



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB0897

Introduced 2/2/2005, by Rep. John J. Millner

SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-4-3

from Ch. 38, par. 1005-4-3

730 ILCS 5/5-5-3

from Ch. 38, par. 1005-5-3

Amends the Unified Code of Corrections. Includes in the requirements of submission of blood, saliva, and tissue samples for analysis and inclusion in the genetic marker grouping analysis database maintained by the Department of State Police a person found not guilty by reason of insanity for certain qualifying offenses or inchoate offenses. Includes in the definition of "qualifying offense" any offense or inchoate offense that is a felony. Provides that a person found not guilty by reason of insanity for certain specified sex offenses or for a violation of the Hypodermic Syringes and Needles Act must undergo medical testing to determine whether the defendant has any sexually transmissible disease, including a test for infection with HIV or any other identified causative agent of AIDS. Present law requires the mandatory medical testing only for persons who have been convicted of any of these offenses.

LRB094 07424 RLC 37586 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

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 Sections 5-4-3 and 5-5-3 as follows:

6 (730 ILCS 5/5-4-3) (from Ch. 38, par. 1005-4-3)

7 Sec. 5-4-3. Persons convicted of, or found not guilty by
8 reason of insanity of, or found delinquent for, certain
9 offenses or institutionalized as sexually dangerous;
10 specimens; genetic marker groups.

11 (a) Any person convicted of, or found not guilty by reason
12 of insanity of, or found guilty under the Juvenile Court Act of
13 1987 for, or who received a disposition of court supervision
14 for, a qualifying offense or ~~inchoate attempt of a~~ qualifying
15 offense, convicted or found not guilty by reason of insanity of
16 any offense classified as a felony under Illinois law, found
17 guilty or given supervision for any offense classified as a
18 felony under the Juvenile Court Act of 1987, or
19 institutionalized as a sexually dangerous person under the
20 Sexually Dangerous Persons Act, or committed as a sexually
21 violent person under the Sexually Violent Persons Commitment
22 Act shall, regardless of the sentence or disposition imposed,
23 be required to submit specimens of blood, saliva, or tissue to
24 the Illinois Department of State Police in accordance with the
25 provisions of this Section, provided such person is:

26 (1) convicted of a qualifying offense or inchoate
27 ~~attempt of a~~ qualifying offense on or after July 1, 1990
28 and sentenced to a term of imprisonment, periodic
29 imprisonment, fine, probation, conditional discharge or
30 any other form of sentence, or given a disposition of court
31 supervision for the offense, or remanded to a Department of
32 Human Services mental health facility;

1 (1.5) found guilty or given supervision under the
2 Juvenile Court Act of 1987 for a qualifying offense or
3 inchoate ~~attempt of a~~ qualifying offense on or after
4 January 1, 1997;

5 (2) ordered institutionalized as a sexually dangerous
6 person on or after July 1, 1990;

7 (3) convicted of a qualifying offense or inchoate
8 ~~attempt of a~~ qualifying offense before July 1, 1990 and is
9 presently confined as a result of such conviction in any
10 State correctional facility or county jail or is presently
11 serving a sentence of probation, conditional discharge or
12 periodic imprisonment as a result of such conviction, or is
13 confined in a Department of Human Services mental health
14 facility;

15 (3.5) convicted or found guilty of any offense
16 classified as a felony under Illinois law or found guilty
17 or given supervision for such an offense under the Juvenile
18 Court Act of 1987 on or after August 22, 2002;

19 (4) presently institutionalized as a sexually
20 dangerous person or presently institutionalized as a
21 person found guilty but mentally ill of a sexual offense or
22 attempt to commit a sexual offense;

23 (4.5) ordered committed as a sexually violent person on
24 or after the effective date of the Sexually Violent Persons
25 Commitment Act; or

26 (5) seeking transfer to or residency in Illinois under
27 Sections 3-3-11.05 through 3-3-11.5 of the Unified Code of
28 Corrections and the Interstate Compact for Adult Offender
29 Supervision or the Interstate Agreements on Sexually
30 Dangerous Persons Act.

