



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB0524

Introduced 01/27/05, by Rep. Deborah L. Graham

SYNOPSIS AS INTRODUCED:

720 ILCS 5/24-1	from Ch. 38, par. 24-1
720 ILCS 5/24-1.1	from Ch. 38, par. 24-1.1
720 ILCS 5/24-1.6	
730 ILCS 5/5-5-3	from Ch. 38, par. 1005-5-3

Amends the Criminal Code of 1961 and the Unified Code of Corrections. Requires a mandatory sentence of imprisonment for certain violations of the statutes concerning unlawful use of weapons, the unlawful use or possession of weapons by felons, and aggravated unlawful use of a weapon. Provides that a period of probation, periodic imprisonment, or conditional discharge may not be imposed for these violations.

LRB094 03740 RLC 33749 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

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 Criminal Code of 1961 is amended by changing
5 Sections 24-1, 24-1.1, and 24-1.6 as follows:

6 (720 ILCS 5/24-1) (from Ch. 38, par. 24-1)

7 Sec. 24-1. Unlawful Use of Weapons.

8 (a) A person commits the offense of unlawful use of weapons
9 when he knowingly:

10 (1) Sells, manufactures, purchases, possesses or
11 carries any bludgeon, black-jack, slung-shot, sand-club,
12 sand-bag, metal knuckles, throwing star, or any knife,
13 commonly referred to as a switchblade knife, which has a
14 blade that opens automatically by hand pressure applied to
15 a button, spring or other device in the handle of the
16 knife, or a ballistic knife, which is a device that propels
17 a knifelike blade as a projectile by means of a coil
18 spring, elastic material or compressed gas; or

19 (2) Carries or possesses with intent to use the same
20 unlawfully against another, a dagger, dirk, billy,
21 dangerous knife, razor, stiletto, broken bottle or other
22 piece of glass, stun gun or taser or any other dangerous or
23 deadly weapon or instrument of like character; or

24 (3) Carries on or about his person or in any vehicle, a
25 tear gas gun projector or bomb or any object containing
26 noxious liquid gas or substance, other than an object
27 containing a non-lethal noxious liquid gas or substance
28 designed solely for personal defense carried by a person 18
29 years of age or older; or

30 (4) Carries or possesses in any vehicle or concealed on
31 or about his person except when on his land or in his own
32 abode or fixed place of business any pistol, revolver, stun

1 gun or taser or other firearm, except that this subsection
2 (a) (4) does not apply to or affect transportation of
3 weapons that meet one of the following conditions:

4 (i) are broken down in a non-functioning state; or

5 (ii) are not immediately accessible; or

6 (iii) are unloaded and enclosed in a case, firearm
7 carrying box, shipping box, or other container by a
8 person who has been issued a currently valid Firearm
9 Owner's Identification Card; or

10 (5) Sets a spring gun; or

11 (6) Possesses any device or attachment of any kind
12 designed, used or intended for use in silencing the report
13 of any firearm; or

14 (7) Sells, manufactures, purchases, possesses or
15 carries:

16 (i) a machine gun, which shall be defined for the
17 purposes of this subsection as any weapon, which
18 shoots, is designed to shoot, or can be readily
19 restored to shoot, automatically more than one shot
20 without manually reloading by a single function of the
21 trigger, including the frame or receiver of any such
22 weapon, or sells, manufactures, purchases, possesses,
23 or carries any combination of parts designed or
24 intended for use in converting any weapon into a
25 machine gun, or any combination or parts from which a
26 machine gun can be assembled if such parts are in the
27 possession or under the control of a person;

28 (ii) any rifle having one or more barrels less than
29 16 inches in length or a shotgun having one or more
30 barrels less than 18 inches in length or any weapon
31 made from a rifle or shotgun, whether by alteration,
32 modification, or otherwise, if such a weapon as
33 modified has an overall length of less than 26 inches;
34 or

35 (iii) any bomb, bomb-shell, grenade, bottle or
36 other container containing an explosive substance of

1 over one-quarter ounce for like purposes, such as, but
2 not limited to, black powder bombs and Molotov
3 cocktails or artillery projectiles; or

4 (8) Carries or possesses any firearm, stun gun or taser
5 or other deadly weapon in any place which is licensed to
6 sell intoxicating beverages, or at any public gathering
7 held pursuant to a license issued by any governmental body
8 or any public gathering at which an admission is charged,
9 excluding a place where a showing, demonstration or lecture
10 involving the exhibition of unloaded firearms is
11 conducted.

