



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004

Introduced 02/09/04, by Eileen Lyons

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 third and subsequent offenses of driving under the influence of alcohol, drugs, or intoxicating compounds. Provides that: a third offense is a Class 2 felony; a fourth offense is a non-probationable Class 2 felony; and a fifth or subsequent offense is a non-probationable Class 1 felony.

LRB093 17932 DRH 43615 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

1 AN ACT concerning 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), and
5 (d) of this Section, every person convicted of violating this
6 Section or a similar provision of a local ordinance, shall be
7 guilty of a Class A misdemeanor and, in addition to any other
8 criminal or administrative action, for any second conviction of
9 violating this Section or a similar provision of a law of
10 another state or local ordinance committed within 5 years of a
11 previous violation of this Section or a similar provision of a
12 local ordinance shall be mandatorily sentenced to a minimum of
13 5 days of imprisonment or assigned to a minimum of 30 days of
14 community service as may be determined by the court.

15 Except as provided in subsections (c-1), (c-3), (c-4), and
16 (d): any person convicted of violating this Section a third
17 time is guilty of a Class 2 felony; any person convicted of
18 violating this Section a fourth time is guilty of a Class 2
19 felony and subject to a mandatory prison term of not less than
20 3 years and not more than 7 years; any person convicted of
21 violating this Section a fifth or subsequent time is guilty of
22 a Class 1 felony and subject to a mandatory prison term of not
23 less than 4 years and not more than 15 years.

24 Every person convicted of violating this Section or a
25 similar provision of a local ordinance shall be subject to an
26 additional mandatory minimum fine of \$500 and an additional
27 mandatory 5 days of community service in a program benefiting
28 children if the person committed a violation of paragraph (a)
29 or a similar provision of a local ordinance while transporting
30 a person under age 16. Every person convicted a second time for
31 violating this Section or a similar provision of a local
32 ordinance within 5 years of a previous violation of this
33 Section or a similar provision of a law of another state or
34 local ordinance shall be subject to an additional mandatory
35 minimum fine of \$500 and an additional 10 days of mandatory
36 community service in a program benefiting children if the

1 current offense was committed while transporting a person under
2 age 16. The imprisonment or assignment under this subsection
3 shall not be subject to suspension nor shall the person be
4 eligible for probation in order to reduce the sentence or
5 assignment.

6 (c-1) (1) A person who violates this Section during a
7 period in which his or her driving privileges are revoked
8 or suspended, where the revocation or suspension was for a
9 violation of this Section, Section 11-501.1, paragraph (b)
10 of Section 11-401, or Section 9-3 of the Criminal Code of
11 1961 is guilty of a Class 4 felony.

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

18 (3) A person who violates this Section a fourth or
19 subsequent time during a period in which his or her driving
20 privileges are revoked or suspended where the revocation or
21 suspension was for a violation of this Section, Section
22 11-501.1, paragraph (b) of Section 11-401, or Section 9-3
23 of the Criminal Code of 1961 is guilty of a Class 2 felony.

24 (c-2) (Blank).

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

1 sentence or assignment.

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

9 (1) A person who is convicted of violating subsection
10 (a) of Section 11-501 of this Code a first time, in
11 addition to any other penalty that may be imposed under
12 subsection (c), is subject to a mandatory minimum of 100
13 hours of community service and a minimum fine of \$500.

14 (2) A person who is convicted of violating subsection
15 (a) of Section 11-501 of this Code a second time within 10
16 years, in addition to any other penalty that may be imposed
17 under subsection (c), is subject to a mandatory minimum of
18 2 days of imprisonment and a minimum fine of \$1,250.

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

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

31 (d) (1) Every person convicted of committing a violation of
32 this Section shall be guilty of aggravated driving under
33 the influence of alcohol, other drug or drugs, or
34 intoxicating compound or compounds, or any combination
35 thereof if:

36 (A) the person committed a violation of this

1 Section, or a similar provision of a law of another
2 state or a local ordinance when the cause of action is
3 the same as or substantially similar to this Section,
4 for the third or subsequent time;

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

7 (C) the person in committing a violation of
8 paragraph (a) was involved in a motor vehicle accident
9 that resulted in great bodily harm or permanent
10 disability or disfigurement to another, when the
11 violation was a proximate cause of the injuries;

