
Age Group Total	| 41

17 Year Olds

Armed Robbery	| 12
First Degree Murder	| 6
Agg. Battery	| 5
Agg. Unlwl. Use of Weap.	| 5
Agg. Vehicular Hijacking	| 5
Armed Violence	| 3
Robbery	| 3
Agg. Discharge of a Fir.	| 2
Agg. Robbery	| 2
Crim. Sexual Aslt.	| 2
Defacing Identification Mark of Firearm	| 2
Possession of Stolen Property	| 2
Agg. Crim. Sex. Assault	| 1
Home Invasion	| 1
Meth Delivery	| 1
Reckless Homicide	| 1
Vehicular Hijacking	| 1
Age Group Total	| 53

Charges by Age

14 Year-Olds	| 4
15 Year-Olds	| 9
16 Year-Olds	| 41
17 Year-Olds	| 53
Grand Total	| 106

NOTE: Individual youth may be subject to multiple proceedings/charges. Therefore, the number of proceedings/charges may exceed the number of youth in some data tables.

Charges by County Calendar Year 2018

Champaign	Agg. Battery	1	Logan	Armed Violence	1
	Robbery	1		County Total	1
	Meth Delivery	1	Madison	Armed Robbery	1
	County Total	2		County Total	1
Cook	Armed Robbery	18	McLean	Agg. Battery	1
	First Degree Murder	11		Possession of Stolen Property	2
	Agg. Unlawful Use of Weap.	10		Defacing Identification Mark of F..	1
	Agg. Vehicular Hijacking	10		County Total	4
	Agg. Battery	2	Peoria	Agg. Discharge of a Fir.	1
	Robbery	6		County Total	1
	Agg. Robbery	4	St. Clair	Crim. Sexual Aslt.	2
	Vehicular Hijacking	3		Unlawful Possession of Stolen Mo..	2
	Agg. Crim. Sex. Assault	1		Agg. Poss. of Stolen Fir.	1
	Armed Violence	1		Escape	1
	Defacing Identification Mark of Fi..	1		Reckless Homicide	1
	Unlawful Use of Weap.	1		Robbery	1
	County Total	68		County Total	8
DeKalb	Agg. Crim. Sex. Assault	1		Stephenson	Agg. Discharge of a Fir.	1
	Armed Violence	1	County Total		1
	County Total	2	Tazewell	Home Invasion	1
DuPage	Armed Robbery	1		County Total	1
	First Degree Murder	2	Will	Agg. Battery	2
	Agg. Discharge of a Fir.	1		First Degree Murder	2
	Concealment of Homicidal Death	1		County Total	4
County Total	2	Winnebago	Agg. Battery	2	
Kane	Armed Robbery		1	County Total	2
	Agg. Battery	4	State Total Charges: 106		
	Aggravated Flee/Attempt to Elud..	1			
	Burglary	1			
County Total	7				
Lake	First Degree Murder	1			
	County Total	1			
LaSalle	Armed Robbery	1			
	County Total	1			

NOTE: Individual youth may be subject to multiple proceedings/charges. Therefore, the number of proceedings/charges may exceed the number of youth in some data tables.

Charges by Ethnicity Calendar Year 2018

Hispanic

First Degree Murder	2
Agg. Discharge of a Fir.	1
Armed Robbery	1
Concealment of Homicidal Death	1
Ethnicity Group Total	2

Non-Hispanic

First Degree Murder	12
Agg. Battery	11
Agg. Discharge of a Fir.	2
Armed Robbery	2
Crim. Sexual Aslt.	2
Robbery	2
Unlawful Possession of Stolen Motor V..	2
Agg. Crim. Sex. Assault	1
Aggravated Flee/Attempt to Elude Pea..	1
Agg. Poss. of Stolen Fir.	1
Armed Violence	1
Burglary	1
Escape	1
Home Invasion	1
Meth Delivery	1
Reckless Homicide	1
Ethnicity Group Total	41

Unknown Ethnicity

Armed Robbery	19
Agg. Unlwl. Use of Weap.	10
Agg. Vehicular Hijacking	10
Robbery	6
Agg. Robbery	4
Vehicular Hijacking	3
Armed Violence	2
Defacing Identification M..	2
First Degree Murder	2
Possession of Stolen Prop..	2
Agg. Battery	1
Agg. Crim. Sex. Assault	1
Unlwl. Use of Weap.	1
Ethnicity Group Total	63

Charges by Ethnicity

Hispanic	2
Non-Hispanic	41
Unknown	63
Grand Total	106

NOTE: Individual youth may be subject to multiple proceedings/charges. Therefore, the number of proceedings/charges may exceed the number of youth in some data tables.

Charges by Gender Calendar Year 2018

Male Youth by Charges

Armed Robbery	21
First Degree Murder	15
Agg. Battery	12
Agg. Unlawfl. Use of Weap.	10
Agg. Vehicular Hijacking	10
Robbery	8
Agg. Robbery	4
Agg. Discharge of a Fir.	3
Armed Violence	3
Vehicular Hijacking	3
Agg. Crim. Sex. Assault	2
Crim. Sexual Aslt.	2
Defacing Identification Mark o..	2
Unlawful Possession of Stolen ..	2
Aggravated Flee/Attempt to ..	1
Agg. Poss. of Stolen Fir.	1
Burglary	1
Escape	1
Home Invasion	1
Meth Delivery	1
Possession of Stolen Property	1
Reckless Homicide	1
Unlawfl. Use of Weap.	1
Total Male Youth	104

Female Youth by Charges

Armed Robbery	1
Concealment of Homicidal Death	1
First Degree Murder	1
Possession of Stolen Property	1
Total Female Youth	2

Charges by Gender

Female	2
Male	104
Total Youth	106

NOTE: Individual youth may be subject to multiple proceedings/charges. Therefore, the number of proceedings/charges may exceed the number of youth in some data tables.

