



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB0129

Introduced 1/31/2007, by Sen. Kwame Raoul

SYNOPSIS AS INTRODUCED:

720 ILCS 570/401
730 ILCS 5/5-5-3

from Ch. 56 1/2, par. 1401
from Ch. 38, par. 1005-5-3

Amends the Illinois Controlled Substances Act. Establishes penalties for the knowing manufacture or delivery of, or possession with intent to manufacture or deliver, fentanyl. Provides that 3 years shall be added to the term of imprisonment and the maximum sentence shall be increased by 3 years if the substance containing a controlled substance contains any amount of fentanyl (except for violations in which the controlled substance is fentanyl). Amends the Unified Code of Corrections. Provides that probation, periodic imprisonment, or conditional discharge may not be imposed for the knowing manufacture or delivery of, or possession with intent to manufacture or deliver, more than 5 grams of a substance containing fentanyl. Effective immediately.

LRB095 02351 RLC 22353 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

A BILL FOR

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 Illinois Controlled Substances Act is
5 amended by changing Section 401 as follows:

6 (720 ILCS 570/401) (from Ch. 56 1/2, par. 1401)

7 Sec. 401. Except as authorized by this Act, it is unlawful
8 for any person knowingly to manufacture or deliver, or possess
9 with intent to manufacture or deliver, a controlled substance
10 other than methamphetamine, a counterfeit substance, or a
11 controlled substance analog. A violation of this Act with
12 respect to each of the controlled substances listed herein
13 constitutes a single and separate violation of this Act. For
14 purposes of this Section, "controlled substance analog" or
15 "analog" means a substance which is intended for human
16 consumption, other than a controlled substance, that has a
17 chemical structure substantially similar to that of a
18 controlled substance in Schedule I or II, or that was
19 specifically designed to produce an effect substantially
20 similar to that of a controlled substance in Schedule I or II.
21 Examples of chemical classes in which controlled substance
22 analogs are found include, but are not limited to, the
23 following: phenethylamines, N-substituted piperidines,

1 morphinans, ecgonines, quinazolinones, substituted indoles,
2 and arylcycloalkylamines. For purposes of this Act, a
3 controlled substance analog shall be treated in the same manner
4 as the controlled substance to which it is substantially
5 similar.

6 (a) Any person who violates this Section with respect to
7 the following amounts of controlled or counterfeit substances
8 or controlled substance analogs, notwithstanding any of the
9 provisions of subsections (c), (d), (e), (f), (g) or (h) to the
10 contrary, is guilty of a Class X felony and shall be sentenced
11 to a term of imprisonment as provided in this subsection (a)
12 and fined as provided in subsection (b):

13 (1) (A) not less than 6 years and not more than 30
14 years with respect to 15 grams or more but less than
15 100 grams of a substance containing heroin, or an
16 analog thereof;

17 (B) not less than 9 years and not more than 40
18 years with respect to 100 grams or more but less than
19 400 grams of a substance containing heroin, or an
20 analog thereof;

21 (C) not less than 12 years and not more than 50
22 years with respect to 400 grams or more but less than
23 900 grams of a substance containing heroin, or an
24 analog thereof;

25 (D) not less than 15 years and not more than 60
26 years with respect to 900 grams or more of any

1 substance containing heroin, or an analog thereof;

2 (1.5) (A) not less than 6 years and not more than 30
3 years with respect to 15 grams or more but less than
4 100 grams of a substance containing fentanyl, or an
5 analog thereof;

6 (B) not less than 9 years and not more than 40
7 years with respect to 100 grams or more but less than
8 400 grams of a substance containing fentanyl, or an
9 analog thereof;

10 (C) not less than 12 years and not more than 50
11 years with respect to 400 grams or more but less than
12 900 grams of a substance containing fentanyl, or an
13 analog thereof;

14 (D) not less than 15 years and not more than 60
15 years with respect to 900 grams or more of a substance
16 containing fentanyl, or an analog thereof;

17 (2) (A) not less than 6 years and not more than 30
18 years with respect to 15 grams or more but less than
19 100 grams of a substance containing cocaine, or an
20 analog thereof;

21 (B) not less than 9 years and not more than 40
22 years with respect to 100 grams or more but less than
23 400 grams of a substance containing cocaine, or an
24 analog thereof;

25 (C) not less than 12 years and not more than 50
26 years with respect to 400 grams or more but less than

1 900 grams of a substance containing cocaine, or an
2 analog thereof;

3 (D) not less than 15 years and not more than 60
4 years with respect to 900 grams or more of any
5 substance containing cocaine, or an analog thereof;

6 (3) (A) not less than 6 years and not more than 30
7 years with respect to 15 grams or more but less than
8 100 grams of a substance containing morphine, or an
9 analog thereof;

10 (B) not less than 9 years and not more than 40
11 years with respect to 100 grams or more but less than
12 400 grams of a substance containing morphine, or an
13 analog thereof;

14 (C) not less than 12 years and not more than 50
15 years with respect to 400 grams or more but less than
16 900 grams of a substance containing morphine, or an
17 analog thereof;

18 (D) not less than 15 years and not more than 60
19 years with respect to 900 grams or more of a substance
20 containing morphine, or an analog thereof;

21 (4) 200 grams or more of any substance containing
22 peyote, or an analog thereof;

23 (5) 200 grams or more of any substance containing a
24 derivative of barbituric acid or any of the salts of a
25 derivative of barbituric acid, or an analog thereof;

