



Sen. A. J. Wilhelmi

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1 AMENDMENT TO SENATE BILL 697

2 AMENDMENT NO. _____. Amend Senate Bill 697 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Criminal Code of 1961 is amended by
5 changing Sections 11-20.1A and 11-20.2 and by adding Section
6 11-20.3 as follows:

7 (720 ILCS 5/11-20.1A) (from Ch. 38, par. 11-20.1A)
8 Sec. 11-20.1A. Forfeitures.

9 (a) A person who commits the offense of keeping a place of
10 juvenile prostitution, exploitation of a child, or child
11 pornography under Section 11-17.1, 11-19.2, ~~or~~ 11-20.1, or
12 11-20.3 of this Code shall forfeit to the State of Illinois:

13 (1) Any profits or proceeds and any interest or
14 property he or she has acquired or maintained in violation
15 of Section 11-17.1, 11-19.2, ~~or~~ 11-20.1, or 11-20.3 of this
16 Code that the sentencing court determines, after a

1 forfeiture hearing, to have been acquired or maintained as
2 a result of keeping a place of juvenile prostitution,
3 exploitation of a child, ~~or~~ child pornography, or
4 aggravated child pornography.

5 (2) Any interest in, security of, claim against, or
6 property or contractual right of any kind affording a
7 source of influence over any enterprise that he or she has
8 established, operated, controlled, or conducted in
9 violation of Section 11-17.1, 11-19.2, ~~or~~ 11-20.1, or
10 11-20.3 of this Code that the sentencing court determines,
11 after a forfeiture hearing, to have been acquired or
12 maintained as a result of keeping a place of juvenile
13 prostitution, exploitation of a child, ~~or~~ child
14 pornography, or aggravated child pornography.

15 (3) Any computer that contains a depiction of child
16 pornography in any encoded or decoded format in violation
17 of Section 11-20.1 of this Code. For purposes of this
18 paragraph (3), "computer" has the meaning ascribed to it in
19 Section 16D-2 of this Code.

20 (b) (1) The court shall, upon petition by the Attorney
21 General or State's Attorney at any time following
22 sentencing, conduct a hearing to determine whether any
23 property or property interest is subject to forfeiture
24 under this Section. At the forfeiture hearing the people
25 shall have the burden of establishing, by a preponderance
26 of the evidence, that property or property interests are

1 subject to forfeiture under this Section.

2 (2) In any action brought by the People of the State of
3 Illinois under this Section, wherein any restraining
4 order, injunction or prohibition or any other action in
5 connection with any property or interest subject to
6 forfeiture under this Section is sought, the circuit court
7 presiding over the trial of the person or persons charged
8 with keeping a place of juvenile prostitution,
9 exploitation of a child or child pornography shall first
10 determine whether there is probable cause to believe that
11 the person or persons so charged have committed the offense
12 of keeping a place of juvenile prostitution, exploitation
13 of a child or child pornography and whether the property or
14 interest is subject to forfeiture pursuant to this Section.
15 In order to make such a determination, prior to entering
16 any such order, the court shall conduct a hearing without a
17 jury, wherein the People shall establish that there is: (i)
18 probable cause that the person or persons so charged have
19 committed the offense of keeping a place of juvenile
20 prostitution, exploitation of a child or child pornography
21 and (ii) probable cause that any property or interest may
22 be subject to forfeiture pursuant to this Section. Such
23 hearing may be conducted simultaneously with a preliminary
24 hearing, if the prosecution is commenced by information or
25 complaint, or by motion of the People, at any stage in the
26 proceedings. The court may accept a finding of probable

