



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB1039

Introduced 02/03/05, by Rep. James D. Brosnahan

SYNOPSIS AS INTRODUCED:

720 ILCS 5/24-1.7 new

730 ILCS 5/3-6-3

from Ch. 38, par. 1003-6-3

Amends the Criminal Code of 1961. Creates the offense of being an armed habitual criminal. Provides that a person commits the offense of being an armed habitual criminal if he or she receives, sells, possesses, or transfers any firearm after having been convicted a total of 3 or more times of any of the following offenses: first degree murder; aggravated battery; aggravated battery with a firearm; unlawful use of a weapon by a felon; robbery; armed robbery; residential burglary; home invasion; vehicular hijacking; gunrunning; intimidation; armed violence; criminal sexual assault; aggravated criminal sexual assault; predatory criminal sexual assault of a child; aggravated domestic battery; or any violation of the Illinois Controlled Substances Act or the Cannabis Control Act that is punishable as a Class 3 felony or higher. Provides that a violation is a Class X felony. Amends the Unified Code of Corrections. Provides that a prisoner serving a sentence for being an armed habitual criminal shall receive no more than 4.5 days of good conduct credit for each month of his or her sentence of imprisonment. Effective immediately.

LRB094 03415 RLC 33417 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

1 AN ACT concerning criminal law.

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

4 Section 5. The Criminal Code of 1961 is amended by adding
5 Section 24-1.7 as follows:

6 (720 ILCS 5/24-1.7 new)

7 Sec. 24-1.7. Armed habitual criminal.

8 (a) A person commits the offense of being an armed habitual
9 criminal if he or she receives, sells, possesses, or transfers
10 any firearm after having been convicted a total of 3 or more
11 times of any of the following offenses: first degree murder;
12 aggravated battery; aggravated battery with a firearm;
13 unlawful use of a weapon by a felon; robbery; armed robbery;
14 residential burglary; home invasion; vehicular hijacking;
15 gunrunning; intimidation; armed violence; criminal sexual
16 assault; aggravated criminal sexual assault; predatory
17 criminal sexual assault of a child; aggravated domestic
18 battery; or any violation of the Illinois Controlled Substances
19 Act or the Cannabis Control Act that is punishable as a Class 3
20 felony or higher.

21 (b) Sentence. Being an armed habitual criminal is a Class X
22 felony.

23 Section 10. The Unified Code of Corrections is amended by
24 changing Section 3-6-3 as follows:

25 (730 ILCS 5/3-6-3) (from Ch. 38, par. 1003-6-3)

26 Sec. 3-6-3. Rules and Regulations for Early Release.

27 (a) (1) The Department of Corrections shall prescribe
28 rules and regulations for the early release on account of
29 good conduct of persons committed to the Department which
30 shall be subject to review by the Prisoner Review Board.

1 (2) The rules and regulations on early release shall
2 provide, with respect to offenses committed on or after
3 June 19, 1998 or with respect to the offense of being an
4 armed habitual criminal committed on or after the effective
5 date of this amendatory Act of the 94th General Assembly,
6 the following:

7 (i) that a prisoner who is serving a term of
8 imprisonment for first degree murder or for the offense
9 of terrorism shall receive no good conduct credit and
10 shall serve the entire sentence imposed by the court;

11 (ii) that a prisoner serving a sentence for attempt
12 to commit first degree murder, solicitation of murder,
13 solicitation of murder for hire, intentional homicide
14 of an unborn child, predatory criminal sexual assault
15 of a child, aggravated criminal sexual assault,
16 criminal sexual assault, aggravated kidnapping,
17 aggravated battery with a firearm, heinous battery,
18 being an armed habitual criminal, aggravated battery
19 of a senior citizen, or aggravated battery of a child
20 shall receive no more than 4.5 days of good conduct
21 credit for each month of his or her sentence of
22 imprisonment; and

23 (iii) that a prisoner serving a sentence for home
24 invasion, armed robbery, aggravated vehicular
25 hijacking, aggravated discharge of a firearm, or armed
26 violence with a category I weapon or category II
27 weapon, when the court has made and entered a finding,
28 pursuant to subsection (c-1) of Section 5-4-1 of this
29 Code, that the conduct leading to conviction for the
30 enumerated offense resulted in great bodily harm to a
31 victim, shall receive no more than 4.5 days of good
32 conduct credit for each month of his or her sentence of
33 imprisonment.

