



**93RD GENERAL ASSEMBLY**  
**State of Illinois**  
**2003 and 2004**  
**HB4342**

Introduced 02/02/04, by Jack D. Franks

**SYNOPSIS AS INTRODUCED:**

625 ILCS 5/11-501  
730 ILCS 5/5-5-3

from Ch. 95 1/2, par. 11-501  
from Ch. 38, par. 1005-5-3

Amends the Illinois Vehicle Code and the Unified Code of Corrections.  
Increases the penalties for driving under the influence of alcohol, drugs,  
or intoxicating compounds while transporting a child under the age of 16  
years.

LRB093 18297 DRH 44001 b

CORRECTIONAL  
BUDGET AND  
IMPACT NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT in relation to driving offenses.

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

4 Section 5. The Illinois Vehicle Code is amended by changing  
5 Section 11-501 as follows:

6 (625 ILCS 5/11-501) (from Ch. 95 1/2, par. 11-501)

7 Sec. 11-501. Driving while under the influence of alcohol,  
8 other drug or drugs, intoxicating compound or compounds or any  
9 combination thereof.

10 (a) A person shall not drive or be in actual physical  
11 control of any vehicle within this State while:

12 (1) the alcohol concentration in the person's blood or  
13 breath is 0.08 or more based on the definition of blood and  
14 breath units in Section 11-501.2;

15 (2) under the influence of alcohol;

16 (3) under the influence of any intoxicating compound or  
17 combination of intoxicating compounds to a degree that  
18 renders the person incapable of driving safely;

19 (4) under the influence of any other drug or  
20 combination of drugs to a degree that renders the person  
21 incapable of safely driving;

22 (5) under the combined influence of alcohol, other drug  
23 or drugs, or intoxicating compound or compounds to a degree  
24 that renders the person incapable of safely driving; or

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

31 (b) The fact that any person charged with violating this  
32 Section is or has been legally entitled to use alcohol, other

1 drug or drugs, or intoxicating compound or compounds, or any  
2 combination thereof, shall not constitute a defense against any  
3 charge of violating this Section.

4 (c) Except as provided under paragraphs ~~(c-3)~~, (c-4),  
5 (c-5), and (d) of this Section, every person convicted of  
6 violating this Section or a similar provision of a local  
7 ordinance, shall be guilty of a Class A misdemeanor and, in  
8 addition to any other criminal or administrative action, for  
9 any second conviction of violating this Section or a similar  
10 provision of a law of another state or local ordinance  
11 committed within 5 years of a previous violation of this  
12 Section or a similar provision of a local ordinance shall be  
13 mandatorily sentenced to a minimum of 5 days of imprisonment or  
14 assigned to a minimum of 30 days of community service as may be  
15 determined by the court. ~~Every person convicted of violating~~  
16 ~~this Section or a similar provision of a local ordinance shall~~  
17 ~~be subject to an additional mandatory minimum fine of \$500 and~~  
18 ~~an additional mandatory 5 days of community service in a~~  
19 ~~program benefiting children if the person committed a violation~~  
20 ~~of paragraph (a) or a similar provision of a local ordinance~~  
21 ~~while transporting a person under age 16. Every person~~  
22 ~~convicted a second time for violating this Section or a similar~~  
23 ~~provision of a local ordinance within 5 years of a previous~~  
24 ~~violation of this Section or a similar provision of a law of~~  
25 ~~another state or local ordinance shall be subject to an~~  
26 ~~additional mandatory minimum fine of \$500 and an additional 10~~  
27 ~~days of mandatory community service in a program benefiting~~  
28 ~~children if the current offense was committed while~~  
29 ~~transporting a person under age 16. The imprisonment or~~  
30 ~~assignment under this subsection shall not be subject to~~  
31 ~~suspension nor shall the person be eligible for probation in~~  
32 ~~order to reduce the sentence or assignment.~~

33 (c-1) (1) A person who violates this Section during a  
34 period in which his or her driving privileges are revoked  
35 or suspended, where the revocation or suspension was for a  
36 violation of this Section, Section 11-501.1, paragraph (b)

1 of Section 11-401, or Section 9-3 of the Criminal Code of  
2 1961 is guilty of a Class 4 felony.

