



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
HB4207

Introduced 11/28/2005, by Rep. Bill Mitchell

SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-5-3

from Ch. 38, par. 1005-5-3

Amends the Unified Code of Corrections. Provides that a period of probation, a term of periodic imprisonment or conditional discharge shall not be imposed for theft of public funds.

LRB094 15417 RLC 50610 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 Unified Code of Corrections is amended by
5 changing Section 5-5-3 as follows:

6 (730 ILCS 5/5-5-3) (from Ch. 38, par. 1005-5-3)
7 Sec. 5-5-3. Disposition.

8 (a) Except as provided in Section 11-501 of the Illinois
9 Vehicle Code, every person convicted of an offense shall be
10 sentenced as provided in this Section.

11 (b) The following options shall be appropriate
12 dispositions, alone or in combination, for all felonies and
13 misdemeanors other than those identified in subsection (c) of
14 this Section:

15 (1) A period of probation.

16 (2) A term of periodic imprisonment.

17 (3) A term of conditional discharge.

18 (4) A term of imprisonment.

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22 (now repealed).

23 (6) A fine.

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

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

28 (9) A term of imprisonment in combination with a term
29 of probation when the offender has been admitted into a
30 drug court program under Section 20 of the Drug Court
31 Treatment Act.

32 Neither a fine nor restitution shall be the sole

1 disposition for a felony and either or both may be imposed only
2 in conjunction with another disposition.

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

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

15 (A) First degree murder where the death penalty is
16 not imposed.

17 (B) Attempted first degree murder.

18 (C) A Class X felony.

19 (D) A violation of Section 401.1 or 407 of the
20 Illinois Controlled Substances Act, or a violation of
21 subdivision (c) (1) or (c) (2) of Section 401 of that Act
22 which relates to more than 5 grams of a substance
23 containing heroin or cocaine or an analog thereof.

24 (E) A violation of Section 5.1 or 9 of the Cannabis
25 Control Act.

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

32 (F-5) A violation of Section 24-1, 24-1.1, or
33 24-1.6 of the Criminal Code of 1961 for which
34 imprisonment is prescribed in those Sections.

35 (G) Residential burglary, except as otherwise
36 provided in Section 40-10 of the Alcoholism and Other

1 Drug Abuse and Dependency Act.

2 (H) Criminal sexual assault.

3 (I) Aggravated battery of a senior citizen.

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

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

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

16 (K) Vehicular hijacking.

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

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

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

27 (O) A violation of Section 12-6.1 of the Criminal
28 Code of 1961.

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

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

34 (R) A violation of Section 24-3A of the Criminal
35 Code of 1961.

36 (S) (Blank).

1 (T) A second or subsequent violation of the
2 Methamphetamine Control and Community Protection Act.

3 (U) Theft of public funds.

4 (3) (Blank).

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

9 (4.1) (Blank).

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

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

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

24 (4.5) A minimum term of imprisonment of 30 days shall
25 be imposed for a third violation of subsection (c) of
26 Section 6-303 of the Illinois Vehicle Code.

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

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

34 (A) a period of conditional discharge;

35 (B) a fine;

36 (C) make restitution to the victim under Section

1 5-5-6 of this Code.

2 (5.1) In addition to any penalties imposed under
3 paragraph (5) of this subsection (c), and except as
4 provided in paragraph (5.2) or (5.3), a person convicted of
5 violating subsection (c) of Section 11-907 of the Illinois
6 Vehicle Code shall have his or her driver's license,
7 permit, or privileges suspended for at least 90 days but
8 not more than one year, if the violation resulted in damage
9 to the property of another person.

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

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

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

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

32 (8) When a defendant, over the age of 21 years, is
33 convicted of a Class 1 or Class 2 felony, after having
34 twice been convicted in any state or federal court of an
35 offense that contains the same elements as an offense now
36 classified in Illinois as a Class 2 or greater Class felony

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

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

15 (10) (Blank).

