



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

**HB4222**

Introduced 2/27/2009, by Rep. Arthur L. Turner

#### SYNOPSIS AS INTRODUCED:

New Act

720 ILCS 570/102

from Ch. 56 1/2, par. 1102

720 ILCS 570/410.5 new

720 ILCS 646/10

720 ILCS 646/70.5 new

Creates the Substance Abuse and Crime Prevention Act. Amends the Illinois Controlled Substances Act and the Methamphetamine Control and Community Protection Act. Provides that any person convicted of a nonviolent drug possession offense shall receive probation; includes certain exceptions. Provides that as a condition of probation, the court shall require participation in and completion of an appropriate drug treatment program. Provides that the court may also impose as a condition of probation participation in vocational training, family counseling, literacy training, or community service, or a combination of those conditions. Provides that a court may not impose incarceration as an additional condition of probation. Provides that in addition to any fine assessed under other provisions of law, the trial judge may require any person convicted of a nonviolent drug possession offense who is reasonably able to do so to contribute to the cost of his or her own placement in a drug treatment program.

LRB096 04065 RLC 14103 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning substance abuse treatment.

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

4 Section 1. Short title. This Act may be cited as the  
5 Substance Abuse and Crime Prevention Act.

6 Section 5. Findings and declarations. The People of the  
7 State of Illinois hereby find and declare all of the following:

8 (1) Substance abuse treatment is a proven public safety  
9 and health measure. Nonviolent, drug-dependent criminal  
10 offenders who receive drug treatment are much less likely  
11 to abuse drugs and commit future crimes, and are likelier  
12 to live healthier, more stable, and more productive lives.

13 (2) Community safety and health are promoted, and  
14 taxpayer dollars are saved, when nonviolent persons  
15 convicted of drug possession or drug use are provided  
16 appropriate community-based treatment instead of  
17 incarceration.

18 (3) In 1996 Arizona voters, by a 2 to 1, margin passed  
19 the Drug Medicalization, Prevention, and Control Act,  
20 which diverted nonviolent drug offenders into drug  
21 treatment and education services rather than  
22 incarceration. According to a Report Card prepared by the  
23 Arizona Supreme Court, the Arizona law is resulting in

1 safer communities and more substance abusing probationers  
2 in recovery, has already saved state taxpayers millions of  
3 dollars, and is helping more than 75% of program  
4 participants to remain drug free.

5 Section 10. Purpose and intent. The People of the State of  
6 Illinois hereby declare their purpose and intent in enacting  
7 this Act to be as follows:

8 (1) to divert from incarceration into community-based  
9 substance abuse treatment programs nonviolent defendants,  
10 probationers, and parolees charged with simple drug  
11 possession or drug use offenses;

12 (2) to halt the wasteful expenditure of hundreds of  
13 millions of dollars each year on the incarceration and  
14 re-incarceration of nonviolent drug users who would be  
15 better served by community-based treatment;

16 (3) to enhance public safety by reducing drug-related  
17 crime and preserving jails and prison cells for serious and  
18 violent offenders; and

19 (4) to improve public health by reducing drug abuse  
20 and drug dependence through proven and effective drug  
21 treatment strategies.

22 Section 105. The Illinois Controlled Substances Act is  
23 amended by changing Section 102 and by adding Section 410.5 as  
24 follows:

1 (720 ILCS 570/102) (from Ch. 56 1/2, par. 1102)

2 Sec. 102. Definitions. As used in this Act, unless the  
3 context otherwise requires:

4 (a) "Addict" means any person who habitually uses any drug,  
5 chemical, substance or dangerous drug other than alcohol so as  
6 to endanger the public morals, health, safety or welfare or who  
7 is so far addicted to the use of a dangerous drug or controlled  
8 substance other than alcohol as to have lost the power of self  
9 control with reference to his addiction.

10 (b) "Administer" means the direct application of a  
11 controlled substance, whether by injection, inhalation,  
12 ingestion, or any other means, to the body of a patient,  
13 research subject, or animal (as defined by the Humane  
14 Euthanasia in Animal Shelters Act) by:

15 (1) a practitioner (or, in his presence, by his  
16 authorized agent),

17 (2) the patient or research subject at the lawful  
18 direction of the practitioner, or

19 (3) a euthanasia technician as defined by the Humane  
20 Euthanasia in Animal Shelters Act.

21 (c) "Agent" means an authorized person who acts on behalf  
22 of or at the direction of a manufacturer, distributor, or  
23 dispenser. It does not include a common or contract carrier,  
24 public warehouseman or employee of the carrier or warehouseman.

25 (c-1) "Anabolic Steroids" means any drug or hormonal

1 substance, chemically and pharmacologically related to  
2 testosterone (other than estrogens, progestins, and  
3 corticosteroids) that promotes muscle growth, and includes:

- 4 (i) boldenone,
- 5 (ii) chlorotestosterone,
- 6 (iii) chostebol,
- 7 (iv) dehydrochlormethyltestosterone,
- 8 (v) dihydrotestosterone,
- 9 (vi) drostanolone,
- 10 (vii) ethylestrenol,
- 11 (viii) fluoxymesterone,
- 12 (ix) formebulone,
- 13 (x) mesterolone,
- 14 (xi) methandienone,
- 15 (xii) methandranone,
- 16 (xiii) methandriol,
- 17 (xiv) methandrostenolone,
- 18 (xv) methenolone,
- 19 (xvi) methyltestosterone,
- 20 (xvii) mibolerone,
- 21 (xviii) nandrolone,
- 22 (xix) norethandrolone,
- 23 (xx) oxandrolone,
- 24 (xxi) oxymesterone,
- 25 (xxii) oxymetholone,
- 26 (xxiii) stanolone,

1           (xxiv) stanozolol,  
2           (xxv) testolactone,  
3           (xxvi) testosterone,  
4           (xxvii) trenbolone, and  
5           (xxviii) any salt, ester, or isomer of a drug or  
6           substance described or listed in this paragraph, if  
7           that salt, ester, or isomer promotes muscle growth.

8           Any person who is otherwise lawfully in possession of an  
9           anabolic steroid, or who otherwise lawfully manufactures,  
10          distributes, dispenses, delivers, or possesses with intent to  
11          deliver an anabolic steroid, which anabolic steroid is  
12          expressly intended for and lawfully allowed to be administered  
13          through implants to livestock or other nonhuman species, and  
14          which is approved by the Secretary of Health and Human Services  
15          for such administration, and which the person intends to  
16          administer or have administered through such implants, shall  
17          not be considered to be in unauthorized possession or to  
18          unlawfully manufacture, distribute, dispense, deliver, or  
19          possess with intent to deliver such anabolic steroid for  
20          purposes of this Act.

21          (d) "Administration" means the Drug Enforcement  
22          Administration, United States Department of Justice, or its  
23          successor agency.

24          (e) "Control" means to add a drug or other substance, or  
25          immediate precursor, to a Schedule under Article II of this Act  
26          whether by transfer from another Schedule or otherwise.

