Nos. 121306 & 121345 (cons.)

IN THE
ILLINOIS SUPREME COURT

PEOPLE OF THE STATE OF ILLINOIS,	)	On Appeal from the Appellate Court of Illinois, First Judicial District,
Plaintiff-Appellee,	)	Nos. 1-14-1904 & 1-14-1500
v.	)	There on Appeal from the Circuit Court of Cook County, Illinois Nos. 11 CR 9381 & 12 CR 19490
KEVIN HUNTER & DRASHUN WILSON,	)	The Honorable Evelyn B. Clay & Thaddeas L. Wilson,
Defendants-Appellants.	)	Judges Presiding.

BRIEF OF PLAINTIFF-APPELLEE PEOPLE OF THE STATE OF ILLINOIS

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ISSUES PRESENTED

In 2013 and 2014, respectively, defendants Kevin Hunter and Drashun Wilson were separately convicted in criminal court for offenses they committed when they were juveniles. At the time of their crimes and charges, the Juvenile Court Act (Act) precluded the State from proceeding against either defendant in juvenile court. 705 ILCS 405/5-120 (2012) (for Wilson, under exclusive jurisdiction provision); 705 ILCS 405/5-130(1)(a) (2011) (for Hunter, under excluded jurisdiction provision). At sentencing, the trial courts were statutorily required to impose firearm enhancements in addition to the applicable term-of-years sentences.

While defendants' direct appeals were pending, on January 1, 2016, Public Acts 99-69 and 99-258 took effect. PA1-63;[1] *People ex rel. Alvarez v. Howard*, 2016 IL 120729, ¶¶ 5, 22. Public Act 99-69 enacted a new juvenile sentencing statute, 730 ILCS 5/5-4.5-105 (2016), whose subsection (b) eliminates *mandatory* firearm enhancements for juvenile offenders.

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[1] For defendant Hunter's case, citations to the common law record and report of proceedings appear as "HC__" and "HR at __," respectively. For defendant Wilson's case, citations to the common law record and report of proceedings appear as "WC__" and "WR at __," respectively. Citations to defendants' brief and appendix appear as "Def. Br. __" and "A__," respectively. And citations to the People's separate appendix appear as "PA__."

Pursuant to Rule 318(c), the People asked the Appellate Court to transmit to this Court certified copies of the appellate court briefs from both cases. Citations to Hunter and Wilson's supplemental appellate court opening briefs appear as "Hunter Supp. Br. __" and "Wilson Supp. Br. __," respectively.

PA20-22. Public Act 99-258 removes certain offenses from the excluded jurisdiction provision, thus allowing juvenile court proceedings against certain minors who previously could be tried only in criminal court. PA29.[2]

The issues presented are:

1. Whether 730 ILCS 5/5-4.5-105(b), the juvenile sentencing provision, applies retroactively to cases on appeal when it became effective.

2. Whether the amendment to the excluded jurisdiction provision applies retroactively to cases on appeal when it became effective.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315 and 651. On November 23, 2016, this Court allowed defendants' petitions for leave to appeal and consolidated the cases for review.

STATEMENT OF FACTS

I. Kevin Hunter

In June 2011, Hunter was charged by information with one count of aggravated vehicular hijacking while carrying a firearm, 720 ILCS 5/18-4(a)(4) (2011), one count of aggravated kidnaping while armed with a firearm, 720 ILCS 5/10-2(a)(6) (2011), and one count of armed robbery while

[2] Public Act 99-258 duplicated the new juvenile sentencing provision that Public Act 99-69 had already enacted. *Compare* PA20-22, *with* PA61-63. Because the two acts do not conflict, they must "be construed together in such a manner as to give full effect to each Act." 5 ILCS 70/6 (2016). In both cases, the appellate court focused its retroactivity inquiry as to the new juvenile sentencing provision on Public Act 99-69. A20-21, 48-50. This brief likewise focuses on Public Act 99-69, but refers to Public Act 99-258 where necessary to address defendants' arguments.

carrying a firearm, 720 ILCS 5/18-2(a)(2) (2011), for offenses he committed in May 2011, when he was 16 years old. HC34-39, 82. At the time of both the offenses and charges, the Act's excluded jurisdiction provision, 705 ILCS 405/5-130(1)(a) (2011), required the State to prosecute 16-year-olds charged with committing aggravated vehicular hijacking with a firearm and armed robbery with a firearm under the criminal laws. In November 2013, following a bench trial, Hunter was convicted of all three offenses. HC74; HR at DD1, DD46-47. At sentencing, Hunter faced a prison term of 21 to 45 years for each offense. 720 ILCS 5/18-4(a)(4), (b) (2011) (aggravated vehicular hijacking with firearm is class X felony for which 15 years must be added to prison term); 720 ILCS 5/10-2(a)(6), (b) (2011) (same for aggravated kidnaping with a firearm); 720 ILCS 5/18-2(a)(2), (b) (2011) (same for armed robbery with a firearm); 730 ILCS 5/5-4.5-25(a) (2011) (sentencing range for class X felony is six to 30 years in prison). In May 2014, the trial court sentenced Hunter to concurrent 21-year prison terms. A38; HR at PP8-9. Hunter filed a notice of appeal in June 2014. A39.

On appeal, in supplemental briefing, Hunter argued that the new juvenile sentencing provision, 720 ILCS 5/5-4.5-105(b) (2016), and the amendment to the excluded jurisdiction provision, 705 ILCS 405/5-130(1)(a) (2016) — both of which took effect while Hunter's case was on appeal — applied retroactively to him. A5-6, 17-18, 30-31. Hunter sought resentencing either in criminal court under section 5-4.5-105(b), or in juvenile court under

the Act. A5-6, 17-18, 30-31. The appellate court affirmed Hunter's sentences, concluding that neither section 5-4.5-105(b) nor the amendment applies retroactively to cases that were pending on appeal when the provisions became effective.

II. Drashun Wilson

In October 2012, defendant Wilson was indicted on charges of attempted first degree murder, 720 ILCS 5/8-4(a), 5/9-1(a) (2012), and aggravated battery with a firearm, 720 ILCS 5/12-3.05(e)(1) (2012), for offenses he committed in September 2012, when he was 17 years old. WC13, 24-29. At the time of the offenses and indictment, the Act applied exclusively to minors under age 17, thus precluding the State from proceeding against Wilson in juvenile court. 705 ILCS 405/5-120 (2012); *People v. Richardson*, 2015 IL 118255, ¶ 3. In March 2014, a jury found Wilson guilty of both offenses and also found that during the attempted murder, Wilson personally discharged a firearm that proximately caused great bodily harm to another person. WC116-20; WR at P5-6; R115-19. Wilson's crimes subjected him to prison terms of (1) six to 30 years for the attempted murder, plus a mandatory firearm enhancement of between 25 years and life, 720 ILCS 5/8-4(c)(1)(D) (2012); 730 ILCS 5/5-4.5-25(a) (2012); and (2) six to 30 years for the aggravated battery with a firearm, 720 ILCS 5/12-3.05(h) (2012); 730 ILCS 5/5-4.5-25(a) (2012). In May 2014, after merging the aggravated

battery conviction into the attempted murder conviction, the trial court sentenced Wilson to 31 years for attempted murder. A61; WR at S6.

On appeal, in supplemental briefing, Def. Br. 8, Wilson argued that he was entitled to resentencing under the new juvenile sentencing provision, 720 ILCS 5/5-4.5-105(b) (2016), which took effect while his case was on appeal. A43, 46-50. The appellate court affirmed, concluding that the new provision applied prospectively only. A49-50.

STANDARD OF REVIEW

Whether a statutory enactment or amendment applies retroactively presents a question of statutory construction that this Court reviews *de novo*. *People ex rel. Madigan v. J.T. Einoder, Inc.*, 2015 IL 117193, ¶ 27.

ARGUMENT

Defendants are not entitled to remands for further proceedings. Whether in the new provision itself or by default under the Statute on Statutes, the legislature clearly indicated its intent that the new juvenile sentencing statute apply prospectively only. Even if subsection (b) of the new sentencing statute is procedural, it does not apply retroactively to these defendants because they were sentenced before the statute's effective date and thus their sentencing proceedings were not required to conform to it.

The amendment to the excluded jurisdiction provision does not apply retroactively to Hunter. The amendment governs only which division of the circuit court tries a juvenile's case. Because Hunter was properly tried in

criminal court under the amendment's predecessor, the amendment does not apply to his case. But even if the amendment would apply retroactively to all pending nonfinal cases, it is impossible to apply the amendment to Hunter, who is now 22 years old and no longer subject to proceedings under the Act. Thus, this Court should affirm the appellate court's judgments.

I. Legal Standards

A. Statutory construction principles

The fundamental rule of statutory construction is to ascertain and give effect to the legislature's intent. *Hayashi v. Ill. Dep't of Fin. & Prof. Reg.*, 2014 IL 116023, ¶ 16. The statutory language — the most reliable indicator of legislative intent — must be given its plain and ordinary meaning. *Id.* In interpreting statutory language, the Court "view[s] the statute as a whole, construing words and phrases in light of other relevant statutory provisions and not in isolation," considering "the reason for the law, the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statute one way or another." *Bowman v. Ottney*, 2015 IL 119000, ¶ 9 (citations omitted). And the Court considers "real-world results," presuming that "the legislature did not intend absurdity, inconvenience, or injustice." *People v. Fort*, 2017 IL 118966, ¶¶ 20, 35 (citations omitted).

B. Retroactivity standards

To determine whether a statutory enactment or amendment applies retroactively, the Court first asks whether the legislature clearly indicated

the statute's temporal reach. *Howard*, 2016 IL 120729, ¶ 19 (applying retroactivity analysis set forth in *Landgraf v. USI Film Products*, 511 U.S. 244 (1994)). If so, the expressed legislative intent must be given effect, absent a constitutional prohibition. *Howard*, 2016 IL 120729, ¶ 19. If not, then the Court looks to the default provision, section 4 of the Statute on Statutes. *Id.* at ¶¶ 20, 29. Section 4 provides:

> No new law shall be construed to repeal a former law, whether such former law is expressly repealed or not, as to any offense committed against the former law, or as to any act done, any penalty, forfeiture or punishment incurred, or any right accrued, or claim arising under the former law, or in any way whatever to affect any such offense or act so committed or done, or any penalty, forfeiture or punishment so incurred, or any right accrued, or claim arising before the new law takes effect, save only that the proceedings thereafter shall conform, so far as practicable, to the laws in force at the time of such proceeding. If any penalty, forfeiture or punishment be mitigated by any provisions of a new law, such provision may, by the consent of the party affected, be applied to any judgment pronounced after the new law takes effect. This section shall extend to all repeals, either by express words or by implication, whether the repeal is in the act making any new provision upon the same subject or in any other act.

5 ILCS 70/4 (2016). Thus, when a statutory enactment or amendment "does not directly address [its] temporal reach . . . , section 4 of the Statute on Statutes governs, prohibiting the retroactive application of substantive provisions, but providing that procedural law changes will apply to ongoing proceedings," absent a constitutional impediment to doing so. *People v. Ziobro*, 242 Ill. 2d 34, 45-46 (2011) (citations omitted); *see Howard*, 2016 IL 120729, ¶ 28. Under section 4's second sentence, however, a substantive

change that mitigates punishment may, at the defendant's election, be applied to any judgment pronounced after the new law takes effect, *i.e.*, before the defendant is sentenced. *People v. Bradford*, 106 Ill. 2d 492, 504 (1985); *People v. Hansen*, 28 Ill. 2d 322, 340-41 (1963).

II. The New Juvenile Sentencing Statute Does Not Apply Retroactively to Cases on Appeal on Its Effective Date.

Public Act 99-69 enacted the new juvenile sentencing provision, 730 ILCS 5/5-4.5-105 (2016), which provides, in relevant part:

> Sec. 5-4.5-105. SENTENCING OF INDIVIDUALS UNDER THE AGE OF 18 AT THE TIME OF THE COMMISSION OF AN OFFENSE.
>
> (a) On or after the effective date of this amendatory Act of the 99th General Assembly, when a person commits an offense and the person is under 18 years of age at the time of the commission of the offense, the court, at the sentencing hearing conducted under Section 5-4-1, shall consider [nine enumerated] factors in mitigation in determining the appropriate sentence[.]
>
> * * *
>
> (b) Except as provided in subsection (c), the court may sentence the defendant to any disposition authorized for the class of the offense of which he or she was found guilty as described in Article 4.5 of this Code, and may, in its discretion, decline to impose any otherwise applicable sentencing enhancement based upon firearm possession, possession with personal discharge, or possession with personal discharge that proximately causes great bodily harm, permanent disability, permanent disfigurement, or death to another person.
>
> (c) Notwithstanding any other provision of law, if the defendant is convicted of first degree murder and would otherwise be subject to sentencing under clause (iii), (iv), (v), or (vii) of subsection (c) of Section 5-8-1 of this Code based on the category of persons identified therein, the court shall impose a sentence of not less than 40 years of imprisonment. In addition,

> the court may, in its discretion, decline to impose the sentencing enhancements based upon the possession or use of a firearm during the commission of the offense included in subsection (d) of Section 5-8-1.

