



Judiciary II - Criminal Law Committee

**Filed: 3/2/2007**

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LRB095 04121 RLC 32365 a

1 AMENDMENT TO HOUSE BILL 231

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 231 by replacing  
3 everything after the enacting clause with the following:

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

6 (730 ILCS 5/3-1-2) (from Ch. 38, par. 1003-1-2)

7 Sec. 3-1-2. Definitions.

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

13 (a-5) "Sex offense" for the purposes of paragraph (16) of  
14 subsection (a) of Section 3-3-7, paragraph (10) of subsection  
15 (a) of Section 5-6-3, and paragraph (18) of subsection (c) of  
16 Section 5-6-3.1 only means:

1 (i) A violation of any of the following Sections of the  
2 Criminal Code of 1961: 10-7 (aiding and abetting child  
3 abduction under Section 10-5(b)(10)), 10-5(b)(10) (child  
4 luring), 11-6 (indecent solicitation of a child), 11-6.5  
5 (indecent solicitation of an adult), 11-15.1 (soliciting  
6 for a juvenile prostitute), 11-17.1 (keeping a place of  
7 juvenile prostitution), 11-18.1 (patronizing a juvenile  
8 prostitute), 11-19.1 (juvenile pimping), 11-19.2  
9 (exploitation of a child), 11-20.1 (child pornography),  
10 12-14.1 (predatory criminal sexual assault of a child), or  
11 12-33 (ritualized abuse of a child). An attempt to commit  
12 any of these offenses.

13 (ii) A violation of any of the following Sections of  
14 the Criminal Code of 1961: 12-13 (criminal sexual assault),  
15 12-14 (aggravated criminal sexual assault), 12-16  
16 (aggravated criminal sexual abuse), and subsection (a) of  
17 Section 12-15 (criminal sexual abuse). An attempt to commit  
18 any of these offenses.

19 (iii) A violation of any of the following Sections of  
20 the Criminal Code of 1961 when the defendant is not a  
21 parent of the victim:

22 10-1 (kidnapping),

23 10-2 (aggravated kidnapping),

24 10-3 (unlawful restraint),

25 10-3.1 (aggravated unlawful restraint).

26 An attempt to commit any of these offenses.

1           (iv) A violation of any former law of this State  
2           substantially equivalent to any offense listed in this  
3           subsection (a-5).

4           An offense violating federal law or the law of another  
5           state that is substantially equivalent to any offense listed in  
6           this subsection (a-5) shall constitute a sex offense for the  
7           purpose of this subsection (a-5). A finding or adjudication as  
8           a sexually dangerous person under any federal law or law of  
9           another state that is substantially equivalent to the Sexually  
10          Dangerous Persons Act shall constitute an adjudication for a  
11          sex offense for the purposes of this subsection (a-5).

12          (b) "Commitment" means a judicially determined placement  
13          in the custody of the Department of Corrections on the basis of  
14          delinquency or conviction.

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

21          (d) "Correctional Institution or Facility" means any  
22          building or part of a building where committed persons are kept  
23          in a secured manner.

24          (e) In the case of functions performed before the effective  
25          date of this amendatory Act of the 94th General Assembly,  
26          "Department" means the Department of Corrections of this State.

1 In the case of functions performed on or after the effective  
2 date of this amendatory Act of the 94th General Assembly,  
3 "Department" has the meaning ascribed to it in subsection  
4 (f-5).

5 (f) In the case of functions performed before the effective  
6 date of this amendatory Act of the 94th General Assembly,  
7 "Director" means the Director of the Department of Corrections.  
8 In the case of functions performed on or after the effective  
9 date of this amendatory Act of the 94th General Assembly,  
10 "Director" has the meaning ascribed to it in subsection (f-5).

