



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004

Introduced 2/6/2004, by Ira I. Silverstein

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. Provides that a person convicted of aggravated driving under the influence of alcohol, drugs, or intoxicating compounds may not receive a sentence of probation or periodic imprisonment if the offense resulted in the death of a person.

LRB093 15697 DRH 41306 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. Every
15 person convicted of violating this Section or a similar
16 provision of a local ordinance shall be subject to an
17 additional mandatory minimum fine of \$500 and an additional
18 mandatory 5 days of community service in a program benefiting
19 children if the person committed a violation of paragraph (a)
20 or a similar provision of a local ordinance while transporting
21 a person under age 16. Every person convicted a second time for
22 violating this Section or a similar provision of a local
23 ordinance within 5 years of a previous violation of this
24 Section or a similar provision of a law of another state or
25 local ordinance shall be subject to an additional mandatory
26 minimum fine of \$500 and an additional 10 days of mandatory
27 community service in a program benefiting children if the
28 current offense was committed while transporting a person under
29 age 16. The imprisonment or assignment under this subsection
30 shall not be subject to suspension nor shall the person be
31 eligible for probation in order to reduce the sentence or
32 assignment.

33 (c-1) (1) A person who violates this Section during a
34 period in which his or her driving privileges are revoked
35 or suspended, where the revocation or suspension was for a
36 violation of this Section, Section 11-501.1, paragraph (b)

1 of Section 11-401, or Section 9-3 of the Criminal Code of
2 1961 is guilty of a Class 4 felony.

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

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

15 (c-2) (Blank).

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

29 (c-4) When a person is convicted of violating Section
30 11-501 of this Code or a similar provision of a local
31 ordinance, the following penalties apply when his or her blood,
32 breath, or urine was .16 or more based on the definition of
33 blood, breath, or urine units in Section 11-501.2 or when that
34 person is convicted of violating this Section while
35 transporting a child under the age of 16:

36 (1) A person who is convicted of violating subsection

1 (a) of Section 11-501 of this Code a first time, in
2 addition to any other penalty that may be imposed under
3 subsection (c), is subject to a mandatory minimum of 100
4 hours of community service and a minimum fine of \$500.

5 (2) A person who is convicted of violating subsection
6 (a) of Section 11-501 of this Code a second time within 10
7 years, in addition to any other penalty that may be imposed
8 under subsection (c), is subject to a mandatory minimum of
9 2 days of imprisonment and a minimum fine of \$1,250.

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

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

22 (d) (1) Every person convicted of committing a violation of
23 this Section shall be guilty of aggravated driving under
24 the influence of alcohol, other drug or drugs, or
25 intoxicating compound or compounds, or any combination
26 thereof if:

27 (A) the person committed a violation of this
28 Section, or a similar provision of a law of another
29 state or a local ordinance when the cause of action is
30 the same as or substantially similar to this Section,
31 for the third or subsequent time;

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

34 (C) the person in committing a violation of
35 paragraph (a) was involved in a motor vehicle accident
36 that resulted in great bodily harm or permanent

1 disability or disfigurement to another, when the
2 violation was a proximate cause of the injuries;

3 (D) the person committed a violation of paragraph
4 (a) for a second time and has been previously convicted
5 of violating Section 9-3 of the Criminal Code of 1961
6 relating to reckless homicide in which the person was
7 determined to have been under the influence of alcohol,
8 other drug or drugs, or intoxicating compound or
9 compounds as an element of the offense or the person
10 has previously been convicted under subparagraph (C)
11 or subparagraph (F) of this paragraph (1);

12 (E) the person, in committing a violation of
13 paragraph (a) while driving at any speed in a school
14 speed zone at a time when a speedlimit of 20 miles per
15 hour was in effect under subsection (a) of Section
16 11-605 of this Code, was involved in a motor vehicle
17 accident that resulted in bodily harm, other than great
18 bodily harm or permanent disability or disfigurement,
19 to another person, when the violation of paragraph (a)
20 was a proximate cause of the bodily harm; or

21 (F) the person, in committing a violation of
22 paragraph (a), was involved in a motor vehicle,
23 snowmobile, all-terrain vehicle, or watercraft
24 accident that resulted in the death of another person,
25 when the violation of paragraph (a) was a proximate
26 cause of the death.

