

# QUICK -REFERENCE GUIDE TO SENTENCING AND BOND HEARING PROVISIONS

by Darren O'Brien  
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Attached is the most recent version of the memorandum regarding Sentencing and Bond Provisions.  
**Please note recent changes in the underlined paragraphs.**

The Illinois Supreme Court recently decided the case of People v. Washington, 2012 IL 107993 (2012). In that case the court held that the observations of a robbery victim were sufficient to prove that the weapon used by the offender was a firearm, as opposed to merely a dangerous weapon, even though it was not recovered or discharged and even though the offender never admitted it was a real firearm. See section II. A. 3 for further information.

\*\*\*\*\* **Important!!!!** In an opinion regarding firearm enhancements the Illinois Supreme Court in P. v. White, 2011 Ill. Lexis 1098, held that neither the State nor the trial court have discretion to ignore the firearm enhancement when a defendant pleads guilty to an offense in which a firearm was used and the proper notice has been provided to the defendant.

In a third opinion on the enhancements the 3<sup>rd</sup> District, in P. v. Barnett, 2011 Ill. App. Lexis (2011), held that 720 ILCS 5/18-2(a)(1), Armed Robbery while possessing a dangerous weapon other than a firearm, is not a lesser included offense of 720 ILCS 5/18-2(a)(2), Armed Robbery while possessing a firearm. The Court held that these two offenses were mutually exclusive. This becomes significant when deciding on which offenses to proceed when a gun is not recovered or discharged in your case. Proceeding only on the firearm count could leave your trier of fact who doesn't believe there is sufficient evidence to prove the weapon was a firearm, as opposed to something that looks like a firearm, with no alternative except to find the defendant guilty of robbery. (Aggravated Robbery may or may not be a lesser included of Armed Robbery under current case law, depending on the language contained in the charging instrument. P. v. McDonald, 321 Ill. App. 3d 470 2001).

**SEE SECTION II IN THIS MEMO FOR ADDITIONAL INFORMATION ON THE FIREARM ENHANCEMENTS!!!**

Effective July 1, 2011 some of the sections of the criminal code were renumbered. The chart at the end of this memorandum includes all the updated section numbers.

Effective August 22, 2011 violations of Child Pornography and Aggravated Child Pornography are triggering offenses for purposes of mandatory consecutive sentencing. Each violation must be sentenced consecutively to each other as well as to sentences on non-triggering offenses.

Aggravated Assault of a Peace Officer, Fireman, or Community Policing Volunteer, when a firearm is pointed at the victim is now non-probationable. Effective July 21, 2011.

Effective January 1, 2011 Aggravated UUW is no longer probationable, even for first time offenders, if the gun was uncased, loaded and immediately accessible, the offender does not possess an FOID card AND if the offender was at least 18 years of age. Other violations of this Statute remain probationable for first time offenders. As before, AGG UUW/Felon/ Second offense, remains non-probationable.

*Note: Rather than enact a separate violation of 24-1.6 which included the all of the sentencing factors as elements of the offense, the legislature made this a sentencing issue. In order for an offender to be non-probationable pursuant to this section you must prove (at trial or sentencing three factors, in addition to possession of the firearm.*

1. *the firearm was uncased, loaded and immediately accessible;*
2. *the offender did not have an FOID card; and*
3. *the offender was at least 18 years of age.*

**Don't forget that all UUW/Felons are now non-probationable. (Effective January 1, 2012)**  
**AGG UUW/Felons remain non-probationable.**

The Illinois Supreme Court in P. v. King, 2011 Ill. Lexis 13 (2011) effectively abolished the necessity of filing a petition to have a juvenile offender sentenced as an adult and the accompanying sentencing hearing which had been necessary after convicting (or pleading) a juvenile offender to a non-automatic transfer offense. It is no longer necessary to file a petition or have a sentencing hearing since the Court ruled that all charges arising out of an incident that is an automatic transfer are subject to adult sentencing. This opinion resulted from a guilty plea but the holding should apply to findings of guilty after trial as well. (King also seems to suggest that the juvenile jurisdiction waiver required by 705 ILCS 405/5-130 does not apply if the defendant pleads guilty to an offense that arose out of a charged, automatic transfer, even if that offense is not an automatic transfer itself, though this is not specifically addressed in the King opinion.)

## **I. It's-still-not-over 15-20-25 to Life Update**

### **ALL 15-20-25-to-Life FIREARM ENHANCEMENTS ARE CONSTITUTIONAL! !!**

The only limitation occurs for offenders charged with possessing a firearm (not personally discharging) in armed robbery, aggravated vehicular hijacking, aggravated kidnapping and aggravated criminal sexual assault cases which occurred before October 23, 2007. The possession enhancement, only, is unconstitutional for these four offenses when the offense occurred prior to the amendment of the armed violence statute on October 23, 2007. The possession enhancement for these four offenses is constitutional for offenses committed after that date.

In P. v. Sharpe, 216 Ill 2d. 481, the Illinois Supreme Court essentially re-instated those sentencing enhancements previously deemed unconstitutional by previous Appellate Court decisions. (Sharpe held that using the “cross-comparison” analysis to evaluate the constitutionality of various statutes was improper). The Sharpe decision applies to the 15-20-25 to Life enhancements.

In 2007 the Illinois Supreme Court held the 15-year sentencing enhancement for possessing a firearm during the commission of an armed robbery unconstitutional in P. v. Hauschild, 226 Ill 2d. 63 (2007) in that it violated the “identical elements” test. **Example:** An offender who commits an armed robbery while in possession of a firearm would be sentenced to a minimum of 21-years IDOC (6 for the armed robbery and 15 for the sentencing enhancement due to the possession of the firearm). According to the Illinois Supreme Court that same offender could be charged with robbery plus armed violence for that same offense, rather than armed robbery. If that occurred the offender would be subject to a minimum sentence of 13 or 18 years in IDOC (10 or 15 for the Armed Violence [depending on the type of firearm], plus 3 for the robbery). The elements of armed robbery and robbery plus armed violence are identical but have different minimum sentences, and, therefore, the armed robbery 15 year enhancement is unconstitutional.

**As a result the legislature amended the armed violence statute to exclude all ten of the felonies that currently carry the 15-year enhancement for possession of a firearm (as well as any offenses that may become enhanced in the future). Effective October 23, 2007. Public Act 095-0688 (Armed Violence Amended); 720 ILCS 5/33A. The result of this is that all 15-20-25 to life enhancements are now constitutional!!!**

**NOTE:** The 15 year enhancement for possession of a firearm (*not personal discharge*) does not apply to Armed Robbery with a Firearm for offenses committed before October 23, 2007. (See above). There is at least one Rule 23 opinion (P. v. Ronald Harris, 07-0261, 2008) and one published opinion (P. v. Pelo, 474 Ill. App. 3d 839 (2010) which hold that the 15 year enhancement for mere possession of a firearm also does not apply to ACSA offenses committed before October 23, 2007. Hauschild bars the imposition of the 15 year enhancement for possessing a firearm for Aggravated Kidnapping or Aggravated Vehicular Hijacking (occurring before October 23, 2007) as well.

## **Defendants Charged with Firearm Enhancements in Bond Court**

Offenders charged with at least one of the ten enumerated offenses, which carry the 25 to Life sentencing enhancement for individuals who personally discharge a firearm that proximately causes death or great bodily harm must be held without bond, unless the proof is not evident or the presumption not great that the offender committed the offense. In other words if an offender shoots a victim causing great bodily harm or death during any of the ten offenses which carry the enhanced penalty the statute requires he be held without bond. 725 ILCS 5/110-4(a)

Be aware that in order to obtain the sentencing enhancement the Information or Indictment must include the appropriate section number and qualifying language or you must file a written Notice to Seek an Enhanced Penalty pursuant to 725 ILCS 5/111-3 (c), (c-5) or (d), which you can do anytime before trial. P.v. McLain, 343 Ill. App. 3d 1122 (2003); P. v. O'Quinn, 339 Ill. App.3d 347 (2003).

Also, the enhancement language “to another person” which is applicable when seeking the 25-Life enhancement for causing death or great bodily harm, applies to the victim of the charged offense as well as any other person. P. v. Foreman, 361 Ill App 3d 936 (2005). (The defense has argued that the “another person” language only applies to someone other than the victim).

## **II. Trial/Plea Issues When The Defendant Is Charged With A Firearm Enhanced Count**

When proceeding to trial of a defendant on counts that include crimes that carry enhanced penalties as a result of the possession or personal discharge of a firearm or when a defendant wishes to plead guilty after being charged with a firearm-enhanced count (whether or not that plea is to a count that carries a firearm-enhanced penalty) there are several issues which must be considered by the ASA and the Court.

There are ten crimes that carry an enhanced penalty for the possession or personal discharge of a firearm, (not including Armed Violence). Of these ten crimes, six of the crimes include the particular firearm enhancement as an element of a specific subsection of an offense. Four have the firearm enhancements as sentencing issues only.

### **A. SIX OFFENSES FOR WHICH THE FIREARM ENHANCEMENT IS AN ELEMENT OF THE OFFENSE**

- (1) **Armed Robbery - 720 ILCS 5/18-2(b)**
- (2) **Aggravated Kidnapping - 720 ILCS 5/10-2(b)**
- (3) **Aggravated Criminal Sexual Assault - 720 ILCS 5/12-14(d)(1)**
- (4) **Aggravated Vehicular Hijacking - 720 ILCS 5/18-4(b)**
- (5) **Home Invasion - 720 ILCS 5/12-11(c)**
- (6) **Predatory Criminal Sexual Assault - 720 ILCS 5/12-14.1(b)(1)**  
**(PCSA does not have an enhancement for personally discharging a firearm causing GBH).**

As an example, the armed robbery statute incorporates the firearm sentencing enhancement into the sentence for each subsection.

