



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

HB5090

by Rep. Linda Chapa LaVia

#### SYNOPSIS AS INTRODUCED:

720 ILCS 5/31A-1.1	from Ch. 38, par. 31A-1.1
720 ILCS 5/31A-1.2	from Ch. 38, par. 31A-1.2

Amends the Criminal Code of 1961 relating to the offenses of bringing contraband into a penal institution, possessing contraband in a penal institution, bringing contraband into a penal institution by an employee; unauthorized possessing of contraband in a penal institution by an employee; and unauthorized delivery of contraband in a penal institution by an employee. Provides that the possession of tobacco products by inmates and the delivery of such tobacco products to inmates in penal institutions are prohibited. Provides that a violation is a petty offense for which a fine not exceeding \$250 may be imposed.

LRB095 18076 RLC 44159 b

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 changing  
5 Sections 31A-1.1 and 31A-1.2 as follows:

6 (720 ILCS 5/31A-1.1) (from Ch. 38, par. 31A-1.1)

7 Sec. 31A-1.1. Bringing Contraband into a Penal  
8 Institution; Possessing Contraband in a Penal Institution.

9 (a) A person commits the offense of bringing contraband  
10 into a penal institution when he knowingly and without  
11 authority of any person designated or authorized to grant such  
12 authority (1) brings an item of contraband into a penal  
13 institution or (2) causes another to bring an item of  
14 contraband into a penal institution or (3) places an item of  
15 contraband in such proximity to a penal institution as to give  
16 an inmate access to the contraband.

17 (b) A person commits the offense of possessing contraband  
18 in a penal institution when he possesses contraband in a penal  
19 institution, regardless of the intent with which he possesses  
20 it.

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

23 (1) "Penal institution" means any penitentiary, State

1 farm, reformatory, prison, jail, house of correction,  
2 police detention area, half-way house or other institution  
3 or place for the incarceration or custody of persons under  
4 sentence for offenses awaiting trial or sentence for  
5 offenses, under arrest for an offense, a violation of  
6 probation, a violation of parole, or a violation of  
7 mandatory supervised release, or awaiting a bail setting  
8 hearing or preliminary hearing; provided that where the  
9 place for incarceration or custody is housed within another  
10 public building this Act shall not apply to that part of  
11 such building unrelated to the incarceration or custody of  
12 persons.

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

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

16 (ii) "Cannabis" as such term is defined in  
17 subsection (a) of Section 3 of the Cannabis Control  
18 Act.

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

21 (iii-a) "Methamphetamine" as such term is defined  
22 in the Illinois Controlled Substances Act or the  
23 Methamphetamine Control and Community Protection Act.

24 (iv) "Hypodermic syringe" or hypodermic needle, or  
25 any instrument adapted for use of controlled  
26 substances or cannabis by subcutaneous injection.

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

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

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

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

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

22           (D) any device which is powered by electrical  
23           charging units, such as batteries, and which fires  
24           one or several barbs attached to a length of wire  
25           and which, upon hitting a human, can send out  
26           current capable of disrupting the person's nervous

1 system in such a manner as to render him incapable  
2 of normal functioning, commonly referred to as a  
3 stun gun or taser.

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

8 (A) any ammunition exclusively designed for  
9 use with a device used exclusively for signaling or  
10 safety and required or recommended by the United  
11 States Coast Guard or the Interstate Commerce  
12 Commission; or

13 (B) any ammunition designed exclusively for  
14 use with a stud or rivet driver or other similar  
15 industrial ammunition.

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

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

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

4           (xi) "Electronic contraband" means, but is not  
5 limited to, any electronic, video recording device,  
6 computer, or cellular communications equipment,  
7 including, but not limited to, cellular telephones,  
8 cellular telephone batteries, videotape recorders,  
9 pagers, computers, and computer peripheral equipment  
10 brought into or possessed in a penal institution  
11 without the written authorization of the Chief  
12 Administrative Officer.

13           (xii) "Tobacco" means any cigar, cigarette,  
14 smokeless tobacco, or tobacco in any of its forms.  
15 "Smokeless tobacco" means any loose, cut, shredded,  
16 ground, powdered, compressed, or leaf tobacco that is  
17 intended to be placed in the mouth without being  
18 smoked.

19           (d) Bringing alcoholic liquor into a penal institution is a  
20 Class 4 felony. Possessing alcoholic liquor in a penal  
21 institution is a Class 4 felony.

22           (e) Bringing cannabis into a penal institution is a Class 3  
23 felony. Possessing cannabis in a penal institution is a Class 3  
24 felony.

