

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 1. Findings; purpose.

5 (a) The General Assembly finds and declares that:

6 (1) Public Act 89-688, effective June 1, 1997,
7 contained provisions amending Sections 31A-1.1 and
8 31A-1.2 of the Criminal Code of 1961 relating to bringing
9 contraband into a penal institution; possessing
10 contraband in a penal institution; and unauthorized
11 bringing of contraband into a penal institution by an
12 employee. Public Act 89-688, also contained provisions
13 amending Section 3-8-7 of the Unified Code of Corrections
14 relating to disciplinary procedures at Department of
15 Corrections facilities. Public Act 89-688 also contained
16 other provisions.

17 (2) On October 20, 2000, in *People v. Jerry Lee*
18 *Foster*, 316 Ill. App. 3d 855, the Illinois Appellate
19 Court, Fourth District, ruled that Public Act 89-688
20 violates the single subject clause of the Illinois
21 Constitution (Article IV, Section 8 (d)) and is therefore
22 unconstitutional in its entirety.

23 (3) The provisions added to Sections 31A-1.1 and
24 31A-1.2 of the Criminal Code of 1961 and to Section 3-8-7
25 of the Unified Code of Corrections by Public Act 89-688
26 are of vital concern to the people of this State. Prompt
27 legislative action concerning those provisions is
28 necessary.

29 (4) Section 31A-1.2 of the Criminal Code of 1961
30 has subsequently been amended by Public Acts 90-655 and
31 91-357.

32 (b) It is the purpose of this Act to re-enact Sections

1 31A-1.1 and 31A-1.2 of the Criminal Code of 1961, including
2 the provisions added by Public Act 89-688 and subsequent
3 amendments to Section 31A-1.2 by Public Acts 90-655 and
4 91-357. This re-enactment is intended to remove any question
5 as to the validity or content of those provisions; it is not
6 intended to supersede any other Public Act that amends the
7 text of the Sections as set forth in this Act. The re-enacted
8 material is shown in this Act as existing text (i.e., without
9 underscoring).

10 (c) It is also the purpose of this Act to re-enact
11 Section 3-8-7 of the Unified Code of Corrections, including
12 the provisions added and deleted by Public Act 89-688. This
13 re-enactment is intended to remove any question as to the
14 validity or content of those provisions; it is not intended
15 to supersede any other Public Act that amends the text of the
16 Section as set forth in this Act. The re-enacted material is
17 shown in this Act as existing text (i.e., without
18 underscoring).

19 Section 5. The Criminal Code of 1961 is amended by
20 re-enacting Sections 31A-1.1 and 31A-1.2 as follows:

21 (720 ILCS 5/31A-1.1) (from Ch. 38, par. 31A-1.1)
22 Sec. 31A-1.1. Bringing Contraband into a Penal
23 Institution; Possessing Contraband in a Penal Institution.

24 (a) A person commits the offense of bringing contraband
25 into a penal institution when he knowingly and without
26 authority of any person designated or authorized to grant
27 such authority (1) brings an item of contraband into a penal
28 institution or (2) causes another to bring an item of
29 contraband into a penal institution or (3) places an item of
30 contraband in such proximity to a penal institution as to
31 give an inmate access to the contraband.

32 (b) A person commits the offense of possessing

1 contraband in a penal institution when he possesses
2 contraband in a penal institution, regardless of the intent
3 with which he possesses it.

4 (c) For the purposes of this Section, the words and
5 phrases listed below shall be defined as follows:

6 (1) "Penal institution" means any penitentiary,
7 State farm, reformatory, prison, jail, house of
8 correction, police detention area, half-way house or
9 other institution or place for the incarceration or
10 custody of persons under sentence for offenses awaiting
11 trial or sentence for offenses, under arrest for an
12 offense, a violation of probation, a violation of parole,
13 or a violation of mandatory supervised release, or
14 awaiting a bail setting hearing or preliminary hearing;
15 provided that where the place for incarceration or
16 custody is housed within another public building this Act
17 shall not apply to that part of such building unrelated
18 to the incarceration or custody of persons.

19 (2) "Item of contraband" means any of the
20 following:

21 (i) "Alcoholic liquor" as such term is defined
22 in Section 1-3.05 of The Liquor Control Act of 1934
23 as such Act may be now or hereafter amended.

