

Rep. Nekritz/HB4538

Restore Individualized “Sentencing” for Children

Judicial review is needed before transferring a child’s case to adult criminal court.

Illinois allows children under the age of 18 to be tried in adult criminal proceedings without a meaningful judicial review prior removing a child from juvenile court jurisdiction. This practice is unfair. Children are developmentally and biologically different from adults; therefore decisions about their rehabilitation must be carefully considered. Illinois is now one of only 14 states with no ability for individual review, either in juvenile or adult court, of the decision to try a child in adult court.

What This Bill Does:

Amends the Juvenile Court Act of 1987 to restore judicial decision-making authority to determine whether a youth is tried in juvenile or adult court through a meaningful, individualized court hearing that takes into account the child's age, degree of participation in offense, and individual circumstances.

What This Bill Does Not Do:

The bill does not prevent youth from being tried in adult criminal proceedings. Any child age 13 or older **charged with any offense** can be tried in adult court based on a juvenile judge’s review considering a range of factors including seriousness of offense and background of the child.

Young offenders tried in adult court are more likely to be re-arrested for violent and non-violent crime.

- Transferred youth are approximately 34% more likely to be re-arrested for violent or other crime.
- U.S. Task Force on Community Preventative Services recommends *against* policies which transfer juveniles to “adult justice systems for the purpose of reducing violence.”
- The “experience of transfer to the adult criminal justice system is associated with subsequent violence” and lacks evidence “that transfer laws deter juveniles in the general population from violent crime.”
- Contrary to popular belief that “automatic” transfer is used only on the most serious cases, only 13% of automatic transfers were charged as first-degree murder during a recent 3-year review.

Children are different. This factor must be considered when holding them accountable.

- As a matter of law, the U.S. Supreme Court reaffirmed that youthfulness matter in prosecution: “a State’s most severe penalties on juvenile offenders cannot proceed as though they were not children.”
- The American Psychiatric Association “opposes statutes which permit or require juvenile suspects to be transferred or waived into adult court without judicial review” because individual factors must be considered in this decision.
- From developmental and social perspectives, the courts should review individual differences and amenability to change rather than blindly excluding youth from the benefit of juvenile court.
- Adolescents in the adult system may be at risk for disruptions in their personal development, identity formation, relationships, learning, growth in skills and competencies, and positive movement into adulthood.

Prosecution in adult courts exposes youth to punishments and conditions that are unduly harsh.

- Children face the same mandatory-sentencing schemes as adults. This means youth serve disproportionately longer sentences when compared to their adult counterparts.
- Denying a meaningful hearing is discriminatory. Minority youth are overwhelmingly represented in the automatic transfer of youth to adult court.
- Transferred youth are:
 - 8 times more likely to commit suicide
 - 2 times as likely to be assaulted by the prison staff
 - 5 times more likely to be sexually assaulted
 - 50% more likely to be attacked with a weapon

“[I]t doesn’t make sense for us to transfer, indiscriminately, young people to adult court.”

Then Senator Barack Obama, Jan. 29, 1998.