PA20-22. Public Act 99-69 also amended statutory provisions that prescribed sentences for specific crimes, requiring that juveniles convicted under those provisions be sentenced under newly-enacted section 5-4.5-105. *See* PA2-5, 8-12, 14-16 ("An offender under the age of 18 years of age at the time of the commission of [the offense] shall be sentenced under Section 5-4.5-105 of the Unified Code of Corrections."). Under the Effective Date of Laws Act, 5 ILCS 75/1 (2016), Public Act 99-69 became effective on January 1, 2016. *See* PA1-28 (no effective date provided); *Howard*, 2016 IL 120729, ¶ 22.

For three alternative reasons, section 5-4.5-105(b) does not apply retroactively to defendants' cases, which were on appeal when the statute took effect. First, the statutory enactment clearly indicates its temporal reach, providing that it applies only to a juvenile who commits an offense on or after the public act's effective date — here, January 1, 2016. Second, even if subsection (b) does not clearly indicate its temporal reach, because it is a substantive enactment, it applies prospectively under section 4 of the Statute on Statutes, 5 ILCS 70/4 (2016). Finally, even if the enactment constitutes a procedural change that applies retroactively to ongoing trial court proceedings, under section 4's plain language, it does not apply to cases like defendants' that were already on appeal when the change became effective.

Thus, defendants are not entitled to resentencing under the new juvenile sentencing provision.

A. The legislature clearly indicated its intent that the new juvenile sentencing statute apply to juveniles who commit offenses after its effective date.

Defendants' argument that the legislature clearly indicated only subsection (a)'s temporal reach, Def. Br. 24-29,[3] improperly construes the operative language in isolation and disregards the overall purpose of Public Act 99-69. Public Act 99-69 enacted a new sentencing statute that applies to defendants who were under age 18 at the time of their crimes. The enactment creates a separate sentencing scheme for juvenile offenders who are prosecuted in criminal court. Viewed as a whole, the new scheme is designed to lessen criminal penalties for juvenile offenders and ensure that trial courts consider certain mitigating factors, including the offender's youth and its attendant characteristics, before sentencing the offender. PA20-22.

Statutory changes are traditionally presumed to be prospective, not retroactive. *See, e.g.*, *Landgraf*, 511 U.S. at 265-73, 277-78; *J.T. Einoder*, 2015 IL 117193, ¶ 34. Here, in the very first sentence, the legislature confirmed its intent that the new enactment apply prospectively only: "On or after the effective date of this amendatory Act of the 99th General Assembly, when a person commits an offense and the person is under 18 years of age at

[3] Defendants have abandoned their argument, raised in the appellate court, that the entire statute applies retroactively to their cases. A22-24, 46, 49; Hunter Supp. Br. 2, 5; Wilson Supp. Br. 4-6. Thus, it is undisputed that subsection (a) applies prospectively only.

the time of the commission of the offense, ..." PA20. Although the legislature included this language in subsection (a), the phrase must be read in light of the statute's overall structure and its purpose of enacting a new sentencing scheme specific to juvenile offenders. *In re Marriage of Kutchins*, 136 Ill. App. 3d 45, 49 (2d Dist. 1985) (court ascertains legislative intent "from the entire act rather than from just one clause, sentence or section. As a statute is passed as a whole and not in parts, it should be construed as a whole and not in parts.") (citing *Merrill v. Drazek*, 62 Ill. 2d 1 (1975), and *Ill. Bell Tele. Co. v. Ames*, 364 Ill. 362 (1936)).

Viewed in light of the Act's purpose, the legislature stated the enactment's temporal reach in the first sentence, then set forth in subsection (a) the new procedures that govern juvenile sentencing hearings. Subsections (b) and (c) provide the applicable sentencing ranges. Thus, the three subsections together establish a comprehensive juvenile sentencing scheme, and the legislature's expression of temporal reach in subsection (a) applies to the entire scheme, not just one subpart of it. Accordingly, the legislature plainly intended that the new statute apply prospectively in its entirety to juveniles who commit crimes after its effective date.

Contrary to defendants' argument, Def. Br. 29 (citing PA44-53), although the legislature could have set forth the new statute's temporal reach in a separate subsection, as it did with some amendments in Public Act 99-258, it was not necessary to do so. Public Act 99-258 amended existing

statutory provisions, PA44-53, and in that context, it made sense to include an independent subsection making the changes prospective. But here, the legislature enacted an entirely new scheme. Therefore, there was no need to set forth the effective date in a separate subsection; it was enough for the legislature to express its intent for prospective application in the first sentence. Thus, the new juvenile sentencing scheme applies prospectively as a whole to juveniles who commit offenses on or after its effective date.

B. Even if subsection (b) were silent as to temporal reach, Section 4 of the Statute on Statutes prohibits its retroactive application to defendants who were sentenced before its effective date.

Under section 4 of the Statute on Statutes, the legislature clearly intended that subsection (b) not apply retroactively to juveniles who were sentenced before January 1, 2016, the new law's effective date. Section 4 is a general savings clause that the legislature enacted to reverse the common-law presumption that statutory repeals and amendments abate all nonfinal criminal cases. *People v. Glisson*, 202 Ill. 2d 499, 504 (2002). To that end, it "starts with a prohibition on construing a new statute to affect penalties [or] punishments" incurred under the former law. *Id.* at 506-07; 5 ILCS 70/4 (2016). "[T]his [language] forbids retroactive application of substantive changes to statutes." *Glisson*, 202 Ill. 2d at 506-07. Thus, following a statutory change, the penalty incurred by an offender under an old law is "'kept alive'" rather than abated, as the common-law presumption would have required. *Id.* at 507 (quoting *State v. Sanney*, 113 S.E. 762, 764

(W. Va. 1922)). The sole exception to this rule is contained in section 4's second sentence, which provides that a new law that mitigates punishment may apply retroactively to a consenting defendant who has not yet been sentenced in the circuit court. 5 ILCS 70/4 (2016); *People v. Reyes*, 2016 IL 119271, ¶¶ 11-12; *Bradford*, 106 Ill. 2d at 504; *Hansen*, 28 Ill. 2d at 340-41. To summarize, under section 4, substantive changes apply prospectively only; procedural changes may apply retroactively; and changes that mitigate punishment may apply retroactively only to persons who have not been sentenced.

1. Subsection (b) applies prospectively because it substantively changed the mandatory minimum penalties that attach to certain offenses committed by juveniles.

Subsection (b) eliminated mandatory firearm enhancements for juvenile offenders, thus changing the quantum of punishment for certain crimes. *Cf. Dobbert v. Florida*, 432 U.S. 282, 293-94 (1977) (statutory change procedural where "there was no change in the quantum of punishment attached to the crime"). For example, a juvenile who commits attempted murder while armed with a firearm on or after January 1, 2016, is subject to a mandatory minimum sentence of six years, instead of the mandatory minimum sentence of 21 years (six years plus a 15-year firearm enhancement) under the pre-2016 scheme. 720 ILCS 5/8-4(c)(1)(B) (2014 & 2016); 730 ILCS 5/5-4.5-25(a) (2014 & 2016).

By redefining the mandatory minimum penalties that attach to certain offenses committed by juveniles, the legislature effected a substantive change. *Ogdon v. Gianakos*, 415 Ill. 591, 596 (1953) (law that "creates, defines, or regulates rights" is substantive). To construe the new law as applying retroactively to cases on appeal would "affect" the "penalty" or "punishment" to which a juvenile was subject at the time of his crime and sentence and directly contravene section 4's plain language. 5 ILCS 70/4 (2016) (prohibiting retroactive application of new law where it would "affect" "any penalty . . . or punishment . . . incurred" under former law, unless new law took effect before sentencing); *cf. Dorsey v. United States*, 567 U.S. 260, 272 (2012) (under similar language in federal savings statute, new statute that diminishes penalties prescribed in old statute does not apply retroactively to change "the penalties 'incurred' under that older statute"; "penalties are 'incurred' under the older statute when an offender becomes subject to them, *i.e.*, commits the underlying conduct that makes the offender liable"). For these reasons, subsection (b) worked a substantive change that cannot apply retroactively to cases that were on appeal at the time of its effective date.

Defendants' argument disregards section 4's plain language and purpose. Applying subsection (b) to offenders who were sentenced before its effective date would affect the punishment incurred by the offender under the former law. 5 ILCS 70/4 (2016). That is why subsection (b) is a substantive

change. Because section 4 bars retroactive application of substantive changes, and the sole exception to that prohibition — for changes that mitigate punishment — does not apply to defendants sentenced before the new law's effective date, subsection (b) must apply prospectively here. *Glisson*, 202 Ill. 2d at 506-07.

Furthermore, section 4's purpose, in part, is to preserve the State's right to enforce punishment already imposed under a former law. *See People v. Bilderback*, 9 Ill. 2d 175, 180-82 (1956) (section 4 enacted to reverse common-law presumption that extinguished penalties incurred before statutory change); *Bradford*, 106 Ill. 2d at 504 (defendant sentenced before effective date of statute mitigating punishment "not eligible to elect to be sentenced under it"); *Hansen*, 28 Ill. 2d at 340-41 (same, for defendant sentenced 13 days before new statute's effective date); *see also Warden v. Marrero*, 417 U.S. 653, 660-61 (1974) (Congress enacted general savings clause to avoid abatements resulting from legislative changes that increased or decreased penalties); Comment, *Today's Law and Yesterday's Crime: Retroactive Application of Ameliorative Criminal Legislation*, 121 U. Pa. L. Rev. 120, 127-35 (1972) (describing similar savings clauses across country). Defendants' argument contravenes this clear intent and should be rejected.

2. Contrary to defendants' position, subsection (b) does not simply change sentencing procedures.

Subsection (b) does not merely reallocate decision-making responsibility for imposing the firearm enhancement, such that it could

properly be characterized as a procedural change, as defendant posits. Def. Br. 30-32. First, a mandatory firearm enhancement is part of the sentence itself; it increases the applicable mandatory minimum sentence by the designated number of years. *See People v. Taylor*, 2015 IL 117267, ¶ 21; *People v. Blair*, 2013 IL 114122, ¶¶ 12, 20; *People v. White*, 2011 IL 109616, ¶¶ 19-21, 26, 29. Making that enhancement discretionary lessens the minimum penalty for the offense, thus "affect[ing]" the penalty incurred under the former law. 5 ILCS 70/4 (2016).

Second, reducing the mandatory minimum sentence for an offense is a substantive change, even though the trial court retains discretion to impose the previously-higher minimum term. Although subsection (b) may be said to re-allocate from the legislature to the judiciary the decision whether a firearm enhancement should be imposed, it nevertheless affects the penalty incurred under the former law by broadening the available sentencing range. *Cf. People v. Davis*, 2014 IL 115595, ¶¶ 38-43 (constitutional rule rendering mandatory minimum sentence discretionary is substantive change because it "'mandates a sentencing range broader than that [previously] provided'"). And even where a change appears procedural, it can properly be characterized as substantive under section 4 where it establishes, creates, defines, or regulates rights. *See, e.g.*, *J.T. Einoder*, 2015 IL 117193, ¶¶ 35-36 (although amendment appeared procedural, it was substantive and could not apply retroactively because it created new type of liability for defendant's

past conduct); *cf. Lindh v. Murphy*, 521 U.S. 320, 327-28 (1997) (statute that "goes beyond 'mere' procedure to affect substantive entitlement to relief" may not apply retroactively). Here, applying subsection (b) retroactively to cases on appeal would establish new rights for defendants who have already received sentences that include mandatory firearm enhancements: they would be entitled to shorter mandatory minimum sentences. And, as discussed, applying the new law retroactively would contravene section 4's aim to preserve the State's right to enforce punishment already imposed under the former law. Thus, the change in law is not procedural. *Compare Schweickert v. AG Serv. of Am., Inc.*, 355 Ill. App. 3d 439, 442-43 (3d Dist. 2005) ("substantive change in law establishes, creates, or defines rights"), *with Landgraf*, 511 U.S. at 275 (procedural rules "regulate secondary rather than primary conduct").

