

1 AN ACT concerning criminal law.

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

4 Section 5. The Unified Code of Corrections is amended by
5 changing Sections 5-5-3, 5-6-1, 5-6-2, and 5-6-4 as follows:

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

7 Sec. 5-5-3. Disposition.

8 (a) Every person convicted of an offense shall be sentenced
9 as provided in this Section.

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

14 (1) A period of probation.

15 (2) A term of periodic imprisonment.

16 (3) A term of conditional discharge.

17 (4) A term of imprisonment.

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21 (now repealed).

22 (6) A fine.

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

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

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

31 Whenever an individual is sentenced for an offense based
32 upon an arrest for a violation of Section 11-501 of the

1 Illinois Vehicle Code, or a similar provision of a local
2 ordinance, and the professional evaluation recommends remedial
3 or rehabilitative treatment or education, neither the
4 treatment nor the education shall be the sole disposition and
5 either or both may be imposed only in conjunction with another
6 disposition. The court shall monitor compliance with any
7 remedial education or treatment recommendations contained in
8 the professional evaluation. Programs conducting alcohol or
9 other drug evaluation or remedial education must be licensed by
10 the Department of Human Services. However, if the individual is
11 not a resident of Illinois, the court may accept an alcohol or
12 other drug evaluation or remedial education program in the
13 state of such individual's residence. Programs providing
14 treatment must be licensed under existing applicable
15 alcoholism and drug treatment licensure standards.

16 In addition to any other fine or penalty required by law,
17 any individual convicted of a violation of Section 11-501 of
18 the Illinois Vehicle Code, Section 5-7 of the Snowmobile
19 Registration and Safety Act, Section 5-16 of the Boat
20 Registration and Safety Act, or a similar provision of local
21 ordinance, whose operation of a motor vehicle while in
22 violation of Section 11-501, Section 5-7, Section 5-16, or such
23 ordinance proximately caused an incident resulting in an
24 appropriate emergency response, shall be required to make
25 restitution to a public agency for the costs of that emergency
26 response. Such restitution shall not exceed \$1,000 per public
27 agency for each such emergency response. For the purpose of
28 this paragraph, emergency response shall mean any incident
29 requiring a response by: a police officer as defined under
30 Section 1-162 of the Illinois Vehicle Code; a fireman carried
31 on the rolls of a regularly constituted fire department; and an
32 ambulance as defined under Section 3.85 of the Emergency
33 Medical Services (EMS) Systems Act.

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

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

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

13 (A) First degree murder where the death penalty is
14 not imposed.

15 (B) Attempted first degree murder.

16 (C) A Class X felony.

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

22 (E) A violation of Section 5.1 or 9 of the Cannabis
23 Control Act.

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

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

33 (H) Criminal sexual assault.

34 (I) Aggravated battery of a senior citizen.

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

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

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

11 (K) Vehicular hijacking.

12 (L) A second or subsequent conviction for the
13 offense of hate crime when the underlying offense upon
14 which the hate crime is based is felony aggravated
15 assault or felony mob action.

16 (M) A second or subsequent conviction for the
17 offense of institutional vandalism if the damage to the
18 property exceeds \$300.

19 (N) A Class 3 felony violation of paragraph (1) of
20 subsection (a) of Section 2 of the Firearm Owners
21 Identification Card Act.

22 (O) A violation of Section 12-6.1 of the Criminal
23 Code of 1961.

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

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

29 (R) A violation of Section 24-3A of the Criminal
30 Code of 1961.

31 (S) A violation of Section 11-501(c-1)(3) of the
32 Illinois Vehicle Code.

33 (T) A second or subsequent violation of paragraph
34 (6.6) of subsection (a), subsection (c-5), or
35 subsection (d-5) of Section 401 of the Illinois
36 Controlled Substances Act.

1 (3) A minimum term of imprisonment of not less than 5
2 days or 30 days of community service as may be determined
3 by the court shall be imposed for a second violation
4 committed within 5 years of a previous violation of Section
5 11-501 of the Illinois Vehicle Code or a similar provision
6 of a local ordinance. In the case of a third or subsequent
7 violation committed within 5 years of a previous violation
8 of Section 11-501 of the Illinois Vehicle Code or a similar
9 provision of a local ordinance, a minimum term of either 10
10 days of imprisonment or 60 days of community service shall
11 be imposed.

