



**93RD GENERAL ASSEMBLY**  
**State of Illinois**  
**2003 and 2004**  
**SB2471**

Introduced 2/3/2004, by William R. Haine

**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.

LRB093 19154 RLC 44889 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 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.

13 (Source: P.A. 91-544, eff. 1-1-00.)

14 (720 ILCS 5/24-1.6)

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

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

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

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

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

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

34 (B) the firearm possessed was uncased, unloaded  
35 and the ammunition for the weapon was immediately

1 accessible at the time of the offense; or

2 (C) the person possessing the firearm has not been  
3 issued a currently valid Firearm Owner's  
4 Identification Card; or

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

9 (E) the person possessing the weapon was engaged in  
10 a misdemeanor violation of the Cannabis Control Act or  
11 in a misdemeanor violation of the Illinois Controlled  
12 Substances Act; or

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

17 (G) the person possessing the weapon had a order of  
18 protection issued against him or her within the  
19 previous 2 years; or

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

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

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

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

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

35 (ii) are not immediately accessible; or

36 (iii) are unloaded and enclosed in a case, firearm

1 carrying box, shipping box, or other container by a  
2 person who has been issued a currently valid Firearm  
3 Owner's Identification Card.

4 (d) Sentence. Aggravated unlawful use of a weapon is a  
5 Class 4 felony; a second or subsequent offense is a Class 2  
6 felony for which the person shall be sentenced to a term of  
7 imprisonment of not less than 3 years and not more than 7  
8 years. Aggravated unlawful use of a weapon by a person who has  
9 been previously convicted of a felony in this State or another  
10 jurisdiction is a Class 2 felony for which the person shall be  
11 sentenced to a term of imprisonment of not less than 3 years  
12 and not more than 7 years.

13 (Source: P.A. 91-690, eff. 4-13-00.)

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

16 (730 ILCS 5/5-5-3) (from Ch. 38, par. 1005-5-3)

17 Sec. 5-5-3. Disposition.

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

20 (b) The following options shall be appropriate  
21 dispositions, alone or in combination, for all felonies and  
22 misdemeanors other than those identified in subsection (c) of  
23 this Section:

24 (1) A period of probation.

25 (2) A term of periodic imprisonment.

26 (3) A term of conditional discharge.

27 (4) A term of imprisonment.

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

32 (6) A fine.

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

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

3 Whenever an individual is sentenced for an offense based  
4 upon an arrest for a violation of Section 11-501 of the  
5 Illinois Vehicle Code, or a similar provision of a local  
6 ordinance, and the professional evaluation recommends remedial  
7 or rehabilitative treatment or education, neither the  
8 treatment nor the education shall be the sole disposition and  
9 either or both may be imposed only in conjunction with another  
10 disposition. The court shall monitor compliance with any  
11 remedial education or treatment recommendations contained in  
12 the professional evaluation. Programs conducting alcohol or  
13 other drug evaluation or remedial education must be licensed by  
14 the Department of Human Services. However, if the individual is  
15 not a resident of Illinois, the court may accept an alcohol or  
16 other drug evaluation or remedial education program in the  
17 state of such individual's residence. Programs providing  
18 treatment must be licensed under existing applicable  
19 alcoholism and drug treatment licensure standards.

20 In addition to any other fine or penalty required by law,  
21 any individual convicted of a violation of Section 11-501 of  
22 the Illinois Vehicle Code, Section 5-7 of the Snowmobile  
23 Registration and Safety Act, Section 5-16 of the Boat  
24 Registration and Safety Act, or a similar provision of local  
25 ordinance, whose operation of a motor vehicle while in  
26 violation of Section 11-501, Section 5-7, Section 5-16, or such  
27 ordinance proximately caused an incident resulting in an  
28 appropriate emergency response, shall be required to make  
29 restitution to a public agency for the costs of that emergency  
30 response. Such restitution shall not exceed \$1,000 per public  
31 agency for each such emergency response. For the purpose of  
32 this paragraph, emergency response shall mean any incident  
33 requiring a response by: a police officer as defined under  
34 Section 1-162 of the Illinois Vehicle Code; a fireman carried  
35 on the rolls of a regularly constituted fire department; and an  
36 ambulance as defined under Section 3.85 of the Emergency

1 Medical Services (EMS) Systems Act.

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

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

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

17 (A) First degree murder where the death penalty is  
18 not imposed.

19 (B) Attempted first degree murder.

20 (C) A Class X felony.

21 (D) A violation of Section 401.1 or 407 of the  
22 Illinois Controlled Substances Act, or a violation of  
23 subdivision (c) (1) or (c) (2) of Section 401 of that Act  
24 which relates to more than 5 grams of a substance  
25 containing heroin or cocaine or an analog thereof.