25           (f) Bringing any amount of a controlled substance  
26 classified in Schedules III, IV or V of Article II of the

1 Controlled Substance Act into a penal institution is a Class 2  
2 felony. Possessing any amount of a controlled substance  
3 classified in Schedule III, IV, or V of Article II of the  
4 Controlled Substance Act in a penal institution is a Class 2  
5 felony.

6 (g) Bringing any amount of a controlled substance  
7 classified in Schedules I or II of Article II of the Controlled  
8 Substance Act into a penal institution is a Class 1 felony.  
9 Possessing any amount of a controlled substance classified in  
10 Schedules I or II of Article II of the Controlled Substance Act  
11 in a penal institution is a Class 1 felony.

12 (h) Bringing an item of contraband listed in paragraph (iv)  
13 of subsection (c)(2) into a penal institution is a Class 1  
14 felony. Possessing an item of contraband listed in paragraph  
15 (iv) of subsection (c)(2) in a penal institution is a Class 1  
16 felony.

17 (i) Bringing an item of contraband listed in paragraph (v),  
18 (ix), (x), or (xi) of subsection (c)(2) into a penal  
19 institution is a Class 1 felony. Possessing an item of  
20 contraband listed in paragraph (v), (ix), (x), or (xi) of  
21 subsection (c)(2) in a penal institution is a Class 1 felony.

22 (j) Bringing an item of contraband listed in paragraphs  
23 (vi), (vii) or (viii) of subsection (c)(2) in a penal  
24 institution is a Class X felony. Possessing an item of  
25 contraband listed in paragraphs (vi), (vii), or (viii) of  
26 subsection (c)(2) in a penal institution is a Class X felony.

1       (j-5) Bringing an item of contraband listed in paragraph  
2       (xii) of subsection (c)(2) in a penal institution with the  
3       intent to deliver such contraband to an inmate of that  
4       institution is a petty offense for which a fine not exceeding  
5       \$250 may be imposed. Possessing an item of contraband listed in  
6       paragraph (xii) of subsection (c)(2) in a penal institution by  
7       an inmate of that institution is a petty offense for which a  
8       fine not exceeding \$250 may be imposed.

9       (k) It shall be an affirmative defense to subsection (b)  
10      hereof, that such possession was specifically authorized by  
11      rule, regulation, or directive of the governing authority of  
12      the penal institution or order issued pursuant thereto. Except  
13      as provided in subsection (l), no such rule, regulation,  
14      directive, or order shall permit the possession of tobacco by  
15      inmates of the penal institution.

16      (l) It shall be an affirmative defense to subsection (a)(1)  
17      and subsection (b) hereof that the person bringing into or  
18      possessing contraband in a penal institution had been arrested,  
19      and that that person possessed such contraband at the time of  
20      his arrest, and that such contraband was brought into or  
21      possessed in the penal institution by that person as a direct  
22      and immediate result of his arrest.

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



1 (Source: P.A. 94-556, eff. 9-11-05; 94-1017, eff. 7-7-06.)

2 (720 ILCS 5/31A-1.2) (from Ch. 38, par. 31A-1.2)

3 Sec. 31A-1.2. Unauthorized bringing of contraband into a  
4 penal institution by an employee; unauthorized possessing of  
5 contraband in a penal institution by an employee; unauthorized  
6 delivery of contraband in a penal institution by an employee.

7 (a) A person commits the offense of unauthorized bringing  
8 of contraband into a penal institution by an employee when a  
9 person who is an employee knowingly and without authority or  
10 any person designated or authorized to grant such authority:

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

14 (2) causes or permits another to bring an item of  
15 contraband listed in paragraphs (i) through (iv) of  
16 subsection (d)(4) into a penal institution.

17 (b) A person commits the offense of unauthorized possession  
18 of contraband in a penal institution by an employee when a  
19 person who is an employee knowingly and without authority of  
20 any person designated or authorized to grant such authority  
21 possesses contraband listed in paragraphs (i) through (iv) of  
22 subsection (d)(4) in a penal institution, regardless of the  
23 intent with which he possesses it.

24 (c) A person commits the offense of unauthorized delivery  
25 of contraband in a penal institution by an employee when a

1 person who is an employee knowingly and without authority of  
2 any person designated or authorized to grant such authority:

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

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

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

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

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

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

16 (2) "Employee" means any elected or appointed officer,  
17 trustee or employee of a penal institution or of the  
18 governing authority of the penal institution, or any person  
19 who performs services for the penal institution pursuant to  
20 contract with the penal institution or its governing  
21 authority.

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

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

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

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

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

8 (iii-a) "Methamphetamine" as such term is defined  
9 in the Illinois Controlled Substances Act or the  
10 Methamphetamine Control and Community Protection Act.

