

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) Every person convicted of an offense shall be
9 sentenced as provided in this Section.

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

14 (1) A period of probation.

15 (2) A term of periodic imprisonment.

16 (3) A term of conditional discharge.

17 (4) A term of imprisonment.

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

22 (6) A fine.

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

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

28 Whenever an individual is sentenced for an offense based
29 upon an arrest for a violation of Section 11-501 of the
30 Illinois Vehicle Code, or a similar provision of a local
31 ordinance, and the professional evaluation recommends

1 remedial or rehabilitative treatment or education, neither
2 the treatment nor the education shall be the sole disposition
3 and either or both may be imposed only in conjunction with
4 another disposition. The court shall monitor compliance with
5 any remedial education or treatment recommendations contained
6 in the professional evaluation. Programs conducting alcohol
7 or other drug evaluation or remedial education must be
8 licensed by the Department of Human Services. However, if
9 the individual is not a resident of Illinois, the court may
10 accept an alcohol or other drug evaluation or remedial
11 education program in the state of such individual's
12 residence. Programs providing treatment must be licensed
13 under existing applicable alcoholism and drug treatment
14 licensure standards.

15 In addition to any other fine or penalty required by law,
16 any individual convicted of a violation of Section 11-501 of
17 the Illinois Vehicle Code or a similar provision of local
18 ordinance, whose operation of a motor vehicle while in
19 violation of Section 11-501 or such ordinance proximately
20 caused an incident resulting in an appropriate emergency
21 response, shall be required to make restitution to a public
22 agency for the costs of that emergency response. Such
23 restitution shall not exceed \$500 per public agency for each
24 such emergency response. For the purpose of this paragraph,
25 emergency response shall mean any incident requiring a
26 response by: a police officer as defined under Section 1-162
27 of the Illinois Vehicle Code; a fireman carried on the rolls
28 of a regularly constituted fire department; and an ambulance
29 as defined under Section 4.05 of the Emergency Medical
30 Services (EMS) Systems Act.

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

34 (c) (1) When a defendant is found guilty of first degree

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

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

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

14 (B) Attempted first degree murder.

15 (C) A Class X felony.

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

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

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

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

33 (H) Criminal sexual assault, except as
34 otherwise provided in subsection (e) of this

1 Section.

2 (I) Aggravated battery of a senior citizen.

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

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

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

15 (K) Vehicular hijacking.

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

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

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

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

28 (P) A violation of paragraph (1), (2), (3),
29 (4), (5), or (7) of subsection (a) of Section
30 11-20.1 of the Criminal Code of 1961.

31 (Q) A violation of Section 20-1.2 of the
32 Criminal Code of 1961.

33 (R) A violation of Section 24-3A of the
34 Criminal Code of 1961.

1 (3) A minimum term of imprisonment of not less than
2 48 consecutive hours or 100 hours of community service as
3 may be determined by the court shall be imposed for a
4 second or subsequent violation committed within 5 years
5 of a previous violation of Section 11-501 of the Illinois
6 Vehicle Code or a similar provision of a local ordinance.

7 (4) A minimum term of imprisonment of not less than
8 7 consecutive days or 30 days of community service shall
9 be imposed for a violation of paragraph (c) of Section
10 6-303 of the Illinois Vehicle Code.

11 (4.1) A minimum term of 30 consecutive days of
12 imprisonment, 40 days of 24 hour periodic imprisonment or
13 720 hours of community service, as may be determined by
14 the court, shall be imposed for a violation of Section
15 11-501 of the Illinois Vehicle Code during a period in
16 which the defendant's driving privileges are revoked or
17 suspended, where the revocation or suspension was for a
18 violation of Section 11-501 or Section 11-501.1 of that
19 Code.

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

- 23 (A) a period of conditional discharge;
- 24 (B) a fine;
- 25 (C) make restitution to the victim under
26 Section 5-5-6 of this Code.

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
32 criminal under Article 33B of the Criminal Code of 1961,
33 the court shall sentence the defendant to a term of
34 natural life imprisonment.

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

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

19 (d) In any case in which a sentence originally imposed
20 is vacated, the case shall be remanded to the trial court.
21 The trial court shall hold a hearing under Section 5-4-1 of
22 the Unified Code of Corrections which may include evidence of
23 the defendant's life, moral character and occupation during
24 the time since the original sentence was passed. The trial
25 court shall then impose sentence upon the defendant. The
26 trial court may impose any sentence which could have been
27 imposed at the original trial subject to Section 5-5-4 of the
28 Unified Code of Corrections.

29 (e) In cases where prosecution for criminal sexual
30 assault or aggravated criminal sexual abuse under Section
31 12-13 or 12-16 of the Criminal Code of 1961 results in
32 conviction of a defendant who was a family member of the
33 victim at the time of the commission of the offense, the
34 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
3 appropriate:

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

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

10 (i) removal from the household;

11 (ii) restricted contact with the victim;

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

14 (iv) restitution for harm done to the
15 victim; and

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

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

25 Probation may be revoked or modified pursuant to Section
26 5-6-4; except where the court determines at the hearing that
27 the defendant violated a condition of his or her probation
28 restricting contact with the victim or other family members
29 or commits another offense with the victim or other family
30 members, the court shall revoke the defendant's probation and
31 impose a term of imprisonment.

32 For the purposes of this Section, "family member" and
33 "victim" shall have the meanings ascribed to them in Section
34 12-12 of the Criminal Code of 1961.