24 (ii) "Cannabis" as such term is defined in
25 subsection (a) of Section 3 of the "Cannabis Control
26 Act", approved August 16, 1971, as now or hereafter
27 amended.

28 (iii) "Controlled substance" as such term is
29 defined in the "Illinois Controlled Substances Act",
30 approved August 16, 1971, as now or hereafter
31 amended.

32 (iv) "Hypodermic syringe" or hypodermic
33 needle, or any instrument adapted for use of
34 controlled substances or cannabis by subcutaneous

1 injection.

2 (v) "Weapon" means any knife, dagger, dirk,
3 billy, razor, stiletto, broken bottle, or other
4 piece of glass which could be used as a dangerous
5 weapon. Such term includes any of the devices or
6 implements designated in subsections (a)(1), (a)(3)
7 and (a)(6) of Section 24-1 of this Act, or any other
8 dangerous weapon or instrument of like character.

9 (vi) "Firearm" means any device, by whatever
10 name known, which is designed to expel a projectile
11 or projectiles by the action of an explosion,
12 expansion of gas or escape of gas, including but not
13 limited to:

14 (A) any pneumatic gun, spring gun, or B-B
15 gun which expels a single globular projectile
16 not exceeding .18 inch in diameter, or;

17 (B) any device used exclusively for
18 signaling or safety and required as recommended
19 by the United States Coast Guard or the
20 Interstate Commerce Commission; or

21 (C) any device used exclusively for the
22 firing of stud cartridges, explosive rivets or
23 industrial ammunition; or

24 (D) any device which is powered by
25 electrical charging units, such as batteries,
26 and which fires one or several barbs attached
27 to a length of wire and which, upon hitting a
28 human, can send out current capable of
29 disrupting the person's nervous system in such
30 a manner as to render him incapable of normal
31 functioning, commonly referred to as a stun gun
32 or taser.

33 (vii) "Firearm ammunition" means any
34 self-contained cartridge or shotgun shell, by

1 whatever name known, which is designed to be used or
2 adaptable to use in a firearm, including but not
3 limited to:

4 (A) any ammunition exclusively designed
5 for use with a device used exclusively for
6 signaling or safety and required or recommended
7 by the United States Coast Guard or the
8 Interstate Commerce Commission; or

9 (B) any ammunition designed exclusively
10 for use with a stud or rivet driver or other
11 similar industrial ammunition.

12 (viii) "Explosive" means, but is not limited
13 to, bomb, bombshell, grenade, bottle or other
14 container containing an explosive substance of over
15 one-quarter ounce for like purposes such as black
16 powder bombs and Molotov cocktails or artillery
17 projectiles.

18 (ix) "Tool to defeat security mechanisms"
19 means, but is not limited to, handcuff or security
20 restraint key, tool designed to pick locks, or
21 device or instrument capable of unlocking handcuff
22 or security restraints, doors to cells, rooms, gates
23 or other areas of the penal institution.

24 (x) "Cutting tool" means, but is not limited
25 to, hacksaw blade, wirecutter, or device, instrument
26 or file capable of cutting through metal.

27 (xi) "Electronic contraband" means, but is not
28 limited to, any electronic, video recording device,
29 computer, or cellular communications equipment,
30 including, but not limited to, cellular telephones,
31 cellular telephone batteries, videotape recorders,
32 pagers, computers, and computer peripheral equipment
33 brought into or possessed in a penal institution
34 without the written authorization of the Chief

1 Administrative Officer.

2 (d) Bringing alcoholic liquor into a penal institution
3 is a Class 4 felony. Possessing alcoholic liquor in a penal
4 institution is a Class 4 felony.

5 (e) Bringing cannabis into a penal institution is a
6 Class 3 felony. Possessing cannabis in a penal institution
7 is a Class 3 felony.

8 (f) Bringing any amount of a controlled substance
9 classified in Schedules III, IV or V of Article II of the
10 Controlled Substance Act into a penal institution is a Class
11 2 felony. Possessing any amount of a controlled substance
12 classified in Schedule III, IV, or V of Article II of the
13 Controlled Substance Act in a penal institution is a Class 2
14 felony.

15 (g) Bringing any amount of a controlled substance
16 classified in Schedules I or II of Article II of the
17 Controlled Substance Act into a penal institution is a Class
18 1 felony. Possessing any amount of a controlled substance
19 classified in Schedules I or II of Article II of the
20 Controlled Substance Act in a penal institution is a Class 1
21 felony.

