



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

SB0425

Introduced 2/16/2005, by Sen. Mattie Hunter

SYNOPSIS AS INTRODUCED:

720 ILCS 570/410
730 ILCS 5/5-5-3

from Ch. 56 1/2, par. 1410
from Ch. 38, par. 1005-5-3

Amends the Criminal Code of 1961. Provides that whenever any person who has not previously been convicted of, or placed on probation or court supervision for any offense under the Act or any law of the United States or of any state relating to cannabis or controlled substances, pleads guilty to or is found guilty of possession of a controlled or counterfeit substance, the court may order an assessment of drug use or addiction to be performed by the program designated by the Department of Human Services to provide assessment and referral services to the Illinois courts. Provides that a condition of probation, if the court determines that the person is in need of drug treatment, shall be treatment for drug use or addiction. Provides that drug treatment shall be delivered by a provider licensed by the Department of Human Services, including, but not limited to, residential treatment, recovery homes, and outpatient services. Amends the Unified Code of Corrections. Provides that a defendant that is convicted of violating a provision of the Illinois Controlled Substances Act, and that has not been previously sentenced to a term of imprisonment in the Illinois Department of Corrections or any other jurisdiction, shall be sentenced to a term of probation under the supervision of the program designated by the Department of Human Services to provide assessment and referral services to the Illinois courts.

LRB094 09398 RXD 39644 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning criminal law.

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

4 Section 5. The Illinois Controlled Substances Act is
5 amended by changing Section 410 as follows:

6 (720 ILCS 570/410) (from Ch. 56 1/2, par. 1410)

7 Sec. 410. (a) Whenever any person who has not previously
8 been convicted of, or placed on probation or court supervision
9 for any offense under this Act or any law of the United States
10 or of any State relating to cannabis or controlled substances,
11 pleads guilty to or is found guilty of possession of a
12 controlled or counterfeit substance under subsection (c) of
13 Section 402, the court, without entering a judgment and with
14 the consent of such person, shall ~~may~~ sentence him to
15 probation, and shall order an assessment of drug use or
16 addiction to be performed by the program designated by the
17 Department of Human Services to provide assessment and referral
18 services to the Illinois courts, pursuant to 77 Illinois
19 Administrative Code, Chapter X, Section 2060.507.

20 (b) When a person is placed on probation, the court shall
21 enter an order specifying a period of probation of 24 months
22 and shall defer further proceedings in the case until the
23 conclusion of the period or until the filing of a petition
24 alleging violation of a term or condition of probation.

25 (c) The conditions of probation shall be that the person:
26 (1) not violate any criminal statute of any jurisdiction; (2)
27 refrain from possessing a firearm or other dangerous weapon;
28 (3) submit to periodic drug testing at a time and in a manner
29 as ordered by the court, but no less than 3 times during the
30 period of the probation, with the cost of the testing to be
31 paid by the probationer; ~~and~~ (4) perform no less than 30 hours
32 of community service, provided community service is available

1 in the jurisdiction and is funded and approved by the county
2 board; and (5) if based on the results of the assessment
3 performed under subsection (a), the court determines that the
4 person is in need of drug treatment, the person shall undergo
5 treatment for drug use or addiction under the supervision of
6 the designated program. The treatment shall be delivered by a
7 provider licensed by the Department of Human Services,
8 including, but not limited to, residential treatment, recovery
9 homes, and outpatient services.