31 Notwithstanding other provisions of this Section, any
32 person incarcerated in a facility of the Illinois Department of
33 Corrections or confined in a Department of Human Services
34 mental health facility after a finding of not guilty by reason
35 of insanity for a felony offense, qualifying offense, or
36 inchoate qualifying offense on or after August 22, 2002 shall

1 be required to submit a specimen of blood, saliva, or tissue
2 prior to his or her final discharge or release on parole or
3 mandatory supervised release, as a condition of his or her
4 parole or mandatory supervised release.

5 (a-5) Any person who was otherwise convicted of, or found
6 not guilty by reason of insanity of, or received a disposition
7 of court supervision for any other offense under the Criminal
8 Code of 1961 or who was found guilty or given supervision for
9 such a violation under the Juvenile Court Act of 1987, may,
10 regardless of the sentence imposed, be required by an order of
11 the court to submit specimens of blood, saliva, or tissue to
12 the Illinois Department of State Police in accordance with the
13 provisions of this Section.

14 (b) Any person required by paragraphs (a) (1), (a) (1.5),
15 (a) (2), (a) (3.5), and (a-5) to provide specimens of blood,
16 saliva, or tissue shall provide specimens of blood, saliva, or
17 tissue within 45 days after sentencing or disposition at a
18 collection site designated by the Illinois Department of State
19 Police.

20 (c) Any person required by paragraphs (a) (3), (a) (4), and
21 (a) (4.5) to provide specimens of blood, saliva, or tissue shall
22 be required to provide such samples prior to final discharge,
23 parole, or release at a collection site designated by the
24 Illinois Department of State Police.

25 (c-5) Any person required by paragraph (a) (5) to provide
26 specimens of blood, saliva, or tissue shall, where feasible, be
27 required to provide the specimens before being accepted for
28 conditioned residency in Illinois under the interstate compact
29 or agreement, but no later than 45 days after arrival in this
30 State.

31 (c-6) The Illinois Department of State Police may determine
32 which type of specimen or specimens, blood, saliva, or tissue,
33 is acceptable for submission to the Division of Forensic
34 Services for analysis.

35 (d) The Illinois Department of State Police shall provide
36 all equipment and instructions necessary for the collection of

1 blood samples. The collection of samples shall be performed in
2 a medically approved manner. Only a physician authorized to
3 practice medicine, a registered nurse or other qualified person
4 trained in venipuncture may withdraw blood for the purposes of
5 this Act. The samples shall thereafter be forwarded to the
6 Illinois Department of State Police, Division of Forensic
7 Services, for analysis and categorizing into genetic marker
8 groupings.

9 (d-1) The Illinois Department of State Police shall provide
10 all equipment and instructions necessary for the collection of
11 saliva samples. The collection of saliva samples shall be
12 performed in a medically approved manner. Only a person trained
13 in the instructions promulgated by the Illinois State Police on
14 collecting saliva may collect saliva for the purposes of this
15 Section. The samples shall thereafter be forwarded to the
16 Illinois Department of State Police, Division of Forensic
17 Services, for analysis and categorizing into genetic marker
18 groupings.

19 (d-2) The Illinois Department of State Police shall provide
20 all equipment and instructions necessary for the collection of
21 tissue samples. The collection of tissue samples shall be
22 performed in a medically approved manner. Only a person trained
23 in the instructions promulgated by the Illinois State Police on
24 collecting tissue may collect tissue for the purposes of this
25 Section. The samples shall thereafter be forwarded to the
26 Illinois Department of State Police, Division of Forensic
27 Services, for analysis and categorizing into genetic marker
28 groupings.

29 (d-5) To the extent that funds are available, the Illinois
30 Department of State Police shall contract with qualified
31 personnel and certified laboratories for the collection,
32 analysis, and categorization of known samples.

33 (d-6) Agencies designated by the Illinois Department of
34 State Police and the Illinois Department of State Police may
35 contract with third parties to provide for the collection or
36 analysis of DNA, or both, of an offender's blood, saliva, and

1 tissue samples.

