



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004

Introduced 02/05/04, by Deborah L. Graham

SYNOPSIS AS INTRODUCED:

720 ILCS 5/24-1	from Ch. 38, par. 24-1
720 ILCS 5/24-1.1	from Ch. 38, par. 24-1.1
720 ILCS 5/24-1.6	
730 ILCS 5/5-5-3	from Ch. 38, par. 1005-5-3

Amends the Criminal Code of 1961 and the Unified Code of Corrections. Requires a mandatory sentence of imprisonment for certain violations of the statutes concerning unlawful use of weapons, the unlawful use or possession of weapons by felons, and aggravated unlawful use of a weapon. Provides that a period of probation, periodic imprisonment, or conditional discharge may not be imposed for these violations.

LRB093 19155 RLC 44890 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

1 AN ACT concerning criminal law.

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

4 Section 5. The Criminal Code of 1961 is amended by changing
5 Sections 24-1, 24-1.1, and 24-1.6 as follows:

6 (720 ILCS 5/24-1) (from Ch. 38, par. 24-1)

7 Sec. 24-1. Unlawful Use of Weapons.

8 (a) A person commits the offense of unlawful use of weapons
9 when he knowingly:

10 (1) Sells, manufactures, purchases, possesses or
11 carries any bludgeon, black-jack, slung-shot, sand-club,
12 sand-bag, metal knuckles, throwing star, or any knife,
13 commonly referred to as a switchblade knife, which has a
14 blade that opens automatically by hand pressure applied to
15 a button, spring or other device in the handle of the
16 knife, or a ballistic knife, which is a device that propels
17 a knifelike blade as a projectile by means of a coil
18 spring, elastic material or compressed gas; or

19 (2) Carries or possesses with intent to use the same
20 unlawfully against another, a dagger, dirk, billy,
21 dangerous knife, razor, stiletto, broken bottle or other
22 piece of glass, stun gun or taser or any other dangerous or
23 deadly weapon or instrument of like character; or

24 (3) Carries on or about his person or in any vehicle, a
25 tear gas gun projector or bomb or any object containing
26 noxious liquid gas or substance, other than an object
27 containing a non-lethal noxious liquid gas or substance
28 designed solely for personal defense carried by a person 18
29 years of age or older; or

30 (4) Carries or possesses in any vehicle or concealed on
31 or about his person except when on his land or in his own
32 abode or fixed place of business any pistol, revolver, stun

1 gun or taser or other firearm, except that this subsection
2 (a) (4) does not apply to or affect transportation of
3 weapons that meet one of the following conditions:

4 (i) are broken down in a non-functioning state; or

5 (ii) are not immediately accessible; or

6 (iii) are unloaded and enclosed in a case, firearm
7 carrying box, shipping box, or other container by a
8 person who has been issued a currently valid Firearm
9 Owner's Identification Card; or

10 (5) Sets a spring gun; or

11 (6) Possesses any device or attachment of any kind
12 designed, used or intended for use in silencing the report
13 of any firearm; or

14 (7) Sells, manufactures, purchases, possesses or
15 carries:

16 (i) a machine gun, which shall be defined for the
17 purposes of this subsection as any weapon, which
18 shoots, is designed to shoot, or can be readily
19 restored to shoot, automatically more than one shot
20 without manually reloading by a single function of the
21 trigger, including the frame or receiver of any such
22 weapon, or sells, manufactures, purchases, possesses,
23 or carries any combination of parts designed or
24 intended for use in converting any weapon into a
25 machine gun, or any combination or parts from which a
26 machine gun can be assembled if such parts are in the
27 possession or under the control of a person;

28 (ii) any rifle having one or more barrels less than
29 16 inches in length or a shotgun having one or more
30 barrels less than 18 inches in length or any weapon
31 made from a rifle or shotgun, whether by alteration,
32 modification, or otherwise, if such a weapon as
33 modified has an overall length of less than 26 inches;
34 or

35 (iii) any bomb, bomb-shell, grenade, bottle or
36 other container containing an explosive substance of

1 over one-quarter ounce for like purposes, such as, but
2 not limited to, black powder bombs and Molotov
3 cocktails or artillery projectiles; or

4 (8) Carries or possesses any firearm, stun gun or taser
5 or other deadly weapon in any place which is licensed to
6 sell intoxicating beverages, or at any public gathering
7 held pursuant to a license issued by any governmental body
8 or any public gathering at which an admission is charged,
9 excluding a place where a showing, demonstration or lecture
10 involving the exhibition of unloaded firearms is
11 conducted.