Finally, even if subsection (b)'s change does not fit squarely within the definition of "substantive," section 4's plain language and this Court's precedent forbid applying subsection (b) to defendants. As discussed, because the new law affects punishment incurred under the former law, section 4's plain language bars construing subsection (b) as applying retroactively. Moreover, in applying section 4's sole exception to this prohibition, this Court has long held that a defendant sentenced before the effective date of a new law mitigating punishment is "not eligible to elect to be sentenced under it." *Bradford*, 106 Ill. 2d at 504 (citing *Hansen*, 28 Ill. 2d at 341); *People v. Lisle*,

390 Ill. 327, 328-29 (1945) (section 4's second sentence "only appl[ies] to those classes of cases in which a new law had become effective prior to the date of the actual sentence") (citing *People ex rel. Kerner v. McKinley*, 371 Ill. 190 (1939), *People ex rel. Carlstrom v. David*, 336 Ill. 353, 357-58 (1929), and *People v. Zito*, 237 Ill. 434, 439-40 (1908)); *cf.* Comment, *supra*, at 129 & n.70 (in states with general savings clauses similar to Illinois's, "an ameliorative change in penalty while the case is on appeal would not inure to the [appellant's] benefit"); *id.* at 133-36 (vast majority of jurisdictions do not retroactively apply new laws reducing punishment to cases on appeal).[4] Defendants agree, as they must, that subsection (b) lessens the minimum penalties for certain offenses committed by juveniles. Def. Br. 23. Therefore, defendants are not eligible for resentencing under subsection (b). To hold otherwise would defeat section 4's objective of (1) generally prohibiting substantive changes from applying retroactively; (2) allowing procedural changes to apply retroactively; and (3) allowing substantive changes that mitigate punishment to apply retroactively only to persons who have not been sentenced.

[4] Indeed, many jurisdictions go further than section 4, altogether prohibiting retroactive application of new laws that mitigate punishment, even if the defendant has not yet been sentenced when the new law takes effect. *See Marrero*, 417 U.S. at 661; Comment, *supra*, at 133-36.

3. Defendants' cited authority does not warrant a different result.

Unlike in *Schriro v. Summerlin*, 542 U.S. 348, 353 (2004), *People v. Johnson*, 23 Ill. 2d 465, 470-71 (1961), or *People v. Wolst*, 347 Ill. App. 3d 782, 803-04 (1st Dist. 2004), subsection (b) alters the sentencing range for certain juvenile offenders. It does not merely transfer the authority for determining whether the sentence should be imposed from the judge to the jury, or vice versa, *Schriro*, 542 U.S. at 353; *Johnson*, 23 Ill. 2d at 470-71, or impose a burden of proof on a party who had no settled expectation that the law would be otherwise, *Wolst*, 247 Ill. App. 3d at 803-04.

Further, defendants' reliance on *People v. Patterson*, 2016 IL App (1st) 101573-B, Def. Br. 32, is misplaced. The People's petition for leave to appeal (PLA) from that judgment is pending before the Court. *People v. Patterson*, No. 121639 (filed Dec. 28, 2016). That PLA raises the same question presented by Hunter: whether the excluded jurisdiction provision applies retroactively to cases that were on appeal at the time it became effective. For the reasons set forth *infra*, Part II, *Patterson*, 2016 IL App (1st) 101573-B, is wrongly decided. Longstanding precedent establishes that "'[w]hether a defendant is tried in juvenile or criminal court is purely a matter of procedure,'" and "statutes that simply 'change[ ] the tribunal that is to hear the case' are regularly applied to pending cases." *Howard*, 2016 IL 120729, ¶¶ 28, 31 (citations omitted). Unlike an amendment that alters the forum for redressing a juvenile's criminal act, subsection (b) decreases the mandatory

minimum sentence for juveniles who commit certain offenses, directly regulating the quantum of punishment that attaches to a juvenile's crime. *Black's Law Dictionary* 1567 (9th ed. 2009) ("substantive law" defined as "[t]he part of the law that creates, defines, and regulates the rights, duties, and powers of parties.").

Finally, *People v. Smith*, 2014 IL App (1st) 103436 supports the conclusion that subsection (b) does not apply retroactively to defendants. *Smith* held that the reenactment of a mandatory firearm enhancement is a substantive change that applies prospectively. *Id.* at ¶¶ 97-98. Likewise, the removal of a mandatory firearm enhancement is also a substantive change that must apply prospectively. A change in the amount of punishment that attaches to an offense is substantive, regardless of whether the change increases or decreases the punishment.[5] And section 4 reflects that understanding by making clear that statutory changes affecting punishment apply prospectively with a single, narrow exception allowing but not requiring decreases in punishment to apply to offenders who have not been sentenced before the new law's effective date.

---

[5] If section 4 did not apply, or if the legislature expressly made retroactive a substantive change increasing punishment, the *Ex Post Facto* Clause, U.S. Const., Art. I, § 10, would prohibit retroactive application because the amendment would be both substantive — altering the quantum of punishment that attached to a crime — and more onerous on the defendant. *Dobbert*, 432 U.S. at 292-94 & n.6; *see Howard*, 2016 IL 120729, ¶ 28 (statutory changes do not apply retroactively if doing so would offend constitution); *cf. Collins v. Youngblood*, 497 U.S. 37, 45-46 (1990) (procedural change may constitute *ex post facto* violation if it affects matters of substance).

In sum, subsection (b) does not merely affect the procedure for imposing a sentence; rather, it alters the penalties that apply to certain juvenile offenders. Under section 4's plain language, statutory changes that affect penalties incurred under a former law cannot apply retroactively, unless the change mitigates punishment *and* the offender has not been sentenced. Here, because defendants were sentenced before subsection (b)'s effective date, section 4 prohibits applying the new provision to defendants.

C. Even if subsection (b) is procedural, it does not apply retroactively to defendants.

Section 4 prohibits construing a new statute to affect penalties or punishments imposed under an old one, "save only that the proceedings thereafter shall conform, so far as practicable, to the laws in force at the time of such proceeding." 5 ILCS 70/4 (2016). This clause "allows retroactive application of procedural changes to statutes." *Glisson*, 202 Ill. 2d at 507. Thus, "proceedings" that occur after a new law takes effect must conform to it, so far as practicable. *Howard*, 2016 IL 120729, ¶ 28 ("'procedural law changes will apply to ongoing proceedings'") (quoting *Ziobro*, 242 Ill. 2d at 46); *Black's Law Dictionary* 1324 (9th ed. 2009) ("proceeding" means, *inter alia*, "[a]n act or step that is part of a larger action," or "[t]he business conducted by a court or other official body; a hearing"). But if a procedural change is to apply to a particular case, there must be "proceedings thereafter" that are capable of "conform[ing]" to the change. 5 ILCS 70/4 (2016); *Glisson*, 202 Ill. 2d at 507.

Even if, as defendants posit, subsection (b) is a procedural change because it re-allocates decision-making authority as to the firearm enhancement to the trial court, that change does not apply to a case where the firearm enhancement has already been imposed. The "proceeding" that subsection (b) governs is the sentencing hearing. Defendants' sentencing hearings "conform[ed] . . . to the laws in force at the time" of those hearings. 5 ILCS 70/4 (2016). Section 4 does not require new sentencing hearings under such circumstances. Thus, under section 4's plain language, even if subsection (b) constitutes a procedural change, it does not apply to defendants, whose sentencing hearings are complete. *See* 2 Norman J. Singer, *Sutherland Statutory Construction*, § 41:4 (rev. 6th ed. Dec. 2001) (although procedural statutory changes apply retroactively, "steps taken, including pleadings, and all things done under the old law continue effective . . . . [P]ending cases are only affected in relation to future proceedings from the point reached when the new law becomes operative"); *cf. Howard*, 2016 IL 120729, ¶ 31 (propriety of events that already occurred in case not in question; question is whether juvenile should continue to be tried in criminal court after amendment); *Zito*, 237 Ill. at 437-38 (procedures followed before repeal valid; procedures that "remained to be done must conform to" new law); *cf. also People v. Hickey*, 204 Ill. 2d 585, 630 (2001) (new rules for capital proceedings govern cases in pretrial stage, not all cases regardless of procedural posture); *People ex rel. Birkett v. Bakalis*, 196 Ill. 2d

510, 512-14 (2001) (new procedural rule governing discovery depositions in capital proceedings applies to pretrial case).

This conclusion is consistent with *Landgraf*, which explained that "[c]hanges in procedural rules may often be applied in suits arising before their enactment without raising concerns about retroactivity." 511 U.S. at 275. But *Landgraf* noted:

> Of course, the mere fact that a new rule is procedural does not mean that it applies to every pending case. A new rule concerning the filing of complaints would not govern an action in which the complaint had already been properly filed under the old regime, and the promulgation of a new rule of evidence would not require an appellate remand for a new trial. Our orders approving amendments to federal procedural rules reflect the commonsense notion that the applicability of such provisions ordinarily depends on the posture of the particular case.

Id. at 275 n.29. *Landgraf* further observed that a change that "did no more than introduce a right to jury trial" could be "readily classified" as "a procedural change of the sort that would ordinarily govern in trials conducted after its effective date." *Id.* at 280-81; *see, e.g.*, *Hyslop v. Finch*, 99 Ill. 171, 181-82 (1881) (new rule governing jury trial procedure applied only to trials conducted after its effective date). The promulgation of such a rule "would ordinarily not warrant retrial of cases that had previously been tried to a judge" and "customary practice would not support remand for a jury trial" on appeal. *Landgraf*, 511 U.S. at 281 n.34 (citing lower court's decision in *Landgraf v. USI Film Products*, 968 F.2d 427, 432-33 (5th Cir. 1992)); *see Landgraf*, 968 F.2d at 432-33 (Congress could not have "intended to upset

cases which were properly tried under the law at the time of trial"; requiring retrial in such cases "would be an injustice and a waste of judicial resources"; procedural changes do not invalidate procedures followed before new law's adoption).

Likewise, nothing in section 4 suggests that a new procedural law invalidates procedures properly followed before it became effective. Therefore, section 4 does not warrant a remand here, where defendants' sentencing hearings conformed to the laws in effect at the time of the proceedings. To hold otherwise would require this Court to construe the term "proceedings" in section 4 as comprising the entire action or case, from arraignment through the conclusion of all direct appeals. But that interpretation would contravene section 4's broad purpose: to save prior events from later statutory changes. And it would result in absurdity and inconvenience, requiring a remand in every nonfinal case where the legislature made an intervening change to a trial court procedural rule — a rule that merely "regulate[s] secondary rather than primary conduct," *Landgraf*, 511 U.S. at 275 (citation omitted). *See Fort*, 2017 IL 118966, ¶¶ 20, 35 (in construing statutes, this Court considers "real-world results" and "presume[s] that the legislature did not intend absurdity, inconvenience, or injustice"). For these reasons, even if subsection (b) constitutes a procedural change, it does not apply to defendants.

III. The Amendment to the Excluded Jurisdiction Provision Does Not Apply Retroactively to Cases that Were on Appeal When It Took Effect.

Public Act 99-258, effective January 1, 2016, states, in relevant part:

> Sec. 5-130. Excluded jurisdiction.
>
> (1)(a) The definition of delinquent minor under Section 5-120 of this Article shall not apply to any minor who at the time of an offense was at least 16 ~~15~~ years of age and who is charged with: (i) first degree murder, (ii) aggravated criminal sexual assault, or (iii) aggravated battery with a firearm as described in Section 12-4.2 or subdivision (e)(1), (e)(2), (e)(3), or (e)(4) of Section 12-3.05 where the minor personally discharged a firearm as defined in Section 2-15.5 of the Criminal Code of 1961 or the Criminal Code of 2012~~, (iv) armed robbery when the armed robbery was committed with a firearm, or (v) aggravated vehicular hijacking when the hijacking was committed with a firearm~~.
>
> These charges and all other charges arising out of the same incident shall be prosecuted under the criminal laws of this State.

PA29; *Howard*, 2016 IL 120729, ¶ 5. As pertinent here, minors charged with armed robbery with a firearm or aggravated vehicular hijacking with a firearm are no longer automatically excluded from proceedings under the Juvenile Court Act (Act). But these minors may be prosecuted in criminal court following a juvenile court determination that criminal proceedings are appropriate. PA44-53.

Because Hunter's circuit court proceedings were already complete when the amendment became effective, A39 (notice of appeal filed June 2014), the amendment does not apply to him. And even if the amendment were generally retroactive to cases on appeal, applying it retroactively to

Hunter, who is now 22 years old, would be impracticable and prohibited under section 4. Accordingly, Hunter is entitled to no further proceedings in juvenile court.

A. The amendment does not apply to Hunter because, at the time it became effective, he had already been tried in criminal court.

