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LRB094 04960 RLC 41825 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 results of an HIV/AIDS test administered under
31 subsection (i) of Section 3-6-2; and

32 (10) any other pertinent data concerning the person's
33 background, conduct, associations and family relationships

1 as may be required by the Department.

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

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

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

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

32 (e) All public agencies may make available to the
33 Department on request any factual data not otherwise privileged
34 as a matter of law in their possession in respect to

1 individuals committed to the Department.

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

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

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

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

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

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

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

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

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

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

33 (2) that the person is not capable of giving consent to
34 such treatment; the chief administrative officer may give

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

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

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

1 those facilities.

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

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

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

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

1 throughout Illinois; (2) display in all public places of
2 detention facilities and prisons in which video equipment is
3 available an HIV/AIDS informational video, produced by a
4 national organization with expertise in HIV/AIDS prevention;
5 (3) provide written information on the transmission and
6 prevention of HIV/AIDS, hepatitis C, and other sexually
7 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 as part of his or her comprehensive
17 physical examination and immediately prior to release of that
18 person, the committed person shall be required to take a test
19 for HIV/AIDS administered by the Department. ~~Prior to the~~
20 ~~release of any inmate who has a documented history of~~
21 ~~intravenous drug use, and upon the receipt of that inmate's~~
22 ~~written informed consent, the Department shall provide for the~~
23 ~~testing of such inmate for infection with human~~
24 ~~immunodeficiency virus (HIV) and any other identified~~
25 ~~causative agent of acquired immunodeficiency syndrome (AIDS).~~
26 The testing provided under this subsection shall consist of an
27 enzyme-linked immunosorbent assay (ELISA) test or such other
28 test as may be approved by the Illinois Department of Public
29 Health. If the test result is positive, the Western Blot Assay
30 or more reliable confirmatory test shall be administered. Each
31 committed person ~~All inmates tested in accordance with the~~
32 ~~provisions of this subsection~~ shall be provided with HIV/AIDS
33 ~~pre-test and post-test~~ counseling. If the test result is
34 positive, the committed person shall receive medical care for

1 the infection paid by the Department. The Department shall
2 develop a specialized discharge plan for a committed person who
3 tests positive for HIV/AIDS. The Department, in consultation
4 with the Department of Public Health and Prisoner Review Board,
5 shall provide community reentry services for committed persons
6 who test positive for HIV/AIDS.

7 One year after the implementation of this amendatory Act of
8 the 94th General Assembly, the Department of Corrections shall
9 report to the General Assembly on the effectiveness of the
10 program created by this amendatory Act in preventing HIV/AIDS.

11 ~~Notwithstanding any provision of this subsection to the~~
12 ~~contrary, the Department shall not be required to conduct the~~
13 ~~testing and counseling required by this subsection unless~~
14 ~~sufficient funds to cover all costs of such testing and~~
15 ~~counseling are appropriated for that purpose by the General~~
16 ~~Assembly.~~

17 (j) Any person convicted of a sex offense as defined in the
18 Sex Offender Management Board Act shall be required to receive
19 a sex offender evaluation prior to release into the community
20 from the Department of Corrections. The sex offender evaluation
21 shall be conducted in conformance with the standards and
22 guidelines developed under the Sex Offender Management Board
23 Act and by an evaluator approved by the Board.

24 (k) Any minor committed to the Department of
25 Corrections-Juvenile Division for a sex offense as defined by
26 the Sex Offender Management Board Act shall be required to
27 undergo sex offender treatment by a treatment provider approved
28 by the Board and conducted in conformance with the Sex Offender
29 Management Board Act.

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

32 (730 ILCS 5/5-1-9.1 new)

33 Sec. 5-1-9.1. HIV/AIDS. "HIV/AIDS" has the meaning

1 ascribed to it in subsection (j-5) of Section 3-1-2 of this
2 Code.

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

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

8 (b) The following options shall be appropriate
9 dispositions, alone or in combination, for all felonies and
10 misdemeanors other than those identified in subsection (c) of
11 this Section:

12 (1) A period of probation.

13 (2) A term of periodic imprisonment.

14 (3) A term of conditional discharge.

15 (4) A term of imprisonment.

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

20 (6) A fine.

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

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

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

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

32 (c) (1) When a defendant is found guilty of first degree
33 murder the State may either seek a sentence of imprisonment

1 under Section 5-8-1 of this Code, or where appropriate seek
2 a sentence of death under Section 9-1 of the Criminal Code
3 of 1961.

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

11 (A) First degree murder where the death penalty is
12 not imposed.

13 (B) Attempted first degree murder.

14 (C) A Class X felony.

15 (D) A violation of Section 401.1 or 407 of the
16 Illinois Controlled Substances Act, or a violation of
17 subdivision (c) (1) or (c) (2) of Section 401 of that Act
18 which relates to more than 5 grams of a substance
19 containing heroin or cocaine or an analog thereof.

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

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

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

31 (H) Criminal sexual assault.

32 (I) Aggravated battery of a senior citizen.

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

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

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

11 (K) Vehicular hijacking.

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

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

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

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

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

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

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

31 (S) (Blank).

32 (T) A second or subsequent violation of paragraph
33 (6.6) of subsection (a), subsection (c-5), or
34 subsection (d-5) of Section 401 of the Illinois

1 Controlled Substances Act.

2 (3) (Blank).

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

7 (4.1) (Blank).

8 (4.2) Except as provided in paragraph (4.3) of this
9 subsection (c), a minimum of 100 hours of community service
10 shall be imposed for a second violation of Section 6-303 of
11 the Illinois Vehicle Code.

12 (4.3) A minimum term of imprisonment of 30 days or 300
13 hours of community service, as determined by the court,
14 shall be imposed for a second violation of subsection (c)
15 of Section 6-303 of the Illinois Vehicle Code.