12 This subsection (a) (8) does not apply to any auction or
13 raffle of a firearm held pursuant to a license or permit
14 issued by a governmental body, nor does it apply to persons
15 engaged in firearm safety training courses; or

16 (9) Carries or possesses in a vehicle or on or about
17 his person any pistol, revolver, stun gun or taser or
18 firearm or ballistic knife, when he is hooded, robed or
19 masked in such manner as to conceal his identity; or

20 (10) Carries or possesses on or about his person, upon
21 any public street, alley, or other public lands within the
22 corporate limits of a city, village or incorporated town,
23 except when an invitee thereon or therein, for the purpose
24 of the display of such weapon or the lawful commerce in
25 weapons, or except when on his land or in his own abode or
26 fixed place of business, any pistol, revolver, stun gun or
27 taser or other firearm, except that this subsection (a)
28 (10) does not apply to or affect transportation of weapons
29 that meet one of the following conditions:

30 (i) are broken down in a non-functioning state; or

31 (ii) are not immediately accessible; or

32 (iii) are unloaded and enclosed in a case, firearm
33 carrying box, shipping box, or other container by a
34 person who has been issued a currently valid Firearm
35 Owner's Identification Card.

36 A "stun gun or taser", as used in this paragraph (a)

1 means (i) any device which is powered by electrical
2 charging units, such as, batteries, and which fires one or
3 several barbs attached to a length of wire and which, upon
4 hitting a human, can send out a current capable of
5 disrupting the person's nervous system in such a manner as
6 to render him incapable of normal functioning or (ii) any
7 device which is powered by electrical charging units, such
8 as batteries, and which, upon contact with a human or
9 clothing worn by a human, can send out current capable of
10 disrupting the person's nervous system in such a manner as
11 to render him incapable of normal functioning; or

12 (11) Sells, manufactures or purchases any explosive
13 bullet. For purposes of this paragraph (a) "explosive
14 bullet" means the projectile portion of an ammunition
15 cartridge which contains or carries an explosive charge
16 which will explode upon contact with the flesh of a human
17 or an animal. "Cartridge" means a tubular metal case having
18 a projectile affixed at the front thereof and a cap or
19 primer at the rear end thereof, with the propellant
20 contained in such tube between the projectile and the cap;
21 or

22 (12) (Blank).

23 (b) Sentence. A person convicted of a violation of
24 subsection 24-1(a)(1) through (5), subsection 24-1(a)(10), or
25 subsection 24-1(a)(11) commits a Class A misdemeanor. A person
26 convicted of a violation of subsection 24-1(a)(8) or 24-1(a)(9)
27 commits a Class 4 felony; a person convicted of a violation of
28 subsection 24-1(a)(6) or 24-1(a)(7)(ii) or (iii) commits a
29 Class 3 felony. A person convicted of a violation of subsection
30 24-1(a)(7)(i) commits a Class 2 felony and shall be sentenced
31 to a term of imprisonment of not less than 3 years and not more
32 than 7 years, unless the weapon is possessed in the passenger
33 compartment of a motor vehicle as defined in Section 1-146 of
34 the Illinois Vehicle Code, or on the person, while the weapon
35 is loaded, in which case it shall be a Class X felony. A person
36 convicted of a second or subsequent violation of subsection

1 24-1(a)(4), 24-1(a)(8), 24-1(a)(9), or 24-1(a)(10) commits a
2 Class 3 felony.

3 (c) Violations in specific places.

4 (1) A person who violates subsection 24-1(a)(6) or
5 24-1(a)(7) in any school, regardless of the time of day or
6 the time of year, in residential property owned, operated
7 or managed by a public housing agency or leased by a public
8 housing agency as part of a scattered site or mixed-income
9 development, in a public park, in a courthouse, on the real
10 property comprising any school, regardless of the time of
11 day or the time of year, on residential property owned,
12 operated or managed by a public housing agency or leased by
13 a public housing agency as part of a scattered site or
14 mixed-income development, on the real property comprising
15 any public park, on the real property comprising any
16 courthouse, in any conveyance owned, leased or contracted
17 by a school to transport students to or from school or a
18 school related activity, or on any public way within 1,000
19 feet of the real property comprising any school, public
20 park, courthouse, or residential property owned, operated,
21 or managed by a public housing agency or leased by a public
22 housing agency as part of a scattered site or mixed-income
23 development commits a Class 2 felony and shall be sentenced
24 to a term of imprisonment of not less than 3 years and not
25 more than 7 years.

