

1 AN ACT to abolish the death penalty.

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

4 Section 3. The Department of State Police Law of the  
5 Civil Administrative Code of Illinois is amended by changing  
6 Section 2605-40 as follows:

7 (20 ILCS 2605/2605-40) (was 20 ILCS 2605/55a-4)

8 Sec. 2605-40. Division of Forensic Services. The  
9 Division of Forensic Services shall exercise the following  
10 functions:

11 (1) Exercise the rights, powers, and duties vested  
12 by law in the Department by the Criminal Identification  
13 Act.

14 (2) Exercise the rights, powers, and duties vested  
15 by law in the Department by Section 2605-300 of this Law.

16 (3) Provide assistance to local law enforcement  
17 agencies through training, management, and consultant  
18 services.

19 (4) (Blank).

20 (5) Exercise other duties that may be assigned by  
21 the Director in order to fulfill the responsibilities and  
22 achieve the purposes of the Department.

23 (6) Establish and operate a forensic science  
24 laboratory system, including a forensic toxicological  
25 laboratory service, for the purpose of testing specimens  
26 submitted by coroners and other law enforcement officers  
27 in their efforts to determine whether alcohol, drugs, or  
28 poisonous or other toxic substances have been involved in  
29 deaths, accidents, or illness. Forensic toxicological  
30 laboratories shall be established in Springfield,  
31 Chicago, and elsewhere in the State as needed.

1           (7) (Blank). Subject--to--specific--appropriations  
 2           made--for--these--purposes,--establish--and--coordinate-a  
 3           system-for--providing--accurate--and--expedited--forensic  
 4           science--and--other-investigative-and-laboratory-services  
 5           to-local--law--enforcement--agencies--and--local--State's  
 6           Attorneys--in--aid--of--the--investigation--and--trial-of  
 7           capital-cases.

8           (Source: P.A. 90-130, eff. 1-1-98; 91-239, eff. 1-1-00;  
 9           91-589, eff. 1-1-00; 91-760, eff. 1-1-01.)

10           Section 5. The Criminal Identification Act is amended by  
 11           changing Section 2.1 as follows:

12           (20 ILCS 2630/2.1) (from Ch. 38, par. 206-2.1)

13           Sec. 2.1. For the purpose of maintaining complete and  
 14           accurate criminal records of the Department of State Police,  
 15           it is necessary for all policing bodies of this State, the  
 16           clerk of the circuit court, the Illinois Department of  
 17           Corrections, the sheriff of each county, and State's Attorney  
 18           of each county to submit certain criminal arrest, charge, and  
 19           disposition information to the Department for filing at the  
 20           earliest time possible. Unless otherwise noted herein, it  
 21           shall be the duty of all policing bodies of this State, the  
 22           clerk of the circuit court, the Illinois Department of  
 23           Corrections, the sheriff of each county, and the State's  
 24           Attorney of each county to report such information as  
 25           provided in this Section, both in the form and manner  
 26           required by the Department and within 30 days of the criminal  
 27           history event. Specifically:

28           (a) Arrest Information. All agencies making arrests for  
 29           offenses which are required by statute to be collected,  
 30           maintained or disseminated by the Department of State Police  
 31           shall be responsible for furnishing daily to the Department  
 32           fingerprints, charges and descriptions of all persons who are

1 arrested for such offenses. All such agencies shall also  
2 notify the Department of all decisions by the arresting  
3 agency not to refer such arrests for prosecution. With  
4 approval of the Department, an agency making such arrests may  
5 enter into arrangements with other agencies for the purpose  
6 of furnishing daily such fingerprints, charges and  
7 descriptions to the Department upon its behalf.

8 (b) Charge Information. The State's Attorney of each  
9 county shall notify the Department of all charges filed and  
10 all petitions filed alleging that a minor is delinquent,  
11 including all those added subsequent to the filing of a case,  
12 and whether charges were not filed in cases for which the  
13 Department has received information required to be reported  
14 pursuant to paragraph (a) of this Section. With approval of  
15 the Department, the State's Attorney may enter into  
16 arrangements with other agencies for the purpose of  
17 furnishing the information required by this subsection (b) to  
18 the Department upon the State's Attorney's behalf.

19 (c) Disposition Information. The clerk of the circuit  
20 court of each county shall furnish the Department, in the  
21 form and manner required by the Supreme Court, with all final  
22 dispositions of cases for which the Department has received  
23 information required to be reported pursuant to paragraph (a)  
24 or (d) of this Section. Such information shall include, for  
25 each charge, all (1) judgments of not guilty, judgments of  
26 guilty including the sentence pronounced by the court,  
27 findings that a minor is delinquent and any sentence made  
28 based on those findings, discharges and dismissals in the  
29 court; (2) reviewing court orders filed with the clerk of the  
30 circuit court which reverse or remand a reported conviction  
31 or findings that a minor is delinquent or that vacate or  
32 modify a sentence or sentence made following a trial that a  
33 minor is delinquent; (3) continuances to a date certain in  
34 furtherance of an order of supervision granted under Section

1 5-6-1 of the Unified Code of Corrections or an order of  
2 probation granted under Section 10 of the Cannabis Control  
3 Act, Section 410 of the Illinois Controlled Substances Act,  
4 Section 12-4.3 of the Criminal Code of 1961, Section 10-102  
5 of the Illinois Alcoholism and Other Drug Dependency Act,  
6 Section 40-10 of the Alcoholism and Other Drug Abuse and  
7 Dependency Act, Section 10 of the Steroid Control Act, or  
8 Section 5-615 of the Juvenile Court Act of 1987; and (4)  
9 judgments or court orders terminating or revoking a sentence  
10 to or juvenile disposition of probation, supervision or  
11 conditional discharge and any resentencing or new court  
12 orders entered by a juvenile court relating to the  
13 disposition of a minor's case involving delinquency after  
14 such revocation.

15 (d) Fingerprints After Sentencing.

16 (1) After the court pronounces sentence, sentences a  
17 minor following a trial in which a minor was found to be  
18 delinquent or issues an order of supervision or an order  
19 of probation granted under Section 10 of the Cannabis  
20 Control Act, Section 410 of the Illinois Controlled  
21 Substances Act, Section 12-4.3 of the Criminal Code of  
22 1961, Section 10-102 of the Illinois Alcoholism and Other  
23 Drug Dependency Act, Section 40-10 of the Alcoholism and  
24 Other Drug Abuse and Dependency Act, Section 10 of the  
25 Steroid Control Act, or Section 5-615 of the Juvenile  
26 Court Act of 1987 for any offense which is required by  
27 statute to be collected, maintained, or disseminated by  
28 the Department of State Police, the State's Attorney of  
29 each county shall ask the court to order a law  
30 enforcement agency to fingerprint immediately all persons  
31 appearing before the court who have not previously been  
32 fingerprinted for the same case. The court shall so order  
33 the requested fingerprinting, if it determines that any  
34 such person has not previously been fingerprinted for the

1 same case. The law enforcement agency shall submit such  
2 fingerprints to the Department daily.

3 (2) After the court pronounces sentence or makes a  
4 disposition of a case following a finding of delinquency  
5 for any offense which is not required by statute to be  
6 collected, maintained, or disseminated by the Department  
7 of State Police, the prosecuting attorney may ask the  
8 court to order a law enforcement agency to fingerprint  
9 immediately all persons appearing before the court who  
10 have not previously been fingerprinted for the same case.  
11 The court may so order the requested fingerprinting, if  
12 it determines that any so sentenced person has not  
13 previously been fingerprinted for the same case. The law  
14 enforcement agency may retain such fingerprints in its  
15 files.

16 (e) Corrections Information. The Illinois Department of  
17 Corrections and the sheriff of each county shall furnish the  
18 Department with all information concerning the receipt,  
19 escape, execution before the effective date of this  
20 amendatory Act of the 93rd General Assembly, death, release,  
21 pardon, parole, commutation of sentence, granting of  
22 executive clemency or discharge of an individual who has been  
23 sentenced or committed to the agency's custody for any  
24 offenses which are mandated by statute to be collected,  
25 maintained or disseminated by the Department of State Police.  
26 For an individual who has been charged with any such offense  
27 and who escapes from custody or dies while in custody, all  
28 information concerning the receipt and escape or death,  
29 whichever is appropriate, shall also be so furnished to the  
30 Department.

31 (Source: P.A. 90-590, eff. 1-1-00.)

32 (30 ILCS 105/5.518 rep.)

33 Section 10. The State Finance Act is amended by

1     repealing Section 5.518 on July 1, 2003.

2             Section 15.    The Counties Code is amended by changing  
3     Sections 3-9005 and 3-4011 as follows:

4             (55 ILCS 5/3-9005) (from Ch. 34, par. 3-9005)  
5             Sec. 3-9005.   Powers and duties of State's attorney.

6             (a)   The duty of each State's attorney shall be:

7                 (1)   To commence and prosecute all actions, suits,  
8                 indictments and prosecutions, civil and criminal, in the  
9                 circuit court for his county, in which the people of the  
10                State or county may be concerned.

11               (2)   To prosecute all forfeited bonds and  
12               recognizances, and all actions and proceedings for the  
13               recovery of debts, revenues, moneys, fines, penalties and  
14               forfeitures accruing to the State or his county, or to  
15               any school district or road district in his county; also,  
16               to prosecute all suits in his county against railroad or  
17               transportation companies, which may be prosecuted in the  
18               name of the People of the State of Illinois.

19               (3)   To commence and prosecute all actions and  
20               proceedings brought by any county officer in his official  
21               capacity.

22               (4)   To defend all actions and proceedings brought  
23               against his county, or against any county or State  
24               officer, in his official capacity, within his county.

25               (5)   To attend the examination of all persons  
26               brought before any judge on habeas corpus, when the  
27               prosecution is in his county.

28               (6)   To attend before judges and prosecute charges  
29               of felony or misdemeanor, for which the offender is  
30               required to be recognized to appear before the circuit  
31               court, when in his power so to do.

32               (7)   To give his opinion, without fee or reward, to

1 any county officer in his county, upon any question or  
2 law relating to any criminal or other matter, in which  
3 the people or the county may be concerned.

4 (8) To assist the attorney general whenever it may  
5 be necessary, and in cases of appeal from his county to  
6 the Supreme Court, to which it is the duty of the  
7 attorney general to attend, he shall furnish the attorney  
8 general at least 10 days before such is due to be filed,  
9 a manuscript of a proposed statement, brief and argument  
10 to be printed and filed on behalf of the people, prepared  
11 in accordance with the rules of the Supreme Court.  
12 However, if such brief, argument or other document is due  
13 to be filed by law or order of court within this 10 day  
14 period, then the State's attorney shall furnish such as  
15 soon as may be reasonable.

16 (9) To pay all moneys received by him in trust,  
17 without delay, to the officer who by law is entitled to  
18 the custody thereof.

19 (10) To notify, by first class mail, complaining  
20 witnesses of the ultimate disposition of the cases  
21 arising from an indictment or an information.

22 (11) To perform such other and further duties as  
23 may, from time to time, be enjoined on him by law.

24 (12) To appear in all proceedings by collectors of  
25 taxes against delinquent taxpayers for judgments to sell  
26 real estate, and see that all the necessary preliminary  
27 steps have been legally taken to make the judgment legal  
28 and binding.

29 (b) The State's Attorney of each county shall have  
30 authority to appoint one or more special investigators to  
31 serve subpoenas, make return of process and conduct  
32 investigations which assist the State's Attorney in the  
33 performance of his duties. A special investigator shall not  
34 carry firearms except with permission of the State's Attorney

1 and only while carrying appropriate identification indicating  
2 his employment and in the performance of his assigned duties.

3 Subject to the qualifications set forth in this  
4 subsection, special investigators shall be peace officers and  
5 shall have all the powers possessed by investigators under  
6 the State's Attorneys Appellate Prosecutor's Act.

7 No special investigator employed by the State's Attorney  
8 shall have peace officer status or exercise police powers  
9 unless he or she successfully completes the basic police  
10 training course mandated and approved by the Illinois Law  
11 Enforcement Training Standards Board or such board waives the  
12 training requirement by reason of the special investigator's  
13 prior law enforcement experience or training or both. Any  
14 State's Attorney appointing a special investigator shall  
15 consult with all affected local police agencies, to the  
16 extent consistent with the public interest, if the special  
17 investigator is assigned to areas within that agency's  
18 jurisdiction.

19 Before a person is appointed as a special investigator,  
20 his fingerprints shall be taken and transmitted to the  
21 Department of State Police. The Department shall examine its  
22 records and submit to the State's Attorney of the county in  
23 which the investigator seeks appointment any conviction  
24 information concerning the person on file with the  
25 Department. No person shall be appointed as a special  
26 investigator if he has been convicted of a felony or other  
27 offense involving moral turpitude. A special investigator  
28 shall be paid a salary and be reimbursed for actual expenses  
29 incurred in performing his assigned duties. The county board  
30 shall approve the salary and actual expenses and appropriate  
31 the salary and expenses in the manner prescribed by law or  
32 ordinance.

33 (c) The State's Attorney may request and receive from  
34 employers, labor unions, telephone companies, and utility



1 companies location information concerning putative fathers  
2 and noncustodial parents for the purpose of establishing a  
3 child's paternity or establishing, enforcing, or modifying a  
4 child support obligation. In this subsection, "location  
5 information" means information about (i) the physical  
6 whereabouts of a putative father or noncustodial parent, (ii)  
7 the putative father or noncustodial parent's employer, or  
8 (iii) the salary, wages, and other compensation paid and the  
9 health insurance coverage provided to the putative father or  
10 noncustodial parent by the employer of the putative father or  
11 noncustodial parent or by a labor union of which the putative  
12 father or noncustodial parent is a member.

13 ~~(d) For each State fiscal year, the State's Attorney of~~  
14 ~~Cook County shall appear before the General Assembly and~~  
15 ~~request appropriations to be made from the Capital Litigation~~  
16 ~~Trust Fund to the State Treasurer for the purpose of~~  
17 ~~providing assistance in the prosecution of capital cases in~~  
18 ~~Cook County. The State's Attorney may appear before the~~  
19 ~~General Assembly at other times during the State's fiscal~~  
20 ~~year to request supplemental appropriations from the Trust~~  
21 ~~Fund to the State Treasurer.~~

22 (e) The State's Attorney shall have the authority to  
23 enter into a written agreement with the Department of Revenue  
24 for pursuit of civil liability under Section 17-1a of the  
25 Criminal Code of 1961 against persons who have issued to the  
26 Department checks or other orders in violation of the  
27 provisions of paragraph (d) of subsection (B) of Section 17-1  
28 of the Criminal Code of 1961, with the Department to retain  
29 the amount owing upon the dishonored check or order along  
30 with the dishonored check fee imposed under the Uniform  
31 Penalty and Interest Act, with the balance of damages, fees,  
32 and costs collected under Section 17-1a of the Criminal Code  
33 of 1961 to be retained by the State's Attorney. The  
34 agreement shall not affect the allocation of fines and costs

1 imposed in any criminal prosecution.

2 (Source: P.A. 91-589, eff. 1-1-00; 92-492, eff. 1-1-02.)

3 (55 ILCS 5/3-4011) (from Ch. 34, par. 3-4011)

4 Sec. 3-4011. Expenses and legal services for indigent  
5 defendants in felony cases. It shall be the duty of the  
6 county board in counties containing fewer than 500,000  
7 inhabitants to appropriate a sufficient sum for the purpose  
8 of paying for the legal services necessarily rendered for the  
9 defense of indigent persons in felony cases, and for costs,  
10 expenses and legal services necessary in the prosecution of  
11 an appeal when the sentence is death and the sentence was  
12 imposed before the effective date of this amendatory Act of  
13 the 93rd General Assembly, which is to be paid upon the  
14 orders of a court of competent jurisdiction. It shall  
15 likewise be the duty of the county board in counties  
16 containing fewer than 500,000 inhabitants to appropriate a  
17 sufficient sum for the payment of out of pocket expenses  
18 necessarily incurred by appointed counsel in the prosecution  
19 of an appeal on behalf of an indigent incarcerated defendant  
20 in felony cases. In such cases payment shall be made upon the  
21 order of the reviewing court.

22 (Source: P.A. 86-962.)

23 (55 ILCS 5/3-4006.1 rep.)

24 Section 20. The Counties Code is amended by repealing  
25 Section 3-4006.1.

26 Section 25. The School Code is amended by changing  
27 Section 21-23b as follows:

28 (105 ILCS 5/21-23b) (from Ch. 122, par. 21-23b)

29 Sec. 21-23b. Conviction of felony.

30 (a) Whenever the holder of any certificate issued under

1 this Article is employed by the school board of any school  
2 district, including a special charter district or school  
3 district organized under Article 34, and is convicted, either  
4 after a bench trial, trial by jury, or plea of guilty, of any  
5 offense for which a sentence to death--~~er~~ a term of  
6 imprisonment in a penitentiary for one year or more is  
7 provided, the school board shall promptly notify the State  
8 Board of Education in writing of the name of the certificate  
9 holder, the fact of the conviction, and the name and location  
10 of the court in which the conviction occurred.

11 (b) Whenever the State Board of Education receives  
12 notice of a conviction under subsection (a) or otherwise  
13 learns that any person who is a "teacher" as that term is  
14 defined in Section 16-106 of the Illinois Pension Code has  
15 been convicted, either after a bench trial, trial by jury, or  
16 plea of guilty, of any offense for which a sentence to death  
17 ~~er~~ a term of imprisonment in a penitentiary for one year or  
18 more is provided, the State Board of Education shall promptly  
19 notify in writing the board of trustees of the Teachers'  
20 Retirement System of the State of Illinois and the board of  
21 trustees of the Public School Teachers' Pension and  
22 Retirement Fund of the City of Chicago of the name of the  
23 certificate holder or teacher, the fact of the conviction,  
24 the name and location of the court in which the conviction  
25 occurred, and the number assigned in that court to the case  
26 in which the conviction occurred.

27 (Source: P.A. 87-1001.)

28 Section 30. The Illinois Public Aid Code is amended by  
29 changing Section 1-8 as follows:

30 (305 ILCS 5/1-8)

31 Sec. 1-8. Fugitives ineligible.

32 (a) The following persons are not eligible for aid under

1 this Code, or federal food stamps or federal food stamp  
2 benefits:

3 (1) A person who has fled from the jurisdiction of  
4 any court of record of this or any other state or of the  
5 United States to avoid prosecution for a felony or to  
6 avoid giving testimony in any criminal proceeding  
7 involving the alleged commission of a felony.

8 (2) A person who has fled to avoid imprisonment in  
9 a correctional facility of this or any other state or the  
10 United States for having committed a felony.

11 (3) A person who has escaped from a correctional  
12 facility of this or any other state or the United States  
13 if the person was incarcerated for having committed a  
14 felony.

