

1 AN ACT in relation to vehicles.

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

4 Section 5. The Boat Registration and Safety Act is
5 amended by changing Sections 2-2, 5-16, and 5-16a and adding
6 Section 5-16a.1 as follows:

7 (625 ILCS 45/2-2) (from Ch. 95 1/2, par. 312-2)

8 Sec. 2-2. Inspection; removal; impoundment.

9 (a) Agents of the Department or other duly authorized
10 police officers may board and inspect any boat at any time
11 for the purpose of determining if this Act is being complied
12 with. If the boarding officer or agent discovers any
13 violation of this Act, he may issue a summons to the operator
14 of the boat requiring that the operator appear before the
15 circuit court for the county within which the offense was
16 committed.

17 (b) Every vessel subject to this Act, if under way and
18 upon being hailed by a designated law enforcement officer,
19 must stop immediately and lay to.

20 (c) Agents of the Department and other duly authorized
21 police officers may enforce all federal laws and regulations
22 which have been mutually agreed upon by the federal and state
23 governments and are applicable to the operation of watercraft
24 on navigable waters and federal impoundments where concurrent
25 jurisdiction exists between the federal and state
26 governments.

27 (d) Agents of the Department and other duly authorized
28 police officers may seize and impound, at the owner's or
29 operator's expense, any watercraft involved in a boating
30 accident or a violation of Section 3A-21, 5-1, 5-2, or 5-16
31 of this Act.

1 (e) If a watercraft is causing a traffic hazard because
 2 of its position on a waterway or its physical appearance is
 3 causing the impeding of traffic, its immediate removal from
 4 the waterway by a towing service may be authorized by a law
 5 enforcement agency having jurisdiction.

6 (f) Whenever a peace officer reasonably believes that a
 7 person under arrest for a violation of Section 5-1, 5-2 or
 8 5-16 of this Act or similar provision of a local ordinance,
 9 is likely, upon release, to commit a subsequent violation of
 10 Section 5-1, 5-2 or 5-16 or a similar provision of a local
 11 ordinance, the arresting officer shall have the watercraft
 12 which the person was operating at the time of the arrest
 13 impounded for a period of not more than 12 hours after the
 14 time of the arrest. The watercraft may be released by the
 15 arresting law enforcement agency without impoundment, or may
 16 be released prior to the end of the impoundment period,
 17 however, if:

18 (1) the watercraft was not owned by the person under
 19 arrest, and the lawful owner requesting release possesses
 20 proof of ownership, and would not, as determined by the
 21 arresting law enforcement agency: (i) indicate a lack of
 22 ability to operate a watercraft in a safe manner, or (ii)
 23 otherwise, by operating the watercraft, be in violation
 24 of this Act; or

25 (2) the watercraft is owned by the person under
 26 arrest, and the person under arrest gives permission to
 27 another person to operate the watercraft, and the other
 28 person would not, as determined by the arresting law
 29 enforcement agency: (i) indicate a lack of ability to operate
 30 a watercraft in a safe manner, or (ii) otherwise, by
 31 operating the watercraft, be in violation of this Act.

32 (Source: P.A. 87-798; 88-670, eff. 12-2-94.)

1 Sec. 5-16. Operating a watercraft under the influence of
2 alcohol, other drug or drugs, intoxicating compound or
3 compounds, or combination thereof.

4 (A) 1. A person shall not operate or be in actual
5 physical control of any watercraft within this State
6 while:

7 (a) The alcohol concentration in such person's
8 blood or breath is a concentration at which driving
9 a motor vehicle is prohibited under subdivision (1)
10 of subsection (a) of Section 11-501 of the Illinois
11 Vehicle Code;

12 (b) Under the influence of alcohol;

13 (c) Under the influence of any other drug or
14 combination of drugs to a degree which renders such
15 person incapable of safely operating any watercraft;

16 (c-1) Under the influence of any intoxicating
17 compound or combination of intoxicating compounds to
18 a degree that renders the person incapable of safely
19 operating any watercraft;

20 (d) Under the combined influence of alcohol
21 and any other drug or drugs to a degree which
22 renders such person incapable of safely operating a
23 watercraft; or

24 (e) There is any amount of a drug, substance,
25 or compound in the person's blood or urine resulting
26 from the unlawful use or consumption of cannabis
27 listed as-defined in the Cannabis Control Act, or a
28 controlled substance listed in the Illinois
29 Controlled Substances Act, or an intoxicating
30 compound listed in the Use of Intoxicating Compounds
31 Act.