26 (1.5) A person who violates subsection 24-1(a)(4),
27 24-1(a)(9), or 24-1(a)(10) in any school, regardless of the
28 time of day or the time of year, in residential property
29 owned, operated, or managed by a public housing agency or
30 leased by a public housing agency as part of a scattered
31 site or mixed-income development, in a public park, in a
32 courthouse, on the real property comprising any school,
33 regardless of the time of day or the time of year, on
34 residential property owned, operated, or managed by a
35 public housing agency or leased by a public housing agency
36 as part of a scattered site or mixed-income development, on

1 the real property comprising any public park, on the real
2 property comprising any courthouse, in any conveyance
3 owned, leased, or contracted by a school to transport
4 students to or from school or a school related activity, or
5 on any public way within 1,000 feet of the real property
6 comprising any school, public park, courthouse, or
7 residential property owned, operated, or managed by a
8 public housing agency or leased by a public housing agency
9 as part of a scattered site or mixed-income development
10 commits a Class 3 felony.

11 (2) A person who violates subsection 24-1(a)(1),
12 24-1(a)(2), or 24-1(a)(3) in any school, regardless of the
13 time of day or the time of year, in residential property
14 owned, operated or managed by a public housing agency or
15 leased by a public housing agency as part of a scattered
16 site or mixed-income development, in a public park, in a
17 courthouse, on the real property comprising any school,
18 regardless of the time of day or the time of year, on
19 residential property owned, operated or managed by a public
20 housing agency or leased by a public housing agency as part
21 of a scattered site or mixed-income development, on the
22 real property comprising any public park, on the real
23 property comprising any courthouse, in any conveyance
24 owned, leased or contracted by a school to transport
25 students to or from school or a school related activity, or
26 on any public way within 1,000 feet of the real property
27 comprising any school, public park, courthouse, or
28 residential property owned, operated, or managed by a
29 public housing agency or leased by a public housing agency
30 as part of a scattered site or mixed-income development
31 commits a Class 4 felony. "Courthouse" means any building
32 that is used by the Circuit, Appellate, or Supreme Court of
33 this State for the conduct of official business.

34 (3) Paragraphs (1), (1.5), and (2) of this subsection
35 (c) shall not apply to law enforcement officers or security
36 officers of such school, college, or university or to

1 students carrying or possessing firearms for use in
2 training courses, parades, hunting, target shooting on
3 school ranges, or otherwise with the consent of school
4 authorities and which firearms are transported unloaded
5 enclosed in a suitable case, box, or transportation
6 package.

7 (4) For the purposes of this subsection (c), "school"
8 means any public or private elementary or secondary school,
9 community college, college, or university.

10 (d) The presence in an automobile other than a public
11 omnibus of any weapon, instrument or substance referred to in
12 subsection (a)(7) is prima facie evidence that it is in the
13 possession of, and is being carried by, all persons occupying
14 such automobile at the time such weapon, instrument or
15 substance is found, except under the following circumstances:
16 (i) if such weapon, instrument or instrumentality is found upon
17 the person of one of the occupants therein; or (ii) if such
18 weapon, instrument or substance is found in an automobile
19 operated for hire by a duly licensed driver in the due, lawful
20 and proper pursuit of his trade, then such presumption shall
21 not apply to the driver.

22 (e) Exemptions. Crossbows, Common or Compound bows and
23 Underwater Spearguns are exempted from the definition of
24 ballistic knife as defined in paragraph (1) of subsection (a)
25 of this Section.

26 (Source: P.A. 90-686, eff. 1-1-99; 91-673, eff. 12-22-99;
27 91-690, eff. 4-13-00.)

28 (720 ILCS 5/24-1.1) (from Ch. 38, par. 24-1.1)

29 Sec. 24-1.1. Unlawful Use or Possession of Weapons by
30 Felons or Persons in the Custody of the Department of
31 Corrections Facilities.

32 (a) It is unlawful for a person to knowingly possess on or
33 about his person or on his land or in his own abode or fixed
34 place of business any weapon prohibited under Section 24-1 of
35 this Act or any firearm or any firearm ammunition if the person

1 has been convicted of a felony under the laws of this State or
2 any other jurisdiction. This Section shall not apply if the
3 person has been granted relief by the Director of the
4 Department of State Police under Section 10 of the Firearm
5 Owners Identification Card Act.

