

# HB3294



## 96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

**HB3294**

Introduced 2/24/2009, by Rep. Tom Cross

### SYNOPSIS AS INTRODUCED:

705 ILCS 405/5-130

Amends the Juvenile Court Act of 1987. Makes a technical change in a Section concerning delinquent minors.

LRB096 07976 RLC 18080 b

A BILL FOR

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 Section 5-130 as follows:

6 (705 ILCS 405/5-130)

7 Sec. 5-130. Excluded jurisdiction.

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

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

21 (b) (i) If before trial or plea an information or  
22 indictment is filed that does not charge an offense specified  
23 in paragraph (a) of this subsection (1) the State's Attorney

1 may proceed on any lesser charge or charges, but only in  
2 Juvenile Court under the provisions of this Article. The  
3 State's Attorney may proceed under the Criminal Code of 1961 on  
4 a lesser charge if before trial the minor defendant knowingly  
5 and with advice of counsel waives, in writing, his or her right  
6 to have the matter proceed in Juvenile Court.

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

13 (c) (i) If after trial or plea the minor is convicted of  
14 any offense covered by paragraph (a) of this subsection (1),  
15 then, in sentencing the minor, the court shall have available  
16 any or all dispositions prescribed for that offense under  
17 Chapter V of the Unified Code of Corrections.

18 (ii) If after trial or plea the court finds that the minor  
19 committed an offense not covered by paragraph (a) of this  
20 subsection (1), that finding shall not invalidate the verdict  
21 or the prosecution of the minor under the criminal laws of the  
22 State; however, unless the State requests a hearing for the  
23 purpose of sentencing the minor under Chapter V of the Unified  
24 Code of Corrections, the Court must proceed under Sections  
25 5-705 and 5-710 of this Article. To request a hearing, the  
26 State must file a written motion within 10 days following the

1 entry of a finding or the return of a verdict. Reasonable  
2 notice of the motion shall be given to the minor or his or her  
3 counsel. If the motion is made by the State, the court shall  
4 conduct a hearing to determine if the minor should be sentenced  
5 under Chapter V of the Unified Code of Corrections. In making  
6 its determination, the court shall consider among other  
7 matters: (a) whether there is evidence that the offense was  
8 committed in an aggressive and premeditated manner; (b) the age  
9 of the minor; (c) the previous history of the minor; (d)  
10 whether there are facilities particularly available to the  
11 Juvenile Court or the Department of Juvenile Justice for the  
12 treatment and rehabilitation of the minor; (e) whether the  
13 security of the public requires sentencing under Chapter V of  
14 the Unified Code of Corrections; and (f) whether the minor  
15 possessed a deadly weapon when committing the offense. The  
16 rules of evidence shall be the same as if at trial. If after  
17 the hearing the court finds that the minor should be sentenced  
18 under Chapter V of the Unified Code of Corrections, then the  
19 court shall sentence the minor accordingly having available to  
20 it any or all dispositions so prescribed.

21 (2) (Blank).

22 (3) (a) The definition of delinquent minor under Section  
23 5-120 of this Article shall not apply to any minor who at the  
24 time of the offense was at least 15 years of age and who is  
25 charged with a violation of the provisions of paragraph (1),  
26 (3), (4), or (10) of subsection (a) of Section 24-1 of the

1 Criminal Code of 1961 while in school, regardless of the time  
2 of day or the time of year, or on the real property comprising  
3 any school, regardless of the time of day or the time of year.  
4 School is defined, for purposes of this Section as any public  
5 or private elementary or secondary school, community college,  
6 college, or university. These charges and all other charges  
7 arising out of the same incident shall be prosecuted under the  
8 criminal laws of this State.

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

18 (ii) If before trial or plea an information or indictment  
19 is filed that includes one or more charges specified in  
20 paragraph (a) of this subsection (3) and additional charges  
21 that are not specified in that paragraph, all of the charges  
22 arising out of the same incident shall be prosecuted under the  
23 criminal laws of this State.

24 (c) (i) If after trial or plea the minor is convicted of  
25 any offense covered by paragraph (a) of this subsection (3),  
26 then, in sentencing the minor, the court shall have available

1 any or all dispositions prescribed for that offense under  
2 Chapter V of the Unified Code of Corrections.

