



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB3406

Introduced 2/10/2010, by Sen. Kwame Raoul

SYNOPSIS AS INTRODUCED:

705 ILCS 405/5-615

705 ILCS 405/5-715

Amends the Juvenile Court Act of 1987. Eliminates the provision that the State's Attorney may object to a court order of continuance under supervision. Provides that at the successful completion of probation of a first time offender only, a minor may move to vacate a finding of delinquency. Provides that unless good cause is shown, such motion to vacate must be filed within 30 days of the entry of the order terminating probation or discharging the minor. Establishes conditions and factors under which a court may vacate a finding of delinquency. Provides that once a motion to vacate a finding of delinquency has been granted, the case shall be treated as if it never occurred and, the person may not be required to disclose that he or she had a juvenile record. Provides that the amendatory Act shall govern all motions pending at the time of its effective date. Effective immediately.

LRB096 18825 RLC 34211 b

1 AN ACT concerning courts.

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

4 Section 5. The Juvenile Court Act of 1987 is amended by
5 changing Sections 5-615 and 5-715 as follows:

6 (705 ILCS 405/5-615)

7 Sec. 5-615. Continuance under supervision.

8 (1) The court may enter an order of continuance under
9 supervision for an offense other than first degree murder, a
10 Class X felony or a forcible felony (a) upon an admission or
11 stipulation by the appropriate respondent or minor respondent
12 of the facts supporting the petition and before proceeding to
13 adjudication, or after hearing the evidence at the trial, and
14 (b) in the absence of objection made in open court by the
15 minor, his or her parent, guardian, or legal custodian, or the
16 minor's attorney ~~or the State's Attorney~~.

17 (2) If the minor, his or her parent, guardian, or legal
18 custodian, or the minor's attorney ~~or State's Attorney~~ objects
19 in open court to any continuance and insists upon proceeding to
20 findings and adjudication, the court shall so proceed.

21 (3) Nothing in this Section limits the power of the court
22 to order a continuance of the hearing for the production of
23 additional evidence or for any other proper reason.

1 (4) When a hearing where a minor is alleged to be a
2 delinquent is continued pursuant to this Section, the period of
3 continuance under supervision may not exceed 24 months. The
4 court may terminate a continuance under supervision at any time
5 if warranted by the conduct of the minor and the ends of
6 justice.

7 (5) When a hearing where a minor is alleged to be
8 delinquent is continued pursuant to this Section, the court
9 may, as conditions of the continuance under supervision,
10 require the minor to do any of the following:

11 (a) not violate any criminal statute of any
12 jurisdiction;

13 (b) make a report to and appear in person before any
14 person or agency as directed by the court;

15 (c) work or pursue a course of study or vocational
16 training;

17 (d) undergo medical or psychotherapeutic treatment
18 rendered by a therapist licensed under the provisions of
19 the Medical Practice Act of 1987, the Clinical Psychologist
20 Licensing Act, or the Clinical Social Work and Social Work
21 Practice Act, or an entity licensed by the Department of
22 Human Services as a successor to the Department of
23 Alcoholism and Substance Abuse, for the provision of drug
24 addiction and alcoholism treatment;

25 (e) attend or reside in a facility established for the
26 instruction or residence of persons on probation;

- 1 (f) support his or her dependents, if any;
- 2 (g) pay costs;
- 3 (h) refrain from possessing a firearm or other
4 dangerous weapon, or an automobile;
- 5 (i) permit the probation officer to visit him or her at
6 his or her home or elsewhere;
- 7 (j) reside with his or her parents or in a foster home;
- 8 (k) attend school;
- 9 (k-5) with the consent of the superintendent of the
10 facility, attend an educational program at a facility other
11 than the school in which the offense was committed if he or
12 she committed a crime of violence as defined in Section 2
13 of the Crime Victims Compensation Act in a school, on the
14 real property comprising a school, or within 1,000 feet of
15 the real property comprising a school;
- 16 (l) attend a non-residential program for youth;
- 17 (m) contribute to his or her own support at home or in
18 a foster home;
- 19 (n) perform some reasonable public or community
20 service;
- 21 (o) make restitution to the victim, in the same manner
22 and under the same conditions as provided in subsection (4)
23 of Section 5-710, except that the "sentencing hearing"
24 referred to in that Section shall be the adjudicatory
25 hearing for purposes of this Section;
- 26 (p) comply with curfew requirements as designated by