32 2. The fact that any person charged with violating
33 this Section is or has been legally entitled to use
34 alcohol, or other drug or drugs, any intoxicating

1 compound or compounds, or any combination of them both,
2 shall not constitute a defense against any charge of
3 violating this Section.

4 3. Every person convicted of violating this Section
5 shall be guilty of a Class A misdemeanor, except as
6 otherwise provided in this Section.

7 4. Every person convicted of violating this Section
8 shall be guilty of a Class 4 felony if:

9 (a) He has a previous conviction under this
10 Section; ~~or~~

11 (b) The offense results in personal injury
12 where a person other than the operator suffers great
13 bodily harm or permanent disability or
14 disfigurement, when the violation was a proximate
15 cause of the injuries. A person guilty of a Class 4
16 felony under this subparagraph (b), if sentenced to
17 a term of imprisonment, shall be sentenced to a term
18 of not less than one year nor more than 12 years; or

19 (c) The offense occurred during a period in
20 which his or her privileges to operate a watercraft
21 are revoked or suspended, and the revocation or
22 suspension was for a violation of this Section or
23 was imposed under subsection (B).

24 5. Every person convicted of violating this Section
25 shall be guilty of a Class 2 felony if the offense
26 results in the death of a person. A person guilty of a
27 Class 2 felony under this paragraph 5, if sentenced to a
28 term of imprisonment, shall be sentenced to a term of not
29 less than 3 years and not more than 14 years.

30 5.1. A person convicted of violating this Section
31 or a similar provision of a local ordinance who had a
32 child under the age of 16 aboard the watercraft at the
33 time of offense is subject to a mandatory minimum fine of
34 \$500 and to a mandatory minimum of 5 days of community

1 service in a program benefiting children. The assignment
2 under this paragraph 5.1 is not subject to suspension and
3 the person is not eligible for probation in order to
4 reduce the assignment.

5 5.2. A person found guilty of violating this
6 Section, if his or her operation of a watercraft while in
7 violation of this Section proximately caused any incident
8 resulting in an appropriate emergency response, is liable
9 for the expense of an emergency response as provided
10 under Section 5-5-3 of the Unified Code of Corrections.

11 5.3. In addition to any other penalties and
12 liabilities, a person who is found guilty of violating
13 this Section, including any person placed on court
14 supervision, shall be fined \$100, payable to the circuit
15 clerk, who shall distribute the money to the law
16 enforcement agency that made the arrest. In the event
17 that more than one agency is responsible for the arrest,
18 the \$100 shall be shared equally. Any moneys received by
19 a law enforcement agency under this paragraph 5.3 shall
20 be used to purchase law enforcement equipment or to
21 provide law enforcement training that will assist in the
22 prevention of alcohol related criminal violence
23 throughout the State. Law enforcement equipment shall
24 include, but is not limited to, in-car video cameras,
25 radar and laser speed detection devices, and alcohol
26 breath testers.

27 6. (a) In addition to any criminal penalties
28 imposed, the Department of Natural Resources shall
29 suspend the watercraft operation privileges of any
30 person convicted or found guilty of a misdemeanor
31 under this Section for a period of one year, except
32 that a first time offender is exempt from this
33 mandatory one year suspension.

34 (b) In addition to any criminal penalties

1 imposed, the Department of Natural Resources shall
2 suspend the watercraft operation privileges of any
3 person convicted of a felony under this Section for
4 a period of 3 years.

5 (B) 1. Any person who operates or is in actual physical
6 control of any watercraft upon the waters of this State
7 shall be deemed to have given consent to a chemical test
8 or tests of blood, breath or urine for the purpose of
9 determining the content of alcohol, other drug or drugs,
10 intoxicating compound or compounds, or combination
11 thereof in the content of such person's blood if arrested
12 for any offense of subsection (A) above. The chemical
13 test or tests shall be administered at the direction of
14 the arresting officer. The law enforcement agency
15 employing the officer shall designate which of the tests
16 shall be administered. A urine test may be administered
17 even after a blood or breath test or both has been
18 administered.

19 1.1. For the purposes of this Section, an Illinois
20 Law Enforcement officer of this State who is
21 investigating the person for any offense defined in
22 Section 5-16 may travel into an adjoining state, where
23 the person has been transported for medical care to
24 complete an investigation, and may request that the
25 person submit to the test or tests set forth in this
26 Section. The requirements of this Section that the
27 person be arrested are inapplicable, but the officer
28 shall issue the person a uniform citation for an offense
29 as defined in Section 5-16 or a similar provision of a
30 local ordinance prior to requesting that the person
31 submit to the test or tests. The issuance of the uniform
32 citation shall not constitute an arrest, but shall be for
33 the purpose of notifying the person that he or she is
34 subject to the provisions of this Section and of the

1 officer's belief in the existence of probable cause to
2 arrest. Upon returning to this State, the officer shall
3 file the uniform citation with the circuit clerk of the
4 county where the offense was committed and shall seek the
5 issuance of an arrest warrant or a summons for the
6 person.