26 (6) 200 grams or more of any substance containing

1 amphetamine or any salt of an optical isomer of
2 amphetamine, or an analog thereof;

3 (6.5) (blank);

4 (6.6) (blank);

5 (7) (A) not less than 6 years and not more than 30
6 years with respect to: (i) 15 grams or more but less
7 than 100 grams of a substance containing lysergic acid
8 diethylamide (LSD), or an analog thereof, or (ii) 15 or
9 more objects or 15 or more segregated parts of an
10 object or objects but less than 200 objects or 200
11 segregated parts of an object or objects containing in
12 them or having upon them any amounts of any substance
13 containing lysergic acid diethylamide (LSD), or an
14 analog thereof;

15 (B) not less than 9 years and not more than 40
16 years with respect to: (i) 100 grams or more but less
17 than 400 grams of a substance containing lysergic acid
18 diethylamide (LSD), or an analog thereof, or (ii) 200
19 or more objects or 200 or more segregated parts of an
20 object or objects but less than 600 objects or less
21 than 600 segregated parts of an object or objects
22 containing in them or having upon them any amount of
23 any substance containing lysergic acid diethylamide
24 (LSD), or an analog thereof;

25 (C) not less than 12 years and not more than 50
26 years with respect to: (i) 400 grams or more but less

1 than 900 grams of a substance containing lysergic acid
2 diethylamide (LSD), or an analog thereof, or (ii) 600
3 or more objects or 600 or more segregated parts of an
4 object or objects but less than 1500 objects or 1500
5 segregated parts of an object or objects containing in
6 them or having upon them any amount of any substance
7 containing lysergic acid diethylamide (LSD), or an
8 analog thereof;

9 (D) not less than 15 years and not more than 60
10 years with respect to: (i) 900 grams or more of any
11 substance containing lysergic acid diethylamide (LSD),
12 or an analog thereof, or (ii) 1500 or more objects or
13 1500 or more segregated parts of an object or objects
14 containing in them or having upon them any amount of a
15 substance containing lysergic acid diethylamide (LSD),
16 or an analog thereof;

17 (7.5) (A) not less than 6 years and not more than 30
18 years with respect to: (i) 15 grams or more but less
19 than 100 grams of a substance listed in paragraph (1),
20 (2), (2.1), (3), (14.1), (19), (20), (20.1), (21),
21 (25), or (26) of subsection (d) of Section 204, or an
22 analog or derivative thereof, or (ii) 15 or more pills,
23 tablets, caplets, capsules, or objects but less than
24 200 pills, tablets, caplets, capsules, or objects
25 containing in them or having upon them any amounts of
26 any substance listed in paragraph (1), (2), (2.1), (3),

1 (14.1), (19), (20), (20.1), (21), (25), or (26) of
2 subsection (d) of Section 204, or an analog or
3 derivative thereof;

4 (B) not less than 9 years and not more than 40
5 years with respect to: (i) 100 grams or more but less
6 than 400 grams of a substance listed in paragraph (1),
7 (2), (2.1), (3), (14.1), (19), (20), (20.1), (21),
8 (25), or (26) of subsection (d) of Section 204, or an
9 analog or derivative thereof, or (ii) 200 or more
10 pills, tablets, caplets, capsules, or objects but less
11 than 600 pills, tablets, caplets, capsules, or objects
12 containing in them or having upon them any amount of
13 any substance listed in paragraph (1), (2), (2.1), (3),
14 (14.1), (19), (20), (20.1), (21), (25), or (26) of
15 subsection (d) of Section 204, or an analog or
16 derivative thereof;

17 (C) not less than 12 years and not more than 50
18 years with respect to: (i) 400 grams or more but less
19 than 900 grams of a substance listed in paragraph (1),
20 (2), (2.1), (3), (14.1), (19), (20), (20.1), (21),
21 (25), or (26) of subsection (d) of Section 204, or an
22 analog or derivative thereof, or (ii) 600 or more
23 pills, tablets, caplets, capsules, or objects but less
24 than 1,500 pills, tablets, caplets, capsules, or
25 objects containing in them or having upon them any
26 amount of any substance listed in paragraph (1), (2),

1 (2.1), (3), (14.1), (19), (20), (20.1), (21), (25), or
2 (26) of subsection (d) of Section 204, or an analog or
3 derivative thereof;

4 (D) not less than 15 years and not more than 60
5 years with respect to: (i) 900 grams or more of any
6 substance listed in paragraph (1), (2), (2.1), (3),
7 (14.1), (19), (20), (20.1), (21), (25), or (26) of
8 subsection (d) of Section 204, or an analog or
9 derivative thereof, or (ii) 1,500 or more pills,
10 tablets, caplets, capsules, or objects containing in
11 them or having upon them any amount of a substance
12 listed in paragraph (1), (2), (2.1), (3), (14.1), (19),
13 (20), (20.1), (21), (25), or (26) of subsection (d) of
14 Section 204, or an analog or derivative thereof;

15 (8) 30 grams or more of any substance containing
16 pentazocine or any of the salts, isomers and salts of
17 isomers of pentazocine, or an analog thereof;

18 (9) 30 grams or more of any substance containing
19 methaqualone or any of the salts, isomers and salts of
20 isomers of methaqualone, or an analog thereof;

21 (10) 30 grams or more of any substance containing
22 phencyclidine or any of the salts, isomers and salts of
23 isomers of phencyclidine (PCP), or an analog thereof;

24 (10.5) 30 grams or more of any substance containing
25 ketamine or any of the salts, isomers and salts of isomers
26 of ketamine, or an analog thereof;

1 (11) 200 grams or more of any substance containing any
2 other controlled substance classified in Schedules I or II,
3 or an analog thereof, which is not otherwise included in
4 this subsection.

