



**93RD GENERAL ASSEMBLY**

**State of Illinois**

**2003 and 2004**

**SB2164**

Introduced 1/14/2004, by Pamela J. Althoff

**SYNOPSIS AS INTRODUCED:**

625 ILCS 45/5-2	from Ch. 95 1/2, par. 315-2
625 ILCS 45/6-1	from Ch. 95 1/2, par. 316-1
625 ILCS 45/11A-3	from Ch. 95 1/2, par. 321A-3
625 ILCS 45/11A-4	from Ch. 95 1/2, par. 321A-4
625 ILCS 45/11A-5	from Ch. 95 1/2, par. 321A-5
730 ILCS 5/5-5-3	from Ch. 38, par. 1005-5-3

Amends the Boat Registration and Safety Act. Provides that, in cases involving death or personal injury, the failure of the operator of a watercraft involved in an accident to remain at the scene as required by the Act is a Class A misdemeanor. Provides that a person who has failed to remain at the scene of an accident involving death or personal injury as required by the Act must, within a specified time, report specified information concerning the accident at a police station or sheriff's office near the location where the accident occurred. Provides that failure to comply with this reporting requirement is a Class 4 felony in a case not involving the death of a person and a Class 2 felony in a case involving the death of a person. Provides that, if the defendant is sentenced to a term of imprisonment in a case involving the death of a person, the term shall be not less than 3 years and not more than 14 years. Provides for mandatory suspension of watercraft operation privileges under specified circumstances. Increases penalties for reckless operation of a watercraft. Provides that penalties for operating a watercraft under the influence also apply if a person is in actual physical control of a watercraft. Provides that a second or subsequent violation of operating a watercraft while watercraft operating privileges are suspended is a Class 4 felony. Amends the Unified Code of Corrections. Provides that a person may not receive court supervision more than once for operating a watercraft under the influence. Makes other changes.

LRB093 16664 DRH 42315 b

CORRECTIONAL  
 BUDGET AND  
 IMPACT NOTE ACT  
 MAY APPLY

1 AN ACT in relation to vehicles.

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

4 Section 5. The Boat Registration and Safety Act is amended  
5 by changing Sections 5-2, 6-1, 11A-3, 11A-4, and 11A-5 as  
6 follows:

7 (625 ILCS 45/5-2) (from Ch. 95 1/2, par. 315-2)

8 Sec. 5-2. Reckless operation.

9 (a) No person shall operate any watercraft, specialty  
10 prop-craft, personal watercraft or manipulate any water skis,  
11 aquaplane, or similar device in such a manner as to willfully  
12 or wantonly endanger the life, limb or property of any person,  
13 to weave through congested traffic, to jump the wake of another  
14 vessel unreasonably or unnecessarily close to the other vessel  
15 or when visibility around the other vessel is obstructed, to  
16 wait until the last possible moment to swerve to avoid  
17 collision, or operate any watercraft so as to approach or pass  
18 another watercraft in such a manner or at such a rate of speed  
19 as to create a hazardous wake or wash.

20 (b) A person convicted of committing a violation of this  
21 Section shall be guilty of aggravated reckless operation of a  
22 watercraft if the violation of this Section resulted in great  
23 bodily harm or permanent disability or disfigurement of  
24 another, when the violation was a proximate cause of the  
25 injuries.

26 (Source: P.A. 87-798.)

27 (625 ILCS 45/6-1) (from Ch. 95 1/2, par. 316-1)

28 Sec. 6-1. Collisions, accidents, and casualties; reports.

29 A. The operator of a vessel involved in a collision,  
30 accident, or other casualty, so far as he can without serious  
31 danger to his own vessel, crew, passengers and guests, if any,

1 shall render to other persons affected by the collision,  
2 accident, or other casualty assistance as may be practicable  
3 and as may be necessary in order to save them from or minimize  
4 any danger caused by the collision, accident, or other  
5 casualty, and also shall give his name, address, and  
6 identification of his vessel to any person injured and to the  
7 owner of any property damaged in the collision, accident, or  
8 other casualty.

9 If the collision, accident, or other casualty has resulted  
10 in the death of or personal injury to any person, failure to  
11 comply with this subsection A is a Class A misdemeanor.