1 (f) "Controlled Substance" means a drug, substance, or  
2 immediate precursor in the Schedules of Article II of this Act.

3 (g) "Counterfeit substance" means a controlled substance,  
4 which, or the container or labeling of which, without  
5 authorization bears the trademark, trade name, or other  
6 identifying mark, imprint, number or device, or any likeness  
7 thereof, of a manufacturer, distributor, or dispenser other  
8 than the person who in fact manufactured, distributed, or  
9 dispensed the substance.

10 (h) "Deliver" or "delivery" means the actual, constructive  
11 or attempted transfer of possession of a controlled substance,  
12 with or without consideration, whether or not there is an  
13 agency relationship.

14 (i) "Department" means the Illinois Department of Human  
15 Services (as successor to the Department of Alcoholism and  
16 Substance Abuse) or its successor agency.

17 (j) "Department of State Police" means the Department of  
18 State Police of the State of Illinois or its successor agency.

19 (k) "Department of Corrections" means the Department of  
20 Corrections of the State of Illinois or its successor agency.

21 (l) "Department of Professional Regulation" means the  
22 Department of Professional Regulation of the State of Illinois  
23 or its successor agency.

24 (m) "Depressant" or "stimulant substance" means:

25 (1) a drug which contains any quantity of (i)  
26 barbituric acid or any of the salts of barbituric acid

1 which has been designated as habit forming under section  
2 502 (d) of the Federal Food, Drug, and Cosmetic Act (21  
3 U.S.C. 352 (d)); or

4 (2) a drug which contains any quantity of (i)  
5 amphetamine or methamphetamine and any of their optical  
6 isomers; (ii) any salt of amphetamine or methamphetamine or  
7 any salt of an optical isomer of amphetamine; or (iii) any  
8 substance which the Department, after investigation, has  
9 found to be, and by rule designated as, habit forming  
10 because of its depressant or stimulant effect on the  
11 central nervous system; or

12 (3) lysergic acid diethylamide; or

13 (4) any drug which contains any quantity of a substance  
14 which the Department, after investigation, has found to  
15 have, and by rule designated as having, a potential for  
16 abuse because of its depressant or stimulant effect on the  
17 central nervous system or its hallucinogenic effect.

18 (n) (Blank).

19 (o) "Director" means the Director of the Department of  
20 State Police or the Department of Professional Regulation or  
21 his designated agents.

22 (p) "Dispense" means to deliver a controlled substance to  
23 an ultimate user or research subject by or pursuant to the  
24 lawful order of a prescriber, including the prescribing,  
25 administering, packaging, labeling, or compounding necessary  
26 to prepare the substance for that delivery.



1 (q) "Dispenser" means a practitioner who dispenses.

2 (r) "Distribute" means to deliver, other than by  
3 administering or dispensing, a controlled substance.

4 (s) "Distributor" means a person who distributes.

5 (t) "Drug" means (1) substances recognized as drugs in the  
6 official United States Pharmacopoeia, Official Homeopathic  
7 Pharmacopoeia of the United States, or official National  
8 Formulary, or any supplement to any of them; (2) substances  
9 intended for use in diagnosis, cure, mitigation, treatment, or  
10 prevention of disease in man or animals; (3) substances (other  
11 than food) intended to affect the structure of any function of  
12 the body of man or animals and (4) substances intended for use  
13 as a component of any article specified in clause (1), (2), or  
14 (3) of this subsection. It does not include devices or their  
15 components, parts, or accessories.

16 (t-3) "Drug treatment program" or "drug treatment" means a  
17 community drug treatment program licensed by the Department of  
18 Human Services under the Alcoholism and Other Drug Abuse and  
19 Dependency Act, which may include one or more of the following:  
20 outpatient treatment, half-way house treatment, narcotic  
21 replacement therapy, drug education or prevention courses, or  
22 limited inpatient or residential drug treatment as needed to  
23 address special detoxification or relapse situations or severe  
24 dependence. "Drug treatment program" or "drug treatment" does  
25 not include drug treatment programs offered in a prison or jail  
26 facility.

1 (t-5) "Euthanasia agency" means an entity certified by the  
2 Department of Professional Regulation for the purpose of animal  
3 euthanasia that holds an animal control facility license or  
4 animal shelter license under the Animal Welfare Act. A  
5 euthanasia agency is authorized to purchase, store, possess,  
6 and utilize Schedule II nonnarcotic and Schedule III  
7 nonnarcotic drugs for the sole purpose of animal euthanasia.

8 (t-10) "Euthanasia drugs" means Schedule II or Schedule III  
9 substances (nonnarcotic controlled substances) that are used  
10 by a euthanasia agency for the purpose of animal euthanasia.

11 (u) "Good faith" means the prescribing or dispensing of a  
12 controlled substance by a practitioner in the regular course of  
13 professional treatment to or for any person who is under his  
14 treatment for a pathology or condition other than that  
15 individual's physical or psychological dependence upon or  
16 addiction to a controlled substance, except as provided herein:  
17 and application of the term to a pharmacist shall mean the  
18 dispensing of a controlled substance pursuant to the  
19 prescriber's order which in the professional judgment of the  
20 pharmacist is lawful. The pharmacist shall be guided by  
21 accepted professional standards including, but not limited to  
22 the following, in making the judgment:

23 (1) lack of consistency of doctor-patient  
24 relationship,

25 (2) frequency of prescriptions for same drug by one  
26 prescriber for large numbers of patients,

- 1 (3) quantities beyond those normally prescribed,  
2 (4) unusual dosages,  
3 (5) unusual geographic distances between patient,  
4 pharmacist and prescriber,  
5 (6) consistent prescribing of habit-forming drugs.

6 (u-1) "Home infusion services" means services provided by a  
7 pharmacy in compounding solutions for direct administration to  
8 a patient in a private residence, long-term care facility, or  
9 hospice setting by means of parenteral, intravenous,  
10 intramuscular, subcutaneous, or intraspinal infusion.

11 (v) "Immediate precursor" means a substance:

12 (1) which the Department has found to be and by rule  
13 designated as being a principal compound used, or produced  
14 primarily for use, in the manufacture of a controlled  
15 substance;

16 (2) which is an immediate chemical intermediary used or  
17 likely to be used in the manufacture of such controlled  
18 substance; and

19 (3) the control of which is necessary to prevent,  
20 curtail or limit the manufacture of such controlled  
21 substance.

22 (w) "Instructional activities" means the acts of teaching,  
23 educating or instructing by practitioners using controlled  
24 substances within educational facilities approved by the State  
25 Board of Education or its successor agency.

