



**Filed: 2/17/2005**

09400HB0255ham002

LRB094 04960 RLC 41096 a

1 AMENDMENT TO HOUSE BILL 255

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 255, AS AMENDED, by  
3 replacing everything after the enacting clause with the  
4 following:

5 "Section 5. The Unified Code of Corrections is amended by  
6 changing Sections 3-1-2, 3-5-1, 3-6-2, and 5-5-3 and by adding  
7 Section 5-1-9.1 as follows:

8 (730 ILCS 5/3-1-2) (from Ch. 38, par. 1003-1-2)

9 Sec. 3-1-2. Definitions. (a) "Chief Administrative  
10 Officer" means the person designated by the Director to  
11 exercise the powers and duties of the Department of Corrections  
12 in regard to committed persons within a correctional  
13 institution or facility, and includes the superintendent of any  
14 juvenile institution or facility.

15 (b) "Commitment" means a judicially determined placement  
16 in the custody of the Department of Corrections on the basis of  
17 delinquency or conviction.

18 (c) "Committed Person" is a person committed to the  
19 Department, however a committed person shall not be considered  
20 to be an employee of the Department of Corrections for any  
21 purpose, including eligibility for a pension, benefits, or any  
22 other compensation or rights or privileges which may be  
23 provided to employees of the Department.

24 (d) "Correctional Institution or Facility" means any

1 building or part of a building where committed persons are kept  
2 in a secured manner.

3 (e) "Department" means the Department of Corrections of  
4 this State.

5 (f) "Director" means the Director of the Department of  
6 Corrections.

7 (g) "Discharge" means the final termination of a commitment  
8 to the Department of Corrections.

9 (h) "Discipline" means the rules and regulations for the  
10 maintenance of order and the protection of persons and property  
11 within the institutions and facilities of the Department and  
12 their enforcement.

13 (i) "Escape" means the intentional and unauthorized  
14 absence of a committed person from the custody of the  
15 Department.

16 (j) "Furlough" means an authorized leave of absence from  
17 the Department of Corrections for a designated purpose and  
18 period of time.

19 (j-5) "HIV/AIDS" means the human immunodeficiency virus or  
20 any other identified causative agent of acquired  
21 immunodeficiency syndrome.

22 (k) "Parole" means the conditional and revocable release of  
23 a committed person under the supervision of a parole officer.

24 (l) "Prisoner Review Board" means the Board established in  
25 Section 3-3-1(a), independent of the Department, to review  
26 rules and regulations with respect to good time credits, to  
27 hear charges brought by the Department against certain  
28 prisoners alleged to have violated Department rules with  
29 respect to good time credits, to set release dates for certain  
30 prisoners sentenced under the law in effect prior to the  
31 effective date of this Amendatory Act of 1977, to hear requests  
32 and make recommendations to the Governor with respect to  
33 pardon, reprieve or commutation, to set conditions for parole  
34 and mandatory supervised release and determine whether

1 violations of those conditions justify revocation of parole or  
2 release, and to assume all other functions previously exercised  
3 by the Illinois Parole and Pardon Board.

4 (m) Whenever medical treatment, service, counseling, or  
5 care is referred to in this Unified Code of Corrections, such  
6 term may be construed by the Department or Court, within its  
7 discretion, to include treatment, service or counseling by a  
8 Christian Science practitioner or nursing care appropriate  
9 therewith whenever request therefor is made by a person subject  
10 to the provisions of this Act.

11 (n) "Victim" shall have the meaning ascribed to it in  
12 subsection (a) of Section 3 of the Bill of Rights for Victims  
13 and Witnesses of Violent Crime Act.

14 (Source: P.A. 83-1433; 83-1499.)

15 (730 ILCS 5/3-5-1) (from Ch. 38, par. 1003-5-1)

16 Sec. 3-5-1. Master Record File.

17 (a) The Department shall maintain a master record file on  
18 each person committed to it, which shall contain the following  
19 information:

20 (1) all information from the committing court;

21 (2) reception summary;

22 (3) evaluation and assignment reports and  
23 recommendations;

24 (4) reports as to program assignment and progress;

25 (5) reports of disciplinary infractions and  
26 disposition;

27 (6) any parole plan;

28 (7) any parole reports;

29 (8) the date and circumstances of final discharge;

30 (9) The statement or acknowledgement of the offer of an  
31 HIV/AIDS test under subsection (i) of Section 3-6-2 and the  
32 results of that test; and

33 (10) any other pertinent data concerning the person's

1 background, conduct, associations and family relationships  
2 as may be required by the Department.