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

16 (4.1) A minimum term of 30 consecutive days of
17 imprisonment, 40 days of 24 hour periodic imprisonment or
18 720 hours of community service, as may be determined by the
19 court, shall be imposed for a violation of Section 11-501
20 of the Illinois Vehicle Code during a period in which the
21 defendant's driving privileges are revoked or suspended,
22 where the revocation or suspension was for a violation of
23 Section 11-501 or Section 11-501.1 of that Code.

24 (4.2) Except as provided in paragraph (4.3) of this
25 subsection (c), a minimum of 100 hours of community service
26 shall be imposed for a second violation of Section 6-303 of
27 the Illinois Vehicle Code.

28 (4.3) A minimum term of imprisonment of 30 days or 300
29 hours of community service, as determined by the court,
30 shall be imposed for a second violation of subsection (c)
31 of Section 6-303 of the Illinois Vehicle Code.

32 (4.4) Except as provided in paragraph (4.5) and
33 paragraph (4.6) of this subsection (c), a minimum term of
34 imprisonment of 30 days or 300 hours of community service,
35 as determined by the court, shall be imposed for a third or
36 subsequent violation of Section 6-303 of the Illinois

1 Vehicle Code.

2 (4.5) A minimum term of imprisonment of 30 days shall
3 be imposed for a third violation of subsection (c) of
4 Section 6-303 of the Illinois Vehicle Code.

5 (4.6) A minimum term of imprisonment of 180 days shall
6 be imposed for a fourth or subsequent violation of
7 subsection (c) of Section 6-303 of the Illinois Vehicle
8 Code.

9 (5) The court may sentence an offender convicted of a
10 business offense or a petty offense or a corporation or
11 unincorporated association convicted of any offense to:

12 (A) a period of conditional discharge;

13 (B) a fine;

14 (C) make restitution to the victim under Section
15 5-5-6 of this Code.

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

24 (5.2) In addition to any penalties imposed under
25 paragraph (5) of this subsection (c), and except as
26 provided in paragraph (5.3), a person convicted of
27 violating subsection (c) of Section 11-907 of the Illinois
28 Vehicle Code shall have his or her driver's license,
29 permit, or privileges suspended for at least 180 days but
30 not more than 2 years, if the violation resulted in injury
31 to another person.

32 (5.3) In addition to any penalties imposed under
33 paragraph (5) of this subsection (c), a person convicted of
34 violating subsection (c) of Section 11-907 of the Illinois
35 Vehicle Code shall have his or her driver's license,
36 permit, or privileges suspended for 2 years, if the

1 violation resulted in the death of another person.

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

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

10 (8) When a defendant, over the age of 21 years, is
11 convicted of a Class 1 or Class 2 felony, after having
12 twice been convicted in any state or federal court of an
13 offense that contains the same elements as an offense now
14 classified in Illinois as a Class 2 or greater Class felony
15 and such charges are separately brought and tried and arise
16 out of different series of acts, such defendant shall be
17 sentenced as a Class X offender. This paragraph shall not
18 apply unless (1) the first felony was committed after the
19 effective date of this amendatory Act of 1977; and (2) the
20 second felony was committed after conviction on the first;
21 and (3) the third felony was committed after conviction on
22 the second. A person sentenced as a Class X offender under
23 this paragraph is not eligible to apply for treatment as a
24 condition of probation as provided by Section 40-10 of the
25 Alcoholism and Other Drug Abuse and Dependency Act.

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

29 (10) When a person is convicted of violating Section
30 11-501 of the Illinois Vehicle Code or a similar provision
31 of a local ordinance, the following penalties apply when
32 his or her blood, breath, or urine was .16 or more based on
33 the definition of blood, breath, or urine units in Section
34 11-501.2 or that person is convicted of violating Section
35 11-501 of the Illinois Vehicle Code while transporting a
36 child under the age of 16:

1 (A) For a first violation of subsection (a) of
2 Section 11-501, in addition to any other penalty that
3 may be imposed under subsection (c) of Section 11-501:
4 a mandatory minimum of 100 hours of community service
5 and a minimum fine of \$500.

6 (B) For a second violation of subsection (a) of
7 Section 11-501, in addition to any other penalty that
8 may be imposed under subsection (c) of Section 11-501
9 within 10 years: a mandatory minimum of 2 days of
10 imprisonment and a minimum fine of \$1,250.