26 (x) "Local authorities" means a duly organized State,

1 County or Municipal peace unit or police force.

2 (y) "Look-alike substance" means a substance, other than a  
3 controlled substance which (1) by overall dosage unit  
4 appearance, including shape, color, size, markings or lack  
5 thereof, taste, consistency, or any other identifying physical  
6 characteristic of the substance, would lead a reasonable person  
7 to believe that the substance is a controlled substance, or (2)  
8 is expressly or impliedly represented to be a controlled  
9 substance or is distributed under circumstances which would  
10 lead a reasonable person to believe that the substance is a  
11 controlled substance. For the purpose of determining whether  
12 the representations made or the circumstances of the  
13 distribution would lead a reasonable person to believe the  
14 substance to be a controlled substance under this clause (2) of  
15 subsection (y), the court or other authority may consider the  
16 following factors in addition to any other factor that may be  
17 relevant:

18 (a) statements made by the owner or person in control  
19 of the substance concerning its nature, use or effect;

20 (b) statements made to the buyer or recipient that the  
21 substance may be resold for profit;

22 (c) whether the substance is packaged in a manner  
23 normally used for the illegal distribution of controlled  
24 substances;

25 (d) whether the distribution or attempted distribution  
26 included an exchange of or demand for money or other

1 property as consideration, and whether the amount of the  
2 consideration was substantially greater than the  
3 reasonable retail market value of the substance.

4 Clause (1) of this subsection (y) shall not apply to a  
5 noncontrolled substance in its finished dosage form that was  
6 initially introduced into commerce prior to the initial  
7 introduction into commerce of a controlled substance in its  
8 finished dosage form which it may substantially resemble.

9 Nothing in this subsection (y) prohibits the dispensing or  
10 distributing of noncontrolled substances by persons authorized  
11 to dispense and distribute controlled substances under this  
12 Act, provided that such action would be deemed to be carried  
13 out in good faith under subsection (u) if the substances  
14 involved were controlled substances.

15 Nothing in this subsection (y) or in this Act prohibits the  
16 manufacture, preparation, propagation, compounding,  
17 processing, packaging, advertising or distribution of a drug or  
18 drugs by any person registered pursuant to Section 510 of the  
19 Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360).

20 (y-1) "Mail-order pharmacy" means a pharmacy that is  
21 located in a state of the United States, other than Illinois,  
22 that delivers, dispenses or distributes, through the United  
23 States Postal Service or other common carrier, to Illinois  
24 residents, any substance which requires a prescription.

25 (z) "Manufacture" means the production, preparation,  
26 propagation, compounding, conversion or processing of a

1 controlled substance other than methamphetamine, either  
2 directly or indirectly, by extraction from substances of  
3 natural origin, or independently by means of chemical  
4 synthesis, or by a combination of extraction and chemical  
5 synthesis, and includes any packaging or repackaging of the  
6 substance or labeling of its container, except that this term  
7 does not include:

8 (1) by an ultimate user, the preparation or compounding  
9 of a controlled substance for his own use; or

10 (2) by a practitioner, or his authorized agent under  
11 his supervision, the preparation, compounding, packaging,  
12 or labeling of a controlled substance:

13 (a) as an incident to his administering or  
14 dispensing of a controlled substance in the course of  
15 his professional practice; or

16 (b) as an incident to lawful research, teaching or  
17 chemical analysis and not for sale.

18 (z-1) (Blank).

19 (z-5) "Misdemeanor not related to the use of drugs" means a  
20 misdemeanor that does not involve: (i) the simple possession or  
21 use of drugs or drug paraphernalia, (ii) being present where  
22 drugs are used, (iii) failure to register as a drug offender,  
23 or (iv) any similar activity.

24 (aa) "Narcotic drug" means any of the following, whether  
25 produced directly or indirectly by extraction from substances  
26 of natural origin, or independently by means of chemical

1 synthesis, or by a combination of extraction and chemical  
2 synthesis:

3 (1) opium and opiate, and any salt, compound,  
4 derivative, or preparation of opium or opiate;

5 (2) any salt, compound, isomer, derivative, or  
6 preparation thereof which is chemically equivalent or  
7 identical with any of the substances referred to in clause  
8 (1), but not including the isoquinoline alkaloids of opium;

9 (3) opium poppy and poppy straw;

10 (4) coca leaves and any salts, compound, isomer, salt  
11 of an isomer, derivative, or preparation of coca leaves  
12 including cocaine or ecgonine, and any salt, compound,  
13 isomer, derivative, or preparation thereof which is  
14 chemically equivalent or identical with any of these  
15 substances, but not including decocainized coca leaves or  
16 extractions of coca leaves which do not contain cocaine or  
17 ecgonine (for the purpose of this paragraph, the term  
18 "isomer" includes optical, positional and geometric  
19 isomers).

20 (aa-5) "Nonviolent drug possession offense" means the  
21 unlawful possession of any Schedule I, II, III, IV, or V  
22 controlled substance under Section 402 or the unlawful  
23 possession of methamphetamine under the Methamphetamine  
24 Control and Community Protection Act. "Nonviolent drug  
25 possession offense" does not include the manufacture or  
26 delivery, or possession with intent to manufacture or

1       deliver, of any controlled substance under Section 402 or  
2       of methamphetamine under the Methamphetamine Control and  
3       Community Protection Act.

4       (bb) "Nurse" means a registered nurse licensed under the  
5 Nurse Practice Act.

6       (cc) (Blank).

7       (dd) "Opiate" means any substance having an addiction  
8 forming or addiction sustaining liability similar to morphine  
9 or being capable of conversion into a drug having addiction  
10 forming or addiction sustaining liability.

11       (ee) "Opium poppy" means the plant of the species *Papaver*  
12 *somniferum* L., except its seeds.

13       (ff) "Parole and Pardon Board" means the Parole and Pardon  
14 Board of the State of Illinois or its successor agency.

15       (gg) "Person" means any individual, corporation,  
16 mail-order pharmacy, government or governmental subdivision or  
17 agency, business trust, estate, trust, partnership or  
18 association, or any other entity.

19       (hh) "Pharmacist" means any person who holds a license or  
20 certificate of registration as a registered pharmacist, a local  
21 registered pharmacist or a registered assistant pharmacist  
22 under the Pharmacy Practice Act.

23       (ii) "Pharmacy" means any store, ship or other place in  
24 which pharmacy is authorized to be practiced under the Pharmacy  
25 Practice Act.

26       (jj) "Poppy straw" means all parts, except the seeds, of



1 the opium poppy, after mowing.

2 (kk) "Practitioner" means a physician licensed to practice  
3 medicine in all its branches, dentist, optometrist,  
4 podiatrist, veterinarian, scientific investigator, pharmacist,  
5 physician assistant, advanced practice nurse, licensed  
6 practical nurse, registered nurse, hospital, laboratory, or  
7 pharmacy, or other person licensed, registered, or otherwise  
8 lawfully permitted by the United States or this State to  
9 distribute, dispense, conduct research with respect to,  
10 administer or use in teaching or chemical analysis, a  
11 controlled substance in the course of professional practice or  
12 research.

13 (ll) "Pre-printed prescription" means a written  
14 prescription upon which the designated drug has been indicated  
15 prior to the time of issuance.

