



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

SB0323

Introduced 2/6/2009, by Sen. Kwame Raoul

#### SYNOPSIS AS INTRODUCED:

720 ILCS 5/24-1.6

720 ILCS 5/24-1.8 new

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. Creates the offense of unlawful possession of a firearm by a street gang member. Provides that a person commits the offense if he or she (1) possesses, carries, or conceals on or about his or her person a firearm and firearm ammunition while on any street, road, alley, gangway, sidewalk, or any other lands, except when inside his or her own abode or inside his or her fixed place of business, and has not been issued a currently valid Firearm Owner's Identification Card and is a member of a street gang; or (2) possesses or carries in any vehicle a firearm and firearm ammunition which are both immediately accessible at the time of the offense while on any street, road, alley, or any other lands, except when inside his or her own abode or garage, and has not been issued a currently valid Firearm Owner's Identification Card and is a member of a street gang. Provides that unlawful possession of a firearm by a street gang member is a Class 2 felony for which the person, if sentenced to a term of imprisonment, shall be sentenced to no less than 3 years and no more than 10 years. Provides that a period of probation, a term of periodic imprisonment or conditional discharge shall not be imposed for the offense of unlawful possession of a firearm by a street gang member when the firearm was loaded or contained firearm ammunition and the court shall sentence the offender to not less than the minimum term of imprisonment authorized for the Class 2 felony. Effective immediately.

LRB096 05621 RLC 15687 b

CORRECTIONAL  
BUDGET AND  
IMPACT 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 Criminal Code of 1961 is amended by changing  
5 Section 24-1.6 and by adding Section 24-1.8 as follows:

6 (720 ILCS 5/24-1.6)

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

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

10 (1) Carries on or about his or her person or in any  
11 vehicle or concealed on or about his or her person except  
12 when on his or her land or in his or her abode or fixed  
13 place of business any pistol, revolver, stun gun or taser  
14 or other firearm; or

15 (2) Carries or possesses on or about his or her person,  
16 upon any public street, alley, or other public lands within  
17 the corporate limits of a city, village or incorporated  
18 town, except when an invitee thereon or therein, for the  
19 purpose of the display of such weapon or the lawful  
20 commerce in weapons, or except when on his or her own land  
21 or in his or her own abode or fixed place of business, any  
22 pistol, revolver, stun gun or taser or other firearm; and

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

1 (A) the firearm possessed was uncased, loaded and  
2 immediately accessible at the time of the offense; or

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

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

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

13 (E) the person possessing the weapon was engaged in  
14 a misdemeanor violation of the Cannabis Control Act, in  
15 a misdemeanor violation of the Illinois Controlled  
16 Substances Act, or in a misdemeanor violation of the  
17 Methamphetamine Control and Community Protection Act;  
18 or

19 (F) (blank) ~~the person possessing the weapon is a~~  
20 ~~member of a street gang or is engaged in street gang~~  
21 ~~related activity, as defined in Section 10 of the~~  
22 ~~Illinois Streetgang Terrorism Omnibus Prevention Act;~~  
23 or

24 (G) the person possessing the weapon had a order of  
25 protection issued against him or her within the  
26 previous 2 years; or

1 (H) the person possessing the weapon was engaged in  
2 the commission or attempted commission of a  
3 misdemeanor involving the use or threat of violence  
4 against the person or property of another; or

5 (I) the person possessing the weapon was under 21  
6 years of age and in possession of a handgun as defined  
7 in Section 24-3, unless the person under 21 is engaged  
8 in lawful activities under the Wildlife Code or  
9 described in subsection 24-2(b)(1), (b)(3), or  
10 24-2(f).

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

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

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

16 (ii) are not immediately accessible; or

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

21 (d) Sentence. Aggravated unlawful use of a weapon is a  
22 Class 4 felony; a second or subsequent offense is 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 7  
25 years. Aggravated unlawful use of a weapon by a person who has  
26 been previously convicted of a felony in this State or another

1 jurisdiction is a Class 2 felony for which the person shall be  
2 sentenced to a term of imprisonment of not less than 3 years  
3 and not more than 7 years. Aggravated unlawful use of a weapon  
4 while wearing or in possession of body armor as defined in  
5 Section 33F-1 by a person who has not been issued a valid  
6 Firearms Owner's Identification Card in accordance with  
7 Section 5 of the Firearm Owners Identification Card Act is a  
8 Class X felony. The possession of each firearm in violation of  
9 this Section constitutes a single and separate violation.