12 A-1. Any person who has failed to stop or to comply with  
13 the requirements of subsection A must, as soon as possible but  
14 in no case later than one hour after the collision, accident,  
15 or other casualty, or, if hospitalized and incapacitated from  
16 reporting at any time during that period, as soon as possible  
17 but in no case later than one hour after being discharged from  
18 the hospital, report the date, place, and approximate time of  
19 the collision, accident, or other casualty, the watercraft  
20 operator's name and address, the identification number of the  
21 watercraft, if any, and the names of all other occupants of the  
22 watercraft, at a police station or sheriff's office near the  
23 location where the collision, accident, or other casualty  
24 occurred. A report made as required under this subsection A-1  
25 may not be used, directly or indirectly, as a basis for the  
26 prosecution of any violation of subsection A.

27 As used in this Section, personal injury means any injury  
28 requiring immediate professional treatment in a medical  
29 facility or doctor's office.

30 Any person failing to comply with this subsection A-1 is  
31 guilty of a Class 4 felony if the collision, accident, or other  
32 casualty does not result in the death of any person. Any person  
33 failing to comply with this subsection A-1 when the collision,  
34 accident, or other casualty results in the death of any person  
35 is guilty of a Class 2 felony, for which the person, if  
36 sentenced to a term of imprisonment, shall be sentenced to a

1 term of not less than 3 years and not more than 14 years.

2 B. In the case of collision, accident, or other casualty  
3 involving a vessel, the operator, if the collision, accident,  
4 or other casualty results in death or injury to a person or  
5 damage to property in excess of \$500, shall file with the  
6 Department a full description of the collision, accident, or  
7 other casualty, including information as the Department may by  
8 regulation require. Reports of the accidents must be filed with  
9 the Department on a Department Accident Report form within 5  
10 days.

11 C. Reports of accidents resulting in personal injury, where  
12 a person is incapacitated for a period exceeding 72 hours, must  
13 be filed with the Department on a Department Accident Report  
14 form within 5 days. Accidents that result in loss of life shall  
15 be reported to the Department on a Department form within 48  
16 hours.

17 D. All required accident reports and supplemental reports  
18 are without prejudice to the individual reporting, and are for  
19 the confidential use of the Department, except that the  
20 Department may disclose the identity of a person involved in an  
21 accident when the identity is not otherwise known or when the  
22 person denies his presence at the accident. No report to the  
23 Department may be used as evidence in any trial, civil or  
24 criminal, arising out of an accident, except that the  
25 Department must furnish upon demand of any person who has or  
26 claims to have made a report or upon demand of any court a  
27 certificate showing that a specified accident report has or has  
28 not been made to the Department solely to prove a compliance or  
29 a failure to comply with the requirements that a report be made  
30 to the Department.

31 E. (1) Every coroner or medical examiner shall on or before  
32 the 10th day of each month report in writing to the  
33 Department the circumstances surrounding the death of any  
34 person that has occurred as the result of a boating  
35 accident within the examiner's jurisdiction during the  
36 preceding calendar month.

1           (2) Within 6 hours after a death resulting from a  
2 boating accident, but in any case not more than 12 hours  
3 after the occurrence of the boating accident, a blood  
4 specimen of at least 10 cc shall be withdrawn from the body  
5 of the decedent by the coroner or medical examiner or by a  
6 qualified person at the direction of the physician. All  
7 morticians shall obtain a release from the coroner or  
8 medical examiner prior to proceeding with embalming any  
9 body coming under the scope of this Section. The blood so  
10 drawn shall be forwarded to a laboratory approved by the  
11 Department of State Police for analysis of the alcoholic  
12 content of the blood specimen. The coroner or medical  
13 examiner causing the blood to be withdrawn shall be  
14 notified of the results of each analysis made and shall  
15 forward the results of each analysis to the Department. The  
16 Department shall keep a record of all examinations to be  
17 used for statistical purposes only. The cumulative results  
18 of the examinations, without identifying the individuals  
19 involved, shall be disseminated and made public by the  
20 Department.

21 (Source: P.A. 91-828, eff. 1-1-01.)

22 (625 ILCS 45/11A-3) (from Ch. 95 1/2, par. 321A-3)

23 Sec. 11A-3. Any person who violates any of the provisions  
24 of Section 5-1 ~~or 5-2~~ of this Act is guilty of a Class B  
25 misdemeanor.

26 Any person who violates Section 5-2 of this Act is guilty  
27 of a Class A misdemeanor, except that aggravated reckless  
28 operation of a watercraft is a Class 4 felony.

29 (Source: P.A. 85-149.)

30 (625 ILCS 45/11A-4) (from Ch. 95 1/2, par. 321A-4)

31 Sec. 11A-4. Any person who is convicted of a violation of  
32 Sections 5-1, ~~5-2~~ or 11A-5 of this Act, in addition to any  
33 other penalties authorized in this Act, may in the discretion  
34 of the court be refused the privilege of operating any

1 watercraft on any of the waterways of this State for a period  
2 of not less than one year.