34 (2.1) For all offenses, other than those enumerated in
35 subdivision (a)(2) committed on or after June 19, 1998, and
36 other than the offense of reckless homicide as defined in

1 subsection (e) of Section 9-3 of the Criminal Code of 1961
2 committed on or after January 1, 1999, or aggravated
3 driving under the influence of alcohol, other drug or
4 drugs, or intoxicating compound or compounds, or any
5 combination thereof as defined in subparagraph (F) of
6 paragraph (1) of subsection (d) of Section 11-501 of the
7 Illinois Vehicle Code, the rules and regulations shall
8 provide that a prisoner who is serving a term of
9 imprisonment shall receive one day of good conduct credit
10 for each day of his or her sentence of imprisonment or
11 recommitment under Section 3-3-9. Each day of good conduct
12 credit shall reduce by one day the prisoner's period of
13 imprisonment or recommitment under Section 3-3-9.

14 (2.2) A prisoner serving a term of natural life
15 imprisonment or a prisoner who has been sentenced to death
16 shall receive no good conduct credit.

17 (2.3) The rules and regulations on early release shall
18 provide that a prisoner who is serving a sentence for
19 reckless homicide as defined in subsection (e) of Section
20 9-3 of the Criminal Code of 1961 committed on or after
21 January 1, 1999, or aggravated driving under the influence
22 of alcohol, other drug or drugs, or intoxicating compound
23 or compounds, or any combination thereof as defined in
24 subparagraph (F) of paragraph (1) of subsection (d) of
25 Section 11-501 of the Illinois Vehicle Code, shall receive
26 no more than 4.5 days of good conduct credit for each month
27 of his or her sentence of imprisonment.

28 (2.4) The rules and regulations on early release shall
29 provide with respect to the offenses of aggravated battery
30 with a machine gun or a firearm equipped with any device or
31 attachment designed or used for silencing the report of a
32 firearm or aggravated discharge of a machine gun or a
33 firearm equipped with any device or attachment designed or
34 used for silencing the report of a firearm, committed on or
35 after July 15, 1999 (the effective date of Public Act
36 91-121) ~~this amendatory Act of 1999~~, that a prisoner

1 serving a sentence for any of these offenses shall receive
2 no more than 4.5 days of good conduct credit for each month
3 of his or her sentence of imprisonment.

4 (2.5) The rules and regulations on early release shall
5 provide that a prisoner who is serving a sentence for
6 aggravated arson committed on or after July 27, 2001 (the
7 effective date of Public Act 92-176) ~~this amendatory Act of~~
8 ~~the 92nd 93rd General Assembly~~ shall receive no more than
9 4.5 days of good conduct credit for each month of his or
10 her sentence of imprisonment.

11 (3) The rules and regulations shall also provide that
12 the Director may award up to 180 days additional good
13 conduct credit for meritorious service in specific
14 instances as the Director deems proper; except that no more
15 than 90 days of good conduct credit for meritorious service
16 shall be awarded to any prisoner who is serving a sentence
17 for conviction of first degree murder, reckless homicide
18 while under the influence of alcohol or any other drug, or
19 aggravated driving under the influence of alcohol, other
20 drug or drugs, or intoxicating compound or compounds, or
21 any combination thereof as defined in subparagraph (F) of
22 paragraph (1) of subsection (d) of Section 11-501 of the
23 Illinois Vehicle Code, aggravated kidnapping, kidnapping,
24 predatory criminal sexual assault of a child, aggravated
25 criminal sexual assault, criminal sexual assault, deviate
26 sexual assault, aggravated criminal sexual abuse,
27 aggravated indecent liberties with a child, indecent
28 liberties with a child, child pornography, heinous
29 battery, aggravated battery of a spouse, aggravated
30 battery of a spouse with a firearm, stalking, aggravated
31 stalking, aggravated battery of a child, endangering the
32 life or health of a child, cruelty to a child, or narcotic
33 racketeering. Notwithstanding the foregoing, good conduct
34 credit for meritorious service shall not be awarded on a
35 sentence of imprisonment imposed for conviction of: (i) one
36 of the offenses enumerated in subdivision (a)(2) when the

1 offense is committed on or after June 19, 1998, (ii)
2 reckless homicide as defined in subsection (e) of Section
3 9-3 of the Criminal Code of 1961 when the offense is
4 committed on or after January 1, 1999, or aggravated
5 driving under the influence of alcohol, other drug or
6 drugs, or intoxicating compound or compounds, or any
7 combination thereof as defined in subparagraph (F) of
8 paragraph (1) of subsection (d) of Section 11-501 of the
9 Illinois Vehicle Code, (iii) one of the offenses enumerated
10 in subdivision (a)(2.4) when the offense is committed on or
11 after July 15, 1999 (the effective date of Public Act
12 91-121) ~~this amendatory Act of 1999~~, or (iv) aggravated
13 arson when the offense is committed on or after July 27,
14 2001 (the effective date of Public Act 92-176) ~~this~~
15 ~~amendatory Act of the 92nd 93rd General Assembly.~~