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

5 (g) Whenever a defendant is convicted of an offense
6 under Sections 11-14, 11-15, 11-15.1, 11-16, 11-17, 11-18,
7 11-18.1, 11-19, 11-19.1, 11-19.2, 12-13, 12-14, 12-14.1,
8 12-15 or 12-16 of the Criminal Code of 1961, the defendant
9 shall undergo medical testing to determine whether the
10 defendant has any sexually transmissible disease, including a
11 test for infection with human immunodeficiency virus (HIV) or
12 any other identified causative agent of acquired
13 immunodeficiency syndrome (AIDS). Any such medical test
14 shall be performed only by appropriately licensed medical
15 practitioners and may include an analysis of any bodily
16 fluids as well as an examination of the defendant's person.
17 Except as otherwise provided by law, the results of such test
18 shall be kept strictly confidential by all medical personnel
19 involved in the testing and must be personally delivered in a
20 sealed envelope to the judge of the court in which the
21 conviction was entered for the judge's inspection in camera.
22 Acting in accordance with the best interests of the victim
23 and the public, the judge shall have the discretion to
24 determine to whom, if anyone, the results of the testing may
25 be revealed. The court shall notify the defendant of the test
26 results. The court shall also notify the victim if requested
27 by the victim, and if the victim is under the age of 15 and
28 if requested by the victim's parents or legal guardian, the
29 court shall notify the victim's parents or legal guardian of
30 the test results. The court shall provide information on the
31 availability of HIV testing and counseling at Department of
32 Public Health facilities to all parties to whom the results
33 of the testing are revealed and shall direct the State's
34 Attorney to provide the information to the victim when

1 possible. A State's Attorney may petition the court to obtain
2 the results of any HIV test administered under this Section,
3 and the court shall grant the disclosure if the State's
4 Attorney shows it is relevant in order to prosecute a charge
5 of criminal transmission of HIV under Section 12-16.2 of the
6 Criminal Code of 1961 against the defendant. The court shall
7 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 (g-5) When an inmate is tested for an airborne
11 communicable disease, as determined by the Illinois
12 Department of Public Health including but not limited to
13 tuberculosis, the results of the test shall be personally
14 delivered by the warden or his or her designee in a sealed
15 envelope to the judge of the court in which the inmate must
16 appear for the judge's inspection in camera if requested by
17 the judge. Acting in accordance with the best interests of
18 those in the courtroom, the judge shall have the discretion
19 to determine what if any precautions need to be taken to
20 prevent transmission of the disease in the courtroom.

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

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

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

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

1 1969, a public or private elementary or secondary school, or
2 otherwise works with children under 18 years of age on a
3 daily basis. When a defendant is so employed, the court
4 shall order the Clerk of the Court to send a copy of the
5 judgment of conviction or order of supervision or probation
6 to the defendant's employer by certified mail. If the
7 employer of the defendant is a school, the Clerk of the Court
8 shall direct the mailing of a copy of the judgment of
9 conviction or order of supervision or probation to the
10 appropriate regional superintendent of schools. The regional
11 superintendent of schools shall notify the State Board of
12 Education of any notification under this subsection.

13 (j-5) A defendant at least 17 years of age who is
14 convicted of a felony and who has not been previously
15 convicted of a misdemeanor or felony and who is sentenced to
16 a term of imprisonment in the Illinois Department of
17 Corrections shall as a condition of his or her sentence be
18 required by the court to attend educational courses designed
19 to prepare the defendant for a high school diploma and to
20 work toward a high school diploma or to work toward passing
21 the high school level Test of General Educational Development
22 (GED) or to work toward completing a vocational training
23 program offered by the Department of Corrections. If a
24 defendant fails to complete the educational training required
25 by his or her sentence during the term of incarceration, the
26 Prisoner Review Board shall, as a condition of mandatory
27 supervised release, require the defendant, at his or her own
28 expense, to pursue a course of study toward a high school
29 diploma or passage of the GED test. The Prisoner Review
30 Board shall revoke the mandatory supervised release of a
31 defendant who wilfully fails to comply with this subsection
32 (j-5) upon his or her release from confinement in a penal
33 institution while serving a mandatory supervised release
34 term; however, the inability of the defendant after making a

1 good faith effort to obtain financial aid or pay for the
 2 educational training shall not be deemed a wilful failure to
 3 comply. The Prisoner Review Board shall recommit the
 4 defendant whose mandatory supervised release term has been
 5 revoked under this subsection (j-5) as provided in Section
 6 3-3-9. This subsection (j-5) does not apply to a defendant
 7 who has a high school diploma or has successfully passed the
 8 GED test. This subsection (j-5) does not apply to a defendant
 9 who is determined by the court to be developmentally disabled
 10 or otherwise mentally incapable of completing the educational
 11 or vocational program.

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

16 (l) (A) Except as provided in paragraph (C) of
 17 subsection (l), whenever a defendant, who is an alien as
 18 defined by the Immigration and Nationality Act, is
 19 convicted of any felony or misdemeanor offense, the court
 20 after sentencing the defendant may, upon motion of the
 21 State's Attorney, hold sentence in abeyance and remand
 22 the defendant to the custody of the Attorney General of
 23 the United States or his or her designated agent to be
 24 deported when:

25 (1) a final order of deportation has been
 26 issued against the defendant pursuant to proceedings
 27 under the Immigration and Nationality Act, and

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

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

34 (B) If the defendant has already been sentenced for

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

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

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

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

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

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

34 (Source: P.A. 90-14, eff. 7-1-97; 90-68, eff. 7-8-97; 90-680,

1 eff. 1-1-99; 90-685, eff. 1-1-99; 90-787, eff. 8-14-98;
2 91-357, eff. 7-29-99; 91-404, eff. 1-1-00; 91-663, eff.
3 12-22-99; 91-695, eff. 4-13-00.)

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