12 This subsection (a) (8) does not apply to any auction or
13 raffle of a firearm held pursuant to a license or permit
14 issued by a governmental body, nor does it apply to persons
15 engaged in firearm safety training courses; or

16 (9) Carries or possesses in a vehicle or on or about
17 his person any pistol, revolver, stun gun or taser or
18 firearm or ballistic knife, when he is hooded, robed or
19 masked in such manner as to conceal his identity; or

20 (10) Carries or possesses on or about his person, upon
21 any public street, alley, or other public lands within the
22 corporate limits of a city, village or incorporated town,
23 except when an invitee thereon or therein, for the purpose
24 of the display of such weapon or the lawful commerce in
25 weapons, or except when on his land or in his own abode or
26 fixed place of business, any pistol, revolver, stun gun or
27 taser or other firearm, except that this subsection (a)
28 (10) does not apply to or affect transportation of weapons
29 that meet one of the following conditions:

30 (i) are broken down in a non-functioning state; or

31 (ii) are not immediately accessible; or

32 (iii) are unloaded and enclosed in a case, firearm
33 carrying box, shipping box, or other container by a
34 person who has been issued a currently valid Firearm
35 Owner's Identification Card.

36 A "stun gun or taser", as used in this paragraph (a)

1 means (i) any device which is powered by electrical
2 charging units, such as, batteries, and which fires one or
3 several barbs attached to a length of wire and which, upon
4 hitting a human, can send out a current capable of
5 disrupting the person's nervous system in such a manner as
6 to render him incapable of normal functioning or (ii) any
7 device which is powered by electrical charging units, such
8 as batteries, and which, upon contact with a human or
9 clothing worn by a human, can send out current capable of
10 disrupting the person's nervous system in such a manner as
11 to render him incapable of normal functioning; or

12 (11) Sells, manufactures or purchases any explosive
13 bullet. For purposes of this paragraph (a) "explosive
14 bullet" means the projectile portion of an ammunition
15 cartridge which contains or carries an explosive charge
16 which will explode upon contact with the flesh of a human
17 or an animal. "Cartridge" means a tubular metal case having
18 a projectile affixed at the front thereof and a cap or
19 primer at the rear end thereof, with the propellant
20 contained in such tube between the projectile and the cap;
21 or

22 (12) (Blank).

23 (b) Sentence. A person convicted of a violation of
24 subsection 24-1(a)(1) through (5), subsection 24-1(a)(10), or
25 subsection 24-1(a)(11) commits a Class A misdemeanor. A person
26 convicted of a violation of subsection 24-1(a)(8) or 24-1(a)(9)
27 commits a Class 4 felony; a person convicted of a violation of
28 subsection 24-1(a)(6) or 24-1(a)(7)(ii) or (iii) commits a
29 Class 3 felony. A person convicted of a violation of subsection
30 24-1(a)(7)(i) commits a Class 2 felony and shall be sentenced
31 to a term of imprisonment of not less than 3 years and not more
32 than 7 years, unless the weapon is possessed in the passenger
33 compartment of a motor vehicle as defined in Section 1-146 of
34 the Illinois Vehicle Code, or on the person, while the weapon
35 is loaded, in which case it shall be a Class X felony. A person
36 convicted of a second or subsequent violation of subsection

1 24-1(a)(4), 24-1(a)(8), 24-1(a)(9), or 24-1(a)(10) commits a
2 Class 3 felony.

3 (c) Violations in specific places.

4 (1) A person who violates subsection 24-1(a)(6) or
5 24-1(a)(7) in any school, regardless of the time of day or
6 the time of year, in residential property owned, operated
7 or managed by a public housing agency or leased by a public
8 housing agency as part of a scattered site or mixed-income
9 development, in a public park, in a courthouse, on the real
10 property comprising any school, regardless of the time of
11 day or the time of year, on residential property owned,
12 operated or managed by a public housing agency or leased by
13 a public housing agency as part of a scattered site or
14 mixed-income development, on the real property comprising
15 any public park, on the real property comprising any
16 courthouse, in any conveyance owned, leased or contracted
17 by a school to transport students to or from school or a
18 school related activity, or on any public way within 1,000
19 feet of the real property comprising any school, public
20 park, courthouse, or residential property owned, operated,
21 or managed by a public housing agency or leased by a public
22 housing agency as part of a scattered site or mixed-income
23 development commits a Class 2 felony and shall be sentenced
24 to a term of imprisonment of not less than 3 years and not
25 more than 7 years.