12 (D) the person committed a violation of paragraph
13 (a) for a second time and has been previously convicted
14 of violating Section 9-3 of the Criminal Code of 1961
15 relating to reckless homicide in which the person was
16 determined to have been under the influence of alcohol,
17 other drug or drugs, or intoxicating compound or
18 compounds as an element of the offense or the person
19 has previously been convicted under subparagraph (C)
20 or subparagraph (F) of this paragraph (1);

21 (E) the person, in committing a violation of
22 paragraph (a) while driving at any speed in a school
23 speed zone at a time when a speed limit of 20 miles per
24 hour was in effect under subsection (a) of Section
25 11-605 of this Code, was involved in a motor vehicle
26 accident that resulted in bodily harm, other than great
27 bodily harm or permanent disability or disfigurement,
28 to another person, when the violation of paragraph (a)
29 was a proximate cause of the bodily harm; or

30 (F) the person, in committing a violation of
31 paragraph (a), was involved in a motor vehicle,
32 snowmobile, all-terrain vehicle, or watercraft
33 accident that resulted in the death of another person,
34 when the violation of paragraph (a) was a proximate
35 cause of the death.

36 (2) Except as provided in this paragraph (2),

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

21 (e) After a finding of guilt and prior to any final
22 sentencing, or an order for supervision, for an offense based
23 upon an arrest for a violation of this Section or a similar
24 provision of a local ordinance, individuals shall be required
25 to undergo a professional evaluation to determine if an
26 alcohol, drug, or intoxicating compound abuse problem exists
27 and the extent of the problem, and undergo the imposition of
28 treatment as appropriate. Programs conducting these
29 evaluations shall be licensed by the Department of Human
30 Services. The cost of any professional evaluation shall be paid
31 for by the individual required to undergo the professional
32 evaluation.

33 (e-1) Any person who is found guilty of or pleads guilty to
34 violating this Section, including any person receiving a
35 disposition of court supervision for violating this Section,
36 may be required by the Court to attend a victim impact panel

1 offered by, or under contract with, a County State's Attorney's
2 office, a probation and court services department, Mothers
3 Against Drunk Driving, or the Alliance Against Intoxicated
4 Motorists. All costs generated by the victim impact panel shall
5 be paid from fees collected from the offender or as may be
6 determined by the court.

7 (f) Every person found guilty of violating this Section,
8 whose operation of a motor vehicle while in violation of this
9 Section proximately caused any incident resulting in an
10 appropriate emergency response, shall be liable for the expense
11 of an emergency response as provided under Section 5-5-3 of the
12 Unified Code of Corrections.

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

16 (h) Every person sentenced under paragraph (2) or (3) of
17 subsection (c-1) of this Section or subsection (d) of this
18 Section and who receives a term of probation or conditional
19 discharge shall be required to serve a minimum term of either
20 60 days community service or 10 days of imprisonment as a
21 condition of the probation or conditional discharge. This
22 mandatory minimum term of imprisonment or assignment of
23 community service shall not be suspended and shall not be
24 subject to reduction by the court.

25 (i) The Secretary of State shall require the use of
26 ignition interlock devices on all vehicles owned by an
27 individual who has been convicted of a second or subsequent
28 offense of this Section or a similar provision of a local
29 ordinance. The Secretary shall establish by rule and regulation
30 the procedures for certification and use of the interlock
31 system.

32 (j) In addition to any other penalties and liabilities, a
33 person who is found guilty of or pleads guilty to violating
34 this Section, including any person placed on court supervision
35 for violating this Section, shall be fined \$100, payable to the
36 circuit clerk, who shall distribute the money to the law

1 enforcement agency that made the arrest. If the person has been
2 previously convicted of violating this Section or a similar
3 provision of a local ordinance, the fine shall be \$200. In the
4 event that more than one agency is responsible for the arrest,
5 the \$100 or \$200 shall be shared equally. Any moneys received
6 by a law enforcement agency under this subsection (j) shall be
7 used to purchase law enforcement equipment that will assist in
8 the prevention of alcohol related criminal violence throughout
9 the State. This shall include, but is not limited to, in-car
10 video cameras, radar and laser speed detection devices, and
11 alcohol breath testers. Any moneys received by the Department
12 of State Police under this subsection (j) shall be deposited
13 into the State Police DUI Fund and shall be used to purchase
14 law enforcement equipment that will assist in the prevention of
15 alcohol related criminal violence throughout the State.

16 (k) The Secretary of State Police DUI Fund is created as a
17 special fund in the State treasury. All moneys received by the
18 Secretary of State Police under subsection (j) of this Section
19 shall be deposited into the Secretary of State Police DUI Fund
20 and, subject to appropriation, shall be used to purchase law
21 enforcement equipment to assist in the prevention of alcohol
22 related criminal violence throughout the State.