22 (h) Bringing an item of contraband listed in paragraph
23 (iv) of subsection (c)(2) into a penal institution is a Class
24 1 felony. Possessing an item of contraband listed in
25 paragraph (iv) of subsection (c)(2) in a penal institution is
26 a Class 1 felony.

27 (i) Bringing an item of contraband listed in paragraph
28 (v), (ix), (x), or (xi) of subsection (c)(2) into a penal
29 institution is a Class 1 felony. Possessing an item of
30 contraband listed in paragraph (v), (ix), (x), or (xi) of
31 subsection (c)(2) in a penal institution is a Class 1 felony.

32 (j) Bringing an item of contraband listed in paragraphs
33 (vi), (vii) or (viii) of subsection (c)(2) in a penal
34 institution is a Class X felony. Possessing an item of

1 contraband listed in paragraphs (vi), (vii), or (viii) of
2 subsection (c)(2) in a penal institution is a Class X felony.

3 (k) It shall be an affirmative defense to subsection (b)
4 hereof, that such possession was specifically authorized by
5 rule, regulation, or directive of the governing authority of
6 the penal institution or order issued pursuant thereto.

7 (l) It shall be an affirmative defense to subsection
8 (a)(1) and subsection (b) hereof that the person bringing
9 into or possessing contraband in a penal institution had been
10 arrested, and that that person possessed such contraband at
11 the time of his arrest, and that such contraband was brought
12 into or possessed in the penal institution by that person as
13 a direct and immediate result of his arrest.

14 (m) Items confiscated may be retained for use by the
15 Department of Corrections or disposed of as deemed
16 appropriate by the Chief Administrative Officer in accordance
17 with Department rules or disposed of as required by law.

18 (Source: P.A. 88-678, eff. 7-1-95; 89-688, eff. 6-1-97.)

19 (720 ILCS 5/31A-1.2) (from Ch. 38, par. 31A-1.2)

20 Sec. 31A-1.2. Unauthorized bringing of contraband into a
21 penal institution by an employee; unauthorized possessing of
22 contraband in a penal institution by an employee;
23 unauthorized delivery of contraband in a penal institution by
24 an employee.

25 (a) A person commits the offense of unauthorized
26 bringing of contraband into a penal institution by an
27 employee when a person who is an employee knowingly and
28 without authority or any person designated or authorized to
29 grant such authority:

30 (1) brings or attempts to bring an item of
31 contraband listed in paragraphs (i) through (iv) of
32 subsection (d)(4) into a penal institution, or

33 (2) causes or permits another to bring an item of

1 contraband listed in paragraphs (i) through (iv) of
2 subsection (d)(4) into a penal institution.

3 (b) A person commits the offense of unauthorized
4 possession of contraband in a penal institution by an
5 employee when a person who is an employee knowingly and
6 without authority of any person designated or authorized to
7 grant such authority possesses contraband listed in
8 paragraphs (i) through (iv) of subsection (d)(4) in a penal
9 institution, regardless of the intent with which he possesses
10 it.

11 (c) A person commits the offense of unauthorized
12 delivery of contraband in a penal institution by an employee
13 when a person who is an employee knowingly and without
14 authority of any person designated or authorized to grant
15 such authority:

16 (1) delivers or possesses with intent to deliver an
17 item of contraband to any inmate of a penal institution,
18 or

19 (2) conspires to deliver or solicits the delivery
20 of an item of contraband to any inmate of a penal
21 institution, or

22 (3) causes or permits the delivery of an item of
23 contraband to any inmate of a penal institution, or

24 (4) permits another person to attempt to deliver an
25 item of contraband to any inmate of a penal institution.

26 (d) For purpose of this Section, the words and phrases
27 listed below shall be defined as follows:

28 (1) "Penal Institution" shall have the meaning
29 ascribed to it in subsection (c)(1) of Section 31A-1.1 of
30 this Code;

31 (2) "Employee" means any elected or appointed
32 officer, trustee or employee of a penal institution or of
33 the governing authority of the penal institution, or any
34 person who performs services for the penal institution

1 pursuant to contract with the penal institution or its
2 governing authority.