1 cause at a preliminary hearing following the filing of an
2 information charging the offense of keeping a place of
3 juvenile prostitution, exploitation of a child or child
4 pornography or the return of an indictment by a grand jury
5 charging the offense of keeping a place of juvenile
6 prostitution, exploitation of a child or child pornography
7 as sufficient evidence of probable cause as provided in
8 item (i) above. Upon such a finding, the circuit court
9 shall enter such restraining order, injunction or
10 prohibition, or shall take such other action in connection
11 with any such property or other interest subject to
12 forfeiture, as is necessary to insure that such property is
13 not removed from the jurisdiction of the court, concealed,
14 destroyed or otherwise disposed of by the owner of that
15 property or interest prior to a forfeiture hearing under
16 this Section. The Attorney General or State's Attorney
17 shall file a certified copy of such restraining order,
18 injunction or other prohibition with the recorder of deeds
19 or registrar of titles of each county where any such
20 property of the defendant may be located. No such
21 injunction, restraining order or other prohibition shall
22 affect the rights of any bona fide purchaser, mortgagee,
23 judgment creditor or other lienholder arising prior to the
24 date of such filing. The court may, at any time, upon
25 verified petition by the defendant or an innocent owner or
26 innocent bona fide third party lienholder who neither had

1 knowledge of, nor consented to, the illegal act or
2 omission, conduct a hearing to release all or portions of
3 any such property or interest which the court previously
4 determined to be subject to forfeiture or subject to any
5 restraining order, injunction, or prohibition or other
6 action. The court may release such property to the
7 defendant or innocent owner or innocent bona fide third
8 party lienholder who neither had knowledge of, nor
9 consented to, the illegal act or omission for good cause
10 shown and within the sound discretion of the court.

11 A forfeiture under this Section may be commenced by the
12 Attorney General or a State's Attorney.

13 (3) Upon conviction of a person of keeping a place of
14 juvenile prostitution, exploitation of a child or child
15 pornography, the court shall authorize the Attorney
16 General to seize all property or other interest declared
17 forfeited under this Section upon such terms and conditions
18 as the court shall deem proper.

19 (4) The Attorney General is authorized to sell all
20 property forfeited and seized pursuant to this Section,
21 unless such property is required by law to be destroyed or
22 is harmful to the public, and, after the deduction of all
23 requisite expenses of administration and sale, shall
24 distribute the proceeds of such sale, along with any moneys
25 forfeited or seized, in accordance with subsection (c) of
26 this Section.

1 (c) All monies forfeited and the sale proceeds of all other
2 property forfeited and seized under this Section shall be
3 distributed as follows:

4 (1) One-half shall be divided equally among all State
5 agencies and units of local government whose officers or
6 employees conducted the investigation which resulted in
7 the forfeiture; and

8 (2) One-half shall be deposited in the Violent Crime
9 Victims Assistance Fund.

10 (Source: P.A. 91-229, eff. 1-1-00; 92-175, eff. 1-1-02.)

11 (720 ILCS 5/11-20.2) (from Ch. 38, par. 11-20.2)

12 Sec. 11-20.2. Duty to report child pornography.

13 (a) Any commercial film and photographic print processor or
14 computer technician who has knowledge of or observes, within
15 the scope of his professional capacity or employment, any film,
16 photograph, videotape, negative, ~~or~~ slide, computer hard drive
17 or any other magnetic or optical media which depicts a child
18 whom the processor or computer technician knows or reasonably
19 should know to be under the age of 18 where such child is:

20 (i) actually or by simulation engaged in any act of sexual
21 penetration or sexual conduct ~~intercourse~~ with any person or
22 animal; or

23 (ii) actually or by simulation engaged in any act of sexual
24 penetration or sexual conduct ~~contact~~ involving the sex organs
25 of the child and the mouth, anus, or sex organs of another

1 person or animal; or which involves the mouth, anus or sex
2 organs of the child and the sex organs of another person or
3 animal; or

4 (iii) actually or by simulation engaged in any act of
5 masturbation; or

6 (iv) actually or by simulation portrayed as being the
7 object of, or otherwise engaged in, any act of lewd fondling,
8 touching, or caressing involving another person or animal; or

9 (v) actually or by simulation engaged in any act of
10 excretion or urination within a sexual context; or

11 (vi) actually or by simulation portrayed or depicted as
12 bound, fettered, or subject to sadistic, masochistic, or
13 sadomasochistic abuse in any sexual context; or

14 (vii) depicted or portrayed in any pose, posture or setting
15 involving a lewd exhibition of the unclothed or transparently
16 clothed genitals, pubic area, buttocks, or, if such person is
17 female, a fully or partially developed breast of the child or
18 other person;

19 shall report such instance to a peace officer in the county or
20 municipality in which the film, photograph, videotape,
21 negative, slide, computer hard drive or magnetic or optical
22 media was submitted immediately or as soon as possible. Failure
23 to make such report shall be a business offense with a fine of
24 \$1,000.

