

1 AN ACT to amend the Unified Code of Corrections by  
2 changing Section 5-5-3.

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

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

7 (730 ILCS 5/5-5-3) (from Ch. 38, par. 1005-5-3)  
8 Sec. 5-5-3. Disposition.

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

11 (b) 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  
22 1961.

23 (6) A fine.

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

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

29 Whenever an individual is sentenced for an offense based  
30 upon an arrest for a violation of Section 11-501 of the  
31 Illinois Vehicle Code, or a similar provision of a local

1 ordinance, and the professional evaluation recommends  
2 remedial or rehabilitative treatment or education, neither  
3 the treatment nor the education shall be the sole disposition  
4 and either or both may be imposed only in conjunction with  
5 another disposition. The court shall monitor compliance with  
6 any remedial education or treatment recommendations contained  
7 in the professional evaluation. Programs conducting alcohol  
8 or other drug evaluation or remedial education must be  
9 licensed by the Department of Human Services. However, if  
10 the individual is not a resident of Illinois, the court may  
11 accept an alcohol or other drug evaluation or remedial  
12 education program in the state of such individual's  
13 residence. Programs providing treatment must be licensed  
14 under existing applicable alcoholism and drug treatment  
15 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 or a similar provision of local  
19 ordinance, whose operation of a motor vehicle while in  
20 violation of Section 11-501 or such ordinance proximately  
21 caused an incident resulting in an appropriate emergency  
22 response, shall be required to make restitution to a public  
23 agency for the costs of that emergency response. Such  
24 restitution shall not exceed \$500 per public agency for each  
25 such emergency response. For the purpose of this paragraph,  
26 emergency response shall mean any incident requiring a  
27 response by: a police officer as defined under Section 1-162  
28 of the Illinois Vehicle Code; a fireman carried on the rolls  
29 of a regularly constituted fire department; and an ambulance  
30 as defined under Section 4.05 of the Emergency Medical  
31 Services (EMS) Systems Act.

32 Neither a fine nor restitution shall be the sole  
33 disposition for a felony and either or both may be imposed  
34 only 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  
3 imprisonment under Section 5-8-1 of this Code, or where  
4 appropriate seek a sentence of death under Section 9-1 of  
5 the Criminal Code of 1961.

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

13 (A) First degree murder where the death  
14 penalty is 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  
19 of subdivision (c)(2) of Section 401 of that Act  
20 which relates to more than 5 grams of a substance  
21 containing cocaine or an analog thereof.

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

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

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

34 (H) Criminal sexual assault, except as

1 otherwise provided in subsection (e) of this  
2 Section.

3 (I) Aggravated battery of a senior citizen.

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

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

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

16 (K) Vehicular hijacking.

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

21 (M) A second or subsequent conviction for the  
22 offense of institutional vandalism if the damage to  
23 the property exceeds \$300.

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

27 (O) A violation of Section 12-6.1 of the  
28 Criminal Code of 1961.

29 (P) A violation of paragraph (1), (2), (3),  
30 (4), (5), or (7) of subsection (a) of Section  
31 11-20.1 of the Criminal Code of 1961.

32 (Q) A violation of Section 20-1.2 of the  
33 Criminal Code of 1961.

34 (R) A violation of Section 24-3A of the

1 Criminal Code of 1961.

2 (3) A minimum term of imprisonment of not less than  
3 48 consecutive hours or 100 hours of community service as  
4 may be determined by the court shall be imposed for a  
5 second or subsequent violation committed within 5 years  
6 of a previous violation of Section 11-501 of the Illinois  
7 Vehicle Code or a similar provision of a local ordinance.

8 (4) A minimum term of imprisonment of not less than  
9 7 consecutive days or 30 days of community service shall  
10 be imposed for a violation of paragraph (c) of Section  
11 6-303 of the Illinois Vehicle Code.

12 (4.1) A minimum term of 30 consecutive days of  
13 imprisonment, 40 days of 24 hour periodic imprisonment or  
14 720 hours of community service, as may be determined by  
15 the court, shall be imposed for a violation of Section  
16 11-501 of the Illinois Vehicle Code during a period in  
17 which the defendant's driving privileges are revoked or  
18 suspended, where the revocation or suspension was for a  
19 violation of Section 11-501 or Section 11-501.1 of that  
20 Code.

21 (5) The court may sentence an offender convicted of  
22 a business offense or a petty offense or a corporation or  
23 unincorporated association convicted of any offense to:

- 24 (A) a period of conditional discharge;
- 25 (B) a fine;
- 26 (C) make restitution to the victim under  
27 Section 5-5-6 of this Code.

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

32 (7) When a defendant is adjudged a habitual  
33 criminal under Article 33B of the Criminal Code of 1961,  
34 the court shall sentence the defendant to a term of

1 natural life imprisonment.

2 (8) When a defendant, over the age of 21 years, is  
 3 convicted of a Class 1 or Class 2 felony, after having  
 4 twice been convicted of any Class 2 or greater Class  
 5 felonies in Illinois, and such charges are separately  
 6 brought and tried and arise out of different series of  
 7 acts, such defendant shall be sentenced as a Class X  
 8 offender. This paragraph shall not apply unless (1) the  
 9 first felony was committed after the effective date of  
 10 this amendatory Act of 1977; and (2) the second felony  
 11 was committed after conviction on the first; and (3) the  
 12 third felony was committed after conviction on the  
 13 second.