26 (1.5) A person who violates subsection 24-1(a)(4),
27 24-1(a)(9), or 24-1(a)(10) in any school, regardless of the
28 time of day or the time of year, in residential property
29 owned, operated, or managed by a public housing agency or
30 leased by a public housing agency as part of a scattered
31 site or mixed-income development, in a public park, in a
32 courthouse, on the real property comprising any school,
33 regardless of the time of day or the time of year, on
34 residential property owned, operated, or managed by a
35 public housing agency or leased by a public housing agency
36 as part of a scattered site or mixed-income development, on

1 the real property comprising any public park, on the real
2 property comprising any courthouse, in any conveyance
3 owned, leased, or contracted by a school to transport
4 students to or from school or a school related activity, or
5 on any public way within 1,000 feet of the real property
6 comprising any school, public park, courthouse, or
7 residential property owned, operated, or managed by a
8 public housing agency or leased by a public housing agency
9 as part of a scattered site or mixed-income development
10 commits a Class 3 felony.

11 (2) A person who violates subsection 24-1(a)(1),
12 24-1(a)(2), or 24-1(a)(3) in any school, regardless of the
13 time of day or the time of year, in residential property
14 owned, operated or managed by a public housing agency or
15 leased by a public housing agency as part of a scattered
16 site or mixed-income development, in a public park, in a
17 courthouse, on the real property comprising any school,
18 regardless of the time of day or the time of year, on
19 residential property owned, operated or managed by a public
20 housing agency or leased by a public housing agency as part
21 of a scattered site or mixed-income development, on the
22 real property comprising any public park, on the real
23 property comprising any courthouse, in any conveyance
24 owned, leased or contracted by a school to transport
25 students to or from school or a school related activity, or
26 on any public way within 1,000 feet of the real property
27 comprising any school, public park, courthouse, or
28 residential property owned, operated, or managed by a
29 public housing agency or leased by a public housing agency
30 as part of a scattered site or mixed-income development
31 commits a Class 4 felony. "Courthouse" means any building
32 that is used by the Circuit, Appellate, or Supreme Court of
33 this State for the conduct of official business.

34 (3) Paragraphs (1), (1.5), and (2) of this subsection
35 (c) shall not apply to law enforcement officers or security
36 officers of such school, college, or university or to

1 students carrying or possessing firearms for use in
2 training courses, parades, hunting, target shooting on
3 school ranges, or otherwise with the consent of school
4 authorities and which firearms are transported unloaded
5 enclosed in a suitable case, box, or transportation
6 package.

7 (4) For the purposes of this subsection (c), "school"
8 means any public or private elementary or secondary school,
9 community college, college, or university.

10 (d) The presence in an automobile other than a public
11 omnibus of any weapon, instrument or substance referred to in
12 subsection (a)(7) is prima facie evidence that it is in the
13 possession of, and is being carried by, all persons occupying
14 such automobile at the time such weapon, instrument or
15 substance is found, except under the following circumstances:
16 (i) if such weapon, instrument or instrumentality is found upon
17 the person of one of the occupants therein; or (ii) if such
18 weapon, instrument or substance is found in an automobile
19 operated for hire by a duly licensed driver in the due, lawful
20 and proper pursuit of his trade, then such presumption shall
21 not apply to the driver.

22 (e) Exemptions. Crossbows, Common or Compound bows and
23 Underwater Spearguns are exempted from the definition of
24 ballistic knife as defined in paragraph (1) of subsection (a)
25 of this Section.

26 (Source: P.A. 90-686, eff. 1-1-99; 91-673, eff. 12-22-99;
27 91-690, eff. 4-13-00.)

28 (720 ILCS 5/24-1.1) (from Ch. 38, par. 24-1.1)

29 Sec. 24-1.1. Unlawful Use or Possession of Weapons by
30 Felons or Persons in the Custody of the Department of
31 Corrections Facilities.

32 (a) It is unlawful for a person to knowingly possess on or
33 about his person or on his land or in his own abode or fixed
34 place of business any weapon prohibited under Section 24-1 of
35 this Act or any firearm or any firearm ammunition if the person

1 has been convicted of a felony under the laws of this State or
2 any other jurisdiction. This Section shall not apply if the
3 person has been granted relief by the Director of the
4 Department of State Police under Section 10 of the Firearm
5 Owners Identification Card Act.

6 (b) It is unlawful for any person confined in a penal
7 institution, which is a facility of the Illinois Department of
8 Corrections, to possess any weapon prohibited under Section
9 24-1 of this Code or any firearm or firearm ammunition,
10 regardless of the intent with which he possesses it.

11 (c) It shall be an affirmative defense to a violation of
12 subsection (b), that such possession was specifically
13 authorized by rule, regulation, or directive of the Illinois
14 Department of Corrections or order issued pursuant thereto.