15 (4) A person who is violating a condition of  
16 probation or parole imposed under federal or State law.

17 In this Section, "felony" means a violation of a penal  
18 statute of this State for which a sentence to a term of  
19 imprisonment in a penitentiary for one year or more is  
20 provided or a violation of a penal statute of ~~er~~ any other  
21 state or the United States for which a sentence to death or  
22 to a term of imprisonment in a penitentiary for one year or  
23 more is provided.

24 To implement this Section, the Illinois Department may  
25 exchange necessary information with an appropriate law  
26 enforcement agency of this or any other state, a political  
27 subdivision of this or any other state, or the United States.

28 (b) (Blank).

29 (Source: P.A. 92-111, eff. 1-1-02.)

30 Section 35. The Criminal Code of 1961 is amended by  
31 changing Sections 2-7, 7-10, 9-1, 9-1.2, 30-1, and 33B-1 as  
32 follows:

1 (720 ILCS 5/2-7) (from Ch. 38, par. 2-7)

2 Sec. 2-7. "Felony".

3 "Felony" means an offense for which a sentence to death  
4 ~~ex--te~~ a term of imprisonment in a penitentiary for one year  
5 or more is provided.

6 (Source: P.A. 77-2638.)

7 (720 ILCS 5/7-10) (from Ch. 38, par. 7-10)

8 Sec. 7-10. Execution of death sentence.

9 A public officer who, in the exercise of his official  
10 duty, puts a person to death pursuant to a sentence of a  
11 court of competent jurisdiction made before the effective  
12 date of this amendatory Act of the 93rd General Assembly, is  
13 justified if he acts in accordance with the sentence  
14 pronounced and the law prescribing the procedure for  
15 execution of a death sentence.

16 (Source: Laws 1961, p. 1983.)

17 (720 ILCS 5/9-1) (from Ch. 38, par. 9-1)

18 Sec. 9-1. First degree Murder - ~~Death--penalties---~~  
19 ~~Exeptions---Separate-Hearings---Proof---Findings---Appellate~~  
20 ~~proeedures---Reversals.~~

21 (a) A person who kills an individual without lawful  
22 justification commits first degree murder if, in performing  
23 the acts which cause the death:

24 (1) he either intends to kill or do great bodily  
25 harm to that individual or another, or knows that such  
26 acts will cause death to that individual or another; or

27 (2) he knows that such acts create a strong  
28 probability of death or great bodily harm to that  
29 individual or another; or

30 (3) he is attempting or committing a forcible  
31 felony other than second degree murder.

32 (b) Aggravating Factors. A defendant who at the time of

1 the commission of the offense has attained the age of 18 or  
2 more and who has been found guilty of first degree murder may  
3 be sentenced to a term of natural life imprisonment death if:

4 (1) the murdered individual was a peace officer or  
5 fireman killed in the course of performing his official  
6 duties, to prevent the performance of his official  
7 duties, or in retaliation for performing his official  
8 duties, and the defendant knew or should have known that  
9 the murdered individual was a peace officer or fireman;  
10 or

11 (2) the murdered individual was an employee of an  
12 institution or facility of the Department of Corrections,  
13 or any similar local correctional agency, killed in the  
14 course of performing his official duties, to prevent the  
15 performance of his official duties, or in retaliation for  
16 performing his official duties, or the murdered  
17 individual was an inmate at such institution or facility  
18 and was killed on the grounds thereof, or the murdered  
19 individual was otherwise present in such institution or  
20 facility with the knowledge and approval of the chief  
21 administrative officer thereof; or

22 (3) the defendant has been convicted of murdering  
23 two or more individuals under subsection (a) of this  
24 Section or under any law of the United States or of any  
25 state which is substantially similar to subsection (a) of  
26 this Section regardless of whether the deaths occurred  
27 as the result of the same act or of several related or  
28 unrelated acts so long as the deaths were the result of  
29 either an intent to kill more than one person or of  
30 separate acts which the defendant knew would cause death  
31 or create a strong probability of death or great bodily  
32 harm to the murdered individual or another; or

33 (4) the murdered individual was killed as a result  
34 of the hijacking of an airplane, train, ship, bus or

1 other public conveyance; or

2 (5) the defendant committed the murder pursuant to  
3 a contract, agreement or understanding by which he was to  
4 receive money or anything of value in return for  
5 committing the murder or procured another to commit the  
6 murder for money or anything of value; or

7 (6) the murdered individual was killed in the  
8 course of another felony if:

9 (a) the murdered individual:

10 (i) was actually killed by the defendant,  
11 or

12 (ii) received physical injuries  
13 personally inflicted by the defendant  
14 substantially contemporaneously with physical  
15 injuries caused by one or more persons for  
16 whose conduct the defendant is legally  
17 accountable under Section 5-2 of this Code, and  
18 the physical injuries inflicted by either the  
19 defendant or the other person or persons for  
20 whose conduct he is legally accountable caused  
21 the death of the murdered individual; and

22 (b) in performing the acts which caused the  
23 death of the murdered individual or which resulted  
24 in physical injuries personally inflicted by the  
25 defendant on the murdered individual under the  
26 circumstances of subdivision (ii) of subparagraph  
27 (a) of paragraph (6) of subsection (b) of this  
28 Section, the defendant acted with the intent to kill  
29 the murdered individual or with the knowledge that  
30 his acts created a strong probability of death or  
31 great bodily harm to the murdered individual or  
32 another; and

33 (c) the other felony was one of the following:  
34 armed robbery, armed violence, robbery, predatory

1 criminal sexual assault of a child, aggravated  
2 criminal sexual assault, aggravated kidnapping,  
3 aggravated vehicular hijacking, forcible detention,  
4 arson, aggravated arson, aggravated stalking,  
5 burglary, residential burglary, home invasion,  
6 calculated criminal drug conspiracy as defined in  
7 Section 405 of the Illinois Controlled Substances  
8 Act, streetgang criminal drug conspiracy as defined  
9 in Section 405.2 of the Illinois Controlled  
10 Substances Act, or the attempt to commit any of the  
11 felonies listed in this subsection (c); or

12 (7) the murdered individual was under 12 years of  
13 age and the death resulted from exceptionally brutal or  
14 heinous behavior indicative of wanton cruelty; or

15 (8) the defendant committed the murder with intent  
16 to prevent the murdered individual from testifying in any  
17 criminal prosecution or giving material assistance to the  
18 State in any investigation or prosecution, either against  
19 the defendant or another; or the defendant committed the  
20 murder because the murdered individual was a witness in  
21 any prosecution or gave material assistance to the State  
22 in any investigation or prosecution, either against the  
23 defendant or another; or

24 (9) the defendant, while committing an offense  
25 punishable under Sections 401, 401.1, 401.2, 405, 405.2,  
26 407 or 407.1 or subsection (b) of Section 404 of the  
27 Illinois Controlled Substances Act, or while engaged in a  
28 conspiracy or solicitation to commit such offense,  
29 intentionally killed an individual or counseled,  
30 commanded, induced, procured or caused the intentional  
31 killing of the murdered individual; or

32 (10) the defendant was incarcerated in an  
33 institution or facility of the Department of Corrections  
34 at the time of the murder, and while committing an



1 offense punishable as a felony under Illinois law, or  
2 while engaged in a conspiracy or solicitation to commit  
3 such offense, intentionally killed an individual or  
4 counseled, commanded, induced, procured or caused the  
5 intentional killing of the murdered individual; or

6 (11) the murder was committed in a cold, calculated  
7 and premeditated manner pursuant to a preconceived plan,  
8 scheme or design to take a human life by unlawful means,  
9 and the conduct of the defendant created a reasonable  
10 expectation that the death of a human being would result  
11 therefrom; or

12 (12) the murdered individual was an emergency  
13 medical technician - ambulance, emergency medical  
14 technician - intermediate, emergency medical technician -  
15 paramedic, ambulance driver, or other medical assistance  
16 or first aid personnel, employed by a municipality or  
17 other governmental unit, killed in the course of  
18 performing his official duties, to prevent the  
19 performance of his official duties, or in retaliation for  
20 performing his official duties, and the defendant knew or  
21 should have known that the murdered individual was an  
22 emergency medical technician - ambulance, emergency  
23 medical technician - intermediate, emergency medical  
24 technician - paramedic, ambulance driver, or other  
25 medical assistance or first aid personnel; or

26 (13) the defendant was a principal administrator,  
27 organizer, or leader of a calculated criminal drug  
28 conspiracy consisting of a hierarchical position of  
29 authority superior to that of all other members of the  
30 conspiracy, and the defendant counseled, commanded,  
31 induced, procured, or caused the intentional killing of  
32 the murdered person; or

33 (14) the murder was intentional and involved the  
34 infliction of torture. For the purpose of this Section

1 torture means the infliction of or subjection to extreme  
2 physical pain, motivated by an intent to increase or  
3 prolong the pain, suffering or agony of the victim; or

4 (15) the murder was committed as a result of the  
5 intentional discharge of a firearm by the defendant from  
6 a motor vehicle and the victim was not present within the  
7 motor vehicle; or

8 (16) the murdered individual was 60 years of age or  
9 older and the death resulted from exceptionally brutal or  
10 heinous behavior indicative of wanton cruelty; or

11 (17) the murdered individual was a disabled person  
12 and the defendant knew or should have known that the  
13 murdered individual was disabled. For purposes of this  
14 paragraph (17), "disabled person" means a person who  
15 suffers from a permanent physical or mental impairment  
16 resulting from disease, an injury, a functional disorder,  
17 or a congenital condition that renders the person  
18 incapable of adequately providing for his or her own  
19 health or personal care; or

20 (18) the murder was committed by reason of any  
21 person's activity as a community policing volunteer or to  
22 prevent any person from engaging in activity as a  
23 community policing volunteer; or

24 (19) the murdered individual was subject to an  
25 order of protection and the murder was committed by a  
26 person against whom the same order of protection was  
27 issued under the Illinois Domestic Violence Act of 1986;  
28 or

29 (20) the murdered individual was known by the  
30 defendant to be a teacher or other person employed in any  
31 school and the teacher or other employee is upon the  
32 grounds of a school or grounds adjacent to a school, or  
33 is in any part of a building used for school purposes; or

34 (21) the murder was committed by the defendant in

1 connection with or as a result of the offense of  
2 terrorism as defined in Section 29D-30 of this Code.

3 (c) (Blank). Consideration--of-factors-in-Aggravation  
4 and-Mitigation-

5 The-court-shall-consider,-or-shall-instruct-the--jury--to  
6 consider-any-aggravating-and-any-mitigating-factors-which-are  
7 relevant-to-the-imposition-of-the-death-penalty.--Aggravating  
8 factors--may-include-but-need-not-be-limited-to-those-factors  
9 set-forth-in-subsection-(b)-.Mitigating-factors--may--include  
10 but-need-not-be-limited-to-the-following:

11 (1)--the--defendant--has--no--significant-history-of  
12 prior-criminal-activity;

13 (2)--the-murder-was-committed--while--the--defendant  
14 was--under--the--influence-of-extreme-mental-or-emotional  
15 disturbance,-although-not-such-as-to-constitute-a-defense  
16 to-prosecution;

17 (3)--the-murdered-individual-was--a--participant--in  
18 the--defendant's--homicidal--conduct--or-consented-to-the  
19 homicidal-act;

20 (4)--the-defendant-acted--under--the--compulsion--of  
21 threat--or--menace-of-the-imminent-in infliction-of-death-or  
22 great-bodily-harm;

23 (5)--the-defendant-was-not-personally-present-during  
24 commission-of-the-act-or-acts-causing-death.

25 (d) (Blank). Separate-sentencing-hearing-

26 Where-requested-by-the-State,-the-court-shall--conduct--a  
27 separate--sentencing-proceeding-to-determine-the-existence-of  
28 factors-set-forth-in--subsection--(b)--and--to--consider--any  
29 aggravating--or-mitigating-factors-as-indicated-in-subsection  
30 (c)-.-The-proceeding-shall-be-conducted:

31 (1)--before-the-jury-that-determined-the-defendant's  
32 guilt;-or

33 (2)--before-a-jury-impanelled-for-the-purpose-of-the  
34 proceeding-if:

1 A.--the-defendant-was-convicted-upon-a-plea--of  
2 guilty;-or

3 B.--the--defendant--was-convicted-after-a-trial  
4 before-the-court-sitting-without-a-jury;-or

5 C.--the-court-for-good-cause--shown--discharges  
6 the-jury-that-determined-the-defendant's-guilt;-or

7 (3)--before--the-court-alone-if-the-defendant-waives  
8 a-jury-for-the-separate-proceeding.

9 (e) (Blank). Evidence-and-Argument.

10 During-the-proceeding-any-information-relevant-to-any--of  
11 the--factors--set-forth-in-subsection-(b)-may-be-presented-by  
12 either-the-State-or-the-defendant-under-the--rules--governing  
13 the---admission---of---evidence---at--criminal--trials.---Any  
14 information-relevant-to-any-additional-aggravating-factors-or  
15 any-mitigating-factors-indicated-in--subsection--(c)--may--be  
16 presented--by--the--State--or--defendant--regardless--of--its  
17 admissibility--under--the--rules--governing--the-admission-of  
18 evidence-at-eriminal-trials.--The--State--and--the--defendant  
19 shall--be--given--fair--opportunity--to-rebut-any-information  
20 received-at-the-hearing.

21 (f) Blank). Proof.

22 The-burden-of-proof-of-establishing-the-existence-of--any  
23 of--the--factors--set-forth-in-subsection-(b)-is-on-the-State  
24 and-shall--not--be--satisfied--unless--established--beyond--a  
25 reasonable-doubt.

26 (g) (Blank). Procedure---Jury.

27 If--at--the-separate-sentencing-proceeding-the-jury-finds  
28 that-none-of-the-factors-set-forth-in-subsection-(b)--exists,  
29 the---court--shall--sentence--the--defendant--to--a--term--of  
30 imprisonment--under--Chapter--V--of--the--Unified---Code---of  
31 Corrections.---If--there--is--a-unanimous-finding-by-the-jury  
32 that-one-or-more-of-the-factors-set-forth-in--subsection--(b)  
33 exist,--the--jury--shall--consider-aggravating-and-mitigating  
34 factors-as--instructed--by--the--court--and--shall--determine

1 whether--the-sentence-of-death-shall-be-imposed.--If-the-jury  
2 determines-unanimously-that-there-are-no--mitigating--factors  
3 sufficient--to-preclude-the-imposition-of-the-death-sentence,  
4 the-court-shall-sentence-the-defendant-to-death.

5 Unless-the-jury--unanimously--finds--that--there--are--no  
6 mitigating--factors--sufficient-to-preclude-the-imposition-of  
7 the-death-sentence-the-court-shall-sentence-the-defendant--to  
8 a-term-of-imprisonment-under-Chapter-V-of-the-Unified-Code-of  
9 Corrections.

10 (h) (Blank). Procedure--No-Jury.

11 In--a--proceeding--before--the--court-alone,-if-the-court  
12 finds-that-none--of--the--factors--found--in--subsection--(b)  
13 exists,-the--court-shall-sentence-the-defendant-to-a-term-of  
14 imprisonment--under--Chapter--V--of--the--Unified--Code--of  
15 Corrections.

16 If--the--Court-determines-that-one-or-more-of-the-factors  
17 set-forth-in-subsection-(b)-exists,-the-Court-shall--consider  
18 any--aggravating--and--mitigating--factors--as--indicated--in  
19 subsection--(c).---If--the-Court-determines-that-there-are-no  
20 mitigating-factors-sufficient-to-preclude-the--imposition--of  
21 the-death-sentence,-the-Court-shall-sentence-the-defendant-to  
22 death.

23 Unless--the--court--finds--that--there--are-no-mitigating  
24 factors-sufficient-to-preclude-the-imposition-of-the-sentence  
25 of-death,-the-court-shall-sentence-the-defendant-to-a-term-of  
26 imprisonment--under--Chapter--V--of--the--Unified--Code--of  
27 Corrections.

28 (i) (Blank). Appellate-Procedure.

29 The--conviction-and-sentence-of-death-shall-be-subject-to  
30 automatic-review-by-the-Supreme-Court.--Such-review-shall--be  
31 in-accordance-with-rules-promulgated-by-the-Supreme-Court.

32 (j) (Blank). Disposition-of-reversed-death-sentence.

33 In--the--event-that-the-death-penalty-in-this-Act-is-held  
34 to-be-unconstitutional-by-the-Supreme--Court--of--the--United

1 States--or--of-the-State-of-Illinois, any person convicted of  
 2 first-degree murder shall be sentenced by the court to a term  
 3 of imprisonment under Chapter V of the Unified Code of  
 4 Corrections.

5 In the event that any death sentence pursuant to the  
 6 sentencing provisions of this Section is declared  
 7 unconstitutional by the Supreme Court of the United States or  
 8 of the State of Illinois, the court having jurisdiction over  
 9 a person previously sentenced to death shall cause the  
 10 defendant to be brought before the court, and the court shall  
 11 sentence the defendant to a term of imprisonment under  
 12 Chapter V of the Unified Code of Corrections.

13 (Source: P.A. 91-357, eff. 7-29-99; 91-434, eff. 1-1-00;  
 14 92-854, eff. 12-5-02.)

15 (720 ILCS 5/9-1.2) (from Ch. 38, par. 9-1.2)

16 Sec. 9-1.2. Intentional Homicide of an Unborn Child.

17 (a) A person commits the offense of intentional homicide  
 18 of an unborn child if, in performing acts which cause the  
 19 death of an unborn child, he without lawful justification:

20 (1) either intended to cause the death of or do  
 21 great bodily harm to the pregnant woman or her unborn  
 22 child or knew that such acts would cause death or great  
 23 bodily harm to the pregnant woman or her unborn child; or

24 (2) he knew that his acts created a strong  
 25 probability of death or great bodily harm to the pregnant  
 26 woman or her unborn child; and

27 (3) he knew that the woman was pregnant.

28 (b) For purposes of this Section, (1) "unborn child"  
 29 shall mean any individual of the human species from  
 30 fertilization until birth, and (2) "person" shall not include  
 31 the pregnant woman whose unborn child is killed.

32 (c) This Section shall not apply to acts which cause the  
 33 death of an unborn child if those acts were committed during

1 any abortion, as defined in Section 2 of the Illinois  
 2 Abortion Law of 1975, as amended, to which the pregnant woman  
 3 has consented. This Section shall not apply to acts which  
 4 were committed pursuant to usual and customary standards of  
 5 medical practice during diagnostic testing or therapeutic  
 6 treatment.