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

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

34 (F-5) A violation of Section 24-1, 24-1.1, or  
35 24-1.6 of the Criminal Code of 1961 for which  
36 imprisonment is prescribed in those Sections.

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

4 (H) Criminal sexual assault.

5 (I) Aggravated battery of a senior citizen.

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

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

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

18 (K) Vehicular hijacking.

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

23 (M) A second or subsequent conviction for the  
24 offense of institutional vandalism if the damage to the  
25 property exceeds \$300.

26 (N) A Class 3 felony violation of paragraph (1) of  
27 subsection (a) of Section 2 of the Firearm Owners  
28 Identification Card Act.

29 (O) A violation of Section 12-6.1 of the Criminal  
30 Code of 1961.

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

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

36 (R) A violation of Section 24-3A of the Criminal

1 Code of 1961.

2 (S) A violation of Section 11-501(c-1)(3) of the  
3 Illinois Vehicle Code.

4 (T) A second or subsequent violation of paragraph  
5 (6.6) of subsection (a), subsection (c-5), or  
6 subsection (d-5) of Section 401 of the Illinois  
7 Controlled Substances Act.

8 (3) A minimum term of imprisonment of not less than 5  
9 days or 30 days of community service as may be determined  
10 by the court shall be imposed for a second violation  
11 committed within 5 years of a previous violation of Section  
12 11-501 of the Illinois Vehicle Code or a similar provision  
13 of a local ordinance. In the case of a third or subsequent  
14 violation committed within 5 years of a previous violation  
15 of Section 11-501 of the Illinois Vehicle Code or a similar  
16 provision of a local ordinance, a minimum term of either 10  
17 days of imprisonment or 60 days of community service shall  
18 be imposed.

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

23 (4.1) A minimum term of 30 consecutive days of  
24 imprisonment, 40 days of 24 hour periodic imprisonment or  
25 720 hours of community service, as may be determined by the  
26 court, shall be imposed for a violation of Section 11-501  
27 of the Illinois Vehicle Code during a period in which the  
28 defendant's driving privileges are revoked or suspended,  
29 where the revocation or suspension was for a violation of  
30 Section 11-501 or Section 11-501.1 of that Code.

31 (4.2) Except as provided in paragraph (4.3) of this  
32 subsection (c), a minimum of 100 hours of community service  
33 shall be imposed for a second violation of Section 6-303 of  
34 the Illinois Vehicle Code.

35 (4.3) A minimum term of imprisonment of 30 days or 300  
36 hours of community service, as determined by the court,



1 shall be imposed for a second violation of subsection (c)  
2 of Section 6-303 of the Illinois Vehicle Code.

3 (4.4) Except as provided in paragraph (4.5) and  
4 paragraph (4.6) of this subsection (c), a minimum term of  
5 imprisonment of 30 days or 300 hours of community service,  
6 as determined by the court, shall be imposed for a third or  
7 subsequent violation of Section 6-303 of the Illinois  
8 Vehicle Code.

9 (4.5) A minimum term of imprisonment of 30 days shall  
10 be imposed for a third violation of subsection (c) of  
11 Section 6-303 of the Illinois Vehicle Code.

12 (4.6) A minimum term of imprisonment of 180 days shall  
13 be imposed for a fourth or subsequent violation of  
14 subsection (c) of Section 6-303 of the Illinois Vehicle  
15 Code.

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

19 (A) a period of conditional discharge;

20 (B) a fine;

21 (C) make restitution to the victim under Section  
22 5-5-6 of this Code.

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

31 (5.2) In addition to any penalties imposed under  
32 paragraph (5) of this subsection (c), and except as  
33 provided in paragraph (5.3), a person convicted of  
34 violating subsection (c) of Section 11-907 of the Illinois  
35 Vehicle Code shall have his or her driver's license,  
36 permit, or privileges suspended for at least 180 days but

1 not more than 2 years, if the violation resulted in injury  
2 to another person.

3 (5.3) In addition to any penalties imposed under  
4 paragraph (5) of this subsection (c), a person convicted of  
5 violating subsection (c) of Section 11-907 of the Illinois  
6 Vehicle Code shall have his or her driver's license,  
7 permit, or privileges suspended for 2 years, if the  
8 violation resulted in the death of another person.

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

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

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

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

36 (10) When a person is convicted of violating Section

1 11-501 of the Illinois Vehicle Code or a similar provision  
2 of a local ordinance, the following penalties apply when  
3 his or her blood, breath, or urine was .16 or more based on  
4 the definition of blood, breath, or urine units in Section  
5 11-501.2 or that person is convicted of violating Section  
6 11-501 of the Illinois Vehicle Code while transporting a  
7 child under the age of 16:

8 (A) For a first violation of subsection (a) of  
9 Section 11-501, in addition to any other penalty that  
10 may be imposed under subsection (c) of Section 11-501:  
11 a mandatory minimum of 100 hours of community service  
12 and a minimum fine of \$500.