3 A current summary index shall be maintained on each file  
4 which shall include the person's known active and past gang  
5 affiliations and ranks.

6 (b) All files shall be confidential and access shall be  
7 limited to authorized personnel of the Department. Personnel of  
8 other correctional, welfare or law enforcement agencies may  
9 have access to files under rules and regulations of the  
10 Department. The Department shall keep a record of all outside  
11 personnel who have access to files, the files reviewed, any  
12 file material copied, and the purpose of access. If the  
13 Department or the Prisoner Review Board makes a determination  
14 under this Code which affects the length of the period of  
15 confinement or commitment, the committed person and his counsel  
16 shall be advised of factual information relied upon by the  
17 Department or Board to make the determination, provided that  
18 the Department or Board shall not be required to advise a  
19 person committed to the Juvenile Division any such information  
20 which in the opinion of the Department or Board would be  
21 detrimental to his treatment or rehabilitation.

22 (c) The master file shall be maintained at a place  
23 convenient to its use by personnel of the Department in charge  
24 of the person. When custody of a person is transferred from the  
25 Department to another department or agency, a summary of the  
26 file shall be forwarded to the receiving agency with such other  
27 information required by law or requested by the agency under  
28 rules and regulations of the Department.

29 (d) The master file of a person no longer in the custody of  
30 the Department shall be placed on inactive status and its use  
31 shall be restricted subject to rules and regulations of the  
32 Department.

33 (e) All public agencies may make available to the  
34 Department on request any factual data not otherwise privileged

1 as a matter of law in their possession in respect to  
2 individuals committed to the Department.

3 (Source: P.A. 89-688, eff. 6-1-97; 89-689, eff. 12-31-96.)

4 (730 ILCS 5/3-6-2) (from Ch. 38, par. 1003-6-2)

5 Sec. 3-6-2. Institutions and Facility Administration.

6 (a) Each institution and facility of the Department shall  
7 be administered by a chief administrative officer appointed by  
8 the Director. A chief administrative officer shall be  
9 responsible for all persons assigned to the institution or  
10 facility. The chief administrative officer shall administer  
11 the programs of the Department for the custody and treatment of  
12 such persons.

13 (b) The chief administrative officer shall have such  
14 assistants as the Department may assign.

15 (c) The Director or Assistant Director shall have the  
16 emergency powers to temporarily transfer individuals without  
17 formal procedures to any State, county, municipal or regional  
18 correctional or detention institution or facility in the State,  
19 subject to the acceptance of such receiving institution or  
20 facility, or to designate any reasonably secure place in the  
21 State as such an institution or facility and to make transfers  
22 thereto. However, transfers made under emergency powers shall  
23 be reviewed as soon as practicable under Article 8, and shall  
24 be subject to Section 5-905 of the Juvenile Court Act of 1987.  
25 This Section shall not apply to transfers to the Department of  
26 Human Services which are provided for under Section 3-8-5 or  
27 Section 3-10-5.

28 (d) The Department shall provide educational programs for  
29 all committed persons so that all persons have an opportunity  
30 to attain the achievement level equivalent to the completion of  
31 the twelfth grade in the public school system in this State.  
32 Other higher levels of attainment shall be encouraged and  
33 professional instruction shall be maintained wherever

1 possible. The Department may establish programs of mandatory  
2 education and may establish rules and regulations for the  
3 administration of such programs. A person committed to the  
4 Department who, during the period of his or her incarceration,  
5 participates in an educational program provided by or through  
6 the Department and through that program is awarded or earns the  
7 number of hours of credit required for the award of an  
8 associate, baccalaureate, or higher degree from a community  
9 college, college, or university located in Illinois shall  
10 reimburse the State, through the Department, for the costs  
11 incurred by the State in providing that person during his or  
12 her incarceration with the education that qualifies him or her  
13 for the award of that degree. The costs for which reimbursement  
14 is required under this subsection shall be determined and  
15 computed by the Department under rules and regulations that it  
16 shall establish for that purpose. However, interest at the rate  
17 of 6% per annum shall be charged on the balance of those costs  
18 from time to time remaining unpaid, from the date of the  
19 person's parole, mandatory supervised release, or release  
20 constituting a final termination of his or her commitment to  
21 the Department until paid.