7 1.2. Notwithstanding any ability to refuse under
8 this Act to submit to these tests or any ability to
9 revoke the implied consent to these tests, if a law
10 enforcement officer has probable cause to believe that a
11 watercraft operated by or under actual physical control
12 of a person under the influence of alcohol, other drug or
13 drugs, intoxicating compound or compounds, or any
14 combination of them has caused the death of or personal
15 injury to another, that person shall submit, upon the
16 request of a law enforcement officer, to a chemical test
17 or tests of his or her blood, breath, or urine for the
18 purpose of determining the alcohol content or the
19 presence of any other drug, intoxicating compound, or
20 combination of them. For the purposes of this Section, a
21 personal injury includes severe bleeding wounds,
22 distorted extremities, and injuries that require the
23 injured party to be carried from the scene for immediate
24 professional attention in either a doctor's office or a
25 medical facility.

26 2. Any person who is dead, unconscious or who is
27 otherwise in a condition rendering such person incapable
28 of refusal, shall be deemed not to have withdrawn the
29 consent provided above, and the test may be administered.

30 3. A person requested to submit to a chemical test
31 as provided above shall be verbally advised by the law
32 enforcement officer requesting the test that a refusal to
33 submit to the test will result in suspension of such
34 person's privilege to operate a watercraft for a minimum

1 of 2 years. Following this warning, if a person under
2 arrest refuses upon the request of a law enforcement
3 officer to submit to a test designated by the officer, no
4 test none shall be given, but the law enforcement officer
5 shall file with the clerk of the circuit court for the
6 county in which the arrest was made, and with the
7 Department of Natural Resources, a sworn statement naming
8 the person refusing to take and complete the chemical
9 test or tests requested under the provisions of this
10 Section. Such sworn statement shall identify the
11 arrested person, such person's current residence address
12 and shall specify that a refusal by such person to take
13 the chemical test or tests was made. Such sworn
14 statement shall include a statement that the arresting
15 officer had reasonable cause to believe the person was
16 operating or was in actual physical control of the
17 watercraft within this State while under the influence of
18 alcohol, other drug or drugs, intoxicating compound or
19 compounds, or combination thereof and that such chemical
20 test or tests were made as an incident to and following
21 the lawful arrest for an offense as defined in this
22 Section or a similar provision of a local ordinance, and
23 that the person after being arrested for an offense
24 arising out of acts alleged to have been committed while
25 so operating a watercraft refused to submit to and
26 complete a chemical test or tests as requested by the law
27 enforcement officer.

28 3.1. The law enforcement officer submitting the
29 sworn statement as provided in paragraph 3 of this
30 subsection (B) shall serve immediate written notice upon
31 the person refusing the chemical test or tests that the
32 person's privilege to operate a watercraft within this
33 State will be suspended for a period of 2 years unless,
34 within 28 days from the date of the notice, the person

1 requests in writing a hearing on the suspension.

2 The clerk shall thereupon notify such person in
3 writing that the person's privilege to operate a
4 watercraft will be suspended unless, within 28 days from
5 the date of mailing of the notice, such person shall
6 request in writing a hearing thereon; If the person
7 desires a hearing, such person shall file a complaint in
8 the circuit court for and in the county in which such
9 person was arrested for such hearing. Such hearing shall
10 proceed in the court in the same manner as other civil
11 proceedings, shall cover only the issues of whether the
12 person was placed under arrest for an offense as defined
13 in this Section or a similar provision of a local
14 ordinance as evidenced by the issuance of a uniform
15 citation; whether the arresting officer had reasonable
16 grounds to believe that such person was operating a
17 watercraft while under the influence of alcohol, other
18 drug or drugs, intoxicating compound or compounds, or
19 combination thereof; and whether such person refused to
20 submit and complete the chemical test or tests upon the
21 request of the law enforcement officer. Whether the
22 person was informed that such person's privilege to
23 operate a watercraft would be suspended if such person
24 refused to submit to the chemical test or tests shall not
25 be an issue.

26 If the person fails to request in writing a hearing
27 within 28 days from the date of notice, or if a hearing
28 is held and the court finds against the person on the
29 issues before the court, the clerk shall immediately
30 notify the Department of Natural Resources of the court's
31 decision, and the Department shall suspend the watercraft
32 operation privileges of the person for at least 2 years.