Charges by Race Calendar Year 2018

Black/African American

First Degree Murder	12
Agg. Battery	11
Armed Robbery	3
Agg. Discharge of a Fir.	2
Crim. Sexual Aslt.	2
Possession of Stolen Property	2
Robbery	2
Unlawful Possession of Stolen Motor Veh..	2
Agg. Crim. Sex. Assault	1
Aggravated Flee/Attempt to Elude Peac..	1
Agg. Poss. of Stolen Fir.	1
Armed Violence	1
Burglary	1
Defacing Identification Mark of Firearm	1
Escape	1
Home Invasion	1
Meth Delivery	1
Racial Group Total	44

White

Agg. Battery	1
Agg. Crim. Sex. Assault	1
Armed Robbery	1
Armed Violence	1
Concealment of Homicidal Death	1
First Degree Murder	1
Reckless Homicide	1
Racial Group Total	5

Other Race

Agg. Discharge of a Fir.	1
First Degree Murder	1
Racial Group Total	1

Unknown Race

Armed Robbery	18
Agg. Unlwl. Use of Weap.	10
Agg. Vehicular Hijacking	10
Robbery	6
Agg. Robbery	4
Vehicular Hijacking	3
First Degree Murder	2
Armed Violence	1
Defacing Identification Mark of F..	1
Unlwl. Use of Weap.	1
Racial Group Total	56

Charges by Race

Unknown	56
Black/ Afr Amer.	44
White	5
Other	1
Grand Total	106

NOTE: Individual youth may be subject to multiple proceedings/charges. Therefore, the number of proceedings/charges may exceed the number of youth in some data tables.

5-130 Excluded Jurisdiction Calendar Year 2018

Charges

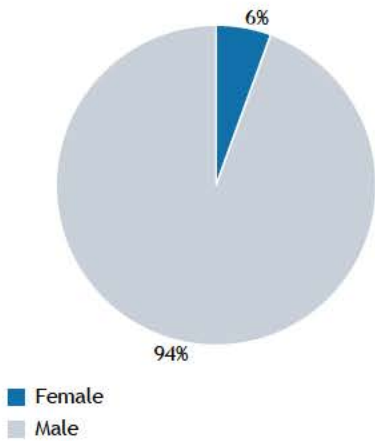
First Degree Murder	12
Agg. Battery	4
Agg. Crim. Sex. Assault	1
Agg. Discharge of a Fir.	1
Armed Robbery	1
Concealment of Homicidal Death	1
Crim. Sexual Aslt.	1
Reckless Homicide	1

Youth by Age

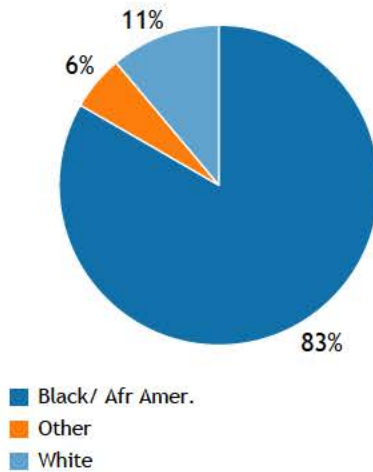
16 Year-Olds	7
17 Year-Olds	11

Total 5-130 Excluded Jurisdiction Cases: 19

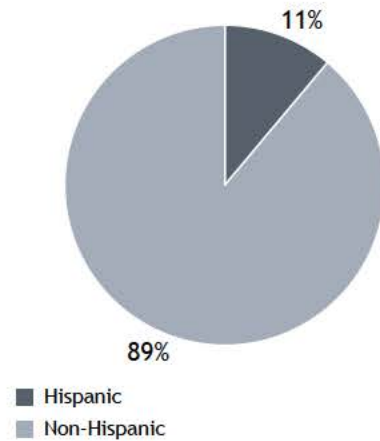
Gender



Race



Ethnicity



Male	17	Black/ Afr Amer.	15	Non-Hispanic	16
Female	1	White	2	Hispanic	2
Grand Total	18	Other	1	Grand Total	18
		Grand Total	18		

NOTE: Individual youth may be subject to multiple proceedings/charges. Therefore, the number of proceedings/charges may exceed the number of youth in some data tables.

5-805 Motion for Transfer Calendar Year 2018

Charges

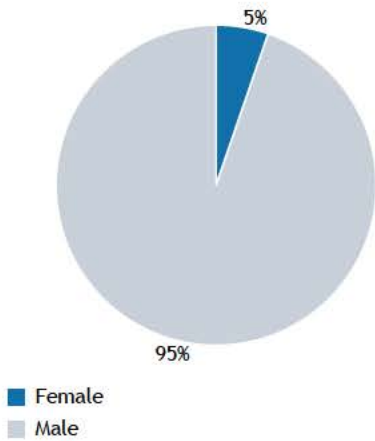
Agg. Battery	| 4
Agg. Discharge of a Fir.	| 2
Agg. Vehicular Hijacking	| 2
Armed Robbery	| 2
Armed Violence	| 2
First Degree Murder	| 2
Unlawful Possession of Stolen Motor Vehicle	| 2
Agg. Crim. Sex. Assault	| 1
Agg. Unlawfl. Use of Weap.	| 1
Home Invasion	| 1
Meth Delivery	| 1
Possession of Stolen Property	| 1
Robbery	| 1

Youth by Age

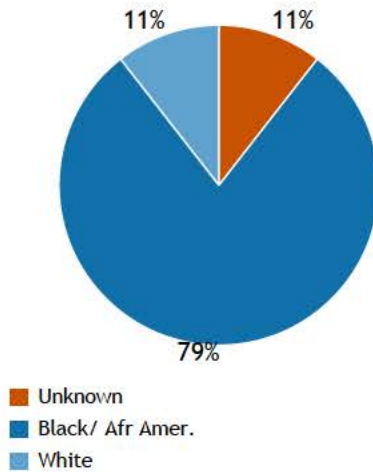
14 Year-Olds	| 2
15 Year-Olds	| 3
16 Year-Olds	| 5
17 Year-Olds	| 9

Total 5-805 Motion for Transfer Cases: 21

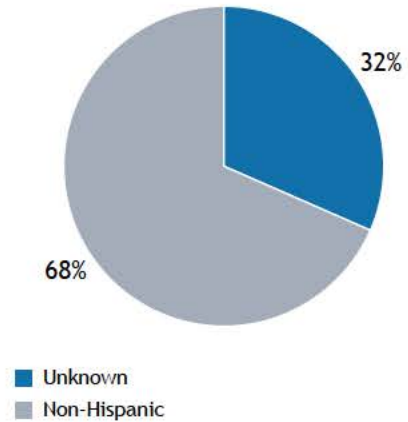
Gender



Race



Ethnicity



Male	18	Black/ Afr Amer.	15	Non-Hispanic	13
Female	1	Unknown	2	Unknown	6
Grand Total	19	White	2	Grand Total	19
		Grand Total	19		

NOTE: Individual youth may be subject to multiple proceedings/charges. Therefore, the number of proceedings/charges may exceed the number of youth in some data tables.

