

1 AN ACT concerning criminal law.

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

4 Section 5. The Unified Code of Corrections is amended by
5 changing Section 5-5-3 as follows:

6 (730 ILCS 5/5-5-3) (from Ch. 38, par. 1005-5-3)
7 Sec. 5-5-3. Disposition.

8 (a) Every person convicted of an offense shall be
9 sentenced as provided in this Section.

10 (b) The following options shall be appropriate
11 dispositions, alone or in combination, for all felonies and
12 misdemeanors other than those identified in subsection (c) of
13 this Section:

14 (1) A period of probation.

15 (2) A term of periodic imprisonment.

16 (3) A term of conditional discharge.

17 (4) A term of imprisonment.

18 (5) An order directing the offender to clean up and
19 repair the damage, if the offender was convicted under
20 paragraph (h) of Section 21-1 of the Criminal Code of
21 1961.

22 (6) A fine.

23 (7) An order directing the offender to make
24 restitution to the victim under Section 5-5-6 of this
25 Code.

26 (8) A sentence of participation in a county impact
27 incarceration program under Section 5-8-1.2 of this Code.

28 Whenever an individual is sentenced for an offense based
29 upon an arrest for a violation of Section 11-501 of the
30 Illinois Vehicle Code, or a similar provision of a local
31 ordinance, and the professional evaluation recommends

1 remedial or rehabilitative treatment or education, neither
2 the treatment nor the education shall be the sole disposition
3 and either or both may be imposed only in conjunction with
4 another disposition. The court shall monitor compliance with
5 any remedial education or treatment recommendations contained
6 in the professional evaluation. Programs conducting alcohol
7 or other drug evaluation or remedial education must be
8 licensed by the Department of Human Services. However, if
9 the individual is not a resident of Illinois, the court may
10 accept an alcohol or other drug evaluation or remedial
11 education program in the state of such individual's
12 residence. Programs providing treatment must be licensed
13 under existing applicable alcoholism and drug treatment
14 licensure standards.

15 In addition to any other fine or penalty required by law,
16 any individual convicted of a violation of Section 11-501 of
17 the Illinois Vehicle Code or a similar provision of local
18 ordinance, whose operation of a motor vehicle while in
19 violation of Section 11-501 or such ordinance proximately
20 caused an incident resulting in an appropriate emergency
21 response, shall be required to make restitution to a public
22 agency for the costs of that emergency response. Such
23 restitution shall not exceed \$500 per public agency for each
24 such emergency response. For the purpose of this paragraph,
25 emergency response shall mean any incident requiring a
26 response by: a police officer as defined under Section 1-162
27 of the Illinois Vehicle Code; a fireman carried on the rolls
28 of a regularly constituted fire department; and an ambulance
29 as defined under Section 4.05 of the Emergency Medical
30 Services (EMS) Systems Act.

31 Neither a fine nor restitution shall be the sole
32 disposition for a felony and either or both may be imposed
33 only in conjunction with another disposition.

34 (c) (1) When a defendant is found guilty of first degree

1 murder the State may either seek a sentence of
2 imprisonment under Section 5-8-1 of this Code, or where
3 appropriate seek a sentence of death under Section 9-1 of
4 the Criminal Code of 1961.

5 (2) A period of probation, a term of periodic
6 imprisonment or conditional discharge shall not be
7 imposed for the following offenses. The court shall
8 sentence the offender to not less than the minimum term
9 of imprisonment set forth in this Code for the following
10 offenses, and may order a fine or restitution or both in
11 conjunction with such term of imprisonment:

12 (A) First degree murder where the death
13 penalty is not imposed.

14 (B) Attempted first degree murder.

15 (C) A Class X felony.

16 (D) A violation of Section 401.1 or 407 of the
17 Illinois Controlled Substances Act, or a violation
18 of subdivision (c)(2) of Section 401 of that Act
19 which relates to more than 5 grams of a substance
20 containing cocaine or an analog thereof.

21 (E) A violation of Section 5.1 or 9 of the
22 Cannabis Control Act.

23 (F) A Class 2 or greater felony if the
24 offender had been convicted of a Class 2 or greater
25 felony within 10 years of the date on which the
26 offender committed the offense for which he or she
27 is being sentenced, except as otherwise provided in
28 Section 40-10 of the Alcoholism and Other Drug Abuse
29 and Dependency Act.