2 (e) The genetic marker groupings shall be maintained by the
3 Illinois Department of State Police, Division of Forensic
4 Services.

5 (f) The genetic marker grouping analysis information
6 obtained pursuant to this Act shall be confidential and shall
7 be released only to peace officers of the United States, of
8 other states or territories, of the insular possessions of the
9 United States, of foreign countries duly authorized to receive
10 the same, to all peace officers of the State of Illinois and to
11 all prosecutorial agencies, and to defense counsel as provided
12 by Section 116-5 of the Code of Criminal Procedure of 1963. The
13 genetic marker grouping analysis information obtained pursuant
14 to this Act shall be used only for (i) valid law enforcement
15 identification purposes and as required by the Federal Bureau
16 of Investigation for participation in the National DNA
17 database, (ii) technology validation purposes, (iii) a
18 population statistics database, (iv) quality assurance
19 purposes if personally identifying information is removed, (v)
20 assisting in the defense of the criminally accused pursuant to
21 Section 116-5 of the Code of Criminal Procedure of 1963, or
22 (vi) identifying and assisting in the prosecution of a person
23 who is suspected of committing a sexual assault as defined in
24 Section 1a of the Sexual Assault Survivors Emergency Treatment
25 Act. Notwithstanding any other statutory provision to the
26 contrary, all information obtained under this Section shall be
27 maintained in a single State data base, which may be uploaded
28 into a national database, and which information may be subject
29 to expungement only as set forth in subsection (f-1).

30 (f-1) Upon receipt of notification of a reversal of a
31 conviction based on actual innocence, or of the granting of a
32 pardon pursuant to Section 12 of Article V of the Illinois
33 Constitution, if that pardon document specifically states that
34 the reason for the pardon is the actual innocence of an
35 individual whose DNA record has been stored in the State or
36 national DNA identification index in accordance with this

1 Section by the Illinois Department of State Police, the DNA
2 record shall be expunged from the DNA identification index, and
3 the Department shall by rule prescribe procedures to ensure
4 that the record and any samples, analyses, or other documents
5 relating to such record, whether in the possession of the
6 Department or any law enforcement or police agency, or any
7 forensic DNA laboratory, including any duplicates or copies
8 thereof, are destroyed and a letter is sent to the court
9 verifying the expungement is completed.

10 (f-5) Any person who intentionally uses genetic marker
11 grouping analysis information, or any other information
12 derived from a DNA sample, beyond the authorized uses as
13 provided under this Section, or any other Illinois law, is
14 guilty of a Class 4 felony, and shall be subject to a fine of
15 not less than \$5,000.

16 (f-6) The Illinois Department of State Police may contract
17 with third parties for the purposes of implementing this
18 amendatory Act of the 93rd General Assembly. Any other party
19 contracting to carry out the functions of this Section shall be
20 subject to the same restrictions and requirements of this
21 Section insofar as applicable, as the Illinois Department of
22 State Police, and to any additional restrictions imposed by the
23 Illinois Department of State Police.

24 (g) For the purposes of this Section, "qualifying offense"
25 means any of the following:

26 (1) any offense or inchoate offense that is a felony;

27 (2) any violation or inchoate violation of Section
28 9-3.1, 11-6, 11-9.1, 11-9.3, 11-18.1, 12-7.3, 12-7.4, or
29 12-15 whether punishable as a felony or a misdemeanor; or

30 (3) any former statute of this State that defined a
31 felony offense.

32 ~~(1) any violation or inchoate violation of Section~~
33 ~~11-6, 11-9.1, 11-11, 11-18.1, 12-15, or 12-16 of the~~
34 ~~Criminal Code of 1961;~~

35 ~~(1.1) any violation or inchoate violation of Section~~
36 ~~9-1, 9-2, 10-1, 10-2, 12-11, 12-11.1, 18-1, 18-2, 18-3,~~

1 ~~18-4, 19-1, or 19-2 of the Criminal Code of 1961 for which~~
2 ~~persons are convicted on or after July 1, 2001;~~

3 ~~(2) any former statute of this State which defined a~~
4 ~~felony sexual offense;~~

5 ~~(3) (blank);~~

6 ~~(4) any inchoate violation of Section 9-3.1, 11-9.3,~~
7 ~~12-7.3, or 12-7.4 of the Criminal Code of 1961; or~~

8 ~~(5) any violation or inchoate violation of Article 29D~~
9 ~~of the Criminal Code of 1961.~~

10 (g-5) (Blank).