15 (d) The defense of necessity is not available to a person
16 who is charged with a violation of subsection (b) of this
17 Section.

18 (e) Sentence. Violation of this Section by a person not
19 confined in a penal institution shall be a Class 3 felony for
20 which the person, if sentenced to a term of imprisonment, shall
21 be sentenced to no less than 2 years and no more than 10 years
22 and any second or subsequent violation shall be a Class 2
23 felony for which the person shall be sentenced to a term of
24 imprisonment of not less than 3 years and not more than 14
25 years. Violation of this Section by a person not confined in a
26 penal institution who has been convicted of a forcible felony,
27 a felony violation of Article 24 of this Code or of the Firearm
28 Owners Identification Card Act, stalking or aggravated
29 stalking, or a Class 2 or greater felony under the Illinois
30 Controlled Substances Act or the Cannabis Control Act is a
31 Class 2 felony for which the person, ~~if sentenced to a term of~~
32 ~~imprisonment,~~ shall be sentenced to not less than 3 years and
33 not more than 14 years. Violation of this Section by a person
34 who is on parole or mandatory supervised release is a Class 2
35 felony for which the person, if sentenced to a term of
36 imprisonment, shall be sentenced to not less than 3 years and

1 not more than 14 years. Violation of this Section by a person
2 not confined in a penal institution is a Class X felony when
3 the firearm possessed is a machine gun. Any person who violates
4 this Section while confined in a penal institution, which is a
5 facility of the Illinois Department of Corrections, is guilty
6 of a Class 1 felony, if he possesses any weapon prohibited
7 under Section 24-1 of this Code regardless of the intent with
8 which he possesses it, a Class X felony if he possesses any
9 firearm, firearm ammunition or explosive, and a Class X felony
10 for which the offender shall be sentenced to not less than 12
11 years and not more than 50 years when the firearm possessed is
12 a machine gun. A violation of this Section while wearing or in
13 possession of body armor as defined in Section 33F-1 is a Class
14 X felony punishable by a term of imprisonment of not less than
15 10 years and not more than 40 years.

16 (Source: P.A. 93-906, eff. 8-11-04.)

17 (720 ILCS 5/24-1.6)

18 Sec. 24-1.6. Aggravated unlawful use of a weapon.

19 (a) A person commits the offense of aggravated unlawful use
20 of a weapon when he or she knowingly:

21 (1) Carries on or about his or her person or in any
22 vehicle or concealed on or about his or her person except
23 when on his or her land or in his or her abode or fixed
24 place of business any pistol, revolver, stun gun or taser
25 or other firearm; or

26 (2) Carries or possesses on or about his or her person,
27 upon any public street, alley, or other public lands within
28 the corporate limits of a city, village or incorporated
29 town, except when an invitee thereon or therein, for the
30 purpose of the display of such weapon or the lawful
31 commerce in weapons, or except when on his or her own land
32 or in his or her own abode or fixed place of business, any
33 pistol, revolver, stun gun or taser or other firearm; and

34 (3) One of the following factors is present:

35 (A) the firearm possessed was uncased, loaded and

1 immediately accessible at the time of the offense; or

2 (B) the firearm possessed was uncased, unloaded
3 and the ammunition for the weapon was immediately
4 accessible at the time of the offense; or

5 (C) the person possessing the firearm has not been
6 issued a currently valid Firearm Owner's
7 Identification Card; or

8 (D) the person possessing the weapon was
9 previously adjudicated a delinquent minor under the
10 Juvenile Court Act of 1987 for an act that if committed
11 by an adult would be a felony; or

12 (E) the person possessing the weapon was engaged in
13 a misdemeanor violation of the Cannabis Control Act or
14 in a misdemeanor violation of the Illinois Controlled
15 Substances Act; or

16 (F) the person possessing the weapon is a member of
17 a street gang or is engaged in street gang related
18 activity, as defined in Section 10 of the Illinois
19 Streetgang Terrorism Omnibus Prevention Act; or

20 (G) the person possessing the weapon had a order of
21 protection issued against him or her within the
22 previous 2 years; or

23 (H) the person possessing the weapon was engaged in
24 the commission or attempted commission of a
25 misdemeanor involving the use or threat of violence
26 against the person or property of another; or

27 (I) the person possessing the weapon was under 21
28 years of age and in possession of a handgun as defined
29 in Section 24-3, unless the person under 21 is engaged
30 in lawful activities under the Wildlife Code or
31 described in subsection 24-2(b)(1), (b)(3), or
32 24-2(f).

33 (b) "Stun gun or taser" as used in this Section has the
34 same definition given to it in Section 24-1 of this Code.

