

1 AMENDMENT TO HOUSE BILL 4129

2 AMENDMENT NO. _____. Amend House Bill 4129 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Juvenile Court Act of 1987 is amended
5 by changing Section 5-130 as follows:

6 (705 ILCS 405/5-130)

7 Sec. 5-130. Excluded jurisdiction.

8 (1) (a) The definition of delinquent minor under Section
9 5-120 of this Article shall not apply to any minor who at the
10 time of an offense was at least 15 years of age and who is
11 charged with first degree murder, aggravated criminal sexual
12 assault, aggravated battery with a firearm committed in a
13 school, on the real property comprising a school, within
14 1,000 feet of the real property comprising a school, at a
15 school related activity, or on, boarding, or departing from
16 any conveyance owned, leased, or contracted by a school or
17 school district to transport students to or from school or a
18 school related activity regardless of the time of day or time
19 of year that the offense was committed, armed robbery when
20 the armed robbery was committed with a firearm, or aggravated
21 vehicular hijacking when the hijacking was committed with a
22 firearm.

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

4 For purposes of this paragraph (a) of subsection (1):

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

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

11 (b) (i) If before trial or plea an information or
12 indictment is filed that does not charge an offense specified
13 in paragraph (a) of this subsection (1) the State's Attorney
14 may proceed on any lesser charge or charges, but only in
15 Juvenile Court under the provisions of this Article. The
16 State's Attorney may proceed under the Criminal Code of 1961
17 on a lesser charge if before trial the minor defendant
18 knowingly and with advice of counsel waives, in writing, his
19 or her right to have the matter proceed in Juvenile Court.

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

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

31 (ii) If after trial or plea the court finds that the
32 minor committed an offense not covered by paragraph (a) of
33 this subsection (1), that finding shall not invalidate the
34 verdict or the prosecution of the minor under the criminal

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

27 (2) (a) The definition of a delinquent minor under
28 Section 5-120 of this Article shall not apply to any minor
29 who at the time of the offense was at least 15 years of age
30 and who is charged with an offense under Section 401 of the
31 Illinois Controlled Substances Act, while in a school,
32 regardless of the time of day or the time of year, or any
33 conveyance owned, leased or contracted by a school to
34 transport students to or from school or a school related

1 activity, or residential property owned, operated or managed
2 by a public housing agency or leased by a public housing
3 agency as part of a scattered site or mixed-income
4 development, on the real property comprising any school,
5 regardless of the time of day or the time of year, or
6 residential property owned, operated or managed by a public
7 housing agency or leased by a public housing agency as part
8 of a scattered site or mixed-income development, or on a
9 public way within 1,000 feet of the real property comprising
10 any school, regardless of the time of day or the time of
11 year, or residential property owned, operated or managed by a
12 public housing agency or leased by a public housing agency as
13 part of a scattered site or mixed-income development. School
14 is defined, for the purposes of this Section, as any public
15 or private elementary or secondary school, community college,
16 college, or university. These charges and all other charges
17 arising out of the same incident shall be prosecuted under
18 the criminal laws of this State.

19 (b) (i) If before trial or plea an information or
20 indictment is filed that does not charge an offense specified
21 in paragraph (a) of this subsection (2) the State's Attorney
22 may proceed on any lesser charge or charges, but only in
23 Juvenile Court under the provisions of this Article. The
24 State's Attorney may proceed under the criminal laws of this
25 State on a lesser charge if before trial the minor defendant
26 knowingly and with advice of counsel waives, in writing, his
27 or her right to have the matter proceed in Juvenile Court.

28 (ii) If before trial or plea an information or
29 indictment is filed that includes one or more charges
30 specified in paragraph (a) of this subsection (2) and
31 additional charges that are not specified in that paragraph,
32 all of the charges arising out of the same incident shall be
33 prosecuted under the criminal laws of this State.