11 (h) The Illinois Department of State Police shall be the
12 State central repository for all genetic marker grouping
13 analysis information obtained pursuant to this Act. The
14 Illinois Department of State Police may promulgate rules for
15 the form and manner of the collection of blood, saliva, or
16 tissue samples and other procedures for the operation of this
17 Act. The provisions of the Administrative Review Law shall
18 apply to all actions taken under the rules so promulgated.

19 (i) (1) A person required to provide a blood, saliva, or
20 tissue specimen shall cooperate with the collection of the
21 specimen and any deliberate act by that person intended to
22 impede, delay or stop the collection of the blood, saliva,
23 or tissue specimen is a Class A misdemeanor.

24 (2) In the event that a person's DNA sample is not
25 adequate for any reason, the person shall provide another
26 DNA sample for analysis. Duly authorized law enforcement
27 and corrections personnel may employ reasonable force in
28 cases in which an individual refuses to provide a DNA
29 sample required under this Act.

30 (j) Any person required by subsection (a) to submit
31 specimens of blood, saliva, or tissue to the Illinois
32 Department of State Police for analysis and categorization into
33 genetic marker grouping, in addition to any other disposition,
34 penalty, or fine imposed, shall pay an analysis fee of \$200. If
35 the analysis fee is not paid at the time of sentencing, the
36 court shall establish a fee schedule by which the entire amount

1 of the analysis fee shall be paid in full, such schedule not to
2 exceed 24 months from the time of conviction. The inability to
3 pay this analysis fee shall not be the sole ground to
4 incarcerate the person.

5 (k) All analysis and categorization fees provided for by
6 subsection (j) shall be regulated as follows:

7 (1) The State Offender DNA Identification System Fund
8 is hereby created as a special fund in the State Treasury.

9 (2) All fees shall be collected by the clerk of the
10 court and forwarded to the State Offender DNA
11 Identification System Fund for deposit. The clerk of the
12 circuit court may retain the amount of \$10 from each
13 collected analysis fee to offset administrative costs
14 incurred in carrying out the clerk's responsibilities
15 under this Section.

16 (3) Fees deposited into the State Offender DNA
17 Identification System Fund shall be used by Illinois State
18 Police crime laboratories as designated by the Director of
19 State Police. These funds shall be in addition to any
20 allocations made pursuant to existing laws and shall be
21 designated for the exclusive use of State crime
22 laboratories. These uses may include, but are not limited
23 to, the following:

24 (A) Costs incurred in providing analysis and
25 genetic marker categorization as required by
26 subsection (d).

27 (B) Costs incurred in maintaining genetic marker
28 groupings as required by subsection (e).

29 (C) Costs incurred in the purchase and maintenance
30 of equipment for use in performing analyses.

31 (D) Costs incurred in continuing research and
32 development of new techniques for analysis and genetic
33 marker categorization.

34 (E) Costs incurred in continuing education,
35 training, and professional development of forensic
36 scientists regularly employed by these laboratories.

1 (1) The failure of a person to provide a specimen, or of
2 any person or agency to collect a specimen, within the 45 day
3 period shall in no way alter the obligation of the person to
4 submit such specimen, or the authority of the Illinois
5 Department of State Police or persons designated by the
6 Department to collect the specimen, or the authority of the
7 Illinois Department of State Police to accept, analyze and
8 maintain the specimen or to maintain or upload results of
9 genetic marker grouping analysis information into a State or
10 national database.