3 (2) A person who violates this Section a third time  
4 during a period in which his or her driving privileges are  
5 revoked or suspended where the revocation or suspension was  
6 for a violation of this Section, Section 11-501.1,  
7 paragraph (b) of Section 11-401, or Section 9-3 of the  
8 Criminal Code of 1961 is guilty of a Class 3 felony.

9 (3) A person who violates this Section a fourth or  
10 subsequent time during a period in which his or her driving  
11 privileges are revoked or suspended where the revocation or  
12 suspension was for a violation of this Section, Section  
13 11-501.1, paragraph (b) of Section 11-401, or Section 9-3  
14 of the Criminal Code of 1961 is guilty of a Class 2 felony.

15 (c-2) (Blank).

16 (c-3) (Blank). ~~Every person convicted of violating this~~  
17 ~~Section or a similar provision of a local ordinance who had a~~  
18 ~~child under age 16 in the vehicle at the time of the offense~~  
19 ~~shall have his or her punishment under this Act enhanced by 2~~  
20 ~~days of imprisonment for a first offense, 10 days of~~  
21 ~~imprisonment for a second offense, 30 days of imprisonment for~~  
22 ~~a third offense, and 90 days of imprisonment for a fourth or~~  
23 ~~subsequent offense, in addition to the fine and community~~  
24 ~~service required under subsection (c) and the possible~~  
25 ~~imprisonment required under subsection (d). The imprisonment~~  
26 ~~or assignment under this subsection shall not be subject to~~  
27 ~~suspension nor shall the person be eligible for probation in~~  
28 ~~order to reduce the sentence or assignment.~~

29 (c-4) When a person is convicted of violating Section  
30 11-501 of this Code or a similar provision of a local  
31 ordinance, the following penalties apply when his or her blood,  
32 breath, or urine was .16 or more based on the definition of  
33 blood, breath, or urine units in Section 11-501.2 ~~or when that~~  
34 ~~person is convicted of violating this Section while~~  
35 ~~transporting a child under the age of 16:~~

36 (1) A person who is convicted of violating subsection

1 (a) of Section 11-501 of this Code a first time, in  
2 addition to any other penalty that may be imposed under  
3 subsection (c), is subject to a mandatory minimum of 100  
4 hours of community service and a minimum fine of \$500.

5 (2) A person who is convicted of violating subsection  
6 (a) of Section 11-501 of this Code a second time within 10  
7 years, in addition to any other penalty that may be imposed  
8 under subsection (c), is subject to a mandatory minimum of  
9 2 days of imprisonment and a minimum fine of \$1,250.

10 (3) A person who is convicted of violating subsection  
11 (a) of Section 11-501 of this Code a third time within 20  
12 years is guilty of a Class 4 felony and, in addition to any  
13 other penalty that may be imposed under subsection (c), is  
14 subject to a mandatory minimum of 90 days of imprisonment  
15 and a minimum fine of \$2,500.

16 (4) A person who is convicted of violating this  
17 subsection (c-4) a fourth or subsequent time is guilty of a  
18 Class 2 felony and, in addition to any other penalty that  
19 may be imposed under subsection (c), is not eligible for a  
20 sentence of probation or conditional discharge and is  
21 subject to a minimum fine of \$2,500.

22 (c-5) When a person is convicted of violating this Section  
23 or a similar provision of a local ordinance, the following  
24 penalties apply when that person is convicted of a violation  
25 while transporting a child under the age of 16:

26 (1) Except as otherwise provided in paragraph (2) of  
27 this subsection (c-5), a person who is convicted of  
28 violating subsection (a) of this Section a first time is  
29 guilty of a Class A misdemeanor and is subject to 6 months  
30 of imprisonment, a mandatory fine of \$1000, and 25 days of  
31 community service in a program benefiting children. The  
32 imprisonment or assignment to community service under this  
33 subsection shall not be subject to suspension, nor shall  
34 the person be eligible for probation in order to reduce the  
35 sentence or assignment.