5 (b) Any person sentenced with respect to violations of
6 paragraph (1), (2), (3), (7), or (7.5) of subsection (a)
7 involving 100 grams or more of the controlled substance named
8 therein, may in addition to the penalties provided therein, be
9 fined an amount not more than \$500,000 or the full street value
10 of the controlled or counterfeit substance or controlled
11 substance analog, whichever is greater. The term "street value"
12 shall have the meaning ascribed in Section 110-5 of the Code of
13 Criminal Procedure of 1963. Any person sentenced with respect
14 to any other provision of subsection (a), may in addition to
15 the penalties provided therein, be fined an amount not to
16 exceed \$500,000.

17 (b-1) Excluding violations of this Act when the controlled
18 substance is fentanyl, any person sentenced to a term of
19 imprisonment with respect to violations of Section 401, 401.1,
20 405, 405.1, 405.2, or 407, when the substance containing the
21 controlled substance contains any amount of fentanyl, 3 years
22 shall be added to the term of imprisonment imposed by the
23 court, and the maximum sentence for the offense shall be
24 increased by 3 years.

25 (c) Any person who violates this Section with regard to the
26 following amounts of controlled or counterfeit substances or

1 controlled substance analogs, notwithstanding any of the
2 provisions of subsections (a), (b), (d), (e), (f), (g) or (h)
3 to the contrary, is guilty of a Class 1 felony. The fine for
4 violation of this subsection (c) shall not be more than
5 \$250,000:

6 (1) 1 gram or more but less than 15 grams of any
7 substance containing heroin, or an analog thereof;

8 (1.5) 1 gram or more but less than 15 grams of any
9 substance containing fentanyl, or an analog thereof;

10 (2) 1 gram or more but less than 15 grams of any
11 substance containing cocaine, or an analog thereof;

12 (3) 10 grams or more but less than 15 grams of any
13 substance containing morphine, or an analog thereof;

14 (4) 50 grams or more but less than 200 grams of any
15 substance containing peyote, or an analog thereof;

16 (5) 50 grams or more but less than 200 grams of any
17 substance containing a derivative of barbituric acid or any
18 of the salts of a derivative of barbituric acid, or an
19 analog thereof;

20 (6) 50 grams or more but less than 200 grams of any
21 substance containing amphetamine or any salt of an optical
22 isomer of amphetamine, or an analog thereof;

23 (6.5) (blank);

24 (7) (i) 5 grams or more but less than 15 grams of any
25 substance containing lysergic acid diethylamide (LSD), or
26 an analog thereof, or (ii) more than 10 objects or more

1 than 10 segregated parts of an object or objects but less
2 than 15 objects or less than 15 segregated parts of an
3 object containing in them or having upon them any amount of
4 any substance containing lysergic acid diethylamide (LSD),
5 or an analog thereof;

6 (7.5) (i) 5 grams or more but less than 15 grams of any
7 substance listed in paragraph (1), (2), (2.1), (3), (14.1),
8 (19), (20), (20.1), (21), (25), or (26) of subsection (d)
9 of Section 204, or an analog or derivative thereof, or (ii)
10 more than 10 pills, tablets, caplets, capsules, or objects
11 but less than 15 pills, tablets, caplets, capsules, or
12 objects containing in them or having upon them any amount
13 of any substance listed in paragraph (1), (2), (2.1), (3),
14 (14.1), (19), (20), (20.1), (21), (25), or (26) of
15 subsection (d) of Section 204, or an analog or derivative
16 thereof;

17 (8) 10 grams or more but less than 30 grams of any
18 substance containing pentazocine or any of the salts,
19 isomers and salts of isomers of pentazocine, or an analog
20 thereof;

21 (9) 10 grams or more but less than 30 grams of any
22 substance containing methaqualone or any of the salts,
23 isomers and salts of isomers of methaqualone, or an analog
24 thereof;

25 (10) 10 grams or more but less than 30 grams of any
26 substance containing phencyclidine or any of the salts,

1 isomers and salts of isomers of phencyclidine (PCP), or an
2 analog thereof;

3 (10.5) 10 grams or more but less than 30 grams of any
4 substance containing ketamine or any of the salts, isomers
5 and salts of isomers of ketamine, or an analog thereof;

6 (11) 50 grams or more but less than 200 grams of any
7 substance containing a substance classified in Schedules I
8 or II, or an analog thereof, which is not otherwise
9 included in this subsection.

10 (c-5) (Blank).

11 (d) Any person who violates this Section with regard to any
12 other amount of a controlled or counterfeit substance
13 classified in Schedules I or II, or an analog thereof, which is
14 (i) a narcotic drug, (ii) lysergic acid diethylamide (LSD) or
15 an analog thereof, or (iii) any substance containing
16 amphetamine or fentanyl or any salt or optical isomer of
17 amphetamine or fentanyl, or an analog thereof, is guilty of a
18 Class 2 felony. The fine for violation of this subsection (d)
19 shall not be more than \$200,000.

20 (d-5) (Blank).

21 (e) Any person who violates this Section with regard to any
22 other amount of a controlled substance other than
23 methamphetamine or counterfeit substance classified in
24 Schedule I or II, or an analog thereof, which substance is not
25 included under subsection (d) of this Section, is guilty of a
26 Class 3 felony. The fine for violation of this subsection (e)

1 shall not be more than \$150,000.