16 (4.4) Except as provided in paragraph (4.5) and
17 paragraph (4.6) of this subsection (c), a minimum term of
18 imprisonment of 30 days or 300 hours of community service,
19 as determined by the court, shall be imposed for a third or
20 subsequent violation of Section 6-303 of the Illinois
21 Vehicle Code.

22 (4.5) A minimum term of imprisonment of 30 days shall
23 be imposed for a third violation of subsection (c) of
24 Section 6-303 of the Illinois Vehicle Code.

25 (4.6) A minimum term of imprisonment of 180 days shall
26 be imposed for a fourth or subsequent violation of
27 subsection (c) of Section 6-303 of the Illinois Vehicle
28 Code.

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

32 (A) a period of conditional discharge;

33 (B) a fine;

34 (C) make restitution to the victim under Section

1 5-5-6 of this Code.

2 (5.1) In addition to any penalties imposed under
3 paragraph (5) of this subsection (c), and except as
4 provided in paragraph (5.2) or (5.3), 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 at least 90 days but
8 not more than one year, if the violation resulted in damage
9 to the property of another person.

10 (5.2) In addition to any penalties imposed under
11 paragraph (5) of this subsection (c), and except as
12 provided in paragraph (5.3), a person convicted of
13 violating subsection (c) of Section 11-907 of the Illinois
14 Vehicle Code shall have his or her driver's license,
15 permit, or privileges suspended for at least 180 days but
16 not more than 2 years, if the violation resulted in injury
17 to another person.

18 (5.3) In addition to any penalties imposed under
19 paragraph (5) of this subsection (c), a person convicted of
20 violating subsection (c) of Section 11-907 of the Illinois
21 Vehicle Code shall have his or her driver's license,
22 permit, or privileges suspended for 2 years, if the
23 violation resulted in the death of another person.

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

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

32 (8) When a defendant, over the age of 21 years, is
33 convicted of a Class 1 or Class 2 felony, after having
34 twice been convicted in any state or federal court of an

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

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

17 (10) (Blank).

18 (11) The court shall impose a minimum fine of \$1,000
19 for a first offense and \$2,000 for a second or subsequent
20 offense upon a person convicted of or placed on supervision
21 for battery when the individual harmed was a sports
22 official or coach at any level of competition and the act
23 causing harm to the sports official or coach occurred
24 within an athletic facility or within the immediate
25 vicinity of the athletic facility at which the sports
26 official or coach was an active participant of the athletic
27 contest held at the athletic facility. For the purposes of
28 this paragraph (11), "sports official" means a person at an
29 athletic contest who enforces the rules of the contest,
30 such as an umpire or referee; "athletic facility" means an
31 indoor or outdoor playing field or recreational area where
32 sports activities are conducted; and "coach" means a person
33 recognized as a coach by the sanctioning authority that
34 conducted the sporting event.

1 (12) ~~(11)~~ A person may not receive a disposition of
2 court supervision for a violation of Section 5-16 of the
3 Boat Registration and Safety Act if that person has
4 previously received a disposition of court supervision for
5 a violation of that Section.

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

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

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

31 (A) the defendant is willing to undergo a court
32 approved counseling program for a minimum duration of 2
33 years; or

34 (B) the defendant is willing to participate in a

1 court approved plan including but not limited to the
2 defendant's:

3 (i) removal from the household;

4 (ii) restricted contact with the victim;

5 (iii) continued financial support of the
6 family;

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

8 and

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

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

18 Probation may be revoked or modified pursuant to Section
19 5-6-4; except where the court determines at the hearing that
20 the defendant violated a condition of his or her probation
21 restricting contact with the victim or other family members or
22 commits another offense with the victim or other family
23 members, the court shall revoke the defendant's probation and
24 impose a term of imprisonment.

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

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

32 (g) Whenever a defendant is convicted of an offense under
33 Sections 11-14, 11-15, 11-15.1, 11-16, 11-17, 11-18, 11-18.1,
34 11-19, 11-19.1, 11-19.2, 12-13, 12-14, 12-14.1, 12-15 or 12-16

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

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

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

1 charge of criminal transmission of HIV under Section 12-16.2 of
2 the Criminal Code of 1961 against the defendant. The court
3 shall order that the cost of any such test shall be paid by the
4 county and may be taxed as costs against the convicted
5 defendant.

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

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

1 notification under this subsection.

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

1 determined by the court to be developmentally disabled or
2 otherwise mentally incapable of completing the educational or
3 vocational program.

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

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

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

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

21 Otherwise, the defendant shall be sentenced as
22 provided in this Chapter V.

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

31 (1) a final order of deportation has been issued
32 against the defendant pursuant to proceedings under
33 the Immigration and Nationality Act, and

34 (2) the deportation of the defendant would not

1 deprecate the seriousness of the defendant's conduct
2 and would not be inconsistent with the ends of justice.

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

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

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

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

30 (Source: P.A. 92-183, eff. 7-27-01; 92-248, eff. 8-3-01;
31 92-283, eff. 1-1-02; 92-340, eff. 8-10-01; 92-418, eff.
32 8-17-01; 92-422, eff. 8-17-01; 92-651, eff. 7-11-02; 92-698,
33 eff. 7-19-02; 93-44, eff. 7-1-03; 93-156, eff. 1-1-04; 93-169,
34 eff. 7-10-03; 93-301, eff. 1-1-04; 93-419, eff. 1-1-04; 93-546,

1 eff. 1-1-04; 93-694, eff. 7-9-04; 93-782, eff. 1-1-05; 93-800,
2 eff. 1-1-05; 93-1014, eff. 1-1-05; revised 10-25-04.)

3 Section 99. Effective date. This Act takes effect upon
4 becoming law.".