35 (c) This Section does not apply to or affect the
36 transportation or possession of weapons that:

1 (i) are broken down in a non-functioning state; or
2 (ii) are not immediately accessible; or
3 (iii) are unloaded and enclosed in a case, firearm
4 carrying box, shipping box, or other container by a
5 person who has been issued a currently valid Firearm
6 Owner's Identification Card.

7 (d) Sentence. Aggravated unlawful use of a weapon is a
8 Class 4 felony; a second or subsequent offense is a Class 2
9 felony for which the person shall be sentenced to a term of
10 imprisonment of not less than 3 years and not more than 7
11 years. Aggravated unlawful use of a weapon by a person who has
12 been previously convicted of a felony in this State or another
13 jurisdiction is a Class 2 felony for which the person shall be
14 sentenced to a term of imprisonment of not less than 3 years
15 and not more than 7 years. Aggravated unlawful use of a weapon
16 while wearing or in possession of body armor as defined in
17 Section 33F-1 by a person who has not been issued a valid
18 Firearms Owner's Identification Card in accordance with
19 Section 5 of the Firearm Owners Identification Card Act is a
20 Class X felony.

21 (Source: P.A. 93-906, eff. 8-11-04.)

22 Section 10. The Unified Code of Corrections is amended by
23 changing Section 5-5-3 as follows:

24 (730 ILCS 5/5-5-3) (from Ch. 38, par. 1005-5-3)

25 Sec. 5-5-3. Disposition.

26 (a) Except as provided in Section 11-501 of the Illinois
27 Vehicle Code, every person convicted of an offense shall be
28 sentenced as provided in this Section.

29 (b) The following options shall be appropriate
30 dispositions, alone or in combination, for all felonies and
31 misdemeanors other than those identified in subsection (c) of
32 this Section:

33 (1) A period of probation.

34 (2) A term of periodic imprisonment.

1 (3) A term of conditional discharge.

2 (4) A term of imprisonment.

3 (5) An order directing the offender to clean up and
4 repair the damage, if the offender was convicted under
5 paragraph (h) of Section 21-1 of the Criminal Code of 1961
6 (now repealed).

7 (6) A fine.

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

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

12 (9) A term of imprisonment in combination with a term
13 of probation when the offender has been admitted into a
14 drug court program under Section 20 of the Drug Court
15 Treatment Act.

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

19 (c) (1) When a defendant is found guilty of first degree
20 murder the State may either seek a sentence of imprisonment
21 under Section 5-8-1 of this Code, or where appropriate seek
22 a sentence of death under Section 9-1 of the Criminal Code
23 of 1961.

24 (2) A period of probation, a term of periodic
25 imprisonment or conditional discharge shall not be imposed
26 for the following offenses. The court shall sentence the
27 offender to not less than the minimum term of imprisonment
28 set forth in this Code for the following offenses, and may
29 order a fine or restitution or both in conjunction with
30 such term of imprisonment:

31 (A) First degree murder where the death penalty is
32 not imposed.

33 (B) Attempted first degree murder.

34 (C) A Class X felony.

35 (D) A violation of Section 401.1 or 407 of the
36 Illinois Controlled Substances Act, or a violation of

1 subdivision (c) (1) or (c) (2) of Section 401 of that Act
2 which relates to more than 5 grams of a substance
3 containing heroin or cocaine or an analog thereof.

4 (E) A violation of Section 5.1 or 9 of the Cannabis
5 Control Act.

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

12 (F-5) A violation of Section 24-1, 24-1.1, or
13 24-1.6 of the Criminal Code of 1961 for which
14 imprisonment is prescribed in those Sections.

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

18 (H) Criminal sexual assault.

19 (I) Aggravated battery of a senior citizen.

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

22 Before July 1, 1994, for the purposes of this
23 paragraph, "organized gang" means an association of 5
24 or more persons, with an established hierarchy, that
25 encourages members of the association to perpetrate
26 crimes or provides support to the members of the
27 association who do commit crimes.

28 Beginning July 1, 1994, for the purposes of this
29 paragraph, "organized gang" has the meaning ascribed
30 to it in Section 10 of the Illinois Streetgang
31 Terrorism Omnibus Prevention Act.

32 (K) Vehicular hijacking.

33 (L) A second or subsequent conviction for the
34 offense of hate crime when the underlying offense upon
35 which the hate crime is based is felony aggravated
36 assault or felony mob action.

1 (M) A second or subsequent conviction for the
2 offense of institutional vandalism if the damage to the
3 property exceeds \$300.