11 (C) For a third violation of subsection (a) of
12 Section 11-501, in addition to any other penalty that
13 may be imposed under subsection (c) of Section 11-501
14 within 20 years: a mandatory minimum of 90 days of
15 imprisonment and a minimum fine of \$2,500.

16 (D) For a fourth or subsequent violation of
17 subsection (a) of Section 11-501: ineligibility for a
18 sentence of probation or conditional discharge and a
19 minimum fine of \$2,500.

20 (d) In any case in which a sentence originally imposed is
21 vacated, the case shall be remanded to the trial court. The
22 trial court shall hold a hearing under Section 5-4-1 of the
23 Unified Code of Corrections which may include evidence of the
24 defendant's life, moral character and occupation during the
25 time since the original sentence was passed. The trial court
26 shall then impose sentence upon the defendant. The trial court
27 may impose any sentence which could have been imposed at the
28 original trial subject to Section 5-5-4 of the Unified Code of
29 Corrections. If a sentence is vacated on appeal or on
30 collateral attack due to the failure of the trier of fact at
31 trial to determine beyond a reasonable doubt the existence of a
32 fact (other than a prior conviction) necessary to increase the
33 punishment for the offense beyond the statutory maximum
34 otherwise applicable, either the defendant may be re-sentenced
35 to a term within the range otherwise provided or, if the State
36 files notice of its intention to again seek the extended

1 sentence, the defendant shall be afforded a new trial.

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

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

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

12 (B) the defendant is willing to participate in a
13 court approved plan including but not limited to the
14 defendant's:

15 (i) removal from the household;

16 (ii) restricted contact with the victim;

17 (iii) continued financial support of the
18 family;

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

20 and

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

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

30 Probation may be revoked or modified pursuant to Section
31 5-6-4; except where the court determines at the hearing that
32 the defendant violated a condition of his or her probation
33 restricting contact with the victim or other family members or
34 commits another offense with the victim or other family
35 members, the court shall revoke the defendant's probation and
36 impose a term of imprisonment.

1 For the purposes of this Section, "family member" and
2 "victim" shall have the meanings ascribed to them in Section
3 12-12 of the Criminal Code of 1961.

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

8 (g) Whenever a defendant is convicted of an offense under
9 Sections 11-14, 11-15, 11-15.1, 11-16, 11-17, 11-18, 11-18.1,
10 11-19, 11-19.1, 11-19.2, 12-13, 12-14, 12-14.1, 12-15 or 12-16
11 of the Criminal Code of 1961, the defendant shall undergo
12 medical testing to determine whether the defendant has any
13 sexually transmissible disease, including a test for infection
14 with human immunodeficiency virus (HIV) or any other identified
15 causative agent of acquired immunodeficiency syndrome (AIDS).
16 Any such medical test shall be performed only by appropriately
17 licensed medical practitioners and may include an analysis of
18 any bodily fluids as well as an examination of the defendant's
19 person. Except as otherwise provided by law, the results of
20 such test shall be kept strictly confidential by all medical
21 personnel involved in the testing and must be personally
22 delivered in a sealed envelope to the judge of the court in
23 which the conviction was entered for the judge's inspection in
24 camera. Acting in accordance with the best interests of the
25 victim and the public, the judge shall have the discretion to
26 determine to whom, if anyone, the results of the testing may be
27 revealed. The court shall notify the defendant of the test
28 results. The court shall also notify the victim if requested by
29 the victim, and if the victim is under the age of 15 and if
30 requested by the victim's parents or legal guardian, the court
31 shall notify the victim's parents or legal guardian of the test
32 results. The court shall provide information on the
33 availability of HIV testing and counseling at Department of
34 Public Health facilities to all parties to whom the results of
35 the testing are revealed and shall direct the State's Attorney
36 to provide the information to the victim when possible. A

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

9 (g-5) When an inmate is tested for an airborne communicable
10 disease, as determined by the Illinois Department of Public
11 Health including but not limited to tuberculosis, the results
12 of the test shall be personally delivered by the warden or his
13 or her designee in a sealed envelope to the judge of the court
14 in which the inmate must appear for the judge's inspection in
15 camera if requested by the judge. Acting in accordance with the
16 best interests of those in the courtroom, the judge shall have
17 the discretion to determine what if any precautions need to be
18 taken to prevent transmission of the disease in the courtroom.