3 Any person who is convicted of a violation of Section 5-2  
4 of this Act or subsection A-1 of Section 6-1 of this Act, in  
5 addition to any other penalties authorized in this Act, shall  
6 be refused the privilege of operating any watercraft on any of  
7 the waterways of this Section for a period of not less than one  
8 year.

9 (Source: P.A. 85-149.)

10 (625 ILCS 45/11A-5) (from Ch. 95 1/2, par. 321A-5)

11 Sec. 11A-5. Any person who operates any watercraft during  
12 the period when he is denied the privilege to so operate is  
13 guilty of a Class A misdemeanor for a first offense and a Class  
14 4 felony for a second or subsequent offense.

15 (Source: P.A. 85-149.)

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

18 (730 ILCS 5/5-5-3) (from Ch. 38, par. 1005-5-3)

19 Sec. 5-5-3. Disposition.

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

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

26 (1) A period of probation.

27 (2) A term of periodic imprisonment.

28 (3) A term of conditional discharge.

29 (4) A term of imprisonment.

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

1 (6) A fine.

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

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

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

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

1 Section 1-162 of the Illinois Vehicle Code; a fireman carried  
2 on the rolls of a regularly constituted fire department; and an  
3 ambulance as defined under Section 3.85 of the Emergency  
4 Medical Services (EMS) Systems Act.

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

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

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

20 (A) First degree murder where the death penalty is  
21 not imposed.

22 (B) Attempted first degree murder.

23 (C) A Class X felony.

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

29 (E) A violation of Section 5.1 or 9 of the Cannabis  
30 Control Act.

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



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

4 (H) Criminal sexual assault.

5 (I) Aggravated battery of a senior citizen.

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

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

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

18 (K) Vehicular hijacking.

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

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

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

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

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

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

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

1 Code of 1961.

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

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

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

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

23 (4.1) A minimum term of 30 consecutive days of  
24 imprisonment, 40 days of 24 hour periodic imprisonment or  
25 720 hours of community service, as may be determined by the  
26 court, shall be imposed for a violation of Section 11-501  
27 of the Illinois Vehicle Code during a period in which the  
28 defendant's driving privileges are revoked or suspended,  
29 where the revocation or suspension was for a violation of  
30 Section 11-501 or Section 11-501.1 of that Code.

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

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

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

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

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

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

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

20 (A) a period of conditional discharge;

21 (B) a fine;

22 (C) make restitution to the victim under Section  
23 5-5-6 of this Code.

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

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

1 permit, or privileges suspended for at least 180 days but  
2 not more than 2 years, if the violation resulted in injury  
3 to another person.

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

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

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

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

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

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

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

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

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

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

28          (11) A person may not receive a disposition of court  
29          supervision for a violation of Section 5-16 of the Boat  
30          Registration and Safety Act if that person has previously  
31          received a disposition of court supervision for a violation  
32          of that Section.

33          (d) In any case in which a sentence originally imposed is  
34          vacated, the case shall be remanded to the trial court. The  
35          trial court shall hold a hearing under Section 5-4-1 of the  
36          Unified Code of Corrections which may include evidence of the

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

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

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

22 (A) the defendant is willing to undergo a court  
23 approved counseling program for a minimum duration of 2  
24 years; or

25 (B) the defendant is willing to participate in a  
26 court approved plan including but not limited to the  
27 defendant's:

28 (i) removal from the household;

29 (ii) restricted contact with the victim;

30 (iii) continued financial support of the  
31 family;

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

33 and

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

36 (2) the court orders the defendant to pay for the

1 victim's counseling services, to the extent that the court  
2 finds, after considering the defendant's income and  
3 assets, that the defendant is financially capable of paying  
4 for such services, if the victim was under 18 years of age  
5 at the time the offense was committed and requires  
6 counseling as a result of the offense.

7 Probation may be revoked or modified pursuant to Section  
8 5-6-4; except where the court determines at the hearing that  
9 the defendant violated a condition of his or her probation  
10 restricting contact with the victim or other family members or  
11 commits another offense with the victim or other family  
12 members, the court shall revoke the defendant's probation and  
13 impose a term of imprisonment.

14 For the purposes of this Section, "family member" and  
15 "victim" shall have the meanings ascribed to them in Section  
16 12-12 of the Criminal Code of 1961.