27 (2) Except as provided in this paragraph (2),
28 aggravated driving under the influence of alcohol, other
29 drug or drugs, or intoxicating compound or compounds, or
30 any combination thereof is a Class 4 felony. For a
31 violation of subparagraph (C) of paragraph (1) of this
32 subsection (d), the defendant, if sentenced to a term of
33 imprisonment, shall be sentenced to not less than one year
34 nor more than 12 years. Aggravated driving under the
35 influence of alcohol, other drug or drugs, or intoxicating
36 compound or compounds, or any combination thereof as

1 defined in subparagraph (F) of paragraph (1) of this
2 subsection (d) is a Class 2 felony, for which the
3 defendant, ~~if sentenced to a term of imprisonment,~~ shall be
4 sentenced to: (A) a term of imprisonment of not less than 3
5 years and not more than 14 years if the violation resulted
6 in the death of one person; or (B) a term of imprisonment
7 of not less than 6 years and not more than 28 years if the
8 violation resulted in the deaths of 2 or more persons. For
9 any prosecution under this subsection (d), a certified copy
10 of the driving abstract of the defendant shall be admitted
11 as proof of any prior conviction.

12 (e) After a finding of guilt and prior to any final
13 sentencing, or an order for supervision, for an offense based
14 upon an arrest for a violation of this Section or a similar
15 provision of a local ordinance, individuals shall be required
16 to undergo a professional evaluation to determine if an
17 alcohol, drug, or intoxicating compound abuse problem exists
18 and the extent of the problem, and undergo the imposition of
19 treatment as appropriate. Programs conducting these
20 evaluations shall be licensed by the Department of Human
21 Services. The cost of any professional evaluation shall be paid
22 for by the individual required to undergo the professional
23 evaluation.

24 (e-1) Any person who is found guilty of or pleads guilty to
25 violating this Section, including any person receiving a
26 disposition of court supervision for violating this Section,
27 may be required by the Court to attend a victim impact panel
28 offered by, or under contract with, a County State's Attorney's
29 office, a probation and court services department, Mothers
30 Against Drunk Driving, or the Alliance Against Intoxicated
31 Motorists. All costs generated by the victim impact panel shall
32 be paid from fees collected from the offender or as may be
33 determined by the court.

34 (f) Every person found guilty of violating this Section,
35 whose operation of a motor vehicle while in violation of this
36 Section proximately caused any incident resulting in an

1 appropriate emergency response, shall be liable for the expense
2 of an emergency response as provided under Section 5-5-3 of the
3 Unified Code of Corrections.

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

7 (h) Every person sentenced under paragraph (2) or (3) of
8 subsection (c-1) of this Section or subsection (d) of this
9 Section and who receives a term of probation or conditional
10 discharge shall be required to serve a minimum term of either
11 60 days community service or 10 days of imprisonment as a
12 condition of the probation or conditional discharge. This
13 mandatory minimum term of imprisonment or assignment of
14 community service shall not be suspended and shall not be
15 subject to reduction by the court.

16 (i) The Secretary of State shall require the use of
17 ignition interlock devices on all vehicles owned by an
18 individual who has been convicted of a second or subsequent
19 offense of this Section or a similar provision of a local
20 ordinance. The Secretary shall establish by rule and regulation
21 the procedures for certification and use of the interlock
22 system.

23 (j) In addition to any other penalties and liabilities, a
24 person who is found guilty of or pleads guilty to violating
25 this Section, including any person placed on court supervision
26 for violating this Section, shall be fined \$100, payable to the
27 circuit clerk, who shall distribute the money to the law
28 enforcement agency that made the arrest. If the person has been
29 previously convicted of violating this Section or a similar
30 provision of a local ordinance, the fine shall be \$200. In the
31 event that more than one agency is responsible for the arrest,
32 the \$100 or \$200 shall be shared equally. Any moneys received
33 by a law enforcement agency under this subsection (j) shall be
34 used to purchase law enforcement equipment that will assist in
35 the prevention of alcohol related criminal violence throughout
36 the State. This shall include, but is not limited to, in-car

1 video cameras, radar and laser speed detection devices, and
2 alcohol breath testers. Any moneys received by the Department
3 of State Police under this subsection (j) shall be deposited
4 into the State Police DUI Fund and shall be used to purchase
5 law enforcement equipment that will assist in the prevention of
6 alcohol related criminal violence throughout the State.

7 (k) The Secretary of State Police DUI Fund is created as a
8 special fund in the State treasury. All moneys received by the
9 Secretary of State Police under subsection (j) of this Section
10 shall be deposited into the Secretary of State Police DUI Fund
11 and, subject to appropriation, shall be used to purchase law
12 enforcement equipment to assist in the prevention of alcohol
13 related criminal violence throughout the State.

14 (Source: P.A. 92-248, eff. 8-3-01; 92-418, eff. 8-17-01;
15 92-420, eff. 8-17-01; 92-429, eff. 1-1-02; 92-431, eff. 1-1-02;
16 92-651, eff. 7-11-02; 93-156, eff. 1-1-04; 93-213, eff.
17 7-18-03; 93-584, eff. 8-22-03; revised 8-27-03.)

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

20 (730 ILCS 5/5-5-3) (from Ch. 38, par. 1005-5-3)

21 Sec. 5-5-3. Disposition.

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

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

28 (1) A period of probation.