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

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

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

19 (j) In cases when prosecution for any violation of Section
20 11-6, 11-8, 11-9, 11-11, 11-14, 11-15, 11-15.1, 11-16, 11-17,
21 11-17.1, 11-18, 11-18.1, 11-19, 11-19.1, 11-19.2, 11-20.1,
22 11-21, 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the Criminal
23 Code of 1961, any violation of the Illinois Controlled
24 Substances Act, or any violation of the Cannabis Control Act
25 results in conviction, a disposition of court supervision, or
26 an order of probation granted under Section 10 of the Cannabis
27 Control Act or Section 410 of the Illinois Controlled Substance
28 Act of a defendant, the court shall determine whether the
29 defendant is employed by a facility or center as defined under
30 the Child Care Act of 1969, a public or private elementary or
31 secondary school, or otherwise works with children under 18
32 years of age on a daily basis. When a defendant is so employed,
33 the court shall order the Clerk of the Court to send a copy of
34 the judgment of conviction or order of supervision or probation
35 to the defendant's employer by certified mail. If the employer
36 of the defendant is a school, the Clerk of the Court shall

1 direct the mailing of a copy of the judgment of conviction or
2 order of supervision or probation to the appropriate regional
3 superintendent of schools. The regional superintendent of
4 schools shall notify the State Board of Education of any
5 notification under this subsection.

6 (j-5) A defendant at least 17 years of age who is convicted
7 of a felony and who has not been previously convicted of a
8 misdemeanor or felony and who is sentenced to a term of
9 imprisonment in the Illinois Department of Corrections shall as
10 a condition of his or her sentence be required by the court to
11 attend educational courses designed to prepare the defendant
12 for a high school diploma and to work toward a high school
13 diploma or to work toward passing the high school level Test of
14 General Educational Development (GED) or to work toward
15 completing a vocational training program offered by the
16 Department of Corrections. If a defendant fails to complete the
17 educational training required by his or her sentence during the
18 term of incarceration, the Prisoner Review Board shall, as a
19 condition of mandatory supervised release, require the
20 defendant, at his or her own expense, to pursue a course of
21 study toward a high school diploma or passage of the GED test.
22 The Prisoner Review Board shall revoke the mandatory supervised
23 release of a defendant who wilfully fails to comply with this
24 subsection (j-5) upon his or her release from confinement in a
25 penal institution while serving a mandatory supervised release
26 term; however, the inability of the defendant after making a
27 good faith effort to obtain financial aid or pay for the
28 educational training shall not be deemed a wilful failure to
29 comply. The Prisoner Review Board shall recommit the defendant
30 whose mandatory supervised release term has been revoked under
31 this subsection (j-5) as provided in Section 3-3-9. This
32 subsection (j-5) does not apply to a defendant who has a high
33 school diploma or has successfully passed the GED test. This
34 subsection (j-5) does not apply to a defendant who is
35 determined by the court to be developmentally disabled or
36 otherwise mentally incapable of completing the educational or

1 vocational program.

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

5 (l) (A) Except as provided in paragraph (C) of subsection
6 (l), whenever a defendant, who is an alien as defined by
7 the Immigration and Nationality Act, is convicted of any
8 felony or misdemeanor offense, the court after sentencing
9 the defendant may, upon motion of the State's Attorney,
10 hold sentence in abeyance and remand the defendant to the
11 custody of the Attorney General of the United States or his
12 or her designated agent to be deported when:

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

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

19 Otherwise, the defendant shall be sentenced as
20 provided in this Chapter V.

21 (B) If the defendant has already been sentenced for a
22 felony or misdemeanor offense, or has been placed on
23 probation under Section 10 of the Cannabis Control Act or
24 Section 410 of the Illinois Controlled Substances Act, the
25 court may, upon motion of the State's Attorney to suspend
26 the sentence imposed, commit the defendant to the custody
27 of the Attorney General of the United States or his or her
28 designated agent when:

29 (1) a final order of deportation has been issued
30 against the defendant pursuant to proceedings under
31 the Immigration and Nationality Act, and

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

35 (C) This subsection (l) does not apply to offenders who
36 are subject to the provisions of paragraph (2) of

1 subsection (a) of Section 3-6-3.