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

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

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

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

32 (h) Whenever a defendant is convicted of an offense under  
33 Section 1 or 2 of the Hypodermic Syringes and Needles Act, the  
34 defendant shall undergo medical testing to determine whether  
35 the defendant has been exposed to human immunodeficiency virus  
36 (HIV) or any other identified causative agent of acquired



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

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

32 (j) In cases when prosecution for any violation of Section  
33 11-6, 11-8, 11-9, 11-11, 11-14, 11-15, 11-15.1, 11-16, 11-17,  
34 11-17.1, 11-18, 11-18.1, 11-19, 11-19.1, 11-19.2, 11-20.1,  
35 11-21, 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the Criminal  
36 Code of 1961, any violation of the Illinois Controlled

1 Substances Act, or any violation of the Cannabis Control Act  
2 results in conviction, a disposition of court supervision, or  
3 an order of probation granted under Section 10 of the Cannabis  
4 Control Act or Section 410 of the Illinois Controlled Substance  
5 Act of a defendant, the court shall determine whether the  
6 defendant is employed by a facility or center as defined under  
7 the Child Care Act of 1969, a public or private elementary or  
8 secondary school, or otherwise works with children under 18  
9 years of age on a daily basis. When a defendant is so employed,  
10 the court shall order the Clerk of the Court to send a copy of  
11 the judgment of conviction or order of supervision or probation  
12 to the defendant's employer by certified mail. If the employer  
13 of the defendant is a school, the Clerk of the Court shall  
14 direct the mailing of a copy of the judgment of conviction or  
15 order of supervision or probation to the appropriate regional  
16 superintendent of schools. The regional superintendent of  
17 schools shall notify the State Board of Education of any  
18 notification under this subsection.

19 (j-5) A defendant at least 17 years of age who is convicted  
20 of a felony and who has not been previously convicted of a  
21 misdemeanor or felony and who is sentenced to a term of  
22 imprisonment in the Illinois Department of Corrections shall as  
23 a condition of his or her sentence be required by the court to  
24 attend educational courses designed to prepare the defendant  
25 for a high school diploma and to work toward a high school  
26 diploma or to work toward passing the high school level Test of  
27 General Educational Development (GED) or to work toward  
28 completing a vocational training program offered by the  
29 Department of Corrections. If a defendant fails to complete the  
30 educational training required by his or her sentence during the  
31 term of incarceration, the Prisoner Review Board shall, as a  
32 condition of mandatory supervised release, require the  
33 defendant, at his or her own expense, to pursue a course of  
34 study toward a high school diploma or passage of the GED test.  
35 The Prisoner Review Board shall revoke the mandatory supervised  
36 release of a defendant who wilfully fails to comply with this

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

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

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

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

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

32 Otherwise, the defendant shall be sentenced as  
33 provided in this Chapter V.

34 (B) If the defendant has already been sentenced for a  
35 felony or misdemeanor offense, or has been placed on  
36 probation under Section 10 of the Cannabis Control Act or

1 Section 410 of the Illinois Controlled Substances Act, the  
2 court may, upon motion of the State's Attorney to suspend  
3 the sentence imposed, commit the defendant to the custody  
4 of the Attorney General of the United States or his or her  
5 designated agent when:

6 (1) a final order of deportation has been issued  
7 against the defendant pursuant to proceedings under  
8 the Immigration and Nationality Act, and

9 (2) the deportation of the defendant would not  
10 deprecate the seriousness of the defendant's conduct  
11 and would not be inconsistent with the ends of justice.

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

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

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

31 (n) The court may sentence a person convicted of a  
32 violation of Section 12-19, 12-21, or 16-1.3 of the Criminal  
33 Code of 1961 (i) to an impact incarceration program if the  
34 person is otherwise eligible for that program under Section  
35 5-8-1.1, (ii) to community service, or (iii) if the person is  
36 an addict or alcoholic, as defined in the Alcoholism and Other

1 Drug Abuse and Dependency Act, to a substance or alcohol abuse  
2 program licensed under that Act.

3 (Source: P.A. 92-183, eff. 7-27-01; 92-248, eff. 8-3-01;  
4 92-283, eff. 1-1-02; 92-340, eff. 8-10-01; 92-418, eff.  
5 8-17-01; 92-422, eff. 8-17-01; 92-651, eff. 7-11-02; 92-698,  
6 eff. 7-19-02; 93-44, eff. 7-1-03; 93-156, eff. 1-1-04; 93-169,  
7 eff. 7-10-03; 93-301, eff. 1-1-04; 93-419, eff. 1-1-04; 93-546,  
8 eff. 1-1-04; revised 10-9-03.)