34 (c) (i) If after trial or plea the minor is convicted of

1 any offense covered by paragraph (a) of this subsection (2),
2 then, in sentencing the minor, the court shall have available
3 any or all dispositions prescribed for that offense under
4 Chapter V of the Unified Code of Corrections.

5 (ii) If after trial or plea the court finds that the
6 minor committed an offense not covered by paragraph (a) of
7 this subsection (2), that finding shall not invalidate the
8 verdict or the prosecution of the minor under the criminal
9 laws of the State; however, unless the State requests a
10 hearing for the purpose of sentencing the minor under Chapter
11 V of the Unified Code of Corrections, the Court must proceed
12 under Sections 5-705 and 5-710 of this Article. To request a
13 hearing, the State must file a written motion within 10 days
14 following the entry of a finding or the return of a verdict.
15 Reasonable notice of the motion shall be given to the minor
16 or his or her counsel. If the motion is made by the State,
17 the court shall conduct a hearing to determine if the minor
18 should be sentenced under Chapter V of the Unified Code of
19 Corrections. In making its determination, the court shall
20 consider among other matters: (a) whether there is evidence
21 that the offense was committed in an aggressive and
22 premeditated manner; (b) the age of the minor; (c) the
23 previous history of the minor; (d) whether there are
24 facilities particularly available to the Juvenile Court or
25 the Department of Corrections, Juvenile Division, for the
26 treatment and rehabilitation of the minor; (e) whether the
27 security of the public requires sentencing under Chapter V of
28 the Unified Code of Corrections; and (f) whether the minor
29 possessed a deadly weapon when committing the offense. The
30 rules of evidence shall be the same as if at trial. If after
31 the hearing the court finds that the minor should be
32 sentenced under Chapter V of the Unified Code of Corrections,
33 then the court shall sentence the minor accordingly having
34 available to it any or all dispositions so prescribed.

1 (3) (a) The definition of delinquent minor under Section
2 5-120 of this Article shall not apply to any minor who at the
3 time of the offense was at least 15 years of age and who is
4 charged with a violation of the provisions of paragraph (1),
5 (3), (4), or (10) of subsection (a) of Section 24-1 of the
6 Criminal Code of 1961 while in school, regardless of the time
7 of day or the time of year, or on the real property
8 comprising any school, regardless of the time of day or the
9 time of year. School is defined, for purposes of this
10 Section as any public or private elementary or secondary
11 school, community college, college, or university. These
12 charges and all other charges arising out of the same
13 incident shall be prosecuted under the criminal laws of this
14 State.

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

24 (ii) If before trial or plea an information or
25 indictment is filed that includes one or more charges
26 specified in paragraph (a) of this subsection (3) and
27 additional charges that are not specified in that paragraph,
28 all of the charges arising out of the same incident shall be
29 prosecuted under the criminal laws of this State.

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

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

31 (4) (a) The definition of delinquent minor under Section
32 5-120 of this Article shall not apply to any minor who at the
33 time of an offense was at least 13 years of age and who is
34 charged with first degree murder committed during the course

1 of either aggravated criminal sexual assault, criminal sexual
2 assault, or aggravated kidnaping. However, this subsection
3 (4) does not include a minor charged with first degree murder
4 based exclusively upon the accountability provisions of the
5 Criminal Code of 1961.

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

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

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

32 (ii) If the minor was not yet 15 years of age at the
33 time of the offense, and if after trial or plea the court
34 finds that the minor committed an offense other than first