2 (f) Any person who violates this Section with regard to any
3 other amount of a controlled or counterfeit substance
4 classified in Schedule III is guilty of a Class 3 felony. The
5 fine for violation of this subsection (f) shall not be more
6 than \$125,000.

7 (g) Any person who violates this Section with regard to any
8 other amount of a controlled or counterfeit substance
9 classified in Schedule IV is guilty of a Class 3 felony. The
10 fine for violation of this subsection (g) shall not be more
11 than \$100,000.

12 (h) Any person who violates this Section with regard to any
13 other amount of a controlled or counterfeit substance
14 classified in Schedule V is guilty of a Class 3 felony. The
15 fine for violation of this subsection (h) shall not be more
16 than \$75,000.

17 (i) This Section does not apply to the manufacture,
18 possession or distribution of a substance in conformance with
19 the provisions of an approved new drug application or an
20 exemption for investigational use within the meaning of Section
21 505 of the Federal Food, Drug and Cosmetic Act.

22 (j) (Blank).

23 (Source: P.A. 93-278, eff. 1-1-04; 94-556, eff. 9-11-05.)

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

1 (730 ILCS 5/5-5-3) (from Ch. 38, par. 1005-5-3)
2 (Text of Section before amendment by P.A. 94-1035)
3 Sec. 5-5-3. Disposition.

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

7 (b) The following options shall be appropriate
8 dispositions, alone or in combination, for all felonies and
9 misdemeanors other than those identified in subsection (c) of
10 this Section:

11 (1) A period of probation.

12 (2) A term of periodic imprisonment.

13 (3) A term of conditional discharge.

14 (4) A term of imprisonment.

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

19 (6) A fine.

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

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

24 (9) A term of imprisonment in combination with a term
25 of probation when the offender has been admitted into a

1 drug court program under Section 20 of the Drug Court
2 Treatment Act.

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

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

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

18 (A) First degree murder where the death penalty is
19 not imposed.

20 (B) Attempted first degree murder.

21 (C) A Class X felony.

22 (D) A violation of Section 401.1 or 407 of the
23 Illinois Controlled Substances Act, or a violation of
24 subdivision (c) (1), (c) (1.5), or (c) (2) of Section 401
25 of that Act which relates to more than 5 grams of a
26 substance containing heroin, ~~or~~ cocaine, fentanyl, or

1 an analog thereof.

2 (E) A violation of Section 5.1 or 9 of the Cannabis
3 Control Act.

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

10 (F-5) A violation of Section 24-1, 24-1.1, or
11 24-1.6 of the Criminal Code of 1961 for which
12 imprisonment is prescribed in those Sections.

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

16 (H) Criminal sexual assault.

17 (I) Aggravated battery of a senior citizen.

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

20 Before July 1, 1994, for the purposes of this
21 paragraph, "organized gang" means an association of 5
22 or more persons, with an established hierarchy, that
23 encourages members of the association to perpetrate
24 crimes or provides support to the members of the
25 association who do commit crimes.

26 Beginning July 1, 1994, for the purposes of this

1 paragraph, "organized gang" has the meaning ascribed
2 to it in Section 10 of the Illinois Streetgang
3 Terrorism Omnibus Prevention Act.

4 (K) Vehicular hijacking.

5 (L) A second or subsequent conviction for the
6 offense of hate crime when the underlying offense upon
7 which the hate crime is based is felony aggravated
8 assault or felony mob action.

9 (M) A second or subsequent conviction for the
10 offense of institutional vandalism if the damage to the
11 property exceeds \$300.

12 (N) A Class 3 felony violation of paragraph (1) of
13 subsection (a) of Section 2 of the Firearm Owners
14 Identification Card Act.

15 (O) A violation of Section 12-6.1 of the Criminal
16 Code of 1961.

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

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

22 (R) A violation of Section 24-3A of the Criminal
23 Code of 1961.

24 (S) (Blank).

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

1 (3) (Blank).

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

6 (4.1) (Blank).

7 (4.2) Except as provided in paragraph (4.3) of this
8 subsection (c), a minimum of 100 hours of community service
9 shall be imposed for a second violation of Section 6-303 of
10 the Illinois Vehicle Code.

11 (4.3) A minimum term of imprisonment of 30 days or 300
12 hours of community service, as determined by the court,
13 shall be imposed for a second violation of subsection (c)
14 of Section 6-303 of the Illinois Vehicle Code.

15 (4.4) Except as provided in paragraph (4.5) and
16 paragraph (4.6) of this subsection (c), a minimum term of
17 imprisonment of 30 days or 300 hours of community service,
18 as determined by the court, shall be imposed for a third or
19 subsequent violation of Section 6-303 of the Illinois
20 Vehicle Code.

21 (4.5) A minimum term of imprisonment of 30 days shall
22 be imposed for a third violation of subsection (c) of
23 Section 6-303 of the Illinois Vehicle Code.

24 (4.6) A minimum term of imprisonment of 180 days shall
25 be imposed for a fourth or subsequent violation of
26 subsection (c) of Section 6-303 of the Illinois Vehicle

1 Code.

2 (5) The court may sentence an offender convicted of a
3 business offense or a petty offense or a corporation or
4 unincorporated association convicted of any offense to:

5 (A) a period of conditional discharge;

6 (B) a fine;

7 (C) make restitution to the victim under Section
8 5-5-6 of this Code.