25 (b) For the purposes of this Section, a "computer
26 technician" is a person who installs, maintains,

1 troubleshoots, repairs or upgrades computer hardware,
2 software, computer networks, peripheral equipment, electronic
3 mail systems, or provides user assistance for any of the
4 aforementioned tasks.

5 (Source: P.A. 84-1280.)

6 (720 ILCS 5/11-20.3 new)

7 Sec. 11-20.3. Aggravated child pornography.

8 (a) A person commits the offense of aggravated child
9 pornography who:

10 (1) films, videotapes, photographs, or otherwise
11 depicts or portrays by means of any similar visual medium
12 or reproduction or depicts by computer any child whom he or
13 she knows or reasonably should know to be under the age of
14 13 years where such child is:

15 (i) actually or by simulation engaged in any act of
16 sexual penetration or sexual conduct with any person or
17 animal; or

18 (ii) actually or by simulation engaged in any act
19 of sexual penetration or sexual conduct involving the
20 sex organs of the child and the mouth, anus, or sex
21 organs of another person or animal; or which involves
22 the mouth, anus or sex organs of the child and the sex
23 organs of another person or animal; or

24 (iii) actually or by simulation engaged in any act
25 of masturbation; or

1 (iv) actually or by simulation portrayed as being
2 the object of, or otherwise engaged in, any act of lewd
3 fondling, touching, or caressing involving another
4 person or animal; or

5 (v) actually or by simulation engaged in any act of
6 excretion or urination within a sexual context; or

7 (vi) actually or by simulation portrayed or
8 depicted as bound, fettered, or subject to sadistic,
9 masochistic, or sadomasochistic abuse in any sexual
10 context; or

11 (vii) depicted or portrayed in any pose, posture or
12 setting involving a lewd exhibition of the unclothed or
13 transparently clothed genitals, pubic area, buttocks,
14 or, if such person is female, a fully or partially
15 developed breast of the child or other person; or

16 (2) with the knowledge of the nature or content
17 thereof, reproduces, disseminates, offers to disseminate,
18 exhibits or possesses with intent to disseminate any film,
19 videotape, photograph or other similar visual reproduction
20 or depiction by computer of any child whom the person knows
21 or reasonably should know to be under the age of 13 engaged
22 in any activity described in subparagraphs (i) through
23 (vii) of paragraph (1) of this subsection; or

24 (3) with knowledge of the subject matter or theme
25 thereof, produces any stage play, live performance, film,
26 videotape or other similar visual portrayal or depiction by

1 computer which includes a child whom the person knows or
2 reasonably should know to be under the age of 13 engaged in
3 any activity described in subparagraphs (i) through (vii)
4 of paragraph (1) of this subsection; or

5 (4) solicits, uses, persuades, induces, entices, or
6 coerces any child whom he or she knows or reasonably should
7 know to be under the age of 13 to appear in any stage play,
8 live presentation, film, videotape, photograph or other
9 similar visual reproduction or depiction by computer in
10 which the child or severely or profoundly mentally retarded
11 person is or will be depicted, actually or by simulation,
12 in any act, pose or setting described in subparagraphs (i)
13 through (vii) of paragraph (1) of this subsection; or

14 (5) is a parent, step-parent, legal guardian or other
15 person having care or custody of a child whom the person
16 knows or reasonably should know to be under the age of 13
17 and who knowingly permits, induces, promotes, or arranges
18 for such child to appear in any stage play, live
19 performance, film, videotape, photograph or other similar
20 visual presentation, portrayal or simulation or depiction
21 by computer of any act or activity described in
22 subparagraphs (i) through (vii) of paragraph (1) of this
23 subsection; or

24 (6) with knowledge of the nature or content thereof,
25 possesses any film, videotape, photograph or other similar
26 visual reproduction or depiction by computer of any child

1 whom the person knows or reasonably should know to be under
2 the age of 13 engaged in any activity described in
3 subparagraphs (i) through (vii) of paragraph (1) of this
4 subsection; or

5 (7) solicits, or knowingly uses, persuades, induces,
6 entices, or coerces a person to provide a child under the
7 age of 13 to appear in any videotape, photograph, film,
8 stage play, live presentation, or other similar visual
9 reproduction or depiction by computer in which the child
10 will be depicted, actually or by simulation, in any act,
11 pose, or setting described in subparagraphs (i) through
12 (vii) of paragraph (1) of this subsection.