10 (Source: P.A. 94-72, eff. 1-1-06; 94-284, eff. 7-21-05; 94-556,  
11 eff. 9-11-05; 95-331, eff. 8-21-07.)

12 (720 ILCS 5/24-1.8 new)

13 Sec. 24-1.8. Unlawful possession of a firearm by a street  
14 gang member.

15 (a) A person commits unlawful possession of a firearm by a  
16 street gang member when he or she knowingly:

17 (1) possesses, carries, or conceals on or about his or  
18 her person a firearm and firearm ammunition while on any  
19 street, road, alley, gangway, sidewalk, or any other lands,  
20 except when inside his or her own abode or inside his or  
21 her fixed place of business, and has not been issued a  
22 currently valid Firearm Owner's Identification Card and is  
23 a member of a street gang; or

24 (2) possesses or carries in any vehicle a firearm and  
25 firearm ammunition which are both immediately accessible

1 at the time of the offense while on any street, road,  
2 alley, or any other lands, except when inside his or her  
3 own abode or garage, and has not been issued a currently  
4 valid Firearm Owner's Identification Card and is a member  
5 of a street gang.

6 (b) Unlawful possession of a firearm by a street gang  
7 member is a Class 2 felony for which the person, if sentenced  
8 to a term of imprisonment, shall be sentenced to no less than 3  
9 years and no more than 10 years. A period of probation, a term  
10 of periodic imprisonment or conditional discharge shall not be  
11 imposed for the offense of unlawful possession of a firearm by  
12 a street gang member when the firearm was loaded or contained  
13 firearm ammunition and the court shall sentence the offender to  
14 not less than the minimum term of imprisonment authorized for  
15 the Class 2 felony.

16 (c) For purposes of this Section:

17 "Street gang" or "gang" means any combination,  
18 confederation, alliance, network, conspiracy in law or in  
19 fact, of 3 or more persons with an established hierarchy  
20 that, through its membership or through the agency of any  
21 member, engages in a course or pattern of criminal  
22 activity.

23 "Street gang member" or "gang member" means any person  
24 who actually and in fact belongs to a gang.

25 "Firearm" means any pistol, revolver, rifle, shotgun,  
26 or any device by whatever name which is designed to expel a

1 projectile or projectiles by the action of an explosion,  
2 expansion of gas, or escape of gas.

3 "Firearm ammunition" means any self-contained  
4 cartridge or shotgun shell, by whatever name known, which  
5 is designed to be used or adaptable for use in a firearm.

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

8 (730 ILCS 5/5-5-3) (from Ch. 38, par. 1005-5-3)  
9 Sec. 5-5-3. Disposition.

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

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

17 (1) A period of probation.

18 (2) A term of periodic imprisonment.

19 (3) A term of conditional discharge.

20 (4) A term of imprisonment.

21 (5) An order directing the offender to clean up and  
22 repair the damage, if the offender was convicted under  
23 paragraph (h) of Section 21-1 of the Criminal Code of 1961  
24 (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.



1 (B) Attempted first degree murder.

2 (C) A Class X felony.

3 (D) A violation of Section 401.1 or 407 of the  
4 Illinois Controlled Substances Act, or a violation of  
5 subdivision (c) (1), (c) (1.5), or (c) (2) of Section 401  
6 of that Act which relates to more than 5 grams of a  
7 substance containing heroin, cocaine, fentanyl, or an  
8 analog thereof.

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

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

17 (F-5) A violation of Section 24-1, 24-1.1, or  
18 24-1.6 of the Criminal Code of 1961 for which  
19 imprisonment is prescribed in those Sections.

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

23 (H) Criminal sexual assault.

24 (I) Aggravated battery of a senior citizen.

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

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

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

11           (K) Vehicular hijacking.

12           (L) A second or subsequent conviction for the  
13 offense of hate crime when the underlying offense upon  
14 which the hate crime is based is felony aggravated  
15 assault or felony mob action.