5-810 Extended Jurisdiction Calendar Year 2018

Charges

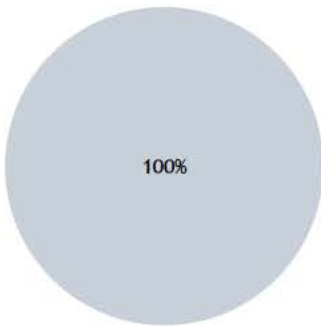
Agg. Battery	| 3
Agg. Vehicular Hijacking	| 3
Unlawful Possession of Stolen Motor Vehicle	| 2
Aggravated Flee/Attempt to Elude Peace Officer	| 1
Agg. Poss. of Stolen Fir.	| 1
Agg. Unlwf. Use of Weap.	| 1
Armed Robbery	| 1
Burglary	| 1
Crim. Sexual Aslt.	| 1
Escape	| 1
Meth Delivery	| 1
Robbery	| 1

Youth by Age

15 Year-Olds	| 1
16 Year-Olds	| 7
17 Year-Olds	| 7

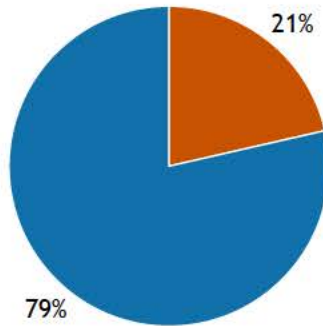
Total 5-810 Extended Jurisdiction Cases: 17

Gender



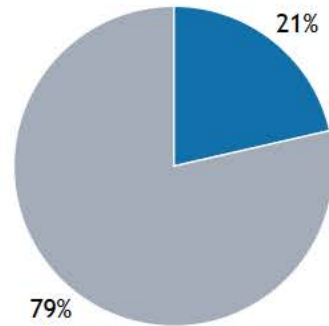
Male

Race



Unknown
Black/ Afr Amer.

Ethnicity



Unknown
Non-Hispanic

Male	14	Black/ Afr Amer.	11	Non-Hispanic	11
Grand Total	14	Unknown	3	Unknown	3
		Grand Total	14	Grand Total	14

NOTE: Individual youth may be subject to multiple proceedings/charges. Therefore, the number of proceedings/charges may exceed the number of youth in some data tables.

5-815 Habitual Offender Calendar Year 2018

Charges

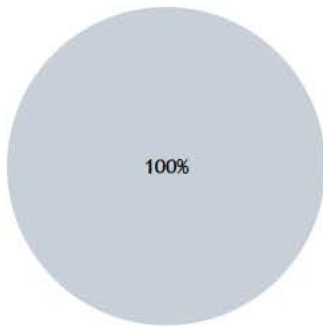
Armed Robbery	5
Agg. Vehicular Hijacking	2
Agg. Battery	1
Agg. Robbery	1
Agg. Unlawf. Use of Weap.	1
Possession of Stolen Property	1
Robbery	1

Youth by Age

15 Year-Olds	1
16 Year-Olds	2
17 Year-Olds	9

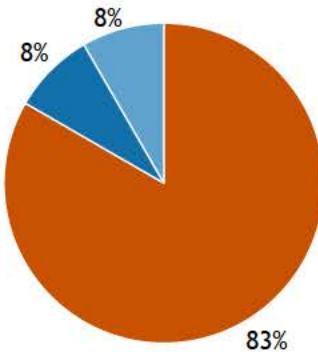
Total 5-815 Habitual Offender Cases: 12

Gender



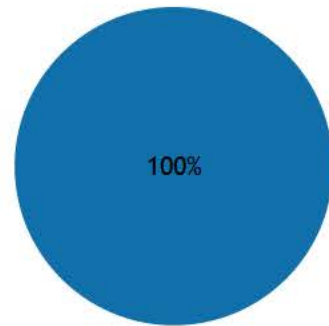
Male

Race



Unknown
Black/ Afr Amer.
White

Ethnicity



Unknown

Male	12
Grand Total	12

Unknown	10
Black/ Afr Amer.	1
White	1
Grand Total	12

Unknown	12
Grand Total	12

NOTE: Individual youth may be subject to multiple proceedings/charges. Therefore, the number of proceedings/charges may exceed the number of youth in some data tables.

5-820 Violent Offender Calendar Year 2018

Charges

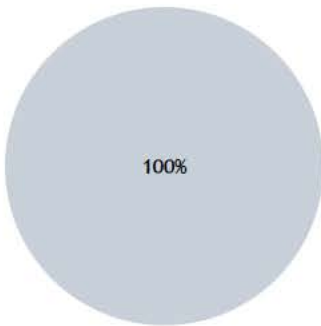
Armed Robbery	16
Agg. Unlawf. Use of Weap.	8
Agg. Vehicular Hijacking	8
Robbery	6
Agg. Robbery	4
Vehicular Hijacking	3
Defacing Identification Mark of Firearm	2
First Degree Murder	2
Armed Violence	1
Unlawf. Use of Weap.	1

Youth by Age

14 Year-Olds	2
15 Year-Olds	4
16 Year-Olds	18
17 Year-Olds	24

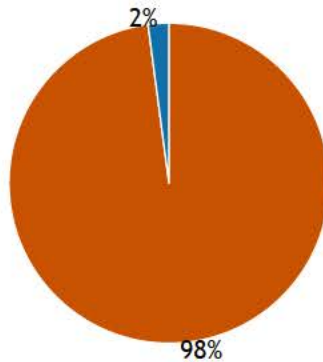
Total 5-820 Violent Offender Cases: 51

Gender



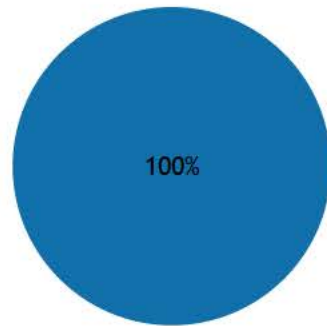
Male

Race



Unknown
Black/ Afr Amer.