13 (b) (1) It shall be an affirmative defense to a charge of
14 aggravated child pornography that the defendant reasonably
15 believed, under all of the circumstances, that the child was 13
16 years of age or older, but only where, prior to the act or acts
17 giving rise to a prosecution under this Section, he or she took
18 some affirmative action or made a bonafide inquiry designed to
19 ascertain whether the child was 13 years of age or older and
20 his or her reliance upon the information so obtained was
21 clearly reasonable.

22 (2) The charge of aggravated child pornography shall not
23 apply to the performance of official duties by law enforcement
24 or prosecuting officers or persons employed by law enforcement
25 or prosecuting agencies, court personnel or attorneys, nor to
26 bonafide treatment or professional education programs

1 conducted by licensed physicians, psychologists or social
2 workers.

3 (3) If the defendant possessed more than 3 of the same
4 film, videotape or visual reproduction or depiction by computer
5 in which aggravated child pornography is depicted, then the
6 trier of fact may infer that the defendant possessed such
7 materials with the intent to disseminate them.

8 (4) The charge of aggravated child pornography does not
9 apply to a person who does not voluntarily possess a film,
10 videotape, or visual reproduction or depiction by computer in
11 which aggravated child pornography is depicted. Possession is
12 voluntary if the defendant knowingly procures or receives a
13 film, videotape, or visual reproduction or depiction for a
14 sufficient time to be able to terminate his or her possession.

15 (c) Sentence: (1) A person who commits a violation of
16 paragraph (1), (2), (3), (4), (5), or (7) of subsection (a) is
17 guilty of a Class X felony with a mandatory minimum fine of
18 \$2,000 and a maximum fine of \$100,000.

19 (2) A person who commits a violation of paragraph (6) of
20 subsection (a) is guilty of a Class 2 felony with a mandatory
21 minimum fine of \$1000 and a maximum fine of \$100,000.

22 (3) A person who commits a violation of paragraph (1), (2),
23 (3), (4), (5), or (7) of subsection (a) where the defendant has
24 previously been convicted under the laws of this State or any
25 other state of the offense of child pornography, aggravated
26 child pornography, aggravated criminal sexual abuse,

1 aggravated criminal sexual assault, predatory criminal sexual
2 assault of a child, or any of the offenses formerly known as
3 rape, deviate sexual assault, indecent liberties with a child,
4 or aggravated indecent liberties with a child where the victim
5 was under the age of 18 years or an offense that is
6 substantially equivalent to those offenses, is guilty of a
7 Class X Felony for which the person shall be sentenced to a
8 term of imprisonment of not less than 9 years with a mandatory
9 minimum fine of \$2,000 and a maximum fine of \$100,000.

10 (4) A person who commits a violation of paragraph (6) of
11 subsection (a) where the defendant has previously been
12 convicted under the laws of this State or any other state of
13 the offense of child pornography, aggravated child
14 pornography, aggravated criminal sexual abuse, aggravated
15 criminal sexual assault, predatory criminal sexual assault of a
16 child, or any of the offenses formerly known as rape, deviate
17 sexual assault, indecent liberties with a child, or aggravated
18 indecent liberties with a child where the victim was under the
19 age of 18 years or an offense that is substantially equivalent
20 to those offenses, is guilty of a Class 1 felony with a
21 mandatory minimum fine of \$1000 and a maximum fine of \$100,000.

22 (d) If a person is convicted of a second or subsequent
23 violation of this Section within 10 years of a prior
24 conviction, the court shall order a presentence psychiatric
25 examination of the person. The examiner shall report to the
26 court whether treatment of the person is necessary.