16           (M) A second or subsequent conviction for the  
17 offense of institutional vandalism if the damage to the  
18 property exceeds \$300.

19           (N) A Class 3 felony violation of paragraph (1) of  
20 subsection (a) of Section 2 of the Firearm Owners  
21 Identification Card Act.

22           (O) A violation of Section 12-6.1 of the Criminal  
23 Code of 1961.

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

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

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

5 (S) (Blank).

6 (T) A second or subsequent violation of the  
7 Methamphetamine Control and Community Protection Act.

8 (U) A second or subsequent violation of Section  
9 6-303 of the Illinois Vehicle Code committed while his  
10 or her driver's license, permit, or privilege was  
11 revoked because of a violation of Section 9-3 of the  
12 Criminal Code of 1961, relating to the offense of  
13 reckless homicide, or a similar provision of a law of  
14 another state.

15 (V) A violation of paragraph (4) of subsection (c)  
16 of Section 11-20.3 of the Criminal Code of 1961.

17 (W) A violation of Section 24-3.5 of the Criminal  
18 Code of 1961.

19 (X) A conviction for unlawful possession of a  
20 firearm by a street gang member when the firearm was  
21 loaded or contained firearm ammunition.

22 (3) (Blank).

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

1 (4.1) (Blank).

2 (4.2) Except as provided in paragraphs (4.3) and (4.8)  
3 of this subsection (c), a minimum of 100 hours of community  
4 service shall be imposed for a second violation of Section  
5 6-303 of the Illinois Vehicle Code.

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

10 (4.4) Except as provided in paragraphs (4.5), (4.6),  
11 and (4.9) of this subsection (c), a minimum term of  
12 imprisonment of 30 days or 300 hours of community service,  
13 as determined by the court, shall be imposed for a third or  
14 subsequent violation of Section 6-303 of the Illinois  
15 Vehicle Code.

16 (4.5) A minimum term of imprisonment of 30 days shall  
17 be imposed for a third violation of subsection (c) of  
18 Section 6-303 of the Illinois Vehicle Code.

19 (4.6) Except as provided in paragraph (4.10) of this  
20 subsection (c), a minimum term of imprisonment of 180 days  
21 shall be imposed for a fourth or subsequent violation of  
22 subsection (c) of Section 6-303 of the Illinois Vehicle  
23 Code.

24 (4.7) A minimum term of imprisonment of not less than  
25 30 consecutive days, or 300 hours of community service,  
26 shall be imposed for a violation of subsection (a-5) of

1 Section 6-303 of the Illinois Vehicle Code, as provided in  
2 subsection (b-5) of that Section.

3 (4.8) A mandatory prison sentence shall be imposed for  
4 a second violation of subsection (a-5) of Section 6-303 of  
5 the Illinois Vehicle Code, as provided in subsection (c-5)  
6 of that Section. The person's driving privileges shall be  
7 revoked for a period of not less than 5 years from the date  
8 of his or her release from prison.

9 (4.9) A mandatory prison sentence of not less than 4  
10 and not more than 15 years shall be imposed for a third  
11 violation of subsection (a-5) of Section 6-303 of the  
12 Illinois Vehicle Code, as provided in subsection (d-2.5) of  
13 that Section. The person's driving privileges shall be  
14 revoked for the remainder of his or her life.

15 (4.10) A mandatory prison sentence for a Class 1 felony  
16 shall be imposed, and the person shall be eligible for an  
17 extended term sentence, for a fourth or subsequent  
18 violation of subsection (a-5) of Section 6-303 of the  
19 Illinois Vehicle Code, as provided in subsection (d-3.5) of  
20 that Section. The person's driving privileges shall be  
21 revoked for the remainder of his or her life.

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

25 (A) a period of conditional discharge;

26 (B) a fine;

1 (C) make restitution to the victim under Section  
2 5-5-6 of this Code.

3 (5.1) In addition to any penalties imposed under  
4 paragraph (5) of this subsection (c), and except as  
5 provided in paragraph (5.2) or (5.3), a person convicted of  
6 violating subsection (c) of Section 11-907 of the Illinois  
7 Vehicle Code shall have his or her driver's license,  
8 permit, or privileges suspended for at least 90 days but  
9 not more than one year, if the violation resulted in damage  
10 to the property of another person.