16 (mm) "Prescriber" means a physician licensed to practice  
17 medicine in all its branches, dentist, optometrist, podiatrist  
18 or veterinarian who issues a prescription, a physician  
19 assistant who issues a prescription for a Schedule III, IV, or  
20 V controlled substance in accordance with Section 303.05 and  
21 the written guidelines required under Section 7.5 of the  
22 Physician Assistant Practice Act of 1987, or an advanced  
23 practice nurse with prescriptive authority delegated under  
24 Section 65-40 of the Nurse Practice Act and in accordance with  
25 Section 303.05 and a written collaborative agreement under  
26 Section 65-35 of the Nurse Practice Act.

1 (nn) "Prescription" means a lawful written, facsimile, or  
2 verbal order of a physician licensed to practice medicine in  
3 all its branches, dentist, podiatrist or veterinarian for any  
4 controlled substance, of an optometrist for a Schedule III, IV,  
5 or V controlled substance in accordance with Section 15.1 of  
6 the Illinois Optometric Practice Act of 1987, of a physician  
7 assistant for a Schedule III, IV, or V controlled substance in  
8 accordance with Section 303.05 and the written guidelines  
9 required under Section 7.5 of the Physician Assistant Practice  
10 Act of 1987, or of an advanced practice nurse with prescriptive  
11 authority delegated under Section 65-40 of the Nurse Practice  
12 Act who issues a prescription for a Schedule III, IV, or V  
13 controlled substance in accordance with Section 303.05 and a  
14 written collaborative agreement under Section 65-35 of the  
15 Nurse Practice Act.

16 (oo) "Production" or "produce" means manufacture,  
17 planting, cultivating, growing, or harvesting of a controlled  
18 substance other than methamphetamine.

19 (pp) "Registrant" means every person who is required to  
20 register under Section 302 of this Act.

21 (qq) "Registry number" means the number assigned to each  
22 person authorized to handle controlled substances under the  
23 laws of the United States and of this State.

24 (rr) "State" includes the State of Illinois and any state,  
25 district, commonwealth, territory, insular possession thereof,  
26 and any area subject to the legal authority of the United

1 States of America.

2 (rr-5) "Successful completion of treatment" means that a  
3 defendant who has had drug treatment imposed as a condition of  
4 probation has completed the prescribed course of drug treatment  
5 and, as a result, there is reasonable cause to believe that the  
6 defendant will not abuse controlled substances in the future.

7 (ss) "Ultimate user" means a person who lawfully possesses  
8 a controlled substance for his own use or for the use of a  
9 member of his household or for administering to an animal owned  
10 by him or by a member of his household.

11 (tt) "Violent crime" has the meaning ascribed in paragraph  
12 (c) of Section 3 of the Rights of Crime Victims and Witnesses  
13 Act.

14 (Source: P.A. 94-556, eff. 9-11-05; 95-242, eff. 1-1-08;  
15 95-639, eff. 10-5-07; 95-689, eff. 10-29-07; 95-876, eff.  
16 8-21-08.)

17 (720 ILCS 570/410.5 new)

18 Sec. 410.5. Possession of controlled substances;  
19 probation; exceptions.

20 (a) Conditions of probation. Notwithstanding any other  
21 provision of law, and except as provided in the other  
22 provisions of this Section, any person convicted of a  
23 nonviolent drug possession offense shall receive probation. As  
24 a condition of probation the court shall require participation  
25 in and completion of an appropriate drug treatment program. The

1 court may also impose as a condition of probation participation  
2 in vocational training, family counseling, literacy training,  
3 or community service, or a combination of those conditions. A  
4 court may not impose incarceration as an additional condition  
5 of probation. Aside from the limitations imposed in this  
6 subsection, the trial court is not otherwise limited in the  
7 type of probation conditions it may impose. In addition to any  
8 fine assessed under other provisions of law, the trial judge  
9 may require any person convicted of a nonviolent drug  
10 possession offense who is reasonably able to do so to  
11 contribute to the cost of his or her own placement in a drug  
12 treatment program.

13 (b) Exclusions. Subsection (a) does not apply to:

14 (1) Any defendant who has previously been convicted of  
15 one or more violent crimes, unless the nonviolent drug  
16 possession offense occurred after a period of 5 years in  
17 which the defendant remained free of both prison custody  
18 and the commission of an offense that resulted in (A) a  
19 felony conviction other than a nonviolent drug possession  
20 offense or (B) a misdemeanor conviction involving physical  
21 injury or the threat of physical injury to another person.

22 (2) Any defendant who, in addition to one or more  
23 nonviolent drug possession offenses, has been convicted in  
24 the same proceeding of a misdemeanor not related to the use  
25 of drugs or any felony.

26 (3) Any defendant who:

1           (A) While using a firearm, unlawfully possesses  
2           any amount of (i) a substance containing either cocaine  
3           base, cocaine, heroin, or methamphetamine, or (ii) a  
4           liquid, non-liquid, plant substance, or hand-rolled  
5           cigarette containing phencyclidine.

6           (B) While using a firearm, is unlawfully under the  
7           influence of cocaine base, cocaine, heroin,  
8           methamphetamine, or phencyclidine.

9           (4) Any defendant who refuses drug treatment as a  
10          condition of probation.

11          (5) Any defendant who (A) has two separate convictions  
12          for nonviolent drug possession offenses, (B) has  
13          participated in two separate courses of drug treatment  
14          pursuant to subsection (A), and (C) is found by the court,  
15          by clear and convincing evidence, to be unamenable to any  
16          and all forms of available drug treatment. Notwithstanding  
17          any other provision of law, the trial court shall sentence  
18          such defendants to 30 days in jail.

19          (c) Treatment.

20          (1) Within 7 days of an order imposing probation under  
21          subsection (a), the probation department shall notify the  
22          drug treatment provider designated to provide drug  
23          treatment under subsection (a). Within 30 days of receiving  
24          that notice, the treatment provider shall prepare a  
25          treatment plan and forward it to the probation department.  
26          On a quarterly basis after the defendant begins the drug

1 treatment program, the treatment provider shall prepare  
2 and forward a progress report to the probation department.

3 (2) If at any point during the course of drug  
4 treatment the treatment provider notifies the probation  
5 department that the defendant is unamenable to the drug  
6 treatment being provided, but may be amenable to other drug  
7 treatments or related programs, the probation department  
8 may move the court to modify the terms of probation to  
9 ensure that the defendant receives the alternative drug  
10 treatment or program.

11 (3) If at any point during the course of drug treatment  
12 the treatment provider notifies the probation department  
13 that the defendant is unamenable to the drug treatment  
14 provided and all other forms of drug treatment, the  
15 probation department may move to revoke probation. At the  
16 revocation hearing, unless the defendant proves by a  
17 preponderance of the evidence that there is a drug  
18 treatment program to which he is amenable, the court may  
19 revoke probation.

20 (4) Drug treatment services provided under subsection  
21 (a) as a required condition of probation may not exceed 12  
22 months, except that additional aftercare services may be  
23 required as a condition of probation for up to 6 months.