1 (e) Any film, videotape, photograph or other similar visual
2 reproduction or depiction by computer which includes a child
3 under the age of 13 engaged in any activity described in
4 subparagraphs (i) through (vii) or paragraph (1) of subsection
5 (a), and any material or equipment used or intended for use in
6 photographing, filming, printing, producing, reproducing,
7 manufacturing, projecting, exhibiting, depiction by computer,
8 or disseminating such material shall be seized and forfeited in
9 the manner, method and procedure provided by Section 36-1 of
10 this Code for the seizure and forfeiture of vessels, vehicles
11 and aircraft.

12 (e-5) Upon the conclusion of a case brought under this
13 Section, the court shall seal all evidence depicting a victim
14 or witness that is sexually explicit. The evidence may be
15 unsealed and viewed, on a motion of the party seeking to unseal
16 and view the evidence, only for good cause shown and in the
17 discretion of the court. The motion must expressly set forth
18 the purpose for viewing the material. The State's attorney and
19 the victim, if possible, shall be provided reasonable notice of
20 the hearing on the motion to unseal the evidence. Any person
21 entitled to notice of a hearing under this subsection (e-5) may
22 object to the motion.

23 (f) Definitions. For the purposes of this Section:

24 (1) "Disseminate" means (i) to sell, distribute,
25 exchange or transfer possession, whether with or without
26 consideration or (ii) to make a depiction by computer

1 available for distribution or downloading through the
2 facilities of any telecommunications network or through
3 any other means of transferring computer programs or data
4 to a computer.

5 (2) "Produce" means to direct, promote, advertise,
6 publish, manufacture, issue, present or show.

7 (3) "Reproduce" means to make a duplication or copy.

8 (4) "Depict by computer" means to generate or create,
9 or cause to be created or generated, a computer program or
10 data that, after being processed by a computer either alone
11 or in conjunction with one or more computer programs,
12 results in a visual depiction on a computer monitor,
13 screen, or display.

14 (5) "Depiction by computer" means a computer program or
15 data that, after being processed by a computer either alone
16 or in conjunction with one or more computer programs,
17 results in a visual depiction on a computer monitor,
18 screen, or display.

19 (6) "Computer", "computer program", and "data" have
20 the meanings ascribed to them in Section 16D-2 of this
21 Code.

22 (7) For the purposes of this Section, "child" means a
23 person, either in part, or in total, under the age of 13,
24 regardless of the method by which the film, videotape,
25 photograph, or other similar visual medium or reproduction
26 or depiction by computer is created, adopted, or modified

1 to appear as such.

2 (8) "Sexual penetration" and "sexual conduct" have the
3 meanings ascribed to them in Section 12-12 of this Code.

4 (g) When a charge of aggravated child pornography is
5 brought, the age of the child is an element of the offense to
6 be resolved by the trier of fact as either exceeding or not
7 exceeding the age in question. The trier of fact can rely on
8 its own everyday observations and common experiences in making
9 this determination.

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

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

13 Sec. 5-5-3. Disposition.

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

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

21 (1) A period of probation.

22 (2) A term of periodic imprisonment.

23 (3) A term of conditional discharge.

24 (4) A term of imprisonment.

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

5 (6) A fine.

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

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

10 (9) A term of imprisonment in combination with a term
11 of probation when the offender has been admitted into a
12 drug court program under Section 20 of the Drug Court
13 Treatment Act.

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

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

22 (2) A period of probation, a term of periodic
23 imprisonment or conditional discharge shall not be imposed
24 for the following offenses. The court shall sentence the
25 offender to not less than the minimum term of imprisonment
26 set forth in this Code for the following offenses, and may

1 order a fine or restitution or both in conjunction with
2 such term of imprisonment:

3 (A) First degree murder where the death penalty is
4 not imposed.

5 (B) Attempted first degree murder.

6 (C) A Class X felony.

7 (D) A violation of Section 401.1 or 407 of the
8 Illinois Controlled Substances Act, or a violation of
9 subdivision (c) (1) or (c) (2) of Section 401 of that Act
10 which relates to more than 5 grams of a substance
11 containing heroin or cocaine or an analog thereof.