Ethnicity



Unknown

Male	48	Unknown	47	Unknown	48
Grand Total	48	Black/ Afr Amer.	1	Grand Total	48
		Grand Total	48		

NOTE: Individual youth may be subject to multiple proceedings/charges. Therefore, the number of proceedings/charges may exceed the number of youth in some data tables.

Champaign County

Proceedings to try youth as adults or apply Extended Juvenile Jurisdiction, Violent Juvenile Offender and/or Habitual Offender Provisions Calendar Year 2018

Champaign County All Motions Year Comparison



<u># Youth by Age</u>		<u>Age at Offense</u>		
16 Year-Olds	1	16 Year-Olds	Agg. Battery	1
17 Year-Olds	1		Robbery	1
Youth Total	2	17 Year-Olds	Meth Delivery	1

<u># Charges by Age</u>	
16 Year-Olds	1
17 Year-Olds	1
Charges Total	2

Proceedings Summary

Calendar Year: 2018 Motion Type: 5-805 Motion for Transfer

Agg. Battery	1
Meth Delivery	1
Robbery	1

<u>Age</u>		<u>Gender</u>		<u>Race</u>		<u>Ethnicity</u>	
16 Year-Olds	1	Male	2	Black/ Afr Amer.	2	Non-Hispanic	2
17 Year-Olds	1	Grand Total	2	Grand Total	2	Grand Total	2

Calendar Year: 2018 Motion Type: 5-810 Extended Jurisdiction

Meth Delivery	1
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<u>Age</u>		<u>Gender</u>		<u>Race</u>		<u>Ethnicity</u>	
17 Year-Olds	1	Male	1	Black/ Afr Amer.	1	Non-Hispanic	1
		Grand Total	1	Grand Total	1	Grand Total	1

NOTE: Individual youth may be subject to multiple proceedings/charges. Therefore, the number of proceedings/charges may exceed the number of youth in some data tables.

Cook County

Proceedings to try youth as adults or apply Extended Juvenile Jurisdiction, Violent Juvenile
Offender and/or Habitual Offender Provisions
Calendar Year 2018

Cook County All Motions Year Comparison**Calendar Year 2018 All Motions**

<u># Youth by Age</u>		<u>Age at Offense</u>		
14 Year-Olds	2	14 Year-Olds	Armed Robbery	1
15 Year-Olds	5		Unlawful Use of Weap.	1
16 Year-Olds	24	15 Year-Olds	Agg. Vehicular Hijacking	1
17 Year-Olds	34		Armed Robbery	2
Youth Total	65		Robbery	1
			Vehicular Hijacking	1
		16 Year-Olds	Agg. Robbery	2
<u># Charges by Age</u>			Agg. Unlawful Use of Weap.	5
14 Year-Olds	2		Agg. Vehicular Hijacking	4
15 Year-Olds	5		Armed Robbery	5
16 Year-Olds	27		First Degree Murder	7
17 Year-Olds	35		Robbery	3
Charges Total	68		Vehicular Hijacking	1
		17 Year-Olds	Agg. Battery	2
			Agg. Crim. Sex. Assault	1
			Agg. Robbery	2
			Agg. Unlawful Use of Weap.	5
			Agg. Vehicular Hijacking	5
			Armed Robbery	11
			Armed Violence	1
			Defacing Identification Mark of Firearm	1
			First Degree Murder	4
			Robbery	2
			Vehicular Hijacking	1

Proceedings Summary

Calendar Year: 2018 Motion Type: 5-805 Motion for Transfer

Agg. Unlawful Use of Weap.	1
Agg. Vehicular Hijacking	2

<u>Age</u>	<u>Gender</u>	<u>Race</u>	<u>Ethnicity</u>
17 Year-Olds	Male	Unknown	Unknown
2	2	2	2
	Grand Total	Grand Total	Grand Total
	2	2	2

NOTE: Individual youth may be subject to multiple proceedings/charges. Therefore, the number of proceedings/charges may exceed the number of youth in some data tables.

Cook County
 Proceedings to try youth as adults or apply Extended Juvenile Jurisdiction, Violent
 Juvenile Offender and/or Habitual Offender Provisions
 Calendar Year 2018

Proceedings ContinuedCalendar Year: 2018 Motion Type: 5-130 Excluded Jurisdiction

Agg. Battery	2
Agg. Crim. Sex. Assault	1
First Degree Murder	9

Age		Gender		Race		Ethnicity	
16 Year-Olds	5	Male	11	Black/ Afr Amer.	11	Non-Hispanic	11
17 Year-Olds	6	Grand Total	11	Grand Total	11	Grand Total	11

Calendar Year: 2018 Motion Type: 5-810 Extended Jurisdiction

Agg. Unlwl. Use of Weap.	1
Agg. Vehicular Hijacking	3

Age		Gender		Race		Ethnicity	
16 Year-Olds	1	Male	3	Unknown	3	Unknown	3
17 Year-Olds	2	Grand Total	3	Grand Total	3	Grand Total	3

Calendar Year: 2018 Motion Type: 5-815 Habitual Offender

Agg. Robbery	1
Agg. Unlwl. Use of Weap.	1
Agg. Vehicular Hijacking	2
Armed Robbery	5
Robbery	1

Age		Gender		Race		Ethnicity	
15 Year-Olds	1	Male	10	Unknown	10	Unknown	10
16 Year-Olds	1	Grand Total	10	Grand Total	10	Grand Total	10
17 Year-Olds	8						

NOTE: Individual youth may be subject to multiple proceedings/charges. Therefore, the number of proceedings/charges may exceed the number of youth in some data tables.