1 the court;

2 (q) refrain from entering into a designated geographic
3 area except upon terms as the court finds appropriate. The
4 terms may include consideration of the purpose of the
5 entry, the time of day, other persons accompanying the
6 minor, and advance approval by a probation officer;

7 (r) refrain from having any contact, directly or
8 indirectly, with certain specified persons or particular
9 types of persons, including but not limited to members of
10 street gangs and drug users or dealers;

11 (r-5) undergo a medical or other procedure to have a
12 tattoo symbolizing allegiance to a street gang removed from
13 his or her body;

14 (s) refrain from having in his or her body the presence
15 of any illicit drug prohibited by the Cannabis Control Act,
16 the Illinois Controlled Substances Act, or the
17 Methamphetamine Control and Community Protection Act,
18 unless prescribed by a physician, and submit samples of his
19 or her blood or urine or both for tests to determine the
20 presence of any illicit drug; or

21 (t) comply with any other conditions as may be ordered
22 by the court.

23 (6) A minor whose case is continued under supervision under
24 subsection (5) shall be given a certificate setting forth the
25 conditions imposed by the court. Those conditions may be
26 reduced, enlarged, or modified by the court on motion of the

1 probation officer or on its own motion, or that of the State's
2 Attorney, or, at the request of the minor after notice and
3 hearing.

4 (7) If a petition is filed charging a violation of a
5 condition of the continuance under supervision, the court shall
6 conduct a hearing. If the court finds that a condition of
7 supervision has not been fulfilled, the court may proceed to
8 findings and adjudication and disposition. The filing of a
9 petition for violation of a condition of the continuance under
10 supervision shall toll the period of continuance under
11 supervision until the final determination of the charge, and
12 the term of the continuance under supervision shall not run
13 until the hearing and disposition of the petition for
14 violation; provided where the petition alleges conduct that
15 does not constitute a criminal offense, the hearing must be
16 held within 30 days of the filing of the petition unless a
17 delay shall continue the tolling of the period of continuance
18 under supervision for the period of the delay.

19 (8) When a hearing in which a minor is alleged to be a
20 delinquent for reasons that include a violation of Section
21 21-1.3 of the Criminal Code of 1961 is continued under this
22 Section, the court shall, as a condition of the continuance
23 under supervision, require the minor to perform community
24 service for not less than 30 and not more than 120 hours, if
25 community service is available in the jurisdiction. The
26 community service shall include, but need not be limited to,

1 the cleanup and repair of the damage that was caused by the
2 alleged violation or similar damage to property located in the
3 municipality or county in which the alleged violation occurred.
4 The condition may be in addition to any other condition.

5 (8.5) When a hearing in which a minor is alleged to be a
6 delinquent for reasons that include a violation of Section 3.02
7 or Section 3.03 of the Humane Care for Animals Act or paragraph
8 (d) of subsection (1) of Section 21-1 of the Criminal Code of
9 1961 is continued under this Section, the court shall, as a
10 condition of the continuance under supervision, require the
11 minor to undergo medical or psychiatric treatment rendered by a
12 psychiatrist or psychological treatment rendered by a clinical
13 psychologist. The condition may be in addition to any other
14 condition.