As discussed, section 4 requires retroactive application of procedural changes to ongoing proceedings, *i.e.*, to proceedings (1) occurring after the new law's effective date (2) that are capable of conforming to it. *See supra*, Part II.C. As this Court has repeatedly explained, transfer provisions like the amendment merely determine which circuit court division tries or adjudicates a juvenile's alleged criminal acts. *Howard*, 2016 IL 120729, ¶¶ 28, 31 (amendment dictates only which circuit court division tries a juvenile's case); *People v. Patterson*, 2014 IL 115102, ¶ 105 (excluded jurisdiction provision reflects "legislature's determination that criminal court is the most appropriate trial setting" for certain juveniles); *People v. P.H.*, 145 Ill. 2d 209, 222 (1991) ("juvenile court is merely a division of a single unified circuit court," and transfer provision "merely . . . removes a case from the judge sitting in the juvenile division of the circuit court to a judge sitting in the criminal division"); *People v. Taylor*, 76 Ill. 2d 289, 302-03 (1979) (process involved in transferring case from juvenile to criminal court merely decides the forum in which guilt or innocence will be adjudicated; it does not itself determine guilt or innocence). Thus, the amendment does not purport to

address proceedings in either the appellate court or this Court. Hunter was properly tried in criminal court under the amendment's predecessor, and his circuit court proceedings were already complete when the amendment took effect. A39 (notice of appeal filed in June 2014); *cf. Howard*, 2016 IL 120729, ¶ 31 (criminal court proceedings occurring before amendment's effective date were proper). Therefore, the amendment does not apply to Hunter's case.

Contrary to Hunter's suggestion, Def. Br. 15-16, *Howard* did not hold that the amendment applies to all nonfinal cases. To be sure, *Howard* twice stated that the amendment applies to "pending cases." 2016 IL 120729, ¶¶ 28, 31. But the issue in *Howard* was whether the amendment applied retroactively to a defendant whose case was still in a pre-trial posture in the circuit court when the amendment became effective. *Id.* at ¶¶ 1, 5, 30, 33 (reviewing whether circuit court judge properly allowed defendant's motion to send "pending criminal case to juvenile court for a discretionary transfer hearing," and observing that the defendant's case was "pending in criminal court"). Thus, *Howard*'s statement that the amendment applies retroactively to "pending cases" does not mean that it applies broadly to all nonfinal cases; rather, construing the statement in light of the issue presented and decided, it means only that the amendment applies retroactively to cases pending in criminal court.

Indeed, in answering the question presented, *Howard* explained that under section 4 of the Statute on Statutes, "'procedural law changes will

apply to *ongoing proceedings*.'" 2016 IL 120729, ¶ 28 (quoting *Ziobro*, 242 Ill. 2d at 46) (emphasis added). And contrary to Hunter's suggestion, Def. Br. 16, "proceedings" are not synonymous with "prosecution," as defined by 720 ILCS 5/2-16 (2016). *Cf. People v. Crawford*, 337 Ill. App. 3d 624, 628 (4th Dist. 2003) ("pending legal proceeding" in 720 ILCS 5/32-4a(a)(2) not synonymous with "prosecution," as defined by 720 ILCS 5/2-16). Indeed, Hunter's cited definition reveals that a "prosecution" is comprised of any number of "proceedings," including "the return of the indictment or the issuance of the information," and "the final disposition of the case upon appeal." 720 ILCS 5/2-16 (2016); *cf. Black's Law Dictionary* 1324 (9th ed. 2009) ("proceeding" means, *inter alia*, "[a]n act or step that is part of a larger action," or "[t]he business conducted by a court or other official body; a hearing"). Therefore, because Hunter's circuit court proceedings are no longer ongoing, the amendment does not apply to him.

Defendant's cited authority is inapposite. *See* Def. Br. 16-19. *People v. Atkins*, 217 Ill. 2d 66, 72 (2005), and *Glisson*, 202 Ill. 2d at 508, are unpersuasive because the amendments at issue in those cases were substantive and applied prospectively under section 4.

Allegis Realty Investors v. Novak, 223 Ill. 2d 318 (2006), is inapposite because the amendment at issue there expressly stated that it applied retroactively to validate a tax levy imposed before its effective date. *Id.* at 322, 333, 341. Thus, section 4 was not implicated. *Id.* And unlike the

amendment here, the change in *Novak* related directly to a party's entitlement to relief rather than to court procedures. *Id.*

Similarly, *Johnson v. Edgar*, 176 Ill. 2d 499 (1997), addressed the retroactivity of legislation that cured a constitutional defect and expressly validated fees that had been collected under the defective statute. *Id.* at 502, 509-10, 518-22. *Johnson* held that the defendants were entitled to keep and disburse the collected fees. *Id.* at 520-22. *Johnson* is inapposite because section 4 was not at issue and the new law concerned substantive rights, not court procedures. *Id.* Moreover, *Johnson* employed the vested rights approach to evaluating a new law's retroactivity, *id.*, which this Court later abandoned in favor of *Landgraf*'s retroactivity analysis. *See Commonwealth Edison Co. v. Will Cnty. Collector*, 196 Ill. 2d 27, 34-39 (2001).

Likewise, *People v. Digirolamo*, 179 Ill. 2d 24, 50 (1997), applied a since-abandoned approach to retroactivity analysis, *Commonwealth Edison*, 196 Ill. 2d at 36-39; did not cite section 4; and concerned a substantive change, rather than a procedural one. Finally, *People v. Kellick*, 102 Ill. 2d 162, 181 (1984), is inapposite because the offenses there occurred after the new law's intended effective date.

In sum, under section 4's plain language, the amendment to the excluded jurisdiction provision does not apply to cases that were on appeal when the amendment became effective. Thus, Hunter is not entitled to a remand for proceedings in juvenile court.

B. Even if the amendment applies retroactively to cases on appeal when it took effect, it is not "practicable" to apply the amendment to Hunter, who is 22 years old and no longer subject to the Juvenile Court Act.

Under section 4's plain language, a procedural change applies retroactively to ongoing proceedings "so far as practicable." 5 ILCS 70/4 (2016). "Practicable" means "possible" or "feasible." *Howard*, 2016 IL 120729, ¶ 32. In *Howard*, this Court applied the amendment retroactively to the then-19-year-old defendant, and held that his case "belong[e]d in juvenile court, unless and until it [wa]s transferred to criminal court pursuant to a discretionary transfer hearing." *Id.* at ¶ 35. But because Hunter is 22 years old, that is impossible under the Act. *See In re Jaime P.*, 223 Ill. 2d 526, 540 (2006) (all proceedings under Act must automatically terminate when the minor attains the age of 21 years); *cf. Fort*, 2017 IL 118966, ¶ 41 (if, on remand, criminal court finds defendant not subject to adult sentencing under 705 ILCS 405/5-130(1)(c)(ii), "proper remedy is to discharge the proceedings against defendant since he is now over 21 years of age and is no longer eligible to be committed as a juvenile under the Act").

The amendment does not apply to Hunter. It provides, in relevant part, that "[t]he definition of delinquent minor under Section 5-120 of this Article shall not apply to any *minor* who at the time of an offense was at least 16 years of age and who is charged with" certain offenses. PA29 (emphasis added). The Act defines "[m]inor" as "a person under the age of 21 years

subject to this Act." 705 ILCS 405/1-3(10) (2016 & 2017). Hunter is 22 years old and not a "minor" under the amendment's plain language.

Moreover, section 5-120 provides that "[p]roceedings 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" any law, and "[e]xcept 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 (2016 & 2017). Under this section, "no person under 21 who is subject to the Act, and who was younger than [18] when the alleged offense was committed, may be prosecuted in adult criminal court." *People v. Fiveash*, 2015 IL 117669, ¶ 16; *see* 705 ILCS 405/5-120 (2016 & 2017). And with one exception that does not apply here,[6] "[a]ll proceedings under th[e] Act . . . automatically terminate upon [the minor] attaining the age of 21 years." 705 ILCS 405/5-755 (2016 & 2017). Under these provisions, because Hunter is not a minor, *i.e.*, a person under 21 who is subject to the Act, the juvenile court has no authority over him and he is no longer subject to the Act's provisions. *Fiveash*, 2015 IL 117669, ¶¶ 14-16.

Indeed, it is impossible to fulfill Hunter's request that this Court apply the amendment retroactively to him as it did in *Howard*. Def. Br. 22. The

[6] The exception is for extended jurisdiction juvenile prosecutions initiated under 705 ILCS 405/5-810 (2016 & 2017), which cannot apply to Hunter because he is not a minor.

State has no authority to proceed against Hunter under the Act and therefore cannot request a transfer under its provisions. *See, e.g.*, 705 ILCS 405/5-805 (2016 & 2017) (premising transfer on the filing of a delinquency petition *before* trial that alleges certain facts and requiring juvenile court judge to hear transfer motions); 705 ILCS 405/5-805 (2013) (similar).[7] Accordingly, because section 4 requires retroactive application of procedural changes only "so far as practicable," 5 ILCS 70/4 (2016), and it is not "practicable" for Hunter's case to conform to the amendment's new rule, the amendment does not apply retroactively to him.[8]

---

[7] *People v. Brown*, 225 Ill. 2d 188, 199, 202 (2007) — remanding for a retrospective transfer hearing in a case where the defendant was over 21 years of age — does not warrant a different result. Section 4 of the Statute on Statutes was not at issue in *Brown*. Moreover, Brown requested and thus agreed to the retrospective transfer hearing, and neither the parties nor this Court addressed whether allowing such a hearing conflicts with the Act's plain language. Additionally, *Brown* was decided before *Fiveash*, 2015 IL 117669, ¶¶ 14-16, which interpreted the Act's plain language as precluding the juvenile court from exercising authority over a person who is not under 21 years of age. Accordingly, *Brown* does not control here.

[8] Were this Court to hold otherwise and remand for a transfer hearing, the transfer provisions in effect before Public Act 99-258, *see* 705 ILCS 405/5-805 (2013) — which are substantially the same as those in effect at the time of Hunter's offenses — would apply because the changes to the transfer provisions in Public Act 99-258 apply only to minors taken into custody on or after its effective date. PA53.

CONCLUSION

This Court should affirm the judgments of the appellate court.

June 19, 2017

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RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rule 341. The length of this brief, excluding the pages permitted to be excluded under Rule 341, is 33 pages.

/s/ Gopi Kashyap
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PROOF OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On June 19, 2017, the **Brief of Plaintiff-Appellee People of the State of Illinois** was (1) filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, and (2) served by transmitting a copy from my e-mail address to the e-mail addresses of the persons named below:

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Additionally, upon its acceptance by the court's electronic filing system, the undersigned will mail 13 copies of the brief to the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois 62701.

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Nos. 121306 & 121345 (cons.)

IN THE
ILLINOIS SUPREME COURT

PEOPLE OF THE STATE OF ILLINOIS,	)	On Appeal from the Appellate Court of Illinois, First Judicial District,
Plaintiff-Appellee,	)	Nos. 1-14-1904 & 1-14-1500
	)	There on Appeal from the Circuit
v.	)	Court of Cook County, Illinois
	)	Nos. 11 CR 9381 & 12 CR 19490
KEVIN HUNTER & DRASHUN WILSON,	)	The Honorable Evelyn B. Clay & Thaddeas L. Wilson,
Defendants-Appellants.	)	Judges Presiding.

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ORAL ARGUMENT REQUESTED

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P.A. 99-258 (99th General Assembly) PA29

Public Act 099-0069

HB2471 Enrolled LRB099 04989 RLC 25018 b

AN ACT concerning criminal law.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

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

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

Sec. 10-2. Aggravated kidnaping.

(a) A person commits the offense of aggravated kidnaping when he or she commits kidnapping and:

(1) kidnaps with the intent to obtain ransom from the person kidnaped or from any other person;

(2) takes as his or her victim a child under the age of 13 years, or a severely or profoundly intellectually disabled person;

(3) inflicts great bodily harm, other than by the discharge of a firearm, or commits another felony upon his or her victim;

(4) wears a hood, robe, or mask or conceals his or her identity;

(5) commits the offense of kidnaping while armed with a dangerous weapon, other than a firearm, as defined in Section 33A-1 of this Code;

(6) commits the offense of kidnaping while armed with a firearm;

(7) during the commission of the offense of kidnaping, personally discharges a firearm; or

(8) during the commission of the offense of kidnaping, personally discharges a firearm that proximately causes great bodily harm, permanent disability, permanent disfigurement, or death to another person.

As used in this Section, "ransom" includes money, benefit, or other valuable thing or concession.

(b) Sentence. Aggravated kidnaping in violation of paragraph (1), (2), (3), (4), or (5) of subsection (a) is a Class X felony. A violation of subsection (a)(6) is a Class X felony for which 15 years shall be added to the term of imprisonment imposed by the court. A violation of subsection (a)(7) is a Class X felony for which 20 years shall be added to the term of imprisonment imposed by the court. A violation of subsection (a)(8) is a Class X felony for which 25 years or up to a term of natural life shall be added to the term of imprisonment imposed by the court. An offender under the age of 18 years at the time of the commission of aggravated kidnaping in violation of paragraphs (1) through (8) of subsection (a) shall be sentenced under Section 5-4.5-105 of the Unified Code of Corrections.