10 (d) The court may, in addition to other conditions, require
11 that the person:

12 (1) make a report to and appear in person before or
13 participate with the court or such courts, person, or
14 social service agency as directed by the court in the order
15 of probation;

16 (2) pay a fine and costs;

17 (3) work or pursue a course of study or vocational
18 training;

19 (4) undergo medical or psychiatric treatment; or
20 treatment or rehabilitation approved by the Illinois
21 Department of Human Services;

22 (5) attend or reside in a facility established for the
23 instruction or residence of defendants on probation;

24 (6) support his dependents;

25 (6-5) refrain from having in his or her body the
26 presence of any illicit drug prohibited by the Cannabis
27 Control Act or the Illinois Controlled Substances Act,
28 unless prescribed by a physician, and submit samples of his
29 or her blood or urine or both for tests to determine the
30 presence of any illicit drug;

31 (7) and in addition, if a minor:

32 (i) reside with his parents or in a foster home;

33 (ii) attend school;

34 (iii) attend a non-residential program for youth;

35 (iv) contribute to his own support at home or in a
36 foster home.

1 (e) Upon violation of a term or condition of probation, the
2 court may enter a judgment on its original finding of guilt and
3 proceed as otherwise provided.

4 (f) Upon fulfillment of the terms and conditions of
5 probation, the court shall discharge the person and dismiss the
6 proceedings against him.

7 (g) A disposition of probation is considered to be a
8 conviction for the purposes of imposing the conditions of
9 probation and for appeal, however, discharge and dismissal
10 under this Section is not a conviction for purposes of this Act
11 or for purposes of disqualifications or disabilities imposed by
12 law upon conviction of a crime.

13 (h) There may be only one discharge and dismissal under
14 this Section or Section 10 of the Cannabis Control Act with
15 respect to any person.

16 (i) If a person is convicted of an offense under this Act
17 or the Cannabis Control Act within 5 years subsequent to a
18 discharge and dismissal under this Section, the discharge and
19 dismissal under this Section shall be admissible in the
20 sentencing proceeding for that conviction as evidence in
21 aggravation.

22 (Source: P.A. 91-696, eff. 4-13-00.)

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

25 (730 ILCS 5/5-5-3) (from Ch. 38, par. 1005-5-3)

26 Sec. 5-5-3. Disposition.

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

30 (b) The following options shall be appropriate
31 dispositions, alone or in combination, for all felonies and
32 misdemeanors other than those identified in subsection (c) of
33 this Section:

34 (1) A period of probation.

1 (2) A term of periodic imprisonment.

2 (3) A term of conditional discharge.

3 (4) A term of imprisonment.

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

8 (6) A fine.

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

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

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

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

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

25 (2) A period of probation, a term of periodic
26 imprisonment or conditional discharge shall not be imposed
27 for the following offenses. The court shall sentence the
28 offender to not less than the minimum term of imprisonment
29 set forth in this Code for the following offenses, and may
30 order a fine or restitution or both in conjunction with
31 such term of imprisonment:

32 (A) First degree murder where the death penalty is
33 not imposed.

34 (B) Attempted first degree murder.

35 (C) A Class X felony.

36 (D) A violation of Section 401.1 or 407 of the

1 Illinois Controlled Substances Act, or a violation of
2 subdivision (c) (1) or (c) (2) of Section 401 of that Act
3 which relates to more than 5 grams of a substance
4 containing heroin or cocaine or an analog thereof.

5 (E) A violation of Section 5.1 or 9 of the Cannabis
6 Control Act.

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

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

16 (H) Criminal sexual assault.

17 (I) Aggravated battery of a senior citizen.

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

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

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

30 (K) Vehicular hijacking.

31 (L) A second or subsequent conviction for the
32 offense of hate crime when the underlying offense upon
33 which the hate crime is based is felony aggravated
34 assault or felony mob action.

35 (M) A second or subsequent conviction for the
36 offense of institutional vandalism if the damage to the

1 property exceeds \$300.

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

5 (O) A violation of Section 12-6.1 of the Criminal
6 Code of 1961.

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

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

12 (R) A violation of Section 24-3A of the Criminal
13 Code of 1961.

14 (S) (Blank).

15 (T) A second or subsequent violation of paragraph
16 (6.6) of subsection (a), subsection (c-5), or
17 subsection (d-5) of Section 401 of the Illinois
18 Controlled Substances Act.

19 (3) (Blank).