7 (d) Penalty. The sentence for intentional homicide of  
 8 an unborn child shall be the same as for first degree murder,  
 9 except that:

10 (1) ~~(Blank); the-death-penalty-may-not-be-imposed;~~

11 (2) if the person committed the offense while armed  
 12 with a firearm, 15 years shall be added to the term of  
 13 imprisonment imposed by the court;

14 (3) if, during the commission of the offense, the  
 15 person personally discharged a firearm, 20 years shall be  
 16 added to the term of imprisonment imposed by the court;

17 (4) if, during the commission of the offense, the  
 18 person personally discharged a firearm that proximately  
 19 caused great bodily harm, permanent disability, permanent  
 20 disfigurement, or death to another person, 25 years or up  
 21 to a term of natural life shall be added to the term of  
 22 imprisonment imposed by the court.

23 (e) The provisions of this Act shall not be construed to  
 24 prohibit the prosecution of any person under any other  
 25 provision of law.

26 (Source: P.A. 91-404, eff. 1-1-00.)

27 (720 ILCS 5/30-1) (from Ch. 38, par. 30-1)

28 Sec. 30-1. Treason. (a) A person owing allegiance to this  
 29 State commits treason when he or she knowingly:

30 (1) Levies war against this State; or

31 (2) Adheres to the enemies of this State, giving  
 32 them aid or comfort.

33 (b) No person may be convicted of treason except on the

1 testimony of 2 witnesses to the same overt act, or on his  
2 confession in open court.

3 (c) Sentence. Treason is a Class X felony ~~for which an~~  
4 ~~offender may be sentenced to death under Section 5-5-3 of the~~  
5 ~~Unified Code of Corrections.~~

6 (Source: P.A. 80-1099.)

7 (720 ILCS 5/33B-1) (from Ch. 38, par. 33B-1)

8 Sec. 33B-1. (a) Every person who has been twice  
9 convicted in any state or federal court of an offense that  
10 contains the same elements as an offense now classified in  
11 Illinois as a Class X felony, criminal sexual assault,  
12 aggravated kidnapping or first degree murder, and is  
13 thereafter convicted of a Class X felony, criminal sexual  
14 assault or first degree murder, committed after the 2 prior  
15 convictions, shall be adjudged an habitual criminal.

16 (b) The 2 prior convictions need not have been for the  
17 same offense.

18 (c) Any convictions which result from or are connected  
19 with the same transaction, or result from offenses committed  
20 at the same time, shall be counted for the purposes of this  
21 Section as one conviction.

22 (d) This Article shall not apply unless each of the  
23 following requirements are satisfied:

24 (1) the third offense was committed after the  
25 effective date of this Act;

26 (2) the third offense was committed within 20 years  
27 of the date that judgment was entered on the first  
28 conviction, provided, however, that time spent in custody  
29 shall not be counted;

30 (3) the third offense was committed after  
31 conviction on the second offense;

32 (4) the second offense was committed after  
33 conviction on the first offense.



1 (e) ~~Except when the death penalty is imposed,~~ Anyone  
2 adjudged an habitual criminal shall be sentenced to life  
3 imprisonment.

4 (Source: P.A. 88-677, eff. 12-15-94.)

5 Section 40. The Cannabis Control Act is amended by  
6 changing Section 9 as follows:

7 (720 ILCS 550/9) (from Ch. 56 1/2, par. 709)

8 Sec. 9. (a) Any person who engages in a calculated  
9 criminal cannabis conspiracy, as defined in subsection (b),  
10 is guilty of a Class 3 felony, and fined not more than  
11 \$200,000 and shall be subject to the forfeitures prescribed  
12 in subsection (c); except that, if any person engages in such  
13 offense after one or more prior convictions under this  
14 Section, Section 4 (d), Section 5 (d), Section 8 (d) or any  
15 law of the United States or of any State relating to  
16 cannabis, or controlled substances as defined in the Illinois  
17 Controlled Substances Act, in addition to the fine and  
18 forfeiture authorized above, he shall be guilty of a Class 1  
19 felony ~~for which an offender may not be sentenced to death.~~

20 (b) For purposes of this section, a person engages in a  
21 calculated criminal cannabis conspiracy when:

22 (1) he violates Section 4 (d), 4 (e), 5 (d), 5 (e), 8  
23 (c) or 8 (d) of this Act; and

24 (2) such violation is a part of a conspiracy undertaken  
25 or carried on with 2 or more other persons; and

26 (3) he obtains anything of value greater than \$500 from,  
27 or organizes, directs or finances such violation or  
28 conspiracy.

29 (c) Any person who is convicted under this Section of  
30 engaging in a calculated criminal cannabis conspiracy shall  
31 forfeit to the State of Illinois:

32 (1) the receipts obtained by him in such conspiracy; and

1 (2) any of his interests in, claims against, receipts  
2 from, or property or rights of any kind affording a source of  
3 influence over, such conspiracy.

4 (d) The circuit court may enter such injunctions,  
5 restraining orders, directions, or prohibitions, or take such  
6 other actions, including the acceptance of satisfactory  
7 performance bonds, in connection with any property, claim,  
8 receipt, right or other interest subject to forfeiture under  
9 this Section, as it deems proper.

10 (Source: P.A. 84-1233.)

11 Section 45. The Code of Criminal Procedure of 1963 is  
12 amended by changing Sections 104-26, 113-3, 114-5, 115-4,  
13 115-4.1, 119-5, 121-13, 122-1, 122-2.1 and 122-4 as follows:

14 (725 ILCS 5/104-26) (from Ch. 38, par. 104-26)

15 Sec. 104-26. Disposition of Defendants suffering  
16 disabilities.

17 (a) A defendant convicted following a trial conducted  
18 under the provisions of Section 104-22 shall not be sentenced  
19 before a written presentence report of investigation is  
20 presented to and considered by the court. The presentence  
21 report shall be prepared pursuant to Sections 5-3-2, 5-3-3  
22 and 5-3-4 of the Unified Code of Corrections, as now or  
23 hereafter amended, and shall include a physical and mental  
24 examination unless the court finds that the reports of prior  
25 physical and mental examinations conducted pursuant to this  
26 Article are adequate and recent enough so that additional  
27 examinations would be unnecessary.

28 (b) (Blank). ~~A defendant convicted following a trial~~  
29 ~~under Section 104-22 shall not be subject to the death~~  
30 ~~penalty.~~

31 (c) A defendant convicted following a trial under  
32 Section 104-22 shall be sentenced according to the procedures

1 and dispositions authorized under the Unified Code of  
2 Corrections, as now or hereafter amended, subject to the  
3 following provisions:

4 (1) The court shall not impose a sentence of  
5 imprisonment upon the offender if the court believes that  
6 because of his disability a sentence of imprisonment  
7 would not serve the ends of justice and the interests of  
8 society and the offender or that because of his  
9 disability a sentence of imprisonment would subject the  
10 offender to excessive hardship. In addition to any other  
11 conditions of a sentence of conditional discharge or  
12 probation the court may require that the offender undergo  
13 treatment appropriate to his mental or physical  
14 condition.

15 (2) After imposing a sentence of imprisonment upon  
16 an offender who has a mental disability, the court may  
17 remand him to the custody of the Department of Human  
18 Services and order a hearing to be conducted pursuant to  
19 the provisions of the Mental Health and Developmental  
20 Disabilities Code, as now or hereafter amended. If the  
21 offender is committed following such hearing, he shall be  
22 treated in the same manner as any other civilly committed  
23 patient for all purposes except as provided in this  
24 Section. If the defendant is not committed pursuant to  
25 such hearing, he shall be remanded to the sentencing  
26 court for disposition according to the sentence imposed.

27 (3) If the court imposes a sentence of imprisonment  
28 upon an offender who has a mental disability but does not  
29 proceed under subparagraph (2) of paragraph (c) of this  
30 Section, it shall order the Department of Corrections to  
31 proceed pursuant to Section 3-8-5 of the Unified Code of  
32 Corrections, as now or hereafter amended.

33 (4) If the court imposes a sentence of imprisonment  
34 upon an offender who has a physical disability, it may

1 authorize the Department of Corrections to place the  
2 offender in a public or private facility which is able to  
3 provide care or treatment for the offender's disability  
4 and which agrees to do so.

5 (5) When an offender is placed with the Department  
6 of Human Services or another facility pursuant to  
7 subparagraph (2) or (4) of this paragraph (c), the  
8 Department or private facility shall not discharge or  
9 allow the offender to be at large in the community  
10 without prior approval of the court. If the defendant is  
11 placed in the custody of the Department of Human  
12 Services, the defendant shall be placed in a secure  
13 setting unless the court determines that there are  
14 compelling reasons why such placement is not necessary.  
15 The offender shall accrue good time and shall be eligible  
16 for parole in the same manner as if he were serving his  
17 sentence within the Department of Corrections. When the  
18 offender no longer requires hospitalization, care, or  
19 treatment, the Department of Human Services or the  
20 facility shall transfer him, if his sentence has not  
21 expired, to the Department of Corrections. If an  
22 offender is transferred to the Department of Corrections,  
23 the Department of Human Services shall transfer to the  
24 Department of Corrections all related records pertaining  
25 to length of custody and treatment services provided  
26 during the time the offender was held.

27 (6) The Department of Corrections shall notify the  
28 Department of Human Services or a facility in which an  
29 offender has been placed pursuant to subparagraph (2) or  
30 (4) of paragraph (c) of this Section of the expiration of  
31 his sentence. Thereafter, an offender in the Department  
32 of Human Services shall continue to be treated pursuant  
33 to his commitment order and shall be considered a civilly  
34 committed patient for all purposes including discharge.

1 An offender who is in a facility pursuant to subparagraph  
2 (4) of paragraph (c) of this Section shall be informed by  
3 the facility of the expiration of his sentence, and shall  
4 either consent to the continuation of his care or  
5 treatment by the facility or shall be discharged.

6 (Source: P.A. 89-507, eff. 7-1-97.)

7 (725 ILCS 5/113-3) (from Ch. 38, par. 113-3)

8 Sec. 113-3. (a) Every person charged with an offense  
9 shall be allowed counsel before pleading to the charge. If  
10 the defendant desires counsel and has been unable to obtain  
11 same before arraignment the court shall recess court or  
12 continue the cause for a reasonable time to permit defendant  
13 to obtain counsel and consult with him before pleading to the  
14 charge. If the accused is a dissolved corporation, and is not  
15 represented by counsel, the court may, in the interest of  
16 justice, appoint as counsel a licensed attorney of this  
17 State.

18 (b) In all cases, except where the penalty is a fine  
19 only, if the court determines that the defendant is indigent  
20 and desires counsel, the Public Defender shall be appointed  
21 as counsel. If there is no Public Defender in the county or  
22 if the defendant requests counsel other than the Public  
23 Defender and the court finds that the rights of the defendant  
24 will be prejudiced by the appointment of the Public Defender,  
25 the court shall appoint as counsel a licensed attorney at law  
26 of this State, except that in a county having a population of  
27 2,000,000 ~~1,000,000~~ or more the Public Defender shall be  
28 appointed as counsel in all misdemeanor cases where the  
29 defendant is indigent and desires counsel unless the case  
30 involves multiple defendants, in which case the court may  
31 appoint counsel other than the Public Defender for the  
32 additional defendants. The court shall require an affidavit  
33 signed by any defendant who requests court-appointed counsel.

1 Such affidavit shall be in the form established by the  
2 Supreme Court containing sufficient information to ascertain  
3 the assets and liabilities of that defendant. The Court may  
4 direct the Clerk of the Circuit Court to assist the defendant  
5 in the completion of the affidavit. Any person who knowingly  
6 files such affidavit containing false information concerning  
7 his assets and liabilities shall be liable to the county  
8 where the case, in which such false affidavit is filed, is  
9 pending for the reasonable value of the services rendered by  
10 the public defender or other court-appointed counsel in the  
11 case to the extent that such services were unjustly or  
12 falsely procured.

13 (c) Upon the filing with the court of a verified  
14 statement of services rendered the court shall order the  
15 county treasurer of the county of trial to pay counsel other  
16 than the Public Defender a reasonable fee. The court shall  
17 consider all relevant circumstances, including but not  
18 limited to the time spent while court is in session, other  
19 time spent in representing the defendant, and expenses  
20 reasonably incurred by counsel. In counties with a  
21 population greater than 2,000,000, the court shall order the  
22 county treasurer of the county of trial to pay counsel other  
23 than the Public Defender a reasonable fee stated in the order  
24 and based upon a rate of compensation of not more than \$40  
25 for each hour spent while court is in session and not more  
26 than \$30 for each hour otherwise spent representing a  
27 defendant, and such compensation shall not exceed \$150 for  
28 each defendant represented in misdemeanor cases and \$1250 in  
29 felony cases, in addition to expenses reasonably incurred as  
30 hereinafter in this Section provided, except that, in  
31 extraordinary circumstances, payment in excess of the limits  
32 herein stated may be made if the trial court certifies that  
33 such payment is necessary to provide fair compensation for  
34 protracted representation. A trial court may entertain the

1 filing of this verified statement before the termination of  
2 the cause, and may order the provisional payment of sums  
3 during the pendency of the cause.

4 (d) (Blank). ~~In-capital-cases, in-addition-to-counsel,~~  
5 ~~if-the-court-determines-that-the-defendant-is-indigent-the~~  
6 ~~court-may, upon-the-filing-with-the-court-of-a-verified~~  
7 ~~statement-of-services-rendered, order-the-county-Treasurer-of~~  
8 ~~the-county-of-trial-to-pay-necessary-expert-witnesses-for~~  
9 ~~defendant-reasonable-compensation-stated-in-the-order-not-to~~  
10 ~~exceed-\$250-for-each-defendant.~~

11 (e) If the court in any county having a population  
12 greater than 2,000,000 ~~1,000,000~~ determines that the  
13 defendant is indigent the court may, upon the filing with the  
14 court of a verified statement of such expenses, order the  
15 county treasurer of the county of trial, in such counties  
16 having a population greater than 2,000,000 ~~1,000,000~~ to pay  
17 the general expenses of the trial incurred by the defendant  
18 not to exceed \$50 for each defendant.

19 (f) (Blank). ~~The-provisions-of-this-Section-relating-to~~  
20 ~~appointment-of-counsel, compensation-of-counsel, and-payment~~  
21 ~~of-expenses-in-capital-cases-apply-except-when-the~~  
22 ~~compensation-and-expenses-are-being-provided-under-the~~  
23 ~~Capital-Crimes-Litigation-Act.~~

24 (Source: P.A. 91-589, eff. 1-1-00.)

25 (725 ILCS 5/114-5) (from Ch. 38, par. 114-5)  
26 Sec. 114-5. Substitution of judge.

27 (a) Within 10 days after a cause involving only one  
28 defendant has been placed on the trial call of a judge the  
29 defendant may move the court in writing for a substitution of  
30 that judge on the ground that such judge is so prejudiced  
31 against him that he cannot receive a fair trial. Upon the  
32 filing of such a motion the court shall proceed no further in  
33 the cause but shall transfer it to another judge not named in

1 the motion. The defendant may name only one judge as  
2 prejudiced, pursuant to this subsection; provided, however,  
3 that in a case in which the offense charged is a Class X  
4 felony or may be punished by death-~~er~~ life imprisonment, the  
5 defendant may name two judges as prejudiced.

6 (b) Within 24 hours after a motion is made for  
7 substitution of judge in a cause with multiple defendants  
8 each defendant shall have the right to move in accordance  
9 with subsection (a) of this Section for a substitution of one  
10 judge. The total number of judges named as prejudiced by all  
11 defendants shall not exceed the total number of defendants.  
12 The first motion for substitution of judge in a cause with  
13 multiple defendants shall be made within 10 days after the  
14 cause has been placed on the trial call of a judge.

15 (c) Within 10 days after a cause has been placed on the  
16 trial call of a judge the State may move the court in writing  
17 for a substitution of that judge on the ground that such  
18 judge is prejudiced against the State. Upon the filing of  
19 such a motion the court shall proceed no further in the cause  
20 but shall transfer it to another judge not named in the  
21 motion. The State may name only one judge as prejudiced,  
22 pursuant to this subsection.

23 (d) In addition to the provisions of subsections (a),  
24 (b) and (c) of this Section the State or any defendant may  
25 move at any time for substitution of judge for cause,  
26 supported by affidavit. Upon the filing of such motion a  
27 hearing shall be conducted as soon as possible after its  
28 filing by a judge not named in the motion; provided, however,  
29 that the judge named in the motion need not testify, but may  
30 submit an affidavit if the judge wishes. If the motion is  
31 allowed, the case shall be assigned to a judge not named in  
32 the motion. If the motion is denied the case shall be  
33 assigned back to the judge named in the motion.

34 (Source: P.A. 84-1428.)



1 (725 ILCS 5/115-4) (from Ch. 38, par. 115-4)  
2 Sec. 115-4. Trial by Court and Jury.) (a) Questions of  
3 law shall be decided by the court and questions of fact by  
4 the jury.

5 (b) The jury shall consist of 12 members.

6 (c) Upon request the parties shall be furnished with a  
7 list of prospective jurors with their addresses if known.

8 (d) Each party may challenge jurors for cause. If a  
9 prospective juror has a physical impairment, the court shall  
10 consider such prospective juror's ability to perceive and  
11 appreciate the evidence when considering a challenge for  
12 cause.

13 (e) A defendant tried alone shall be allowed 20  
14 ~~peremptory--challenges--in--a--capital--case,~~ 10 peremptory  
15 challenges in a case in which the punishment may be  
16 imprisonment in the penitentiary, and 5 in all other cases;  
17 except that, in a single trial of more than one defendant,  
18 each defendant shall be allowed ~~12-peremptory-challenges-in-a~~  
19 ~~capital--case,~~ 6 peremptory challenges in a case in which the  
20 punishment may be imprisonment in the penitentiary, and 3 in  
21 all other cases. If several charges against a defendant or  
22 defendants are consolidated for trial, each defendant shall  
23 be allowed peremptory challenges upon one charge only, which  
24 single charge shall be the charge against that defendant  
25 authorizing the greatest maximum penalty. The State shall be  
26 allowed the same number of peremptory challenges as all of  
27 the defendants.

28 (f) After examination by the court the jurors may be  
29 examined, passed upon, accepted and tendered by opposing  
30 counsel as provided by Supreme Court rules.

31 (g) After the jury is impaneled and sworn the court may  
32 direct the selection of 2 alternate jurors who shall take the  
33 same oath as the regular jurors. Each party shall have one  
34 additional peremptory challenge for each alternate juror. If

1 before the final submission of a cause a member of the jury  
2 dies or is discharged he shall be replaced by an alternate  
3 juror in the order of selection.

4 (h) A trial by the court and jury shall be conducted in  
5 the presence of the defendant unless he waives the right to  
6 be present.

7 (i) After arguments of counsel the court shall instruct  
8 the jury as to the law.