3 (3) "Deliver" or "delivery" means the actual,
4 constructive or attempted transfer of possession of an
5 item of contraband, with or without consideration,
6 whether or not there is an agency relationship;

7 (4) "Item of contraband" means any of the
8 following:

9 (i) "Alcoholic liquor" as such term is defined
10 in Section 1-3.05 of the Liquor Control Act of 1934.

11 (ii) "Cannabis" as such term is defined in
12 subsection (a) of Section 3 of the Cannabis Control
13 Act.

14 (iii) "Controlled substance" as such term is
15 defined in the Illinois Controlled Substances Act.

16 (iv) "Hypodermic syringe" or hypodermic
17 needle, or any instrument adapted for use of
18 controlled substances or cannabis by subcutaneous
19 injection.

20 (v) "Weapon" means any knife, dagger, dirk,
21 billy, razor, stiletto, broken bottle, or other
22 piece of glass which could be used as a dangerous
23 weapon. Such term includes any of the devices or
24 implements designated in subsections (a)(1), (a)(3)
25 and (a)(6) of Section 24-1 of this Act, or any other
26 dangerous weapon or instrument of like character.

27 (vi) "Firearm" means any device, by whatever
28 name known, which is designed to expel a projectile
29 or projectiles by the action of an explosion,
30 expansion of gas or escape of gas, including but not
31 limited to:

32 (A) any pneumatic gun, spring gun, or B-B
33 gun which expels a single globular projectile
34 not exceeding .18 inch in diameter; or

1 (B) any device used exclusively for
2 signaling or safety and required or recommended
3 by the United States Coast Guard or the
4 Interstate Commerce Commission; or

5 (C) any device used exclusively for the
6 firing of stud cartridges, explosive rivets or
7 industrial ammunition; or

8 (D) any device which is powered by
9 electrical charging units, such as batteries,
10 and which fires one or several barbs attached
11 to a length of wire and which, upon hitting a
12 human, can send out current capable of
13 disrupting the person's nervous system in such
14 a manner as to render him incapable of normal
15 functioning, commonly referred to as a stun gun
16 or taser.

17 (vii) "Firearm ammunition" means any
18 self-contained cartridge or shotgun shell, by
19 whatever name known, which is designed to be used or
20 adaptable to use in a firearm, including but not
21 limited to:

22 (A) any ammunition exclusively designed
23 for use with a device used exclusively for
24 signaling or safety and required or recommended
25 by the United States Coast Guard or the
26 Interstate Commerce Commission; or

27 (B) any ammunition designed exclusively
28 for use with a stud or rivet driver or other
29 similar industrial ammunition.

30 (viii) "Explosive" means, but is not limited
31 to, bomb, bombshell, grenade, bottle or other
32 container containing an explosive substance of over
33 one-quarter ounce for like purposes such as black
34 powder bombs and Molotov cocktails or artillery

1 projectiles.

2 (ix) "Tool to defeat security mechanisms"
3 means, but is not limited to, handcuff or security
4 restraint key, tool designed to pick locks, or
5 device or instrument capable of unlocking handcuff
6 or security restraints, doors to cells, rooms, gates
7 or other areas of the penal institution.

8 (x) "Cutting tool" means, but is not limited
9 to, hacksaw blade, wirecutter, or device, instrument
10 or file capable of cutting through metal.

11 (xi) "Electronic contraband" means, but is not
12 limited to, any electronic, video recording device,
13 computer, or cellular communications equipment,
14 including, but not limited to, cellular telephones,
15 cellular telephone batteries, videotape recorders,
16 pagers, computers, and computer peripheral
17 equipment.

18 (e) A violation of paragraphs (a) or (b) of this Section
19 involving alcohol is a Class 4 felony. A violation of
20 paragraph (a) or (b) of this Section involving cannabis is a
21 Class 2 felony. A violation of paragraph (a) or (b)
22 involving any amount of a controlled substance classified in
23 Schedules III, IV or V of Article II of the Illinois
24 Controlled Substances Act is a Class 1 felony. A violation
25 of paragraph (a) or (b) of this Section involving any amount
26 of a controlled substance classified in Schedules I or II of
27 Article II of the Illinois Controlled Substances Act is a
28 Class X felony. A violation of paragraph (a) or (b)
29 involving an item of contraband listed in paragraph (iv) of
30 subsection (d)(4) is a Class X felony. A violation of
31 paragraph (a) or (b) involving an item of contraband listed
32 in paragraph (v) or (xi) of subsection (d)(4) is a Class 1
33 felony. A violation of paragraph (a) or (b) involving an
34 item of contraband listed in paragraphs (vi), (vii) or (viii)

1 of subsection (d)(4) is a Class X felony.