33 3.2. If the person submits to a test that discloses
34 an alcohol concentration of 0.08 or more, or any amount

1 of a drug, substance or intoxicating compound in the
2 person's breath, blood, or urine resulting from the
3 unlawful use of cannabis listed in the Cannabis Control
4 Act, a controlled substance listed in the Illinois
5 Controlled Substances Act, or an intoxicating compound
6 listed in the Use of Intoxicating Compounds Act, the law
7 enforcement officer shall immediately submit a sworn
8 report to the circuit clerk of venue and the Department
9 of Natural Resources, certifying that the test or tests
10 were requested under paragraph 1 of this subsection (B)
11 and the person submitted to testing that disclosed an
12 alcohol concentration of 0.08 or more.

13 In cases where the blood alcohol concentration of
14 0.08 or greater or any amount of drug, substance or
15 compound resulting from the unlawful use of cannabis, a
16 controlled substance or an intoxicating compound is
17 established by a subsequent analysis of blood or urine
18 collected at the time of arrest, the arresting officer or
19 arresting agency shall immediately submit a sworn report
20 to the circuit clerk of venue and the Department of
21 Natural Resources upon receipt of the test results.

22 4. A person must submit to each chemical test
23 offered by the law enforcement officer in order to comply
24 with the implied consent provisions of this Section.

25 5. The provisions of Section 11-501.2 of the
26 Illinois Vehicle Code, as amended, concerning the
27 certification and use of chemical tests apply to the use
28 of such tests under this Section.

29 (C) Upon the trial of any civil or criminal action or
30 proceeding arising out of acts alleged to have been committed
31 by any person while operating a watercraft while under the
32 influence of alcohol, the concentration of alcohol in the
33 person's blood or breath at the time alleged as shown by
34 analysis of a person's blood, urine, breath, or other bodily

1 substance shall give rise to the presumptions specified in
2 subdivisions 1, 2, and 3 of subsection (b) of Section
3 11-501.2 of the Illinois Vehicle Code. The foregoing
4 provisions of this subsection (C) shall not be construed as
5 limiting the introduction of any other relevant evidence
6 bearing upon the question whether the person was under the
7 influence of alcohol.

8 (D) If a person under arrest refuses to submit to a
9 chemical test under the provisions of this Section, evidence
10 of refusal shall be admissible in any civil or criminal
11 action or proceeding arising out of acts alleged to have been
12 committed while the person under the influence of alcohol, ~~or~~
13 other drug or drugs, intoxicating compound or compounds, or
14 combination of them ~~both~~ was operating a watercraft.

15 (E) The owner of any watercraft or any person given
16 supervisory authority over a watercraft, may not knowingly
17 permit a watercraft to be operated by any person under the
18 influence of alcohol, other drug or drugs, intoxicating
19 compound or compounds, or combination thereof.

20 (F) Whenever any person is convicted or found guilty of
21 a violation of this Section, including any person placed on
22 court supervision, the court shall notify the Office Division
23 of Law Enforcement of the Department of Natural Resources, to
24 provide the Department with the records essential for the
25 performance of the Department's duties to monitor and enforce
26 any order of suspension or revocation concerning the
27 privilege to operate a watercraft.

28 (G) No person who has been arrested and charged for
29 violating paragraph 1 of subsection (A) of this Section shall
30 operate any watercraft within this State for a period of 24 6
31 hours after such arrest.

32 (Source: P.A. 92-615, eff. 1-1-03.)

33 (625 ILCS 45/5-16a) (from Ch. 95 1/2, par. 315-11a)

1 Sec. 5-16a. Admissibility of chemical tests of written
2 ~~blood alcohol-test-results~~ conducted in the regular course of
3 providing emergency medical treatment.

4 (a) Notwithstanding any other provision of law, the
5 written results of blood alcohol tests conducted upon persons
6 receiving medical treatment in a hospital emergency room are
7 admissible in evidence as a business record exception to the
8 hearsay rule only in prosecutions for any violation of
9 Section 5-16 of this Act or a similar provision of a local
10 ordinance or in prosecutions for reckless homicide brought
11 under the Criminal Code of 1961, when:

12 (1) the chemical tests performed upon an
13 individual's blood were ordered in the regular course of
14 providing emergency treatment and not at the request of
15 law enforcement authorities; and

16 (2) the chemical tests performed upon an
17 individual's blood were performed by the laboratory
18 routinely used by the hospital.