Cook County

Proceedings to try youth as adults or apply Extended Juvenile Jurisdiction, Violent
 Juvenile Offender and/or Habitual Offender Provisions
 Calendar Year 2018

Proceedings Continued

Calendar Year: 2018 Motion Type: 5-820 Violent Offender

Agg. Robbery	4
Agg. Unlawful Use of Weap.	8
Agg. Vehicular Hijacking	8
Armed Robbery	16
Armed Violence	1
Defacing Identification Mark of Firearm	1
First Degree Murder	2
Robbery	6
Unlawful Use of Weap.	1
Vehicular Hijacking	3

Age		Gender		Race		Ethnicity	
14 Year-Olds	2	Male	47	Unknown	47	Unknown	47
15 Year-Olds	4	Grand Total	47	Grand Total	47	Grand Total	47
16 Year-Olds	18						
17 Year-Olds	23						

NOTE: Individual youth may be subject to multiple proceedings/charges. Therefore, the number of proceedings/charges may exceed the number of youth in some data tables.

DeKalb County

Proceedings to try youth as adults or apply Extended Juvenile Jurisdiction, Violent Juvenile
Offender and/or Habitual Offender Provisions
Calendar Year 2018

DeKalb County All Motions Year Comparison

2016	2
2017	2
2018	2

Calendar Year 2018 All Motions

<u># Youth by Age</u>		<u>Age at Offense</u>		
14 Year-Olds	1	14 Year-Olds	Agg. Crim. Sex. Assault	1
17 Year-Olds	1	17 Year-Olds	Armed Violence	1
Youth Total	2			

<u># Charges by Age</u>	
14 Year-Olds	1
17 Year-Olds	1
Charges Total	2

Proceedings Summary**Calendar Year: 2018 Motion Type: 5-805 Motion for Transfer**

Agg. Crim. Sex. Assault	1
Armed Violence	1

<u>Age</u>		<u>Gender</u>		<u>Race</u>		<u>Ethnicity</u>	
14 Year-Olds	1	Male	2	Black/ Afr Amer.	1	Unknown	2
17 Year-Olds	1	Grand Total	2	White	1	Grand Total	2
				Grand Total	2		

NOTE: Individual youth may be subject to multiple proceedings/charges. Therefore, the number of proceedings/charges may exceed the number of youth in some data tables.

DuPage County

Proceedings to try youth as adults or apply Extended Juvenile Jurisdiction, Violent Juvenile Offender and/or Habitual Offender Provisions Calendar Year 2018

DuPage County All Motions Year Comparison

2017		1
2018		2

Calendar Year 2018 All Motions

<u># Youth by Age</u>		<u>Age at Offense</u>		
16 Year-Olds	1	16 Year-Olds	Armed Robbery	1
17 Year-Olds	1		Concealment of Homicidal Death	1
Youth Total	2		First Degree Murder	1
<u># Charges by Age</u>		17 Year-Olds	Agg. Discharge of a Fir.	1
16 Year-Olds	1		First Degree Murder	1
17 Year-Olds	1			
Charges Total	2			

Proceedings Summary

Calendar Year: 2018 Motion Type: 5-130 Excluded Jurisdiction

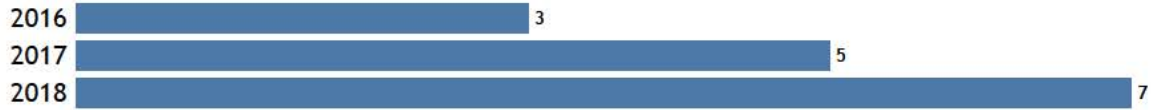
Agg. Discharge of a Fir.	1				
Armed Robbery	1				
Concealment of Homicidal Death	1				
First Degree Murder	2				
<u>Age</u>		<u>Gender</u>	<u>Race</u>	<u>Ethnicity</u>	
16 Year-Olds	1	Female	1	Other	1
17 Year-Olds	1	Male	1	White	1
		Grand Total	2	Grand Total	2
				Hispanic	2
				Grand Total	2

NOTE: Individual youth may be subject to multiple proceedings/charges. Therefore, the number of proceedings/charges may exceed the number of youth in some data tables.

Kane County

Proceedings to try youth as adults or apply Extended Juvenile Jurisdiction, Violent Juvenile Offender and/or Habitual Offender Provisions Calendar Year 2018

Kane County All Motions Year Comparison



<u># Youth by Age</u>		<u>Age at Offense</u>		
16 Year-Olds	5	16 Year-Olds	Agg. Battery	2
17 Year-Olds	1		Aggravated Flee/Attempt to Elude Peace..	1
18 Year-Olds	1		Armed Robbery	1
Youth Total	7		Burglary	1
<u># Charges by Age</u>		17 Year-Olds	Agg. Battery	1
16 Year-Olds	5	18 Year-Olds	Agg. Battery	1
17 Year-Olds	1			
18 Year-Olds	1			
Charges Total	7			

Proceedings Summary

Calendar Year: 2018 Motion Type: 5-805 Motion for Transfer

Agg. Battery	1
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<u>Age</u>		<u>Gender</u>		<u>Race</u>		<u>Ethnicity</u>	
16 Year-Olds	1	Male	1	Black/ Afr Amer.	1	Non-Hispanic	1
		Grand Total	1	Grand Total	1	Grand Total	1

Calendar Year: 2018 Motion Type: 5-810 Extended Jurisdiction

Agg. Battery	3
Aggravated Flee/Attempt to Elude Peace Officer	1
Armed Robbery	1
Burglary	1

<u>Age</u>		<u>Gender</u>		<u>Race</u>		<u>Ethnicity</u>	
16 Year-Olds	4	Male	6	Black/ Afr Amer.	6	Non-Hispanic	6
17 Year-Olds	1	Grand Total	6	Grand Total	6	Grand Total	6
18 Year-Olds	1						

NOTE: Individual youth may be subject to multiple proceedings/charges. Therefore, the number of proceedings/charges may exceed the number of youth in some data tables.