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

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

18 (n) The court may sentence a person convicted of a
19 violation of Section 12-19, 12-21, or 16-1.3 of the Criminal
20 Code of 1961 (i) to an impact incarceration program if the
21 person is otherwise eligible for that program under Section
22 5-8-1.1, (ii) to community service, or (iii) if the person is
23 an addict or alcoholic, as defined in the Alcoholism and Other
24 Drug Abuse and Dependency Act, to a substance or alcohol abuse
25 program licensed under that Act.

26 (Source: P.A. 92-183, eff. 7-27-01; 92-248, eff. 8-3-01;
27 92-283, eff. 1-1-02; 92-340, eff. 8-10-01; 92-418, eff.
28 8-17-01; 92-422, eff. 8-17-01; 92-651, eff. 7-11-02; 92-698,
29 eff. 7-19-02; 93-44, eff. 7-1-03; 93-156, eff. 1-1-04; 93-169,
30 eff. 7-10-03; 93-301, eff. 1-1-04; 93-419, eff. 1-1-04; 93-546,
31 eff. 1-1-04; revised 10-9-03.)

32 (730 ILCS 5/5-6-1) (from Ch. 38, par. 1005-6-1)

33 Sec. 5-6-1. Sentences of Probation and of Conditional
34 Discharge and Disposition of Supervision. The General Assembly
35 finds that in order to protect the public, the criminal justice

1 system must compel compliance with the conditions of probation
2 by responding to violations with swift, certain and fair
3 punishments and intermediate sanctions. The Chief Judge of each
4 circuit shall adopt a system of structured, intermediate
5 sanctions for violations of the terms and conditions of a
6 sentence of probation, conditional discharge or disposition of
7 supervision.

8 (a) Except where specifically prohibited by other
9 provisions of this Code, the court shall impose a sentence of
10 probation or conditional discharge upon an offender unless,
11 having regard to the nature and circumstance of the offense,
12 and to the history, character and condition of the offender,
13 the court is of the opinion that:

14 (1) his imprisonment or periodic imprisonment is
15 necessary for the protection of the public; or

16 (2) probation or conditional discharge would deprecate
17 the seriousness of the offender's conduct and would be
18 inconsistent with the ends of justice; ~~or-~~

19 (3) a combination of imprisonment with concurrent or
20 consecutive probation when an offender has been admitted
21 into a drug court program under Section 20 of the Drug
22 Court Treatment Act is necessary for the protection of the
23 public and for the rehabilitation of the offender.

24 The court shall impose as a condition of a sentence of
25 probation, conditional discharge, or supervision, that the
26 probation agency may invoke any sanction from the list of
27 intermediate sanctions adopted by the chief judge of the
28 circuit court for violations of the terms and conditions of the
29 sentence of probation, conditional discharge, or supervision,
30 subject to the provisions of Section 5-6-4 of this Act.

31 (b) The court may impose a sentence of conditional
32 discharge for an offense if the court is of the opinion that
33 neither a sentence of imprisonment nor of periodic imprisonment
34 nor of probation supervision is appropriate.

35 (c) The court may, upon a plea of guilty or a stipulation
36 by the defendant of the facts supporting the charge or a

1 finding of guilt, defer further proceedings and the imposition
2 of a sentence, and enter an order for supervision of the
3 defendant, if the defendant is not charged with: (i) a Class A
4 misdemeanor, as defined by the following provisions of the
5 Criminal Code of 1961: Sections 12-3.2; 12-15; 26-5; 31-1;
6 31-6; 31-7; subsections (b) and (c) of Section 21-1; paragraph
7 (1) through (5), (8), (10), and (11) of subsection (a) of
8 Section 24-1; (ii) a Class A misdemeanor violation of Section
9 3.01, 3.03-1, or 4.01 of the Humane Care for Animals Act; or
10 (iii) felony. If the defendant is not barred from receiving an
11 order for supervision as provided in this subsection, the court
12 may enter an order for supervision after considering the
13 circumstances of the offense, and the history, character and
14 condition of the offender, if the court is of the opinion that:

15 (1) the offender is not likely to commit further
16 crimes;

17 (2) the defendant and the public would be best served
18 if the defendant were not to receive a criminal record; and

19 (3) in the best interests of justice an order of
20 supervision is more appropriate than a sentence otherwise
21 permitted under this Code.