1 degree murder committed during the course of either
2 aggravated criminal sexual assault, criminal sexual assault,
3 or aggravated kidnapping, the finding shall not invalidate
4 the verdict or the prosecution of the minor under the
5 criminal laws of the State; however, unless the State
6 requests a hearing for the purpose of sentencing the minor
7 under Chapter V of the Unified Code of Corrections, the Court
8 must proceed under Sections 5-705 and 5-710 of this Article.
9 To request a hearing, the State must file a written motion
10 within 10 days following the entry of a finding or the return
11 of a verdict. Reasonable notice of the motion shall be given
12 to the minor or his or her counsel. If the motion is made by
13 the State, the court shall conduct a hearing to determine
14 whether the minor should be sentenced under Chapter V of the
15 Unified Code of Corrections. In making its determination,
16 the court shall consider among other matters: (a) whether
17 there is evidence that the offense was committed in an
18 aggressive and premeditated manner; (b) the age of the
19 minor; (c) the previous delinquent history of the minor;
20 (d) whether there are facilities particularly available to
21 the Juvenile Court or the Department of Corrections, Juvenile
22 Division, for the treatment and rehabilitation of the minor;
23 (e) whether the best interest of the minor and the security
24 of the public require sentencing under Chapter V of the
25 Unified Code of Corrections; and (f) whether the minor
26 possessed a deadly weapon when committing the offense. The
27 rules of evidence shall be the same as if at trial. If after
28 the hearing the court finds that the minor should be
29 sentenced under Chapter V of the Unified Code of Corrections,
30 then the court shall sentence the minor accordingly having
31 available to it any or all dispositions so prescribed.

32 (5) (a) The definition of delinquent minor under Section
33 5-120 of this Article shall not apply to any minor who is
34 charged with a violation of subsection (a) of Section 31-6 or

1 Section 32-10 of the Criminal Code of 1961 when the minor is
2 subject to prosecution under the criminal laws of this State
3 as a result of the application of the provisions of Section
4 5-125, or subsection (1) or (2) of this Section. These
5 charges and all other charges arising out of the same
6 incident shall be prosecuted under the criminal laws of this
7 State.

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

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

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

28 (ii) If after trial or plea the court finds that the
29 minor committed an offense not covered by paragraph (a) of
30 this subsection (5), the conviction shall not invalidate the
31 verdict or the prosecution of the minor under the criminal
32 laws of this State; however, unless the State requests a
33 hearing for the purpose of sentencing the minor under Chapter
34 V of the Unified Code of Corrections, the Court must proceed

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

24 (6) The definition of delinquent minor under Section
25 5-120 of this Article shall not apply to any minor who,
26 pursuant to subsection (1), (2), or (3) or Section 5-805, or
27 5-810, has previously been placed under the jurisdiction of
28 the criminal court and has been convicted of a crime under an
29 adult criminal or penal statute. Such a minor shall be
30 subject to prosecution under the criminal laws of this State.

31 (7) The procedures set out in this Article for the
32 investigation, arrest and prosecution of juvenile offenders
33 shall not apply to minors who are excluded from jurisdiction
34 of the Juvenile Court, except that minors under 17 years of

1 age shall be kept separate from confined adults.

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

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

16 (10) If a minor is subject to the provisions of
17 subsection (2) of this Section, any party including the minor
18 or the court sua sponte may, before trial, move for a hearing
19 for the purpose of trying and sentencing the minor as a
20 delinquent minor. To request a hearing, the party must file a
21 motion prior to trial. Reasonable notice of the motion shall
22 be given to all parties. On its own motion or upon the filing
23 of a motion by one of the parties including the minor, the
24 court shall conduct a hearing to determine whether the minor
25 should be tried and sentenced as a delinquent minor under
26 this Article. In making its determination, the court shall
27 consider among other matters:

28 (a) The age of the minor;

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

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

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

34 (e) Whether there is probable cause to support the

1 charge, whether the minor is charged through accountability,
2 and whether there is evidence the minor possessed a deadly
3 weapon or caused serious bodily harm during the offense.

4 Any material that is relevant and reliable shall be
5 admissible at the hearing. In all cases, the judge shall
6 enter an order permitting prosecution under the criminal laws
7 of Illinois unless the judge makes a finding based on a
8 preponderance of the evidence that the minor would be
9 amenable to the care, treatment, and training programs
10 available through the facilities of the juvenile court based
11 on an evaluation of the factors listed in this subsection
12 (10).

13 (Source: P.A. 91-15, eff. 1-1-00; 91-673, eff. 12-22-99;
14 92-16, eff. 6-28-01.)".