19 Results of chemical tests performed upon an individual's
20 blood are admissible into evidence regardless of the time
21 that the records were prepared. each--of--the--following
22 ~~criteria-are-met:~~

23 ~~(1)--the-blood--alcohol--tests--were--ordered--by--a~~
24 ~~physician-on-duty-at-the-hospital-emergency-room-and-were~~
25 ~~performed--in--the--regular-course-of-providing-emergency~~
26 ~~medical-treatment-in-order-to--assist--the--physician--in~~
27 ~~diagnosis-or-treatment;~~

28 ~~(2)--the--blood--alcohol-tests-were-performed-by-the~~
29 ~~hospital's-own-laboratory;-and~~

30 ~~(3)--the-written-results-of-the-blood-alcohol--tests~~
31 ~~were--received-and-considered-by-the-physician-on-duty-at~~
32 ~~the-hospital-emergency-room-to-assist-that--physician--in~~
33 ~~diagnosis-or-treatment.~~

34 (b) The confidentiality provisions of law pertaining to

1 medical records and medical treatment shall not be applicable
 2 with regard to chemical blood-alcohol tests performed upon an
 3 individual's blood or urine under the provisions of this
 4 Section in prosecutions as specified in subsection (a) of
 5 this Section. No person shall be liable for civil damages as
 6 a result of the evidentiary use of the results of chemical
 7 testing of an individual's blood ~~blood-alcohol-test-results~~
 8 under this Section or as a result of that person's testimony
 9 made available under this Section.

10 (Source: P.A. 87-803; 88-670, eff. 12-2-94.)

11 (625 ILCS 45/5-16a.1 new)

12 Sec. 5-16a.1. Reporting of test results of blood or urine
 13 conducted in the regular course of providing emergency
 14 medical treatment.

15 (a) Notwithstanding any other provision of law, the
 16 results of blood or urine tests performed for the purpose of
 17 determining the content of alcohol, other drug or drugs,
 18 intoxicating compound or compounds, or any combination of
 19 them in an individual's blood or urine, conducted upon
 20 persons receiving medical treatment in a hospital emergency
 21 room for injuries resulting from a boating accident, shall be
 22 disclosed to the Department of Natural Resources or local law
 23 enforcement agencies of jurisdiction, upon request. The
 24 blood or urine tests are admissible in evidence as a business
 25 record exception to the hearsay rule only in prosecutions for
 26 violations of Section 5-16 of this Code or a similar
 27 provision of a local ordinance, or in prosecutions for
 28 reckless homicide brought under the Criminal Code of 1961.

29 (b) The confidentiality provisions of the law pertaining
 30 to medical records and medical treatment shall not be
 31 applicable with regard to tests performed upon an
 32 individual's blood or urine under the provisions of
 33 subsection (a) of this Section. No person is liable for

1 civil damages or professional discipline as a result of
 2 disclosure or reporting of the tests or the evidentiary use
 3 of an individual's blood or urine test results under this
 4 Section or Section 5-16a, or as a result of that person's
 5 testimony made available under this Section or Section 5-16a,
 6 except for willful or wanton misconduct.

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

9 (730 ILCS 5/5-5-3) (from Ch. 38, par. 1005-5-3)
 10 Sec. 5-5-3. Disposition.

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

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

- 17 (1) A period of probation.
- 18 (2) A term of periodic imprisonment.
- 19 (3) A term of conditional discharge.
- 20 (4) A term of imprisonment.
- 21 (5) An order directing the offender to clean up and
 22 repair the damage, if the offender was convicted under
 23 paragraph (h) of Section 21-1 of the Criminal Code of
 24 1961.
- 25 (6) A fine.
- 26 (7) An order directing the offender to make
 27 restitution to the victim under Section 5-5-6 of this
 28 Code.
- 29 (8) A sentence of participation in a county impact
 30 incarceration program under Section 5-8-1.2 of this Code.

31 Whenever an individual is sentenced for an offense based
 32 upon an arrest for a violation of Section 11-501 of the

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

17 In addition to any other fine or penalty required by law,
18 any individual convicted of a violation of Section 11-501 of
19 the Illinois Vehicle Code, Section 5-16 of the Boat
20 Registration and Safety Act, or a similar provision of local
21 ordinance, whose operation of a motor vehicle while in
22 violation of Section 11-501, Section 5-16, or such ordinance
23 proximately caused an incident resulting in an appropriate
24 emergency response, shall be required to make restitution to
25 a public agency for the costs of that emergency response.
26 Such restitution shall not exceed \$500 per public agency for
27 each such emergency response. For the purpose of this
28 paragraph, emergency response shall mean any incident
29 requiring a response by: a police officer as defined under
30 Section 1-162 of the Illinois Vehicle Code; a fireman carried
31 on the rolls of a regularly constituted fire department; and
32 an ambulance as defined under Section 4.05 of the Emergency
33 Medical Services (EMS) Systems Act.