4 (N) A Class 3 felony violation of paragraph (1) of
5 subsection (a) of Section 2 of the Firearm Owners
6 Identification Card Act.

7 (O) A violation of Section 12-6.1 of the Criminal
8 Code of 1961.

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

12 (Q) A violation of Section 20-1.2 or 20-1.3 of the
13 Criminal Code of 1961.

14 (R) A violation of Section 24-3A of the Criminal
15 Code of 1961.

16 (S) (Blank).

17 (T) A second or subsequent violation of paragraph
18 (6.6) of subsection (a), subsection (c-5), or
19 subsection (d-5) of Section 401 of the Illinois
20 Controlled Substances Act.

21 (3) (Blank).

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

26 (4.1) (Blank).

27 (4.2) Except as provided in paragraph (4.3) of this
28 subsection (c), a minimum of 100 hours of community service
29 shall be imposed for a second violation of Section 6-303 of
30 the Illinois Vehicle Code.

31 (4.3) A minimum term of imprisonment of 30 days or 300
32 hours of community service, as determined by the court,
33 shall be imposed for a second violation of subsection (c)
34 of Section 6-303 of the Illinois Vehicle Code.

35 (4.4) Except as provided in paragraph (4.5) and
36 paragraph (4.6) of this subsection (c), a minimum term of

1 imprisonment of 30 days or 300 hours of community service,
2 as determined by the court, shall be imposed for a third or
3 subsequent violation of Section 6-303 of the Illinois
4 Vehicle Code.

5 (4.5) A minimum term of imprisonment of 30 days shall
6 be imposed for a third violation of subsection (c) of
7 Section 6-303 of the Illinois Vehicle Code.

8 (4.6) A minimum term of imprisonment of 180 days shall
9 be imposed for a fourth or subsequent violation of
10 subsection (c) of Section 6-303 of the Illinois Vehicle
11 Code.

12 (5) The court may sentence an offender convicted of a
13 business offense or a petty offense or a corporation or
14 unincorporated association convicted of any offense to:

15 (A) a period of conditional discharge;

16 (B) a fine;

17 (C) make restitution to the victim under Section
18 5-5-6 of this Code.

19 (5.1) In addition to any penalties imposed under
20 paragraph (5) of this subsection (c), and except as
21 provided in paragraph (5.2) or (5.3), a person convicted of
22 violating subsection (c) of Section 11-907 of the Illinois
23 Vehicle Code shall have his or her driver's license,
24 permit, or privileges suspended for at least 90 days but
25 not more than one year, if the violation resulted in damage
26 to the property of another person.

27 (5.2) In addition to any penalties imposed under
28 paragraph (5) of this subsection (c), and except as
29 provided in paragraph (5.3), a person convicted of
30 violating subsection (c) of Section 11-907 of the Illinois
31 Vehicle Code shall have his or her driver's license,
32 permit, or privileges suspended for at least 180 days but
33 not more than 2 years, if the violation resulted in injury
34 to another person.

35 (5.3) In addition to any penalties imposed under
36 paragraph (5) of this subsection (c), a person convicted of

1 violating subsection (c) of Section 11-907 of the Illinois
2 Vehicle Code shall have his or her driver's license,
3 permit, or privileges suspended for 2 years, if the
4 violation resulted in the death of another person.

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

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

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

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

32 (10) (Blank).

33 (11) The court shall impose a minimum fine of \$1,000
34 for a first offense and \$2,000 for a second or subsequent
35 offense upon a person convicted of or placed on supervision
36 for battery when the individual harmed was a sports

1 official or coach at any level of competition and the act
2 causing harm to the sports official or coach occurred
3 within an athletic facility or within the immediate
4 vicinity of the athletic facility at which the sports
5 official or coach was an active participant of the athletic
6 contest held at the athletic facility. For the purposes of
7 this paragraph (11), "sports official" means a person at an
8 athletic contest who enforces the rules of the contest,
9 such as an umpire or referee; "athletic facility" means an
10 indoor or outdoor playing field or recreational area where
11 sports activities are conducted; and "coach" means a person
12 recognized as a coach by the sanctioning authority that
13 conducted the sporting event.

14 (12) ~~(11)~~ A person may not receive a disposition of
15 court supervision for a violation of Section 5-16 of the
16 Boat Registration and Safety Act if that person has
17 previously received a disposition of court supervision for
18 a violation of that Section.