11 (m) If any provision of this amendatory Act of the 93rd
12 General Assembly is held unconstitutional or otherwise
13 invalid, the remainder of this amendatory Act of the 93rd
14 General Assembly is not affected.

15 (Source: P.A. 92-16, eff. 6-28-01; 92-40, eff. 6-29-01; 92-571,
16 eff. 6-26-02; 92-600, eff. 6-28-02; 92-829, eff. 8-22-02;
17 92-854, eff. 12-5-02; 93-216, eff. 1-1-04; 93-605, eff.
18 11-19-03; 93-781, eff. 1-1-05.)

19 (730 ILCS 5/5-5-3) (from Ch. 38, par. 1005-5-3)

20 Sec. 5-5-3. Disposition.

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

24 (b) The following options shall be appropriate
25 dispositions, alone or in combination, for all felonies and
26 misdemeanors other than those identified in subsection (c) of
27 this Section:

28 (1) A period of probation.

29 (2) A term of periodic imprisonment.

30 (3) A term of conditional discharge.

31 (4) A term of imprisonment.

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

1 (6) A fine.

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

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

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

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

13 (c) (1) When a defendant is found guilty of first degree
14 murder the State may either seek a sentence of imprisonment
15 under Section 5-8-1 of this Code, or where appropriate seek
16 a sentence of death under Section 9-1 of the Criminal Code
17 of 1961.

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

25 (A) First degree murder where the death penalty is
26 not imposed.

27 (B) Attempted first degree murder.

28 (C) A Class X felony.

29 (D) A violation of Section 401.1 or 407 of the
30 Illinois Controlled Substances Act, or a violation of
31 subdivision (c) (1) or (c) (2) of Section 401 of that Act
32 which relates to more than 5 grams of a substance
33 containing heroin or cocaine or an analog thereof.

34 (E) A violation of Section 5.1 or 9 of the Cannabis
35 Control Act.

36 (F) A Class 2 or greater felony if the offender had

1 been convicted of a Class 2 or greater felony within 10
2 years of the date on which the offender committed the
3 offense for which he or she is being sentenced, except
4 as otherwise provided in Section 40-10 of the
5 Alcoholism and Other Drug Abuse and Dependency Act.

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

9 (H) Criminal sexual assault.

10 (I) Aggravated battery of a senior citizen.

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

13 Before July 1, 1994, for the purposes of this
14 paragraph, "organized gang" means an association of 5
15 or more persons, with an established hierarchy, that
16 encourages members of the association to perpetrate
17 crimes or provides support to the members of the
18 association who do commit crimes.

19 Beginning July 1, 1994, for the purposes of this
20 paragraph, "organized gang" has the meaning ascribed
21 to it in Section 10 of the Illinois Streetgang
22 Terrorism Omnibus Prevention Act.

23 (K) Vehicular hijacking.

24 (L) A second or subsequent conviction for the
25 offense of hate crime when the underlying offense upon
26 which the hate crime is based is felony aggravated
27 assault or felony mob action.

28 (M) A second or subsequent conviction for the
29 offense of institutional vandalism if the damage to the
30 property exceeds \$300.

31 (N) A Class 3 felony violation of paragraph (1) of
32 subsection (a) of Section 2 of the Firearm Owners
33 Identification Card Act.

34 (O) A violation of Section 12-6.1 of the Criminal
35 Code of 1961.

36 (P) A violation of paragraph (1), (2), (3), (4),

1 (5), or (7) of subsection (a) of Section 11-20.1 of the
2 Criminal Code of 1961.

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

5 (R) A violation of Section 24-3A of the Criminal
6 Code of 1961.

7 (S) (Blank).

8 (T) A second or subsequent violation of paragraph
9 (6.6) of subsection (a), subsection (c-5), or
10 subsection (d-5) of Section 401 of the Illinois
11 Controlled Substances Act.

12 (3) (Blank).

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

17 (4.1) (Blank).

18 (4.2) Except as provided in paragraph (4.3) of this
19 subsection (c), a minimum of 100 hours of community service
20 shall be imposed for a second violation of Section 6-303 of
21 the Illinois Vehicle Code.

