



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
HB1094

Introduced 02/08/05, by Rep. Chapin Rose

SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-5-3

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

Amends the Unified Code of Corrections. Provides that a period of probation, a term of periodic imprisonment, or conditional discharge shall not be imposed for the offense of aggravated criminal sexual abuse if the offender who held a position of trust, authority, or supervision in relation to the victim was the victim's teacher.

LRB094 06914 RLC 37026 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

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

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

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

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

15 (1) A period of probation.

16 (2) A term of periodic imprisonment.

17 (3) A term of conditional discharge.

18 (4) A term of imprisonment.

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22 (now repealed).

23 (6) A fine.

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

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

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

32 Neither a fine nor restitution shall be the sole

1 disposition for a felony and either or both may be imposed only
2 in conjunction with another disposition.

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

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

15 (A) First degree murder where the death penalty is
16 not imposed.

17 (B) Attempted first degree murder.

18 (C) A Class X felony.

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

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

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

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

35 (H) Criminal sexual assault.

36 (I) Aggravated battery of a senior citizen.

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

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

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

13 (K) Vehicular hijacking.

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

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

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

24 (O) A violation of Section 12-6.1 of the Criminal
25 Code of 1961.

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

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

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

33 (S) (Blank).

34 (T) A second or subsequent violation of paragraph
35 (6.6) of subsection (a), subsection (c-5), or
36 subsection (d-5) of Section 401 of the Illinois

1 Controlled Substances Act.

2 (U) Aggravated criminal sexual abuse under
3 subsection (f) of Section 12-16 of the Criminal Code of
4 1961 if the offender who held a position of trust,
5 authority, or supervision in relation to the victim was
6 the victim's teacher.

7 (3) (Blank).

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

12 (4.1) (Blank).

13 (4.2) Except as provided in paragraph (4.3) of this
14 subsection (c), a minimum of 100 hours of community service
15 shall be imposed for a second violation of Section 6-303 of
16 the Illinois Vehicle Code.

17 (4.3) A minimum term of imprisonment of 30 days or 300
18 hours of community service, as determined by the court,
19 shall be imposed for a second violation of subsection (c)
20 of Section 6-303 of the Illinois Vehicle Code.

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

27 (4.5) A minimum term of imprisonment of 30 days shall
28 be imposed for a third violation of subsection (c) of
29 Section 6-303 of the Illinois Vehicle Code.

30 (4.6) A minimum term of imprisonment of 180 days shall
31 be imposed for a fourth or subsequent violation of
32 subsection (c) of Section 6-303 of the Illinois Vehicle
33 Code.

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

- 1 (A) a period of conditional discharge;
- 2 (B) a fine;
- 3 (C) make restitution to the victim under Section
- 4 5-5-6 of this Code.

5 (5.1) In addition to any penalties imposed under

6 paragraph (5) of this subsection (c), and except as

7 provided in paragraph (5.2) or (5.3), a person convicted of

8 violating subsection (c) of Section 11-907 of the Illinois

9 Vehicle Code shall have his or her driver's license,

10 permit, or privileges suspended for at least 90 days but

11 not more than one year, if the violation resulted in damage

12 to the property of another person.

13 (5.2) In addition to any penalties imposed under

14 paragraph (5) of this subsection (c), and except as

15 provided in paragraph (5.3), a person convicted of

16 violating subsection (c) of Section 11-907 of the Illinois

17 Vehicle Code shall have his or her driver's license,

18 permit, or privileges suspended for at least 180 days but

19 not more than 2 years, if the violation resulted in injury

20 to another person.

21 (5.3) In addition to any penalties imposed under

22 paragraph (5) of this subsection (c), 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 2 years, if the

26 violation resulted in the death of another person.

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

28 disposition of probation or conditional discharge for a

29 Class 1 felony committed while he was serving a term of

30 probation or conditional discharge for a felony.

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

32 under Article 33B of the Criminal Code of 1961, the court

33 shall sentence the defendant to a term of natural life

34 imprisonment.

35 (8) When a defendant, over the age of 21 years, is

36 convicted of a Class 1 or Class 2 felony, after having

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

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

18 (10) (Blank).

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

36 (12) ~~(11)~~ A person may not receive a disposition of

1 court supervision for a violation of Section 5-16 of the
2 Boat Registration and Safety Act if that person has
3 previously received a disposition of court supervision for
4 a violation of that Section.

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

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

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

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

33 (B) the defendant is willing to participate in a
34 court approved plan including but not limited to the
35 defendant's:

36 (i) removal from the household;

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

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

15 Probation may be revoked or modified pursuant to Section
16 5-6-4; except where the court determines at the hearing that
17 the defendant violated a condition of his or her probation
18 restricting contact with the victim or other family members or
19 commits another offense with the victim or other family
20 members, the court shall revoke the defendant's probation and
21 impose a term of imprisonment.

22 For the purposes of this Section, "family member" and
23 "victim" shall have the meanings ascribed to them in Section
24 12-12 of the Criminal Code of 1961.