34 Neither a fine nor restitution shall be the sole

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

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

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

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

17 (B) Attempted first degree murder.

18 (C) A Class X felony.

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

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

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

34 (G) Residential burglary, except as otherwise

1 provided in Section 40-10 of the Alcoholism and
2 Other Drug Abuse and Dependency Act.

3 (H) Criminal sexual assault, except as
4 otherwise provided in subsection (e) of this
5 Section.

6 (I) Aggravated battery of a senior citizen.

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

9 Before July 1, 1994, for the purposes of this
10 paragraph, "organized gang" means an association of
11 5 or more persons, with an established hierarchy,
12 that encourages members of the association to
13 perpetrate crimes or provides support to the members
14 of the association who do commit crimes.

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

19 (K) Vehicular hijacking.

20 (L) A second or subsequent conviction for the
21 offense of hate crime when the underlying offense
22 upon which the hate crime is based is felony
23 aggravated assault or felony mob action.

24 (M) A second or subsequent conviction for the
25 offense of institutional vandalism if the damage to
26 the property exceeds \$300.

27 (N) A Class 3 felony violation of paragraph
28 (1) of subsection (a) of Section 2 of the Firearm
29 Owners Identification Card Act.

30 (O) A violation of Section 12-6.1 of the
31 Criminal Code of 1961.

32 (P) A violation of paragraph (1), (2), (3),
33 (4), (5), or (7) of subsection (a) of Section
34 11-20.1 of the Criminal Code of 1961.

1 (Q) A violation of Section 20-1.2 of the
2 Criminal Code of 1961.

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

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

7 (3) A minimum term of imprisonment of not less than
8 5 days or 30 days of community service as may be
9 determined by the court shall be imposed for a second
10 violation committed within 5 years of a previous
11 violation of Section 11-501 of the Illinois Vehicle Code
12 or a similar provision of a local ordinance. In the case
13 of a third or subsequent violation committed within 5
14 years of a previous violation of Section 11-501 of the
15 Illinois Vehicle Code or a similar provision of a local
16 ordinance, a minimum term of either 10 days of
17 imprisonment or 60 days of community service shall be
18 imposed.

19 (4) A minimum term of imprisonment of not less than
20 10 consecutive days or 30 days of community service shall
21 be imposed for a violation of paragraph (c) of Section
22 6-303 of the Illinois Vehicle Code.

23 (4.1) A minimum term of 30 consecutive days of
24 imprisonment, 40 days of 24 hour periodic imprisonment or
25 720 hours of community service, as may be determined by
26 the court, shall be imposed for a violation of Section
27 11-501 of the Illinois Vehicle Code during a period in
28 which the defendant's driving privileges are revoked or
29 suspended, where the revocation or suspension was for a
30 violation of Section 11-501 or Section 11-501.1 of that
31 Code.

32 (4.2) Except as provided in paragraph (4.3) of this
33 subsection (c), a minimum of 100 hours of community
34 service shall be imposed for a second violation of

1 Section 6-303 of the Illinois Vehicle Code.

2 (4.3) A minimum term of imprisonment of 30 days or
3 300 hours of community service, as determined by the
4 court, shall be imposed for a second violation of
5 subsection (c) of Section 6-303 of the Illinois Vehicle
6 Code.

7 (4.4) Except as provided in paragraph (4.5) and
8 paragraph (4.6) of this subsection (c), a minimum term of
9 imprisonment of 30 days or 300 hours of community
10 service, as determined by the court, shall be imposed for
11 a third or subsequent violation of Section 6-303 of the
12 Illinois Vehicle Code.

13 (4.5) A minimum term of imprisonment of 30 days
14 shall be imposed for a third violation of subsection (c)
15 of Section 6-303 of the Illinois Vehicle Code.

16 (4.6) A minimum term of imprisonment of 180 days
17 shall be imposed for a fourth or subsequent violation of
18 subsection (c) of Section 6-303 of the Illinois Vehicle
19 Code.

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

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

27 (5.1) In addition to any penalties imposed under
28 paragraph (5) of this subsection (c), and except as
29 provided in paragraph (5.2) or (5.3), a person convicted
30 of violating subsection (c) of Section 11-907 of the
31 Illinois Vehicle Code shall have his or her driver's
32 license, permit, or privileges suspended for at least 90
33 days but not more than one year, if the violation
34 resulted in damage to the property of another person.