3 (ii) If after trial or plea the court finds that the minor  
4 committed an offense not covered by paragraph (a) of this  
5 subsection (3), that finding shall not invalidate the verdict  
6 or the prosecution of the minor under the criminal laws of the  
7 State; however, unless the State requests a hearing for the  
8 purpose of sentencing the minor under Chapter V of the Unified  
9 Code of Corrections, the Court must proceed under Sections  
10 5-705 and 5-710 of this Article. To request a hearing, the  
11 State must file a written motion within 10 days following the  
12 entry of a finding or the return of a verdict. Reasonable  
13 notice of the motion shall be given to the minor or his or her  
14 counsel. If the motion is made by the State, the court shall  
15 conduct a hearing to determine if the minor should be sentenced  
16 under Chapter V of the Unified Code of Corrections. In making  
17 its determination, the court shall consider among other  
18 matters: (a) whether there is evidence that the offense was  
19 committed in an aggressive and premeditated manner; (b) the age  
20 of the minor; (c) the previous history of the minor; (d)  
21 whether there are facilities particularly available to the  
22 Juvenile Court or the Department of Juvenile Justice for the  
23 treatment and rehabilitation of the minor; (e) whether the  
24 security of the public requires sentencing under Chapter V of  
25 the Unified Code of Corrections; and (f) whether the minor  
26 possessed a deadly weapon when committing the offense. The

1 rules of evidence shall be the same as if at trial. If after  
2 the hearing the court finds that the minor should be sentenced  
3 under Chapter V of the Unified Code of Corrections, then the  
4 court shall sentence the minor accordingly having available to  
5 it any or all dispositions so prescribed.

6 (4) (a) The definition of delinquent minor under Section  
7 5-120 of this Article shall not apply to any minor who at the  
8 time of an offense was at least 13 years of age and who is  
9 charged with first degree murder committed during the course of  
10 either aggravated criminal sexual assault, criminal sexual  
11 assault, or aggravated kidnaping. However, this subsection (4)  
12 does not include a minor charged with first degree murder based  
13 exclusively upon the accountability provisions of the Criminal  
14 Code of 1961.

15 (b) (i) If before trial or plea an information or  
16 indictment is filed that does not charge first degree murder  
17 committed during the course of aggravated criminal sexual  
18 assault, criminal sexual assault, or aggravated kidnaping, the  
19 State's Attorney may proceed on any lesser charge or charges,  
20 but only in Juvenile Court under the provisions of this  
21 Article. The State's Attorney may proceed under the criminal  
22 laws of this State on a lesser charge if before trial the minor  
23 defendant knowingly and with advice of counsel waives, in  
24 writing, his or her right to have the matter proceed in  
25 Juvenile Court.

26 (ii) If before trial or plea an information or indictment

1 is filed that includes first degree murder committed during the  
2 course of aggravated criminal sexual assault, criminal sexual  
3 assault, or aggravated kidnaping, and additional charges that  
4 are not specified in paragraph (a) of this subsection, all of  
5 the charges arising out of the same incident shall be  
6 prosecuted under the criminal laws of this State.

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

13 (ii) If the minor was not yet 15 years of age at the time of  
14 the offense, and if after trial or plea the court finds that  
15 the minor committed an offense other than first degree murder  
16 committed during the course of either aggravated criminal  
17 sexual assault, criminal sexual assault, or aggravated  
18 kidnaping, the finding shall not invalidate the verdict or the  
19 prosecution of the minor under the criminal laws of the State;  
20 however, unless the State requests a hearing for the purpose of  
21 sentencing the minor under Chapter V of the Unified Code of  
22 Corrections, the Court must proceed under Sections 5-705 and  
23 5-710 of this Article. To request a hearing, the State must  
24 file a written motion within 10 days following the entry of a  
25 finding or the return of a verdict. Reasonable notice of the  
26 motion shall be given to the minor or his or her counsel. If



1 the motion is made by the State, the court shall conduct a  
2 hearing to determine whether the minor should be sentenced  
3 under Chapter V of the Unified Code of Corrections. In making  
4 its determination, the court shall consider among other  
5 matters: (a) whether there is evidence that the offense was  
6 committed in an aggressive and premeditated manner; (b) the age  
7 of the minor; (c) the previous delinquent history of the minor;  
8 (d) whether there are facilities particularly available to the  
9 Juvenile Court or the Department of Juvenile Justice for the  
10 treatment and rehabilitation of the minor; (e) whether the best  
11 interest of the minor and the security of the public require  
12 sentencing under Chapter V of the Unified Code of Corrections;  
13 and (f) whether the minor possessed a deadly weapon when  
14 committing the offense. The rules of evidence shall be the same  
15 as if at trial. If after the hearing the court finds that the  
16 minor should be sentenced under Chapter V of the Unified Code  
17 of Corrections, then the court shall sentence the minor  
18 accordingly having available to it any or all dispositions so  
19 prescribed.