11 (f-5) In the case of functions performed on or after the  
12 effective date of this amendatory Act of the 94th General  
13 Assembly, references to "Department" or "Director" refer to  
14 either the Department of Corrections or the Director of  
15 Corrections or to the Department of Juvenile Justice or the  
16 Director of Juvenile Justice unless the context is specific to  
17 the Department of Juvenile Justice or the Director of Juvenile  
18 Justice.

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

21 (h) "Discipline" means the rules and regulations for the  
22 maintenance of order and the protection of persons and property  
23 within the institutions and facilities of the Department and  
24 their enforcement.

25 (i) "Escape" means the intentional and unauthorized  
26 absence of a committed person from the custody of the

1 Department.

2 (j) "Furlough" means an authorized leave of absence from  
3 the Department of Corrections for a designated purpose and  
4 period of time.

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

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

10 (l) "Prisoner Review Board" means the Board established in  
11 Section 3-3-1(a), independent of the Department, to review  
12 rules and regulations with respect to good time credits, to  
13 hear charges brought by the Department against certain  
14 prisoners alleged to have violated Department rules with  
15 respect to good time credits, to set release dates for certain  
16 prisoners sentenced under the law in effect prior to the  
17 effective date of this Amendatory Act of 1977, to hear requests  
18 and make recommendations to the Governor with respect to  
19 pardon, reprieve or commutation, to set conditions for parole  
20 and mandatory supervised release and determine whether  
21 violations of those conditions justify revocation of parole or  
22 release, and to assume all other functions previously exercised  
23 by the Illinois Parole and Pardon Board.

24 (m) Whenever medical treatment, service, counseling, or  
25 care is referred to in this Unified Code of Corrections, such  
26 term may be construed by the Department or Court, within its

1 discretion, to include treatment, service or counseling by a  
2 Christian Science practitioner or nursing care appropriate  
3 therewith whenever request therefor is made by a person subject  
4 to the provisions of this Act.

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

8 (Source: P.A. 94-159, eff. 7-11-05; 94-696, eff. 6-1-06.)

9 (730 ILCS 5/3-5-1) (from Ch. 38, par. 1003-5-1)

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

11 (a) The Department of Corrections and the Department of  
12 Juvenile Justice shall maintain a master record file on each  
13 person committed to it, which shall contain the following  
14 information:

15 (1) all information from the committing court;

16 (2) reception summary;

17 (3) evaluation and assignment reports and  
18 recommendations;

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

20 (5) reports of disciplinary infractions and  
21 disposition;

22 (6) any parole plan;

23 (7) any parole reports;

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

25 (9) The results of an HIV/AIDS test administered under

1           subsection (i) of Section 3-6-2; and

2           (10) any other pertinent data concerning the person's  
3           background, conduct, associations and family relationships  
4           as may be required by the respective Department.

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

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

25          (c) The master file shall be maintained at a place  
26          convenient to its use by personnel of the respective Department

1 in charge of the person. When custody of a person is  
2 transferred from the Department to another department or  
3 agency, a summary of the file shall be forwarded to the  
4 receiving agency with such other information required by law or  
5 requested by the agency under rules and regulations of the  
6 respective Department.

7 (d) The master file of a person no longer in the custody of  
8 the respective Department shall be placed on inactive status  
9 and its use shall be restricted subject to rules and  
10 regulations of the Department.

11 (e) All public agencies may make available to the  
12 respective Department on request any factual data not otherwise  
13 privileged as a matter of law in their possession in respect to  
14 individuals committed to the respective Department.

15 (Source: P.A. 94-696, eff. 6-1-06.)

16 (730 ILCS 5/3-6-2) (from Ch. 38, par. 1003-6-2)

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

18 (a) Each institution and facility of the Department shall  
19 be administered by a chief administrative officer appointed by  
20 the Director. A chief administrative officer shall be  
21 responsible for all persons assigned to the institution or  
22 facility. The chief administrative officer shall administer  
23 the programs of the Department for the custody and treatment of  
24 such persons.

25 (b) The chief administrative officer shall have such



1 assistants as the Department may assign.