23 (Source: P.A. 92-248, eff. 8-3-01; 92-418, eff. 8-17-01;
24 92-420, eff. 8-17-01; 92-429, eff. 1-1-02; 92-431, eff. 1-1-02;
25 92-651, eff. 7-11-02; 93-156, eff. 1-1-04; 93-213, eff.
26 7-18-03; 93-584, eff. 8-22-03; revised 8-27-03.)

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

29 (730 ILCS 5/5-5-3) (from Ch. 38, par. 1005-5-3)

30 Sec. 5-5-3. Disposition.

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

33 (b) The following options shall be appropriate
34 dispositions, alone or in combination, for all felonies and

1 misdemeanors other than those identified in subsection (c) of
2 this Section:

3 (1) A period of probation.

4 (2) A term of periodic imprisonment.

5 (3) A term of conditional discharge.

6 (4) A term of imprisonment.

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

11 (6) A fine.

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

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

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

33 In addition to any other fine or penalty required by law,
34 any individual convicted of a violation of Section 11-501 of
35 the Illinois Vehicle Code, Section 5-7 of the Snowmobile
36 Registration and Safety Act, Section 5-16 of the Boat

1 Registration and Safety Act, or a similar provision of local
2 ordinance, whose operation of a motor vehicle while in
3 violation of Section 11-501, Section 5-7, Section 5-16, or such
4 ordinance proximately caused an incident resulting in an
5 appropriate emergency response, shall be required to make
6 restitution to a public agency for the costs of that emergency
7 response. Such restitution shall not exceed \$1,000 per public
8 agency for each such emergency response. For the purpose of
9 this paragraph, emergency response shall mean any incident
10 requiring a response by: a police officer as defined under
11 Section 1-162 of the Illinois Vehicle Code; a fireman carried
12 on the rolls of a regularly constituted fire department; and an
13 ambulance as defined under Section 3.85 of the Emergency
14 Medical Services (EMS) Systems Act.

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

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

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

30 (A) First degree murder where the death penalty is
31 not imposed.

32 (B) Attempted first degree murder.

33 (C) A Class X felony.

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

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

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

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

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

14 (H) Criminal sexual assault.

15 (I) Aggravated battery of a senior citizen.

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

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

24 Beginning July 1, 1994, for the purposes of this
25 paragraph, "organized gang" has the meaning ascribed
26 to it in Section 10 of the Illinois Streetgang
27 Terrorism Omnibus Prevention Act.

28 (K) Vehicular hijacking.

29 (L) A second or subsequent conviction for the
30 offense of hate crime when the underlying offense upon
31 which the hate crime is based is felony aggravated
32 assault or felony mob action.

33 (M) A second or subsequent conviction for the
34 offense of institutional vandalism if the damage to the
35 property exceeds \$300.

36 (N) A Class 3 felony violation of paragraph (1) of

1 subsection (a) of Section 2 of the Firearm Owners
2 Identification Card Act.

3 (O) A violation of Section 12-6.1 of the Criminal
4 Code of 1961.

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

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

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

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

14 (T) A second or subsequent violation of paragraph
15 (6.6) of subsection (a), subsection (c-5), or
16 subsection (d-5) of Section 401 of the Illinois
17 Controlled Substances Act.

18 (U) A fourth or subsequent violation of Section
19 11-501 of the Illinois Vehicle Code.

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

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

35 (4.1) A minimum term of 30 consecutive days of
36 imprisonment, 40 days of 24 hour periodic imprisonment or

1 720 hours of community service, as may be determined by the
2 court, shall be imposed for a violation of Section 11-501
3 of the Illinois Vehicle Code during a period in which the
4 defendant's driving privileges are revoked or suspended,
5 where the revocation or suspension was for a violation of
6 Section 11-501 or Section 11-501.1 of that Code.

7 (4.2) Except as provided in paragraph (4.3) of this
8 subsection (c), a minimum of 100 hours of community service
9 shall be imposed for a second violation of Section 6-303 of
10 the Illinois Vehicle Code.

11 (4.3) A minimum term of imprisonment of 30 days or 300
12 hours of community service, as determined by the court,
13 shall be imposed for a second violation of subsection (c)
14 of Section 6-303 of the Illinois Vehicle Code.