22 (d) The provisions of paragraph (c) shall not apply to a
23 defendant charged with violating Section 11-501 of the Illinois
24 Vehicle Code or a similar provision of a local ordinance when
25 the defendant has previously been:

26 (1) convicted for a violation of Section 11-501 of the
27 Illinois Vehicle Code or a similar provision of a local
28 ordinance or any similar law or ordinance of another state;
29 or

30 (2) assigned supervision for a violation of Section
31 11-501 of the Illinois Vehicle Code or a similar provision
32 of a local ordinance or any similar law or ordinance of
33 another state; or

34 (3) pleaded guilty to or stipulated to the facts
35 supporting a charge or a finding of guilty to a violation
36 of Section 11-503 of the Illinois Vehicle Code or a similar

1 provision of a local ordinance or any similar law or
2 ordinance of another state, and the plea or stipulation was
3 the result of a plea agreement.

4 The court shall consider the statement of the prosecuting
5 authority with regard to the standards set forth in this
6 Section.

7 (e) The provisions of paragraph (c) shall not apply to a
8 defendant charged with violating Section 16A-3 of the Criminal
9 Code of 1961 if said defendant has within the last 5 years
10 been:

11 (1) convicted for a violation of Section 16A-3 of the
12 Criminal Code of 1961; or

13 (2) assigned supervision for a violation of Section
14 16A-3 of the Criminal Code of 1961.

15 The court shall consider the statement of the prosecuting
16 authority with regard to the standards set forth in this
17 Section.

18 (f) The provisions of paragraph (c) shall not apply to a
19 defendant charged with violating Sections 15-111, 15-112,
20 15-301, paragraph (b) of Section 6-104, Section 11-605, or
21 Section 11-1414 of the Illinois Vehicle Code or a similar
22 provision of a local ordinance.

23 (g) Except as otherwise provided in paragraph (i) of this
24 Section, the provisions of paragraph (c) shall not apply to a
25 defendant charged with violating Section 3-707, 3-708, 3-710,
26 or 5-401.3 of the Illinois Vehicle Code or a similar provision
27 of a local ordinance if the defendant has within the last 5
28 years been:

29 (1) convicted for a violation of Section 3-707, 3-708,
30 3-710, or 5-401.3 of the Illinois Vehicle Code or a similar
31 provision of a local ordinance; or

32 (2) assigned supervision for a violation of Section
33 3-707, 3-708, 3-710, or 5-401.3 of the Illinois Vehicle
34 Code or a similar provision of a local ordinance.

35 The court shall consider the statement of the prosecuting
36 authority with regard to the standards set forth in this

1 Section.

2 (h) The provisions of paragraph (c) shall not apply to a
3 defendant under the age of 21 years charged with violating a
4 serious traffic offense as defined in Section 1-187.001 of the
5 Illinois Vehicle Code:

6 (1) unless the defendant, upon payment of the fines,
7 penalties, and costs provided by law, agrees to attend and
8 successfully complete a traffic safety program approved by
9 the court under standards set by the Conference of Chief
10 Circuit Judges. The accused shall be responsible for
11 payment of any traffic safety program fees. If the accused
12 fails to file a certificate of successful completion on or
13 before the termination date of the supervision order, the
14 supervision shall be summarily revoked and conviction
15 entered. The provisions of Supreme Court Rule 402 relating
16 to pleas of guilty do not apply in cases when a defendant
17 enters a guilty plea under this provision; or

18 (2) if the defendant has previously been sentenced
19 under the provisions of paragraph (c) on or after January
20 1, 1998 for any serious traffic offense as defined in
21 Section 1-187.001 of the Illinois Vehicle Code.

22 (i) The provisions of paragraph (c) shall not apply to a
23 defendant charged with violating Section 3-707 of the Illinois
24 Vehicle Code or a similar provision of a local ordinance if the
25 defendant has been assigned supervision for a violation of
26 Section 3-707 of the Illinois Vehicle Code or a similar
27 provision of a local ordinance.