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

29 (g) Whenever a defendant is convicted of an offense under
30 Sections 11-14, 11-15, 11-15.1, 11-16, 11-17, 11-18, 11-18.1,
31 11-19, 11-19.1, 11-19.2, 12-13, 12-14, 12-14.1, 12-15 or 12-16
32 of the Criminal Code of 1961, the defendant shall undergo
33 medical testing to determine whether the defendant has any
34 sexually transmissible disease, including a test for infection
35 with human immunodeficiency virus (HIV) or any other identified
36 causative agent of acquired immunodeficiency syndrome (AIDS).

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

30 (g-5) When an inmate is tested for an airborne communicable
31 disease, as determined by the Illinois Department of Public
32 Health including but not limited to tuberculosis, the results
33 of the test shall be personally delivered by the warden or his
34 or her designee in a sealed envelope to the judge of the court
35 in which the inmate must appear for the judge's inspection in
36 camera if requested by the judge. Acting in accordance with the

1 best interests of those in the courtroom, the judge shall have
2 the discretion to determine what if any precautions need to be
3 taken to prevent transmission of the disease in the courtroom.

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

33 (i) All fines and penalties imposed under this Section for
34 any violation of Chapters 3, 4, 6, and 11 of the Illinois
35 Vehicle Code, or a similar provision of a local ordinance, and
36 any violation of the Child Passenger Protection Act, or a

1 similar provision of a local ordinance, shall be collected and
2 disbursed by the circuit clerk as provided under Section 27.5
3 of the Clerks of Courts Act.

4 (j) In cases when prosecution for any violation of Section
5 11-6, 11-8, 11-9, 11-11, 11-14, 11-15, 11-15.1, 11-16, 11-17,
6 11-17.1, 11-18, 11-18.1, 11-19, 11-19.1, 11-19.2, 11-20.1,
7 11-21, 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the Criminal
8 Code of 1961, any violation of the Illinois Controlled
9 Substances Act, or any violation of the Cannabis Control Act
10 results in conviction, a disposition of court supervision, or
11 an order of probation granted under Section 10 of the Cannabis
12 Control Act or Section 410 of the Illinois Controlled Substance
13 Act of a defendant, the court shall determine whether the
14 defendant is employed by a facility or center as defined under
15 the Child Care Act of 1969, a public or private elementary or
16 secondary school, or otherwise works with children under 18
17 years of age on a daily basis. When a defendant is so employed,
18 the court shall order the Clerk of the Court to send a copy of
19 the judgment of conviction or order of supervision or probation
20 to the defendant's employer by certified mail. If the employer
21 of the defendant is a school, the Clerk of the Court shall
22 direct the mailing of a copy of the judgment of conviction or
23 order of supervision or probation to the appropriate regional
24 superintendent of schools. The regional superintendent of
25 schools shall notify the State Board of Education of any
26 notification under this subsection.

27 (j-5) A defendant at least 17 years of age who is convicted
28 of a felony and who has not been previously convicted of a
29 misdemeanor or felony and who is sentenced to a term of
30 imprisonment in the Illinois Department of Corrections shall as
31 a condition of his or her sentence be required by the court to
32 attend educational courses designed to prepare the defendant
33 for a high school diploma and to work toward a high school
34 diploma or to work toward passing the high school level Test of
35 General Educational Development (GED) or to work toward
36 completing a vocational training program offered by the

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

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

26 (l) (A) Except as provided in paragraph (C) of subsection
27 (l), whenever a defendant, who is an alien as defined by
28 the Immigration and Nationality Act, is convicted of any
29 felony or misdemeanor offense, the court after sentencing
30 the defendant may, upon motion of the State's Attorney,
31 hold sentence in abeyance and remand the defendant to the
32 custody of the Attorney General of the United States or his
33 or her designated agent to be deported when:

34 (1) a final order of deportation has been issued
35 against the defendant pursuant to proceedings under
36 the Immigration and Nationality Act, and

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

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

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

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

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

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

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

33 (m) A person convicted of criminal defacement of property
34 under Section 21-1.3 of the Criminal Code of 1961, in which the
35 property damage exceeds \$300 and the property damaged is a
36 school building, shall be ordered to perform community service

1 that may include cleanup, removal, or painting over the
2 defacement.

3 (n) The court may sentence a person convicted of a
4 violation of Section 12-19, 12-21, or 16-1.3 of the Criminal
5 Code of 1961 (i) to an impact incarceration program if the
6 person is otherwise eligible for that program under Section
7 5-8-1.1, (ii) to community service, or (iii) if the person is
8 an addict or alcoholic, as defined in the Alcoholism and Other
9 Drug Abuse and Dependency Act, to a substance or alcohol abuse
10 program licensed under that Act.

11 (Source: P.A. 92-183, eff. 7-27-01; 92-248, eff. 8-3-01;
12 92-283, eff. 1-1-02; 92-340, eff. 8-10-01; 92-418, eff.
13 8-17-01; 92-422, eff. 8-17-01; 92-651, eff. 7-11-02; 92-698,
14 eff. 7-19-02; 93-44, eff. 7-1-03; 93-156, eff. 1-1-04; 93-169,
15 eff. 7-10-03; 93-301, eff. 1-1-04; 93-419, eff. 1-1-04; 93-546,
16 eff. 1-1-04; 93-694, eff. 7-9-04; 93-782, eff. 1-1-05; 93-800,
17 eff. 1-1-05; 93-1014, eff. 1-1-05; revised 10-25-04.)