36 (2) A person who is convicted of violating subsection

1       (a) of this Section a first time and who in committing that  
2       violation was involved in a motor vehicle accident that  
3       resulted in bodily harm to the child under the age of 16  
4       being transported by the person, if the violation was the  
5       proximate cause of the injury, is guilty of a Class 4  
6       felony and is subject to one year of imprisonment, a  
7       mandatory fine of \$2,500, and 25 days of community service  
8       in a program benefiting children. The imprisonment or  
9       assignment to community service under this subsection  
10       shall not be subject to suspension, nor shall the person be  
11       eligible for probation in order to reduce the sentence or  
12       assignment.

13       (3) Except as otherwise provided in paragraph (4) of  
14       this subsection (c-5), a person who is convicted of  
15       violating subsection (a) of this Section a second time  
16       within 10 years is guilty of a Class 4 felony and is  
17       subject to one year of imprisonment, a mandatory fine of  
18       \$2,500, and 25 days of community service in a program  
19       benefiting children. The imprisonment or assignment to  
20       community service under this subsection shall not be  
21       subject to suspension, nor shall the person be eligible for  
22       probation in order to reduce the sentence or assignment.

23       (4) A person who is convicted of violating subsection  
24       (a) of this Section a second time within 10 years and who  
25       in committing that violation was involved in a motor  
26       vehicle accident that resulted in bodily harm to the child  
27       under the age of 16 being transported, if the violation was  
28       the proximate cause of the injury, is guilty of a Class 4  
29       felony and is subject to 18 months of imprisonment, a  
30       mandatory fine of \$5,000, and 25 days of community service  
31       in a program benefiting children. The imprisonment or  
32       assignment to community service under this subsection  
33       shall not be subject to suspension, nor shall the person be  
34       eligible for probation in order to reduce the sentence or  
35       assignment.

36       (5) A person who is convicted of violating subsection

1       (a) of this Section a third or subsequent time within 20  
2       years is guilty of a Class 3 felony and is subject to 3  
3       years of imprisonment, a mandatory fine of \$25,000, and 25  
4       days of community service in a program benefiting children.  
5       The imprisonment or assignment to community service under  
6       this subsection shall not be subject to suspension, nor  
7       shall the person be eligible for probation in order to  
8       reduce the sentence or assignment.

9       (d) (1) Every person convicted of committing a violation of  
10       this Section shall be guilty of aggravated driving under  
11       the influence of alcohol, other drug or drugs, or  
12       intoxicating compound or compounds, or any combination  
13       thereof if:

14               (A) the person committed a violation of this  
15       Section, or a similar provision of a law of another  
16       state or a local ordinance when the cause of action is  
17       the same as or substantially similar to this Section,  
18       for the third or subsequent time;

19               (B) the person committed a violation of paragraph  
20       (a) while driving a school bus with children on board;

21               (C) the person in committing a violation of  
22       paragraph (a) was involved in a motor vehicle accident  
23       that resulted in great bodily harm or permanent  
24       disability or disfigurement to another, when the  
25       violation was a proximate cause of the injuries;

26               (D) the person committed a violation of paragraph  
27       (a) for a second time and has been previously convicted  
28       of violating Section 9-3 of the Criminal Code of 1961  
29       relating to reckless homicide in which the person was  
30       determined to have been under the influence of alcohol,  
31       other drug or drugs, or intoxicating compound or  
32       compounds as an element of the offense or the person  
33       has previously been convicted under subparagraph (C)  
34       or subparagraph (F) of this paragraph (1);

35               (E) the person, in committing a violation of  
36       paragraph (a) while driving at any speed in a school

1 speed zone at a time when a speed limit of 20 miles per  
2 hour was in effect under subsection (a) of Section  
3 11-605 of this Code, was involved in a motor vehicle  
4 accident that resulted in bodily harm, other than great  
5 bodily harm or permanent disability or disfigurement,  
6 to another person, when the violation of paragraph (a)  
7 was a proximate cause of the bodily harm; or

8 (F) the person, in committing a violation of  
9 paragraph (a), was involved in a motor vehicle,  
10 snowmobile, all-terrain vehicle, or watercraft  
11 accident that resulted in the death of another person,  
12 when the violation of paragraph (a) was a proximate  
13 cause of the death.