9 (j) Unless the affirmative defense of insanity has been  
10 presented during the trial, the jury shall return a general  
11 verdict as to each offense charged. When the affirmative  
12 defense of insanity has been presented during the trial, the  
13 court shall provide the jury not only with general verdict  
14 forms but also with a special verdict form of not guilty by  
15 reason of insanity, as to each offense charged, and in such  
16 event the court shall separately instruct the jury that a  
17 special verdict of not guilty by reason of insanity may be  
18 returned instead of a general verdict but such special  
19 verdict requires a unanimous finding by the jury that the  
20 defendant committed the acts charged but at the time of the  
21 commission of those acts the defendant was insane. In the  
22 event of a verdict of not guilty by reason of insanity, a  
23 hearing shall be held pursuant to the Mental Health and  
24 Developmental Disabilities Code to determine whether the  
25 defendant is subject to involuntary admission. When the  
26 affirmative defense of insanity has been presented during the  
27 trial, the court, where warranted by the evidence, shall also  
28 provide the jury with a special verdict form of guilty but  
29 mentally ill, as to each offense charged and shall separately  
30 instruct the jury that a special verdict of guilty but  
31 mentally ill may be returned instead of a general verdict,  
32 but that such special verdict requires a unanimous finding by  
33 the jury that: (1) the State has proven beyond a reasonable  
34 doubt that the defendant is guilty of the offense charged;

1 and (2) the defendant has failed to prove his insanity as  
2 required in subsection (b) of Section 3-2 of the Criminal  
3 Code of 1961, as amended, and subsections (a), (b) and (e) of  
4 Section 6-2 of the Criminal Code of 1961, as amended; and (3)  
5 the defendant has proven by a preponderance of the evidence  
6 that he was mentally ill, as defined in subsections (c) and  
7 (d) of Section 6-2 of the Criminal Code of 1961, as amended,  
8 at the time of the offense.

9 (k) When, at the close of the State's evidence or at the  
10 close of all of the evidence, the evidence is insufficient to  
11 support a finding or verdict of guilty the court may and on  
12 motion of the defendant shall make a finding or direct the  
13 jury to return a verdict of not guilty, enter a judgment of  
14 acquittal and discharge the defendant.

15 (l) When the jury retires to consider its verdict an  
16 officer of the court shall be appointed to keep them together  
17 and to prevent conversation between the jurors and others;  
18 however, if any juror is deaf, the jury may be accompanied by  
19 and may communicate with a court-appointed interpreter during  
20 its deliberations. Upon agreement between the State and  
21 defendant or his counsel the jury may seal and deliver its  
22 verdict to the clerk of the court, separate, and then return  
23 such verdict in open court at its next session.

24 (m) In the trial of an ~~a-capital-or-ether~~ offense, any  
25 juror who is a member of a panel or jury which has been  
26 impaneled and sworn as a panel or as a jury shall be  
27 permitted to separate from other such jurors during every  
28 period of adjournment to a later day, until final submission  
29 of the cause to the jury for determination, except that no  
30 such separation shall be permitted in any trial after the  
31 court, upon motion by the defendant or the State or upon its  
32 own motion, finds a probability that prejudice to the  
33 defendant or to the State will result from such separation.

34 (n) The members of the jury shall be entitled to take

1 notes during the trial, and the sheriff of the county in  
 2 which the jury is sitting shall provide them with writing  
 3 materials for this purpose. Such notes shall remain  
 4 confidential, and shall be destroyed by the sheriff after the  
 5 verdict has been returned or a mistrial declared.

6 (o) A defendant tried by the court and jury shall only  
 7 be found guilty, guilty but mentally ill, not guilty or not  
 8 guilty by reason of insanity, upon the unanimous verdict of  
 9 the jury.

10 (Source: P.A. 86-392.)

11 (725 ILCS 5/115-4.1) (from Ch. 38, par. 115-4.1)

12 Sec. 115-4.1. Absence of defendant.

13 (a) When a defendant after arrest and an initial court  
 14 appearance for a ~~non-capital~~ felony or a misdemeanor, fails  
 15 to appear for trial, at the request of the State and after  
 16 the State has affirmatively proven through substantial  
 17 evidence that the defendant is willfully avoiding trial, the  
 18 court may commence trial in the absence of the defendant.  
 19 Absence of a defendant as specified in this Section shall not  
 20 be a bar to indictment of a defendant, return of information  
 21 against a defendant, or arraignment of a defendant for the  
 22 charge for which bail has been granted. If a defendant fails  
 23 to appear at arraignment, the court may enter a plea of "not  
 24 guilty" on his behalf. ~~If a defendant absents himself before~~  
 25 ~~trial on a capital felony, trial may proceed as specified in~~  
 26 ~~this Section provided that the State certifies that it will~~  
 27 ~~not seek a death sentence following conviction.~~ Trial in the  
 28 defendant's absence shall be by jury unless the defendant had  
 29 previously waived trial by jury. The absent defendant must  
 30 be represented by retained or appointed counsel. The court,  
 31 at the conclusion of all of the proceedings, may order the  
 32 clerk of the circuit court to pay counsel such sum as the  
 33 court deems reasonable, from any bond monies which were

1 posted by the defendant with the clerk, after the clerk has  
2 first deducted all court costs. If trial had previously  
3 commenced in the presence of the defendant and the defendant  
4 willfully absents himself for two successive court days, the  
5 court shall proceed to trial. All procedural rights  
6 guaranteed by the United States Constitution, Constitution of  
7 the State of Illinois, statutes of the State of Illinois, and  
8 rules of court shall apply to the proceedings the same as if  
9 the defendant were present in court and had not either  
10 forfeited his bail bond or escaped from custody. The court  
11 may set the case for a trial which may be conducted under  
12 this Section despite the failure of the defendant to appear  
13 at the hearing at which the trial date is set. When such  
14 trial date is set the clerk shall send to the defendant, by  
15 certified mail at his last known address indicated on his  
16 bond slip, notice of the new date which has been set for  
17 trial. Such notification shall be required when the  
18 defendant was not personally present in open court at the  
19 time when the case was set for trial.

20 (b) The absence of a defendant from a trial conducted  
21 pursuant to this Section does not operate as a bar to  
22 concluding the trial, to a judgment of conviction resulting  
23 therefrom, or to a final disposition of the trial in favor of  
24 the defendant.

25 (c) Upon a verdict of not guilty, the court shall enter  
26 judgment for the defendant. Upon a verdict of guilty, the  
27 court shall set a date for the hearing of post-trial motions  
28 and shall hear such motion in the absence of the defendant.  
29 If post-trial motions are denied, the court shall proceed to  
30 conduct a sentencing hearing and to impose a sentence upon  
31 the defendant.

32 (d) A defendant who is absent for part of the  
33 proceedings of trial, post-trial motions, or sentencing, does  
34 not thereby forfeit his right to be present at all remaining

1 proceedings.

2 (e) When a defendant who in his absence has been either  
 3 convicted or sentenced or both convicted and sentenced  
 4 appears before the court, he must be granted a new trial or  
 5 new sentencing hearing if the defendant can establish that  
 6 his failure to appear in court was both without his fault and  
 7 due to circumstances beyond his control. A hearing with  
 8 notice to the State's Attorney on the defendant's request for  
 9 a new trial or a new sentencing hearing must be held before  
 10 any such request may be granted. At any such hearing both  
 11 the defendant and the State may present evidence.

12 (f) If the court grants only the defendant's request for  
 13 a new sentencing hearing, then a new sentencing hearing  
 14 shall be held in accordance with the provisions of the  
 15 Unified Code of Corrections. At any such hearing, both the  
 16 defendant and the State may offer evidence of the defendant's  
 17 conduct during his period of absence from the court. The  
 18 court may impose any sentence authorized by the Unified Code  
 19 of Corrections and is not in any way limited or restricted by  
 20 any sentence previously imposed.

21 (g) A defendant whose motion under paragraph (e) for a  
 22 new trial or new sentencing hearing has been denied may file  
 23 a notice of appeal therefrom. Such notice may also include a  
 24 request for review of the judgment and sentence not vacated  
 25 by the trial court.

26 (Source: P.A. 90-787, eff. 8-14-98.)

27 (725 ILCS 5/119-5) (from Ch. 38, par. 119-5)

28 Sec. 119-5. Execution of Death Sentence. On or after the  
 29 effective date of this amendatory Act of the 93rd General  
 30 Assembly no person may be executed in this State.

31 ~~(a)-(1)--A-defendant-sentenced--to--death--shall--be~~  
 32 ~~executed--by--an--intravenous--administration--of--a--lethal~~  
 33 ~~quantity---of---an---ultrashort-acting---barbiturate---in~~

1 combination-with-a-chemical-paralytic-agent-and-potassium  
2 chloride-or-other-equally-effective-substances-sufficient  
3 to-cause-death-until-death-is-pronounced--by--a--licensed  
4 physician--according--to--accepted--standards--of-medical  
5 practice.

6 (2)--If-the-execution-of-the-sentence--of--death--as  
7 provided---in---paragraph---(1)---is---held---illegal---or  
8 unconstitutional--by--a--reviewing--court--of---competent  
9 jurisdiction,--the-sentence-of-death-shall-be-carried-out  
10 by-electrocution.

11 (b)--In-pronouncing-the-sentence-of-death-the-court-shall  
12 set-the-date-of-the-execution-which-shall-be-not-less-than-60  
13 nor-more-than-90-days-from-the-date-sentence-is-pronounced.

14 (c)--A--sentence--of--death--shall--be--executed---at---a  
15 Department-of-Corrections-facility.

16 (d)--The--warden-of-the-penitentiary-shall-supervise-such  
17 execution,--which-shall-be-conducted--in--the--presence--of--6  
18 witnesses--who--shall--certify-the-execution-of-the-sentence.  
19 The-certification-shall-be-filed-with-the-clerk-of-the--court  
20 that-imposed-the-sentence.

21 (e)--The--identity--of-executioners-and-other-persons-who  
22 participate-or-perform-ancillary-functions--in--an--execution  
23 and--information--contained--in--records--that-would-identify  
24 those-persons-shall-remain-confidential,--shall-not-be-subject  
25 to-disclosure,--and-shall-not-be-admissible-as-evidence-or--be  
26 discoverable-in-any-action-of-any-kind-in-any-court-or-before  
27 any--tribunal,--board,--agency,--or-person.--In-order-to-protect  
28 the-confidentiality-of-persons-participating-in-an-execution,  
29 the-Director-of-Corrections-may-direct--that--the--Department  
30 make-payments-in-cash-for-such-services.

31 (f)--The--amendatory-changes-to-this-Section-made-by-this  
32 amendatory-Act-of-1991-are-severable-under--Section--1.31--of  
33 the-Statute-on-Statutes.

34 (g)--Notwithstanding---any---other---provision---of--law,

1 assistance, participation in, or the performance of ancillary  
2 or other functions pursuant to this Section, including but  
3 not limited to the administration of the lethal substance or  
4 substances required by this Section, shall not be construed  
5 to constitute the practice of medicine.

6 (h) Notwithstanding any other provision of law, any  
7 pharmacist or pharmaceutical supplier is authorized to  
8 dispense drugs to the Director of Corrections or his or her  
9 designee, without prescription, in order to carry out the  
10 provisions of this Section.

11 (Source: P.A. 89-8, eff. 3-21-95.)

12 (725 ILCS 5/121-13) (from Ch. 38, par. 121-13)  
13 Sec. 121-13. Pauper Appeals.

14 (a) In any case wherein the defendant was convicted of a  
15 felony, if the court determines that the defendant desires  
16 counsel on appeal but is indigent the Public Defender or the  
17 State Appellate Defender shall be appointed as counsel,  
18 unless with the consent of the defendant and for good cause  
19 shown, the court may appoint counsel other than the Public  
20 Defender or the State Appellate Defender.

21 (b) In any case wherein the defendant was convicted of a  
22 felony and a sentence of death was not imposed in the trial  
23 court the reviewing court, upon petition of the defendant's  
24 counsel made not more frequently than every 60 days after  
25 appointment, shall determine a reasonable amount to be  
26 allowed an indigent defendant's counsel other than the Public  
27 Defender or the State Appellate Defender for compensation and  
28 reimbursement of expenditures necessarily incurred in the  
29 prosecution of the appeal or review proceedings. The  
30 compensation shall not exceed \$1500 in each case, except  
31 that, in extraordinary circumstances, payment in excess of  
32 the limits herein stated may be made if the reviewing court  
33 certifies that the payment is necessary to provide fair



1 compensation for protracted representation. The reviewing  
2 court shall enter an order directing the county treasurer of  
3 the county where the case was tried to pay the amount allowed  
4 by the court. The reviewing court may order the provisional  
5 payment of sums during the pendency of the cause.

6 (c) In any case in which a sentence of death was imposed  
7 in the trial court before the effective date of this  
8 amendatory Act of the 93rd General Assembly, the Supreme  
9 Court, upon written petition of the defendant's counsel made  
10 not more than every 60 days after appointment, shall  
11 determine reasonable compensation for an indigent defendant's  
12 attorneys on appeal. The compensation shall not exceed \$2,000  
13 in each case, except that, in extraordinary circumstances,  
14 payment in excess of the limits herein stated may be made if  
15 the reviewing court certifies that the payment is necessary  
16 to provide fair compensation for protracted representation.  
17 The Supreme Court shall enter an order directing the county  
18 treasurer of the county where the case was tried to pay  
19 compensation and reimburse expenditures necessarily incurred  
20 in the prosecution of the appeal or review proceedings. The  
21 Supreme Court may order the provisional payment of sums  
22 during the pendency of the cause.

23 (Source: P.A. 86-318; 87-580.)

24 (725 ILCS 5/122-1) (from Ch. 38, par. 122-1)

25 Sec. 122-1. Petition in the trial court.

26 (a) Any person imprisoned in the penitentiary who  
27 asserts that in the proceedings which resulted in his or her  
28 conviction there was a substantial denial of his or her  
29 rights under the Constitution of the United States or of the  
30 State of Illinois or both may institute a proceeding under  
31 this Article.

32 (b) The proceeding shall be commenced by filing with the  
33 clerk of the court in which the conviction took place a

1 petition (together with a copy thereof) verified by  
2 affidavit. Petitioner shall also serve another copy upon the  
3 State's Attorney by any of the methods provided in Rule 7 of  
4 the Supreme Court. The clerk shall docket the petition for  
5 consideration by the court pursuant to Section 122-2.1 upon  
6 his or her receipt thereof and bring the same promptly to the  
7 attention of the court.

8 (c) No proceedings under this Article shall be commenced  
9 more than 6 months after the denial of a petition for leave  
10 to appeal or the date for filing such a petition if none is  
11 filed or more than 45 days after the defendant files his or  
12 her brief in the appeal of the sentence before the Illinois  
13 Supreme Court (or more than 45 days after the deadline for  
14 the filing of the defendant's brief with the Illinois Supreme  
15 Court if no brief is filed) or 3 years from the date of  
16 conviction, whichever is sooner, unless the petitioner  
17 alleges facts showing that the delay was not due to his or  
18 her culpable negligence.

19 (d) A person seeking relief by filing a petition under  
20 this Section must specify in the petition or its heading that  
21 it is filed under this Section. A trial court that has  
22 received a petition complaining of a conviction or sentence  
23 that fails to specify in the petition or its heading that it  
24 is filed under this Section need not evaluate the petition to  
25 determine whether it could otherwise have stated some grounds  
26 for relief under this Article.

27 (e) (Blank). ~~A proceeding under this Article may not be~~  
28 ~~commenced on behalf of a defendant who has been sentenced to~~  
29 ~~death without the written consent of the defendant, unless~~  
30 ~~the defendant, because of a mental or physical condition, is~~  
31 ~~incapable of asserting his or her own claim.~~

32 (Source: P.A. 89-284, eff. 1-1-96; 89-609, eff. 1-1-97;  
33 89-684, eff. 6-1-97; 90-14, eff. 7-1-97.)

1 (725 ILCS 5/122-2.1) (from Ch. 38, par. 122-2.1)

2 Sec. 122-2.1. (a) Within 90 days after the filing and  
3 docketing of each petition, the court shall examine such  
4 petition and enter an order thereon pursuant to this Section.

5 (1) If the petitioner is under sentence of death  
6 imposed before the effective date of this amendatory Act  
7 of the 93rd General Assembly and is without counsel and  
8 alleges that he is without means to procure counsel, he  
9 shall state whether or not he wishes counsel to be  
10 appointed to represent him. If appointment of counsel is  
11 so requested, the court shall appoint counsel if  
12 satisfied that the petitioner has no means to procure  
13 counsel.

14 (2) If the petitioner is sentenced to imprisonment  
15 and the court determines the petition is frivolous or is  
16 patently without merit, it shall dismiss the petition in  
17 a written order, specifying the findings of fact and  
18 conclusions of law it made in reaching its decision.  
19 Such order of dismissal is a final judgment and shall be  
20 served upon the petitioner by certified mail within 10  
21 days of its entry.

22 (b) If the petition is not dismissed pursuant to this  
23 Section, the court shall order the petition to be docketed  
24 for further consideration in accordance with Sections 122-4  
25 through 122-6.

26 (c) In considering a petition pursuant to this Section,  
27 the court may examine the court file of the proceeding in  
28 which the petitioner was convicted, any action taken by an  
29 appellate court in such proceeding and any transcripts of  
30 such proceeding.

31 (Source: P.A. 86-655; 87-904.)

32 (725 ILCS 5/122-4) (from Ch. 38, par. 122-4)

33 Sec. 122-4. Pauper Petitions. If the petition is not

1 dismissed pursuant to Section 122-2.1, and alleges that the  
2 petitioner is unable to pay the costs of the proceeding, the  
3 court may order that the petitioner be permitted to proceed  
4 as a poor person and order a transcript of the proceedings  
5 delivered to petitioner in accordance with Rule of the  
6 Supreme Court. If the petitioner is without counsel and  
7 alleges that he is without means to procure counsel, he shall  
8 state whether or not he wishes counsel to be appointed to  
9 represent him. If appointment of counsel is so requested,  
10 and the petition is not dismissed pursuant to Section  
11 122-2.1, the court shall appoint counsel if satisfied that  
12 the petitioner has no means to procure counsel. A petitioner  
13 who is a prisoner in an Illinois Department of Corrections  
14 facility who files a pleading, motion, or other filing that  
15 purports to be a legal document seeking post-conviction  
16 relief under this Article against the State, the Illinois  
17 Department of Corrections, the Prisoner Review Board, or any  
18 of their officers or employees in which the court makes a  
19 specific finding that the pleading, motion, or other filing  
20 that purports to be a legal document is frivolous shall not  
21 proceed as a poor person and shall be liable for the full  
22 payment of filing fees and actual court costs as provided in  
23 Article XXII of the Code of Civil Procedure.