30 (G) Residential burglary, except as otherwise
31 provided in Section 40-10 of the Alcoholism and
32 Other Drug Abuse and Dependency Act.

33 (H) Criminal sexual assault, except as
34 otherwise provided in subsection (e) of this

1 Section.

2 (I) Aggravated battery of a senior citizen.

3 (J) A forcible felony if the offense was
4 related to the activities of an organized gang.

5 Before July 1, 1994, for the purposes of this
6 paragraph, "organized gang" means an association of
7 5 or more persons, with an established hierarchy,
8 that encourages members of the association to
9 perpetrate crimes or provides support to the members
10 of the association who do commit crimes.

11 Beginning July 1, 1994, for the purposes of
12 this paragraph, "organized gang" has the meaning
13 ascribed to it in Section 10 of the Illinois
14 Streetgang Terrorism Omnibus Prevention Act.

15 (K) Vehicular hijacking.

16 (L) A second or subsequent conviction for the
17 offense of hate crime when the underlying offense
18 upon which the hate crime is based is felony
19 aggravated assault or felony mob action.

20 (M) A second or subsequent conviction for the
21 offense of institutional vandalism if the damage to
22 the property exceeds \$300.

23 (N) A Class 3 felony violation of paragraph
24 (1) of subsection (a) of Section 2 of the Firearm
25 Owners Identification Card Act.

26 (O) A violation of Section 12-6.1 of the
27 Criminal Code of 1961.

28 (P) A violation of paragraph (1), (2), (3),
29 (4), (5), or (7) of subsection (a) of Section
30 11-20.1 of the Criminal Code of 1961.

31 (Q) A violation of Section 20-1.2 of the
32 Criminal Code of 1961.

33 (R) A violation of Section 24-3A of the
34 Criminal Code of 1961.

1 (3) A minimum term of imprisonment of not less than
2 48 consecutive hours or 100 hours of community service as
3 may be determined by the court shall be imposed for a
4 second or subsequent violation committed within 5 years
5 of a previous violation of Section 11-501 of the Illinois
6 Vehicle Code or a similar provision of a local ordinance.

7 (4) A minimum term of imprisonment of not less than
8 7 consecutive days or 30 days of community service shall
9 be imposed for a violation of paragraph (c) of Section
10 6-303 of the Illinois Vehicle Code.

11 (4.1) A minimum term of 30 consecutive days of
12 imprisonment, 40 days of 24 hour periodic imprisonment or
13 720 hours of community service, as may be determined by
14 the court, shall be imposed for a violation of Section
15 11-501 of the Illinois Vehicle Code during a period in
16 which the defendant's driving privileges are revoked or
17 suspended, where the revocation or suspension was for a
18 violation of Section 11-501 or Section 11-501.1 of that
19 Code.

20 (5) The court may sentence an offender convicted of
21 a business offense or a petty offense or a corporation or
22 unincorporated association convicted of any offense to:

23 (A) a period of conditional discharge;

24 (B) a fine;

25 (C) make restitution to the victim under
26 Section 5-5-6 of this Code.

27 (6) In no case shall an offender be eligible for a
28 disposition of probation or conditional discharge for a
29 Class 1 felony committed while he was serving a term of
30 probation or conditional discharge for a felony.

31 (7) When a defendant is adjudged a habitual
32 criminal under Article 33B of the Criminal Code of 1961,
33 the court shall sentence the defendant to a term of
34 natural life imprisonment.

1 (8) When a defendant, over the age of 21 years, is
2 convicted of a Class 1 or Class 2 felony, after having
3 twice been convicted in any state or federal court of an
4 offense that contains the same elements as an offense now
5 classified in Illinois as a Class 2 or greater Class
6 felony of any--Class--2--or--greater--Class--felonies--in
7 Illinois and such charges are separately brought and
8 tried and arise out of different series of acts, such
9 defendant shall be sentenced as a Class X offender. This
10 paragraph shall not apply unless (1) the first felony was
11 committed after the effective date of this amendatory Act
12 of 1977; and (2) the second felony was committed after
13 conviction on the first; and (3) the third felony was
14 committed after conviction on the second. A person
15 sentenced as a Class X offender under this paragraph is
16 not eligible to apply for treatment as a condition of
17 probation as provided by Section 40-10 of the Alcoholism
18 and Other Drug Abuse and Dependency Act.

