



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
HB2916

Introduced 2/22/2005, by Rep. Tom Cross

SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-5-3

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

Amends the Unified Code of Corrections. Makes a technical change in a Section concerning dispositions for persons convicted of an offense.

LRB094 05433 RLC 35478 b

1 AN ACT concerning criminal law.

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

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

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

7 Sec. 5-5-3. Disposition.

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

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

15 (1) A period of probation.

16 (2) A term of periodic imprisonment.

17 (3) A term of conditional discharge.

18 (4) A term of imprisonment.

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22 (now repealed).

23 (6) A fine.

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

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

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

32 Neither a fine nor restitution shall be the sole

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

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

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

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

17 (B) Attempted first degree murder.

18 (C) A Class X felony.

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

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

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

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

35 (H) Criminal sexual assault.

36 (I) Aggravated battery of a senior citizen.

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

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

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

13 (K) Vehicular hijacking.

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

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

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

24 (O) A violation of Section 12-6.1 of the Criminal
25 Code of 1961.

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

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

31 (R) A violation of Section 24-3A of the Criminal
32 Code of 1961.

33 (S) (Blank).

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

1 Controlled Substances Act.

2 (3) (Blank).

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

7 (4.1) (Blank).

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

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

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

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

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

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

32 (A) a period of conditional discharge;

33 (B) a fine;

34 (C) make restitution to the victim under Section
35 5-5-6 of this Code.

36 (5.1) In addition to any penalties imposed under

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

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

16 (5.3) In addition to any penalties imposed under
17 paragraph (5) of this subsection (c), a person convicted of
18 violating subsection (c) of Section 11-907 of the Illinois
19 Vehicle Code shall have his or her driver's license,
20 permit, or privileges suspended for 2 years, if the
21 violation resulted in the death of another person.

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

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

30 (8) When a defendant, over the age of 21 years, is
31 convicted of a Class 1 or Class 2 felony, after having
32 twice been convicted in any state or federal court of an
33 offense that contains the same elements as an offense now
34 classified in Illinois as a Class 2 or greater Class felony
35 and such charges are separately brought and tried and arise
36 out of different series of acts, such defendant shall be

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

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

13 (10) (Blank).

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

31 (12) ~~(11)~~ A person may not receive a disposition of
32 court supervision for a violation of Section 5-16 of the
33 Boat Registration and Safety Act if that person has
34 previously received a disposition of court supervision for
35 a violation of that Section.

36 (d) In any case in which a sentence originally imposed is

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

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

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

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

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

31 (i) removal from the household;

32 (ii) restricted contact with the victim;

33 (iii) continued financial support of the
34 family;

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

36 and

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

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

10 Probation may be revoked or modified pursuant to Section
11 5-6-4; except where the court determines at the hearing that
12 the defendant violated a condition of his or her probation
13 restricting contact with the victim or other family members or
14 commits another offense with the victim or other family
15 members, the court shall revoke the defendant's probation and
16 impose a term of imprisonment.

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

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

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

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

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

35 (h) Whenever a defendant is convicted of an offense under
36 Section 1 or 2 of the Hypodermic Syringes and Needles Act, the

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

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

35 (j) In cases when prosecution for any violation of Section
36 11-6, 11-8, 11-9, 11-11, 11-14, 11-15, 11-15.1, 11-16, 11-17,

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

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

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

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

21 (l) (A) Except as provided in paragraph (C) of subsection
22 (l), whenever a defendant, who is an alien as defined by
23 the Immigration and Nationality Act, is convicted of any
24 felony or misdemeanor offense, the court after sentencing
25 the defendant may, upon motion of the State's Attorney,
26 hold sentence in abeyance and remand the defendant to the
27 custody of the Attorney General of the United States or his
28 or her designated agent to be deported 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 Otherwise, the defendant shall be sentenced as
36 provided in this Chapter V.

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

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

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

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

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

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

34 (n) The court may sentence a person convicted of a
35 violation of Section 12-19, 12-21, or 16-1.3 of the Criminal
36 Code of 1961 (i) to an impact incarceration program if the

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

6 (Source: P.A. 92-183, eff. 7-27-01; 92-248, eff. 8-3-01;
7 92-283, eff. 1-1-02; 92-340, eff. 8-10-01; 92-418, eff.
8 8-17-01; 92-422, eff. 8-17-01; 92-651, eff. 7-11-02; 92-698,
9 eff. 7-19-02; 93-44, eff. 7-1-03; 93-156, eff. 1-1-04; 93-169,
10 eff. 7-10-03; 93-301, eff. 1-1-04; 93-419, eff. 1-1-04; 93-546,
11 eff. 1-1-04; 93-694, eff. 7-9-04; 93-782, eff. 1-1-05; 93-800,
12 eff. 1-1-05; 93-1014, eff. 1-1-05; revised 10-25-04.)