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

17 (5.2) In addition to any penalties imposed under
18 paragraph (5) of this subsection (c), and except as
19 provided in paragraph (5.3), 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 at least 180 days but
23 not more than 2 years, if the violation resulted in injury
24 to another person.

25 (5.3) In addition to any penalties imposed under
26 paragraph (5) of this subsection (c), a person convicted of

1 violating subsection (c) of Section 11-907 of the Illinois
2 Vehicle Code shall have his or her driver's license,
3 permit, or privileges suspended for 2 years, if the
4 violation resulted in the death of another person.

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

9 (7) When a defendant is adjudged a habitual criminal
10 under Article 33B of the Criminal Code of 1961, the court
11 shall sentence the defendant to a term of natural life
12 imprisonment.

13 (8) When a defendant, over the age of 21 years, is
14 convicted of a Class 1 or Class 2 felony, after having
15 twice been convicted in any state or federal court of an
16 offense that contains the same elements as an offense now
17 classified in Illinois as a Class 2 or greater Class felony
18 and such charges are separately brought and tried and arise
19 out of different series of acts, such defendant shall be
20 sentenced as a Class X offender. This paragraph shall not
21 apply unless (1) the first felony was committed after the
22 effective date of this amendatory Act of 1977; and (2) the
23 second felony was committed after conviction on the first;
24 and (3) the third felony was committed after conviction on
25 the second. A person sentenced as a Class X offender under
26 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) (Blank).

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

24 (12) A person may not receive a disposition of court
25 supervision for a violation of Section 5-16 of the Boat
26 Registration and Safety Act if that person has previously

1 received a disposition of court supervision for a violation
2 of that Section.

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

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

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

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

5 (B) the defendant is willing to participate in a
6 court approved plan including but not limited to the
7 defendant's:

8 (i) removal from the household;

9 (ii) restricted contact with the victim;

10 (iii) continued financial support of the
11 family;

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

13 and

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

16 (2) the court orders the defendant to pay for the
17 victim's counseling services, to the extent that the court
18 finds, after considering the defendant's income and
19 assets, that the defendant is financially capable of paying
20 for such services, if the victim was under 18 years of age
21 at the time the offense was committed and requires
22 counseling as a result of the offense.

23 Probation may be revoked or modified pursuant to Section
24 5-6-4; except where the court determines at the hearing that
25 the defendant violated a condition of his or her probation
26 restricting contact with the victim or other family members or

1 commits another offense with the victim or other family
2 members, the court shall revoke the defendant's probation and
3 impose a term of imprisonment.

4 For the purposes of this Section, "family member" and
5 "victim" shall have the meanings ascribed to them in Section
6 12-12 of the Criminal Code of 1961.

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

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

1 in which the inmate must appear for the judge's inspection in
2 camera if requested by the judge. Acting in accordance with the
3 best interests of those in the courtroom, the judge shall have
4 the discretion to determine what if any precautions need to be
5 taken to prevent transmission of the disease in the courtroom.

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

1 obtain the results of any HIV test administered under this
2 Section, and the court shall grant the disclosure if the
3 State's Attorney shows it is relevant in order to prosecute a
4 charge of criminal transmission of HIV under Section 12-16.2 of
5 the Criminal Code of 1961 against the defendant. The court
6 shall order that the cost of any such test shall be paid by the
7 county and may be taxed as costs against the convicted
8 defendant.

9 (i) All fines and penalties imposed under this Section for
10 any violation of Chapters 3, 4, 6, and 11 of the Illinois
11 Vehicle Code, or a similar provision of a local ordinance, and
12 any violation of the Child Passenger Protection Act, or a
13 similar provision of a local ordinance, shall be collected and
14 disbursed by the circuit clerk as provided under Section 27.5
15 of the Clerks of Courts Act.

16 (j) In cases when prosecution for any violation of Section
17 11-6, 11-8, 11-9, 11-11, 11-14, 11-15, 11-15.1, 11-16, 11-17,
18 11-17.1, 11-18, 11-18.1, 11-19, 11-19.1, 11-19.2, 11-20.1,
19 11-21, 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the Criminal
20 Code of 1961, any violation of the Illinois Controlled
21 Substances Act, any violation of the Cannabis Control Act, or
22 any violation of the Methamphetamine Control and Community
23 Protection Act results in conviction, a disposition of court
24 supervision, or an order of probation granted under Section 10
25 of the Cannabis Control Act, Section 410 of the Illinois
26 Controlled Substance Act, or Section 70 of the Methamphetamine

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

15 (j-5) A defendant at least 17 years of age who is convicted
16 of a felony and who has not been previously convicted of a
17 misdemeanor or felony and who is sentenced to a term of
18 imprisonment in the Illinois Department of Corrections shall as
19 a condition of his or her sentence be required by the court to
20 attend educational courses designed to prepare the defendant
21 for a high school diploma and to work toward a high school
22 diploma or to work toward passing the high school level Test of
23 General Educational Development (GED) or to work toward
24 completing a vocational training program offered by the
25 Department of Corrections. If a defendant fails to complete the
26 educational training required by his or her sentence during the

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

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

24 (l) (A) Except as provided in paragraph (C) of subsection
25 (l), whenever a defendant, who is an alien as defined by
26 the Immigration and Nationality Act, is convicted of any

1 felony or misdemeanor offense, the court after sentencing
2 the defendant may, upon motion of the State's Attorney,
3 hold sentence in abeyance and remand the defendant to the
4 custody of the Attorney General of the United States or his
5 or her designated agent to be deported 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 Otherwise, the defendant shall be sentenced as
13 provided in this Chapter V.