- If an offender committed an Armed Robbery with a dangerous weapon other than a firearm, he is charged pursuant to 720 ILCS 5/18-2 (a)(1) - a Class X felony;
- If the offender possessed a firearm he is charged pursuant to 5/18-2(a)(2) - a Class X felony for which 15 years shall be added to the term of imprisonment imposed;
- If he personally discharges a firearm he is charged pursuant to 5/18-2(a)(3) - a Class X felony for which 20 years shall be added to the term of imprisonment imposed;
- If he personally discharges causing GBH/Death he is charged pursuant to 18-2(a)(4) - a Class X felony for which 25 years to Life shall be added to the term of imprisonment imposed.

**1. Trials - DO NOT SUBMIT A SEPARATE INTERROGATORY TO THE JURY ON THE FIREARM ENHANCEMENT ISSUE WHEN PROSECUTING A DEFENDANT ON ONE OF THESE SIX OFFENSES!!!**

When prosecuting one of the six offenses for which the firearm enhancement is an element of the offense, a verdict or finding of guilty for the properly charged offense is all that is necessary to prove the firearm enhancement. If you do submit a separate interrogatory you run the risk of an inconsistent verdict, which *may* invalidate the conviction, even though the general rule is that a firearm enhancement verdict that is inconsistent with the verdict for guilt will not invalidate the guilty verdict. P. v. Reed, 396 Ill. App. 3d 636 (2009); P. v. Jackson, 372 Ill. App.3d 605 (2007); P. v. Jones, 207 Ill. 2d 122 (2003). See P. v. Barnett, 2011 Ill. App. Lexis (2011), where the inconsistent verdict on the firearm enhancement did invalidate the guilty verdict for armed robbery while possessing a firearm.

In Reed, the defendant was found guilty of First Degree Murder for shooting the victim. The evidence adduced at trial was that Reed was the one and only shooter and that a firearm was used. The jury then deliberated on the issue of whether Reed had personally discharged a firearm which caused the death of the victim. The jury found that Reed did not personally discharge a firearm causing the victim's death. The Appellate Court held that the seemingly inconsistent finding by the jury did not invalidate the guilty verdict.

In Barnett, the jury found the defendant guilty of armed robbery while possessing a firearm. A special interrogatory was then submitted to the jury asking them to determine whether the defendant possessed a firearm during the armed robbery. The jury found that the defendant did not possess a firearm. The Appellate Court held that the inconsistency invalidated the verdict of guilty and found the defendant not guilty.

*Note: There were problems with the jury instructions in this case. The trial court also sentenced the defendant to an illegal term for the offense for which the defendant was convicted. These issues were not directly addressed by the Appellate Court but may have influenced the Appellate Court decision. As a result, this opinion may be only applicable to the facts in this case.*

The distinguishing factor between Reed and Barnett is that in Reed, the firearm enhancement was not an element of the offense of First Degree Murder, whereas in Barnett, the firearm enhancement was an element of the Armed Robbery subsection that was charged.

**2. Verdict forms - USE A SEPARATE VERDICT FORM FOR A FIREARM ENHANCED COUNT (ONE OF THE SIX OFFENSES) WHEN PROCEEDING ON MULTIPLE COUNTS OF THE SAME OFFENSE.**

In other words, if you are proceeding on multiple counts of the same offense (under different theories) use a separate verdict form for the firearm enhanced count(s) so that there is no issue as to which count the defendant was found guilty.

Example: Defendant is charged with two counts of ACSA. One is based on possessing a firearm (a)(8) and one is based on threatening the life of the victim (a)(3). Using one verdict form for ACSA, rather than two, will create an issue as to whether the jury found the defendant guilty of the “firearm” enhanced count or the “threatening the life” count.

**3. Firearm not recovered-WHEN YOU ARE SEEKING A FIREARM ENHANCEMENT FOR POSSESSION OF A FIREARM AND A FIREARM IS NOT RECOVERED, DISCHARGED DURING THE INCIDENT OR , THE DEFENDANT DOES NOT ADMIT THAT HE USED A REAL FIREARM, CONSIDER PROCEEDING ON MULTIPLE THEORIES OF THE SAME OFFENSE.**

All of the six of offenses provide that the offense may be committed “... while armed with a firearm...” Five of the six offenses under this section also contain a

subsection which provides in part that the particular offense can be committed “...while armed with a dangerous weapon other than a firearm.” (The exception is PCSA which contains no such language).

Proving that the item used was actually a firearm and not a look-alike is difficult when a firearm is not recovered or discharged or if the defendant does not admit that the weapon was a firearm.

In P. v. Barnett, 2011 Ill. App. Lexis 686 (2011) the Court held that Armed Robbery while possessing a dangerous weapon other than a firearm (720 ILCS 5/18-2(a)(1) is not a lesser included of Armed Robbery while possessing a firearm (720 ILCS 5/18-2(a)(2). A trier of fact who doesn’t believe the State has proven the item used was a firearm may be left with no choice but to find the defendant guilty of Robbery. See P. v. McDonald, 321 Ill. App. 3d 470 (2001 as to whether Aggravated Robbery can be a lesser included of Armed Robbery in your case.

As a result you may want to consider proceeding on the “dangerous weapon other than a firearm” count, in addition to the “possessed a firearm” count when the firearm is not recovered or discharged or there is no admission that the weapon was real firearm and you can prove the object could have been used as a bludgeon or in some other dangerous manner. Because the “while armed with a firearm” count and the “while armed with a dangerous weapon other than a firearm count” are mutually exclusive, using three verdict forms is probably the best way to avoid any inconsistency which may invalidate the verdict of guilty. Provide the jury with Guilty of Armed Robbery/Firearm, Guilty of Armed Robbery/Dangerous weapon other than a firearm; and Not Guilty verdict forms, as well as the appropriate concluding instruction to sign only one verdict form. This should avoid any potential problem with inconsistent verdicts, similar to that which occurred in Barnett.

Note: The Illinois Supreme Court in P. v. Washington, 2012 IL 107993 (2012), recently reviewed the issue of whether the victim’s observations alone were sufficient for the jury to conclude that the weapon used in an Armed Robbery was a firearm (as opposed to merely a dangerous weapon), even though that weapon was not recovered or discharged and the defendant did not admit the weapon was a firearm. The Court stated “We note, too, that there was no real dispute at trial that defendant possessed some type of gun when he committed the crimes—during closing argument defense counsel did not argue that defendant did not possess a gun, only that it could not be known for sure whether the gun was real or a toy because no gun was ever recovered. However, given Farraj’s unequivocal testimony and the circumstances under which he was able to view the gun, the jury could have reasonably inferred that defendant possessed a real gun.”

**The Court then added “Viewing the evidence, as set forth above, in a light most favorable to the State, the jurors, as the triers of fact, could have found beyond a reasonable doubt that defendant was armed with a dangerous weapon when he committed the offenses of kidnapping, vehicular hijacking and robbery.”**

**This case may provide a good faith argument that the observations of the victim alone are sufficient to support the trier of fact’s conclusion that the weapon was a real firearm. However, be aware the Washington Court went to great lengths to highlight the fact that Washington was charged under the old statute that did not include the firearm enhancement, and ultimately also found that the evidence in Washington was sufficient to prove the offender was armed with a dangerous weapon (without mentioning whether the observations of the victim are sufficient to support that the weapon was a firearm). It is uncertain whether this leaves the door open for a different conclusion when considering an offense that is enhanced by a firearm and charged under the current statute.**

4. **Pleas to a reduced charge- SUBSECTION NUMBER MUST BE AMENDED TO A CHARGE THAT DOES NOT CONTAIN A FIREARM ENHANCEMENT AS AN ELEMENT OF THE OFFENSE!!**

**When a defendant is charged with any of the six offenses for which a firearm enhancement is an element of the offense and then wishes to plead guilty to any offense for which a firearm enhancement is not applicable, the Indictment/Information must be amended to reflect the appropriate charge and statutory section number. Amending the section number to a subsection for which the firearm enhancement does not apply will ensure that the plea cannot later be withdrawn because of an illegal or void sentence.**

B. **FOUR OFFENSES WHERE THE FIREARM ENHANCEMENTS ARE  
(USUALLY) ONLY SENTENCING ISSUES**

- (1) Attempt Murder - 720 ILCS 5/8-4 (c)(1)
- (2) First Degree Murder - 730 ILCS 5/5-8-1(d)
- (3) Intentional Homicide of an Unborn Child - 720 ILCS 5/9-1.2(d)
- (4) Aggravated Battery to a Child - 720 ILCS 5/12-4.3(b)(1)

1. **Trials- SEPARATE INTERROGATORIES MAY BE USED ON THE  
ISSUE OF THE FIREARM ENHANCEMENT OR YOU CAN MAKE THE  
FIREARM ENHANCEMENT AN ELEMENT OF THE OFFENSE AND  
ELIMINATE THE NEED FOR A SPECIAL INTERROGATORY.**

Generally when prosecuting an offender for one of the four offenses for which the firearm enhancement is not an element of the offense, it is appropriate to submit a separate interrogatory to the jury on the issue of whether the defendant possessed a firearm, personally discharged a firearm or personally discharged a firearm causing death or GBH. Pursuant to Apprendi, the firearm enhancement must be pled or a notice pursuant to 725 ILCS 5/111-3(c-5) filed any time before trial and submitted to the jury.

However, under appropriate circumstances you may incorporate the firearm enhancement as an element of the offense and avoid the necessity for a special interrogatory.