Lake County

Proceedings to try youth as adults or apply Extended Juvenile Jurisdiction, Violent Juvenile Offender and/or Habitual Offender Provisions
Calendar Year 2018

Lake County All Motions Year Comparison



Calendar Year 2018 All Motions

<u># Youth by Age</u>		<u>Age at Offense</u>	
15 Year-Olds	1	15 Year-Olds	First Degree Murder
Youth Total	1		1

<u># Charges by Age</u>	
15 Year-Olds	1
Charges Total	1

Proceedings Summary

Calendar Year: 2018 Motion Type: 5-805 Motion for Transfer

First Degree Murder	1
---------------------	---

<u>Age</u>		<u>Gender</u>		<u>Race</u>		<u>Ethnicity</u>	
15 Year-Olds	1	Male	1	Black/ Afr Amer.	1	Non-Hispanic	1
		Grand Total	1	Grand Total	1	Grand Total	1

NOTE: Individual youth may be subject to multiple proceedings/charges. Therefore, the number of proceedings/charges may exceed the number of youth in some data tables.

LaSalle County

Proceedings to try youth as adults or apply Extended Juvenile Jurisdiction, Violent Juvenile Offender and/or Habitual Offender Provisions
Calendar Year 2018

LaSalle County All Motions Year Comparison

2018  1

Calendar Year 2018 All Motions

<u># Youth by Age</u>		<u>Age at Offense</u>		
16 Year-Olds	1	16 Year-Olds	Armed Robbery	1
Youth Total	1			

<u># Charges by Age</u>	
16 Year-Olds	1
Charges Total	1

Proceedings Summary

Calendar Year: 2018 Motion Type: 5-805 Motion for Transfer

Armed Robbery	1
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<u>Age</u>	<u>Gender</u>	<u>Race</u>	<u>Ethnicity</u>
16 Year-Olds	Male	Black/ Afr Amer.	Unknown
1	1	1	1
Grand Total	Grand Total	Grand Total	Grand Total
	1	1	1

NOTE: Individual youth may be subject to multiple proceedings/charges. Therefore, the number of proceedings/charges may exceed the number of youth in some data tables.

Logan County

Proceedings to try youth as adults or apply Extended Juvenile Jurisdiction, Violent Juvenile Offender and/or Habitual Offender Provisions
Calendar Year 2018

Logan County All Motions Year Comparison

2018  1

Calendar Year 2018 All Motions

<u># Youth by Age</u>		<u>Age at Offense</u>		
17 Year-Olds	1	17 Year-Olds	Armed Violence	1
Youth Total	1			

<u># Charges by Age</u>	
17 Year-Olds	1
Charges Total	1

Proceedings Summary

Calendar Year: 2018 Motion Type: 5-805 Motion for Transfer

Armed Violence	1
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<u>Age</u>		<u>Gender</u>		<u>Race</u>		<u>Ethnicity</u>	
17 Year-Olds	1	Male	1	White	1	Non-Hispanic	1
		Grand Total	1	Grand Total	1	Grand Total	1

NOTE: Individual youth may be subject to multiple proceedings/charges. Therefore, the number of proceedings/charges may exceed the number of youth in some data tables.

Madison County

Proceedings to try youth as adults or apply Extended Juvenile Jurisdiction, Violent Juvenile Offender and/or Habitual Offender Provisions
Calendar Year 2018

Madison County All Motions Year Comparison



Calendar Year 2018 All Motions

<u># Youth by Age</u>		<u>Age at Offense</u>		
17 Year-Olds	1	17 Year-Olds	Armed Robbery	1
Youth Total	1			

<u># Charges by Age</u>	
17 Year-Olds	1
Charges Total	1

Proceedings Summary

Calendar Year: 2018 Motion Type: 5-805 Motion for Transfer

Armed Robbery	1
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<u>Age</u>	<u>Gender</u>	<u>Race</u>	<u>Ethnicity</u>
17 Year-Olds	Male	Black/ Afr Amer.	Non-Hispanic
1	1	1	1
Grand Total	1	Grand Total	Grand Total
		1	1

NOTE: Individual youth may be subject to multiple proceedings/charges. Therefore, the number of proceedings/charges may exceed the number of youth in some data tables.

McLean County

Proceedings to try youth as adults or apply Extended Juvenile Jurisdiction, Violent Juvenile Offender and/or Habitual Offender Provisions Calendar Year 2018

McLean County All Motions Year Comparison



<u># Youth by Age</u>		<u>Age at Offense</u>		
16 Year-Olds	1	16 Year-Olds	Agg. Battery	1
17 Year-Olds	3	17 Year-Olds	Defacing Identification Mark of Firearm	1
Youth Total	4		Possession of Stolen Property	2

<u># Charges by Age</u>	
16 Year-Olds	1
17 Year-Olds	3
Charges Total	4

Proceedings Summary

Calendar Year: 2018 Motion Type: 5-805 Motion for Transfer

Possession of Stolen Property	1
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<u>Age</u>		<u>Gender</u>		<u>Race</u>		<u>Ethnicity</u>	
17 Year-Olds	1	Female	1	Black/ Afr Amer.	1	Unknown	1
		Grand Total	1	Grand Total	1	Grand Total	1

Calendar Year: 2018 Motion Type: 5-815 Habitual Offender

Agg. Battery	1
Possession of Stolen Property	1

<u>Age</u>		<u>Gender</u>		<u>Race</u>		<u>Ethnicity</u>	
16 Year-Olds	1	Male	2	Black/ Afr Amer.	1	Unknown	2
17 Year-Olds	1	Grand Total	2	White	1	Grand Total	2
				Grand Total	2		

NOTE: Individual youth may be subject to multiple proceedings/charges. Therefore, the number of proceedings/charges may exceed the number of youth in some data tables.

McLean County
 Proceedings to try youth as adults or apply Extended Juvenile Jurisdiction, Violent
 Juvenile Offender and/or Habitual Offender Provisions
 Calendar Year 2018

Proceedings Continued

Calendar Year: 2018 Motion Type: 5-820 Violent Offender

Defacing Identification Mark of Firearm	1
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<u>Age</u>	<u>Gender</u>	<u>Race</u>	<u>Ethnicity</u>
17 Year-Olds	1	Male	1
	Grand Total	1	1
	Black/ Afr Amer.	1	Unknown
	Grand Total	1	Grand Total
	1	1	1

NOTE: Individual youth may be subject to multiple proceedings/charges. Therefore, the number of proceedings/charges may exceed the number of youth in some data tables.