14 (B) If the defendant has already been sentenced for a
15 felony or misdemeanor offense, or has been placed on
16 probation under Section 10 of the Cannabis Control Act,
17 Section 410 of the Illinois Controlled Substances Act, or
18 Section 70 of the Methamphetamine Control and Community
19 Protection Act, the court may, upon motion of the State's
20 Attorney to suspend the sentence imposed, commit the
21 defendant to the custody of the Attorney General of the
22 United States or his or her designated agent when:

23 (1) a final order of deportation has been issued
24 against the defendant pursuant to proceedings under
25 the Immigration and Nationality Act, and

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

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

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

22 (n) The court may sentence a person convicted of a
23 violation of Section 12-19, 12-21, or 16-1.3 of the Criminal
24 Code of 1961 (i) to an impact incarceration program if the
25 person is otherwise eligible for that program under Section
26 5-8-1.1, (ii) to community service, or (iii) if the person is

1 an addict or alcoholic, as defined in the Alcoholism and Other
2 Drug Abuse and Dependency Act, to a substance or alcohol abuse
3 program licensed under that Act.

4 (o) Whenever a person is convicted of a sex offense as
5 defined in Section 2 of the Sex Offender Registration Act, the
6 defendant's driver's license or permit shall be subject to
7 renewal on an annual basis in accordance with the provisions of
8 license renewal established by the Secretary of State.

9 (Source: P.A. 93-44, eff. 7-1-03; 93-156, eff. 1-1-04; 93-169,
10 eff. 7-10-03; 93-301, eff. 1-1-04; 93-419, eff. 1-1-04; 93-546,
11 eff. 1-1-04; 93-694, eff. 7-9-04; 93-782, eff. 1-1-05; 93-800,
12 eff. 1-1-05; 93-1014, eff. 1-1-05; 94-72, eff. 1-1-06; 94-556,
13 eff. 9-11-05; 94-993, eff. 1-1-07.)

14 (Text of Section after amendment by P.A. 94-1035)

15 Sec. 5-5-3. Disposition.

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

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

23 (1) A period of probation.

24 (2) A term of periodic imprisonment.

25 (3) A term of conditional discharge.

1 (4) A term of imprisonment.

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

6 (6) A fine.

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

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

11 (9) A term of imprisonment in combination with a term
12 of probation when the offender has been admitted into a
13 drug court program under Section 20 of the Drug Court
14 Treatment Act.

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

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

23 (2) A period of probation, a term of periodic
24 imprisonment or conditional discharge shall not be imposed
25 for the following offenses. The court shall sentence the
26 offender to not less than the minimum term of imprisonment

1 set forth in this Code for the following offenses, and may
2 order a fine or restitution or both in conjunction with
3 such term of imprisonment:

4 (A) First degree murder where the death penalty is
5 not imposed.

6 (B) Attempted first degree murder.

7 (C) A Class X felony.

8 (D) A violation of Section 401.1 or 407 of the
9 Illinois Controlled Substances Act, or a violation of
10 subdivision (c) (1), (c) (1.5), or (c) (2) of Section 401
11 of that Act which relates to more than 5 grams of a
12 substance containing heroin, ~~or~~ cocaine, fentanyl, or
13 an analog thereof.

14 (E) A violation of Section 5.1 or 9 of the Cannabis
15 Control Act.

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

22 (F-5) A violation of Section 24-1, 24-1.1, or
23 24-1.6 of the Criminal Code of 1961 for which
24 imprisonment is prescribed in those Sections.

25 (G) Residential burglary, except as otherwise
26 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.

1 (O) A violation of Section 12-6.1 of the Criminal
2 Code of 1961.

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

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

8 (R) A violation of Section 24-3A of the Criminal
9 Code of 1961.

10 (S) (Blank).

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

13 (3) (Blank).

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

18 (4.1) (Blank).

19 (4.2) Except as provided in paragraph (4.3) of this
20 subsection (c), a minimum of 100 hours of community service
21 shall be imposed for a second violation of Section 6-303 of
22 the Illinois Vehicle Code.

23 (4.3) A minimum term of imprisonment of 30 days or 300
24 hours of community service, as determined by the court,
25 shall be imposed for a second violation of subsection (c)
26 of Section 6-303 of the Illinois Vehicle Code.

1 (4.4) Except as provided in paragraph (4.5) and
2 paragraph (4.6) of this subsection (c), a minimum term of
3 imprisonment of 30 days or 300 hours of community service,
4 as determined by the court, shall be imposed for a third or
5 subsequent violation of Section 6-303 of the Illinois
6 Vehicle Code.

7 (4.5) A minimum term of imprisonment of 30 days shall
8 be imposed for a third violation of subsection (c) of
9 Section 6-303 of the Illinois Vehicle Code.

10 (4.6) A minimum term of imprisonment of 180 days shall
11 be imposed for a fourth or subsequent violation of
12 subsection (c) of Section 6-303 of the Illinois Vehicle
13 Code.

14 (5) The court may sentence an offender convicted of a
15 business offense or a petty offense or a corporation or
16 unincorporated association convicted of any offense to:

17 (A) a period of conditional discharge;

18 (B) a fine;

19 (C) make restitution to the victim under Section
20 5-5-6 of this Code.