A person who has attained the age of 18 years at the time of the commission of the offense and who is convicted of a

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

(Source: P.A. 96-710, eff. 1-1-10; 97-227, eff. 1-1-12.)

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

Sec. 11-1.20. Criminal Sexual Assault.

(a) A person commits criminal sexual assault if that person commits an act of sexual penetration and:

(1) uses force or threat of force;

(2) knows that the victim is unable to understand the nature of the act or is unable to give knowing consent;

(3) is a family member of the victim, and the victim is under 18 years of age; or

(4) is 17 years of age or over and holds a position of trust, authority, or supervision in relation to the victim, and the victim is at least 13 years of age but under 18 years of age.

(b) Sentence.

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

(A) A person who is convicted of the offense of criminal sexual assault as defined in paragraph (a)(1) or (a)(2) after having previously been convicted of the offense of criminal sexual assault or the offense of exploitation of a child, or who is convicted of the offense of criminal sexual assault as defined in paragraph (a)(1) or (a)(2) after having previously been convicted under the laws of this State or any other state of an offense that is substantially equivalent to the offense of criminal sexual assault or to the offense of exploitation of a child, commits a Class X felony for which the person shall be sentenced to a term of imprisonment of not less than 30 years and not more than 60 years, except that if the person is under the age of 18 years at the time of the offense, he or she shall be sentenced under Section 5-4.5-105 of the Unified Code of Corrections. The commission of the second or subsequent offense is required to have been after the initial conviction for this paragraph (A) to apply.

(B) A person who has attained the age of 18 years at the time of the commission of the offense and who is convicted of the offense of criminal sexual assault as defined in paragraph (a)(1) or (a)(2) after having previously been convicted of the offense of aggravated criminal sexual assault or the offense of predatory

criminal sexual assault of a child, or who is convicted of the offense of criminal sexual assault as defined in paragraph (a)(1) or (a)(2) after having previously been convicted under the laws of this State or any other state of an offense that is substantially equivalent to the offense of aggravated criminal sexual assault or the offense of predatory criminal sexual assault of a child shall be sentenced to a term of natural life imprisonment. The commission of the second or subsequent offense is required to have been after the initial conviction for this paragraph (B) to apply. An offender under the age of 18 years at the time of the commission of the offense covered by this subparagraph (B) shall be sentenced under Section 5-4.5-105 of the Unified Code of Corrections.

(C) A second or subsequent conviction for a violation of paragraph (a)(3) or (a)(4) or under any similar statute of this State or any other state for any offense involving criminal sexual assault that is substantially equivalent to or more serious than the sexual assault prohibited under paragraph (a)(3) or (a)(4) is a Class X felony.

(Source: P.A. 95-640, eff. 6-1-08; 96-1551, eff. 7-1-11.)

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

Sec. 11-1.30. Aggravated Criminal Sexual Assault.

(a) A person commits aggravated criminal sexual assault if that person commits criminal sexual assault and any of the following aggravating circumstances exist during the commission of the offense or, for purposes of paragraph (7), occur as part of the same course of conduct as the commission of the offense:

(1) the person displays, threatens to use, or uses a dangerous weapon, other than a firearm, or any other object fashioned or used in a manner that leads the victim, under the circumstances, reasonably to believe that the object is a dangerous weapon;

(2) the person causes bodily harm to the victim, except as provided in paragraph (10);

(3) the person acts in a manner that threatens or endangers the life of the victim or any other person;

(4) the person commits the criminal sexual assault during the course of committing or attempting to commit any other felony;

(5) the victim is 60 years of age or older;

(6) the victim is a physically handicapped person;

(7) the person delivers (by injection, inhalation, ingestion, transfer of possession, or any other means) any controlled substance to the victim without the victim's consent or by threat or deception for other than medical purposes;

(8) the person is armed with a firearm;

(9) the person personally discharges a firearm during the commission of the offense; or

(10) the person personally discharges a firearm during the commission of the offense, and that discharge proximately causes great bodily harm, permanent disability, permanent disfigurement, or death to another person.

(b) A person commits aggravated criminal sexual assault if that person is under 17 years of age and: (i) commits an act of sexual penetration with a victim who is under 9 years of age; or (ii) commits an act of sexual penetration with a victim who is at least 9 years of age but under 13 years of age and the person uses force or threat of force to commit the act.

(c) A person commits aggravated criminal sexual assault if that person commits an act of sexual penetration with a victim who is a severely or profoundly intellectually disabled person.

(d) Sentence.

(1) Aggravated criminal sexual assault in violation of paragraph (2), (3), (4), (5), (6), or (7) of subsection (a) or in violation of subsection (b) or (c) is a Class X felony. A violation of subsection (a)(1) is a Class X felony for which 10 years shall be added to the term of imprisonment imposed by the court. A violation of subsection (a)(8) is a Class X felony for which 15 years shall be added to the term of imprisonment imposed by the court. A violation of subsection (a)(9) is a Class X felony

for which 20 years shall be added to the term of imprisonment imposed by the court. A violation of subsection (a)(10) is a Class X felony for which 25 years or up to a term of natural life imprisonment shall be added to the term of imprisonment imposed by the court. An offender under the age of 18 years at the time of the commission of aggravated criminal sexual assault in violation of paragraphs (1) through (10) of subsection (a) shall be sentenced under Section 5-4.5-105 of the Unified Code of Corrections.

(2) A person who has attained the age of 18 years at the time of the commission of the offense and who is convicted of a second or subsequent offense of aggravated criminal sexual assault, or who is convicted of the offense of aggravated criminal sexual assault after having previously been convicted of the offense of criminal sexual assault or the offense of predatory criminal sexual assault of a child, or who is convicted of the offense of aggravated criminal sexual assault after having previously been convicted under the laws of this or any other state of an offense that is substantially equivalent to the offense of criminal sexual assault, the offense of aggravated criminal sexual assault or the offense of predatory criminal sexual assault of a child, shall be sentenced to a term of natural life imprisonment. The commission of the second or subsequent offense is required to have been after

the initial conviction for this paragraph (2) to apply. An offender under the age of 18 years at the time of the commission of the offense covered by this paragraph (2) shall be sentenced under Section 5-4.5-105 of the Unified Code of Corrections.

(Source: P.A. 96-1551, eff. 7-1-11; incorporates 97-227, eff. 1-1-12; 97-1109, eff. 1-1-13.)

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

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

(a) A person commits predatory criminal sexual assault of a child if that person is 17 years of age or older, and commits an act of contact, however slight, between the sex organ or anus of one person and the part of the body of another for the purpose of sexual gratification or arousal of the victim or the accused, or an act of sexual penetration, and:

(1) the victim is under 13 years of age; or

(2) the victim is under 13 years of age and that person:

(A) is armed with a firearm;

(B) personally discharges a firearm during the commission of the offense;

(C) causes great bodily harm to the victim that:

(i) results in permanent disability; or

(ii) is life threatening; or

(D) delivers (by injection, inhalation, ingestion,

transfer of possession, or any other means) any controlled substance to the victim without the victim's consent or by threat or deception, for other than medical purposes.

(b) Sentence.

(1) A person convicted of a violation of subsection (a)(1) commits a Class X felony, for which the person shall be sentenced to a term of imprisonment of not less than 6 years and not more than 60 years. A person convicted of a violation of subsection (a)(2)(A) commits a Class X felony for which 15 years shall be added to the term of imprisonment imposed by the court. A person convicted of a violation of subsection (a)(2)(B) commits a Class X felony for which 20 years shall be added to the term of imprisonment imposed by the court. A person <u>who has attained the age of 18 years at the time of the commission of the offense and who is</u> convicted of a violation of subsection (a)(2)(C) commits a Class X felony for which the person shall be sentenced to a term of imprisonment of not less than 50 years or up to a term of natural life imprisonment. <u>An offender under the age of 18 years at the time of the commission of predatory criminal sexual assault of a child in violation of subsections (a)(1), (a)(2)(A), (a)(2)(B), and (a)(2)(C) shall be sentenced under Section 5-4.5-105 of the Unified Code of Corrections.</u>

(1.1) A person convicted of a violation of subsection

(a)(2)(D) commits a Class X felony for which the person shall be sentenced to a term of imprisonment of not less than 50 years and not more than 60 years. An offender under the age of 18 years at the time of the commission of predatory criminal sexual assault of a child in violation of subsection (a)(2)(D) shall be sentenced under Section 5-4.5-105 of the Unified Code of Corrections.

(1.2) A person who has attained the age of 18 years at the time of the commission of the offense and convicted of predatory criminal sexual assault of a child committed against 2 or more persons regardless of whether the offenses occurred as the result of the same act or of several related or unrelated acts shall be sentenced to a term of natural life imprisonment and an offender under the age of 18 years at the time of the commission of the offense shall be sentenced under Section 5-4.5-105 of the Unified Code of Corrections.

(2) A person who has attained the age of 18 years at the time of the commission of the offense and who is convicted of a second or subsequent offense of predatory criminal sexual assault of a child, or who is convicted of the offense of predatory criminal sexual assault of a child after having previously been convicted of the offense of criminal sexual assault or the offense of aggravated criminal sexual assault, or who is convicted of the offense of predatory criminal sexual assault of a child after

having previously been convicted under the laws of this State or any other state of an offense that is substantially equivalent to the offense of predatory criminal sexual assault of a child, the offense of aggravated criminal sexual assault or the offense of criminal sexual assault, shall be sentenced to a term of natural life imprisonment. The commission of the second or subsequent offense is required to have been after the initial conviction for this paragraph (2) to apply. An offender under the age of 18 years at the time of the commission of the offense covered by this paragraph (2) shall be sentenced under Section 5-4.5-105 of the Unified Code of Corrections.

(Source: P.A. 98-370, eff. 1-1-14; 98-756, eff. 7-16-14; 98-903, eff. 8-15-14.)

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

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

(a) A person commits ritualized abuse of a child when he or she knowingly commits any of the following acts with, upon, or in the presence of a child as part of a ceremony, rite or any similar observance:

(1) actually or in simulation, tortures, mutilates, or sacrifices any warm-blooded animal or human being;

(2) forces ingestion, injection or other application of any narcotic, drug, hallucinogen or anaesthetic for the

purpose of dulling sensitivity, cognition, recollection of, or resistance to any criminal activity;

(3) forces ingestion, or external application, of human or animal urine, feces, flesh, blood, bones, body secretions, nonprescribed drugs or chemical compounds;

(4) involves the child in a mock, unauthorized or unlawful marriage ceremony with another person or representation of any force or deity, followed by sexual contact with the child;

(5) places a living child into a coffin or open grave containing a human corpse or remains;

(6) threatens death or serious harm to a child, his or her parents, family, pets, or friends that instills a well-founded fear in the child that the threat will be carried out; or

(7) unlawfully dissects, mutilates, or incinerates a human corpse.

(b) The provisions of this Section shall not be construed to apply to:

(1) lawful agricultural, animal husbandry, food preparation, or wild game hunting and fishing practices and specifically the branding or identification of livestock;

(2) the lawful medical practice of male circumcision or any ceremony related to male circumcision;

(3) any state or federally approved, licensed, or funded research project; or

(4) the ingestion of animal flesh or blood in the performance of a religious service or ceremony.

(b-5) For the purposes of this Section, "child" means any person under 18 years of age.

(c) Ritualized abuse of a child is a Class 1 felony for a first offense. A second or subsequent conviction for ritualized abuse of a child is a Class X felony for which an offender who has attained the age of 18 years at the time of the commission of the offense ~~the offender~~ may be sentenced to a term of natural life imprisonment and an offender under the age of 18 years at the time of the commission of the offense shall be sentenced under Section 5-4.5-105 of the Unified Code of Corrections.

(d) (Blank).

(Source: P.A. 96-1551, eff. 7-1-11.)

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

Sec. 29D-14.9. Terrorism.

(a) A person commits the offense of terrorism when, with the intent to intimidate or coerce a significant portion of a civilian population:

(1) he or she knowingly commits a terrorist act as defined in Section 29D-10(1) of this Code within this State; or

(2) he or she, while outside this State, knowingly commits a terrorist act as defined in Section 29D-10(1) of

this Code that takes effect within this State or produces substantial detrimental effects within this State.

(b) Sentence. Terrorism is a Class X felony. If no deaths are caused by the terrorist act, the sentence shall be a term of 20 years to natural life imprisonment; if the terrorist act caused the death of one or more persons, however, a mandatory term of natural life imprisonment shall be the sentence if the death penalty is not imposed and the person has attained the age of 18 years at the time of the commission of the offense. An offender under the age of 18 years at the time of the commission of the offense shall be sentenced under Section 5-4.5-105 of the Unified Code of Corrections.