24 (d) Dismissal of charges upon successful completion of drug  
25 treatment.

26 (1) At any time after completion of drug treatment, a

1 defendant may petition the sentencing court for dismissal  
2 of the charges. If the court finds that the defendant  
3 successfully completed drug treatment and substantially  
4 complied with the conditions of probation, the conviction  
5 on which the probation was based shall be set aside and the  
6 court shall dismiss the indictment or information against  
7 the defendant. In addition, the arrest on which the  
8 conviction was based shall be deemed to have never  
9 occurred. Except as provided in subdivisions (2) and (3) of  
10 this subsection (d), the defendant shall thereafter be  
11 released from all penalties and disabilities resulting  
12 from the offense of which he or she has been convicted.

13 (2) Dismissal of an indictment or information pursuant  
14 to subdivision (1) of this subsection (d) does not permit a  
15 person to own, possess, or have in his or her custody or  
16 control any firearm capable of being concealed upon the  
17 person or prevent his or her conviction for any offense  
18 under Article 24 of the Criminal Code of 1961.

19 (3) Except as provided in this Section, after an  
20 indictment or information is dismissed pursuant to  
21 subdivision (1) of this subsection (d), the defendant may  
22 indicate in response to any question concerning his or her  
23 prior criminal record that he or she was not arrested or  
24 convicted for the offense. Except as provided in this  
25 Section, a record pertaining to an arrest or conviction  
26 resulting in successful completion of a drug treatment

1 program under this Section shall not, without the  
2 defendant's consent, be used in any way that could result  
3 in the denial of any employment, benefit, license, or  
4 certificate. Regardless of his or her successful  
5 completion of drug treatment, the arrest and conviction on  
6 which the probation was based may be recorded by the  
7 Department of State Police and disclosed in response to any  
8 peace officer application request or any law enforcement  
9 inquiry. Dismissal of an information or indictment under  
10 this Section does not relieve a defendant of the obligation  
11 to disclose the arrest and conviction in response to any  
12 direct question contained in any questionnaire or  
13 application for public office, for a position as a peace  
14 officer as defined in Section 2-13 of the Criminal Code of  
15 1961, for licensure by any State or local agency, for  
16 contracting with the Division of State Lottery of the  
17 Illinois Department of Revenue, or for purposes of serving  
18 on a jury.

19 (e) Violation of probation.

20 (1) If probation is revoked pursuant to the provisions of  
21 this subsection, the defendant may be incarcerated pursuant to  
22 otherwise applicable law without regard to the provisions of  
23 this Section.

24 (2) Non-drug-related probation violations. Where a  
25 defendant receives probation under subsection (a) and violates  
26 that probation, either by being arrested for an offense that is



1 not a nonviolent drug possession offense, or by violating a  
2 non-drug-related condition of probation, and the State moves to  
3 revoke probation, the court shall conduct a hearing to  
4 determine whether probation shall be revoked. The court may  
5 modify or revoke probation if the alleged violation is proved.

6 (3) Drug-related probation violations.

7 (A) When a defendant receives probation under  
8 subsection (a) and violates that probation, either by being  
9 arrested for a non-violent drug possession offense or by  
10 violating a drug-related condition of probation, and the  
11 State moves to revoke probation, the court shall conduct a  
12 hearing to determine whether probation shall be revoked.  
13 The trial court shall revoke probation if the alleged  
14 probation violation is proved and the State proves by a  
15 preponderance of the evidence that the defendant poses a  
16 danger to the safety of others. If the court does not  
17 revoke probation, it may intensify or alter the drug  
18 treatment plan.

19 (B) When a defendant receives probation under  
20 subsection (a) and for the second time violates that  
21 probation, either by being arrested for a non-violent drug  
22 possession offense or by violating a drug-related  
23 condition of probation, and the State moves for a second  
24 time to revoke probation, the court shall conduct a hearing  
25 to determine whether probation shall be revoked. The trial  
26 court shall revoke probation if the alleged probation

1 violation is proved and the State proves by a preponderance  
2 of the evidence either that the defendant poses a danger to  
3 the safety of others or is unamenable to drug treatment.

4 If the court does not revoke probation, it may  
5 intensify or alter the drug treatment plan.

6 (C) When a defendant receives probation under  
7 subsection (a) and for the third time violates that  
8 probation, either by being arrested for a non-violent drug  
9 possession offense or by violating a drug-related  
10 condition of probation, and the State moves for a third  
11 time to revoke probation, the court shall conduct a hearing  
12 to determine whether probation shall be revoked. If the  
13 alleged probation violation is proved, defendant is not  
14 eligible for continued probation under subsection (a).

15 (D) When a defendant on probation on the effective date  
16 of this amendatory Act of the 96th General Assembly for a  
17 non-violent drug possession offense violates that  
18 probation, either by being arrested for a non-violent drug  
19 possession offense or by violating a drug-related  
20 condition of probation, and the State moves to revoke  
21 probation, the court shall conduct a hearing to determine  
22 if probation shall be revoked. The trial court shall revoke  
23 probation if the alleged probation violation is proved and  
24 the State proves by a preponderance of the evidence that  
25 the defendant poses a danger to the safety of others. If  
26 the court does not revoke probation, it may modify

1       probation and impose as an additional condition  
2       participation in a drug treatment program.

3       (E) When a defendant on probation on the effective date  
4       of this amendatory Act of the 96th General Assembly for a  
5       non-violent drug possession offense violates that  
6       probation a second time, either by being arrested for a  
7       non-violent drug possession offense or by violating a  
8       drug-related condition of probation, and the State moves  
9       for a second time to revoke probation, the court shall  
10       conduct a hearing to determine whether probation shall be  
11       revoked. The trial court shall revoke probation if the  
12       alleged probation violation is proved and the State proves  
13       by a preponderance of the evidence either that the  
14       defendant poses a danger to the safety of others or is  
15       unamenable to drug treatment. If the court does not revoke  
16       probation, it may modify probation and impose as an  
17       additional condition participation in a drug treatment  
18       program.

19       (F) When a defendant on probation on the effective date  
20       of this amendatory Act of the 96th General Assembly for a  
21       non-violent drug offense violates that probation a third  
22       time either by being arrested for a non-violent drug  
23       possession offense, or by violating a drug-related  
24       condition of probation, and the State moves for a third  
25       time to revoke probation, the court shall conduct a hearing  
26       to determine whether probation shall be revoked. If the

1 alleged probation violation is proved, the defendant is not  
2 eligible for continued probation under subsection (a).

3 (G) In determining whether a defendant is unamenable to  
4 drug treatment, the court may consider, to the extent relevant,  
5 whether the defendant:

6 (1) has committed a serious violation of rules at  
7 the drug treatment program,

8 (2) has repeatedly committed violations of program  
9 rules that inhibit the defendant's ability to function  
10 in the program, or

11 (3) has continually refused to participate in the  
12 program or asked to be removed from the program.