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

19 (5.3) In addition to any penalties imposed under  
20 paragraph (5) of this subsection (c), 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 2 years, if the  
24 violation resulted in the death of another person.

25 (5.4) In addition to any penalties imposed under  
26 paragraph (5) of this subsection (c), a person convicted of

1           violating Section 3-707 of the Illinois Vehicle Code shall  
2           have his or her driver's license, permit, or privileges  
3           suspended for 3 months and until he or she has paid a  
4           reinstatement fee of \$100.

5           (5.5) In addition to any penalties imposed under  
6           paragraph (5) of this subsection (c), a person convicted of  
7           violating Section 3-707 of the Illinois Vehicle Code during  
8           a period in which his or her driver's license, permit, or  
9           privileges were suspended for a previous violation of that  
10          Section shall have his or her driver's license, permit, or  
11          privileges suspended for an additional 6 months after the  
12          expiration of the original 3-month suspension and until he  
13          or she has paid a reinstatement fee of \$100.

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

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

22          (8) When a defendant, over the age of 21 years, is  
23          convicted of a Class 1 or Class 2 felony, after having  
24          twice been convicted in any state or federal court of an  
25          offense that contains the same elements as an offense now  
26          classified in Illinois as a Class 2 or greater Class felony

1 and such charges are separately brought and tried and arise  
2 out of different series of acts, such defendant shall be  
3 sentenced as a Class X offender. This paragraph shall not  
4 apply unless (1) the first felony was committed after the  
5 effective date of this amendatory Act of 1977; and (2) the  
6 second felony was committed after conviction on the first;  
7 and (3) the third felony was committed after conviction on  
8 the second. A person sentenced as a Class X offender under  
9 this paragraph is not eligible to apply for treatment as a  
10 condition of probation as provided by Section 40-10 of the  
11 Alcoholism and Other Drug Abuse and Dependency Act.

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

15 (10) (Blank).

16 (11) The court shall impose a minimum fine of \$1,000  
17 for a first offense and \$2,000 for a second or subsequent  
18 offense upon a person convicted of or placed on supervision  
19 for battery when the individual harmed was a sports  
20 official or coach at any level of competition and the act  
21 causing harm to the sports official or coach occurred  
22 within an athletic facility or within the immediate  
23 vicinity of the athletic facility at which the sports  
24 official or coach was an active participant of the athletic  
25 contest held at the athletic facility. For the purposes of  
26 this paragraph (11), "sports official" means a person at an



1 athletic contest who enforces the rules of the contest,  
2 such as an umpire or referee; "athletic facility" means an  
3 indoor or outdoor playing field or recreational area where  
4 sports activities are conducted; and "coach" means a person  
5 recognized as a coach by the sanctioning authority that  
6 conducted the sporting event.

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

12 (13) A person convicted of or placed on court  
13 supervision for an assault or aggravated assault when the  
14 victim and the offender are family or household members as  
15 defined in Section 103 of the Illinois Domestic Violence  
16 Act of 1986 or convicted of domestic battery or aggravated  
17 domestic battery may be required to attend a Partner Abuse  
18 Intervention Program under protocols set forth by the  
19 Illinois Department of Human Services under such terms and  
20 conditions imposed by the court. The costs of such classes  
21 shall be paid by the offender.

22 (d) In any case in which a sentence originally imposed is  
23 vacated, the case shall be remanded to the trial court. The  
24 trial court shall hold a hearing under Section 5-4-1 of the  
25 Unified Code of Corrections which may include evidence of the  
26 defendant's life, moral character and occupation during the

1 time since the original sentence was passed. The trial court  
2 shall then impose sentence upon the defendant. The trial court  
3 may impose any sentence which could have been imposed at the  
4 original trial subject to Section 5-5-4 of the Unified Code of  
5 Corrections. If a sentence is vacated on appeal or on  
6 collateral attack due to the failure of the trier of fact at  
7 trial to determine beyond a reasonable doubt the existence of a  
8 fact (other than a prior conviction) necessary to increase the  
9 punishment for the offense beyond the statutory maximum  
10 otherwise applicable, either the defendant may be re-sentenced  
11 to a term within the range otherwise provided or, if the State  
12 files notice of its intention to again seek the extended  
13 sentence, the defendant shall be afforded a new trial.