14 (2) Except as provided in this paragraph (2),  
15 aggravated driving under the influence of alcohol, other  
16 drug or drugs, or intoxicating compound or compounds, or  
17 any combination thereof is a Class 4 felony. For a  
18 violation of subparagraph (C) of paragraph (1) of this  
19 subsection (d), the defendant, if sentenced to a term of  
20 imprisonment, shall be sentenced to not less than one year  
21 nor more than 12 years. Aggravated driving under the  
22 influence of alcohol, other drug or drugs, or intoxicating  
23 compound or compounds, or any combination thereof as  
24 defined in subparagraph (F) of paragraph (1) of this  
25 subsection (d) is a Class 2 felony, for which the  
26 defendant, if sentenced to a term of imprisonment, shall be  
27 sentenced to: (A) a term of imprisonment of not less than 3  
28 years and not more than 14 years if the violation resulted  
29 in the death of one person; or (B) a term of imprisonment  
30 of not less than 6 years and not more than 28 years if the  
31 violation resulted in the deaths of 2 or more persons. For  
32 any prosecution under this subsection (d), a certified copy  
33 of the driving abstract of the defendant shall be admitted  
34 as proof of any prior conviction.

35 (e) After a finding of guilt and prior to any final  
36 sentencing, or an order for supervision, for an offense based



1 upon an arrest for a violation of this Section or a similar  
2 provision of a local ordinance, individuals shall be required  
3 to undergo a professional evaluation to determine if an  
4 alcohol, drug, or intoxicating compound abuse problem exists  
5 and the extent of the problem, and undergo the imposition of  
6 treatment as appropriate. Programs conducting these  
7 evaluations shall be licensed by the Department of Human  
8 Services. The cost of any professional evaluation shall be paid  
9 for by the individual required to undergo the professional  
10 evaluation.

11 (e-1) Any person who is found guilty of or pleads guilty to  
12 violating this Section, including any person receiving a  
13 disposition of court supervision for violating this Section,  
14 may be required by the Court to attend a victim impact panel  
15 offered by, or under contract with, a County State's Attorney's  
16 office, a probation and court services department, Mothers  
17 Against Drunk Driving, or the Alliance Against Intoxicated  
18 Motorists. All costs generated by the victim impact panel shall  
19 be paid from fees collected from the offender or as may be  
20 determined by the court.

21 (f) Every person found guilty of violating this Section,  
22 whose operation of a motor vehicle while in violation of this  
23 Section proximately caused any incident resulting in an  
24 appropriate emergency response, shall be liable for the expense  
25 of an emergency response as provided under Section 5-5-3 of the  
26 Unified Code of Corrections.

27 (g) The Secretary of State shall revoke the driving  
28 privileges of any person convicted under this Section or a  
29 similar provision of a local ordinance.

30 (h) Every person sentenced under paragraph (2) or (3) of  
31 subsection (c-1) of this Section or subsection (d) of this  
32 Section and who receives a term of probation or conditional  
33 discharge shall be required to serve a minimum term of either  
34 60 days community service or 10 days of imprisonment as a  
35 condition of the probation or conditional discharge. This  
36 mandatory minimum term of imprisonment or assignment of

1 community service shall not be suspended and shall not be  
2 subject to reduction by the court.

3 (i) The Secretary of State shall require the use of  
4 ignition interlock devices on all vehicles owned by an  
5 individual who has been convicted of a second or subsequent  
6 offense of this Section or a similar provision of a local  
7 ordinance. The Secretary shall establish by rule and regulation  
8 the procedures for certification and use of the interlock  
9 system.

10 (j) In addition to any other penalties and liabilities, a  
11 person who is found guilty of or pleads guilty to violating  
12 this Section, including any person placed on court supervision  
13 for violating this Section, shall be fined \$100, payable to the  
14 circuit clerk, who shall distribute the money to the law  
15 enforcement agency that made the arrest. If the person has been  
16 previously convicted of violating this Section or a similar  
17 provision of a local ordinance, the fine shall be \$200. In the  
18 event that more than one agency is responsible for the arrest,  
19 the \$100 or \$200 shall be shared equally. Any moneys received  
20 by a law enforcement agency under this subsection (j) shall be  
21 used to purchase law enforcement equipment that will assist in  
22 the prevention of alcohol related criminal violence throughout  
23 the State. This shall include, but is not limited to, in-car  
24 video cameras, radar and laser speed detection devices, and  
25 alcohol breath testers. Any moneys received by the Department  
26 of State Police under this subsection (j) shall be deposited  
27 into the State Police DUI Fund and shall be used to purchase  
28 law enforcement equipment that will assist in the prevention of  
29 alcohol related criminal violence throughout the State.