13 Section 110. The Methamphetamine Control and Community  
14 Protection Act is amended by changing Section 10 and by adding  
15 Section 70.5 as follows:

16 (720 ILCS 646/10)

17 Sec. 10. Definitions. As used in this Act:

18 "Anhydrous ammonia" has the meaning provided in subsection  
19 (d) of Section 3 of the Illinois Fertilizer Act of 1961.

20 "Anhydrous ammonia equipment" means all items used to  
21 store, hold, contain, handle, transfer, transport, or apply  
22 anhydrous ammonia for lawful purposes.

23 "Booby trap" means any device designed to cause physical  
24 injury when triggered by an act of a person approaching,

1 entering, or moving through a structure, a vehicle, or any  
2 location where methamphetamine has been manufactured, is being  
3 manufactured, or is intended to be manufactured.

4 "Deliver" or "delivery" has the meaning provided in  
5 subsection (h) of Section 102 of the Illinois Controlled  
6 Substances Act.

7 "Director" means the Director of State Police or the  
8 Director's designated agents.

9 "Dispose" or "disposal" means to abandon, discharge,  
10 release, deposit, inject, dump, spill, leak, or place  
11 methamphetamine waste onto or into any land, water, or well of  
12 any type so that the waste has the potential to enter the  
13 environment, be emitted into the air, or be discharged into the  
14 soil or any waters, including groundwater.

15 "Drug treatment program" or "drug treatment" means a  
16 community drug treatment program licensed by the Department of  
17 Human Services under the Alcoholism and Other Drug Abuse and  
18 Dependency Act, which may include one or more of the following:  
19 outpatient treatment, half-way house treatment, narcotic  
20 replacement therapy, drug education or prevention courses, or  
21 limited inpatient or residential drug treatment as needed to  
22 address special detoxification or relapse situations or severe  
23 dependence. "Drug treatment program" or "drug treatment" does  
24 not include drug treatment programs offered in a prison or jail  
25 facility.

26 "Emergency response" means the act of collecting evidence,

1 securing a methamphetamine laboratory site, methamphetamine  
2 waste site or other methamphetamine-related site and cleaning  
3 up the site, whether these actions are performed by public  
4 entities or private contractors paid by public entities.

5 "Emergency service provider" means a local, State, or  
6 federal peace officer, firefighter, emergency medical  
7 technician-ambulance, emergency medical  
8 technician-intermediate, emergency medical  
9 technician-paramedic, ambulance driver, or other medical or  
10 first aid personnel rendering aid, or any agent or designee of  
11 the foregoing.

12 "Finished methamphetamine" means methamphetamine in a form  
13 commonly used for personal consumption.

14 "Firearm" has the meaning provided in Section 1.1 of the  
15 Firearm Owners Identification Card Act.

16 "Manufacture" means to produce, prepare, compound,  
17 convert, process, synthesize, concentrate, purify, separate,  
18 extract, or package any methamphetamine, methamphetamine  
19 precursor, methamphetamine manufacturing catalyst,  
20 methamphetamine manufacturing reagent, methamphetamine  
21 manufacturing solvent, or any substance containing any of the  
22 foregoing.

23 "Methamphetamine" means the chemical methamphetamine (a  
24 Schedule II controlled substance under the Illinois Controlled  
25 Substances Act) or any salt, optical isomer, salt of optical  
26 isomer, or analog thereof, with the exception of

1 3,4-Methylenedioxymethamphetamine (MDMA) or any other  
2 scheduled substance with a separate listing under the Illinois  
3 Controlled Substances Act.

4 "Methamphetamine manufacturing catalyst" means any  
5 substance that has been used, is being used, or is intended to  
6 be used to activate, accelerate, extend, or improve a chemical  
7 reaction involved in the manufacture of methamphetamine.

8 "Methamphetamine manufacturing environment" means a  
9 structure or vehicle in which:

- 10 (1) methamphetamine is being or has been manufactured;  
11 (2) chemicals that are being used, have been used, or  
12 are intended to be used to manufacture methamphetamine are  
13 stored;  
14 (3) methamphetamine manufacturing materials that have  
15 been used to manufacture methamphetamine are stored; or  
16 (4) methamphetamine manufacturing waste is stored.

17 "Methamphetamine manufacturing material" means any  
18 methamphetamine precursor, substance containing any  
19 methamphetamine precursor, methamphetamine manufacturing  
20 catalyst, substance containing any methamphetamine  
21 manufacturing catalyst, methamphetamine manufacturing reagent,  
22 substance containing any methamphetamine manufacturing  
23 reagent, methamphetamine manufacturing solvent, substance  
24 containing any methamphetamine manufacturing solvent, or any  
25 other chemical, substance, ingredient, equipment, apparatus,  
26 or item that is being used, has been used, or is intended to be

1 used in the manufacture of methamphetamine.

2 "Methamphetamine manufacturing reagent" means any  
3 substance other than a methamphetamine manufacturing catalyst  
4 that has been used, is being used, or is intended to be used to  
5 react with and chemically alter any methamphetamine precursor.

6 "Methamphetamine manufacturing solvent" means any  
7 substance that has been used, is being used, or is intended to  
8 be used as a medium in which any methamphetamine precursor,  
9 methamphetamine manufacturing catalyst, methamphetamine  
10 manufacturing reagent, or any substance containing any of the  
11 foregoing is dissolved, diluted, or washed during any part of  
12 the methamphetamine manufacturing process.

13 "Methamphetamine manufacturing waste" means any chemical,  
14 substance, ingredient, equipment, apparatus, or item that is  
15 left over from, results from, or is produced by the process of  
16 manufacturing methamphetamine, other than finished  
17 methamphetamine.

18 "Methamphetamine precursor" means ephedrine,  
19 pseudoephedrine, benzyl methyl ketone, methyl benzyl ketone,  
20 phenylacetone, phenyl-2-propanone, P2P, or any salt, optical  
21 isomer, or salt of an optical isomer of any of these chemicals.

22 "Multi-unit dwelling" means a unified structure used or  
23 intended for use as a habitation, home, or residence that  
24 contains 2 or more condominiums, apartments, hotel rooms, motel  
25 rooms, or other living units.

26 "Misdemeanor not related to the use of drugs" means a



1 misdemeanor that does not involve: (i) the simple possession or  
2 use of drugs or drug paraphernalia, (ii) being present where  
3 drugs are used, (iii) failure to register as a drug offender,  
4 or (iv) any similar activity.

5 "Nonviolent drug possession offense" means the unlawful  
6 possession of methamphetamine under this Act or of any Schedule  
7 I, II, III, IV, or V controlled substance under Section 402 of  
8 the Illinois Controlled Substances Act. "Nonviolent drug  
9 possession offense" does not include the manufacture or  
10 delivery, or possession with intent to manufacture or deliver,  
11 of methamphetamine under this Act or of any controlled  
12 substance under Section 402 of the Illinois Controlled  
13 Substances Act.