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

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

21 (A) the defendant is willing to undergo a court  
22 approved counseling program for a minimum duration of 2  
23 years; or

24 (B) the defendant is willing to participate in a  
25 court approved plan including but not limited to the  
26 defendant's:

- 1 (i) removal from the household;
- 2 (ii) restricted contact with the victim;
- 3 (iii) continued financial support of the
- 4 family;
- 5 (iv) restitution for harm done to the victim;
- 6 and
- 7 (v) compliance with any other measures that
- 8 the court may deem appropriate; and

9 (2) the court orders the defendant to pay for the

10 victim's counseling services, to the extent that the court

11 finds, after considering the defendant's income and

12 assets, that the defendant is financially capable of paying

13 for such services, if the victim was under 18 years of age

14 at the time the offense was committed and requires

15 counseling as a result of the offense.

16 Probation may be revoked or modified pursuant to Section

17 5-6-4; except where the court determines at the hearing that

18 the defendant violated a condition of his or her probation

19 restricting contact with the victim or other family members or

20 commits another offense with the victim or other family

21 members, the court shall revoke the defendant's probation and

22 impose a term of imprisonment.

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

24 "victim" shall have the meanings ascribed to them in Section

25 12-12 of the Criminal Code of 1961.

26 (f) This Article shall not deprive a court in other

1 proceedings to order a forfeiture of property, to suspend or  
2 cancel a license, to remove a person from office, or to impose  
3 any other civil penalty.

4 (g) Whenever a defendant is convicted of an offense under  
5 Sections 11-14, 11-15, 11-15.1, 11-16, 11-17, 11-18, 11-18.1,  
6 11-19, 11-19.1, 11-19.2, 12-13, 12-14, 12-14.1, 12-15 or 12-16  
7 of the Criminal Code of 1961, the defendant shall undergo  
8 medical testing to determine whether the defendant has any  
9 sexually transmissible disease, including a test for infection  
10 with human immunodeficiency virus (HIV) or any other identified  
11 causative agent of acquired immunodeficiency syndrome (AIDS).  
12 Any such medical test shall be performed only by appropriately  
13 licensed medical practitioners and may include an analysis of  
14 any bodily fluids as well as an examination of the defendant's  
15 person. Except as otherwise provided by law, the results of  
16 such test shall be kept strictly confidential by all medical  
17 personnel involved in the testing and must be personally  
18 delivered in a sealed envelope to the judge of the court in  
19 which the conviction was entered for the judge's inspection in  
20 camera. Acting in accordance with the best interests of the  
21 victim and the public, the judge shall have the discretion to  
22 determine to whom, if anyone, the results of the testing may be  
23 revealed. The court shall notify the defendant of the test  
24 results. The court shall also notify the victim if requested by  
25 the victim, and if the victim is under the age of 15 and if  
26 requested by the victim's parents or legal guardian, the court

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

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

25 (h) Whenever a defendant is convicted of an offense under  
26 Section 1 or 2 of the Hypodermic Syringes and Needles Act, the

1 defendant shall undergo medical testing to determine whether  
2 the defendant has been exposed to human immunodeficiency virus  
3 (HIV) or any other identified causative agent of acquired  
4 immunodeficiency syndrome (AIDS). Except as otherwise provided  
5 by law, the results of such test shall be kept strictly  
6 confidential by all medical personnel involved in the testing  
7 and must be personally delivered in a sealed envelope to the  
8 judge of the court in which the conviction was entered for the  
9 judge's inspection in camera. Acting in accordance with the  
10 best interests of the public, the judge shall have the  
11 discretion to determine to whom, if anyone, the results of the  
12 testing may be revealed. The court shall notify the defendant  
13 of a positive test showing an infection with the human  
14 immunodeficiency virus (HIV). The court shall provide  
15 information on the availability of HIV testing and counseling  
16 at Department of Public Health facilities to all parties to  
17 whom the results of the testing are revealed and shall direct  
18 the State's Attorney to provide the information to the victim  
19 when possible. A State's Attorney may petition the court to  
20 obtain the results of any HIV test administered under this  
21 Section, and the court shall grant the disclosure if the  
22 State's Attorney shows it is relevant in order to prosecute a  
23 charge of criminal transmission of HIV under Section 12-16.2 of  
24 the Criminal Code of 1961 against the defendant. The court  
25 shall order that the cost of any such test shall be paid by the  
26 county and may be taxed as costs against the convicted

1 defendant.