30 (k) The Secretary of State Police DUI Fund is created as a  
31 special fund in the State treasury. All moneys received by the  
32 Secretary of State Police under subsection (j) of this Section  
33 shall be deposited into the Secretary of State Police DUI Fund  
34 and, subject to appropriation, shall be used to purchase law  
35 enforcement equipment to assist in the prevention of alcohol  
36 related criminal violence throughout the State.

1 (Source: P.A. 92-248, eff. 8-3-01; 92-418, eff. 8-17-01;  
2 92-420, eff. 8-17-01; 92-429, eff. 1-1-02; 92-431, eff. 1-1-02;  
3 92-651, eff. 7-11-02; 93-156, eff. 1-1-04; 93-213, eff.  
4 7-18-03; 93-584, eff. 8-22-03; revised 8-27-03.)

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

7 (730 ILCS 5/5-5-3) (from Ch. 38, par. 1005-5-3)

8 Sec. 5-5-3. Disposition.

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

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

15 (1) A period of probation.

16 (2) A term of periodic imprisonment.

17 (3) A term of conditional discharge.

18 (4) A term of imprisonment.

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

23 (6) A fine.

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

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

28 Whenever an individual is sentenced for an offense based  
29 upon an arrest for a violation of Section 11-501 of the  
30 Illinois Vehicle Code, or a similar provision of a local  
31 ordinance, and the professional evaluation recommends remedial  
32 or rehabilitative treatment or education, neither the  
33 treatment nor the education shall be the sole disposition and  
34 either or both may be imposed only in conjunction with another

1 disposition. The court shall monitor compliance with any  
2 remedial education or treatment recommendations contained in  
3 the professional evaluation. Programs conducting alcohol or  
4 other drug evaluation or remedial education must be licensed by  
5 the Department of Human Services. However, if the individual is  
6 not a resident of Illinois, the court may accept an alcohol or  
7 other drug evaluation or remedial education program in the  
8 state of such individual's residence. Programs providing  
9 treatment must be licensed under existing applicable  
10 alcoholism and drug treatment licensure standards.

11 In addition to any other fine or penalty required by law,  
12 any individual convicted of a violation of Section 11-501 of  
13 the Illinois Vehicle Code, Section 5-7 of the Snowmobile  
14 Registration and Safety Act, Section 5-16 of the Boat  
15 Registration and Safety Act, or a similar provision of local  
16 ordinance, whose operation of a motor vehicle while in  
17 violation of Section 11-501, Section 5-7, Section 5-16, or such  
18 ordinance proximately caused an incident resulting in an  
19 appropriate emergency response, shall be required to make  
20 restitution to a public agency for the costs of that emergency  
21 response. Such restitution shall not exceed \$1,000 per public  
22 agency for each such emergency response. For the purpose of  
23 this paragraph, emergency response shall mean any incident  
24 requiring a response by: a police officer as defined under  
25 Section 1-162 of the Illinois Vehicle Code; a fireman carried  
26 on the rolls of a regularly constituted fire department; and an  
27 ambulance as defined under Section 3.85 of the Emergency  
28 Medical Services (EMS) Systems Act.

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

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

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

8           (A) First degree murder where the death penalty is  
9 not imposed.

10          (B) Attempted first degree murder.

11          (C) A Class X felony.

12          (D) A violation of Section 401.1 or 407 of the  
13 Illinois Controlled Substances Act, or a violation of  
14 subdivision (c) (1) or (c) (2) of Section 401 of that Act  
15 which relates to more than 5 grams of a substance  
16 containing heroin or cocaine or an analog thereof.

17          (E) A violation of Section 5.1 or 9 of the Cannabis  
18 Control Act.

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

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

28          (H) Criminal sexual assault.

29          (I) Aggravated battery of a senior citizen.

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

32           Before July 1, 1994, for the purposes of this  
33 paragraph, "organized gang" means an association of 5  
34 or more persons, with an established hierarchy, that  
35 encourages members of the association to perpetrate  
36 crimes or provides support to the members of the

1 association who do commit crimes.