14 "Package" means an item marked for retail sale that is not  
15 designed to be further broken down or subdivided for the  
16 purpose of retail sale.

17 "Participate" or "participation" in the manufacture of  
18 methamphetamine means to produce, prepare, compound, convert,  
19 process, synthesize, concentrate, purify, separate, extract,  
20 or package any methamphetamine, methamphetamine precursor,  
21 methamphetamine manufacturing catalyst, methamphetamine  
22 manufacturing reagent, methamphetamine manufacturing solvent,  
23 or any substance containing any of the foregoing, or to assist  
24 in any of these actions, or to attempt to take any of these  
25 actions, regardless of whether this action or these actions  
26 result in the production of finished methamphetamine.

1 "Person with a disability" means a person who suffers from  
2 a permanent physical or mental impairment resulting from  
3 disease, injury, functional disorder, or congenital condition  
4 which renders the person incapable of adequately providing for  
5 his or her own health and personal care.

6 "Procure" means to purchase, steal, gather, or otherwise  
7 obtain, by legal or illegal means, or to cause another to take  
8 such action.

9 "Second or subsequent offense" means an offense under this  
10 Act committed by an offender who previously committed an  
11 offense under this Act, the Illinois Controlled Substances Act,  
12 the Cannabis Control Act, or another Act of this State, another  
13 state, or the United States relating to methamphetamine,  
14 cannabis, or any other controlled substance.

15 "Standard dosage form", as used in relation to any  
16 methamphetamine precursor, means that the methamphetamine  
17 precursor is contained in a pill, tablet, capsule, caplet, gel  
18 cap, or liquid cap that has been manufactured by a lawful  
19 entity and contains a standard quantity of methamphetamine  
20 precursor.

21 "Successful completion of treatment" means that a  
22 defendant who has had drug treatment imposed as a condition of  
23 probation has completed the prescribed course of drug treatment  
24 and, as a result, there is reasonable cause to believe that the  
25 defendant will not abuse controlled substances in the future.

26 "Unauthorized container", as used in relation to anhydrous

1 ammonia, means any container that is not designed for the  
2 specific and sole purpose of holding, storing, transporting, or  
3 applying anhydrous ammonia. "Unauthorized container" includes,  
4 but is not limited to, any propane tank, fire extinguisher,  
5 oxygen cylinder, gasoline can, food or beverage cooler, or  
6 compressed gas cylinder used in dispensing fountain drinks.  
7 "Unauthorized container" does not encompass anhydrous ammonia  
8 manufacturing plants, refrigeration systems where anhydrous  
9 ammonia is used solely as a refrigerant, anhydrous ammonia  
10 transportation pipelines, anhydrous ammonia tankers, or  
11 anhydrous ammonia barges.

12 "Violent crime" has the meaning ascribed in paragraph (c)  
13 of Section 3 of the Rights of Crime Victims and Witnesses Act.  
14 (Source: P.A. 94-556, eff. 9-11-05.)

15 (720 ILCS 646/70.5 new)

16 Sec. 70.5. Possession of methamphetamine; probation;  
17 exceptions.

18 (a) Conditions of probation. Notwithstanding any other  
19 provision of law, and except as provided in the other  
20 provisions of this Section, any person convicted of a  
21 nonviolent drug possession offense shall receive probation. As  
22 a condition of probation the court shall require participation  
23 in and completion of an appropriate drug treatment program. The  
24 court may also impose as a condition of probation participation  
25 in vocational training, family counseling, literacy training,

1 or community service, or a combination of those conditions. A  
2 court may not impose incarceration as an additional condition  
3 of probation. Aside from the limitations imposed in this  
4 subsection, the trial court is not otherwise limited in the  
5 type of probation conditions it may impose. In addition to any  
6 fine assessed under other provisions of law, the trial judge  
7 may require any person convicted of a nonviolent drug  
8 possession offense who is reasonably able to do so to  
9 contribute to the cost of his or her own placement in a drug  
10 treatment program.

11 (b) Exclusions. Subsection (a) does not apply to:

12 (1) Any defendant who has previously been convicted of  
13 one or more violent crimes, unless the nonviolent drug  
14 possession offense occurred after a period of 5 years in  
15 which the defendant remained free of both prison custody  
16 and the commission of an offense that resulted in (A) a  
17 felony conviction other than a nonviolent drug possession  
18 offense or (B) a misdemeanor conviction involving physical  
19 injury or the threat of physical injury to another person.

20 (2) Any defendant who, in addition to one or more  
21 nonviolent drug possession offenses, has been convicted in  
22 the same proceeding of a misdemeanor not related to the use  
23 of drugs or any felony.

24 (3) Any defendant who:

25 (A) While using a firearm, unlawfully possesses  
26 any amount of (i) a substance containing either cocaine

1 base, cocaine, heroin, or methamphetamine, or (ii) a  
2 liquid, non-liquid, plant substance, or hand-rolled  
3 cigarette containing phencyclidine.

4 (B) While using a firearm, is unlawfully under the  
5 influence of cocaine base, cocaine, heroin,  
6 methamphetamine, or phencyclidine.

7 (4) Any defendant who refuses drug treatment as a  
8 condition of probation.

9 (5) Any defendant who (A) has two separate convictions  
10 for nonviolent drug possession offenses, (B) has  
11 participated in two separate courses of drug treatment  
12 pursuant to subsection (A), and (C) is found by the court,  
13 by clear and convincing evidence, to be unamenable to any  
14 and all forms of available drug treatment. Notwithstanding  
15 any other provision of law, the trial court shall sentence  
16 such defendants to 30 days in jail.

17 (c) Treatment.

18 (1) Within 7 days of an order imposing probation under  
19 subsection (a), the probation department shall notify the  
20 drug treatment provider designated to provide drug  
21 treatment under subsection (a). Within 30 days of receiving  
22 that notice, the treatment provider shall prepare a  
23 treatment plan and forward it to the probation department.  
24 On a quarterly basis after the defendant begins the drug  
25 treatment program, the treatment provider shall prepare  
26 and forward a progress report to the probation department.

1           (2) If at any point during the course of drug treatment  
2           the treatment provider notifies the probation department  
3           that the defendant is unamenable to the drug treatment  
4           being provided, but may be amenable to other drug  
5           treatments or related programs, the probation department  
6           may move the court to modify the terms of probation to  
7           ensure that the defendant receives the alternative drug  
8           treatment or program.

9           (3) If at any point during the course of drug treatment  
10           the treatment provider notifies the probation department  
11           that the defendant is unamenable to the drug treatment  
12           provided and all other forms of drug treatment, the  
13           probation department may move to revoke probation. At the  
14           revocation hearing, unless the defendant proves by a  
15           preponderance of the evidence that there is a drug  
16           treatment program to which he is amenable, the court may  
17           revoke probation.

18           (4) Drug treatment services provided under subsection  
19           (a) as a required condition of probation may not exceed 12  
20           months, except that additional aftercare services may be  
21           required as a condition of probation for up to 6 months.