2 (c) The Director or Assistant Director shall have the  
3 emergency powers to temporarily transfer individuals without  
4 formal procedures to any State, county, municipal or regional  
5 correctional or detention institution or facility in the State,  
6 subject to the acceptance of such receiving institution or  
7 facility, or to designate any reasonably secure place in the  
8 State as such an institution or facility and to make transfers  
9 thereto. However, transfers made under emergency powers shall  
10 be reviewed as soon as practicable under Article 8, and shall  
11 be subject to Section 5-905 of the Juvenile Court Act of 1987.  
12 This Section shall not apply to transfers to the Department of  
13 Human Services which are provided for under Section 3-8-5 or  
14 Section 3-10-5.

15 (d) The Department shall provide educational programs for  
16 all committed persons so that all persons have an opportunity  
17 to attain the achievement level equivalent to the completion of  
18 the twelfth grade in the public school system in this State.  
19 Other higher levels of attainment shall be encouraged and  
20 professional instruction shall be maintained wherever  
21 possible. The Department may establish programs of mandatory  
22 education and may establish rules and regulations for the  
23 administration of such programs. A person committed to the  
24 Department who, during the period of his or her incarceration,  
25 participates in an educational program provided by or through  
26 the Department and through that program is awarded or earns the

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

16 (d-5) A person committed to the Department is entitled to  
17 confidential testing for infection with human immunodeficiency  
18 virus (HIV) and to counseling in connection with such testing,  
19 with no copay to the committed person. A person committed to  
20 the Department who has tested positive for infection with HIV  
21 is entitled to medical care while incarcerated, counseling, and  
22 referrals to support services, in connection with that positive  
23 test result. Implementation of this subsection (d-5) is subject  
24 to appropriation.

25 (e) A person committed to the Department who becomes in  
26 need of medical or surgical treatment but is incapable of

1 giving consent thereto shall receive such medical or surgical  
2 treatment by the chief administrative officer consenting on the  
3 person's behalf. Before the chief administrative officer  
4 consents, he or she shall obtain the advice of one or more  
5 physicians licensed to practice medicine in all its branches in  
6 this State. If such physician or physicians advise:

7 (1) that immediate medical or surgical treatment is  
8 required relative to a condition threatening to cause  
9 death, damage or impairment to bodily functions, or  
10 disfigurement; and

11 (2) that the person is not capable of giving consent to  
12 such treatment; the chief administrative officer may give  
13 consent for such medical or surgical treatment, and such  
14 consent shall be deemed to be the consent of the person for  
15 all purposes, including, but not limited to, the authority  
16 of a physician to give such treatment.

17 (e-5) If a physician providing medical care to a committed  
18 person on behalf of the Department advises the chief  
19 administrative officer that the committed person's mental or  
20 physical health has deteriorated as a result of the cessation  
21 of ingestion of food or liquid to the point where medical or  
22 surgical treatment is required to prevent death, damage, or  
23 impairment to bodily functions, the chief administrative  
24 officer may authorize such medical or surgical treatment.

25 (f) In the event that the person requires medical care and  
26 treatment at a place other than the institution or facility,

1 the person may be removed therefrom under conditions prescribed  
2 by the Department. The Department shall require the committed  
3 person receiving medical or dental services on a non-emergency  
4 basis to pay a \$2 co-payment to the Department for each visit  
5 for medical or dental services. The amount of each co-payment  
6 shall be deducted from the committed person's individual  
7 account. A committed person who has a chronic illness, as  
8 defined by Department rules and regulations, shall be exempt  
9 from the \$2 co-payment for treatment of the chronic illness. A  
10 committed person shall not be subject to a \$2 co-payment for  
11 follow-up visits ordered by a physician, who is employed by, or  
12 contracts with, the Department. A committed person who is  
13 indigent is exempt from the \$2 co-payment and is entitled to  
14 receive medical or dental services on the same basis as a  
15 committed person who is financially able to afford the  
16 co-payment. Notwithstanding any other provision in this  
17 subsection (f) to the contrary, any person committed to any  
18 facility operated by the Department of Juvenile Justice, as set  
19 forth in Section 3-2.5-15 of this Code, is exempt from the  
20 co-payment requirement for the duration of confinement in those  
21 facilities.