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

6 (K) Vehicular hijacking.

7 (L) A second or subsequent conviction for the  
8 offense of hate crime when the underlying offense upon  
9 which the hate crime is based is felony aggravated  
10 assault or felony mob action.

11 (M) A second or subsequent conviction for the  
12 offense of institutional vandalism if the damage to the  
13 property exceeds \$300.

14 (N) A Class 3 felony violation of paragraph (1) of  
15 subsection (a) of Section 2 of the Firearm Owners  
16 Identification Card Act.

17 (O) A violation of Section 12-6.1 of the Criminal  
18 Code of 1961.

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

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

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

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

28 (T) A second or subsequent violation of paragraph  
29 (6.6) of subsection (a), subsection (c-5), or  
30 subsection (d-5) of Section 401 of the Illinois  
31 Controlled Substances Act.

32 (3) A minimum term of imprisonment of not less than 5  
33 days or 30 days of community service as may be determined  
34 by the court shall be imposed for a second violation  
35 committed within 5 years of a previous violation of Section  
36 11-501 of the Illinois Vehicle Code or a similar provision

1 of a local ordinance. In the case of a third or subsequent  
2 violation committed within 5 years of a previous violation  
3 of Section 11-501 of the Illinois Vehicle Code or a similar  
4 provision of a local ordinance, a minimum term of either 10  
5 days of imprisonment or 60 days of community service shall  
6 be imposed.

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

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

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

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

27 (4.4) Except as provided in paragraph (4.5) and  
28 paragraph (4.6) of this subsection (c), a minimum term of  
29 imprisonment of 30 days or 300 hours of community service,  
30 as determined by the court, shall be imposed for a third or  
31 subsequent violation of Section 6-303 of the Illinois  
32 Vehicle Code.

33 (4.5) A minimum term of imprisonment of 30 days shall  
34 be imposed for a third violation of subsection (c) of  
35 Section 6-303 of the Illinois Vehicle Code.  
36

1 (4.6) A minimum term of imprisonment of 180 days shall  
2 be imposed for a fourth or subsequent violation of  
3 subsection (c) of Section 6-303 of the Illinois Vehicle  
4 Code.

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

8 (A) a period of conditional discharge;

9 (B) a fine;

10 (C) make restitution to the victim under Section  
11 5-5-6 of this Code.

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

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

28 (5.3) In addition to any penalties imposed under  
29 paragraph (5) of this subsection (c), a person convicted of  
30 violating subsection (c) of Section 11-907 of the Illinois  
31 Vehicle Code shall have his or her driver's license,  
32 permit, or privileges suspended for 2 years, if the  
33 violation resulted in the death of another person.

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



1 probation or conditional discharge for a felony.

2 (7) When a defendant is adjudged a habitual criminal  
3 under Article 33B of the Criminal Code of 1961, the court  
4 shall sentence the defendant to a term of natural life  
5 imprisonment.

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

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

25 (10) When a person is convicted of violating Section  
26 11-501 of the Illinois Vehicle Code or a similar provision  
27 of a local ordinance, the following penalties apply when  
28 his or her blood, breath, or urine was .16 or more based on  
29 the definition of blood, breath, or urine units in Section  
30 11-501.2 ~~or that person is convicted of violating Section~~  
31 ~~11-501~~ of the Illinois Vehicle Code ~~while transporting a~~  
32 ~~child under the age of 16:~~

33 (A) For a first violation of subsection (a) of  
34 Section 11-501, in addition to any other penalty that  
35 may be imposed under subsection (c) of Section 11-501:  
36 a mandatory minimum of 100 hours of community service

1 and a minimum fine of \$500.

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

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

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

16 (11) When a person is convicted of violating Section  
17 11-501 of the Illinois Vehicle Code or a similar provision  
18 of a local ordinance, the following penalties apply when  
19 that person is convicted of violating Section 11-501 of the  
20 Illinois Vehicle Code while transporting a child under the  
21 age of 16:

22 (A) Except as otherwise provided in subparagraph  
23 (B) of this subdivision (c) (11), for a first violation  
24 of subsection (a) of Section 11-501, in addition to any  
25 other penalty that may be imposed under subsection (c)  
26 of Section 11-501: 25 days of community service in a  
27 program benefiting children and a mandatory fine of  
28 \$1,000.