Peoria County

Proceedings to try youth as adults or apply Extended Juvenile Jurisdiction, Violent Juvenile Offender and/or Habitual Offender Provisions
Calendar Year 2018

Peoria County All Motions Year Comparison



Calendar Year 2018 All Motions

# Youth by Age	Age at Offense
17 Year-Olds 1	17 Year-Olds Agg. Discharge of a Fir. 1
Youth Total 1	

Charges by Age
17 Year-Olds 1
Charges Total 1

Proceedings Summary

Calendar Year: 2018 Motion Type: 5-805 Motion for Transfer

Agg. Discharge of a Fir.	1
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Age	Gender	Race	Ethnicity
17 Year-Olds 1	Male 1	Black/ Afr Amer. 1	Non-Hispanic 1
	Grand Total 1	Grand Total 1	Grand Total 1

NOTE: Individual youth may be subject to multiple proceedings/charges. Therefore, the number of proceedings/charges may exceed the number of youth in some data tables.

St. Clair County

Proceedings to try youth as adults or apply Extended Juvenile Jurisdiction, Violent Juvenile Offender and/or Habitual Offender Provisions Calendar Year 2018

St. Clair County All Motions Year Comparison



<u># Youth by Age</u>		<u>Age at Offense</u>		
15 Year-Olds	1	15 Year-Olds	Escape	1
16 Year-Olds	2	16 Year-Olds	Agg. Poss. of Stolen Fir.	1
17 Year-Olds	3		Unlawful Possession of Stolen Motor Vehi..	2
Youth Total	5	17 Year-Olds	Crim. Sexual Aslt.	2
			Reckless Homicide	1
			Robbery	1
<u># Charges by Age</u>				
15 Year-Olds	1			
16 Year-Olds	3			
17 Year-Olds	4			
Charges Total	8			

Proceedings Summary

Calendar Year: 2018 Motion Type: 5-130 Excluded Jurisdiction

Crim. Sexual Aslt.	1
Reckless Homicide	1

<u>Age</u>		<u>Gender</u>		<u>Race</u>		<u>Ethnicity</u>	
17 Year-Olds	2	Male	2	Black/ Afr Amer.	1	Non-Hispanic	2
		Grand Total	2	White	1	Grand Total	2
				Grand Total	2		

Calendar Year: 2018 Motion Type: 5-805 Motion for Transfer

Unlawful Possession of Stolen Motor Vehicle	2
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<u>Age</u>		<u>Gender</u>		<u>Race</u>		<u>Ethnicity</u>	
16 Year-Olds	1	Male	1	Black/ Afr Amer.	1	Non-Hispanic	1
		Grand Total	1	Grand Total	1	Grand Total	1

NOTE: Individual youth may be subject to multiple proceedings/charges. Therefore, the number of proceedings/charges may exceed the number of youth in some data tables.

St. Clair County

Proceedings to try youth as adults or apply Extended Juvenile Jurisdiction, Violent
 Juvenile Offender and/or Habitual Offender Provisions
 Calendar Year 2018

Proceedings Continued

Calendar Year: 2018 Motion Type: 5-810 Extended Jurisdiction

Agg. Poss. of Stolen Fir.	1
Crim. Sexual Aslt.	1
Escape	1
Robbery	1
Unlawful Possession of Stolen Motor Vehicle	2

Age		Gender		Race		Ethnicity	
15 Year-Olds	1	Male	4	Black/ Afr Amer.	4	Non-Hispanic	4
16 Year-Olds	2	Grand Total	4	Grand Total	4	Grand Total	4
17 Year-Olds	2						

NOTE: Individual youth may be subject to multiple proceedings/charges. Therefore, the number of proceedings/charges may exceed the number of youth in some data tables.

Stephenson County

Proceedings to try youth as adults or apply Extended Juvenile Jurisdiction, Violent Juvenile Offender and/or Habitual Offender Provisions
Calendar Year 2018

Stephenson County All Motions Year Comparison

2018  1

Calendar Year 2018 All Motions

<u># Youth by Age</u>		<u>Age at Offense</u>	
15 Year-Olds	1	15 Year-Olds	Agg. Discharge of a Fir.
Youth Total	1		1

<u># Charges by Age</u>	
15 Year-Olds	1
Charges Total	1

Proceedings Summary

Calendar Year: 2018 Motion Type: 5-805 Motion for Transfer

Agg. Discharge of a Fir.	1
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Age	Gender	Race	Ethnicity
15 Year-Olds	Male	Black/ Afr Amer.	Non-Hispanic
1	1	1	1
Grand Total	1	1	1

NOTE: Individual youth may be subject to multiple proceedings/charges. Therefore, the number of proceedings/charges may exceed the number of youth in some data tables.

Tazewell County

Proceedings to try youth as adults or apply Extended Juvenile Jurisdiction, Violent Juvenile Offender and/or Habitual Offender Provisions
Calendar Year 2018

Tazewell County All Motions Year Comparison

2018  1

Calendar Year 2018 All Motions

<u># Youth by Age</u>		<u>Age at Offense</u>		
17 Year-Olds	1	17 Year-Olds	Home Invasion	1
Youth Total	1			

<u># Charges by Age</u>	
17 Year-Olds	1
Charges Total	1

Proceedings Summary

Calendar Year: 2018 Motion Type: 5-805 Motion for Transfer

Home Invasion	1
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<u>Age</u>		<u>Gender</u>		<u>Race</u>		<u>Ethnicity</u>	
17 Year-Olds	1	Male	1	Black/ Afr Amer.	1	Non-Hispanic	1
		Grand Total	1	Grand Total	1	Grand Total	1

NOTE: Individual youth may be subject to multiple proceedings/charges. Therefore, the number of proceedings/charges may exceed the number of youth in some data tables.