15 (9) When a hearing in which a minor is alleged to be a
16 delinquent is continued under this Section, the court, before
17 continuing the case, shall make a finding whether the offense
18 alleged to have been committed either: (i) was related to or in
19 furtherance of the activities of an organized gang or was
20 motivated by the minor's membership in or allegiance to an
21 organized gang, or (ii) is a violation of paragraph (13) of
22 subsection (a) of Section 12-2 of the Criminal Code of 1961, a
23 violation of any Section of Article 24 of the Criminal Code of
24 1961, or a violation of any statute that involved the unlawful
25 use of a firearm. If the court determines the question in the
26 affirmative the court shall, as a condition of the continuance

1 under supervision and as part of or in addition to any other
2 condition of the supervision, require the minor to perform
3 community service for not less than 30 hours, provided that
4 community service is available in the jurisdiction and is
5 funded and approved by the county board of the county where the
6 offense was committed. The community service shall include, but
7 need not be limited to, the cleanup and repair of any damage
8 caused by an alleged violation of Section 21-1.3 of the
9 Criminal Code of 1961 and similar damage to property located in
10 the municipality or county in which the alleged violation
11 occurred. When possible and reasonable, the community service
12 shall be performed in the minor's neighborhood. For the
13 purposes of this Section, "organized gang" has the meaning
14 ascribed to it in Section 10 of the Illinois Streetgang
15 Terrorism Omnibus Prevention Act.

16 (10) The court shall impose upon a minor placed on
17 supervision, as a condition of the supervision, a fee of \$25
18 for each month of supervision ordered by the court, unless
19 after determining the inability of the minor placed on
20 supervision to pay the fee, the court assesses a lesser amount.
21 The court may not impose the fee on a minor who is made a ward
22 of the State under this Act while the minor is in placement.
23 The fee shall be imposed only upon a minor who is actively
24 supervised by the probation and court services department. A
25 court may order the parent, guardian, or legal custodian of the
26 minor to pay some or all of the fee on the minor's behalf.

1 (11) If a minor is placed on supervision for a violation of
2 subsection (a-7) of Section 1 of the Prevention of Tobacco Use
3 by Minors Act, the court may, in its discretion, and upon
4 recommendation by the State's Attorney, order that minor and
5 his or her parents or legal guardian to attend a smoker's
6 education or youth diversion program as defined in that Act if
7 that program is available in the jurisdiction where the
8 offender resides. Attendance at a smoker's education or youth
9 diversion program shall be time-credited against any community
10 service time imposed for any first violation of subsection
11 (a-7) of Section 1 of that Act. In addition to any other
12 penalty that the court may impose for a violation of subsection
13 (a-7) of Section 1 of that Act, the court, upon request by the
14 State's Attorney, may in its discretion require the offender to
15 remit a fee for his or her attendance at a smoker's education
16 or youth diversion program.

17 For purposes of this Section, "smoker's education program"
18 or "youth diversion program" includes, but is not limited to, a
19 seminar designed to educate a person on the physical and
20 psychological effects of smoking tobacco products and the
21 health consequences of smoking tobacco products that can be
22 conducted with a locality's youth diversion program.

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

25 (a) If a minor violates subsection (a-7) of Section 1
26 of the Prevention of Tobacco Use by Minors Act, the court

1 may impose a sentence of 15 hours of community service or a
2 fine of \$25 for a first violation.

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

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

11 (d) Any second or subsequent violation not within the
12 12-month time period after the first violation is
13 punishable as provided for a first violation.

14 (Source: P.A. eff. 1-1-00; 96-179, eff. 8-10-09.)

15 (705 ILCS 405/5-715)

16 Sec. 5-715. Probation.

17 (1) The period of probation or conditional discharge shall
18 not exceed 5 years or until the minor has attained the age of
19 21 years, whichever is less, except as provided in this Section
20 for a minor who is found to be guilty for an offense which is
21 first degree murder, a Class X felony or a forcible felony. The
22 juvenile court may terminate probation or conditional
23 discharge and discharge the minor at any time if warranted by
24 the conduct of the minor and the ends of justice; provided,
25 however, that the period of probation for a minor who is found

1 to be guilty for an offense which is first degree murder, a
2 Class X felony, or a forcible felony shall be at least 5 years.