29 (B) For a first violation of subsection (a) of  
30 Section 11-501, if the violation was the proximate  
31 cause of an accident resulting in bodily harm to the  
32 child under the age of 16 being transported, in  
33 addition to any other penalty that may be imposed under  
34 subsection (c) of Section 11-501: 25 days of community  
35 service in a program benefiting children and a  
36 mandatory fine of \$2,500.

1           (C) Except as otherwise provided in subparagraph  
2           (D) of this subdivision (c) (11), for a second violation  
3           of subsection (a) of Section 11-501 within 10 years, in  
4           addition to any other penalty that may be imposed under  
5           subsection (c) of Section 11-501: 25 days of community  
6           service in a program benefiting children and a minimum  
7           fine of \$2,500.

8           (D) For a second violation of subsection (a) of  
9           Section 11-501 within 10 years, if the violation was  
10           the proximate cause of an accident resulting in bodily  
11           harm to the person under the age of 16 being  
12           transported, in addition to any other penalty that may  
13           be imposed under subsection (c) of Section 11-501: 25  
14           days of community service in a program benefiting  
15           children and a mandatory fine of \$5,000.

16           (E) For a third or subsequent violation of  
17           subsection (a) of Section 11-501 within 20 years, in  
18           addition to any other penalty that may be imposed under  
19           subsection (c) of Section: 25 days of community service  
20           in a program benefiting children and a mandatory fine  
21           of \$25,000.

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

1 to a term within the range otherwise provided or, if the State  
2 files notice of its intention to again seek the extended  
3 sentence, the defendant shall be afforded a new trial.

4 (e) In cases where prosecution for aggravated criminal  
5 sexual abuse under Section 12-16 of the Criminal Code of 1961  
6 results in conviction of a defendant who was a family member of  
7 the victim at the time of the commission of the offense, the  
8 court shall consider the safety and welfare of the victim and  
9 may impose a sentence of probation only where:

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

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

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

17 (i) removal from the household;

18 (ii) restricted contact with the victim;

19 (iii) continued financial support of the  
20 family;

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

22 and

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

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

32 Probation may be revoked or modified pursuant to Section  
33 5-6-4; except where the court determines at the hearing that  
34 the defendant violated a condition of his or her probation  
35 restricting contact with the victim or other family members or  
36 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 impose  
9 any other civil penalty.

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

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

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

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

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

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

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

1 to the defendant's employer by certified mail. If the employer  
2 of the defendant is a school, the Clerk of the Court shall  
3 direct the mailing of a copy of the judgment of conviction or  
4 order of supervision or probation to the appropriate regional  
5 superintendent of schools. The regional superintendent of  
6 schools shall notify the State Board of Education of any  
7 notification under this subsection.

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



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

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

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

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

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

21 Otherwise, the defendant shall be sentenced as  
22 provided in this Chapter V.

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

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

34 (2) the deportation of the defendant would not  
35 deprecate the seriousness of the defendant's conduct  
36 and would not be inconsistent with the ends of justice.

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

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

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

20 (n) The court may sentence a person convicted of a  
21 violation of Section 12-19, 12-21, or 16-1.3 of the Criminal  
22 Code of 1961 (i) to an impact incarceration program if the  
23 person is otherwise eligible for that program under Section  
24 5-8-1.1, (ii) to community service, or (iii) if the person is  
25 an addict or alcoholic, as defined in the Alcoholism and Other  
26 Drug Abuse and Dependency Act, to a substance or alcohol abuse  
27 program licensed under that Act.

28 (Source: P.A. 92-183, eff. 7-27-01; 92-248, eff. 8-3-01;  
29 92-283, eff. 1-1-02; 92-340, eff. 8-10-01; 92-418, eff.  
30 8-17-01; 92-422, eff. 8-17-01; 92-651, eff. 7-11-02; 92-698,  
31 eff. 7-19-02; 93-44, eff. 7-1-03; 93-156, eff. 1-1-04; 93-169,  
32 eff. 7-10-03; 93-301, eff. 1-1-04; 93-419, eff. 1-1-04; 93-546,  
33 eff. 1-1-04; revised 10-9-03.)