16 (4) The rules and regulations shall also provide that
17 the good conduct credit accumulated and retained under
18 paragraph (2.1) of subsection (a) of this Section by any
19 inmate during specific periods of time in which such inmate
20 is engaged full-time in substance abuse programs,
21 correctional industry assignments, or educational programs
22 provided by the Department under this paragraph (4) and
23 satisfactorily completes the assigned program as
24 determined by the standards of the Department, shall be
25 multiplied by a factor of 1.25 for program participation
26 before August 11, 1993 and 1.50 for program participation
27 on or after that date. However, no inmate shall be eligible
28 for the additional good conduct credit under this paragraph
29 (4) while assigned to a boot camp, mental health unit, or
30 electronic detention, or if convicted of an offense
31 enumerated in paragraph (a)(2) of this Section that is
32 committed on or after June 19, 1998, or if convicted of
33 reckless homicide as defined in subsection (e) of Section
34 9-3 of the Criminal Code of 1961 if the offense is
35 committed on or after January 1, 1999, or aggravated
36 driving under the influence of alcohol, other drug or

1 drugs, or intoxicating compound or compounds, or any
2 combination thereof as defined in subparagraph (F) of
3 paragraph (1) of subsection (d) of Section 11-501 of the
4 Illinois Vehicle Code, or if convicted of an offense
5 enumerated in paragraph (a)(2.4) of this Section that is
6 committed on or after July 15, 1999 (the effective date of
7 Public Act 91-121) ~~this amendatory Act of 1999~~, or first
8 degree murder, a Class X felony, criminal sexual assault,
9 felony criminal sexual abuse, aggravated criminal sexual
10 abuse, aggravated battery with a firearm, or any
11 predecessor or successor offenses with the same or
12 substantially the same elements, or any inchoate offenses
13 relating to the foregoing offenses. No inmate shall be
14 eligible for the additional good conduct credit under this
15 paragraph (4) who (i) has previously received increased
16 good conduct credit under this paragraph (4) and has
17 subsequently been convicted of a felony, or (ii) has
18 previously served more than one prior sentence of
19 imprisonment for a felony in an adult correctional
20 facility.

21 Educational, vocational, substance abuse and
22 correctional industry programs under which good conduct
23 credit may be increased under this paragraph (4) shall be
24 evaluated by the Department on the basis of documented
25 standards. The Department shall report the results of these
26 evaluations to the Governor and the General Assembly by
27 September 30th of each year. The reports shall include data
28 relating to the recidivism rate among program
29 participants.

30 Availability of these programs shall be subject to the
31 limits of fiscal resources appropriated by the General
32 Assembly for these purposes. Eligible inmates who are
33 denied immediate admission shall be placed on a waiting
34 list under criteria established by the Department. The
35 inability of any inmate to become engaged in any such
36 programs by reason of insufficient program resources or for

1 any other reason established under the rules and
2 regulations of the Department shall not be deemed a cause
3 of action under which the Department or any employee or
4 agent of the Department shall be liable for damages to the
5 inmate.

6 (4.5) The rules and regulations on early release shall
7 also provide that a prisoner who is serving a sentence for
8 a crime committed as a result of the use of, abuse of, or
9 addiction to alcohol or a controlled substance and the
10 crime was committed on or after September 1, 2003 (the
11 effective date of Public Act 93-354) ~~this Amendatory Act of~~
12 ~~the 93rd General Assembly~~ shall receive no good conduct
13 credit until he or she participates in and completes a
14 substance abuse treatment program. Good conduct credit
15 awarded under clauses (2), (3), and (4) of this subsection
16 (a) for crimes committed on or after September 1, 2003 ~~the~~
17 ~~effective date of this amendatory Act of the 93rd General~~
18 ~~Assembly~~ is subject to the provisions of this clause (4.5).
19 If the prisoner completes a substance abuse treatment
20 program, the Department may award good conduct credit for
21 the time spent in treatment. Availability of substance
22 abuse treatment shall be subject to the limits of fiscal
23 resources appropriated by the General Assembly for these
24 purposes. If treatment is not available, the prisoner shall
25 be placed on a waiting list under criteria established by
26 the Department. The Department may require a prisoner
27 placed on a waiting list to attend a substance abuse
28 education class or attend substance abuse self-help
29 meetings. A prisoner may not lose good conduct credit as a
30 result of being placed on a waiting list. A prisoner placed
31 on a waiting list remains eligible for increased good
32 conduct credit for participation in an educational,
33 vocational, or correctional industry program under clause
34 (4) of subsection (a) of this Section.

35 (5) Whenever the Department is to release any inmate
36 earlier than it otherwise would because of a grant of good

1 conduct credit for meritorious service given at any time
2 during the term, the Department shall give reasonable
3 advance notice of the impending release to the State's
4 Attorney of the county where the prosecution of the inmate
5 took place.