24 A Circuit Court or the Illinois Supreme Court may appoint  
25 the State Appellate Defender to provide post-conviction  
26 representation in a case in which the defendant was is  
27 sentenced to death before the effective date of this  
28 amendatory Act of the 93rd General Assembly. Any attorney  
29 assigned by the Office of the State Appellate Defender to  
30 provide post-conviction representation for indigent  
31 defendants in cases in which a sentence of death was imposed  
32 in the trial court may, from time to time submit bills and  
33 time sheets to the Office of the State Appellate Defender for  
34 payment of services rendered and the Office of the State

1 Appellate Defender shall pay bills from funds appropriated  
2 for this purpose in accordance with rules promulgated by the  
3 State Appellate Defender.

4 The court, at the conclusion of the proceedings upon  
5 receipt of a petition by the appointed counsel, shall  
6 determine a reasonable amount to be allowed an indigent  
7 defendant's counsel other than the Public Defender or the  
8 State Appellate Defender for compensation and reimbursement  
9 of expenditures necessarily incurred in the proceedings. The  
10 compensation shall not exceed \$500 in each case, except that,  
11 in extraordinary circumstances, payment in excess of the  
12 limits herein stated may be made if the trial court certifies  
13 that the payment is necessary to provide fair compensation  
14 for protracted representation, and the amount is approved by  
15 the chief judge of the circuit. The court shall enter an  
16 order directing the county treasurer of the county where the  
17 case was tried to pay the amount thereby allowed by the  
18 court. The court may order the provisional payment of sums  
19 during the pendency of the cause.

20 (Source: P.A. 90-505, eff. 8-19-97.)

21 Section 50. The State Appellate Defender Act is amended  
22 by changing Sections 10 and 10.5 as follows:

23 (725 ILCS 105/10) (from Ch. 38, par. 208-10)

24 Sec. 10. Powers and duties of State Appellate Defender.

25 (a) The State Appellate Defender shall represent  
26 indigent persons on appeal in criminal and delinquent minor  
27 proceedings, when appointed to do so by a court under a  
28 Supreme Court Rule or law of this State.

29 (b) The State Appellate Defender shall submit a budget  
30 for the approval of the State Appellate Defender Commission.

31 (c) The State Appellate Defender may:

32 (1) maintain a panel of private attorneys available

1 to serve as counsel on a case basis;

2 (2) establish programs, alone or in conjunction  
3 with law schools, for the purpose of utilizing volunteer  
4 law students as legal assistants;

5 (3) cooperate and consult with state agencies,  
6 professional associations, and other groups concerning  
7 the causes of criminal conduct, the rehabilitation and  
8 correction of persons charged with and convicted of  
9 crime, the administration of criminal justice, and, in  
10 counties of less than 1,000,000 population, study,  
11 design, develop and implement model systems for the  
12 delivery of trial level defender services, and make an  
13 annual report to the General Assembly;

14 (4) provide investigative services to appointed  
15 counsel and county public defenders;

16 (5) (blank). in-cases-in-which-a-death-sentence--is  
17 an-authorized-disposition, provide-trial-counsel-with-the  
18 assistance---of---expert--witnesses,--investigators,--and  
19 mitigation-specialists-from--funds--appropriated--to--the  
20 State-Appellate-Defender-specifically-for-that-purpose-by  
21 the--General--Assembly.---The--Office--of-State-Appellate  
22 Defender-shall-not-be-appointed-to-serve-as-trial-counsel  
23 in-capital-cases.

24 (d) (Blank). For--each--State--fiscal--year,--the--State  
25 Appellate--Defender--shall-appear-before-the-General-Assembly  
26 and-request--appropriations--to--be--made--from--the--Capital  
27 Litigation--Trust-Fund-to-the-State-Treasurer-for-the-purpose  
28 of-providing-defense-assistance-in-capital-cases--outside--of  
29 Cook--County.--The-State-Appellate-Defender-may-appear-before  
30 the-General-Assembly-at-other-times-during-the-State's-fiscal  
31 year-to-request-supplemental-appropriations--from--the--Trust  
32 Fund-to-the-State-Treasurer.

33 (e) The requirement for reporting to the General  
34 Assembly shall be satisfied by filing copies of the report

1 with the Speaker, the Minority Leader and the Clerk of the  
2 House of Representatives and the President, the Minority  
3 Leader and the Secretary of the Senate and the Legislative  
4 Research Unit, as required by Section 3.1 of the General  
5 Assembly Organization Act and filing such additional copies  
6 with the State Government Report Distribution Center for the  
7 General Assembly as is required under paragraph (t) of  
8 Section 7 of the State Library Act.

9 (Source: P.A. 91-589, eff. 1-1-00.)

10 (725 ILCS 105/10.5)

11 Sec. 10.5. Competitive bidding for appellate services.

12 (a) The State Appellate Defender may, to the extent  
13 necessary to dispose of its backlog of indigent criminal  
14 appeals, institute a competitive bidding program under which  
15 contracts for the services of attorneys in non-death-penalty  
16 criminal appeals are awarded to the lowest responsible  
17 bidder.

18 (b) The State Appellate Defender, before letting out  
19 bids for contracts for the services of attorneys to represent  
20 indigent defendants on appeal in criminal cases, shall  
21 advertise the letting of the bids in a publication or  
22 publications of the Illinois State Bar Association, the  
23 Chicago Daily Law Bulletin, and the Chicago Lawyer. The  
24 State Appellate Defender shall also advertise the letting of  
25 the bids in newspapers of general circulation in major  
26 municipalities to be determined by the State Appellate  
27 Defender. The State Appellate Defender shall mail notices of  
28 the letting of the bids to county and local bar associations.

29 (c) Bids may be let in packages of one to 5, appeals.  
30 Additional cases may be assigned, in the discretion of the  
31 State Appellate Defender, after a successful bidder completes  
32 work on existing packages.

33 (d) A bid for services of an attorney under this Section

1 shall be let only to an attorney licensed to practice law in  
 2 Illinois who has prior criminal appellate experience or to an  
 3 attorney who is a member or employee of a law firm which has  
 4 at least one member with that experience. Prospective bidders  
 5 must furnish legal writing samples that are deemed acceptable  
 6 to the State Appellate Defender.

7 (e) An attorney who is awarded a contract under this  
 8 Section shall communicate with each of his or her clients and  
 9 shall file each initial brief before the due date established  
 10 by Supreme Court Rule or by the Appellate Court. The State  
 11 Appellate Defender may rescind the contract for attorney  
 12 services and may require the return of the record on appeal  
 13 if the contracted attorney fails to make satisfactory  
 14 progress, in the opinion of the State Appellate Defender,  
 15 toward filing a brief.

16 (f) Gross compensation for completing of a case shall be  
 17 \$40 per hour but shall not exceed \$2,000 per case. The  
 18 contract shall specify the manner of payment.

19 (g) (Blank).

20 (h) (Blank).

21 (Source: P.A. 89-689, eff. 12-31-96; 90-505, eff. 8-19-97.)

22 (725 ILCS 124/Act rep.)

23 Section 55. The Capital Crimes Litigation Act is  
 24 repealed on July 1, 2003.

25 Section 60. The Uniform Criminal Extradition Act is  
 26 amended by changing Section 5 as follows:

27 (725 ILCS 235/5) (from Ch. 38, par. 157-5)

28 Sec. 5. Exceptions.

29 This act does not apply to any person in this State  
 30 confined as mentally ill or, in need of mental treatment, ~~or~~  
 31 ~~under-sentence-of-death.~~



1 (Source: Laws 1963, p. 2171.)

2 Section 65. The Unified Code of Corrections is amended  
3 by changing Sections 3-3-13, 3-8-10, 3-6-3, 5-1-9, 5-4-1,  
4 5-5-3, 5-8-1, 5-8-4, and 5-8-5 as follows:

5 (730 ILCS 5/3-3-13) (from Ch. 38, par. 1003-3-13)

6 Sec. 3-3-13. Procedure for Executive Clemency.

7 (a) Petitions seeking pardon, commutation, or reprieve  
8 shall be addressed to the Governor and filed with the  
9 Prisoner Review Board. The petition shall be in writing and  
10 signed by the person under conviction or by a person on his  
11 behalf. It shall contain a brief history of the case, the  
12 reasons for seeking executive clemency, and other relevant  
13 information the Board may require.

14 (a-5) After a petition has been denied by the Governor,  
15 the Board may not accept a repeat petition for executive  
16 clemency for the same person until one full year has elapsed  
17 from the date of the denial. The Chairman of the Board may  
18 waive the one-year requirement if the petitioner offers in  
19 writing new information that was unavailable to the  
20 petitioner at the time of the filing of the prior petition  
21 and which the Chairman determines to be significant. The  
22 Chairman also may waive the one-year waiting period if the  
23 petitioner can show that a change in circumstances of a  
24 compelling humanitarian nature has arisen since the denial of  
25 the prior petition.

26 (b) Notice of the proposed application shall be given by  
27 the Board to the committing court and the state's attorney of  
28 the county where the conviction was had.

29 (c) The Board shall, if requested and upon due notice,  
30 give a hearing to each application, allowing representation  
31 by counsel, if desired, after which it shall confidentially  
32 advise the Governor by a written report of its

1 recommendations which shall be determined by majority vote.  
2 The Board shall meet to consider such petitions no less than  
3 4 times each year.

4 ~~Application for executive clemency under this Section may~~  
5 ~~not be commenced on behalf of a person who has been sentenced~~  
6 ~~to death without the written consent of the defendant, unless~~  
7 ~~the defendant, because of a mental or physical condition, is~~  
8 ~~incapable of asserting his or her own claim.~~

9 (d) The Governor shall decide each application and  
10 communicate his decision to the Board which shall notify the  
11 petitioner.

12 In the event a petitioner who has been convicted of a  
13 Class X felony is granted a release, after the Governor has  
14 communicated such decision to the Board, the Board shall give  
15 written notice to the Sheriff of the county from which the  
16 offender was sentenced if such sheriff has requested that  
17 such notice be given on a continuing basis. In cases where  
18 arrest of the offender or the commission of the offense took  
19 place in any municipality with a population of more than  
20 10,000 persons, the Board shall also give written notice to  
21 the proper law enforcement agency for said municipality which  
22 has requested notice on a continuing basis.

23 (e) Nothing in this Section shall be construed to limit  
24 the power of the Governor under the constitution to grant a  
25 reprieve, commutation of sentence, or pardon.

26 (Source: P.A. 89-112, eff. 7-7-95; 89-684, eff. 6-1-97.)

27 (730 ILCS 5/3-8-10) (from Ch. 38, par. 1003-8-10)

28 Sec. 3-8-10. Intrastate Detainers. ~~Except for persons~~  
29 ~~sentenced to death,~~ Subsection (b), (c) and (e) of Section  
30 103-5 of the Code of Criminal Procedure of 1963 shall also  
31 apply to persons committed to any institution or facility or  
32 program of the Illinois Department of Corrections who have  
33 untried complaints, charges or indictments pending in any

1 county of this State, and such person shall include in the  
2 demand under subsection (b), a statement of the place of  
3 present commitment, the term, and length of the remaining  
4 term, the charges pending against him or her to be tried and  
5 the county of the charges, and the demand shall be addressed  
6 to the state's attorney of the county where he or she is  
7 charged with a copy to the clerk of that court and a copy to  
8 the chief administrative officer of the Department of  
9 Corrections institution or facility to which he or she is  
10 committed. The state's attorney shall then procure the  
11 presence of the defendant for trial in his county by habeas  
12 corpus. Additional time may be granted by the court for the  
13 process of bringing and serving an order of habeas corpus ad  
14 prosequendum. In the event that the person is not brought to  
15 trial within the allotted time, then the charge for which he  
16 or she has requested a speedy trial shall be dismissed.

17 (Source: P.A. 83-346.)

18 (730 ILCS 5/3-6-3) (from Ch. 38, par. 1003-6-3)

19 Sec. 3-6-3. Rules and Regulations for Early Release.

20 (a) (1) The Department of Corrections shall  
21 prescribe rules and regulations for the early release on  
22 account of good conduct of persons committed to the  
23 Department which shall be subject to review by the  
24 Prisoner Review Board.

25 (2) The rules and regulations on early release  
26 shall provide, with respect to offenses committed on or  
27 after June 19, 1998, the following:

28 (i) that a prisoner who is serving a term of  
29 imprisonment for first degree murder or for the  
30 offense of terrorism shall receive no good conduct  
31 credit and shall serve the entire sentence imposed  
32 by the court;

33 (ii) that a prisoner serving a sentence for

1 attempt to commit first degree murder, solicitation  
2 of murder, solicitation of murder for hire,  
3 intentional homicide of an unborn child, predatory  
4 criminal sexual assault of a child, aggravated  
5 criminal sexual assault, criminal sexual assault,  
6 aggravated kidnapping, aggravated battery with a  
7 firearm, heinous battery, aggravated battery of a  
8 senior citizen, or aggravated battery of a child  
9 shall receive no more than 4.5 days of good conduct  
10 credit for each month of his or her sentence of  
11 imprisonment; and

12 (iii) that a prisoner serving a sentence for  
13 home invasion, armed robbery, aggravated vehicular  
14 hijacking, aggravated discharge of a firearm, or  
15 armed violence with a category I weapon or category  
16 II weapon, when the court has made and entered a  
17 finding, pursuant to subsection (c-1) of Section  
18 5-4-1 of this Code, that the conduct leading to  
19 conviction for the enumerated offense resulted in  
20 great bodily harm to a victim, shall receive no more  
21 than 4.5 days of good conduct credit for each month  
22 of his or her sentence of imprisonment.

23 (2.1) For all offenses, other than those enumerated  
24 in subdivision (a)(2) committed on or after June 19,  
25 1998, and other than the offense of reckless homicide as  
26 defined in subsection (e) of Section 9-3 of the Criminal  
27 Code of 1961 committed on or after January 1, 1999, the  
28 rules and regulations shall provide that a prisoner who  
29 is serving a term of imprisonment shall receive one day  
30 of good conduct credit for each day of his or her  
31 sentence of imprisonment or recommitment under Section  
32 3-3-9. Each day of good conduct credit shall reduce by  
33 one day the prisoner's period of imprisonment or  
34 recommitment under Section 3-3-9.

1           (2.2) A prisoner serving a term of natural life  
2 imprisonment ~~or a prisoner who has been sentenced to~~  
3 death shall receive no good conduct credit.

4           (2.3) The rules and regulations on early release  
5 shall provide that a prisoner who is serving a sentence  
6 for reckless homicide as defined in subsection (e) of  
7 Section 9-3 of the Criminal Code of 1961 committed on or  
8 after January 1, 1999 shall receive no more than 4.5 days  
9 of good conduct credit for each month of his or her  
10 sentence of imprisonment.

11          (2.4) The rules and regulations on early release  
12 shall provide with respect to the offenses of aggravated  
13 battery with a machine gun or a firearm equipped with any  
14 device or attachment designed or used for silencing the  
15 report of a firearm or aggravated discharge of a machine  
16 gun or a firearm equipped with any device or attachment  
17 designed or used for silencing the report of a firearm,  
18 committed on or after the effective date of this  
19 amendatory Act of 1999, that a prisoner serving a  
20 sentence for any of these offenses shall receive no more  
21 than 4.5 days of good conduct credit for each month of  
22 his or her sentence of imprisonment.

23          (2.5) The rules and regulations on early release  
24 shall provide that a prisoner who is serving a sentence  
25 for aggravated arson committed on or after the effective  
26 date of this amendatory Act of the 92nd General Assembly  
27 shall receive no more than 4.5 days of good conduct  
28 credit for each month of his or her sentence of  
29 imprisonment.

30          (3) The rules and regulations shall also provide  
31 that the Director may award up to 180 days additional  
32 good conduct credit for meritorious service in specific  
33 instances as the Director deems proper; except that no  
34 more than 90 days of good conduct credit for meritorious

1 service shall be awarded to any prisoner who is serving a  
2 sentence for conviction of first degree murder, reckless  
3 homicide while under the influence of alcohol or any  
4 other drug, aggravated kidnapping, kidnapping, predatory  
5 criminal sexual assault of a child, aggravated criminal  
6 sexual assault, criminal sexual assault, deviate sexual  
7 assault, aggravated criminal sexual abuse, aggravated  
8 indecent liberties with a child, indecent liberties with  
9 a child, child pornography, heinous battery, aggravated  
10 battery of a spouse, aggravated battery of a spouse with  
11 a firearm, stalking, aggravated stalking, aggravated  
12 battery of a child, endangering the life or health of a  
13 child, cruelty to a child, or narcotic racketeering.  
14 Notwithstanding the foregoing, good conduct credit for  
15 meritorious service shall not be awarded on a sentence of  
16 imprisonment imposed for conviction of: (i) one of the  
17 offenses enumerated in subdivision (a)(2) when the  
18 offense is committed on or after June 19, 1998, (ii)  
19 reckless homicide as defined in subsection (e) of Section  
20 9-3 of the Criminal Code of 1961 when the offense is  
21 committed on or after January 1, 1999, (iii) one of the  
22 offenses enumerated in subdivision (a)(2.4) when the  
23 offense is committed on or after the effective date of  
24 this amendatory Act of 1999, or (iv) aggravated arson  
25 when the offense is committed on or after the effective  
26 date of this amendatory Act of the 92nd General Assembly.  
27 (4) The rules and regulations shall also provide  
28 that the good conduct credit accumulated and retained  
29 under paragraph (2.1) of subsection (a) of this Section  
30 by any inmate during specific periods of time in which  
31 such inmate is engaged full-time in substance abuse  
32 programs, correctional industry assignments, or  
33 educational programs provided by the Department under  
34 this paragraph (4) and satisfactorily completes the

1 assigned program as determined by the standards of the  
2 Department, shall be multiplied by a factor of 1.25 for  
3 program participation before August 11, 1993 and 1.50 for  
4 program participation on or after that date. However, no  
5 inmate shall be eligible for the additional good conduct  
6 credit under this paragraph (4) while assigned to a boot  
7 camp, mental health unit, or electronic detention, or if  
8 convicted of an offense enumerated in paragraph (a)(2) of  
9 this Section that is committed on or after June 19, 1998,  
10 or if convicted of reckless homicide as defined in  
11 subsection (e) of Section 9-3 of the Criminal Code of  
12 1961 if the offense is committed on or after January 1,  
13 1999, or if convicted of an offense enumerated in  
14 paragraph (a)(2.4) of this Section that is committed on  
15 or after the effective date of this amendatory Act of  
16 1999, or first degree murder, a Class X felony, criminal  
17 sexual assault, felony criminal sexual abuse, aggravated  
18 criminal sexual abuse, aggravated battery with a firearm,  
19 or any predecessor or successor offenses with the same or  
20 substantially the same elements, or any inchoate offenses  
21 relating to the foregoing offenses. No inmate shall be  
22 eligible for the additional good conduct credit under  
23 this paragraph (4) who (i) has previously received  
24 increased good conduct credit under this paragraph (4)  
25 and has subsequently been convicted of a felony, or (ii)  
26 has previously served more than one prior sentence of  
27 imprisonment for a felony in an adult correctional  
28 facility.