15 (4.4) Except as provided in paragraph (4.5) and
16 paragraph (4.6) of this subsection (c), a minimum term of
17 imprisonment of 30 days or 300 hours of community service,
18 as determined by the court, shall be imposed for a third or
19 subsequent violation of Section 6-303 of the Illinois
20 Vehicle Code.

21 (4.5) A minimum term of imprisonment of 30 days shall
22 be imposed for a third violation of subsection (c) of
23 Section 6-303 of the Illinois Vehicle Code.

24
25 (4.6) A minimum term of imprisonment of 180 days shall
26 be imposed for a fourth or subsequent violation of
27 subsection (c) of Section 6-303 of the Illinois Vehicle
28 Code.

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

32 (A) a period of conditional discharge;

33 (B) a fine;

34 (C) make restitution to the victim under Section
35 5-5-6 of this Code.

36 (5.1) In addition to any penalties imposed under

1 paragraph (5) of this subsection (c), and except as
2 provided in paragraph (5.2) or (5.3), a person convicted of
3 violating subsection (c) of Section 11-907 of the Illinois
4 Vehicle Code shall have his or her driver's license,
5 permit, or privileges suspended for at least 90 days but
6 not more than one year, if the violation resulted in damage
7 to the property of another person.

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

16 (5.3) In addition to any penalties imposed under
17 paragraph (5) of this subsection (c), a person convicted of
18 violating subsection (c) of Section 11-907 of the Illinois
19 Vehicle Code shall have his or her driver's license,
20 permit, or privileges suspended for 2 years, if the
21 violation resulted in the death of another person.

22 (6) In no case shall an offender be eligible for a
23 disposition of probation or conditional discharge for a
24 Class 1 felony committed while he was serving a term of
25 probation or conditional discharge for a felony.

26 (7) When a defendant is adjudged a habitual criminal
27 under Article 33B of the Criminal Code of 1961, the court
28 shall sentence the defendant to a term of natural life
29 imprisonment.

30 (8) When a defendant, over the age of 21 years, is
31 convicted of a Class 1 or Class 2 felony, after having
32 twice been convicted in any state or federal court of an
33 offense that contains the same elements as an offense now
34 classified in Illinois as a Class 2 or greater Class felony
35 and such charges are separately brought and tried and arise
36 out of different series of acts, such defendant shall be

1 sentenced as a Class X offender. This paragraph shall not
2 apply unless (1) the first felony was committed after the
3 effective date of this amendatory Act of 1977; and (2) the
4 second felony was committed after conviction on the first;
5 and (3) the third felony was committed after conviction on
6 the second. A person sentenced as a Class X offender under
7 this paragraph is not eligible to apply for treatment as a
8 condition of probation as provided by Section 40-10 of the
9 Alcoholism and Other Drug Abuse and Dependency Act.

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

13 (10) When a person is convicted of violating Section
14 11-501 of the Illinois Vehicle Code or a similar provision
15 of a local ordinance, the following penalties apply when
16 his or her blood, breath, or urine was .16 or more based on
17 the definition of blood, breath, or urine units in Section
18 11-501.2 or that person is convicted of violating Section
19 11-501 of the Illinois Vehicle Code while transporting a
20 child under the age of 16:

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

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

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

36 (D) For a fourth or subsequent violation of

1 subsection (a) of Section 11-501: ineligibility for a
2 sentence of probation or conditional discharge and a
3 minimum fine of \$2,500.

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

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

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

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

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

35 (i) removal from the household;

36 (ii) restricted contact with the victim;

1 (iii) continued financial support of the
2 family;

3 (iv) restitution for harm done to the victim;
4 and

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

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

14 Probation may be revoked or modified pursuant to Section
15 5-6-4; except where the court determines at the hearing that
16 the defendant violated a condition of his or her probation
17 restricting contact with the victim or other family members or
18 commits another offense with the victim or other family
19 members, the court shall revoke the defendant's probation and
20 impose a term of imprisonment.

21 For the purposes of this Section, "family member" and
22 "victim" shall have the meanings ascribed to them in Section
23 12-12 of the Criminal Code of 1961.