21 (5.1) In addition to any penalties imposed under
22 paragraph (5) of this subsection (c), and except as
23 provided in paragraph (5.2) or (5.3), a person convicted of
24 violating subsection (c) of Section 11-907 of the Illinois
25 Vehicle Code shall have his or her driver's license,
26 permit, or privileges suspended for at least 90 days but

1 not more than one year, if the violation resulted in damage
2 to the property of another person.

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

11 (5.3) In addition to any penalties imposed under
12 paragraph (5) of this subsection (c), 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 2 years, if the
16 violation resulted in the death of another person.

17 (5.4) In addition to any penalties imposed under
18 paragraph (5) of this subsection (c), a person convicted of
19 violating Section 3-707 of the Illinois Vehicle Code shall
20 have his or her driver's license, permit, or privileges
21 suspended for 3 months and until he or she has paid a
22 reinstatement fee of \$100.

23 (5.5) In addition to any penalties imposed under
24 paragraph (5) of this subsection (c), a person convicted of
25 violating Section 3-707 of the Illinois Vehicle Code during
26 a period in which his or her driver's license, permit, or

1 privileges were suspended for a previous violation of that
2 Section shall have his or her driver's license, permit, or
3 privileges suspended for an additional 6 months after the
4 expiration of the original 3-month suspension and until he
5 or she has paid a reinstatement fee of \$100.

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

10 (7) When a defendant is adjudged a habitual criminal
11 under Article 33B of the Criminal Code of 1961, the court
12 shall sentence the defendant to a term of natural life
13 imprisonment.

14 (8) When a defendant, over the age of 21 years, is
15 convicted of a Class 1 or Class 2 felony, after having
16 twice been convicted in any state or federal court of an
17 offense that contains the same elements as an offense now
18 classified in Illinois as a Class 2 or greater Class felony
19 and such charges are separately brought and tried and arise
20 out of different series of acts, such defendant shall be
21 sentenced as a Class X offender. This paragraph shall not
22 apply unless (1) the first felony was committed after the
23 effective date of this amendatory Act of 1977; and (2) the
24 second felony was committed after conviction on the first;
25 and (3) the third felony was committed after conviction on
26 the second. A person sentenced as a Class X offender under

1 this paragraph is not eligible to apply for treatment as a
2 condition of probation as provided by Section 40-10 of the
3 Alcoholism and Other Drug Abuse and Dependency Act.

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

7 (10) (Blank).

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

25 (12) A person may not receive a disposition of court
26 supervision for a violation of Section 5-16 of the Boat

1 Registration and Safety Act if that person has previously
2 received a disposition of court supervision for a violation
3 of that Section.

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

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

1 may impose a sentence of probation only where:

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

3 (A) the defendant is willing to undergo a court
4 approved counseling program for a minimum duration of 2
5 years; or

6 (B) the defendant is willing to participate in a
7 court approved plan including but not limited to the
8 defendant's:

9 (i) removal from the household;

10 (ii) restricted contact with the victim;

11 (iii) continued financial support of the
12 family;

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

14 and

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

17 (2) the court orders the defendant to pay for the
18 victim's counseling services, to the extent that the court
19 finds, after considering the defendant's income and
20 assets, that the defendant is financially capable of paying
21 for such services, if the victim was under 18 years of age
22 at the time the offense was committed and requires
23 counseling as a result of the offense.

24 Probation may be revoked or modified pursuant to Section
25 5-6-4; except where the court determines at the hearing that
26 the defendant violated a condition of his or her probation

1 restricting contact with the victim or other family members or
2 commits another offense with the victim or other family
3 members, the court shall revoke the defendant's probation and
4 impose a term of imprisonment.

5 For the purposes of this Section, "family member" and
6 "victim" shall have the meanings ascribed to them in Section
7 12-12 of the Criminal Code of 1961.

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

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

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

23 (g-5) When an inmate is tested for an airborne communicable
24 disease, as determined by the Illinois Department of Public
25 Health including but not limited to tuberculosis, the results
26 of the test shall be personally delivered by the warden or his

1 or her designee in a sealed envelope to the judge of the court
2 in which the inmate must appear for the judge's inspection in
3 camera if requested by the judge. Acting in accordance with the
4 best interests of those in the courtroom, the judge shall have
5 the discretion to determine what if any precautions need to be
6 taken to prevent transmission of the disease in the courtroom.

7 (h) Whenever a defendant is convicted of an offense under
8 Section 1 or 2 of the Hypodermic Syringes and Needles Act, the
9 defendant shall undergo medical testing to determine whether
10 the defendant has been exposed to human immunodeficiency virus
11 (HIV) or any other identified causative agent of acquired
12 immunodeficiency syndrome (AIDS). Except as otherwise provided
13 by law, the results of such test shall be kept strictly
14 confidential by all medical personnel involved in the testing
15 and must be personally delivered in a sealed envelope to the
16 judge of the court in which the conviction was entered for the
17 judge's inspection in camera. Acting in accordance with the
18 best interests of the public, the judge shall have the
19 discretion to determine to whom, if anyone, the results of the
20 testing may be revealed. The court shall notify the defendant
21 of a positive test showing an infection with the human
22 immunodeficiency virus (HIV). The court shall provide
23 information on the availability of HIV testing and counseling
24 at Department of Public Health facilities to all parties to
25 whom the results of the testing are revealed and shall direct
26 the State's Attorney to provide the information to the victim

1 when possible. A State's Attorney may petition the court to
2 obtain the results of any HIV test administered under this
3 Section, and the court shall grant the disclosure if the
4 State's Attorney shows it is relevant in order to prosecute a
5 charge of criminal transmission of HIV under Section 12-16.2 of
6 the Criminal Code of 1961 against the defendant. The court
7 shall order that the cost of any such test shall be paid by the
8 county and may be taxed as costs against the convicted
9 defendant.