29 Educational, vocational, substance abuse and  
30 correctional industry programs under which good conduct  
31 credit may be increased under this paragraph (4) shall be  
32 evaluated by the Department on the basis of documented  
33 standards. The Department shall report the results of  
34 these evaluations to the Governor and the General

1 Assembly by September 30th of each year. The reports  
2 shall include data relating to the recidivism rate among  
3 program participants.

4 Availability of these programs shall be subject to  
5 the limits of fiscal resources appropriated by the  
6 General Assembly for these purposes. Eligible inmates  
7 who are denied immediate admission shall be placed on a  
8 waiting list under criteria established by the  
9 Department. The inability of any inmate to become engaged  
10 in any such programs by reason of insufficient program  
11 resources or for any other reason established under the  
12 rules and regulations of the Department shall not be  
13 deemed a cause of action under which the Department or  
14 any employee or agent of the Department shall be liable  
15 for damages to the inmate.

16 (5) Whenever the Department is to release any  
17 inmate earlier than it otherwise would because of a grant  
18 of good conduct credit for meritorious service given at  
19 any time during the term, the Department shall give  
20 reasonable advance notice of the impending release to the  
21 State's Attorney of the county where the prosecution of  
22 the inmate took place.

23 (b) Whenever a person is or has been committed under  
24 several convictions, with separate sentences, the sentences  
25 shall be construed under Section 5-8-4 in granting and  
26 forfeiting of good time.

27 (c) The Department shall prescribe rules and regulations  
28 for revoking good conduct credit, or suspending or reducing  
29 the rate of accumulation of good conduct credit for specific  
30 rule violations, during imprisonment. These rules and  
31 regulations shall provide that no inmate may be penalized  
32 more than one year of good conduct credit for any one  
33 infraction.

34 When the Department seeks to revoke, suspend or reduce



1 the rate of accumulation of any good conduct credits for an  
2 alleged infraction of its rules, it shall bring charges  
3 therefor against the prisoner sought to be so deprived of  
4 good conduct credits before the Prisoner Review Board as  
5 provided in subparagraph (a)(4) of Section 3-3-2 of this  
6 Code, if the amount of credit at issue exceeds 30 days or  
7 when during any 12 month period, the cumulative amount of  
8 credit revoked exceeds 30 days except where the infraction is  
9 committed or discovered within 60 days of scheduled release.  
10 In those cases, the Department of Corrections may revoke up  
11 to 30 days of good conduct credit. The Board may subsequently  
12 approve the revocation of additional good conduct credit, if  
13 the Department seeks to revoke good conduct credit in excess  
14 of 30 days. However, the Board shall not be empowered to  
15 review the Department's decision with respect to the loss of  
16 30 days of good conduct credit within any calendar year for  
17 any prisoner or to increase any penalty beyond the length  
18 requested by the Department.

19 The Director of the Department of Corrections, in  
20 appropriate cases, may restore up to 30 days good conduct  
21 credits which have been revoked, suspended or reduced. Any  
22 restoration of good conduct credits in excess of 30 days  
23 shall be subject to review by the Prisoner Review Board.  
24 However, the Board may not restore good conduct credit in  
25 excess of the amount requested by the Director.

26 Nothing contained in this Section shall prohibit the  
27 Prisoner Review Board from ordering, pursuant to Section  
28 3-3-9(a)(3)(i)(B), that a prisoner serve up to one year of  
29 the sentence imposed by the court that was not served due to  
30 the accumulation of good conduct credit.

31 (d) If a lawsuit is filed by a prisoner in an Illinois  
32 or federal court against the State, the Department of  
33 Corrections, or the Prisoner Review Board, or against any of  
34 their officers or employees, and the court makes a specific

1 finding that a pleading, motion, or other paper filed by the  
2 prisoner is frivolous, the Department of Corrections shall  
3 conduct a hearing to revoke up to 180 days of good conduct  
4 credit by bringing charges against the prisoner sought to be  
5 deprived of the good conduct credits before the Prisoner  
6 Review Board as provided in subparagraph (a)(8) of Section  
7 3-3-2 of this Code. If the prisoner has not accumulated 180  
8 days of good conduct credit at the time of the finding, then  
9 the Prisoner Review Board may revoke all good conduct credit  
10 accumulated by the prisoner.

11 For purposes of this subsection (d):

12 (1) "Frivolous" means that a pleading, motion, or  
13 other filing which purports to be a legal document filed  
14 by a prisoner in his or her lawsuit meets any or all of  
15 the following criteria:

16 (A) it lacks an arguable basis either in law  
17 or in fact;

18 (B) it is being presented for any improper  
19 purpose, such as to harass or to cause unnecessary  
20 delay or needless increase in the cost of  
21 litigation;

22 (C) the claims, defenses, and other legal  
23 contentions therein are not warranted by existing  
24 law or by a nonfrivolous argument for the extension,  
25 modification, or reversal of existing law or the  
26 establishment of new law;

27 (D) the allegations and other factual  
28 contentions do not have evidentiary support or, if  
29 specifically so identified, are not likely to have  
30 evidentiary support after a reasonable opportunity  
31 for further investigation or discovery; or

32 (E) the denials of factual contentions are not  
33 warranted on the evidence, or if specifically so  
34 identified, are not reasonably based on a lack of

1 information or belief.

2 (2) "Lawsuit" means a petition for post-conviction  
3 relief under Article 122 of the Code of Criminal  
4 Procedure of 1963, a motion pursuant to Section 116-3 of  
5 the Code of Criminal Procedure of 1963, a habeas corpus  
6 action under Article X of the Code of Civil Procedure or  
7 under federal law (28 U.S.C. 2254), a petition for claim  
8 under the Court of Claims Act or an action under the  
9 federal Civil Rights Act (42 U.S.C. 1983).

10 (e) Nothing in this amendatory Act of 1998 affects the  
11 validity of Public Act 89-404.

12 (Source: P.A. 91-121, eff. 7-15-99; 91-357, eff. 7-29-99;  
13 92-176, eff. 7-27-01; 92-854, eff. 12-5-02.)

14 (730 ILCS 5/5-1-9) (from Ch. 38, par. 1005-1-9)  
15 Sec. 5-1-9. Felony.

16 "Felony" means an offense for which a sentence to death  
17 ~~or--to~~ a term of imprisonment in a penitentiary for one year  
18 or more is provided.

19 (Source: P.A. 77-2097.)

20 (730 ILCS 5/5-4-1) (from Ch. 38, par. 1005-4-1)  
21 Sec. 5-4-1. Sentencing Hearing.

22 ~~(a) Except--when--the--death--penalty--is--sought--under~~  
23 ~~hearing-procedures-otherwise-specified,~~ After a determination  
24 of guilt, a hearing shall be held to impose the sentence.  
25 However, prior to the imposition of sentence on an individual  
26 being sentenced for an offense based upon a charge for a  
27 violation of Section 11-501 of the Illinois Vehicle Code or a  
28 similar provision of a local ordinance, the individual must  
29 undergo a professional evaluation to determine if an alcohol  
30 or other drug abuse problem exists and the extent of such a  
31 problem. Programs conducting these evaluations shall be  
32 licensed by the Department of Human Services. However, if

1 the individual is not a resident of Illinois, the court may,  
2 in its discretion, accept an evaluation from a program in the  
3 state of such individual's residence. The court may in its  
4 sentencing order approve an eligible defendant for placement  
5 in a Department of Corrections impact incarceration program  
6 as provided in Section 5-8-1.1 or 5-8-1.3. At the hearing  
7 the court shall:

8 (1) consider the evidence, if any, received upon  
9 the trial;

10 (2) consider any presentence reports;

11 (3) consider the financial impact of incarceration  
12 based on the financial impact statement filed with the  
13 clerk of the court by the Department of Corrections;

14 (4) consider evidence and information offered by  
15 the parties in aggravation and mitigation;

16 (5) hear arguments as to sentencing alternatives;

17 (6) afford the defendant the opportunity to make a  
18 statement in his own behalf;

19 (7) afford the victim of a violent crime or a  
20 violation of Section 11-501 of the Illinois Vehicle Code,  
21 or a similar provision of a local ordinance, or a  
22 qualified individual affected by a violation of Section  
23 405, 405.1, 405.2, or 407 of the Illinois Controlled  
24 Substances Act, committed by the defendant the  
25 opportunity to make a statement concerning the impact on  
26 the victim and to offer evidence in aggravation or  
27 mitigation; provided that the statement and evidence  
28 offered in aggravation or mitigation must first be  
29 prepared in writing in conjunction with the State's  
30 Attorney before it may be presented orally at the  
31 hearing. Any sworn testimony offered by the victim is  
32 subject to the defendant's right to cross-examine. All  
33 statements and evidence offered under this paragraph (7)  
34 shall become part of the record of the court. For the

1 purpose of this paragraph (7), "qualified individual"  
2 means any person who (i) lived or worked within the  
3 territorial jurisdiction where the offense took place  
4 when the offense took place; and (ii) is familiar with  
5 various public places within the territorial jurisdiction  
6 where the offense took place when the offense took place.  
7 For the purposes of this paragraph (7), "qualified  
8 individual" includes any peace officer, or any member of  
9 any duly organized State, county, or municipal peace unit  
10 assigned to the territorial jurisdiction where the  
11 offense took place when the offense took place; and

12 (8) in cases of reckless homicide afford the  
13 victim's spouse, guardians, parents or other immediate  
14 family members an opportunity to make oral statements.

15 (b) All sentences shall be imposed by the judge based  
16 upon his independent assessment of the elements specified  
17 above and any agreement as to sentence reached by the  
18 parties. The judge who presided at the trial or the judge  
19 who accepted the plea of guilty shall impose the sentence  
20 unless he is no longer sitting as a judge in that court.  
21 Where the judge does not impose sentence at the same time on  
22 all defendants who are convicted as a result of being  
23 involved in the same offense, the defendant or the State's  
24 Attorney may advise the sentencing court of the disposition  
25 of any other defendants who have been sentenced.

26 (c) In imposing a sentence for a violent crime or for an  
27 offense of operating or being in physical control of a  
28 vehicle while under the influence of alcohol, any other drug  
29 or any combination thereof, or a similar provision of a local  
30 ordinance, when such offense resulted in the personal injury  
31 to someone other than the defendant, the trial judge shall  
32 specify on the record the particular evidence, information,  
33 factors in mitigation and aggravation or other reasons that  
34 led to his sentencing determination. The full verbatim record

1 of the sentencing hearing shall be filed with the clerk of  
2 the court and shall be a public record.

3 (c-1) In imposing a sentence for the offense of  
4 aggravated kidnapping for ransom, home invasion, armed  
5 robbery, aggravated vehicular hijacking, aggravated discharge  
6 of a firearm, or armed violence with a category I weapon or  
7 category II weapon, the trial judge shall make a finding as  
8 to whether the conduct leading to conviction for the offense  
9 resulted in great bodily harm to a victim, and shall enter  
10 that finding and the basis for that finding in the record.

11 (c-2) If the defendant is sentenced to prison, other  
12 than when a sentence of natural life imprisonment or a  
13 sentence of death is imposed, at the time the sentence is  
14 imposed the judge shall state on the record in open court the  
15 approximate period of time the defendant will serve in  
16 custody according to the then current statutory rules and  
17 regulations for early release found in Section 3-6-3 and  
18 other related provisions of this Code. This statement is  
19 intended solely to inform the public, has no legal effect on  
20 the defendant's actual release, and may not be relied on by  
21 the defendant on appeal.

22 The judge's statement, to be given after pronouncing the  
23 sentence, other than when the sentence is imposed for one of  
24 the offenses enumerated in paragraph (a)(3) of Section 3-6-3,  
25 shall include the following:

26 "The purpose of this statement is to inform the public of  
27 the actual period of time this defendant is likely to spend  
28 in prison as a result of this sentence. The actual period of  
29 prison time served is determined by the statutes of Illinois  
30 as applied to this sentence by the Illinois Department of  
31 Corrections and the Illinois Prisoner Review Board. In this  
32 case, assuming the defendant receives all of his or her good  
33 conduct credit, the period of estimated actual custody is ...  
34 years and ... months, less up to 180 days additional good

1 conduct credit for meritorious service. If the defendant,  
2 because of his or her own misconduct or failure to comply  
3 with the institutional regulations, does not receive those  
4 credits, the actual time served in prison will be longer.  
5 The defendant may also receive an additional one-half day  
6 good conduct credit for each day of participation in  
7 vocational, industry, substance abuse, and educational  
8 programs as provided for by Illinois statute."

9 When the sentence is imposed for one of the offenses  
10 enumerated in paragraph (a)(3) of Section 3-6-3, other than  
11 when the sentence is imposed for one of the offenses  
12 enumerated in paragraph (a)(2) of Section 3-6-3 committed on  
13 or after June 19, 1998, and other than when the sentence is  
14 imposed for reckless homicide as defined in subsection (e) of  
15 Section 9-3 of the Criminal Code of 1961 if the offense was  
16 committed on or after January 1, 1999, and other than when  
17 the sentence is imposed for aggravated arson if the offense  
18 was committed on or after the effective date of this  
19 amendatory Act of the 92nd General Assembly, the judge's  
20 statement, to be given after pronouncing the sentence, shall  
21 include the following:

22 "The purpose of this statement is to inform the public of  
23 the actual period of time this defendant is likely to spend  
24 in prison as a result of this sentence. The actual period of  
25 prison time served is determined by the statutes of Illinois  
26 as applied to this sentence by the Illinois Department of  
27 Corrections and the Illinois Prisoner Review Board. In this  
28 case, assuming the defendant receives all of his or her good  
29 conduct credit, the period of estimated actual custody is ...  
30 years and ... months, less up to 90 days additional good  
31 conduct credit for meritorious service. If the defendant,  
32 because of his or her own misconduct or failure to comply  
33 with the institutional regulations, does not receive those  
34 credits, the actual time served in prison will be longer.

1 The defendant may also receive an additional one-half day  
2 good conduct credit for each day of participation in  
3 vocational, industry, substance abuse, and educational  
4 programs as provided for by Illinois statute."

5 When the sentence is imposed for one of the offenses  
6 enumerated in paragraph (a)(2) of Section 3-6-3, other than  
7 first degree murder, and the offense was committed on or  
8 after June 19, 1998, and when the sentence is imposed for  
9 reckless homicide as defined in subsection (e) of Section 9-3  
10 of the Criminal Code of 1961 if the offense was committed on  
11 or after January 1, 1999, and when the sentence is imposed  
12 for aggravated arson if the offense was committed on or after  
13 the effective date of this amendatory Act of the 92nd General  
14 Assembly, the judge's statement, to be given after  
15 pronouncing the sentence, shall include the following:

16 "The purpose of this statement is to inform the public of  
17 the actual period of time this defendant is likely to spend  
18 in prison as a result of this sentence. The actual period of  
19 prison time served is determined by the statutes of Illinois  
20 as applied to this sentence by the Illinois Department of  
21 Corrections and the Illinois Prisoner Review Board. In this  
22 case, the defendant is entitled to no more than 4 1/2 days of  
23 good conduct credit for each month of his or her sentence of  
24 imprisonment. Therefore, this defendant will serve at least  
25 85% of his or her sentence. Assuming the defendant receives  
26 4 1/2 days credit for each month of his or her sentence, the  
27 period of estimated actual custody is ... years and ...  
28 months. If the defendant, because of his or her own  
29 misconduct or failure to comply with the institutional  
30 regulations receives lesser credit, the actual time served in  
31 prison will be longer."

32 When a sentence of imprisonment is imposed for first  
33 degree murder and the offense was committed on or after June  
34 19, 1998, the judge's statement, to be given after



1 pronouncing the sentence, shall include the following:

2 "The purpose of this statement is to inform the public of  
3 the actual period of time this defendant is likely to spend  
4 in prison as a result of this sentence. The actual period of  
5 prison time served is determined by the statutes of Illinois  
6 as applied to this sentence by the Illinois Department of  
7 Corrections and the Illinois Prisoner Review Board. In this  
8 case, the defendant is not entitled to good conduct credit.  
9 Therefore, this defendant will serve 100% of his or her  
10 sentence."

11 (d) When the defendant is committed to the Department of  
12 Corrections, the State's Attorney shall and counsel for the  
13 defendant may file a statement with the clerk of the court to  
14 be transmitted to the department, agency or institution to  
15 which the defendant is committed to furnish such department,  
16 agency or institution with the facts and circumstances of the  
17 offense for which the person was committed together with all  
18 other factual information accessible to them in regard to the  
19 person prior to his commitment relative to his habits,  
20 associates, disposition and reputation and any other facts  
21 and circumstances which may aid such department, agency or  
22 institution during its custody of such person. The clerk  
23 shall within 10 days after receiving any such statements  
24 transmit a copy to such department, agency or institution and  
25 a copy to the other party, provided, however, that this shall  
26 not be cause for delay in conveying the person to the  
27 department, agency or institution to which he has been  
28 committed.

29 (e) The clerk of the court shall transmit to the  
30 department, agency or institution, if any, to which the  
31 defendant is committed, the following:

- 32 (1) the sentence imposed;  
33 (2) any statement by the court of the basis for  
34 imposing the sentence;

- 1           (3) any presentence reports;
- 2           (4) the number of days, if any, which the defendant
- 3 has been in custody and for which he is entitled to
- 4 credit against the sentence, which information shall be
- 5 provided to the clerk by the sheriff;
- 6           (4.1) any finding of great bodily harm made by the
- 7 court with respect to an offense enumerated in subsection
- 8 (c-1);
- 9           (5) all statements filed under subsection (d) of
- 10 this Section;
- 11           (6) any medical or mental health records or
- 12 summaries of the defendant;
- 13           (7) the municipality where the arrest of the
- 14 offender or the commission of the offense has occurred,
- 15 where such municipality has a population of more than
- 16 25,000 persons;
- 17           (8) all statements made and evidence offered under
- 18 paragraph (7) of subsection (a) of this Section; and
- 19           (9) all additional matters which the court directs
- 20 the clerk to transmit.

21 (Source: P.A. 91-357, eff. 7-29-99; 91-899, eff. 1-1-01;  
22 92-176, eff. 7-27-01; 92-806, eff. 1-1-03; revised 9-18-02.)

23 (730 ILCS 5/5-5-3) (from Ch. 38, par. 1005-5-3)  
24 Sec. 5-5-3. Disposition.