28 (j) The provisions of paragraph (c) shall not apply to a
29 defendant charged with violating Section 6-303 of the Illinois
30 Vehicle Code or a similar provision of a local ordinance when
31 the revocation or suspension was for a violation of Section
32 11-501 or a similar provision of a local ordinance, a violation
33 of Section 11-501.1 or paragraph (b) of Section 11-401 of the
34 Illinois Vehicle Code, or a violation of Section 9-3 of the
35 Criminal Code of 1961 if the defendant has within the last 10
36 years been:

1 (1) convicted for a violation of Section 6-303 of the
2 Illinois Vehicle Code or a similar provision of a local
3 ordinance; or

4 (2) assigned supervision for a violation of Section
5 6-303 of the Illinois Vehicle Code or a similar provision
6 of a local ordinance.

7 (Source: P.A. 93-388, eff. 7-25-03.)

8 (730 ILCS 5/5-6-2) (from Ch. 38, par. 1005-6-2)

9 Sec. 5-6-2. Incidents of Probation and of Conditional
10 Discharge.

11 (a) When an offender is sentenced to probation or
12 conditional discharge, the court shall impose a period under
13 paragraph (b) of this Section, and shall specify the conditions
14 under Section 5-6-3.

15 (b) Unless terminated sooner as provided in paragraph (c)
16 of this Section or extended pursuant to paragraph (e) of this
17 Section, the period of probation or conditional discharge shall
18 be as follows:

19 (1) for a Class 1 or Class 2 felony, not to exceed 4
20 years;

21 (2) for a Class 3 or Class 4 felony, not to exceed 30
22 months;

23 (3) for a misdemeanor, not to exceed 2 years;

24 (4) for a petty offense, not to exceed 6 months.

25 Multiple terms of probation imposed at the same time shall
26 run concurrently.

27 (c) The court may at any time terminate probation or
28 conditional discharge if warranted by the conduct of the
29 offender and the ends of justice, as provided in Section 5-6-4.

30 (d) Upon the expiration or termination of the period of
31 probation or of conditional discharge, the court shall enter an
32 order discharging the offender.

33 (e) The court may extend any period of probation or
34 conditional discharge beyond the limits set forth in paragraph
35 (b) of this Section upon a violation of a condition of the

1 probation or conditional discharge, for the payment of an
2 assessment required by Section 10.3 of the Cannabis Control Act
3 or Section 411.2 of the Illinois Controlled Substances Act, or
4 for the payment of restitution as provided by an order of
5 restitution under Section 5-5-6 of this Code.

6 (f) The court may impose a term of probation that is
7 concurrent or consecutive to a term of imprisonment so long as
8 the maximum term imposed does not exceed the maximum term
9 provided under Article 8 of this Chapter. The court may provide
10 that probation may commence while an offender is on mandatory
11 supervised release, participating in a day release program, or
12 being monitored by an electronic monitoring device.

13 (Source: P.A. 91-153, eff. 1-1-00.)

14 (730 ILCS 5/5-6-4) (from Ch. 38, par. 1005-6-4)

15 Sec. 5-6-4. Violation, Modification or Revocation of
16 Probation, of Conditional Discharge or Supervision or of a
17 sentence of county impact incarceration - Hearing.

18 (a) Except in cases where conditional discharge or
19 supervision was imposed for a petty offense as defined in
20 Section 5-1-17, when a petition is filed charging a violation
21 of a condition, the court may:

22 (1) in the case of probation violations, order the
23 issuance of a notice to the offender to be present by the
24 County Probation Department or such other agency
25 designated by the court to handle probation matters; and in
26 the case of conditional discharge or supervision
27 violations, such notice to the offender shall be issued by
28 the Circuit Court Clerk; and in the case of a violation of
29 a sentence of county impact incarceration, such notice
30 shall be issued by the Sheriff;

31 (2) order a summons to the offender to be present for
32 hearing; or

33 (3) order a warrant for the offender's arrest where
34 there is danger of his fleeing the jurisdiction or causing
35 serious harm to others or when the offender fails to answer

1 a summons or notice from the clerk of the court or Sheriff.

2 Personal service of the petition for violation of probation
3 or the issuance of such warrant, summons or notice shall toll
4 the period of probation, conditional discharge, supervision,
5 or sentence of county impact incarceration until the final
6 determination of the charge, and the term of probation,
7 conditional discharge, supervision, or sentence of county
8 impact incarceration shall not run until the hearing and
9 disposition of the petition for violation.