16 (11) The court shall impose a minimum fine of \$1,000
17 for a first offense and \$2,000 for a second or subsequent
18 offense upon a person convicted of or placed on supervision
19 for battery when the individual harmed was a sports
20 official or coach at any level of competition and the act
21 causing harm to the sports official or coach occurred
22 within an athletic facility or within the immediate
23 vicinity of the athletic facility at which the sports
24 official or coach was an active participant of the athletic
25 contest held at the athletic facility. For the purposes of
26 this paragraph (11), "sports official" means a person at an
27 athletic contest who enforces the rules of the contest,
28 such as an umpire or referee; "athletic facility" means an
29 indoor or outdoor playing field or recreational area where
30 sports activities are conducted; and "coach" means a person
31 recognized as a coach by the sanctioning authority that
32 conducted the sporting event.

33 (12) A person may not receive a disposition of court
34 supervision for a violation of Section 5-16 of the Boat
35 Registration and Safety Act if that person has previously
36 received a disposition of court supervision for a violation

1 of that Section.

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

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

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

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

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

33 (i) removal from the household;

34 (ii) restricted contact with the victim;

35 (iii) continued financial support of the
36 family;

1 (iv) restitution for harm done to the victim;
2 and
3 (v) compliance with any other measures that
4 the court may deem appropriate; and

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

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

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

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

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

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

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

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

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

1 (j) In cases when prosecution for any violation of Section
2 11-6, 11-8, 11-9, 11-11, 11-14, 11-15, 11-15.1, 11-16, 11-17,
3 11-17.1, 11-18, 11-18.1, 11-19, 11-19.1, 11-19.2, 11-20.1,
4 11-21, 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the Criminal
5 Code of 1961, any violation of the Illinois Controlled
6 Substances Act, any violation of the Cannabis Control Act, or
7 any violation of the Methamphetamine Control and Community
8 Protection Act results in conviction, a disposition of court
9 supervision, or an order of probation granted under Section 10
10 of the Cannabis Control Act, Section 410 of the Illinois
11 Controlled Substance Act, or Section 70 of the Methamphetamine
12 Control and Community Protection Act of a defendant, the court
13 shall determine whether the defendant is employed by a facility
14 or center as defined under the Child Care Act of 1969, a public
15 or private elementary or secondary school, or otherwise works
16 with children under 18 years of age on a daily basis. When a
17 defendant is so employed, the court shall order the Clerk of
18 the Court to send a copy of the judgment of conviction or order
19 of supervision or probation to the defendant's employer by
20 certified mail. If the employer of the defendant is a school,
21 the Clerk of the Court shall direct the mailing of a copy of
22 the judgment of conviction or order of supervision or probation
23 to the appropriate regional superintendent of schools. The
24 regional superintendent of schools shall notify the State Board
25 of Education of any notification under this subsection.

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

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

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

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

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

36 (2) the deportation of the defendant would not

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

5 (B) If the defendant has already been sentenced for a
6 felony or misdemeanor offense, or has been placed on
7 probation under Section 10 of the Cannabis Control Act,
8 Section 410 of the Illinois Controlled Substances Act, or
9 Section 70 of the Methamphetamine Control and Community
10 Protection Act, the court may, upon motion of the State's
11 Attorney to suspend the sentence imposed, commit the
12 defendant to the custody of the Attorney General of the
13 United States or his or her designated agent when:

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

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

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

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

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

1 that may include cleanup, removal, or painting over the
2 defacement.

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

11 (Source: P.A. 93-44, eff. 7-1-03; 93-156, eff. 1-1-04; 93-169,
12 eff. 7-10-03; 93-301, eff. 1-1-04; 93-419, eff. 1-1-04; 93-546,
13 eff. 1-1-04; 93-694, eff. 7-9-04; 93-782, eff. 1-1-05; 93-800,
14 eff. 1-1-05; 93-1014, eff. 1-1-05; 94-72, eff. 1-1-06; 94-556,
15 eff. 9-11-05; revised 8-19-05.)