6 (b) Whenever a person is or has been committed under
7 several convictions, with separate sentences, the sentences
8 shall be construed under Section 5-8-4 in granting and
9 forfeiting of good time.

10 (c) The Department shall prescribe rules and regulations
11 for revoking good conduct credit, or suspending or reducing the
12 rate of accumulation of good conduct credit for specific rule
13 violations, during imprisonment. These rules and regulations
14 shall provide that no inmate may be penalized more than one
15 year of good conduct credit for any one infraction.

16 When the Department seeks to revoke, suspend or reduce the
17 rate of accumulation of any good conduct credits for an alleged
18 infraction of its rules, it shall bring charges therefor
19 against the prisoner sought to be so deprived of good conduct
20 credits before the Prisoner Review Board as provided in
21 subparagraph (a)(4) of Section 3-3-2 of this Code, if the
22 amount of credit at issue exceeds 30 days or when during any 12
23 month period, the cumulative amount of credit revoked exceeds
24 30 days except where the infraction is committed or discovered
25 within 60 days of scheduled release. In those cases, the
26 Department of Corrections may revoke up to 30 days of good
27 conduct credit. The Board may subsequently approve the
28 revocation of additional good conduct credit, if the Department
29 seeks to revoke good conduct credit in excess of 30 days.
30 However, the Board shall not be empowered to review the
31 Department's decision with respect to the loss of 30 days of
32 good conduct credit within any calendar year for any prisoner
33 or to increase any penalty beyond the length requested by the
34 Department.

35 The Director of the Department of Corrections, in
36 appropriate cases, may restore up to 30 days good conduct

1 credits which have been revoked, suspended or reduced. Any
2 restoration of good conduct credits in excess of 30 days shall
3 be subject to review by the Prisoner Review Board. However, the
4 Board may not restore good conduct credit in excess of the
5 amount requested by the Director.

6 Nothing contained in this Section shall prohibit the
7 Prisoner Review Board from ordering, pursuant to Section
8 3-3-9(a)(3)(i)(B), that a prisoner serve up to one year of the
9 sentence imposed by the court that was not served due to the
10 accumulation of good conduct credit.

11 (d) If a lawsuit is filed by a prisoner in an Illinois or
12 federal court against the State, the Department of Corrections,
13 or the Prisoner Review Board, or against any of their officers
14 or employees, and the court makes a specific finding that a
15 pleading, motion, or other paper filed by the prisoner is
16 frivolous, the Department of Corrections shall conduct a
17 hearing to revoke up to 180 days of good conduct credit by
18 bringing charges against the prisoner sought to be deprived of
19 the good conduct credits before the Prisoner Review Board as
20 provided in subparagraph (a)(8) of Section 3-3-2 of this Code.
21 If the prisoner has not accumulated 180 days of good conduct
22 credit at the time of the finding, then the Prisoner Review
23 Board may revoke all good conduct credit accumulated by the
24 prisoner.

25 For purposes of this subsection (d):

26 (1) "Frivolous" means that a pleading, motion, or other
27 filing which purports to be a legal document filed by a
28 prisoner in his or her lawsuit meets any or all of the
29 following criteria:

30 (A) it lacks an arguable basis either in law or in
31 fact;

32 (B) it is being presented for any improper purpose,
33 such as to harass or to cause unnecessary delay or
34 needless increase in the cost of litigation;

35 (C) the claims, defenses, and other legal
36 contentions therein are not warranted by existing law

1 or by a nonfrivolous argument for the extension,
2 modification, or reversal of existing law or the
3 establishment of new law;

4 (D) the allegations and other factual contentions
5 do not have evidentiary support or, if specifically so
6 identified, are not likely to have evidentiary support
7 after a reasonable opportunity for further
8 investigation or discovery; or

9 (E) the denials of factual contentions are not
10 warranted on the evidence, or if specifically so
11 identified, are not reasonably based on a lack of
12 information or belief.

13 (2) "Lawsuit" means a petition for post-conviction
14 relief under Article 122 of the Code of Criminal Procedure
15 of 1963, a motion pursuant to Section 116-3 of the Code of
16 Criminal Procedure of 1963, a habeas corpus action under
17 Article X of the Code of Civil Procedure or under federal
18 law (28 U.S.C. 2254), a petition for claim under the Court
19 of Claims Act or an action under the federal Civil Rights
20 Act (42 U.S.C. 1983).

21 (e) Nothing in Public Act 90-592 or 90-593 ~~this amendatory~~
22 ~~Act of 1998~~ affects the validity of Public Act 89-404.

23 (Source: P.A. 92-176, eff. 7-27-01; 92-854, eff. 12-5-02;
24 93-213, eff. 7-18-03; 93-354, eff. 9-1-03; revised 10-15-03.)

25 Section 99. Effective date. This Act takes effect upon
26 becoming law.