3 (2) The court may as a condition of probation or of
4 conditional discharge require that the minor:

5 (a) not violate any criminal statute of any
6 jurisdiction;

7 (b) make a report to and appear in person before any
8 person or agency as directed by the court;

9 (c) work or pursue a course of study or vocational
10 training;

11 (d) undergo medical or psychiatric treatment, rendered
12 by a psychiatrist or psychological treatment rendered by a
13 clinical psychologist or social work services rendered by a
14 clinical social worker, or treatment for drug addiction or
15 alcoholism;

16 (e) attend or reside in a facility established for the
17 instruction or residence of persons on probation;

18 (f) support his or her dependents, if any;

19 (g) refrain from possessing a firearm or other
20 dangerous weapon, or an automobile;

21 (h) permit the probation officer to visit him or her at
22 his or her home or elsewhere;

23 (i) reside with his or her parents or in a foster home;

24 (j) attend school;

25 (j-5) with the consent of the superintendent of the
26 facility, attend an educational program at a facility other

1 than the school in which the offense was committed if he or
2 she committed a crime of violence as defined in Section 2
3 of the Crime Victims Compensation Act in a school, on the
4 real property comprising a school, or within 1,000 feet of
5 the real property comprising a school;

6 (k) attend a non-residential program for youth;

7 (l) make restitution under the terms of subsection (4)
8 of Section 5-710;

9 (m) contribute to his or her own support at home or in
10 a foster home;

11 (n) perform some reasonable public or community
12 service;

13 (o) participate with community corrections programs
14 including unified delinquency intervention services
15 administered by the Department of Human Services subject to
16 Section 5 of the Children and Family Services Act;

17 (p) pay costs;

18 (q) serve a term of home confinement. In addition to
19 any other applicable condition of probation or conditional
20 discharge, the conditions of home confinement shall be that
21 the minor:

22 (i) remain within the interior premises of the
23 place designated for his or her confinement during the
24 hours designated by the court;

25 (ii) admit any person or agent designated by the
26 court into the minor's place of confinement at any time

1 for purposes of verifying the minor's compliance with
2 the conditions of his or her confinement; and

3 (iii) use an approved electronic monitoring device
4 if ordered by the court subject to Article 8A of
5 Chapter V of the Unified Code of Corrections;

6 (r) refrain from entering into a designated geographic
7 area except upon terms as the court finds appropriate. The
8 terms may include consideration of the purpose of the
9 entry, the time of day, other persons accompanying the
10 minor, and advance approval by a probation officer, if the
11 minor has been placed on probation, or advance approval by
12 the court, if the minor has been placed on conditional
13 discharge;

14 (s) refrain from having any contact, directly or
15 indirectly, with certain specified persons or particular
16 types of persons, including but not limited to members of
17 street gangs and drug users or dealers;

18 (s-5) undergo a medical or other procedure to have a
19 tattoo symbolizing allegiance to a street gang removed from
20 his or her body;

21 (t) refrain from having in his or her body the presence
22 of any illicit drug prohibited by the Cannabis Control Act,
23 the Illinois Controlled Substances Act, or the
24 Methamphetamine Control and Community Protection Act,
25 unless prescribed by a physician, and shall submit samples
26 of his or her blood or urine or both for tests to determine

1 the presence of any illicit drug; or

2 (u) comply with other conditions as may be ordered by
3 the court.

4 (3) The court may as a condition of probation or of
5 conditional discharge require that a minor found guilty on any
6 alcohol, cannabis, methamphetamine, or controlled substance
7 violation, refrain from acquiring a driver's license during the
8 period of probation or conditional discharge. If the minor is
9 in possession of a permit or license, the court may require
10 that the minor refrain from driving or operating any motor
11 vehicle during the period of probation or conditional
12 discharge, except as may be necessary in the course of the
13 minor's lawful employment.

14 (3.5) The court shall, as a condition of probation or of
15 conditional discharge, require that a minor found to be guilty
16 and placed on probation for reasons that include a violation of
17 Section 3.02 or Section 3.03 of the Humane Care for Animals Act
18 or paragraph (d) of subsection (1) of Section 21-1 of the
19 Criminal Code of 1961 undergo medical or psychiatric treatment
20 rendered by a psychiatrist or psychological treatment rendered
21 by a clinical psychologist. The condition may be in addition to
22 any other condition.