29 (2) A term of periodic imprisonment.

30 (3) A term of conditional discharge.

31 (4) A term of imprisonment.

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

1 (now repealed).

2 (6) A fine.

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

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

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

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

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

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

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

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

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

23 (B) Attempted first degree murder.

24 (C) A Class X felony.

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

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

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

1 Alcoholism and Other Drug Abuse and Dependency Act.

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

5 (H) Criminal sexual assault.

6 (I) Aggravated battery of a senior citizen.

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

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

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

19 (K) Vehicular hijacking.

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

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

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

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

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

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

1 (R) A violation of Section 24-3A of the Criminal
2 Code of 1961.

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

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

9 (U) Aggravated driving under the influence of
10 alcohol, other drug or drugs, intoxicating compound or
11 compounds, or any combination thereof as defined in
12 subparagraph (F) of paragraph (1) of subsection (d) of
13 Section 11-501 of the Illinois Vehicle Code.

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

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

29 (4.1) A minimum term of 30 consecutive days of
30 imprisonment, 40 days of 24 hour periodic imprisonment or
31 720 hours of community service, as may be determined by the
32 court, shall be imposed for a violation of Section 11-501
33 of the Illinois Vehicle Code during a period in which the
34 defendant's driving privileges are revoked or suspended,
35 where the revocation or suspension was for a violation of
36 Section 11-501 or Section 11-501.1 of that Code.

1 (4.2) Except as provided in paragraph (4.3) of this
2 subsection (c), a minimum of 100 hours of community service
3 shall be imposed for a second violation of Section 6-303 of
4 the Illinois Vehicle Code.

5 (4.3) A minimum term of imprisonment of 30 days or 300
6 hours of community service, as determined by the court,
7 shall be imposed for a second violation of subsection (c)
8 of Section 6-303 of the Illinois Vehicle Code.

9 (4.4) Except as provided in paragraph (4.5) and
10 paragraph (4.6) of this subsection (c), a minimum term of
11 imprisonment of 30 days or 300 hours of community service,
12 as determined by the court, shall be imposed for a third or
13 subsequent violation of Section 6-303 of the Illinois
14 Vehicle Code.

15 (4.5) A minimum term of imprisonment of 30 days shall
16 be imposed for a third violation of subsection (c) of
17 Section 6-303 of the Illinois Vehicle Code.

18 (4.6) A minimum term of imprisonment of 180 days shall
19 be imposed for a fourth or subsequent violation of
20 subsection (c) of Section 6-303 of the Illinois Vehicle
21 Code.

22 (5) The court may sentence an offender convicted of a
23 business offense or a petty offense or a corporation or
24 unincorporated association convicted of any offense to:

25 (A) a period of conditional discharge;

26 (B) a fine;

27 (C) make restitution to the victim under Section
28 5-5-6 of this Code.

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

1 (5.2) In addition to any penalties imposed under
2 paragraph (5) of this subsection (c), and except as
3 provided in paragraph (5.3), a person convicted of
4 violating subsection (c) of Section 11-907 of the Illinois
5 Vehicle Code shall have his or her driver's license,
6 permit, or privileges suspended for at least 180 days but
7 not more than 2 years, if the violation resulted in injury
8 to another person.

9 (5.3) In addition to any penalties imposed under
10 paragraph (5) of this subsection (c), 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 2 years, if the
14 violation resulted in the death of another person.

15 (6) In no case shall an offender be eligible for a
16 disposition of probation or conditional discharge for a
17 Class 1 felony committed while he was serving a term of
18 probation or conditional discharge for a felony.

19 (7) When a defendant is adjudged a habitual criminal
20 under Article 33B of the Criminal Code of 1961, the court
21 shall sentence the defendant to a term of natural life
22 imprisonment.

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

1 condition of probation as provided by Section 40-10 of the
2 Alcoholism and Other Drug Abuse and Dependency Act.

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

6 (10) When a person is convicted of violating Section
7 11-501 of the Illinois Vehicle Code or a similar provision
8 of a local ordinance, the following penalties apply when
9 his or her blood, breath, or urine was .16 or more based on
10 the definition of blood, breath, or urine units in Section
11 11-501.2 or that person is convicted of violating Section
12 11-501 of the Illinois Vehicle Code while transporting a
13 child under the age of 16:

14 (A) For a first 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 a mandatory minimum of 100 hours of community service
18 and a minimum fine of \$500.

19 (B) For a second 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 10 years: a mandatory minimum of 2 days of
23 imprisonment and a minimum fine of \$1,250.

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

29 (D) For a fourth or subsequent violation of
30 subsection (a) of Section 11-501: ineligibility for a
31 sentence of probation or conditional discharge and a
32 minimum fine of \$2,500.

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.)