13 (B) For a second violation of subsection (a) of  
14 Section 11-501, in addition to any other penalty that  
15 may be imposed under subsection (c) of Section 11-501  
16 within 10 years: a mandatory minimum of 2 days of  
17 imprisonment and a minimum fine of \$1,250.

18 (C) For a third violation of subsection (a) of  
19 Section 11-501, in addition to any other penalty that  
20 may be imposed under subsection (c) of Section 11-501  
21 within 20 years: a mandatory minimum of 90 days of  
22 imprisonment and a minimum fine of \$2,500.

23 (D) For a fourth or subsequent violation of  
24 subsection (a) of Section 11-501: ineligibility for a  
25 sentence of probation or conditional discharge and a  
26 minimum fine of \$2,500.

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

1 collateral attack due to the failure of the trier of fact at  
2 trial to determine beyond a reasonable doubt the existence of a  
3 fact (other than a prior conviction) necessary to increase the  
4 punishment for the offense beyond the statutory maximum  
5 otherwise applicable, either the defendant may be re-sentenced  
6 to a term within the range otherwise provided or, if the State  
7 files notice of its intention to again seek the extended  
8 sentence, the defendant shall be afforded a new trial.

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

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

16 (A) the defendant is willing to undergo a court  
17 approved counseling program for a minimum duration of 2  
18 years; or

19 (B) the defendant is willing to participate in a  
20 court approved plan including but not limited to the  
21 defendant's:

22 (i) removal from the household;

23 (ii) restricted contact with the victim;

24 (iii) continued financial support of the  
25 family;

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

27 and

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

30 (2) the court orders the defendant to pay for the  
31 victim's counseling services, to the extent that the court  
32 finds, after considering the defendant's income and  
33 assets, that the defendant is financially capable of paying  
34 for such services, if the victim was under 18 years of age  
35 at the time the offense was committed and requires  
36 counseling as a result of the offense.

1 Probation may be revoked or modified pursuant to Section  
2 5-6-4; except where the court determines at the hearing that  
3 the defendant violated a condition of his or her probation  
4 restricting contact with the victim or other family members or  
5 commits another offense with the victim or other family  
6 members, the court shall revoke the defendant's probation and  
7 impose a term of imprisonment.

8 For the purposes of this Section, "family member" and  
9 "victim" shall have the meanings ascribed to them in Section  
10 12-12 of the Criminal Code of 1961.

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

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

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

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

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

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

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

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

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

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



1 whose mandatory supervised release term has been revoked under  
2 this subsection (j-5) as provided in Section 3-3-9. This  
3 subsection (j-5) does not apply to a defendant who has a high  
4 school diploma or has successfully passed the GED test. This  
5 subsection (j-5) does not apply to a defendant who is  
6 determined by the court to be developmentally disabled or  
7 otherwise mentally incapable of completing the educational or  
8 vocational program.

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

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

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

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

26 Otherwise, the defendant shall be sentenced as  
27 provided in this Chapter V.

28 (B) If the defendant has already been sentenced for a  
29 felony or misdemeanor offense, or has been placed on  
30 probation under Section 10 of the Cannabis Control Act or  
31 Section 410 of the Illinois Controlled Substances Act, the  
32 court may, upon motion of the State's Attorney to suspend  
33 the sentence imposed, commit the defendant to the custody  
34 of the Attorney General of the United States or his or her  
35 designated agent when:

36 (1) a final order of deportation has been issued

1 against the defendant pursuant to proceedings under  
2 the Immigration and Nationality Act, and

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

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

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

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

25 (n) The court may sentence a person convicted of a  
26 violation of Section 12-19, 12-21, or 16-1.3 of the Criminal  
27 Code of 1961 (i) to an impact incarceration program if the  
28 person is otherwise eligible for that program under Section  
29 5-8-1.1, (ii) to community service, or (iii) if the person is  
30 an addict or alcoholic, as defined in the Alcoholism and Other  
31 Drug Abuse and Dependency Act, to a substance or alcohol abuse  
32 program licensed under that Act.

33 (Source: P.A. 92-183, eff. 7-27-01; 92-248, eff. 8-3-01;  
34 92-283, eff. 1-1-02; 92-340, eff. 8-10-01; 92-418, eff.  
35 8-17-01; 92-422, eff. 8-17-01; 92-651, eff. 7-11-02; 92-698,  
36 eff. 7-19-02; 93-44, eff. 7-1-03; 93-156, eff. 1-1-04; 93-169,

1 eff. 7-10-03; 93-301, eff. 1-1-04; 93-419, eff. 1-1-04; 93-546,  
2 eff. 1-1-04; revised 10-9-03.)