12 (E) A violation of Section 5.1 or 9 of the Cannabis
13 Control Act.

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

20 (F-5) A violation of Section 24-1, 24-1.1, or
21 24-1.6 of the Criminal Code of 1961 for which
22 imprisonment is prescribed in those Sections.

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

26 (H) Criminal sexual assault.

1 (I) Aggravated battery of a senior citizen.

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

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

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

14 (K) Vehicular hijacking.

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

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

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

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

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

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

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

8 (S) (Blank).

9 (T) A second or subsequent violation of the
10 Methamphetamine Control and Community Protection Act.

11 (U) A violation of paragraph (4) of subsection (c)
12 of Section 11-20.3 of the Criminal Code of 1961.

13 (3) (Blank).

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

18 (4.1) (Blank).

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

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

1 (4.4) Except as provided in paragraph (4.5) and
2 paragraph (4.6) of this subsection (c), a minimum term of
3 imprisonment of 30 days or 300 hours of community service,
4 as determined by the court, shall be imposed for a third or
5 subsequent violation of Section 6-303 of the Illinois
6 Vehicle Code.

7 (4.5) A minimum term of imprisonment of 30 days shall
8 be imposed for a third violation of subsection (c) of
9 Section 6-303 of the Illinois Vehicle Code.

10 (4.6) A minimum term of imprisonment of 180 days shall
11 be imposed for a fourth or subsequent violation of
12 subsection (c) of Section 6-303 of the Illinois Vehicle
13 Code.

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

17 (A) a period of conditional discharge;

18 (B) a fine;

19 (C) make restitution to the victim under Section
20 5-5-6 of this Code.

21 (5.1) In addition to any penalties imposed under
22 paragraph (5) of this subsection (c), and except as
23 provided in paragraph (5.2) or (5.3), a person convicted of
24 violating subsection (c) of Section 11-907 of the Illinois
25 Vehicle Code shall have his or her driver's license,
26 permit, or privileges suspended for at least 90 days but

1 not more than one year, if the violation resulted in damage
2 to the property of another person.

3 (5.2) In addition to any penalties imposed under
4 paragraph (5) of this subsection (c), and except as
5 provided in paragraph (5.3), a person convicted of
6 violating subsection (c) of Section 11-907 of the Illinois
7 Vehicle Code shall have his or her driver's license,
8 permit, or privileges suspended for at least 180 days but
9 not more than 2 years, if the violation resulted in injury
10 to another person.

11 (5.3) In addition to any penalties imposed under
12 paragraph (5) of this subsection (c), 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 2 years, if the
16 violation resulted in the death of another person.

17 (5.4) In addition to any penalties imposed under
18 paragraph (5) of this subsection (c), a person convicted of
19 violating Section 3-707 of the Illinois Vehicle Code shall
20 have his or her driver's license, permit, or privileges
21 suspended for 3 months and until he or she has paid a
22 reinstatement fee of \$100.

23 (5.5) In addition to any penalties imposed under
24 paragraph (5) of this subsection (c), a person convicted of
25 violating Section 3-707 of the Illinois Vehicle Code during
26 a period in which his or her driver's license, permit, or

1 privileges were suspended for a previous violation of that
2 Section shall have his or her driver's license, permit, or
3 privileges suspended for an additional 6 months after the
4 expiration of the original 3-month suspension and until he
5 or she has paid a reinstatement fee of \$100.

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

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

14 (8) When a defendant, over the age of 21 years, is
15 convicted of a Class 1 or Class 2 felony, after having
16 twice been convicted in any state or federal court of an
17 offense that contains the same elements as an offense now
18 classified in Illinois as a Class 2 or greater Class felony
19 and such charges are separately brought and tried and arise
20 out of different series of acts, such defendant shall be
21 sentenced as a Class X offender. This paragraph shall not
22 apply unless (1) the first felony was committed after the
23 effective date of this amendatory Act of 1977; and (2) the
24 second felony was committed after conviction on the first;
25 and (3) the third felony was committed after conviction on
26 the second. A person sentenced as a Class X offender under

1 this paragraph is not eligible to apply for treatment as a
2 condition of probation as provided by Section 40-10 of the
3 Alcoholism and Other Drug Abuse and Dependency Act.