20 (5) (a) The definition of delinquent minor under Section  
21 5-120 of this Article shall not apply to any minor who is  
22 charged with a violation of subsection (a) of Section 31-6 or  
23 Section 32-10 of the Criminal Code of 1961 when the minor is  
24 subject to prosecution under the criminal laws of this State as  
25 a result of the application of the provisions of Section 5-125,  
26 or subsection (1) or (2) of this Section. These charges and all

1 other charges arising out of the same incident shall be  
2 prosecuted under the criminal laws of this State.

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

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

18 (c) (i) If after trial or plea the minor is convicted of  
19 any offense covered by paragraph (a) of this subsection (5),  
20 then, in sentencing the minor, the court shall have available  
21 any or all dispositions prescribed for that offense under  
22 Chapter V of the Unified Code of Corrections.

23 (ii) If after trial or plea the court finds that the minor  
24 committed an offense not covered by paragraph (a) of this  
25 subsection (5), the conviction shall not invalidate the verdict  
26 or the prosecution of the minor under the criminal laws of this

1 State; however, unless the State requests a hearing for the  
2 purpose of sentencing the minor under Chapter V of the Unified  
3 Code of Corrections, the Court must proceed under Sections  
4 5-705 and 5-710 of this Article. To request a hearing, the  
5 State must file a written motion within 10 days following the  
6 entry of a finding or the return of a verdict. Reasonable  
7 notice of the motion shall be given to the minor or his or her  
8 counsel. If the motion is made by the State, the court shall  
9 conduct a hearing to determine if whether the minor should be  
10 sentenced under Chapter V of the Unified Code of Corrections.  
11 In making its determination, the court shall consider among  
12 other matters: (a) whether there is evidence that the offense  
13 was committed in an aggressive and premeditated manner; (b) the  
14 age of the minor; (c) the previous delinquent history of the  
15 minor; (d) whether there are facilities particularly available  
16 to the Juvenile Court or the Department of Juvenile Justice for  
17 the treatment and rehabilitation of the minor; (e) whether the  
18 security of the public requires sentencing under Chapter V of  
19 the Unified Code of Corrections; and (f) whether the minor  
20 possessed a deadly weapon when committing the offense. The  
21 rules of evidence shall be the same as if at trial. If after  
22 the hearing the court finds that the minor should be sentenced  
23 under Chapter V of the Unified Code of Corrections, then the  
24 court shall sentence the minor accordingly having available to  
25 it any or all dispositions so prescribed.

26 (6) The definition of delinquent minor under Section 5-120

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

7 (7) The procedures set out in this Article for the  
8 investigation, arrest and prosecution of juvenile offenders  
9 shall not apply to minors who are excluded from jurisdiction of  
10 the Juvenile Court, except that minors under 17 years of age  
11 shall be kept separate from confined adults.

12 (8) Nothing in this Act prohibits or limits the prosecution  
13 of any minor for an offense committed on or after his or her  
14 17th birthday even though he or she is at the time of the  
15 offense a ward of the court.

16 (9) If an original petition for adjudication of wardship  
17 alleges the commission by a minor 13 years of age or over of an  
18 act that constitutes a crime under the laws of this State, the  
19 minor, with the consent of his or her counsel, may, at any time  
20 before commencement of the adjudicatory hearing, file with the  
21 court a motion that criminal prosecution be ordered and that  
22 the petition be dismissed insofar as the act or acts involved  
23 in the criminal proceedings are concerned. If such a motion is  
24 filed as herein provided, the court shall enter its order  
25 accordingly.

26 (10) If, prior to August 12, 2005 (the effective date of

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

16 (a) The age of the minor;

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

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

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

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

26 Any material that is relevant and reliable shall be

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

8 (Source: P.A. 94-556, eff. 9-11-05; 94-574, eff. 8-12-05;  
9 94-696, eff. 6-1-06.)