19 (9) A defendant convicted of a second or subsequent
20 offense of ritualized abuse of a child may be sentenced
21 to a term of natural life imprisonment.

22 (d) In any case in which a sentence originally imposed
23 is vacated, the case shall be remanded to the trial court.
24 The trial court shall hold a hearing under Section 5-4-1 of
25 the Unified Code of Corrections which may include evidence of
26 the defendant's life, moral character and occupation during
27 the time since the original sentence was passed. The trial
28 court shall then impose sentence upon the defendant. The
29 trial court may impose any sentence which could have been
30 imposed at the original trial subject to Section 5-5-4 of the
31 Unified Code of Corrections.

32 (e) In cases where prosecution for criminal sexual
33 assault or aggravated criminal sexual abuse under Section
34 12-13 or 12-16 of the Criminal Code of 1961 results in

1 conviction of a defendant who was a family member of the
2 victim at the time of the commission of the offense, the
3 court shall consider the safety and welfare of the victim and
4 may impose a sentence of probation only where:

5 (1) the court finds (A) or (B) or both are
6 appropriate:

7 (A) the defendant is willing to undergo a
8 court approved counseling program for a minimum
9 duration of 2 years; or

10 (B) the defendant is willing to participate in
11 a court approved plan including but not limited to
12 the defendant's:

13 (i) removal from the household;

14 (ii) restricted contact with the victim;

15 (iii) continued financial support of the
16 family;

17 (iv) restitution for harm done to the
18 victim; and

19 (v) compliance with any other measures
20 that the court may deem appropriate; and

21 (2) the court orders the defendant to pay for the
22 victim's counseling services, to the extent that the
23 court finds, after considering the defendant's income and
24 assets, that the defendant is financially capable of
25 paying for such services, if the victim was under 18
26 years of age at the time the offense was committed and
27 requires counseling as a result of the offense.

28 Probation may be revoked or modified pursuant to Section
29 5-6-4; except where the court determines at the hearing that
30 the defendant violated a condition of his or her probation
31 restricting contact with the victim or other family members
32 or commits another offense with the victim or other family
33 members, the court shall revoke the defendant's probation and
34 impose a term of imprisonment.

1 For the purposes of this Section, "family member" and
2 "victim" shall have the meanings ascribed to them in Section
3 12-12 of the Criminal Code of 1961.

4 (f) This Article shall not deprive a court in other
5 proceedings to order a forfeiture of property, to suspend or
6 cancel a license, to remove a person from office, or to
7 impose any other civil penalty.

8 (g) Whenever a defendant is convicted of an offense
9 under Sections 11-14, 11-15, 11-15.1, 11-16, 11-17, 11-18,
10 11-18.1, 11-19, 11-19.1, 11-19.2, 12-13, 12-14, 12-14.1,
11 12-15 or 12-16 of the Criminal Code of 1961, the defendant
12 shall undergo medical testing to determine whether the
13 defendant has any sexually transmissible disease, including a
14 test for infection with human immunodeficiency virus (HIV) or
15 any other identified causative agent of acquired
16 immunodeficiency syndrome (AIDS). Any such medical test
17 shall be performed only by appropriately licensed medical
18 practitioners and may include an analysis of any bodily
19 fluids as well as an examination of the defendant's person.
20 Except as otherwise provided by law, the results of such test
21 shall be kept strictly confidential by all medical personnel
22 involved in the testing and must be personally delivered in a
23 sealed envelope to the judge of the court in which the
24 conviction was entered for the judge's inspection in camera.
25 Acting in accordance with the best interests of the victim
26 and the public, the judge shall have the discretion to
27 determine to whom, if anyone, the results of the testing may
28 be revealed. The court shall notify the defendant of the test
29 results. The court shall also notify the victim if requested
30 by the victim, and if the victim is under the age of 15 and
31 if requested by the victim's parents or legal guardian, the
32 court shall notify the victim's parents or legal guardian of
33 the test results. The court shall provide information on the
34 availability of HIV testing and counseling at Department of

1 Public Health facilities to all parties to whom the results
2 of the testing are revealed and shall direct the State's
3 Attorney to provide the information to the victim when
4 possible. A State's Attorney may petition the court to obtain
5 the results of any HIV test administered under this Section,
6 and the court shall grant the disclosure if the State's
7 Attorney shows it is relevant in order to prosecute a charge
8 of criminal transmission of HIV under Section 12-16.2 of the
9 Criminal Code of 1961 against the defendant. The court shall
10 order that the cost of any such test shall be paid by the
11 county and may be taxed as costs against the convicted
12 defendant.