11 (iv) "Hypodermic syringe" or hypodermic needle, or  
12 any instrument adapted for use of controlled  
13 substances or cannabis by subcutaneous injection.

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

21 (vi) "Firearm" means any device, by whatever name  
22 known, which is designed to expel a projectile or  
23 projectiles by the action of an explosion, expansion of  
24 gas or escape of gas, including but not limited to:

25 (A) any pneumatic gun, spring gun, or B-B gun  
26 which expels a single globular projectile not

1 exceeding .18 inch in diameter; or

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

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

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

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

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

26 (B) any ammunition designed exclusively for

1 use with a stud or rivet driver or other similar  
2 industrial ammunition.

3 (viii) "Explosive" means, but is not limited to,  
4 bomb, bombshell, grenade, bottle or other container  
5 containing an explosive substance of over one-quarter  
6 ounce for like purposes such as black powder bombs and  
7 Molotov cocktails or artillery projectiles.

8 (ix) "Tool to defeat security mechanisms" means,  
9 but is not limited to, handcuff or security restraint  
10 key, tool designed to pick locks, or device or  
11 instrument capable of unlocking handcuff or security  
12 restraints, doors to cells, rooms, gates or other areas  
13 of the penal institution.

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

17 (xi) "Electronic contraband" means, but is not  
18 limited to, any electronic, video recording device,  
19 computer, or cellular communications equipment,  
20 including, but not limited to, cellular telephones,  
21 cellular telephone batteries, videotape recorders,  
22 pagers, computers, and computer peripheral equipment.

23 (xii) "Tobacco" means any cigar, cigarette,  
24 smokeless tobacco, or tobacco in any of its forms.  
25 "Smokeless tobacco" means any loose, cut, shredded,  
26 ground, powdered, compressed, or leaf tobacco that is

1           intended to be placed in the mouth without being  
2           smoked.

3           (e) A violation of paragraphs (a) or (b) of this Section  
4 involving alcohol is a Class 4 felony. A violation of paragraph  
5 (a) or (b) of this Section involving cannabis is a Class 2  
6 felony. A violation of paragraph (a) or (b) involving any  
7 amount of a controlled substance classified in Schedules III,  
8 IV or V of Article II of the Illinois Controlled Substances Act  
9 is a Class 1 felony. A violation of paragraph (a) or (b) of  
10 this Section involving any amount of a controlled substance  
11 classified in Schedules I or II of Article II of the Illinois  
12 Controlled Substances Act is a Class X felony. A violation of  
13 paragraph (a) or (b) involving an item of contraband listed in  
14 paragraph (iv) of subsection (d)(4) is a Class X felony. A  
15 violation of paragraph (a) or (b) involving an item of  
16 contraband listed in paragraph (v) or (xi) of subsection (d)(4)  
17 is a Class 1 felony. A violation of paragraph (a) or (b)  
18 involving an item of contraband listed in paragraphs (vi),  
19 (vii) or (viii) of subsection (d)(4) is a Class X felony.

20           (f) A violation of paragraph (c) of this Section involving  
21 alcoholic liquor is a Class 3 felony. A violation of paragraph  
22 (c) involving cannabis is a Class 1 felony. A violation of  
23 paragraph (c) involving any amount of a controlled substance  
24 classified in Schedules III, IV or V of Article II of the  
25 Illinois Controlled Substances Act is a Class X felony. A  
26 violation of paragraph (c) involving any amount of a controlled

1 substance classified in Schedules I or II of Article II of the  
2 Illinois Controlled Substances Act is a Class X felony for  
3 which the minimum term of imprisonment shall be 8 years. A  
4 violation of paragraph (c) involving an item of contraband  
5 listed in paragraph (iv) of subsection (d)(4) is a Class X  
6 felony for which the minimum term of imprisonment shall be 8  
7 years. A violation of paragraph (c) involving an item of  
8 contraband listed in paragraph (v), (ix) or (x) of subsection  
9 (d)(4) is a Class X felony for which the minimum term of  
10 imprisonment shall be 10 years. A violation of paragraph (c)  
11 involving an item of contraband listed in paragraphs (vi),  
12 (vii) or (viii) of subsection (d)(4) is a Class X felony for  
13 which the minimum term of imprisonment shall be 12 years. A  
14 violation of paragraph (c) involving an item of contraband  
15 listed in paragraph (xii) of subsection (d)(4) is a petty  
16 offense for which a fine not exceeding \$250 may be imposed.

17 (g) Items confiscated may be retained for use by the  
18 Department of Corrections or disposed of as deemed appropriate  
19 by the Chief Administrative Officer in accordance with  
20 Department rules or disposed of as required by law.

21 (Source: P.A. 94-556, eff. 9-11-05; 94-1017, eff. 7-7-06.)