19 (d) In any case in which a sentence originally imposed is
20 vacated, the case shall be remanded to the trial court. The
21 trial court shall hold a hearing under Section 5-4-1 of the
22 Unified Code of Corrections which may include evidence of the
23 defendant's life, moral character and occupation during the
24 time since the original sentence was passed. The trial court
25 shall then impose sentence upon the defendant. The trial court
26 may impose any sentence which could have been imposed at the
27 original trial subject to Section 5-5-4 of the Unified Code of
28 Corrections. If a sentence is vacated on appeal or on
29 collateral attack due to the failure of the trier of fact at
30 trial to determine beyond a reasonable doubt the existence of a
31 fact (other than a prior conviction) necessary to increase the
32 punishment for the offense beyond the statutory maximum
33 otherwise applicable, either the defendant may be re-sentenced
34 to a term within the range otherwise provided or, if the State
35 files notice of its intention to again seek the extended
36 sentence, the defendant shall be afforded a new trial.

1 (e) In cases where prosecution for aggravated criminal
2 sexual abuse under Section 12-16 of the Criminal Code of 1961
3 results in conviction of a defendant who was a family member of
4 the victim at the time of the commission of the offense, the
5 court shall consider the safety and welfare of the victim and
6 may impose a sentence of probation only where:

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

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

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

14 (i) removal from the household;

15 (ii) restricted contact with the victim;

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

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

19 and

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

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

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

36 For the purposes of this Section, "family member" and

1 "victim" shall have the meanings ascribed to them in Section
2 12-12 of the Criminal Code of 1961.

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

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

1 of any HIV test administered under this Section, and the court
2 shall grant the disclosure if the State's Attorney shows it is
3 relevant in order to prosecute a charge of criminal
4 transmission of HIV under Section 12-16.2 of the Criminal Code
5 of 1961 against the defendant. The court shall order that the
6 cost of any such test shall be paid by the county and may be
7 taxed as costs against the convicted defendant.

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

18 (h) Whenever a defendant is convicted of an offense under
19 Section 1 or 2 of the Hypodermic Syringes and Needles Act, the
20 defendant shall undergo medical testing to determine whether
21 the defendant has been exposed to human immunodeficiency virus
22 (HIV) or any other identified causative agent of acquired
23 immunodeficiency syndrome (AIDS). Except as otherwise provided
24 by law, the results of such test shall be kept strictly
25 confidential by all medical personnel involved in the testing
26 and must be personally delivered in a sealed envelope to the
27 judge of the court in which the conviction was entered for the
28 judge's inspection in camera. Acting in accordance with the
29 best interests of the public, the judge shall have the
30 discretion to determine to whom, if anyone, the results of the
31 testing may be revealed. The court shall notify the defendant
32 of a positive test showing an infection with the human
33 immunodeficiency virus (HIV). The court shall provide
34 information on the availability of HIV testing and counseling
35 at Department of Public Health facilities to all parties to
36 whom the results of the testing are revealed and shall direct

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

11 (i) All fines and penalties imposed under this Section for
12 any violation of Chapters 3, 4, 6, and 11 of the Illinois
13 Vehicle Code, or a similar provision of a local ordinance, and
14 any violation of the Child Passenger Protection Act, or a
15 similar provision of a local ordinance, shall be collected and
16 disbursed by the circuit clerk as provided under Section 27.5
17 of the Clerks of Courts Act.

18 (j) In cases when prosecution for any violation of Section
19 11-6, 11-8, 11-9, 11-11, 11-14, 11-15, 11-15.1, 11-16, 11-17,
20 11-17.1, 11-18, 11-18.1, 11-19, 11-19.1, 11-19.2, 11-20.1,
21 11-21, 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the Criminal
22 Code of 1961, any violation of the Illinois Controlled
23 Substances Act, or any violation of the Cannabis Control Act
24 results in conviction, a disposition of court supervision, or
25 an order of probation granted under Section 10 of the Cannabis
26 Control Act or Section 410 of the Illinois Controlled Substance
27 Act of a defendant, the court shall determine whether the
28 defendant is employed by a facility or center as defined under
29 the Child Care Act of 1969, a public or private elementary or
30 secondary school, or otherwise works with children under 18
31 years of age on a daily basis. When a defendant is so employed,
32 the court shall order the Clerk of the Court to send a copy of
33 the judgment of conviction or order of supervision or probation
34 to the defendant's employer by certified mail. If the employer
35 of the defendant is a school, the Clerk of the Court shall
36 direct the mailing of a copy of the judgment of conviction or

1 order of supervision or probation to the appropriate regional
2 superintendent of schools. The regional superintendent of
3 schools shall notify the State Board of Education of any
4 notification under this subsection.