Will County

Proceedings to try youth as adults or apply Extended Juvenile Jurisdiction, Violent Juvenile Offender and/or Habitual Offender Provisions Calendar Year 2018

Will County All Motions Year Comparison



<u># Youth by Age</u>		<u>Age at Offense</u>		
14 Year-Olds	1	14 Year-Olds	Agg. Battery	1
15 Year-Olds	1	15 Year-Olds	First Degree Murder	1
17 Year-Olds	2	17 Year-Olds	Agg. Battery	1
Youth Total	4		First Degree Murder	1

<u># Charges by Age</u>	
14 Year-Olds	1
15 Year-Olds	1
17 Year-Olds	2
Charges Total	4

Proceedings Summary

Calendar Year: 2018 Motion Type: 5-130 Excluded Jurisdiction

Agg. Battery	1
First Degree Murder	1

<u>Age</u>		<u>Gender</u>		<u>Race</u>		<u>Ethnicity</u>	
17 Year-Olds	2	Male	2	Black/ Afr Amer.	2	Non-Hispanic	2
		Grand Total	2	Grand Total	2	Grand Total	2

Calendar Year: 2018 Motion Type: 5-805 Motion for Transfer

Agg. Battery	1
First Degree Murder	1

<u>Age</u>		<u>Gender</u>		<u>Race</u>		<u>Ethnicity</u>	
14 Year-Olds	1	Male	2	Black/ Afr Amer.	2	Non-Hispanic	2
15 Year-Olds	1	Grand Total	2	Grand Total	2	Grand Total	2

NOTE: Individual youth may be subject to multiple proceedings/charges. Therefore, the number of proceedings/charges may exceed the number of youth in some data tables.

Winnebago County

Proceedings to try youth as adults or apply Extended Juvenile Jurisdiction, Violent Juvenile Offender and/or Habitual Offender Provisions
Calendar Year 2018

Winnebago County All Motions Year Comparison



# Youth by Age	Age at Offense	
16 Year-Olds	2	16 Year-Olds Agg. Battery 2
Youth Total	2	

# Charges by Age	
16 Year-Olds	2
Charges Total	2

Proceedings Summary

Calendar Year: 2018 Motion Type: 5-130 Excluded Jurisdiction

Agg. Battery	1
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Age	Gender	Race	Ethnicity
16 Year-Olds	1	1	1
	Male	Black/ Afr Amer.	Non-Hispanic
	Grand Total	Grand Total	Grand Total

Calendar Year: 2018 Motion Type: 5-805 Motion for Transfer

Agg. Battery	1
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Age	Gender	Race	Ethnicity
16 Year-Olds	1	1	1
	Male	Black/ Afr Amer.	Non-Hispanic
	Grand Total	Grand Total	Grand Total

NOTE: Individual youth may be subject to multiple proceedings/charges. Therefore, the number of proceedings/charges may exceed the number of youth in some data tables.

Appendix A

This report summarizes five types of actions a State’s Attorney may take to “transfer” a person under 18 years old to criminal (adult) court or to designate the youth as a “Violent Juvenile Offender” or “Habitual Juvenile Offender.” This glossary provides a brief explanation of each of these action. These definitions should not be considered exhaustive. More information is available in the Illinois Juvenile Court Act of 1987 (705 ILCS 405/5 et seq.). As described in the introductory text, the Juvenile Court Act was updated in January 2016 with the enactment of Public Act 99-0258.

Glossary of Motion Types:

Excluded Jurisdiction (705 ILCS 405/5-130): This section of the Juvenile Court Act provides that, if a youth more than 16 years old is charged with one of three specified offenses, their case is automatically “excluded” from juvenile court and shall be prosecuted under the criminal code. This is often referred to as “automatic transfer.” The specified offenses are first degree murder, aggravated criminal sexual assault or aggravated battery with a firearm when the youth is accused of personally discharging a firearm. If convicted or a plea of guilty is filed, the Court shall impose a criminal sentence in accordance with Section 5-4.5-105 of the Unified Code of Corrections.

Motion for Transfer (705 ILCS 405/5-805): There are two types of motions for transfer: Presumptive Transfer and Discretionary Transfer.

1. A presumptive transfer motion alleges a youth 15 years of age or older committed an act that constitutes a forcible felony and (i) the youth has previously been adjudicated delinquent or found guilty for commission of an act that constitutes a forcible felony and (ii) the act that constitutes the offense was committed in furtherance of criminal activity by an organized gang. If a juvenile judge finds probable cause to believe that these allegations are true, there is a rebuttable presumption that the youth should transferred to the adult criminal court.
2. A discretionary transfer motion alleges a youth 13 years of age or older committed an act that constitutes a crime under the criminal laws of Illinois. If a juvenile judge finds probable cause to believe that these allegations are true and that it is “not in the best interests of the public” to proceed in juvenile court, the court may transfer the case to adult criminal court.

Extended Jurisdiction (705 ILCS 405/5-810): This petition alleges the commission by a youth 13 years of age or older of any offense which would be a felony if committed by an adult. Upon a disposition of guilt or guilty plea the court shall impose a juvenile sentence and an adult criminal sentence in accordance with Section 5-4.5-105 of the Unified Code of Corrections. The execution of the adult criminal sentence shall be stayed on the condition that the youth not violate the provisions of the juvenile sentence. These motions are often referred to as “EJJs.” If a motion for EJJ is granted, the youth has a right to a jury trial and, if convicted, the sentencing proceedings are open to the public.

Violent Offender (705 ILCS 405/5-820): A youth having been previously adjudicated a delinquent minor for an offense, which had the youth been prosecuted as an adult, would have been a Class 2 or greater felony involving the use or threat of physical force or violent against an individual or Class 2 or greater felony for which an element of the offense is possession of use of a firearm, and who is thereafter adjudicated a delinquent minor for the second time for any of those offenses shall be adjudicated a

Violent Juvenile Offender (VJO). Upon a VJO adjudication, a court “shall” commit the youth to the Department of Juvenile Justice until the youth’s 21st birthday.

Habitual Offender (705 ILCS 405/5-850): Any youth having been twice adjudicated a delinquent minor for offenses, which had the youth been prosecuted as an adult, would have been felonies under the laws of Illinois, and who is thereafter adjudicated a delinquent minor for a third time shall be adjudged an Habitual Juvenile Offender (HJO). Upon an HJO adjudication, the court “shall” commit the youth to the Department of Juvenile Justice until the youth’s 21st birthday.