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

9 (j) In cases when prosecution for any violation of Section  
10 11-6, 11-8, 11-9, 11-11, 11-14, 11-15, 11-15.1, 11-16, 11-17,  
11 11-17.1, 11-18, 11-18.1, 11-19, 11-19.1, 11-19.2, 11-20.1,  
12 11-21, 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the Criminal  
13 Code of 1961, any violation of the Illinois Controlled  
14 Substances Act, any violation of the Cannabis Control Act, or  
15 any violation of the Methamphetamine Control and Community  
16 Protection Act results in conviction, a disposition of court  
17 supervision, or an order of probation granted under Section 10  
18 of the Cannabis Control Act, Section 410 of the Illinois  
19 Controlled Substance Act, or Section 70 of the Methamphetamine  
20 Control and Community Protection Act of a defendant, the court  
21 shall determine whether the defendant is employed by a facility  
22 or center as defined under the Child Care Act of 1969, a public  
23 or private elementary or secondary school, or otherwise works  
24 with children under 18 years of age on a daily basis. When a  
25 defendant is so employed, the court shall order the Clerk of  
26 the Court to send a copy of the judgment of conviction or order

1 of supervision or probation to the defendant's employer by  
2 certified mail. If the employer of the defendant is a school,  
3 the Clerk of the Court shall direct the mailing of a copy of  
4 the judgment of conviction or order of supervision or probation  
5 to the appropriate regional superintendent of schools. The  
6 regional superintendent of schools shall notify the State Board  
7 of Education of any notification under this subsection.

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



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

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

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

25 (1) a final order of deportation has been issued  
26 against the defendant pursuant to proceedings under

1 the Immigration and Nationality Act, and

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

5 Otherwise, the defendant shall be sentenced as  
6 provided in this Chapter V.

7 (B) If the defendant has already been sentenced for a  
8 felony or misdemeanor offense, or has been placed on  
9 probation under Section 10 of the Cannabis Control Act,  
10 Section 410 of the Illinois Controlled Substances Act, or  
11 Section 70 of the Methamphetamine Control and Community  
12 Protection Act, the court may, upon motion of the State's  
13 Attorney to suspend the sentence imposed, commit the  
14 defendant to the custody of the Attorney General of the  
15 United States or his or her designated agent when:

16 (1) a final order of deportation has been issued  
17 against the defendant pursuant to proceedings under  
18 the Immigration and Nationality Act, and

19 (2) the deportation of the defendant would not  
20 deprecate the seriousness of the defendant's conduct  
21 and would not be inconsistent with the ends of justice.

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

25 (D) Upon motion of the State's Attorney, if a defendant  
26 sentenced under this Section returns to the jurisdiction of

1 the United States, the defendant shall be recommitted to  
2 the custody of the county from which he or she was  
3 sentenced. Thereafter, the defendant shall be brought  
4 before the sentencing court, which may impose any sentence  
5 that was available under Section 5-5-3 at the time of  
6 initial sentencing. In addition, the defendant shall not be  
7 eligible for additional good conduct credit for  
8 meritorious service as provided under Section 3-6-6.

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

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

23 (o) Whenever a person is convicted of a sex offense as  
24 defined in Section 2 of the Sex Offender Registration Act, the  
25 defendant's driver's license or permit shall be subject to  
26 renewal on an annual basis in accordance with the provisions of

1 license renewal established by the Secretary of State.  
2 (Source: P.A. 94-72, eff. 1-1-06; 94-556, eff. 9-11-05; 94-993,  
3 eff. 1-1-07; 94-1035, eff. 7-1-07; 95-188, eff. 8-16-07;  
4 95-259, eff. 8-17-07; 95-331, eff. 8-21-07; 95-377, eff.  
5 1-1-08; 95-579, eff. 6-1-08; 95-876, eff. 8-21-08; 95-882, eff.  
6 1-1-09.)

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