Example: The defendant is the one and only offender who shot and killed the victim. There are no co-offenders and no dispute as to cause of death being from a gunshot wound. If your defendant is found guilty it will be as a result of shooting the victim with a firearm. Under these circumstances you can incorporate the "personally discharged a firearm causing the death of the victim" language into the issues instruction, thereby making it an element of the offense. A verdict of guilty of First Degree Murder would be sufficient to require the imposition of the firearm enhancement without any separate interrogatory. *P v. Aguilar*, 396 Ill. App. 3d 43 (2009); *P. v. Hopkins*, 201 Ill. 2d 26 (2001); See also Supreme Court Rule 451(g);

In some cases the facts may be such that a separate interrogatory is more appropriate.

2.

**Pleas- INVOLVING ONE OF THE FOUR OFFENSES THAT HAVE THE FIREARM ENHANCEMENTS ONLY AS SENTENCING ISSUES**

When a defendant is charged with an offense where the state is seeking a firearm enhancement and that enhancement is not an element of the offense but the defendant then pleads guilty to an offense with no firearm enhancement, you must strike the words “firearm” or “gun” from the charging document. This alone should be sufficient to negate the necessity for the Court to include the firearm enhancement as a part of the sentence.

The Illinois Supreme Court in P. v. White ( 2011 Ill. Lexis 1098), held that neither the State nor the trial court have discretion to ignore the firearm enhancement when a defendant *pleads* guilty to an offense in which a firearm was used and the defendant received proper notice of the enhancement.

In White, the defendant pled guilty to one count of First Degree Murder and received a sentence of 28 years. Both the charging document and the factual basis provided during the plea supported the fact that the offense was committed with a firearm. The defendant sought to vacate his guilty plea because the sentence was void for failing to include the firearm enhancement. The trial court denied that motion but that decision was reversed by the Appellate Court. The State appealed and the Supreme Court affirmed the Appellate Court.

Though the opinion focuses on the factual basis introduced by the State during the plea, rather than the charging document, the dissent suggests (as does Apprendi which requires that the firearm enhancement be pled as well as proven) that striking the word “firearm” or “gun”, etc, from the charging document should be sufficient to eliminate the necessity for the firearm enhancement after a plea/finding of guilty. However, since the majority opinion placed such great emphasis on the word “firearm” being contained in the factual basis, you should avoid mentioning “firearm” or “gun” in your factual basis as well. One alternative, suggested by Justice Theis in her specially concurring opinion, would be to use the phrase “dangerous weapon” in place of “firearm” or “gun”. It seems that doing so would run little risk of reversal.

The primary concern regarding this issue is that an illegal sentence given by the trial court can be attacked at any time since it is void, rather than voidable. As a result a defendant who pleads guilty and receives an illegal sentence can, in effect, withdraw his guilty plea at any time. This presents obvious difficulties when an offender serving a long, illegal sentence chooses to withdraw that guilty plea after State witnesses die or disappear, since successfully trying the defendant under those circumstances could be problematic. See also P. v. Donelson, 2011 IL

App (1st) 092594 where the defendant pled guilty and the trial court sentenced the defendant concurrently rather than consecutively, as the law required. The Appellate Court held the sentence was illegal but that the sentence was merely voidable rather than void, because the term of years was within the legal range authorized by statute (even if the defendant had been sentenced legally (consecutively). The Appellate Court denied the defendant's request to withdraw his guilty plea and ordered the trial court to resentence the defendant to the same total term of years, but consecutively, as mandated by law.

### **III. 15-Year Enhancement for Accountable Defendants**

The Illinois Supreme Court affirmed the fact that the 15-year enhancement applies to accountable offenders as well as those actually in possession of a firearm, unlike the 20 and 25 to Life enhancements which only apply to the individual who personally discharges the firearm P. v. Rodriguez 2008 Ill Lexis 375 (2008).

In cases where more than one offender shoots the victim (or at the victim) we must prove the shot or shots fired by the offender for whom we are seeking no bond were a proximate cause of the victim's death (or GBH) in order to have that offender held without bond. (In cases where there are multiple shooters, ballistic or firearm's evidence may be required to show that our offender actually fired the shots which caused the death or GBH of the victim).

### **IV. 15-20-25 to Life enhancements *may not* apply to Attempt Murder of a Protected Individual as defined by 720 ILCS 5/9-1(b)(1), (2) and (12). (Peace Officers, Correctional Officers, Paramedics).**

In a 2011 opinion the Appellate Court held that the firearm enhancements do apply to the attempt murder of police officers and other protected class individuals when the offender is convicted under 720 ILCS 5/8-4 (c)(1)(A). P .v. Tolentino, 2011 Ill. App. Lexis 417.

This contradicts the holding in another Appellate Court opinion, P. v. Herron Douglas, 371 Ill App 3d. 21(2007). The plain language of the statute suggests that the enhancements do not apply to police officers, but the Tolentino Court determined that they should apply for public policy reasons and because the Attempt Murder of a Peace Officer Statute does not directly forbid application of the firearm enhancements. Until the Supreme Court rules on the issue, a split remains in the Appellate Court.

***Note: The 15-20-25 to Life sentencing enhancement for Attempt Murder (Not of a protected class individual) means that the minimum sentence for any offender convicted of this offense who possessed, personally discharged or personally discharged causing death or great bodily harm is actually subject to a higher minimum penalty (21, 26, or 31 years ) than an individual convicted of Attempt Murder of a protected individual, which may remain at 20 years.***

*\*\*\*Keep this in mind when deciding on what counts to proceed. Should you proceed on the protected individual count or is it better to proceed on the regular Attempt Murder count where conviction guarantees a higher minimum sentence? While in cases where the offender merely possessed or personally discharged the firearm the high end sentence for Attempt Murder of a protected individual is 80 years and is probably worth going forward on whether or not the firearm enhancement applies, You should strongly consider going forward on the regular Attempt Murder count where the protected individual was shot and suffered great bodily harm, instead of the protected individual count. That way you provide the judge with a sentencing range of 31 to Life, instead of possibly only 20 to 80 years and have one less element (that your victim was a member of a protected class ) to prove.*

*\*\*\*Remember, every Attempt Murder conviction (as well as convictions for the other nine offenses which carry the 15-20-25 to Life enhancements) in which an offender personally discharges a firearm causing great bodily harm carries a potential Natural Life Sentence!!!!*

Decisions as of March 12, 2012	15 YEARS	20 YEARS	25 YEARS – LIFE
First Degree Murder	Constitutional ***	Constitutional *	Constitutional *
Attempt First Degree Murder	Constitutional ***	Constitutional ***	Constitutional ***
Intentional Homicide of an Unborn Child	Constitutional ***	Constitutional ***	Constitutional ***
Aggravated Kidnapping	Now Constitutional Eff. 10.23.07	Constitutional ***	Constitutional ***
Home Invasion	(1) Constitutional ****	Constitutional ***	Constitutional ***
Aggravated Battery of a Child	Constitutional ***	Constitutional ***	Constitutional ***
ACSA	(2) Now Constitutional Eff. 10.23.07	Constitutional ***	Constitutional ***
Predatory CSA	Constitutional ***	Constitutional ***	No 25-Life for personal discharge causing GBH. (50-Life for GBH or threatening the Life)
Armed Robbery	Now Constitutional Eff. 10.23.07 **	Constitutional ***	Constitutional ***
Aggravated Vehicular Hijacking	Now Constitutional Eff. 10.23.07	Constitutional ***	Constitutional ***

\* P. v. Tamara Sawczenko-Dub (2003 Ill. App. Lexis 1517) (12/16/03);  
\*\* P. v. Jesse Harvey (366 Ill. App. 3d 119) (5/17/06)  
\*\*\* P. v. Kenneth Sharpe (2005 Ill. Lexis 977) (10/6/05)  
\*\*\*\* P. v. Chad Hill (2002 Ill. Lexis 325) (199 Ill. 2d 440) (5/22/02)  
\*\*\*\*\* P. v. Shauntel Andrews (364 Ill. App. 3d 253) (1/25/06)  
\*\*\*\*\* P. v. Joseph Hauschild (2007 Ill. Lexis 862) (6/7/07)

- (1) Attempting to distinguish the Illinois Supreme Court opinion to the contrary in Hill, the Second District of the Illinois Appellate Court in P. v. Dryden (2004 Ill. App. Lexis 687)(349 Ill. App. 3d 115) held the 15-year enhancement for home invasion when the offender is armed with a firearm and uses or threatens the use of force unconstitutional. 720 ILCS 5/12-11(3)(c).
- (2) The Illinois Supreme Court in P. v. Hampton, 2007 Ill. Lexis 451 vacated the Appellate court decision in the same matter which held the 15-year enhancement unconstitutional. (2005 Ill. App. Lexis 1188).