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

7 (10) (Blank).

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

25 (12) A person may not receive a disposition of court
26 supervision for a violation of Section 5-16 of the Boat

1 Registration and Safety Act if that person has previously
2 received a disposition of court supervision for a violation
3 of that Section.

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

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

1 may impose a sentence of probation only where:

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

3 (A) the defendant is willing to undergo a court
4 approved counseling program for a minimum duration of 2
5 years; or

6 (B) the defendant is willing to participate in a
7 court approved plan including but not limited to the
8 defendant's:

9 (i) removal from the household;

10 (ii) restricted contact with the victim;

11 (iii) continued financial support of the
12 family;

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

14 and

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

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

24 Probation may be revoked or modified pursuant to Section
25 5-6-4; except where the court determines at the hearing that
26 the defendant violated a condition of his or her probation

1 restricting contact with the victim or other family members or
2 commits another offense with the victim or other family
3 members, the court shall revoke the defendant's probation and
4 impose a term of imprisonment.

5 For the purposes of this Section, "family member" and
6 "victim" shall have the meanings ascribed to them in Section
7 12-12 of the Criminal Code of 1961.

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

12 (g) Whenever a defendant is convicted of an offense under
13 Sections 11-14, 11-15, 11-15.1, 11-16, 11-17, 11-18, 11-18.1,
14 11-19, 11-19.1, 11-19.2, 12-13, 12-14, 12-14.1, 12-15 or 12-16
15 of the Criminal Code of 1961, the defendant shall undergo
16 medical testing to determine whether the defendant has any
17 sexually transmissible disease, including a test for infection
18 with human immunodeficiency virus (HIV) or any other identified
19 causative agent of acquired immunodeficiency syndrome (AIDS).
20 Any such medical test shall be performed only by appropriately
21 licensed medical practitioners and may include an analysis of
22 any bodily fluids as well as an examination of the defendant's
23 person. Except as otherwise provided by law, the results of
24 such test shall be kept strictly confidential by all medical
25 personnel involved in the testing and must be personally
26 delivered in a sealed envelope to the judge of the court in

1 which the conviction was entered for the judge's inspection in
2 camera. Acting in accordance with the best interests of the
3 victim and the public, the judge shall have the discretion to
4 determine to whom, if anyone, the results of the testing may be
5 revealed. The court shall notify the defendant of the test
6 results. The court shall also notify the victim if requested by
7 the victim, and if the victim is under the age of 15 and if
8 requested by the victim's parents or legal guardian, the court
9 shall notify the victim's parents or legal guardian of the test
10 results. The court shall provide information on the
11 availability of HIV testing and counseling at Department of
12 Public Health facilities to all parties to whom the results of
13 the testing are revealed and shall direct the State's Attorney
14 to provide the information to the victim when possible. A
15 State's Attorney may petition the court to obtain the results
16 of any HIV test administered under this Section, and the court
17 shall grant the disclosure if the State's Attorney shows it is
18 relevant in order to prosecute a charge of criminal
19 transmission of HIV under Section 12-16.2 of the Criminal Code
20 of 1961 against the defendant. The court shall order that the
21 cost of any such test shall be paid by the county and may be
22 taxed as costs against the convicted defendant.

23 (g-5) When an inmate is tested for an airborne communicable
24 disease, as determined by the Illinois Department of Public
25 Health including but not limited to tuberculosis, the results
26 of the test shall be personally delivered by the warden or his

1 or her designee in a sealed envelope to the judge of the court
2 in which the inmate must appear for the judge's inspection in
3 camera if requested by the judge. Acting in accordance with the
4 best interests of those in the courtroom, the judge shall have
5 the discretion to determine what if any precautions need to be
6 taken to prevent transmission of the disease in the courtroom.