1 (5.2) In addition to any penalties imposed under
2 paragraph (5) of this subsection (c), and except as
3 provided in paragraph (5.3), a person convicted of
4 violating subsection (c) of Section 11-907 of the
5 Illinois Vehicle Code shall have his or her driver's
6 license, permit, or privileges suspended for at least 180
7 days but not more than 2 years, if the violation resulted
8 in injury to another person.

9 (5.3) In addition to any penalties imposed under
10 paragraph (5) of this subsection (c), a person convicted
11 of violating subsection (c) of Section 11-907 of the
12 Illinois Vehicle Code shall have his or her driver's
13 license, permit, or privileges suspended for 2 years, if
14 the violation resulted in the death of another person.

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

19 (7) When a defendant is adjudged a habitual
20 criminal under Article 33B of the Criminal Code of 1961,
21 the court shall sentence the defendant to a term of
22 natural life imprisonment.

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

1 after conviction on the second. A person sentenced as a
2 Class X offender under this paragraph is not eligible to
3 apply for treatment as a condition of probation as
4 provided by Section 40-10 of the Alcoholism and Other
5 Drug Abuse and Dependency Act.

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

9 (10) When a person is convicted of violating
10 Section 11-501 of the Illinois Vehicle Code or a similar
11 provision of a local ordinance, the following penalties
12 apply when his or her blood, breath, or urine was .16 or
13 more based on the definition of blood, breath, or urine
14 units in Section 11-501.2 or that person is convicted of
15 violating Section 11-501 of the Illinois Vehicle Code
16 while transporting a child under the age of 16:

17 (A) For a first violation of subsection (a) of
18 Section 11-501, in addition to any other penalty
19 that may be imposed under subsection (c) of Section
20 11-501: a mandatory minimum of 100 hours of
21 community service and a minimum fine of \$500.

22 (B) For a second violation of subsection (a)
23 of Section 11-501, in addition to any other penalty
24 that may be imposed under subsection (c) of Section
25 11-501 within 10 years: a mandatory minimum of 2
26 days of imprisonment and a minimum fine of \$1,250.

27 (C) For a third violation of subsection (a) of
28 Section 11-501, in addition to any other penalty
29 that may be imposed under subsection (c) of Section
30 11-501 within 20 years: a mandatory minimum of 90
31 days of imprisonment and a minimum fine of \$2,500.

32 (D) For a fourth or subsequent violation of
33 subsection (a) of Section 11-501: ineligibility for
34 a sentence of probation or conditional discharge and

1 a minimum fine of \$2,500.

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

21 (e) In cases where prosecution for criminal sexual
22 assault or aggravated criminal sexual abuse under Section
23 12-13 or 12-16 of the Criminal Code of 1961 results in
24 conviction of a defendant who was a family member of the
25 victim at the time of the commission of the offense, the
26 court shall consider the safety and welfare of the victim and
27 may impose a sentence of probation only where:

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

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

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

1 the defendant's:

2 (i) removal from the household;

3 (ii) restricted contact with the victim;

4 (iii) continued financial support of the
5 family;

6 (iv) restitution for harm done to the
7 victim; and

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

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

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

24 For the purposes of this Section, "family member" and
25 "victim" shall have the meanings ascribed to them in Section
26 12-12 of the Criminal Code of 1961.

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

31 (g) Whenever a defendant is convicted of an offense
32 under Sections 11-14, 11-15, 11-15.1, 11-16, 11-17, 11-18,
33 11-18.1, 11-19, 11-19.1, 11-19.2, 12-13, 12-14, 12-14.1,
34 12-15 or 12-16 of the Criminal Code of 1961, the defendant

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

1 defendant.

2 (g-5) When an inmate is tested for an airborne
3 communicable disease, as determined by the Illinois
4 Department of Public Health including but not limited to
5 tuberculosis, the results of the test shall be personally
6 delivered by the warden or his or her designee in a sealed
7 envelope to the judge of the court in which the inmate must
8 appear for the judge's inspection in camera if requested by
9 the judge. Acting in accordance with the best interests of
10 those in the courtroom, the judge shall have the discretion
11 to determine what if any precautions need to be taken to
12 prevent transmission of the disease in the courtroom.

