



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

Introduced 02/09/04, by John J. Millner

**SYNOPSIS AS INTRODUCED:**

730 ILCS 5/5-5-3

from Ch. 38, par. 1005-5-3

Amends the Unified Code of Corrections. Provides that a person found not guilty by reason of insanity for certain specified sex offenses or for a violation of the Hypodermic Syringes and Needles Act must undergo medical testing to determine whether the defendant has any sexually transmissible disease, including a test for infection with HIV or or any other identified causative agent of AIDS. Present law requires the mandatory medical testing only for persons who have been convicted of any of these offenses.

LRB093 18444 RLC 44153 b

FISCAL 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 Unified Code of Corrections is amended by  
5 changing Section 5-5-3 as follows:

6 (730 ILCS 5/5-5-3) (from Ch. 38, par. 1005-5-3)

7 Sec. 5-5-3. Disposition.

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

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

14 (1) A period of probation.

15 (2) A term of periodic imprisonment.

16 (3) A term of conditional discharge.

17 (4) A term of imprisonment.

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21 (now repealed).

22 (6) A fine.

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

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

27 Whenever an individual is sentenced for an offense based  
28 upon an arrest for a violation of Section 11-501 of the  
29 Illinois Vehicle Code, or a similar provision of a local  
30 ordinance, and the professional evaluation recommends remedial  
31 or rehabilitative treatment or education, neither the  
32 treatment nor the education shall be the sole disposition and

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

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

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

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

1 of 1961.

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

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

11 (B) Attempted first degree murder.

12 (C) A Class X felony.

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

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

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

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

29 (H) Criminal sexual assault.

30 (I) Aggravated battery of a senior citizen.

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

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

1 crimes or provides support to the members of the  
2 association who do commit crimes.

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

7 (K) Vehicular hijacking.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (e) In cases where prosecution for aggravated criminal  
35 sexual abuse under Section 12-16 of the Criminal Code of 1961  
36 results in conviction of a defendant who was a family member of

1 the victim at the time of the commission of the offense, the  
2 court shall consider the safety and welfare of the victim and  
3 may impose a sentence of probation only where:

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

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

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

11 (i) removal from the household;

12 (ii) restricted contact with the victim;

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

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

16 and

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

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

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

33 For the purposes of this Section, "family member" and  
34 "victim" shall have the meanings ascribed to them in Section  
35 12-12 of the Criminal Code of 1961.

36 (f) This Article shall not deprive a court in other

1 proceedings to order a forfeiture of property, to suspend or  
2 cancel a license, to remove a person from office, or to impose  
3 any other civil penalty.

4 (g) Whenever a defendant is convicted of, or found not  
5 guilty by reason of insanity of, an offense under Sections  
6 11-14, 11-15, 11-15.1, 11-16, 11-17, 11-18, 11-18.1, 11-19,  
7 11-19.1, 11-19.2, 12-13, 12-14, 12-14.1, 12-15 or 12-16 of the  
8 Criminal Code of 1961, the defendant shall undergo medical  
9 testing to determine whether the defendant has any sexually  
10 transmissible disease, including a test for infection with  
11 human immunodeficiency virus (HIV) or any other identified  
12 causative agent of acquired immunodeficiency syndrome (AIDS).  
13 Any such medical test shall be performed only by appropriately  
14 licensed medical practitioners and may include an analysis of  
15 any bodily fluids as well as an examination of the defendant's  
16 person. Except as otherwise provided by law, the results of  
17 such test shall be kept strictly confidential by all medical  
18 personnel involved in the testing and must be personally  
19 delivered in a sealed envelope to the judge of the court in  
20 which the conviction was entered for the judge's inspection in  
21 camera. Acting in accordance with the best interests of the  
22 victim and the public, the judge shall have the discretion to  
23 determine to whom, if anyone, the results of the testing may be  
24 revealed. The court shall notify the defendant of the test  
25 results. The court shall also notify the victim if requested by  
26 the victim, and if the victim is under the age of 15 and if  
27 requested by the victim's parents or legal guardian, the court  
28 shall notify the victim's parents or legal guardian of the test  
29 results. The court shall provide information on the  
30 availability of HIV testing and counseling at Department of  
31 Public Health facilities to all parties to whom the results of  
32 the testing are revealed and shall direct the State's Attorney  
33 to provide the information to the victim when possible. A  
34 State's Attorney may petition the court to obtain the results  
35 of any HIV test administered under this Section, and the court  
36 shall grant the disclosure if the State's Attorney shows it is

1 relevant in order to prosecute a charge of criminal  
2 transmission of HIV under Section 12-16.2 of the Criminal Code  
3 of 1961 against the defendant. The court shall order that the  
4 cost of any such test shall be paid by the county and may be  
5 taxed as costs against the convicted defendant.

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

16 (h) Whenever a defendant is convicted of, or found not  
17 guilty by reason of insanity of, an offense under Section 1 or  
18 2 of the Hypodermic Syringes and Needles Act, the defendant  
19 shall undergo medical testing to determine whether the  
20 defendant has been exposed to human immunodeficiency virus  
21 (HIV) or any other identified causative agent of acquired  
22 immunodeficiency syndrome (AIDS). Except as otherwise provided  
23 by law, the results of such test shall be kept strictly  
24 confidential by all medical personnel involved in the testing  
25 and must be personally delivered in a sealed envelope to the  
26 judge of the court in which the conviction was entered for the  
27 judge's inspection in camera. Acting in accordance with the  
28 best interests of the public, the judge shall have the  
29 discretion to determine to whom, if anyone, the results of the  
30 testing may be revealed. The court shall notify the defendant  
31 of a positive test showing an infection with the human  
32 immunodeficiency virus (HIV). The court shall provide  
33 information on the availability of HIV testing and counseling  
34 at Department of Public Health facilities to all parties to  
35 whom the results of the testing are revealed and shall direct  
36 the State's Attorney to provide the information to the victim

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

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

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

1 superintendent of schools. The regional superintendent of  
2 schools shall notify the State Board of Education of any  
3 notification under this subsection.

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

36 (k) A court may not impose a sentence or disposition for a

1 felony or misdemeanor that requires the defendant to be  
2 implanted or injected with or to use any form of birth control.

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

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

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

17 Otherwise, the defendant shall be sentenced as  
18 provided in this Chapter V.

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

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

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

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

36 (D) Upon motion of the State's Attorney, if a defendant

1 sentenced under this Section returns to the jurisdiction of  
2 the United States, the defendant shall be recommitted to  
3 the custody of the county from which he or she was  
4 sentenced. Thereafter, the defendant shall be brought  
5 before the sentencing court, which may impose any sentence  
6 that was available under Section 5-5-3 at the time of  
7 initial sentencing. In addition, the defendant shall not be  
8 eligible for additional good conduct credit for  
9 meritorious service as provided under Section 3-6-6.

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

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

24 (Source: P.A. 92-183, eff. 7-27-01; 92-248, eff. 8-3-01;  
25 92-283, eff. 1-1-02; 92-340, eff. 8-10-01; 92-418, eff.  
26 8-17-01; 92-422, eff. 8-17-01; 92-651, eff. 7-11-02; 92-698,  
27 eff. 7-19-02; 93-44, eff. 7-1-03; 93-156, eff. 1-1-04; 93-169,  
28 eff. 7-10-03; 93-301, eff. 1-1-04; 93-419, eff. 1-1-04; 93-546,  
29 eff. 1-1-04; revised 10-9-03.)