13 (g-5) When an inmate is tested for an airborne
14 communicable disease, as determined by the Illinois
15 Department of Public Health including but not limited to
16 tuberculosis, the results of the test shall be personally
17 delivered by the warden or his or her designee in a sealed
18 envelope to the judge of the court in which the inmate must
19 appear for the judge's inspection in camera if requested by
20 the judge. Acting in accordance with the best interests of
21 those in the courtroom, the judge shall have the discretion
22 to determine what if any precautions need to be taken to
23 prevent transmission of the disease in the courtroom.

24 (h) Whenever a defendant is convicted of an offense
25 under Section 1 or 2 of the Hypodermic Syringes and Needles
26 Act, the defendant shall undergo medical testing to determine
27 whether the defendant has been exposed to human
28 immunodeficiency virus (HIV) or any other identified
29 causative agent of acquired immunodeficiency syndrome (AIDS).
30 Except as otherwise provided by law, the results of such test
31 shall be kept strictly confidential by all medical personnel
32 involved in the testing and must be personally delivered in a
33 sealed envelope to the judge of the court in which the
34 conviction was entered for the judge's inspection in camera.

1 Acting in accordance with the best interests of the public,
2 the judge shall have the discretion to determine to whom, if
3 anyone, the results of the testing may be revealed. The court
4 shall notify the defendant of a positive test showing an
5 infection with the human immunodeficiency virus (HIV). The
6 court shall provide information on the availability of HIV
7 testing and counseling at Department of Public Health
8 facilities to all parties to whom the results of the testing
9 are revealed and shall direct the State's Attorney to provide
10 the information to the victim when possible. A State's
11 Attorney may petition the court to obtain the results of any
12 HIV test administered under this Section, and the court
13 shall grant the disclosure if the State's Attorney shows it
14 is relevant in order to prosecute a charge of criminal
15 transmission of HIV under Section 12-16.2 of the Criminal
16 Code of 1961 against the defendant. The court shall order
17 that the cost of any such test shall be paid by the county
18 and may be taxed as costs against the convicted defendant.

19 (i) All fines and penalties imposed under this Section
20 for any violation of Chapters 3, 4, 6, and 11 of the Illinois
21 Vehicle Code, or a similar provision of a local ordinance,
22 and any violation of the Child Passenger Protection Act, or a
23 similar provision of a local ordinance, shall be collected
24 and disbursed by the circuit clerk as provided under Section
25 27.5 of the Clerks of Courts Act.

26 (j) In cases when prosecution for any violation of
27 Section 11-6, 11-8, 11-9, 11-11, 11-14, 11-15, 11-15.1,
28 11-16, 11-17, 11-17.1, 11-18, 11-18.1, 11-19, 11-19.1,
29 11-19.2, 11-20.1, 11-21, 12-13, 12-14, 12-14.1, 12-15, or
30 12-16 of the Criminal Code of 1961, any violation of the
31 Illinois Controlled Substances Act, or any violation of the
32 Cannabis Control Act results in conviction, a disposition of
33 court supervision, or an order of probation granted under
34 Section 10 of the Cannabis Control Act or Section 410 of the

1 Illinois Controlled Substance Act of a defendant, the court
2 shall determine whether the defendant is employed by a
3 facility or center as defined under the Child Care Act of
4 1969, a public or private elementary or secondary school, or
5 otherwise works with children under 18 years of age on a
6 daily basis. When a defendant is so employed, the court
7 shall order the Clerk of the Court to send a copy of the
8 judgment of conviction or order of supervision or probation
9 to the defendant's employer by certified mail. If the
10 employer of the defendant is a school, the Clerk of the Court
11 shall direct the mailing of a copy of the judgment of
12 conviction or order of supervision or probation to the
13 appropriate regional superintendent of schools. The regional
14 superintendent of schools shall notify the State Board of
15 Education of any notification under this subsection.