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

28 (g) Whenever a defendant is convicted of an offense under
29 Sections 11-14, 11-15, 11-15.1, 11-16, 11-17, 11-18, 11-18.1,
30 11-19, 11-19.1, 11-19.2, 12-13, 12-14, 12-14.1, 12-15 or 12-16
31 of the Criminal Code of 1961, the defendant shall undergo
32 medical testing to determine whether the defendant has any
33 sexually transmissible disease, including a test for infection
34 with human immunodeficiency virus (HIV) or any other identified
35 causative agent of acquired immunodeficiency syndrome (AIDS).
36 Any such medical test shall be performed only by appropriately

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

29 (g-5) When an inmate is tested for an airborne communicable
30 disease, as determined by the Illinois Department of Public
31 Health including but not limited to tuberculosis, the results
32 of the test shall be personally delivered by the warden or his
33 or her designee in a sealed envelope to the judge of the court
34 in which the inmate must appear for the judge's inspection in
35 camera if requested by the judge. Acting in accordance with the
36 best interests of those in the courtroom, the judge shall have

1 the discretion to determine what if any precautions need to be
2 taken to prevent transmission of the disease in the courtroom.

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

32 (i) All fines and penalties imposed under this Section for
33 any violation of Chapters 3, 4, 6, and 11 of the Illinois
34 Vehicle Code, or a similar provision of a local ordinance, and
35 any violation of the Child Passenger Protection Act, or a
36 similar provision of a local ordinance, shall be collected and

1 disbursed by the circuit clerk as provided under Section 27.5
2 of the Clerks of Courts Act.

3 (j) In cases when prosecution for any violation of Section
4 11-6, 11-8, 11-9, 11-11, 11-14, 11-15, 11-15.1, 11-16, 11-17,
5 11-17.1, 11-18, 11-18.1, 11-19, 11-19.1, 11-19.2, 11-20.1,
6 11-21, 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the Criminal
7 Code of 1961, any violation of the Illinois Controlled
8 Substances Act, or any violation of the Cannabis Control Act
9 results in conviction, a disposition of court supervision, or
10 an order of probation granted under Section 10 of the Cannabis
11 Control Act or Section 410 of the Illinois Controlled Substance
12 Act of a defendant, the court shall determine whether the
13 defendant is employed by a facility or center as defined under
14 the Child Care Act of 1969, a public or private elementary or
15 secondary school, or otherwise works with children under 18
16 years of age on a daily basis. When a defendant is so employed,
17 the court shall order the Clerk of the Court to send a copy of
18 the judgment of conviction or order of supervision or probation
19 to the defendant's employer by certified mail. If the employer
20 of the defendant is a school, the Clerk of the Court shall
21 direct the mailing of a copy of the judgment of conviction or
22 order of supervision or probation to the appropriate regional
23 superintendent of schools. The regional superintendent of
24 schools shall notify the State Board of Education of any
25 notification under this subsection.

26 (j-5) A defendant at least 17 years of age who is convicted
27 of a felony and who has not been previously convicted of a
28 misdemeanor or felony and who is sentenced to a term of
29 imprisonment in the Illinois Department of Corrections shall as
30 a condition of his or her sentence be required by the court to
31 attend educational courses designed to prepare the defendant
32 for a high school diploma and to work toward a high school
33 diploma or to work toward passing the high school level Test of
34 General Educational Development (GED) or to work toward
35 completing a vocational training program offered by the
36 Department of Corrections. If a defendant fails to complete the

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

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

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

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

36 (2) the deportation of the defendant would not

1 deprecate the seriousness of the defendant's conduct
2 and would not be inconsistent with the ends of justice.
3 Otherwise, the defendant shall be sentenced as
4 provided in this Chapter V.

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

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

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

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

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

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

1 defacement.

2 (n) The court may sentence a person convicted of a
3 violation of Section 12-19, 12-21, or 16-1.3 of the Criminal
4 Code of 1961 (i) to an impact incarceration program if the
5 person is otherwise eligible for that program under Section
6 5-8-1.1, (ii) to community service, or (iii) if the person is
7 an addict or alcoholic, as defined in the Alcoholism and Other
8 Drug Abuse and Dependency Act, to a substance or alcohol abuse
9 program licensed under that Act.

10 (Source: P.A. 92-183, eff. 7-27-01; 92-248, eff. 8-3-01;
11 92-283, eff. 1-1-02; 92-340, eff. 8-10-01; 92-418, eff.
12 8-17-01; 92-422, eff. 8-17-01; 92-651, eff. 7-11-02; 92-698,
13 eff. 7-19-02; 93-44, eff. 7-1-03; 93-156, eff. 1-1-04; 93-169,
14 eff. 7-10-03; 93-301, eff. 1-1-04; 93-419, eff. 1-1-04; 93-546,
15 eff. 1-1-04; revised 10-9-03.)