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

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

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

17 (j) In cases when prosecution for any violation of Section
18 11-6, 11-8, 11-9, 11-11, 11-14, 11-15, 11-15.1, 11-16, 11-17,
19 11-17.1, 11-18, 11-18.1, 11-19, 11-19.1, 11-19.2, 11-20.1,
20 11-21, 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the Criminal
21 Code of 1961, any violation of the Illinois Controlled
22 Substances Act, any violation of the Cannabis Control Act, or
23 any violation of the Methamphetamine Control and Community
24 Protection Act results in conviction, a disposition of court
25 supervision, or an order of probation granted under Section 10
26 of the Cannabis Control Act, Section 410 of the Illinois

1 Controlled Substance Act, or Section 70 of the Methamphetamine
2 Control and Community Protection Act of a defendant, the court
3 shall determine whether the defendant is employed by a facility
4 or center as defined under the Child Care Act of 1969, a public
5 or private elementary or secondary school, or otherwise works
6 with children under 18 years of age on a daily basis. When a
7 defendant is so employed, the court shall order the Clerk of
8 the Court to send a copy of the judgment of conviction or order
9 of supervision or probation to the defendant's employer by
10 certified mail. If the employer of the defendant is a school,
11 the Clerk of the Court shall direct the mailing of a copy of
12 the judgment of conviction or order of supervision or probation
13 to the appropriate regional superintendent of schools. The
14 regional superintendent of schools shall notify the State Board
15 of Education of any notification under this subsection.

16 (j-5) A defendant at least 17 years of age who is convicted
17 of a felony and who has not been previously convicted of a
18 misdemeanor or felony and who is sentenced to a term of
19 imprisonment in the Illinois Department of Corrections shall as
20 a condition of his or her sentence be required by the court to
21 attend educational courses designed to prepare the defendant
22 for a high school diploma and to work toward a high school
23 diploma or to work toward passing the high school level Test of
24 General Educational Development (GED) or to work toward
25 completing a vocational training program offered by the
26 Department of Corrections. If a defendant fails to complete the

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

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

25 (l) (A) Except as provided in paragraph (C) of subsection

26 (l), whenever a defendant, who is an alien as defined by

1 the Immigration and Nationality Act, is convicted of any
2 felony or misdemeanor offense, the court after sentencing
3 the defendant may, upon motion of the State's Attorney,
4 hold sentence in abeyance and remand the defendant to the
5 custody of the Attorney General of the United States or his
6 or her designated agent to be deported when:

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

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

13 Otherwise, the defendant shall be sentenced as
14 provided in this Chapter V.

15 (B) If the defendant has already been sentenced for a
16 felony or misdemeanor offense, or has been placed on
17 probation under Section 10 of the Cannabis Control Act,
18 Section 410 of the Illinois Controlled Substances Act, or
19 Section 70 of the Methamphetamine Control and Community
20 Protection Act, the court may, upon motion of the State's
21 Attorney to suspend the sentence imposed, commit the
22 defendant to the custody of the Attorney General of the
23 United States or his or her designated agent when:

24 (1) a final order of deportation has been issued
25 against the defendant pursuant to proceedings under
26 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 (C) This subsection (1) does not apply to offenders who
5 are subject to the provisions of paragraph (2) of
6 subsection (a) of Section 3-6-3.

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

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

23 (n) The court may sentence a person convicted of a
24 violation of Section 12-19, 12-21, or 16-1.3 of the Criminal
25 Code of 1961 (i) to an impact incarceration program if the
26 person is otherwise eligible for that program under Section

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

5 (o) Whenever a person is convicted of a sex offense as
6 defined in Section 2 of the Sex Offender Registration Act, the
7 defendant's driver's license or permit shall be subject to
8 renewal on an annual basis in accordance with the provisions of
9 license renewal established by the Secretary of State.

10 (Source: P.A. 93-44, eff. 7-1-03; 93-156, eff. 1-1-04; 93-169,
11 eff. 7-10-03; 93-301, eff. 1-1-04; 93-419, eff. 1-1-04; 93-546,
12 eff. 1-1-04; 93-694, eff. 7-9-04; 93-782, eff. 1-1-05; 93-800,
13 eff. 1-1-05; 93-1014, eff. 1-1-05; 94-72, eff. 1-1-06; 94-556,
14 eff. 9-11-05; 94-993, eff. 1-1-07; 94-1035, eff. 7-1-07;
15 revised 8-28-06.)".