10 (b) The court shall conduct a hearing of the alleged
11 violation. The court shall admit the offender to bail pending
12 the hearing unless the alleged violation is itself a criminal
13 offense in which case the offender shall be admitted to bail on
14 such terms as are provided in the Code of Criminal Procedure of
15 1963, as amended. In any case where an offender remains
16 incarcerated only as a result of his alleged violation of the
17 court's earlier order of probation, supervision, conditional
18 discharge, or county impact incarceration such hearing shall be
19 held within 14 days of the onset of said incarceration, unless
20 the alleged violation is the commission of another offense by
21 the offender during the period of probation, supervision or
22 conditional discharge in which case such hearing shall be held
23 within the time limits described in Section 103-5 of the Code
24 of Criminal Procedure of 1963, as amended.

25 (c) The State has the burden of going forward with the
26 evidence and proving the violation by the preponderance of the
27 evidence. The evidence shall be presented in open court with
28 the right of confrontation, cross-examination, and
29 representation by counsel.

30 (d) Probation, conditional discharge, periodic
31 imprisonment and supervision shall not be revoked for failure
32 to comply with conditions of a sentence or supervision, which
33 imposes financial obligations upon the offender unless such
34 failure is due to his willful refusal to pay.

35 (e) If the court finds that the offender has violated a
36 condition at any time prior to the expiration or termination of

1 the period, it may continue him on the existing sentence, with
2 or without modifying or enlarging the conditions, or may impose
3 any other sentence that was available under Section 5-5-3 at
4 the time of initial sentencing. If the court finds that the
5 person has failed to successfully complete his or her sentence
6 to a county impact incarceration program, the court may impose
7 any other sentence that was available under Section 5-5-3 at
8 the time of initial sentencing, except for a sentence of
9 probation or conditional discharge.

10 (f) The conditions of probation, of conditional discharge,
11 of supervision, or of a sentence of county impact incarceration
12 may be modified by the court on motion of the supervising
13 agency or on its own motion or at the request of the offender
14 after notice and a hearing.

15 (g) A judgment revoking supervision, probation,
16 conditional discharge, or a sentence of county impact
17 incarceration is a final appealable order.

18 (h) Resentencing after revocation of probation,
19 conditional discharge, supervision, or a sentence of county
20 impact incarceration shall be under Article 4. Time served on
21 probation, conditional discharge or supervision shall not be
22 credited by the court against a sentence of imprisonment or
23 periodic imprisonment unless the court orders otherwise.

24 (i) Instead of filing a violation of probation, conditional
25 discharge, supervision, or a sentence of county impact
26 incarceration, an agent or employee of the supervising agency
27 with the concurrence of his or her supervisor may serve on the
28 defendant a Notice of Intermediate Sanctions. The Notice shall
29 contain the technical violation or violations involved, the
30 date or dates of the violation or violations, and the
31 intermediate sanctions to be imposed. Upon receipt of the
32 Notice, the defendant shall immediately accept or reject the
33 intermediate sanctions. If the sanctions are accepted, they
34 shall be imposed immediately. If the intermediate sanctions are
35 rejected or the defendant does not respond to the Notice, a
36 violation of probation, conditional discharge, supervision, or

1 a sentence of county impact incarceration shall be immediately
2 filed with the court. The State's Attorney and the sentencing
3 court shall be notified of the Notice of Sanctions. Upon
4 successful completion of the intermediate sanctions, a court
5 may not revoke probation, conditional discharge, supervision,
6 or a sentence of county impact incarceration or impose
7 additional sanctions for the same violation. A notice of
8 intermediate sanctions may not be issued for any violation of
9 probation, conditional discharge, supervision, or a sentence
10 of county impact incarceration which could warrant an
11 additional, separate felony charge. The intermediate sanctions
12 shall include a term of home detention as provided in Article
13 8A of Chapter V of this Code for multiple or repeat violations
14 of the terms and conditions of a sentence of probation,
15 conditional discharge, or supervision.

16 (j) When an offender is re-sentenced after revocation of
17 probation that was imposed in combination with a sentence of
18 imprisonment for the same offense, the aggregate of the
19 sentences may not exceed the maximum term authorized under
20 Article 8 of this Chapter.

21 (Source: P.A. 89-198, eff. 7-21-95; 89-587, eff. 7-31-96;
22 89-647, eff. 1-1-97; 90-14, eff. 7-1-97.)