22           (d) Dismissal of charges upon successful completion of drug  
23           treatment.

24           (1) At any time after completion of drug treatment, a  
25           defendant may petition the sentencing court for dismissal  
26           of the charges. If the court finds that the defendant

1 successfully completed drug treatment and substantially  
2 complied with the conditions of probation, the conviction  
3 on which the probation was based shall be set aside and the  
4 court shall dismiss the indictment or information against  
5 the defendant. In addition, the arrest on which the  
6 conviction was based shall be deemed to have never  
7 occurred. Except as provided in subdivisions (2) and (3) of  
8 this subsection (d), the defendant shall thereafter be  
9 released from all penalties and disabilities resulting  
10 from the offense of which he or she has been convicted.

11 (2) Dismissal of an indictment or information pursuant  
12 to subdivision (1) of this subsection (d) does not permit a  
13 person to own, possess, or have in his or her custody or  
14 control any firearm capable of being concealed upon the  
15 person or prevent his or her conviction for any offense  
16 under Article 24 of the Criminal Code of 1961.

17 (3) Except as provided in this Section, after an  
18 indictment or information is dismissed pursuant to  
19 subdivision (1) of this subsection (d), the defendant may  
20 indicate in response to any question concerning his or her  
21 prior criminal record that he or she was not arrested or  
22 convicted for the offense. Except as provided in this  
23 Section, a record pertaining to an arrest or conviction  
24 resulting in successful completion of a drug treatment  
25 program under this Section shall not, without the  
26 defendant's consent, be used in any way that could result

1 in the denial of any employment, benefit, license, or  
2 certificate. Regardless of his or her successful  
3 completion of drug treatment, the arrest and conviction on  
4 which the probation was based may be recorded by the  
5 Department of State Police and disclosed in response to any  
6 peace officer application request or any law enforcement  
7 inquiry. Dismissal of an information or indictment under  
8 this Section does not relieve a defendant of the obligation  
9 to disclose the arrest and conviction in response to any  
10 direct question contained in any questionnaire or  
11 application for public office, for a position as a peace  
12 officer as defined in Section 2-13 of the Criminal Code of  
13 1961, for licensure by any State or local agency, for  
14 contracting with the Division of State Lottery of the  
15 Illinois Department of Revenue, or for purposes of serving  
16 on a jury.

17 (e) Violation of probation.

18 (1) If probation is revoked pursuant to the provisions of  
19 this subsection, the defendant may be incarcerated pursuant to  
20 otherwise applicable law without regard to the provisions of  
21 this Section.

22 (2) Non-drug-related probation violations. Where a  
23 defendant receives probation under subsection (a) and violates  
24 that probation, either by being arrested for an offense that is  
25 not a nonviolent drug possession offense, or by violating a  
26 non-drug-related condition of probation, and the State moves to



1 revoke probation, the court shall conduct a hearing to  
2 determine whether probation shall be revoked. The court may  
3 modify or revoke probation if the alleged violation is proved.

4 (3) Drug-related probation violations.

5 (A) When a defendant receives probation under  
6 subsection (a) and violates that probation, either by being  
7 arrested for a non-violent drug possession offense or by  
8 violating a drug-related condition of probation, and the  
9 State moves to revoke probation, the court shall conduct a  
10 hearing to determine whether probation shall be revoked.  
11 The trial court shall revoke probation if the alleged  
12 probation violation is proved and the State proves by a  
13 preponderance of the evidence that the defendant poses a  
14 danger to the safety of others. If the court does not  
15 revoke probation, it may intensify or alter the drug  
16 treatment plan.

17 (B) When a defendant receives probation under  
18 subsection (a) and for the second time violates that  
19 probation, either by being arrested for a non-violent drug  
20 possession offense or by violating a drug-related  
21 condition of probation, and the State moves for a second  
22 time to revoke probation, the court shall conduct a hearing  
23 to determine whether probation shall be revoked. The trial  
24 court shall revoke probation if the alleged probation  
25 violation is proved and the State proves by a preponderance  
26 of the evidence either that the defendant poses a danger to

1 the safety of others or is unamenable to drug treatment.

2 If the court does not revoke probation, it may  
3 intensify or alter the drug treatment plan.

4 (C) When a defendant receives probation under  
5 subsection (a) and for the third time violates that  
6 probation, either by being arrested for a non-violent drug  
7 possession offense or by violating a drug-related  
8 condition of probation, and the State moves for a third  
9 time to revoke probation, the court shall conduct a hearing  
10 to determine whether probation shall be revoked. If the  
11 alleged probation violation is proved, defendant is not  
12 eligible for continued probation under subsection (a).

13 (D) When a defendant on probation on the effective date  
14 of this amendatory Act of the 96th General Assembly for a  
15 non-violent drug possession offense violates that  
16 probation, either by being arrested for a non-violent drug  
17 possession offense or by violating a drug-related  
18 condition of probation, and the State moves to revoke  
19 probation, the court shall conduct a hearing to determine  
20 if probation shall be revoked. The trial court shall revoke  
21 probation if the alleged probation violation is proved and  
22 the State proves by a preponderance of the evidence that  
23 the defendant poses a danger to the safety of others. If  
24 the court does not revoke probation, it may modify  
25 probation and impose as an additional condition  
26 participation in a drug treatment program.

1           (E) When a defendant on probation on the effective date  
2           of this amendatory Act of the 96th General Assembly for a  
3           non-violent drug possession offense violates that  
4           probation a second time, either by being arrested for a  
5           non-violent drug possession offense or by violating a  
6           drug-related condition of probation, and the State moves  
7           for a second time to revoke probation, the court shall  
8           conduct a hearing to determine whether probation shall be  
9           revoked. The trial court shall revoke probation if the  
10           alleged probation violation is proved and the State proves  
11           by a preponderance of the evidence either that the  
12           defendant poses a danger to the safety of others or is  
13           unamenable to drug treatment. If the court does not revoke  
14           probation, it may modify probation and impose as an  
15           additional condition participation in a drug treatment  
16           program.

17           (F) When a defendant on probation on the effective date  
18           of this amendatory Act of the 96th General Assembly for a  
19           non-violent drug offense violates that probation a third  
20           time either by being arrested for a non-violent drug  
21           possession offense, or by violating a drug-related  
22           condition of probation, and the State moves for a third  
23           time to revoke probation, the court shall conduct a hearing  
24           to determine whether probation shall be revoked. If the  
25           alleged probation violation is proved, the defendant is not  
26           eligible for continued probation under subsection (a).

1       (G) In determining whether a defendant is unamenable to  
2 drug treatment, the court may consider, to the extent relevant,  
3 whether the defendant:

4               (1) has committed a serious violation of rules at  
5 the drug treatment program,

6               (2) has repeatedly committed violations of program  
7 rules that inhibit the defendant's ability to function  
8 in the program, or

9               (3) has continually refused to participate in the  
10 program or asked to be removed from the program.