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

24 (4.1) (Blank).

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

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

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

1 subsequent violation of Section 6-303 of the Illinois
2 Vehicle Code.

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

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

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

13 (A) a period of conditional discharge;

14 (B) a fine;

15 (C) make restitution to the victim under Section
16 5-5-6 of this Code.

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

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

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

1 permit, or privileges suspended for 2 years, if the
2 violation resulted in the death of another person.

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

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

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

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

30 (10) (Blank).

31 (11) The court shall impose a minimum fine of \$1,000
32 for a first offense and \$2,000 for a second or subsequent
33 offense upon a person convicted of or placed on supervision
34 for battery when the individual harmed was a sports
35 official or coach at any level of competition and the act
36 causing harm to the sports official or coach occurred

1 within an athletic facility or within the immediate
2 vicinity of the athletic facility at which the sports
3 official or coach was an active participant of the athletic
4 contest held at the athletic facility. For the purposes of
5 this paragraph (11), "sports official" means a person at an
6 athletic contest who enforces the rules of the contest,
7 such as an umpire or referee; "athletic facility" means an
8 indoor or outdoor playing field or recreational area where
9 sports activities are conducted; and "coach" means a person
10 recognized as a coach by the sanctioning authority that
11 conducted the sporting event.

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

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

35 (e) In cases where prosecution for aggravated criminal
36 sexual abuse under Section 12-16 of the Criminal Code of 1961

1 results in conviction of a defendant who was a family member of
2 the victim at the time of the commission of the offense, the
3 court shall consider the safety and welfare of the victim and
4 may impose a sentence of probation only where:

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

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

9 (B) the defendant is willing to participate in a
10 court approved plan including but not limited to the
11 defendant's:

12 (i) removal from the household;

13 (ii) restricted contact with the victim;

14 (iii) continued financial support of the
15 family;

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

17 and

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

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

27 Probation may be revoked or modified pursuant to Section
28 5-6-4; except where the court determines at the hearing that
29 the defendant violated a condition of his or her probation
30 restricting contact with the victim or other family members or
31 commits another offense with the victim or other family
32 members, the court shall revoke the defendant's probation and
33 impose a term of imprisonment.

34 For the purposes of this Section, "family member" and
35 "victim" shall have the meanings ascribed to them in Section
36 12-12 of the Criminal Code of 1961.

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

5 (g) Whenever a defendant is convicted of an offense under
6 Sections 11-14, 11-15, 11-15.1, 11-16, 11-17, 11-18, 11-18.1,
7 11-19, 11-19.1, 11-19.2, 12-13, 12-14, 12-14.1, 12-15 or 12-16
8 of the Criminal Code of 1961, the defendant shall undergo
9 medical testing to determine whether the defendant has any
10 sexually transmissible disease, including a test for infection
11 with human immunodeficiency virus (HIV) or any other identified
12 causative agent of acquired immunodeficiency syndrome (AIDS).
13 Any such medical test shall be performed only by appropriately
14 licensed medical practitioners and may include an analysis of
15 any bodily fluids as well as an examination of the defendant's
16 person. Except as otherwise provided by law, the results of
17 such test shall be kept strictly confidential by all medical
18 personnel involved in the testing and must be personally
19 delivered in a sealed envelope to the judge of the court in
20 which the conviction was entered for the judge's inspection in
21 camera. Acting in accordance with the best interests of the
22 victim and the public, the judge shall have the discretion to
23 determine to whom, if anyone, the results of the testing may be
24 revealed. The court shall notify the defendant of the test
25 results. The court shall also notify the victim if requested by
26 the victim, and if the victim is under the age of 15 and if
27 requested by the victim's parents or legal guardian, the court
28 shall notify the victim's parents or legal guardian of the test
29 results. The court shall provide information on the
30 availability of HIV testing and counseling at Department of
31 Public Health facilities to all parties to whom the results of
32 the testing are revealed and shall direct the State's Attorney
33 to provide the information to the victim when possible. A
34 State's Attorney may petition the court to obtain the results
35 of any HIV test administered under this Section, and the court
36 shall grant the disclosure if the State's Attorney shows it is

1 relevant in order to prosecute a charge of criminal
2 transmission of HIV under Section 12-16.2 of the Criminal Code
3 of 1961 against the defendant. The court shall order that the
4 cost of any such test shall be paid by the county and may be
5 taxed as costs against the convicted defendant.