2 (f) A violation of paragraph (c) of this Section
3 involving alcoholic liquor is a Class 3 felony. A violation
4 of paragraph (c) involving cannabis is a Class 1 felony. A
5 violation of paragraph (c) involving any amount of a
6 controlled substance classified in Schedules III, IV or V of
7 Article II of the Illinois Controlled Substances Act is a
8 Class X felony. A violation of paragraph (c) involving any
9 amount of a controlled substance classified in Schedules I or
10 II of Article II of the Illinois Controlled Substances Act is
11 a Class X felony for which the minimum term of imprisonment
12 shall be 8 years. A violation of paragraph (c) involving an
13 item of contraband listed in paragraph (iv) of subsection
14 (d)(4) is a Class X felony for which the minimum term of
15 imprisonment shall be 8 years. A violation of paragraph (c)
16 involving an item of contraband listed in paragraph (v), (ix)
17 or (x) of subsection (d)(4) is a Class X felony for which the
18 minimum term of imprisonment shall be 10 years. A violation
19 of paragraph (c) involving an item of contraband listed in
20 paragraphs (vi), (vii) or (viii) of subsection (d)(4) is a
21 Class X felony for which the minimum term of imprisonment
22 shall be 12 years.

23 (g) Items confiscated may be retained for use by the
24 Department of Corrections or disposed of as deemed
25 appropriate by the Chief Administrative Officer in accordance
26 with Department rules or disposed of as required by law.

27 (Source: P.A. 90-655, eff. 7-30-98; 91-357, eff. 7-29-99.)

28 Section 10. The Unified Code of Corrections is amended by
29 re-enacting Section 3-8-7 as follows:

30 (730 ILCS 5/3-8-7) (from Ch. 38, par. 1003-8-7)
31 Sec. 3-8-7. Disciplinary Procedures.)

32 (a) All disciplinary action shall be consistent with

1 this Chapter. Rules of behavior and conduct, the penalties
2 for violation thereof, and the disciplinary procedure by
3 which such penalties may be imposed shall be available to
4 committed persons.

5 (b) (1) Corporal punishment and disciplinary
6 restrictions on diet, medical or sanitary facilities,
7 mail or access to legal materials are prohibited.

8 (2) (Blank).

9 (3) (Blank).

10 (c) Review of disciplinary action imposed under this
11 Section shall be provided by means of the grievance procedure
12 under Section 3-8-8. The Department shall provide a
13 disciplined person with a review of his or her disciplinary
14 action in a timely manner as required by law.

15 (d) All institutions and facilities of the Adult
16 Division shall establish, subject to the approval of the
17 Director, procedures for hearing disciplinary cases except
18 those that may involve the imposition of disciplinary
19 segregation and isolation; the loss of good time credit under
20 Section 3-6-3 or eligibility to earn good time credit.

21 (e) In disciplinary cases which may involve the
22 imposition of disciplinary segregation and isolation, the
23 loss of good time credit or eligibility to earn good time
24 credit, the Director shall establish disciplinary procedures
25 consistent with the following principles:

26 (1) Any person or persons who initiate a
27 disciplinary charge against a person shall not determine
28 the disposition of the charge. The Director may
29 establish one or more disciplinary boards to hear and
30 determine charges.

31 (2) Any committed person charged with a violation
32 of Department rules of behavior shall be given notice of
33 the charge including a statement of the misconduct
34 alleged and of the rules this conduct is alleged to

1 violate.

2 (3) Any person charged with a violation of rules is
3 entitled to a hearing on that charge at which time he
4 shall have an opportunity to appear before and address
5 the person or persons deciding the charge.

6 (4) The person or persons determining the
7 disposition of the charge may also summon to testify any
8 witnesses or other persons with relevant knowledge of the
9 incident.

10 (5) If the charge is sustained, the person charged
11 is entitled to a written statement of the decision by the
12 persons determining the disposition of the charge which
13 shall include the basis for the decision and the
14 disciplinary action, if any, to be imposed.

15 (6) (Blank).

16 (Source: P.A. 89-688, eff. 6-1-97.)

17 Section 99. Effective date. This Act takes effect upon
18 becoming law.