## BOND HEARING PROVISIONS

I. **MANDATORY NO BAIL:** The Illinois Supreme Court has held 725 ILCS 5/110-4(b) unconstitutional in P. v. Purcell, 201 Ill. 2d 542 (2002). However, 725 ILCS 5/110-4(a) remains in effect. Pursuant to that section, in certain cases, an offender shall be held without bond upon a finding by the court that the proof is evident or the presumption great that the offender is guilty of the offense. The court must conduct a hearing in which either the State or the defense may proceed by proffer. Presentation of evidence is permissible as long as it is relevant and reliable regardless of whether it would be admissible under the rules of evidence applicable at a criminal trial. No petition is necessary and the burden is on the State. (725 ILCS 5/110-4(a) and 725 ILCS 5/110-5(a))

In the following cases the defendant shall be held without bond upon a finding by the court that the proof is evident or the presumption great that the defendant is guilty of the offense:

A. **All Capital Cases.**

*Note: With the abolition of the death penalty in Illinois there are obviously no more capital cases. However, each of the factors that qualified an offender for the death penalty remain valid as a basis for a discretionary or mandatory Natural Life sentence. As a result any offender who would have been eligible for the death penalty remains eligible for a Natural Life sentence and, therefore, is subject to a no-bond order.*

Capital cases are defined in 720 ILCS 5/9-1(b) where the offender was at least 18 years of age at the time of the offense. Some of the most common capital cases encountered are:

1. **Felony Murder:** In Felony Murder cases the “No Bond” provisions apply only if the offender actually caused the victim’s death or inflicted injuries contemporaneously with those that caused death AND the underlying felony is one enumerated in 720 ILCS 5/9-1 (b)(6)(c); Note: Death does not have to be contemporaneous with the commission of the forcible felony. P. v. Derr, 316 Ill App. 3d. 272 (2000). The other felony was an inherently violent or the attempt to commit an inherently violent crime. In this subparagraph (c), “inherently violent crime” includes, but is not limited to, Armed Robbery, Robbery, Predatory Criminal Sexual Assault of A child, Aggravated Criminal Sexual Assault, Aggravated Kidnapping, Aggravated vehicle Hijacking, Aggravated Arson, Aggravated Stalking, Residential Burglary, and Home Invasion. Burglary,

Arson, Armed Violence, Forcible Detention, Calculated Criminal Drug Conspiracy (Section 405) and Street Gang Drug Conspiracy (Section 405.2) are no longer specifically enumerated felonies, which qualify an offender to receive the death penalty. However, even if not specifically enumerated in this section, an underlying felony may still qualify an offender to receive the death penalty if it is an “inherently violent crime”. 720 ILCS 5/9-1(b)(6).

2. When the Murdered individual was a:
  - a. Police Officer or Fireman
  - b. Corrections Officer;
  - c. Paramedic;
  - d. Disabled Person (Physically or Mentally);
  - e. School Employee;
  - f. Community Policing Volunteer. 720 ILCS 5/ 9-1(b)(1);(2);(10);(17);(18) or (20);
3. When the Murdered individual was a witness, judge, defense attorney, prosecutor, investigator, or juror in a criminal proceeding or prosecution; 720 ILCS 5/9-1(b)(8);
4. When the victim is under 12 or 60 or over AND the death resulted from *exceptionally* brutal or heinous behavior indicative of wanton cruelty; 720 ILCS 5/9-1(b)(7)and(16);
5. When the victim is killed in a drive-by (Only the shooter is death eligible); 720 ILCS 5/9-1(b)(15);
6. When the victim has a valid Order of Protection AND the offender was the subject of that Order; 720 ILCS 5/9-1(b)(19);
7. When the Murder was committed in a Cold, Calculated and Premeditated manner; 720 ILCS 5/9-1(b)(11);
8. When the Murder was committed pursuant to a contract; 720 ILCS 5/9-1(b)(5);
9. When the offender Murders two or more individuals in one incident;

***Note: 720 ILCS 5/9-1(b)(3) provides in pertinent part that an offender is eligible for a death sentence “...so long as the deaths were the result of an intent to kill more than one person or of separate acts which the defendant knew would cause death or create a strong probability of death or great bodily harm to the murdered individual or another.” This language suggests that in a single incident where more than one person is murdered, an offender is eligible for a death sentence only if he had an intent to kill more than one person.***

*In the cases of P. v. West, 187 Ill 2d 418 (1999) and P. v. Davis 95 Ill 2d 1 (1983) the Illinois Supreme Court held that knowledge that an offender's acts would result in death or GBH was sufficient to satisfy the intent requirement of this section. However, be aware that both of these opinions involved offenders who had murdered victims in separate acts. While holding that a defendant who is convicted of two or more murders resulting from an intentional or knowing act is eligible for the death penalty, the Court in Davis acknowledged that the "intent to kill language" of 9-1(b)(3) is not meaningless."*

As a result, you may encounter an argument that in cases where an offender murders more than one individual during a single incident we must prove he specifically intended to kill more than one person before he is eligible for death, pursuant to 9-1(b)(3). Both cases cited above rebut that argument. See also P. v. Jimerson, 127 Ill 2d 12 (1990);

*Note: The Illinois Supreme Court in P. v. Miller, 202 Ill 2d 328(2002) held that the mandatory Natural Life sentence required after conviction for multiple murders was unconstitutional as it applied to Defendant Miller in that it violated the proportionate penalties clause of the Illinois Constitution because Miller was a juvenile and merely accountable in this case. The Court further stated that it would be possible for the mandatory Natural Life sentence to be proper for a juvenile offender who participated in the planning of the offense (was accountable) to a greater degree;*

## OR

When the offender has murdered one individual AND has been previously convicted of one or more Murders. 720 ILCS 5/9-1(b)(3);

B. **All cases where Natural Life is mandated or merely possible:** These are cases defined as follows:

1. All cases defined by 720 ILCS 5/9- 1(b) where the offender had not reached 18-years of age at the time of the offense.

*Note: The Illinois Supreme Court in P. v. Miller, 202 Ill 2d 328(2002) held that the mandatory Natural Life sentence required after conviction for multiple murders was unconstitutional as it applied to Defendant Miller in that it violated the proportionate penalties clause of the Illinois Constitution because Miller was a juvenile and merely accountable in this case. The Court further stated that it would be possible for the mandatory Natural Life sentence to be proper for a juvenile offender who participated in the planning of the offense (was accountable) to a greater degree;*

2. All of the following cases where the offender personally discharges a firearm that proximately causes *death or great bodily harm* to the victim; Effective January 1, 2000.

<u>First Degree Murder</u>	730 ILCS 5/5-8-1(d)(iii)
<u>Attempt First Degree Murder</u>	720 ILCS 5/8-4 (c)(1)(D)
<u>Intentional Homicide of an Unborn Child</u>	720 ILCS 5/9-1.2(d)(4)
<u>Aggravated Kidnapping</u>	720 ILCS 5/10-2(a)(8);(b)
<u>Home Invasion</u>	720 ILCS 5/12-11(a)(5);(c)
<u>Aggravated Battery of a Child</u>	720 ILCS 5/12-4.3(b)(3)
<u>ACSA</u>	720 ILCS 5/12-14(a)(10);(d)
<u>Predatory CSA</u>	720 ILCS 5/12-14.1(a)(2);(b)
<u>Armed Robbery</u>	720 ILCS 5/18-2(a)(4);(b)
<u>Aggravated Vehicular Hijacking</u>	720 ILCS 5/18-4(a)(6);(b)

3. All Predatory Criminal Sexual Assault, and All Aggravated Criminal Sexual Assault, when the offender has been previously convicted of any Predatory Criminal Sexual Assault, any Aggravated Criminal sexual Assault or any Criminal Sexual Assault. (720 ILCS 5/12-14.1(a) and (b); 720 ILCS 5/12-14(a), (b), (c) and (d). The commission of the subsequent offense must have occurred after conviction on the prior offense;

4. All Criminal Sexual Assault cases in which force or the threat of force was used or where the offender knew the victim was unable to understand the nature of the act or give knowing consent when the offender has been previously convicted of any Predator Criminal Sexual Assault or any Aggravated Criminal Sexual Assault. 720ILCS 5/12-13(b)(3) The commission of the subsequent offense must have occurred after conviction on the prior offense;

5. All Predatory Criminal Sexual Assault cases where an offender is charged with committing that offense against two or more different children, whether or not the offenses occurred during the same or several incidents. (720 ILCS 5/12-14.1(b)(1.2) P. v. Huddleston, 2004 Lexis 980.

6. (A) Class X cases where the offender has two prior convictions for a Class X offense or a Criminal Sexual Assault and the *Third* offense occurred after July 3, 1980 (Previously February 1, 1978); (B) The second offense occurred after conviction on the first; (C) The third offense occurred after conviction on the second.

*Note: The Third offense must occur within 20 years of JUDGMENT (not conviction) on the first offense, less time spent in custody. Time spent on parole or MSR counts as time spent in custody and tolls the 20-year period. P. v. Abdullah 271 Ill. Dec. 669 (2002). 730 ILCS 5/5-4.5-95(a) (Formerly 720 ILCS 5/33-B). Judgment is considered entered on the date the offender is sentenced. (730 ILCS 5/5-1-12.) See also P. v. Brown, 229 Ill. 2d. 374 (2008) (Certified copy of conviction is enough to show prior conviction even though no evidence that second offense was committed after conviction on the first; P. v. Robinson, 167 Ill 2d. 235 (1995) which held that proof of prior convictions must be by a preponderance of the evidence rather than beyond a reasonable doubt).*

7. Any Murder case where the offender was at least seventeen at the time of the offense and killed a victim who was under 12 years of age (730 ILCS 5/5-8-1(c)(ii); *(NOTE: This section was held unconstitutional on November 18, 1999 for violating the Single Subject Rule in P. v. Wooters, 189 Ill. 2d 680. It has not been reenacted to date.)*)
8. Any Murder case where the murder was accompanied by exceptionally brutal and heinous behavior indicative of wanton cruelty (730 ILCS 5/5-8-1(b));
9. Any Murder committed during the course of an Aggravated Criminal Sexual Assault, Criminal Sexual Assault, or Aggravated Kidnapping where the offender had not attained the age of seventeen and the murder victim was under 12-years of age (730 ILCS 5/5-8-1(c)(vi)).
10. Any Aggravated Kidnapping when the offender has been previously convicted of Aggravated Kidnapping and the second offense occurred after convictions on the first the offender *must* be sentenced to natural life. (720 ILCS 5/10-2(b)).
11. Any Murder where the defendant kills two or more individuals. 730 ILCS 5/5-8-1(c)(ii).  
(This part of this subsection was not held unconstitutional, unlike the first part of the subsection. See paragraph 7, above).