22 (4.3) A minimum term of imprisonment of 30 days or 300
23 hours of community service, as determined by the court,
24 shall be imposed for a second violation of subsection (c)
25 of Section 6-303 of the Illinois Vehicle Code.

26 (4.4) Except as provided in paragraph (4.5) and
27 paragraph (4.6) of this subsection (c), a minimum term of
28 imprisonment of 30 days or 300 hours of community service,
29 as determined by the court, shall be imposed for a third or
30 subsequent violation of Section 6-303 of the Illinois
31 Vehicle Code.

32 (4.5) A minimum term of imprisonment of 30 days shall
33 be imposed for a third violation of subsection (c) of
34 Section 6-303 of the Illinois Vehicle Code.

35 (4.6) A minimum term of imprisonment of 180 days shall
36 be imposed for a fourth or subsequent violation of

1 subsection (c) of Section 6-303 of the Illinois Vehicle
2 Code.

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

6 (A) a period of conditional discharge;

7 (B) a fine;

8 (C) make restitution to the victim under Section
9 5-5-6 of this Code.

10 (5.1) In addition to any penalties imposed under
11 paragraph (5) of this subsection (c), and except as
12 provided in paragraph (5.2) or (5.3), a person convicted of
13 violating subsection (c) of Section 11-907 of the Illinois
14 Vehicle Code shall have his or her driver's license,
15 permit, or privileges suspended for at least 90 days but
16 not more than one year, if the violation resulted in damage
17 to the property of another person.

18 (5.2) In addition to any penalties imposed under
19 paragraph (5) of this subsection (c), and except as
20 provided in paragraph (5.3), a person convicted of
21 violating subsection (c) of Section 11-907 of the Illinois
22 Vehicle Code shall have his or her driver's license,
23 permit, or privileges suspended for at least 180 days but
24 not more than 2 years, if the violation resulted in injury
25 to another person.

26 (5.3) In addition to any penalties imposed under
27 paragraph (5) of this subsection (c), a person convicted of
28 violating subsection (c) of Section 11-907 of the Illinois
29 Vehicle Code shall have his or her driver's license,
30 permit, or privileges suspended for 2 years, if the
31 violation resulted in the death of another person.

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

36 (7) When a defendant is adjudged a habitual criminal

1 under Article 33B of the Criminal Code of 1961, the court
2 shall sentence the defendant to a term of natural life
3 imprisonment.

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

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

23 (10) (Blank).

24 (11) The court shall impose a minimum fine of \$1,000
25 for a first offense and \$2,000 for a second or subsequent
26 offense upon a person convicted of or placed on supervision
27 for battery when the individual harmed was a sports
28 official or coach at any level of competition and the act
29 causing harm to the sports official or coach occurred
30 within an athletic facility or within the immediate
31 vicinity of the athletic facility at which the sports
32 official or coach was an active participant of the athletic
33 contest held at the athletic facility. For the purposes of
34 this paragraph (11), "sports official" means a person at an
35 athletic contest who enforces the rules of the contest,
36 such as an umpire or referee; "athletic facility" means an

1 indoor or outdoor playing field or recreational area where
2 sports activities are conducted; and "coach" means a person
3 recognized as a coach by the sanctioning authority that
4 conducted the sporting event.

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

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

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

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

35 (A) the defendant is willing to undergo a court
36 approved counseling program for a minimum duration of 2

1 years; or

2 (B) the defendant is willing to participate in a
3 court approved plan including but not limited to the
4 defendant's:

5 (i) removal from the household;

6 (ii) restricted contact with the victim;

7 (iii) continued financial support of the
8 family;

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

10 and

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

13 (2) the court orders the defendant to pay for the
14 victim's counseling services, to the extent that the court
15 finds, after considering the defendant's income and
16 assets, that the defendant is financially capable of paying
17 for such services, if the victim was under 18 years of age
18 at the time the offense was committed and requires
19 counseling as a result of the offense.