25 (a) Every person convicted of an offense shall be  
26 sentenced as provided in this Section.

27 (b) The following options shall be appropriate  
28 dispositions, alone or in combination, for all felonies and  
29 misdemeanors other than those identified in subsection (c) of  
30 this Section:

- 31           (1) A period of probation.
- 32           (2) A term of periodic imprisonment.
- 33           (3) A term of conditional discharge.

1 (4) A term of imprisonment.

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

6 (6) A fine.

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

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

12 Whenever an individual is sentenced for an offense based  
13 upon an arrest for a violation of Section 11-501 of the  
14 Illinois Vehicle Code, or a similar provision of a local  
15 ordinance, and the professional evaluation recommends  
16 remedial or rehabilitative treatment or education, neither  
17 the treatment nor the education shall be the sole disposition  
18 and either or both may be imposed only in conjunction with  
19 another disposition. The court shall monitor compliance with  
20 any remedial education or treatment recommendations contained  
21 in the professional evaluation. Programs conducting alcohol  
22 or other drug evaluation or remedial education must be  
23 licensed by the Department of Human Services. However, if  
24 the individual is not a resident of Illinois, the court may  
25 accept an alcohol or other drug evaluation or remedial  
26 education program in the state of such individual's  
27 residence. Programs providing treatment must be licensed  
28 under existing applicable alcoholism and drug treatment  
29 licensure standards.

30 In addition to any other fine or penalty required by law,  
31 any individual convicted of a violation of Section 11-501 of  
32 the Illinois Vehicle Code or a similar provision of local  
33 ordinance, whose operation of a motor vehicle while in  
34 violation of Section 11-501 or such ordinance proximately

1 caused an incident resulting in an appropriate emergency  
 2 response, shall be required to make restitution to a public  
 3 agency for the costs of that emergency response. Such  
 4 restitution shall not exceed \$500 per public agency for each  
 5 such emergency response. For the purpose of this paragraph,  
 6 emergency response shall mean any incident requiring a  
 7 response by: a police officer as defined under Section 1-162  
 8 of the Illinois Vehicle Code; a fireman carried on the rolls  
 9 of a regularly constituted fire department; and an ambulance  
 10 as defined under Section 4.05 of the Emergency Medical  
 11 Services (EMS) Systems Act.

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

15 (c) (1) When a defendant is found guilty of first degree  
 16 murder the defendant shall be sentenced to a term of  
 17 ~~State-may-either-see-a-sentence--of~~ imprisonment under  
 18 ~~Section 5-8-1 of this Code,-or-where-appropriate-see-a~~  
 19 ~~sentence-of-death-under-Section-9-1-of-the-Criminal--Code~~  
 20 ~~of-1961.~~

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

28 (A) First degree murder ~~where--the--death~~  
 29 ~~penalty-is-not-imposed.~~

30 (B) Attempted first degree murder.

31 (C) A Class X felony.

32 (D) A violation of Section 401.1 or 407 of the  
 33 Illinois Controlled Substances Act, or a violation  
 34 of subdivision (c)(1) or (c)(2) of Section 401 of

1 that Act which relates to more than 5 grams of a  
2 substance containing heroin or cocaine or an analog  
3 thereof.

4 (E) A violation of Section 5.1 or 9 of the  
5 Cannabis Control Act.

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

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

16 (H) Criminal sexual assault, except as  
17 otherwise provided in subsection (e) of this  
18 Section.

19 (I) Aggravated battery of a senior citizen.

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

22 Before July 1, 1994, for the purposes of this  
23 paragraph, "organized gang" means an association of  
24 5 or more persons, with an established hierarchy,  
25 that encourages members of the association to  
26 perpetrate crimes or provides support to the members  
27 of the association who do commit crimes.

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

32 (K) Vehicular hijacking.

33 (L) A second or subsequent conviction for the  
34 offense of hate crime when the underlying offense

1           upon which the hate crime is based is felony  
2           aggravated assault or felony mob action.

3           (M) A second or subsequent conviction for the  
4           offense of institutional vandalism if the damage to  
5           the property exceeds \$300.

6           (N) A Class 3 felony violation of paragraph  
7           (1) of subsection (a) of Section 2 of the Firearm  
8           Owners Identification Card Act.

9           (O) A violation of Section 12-6.1 of the  
10          Criminal Code of 1961.

11          (P) A violation of paragraph (1), (2), (3),  
12          (4), (5), or (7) of subsection (a) of Section  
13          11-20.1 of the Criminal Code of 1961.

14          (Q) A violation of Section 20-1.2 of the  
15          Criminal Code of 1961.

16          (R) A violation of Section 24-3A of the  
17          Criminal Code of 1961.

18          (S) A violation of Section 11-501(c-1)(3) of  
19          the Illinois Vehicle Code.

20          (3) A minimum term of imprisonment of not less than  
21          5 days or 30 days of community service as may be  
22          determined by the court shall be imposed for a second  
23          violation committed within 5 years of a previous  
24          violation of Section 11-501 of the Illinois Vehicle Code  
25          or a similar provision of a local ordinance. In the case  
26          of a third or subsequent violation committed within 5  
27          years of a previous violation of Section 11-501 of the  
28          Illinois Vehicle Code or a similar provision of a local  
29          ordinance, a minimum term of either 10 days of  
30          imprisonment or 60 days of community service shall be  
31          imposed.

32          (4) A minimum term of imprisonment of not less than  
33          10 consecutive days or 30 days of community service shall  
34          be imposed for a violation of paragraph (c) of Section

1 6-303 of the Illinois Vehicle Code.

2 (4.1) A minimum term of 30 consecutive days of  
3 imprisonment, 40 days of 24 hour periodic imprisonment or  
4 720 hours of community service, as may be determined by  
5 the court, shall be imposed for a violation of Section  
6 11-501 of the Illinois Vehicle Code during a period in  
7 which the defendant's driving privileges are revoked or  
8 suspended, where the revocation or suspension was for a  
9 violation of Section 11-501 or Section 11-501.1 of that  
10 Code.

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

15 (4.3) A minimum term of imprisonment of 30 days or  
16 300 hours of community service, as determined by the  
17 court, shall be imposed for a second violation of  
18 subsection (c) of Section 6-303 of the Illinois Vehicle  
19 Code.

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

26 (4.5) A minimum term of imprisonment of 30 days  
27 shall be imposed for a third violation of subsection (c)  
28 of Section 6-303 of the Illinois Vehicle Code.

29 (4.6) A minimum term of imprisonment of 180 days  
30 shall be imposed for a fourth or subsequent violation of  
31 subsection (c) of Section 6-303 of the Illinois Vehicle  
32 Code.

33 (5) The court may sentence an offender convicted of  
34 a business offense or a petty offense or a corporation or

1 unincorporated association convicted of any offense to:

2 (A) a period of conditional discharge;

3 (B) a fine;

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

6 (5.1) In addition to any penalties imposed under  
7 paragraph (5) of this subsection (c), and except as  
8 provided in paragraph (5.2) or (5.3), a person convicted  
9 of violating subsection (c) of Section 11-907 of the  
10 Illinois Vehicle Code shall have his or her driver's  
11 license, permit, or privileges suspended for at least 90  
12 days but not more than one year, if the violation  
13 resulted in damage to the property of another person.

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

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

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

32 (7) When a defendant is adjudged a habitual  
33 criminal under Article 33B of the Criminal Code of 1961,  
34 the court shall sentence the defendant to a term of



1 natural life imprisonment.

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

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

22 (10) When a person is convicted of violating  
23 Section 11-501 of the Illinois Vehicle Code or a similar  
24 provision of a local ordinance, the following penalties  
25 apply when his or her blood, breath, or urine was .16 or  
26 more based on the definition of blood, breath, or urine  
27 units in Section 11-501.2 or that person is convicted of  
28 violating Section 11-501 of the Illinois Vehicle Code  
29 while transporting a child under the age of 16:

30 (A) For a first violation of subsection (a) of  
31 Section 11-501, in addition to any other penalty  
32 that may be imposed under subsection (c) of Section  
33 11-501: a mandatory minimum of 100 hours of  
34 community service and a minimum fine of \$500.

1           (B) For a second violation of subsection (a)  
2 of Section 11-501, in addition to any other penalty  
3 that may be imposed under subsection (c) of Section  
4 11-501 within 10 years: a mandatory minimum of 2  
5 days of imprisonment and a minimum fine of \$1,250.

6           (C) For a third violation of subsection (a) of  
7 Section 11-501, in addition to any other penalty  
8 that may be imposed under subsection (c) of Section  
9 11-501 within 20 years: a mandatory minimum of 90  
10 days of imprisonment and a minimum fine of \$2,500.

11           (D) For a fourth or subsequent violation of  
12 subsection (a) of Section 11-501: ineligibility for  
13 a sentence of probation or conditional discharge and  
14 a minimum fine of \$2,500.

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

34           (e) In cases where prosecution for criminal sexual

1 assault or aggravated criminal sexual abuse under Section  
2 12-13 or 12-16 of the Criminal Code of 1961 results in  
3 conviction of a defendant who was a family member of the  
4 victim at the time of the commission of the offense, the  
5 court shall consider the safety and welfare of the victim and  
6 may impose a sentence of probation only where:

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

9 (A) the defendant is willing to undergo a  
10 court approved counseling program for a minimum  
11 duration of 2 years; or

12 (B) the defendant is willing to participate in  
13 a court approved plan including but not limited to  
14 the defendant's:

15 (i) removal from the household;

16 (ii) restricted contact with the victim;

17 (iii) continued financial support of the  
18 family;

19 (iv) restitution for harm done to the  
20 victim; and

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

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

30 Probation may be revoked or modified pursuant to Section  
31 5-6-4; except where the court determines at the hearing that  
32 the defendant violated a condition of his or her probation  
33 restricting contact with the victim or other family members  
34 or commits another offense with the victim or other family

1 members, the court shall revoke the defendant's probation and  
2 impose a term of imprisonment.

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

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

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

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

15 (g-5) When an inmate is tested for an airborne  
16 communicable disease, as determined by the Illinois  
17 Department of Public Health including but not limited to  
18 tuberculosis, the results of the test shall be personally  
19 delivered by the warden or his or her designee in a sealed  
20 envelope to the judge of the court in which the inmate must  
21 appear for the judge's inspection in camera if requested by  
22 the judge. Acting in accordance with the best interests of  
23 those in the courtroom, the judge shall have the discretion  
24 to determine what if any precautions need to be taken to  
25 prevent transmission of the disease in the courtroom.

26 (h) Whenever a defendant is convicted of an offense  
27 under Section 1 or 2 of the Hypodermic Syringes and Needles  
28 Act, the defendant shall undergo medical testing to determine  
29 whether the defendant has been exposed to human  
30 immunodeficiency virus (HIV) or any other identified  
31 causative agent of acquired immunodeficiency syndrome (AIDS).  
32 Except as otherwise provided by law, the results of such test  
33 shall be kept strictly confidential by all medical personnel  
34 involved in the testing and must be personally delivered in a

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

21 (i) All fines and penalties imposed under this Section  
22 for any violation of Chapters 3, 4, 6, and 11 of the Illinois  
23 Vehicle Code, or a similar provision of a local ordinance,  
24 and any violation of the Child Passenger Protection Act, or a  
25 similar provision of a local ordinance, shall be collected  
26 and disbursed by the circuit clerk as provided under Section  
27 27.5 of the Clerks of Courts Act.

28 (j) In cases when prosecution for any violation of  
29 Section 11-6, 11-8, 11-9, 11-11, 11-14, 11-15, 11-15.1,  
30 11-16, 11-17, 11-17.1, 11-18, 11-18.1, 11-19, 11-19.1,  
31 11-19.2, 11-20.1, 11-21, 12-13, 12-14, 12-14.1, 12-15, or  
32 12-16 of the Criminal Code of 1961, any violation of the  
33 Illinois Controlled Substances Act, or any violation of the  
34 Cannabis Control Act results in conviction, a disposition of

1 court supervision, or an order of probation granted under  
2 Section 10 of the Cannabis Control Act or Section 410 of the  
3 Illinois Controlled Substance Act of a defendant, the court  
4 shall determine whether the defendant is employed by a  
5 facility or center as defined under the Child Care Act of  
6 1969, a public or private elementary or secondary school, or  
7 otherwise works with children under 18 years of age on a  
8 daily basis. When a defendant is so employed, the court  
9 shall order the Clerk of the Court to send a copy of the  
10 judgment of conviction or order of supervision or probation  
11 to the defendant's employer by certified mail. If the  
12 employer of the defendant is a school, the Clerk of the Court  
13 shall direct the mailing of a copy of the judgment of  
14 conviction or order of supervision or probation to the  
15 appropriate regional superintendent of schools. The regional  
16 superintendent of schools shall notify the State Board of  
17 Education of any notification under this subsection.

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

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

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

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

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

33 (2) the deportation of the defendant would not  
34 deprecate the seriousness of the defendant's conduct



1 and would not be inconsistent with the ends of  
2 justice.

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

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

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

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

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

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

33 (m) A person convicted of criminal defacement of  
34 property under Section 21-1.3 of the Criminal Code of 1961,

1 in which the property damage exceeds \$300 and the property  
2 damaged is a school building, shall be ordered to perform  
3 community service that may include cleanup, removal, or  
4 painting over the defacement.

5 (Source: P.A. 91-357, eff. 7-29-99; 91-404, eff. 1-1-00;  
6 91-663, eff. 12-22-99; 91-695, eff. 4-13-00; 91-953, eff.  
7 2-23-01; 92-183, eff. 7-27-01; 92-248, eff. 8-3-01; 92-283,  
8 eff. 1-1-02; 92-340, eff. 8-10-01; 92-418, eff. 8-17-01;  
9 92-422, eff. 8-17-01; 92-651, eff. 7-11-02; 92-698, eff.  
10 7-19-02.)

11 (730 ILCS 5/5-8-1) (from Ch. 38, par. 1005-8-1)

12 Sec. 5-8-1. Sentence of Imprisonment for Felony.

13 (a) Except as otherwise provided in the statute defining  
14 the offense, a sentence of imprisonment for a felony shall be  
15 a determinate sentence set by the court under this Section,  
16 according to the following limitations:

17 (1) for first degree murder,

18 (a) a term shall be not less than 20 years and  
19 not more than 60 years, or

20 (b) if a trier of fact finds beyond a  
21 reasonable doubt that the murder was accompanied by  
22 exceptionally brutal or heinous behavior indicative  
23 of wanton cruelty or, except as set forth in  
24 subsection (a)(1)(c) of this Section, ~~that any of~~  
25 ~~the aggravating factors listed in subsection (b) of~~  
26 ~~Section 9-1 of the Criminal Code of 1961 are~~  
27 present, the court may sentence the defendant to a  
28 term of natural life imprisonment, or

29 (b-5) a defendant who has been sentenced to  
30 death before the effective date of this amendatory  
31 Act of the 93rd General Assembly shall be sentenced  
32 as provided in this Chapter V, or

33 (c) the court shall sentence the defendant to

1 a term of natural life imprisonment ~~when--the--death~~  
2 ~~penalty-is-not-imposed~~ if the defendant,

3 (i) has previously been convicted of  
4 first degree murder under any state or federal  
5 law, or

6 (ii) is a person who, at the time of the  
7 commission of the murder, had attained the age  
8 of 17 or more and is found guilty of murdering  
9 an individual under 12 years of age; or,  
10 irrespective of the defendant's age at the time  
11 of the commission of the offense, is found  
12 guilty of murdering more than one victim, or

13 (iii) is found guilty of murdering a  
14 peace officer or fireman when the peace officer  
15 or fireman was killed in the course of  
16 performing his official duties, or to prevent  
17 the peace officer or fireman from performing  
18 his official duties, or in retaliation for the  
19 peace officer or fireman performing his  
20 official duties, and the defendant knew or  
21 should have known that the murdered individual  
22 was a peace officer or fireman, or

23 (iv) is found guilty of murdering an  
24 employee of an institution or facility of the  
25 Department of Corrections, or any similar local  
26 correctional agency, when the employee was  
27 killed in the course of performing his official  
28 duties, or to prevent the employee from  
29 performing his official duties, or in  
30 retaliation for the employee performing his  
31 official duties, or

32 (v) is found guilty of murdering an  
33 emergency medical technician - ambulance,  
34 emergency medical technician - intermediate,

1 emergency medical technician - paramedic,  
2 ambulance driver or other medical assistance or  
3 first aid person while employed by a  
4 municipality or other governmental unit when  
5 the person was killed in the course of  
6 performing official duties or to prevent the  
7 person from performing official duties or in  
8 retaliation for performing official duties and  
9 the defendant knew or should have known that  
10 the murdered individual was an emergency  
11 medical technician - ambulance, emergency  
12 medical technician - intermediate, emergency  
13 medical technician - paramedic, ambulance  
14 driver, or other medical assistant or first aid  
15 personnel, or

16 (vi) is a person who, at the time of the  
17 commission of the murder, had not attained the  
18 age of 17, and is found guilty of murdering a  
19 person under 12 years of age and the murder is  
20 committed during the course of aggravated  
21 criminal sexual assault, criminal sexual  
22 assault, or aggravated kidnaping, or

23 (vii) is found guilty of first degree  
24 murder and the murder was committed by reason  
25 of any person's activity as a community  
26 policing volunteer or to prevent any person  
27 from engaging in activity as a community  
28 policing volunteer. For the purpose of this  
29 Section, "community policing volunteer" has the  
30 meaning ascribed to it in Section 2-3.5 of the  
31 Criminal Code of 1961.

32 For purposes of clause (v), "emergency medical  
33 technician - ambulance", "emergency medical  
34 technician - intermediate", "emergency medical

1 technician - paramedic", have the meanings ascribed  
2 to them in the Emergency Medical Services (EMS)  
3 Systems Act.

4 (d) (i) if the person committed the offense  
5 while armed with a firearm, 15 years shall be  
6 added to the term of imprisonment imposed by  
7 the court;

8 (ii) if, during the commission of the  
9 offense, the person personally discharged a  
10 firearm, 20 years shall be added to the term of  
11 imprisonment imposed by the court;

12 (iii) if, during the commission of the  
13 offense, the person personally discharged a  
14 firearm that proximately caused great bodily  
15 harm, permanent disability, permanent  
16 disfigurement, or death to another person, 25  
17 years or up to a term of natural life shall be  
18 added to the term of imprisonment imposed by  
19 the court.