## II. **DISCRETIONARY NO BOND** - A Petition must be filed:

In the following cases the court may set no bond after the State files a petition and after a hearing in which the court finds that the defendant presented a real and present threat to the physical safety of any person or persons and the denial of bail is necessary to prevent the fulfillment of that threat (725 ILCS 5/110-4a). A hearing will be held immediately and the burden is on the State: **Note: When an offender is held without bond pursuant to this section only (When the State files a petition), that offender must be tried within 90 days (excluding delays occasioned by the defendant). Failure to try the defendant within 90 days merely entitles him to receive a bond. 725 ILCS 5/110-6.1(f). (Holding the defendant without bond pursuant to this section *does not* reduce the speedy trial term!!!)**

- A. Non-probationable offenses where Defendant is a real and present threat to the physical safety of another person (725 ILCS 5/110-4(c)). Either the State or the defense may proceed by proffer and the rules of evidence applicable at a criminal trial do not apply (725 ILCS 5/110-.3(c)(1)(A); Refer to 730 ILCS 5/5-5-3(c)(2) as well as the sentencing provisions of each offense to determine whether an offense is probationable. Either the State or the defense may proceed by way of proffer. The rules of evidence applicable at a criminal trial do not apply (725 ILCS 5/110-6.1(c)(1)(A). Additionally, see Section IV of this memo.
- B. Stalking and Aggravated Stalking cases (725 ILCS 5/110-4a, 725 ILCS 5/110-4(d) and 725 ILCS 5/110-6.3a). Either the State or the defense may proceed by proffer and the rules of evidence applicable at a criminal trial do not apply (725 ILCS 5/110-.3(c)(1)(A));
- C. UUW on School Ground, School conveyances or within 1000 feet of School Property (725 ILCS 5/110-4(a). Either the State or the defense may proceed by proffer and the rules of evidence applicable at a criminal trial do not apply (725 ILCS 5/110-5(a).

## III. **VOBB's**

When an offender is out on bond in a felony case and is arrested on a new charge you must file a VOBB. The offender shall be held without bond pending hearing before the court where the prior felony is pending. No notice is required for the filing of the VOBB Petition (725ILCS 5/110-6(e) (Where the original felony bond may be increased or conditions altered after the offender is charged with a subsequent felony offense which is not a forcible felony, Class 2 or greater drug offense or Domestic violence-related offense) and (f) (Where the original felony bond may be revoked after the offender is charged with a forcible felony, a Class 2 or greater drug offense, or certain Domestic violence-related offenses);

## IV. **VOP's**

When an offender is on probation and is arrested on a new felony file a VOP Petition. The court has discretion in setting bond on a VOP (730 ILCS 5/5-6-4(b);

## **V. CONVICTED DEFENDANTS**

A defendant who has been convicted and is serving a jail or penitentiary sentence is not entitled to bail on additional charges, (720 ILCS 5/110-4) and (720 ILCS 5/110-6.2.) Defendants who are convicted but awaiting sentencing shall be held without bond pursuant 110-6.2 (a) Be aware that Section 110-6.2 (b), which applies to defendants who have been sentenced but have filed a notice of appeal, was held unconstitutional in P. v. Williams, 143 Ill 477 (1991) in that it conflicted with Supreme Court Rule 609(b) which allows courts of review to discretionarily set or alter a bail amount. (Appeal Bonds)

Remember: Once a defendant files a notice of appeal the trial court loses jurisdiction. (Battisfore v. Moraites, 186 Ill. App. 3d 180, 185, 541 N.E.2d 1376, 1379-80 (1989); Lake County Trust Co. v. Two Bar B, Inc., 182 Ill. App. 3d 186, 191, 537 N.E.2d 1015, 1019 (1989); Cain v. Sukkar, 167 Ill. App. 3d 941, 945, 521 N.E.2d 1292, 1294.) (1988). Any bail request must then be made to the appellate court.

## SENTENCING PROVISIONS

### I. EXTENDIBLE SENTENCES

In many cases an offender's sentence on the present case may be extendible due to a fact within the case or due to the offender's criminal history. Refer to the Criminal Code (730 ILCS 5/5-5-3.2(b)(1) and 730 ILCS 5/5-8-2) and to the sentencing provisions for each charge to determine whether an extended term applies in your case and to determine the term of incarceration. A general rule is that an extended term sentence doubles the normal maximum penitentiary sentence for each class of felony. For Murder cases the maximum extendible sentence is 100-years. This section also applies to offenders who were convicted federally or in other States when those other offenses are the same, similar or a greater class as the offense in Illinois.

Additionally, keep in mind that an offender may only receive an extended term sentence on the most serious class offense or offenses for which he was convicted. 730 ILCS 5/5-8-2(a). P. v. Richardson 348 Ill App 3d 796(2004).

Multiple extended term sentences are appropriate if the offender is convicted of multiple counts of the same class felony. P. v. Jordan, 103 Ill 2d 192(1984); and 730 ILCS 5/5-5-3.2 A sentence of Natural Life cannot be extended under 5/5-8-2 for obvious reasons so if an offender receives a Natural Life sentence he can still receive an extended term sentence on the remaining highest class offense or offenses. P. v. Neal, 111 Ill. 2d. 180 (1985); P. v. Young, 124 Ill. 2d 147 (1988); P. v. Terry 183 Ill 2d 298 (1998).

Also, keep in mind that an extended term sentence may be imposed on separately charged felonies of different classes when the offenses arise out of separate courses of conduct. P. v. Coleman, 166 Ill. 2d. 247 (1995); P. v. Bell, 196 Ill. 2d. 343 (2001).

**Additionally, there is no minimum time period between the defendant's prior conviction and his current conviction before that prior conviction can be used to extend the defendant's current sentence.**

**Example: Defendant is pleading guilty to two Class 2 Robberies during the same proceeding. As soon as the plea on the first robbery is completed the defendant becomes eligible for an extended term on the second Robbery. P. v. Vaughn, 301 Ill. App. 3d 242 (1998).**

Offenders are extendible under the following circumstances:

A. A case where the offender has previously been convicted of the same or greater class felony in Illinois or any other jurisdiction within the past 10-years. The 10-year period is calculated between the date of the prior conviction and the date of the conviction in your case. (See P. v. Lemons, 191 Ill. 2d. 155 (2000) which held that the 10 year period is calculated from the last resentencing date on a VOP, rather than on the original sentencing date for the prior conviction). The date of conviction is the date of sentencing for purposes of this calculation and does not include time spent in custody. MSR counts as time spent in custody for purposes of extending the sentence. See P. v. Abdullah, 271 Ill Dec. 669 (2002): P. v. Smith, 199 Ill. App. 3d 839 (1990). (All the periods of incarceration after release from MSR on the prior conviction you are using to enhance the defendant's sentence on your case also toll the running of the 10 year period).

Be aware, however, that "custody" and "confinement" are not the same thing. For instance, a defendant's prior conviction can only be used to impeach him within 10 years of his release from confinement from the penitentiary, not release from MSR. P. v. Montgomery, 47 Ill 2d 510 (1971); P. v. Sanchez, 2010 Ill App. Lexis 903 (2010). (The easiest way to look at this is that the time spent in custody tolls the 10 year extendibility period.

**Example:** An offender is convicted/sentenced on January 1, 2000 and serves 2 years in IDOC. He is released to 1 year MSR on December 31, 2001. The offender is extendible through December 31, 2012-; (*730 ILCS 5/5-5-3.2(b)(1). Adding 10 years to the date the defendant's MSR ended is usually the last date for which an offender may be extendible.* Note: Be aware that if a defendant was originally sentenced to probation and then was in and out of custody on VOPs the extendible period would actually be longer by the custodial period on the VOPs. (See P. v. Lemons, 191 Ill. 2d. 155 (2000) which held that the 10 year period is calculated from the last resentencing date on a VOP, rather than on the original sentencing date for the conviction). See Section XI for MSR periods.

The 10 year period is tolled if a defendant BFWs on your case and is prosecuted more than 10 years after his prior qualifying conviction. P. v. Garcia, 2011 Ill. Lexis 6 (2011).

Example: Offender has a prior Class 2 conviction from 1999 where he received probation. He is arrested on your case in 2005 for a Class 2 offense but then BFWs in 2006, after he has been indicted. He is arrested on the warrant in 2011. That offender would be eligible for an extended term sentence on your case pursuant to this section even though conviction on that case occurred more than 10 years after the offender's prior Class 2 because he illegally absented himself from your prosecution.