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

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

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

15 (j) In cases when prosecution for any violation of
16 Section 11-6, 11-8, 11-9, 11-11, 11-14, 11-15, 11-15.1,
17 11-16, 11-17, 11-17.1, 11-18, 11-18.1, 11-19, 11-19.1,
18 11-19.2, 11-20.1, 11-21, 12-13, 12-14, 12-14.1, 12-15, or
19 12-16 of the Criminal Code of 1961, any violation of the
20 Illinois Controlled Substances Act, or any violation of the
21 Cannabis Control Act results in conviction, a disposition of
22 court supervision, or an order of probation granted under
23 Section 10 of the Cannabis Control Act or Section 410 of the
24 Illinois Controlled Substance Act of a defendant, the court
25 shall determine whether the defendant is employed by a
26 facility or center as defined under the Child Care Act of
27 1969, a public or private elementary or secondary school, or
28 otherwise works with children under 18 years of age on a
29 daily basis. When a defendant is so employed, the court
30 shall order the Clerk of the Court to send a copy of the
31 judgment of conviction or order of supervision or probation
32 to the defendant's employer by certified mail. If the
33 employer of the defendant is a school, the Clerk of the Court
34 shall direct the mailing of a copy of the judgment of

1 conviction or order of supervision or probation to the
2 appropriate regional superintendent of schools. The regional
3 superintendent of schools shall notify the State Board of
4 Education of any notification under this subsection.

5 (j-5) A defendant at least 17 years of age who is
6 convicted of a felony and who has not been previously
7 convicted of a misdemeanor or felony and who is sentenced to
8 a term of imprisonment in the Illinois Department of
9 Corrections shall as a condition of his or her sentence be
10 required by the court to attend educational courses designed
11 to prepare the defendant for a high school diploma and to
12 work toward a high school diploma or to work toward passing
13 the high school level Test of General Educational Development
14 (GED) or to work toward completing a vocational training
15 program offered by the Department of Corrections. If a
16 defendant fails to complete the educational training required
17 by his or her sentence during the term of incarceration, the
18 Prisoner Review Board shall, as a condition of mandatory
19 supervised release, require the defendant, at his or her own
20 expense, to pursue a course of study toward a high school
21 diploma or passage of the GED test. The Prisoner Review
22 Board shall revoke the mandatory supervised release of a
23 defendant who wilfully fails to comply with this subsection
24 (j-5) upon his or her release from confinement in a penal
25 institution while serving a mandatory supervised release
26 term; however, the inability of the defendant after making a
27 good faith effort to obtain financial aid or pay for the
28 educational training shall not be deemed a wilful failure to
29 comply. The Prisoner Review Board shall recommit the
30 defendant whose mandatory supervised release term has been
31 revoked under this subsection (j-5) as provided in Section
32 3-3-9. This subsection (j-5) does not apply to a defendant
33 who has a high school diploma or has successfully passed the
34 GED test. This subsection (j-5) does not apply to a defendant

1 who is determined by the court to be developmentally disabled
2 or otherwise mentally incapable of completing the educational
3 or vocational program.

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

8 (l) (A) Except as provided in paragraph (C) of
9 subsection (l), whenever a defendant, who is an alien as
10 defined by the Immigration and Nationality Act, is
11 convicted of any felony or misdemeanor offense, the court
12 after sentencing the defendant may, upon motion of the
13 State's Attorney, hold sentence in abeyance and remand
14 the defendant to the custody of the Attorney General of
15 the United States or his or her designated agent to be
16 deported when:

17 (1) a final order of deportation has been
18 issued against the defendant pursuant to proceedings
19 under the Immigration and Nationality Act, and

20 (2) the deportation of the defendant would not
21 deprecate the seriousness of the defendant's conduct
22 and would not be inconsistent with the ends of
23 justice.

24 Otherwise, the defendant shall be sentenced as
25 provided in this Chapter V.

26 (B) If the defendant has already been sentenced for
27 a felony or misdemeanor offense, or has been placed on
28 probation under Section 10 of the Cannabis Control Act or
29 Section 410 of the Illinois Controlled Substances Act,
30 the court may, upon motion of the State's Attorney to
31 suspend the sentence imposed, commit the defendant to the
32 custody of the Attorney General of the United States or
33 his or her designated agent when:

34 (1) a final order of deportation has been

1 issued against the defendant pursuant to proceedings
2 under the Immigration and Nationality Act, and

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

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

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

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

26 (Source: P.A. 91-357, eff. 7-29-99; 91-404, eff. 1-1-00;
27 91-663, eff. 12-22-99; 91-695, eff. 4-13-00; 91-953, eff.
28 2-23-01; 92-183, eff. 7-27-01; 92-248, eff. 8-3-01; 92-283,
29 eff. 1-1-02; 92-340, eff. 8-10-01; 92-418, eff. 8-17-01;
30 92-422, eff. 8-17-01; 92-651, eff. 7-11-02; 92-698, eff.
31 7-19-02.)