23 (3.10) The court shall order that a minor placed on
24 probation or conditional discharge for a sex offense as defined
25 in the Sex Offender Management Board Act undergo and
26 successfully complete sex offender treatment. The treatment

1 shall be in conformance with the standards developed under the
2 Sex Offender Management Board Act and conducted by a treatment
3 provider approved by the Board. The treatment shall be at the
4 expense of the person evaluated based upon that person's
5 ability to pay for the treatment.

6 (4) A minor on probation or conditional discharge shall be
7 given a certificate setting forth the conditions upon which he
8 or she is being released.

9 (5) The court shall impose upon a minor placed on probation
10 or conditional discharge, as a condition of the probation or
11 conditional discharge, a fee of \$25 for each month of probation
12 or conditional discharge supervision ordered by the court,
13 unless after determining the inability of the minor placed on
14 probation or conditional discharge to pay the fee, the court
15 assesses a lesser amount. The court may not impose the fee on a
16 minor who is made a ward of the State under this Act while the
17 minor is in placement. The fee shall be imposed only upon a
18 minor who is actively supervised by the probation and court
19 services department. The court may order the parent, guardian,
20 or legal custodian of the minor to pay some or all of the fee on
21 the minor's behalf.

22 (6) The General Assembly finds that in order to protect the
23 public, the juvenile justice system must compel compliance with
24 the conditions of probation by responding to violations with
25 swift, certain, and fair punishments and intermediate
26 sanctions. The Chief Judge of each circuit shall adopt a system

1 of structured, intermediate sanctions for violations of the
2 terms and conditions of a sentence of supervision, probation or
3 conditional discharge, under this Act.

4 The court shall provide as a condition of a disposition of
5 probation, conditional discharge, or supervision, that the
6 probation agency may invoke any sanction from the list of
7 intermediate sanctions adopted by the chief judge of the
8 circuit court for violations of the terms and conditions of the
9 sentence of probation, conditional discharge, or supervision,
10 subject to the provisions of Section 5-720 of this Act.

11 (7) At the successful completion of probation of any first
12 time offender only, a minor may move to vacate a finding of
13 delinquency. Unless good cause is shown, such motion to vacate
14 must be filed within 30 days of the entry of the order
15 terminating probation or discharging the minor. The court shall
16 on its own motion or on motion of the minor, his or her parent,
17 guardian, or legal custodian vacate any finding made in the
18 course of a proceeding under this Article and enter a judgment
19 of dismissal.

20 (8) A motion to vacate a finding of delinquency under this
21 Section is limited to minors:

22 (A) with no previous findings of delinquency;

23 (B) who have successfully completed the terms and
24 conditions of probation;

25 (C) with no other matters pending; and

26 (D) without any other findings or convictions.

1 This subsection (8) does not apply to adjudications based
2 upon any homicide, use of a deadly weapon, or sex offenses
3 which would be felonies if committed by an adult.

4 (9) The Court shall consider among other factors:

5 (A) the nature and seriousness of the alleged offense;

6 (B) history and characteristics of the defendant;

7 (C) academic performance and recommendations;

8 (D) work performance and recommendations;

9 (E) recommendations from treatment or service
10 providers;

11 (F) restitution;

12 (G) maturity;

13 (H) age at the time of the offense; and

14 (I) probation or youth officer recommendation, or
15 both.

16 (10) Once a motion to vacate a finding of delinquency has
17 been granted, the case shall be treated as if it never
18 occurred, and the person may not be required to disclose that
19 he or she had a juvenile record. However, nothing in this
20 paragraph (10) prohibits the judge, State's Attorney, or minor
21 from reviewing the juvenile record of the minor, including the
22 proceedings that resulted in the vacation of the finding of
23 delinquency.

24 (11) This amendatory Act of the 96th General Assembly shall
25 govern all motions pending at the time of its effective date.

26 (Source: P.A. 93-616, eff. 1-1-04; 94-556, eff. 9-11-05.)

1 Section 99. Effective date. This Act takes effect upon
2 becoming law.