- B. When the offense is accompanied by exceptionally brutal behavior indicative of wanton cruelty 730 ILCS 5/5-5-3.2 (b)(2);
- C. Any Second Degree Murder, Involuntary Manslaughter, or Reckless Homicide where the offender causes the death of more than one person 730 ILCS 5/5-5-3.2(c)(2) (730 ILCS 5/5-3.2(b)(3)).
- D. Any case where the victim is under 12 or 60 or over or physically handicapped 730 ILCS 5/5-5-3.2 (b)(3) (i) (ii) and (iii); (730 ILCS 5/5-5-3.2(b)(4)(i) (ii) and (iii);
- E. Any Sexual Assault involving co-defendants 730 ILCS 5/5-5-3.2(c)(3) (730 ILCS 5/5-5-3.2(b)(5));
- F. A case in which a rite or ceremony involves torture of humans or animals, theft of corpses, kidnapping of humans, the desecration of a cemetery or other building or property or the ritualized abuse of a child 730 ILCS 5/5-5-3.2 (b)(4) (720 ILCS 5/12-13 (b)(6)).
- G. Any Murder where the offender was previously convicted of a non-probationable offense as defined in 5-5-3(c)(2) within the past 10 years, excluding time spent in custody 730 ILCS 5/5-5-3.2(c)(1) (730 ILCS 5/5-5-3.2(b)(7);
- H. Defendant is convicted of an offense involving at least 2 co-offenders in furtherance of gang activity and defendant is an organizer/leader 730 ILCS 5/5-5-3.2 (b)(5) (730 ILCS 5/5-5-3.2 (b)(8)).
- I. Defendant convicted of Felony UUW (Not Agg UUW) and defendant is gang member 730 ILCS 5/5-5-3.2(c)(5) (730 ILCS 5/5-5-3.2 (b)(9)).
- J. Defendant commits offense with firearm with laser sight attached 730 ILCS 5/5-5-3.2 (b)(5) (730 ILCS 5/5-5-3.2 (b)(10)).
- K. Defendant is at least 17 at the time of your offense and has previously been adjudicated delinquent for a Class X or Class 1 offense when the adjudication occurred within 10 years of conviction on your case, excluding time spent in custody. 730 ILCS 5/5-5-3.2 (b)(7) (730 ILCS 5/5-5-3.2 (b)(11)).
- L. When the offender commits certain drug offenses or illegally possesses explosives and an emergency response officer in the execution of his duties is killed or injured. (See subsection for applicable offenses and definition of Emergency Response Officer 730 ILCS 5/5-5-3.2(c)(7) (730 ILCS 5/5-5-3.2 (b)(12)).
- M. Defendant commits any felony and defendant directs an animal to assault a law enforcement officer in the execution of his duties or in furtherance of gang activity. 730 ILCS 5/5-5-3.2 (b)(8) (730 ILCS 5/5-5-3.2 (b)(13)).

- N. Defendant commits ACSA or Predatory CSA under 12-14.1(a)(1) and victim was under 18 yoa 730 ILCS 5/5-5-3.2(c)(4) (730 ILCS 5/5-5-3.2 (c) See P. v. Ferguson 132 Il 2d 86 (1989) for permissible double enhancement.
- O. Defendant commits Felony UUW (not Agg UUW) for possession of a look alike weapon 730 ILCS 5/5-5-3.2(c)(6) (730 ILCS 5/5-5-3.2 (d).
- P. When the defendant has been convicted of murder and where defendant has been previously convicted of Domestic Battery or Agg Domestic Battery of the murdered individual, or when the defendant has been previously convicted of VOOP in which the murdered individual was the protected person. 730 ILCS 5/5-5-3.2(c)(1.5) (730 ILCS 5/5-5-3.2 (e).
- Q. A Criminal Sexual Assault case under 720 ILCS5/12-13(a)(1) or (a)(2) where the offender has a prior Criminal Sexual Assault conviction pursuant to 12- 13(a)(3) or (a)(4) (age related offenses) requires a sentence of 30 to 60 years. The commission of the second offense must have occurred after conviction on the first (720 ILCS 5/12-13 (b)(2).
- R. An Agg Criminal Sexual Assault, Predatory Criminal Assault or Criminal Sexual Assault (violations of (a) (1) and (a) (2) only) where the offender has a prior conviction for Predatory Criminal Sexual Assault, Agg Criminal Sexual Assault, or Criminal Sexual Assault requires a natural life sentence. The commission of the second offense must have occurred after conviction on the first (720 ILCS 5/12-14 (d)(2); 720 ILCS 5/12-14.1 (b)(2).
- S. Any Involuntary Manslaughter in which the victim is a family member as defined by (730 ILCS 5/9/-3(d)(2)(f); 725 ILCS 112A-3);
- T. After conviction for PCSA, ACSA, CSA, ACS Abuse, and CS Abuse when the victim of the offense was under 18 yo and under the influence of alcohol at the time of the offense, whether or not the offender supplied the alcohol. The offender must have known the victim "consumed" alcohol. (730 ILCS 5/5-5-3.2(e). Effective January 1, 2011.

## II. NON-PROBATIONABLE CASES

Refer to 730 ILCS 5/5-5-3(c)(2) as well as the sentencing provisions of each offense to determine whether an offense is probationable. A mandatory non-probationable sentence is not a sentencing enhancement and is therefore not subject to Apprendi or the prohibition against double enhancements. In other words, a defendant who is extendible because of his background (a prior conviction for a Class 2 or greater offense when being sentenced for a Class 2 or greater offense) is also not eligible to receive probation even if he has only one prior conviction in his background. *Fitzsimmons v. Norgle*, 104 Ill 2d 369 (1984); *P. v. Dycus*, 291 Ill. App.3d 14 (1997).

The circumstances in which an offender is non-probationable are:

A. When the offender is charged with a Class 2 or greater and the offender has been convicted of a Class 2 or greater offense within the past ten years (except as otherwise provided by TASC). Unlike the extendibility provisions, the 10 year calculation does not exclude time spent in custody (730 ILCS 5/5-5-3(c)(2)(F); *Adding ten years to the date of sentencing on the prior case will usually give you the proper non-probationable period.* This section also applies to offenders who were convicted federally or in other States when the elements of those other offenses are the same as a Class 2 or greater offense in Illinois. Be aware, if otherwise eligible, an offender may receive TASC even if he would be non-probationable pursuant to this section.

**Note: Use the date of the commission of your current offense (rather than the date on which your defendant is being sentenced) as the expiration date of the 10 year period. P. v. Johnson, 338 Ill. App. 3d 213 (2003).**

- B. All Class X offenses (730 ILCS 5/5-5-3(c)(2)(C);
- C. Residential Burglary (Unless offender receives TASC -730 ILCS 5/5-5-3 (c)(2)(G);
- D. Aggravated Battery of a Senior Citizen (730 ILCS 5/5-5-3(c)(2)(I);
- E. Criminal Sexual Assault (730 ILCS 5/5-5-3(c)(2)(H);
- F. PCS with intent or DCS of more than 5 grams of cocaine or heroin (730 ILCS 5/5-5-3(c)(2)(D);
- G. Felony Theft over \$500,000 (720ILCS 5/16-1(b)(6.2)
- H. Vehicular Hijacking (730 ILCS 5/5-5-3(c)(2)(K)
- I. Arson to a place of worship (720 ILCS 5/20-1.3) (730 ILCS 5/5-5-3(c )(2)(Q)
- J. Residential Arson (720 ILCS 5/20-1.2) (730 ILCS 5/5-5-3(c )(2)(Q)
- K. Cannabis trafficking/Calculated Crim. Cannabis Consp.(730 ILCS 5/5-5-3(c )(2) (E)
- L. Any Forcible Felony (720 ILCS 5/2-8) related to gang activity (730 ILCS 5/5-5-3(c )(2)(J)
- M. Hate Crime (2<sup>nd</sup> offense only and based on Felony Agg. Assault or Felony Mob Action) (730 ILCS 5/5-5-3(c )(2)(L).

- N. Institutional Vandalism (2nd offense only over \$300.00 damage) (730 ILCS 5/5-5-3 (c )(2)(M)
- O. Compelling Organization Membership (730 ILCS 5/5-5-3(c )(2)(O)
- P. Child Pornography (Anything except straight possession) (730 ILCS 5/5-5-3(c )(2)(P)
- Q. Gunrunning (730 ILCS 5/5-5-3(c )(2)(R)
- R. Methamphetamine Control Act (2nd violation) (730 ILCS 5/5-5-3(c )(2)(T)
- S. Aggravated Child Pornography Subsection (c ) (4) (Solicits, entices etc any child under 13, or severely mentally retarded to engage in sex act on tape). (730 ILCS 5/5-5-3(c )(2)(V);
- T. A second or subsequent violation of 625 ILCS 5/6-303 (Driving on a suspended or revoked license), when the suspension/revocation was a result of a Reckless Homicide (Not Agg. DUI) 730 ILCS 5/5-5-3(c)(2)(U)
- U. Unlawful Purchase of a Firearm (720 ILCS 5/24-3.5); 730 ILCS 5/5-5-3(c)(2)(W);
- V. Disarming a Peace Officer (Completed Act only) 730 ILCS 5/5-5-3(c)(2)(X) (Eff. 8/12/09)
- W. Aggravated UUW/ Gang Member (Loaded gun only) 720 ILCS 5/5 –24-1.8 (Eff. 12/3/09)
- X. Aggravated DUI/Dead Body 625 ILCS 5/11-501(d)(1)(F) and 2(G); *Note: Agg. DUI/ Dead Body is not non-probationable, but the court must make a finding that extraordinary circumstances exist that require probation before failing to give a penitentiary sentence.*
- Y. Any Class 1 felony when the offender is on probation for any class felony. 730 ILCS 5/5-5-3(c)(6);
- Z. Agg UUW/Felon or AGG UUW 2<sup>nd</sup> conviction 720 ILCS 5/ 24-1.6 (d); UUW /Machine Gun, 720 ILCS 5/24-1(a)(7)(i) and 730 ILCS 5/5-5-3 (F- 5) UUW/Felon 720 ILCS 5/ 24-1.1(e) Prior conviction for forcible felony . See statute for other non-probationable UUWs. (Eff 1/1 06).
- AA. AGG UUW when the gun is uncased, loaded and immediately accessible, the offender is at least 18 yrs. of age, and does not have an FOID card. 720 ILCS 5/ 24-1.6 (Eff. January 1, 2011).
- BB. DUI (4<sup>th</sup> violation- Supervision counts as violation. See P. v. Sheehan, 168 Ill.2d 298 (1995) 625 ILCS 5/11-501(d)(2)(C).
- CC. Controlled Substance Trafficking 720 ILCS 570/401.1(b).
- DD. Aggravated Assault of a Police Officer, Fireman, or Community Policing Volunteer when a firearm is pointed at the victim. 730 ILCS 5/5-5-3( c)(2)(DD) (Eff. 7/21/11)

### **III. MANDATORY CLASS X 730 ILCS 5/5-4.5-95 (b)(730 ILCS 5/5-5-3(c)(8)**

When the current charge is a Class 1 or Class 2 and the offender has been convicted of two Class 2 or greater offenses AND the first offense occurred after February 1, 1978, the second offense occurred after conviction on the first, and the new offense occurred after conviction on the second, the offender SHALL be sentenced as a Class X offender. This section also applies to offenders who were convicted federally or in other States when the elements of those other offenses are the same as a Class 2 or greater offense in Illinois.