6 (b) It is unlawful for any person confined in a penal
7 institution, which is a facility of the Illinois Department of
8 Corrections, to possess any weapon prohibited under Section
9 24-1 of this Code or any firearm or firearm ammunition,
10 regardless of the intent with which he possesses it.

11 (c) It shall be an affirmative defense to a violation of
12 subsection (b), that such possession was specifically
13 authorized by rule, regulation, or directive of the Illinois
14 Department of Corrections or order issued pursuant thereto.

15 (d) The defense of necessity is not available to a person
16 who is charged with a violation of subsection (b) of this
17 Section.

18 (e) Sentence. Violation of this Section by a person not
19 confined in a penal institution shall be a Class 3 felony for
20 which the person, if sentenced to a term of imprisonment, shall
21 be sentenced to no less than 2 years and no more than 10 years
22 and any second or subsequent violation shall be a Class 2
23 felony for which the person shall be sentenced to a term of
24 imprisonment of not less than 3 years and not more than 14
25 years. Violation of this Section by a person not confined in a
26 penal institution who has been convicted of a forcible felony,
27 a felony violation of Article 24 of this Code or of the Firearm
28 Owners Identification Card Act, stalking or aggravated
29 stalking, or a Class 2 or greater felony under the Illinois
30 Controlled Substances Act or the Cannabis Control Act is a
31 Class 2 felony for which the person, ~~if sentenced to a term of~~
32 ~~imprisonment,~~ shall be sentenced to not less than 3 years and
33 not more than 14 years. Violation of this Section by a person
34 who is on parole or mandatory supervised release is a Class 2
35 felony for which the person, if sentenced to a term of
36 imprisonment, shall be sentenced to not less than 3 years and

1 not more than 14 years. Violation of this Section by a person
2 not confined in a penal institution is a Class X felony when
3 the firearm possessed is a machine gun. Any person who violates
4 this Section while confined in a penal institution, which is a
5 facility of the Illinois Department of Corrections, is guilty
6 of a Class 1 felony, if he possesses any weapon prohibited
7 under Section 24-1 of this Code regardless of the intent with
8 which he possesses it, a Class X felony if he possesses any
9 firearm, firearm ammunition or explosive, and a Class X felony
10 for which the offender shall be sentenced to not less than 12
11 years and not more than 50 years when the firearm possessed is
12 a machine gun.

13 (Source: P.A. 91-544, eff. 1-1-00.)

14 (720 ILCS 5/24-1.6)

15 Sec. 24-1.6. Aggravated unlawful use of a weapon.

16 (a) A person commits the offense of aggravated unlawful use
17 of a weapon when he or she knowingly:

18 (1) Carries on or about his or her person or in any
19 vehicle or concealed on or about his or her person except
20 when on his or her land or in his or her abode or fixed
21 place of business any pistol, revolver, stun gun or taser
22 or other firearm; or

23 (2) Carries or possesses on or about his or her person,
24 upon any public street, alley, or other public lands within
25 the corporate limits of a city, village or incorporated
26 town, except when an invitee thereon or therein, for the
27 purpose of the display of such weapon or the lawful
28 commerce in weapons, or except when on his or her own land
29 or in his or her own abode or fixed place of business, any
30 pistol, revolver, stun gun or taser or other firearm; and

31 (3) One of the following factors is present:

32 (A) the firearm possessed was uncased, loaded and
33 immediately accessible at the time of the offense; or

34 (B) the firearm possessed was uncased, unloaded
35 and the ammunition for the weapon was immediately

1 accessible at the time of the offense; or

2 (C) the person possessing the firearm has not been
3 issued a currently valid Firearm Owner's
4 Identification Card; or

5 (D) the person possessing the weapon was
6 previously adjudicated a delinquent minor under the
7 Juvenile Court Act of 1987 for an act that if committed
8 by an adult would be a felony; or

9 (E) the person possessing the weapon was engaged in
10 a misdemeanor violation of the Cannabis Control Act or
11 in a misdemeanor violation of the Illinois Controlled
12 Substances Act; or

13 (F) the person possessing the weapon is a member of
14 a street gang or is engaged in street gang related
15 activity, as defined in Section 10 of the Illinois
16 Streetgang Terrorism Omnibus Prevention Act; or

17 (G) the person possessing the weapon had a order of
18 protection issued against him or her within the
19 previous 2 years; or

20 (H) the person possessing the weapon was engaged in
21 the commission or attempted commission of a
22 misdemeanor involving the use or threat of violence
23 against the person or property of another; or

24 (I) the person possessing the weapon was under 21
25 years of age and in possession of a handgun as defined
26 in Section 24-3, unless the person under 21 is engaged
27 in lawful activities under the Wildlife Code or
28 described in subsection 24-2(b)(1), (b)(3), or
29 24-2(f).