(Source: P.A. 96-710, eff. 1-1-10.)

(720 ILCS 5/29D-35)

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

(a) A person commits the offense of hindering prosecution of terrorism when he or she renders criminal assistance to a person who has committed terrorism as defined in Section 29D-14.9 or caused a catastrophe as defined in Section 29D-15.1 of this Code when he or she knows that the person to whom he or she rendered criminal assistance engaged in an act of terrorism or caused a catastrophe.

(b) Hindering prosecution of terrorism is a Class X felony, the sentence for which shall be a term of 20 years to natural life imprisonment if no death was caused by the act of

terrorism committed by the person to whom the defendant rendered criminal assistance and a mandatory term of natural life imprisonment if death was caused by the act of terrorism committed by the person to whom the defendant rendered criminal assistance. An offender under the age of 18 years at the time of the commission of the offense shall be sentenced under Section 5-4.5-105 of the Unified Code of Corrections.

(Source: P.A. 96-710, eff. 1-1-10.)

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

(730 ILCS 5/5-4.5-95)

Sec. 5-4.5-95. GENERAL RECIDIVISM PROVISIONS.

(a) HABITUAL CRIMINALS.

(1) Every person who has been twice convicted in any state or federal court of an offense that contains the same elements as an offense now (the date of the offense committed after the 2 prior convictions) classified in Illinois as a Class X felony, criminal sexual assault, aggravated kidnapping, or first degree murder, and who is thereafter convicted of a Class X felony, criminal sexual assault, or first degree murder, committed after the 2 prior convictions, shall be adjudged an habitual criminal.

(2) The 2 prior convictions need not have been for the

same offense.

(3) Any convictions that result from or are connected with the same transaction, or result from offenses committed at the same time, shall be counted for the purposes of this Section as one conviction.

(4) This Section does not apply unless each of the following requirements are satisfied:

(A) The third offense was committed after July 3, 1980.

(B) The third offense was committed within 20 years of the date that judgment was entered on the first conviction; provided, however, that time spent in custody shall not be counted.

(C) The third offense was committed after conviction on the second offense.

(D) The second offense was committed after conviction on the first offense.

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

(6) A prior conviction shall not be alleged in the indictment, and no evidence or other disclosure of that conviction shall be presented to the court or the jury during the trial of an offense set forth in this Section unless otherwise permitted by the issues properly raised in

that trial. After a plea or verdict or finding of guilty and before sentence is imposed, the prosecutor may file with the court a verified written statement signed by the State's Attorney concerning any former conviction of an offense set forth in this Section rendered against the defendant. The court shall then cause the defendant to be brought before it; shall inform the defendant of the allegations of the statement so filed, and of his or her right to a hearing before the court on the issue of that former conviction and of his or her right to counsel at that hearing; and unless the defendant admits such conviction, shall hear and determine the issue, and shall make a written finding thereon. If a sentence has previously been imposed, the court may vacate that sentence and impose a new sentence in accordance with this Section.

(7) A duly authenticated copy of the record of any alleged former conviction of an offense set forth in this Section shall be prima facie evidence of that former conviction; and a duly authenticated copy of the record of the defendant's final release or discharge from probation granted, or from sentence and parole supervision (if any) imposed pursuant to that former conviction, shall be prima facie evidence of that release or discharge.

(8) Any claim that a previous conviction offered by the prosecution is not a former conviction of an offense set forth in this Section because of the existence of any

exceptions described in this Section, is waived unless duly raised at the hearing on that conviction, or unless the prosecution's proof shows the existence of the exceptions described in this Section.

(9) If the person so convicted shows to the satisfaction of the court before whom that conviction was had that he or she was released from imprisonment, upon either of the sentences upon a pardon granted for the reason that he or she was innocent, that conviction and sentence shall not be considered under this Section.

(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. This subsection does not apply unless:

(1) the first felony was committed after February 1, 1978 (the effective date of Public Act 80-1099);

(2) the second felony was committed after conviction on the first; and

(3) the third felony was committed after conviction on the second.

A person sentenced as a Class X offender under this

subsection (b) is not eligible to apply for treatment as a condition of probation as provided by Section 40-10 of the Alcoholism and Other Drug Abuse and Dependency Act (20 ILCS 301/40-10).

(Source: P.A. 95-1052, eff. 7-1-09.)

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

Sec. 5-4.5-105. SENTENCING OF INDIVIDUALS UNDER THE AGE OF 18 AT THE TIME OF THE COMMISSION OF AN OFFENSE.

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

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

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

(3) the person's family, home environment, educational and social background, including any history of parental

neglect, physical abuse, or other childhood trauma;

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

(5) the circumstances of the offense;

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

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

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

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

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

another person.

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

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

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

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

(1) for first degree murder,

(a) (blank),

(b) if a trier of fact finds beyond a reasonable doubt that the murder was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty or, except as set forth in subsection (a)(1)(c)

of this Section, that any of the aggravating factors listed in subsection (b) or (b-5) of Section 9-1 of the Criminal Code of 1961 or the Criminal Code of 2012 are present, the court may sentence the defendant, subject to Section 5-4.5-105, to a term of natural life imprisonment, or

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

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

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

(iii) is found guilty of murdering a peace officer, fireman, or emergency management worker when the peace officer, fireman, or emergency management worker was killed in the course of performing his official duties, or to prevent the peace officer or fireman from performing his

official duties, or in retaliation for the peace officer, fireman, or emergency management worker from performing his official duties, and the defendant knew or should have known that the murdered individual was a peace officer, fireman, or emergency management worker, or

(iv) is found guilty of murdering an employee of an institution or facility of the Department of Corrections, or any similar local correctional agency, when the employee was killed in the course of performing his official duties, or to prevent the employee from performing his official duties, or in retaliation for the employee performing his official duties, or

(v) is found guilty of murdering an emergency medical technician - ambulance, emergency medical technician - intermediate, emergency medical technician - paramedic, ambulance driver or other medical assistance or first aid person while employed by a municipality or other governmental unit when the person was killed in the course of performing official duties or to prevent the person from performing official duties or in retaliation for performing official duties and the defendant knew or should have known that the murdered individual was an emergency medical

technician - ambulance, emergency medical technician - intermediate, emergency medical technician - paramedic, ambulance driver, or other medical assistant or first aid personnel, or

(vi) (blank), or ~~is a person who, at the time of the commission of the murder, had not attained the age of 17, and is found guilty of murdering a person under 12 years of age and the murder is committed during the course of aggravated criminal sexual assault, criminal sexual assault, or aggravated kidnaping, or~~

(vii) is found guilty of first degree murder and the murder was committed by reason of any person's activity as a community policing volunteer or to prevent any person from engaging in activity as a community policing volunteer. For the purpose of this Section, "community policing volunteer" has the meaning ascribed to it in Section 2-3.5 of the Criminal Code of 2012.

For purposes of clause (v), "emergency medical technician - ambulance", "emergency medical technician - intermediate", "emergency medical technician - paramedic", have the meanings ascribed to them in the Emergency Medical Services (EMS) Systems Act.

(d) (i) if the person committed the offense while armed with a firearm, 15 years shall be added to

the term of imprisonment imposed by the court;

(ii) if, during the commission of the offense, the person personally discharged a firearm, 20 years shall be added to the term of imprisonment imposed by the court;

(iii) if, during the commission of the offense, the person personally discharged a firearm that proximately caused great bodily harm, permanent disability, permanent disfigurement, or death to another person, 25 years or up to a term of natural life shall be added to the term of imprisonment imposed by the court.

(2) (blank);

(2.5) for a person convicted under the circumstances described in subdivision (b)(1)(B) of Section 11-1.20 or paragraph (3) of subsection (b) of Section 12-13, subdivision (d)(2) of Section 11-1.30 or paragraph (2) of subsection (d) of Section 12-14, subdivision (b)(1.2) of Section 11-1.40 or paragraph (1.2) of subsection (b) of Section 12-14.1, subdivision (b)(2) of Section 11-1.40 or paragraph (2) of subsection (b) of Section 12-14.1 of the Criminal Code of 1961 or the Criminal Code of 2012, the sentence shall be a term of natural life imprisonment.

(b) (Blank).

(c) (Blank).

(d) Subject to earlier termination under Section 3-3-8, the

parole or mandatory supervised release term shall be written as part of the sentencing order and shall be as follows:

(1) for first degree murder or a Class X felony except for the offenses of predatory criminal sexual assault of a child, aggravated criminal sexual assault, and criminal sexual assault if committed on or after the effective date of this amendatory Act of the 94th General Assembly and except for the offense of aggravated child pornography under Section 11-20.1B, 11-20.3, or 11-20.1 with sentencing under subsection (c-5) of Section 11-20.1 of the Criminal Code of 1961 or the Criminal Code of 2012, if committed on or after January 1, 2009, 3 years;

(2) for a Class 1 felony or a Class 2 felony except for the offense of criminal sexual assault if committed on or after the effective date of this amendatory Act of the 94th General Assembly and except for the offenses of manufacture and dissemination of child pornography under clauses (a)(1) and (a)(2) of Section 11-20.1 of the Criminal Code of 1961 or the Criminal Code of 2012, if committed on or after January 1, 2009, 2 years;

(3) for a Class 3 felony or a Class 4 felony, 1 year;

(4) for defendants who commit the offense of predatory criminal sexual assault of a child, aggravated criminal sexual assault, or criminal sexual assault, on or after the effective date of this amendatory Act of the 94th General Assembly, or who commit the offense of aggravated child

pornography under Section 11-20.1B, 11-20.3, or 11-20.1 with sentencing under subsection (c-5) of Section 11-20.1 of the Criminal Code of 1961 or the Criminal Code of 2012, manufacture of child pornography, or dissemination of child pornography after January 1, 2009, the term of mandatory supervised release shall range from a minimum of 3 years to a maximum of the natural life of the defendant;

(5) if the victim is under 18 years of age, for a second or subsequent offense of aggravated criminal sexual abuse or felony criminal sexual abuse, 4 years, at least the first 2 years of which the defendant shall serve in an electronic home detention program under Article 8A of Chapter V of this Code;

(6) for a felony domestic battery, aggravated domestic battery, stalking, aggravated stalking, and a felony violation of an order of protection, 4 years.

(e) (Blank).

(f) (Blank).

(Source: P.A. 96-282, eff. 1-1-10; 96-1000, eff. 7-2-10; 96-1200, eff. 7-22-10; 96-1475, eff. 1-1-11; 96-1551, eff. 7-1-11; 97-333, eff. 8-12-11; 97-531, eff. 1-1-12; 97-1109, eff. 1-1-13; 97-1150, eff. 1-25-13.)

Public Act 099-0258

HB3718 Enrolled LRB099 11130 RLC 31593 b

AN ACT concerning courts.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Juvenile Court Act of 1987 is amended by changing Sections 5-130, 5-407, 5-805, and 5-810 and by adding Section 5-822 as follows:

(705 ILCS 405/5-130)

Sec. 5-130. Excluded jurisdiction.

(1)(a) The definition of delinquent minor under Section 5-120 of this Article shall not apply to any minor who at the time of an offense was at least 16 ~~15~~ years of age and who is charged with: (i) first degree murder, (ii) aggravated criminal sexual assault, or (iii) aggravated battery with a firearm as described in Section 12-4.2 or subdivision (e)(1), (e)(2), (e)(3), or (e)(4) of Section 12-3.05 where the minor personally discharged a firearm as defined in Section 2-15.5 of the Criminal Code of 1961 or the Criminal Code of 2012~~, (iv) armed robbery when the armed robbery was committed with a firearm, or (v) aggravated vehicular hijacking when the hijacking was committed with a firearm~~.

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

(b)(i) If before trial or plea an information or indictment is filed that does not charge an offense specified in paragraph (a) of this subsection (1) the State's Attorney may proceed on any lesser charge or charges, but only in Juvenile Court under the provisions of this Article. The State's Attorney may proceed on a lesser charge if before trial the minor defendant knowingly and with advice of counsel waives, in writing, his or her right to have the matter proceed in Juvenile Court.

(ii) If before trial or plea an information or indictment is filed that includes one or more charges specified in paragraph (a) of this subsection (1) and additional charges that are not specified in that paragraph, all of the charges arising out of the same incident shall be prosecuted under the Criminal Code of 1961 or the Criminal Code of 2012.

(c)(i) If after trial or plea the minor is convicted of any offense covered by paragraph (a) of this subsection (1), then, in sentencing the minor, the court shall sentence the minor under Section 5-4.5-105 of the Unified Code of Corrections ~~have available any or all dispositions prescribed for that offense under Chapter V of the Unified Code of Corrections~~.