16 (j-5) A defendant at least 17 years of age who is
17 convicted of a felony and who has not been previously
18 convicted of a misdemeanor or felony and who is sentenced to
19 a term of imprisonment in the Illinois Department of
20 Corrections shall as a condition of his or her sentence be
21 required by the court to attend educational courses designed
22 to prepare the defendant for a high school diploma and to
23 work toward a high school diploma or to work toward passing
24 the high school level Test of General Educational Development
25 (GED) or to work toward completing a vocational training
26 program offered by the Department of Corrections. If a
27 defendant fails to complete the educational training required
28 by his or her sentence during the term of incarceration, the
29 Prisoner Review Board shall, as a condition of mandatory
30 supervised release, require the defendant, at his or her own
31 expense, to pursue a course of study toward a high school
32 diploma or passage of the GED test. The Prisoner Review
33 Board shall revoke the mandatory supervised release of a
34 defendant who wilfully fails to comply with this subsection

1 (j-5) upon his or her release from confinement in a penal
2 institution while serving a mandatory supervised release
3 term; however, the inability of the defendant after making a
4 good faith effort to obtain financial aid or pay for the
5 educational training shall not be deemed a wilful failure to
6 comply. The Prisoner Review Board shall recommit the
7 defendant whose mandatory supervised release term has been
8 revoked under this subsection (j-5) as provided in Section
9 3-3-9. This subsection (j-5) does not apply to a defendant
10 who has a high school diploma or has successfully passed the
11 GED test. This subsection (j-5) does not apply to a defendant
12 who is determined by the court to be developmentally disabled
13 or otherwise mentally incapable of completing the educational
14 or vocational program.

15 (k) A court may not impose a sentence or disposition for
16 a felony or misdemeanor that requires the defendant to be
17 implanted or injected with or to use any form of birth
18 control.

19 (l) (A) Except as provided in paragraph (C) of
20 subsection (l), whenever a defendant, who is an alien as
21 defined by the Immigration and Nationality Act, is
22 convicted of any felony or misdemeanor offense, the court
23 after sentencing the defendant may, upon motion of the
24 State's Attorney, hold sentence in abeyance and remand
25 the defendant to the custody of the Attorney General of
26 the United States or his or her designated agent to be
27 deported when:

28 (1) a final order of deportation has been
29 issued against the defendant pursuant to proceedings
30 under the Immigration and Nationality Act, and

31 (2) the deportation of the defendant would not
32 deprecate the seriousness of the defendant's conduct
33 and would not be inconsistent with the ends of
34 justice.

1 Otherwise, the defendant shall be sentenced as
2 provided in this Chapter V.

3 (B) If the defendant has already been sentenced for
4 a felony or misdemeanor offense, or has been placed on
5 probation under Section 10 of the Cannabis Control Act or
6 Section 410 of the Illinois Controlled Substances Act,
7 the court may, upon motion of the State's Attorney to
8 suspend the sentence imposed, commit the defendant to the
9 custody of the Attorney General of the United States or
10 his or her designated agent when:

11 (1) a final order of deportation has been
12 issued against the defendant pursuant to proceedings
13 under the Immigration and Nationality Act, and

14 (2) the deportation of the defendant would not
15 deprecate the seriousness of the defendant's conduct
16 and would not be inconsistent with the ends of
17 justice.

18 (C) This subsection (1) does not apply to offenders
19 who are subject to the provisions of paragraph (2) of
20 subsection (a) of Section 3-6-3.

21 (D) Upon motion of the State's Attorney, if a
22 defendant sentenced under this Section returns to the
23 jurisdiction of the United States, the defendant shall be
24 recommitted to the custody of the county from which he or
25 she was sentenced. Thereafter, the defendant shall be
26 brought before the sentencing court, which may impose any
27 sentence that was available under Section 5-5-3 at the
28 time of initial sentencing. In addition, the defendant
29 shall not be eligible for additional good conduct credit
30 for meritorious service as provided under Section 3-6-6.

31 (m) A person convicted of criminal defacement of
32 property under Section 21-1.3 of the Criminal Code of 1961,
33 in which the property damage exceeds \$300 and the property
34 damaged is a school building, shall be ordered to perform

1 community service that may include cleanup, removal, or
2 painting over the defacement.

3 (Source: P.A. 90-14, eff. 7-1-97; 90-68, eff. 7-8-97; 90-680,
4 eff. 1-1-99; 90-685, eff. 1-1-99; 90-787, eff. 8-14-98;
5 91-357, eff. 7-29-99; 91-404, eff. 1-1-00; 91-663, eff.
6 12-22-99; 91-695, eff. 4-13-00.)

7 Section 99. Effective date. This Act takes effect upon
8 becoming law.