*Note: The offender must be over 21-years-old at the time he is convicted of (not at the time he committed or was sentenced for) his third offense for this section to apply. Over 21 years of age means the offender has reached his 21<sup>st</sup> birthday, not that he be at least 22. P. v. Baaree, 315 Ill. App. 3d 1049 (2000); P. v. Mendoza, 342 Ill App 3d 195 (2003); P. v. Williams, 358 Ill App 3d 363 (2005.) The State is not required to give notice for this provision to apply since the offender is only being sentenced as a Class X offender and since the class of the offense is not actually being increased. For that same reason an offender sentenced as a Class X offender under this provision does not become eligible for a mandatory Natural Life sentence under 730 ILCS 5/5-4.5-95(a) (Formerly 720 ILCS 5/33B-1). P. v. Lathon, 317 Ill. App. 3d 573 (2000); P. v. Jameson 162 Ill 2d 282 (1994); P. v. Thomas 171 Ill 2d 207 (1996).*

Additionally, be aware that an offender sentenced pursuant to this section must serve 3 years MSR (the term required for a Class X offense) rather than 2 years (the term required for a Class 1 or 2 offense). If your defendant is pleading guilty make sure your judge admonishes the defendant regarding the proper MSR term or the offender could have his sentence reduced (in some cases). P. v. McKinney, 399 Ill. App. 3d. 77 (2010).

Also, The prohibition against double enhancements applies to this section. You cannot use the defendant's prior class 2 or greater convictions to enhance the class of the offense and then use either of those same convictions obtain a mandatory Class X or extendible sentence. P. v. Griham, 399 Ill. App. 3d. 1169 (2010); P. v. Owens, 377 Ill. App. 3d 302 (2007). You can, however, use a defendant's prior Class 2 or greater convictions to obtain a mandatory Class X sentence under this section and then use those same prior convictions to argue that the defendant's sentence should be higher than the minimum Class X sentence. This is a permissible double enhancement. P. v. Thomas, 171 Ill. 2d. 207 (1996).

## IV. CONSECUTIVE SENTENCING 730 ILCS 5/5-8-4 (a-g); 730 ILCS 5/5-8-4(a); (b); (c)(2)

### A. MANDATORY CONSECUTIVE SENTENCING

Although in most cases where an offender is convicted of multiple offenses the defendant must be sentenced to concurrent terms, there are instances where consecutive sentencing is mandated. Mandatory consecutive sentences apply whether the offenses are part of a single course of conduct or are the result of separate incidents.

Apprendi does not apply to consecutive sentencing. Oregon v. Ice 129 S CT 711 (2009); P. v. Wagener 196 Ill 2d 269 (2001).

**Accountable Defendants:** Mandatory consecutive sentencing under this section also applies to accountable defendants who do not inflict any injuries to the victim. (Unlike the death qualifying factor enumerated in 720 ILCS 5/9-1(b)(6) - Felony Murder, which requires the offender to have actually inflicted some injury to the victim before he is eligible for death). P. v. Sangster 91 Ill 2d 260 (1982).

“Death” qualifies as “severe bodily injury” sufficient to trigger consecutive sentencing. P. v. Thompson 331 Ill App 3d 948 (2002); P. v. Causey, 341 Ill. App. 3d 759 (2003); P. v. Griffin, 375 ILL. App. 3d 564 (2007). There is no double enhancement when an element of the triggering offense is death or great bodily harm.

A consecutive sentence is *not* a sentencing enhancement subject to the general prohibition against double enhancements. P. v. Phelps 809 NE 2d 1214.

Consecutive sentences are appropriate even when one of the sentences is Natural Life, as long as the sentences are being imposed under 730 ILCS 5/5-8-4(a-g) (Mandatory Consecutive sentencing). There is no consecutive sentencing when an offender receives multiple Natural Life sentences pursuant to the Habitual Criminal Statute (3<sup>rd</sup> Class X). (730 ILCS 5/5-4.5-95(a); P. v. Palmer, 218 Ill 2d 148 (2006); P. v. Petrenko, 2010 Ill. Lexis 961 (2010)).

### SEPARATE INCIDENTS:

Mandatory consecutive sentencing pursuant to 730 ILCS 5/5-8-4(d)(1) applies to offenders who are convicted of multiple separate offenses in Cook County or an offense or offenses in Cook County and other offenses in a different jurisdiction. (An offender who is convicted in Illinois of Murder, a Class X or Class 1 offense in which the victim suffers severe bodily injury must be sentenced consecutively even if his other conviction is in a different jurisdiction). P. v. Flaughers, 396 Ill. App. 3d 673 (2009). See also P. v. ex rel. Waller v. McKoski, 195 Ill. 2d 175 (2001); P. v. Curry, 687 NE 2<sup>nd</sup> 877 (1997).

Be aware that until July 22, 1997 (Public Act 90-128), mandatory consecutive sentencing pursuant to 730 ILCS 5/5-5-8-4 (a) was limited to circumstances when an offender committed, a Class X or Class 1 felony in which the victim suffered severe bodily injury during a *single course of conduct*. (Murder became a triggering offense January, 1, 2000) At that time the legislature amended the consecutive sentencing statute (730 ILCS 5/5-5-8-4(b) to include mandatory consecutive sentences for offenses committed as part of multiple courses of conduct.

Later, Public Act 93-0160 (Effective July 10, 2003) further amended the consecutive sentencing statutes by combining parts of 5-8-4(a) and (b) and eliminating any reference to single or multiple courses of conduct. As a result of these changes, mandatory consecutive sentencing now applies whether or not the triggering offense and other offenses were part of a single course of conduct or multiple courses of conduct. Mandatory consecutive sentencing is also required even when offenders are sentenced at different times for separate incidents or if the offenses occurred in different jurisdictions. P. v. Flaugh, 396 Ill. App. 3d 673 (2009).

**B. CIRCUMSTANCES WHERE CONSECUTIVE SENTENCING IS REQUIRED (TRIGGERING OFFENSES)**

1. If the offender is convicted of First Degree Murder or a Class X or Class 1 felony and the offender inflicted severe bodily injury, whether or not the offenses were committed during a single course of conduct or during separate incidents (730 ILCS 5/5-8-4(d)(1). **Note: First Degree Murder is not a triggering offense prior to January 1, 2000.**
  - a. Severe bodily injury must occur during the commission of the triggering offense to the victim of that offense. P. v. Whitney 188 Ill. 2d 91 (1999). 730 ILCS 5/5-8-4 (d)(1); “Severe bodily injury” probably requires injuries that are more severe than “great bodily harm”.
  - b. *Note: gunshot wounds do not always satisfy the “severe bodily injury” requirement.* P. v. Bernard Williams 335 Ill. App. 3d 596 (2002); P. v. Durham, 303 Ill. App.3d 763 (2000); However, the Illinois Supreme Court In P. v. DeLeon, 227 Ill. 2d 322 (2008) determined that a through and through GSW can be sufficient for severe bodily injury.
2. If the offender is convicted of Predatory Criminal Sexual Assault, Aggravated Criminal Sexual Assault or Criminal Sexual Assault whether or not the offenses were committed during a single course of conduct (*or if within one incident there are multiple incidents of penetration*) or during separate incidents (730 ILCS 5/5-8-4(d)(2); 730 ILCS 5/5-8-4(a)(ii)).
3. Where the offender is convicted of Leaving the Scene of a Motor Vehicle Accident involving death or personal injuries under section 11-401 and;
  1. Any Aggravated DUI, or
  2. Reckless Homicide. 730 ILCS 5/5-8-4(d)(4)
4. When the offender is convicted of Armed Violence (With certain predicate offenses only. See 730 ILCS 5/5-8-4(d)(3);
5. When the offender is convicted of Concealment of a Homicidal Death or Dismembering a Human Body. 730 ILCS 5/5-8-4(d)(5); Eff. July 20, 2004;
6. If an offender is charged with or has been convicted of a felony and then commits a separate offense while in the penitentiary, county jail or while on bond, any penitentiary sentence must be served consecutively. 730 ILCS 5/5-8-4(d)(6), (8) and (9) (730 ILCS 5/5-4(g),(h) and (i). This includes offenders who are on electronic monitoring, P. v. Moncrief, 276 Ill App. 3d 276 (1995) but does not include offenders who are on MSR. P ex rel Gibson v. Cannon, 65 Ill 2d 366 (1976).

- a. Though an offender must be sentenced consecutively under these circumstances there is no requirement the offender receive a penitentiary sentence. Provided the offender is otherwise probationable, he may be sentenced to a period of probation to run consecutively to his other offense(s). P. v. Sims 233 Ill App. 3d 471 (1992).
- b. Be aware, however, 730 ILCS 5/5-6-2(b) requires “that multiple terms of probation *given at the same time* shall run concurrently.” That would seem to create a conflict for offenders who wish to plead to both offenses at the same time and who are requesting a sentence of probation. (730 ILCS 5/5-6-2(f) authorizes the court to impose probation concurrently or consecutively to a period of imprisonment.)