(ii) If after trial or plea the court finds that the minor committed an offense not covered by paragraph (a) of this subsection (1), that finding shall not invalidate the verdict or the prosecution of the minor under the criminal laws of the State; however, unless the State requests a hearing for the purpose of sentencing the minor under Chapter V of the Unified

Code of Corrections, the Court must proceed under Sections 5-705 and 5-710 of this Article. To request a hearing, the State must file a written motion within 10 days following the entry of a finding or the return of a verdict. Reasonable notice of the motion shall be given to the minor or his or her counsel. If the motion is made by the State, the court shall conduct a hearing to determine if the minor should be sentenced under Chapter V of the Unified Code of Corrections. In making its determination, the court shall consider among other matters: (a) whether there is evidence that the offense was committed in an aggressive and premeditated manner; (b) the age of the minor; (c) the previous history of the minor; (d) whether there are facilities particularly available to the Juvenile Court or the Department of Juvenile Justice for the treatment and rehabilitation of the minor; (e) whether the security of the public requires sentencing under Chapter V of the Unified Code of Corrections; and (f) whether the minor possessed a deadly weapon when committing the offense. The rules of evidence shall be the same as if at trial. If after the hearing the court finds that the minor should be sentenced under Chapter V of the Unified Code of Corrections, then the court shall sentence the minor under Section 5-4.5-105 of the Unified Code of Corrections ~~accordingly having available to it any or all dispositions so prescribed~~.

(2) (Blank).

(3) (Blank). ~~(a) The definition of delinquent minor under~~

~~Section 5-120 of this Article shall not apply to any minor who at the time of the offense was at least 15 years of age and who is charged with a violation of the provisions of paragraph (1), (3), (4), or (10) of subsection (a) of Section 24-1 of the Criminal Code of 1961 or the Criminal Code of 2012 while in school, regardless of the time of day or the time of year, or on the real property comprising any school, regardless of the time of day or the time of year. School is defined, for purposes of this Section as any public or private elementary or secondary school, community college, college, or university. These charges and all other charges arising out of the same incident shall be prosecuted under the criminal laws of this State.~~

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

~~(ii) If before trial or plea an information or indictment is filed that includes one or more charges specified in paragraph (a) of this subsection (3) and additional charges that are not specified in that paragraph, all of the charges~~

~~arising out of the same incident shall be prosecuted under the criminal laws of this State.~~

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

~~(ii) If after trial or plea the court finds that the minor committed an offense not covered by paragraph (a) of this subsection (3), that finding shall not invalidate the verdict or the prosecution of the minor under the criminal laws of the State; however, unless the State requests a hearing for the purpose of sentencing the minor under Chapter V of the Unified Code of Corrections, the Court must proceed under Sections 5-705 and 5-710 of this Article. To request a hearing, the State must file a written motion within 10 days following the entry of a finding or the return of a verdict. Reasonable notice of the motion shall be given to the minor or his or her counsel. If the motion is made by the State, the court shall conduct a hearing to determine if the minor should be sentenced under Chapter V of the Unified Code of Corrections. In making its determination, the court shall consider among other matters: (a) whether there is evidence that the offense was committed in an aggressive and premeditated manner; (b) the age of the minor; (c) the previous history of the minor; (d) whether there are facilities particularly available to the~~

~~Juvenile Court or the Department of Juvenile Justice for the treatment and rehabilitation of the minor; (c) whether the security of the public requires sentencing under Chapter V of the Unified Code of Corrections; and (f) whether the minor possessed a deadly weapon when committing the offense. The rules of evidence shall be the same as if at trial. If after the hearing the court finds that the minor should be sentenced under Chapter V of the Unified Code of Corrections, then the court shall sentence the minor accordingly having available to it any or all dispositions so prescribed.~~

(4) (Blank). ~~(a) The definition of delinquent minor under Section 5-120 of this Article shall not apply to any minor who at the time of an offense was at least 13 years of age and who is charged with first degree murder committed during the course of either aggravated criminal sexual assault, criminal sexual assault, or aggravated kidnaping. However, this subsection (4) does not include a minor charged with first degree murder based exclusively upon the accountability provisions of the Criminal Code of 1961 or the Criminal Code of 2012.~~

~~(b)(i) If before trial or plea an information or indictment is filed that does not charge first degree murder committed during the course of aggravated criminal sexual assault, criminal sexual assault, or aggravated kidnaping, the State's Attorney may proceed on any lesser charge or charges, but only in Juvenile Court under the provisions of this Article. The State's Attorney may proceed under the criminal laws of this~~

~~State on a lesser charge if before trial the minor defendant knowingly and with advice of counsel waives, in writing, his or her right to have the matter proceed in Juvenile Court.~~

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

~~(c)(i) If after trial or plea the minor is convicted of first degree murder committed during the course of aggravated criminal sexual assault, criminal sexual assault, or aggravated kidnaping, in sentencing the minor, the court shall have available any or all dispositions prescribed for that offense under Chapter V of the Unified Code of Corrections.~~

~~(ii) If the minor was not yet 15 years of age at the time of the offense, and if after trial or plea the court finds that the minor committed an offense other than first degree murder committed during the course of either aggravated criminal sexual assault, criminal sexual assault, or aggravated kidnapping, the finding shall not invalidate the verdict or the prosecution of the minor under the criminal laws of the State; however, unless the State requests a hearing for the purpose of sentencing the minor under Chapter V of the Unified Code of Corrections, the Court must proceed under Sections 5-705 and~~

~~5-710 of this Article. To request a hearing, the State must file a written motion within 10 days following the entry of a finding or the return of a verdict. Reasonable notice of the motion shall be given to the minor or his or her counsel. If the motion is made by the State, the court shall conduct a hearing to determine whether the minor should be sentenced under Chapter V of the Unified Code of Corrections. In making its determination, the court shall consider among other matters: (a) whether there is evidence that the offense was committed in an aggressive and premeditated manner; (b) the age of the minor; (c) the previous delinquent history of the minor; (d) whether there are facilities particularly available to the Juvenile Court or the Department of Juvenile Justice for the treatment and rehabilitation of the minor; (e) whether the best interest of the minor and the security of the public require sentencing under Chapter V of the Unified Code of Corrections; and (f) whether the minor possessed a deadly weapon when committing the offense. The rules of evidence shall be the same as if at trial. If after the hearing the court finds that the minor should be sentenced under Chapter V of the Unified Code of Corrections, then the court shall sentence the minor accordingly having available to it any or all dispositions so prescribed.~~

(5) (Blank). ~~(a) The definition of delinquent minor under Section 5-120 of this Article shall not apply to any minor who is charged with a violation of subsection (a) of Section 31-6~~

~~or Section 32-10 of the Criminal Code of 1961 or the Criminal Code of 2012 when the minor is subject to prosecution under the criminal laws of this State as a result of the application of the provisions of Section 5-125, or subsection (1) or (2) of this Section. These charges and all other charges arising out of the same incident shall be prosecuted under the criminal laws of this State.~~

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

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

~~(c)(i) If after trial or plea the minor is convicted of any offense covered by paragraph (a) of this subsection (5), then, in sentencing the minor, the court shall have available any or all dispositions prescribed for that offense under Chapter V of~~

~~the Unified Code of Corrections.~~

~~(ii) If after trial or plea the court finds that the minor committed an offense not covered by paragraph (a) of this subsection (5), the conviction shall not invalidate the verdict or the prosecution of the minor under the criminal laws of this State; however, unless the State requests a hearing for the purpose of sentencing the minor under Chapter V of the Unified Code of Corrections, the Court must proceed under Sections 5-705 and 5-710 of this Article. To request a hearing, the State must file a written motion within 10 days following the entry of a finding or the return of a verdict. Reasonable notice of the motion shall be given to the minor or his or her counsel. If the motion is made by the State, the court shall conduct a hearing to determine if whether the minor should be sentenced under Chapter V of the Unified Code of Corrections. In making its determination, the court shall consider among other matters: (a) whether there is evidence that the offense was committed in an aggressive and premeditated manner; (b) the age of the minor; (c) the previous delinquent history of the minor; (d) whether there are facilities particularly available to the Juvenile Court or the Department of Juvenile Justice for the treatment and rehabilitation of the minor; (e) whether the security of the public requires sentencing under Chapter V of the Unified Code of Corrections; and (f) whether the minor possessed a deadly weapon when committing the offense. The rules of evidence shall be the same as if at trial. If after~~

~~the hearing the court finds that the minor should be sentenced under Chapter V of the Unified Code of Corrections, then the court shall sentence the minor accordingly having available to it any or all dispositions so prescribed.~~

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

(7) The procedures set out in this Article for the investigation, arrest and prosecution of juvenile offenders shall not apply to minors who are excluded from jurisdiction of the Juvenile Court, except that minors under 18 years of age shall be kept separate from confined adults.

(8) Nothing in this Act prohibits or limits the prosecution of any minor for an offense committed on or after his or her 18th birthday even though he or she is at the time of the offense a ward of the court.

(9) If an original petition for adjudication of wardship alleges the commission by a minor 13 years of age or over of an act that constitutes a crime under the laws of this State, the minor, with the consent of his or her counsel, may, at any time before commencement of the adjudicatory hearing, file with the court a motion that criminal prosecution be ordered and that

the petition be dismissed insofar as the act or acts involved in the criminal proceedings are concerned. If such a motion is filed as herein provided, the court shall enter its order accordingly.

(10) If, prior to August 12, 2005 (the effective date of Public Act 94-574), a minor is charged with a violation of Section 401 of the Illinois Controlled Substances Act under the criminal laws of this State, other than a minor charged with a Class X felony violation of the Illinois Controlled Substances Act or the Methamphetamine Control and Community Protection Act, any party including the minor or the court sua sponte may, before trial, move for a hearing for the purpose of trying and sentencing the minor as a delinquent minor. To request a hearing, the party must file a motion prior to trial. Reasonable notice of the motion shall be given to all parties. On its own motion or upon the filing of a motion by one of the parties including the minor, the court shall conduct a hearing to determine whether the minor should be tried and sentenced as a delinquent minor under this Article. In making its determination, the court shall consider among other matters:

(a) The age of the minor;

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

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

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

(e) Whether there is probable cause to support the charge, whether the minor is charged through accountability, and whether there is evidence the minor possessed a deadly weapon or caused serious bodily harm during the offense.

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

(11) The changes made to this Section by Public Act 98-61 apply to a minor who has been arrested or taken into custody on or after January 1, 2014 (the effective date of Public Act 98-61).

(Source: P.A. 97-1150, eff. 1-25-13; 98-61, eff. 1-1-14; 98-756, eff. 7-16-14.)

(705 ILCS 405/5-407)

Sec. 5-407. Processing of juvenile in possession of a firearm.

(a) If a law enforcement officer detains a minor pursuant to Section 10-27.1A of the School Code, the officer shall deliver the minor to the nearest juvenile officer, in the

manner prescribed by subsection (2) of Section 5-405 of this Act. The juvenile officer shall deliver the minor without unnecessary delay to the court or to the place designated by rule or order of court for the reception of minors. In no event shall the minor be eligible for any other disposition by the juvenile police officer, notwithstanding the provisions of subsection (3) of Section 5-405 of this Act.

(b) Minors ~~not excluded from this Act's jurisdiction under subsection (3)(a) of Section 5-130 of this Act~~ shall be brought before a judicial officer within 40 hours, exclusive of Saturdays, Sundays, and court-designated holidays, for a detention hearing to determine whether he or she shall be further held in custody. If the court finds that there is probable cause to believe that the minor is a delinquent minor by virtue of his or her violation of item (4) of subsection (a) of Section 24-1 of the Criminal Code of 1961 or the Criminal Code of 2012 while on school grounds, that finding shall create a presumption that immediate and urgent necessity exists under subdivision (2) of Section 5-501 of this Act. Once the presumption of immediate and urgent necessity has been raised, the burden of demonstrating the lack of immediate and urgent necessity shall be on any party that is opposing detention for the minor. Should the court order detention pursuant to this Section, the minor shall be detained, pending the results of a court-ordered psychological evaluation to determine if the minor is a risk to himself, herself, or others. Upon receipt of

the psychological evaluation, the court shall review the determination regarding the existence of urgent and immediate necessity. The court shall consider the psychological evaluation in conjunction with the other factors identified in subdivision (2) of Section 5-501 of this Act in order to make a de novo determination regarding whether it is a matter of immediate and urgent necessity for the protection of the minor or of the person or property of another that the minor be detained or placed in a shelter care facility. In addition to the pre-trial conditions found in Section 5-505 of this Act, the court may order the minor to receive counseling and any other services recommended by the psychological evaluation as a condition for release of the minor.

(c) Upon making a determination that the student presents a risk to himself, herself, or others, the court shall issue an order restraining the student from entering the property of the school if he or she has been suspended or expelled from the school as a result of possessing a firearm. The order shall restrain the student from entering the school and school owned or leased property, including any conveyance owned, leased, or contracted by the school to transport students to or from school or a school-related activity. The order shall remain in effect until such time as the court determines that the student no longer presents a risk to himself, herself, or others.