22 (e) A person committed to the Department who becomes in  
23 need of medical or surgical treatment but is incapable of  
24 giving consent thereto shall receive such medical or surgical  
25 treatment by the chief administrative officer consenting on the  
26 person's behalf. Before the chief administrative officer  
27 consents, he or she shall obtain the advice of one or more  
28 physicians licensed to practice medicine in all its branches in  
29 this State. If such physician or physicians advise:

30 (1) that immediate medical or surgical treatment is  
31 required relative to a condition threatening to cause  
32 death, damage or impairment to bodily functions, or  
33 disfigurement; and

34 (2) that the person is not capable of giving consent to

1       such treatment; the chief administrative officer may give  
2       consent for such medical or surgical treatment, and such  
3       consent shall be deemed to be the consent of the person for  
4       all purposes, including, but not limited to, the authority  
5       of a physician to give such treatment.

6       (e-5) If a physician providing medical care to a committed  
7       person on behalf of the Department advises the chief  
8       administrative officer that the committed person's mental or  
9       physical health has deteriorated as a result of the cessation  
10      of ingestion of food or liquid to the point where medical or  
11      surgical treatment is required to prevent death, damage, or  
12      impairment to bodily functions, the chief administrative  
13      officer may authorize such medical or surgical treatment.

14      (f) In the event that the person requires medical care and  
15      treatment at a place other than the institution or facility,  
16      the person may be removed therefrom under conditions prescribed  
17      by the Department. The Department shall require the committed  
18      person receiving medical or dental services on a non-emergency  
19      basis to pay a \$2 co-payment to the Department for each visit  
20      for medical or dental services. The amount of each co-payment  
21      shall be deducted from the committed person's individual  
22      account. A committed person who has a chronic illness, as  
23      defined by Department rules and regulations, shall be exempt  
24      from the \$2 co-payment for treatment of the chronic illness. A  
25      committed person shall not be subject to a \$2 co-payment for  
26      follow-up visits ordered by a physician, who is employed by, or  
27      contracts with, the Department. A committed person who is  
28      indigent is exempt from the \$2 co-payment and is entitled to  
29      receive medical or dental services on the same basis as a  
30      committed person who is financially able to afford the  
31      co-payment. Notwithstanding any other provision in this  
32      subsection (f) to the contrary, any person committed to any  
33      facility operated by the Juvenile Division, as set forth in  
34      subsection (b) of Section 3-2-5 of this Code, is exempt from

1 the co-payment requirement for the duration of confinement in  
2 those facilities.

3 (g) Any person having sole custody of a child at the time  
4 of commitment or any woman giving birth to a child after her  
5 commitment, may arrange through the Department of Children and  
6 Family Services for suitable placement of the child outside of  
7 the Department of Corrections. The Director of the Department  
8 of Corrections may determine that there are special reasons why  
9 the child should continue in the custody of the mother until  
10 the child is 6 years old.

11 (h) The Department may provide Family Responsibility  
12 Services which may consist of, but not be limited to the  
13 following:

- 14 (1) family advocacy counseling;
- 15 (2) parent self-help group;
- 16 (3) parenting skills training;
- 17 (4) parent and child overnight program;
- 18 (5) parent and child reunification counseling, either  
19 separately or together, preceding the inmate's release;  
20 and
- 21 (6) a prerelease reunification staffing involving the  
22 family advocate, the inmate and the child's counselor, or  
23 both and the inmate.

24 (i) The Department of Corrections, in consultation with the  
25 Department of Public Health, shall develop and implement an  
26 HIV/AIDS prevention education program targeted to offenders  
27 incarcerated in Department of Corrections facilities,  
28 significant others, and family of adult and juvenile prison  
29 inmates. Through this program, the Illinois Department of  
30 Corrections shall: (1) provide, in all public waiting rooms of  
31 detention facilities and prisons, printed information on the  
32 transmission and prevention of HIV/AIDS, hepatitis C, and other  
33 sexually transmitted diseases and referral information to  
34 community-based providers of HIV/AIDS prevention, HIV/AIDS



1 treatment, and HIV/AIDS counseling and testing services  
2 throughout Illinois; (2) display in all public waiting rooms of  
3 detention facilities and prisons an HIV/AIDS informational  
4 video, produced by a national organization with expertise in  
5 HIV/AIDS prevention; (3) provide written information on the  
6 transmission and prevention of HIV/AIDS, hepatitis C, and other  
7 sexually transmitted diseases to all inmates upon entrance to a  
8 detention center or prison and offer voluntary HIV/AIDS testing  
9 to all inmates; and (4) provide written information on the  
10 transmission and prevention of HIV/AIDS, hepatitis C, and other  
11 sexually transmitted diseases to all inmates just prior to  
12 their release from custody and referral to appropriate  
13 community based organizations that provide HIV/AIDS services  
14 and HIV/AIDS counseling and testing.