20 Probation may be revoked or modified pursuant to Section
21 5-6-4; except where the court determines at the hearing that
22 the defendant violated a condition of his or her probation
23 restricting contact with the victim or other family members or
24 commits another offense with the victim or other family
25 members, the court shall revoke the defendant's probation and
26 impose a term of imprisonment.

27 For the purposes of this Section, "family member" and
28 "victim" shall have the meanings ascribed to them in Section
29 12-12 of the Criminal Code of 1961.

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

34 (g) Whenever a defendant is convicted of, or found not
35 guilty by reason of insanity of, an offense under Sections
36 11-14, 11-15, 11-15.1, 11-16, 11-17, 11-18, 11-18.1, 11-19,

1 11-19.1, 11-19.2, 12-13, 12-14, 12-14.1, 12-15 or 12-16 of the
2 Criminal Code of 1961, the defendant shall undergo medical
3 testing to determine whether the defendant has any sexually
4 transmissible disease, including a test for infection with
5 human immunodeficiency virus (HIV) or any other identified
6 causative agent of acquired immunodeficiency syndrome (AIDS).
7 Any such medical test shall be performed only by appropriately
8 licensed medical practitioners and may include an analysis of
9 any bodily fluids as well as an examination of the defendant's
10 person. Except as otherwise provided by law, the results of
11 such test shall be kept strictly confidential by all medical
12 personnel involved in the testing and must be personally
13 delivered in a sealed envelope to the judge of the court in
14 which the conviction was entered for the judge's inspection in
15 camera. Acting in accordance with the best interests of the
16 victim and the public, the judge shall have the discretion to
17 determine to whom, if anyone, the results of the testing may be
18 revealed. The court shall notify the defendant of the test
19 results. The court shall also notify the victim if requested by
20 the victim, and if the victim is under the age of 15 and if
21 requested by the victim's parents or legal guardian, the court
22 shall notify the victim's parents or legal guardian of the test
23 results. The court shall provide information on the
24 availability of HIV testing and counseling at Department of
25 Public Health facilities to all parties to whom the results of
26 the testing are revealed and shall direct the State's Attorney
27 to provide the information to the victim when possible. A
28 State's Attorney may petition the court to obtain the results
29 of any HIV test administered under this Section, and the court
30 shall grant the disclosure if the State's Attorney shows it is
31 relevant in order to prosecute a charge of criminal
32 transmission of HIV under Section 12-16.2 of the Criminal Code
33 of 1961 against the defendant. The court shall order that the
34 cost of any such test shall be paid by the county and may be
35 taxed as costs against the convicted defendant.

36 (g-5) When an inmate is tested for an airborne communicable

1 disease, as determined by the Illinois Department of Public
2 Health including but not limited to tuberculosis, the results
3 of the test shall be personally delivered by the warden or his
4 or her designee in a sealed envelope to the judge of the court
5 in which the inmate must appear for the judge's inspection in
6 camera if requested by the judge. Acting in accordance with the
7 best interests of those in the courtroom, the judge shall have
8 the discretion to determine what if any precautions need to be
9 taken to prevent transmission of the disease in the courtroom.

10 (h) Whenever a defendant is convicted of, or found not
11 guilty by reason of insanity of, an offense under Section 1 or
12 2 of the Hypodermic Syringes and Needles Act, the defendant
13 shall undergo medical testing to determine whether the
14 defendant has been exposed to human immunodeficiency virus
15 (HIV) or any other identified causative agent of acquired
16 immunodeficiency syndrome (AIDS). Except as otherwise provided
17 by law, the results of such test shall be kept strictly
18 confidential by all medical personnel involved in the testing
19 and must be personally delivered in a sealed envelope to the
20 judge of the court in which the conviction was entered for the
21 judge's inspection in camera. Acting in accordance with the
22 best interests of the public, the judge shall have the
23 discretion to determine to whom, if anyone, the results of the
24 testing may be revealed. The court shall notify the defendant
25 of a positive test showing an infection with the human
26 immunodeficiency virus (HIV). The court shall provide
27 information on the availability of HIV testing and counseling
28 at Department of Public Health facilities to all parties to
29 whom the results of the testing are revealed and shall direct
30 the State's Attorney to provide the information to the victim
31 when possible. A State's Attorney may petition the court to
32 obtain the results of any HIV test administered under this
33 Section, and the court shall grant the disclosure if the
34 State's Attorney shows it is relevant in order to prosecute a
35 charge of criminal transmission of HIV under Section 12-16.2 of
36 the Criminal Code of 1961 against the defendant. The court

1 shall order that the cost of any such test shall be paid by the
2 county and may be taxed as costs against the convicted
3 defendant.