20 (1.5) for second degree murder, a term shall be not  
21 less than 4 years and not more than 20 years;

22 (2) for a person adjudged a habitual criminal under  
23 Article 33B of the Criminal Code of 1961, as amended, the  
24 sentence shall be a term of natural life imprisonment;

25 (2.5) for a person convicted under the  
26 circumstances described in paragraph (3) of subsection  
27 (b) of Section 12-13, paragraph (2) of subsection (d) of  
28 Section 12-14, paragraph (1.2) of subsection (b) of  
29 Section 12-14.1, or paragraph (2) of subsection (b) of  
30 Section 12-14.1 of the Criminal Code of 1961, the  
31 sentence shall be a term of natural life imprisonment;

32 (3) except as otherwise provided in the statute  
33 defining the offense, for a Class X felony, the sentence  
34 shall be not less than 6 years and not more than 30

1 years;

2 (4) for a Class 1 felony, other than second degree  
3 murder, the sentence shall be not less than 4 years and  
4 not more than 15 years;

5 (5) for a Class 2 felony, the sentence shall be not  
6 less than 3 years and not more than 7 years;

7 (6) for a Class 3 felony, the sentence shall be not  
8 less than 2 years and not more than 5 years;

9 (7) for a Class 4 felony, the sentence shall be not  
10 less than 1 year and not more than 3 years.

11 (b) The sentencing judge in each felony conviction shall  
12 set forth his reasons for imposing the particular sentence he  
13 enters in the case, as provided in Section 5-4-1 of this  
14 Code. Those reasons may include any mitigating or  
15 aggravating factors specified in this Code, or the lack of  
16 any such circumstances, as well as any other such factors as  
17 the judge shall set forth on the record that are consistent  
18 with the purposes and principles of sentencing set out in  
19 this Code.

20 (c) A motion to reduce a sentence may be made, or the  
21 court may reduce a sentence without motion, within 30 days  
22 after the sentence is imposed. A defendant's challenge to  
23 the correctness of a sentence or to any aspect of the  
24 sentencing hearing shall be made by a written motion filed  
25 within 30 days following the imposition of sentence.  
26 However, the court may not increase a sentence once it is  
27 imposed.

28 If a motion filed pursuant to this subsection is timely  
29 filed within 30 days after the sentence is imposed, the  
30 proponent of the motion shall exercise due diligence in  
31 seeking a determination on the motion and the court shall  
32 thereafter decide such motion within a reasonable time.

33 If a motion filed pursuant to this subsection is timely  
34 filed within 30 days after the sentence is imposed, then for

1 purposes of perfecting an appeal, a final judgment shall not  
2 be considered to have been entered until the motion to reduce  
3 a sentence has been decided by order entered by the trial  
4 court.

5 A motion filed pursuant to this subsection shall not be  
6 considered to have been timely filed unless it is filed with  
7 the circuit court clerk within 30 days after the sentence is  
8 imposed together with a notice of motion, which notice of  
9 motion shall set the motion on the court's calendar on a date  
10 certain within a reasonable time after the date of filing.

11 (d) Except where a term of natural life is imposed,  
12 every sentence shall include as though written therein a term  
13 in addition to the term of imprisonment. For those sentenced  
14 under the law in effect prior to February 1, 1978, such term  
15 shall be identified as a parole term. For those sentenced on  
16 or after February 1, 1978, such term shall be identified as a  
17 mandatory supervised release term. Subject to earlier  
18 termination under Section 3-3-8, the parole or mandatory  
19 supervised release term shall be as follows:

20 (1) for first degree murder or a Class X felony, 3  
21 years;

22 (2) for a Class 1 felony or a Class 2 felony, 2  
23 years;

24 (3) for a Class 3 felony or a Class 4 felony, 1  
25 year;

26 (4) if the victim is under 18 years of age, for a  
27 second or subsequent offense of criminal sexual assault  
28 or aggravated criminal sexual assault, 5 years, at least  
29 the first 2 years of which the defendant shall serve in  
30 an electronic home detention program under Article 8A of  
31 Chapter V of this Code;

32 (5) if the victim is under 18 years of age, for a  
33 second or subsequent offense of aggravated criminal  
34 sexual abuse or felony criminal sexual abuse, 4 years, at

1           least the first 2 years of which the defendant shall  
2           serve in an electronic home detention program under  
3           Article 8A of Chapter V of this Code.

4           (e) A defendant who has a previous and unexpired  
5           sentence of imprisonment imposed by another state or by any  
6           district court of the United States and who, after sentence  
7           for a crime in Illinois, must return to serve the unexpired  
8           prior sentence may have his sentence by the Illinois court  
9           ordered to be concurrent with the prior sentence in the other  
10          state. The court may order that any time served on the  
11          unexpired portion of the sentence in the other state, prior  
12          to his return to Illinois, shall be credited on his Illinois  
13          sentence. The other state shall be furnished with a copy of  
14          the order imposing sentence which shall provide that, when  
15          the offender is released from confinement of the other state,  
16          whether by parole or by termination of sentence, the offender  
17          shall be transferred by the Sheriff of the committing county  
18          to the Illinois Department of Corrections. The court shall  
19          cause the Department of Corrections to be notified of such  
20          sentence at the time of commitment and to be provided with  
21          copies of all records regarding the sentence.

22          (f) A defendant who has a previous and unexpired  
23          sentence of imprisonment imposed by an Illinois circuit court  
24          for a crime in this State and who is subsequently sentenced  
25          to a term of imprisonment by another state or by any district  
26          court of the United States and who has served a term of  
27          imprisonment imposed by the other state or district court of  
28          the United States, and must return to serve the unexpired  
29          prior sentence imposed by the Illinois Circuit Court may  
30          apply to the court which imposed sentence to have his  
31          sentence reduced.

32          The circuit court may order that any time served on the  
33          sentence imposed by the other state or district court of the  
34          United States be credited on his Illinois sentence. Such



1 application for reduction of a sentence under this  
2 subsection (f) shall be made within 30 days after the  
3 defendant has completed the sentence imposed by the other  
4 state or district court of the United States.

5 (Source: P.A. 91-279, eff. 1-1-00; 91-404, eff. 1-1-00;  
6 91-953, eff. 2-23-01; 92-16, eff. 6-28-01.)

7 (730 ILCS 5/5-8-4) (from Ch. 38, par. 1005-8-4)  
8 Sec. 5-8-4. Concurrent and Consecutive Terms of  
9 Imprisonment.

10 (a) When multiple sentences of imprisonment are imposed  
11 on a defendant at the same time, or when a term of  
12 imprisonment is imposed on a defendant who is already subject  
13 to sentence in this State or in another state, or for a  
14 sentence imposed by any district court of the United States,  
15 the sentences shall run concurrently or consecutively as  
16 determined by the court. When a term of imprisonment is  
17 imposed on a defendant by an Illinois circuit court and the  
18 defendant is subsequently sentenced to a term of imprisonment  
19 by another state or by a district court of the United States,  
20 the Illinois circuit court which imposed the sentence may  
21 order that the Illinois sentence be made concurrent with the  
22 sentence imposed by the other state or district court of the  
23 United States. The defendant must apply to the circuit court  
24 within 30 days after the defendant's sentence imposed by the  
25 other state or district of the United States is finalized.  
26 The court shall not impose consecutive sentences for offenses  
27 which were committed as part of a single course of conduct  
28 during which there was no substantial change in the nature of  
29 the criminal objective, unless:

30 (i) one of the offenses for which defendant was  
31 convicted was first degree murder or a Class X or Class 1  
32 felony and the defendant inflicted severe bodily injury,  
33 or

1           (ii) the defendant was convicted of a violation of  
2 Section 12-13, 12-14, or 12-14.1 of the Criminal Code of  
3 1961, or

4           (iii) the defendant was convicted of armed violence  
5 based upon the predicate offense of solicitation of  
6 murder, solicitation of murder for hire, heinous battery,  
7 aggravated battery of a senior citizen, criminal sexual  
8 assault, a violation of subsection (g) of Section 5 of  
9 the Cannabis Control Act, cannabis trafficking, a  
10 violation of subsection (a) of Section 401 of the  
11 Illinois Controlled Substances Act, controlled substance  
12 trafficking involving a Class X felony amount of  
13 controlled substance under Section 401 of the Illinois  
14 Controlled Substances Act, calculated criminal drug  
15 conspiracy, or streetgang criminal drug conspiracy, or

16           (iv) the defendant was convicted of the offense of  
17 leaving the scene of a motor vehicle accident involving  
18 death or personal injuries under Section 11-401 and  
19 either: (A) aggravated driving under the influence of  
20 alcohol, other drug or drugs, or intoxicating compound or  
21 compounds, or any combination thereof under Section  
22 11-501 of the Illinois Vehicle Code, or (B) reckless  
23 homicide under Section 9-3 of the Criminal Code of 1961,  
24 or both an offense described in subdivision (A) and an  
25 offense described in subdivision (B),

26 in which event the court shall enter sentences to run  
27 consecutively. Sentences shall run concurrently unless  
28 otherwise specified by the court.

29           (b) The court shall not impose a consecutive sentence  
30 except as provided for in subsection (a) unless, having  
31 regard to the nature and circumstances of the offense and the  
32 history and character of the defendant, it is of the opinion  
33 that such a term is required to protect the public from  
34 further criminal conduct by the defendant, the basis for

1 which the court shall set forth in the record; except that no  
2 such finding or opinion is required when multiple sentences  
3 of imprisonment are imposed on a defendant for offenses that  
4 were not committed as part of a single course of conduct  
5 during which there was no substantial change in the nature of  
6 the criminal objective, and one of the offenses for which the  
7 defendant was convicted was first degree murder or a Class X  
8 or Class 1 felony and the defendant inflicted severe bodily  
9 injury, or when the defendant was convicted of a violation of  
10 Section 12-13, 12-14, or 12-14.1 of the Criminal Code of  
11 1961, or where the defendant was convicted of armed violence  
12 based upon the predicate offense of solicitation of murder,  
13 solicitation of murder for hire, heinous battery, aggravated  
14 battery of a senior citizen, criminal sexual assault, a  
15 violation of subsection (g) of Section 5 of the Cannabis  
16 Control Act, cannabis trafficking, a violation of subsection  
17 (a) of Section 401 of the Illinois Controlled Substances Act,  
18 controlled substance trafficking involving a Class X felony  
19 amount of controlled substance under Section 401 of the  
20 Illinois Controlled Substances Act, calculated criminal drug  
21 conspiracy, or streetgang criminal drug conspiracy, or the  
22 defendant was convicted of the offense of leaving the scene  
23 of a motor vehicle accident involving death or personal  
24 injuries under Section 11-401 and either: (A) aggravated  
25 driving under the influence of alcohol, other drug or drugs,  
26 or intoxicating compound or compounds, or any combination  
27 thereof under Section 11-501 of the Illinois Vehicle Code, or  
28 (B) reckless homicide under Section 9-3 of the Criminal Code  
29 of 1961, or both an offense described in subdivision (A) and  
30 an offense described in subdivision (B), in which event the  
31 Court shall enter sentences to run consecutively.

32 (c) (1) For sentences imposed under law in effect prior  
33 to February 1, 1978 the aggregate maximum of consecutive  
34 sentences shall not exceed the maximum term authorized

1 under Section 5-8-1 for the 2 most serious felonies  
2 involved. The aggregate minimum period of consecutive  
3 sentences shall not exceed the highest minimum term  
4 authorized under Section 5-8-1 for the 2 most serious  
5 felonies involved. When sentenced only for misdemeanors,  
6 a defendant shall not be consecutively sentenced to more  
7 than the maximum for one Class A misdemeanor.

8 (2) For sentences imposed under the law in effect  
9 on or after February 1, 1978, the aggregate of  
10 consecutive sentences for offenses that were committed as  
11 part of a single course of conduct during which there was  
12 no substantial change in the nature of the criminal  
13 objective shall not exceed the sum of the maximum terms  
14 authorized under Section 5-8-2 for the 2 most serious  
15 felonies involved, but no such limitation shall apply for  
16 offenses that were not committed as part of a single  
17 course of conduct during which there was no substantial  
18 change in the nature of the criminal objective. When  
19 sentenced only for misdemeanors, a defendant shall not be  
20 consecutively sentenced to more than the maximum for one  
21 Class A misdemeanor.

22 (d) An offender serving a sentence for a misdemeanor who  
23 is convicted of a felony and sentenced to imprisonment shall  
24 be transferred to the Department of Corrections, and the  
25 misdemeanor sentence shall be merged in and run concurrently  
26 with the felony sentence.

27 (e) In determining the manner in which consecutive  
28 sentences of imprisonment, one or more of which is for a  
29 felony, will be served, the Department of Corrections shall  
30 treat the offender as though he had been committed for a  
31 single term with the following incidents:

32 (1) the maximum period of a term of imprisonment  
33 shall consist of the aggregate of the maximums of the  
34 imposed indeterminate terms, if any, plus the aggregate

1 of the imposed determinate sentences for felonies plus  
2 the aggregate of the imposed determinate sentences for  
3 misdemeanors subject to paragraph (c) of this Section;

4 (2) the parole or mandatory supervised release term  
5 shall be as provided in paragraph (e) of Section 5-8-1 of  
6 this Code for the most serious of the offenses involved;

7 (3) the minimum period of imprisonment shall be the  
8 aggregate of the minimum and determinate periods of  
9 imprisonment imposed by the court, subject to paragraph  
10 (c) of this Section; and

11 (4) the offender shall be awarded credit against  
12 the aggregate maximum term and the aggregate minimum term  
13 of imprisonment for all time served in an institution  
14 since the commission of the offense or offenses and as a  
15 consequence thereof at the rate specified in Section  
16 3-6-3 of this Code.

17 (f) A sentence of an offender committed to the  
18 Department of Corrections at the time of the commission of  
19 the offense shall be served consecutive to the sentence under  
20 which he is held by the Department of Corrections. However,  
21 ~~in case such offender shall be sentenced to punishment by~~  
22 ~~death, the sentence shall be executed at such time as the~~  
23 ~~court may fix without regard to the sentence under which such~~  
24 ~~offender may be held by the Department.~~

25 (g) A sentence under Section 3-6-4 for escape or  
26 attempted escape shall be served consecutive to the terms  
27 under which the offender is held by the Department of  
28 Corrections.

29 (h) If a person charged with a felony commits a separate  
30 felony while on pre-trial release or in pretrial detention in  
31 a county jail facility or county detention facility, the  
32 sentences imposed upon conviction of these felonies shall be  
33 served consecutively regardless of the order in which the  
34 judgments of conviction are entered.

1 (i) If a person admitted to bail following conviction of  
2 a felony commits a separate felony while free on bond or if a  
3 person detained in a county jail facility or county detention  
4 facility following conviction of a felony commits a separate  
5 felony while in detention, any sentence following conviction  
6 of the separate felony shall be consecutive to that of the  
7 original sentence for which the defendant was on bond or  
8 detained.

9 (Source: P.A. 91-144, eff. 1-1-00; 91-404, eff. 1-1-00;  
10 92-16, eff. 6-28-01; 92-674, eff. 1-1-03.)

11 (730 ILCS 5/5-8-5) (from Ch. 38, par. 1005-8-5)

12 Sec. 5-8-5. Commitment of the Offender. Upon rendition  
13 of judgment after pronouncement of a sentence of periodic  
14 imprisonment or, imprisonment, ~~or~~ death, the court shall  
15 commit the offender to the custody of the sheriff or to the  
16 Department of Corrections. A sheriff in executing an order  
17 for commitment to the Department of Corrections shall convey  
18 such offender to the nearest receiving station designated by  
19 the Department of Corrections. The court may commit the  
20 offender to the custody of the Attorney General of the United  
21 States under Section 5-8-6 when a sentence for a State  
22 offense provides that such sentence is to run concurrently  
23 with a previous and unexpired federal sentence. The expense  
24 of conveying a person committed by the juvenile court or an  
25 offender convicted of a felony shall be paid by the State.  
26 The expenses in all other cases shall be paid by the county  
27 of the committing court.

28 (Source: P.A. 84-551.)

29 Section 70. The Code of Civil Procedure is amended by  
30 changing Sections 10-103 and 10-136 as follows:

31 (735 ILCS 5/10-103) (from Ch. 110, par. 10-103)

1           Sec. 10-103. Application. Application for the relief  
2 shall be made to the Supreme Court or to the circuit court of  
3 the county in which the person in whose behalf the  
4 application is made, is imprisoned or restrained, or to the  
5 circuit court of the county from which such person was  
6 sentenced or committed. Application shall be made by  
7 complaint signed by the person for whose relief it is  
8 intended, or by some person in his or her behalf, and  
9 verified by affidavit. ~~Application--for-relief-under-this~~  
10 ~~Article-may-not-be-commenced-on-behalf-of-a--person--who--has~~  
11 ~~been--sentenced--to-death-without-the-written-consent-of-that~~  
12 ~~person, unless the person, because of a--mental--or--physical~~  
13 ~~condition, is incapable of asserting his or her own claim.~~  
14 (Source: P.A. 89-684, eff. 6-1-97.)

15           (735 ILCS 5/10-136) (from Ch. 110, par. 10-136)

16           Sec. 10-136. Prisoner remanded or punished. After a  
17 prisoner has given his or her testimony, or been surrendered,  
18 or his or her bail discharged, or he or she has been tried  
19 for the crime with which he or she is charged, he or she  
20 shall be returned to the jail or other place of confinement  
21 from which he or she was taken for that purpose. If such  
22 prisoner is convicted of a crime punishable with death--or  
23 imprisonment in the penitentiary, he or she may be punished  
24 accordingly; but in any case where the prisoner has been  
25 taken from the penitentiary, and his or her punishment is by  
26 imprisonment, the time of such imprisonment shall not  
27 commence to run until the expiration of the time of service  
28 under any former sentence.  
29 (Source: P.A. 82-280.)

30           Section 99. Effective date. This Act takes effect upon  
31 becoming law.

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Statutes amended in order of appearance

20 ILCS 2605/2605-40 was 20 ILCS 2605/55a-4  
20 ILCS 2630/2.1 from Ch. 38, par. 206-2.1  
30 ILCS 105/5.518 rep.  
55 ILCS 5/3-9005 from Ch. 34, par. 3-9005  
55 ILCS 5/3-4011 from Ch. 34, par. 3-4011  
55 ILCS 5/3-4006.1 rep.  
105 ILCS 5/21-23b from Ch. 122, par. 21-23b  
305 ILCS 5/1-8  
720 ILCS 5/2-7 from Ch. 38, par. 2-7  
720 ILCS 5/7-10 from Ch. 38, par. 7-10  
720 ILCS 5/9-1 from Ch. 38, par. 9-1  
720 ILCS 5/9-1.2 from Ch. 38, par. 9-1.2  
720 ILCS 5/30-1 from Ch. 38, par. 30-1  
720 ILCS 5/33B-1 from Ch. 38, par. 33B-1  
720 ILCS 550/9 from Ch. 56 1/2, par. 709  
725 ILCS 5/104-26 from Ch. 38, par. 104-26  
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