30 (b) "Stun gun or taser" as used in this Section has the
31 same definition given to it in Section 24-1 of this Code.

32 (c) This Section does not apply to or affect the
33 transportation or possession of weapons that:

34 (i) are broken down in a non-functioning state; or

35 (ii) are not immediately accessible; or

36 (iii) are unloaded and enclosed in a case, firearm

1 carrying box, shipping box, or other container by a
2 person who has been issued a currently valid Firearm
3 Owner's Identification Card.

4 (d) Sentence. Aggravated unlawful use of a weapon is a
5 Class 4 felony; a second or subsequent offense is a Class 2
6 felony for which the person shall be sentenced to a term of
7 imprisonment of not less than 3 years and not more than 7
8 years. Aggravated unlawful use of a weapon by a person who has
9 been previously convicted of a felony in this State or another
10 jurisdiction is a Class 2 felony for which the person shall be
11 sentenced to a term of imprisonment of not less than 3 years
12 and not more than 7 years.

13 (Source: P.A. 91-690, eff. 4-13-00.)

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

16 (730 ILCS 5/5-5-3) (from Ch. 38, par. 1005-5-3)

17 Sec. 5-5-3. Disposition.

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

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

24 (1) A period of probation.

25 (2) A term of periodic imprisonment.

26 (3) A term of conditional discharge.

27 (4) A term of imprisonment.

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

32 (6) A fine.

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

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

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

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

1 Medical Services (EMS) Systems Act.

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

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

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

17 (A) First degree murder where the death penalty is
18 not imposed.

19 (B) Attempted first degree murder.

20 (C) A Class X felony.

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

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

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

34 (F-5) A violation of Section 24-1, 24-1.1, or
35 24-1.6 of the Criminal Code of 1961 for which
36 imprisonment is prescribed in those Sections.

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

4 (H) Criminal sexual assault.

5 (I) Aggravated battery of a senior citizen.

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

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

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

18 (K) Vehicular hijacking.

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

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

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

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

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

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

36 (R) A violation of Section 24-3A of the Criminal

1 Code of 1961.

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

4 (T) A second or subsequent violation of paragraph
5 (6.6) of subsection (a), subsection (c-5), or
6 subsection (d-5) of Section 401 of the Illinois
7 Controlled Substances Act.

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

19 (4) A minimum term of imprisonment of not less than 10
20 consecutive days or 30 days of community service shall be
21 imposed for a violation of paragraph (c) of Section 6-303
22 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 the
26 court, shall be imposed for a violation of Section 11-501
27 of the Illinois Vehicle Code during a period in which the
28 defendant's driving privileges are revoked or suspended,
29 where the revocation or suspension was for a violation of
30 Section 11-501 or Section 11-501.1 of that Code.

31 (4.2) Except as provided in paragraph (4.3) of this
32 subsection (c), a minimum of 100 hours of community service
33 shall be imposed for a second violation of Section 6-303 of
34 the Illinois Vehicle Code.

35 (4.3) A minimum term of imprisonment of 30 days or 300
36 hours of community service, as determined by the court,

1 shall be imposed for a second violation of subsection (c)
2 of Section 6-303 of the Illinois Vehicle Code.

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

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

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

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

19 (A) a period of conditional discharge;

20 (B) a fine;

21 (C) make restitution to the victim under Section
22 5-5-6 of this Code.

23 (5.1) In addition to any penalties imposed under
24 paragraph (5) of this subsection (c), and except as
25 provided in paragraph (5.2) or (5.3), a person convicted of
26 violating subsection (c) of Section 11-907 of the Illinois
27 Vehicle Code shall have his or her driver's license,
28 permit, or privileges suspended for at least 90 days but
29 not more than one year, if the violation resulted in damage
30 to the property of another person.

31 (5.2) In addition to any penalties imposed under
32 paragraph (5) of this subsection (c), and except as
33 provided in paragraph (5.3), a person convicted of
34 violating subsection (c) of Section 11-907 of the Illinois
35 Vehicle Code shall have his or her driver's license,
36 permit, or privileges suspended for at least 180 days but

1 not more than 2 years, if the violation resulted in injury
2 to another person.