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

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

34 (j-5) A defendant at least 17 years of age who is convicted
35 of a felony and who has not been previously convicted of a
36 misdemeanor or felony and who is sentenced to a term of

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

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

33 (l) (A) Except as provided in paragraph (C) of subsection
34 (l), whenever a defendant, who is an alien as defined by
35 the Immigration and Nationality Act, is convicted of any
36 felony or misdemeanor offense, the court after sentencing

1 the defendant may, upon motion of the State's Attorney,
2 hold sentence in abeyance and remand the defendant to the
3 custody of the Attorney General of the United States or his
4 or her designated agent to be deported when:

5 (1) a final order of deportation has been issued
6 against the defendant pursuant to proceedings under
7 the Immigration and Nationality Act, and

8 (2) the deportation of the defendant would not
9 deprecate the seriousness of the defendant's conduct
10 and would not be inconsistent with the ends of justice.

11 Otherwise, the defendant shall be sentenced as
12 provided in this Chapter V.

13 (B) If the defendant has already been sentenced for a
14 felony or misdemeanor offense, or has been placed on
15 probation under Section 10 of the Cannabis Control Act or
16 Section 410 of the Illinois Controlled Substances Act, the
17 court may, upon motion of the State's Attorney to suspend
18 the sentence imposed, commit the defendant to the custody
19 of the Attorney General of the United States or his or her
20 designated agent when:

21 (1) a final order of deportation has been issued
22 against the defendant pursuant to proceedings under
23 the Immigration and Nationality Act, and

24 (2) the deportation of the defendant would not
25 deprecate the seriousness of the defendant's conduct
26 and would not be inconsistent with the ends of justice.

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

30 (D) Upon motion of the State's Attorney, if a defendant
31 sentenced under this Section returns to the jurisdiction of
32 the United States, the defendant shall be recommitted to
33 the custody of the county from which he or she was
34 sentenced. Thereafter, the defendant shall be brought
35 before the sentencing court, which may impose any sentence
36 that was available under Section 5-5-3 at the time of

1 initial sentencing. In addition, the defendant shall not be
2 eligible for additional good conduct credit for
3 meritorious service as provided under Section 3-6-6.

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

10 (n) The court may sentence a person convicted of a
11 violation of Section 12-19, 12-21, or 16-1.3 of the Criminal
12 Code of 1961 (i) to an impact incarceration program if the
13 person is otherwise eligible for that program under Section
14 5-8-1.1, (ii) to community service, or (iii) if the person is
15 an addict or alcoholic, as defined in the Alcoholism and Other
16 Drug Abuse and Dependency Act, to a substance or alcohol abuse
17 program licensed under that Act.

18 (Source: P.A. 92-183, eff. 7-27-01; 92-248, eff. 8-3-01;
19 92-283, eff. 1-1-02; 92-340, eff. 8-10-01; 92-418, eff.
20 8-17-01; 92-422, eff. 8-17-01; 92-651, eff. 7-11-02; 92-698,
21 eff. 7-19-02; 93-44, eff. 7-1-03; 93-156, eff. 1-1-04; 93-169,
22 eff. 7-10-03; 93-301, eff. 1-1-04; 93-419, eff. 1-1-04; 93-546,
23 eff. 1-1-04; 93-694, eff. 7-9-04; 93-782, eff. 1-1-05; 93-800,
24 eff. 1-1-05; 93-1014, eff. 1-1-05; revised 10-25-04.)