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

17 (10) The court shall impose a minimum fine of \$1,000  
 18 for a first offense and \$2,000 for a second or subsequent  
 19 offense upon a person convicted of or placed on  
 20 supervision for battery when the individual harmed was a  
 21 sports official at any level of competition and the act  
 22 causing harm to the sports official occurred within an  
 23 athletic facility or within the immediate vicinity of the  
 24 athletic facility at which the sports official was an  
 25 active participant of the athletic contest held at the  
 26 athletic facility. For the purposes of this paragraph  
 27 (10), "sports official" means a person at an athletic  
 28 contest who enforces the rules of the contest, such as an  
 29 umpire or referee.

30 (d) In any case in which a sentence originally imposed  
 31 is vacated, the case shall be remanded to the trial court.  
 32 The trial court shall hold a hearing under Section 5-4-1 of  
 33 the Unified Code of Corrections which may include evidence of  
 34 the defendant's life, moral character and occupation during

1 the time since the original sentence was passed. The trial  
 2 court shall then impose sentence upon the defendant. The  
 3 trial court may impose any sentence which could have been  
 4 imposed at the original trial subject to Section 5-5-4 of the  
 5 Unified Code of Corrections.

6 (e) In cases where prosecution for criminal sexual  
 7 assault or aggravated criminal sexual abuse under Section  
 8 12-13 or 12-16 of the Criminal Code of 1961 results in  
 9 conviction of a defendant who was a family member of the  
 10 victim at the time of the commission of the offense, the  
 11 court shall consider the safety and welfare of the victim and  
 12 may impose a sentence of probation only where:

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

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

18 (B) the defendant is willing to participate in  
 19 a court approved plan including but not limited to  
 20 the defendant's:

- 21 (i) removal from the household;
- 22 (ii) restricted contact with the victim;
- 23 (iii) continued financial support of the  
 24 family;
- 25 (iv) restitution for harm done to the  
 26 victim; and
- 27 (v) compliance with any other measures  
 28 that the court may deem appropriate; and

29 (2) the court orders the defendant to pay for the  
 30 victim's counseling services, to the extent that the  
 31 court finds, after considering the defendant's income and  
 32 assets, that the defendant is financially capable of  
 33 paying for such services, if the victim was under 18  
 34 years of age at the time the offense was committed and

1 requires counseling as a result of the offense.

2 Probation may be revoked or modified pursuant to Section  
3 5-6-4; except where the court determines at the hearing that  
4 the defendant violated a condition of his or her probation  
5 restricting contact with the victim or other family members  
6 or commits another offense with the victim or other family  
7 members, the court shall revoke the defendant's probation and  
8 impose a term of imprisonment.

9 For the purposes of this Section, "family member" and  
10 "victim" shall have the meanings ascribed to them in Section  
11 12-12 of the Criminal Code of 1961.

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

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



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

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

32 (h) Whenever a defendant is convicted of an offense  
33 under Section 1 or 2 of the Hypodermic Syringes and Needles  
34 Act, the defendant shall undergo medical testing to determine

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

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

34 (j) In cases when prosecution for any violation of

1 Section 11-6, 11-8, 11-9, 11-11, 11-14, 11-15, 11-15.1,  
2 11-16, 11-17, 11-17.1, 11-18, 11-18.1, 11-19, 11-19.1,  
3 11-19.2, 11-20.1, 11-21, 12-13, 12-14, 12-14.1, 12-15, or  
4 12-16 of the Criminal Code of 1961, any violation of the  
5 Illinois Controlled Substances Act, or any violation of the  
6 Cannabis Control Act results in conviction, a disposition of  
7 court supervision, or an order of probation granted under  
8 Section 10 of the Cannabis Control Act or Section 410 of the  
9 Illinois Controlled Substance Act of a defendant, the court  
10 shall determine whether the defendant is employed by a  
11 facility or center as defined under the Child Care Act of  
12 1969, a public or private elementary or secondary school, or  
13 otherwise works with children under 18 years of age on a  
14 daily basis. When a defendant is so employed, the court  
15 shall order the Clerk of the Court to send a copy of the  
16 judgment of conviction or order of supervision or probation  
17 to the defendant's employer by certified mail. If the  
18 employer of the defendant is a school, the Clerk of the Court  
19 shall direct the mailing of a copy of the judgment of  
20 conviction or order of supervision or probation to the  
21 appropriate regional superintendent of schools. The regional  
22 superintendent of schools shall notify the State Board of  
23 Education of any notification under this subsection.

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

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

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

27 (l) (A) Except as provided in paragraph (C) of  
28 subsection (l), whenever a defendant, who is an alien as  
29 defined by the Immigration and Nationality Act, is  
30 convicted of any felony or misdemeanor offense, the court  
31 after sentencing the defendant may, upon motion of the  
32 State's Attorney, hold sentence in abeyance and remand  
33 the defendant to the custody of the Attorney General of  
34 the United States or his or her designated agent to be

1 deported when:

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

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

9 Otherwise, the defendant shall be sentenced as  
10 provided in this Chapter V.

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

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

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

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

29 (D) Upon motion of the State's Attorney, if a  
30 defendant sentenced under this Section returns to the  
31 jurisdiction of the United States, the defendant shall be  
32 recommitted to the custody of the county from which he or  
33 she was sentenced. Thereafter, the defendant shall be  
34 brought before the sentencing court, which may impose any

1 sentence that was available under Section 5-5-3 at the  
2 time of initial sentencing. In addition, the defendant  
3 shall not be eligible for additional good conduct credit  
4 for meritorious service as provided under Section 3-6-6.

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

11 (Source: P.A. 90-14, eff. 7-1-97; 90-68, eff. 7-8-97; 90-680,  
12 eff. 1-1-99; 90-685, eff. 1-1-99; 90-787, eff. 8-14-98;  
13 91-357, eff. 7-29-99; 91-404, eff. 1-1-00; 91-663, eff.  
14 12-22-99; 91-695, eff. 4-13-00.)