15 Upon admission of a committed person to a Department of  
16 Corrections facility and immediately prior to release of that  
17 person, the committed person shall be offered by the Department  
18 a test for HIV/AIDS. Each committed person offered the HIV/AIDS  
19 test shall sign a statement that he or she was offered the test  
20 and either agreed to its administration or declined the test.  
21 If the committed person is unable to sign the statement because  
22 of illiteracy or physical impairment, the committed person  
23 shall be informed orally of the offer and shall make an oral  
24 acknowledgement of whether he or she will take the test. This  
25 acknowledgement shall be signed by an employee of the  
26 Department facility in which the person is committed. All  
27 statements and acknowledgements shall be part of the committed  
28 person's master record file under Section 3-5-1. Prior to the  
29 release of any inmate who has a documented history of  
30 intravenous drug use, and upon the receipt of that inmate's  
31 written informed consent, the Department shall provide for the  
32 testing of such inmate for infection with human  
33 immunodeficiency virus (HIV) and any other identified  
34 causative agent of acquired immunodeficiency syndrome (AIDS).

1 The testing provided under this subsection shall consist of an  
2 enzyme-linked immunosorbent assay (ELISA) test or such other  
3 test as may be approved by the Illinois Department of Public  
4 Health. If the test result is positive, the Western Blot Assay  
5 or more reliable confirmatory test shall be administered. Each  
6 committed person ~~All inmates tested in accordance with the~~  
7 ~~provisions of this subsection shall, with his or her consent,~~  
8 be provided with HIV/AIDS pre test and post test counseling. If  
9 the test result is positive, the committed person shall receive  
10 medical care for the infection paid by the Department. The  
11 Department shall develop a specialized discharge plan for a  
12 committed person who tests positive for HIV/AIDS. The  
13 Department, in consultation with the Department of Public  
14 Health and Prisoner Review Board, shall provide community  
15 reentry services for committed persons who test positive for  
16 HIV/AIDS.

17 One year after the implementation of this amendatory Act of  
18 the 94th General Assembly, the Department of Corrections shall  
19 report to the General Assembly on the effectiveness of the  
20 program created by this amendatory Act in increasing voluntary  
21 HIV/AIDS testing. ~~Notwithstanding any provision of this~~  
22 ~~subsection to the contrary, the Department shall not be~~  
23 ~~required to conduct the testing and counseling required by this~~  
24 ~~subsection unless sufficient funds to cover all costs of such~~  
25 ~~testing and counseling are appropriated for that purpose by the~~  
26 ~~General Assembly.~~

27 (j) Any person convicted of a sex offense as defined in the  
28 Sex Offender Management Board Act shall be required to receive  
29 a sex offender evaluation prior to release into the community  
30 from the Department of Corrections. The sex offender evaluation  
31 shall be conducted in conformance with the standards and  
32 guidelines developed under the Sex Offender Management Board  
33 Act and by an evaluator approved by the Board.

34 (k) Any minor committed to the Department of

1 Corrections-Juvenile Division for a sex offense as defined by  
2 the Sex Offender Management Board Act shall be required to  
3 undergo sex offender treatment by a treatment provider approved  
4 by the Board and conducted in conformance with the Sex Offender  
5 Management Board Act.

6 (Source: P.A. 92-292, eff. 8-9-01; 93-616, eff. 1-1-04; 93-928,  
7 eff. 1-1-05.)

8 (730 ILCS 5/5-1-9.1 new)

9 Sec. 5-1-9.1. HIV/AIDS. "HIV/AIDS" has the meaning  
10 ascribed to it in subsection (j-5) of Section 3-1-2 of this  
11 Code.

12 (730 ILCS 5/5-5-3) (from Ch. 38, par. 1005-5-3)

13 Sec. 5-5-3. Disposition.

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

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

21 (1) A period of probation.