5 (j-5) A defendant at least 17 years of age who is convicted
6 of a felony and who has not been previously convicted of a
7 misdemeanor or felony and who is sentenced to a term of
8 imprisonment in the Illinois Department of Corrections shall as
9 a condition of his or her sentence be required by the court to
10 attend educational courses designed to prepare the defendant
11 for a high school diploma and to work toward a high school
12 diploma or to work toward passing the high school level Test of
13 General Educational Development (GED) or to work toward
14 completing a vocational training program offered by the
15 Department of Corrections. If a defendant fails to complete the
16 educational training required by his or her sentence during the
17 term of incarceration, the Prisoner Review Board shall, as a
18 condition of mandatory supervised release, require the
19 defendant, at his or her own expense, to pursue a course of
20 study toward a high school diploma or passage of the GED test.
21 The Prisoner Review Board shall revoke the mandatory supervised
22 release of a defendant who wilfully fails to comply with this
23 subsection (j-5) upon his or her release from confinement in a
24 penal institution while serving a mandatory supervised release
25 term; however, the inability of the defendant after making a
26 good faith effort to obtain financial aid or pay for the
27 educational training shall not be deemed a wilful failure to
28 comply. The Prisoner Review Board shall recommit the defendant
29 whose mandatory supervised release term has been revoked under
30 this subsection (j-5) as provided in Section 3-3-9. This
31 subsection (j-5) does not apply to a defendant who has a high
32 school diploma or has successfully passed the GED test. This
33 subsection (j-5) does not apply to a defendant who is
34 determined by the court to be developmentally disabled or
35 otherwise mentally incapable of completing the educational or
36 vocational program.

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

4 (1) (A) Except as provided in paragraph (C) of subsection
5 (1), whenever a defendant, who is an alien as defined by
6 the Immigration and Nationality Act, is convicted of any
7 felony or misdemeanor offense, the court after sentencing
8 the defendant may, upon motion of the State's Attorney,
9 hold sentence in abeyance and remand the defendant to the
10 custody of the Attorney General of the United States or his
11 or her designated agent to be deported when:

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

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

18 Otherwise, the defendant shall be sentenced as
19 provided in this Chapter V.

20 (B) If the defendant has already been sentenced for a
21 felony or misdemeanor offense, or has been placed on
22 probation under Section 10 of the Cannabis Control Act or
23 Section 410 of the Illinois Controlled Substances Act, the
24 court may, upon motion of the State's Attorney to suspend
25 the sentence imposed, commit the defendant to the custody
26 of the Attorney General of the United States or his or her
27 designated agent when:

28 (1) a final order of deportation has been issued
29 against the defendant pursuant to proceedings under
30 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 justice.

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

1 (D) Upon motion of the State's Attorney, if a defendant
2 sentenced under this Section returns to the jurisdiction of
3 the United States, the defendant shall be recommitted to
4 the custody of the county from which he or she was
5 sentenced. Thereafter, the defendant shall be brought
6 before the sentencing court, which may impose any sentence
7 that was available under Section 5-5-3 at the time of
8 initial sentencing. In addition, the defendant shall not be
9 eligible for additional good conduct credit for
10 meritorious service as provided under Section 3-6-6.

11 (m) A person convicted of criminal defacement of property
12 under Section 21-1.3 of the Criminal Code of 1961, in which the
13 property damage exceeds \$300 and the property damaged is a
14 school building, shall be ordered to perform community service
15 that may include cleanup, removal, or painting over the
16 defacement.

17 (n) The court may sentence a person convicted of a
18 violation of Section 12-19, 12-21, or 16-1.3 of the Criminal
19 Code of 1961 (i) to an impact incarceration program if the
20 person is otherwise eligible for that program under Section
21 5-8-1.1, (ii) to community service, or (iii) if the person is
22 an addict or alcoholic, as defined in the Alcoholism and Other
23 Drug Abuse and Dependency Act, to a substance or alcohol abuse
24 program licensed under that Act.

25 (Source: P.A. 92-183, eff. 7-27-01; 92-248, eff. 8-3-01;
26 92-283, eff. 1-1-02; 92-340, eff. 8-10-01; 92-418, eff.
27 8-17-01; 92-422, eff. 8-17-01; 92-651, eff. 7-11-02; 92-698,
28 eff. 7-19-02; 93-44, eff. 7-1-03; 93-156, eff. 1-1-04; 93-169,
29 eff. 7-10-03; 93-301, eff. 1-1-04; 93-419, eff. 1-1-04; 93-546,
30 eff. 1-1-04; 93-694, eff. 7-9-04; 93-782, eff. 1-1-05; 93-800,
31 eff. 1-1-05; 93-1014, eff. 1-1-05; revised 10-25-04.)