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

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

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

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

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

1 schools shall notify the State Board of Education of any
2 notification under this subsection.

3 (j-1) A defendant that is convicted of violating subsection
4 (c) of Section 402 of the Illinois Controlled Substances Act,
5 and that has not been previously sentenced to a term of
6 imprisonment in the Illinois Department of Corrections or any
7 other jurisdiction, shall be sentenced to a term of probation
8 under the supervision of the program designated by the
9 Department of Human Services to provide assessment and referral
10 services to the Illinois courts, pursuant to 77 Illinois
11 Administrative Code, Chapter X, Section 2060.507. The term of
12 supervision shall be pursuant to Section 40-10 of the
13 Alcoholism and Other Drug Abuse and Dependency Act.

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

1 comply. The Prisoner Review Board shall recommit the defendant
2 whose mandatory supervised release term has been revoked under
3 this subsection (j-5) as provided in Section 3-3-9. This
4 subsection (j-5) does not apply to a defendant who has a high
5 school diploma or has successfully passed the GED test. This
6 subsection (j-5) does not apply to a defendant who is
7 determined by the court to be developmentally disabled or
8 otherwise mentally incapable of completing the educational or
9 vocational program.

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

13 (l) (A) Except as provided in paragraph (C) of subsection
14 (l), whenever a defendant, who is an alien as defined by
15 the Immigration and Nationality Act, is convicted of any
16 felony or misdemeanor offense, the court after sentencing
17 the defendant may, upon motion of the State's Attorney,
18 hold sentence in abeyance and remand the defendant to the
19 custody of the Attorney General of the United States or his
20 or her designated agent to be deported when:

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

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

27 Otherwise, the defendant shall be sentenced as
28 provided in this Chapter V.

29 (B) If the defendant has already been sentenced for a
30 felony or misdemeanor offense, or has been placed on
31 probation under Section 10 of the Cannabis Control Act or
32 Section 410 of the Illinois Controlled Substances Act, the
33 court may, upon motion of the State's Attorney to suspend
34 the sentence imposed, commit the defendant to the custody
35 of the Attorney General of the United States or his or her
36 designated agent when:

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

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

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

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

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

26 (n) The court may sentence a person convicted of a
27 violation of Section 12-19, 12-21, or 16-1.3 of the Criminal
28 Code of 1961 (i) to an impact incarceration program if the
29 person is otherwise eligible for that program under Section
30 5-8-1.1, (ii) to community service, or (iii) if the person is
31 an addict or alcoholic, as defined in the Alcoholism and Other
32 Drug Abuse and Dependency Act, to a substance or alcohol abuse
33 program licensed under that Act.

34 (Source: P.A. 92-183, eff. 7-27-01; 92-248, eff. 8-3-01;
35 92-283, eff. 1-1-02; 92-340, eff. 8-10-01; 92-418, eff.
36 8-17-01; 92-422, eff. 8-17-01; 92-651, eff. 7-11-02; 92-698,

1 eff. 7-19-02; 93-44, eff. 7-1-03; 93-156, eff. 1-1-04; 93-169,
2 eff. 7-10-03; 93-301, eff. 1-1-04; 93-419, eff. 1-1-04; 93-546,
3 eff. 1-1-04; 93-694, eff. 7-9-04; 93-782, eff. 1-1-05; 93-800,
4 eff. 1-1-05; 93-1014, eff. 1-1-05; revised 10-25-04.)