22 (2) A term of periodic imprisonment.

23 (3) A term of conditional discharge.

24 (4) A term of imprisonment.

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

29 (6) A fine.

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

32 (8) A sentence of participation in a county impact

1 incarceration program under Section 5-8-1.2 of this Code.

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

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

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

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

21 (A) First degree murder where the death penalty is  
22 not imposed.

23 (B) Attempted first degree murder.

24 (C) A Class X felony.

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

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

32 (F) A Class 2 or greater felony if the offender had  
33 been convicted of a Class 2 or greater felony within 10  
34 years of the date on which the offender committed the

1 offense for which he or she is being sentenced, except  
2 as otherwise provided in Section 40-10 of the  
3 Alcoholism and Other Drug Abuse and Dependency Act.

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

7 (H) Criminal sexual assault.

8 (I) Aggravated battery of a senior citizen.

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

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

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

21 (K) Vehicular hijacking.

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

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

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

32 (O) A violation of Section 12-6.1 of the Criminal  
33 Code of 1961.

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

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

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

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

7 (S) (Blank).

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

12 (3) (Blank).

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

17 (4.1) (Blank).

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

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

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

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

1           (4.6) A minimum term of imprisonment of 180 days shall  
2 be imposed for a fourth or subsequent violation of  
3 subsection (c) of Section 6-303 of the Illinois Vehicle  
4 Code.

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

8                   (A) a period of conditional discharge;

9                   (B) a fine;

10                   (C) make restitution to the victim under Section  
11 5-5-6 of this Code.

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

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

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

34           (6) In no case shall an offender be eligible for a

1 disposition of probation or conditional discharge for a  
2 Class 1 felony committed while he was serving a term of  
3 probation or conditional discharge for a felony.

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

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

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

27 (10) (Blank).

28 (11) The court shall impose a minimum fine of \$1,000  
29 for a first offense and \$2,000 for a second or subsequent  
30 offense upon a person convicted of or placed on supervision  
31 for battery when the individual harmed was a sports  
32 official or coach at any level of competition and the act  
33 causing harm to the sports official or coach occurred  
34 within an athletic facility or within the immediate



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

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

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

34 (e) In cases where prosecution for aggravated criminal

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

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

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

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

13 (i) removal from the household;

14 (ii) restricted contact with the victim;

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

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

18 and

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

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

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

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

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

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

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

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

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

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

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

23 (j) In cases when prosecution for any violation of Section  
24 11-6, 11-8, 11-9, 11-11, 11-14, 11-15, 11-15.1, 11-16, 11-17,  
25 11-17.1, 11-18, 11-18.1, 11-19, 11-19.1, 11-19.2, 11-20.1,  
26 11-21, 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the Criminal  
27 Code of 1961, any violation of the Illinois Controlled  
28 Substances Act, or any violation of the Cannabis Control Act  
29 results in conviction, a disposition of court supervision, or  
30 an order of probation granted under Section 10 of the Cannabis  
31 Control Act or Section 410 of the Illinois Controlled Substance  
32 Act of a defendant, the court shall determine whether the  
33 defendant is employed by a facility or center as defined under  
34 the Child Care Act of 1969, a public or private elementary or

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

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

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

31 Otherwise, the defendant shall be sentenced as  
32 provided in this Chapter V.

33 (B) If the defendant has already been sentenced for a  
34 felony or misdemeanor offense, or has been placed on

1           probation under Section 10 of the Cannabis Control Act or  
2           Section 410 of the Illinois Controlled Substances Act, the  
3           court may, upon motion of the State's Attorney to suspend  
4           the sentence imposed, commit the defendant to the custody  
5           of the Attorney General of the United States or his or her  
6           designated agent when:

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

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

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

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

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

32           (n) The court may sentence a person convicted of a  
33           violation of Section 12-19, 12-21, or 16-1.3 of the Criminal  
34           Code of 1961 (i) to an impact incarceration program if the



1 person is otherwise eligible for that program under Section  
2 5-8-1.1, (ii) to community service, or (iii) if the person is  
3 an addict or alcoholic, as defined in the Alcoholism and Other  
4 Drug Abuse and Dependency Act, to a substance or alcohol abuse  
5 program licensed under that Act.

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

13 Section 99. Effective date. This Act takes effect upon  
14 becoming law."