3 (5.3) In addition to any penalties imposed under
4 paragraph (5) of this subsection (c), a person convicted of
5 violating subsection (c) of Section 11-907 of the Illinois
6 Vehicle Code shall have his or her driver's license,
7 permit, or privileges suspended for 2 years, if the
8 violation resulted in the death of another person.

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

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

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

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

36 (10) When a person is convicted of violating Section

1 11-501 of the Illinois Vehicle Code or a similar provision
2 of a local ordinance, the following penalties apply when
3 his or her blood, breath, or urine was .16 or more based on
4 the definition of blood, breath, or urine units in Section
5 11-501.2 or that person is convicted of violating Section
6 11-501 of the Illinois Vehicle Code while transporting a
7 child under the age of 16:

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

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

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

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

27 (d) In any case in which a sentence originally imposed is
28 vacated, the case shall be remanded to the trial court. The
29 trial court shall hold a hearing under Section 5-4-1 of the
30 Unified Code of Corrections which may include evidence of the
31 defendant's life, moral character and occupation during the
32 time since the original sentence was passed. The trial court
33 shall then impose sentence upon the defendant. The trial court
34 may impose any sentence which could have been imposed at the
35 original trial subject to Section 5-5-4 of the Unified Code of
36 Corrections. If a sentence is vacated on appeal or on

1 collateral attack due to the failure of the trier of fact at
2 trial to determine beyond a reasonable doubt the existence of a
3 fact (other than a prior conviction) necessary to increase the
4 punishment for the offense beyond the statutory maximum
5 otherwise applicable, either the defendant may be re-sentenced
6 to a term within the range otherwise provided or, if the State
7 files notice of its intention to again seek the extended
8 sentence, the defendant shall be afforded a new trial.

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

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

16 (A) the defendant is willing to undergo a court
17 approved counseling program for a minimum duration of 2
18 years; or

19 (B) the defendant is willing to participate in a
20 court approved plan including but not limited to the
21 defendant's:

22 (i) removal from the household;

23 (ii) restricted contact with the victim;

24 (iii) continued financial support of the
25 family;

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

27 and

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

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

1 Probation may be revoked or modified pursuant to Section
2 5-6-4; except where the court determines at the hearing that
3 the defendant violated a condition of his or her probation
4 restricting contact with the victim or other family members or
5 commits another offense with the victim or other family
6 members, the court shall revoke the defendant's probation and
7 impose a term of imprisonment.

8 For the purposes of this Section, "family member" and
9 "victim" shall have the meanings ascribed to them in Section
10 12-12 of the Criminal Code of 1961.

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

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

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

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

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

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

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

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

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

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

1 whose mandatory supervised release term has been revoked under
2 this subsection (j-5) as provided in Section 3-3-9. This
3 subsection (j-5) does not apply to a defendant who has a high
4 school diploma or has successfully passed the GED test. This
5 subsection (j-5) does not apply to a defendant who is
6 determined by the court to be developmentally disabled or
7 otherwise mentally incapable of completing the educational or
8 vocational program.

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

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

20 (1) a final order of deportation has been issued
21 against the defendant pursuant to proceedings under
22 the Immigration and Nationality Act, and

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

26 Otherwise, the defendant shall be sentenced as
27 provided in this Chapter V.

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

36 (1) a final order of deportation has been issued

1 against the defendant pursuant to proceedings under
2 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 justice.

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

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

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

25 (n) The court may sentence a person convicted of a
26 violation of Section 12-19, 12-21, or 16-1.3 of the Criminal
27 Code of 1961 (i) to an impact incarceration program if the
28 person is otherwise eligible for that program under Section
29 5-8-1.1, (ii) to community service, or (iii) if the person is
30 an addict or alcoholic, as defined in the Alcoholism and Other
31 Drug Abuse and Dependency Act, to a substance or alcohol abuse
32 program licensed under that Act.

33 (Source: P.A. 92-183, eff. 7-27-01; 92-248, eff. 8-3-01;
34 92-283, eff. 1-1-02; 92-340, eff. 8-10-01; 92-418, eff.
35 8-17-01; 92-422, eff. 8-17-01; 92-651, eff. 7-11-02; 92-698,
36 eff. 7-19-02; 93-44, eff. 7-1-03; 93-156, eff. 1-1-04; 93-169,

1 eff. 7-10-03; 93-301, eff. 1-1-04; 93-419, eff. 1-1-04; 93-546,
2 eff. 1-1-04; revised 10-9-03.)