10 (i) All fines and penalties imposed under this Section for
11 any violation of Chapters 3, 4, 6, and 11 of the Illinois
12 Vehicle Code, or a similar provision of a local ordinance, and
13 any violation of the Child Passenger Protection Act, or a
14 similar provision of a local ordinance, shall be collected and
15 disbursed by the circuit clerk as provided under Section 27.5
16 of the Clerks of Courts Act.

17 (j) In cases when prosecution for any violation of Section
18 11-6, 11-8, 11-9, 11-11, 11-14, 11-15, 11-15.1, 11-16, 11-17,
19 11-17.1, 11-18, 11-18.1, 11-19, 11-19.1, 11-19.2, 11-20.1,
20 11-21, 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the Criminal
21 Code of 1961, any violation of the Illinois Controlled
22 Substances Act, any violation of the Cannabis Control Act, or
23 any violation of the Methamphetamine Control and Community
24 Protection Act results in conviction, a disposition of court
25 supervision, or an order of probation granted under Section 10
26 of the Cannabis Control Act, Section 410 of the Illinois

1 Controlled Substance Act, or Section 70 of the Methamphetamine
2 Control and Community Protection Act of a defendant, the court
3 shall determine whether the defendant is employed by a facility
4 or center as defined under the Child Care Act of 1969, a public
5 or private elementary or secondary school, or otherwise works
6 with children under 18 years of age on a daily basis. When a
7 defendant is so employed, the court shall order the Clerk of
8 the Court to send a copy of the judgment of conviction or order
9 of supervision or probation to the defendant's employer by
10 certified mail. If the employer of the defendant is a school,
11 the Clerk of the Court shall direct the mailing of a copy of
12 the judgment of conviction or order of supervision or probation
13 to the appropriate regional superintendent of schools. The
14 regional superintendent of schools shall notify the State Board
15 of Education of any notification under this subsection.

16 (j-5) A defendant at least 17 years of age who is convicted
17 of a felony and who has not been previously convicted of a
18 misdemeanor or felony and who is sentenced to a term of
19 imprisonment in the Illinois Department of Corrections shall as
20 a condition of his or her sentence be required by the court to
21 attend educational courses designed to prepare the defendant
22 for a high school diploma and to work toward a high school
23 diploma or to work toward passing the high school level Test of
24 General Educational Development (GED) or to work toward
25 completing a vocational training program offered by the
26 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 (l) (A) Except as provided in paragraph (C) of subsection

26 (1), whenever a defendant, who is an alien as defined by

1 the Immigration and Nationality Act, is convicted of any
2 felony or misdemeanor offense, the court after sentencing
3 the defendant may, upon motion of the State's Attorney,
4 hold sentence in abeyance and remand the defendant to the
5 custody of the Attorney General of the United States or his
6 or her designated agent to be deported when:

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

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

13 Otherwise, the defendant shall be sentenced as
14 provided in this Chapter V.

15 (B) If the defendant has already been sentenced for a
16 felony or misdemeanor offense, or has been placed on
17 probation under Section 10 of the Cannabis Control Act,
18 Section 410 of the Illinois Controlled Substances Act, or
19 Section 70 of the Methamphetamine Control and Community
20 Protection Act, the court may, upon motion of the State's
21 Attorney to suspend the sentence imposed, commit the
22 defendant to the custody of the Attorney General of the
23 United States or his or her designated agent when:

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

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

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

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

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

23 (n) The court may sentence a person convicted of a
24 violation of Section 12-19, 12-21, or 16-1.3 of the Criminal
25 Code of 1961 (i) to an impact incarceration program if the
26 person is otherwise eligible for that program under Section

1 5-8-1.1, (ii) to community service, or (iii) if the person is
2 an addict or alcoholic, as defined in the Alcoholism and Other
3 Drug Abuse and Dependency Act, to a substance or alcohol abuse
4 program licensed under that Act.

5 (o) Whenever a person is convicted of a sex offense as
6 defined in Section 2 of the Sex Offender Registration Act, the
7 defendant's driver's license or permit shall be subject to
8 renewal on an annual basis in accordance with the provisions of
9 license renewal established by the Secretary of State.

10 (Source: P.A. 93-44, eff. 7-1-03; 93-156, eff. 1-1-04; 93-169,
11 eff. 7-10-03; 93-301, eff. 1-1-04; 93-419, eff. 1-1-04; 93-546,
12 eff. 1-1-04; 93-694, eff. 7-9-04; 93-782, eff. 1-1-05; 93-800,
13 eff. 1-1-05; 93-1014, eff. 1-1-05; 94-72, eff. 1-1-06; 94-556,
14 eff. 9-11-05; 94-993, eff. 1-1-07; 94-1035, eff. 7-1-07;
15 revised 8-28-06.)

16 Section 95. No acceleration or delay. Where this Act makes
17 changes in a statute that is represented in this Act by text
18 that is not yet or no longer in effect (for example, a Section
19 represented by multiple versions), the use of that text does
20 not accelerate or delay the taking effect of (i) the changes
21 made by this Act or (ii) provisions derived from any other
22 Public Act.

23 Section 99. Effective date. This Act takes effect upon
24 becoming law.