(d) Psychological evaluations ordered pursuant to subsection (b) of this Section and statements made by the minor

during the course of these evaluations, shall not be admissible on the issue of delinquency during the course of any adjudicatory hearing held under this Act.

(e) In this Section:

"School" means any public or private elementary or secondary school.

"School grounds" includes the real property comprising any school, any conveyance owned, leased, or contracted by a school to transport students to or from school or a school-related activity, or any public way within 1,000 feet of the real property comprising any school.

(Source: P.A. 97-1150, eff. 1-25-13.)

(705 ILCS 405/5-805)

Sec. 5-805. Transfer of jurisdiction.

(1) (Blank). ~~Mandatory transfers.~~

~~(a) If a petition alleges commission by 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 felony under the laws of this State or any other state and (ii) the act that constitutes the offense was committed in furtherance of criminal activity by an~~

~~organized gang, the Juvenile Judge assigned to hear and determine those motions shall, upon determining that there is probable cause that both allegations are true, enter an order permitting prosecution under the criminal laws of Illinois.~~

~~(b) If a petition alleges commission by a minor 15 years of age or older of an act that constitutes a felony under the laws of this State, and if a motion by a State's Attorney to prosecute the minor under the criminal laws of Illinois for the alleged 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 activities by an organized gang, the Juvenile Judge assigned to hear and determine those motions shall, upon determining that there is probable cause that both allegations are true, enter an order permitting prosecution under the criminal laws of Illinois.~~

~~(c) If a petition alleges commission by a minor 15 years of age or older of: (i) an act that constitutes an offense enumerated in the presumptive transfer provisions of subsection (2); and (ii) the minor has previously been adjudicated delinquent or found guilty of a forcible felony, the Juvenile Judge designated to hear and determine~~

~~those motions shall, upon determining that there is probable cause that both allegations are true, enter an order permitting prosecution under the criminal laws of Illinois.~~

~~(d) If a petition alleges commission by a minor 15 years of age or older of an act that constitutes the offense of aggravated discharge of a firearm committed in a school, on the real property comprising a school, within 1,000 feet of the real property comprising a school, at a school related activity, or on, boarding, or departing from any conveyance owned, leased, or contracted by a school or school district to transport students to or from school or a school related activity, regardless of the time of day or the time of year, the juvenile judge designated to hear and determine those motions shall, upon determining that there is probable cause that the allegations are true, enter an order permitting prosecution under the criminal laws of Illinois.~~

~~For purposes of this paragraph (d) of subsection (1):~~

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

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

(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, ~~the commission by a minor 15 years of age or older of: (i) a Class X felony other than armed violence; (ii) aggravated discharge of a firearm; (iii) armed violence with a firearm when the predicate offense is a Class 1 or Class 2 felony and the State's Attorney's motion to transfer the case alleges that the offense committed is in furtherance of the criminal activities of an organized gang; (iv) armed violence with a firearm when the predicate offense is a violation of the Illinois Controlled Substances Act, a violation of the Cannabis Control Act, or a violation of the Methamphetamine Control and Community Protection Act; (v) armed violence when the weapon involved was a machine gun or other weapon~~

~~described in subsection (a)(7) of Section 24-1 of the Criminal Code of 1961 or the Criminal Code of 2012; (vi) an act in violation of Section 401 of the Illinois Controlled Substances Act which is a Class X felony, while in a school, regardless of the time of day or the time of year, or on any conveyance owned, leased, or contracted by a school to transport students to or from school or a school related activity, or on residential property owned, operated, or managed by a public housing agency or leased by a public housing agency as part of a scattered site or mixed-income development; or (vii) an act in violation of Section 401 of the Illinois Controlled Substances Act and the offense is alleged to have occurred while in a school or on a public way within 1,000 feet of the real property comprising any school, regardless of the time of day or the time of year when the delivery or intended delivery of any amount of the controlled substance is to a person under 17 years of age, (to qualify for a presumptive transfer under paragraph (vi) or (vii) of this clause (2)(a), the violation cannot be based upon subsection (b) of Section 407 of the Illinois Controlled Substances Act)~~ 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.

(b) The judge shall enter an order permitting prosecution under the criminal laws of Illinois unless the judge makes a finding based on clear and convincing evidence that the minor would be amenable to the care, treatment, and training programs available through the facilities of the juvenile court based on an evaluation of the following:

(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 and the minor's prior record of delinquency than to the other factors listed in this subsection.

~~For purposes of clauses (2)(a)(vi) and (vii):~~

~~"School" means a public or private elementary or secondary~~

~~school, community college, college, or university.~~

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

(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, ~~and~~ the minor's prior record of delinquency than to the other factors listed in this subsection.

(4) The rules of evidence for this hearing shall be the same as under Section 5-705 of this Act. A minor must be represented in court by counsel before the hearing may be commenced.

(5) If criminal proceedings are instituted, the petition for adjudication of wardship shall be dismissed insofar as the act or acts involved in the criminal proceedings. Taking of evidence in a trial on petition for adjudication of wardship is a bar to criminal proceedings based upon the conduct alleged in the petition.

(6) When criminal prosecution is permitted under this Section and a finding of guilt is entered, the criminal court shall sentence the minor under Section 5-4.5-105 of the Unified Code of Corrections.

(7) The changes made to this Section by this amendatory Act of the 99th General Assembly apply to a minor who has been taken into custody on or after the effective date of this amendatory Act of the 99th General Assembly.

(Source: P.A. 97-1150, eff. 1-25-13.)

(705 ILCS 405/5-810)

Sec. 5-810. Extended jurisdiction juvenile prosecutions.

(1) (a) If the State's Attorney files a petition, at any time prior to commencement of the minor's trial, to designate the proceeding as an extended jurisdiction juvenile prosecution and the petition alleges the commission by a minor 13 years of age or older of any offense which would be a felony if committed by an adult, and, if the juvenile judge assigned to hear and determine petitions to designate the proceeding as an extended jurisdiction juvenile prosecution 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 proceeding shall be designated as an extended jurisdiction juvenile proceeding.

(b) The judge shall enter an order designating the proceeding as an extended jurisdiction juvenile proceeding unless the judge makes a finding based on clear and convincing evidence that sentencing under the Chapter V of the Unified Code of Corrections would not be appropriate for the minor based on an evaluation of the following factors:

(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 and/or educational history of the minor;

(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, and the minor's prior record of delinquency than to other factors listed in this subsection.

(2) Procedures for extended jurisdiction juvenile prosecutions. The State's Attorney may file a written motion for a proceeding to be designated as an extended juvenile jurisdiction prior to commencement of trial. Notice of the motion shall be in compliance with Section 5-530. When the State's Attorney files a written motion that a proceeding be designated an extended jurisdiction juvenile prosecution, the court shall commence a hearing within 30 days of the filing of the motion for designation, unless good cause is shown by the prosecution or the minor as to why the hearing could not be held within this time period. If the court finds good cause has been demonstrated, then the hearing shall be held within 60 days of the filing of the motion. The hearings shall be open to the public unless the judge finds that the hearing should be closed for the protection of any party, victim or witness. If the Juvenile Judge assigned to hear and determine a motion to designate an extended jurisdiction juvenile prosecution determines that there is probable cause to believe that the allegations in the petition and motion are true the court shall grant the motion for designation. Information used by the court

in its findings or stated in or offered in connection with this Section may be by way of proffer based on reliable information offered by the State or the minor. All evidence shall be admissible if it is relevant and reliable regardless of whether it would be admissible under the rules of evidence.

(3) Trial. A minor who is subject of an extended jurisdiction juvenile prosecution has the right to trial by jury. Any trial under this Section shall be open to the public.

(4) Sentencing. If an extended jurisdiction juvenile prosecution under subsection (1) results in a guilty plea, a verdict of guilty, or a finding of guilt, the court shall impose the following:

(i) one or more juvenile sentences under Section 5-710; and

(ii) an adult criminal sentence in accordance with the provisions of Section 5-4.5-105 of the Unified Code of Corrections ~~Chapter V of the Unified Code of Corrections~~, the execution of which shall be stayed on the condition that the offender not violate the provisions of the juvenile sentence.

Any sentencing hearing under this Section shall be open to the public.

(5) If, after an extended jurisdiction juvenile prosecution trial, a minor is convicted of a lesser-included offense or of an offense that the State's Attorney did not designate as an extended jurisdiction juvenile prosecution,

the State's Attorney may file a written motion, within 10 days of the finding of guilt, that the minor be sentenced as an extended jurisdiction juvenile prosecution offender. The court shall rule on this motion using the factors found in paragraph (1)(b) of Section 5-805. If the court denies the State's Attorney's motion for sentencing under the extended jurisdiction juvenile prosecution provision, the court shall proceed to sentence the minor under Section 5-710.

(6) When it appears that a minor convicted in an extended jurisdiction juvenile prosecution under subsection (1) has violated the conditions of his or her sentence, or is alleged to have committed a new offense upon the filing of a petition to revoke the stay, the court may, without notice, issue a warrant for the arrest of the minor. After a hearing, if the court finds by a preponderance of the evidence that the minor committed a new offense, the court shall order execution of the previously imposed adult criminal sentence. After a hearing, if the court finds by a preponderance of the evidence that the minor committed a violation of his or her sentence other than by a new offense, the court may order execution of the previously imposed adult criminal sentence or may continue him or her on the existing juvenile sentence with or without modifying or enlarging the conditions. Upon revocation of the stay of the adult criminal sentence and imposition of that sentence, the minor's extended jurisdiction juvenile status shall be terminated. The on-going jurisdiction over the minor's

case shall be assumed by the adult criminal court and juvenile court jurisdiction shall be terminated and a report of the imposition of the adult sentence shall be sent to the Department of State Police.

(7) Upon successful completion of the juvenile sentence the court shall vacate the adult criminal sentence.

(8) Nothing in this Section precludes the State from filing a motion for transfer under Section 5-805.

(Source: P.A. 94-574, eff. 8-12-05; 95-331, eff. 8-21-07.)

(705 ILCS 405/5-822 new)

Sec. 5-822. Data collection. On the effective date of this amendatory Act of the 99th General Assembly:

(1) The Clerk of the Circuit Court of every county in this State, shall track the filing, processing, and disposition of all cases:

(a) initiated in criminal court under Section 5-130 of this Act;

(b) in which a motion to transfer was filed by the State under Section 5-805 of this Act;

(c) in which a motion for extended jurisdiction was filed by the State under Section 5-810 of this Act;

(d) in which a designation is sought of a Habitual Juvenile Offender under Section 5-815 of this Act; and

(e) in which a designation is sought of a Violent Juvenile Offender under Section 5-820 of this Act.

(2) For each category of case listed in subsection (1), the clerk shall collect the following:

(a) age of the defendant and of the victim or victims at the time of offense;

(b) race and ethnicity of the defendant and the victim or victims;

(c) gender of the defendant and the victim or victims;

(d) the offense or offenses charged;

(e) date filed and the date of final disposition;

(f) the final disposition;

(g) for those cases resulting in a finding or plea of guilty:

(i) charge or charges for which they are convicted;

(ii) sentence for each charge;

(h) for cases under paragraph (c) of subsection (1), the clerk shall report if the adult sentence is applied due to non-compliance with the juvenile sentence.

(3) On January 15 and June 15 of each year beginning 6 months after the effective date of this amendatory Act of the 99th General Assembly, the Clerk of each county shall submit a report outlining all of the information from subsection (2) to the General Assembly and the county board of the clerk's respective county.

(4) No later than 2 months after the effective date of this amendatory Act of the 99th General Assembly, the standards, confidentiality protocols, format, and data depository for the semi-annual reports described in this Section shall be identified by the State Advisory Group on Juvenile Justice and Delinquency Prevention and distributed to the General Assembly, county boards, and county clerks' offices.

(705 ILCS 405/5-821 rep.)

Section 10. The Juvenile Court Act of 1987 is amended by repealing Section 5-821.

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

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

Sec. 5-4.5-105. SENTENCING OF INDIVIDUALS UNDER THE AGE OF 18 AT THE TIME OF THE COMMISSION OF AN OFFENSE.

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

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

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

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

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

(5) the circumstances of the offense;

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

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

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

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

aggravating factor.

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

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

PROOF OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On June 19, 2017, the **Separate Appendix of Plaintiff-Appellee People of the State of Illinois** was (1) filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, and (2) served by transmitting a copy from my e-mail address to the e-mail addresses of the persons named below:

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Additionally, upon its acceptance by the court's electronic filing system, the undersigned will mail 13 copies of the separate appendix to the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois 62701.

/s/ Gopi Kashyap
GOPI KASHYAP
Assistant Attorney General