22 (g) Any person having sole custody of a child at the time  
23 of commitment or any woman giving birth to a child after her  
24 commitment, may arrange through the Department of Children and  
25 Family Services for suitable placement of the child outside of  
26 the Department of Corrections. The Director of the Department

1 of Corrections may determine that there are special reasons why  
2 the child should continue in the custody of the mother until  
3 the child is 6 years old.

4 (h) The Department may provide Family Responsibility  
5 Services which may consist of, but not be limited to the  
6 following:

7 (1) family advocacy counseling;

8 (2) parent self-help group;

9 (3) parenting skills training;

10 (4) parent and child overnight program;

11 (5) parent and child reunification counseling, either  
12 separately or together, preceding the inmate's release;  
13 and

14 (6) a prerelease reunification staffing involving the  
15 family advocate, the inmate and the child's counselor, or  
16 both and the inmate.

17 (i) Upon admission of a committed person to a Department of  
18 Corrections facility as part of his or her comprehensive  
19 physical examination and immediately prior to release of that  
20 person, the committed person shall be offered to take a test  
21 for HIV/AIDS administered by the Department. ~~Prior to the~~  
22 ~~release of any inmate who has a documented history of~~  
23 ~~intravenous drug use, and upon the receipt of that inmate's~~  
24 ~~written informed consent, the Department shall provide for the~~  
25 ~~testing of such inmate for infection with human~~  
26 ~~immunodeficiency virus (HIV) and any other identified~~

1 ~~causative agent of acquired immunodeficiency syndrome (AIDS).~~

2 The testing provided under this subsection shall consist of an  
3 enzyme-linked immunosorbent assay (ELISA) test or such other  
4 test as may be approved by the Illinois Department of Public  
5 Health. If the test result is positive, the Western Blot Assay  
6 or more reliable confirmatory test shall be administered. All  
7 inmates tested in accordance with the provisions of this  
8 subsection shall be provided with HIV/AIDS ~~pre test and~~  
9 ~~post test~~ counseling. If the test result is positive, the  
10 committed person shall receive medical care for the infection  
11 paid by the Department during the committed person's  
12 incarceration.

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

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

26 (k) Any minor committed to the Department of Juvenile

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

6 (1) Prior to the release of any inmate, the Department must  
7 provide the inmate with the option of testing for infection  
8 with human immunodeficiency virus (HIV), as well as counseling  
9 in connection with such testing, with no copayment for the  
10 test. At the same time, the Department shall require each such  
11 inmate to sign a form stating that the inmate has been informed  
12 of his or her rights with respect to the testing required to be  
13 offered under this subsection (1) and providing the inmate with  
14 an opportunity to indicate either that he or she wants to be  
15 tested or that he or she does not want to be tested. The  
16 Department, in consultation with the Department of Public  
17 Health, shall prescribe the contents of the form. The testing  
18 provided under this subsection (1) shall consist of an  
19 enzyme-linked immunosorbent assay (ELISA) test or any other  
20 test approved by the Department of Public Health. If the test  
21 result is positive, the Western Blot Assay or more reliable  
22 confirmatory test shall be administered.

23 Prior to the release of an inmate who the Department knows  
24 has tested positive for infection with HIV, the Department in a  
25 timely manner shall offer the inmate transitional case  
26 management, including referrals to other support services.

1           Implementation of this subsection (1) is subject to  
2 appropriation.

3           (Source: P.A. 93-616, eff. 1-1-04; 93-928, eff. 1-1-05; 94-629,  
4 eff. 1-1-06; 94-696, eff. 6-1-06.)

5           Section 99. Effective date. This Act takes effect upon  
6 becoming law.".