7. When an offender is convicted of a violation of 720 ILCS 5/11-20.1 (Child Pornography) or 730 ILCS 5/11-20.3 (Aggravated Child Pornography) he must be sentenced consecutively for each violation. (730 ILCS 5/5-8-4(d)(2); (Effective August 22, 2011).

*Note: The above are called triggering offenses. Sentences on all triggering offenses must be consecutive to those on all other triggering and non-triggering offenses. (P. v. Curry, 687 NE 2<sup>ND</sup> 877( 1997) Exception: When a non-triggering offense is a lesser-included of the triggering offense the offender must be sentenced concurrently on those offenses.*

*Example: An offender charged with First Degree Murder based SOLELY on a felony murder theory must be sentenced concurrently on both the murder and the underlying felony. P. v. Kenny Smith 183 Ill. 2d 425 (1998); P. v. Walker, 392 Ill. App. 3d 277 (2009). All non-triggering offenses must be served concurrently under this section. 730 ILCS 5/5-8-4-(d) (730 ILCS 5/5-8-4(a).*

Be aware that the court can sentence a defendant discretionarily to a consecutive sentence. 730 ILCS 5/5-5/8-4(c)(1). See Below.

## **VI. DISCRETIONARY CONSECUTIVE SENTENCING**

An offender *may* be sentenced consecutively when “the court, having regard to the nature and circumstances of the offense and the history and character of the defendant it is of the (court’s) opinion that consecutive sentences are required to protect the public from further criminal conduct by the defendant, the basis for which the court shall set forth in the record.” 730 ILCS 5/5-8-4(c)(1); (730 ILCS 5/5-5-8-4(b); or if the offender was convicted of Agg. False Impersonation of a Peace Officer and that offense was committed in attempting to or committing a forcible felony. 730 ILCS 5/5-8-4(c)(2).

P. v. Caruth 322 Ill App 3d 226(2001) specifically holds that Apprendi doesn’t apply to discretionary consecutive sentencing pursuant to 730 ILCS 5/5-8-4(c).

## **VII. AGGREGATE CONSECUTIVE SENTENCING**

A. The aggregate for consecutive sentences *committed as part of a single course of conduct during which there was no substantial change in the nature of the criminal objective* shall not exceed the sum of the maximum terms authorized under 730 ILCS 5/5-8-2 (The extended term section) for the 2 most serious felonies involved. This limitation applies whether the consecutive sentences are imposed mandatorily or discretionarily.

Note: This limitation does not apply for offenses that were not part of a single course of conduct. (In other words, when you have an offender convicted of multiple offenses during a single course of conduct the sentence cannot exceed the maximum extended term sentence for the two highest class felonies.) See Public Act 90-128 which became effective July 22, 1997 and which effectively overruled the Illinois Supreme Court decision of People v. Tucker, 167 Ill. 2d 431 (1995). ( Tucker held that the maximum consecutive sentence applied equally whether or not the offenses were part of a single course of conduct).

Example: An offender is convicted of First Degree Murder, Home Invasion, and Aggravated Battery for an incident involving a break in at the victim's house in which one victim was beaten to death and the other suffered great bodily harm. All counts must be served consecutively pursuant to 5-8-4(d);(5-8-4(a) The maximum sentence that can be imposed (if the offender does not receive Death or Natural Life) is 160 years. This calculation is based on the maximum extended term sentence that could be given for the two most serious felonies- Murder and Home Invasion, which are 100 and 60 years, respectively. This calculation method applies even if the offender was not eligible for an extended term sentence in your case. P. v. Bien, 277 Ill App. 3d 744 (1996).

If your offender were convicted of these same three offenses which occurred at different times, there would be no limitation on the maximum aggregate sentence. *730 ILCS 5/5-8-4(f) (730 ILCS 5/5-8-4 (c)(2).*

**B. Aggregate consecutive sentencing on multiple Class 2 offenses that were part of a single course of conduct for Mandatory X offenders:**

An offender who is being sentenced as a Class X offender after conviction on two Class 2 offenses that were part of a single course of conduct (with two Class 2 or greater offenses in his background) is actually subject to a greater sentence if sentenced concurrently, rather than consecutively.

Example: An offender who is convicted of two class 2 felonies and sentenced on both as a Class X offender (because of two prior Class 2's in his background) is

subject to a 28 year aggregate maximum if sentenced consecutively because that is the maximum aggregate sentence for two Class 2 felonies. However, that same offender could receive up to a 30 year sentence for those same offenses if sentenced concurrently. P. v. Ritchey, 286 Ill. App. 3d 848 (1997); P. v. Pullen, 192 Ill. 2d. 36 (2000). (Since the defendant is only being sentenced as a Class X offender and not actually guilty of a Class X offense, the aggregate sentence is calculated based upon the maximum extended term for a Class 2, rather than a Class x offense).

### **VIII. CONSECUTIVE SENTENCING ON REMAND**

A judge is required to sentence an offender consecutively on remand in cases where mandatory consecutive sentences apply even when the original trial judge failed to do so. The original concurrent sentence is void. P. v. Garcia, 179 Ill 2d 55 (1997) This is true even if the consecutive sentences increase the total sentence received by the offender when he was sentenced improperly (concurrently) after the first trial. 730 ILCS 5/5-5-4(a)

Resentences can't be greater than the original sentence without additional aggravation North Carolina v. Pearce, 395 US 11 (1969) does not apply when the original concurrent sentence was void.

The Court also has discretion to modify an original sentence from several concurrent terms to several consecutive terms. P. v. Moore, 359 Ill App.3d 1090 (2005); P. v. Sanders, 356 Ill App 3d.998 (2005); P. v. Woolsey, 278 Ill App. 3d 708 (1996)

### **IX. MERGER (The One Act, One Crime Rule)**

In Illinois it is improper for an offender to be convicted/sentenced for multiple offenses if the offenses were based on the same act. P. v. King, 66 Ill 2d. 551 (1977). This *only* applies to convictions/sentences based upon the same act, not merely within the same incident.

*Example: Offender is convicted of Attempt Murder and Aggravated Discharge for shooting at one victim. He will only be sentenced on the Attempt Murder because it is the higher class and both convictions arose out of the same act of firing a gun at the victim. (P. v. Hicks, 181 Ill. 2d. 541 (1998). Multiple counts of Attempt Murder as a result of shooting at several victims should receive separate sentences.*

This issue becomes important if an offender is convicted of multiple offenses that are closely related and in which a mandatory or discretionary sentence is appropriate. (However, the rule also applies to concurrent sentences as well).

**Be aware, the Illinois courts apply two different tests in determining whether one offense is the same act as another offense. For purposes of sentencing, the courts apply the “abstract**

**elements” test which allows the imposition of separate sentences when all the elements of one offense are not present in the other offense.**

**For purposes of giving a lesser-included instruction at trial the courts apply the “charging document” approach, which is much less restrictive, and which allows a lesser-included instruction when the charging instrument is supported the facts of the case, exclusive of one element of the offense or the mental state of the offender. P. v. Miller, 238 Ill. 2d. 161 (2010).**

There are many cases which seem to contradict one another on whether two particular crimes are considered one act. Prosecutorial intent, as it is reflected in the charging document is a significant factor in determining whether the defendant’s conduct constituted separate acts capable of supporting multiple convictions. P. v. Pulgar, 323 Ill. App. 3d 1001 (2001); P. v. Green, 339 Ill App 3d 443(2003); P. v. Mayes, 257 Ill App. 3d 137 (1993) (Where it was held that multiple stab wounds inflicted at about the same time supported conviction on Attempt Murder and Aggravated Battery); P. v. Crespo, 203 Ill. 2d 335 (2003) (Where a single attack in which three stab wounds were inflicted could not support convictions for Armed Violence and Aggravated Battery, where the State did not argue at trial that each stab wound supported a separate act and instead portrayed defendant’s conduct as a single attack. P. v. Lee, 213 Ill 2d 218 (2004) (which held that Aggravated Battery/Firearm is a higher class than 2<sup>nd</sup> Degree Murder involving the same victim and, therefore, only a sentence on the Aggravated Battery/Firearm is appropriate).

**NOTE!: If you intend to seek a mandatory or discretionary consecutive sentence in your case where the acts are very closely related, make sure your charging documents appropriately charge separate and distinct acts and that you argue the case as such.**

**X. MANDATORY SUPERVISED RELEASE (MSR) 730 ILCS 5/5-8-1(d)**

First Degree Murder or Class X offense (except PCSA, ACSA, CSA or Aggravated Child Pornography pursuant to 720 ILCS 5/ 11-20.3).	<u>3 years MSR</u>
Class 1 or Class 2 Felony (except CSA, and manufacture and dissemination of child pornography pursuant to 720 ILCS 5/11-20.1(a)(1) or (a)(2)	<u>2 years MSR</u>
Class 3 or Class 4 Felony	<u>1 year MSR</u>
PCSA, ACSA, CSA, Aggravated Child Pornography pursuant to 720 ILCS 5/ 11-20.3 and manufacture and dissemination of child pornography pursuant to 720 ILCS 5/11-20.1(a)(1) or (a)(2.)  <b>There is currently a split between Appellate districts as to whether the trial court or the Prisoner Review Board has the authority to increase the MSR period over the 3 year minimum required by this Statute.</b>	<u>3 years minimum to Life MSR</u>
<b>P. v. Schneider, 403 Ill. App. 3d 301(2010) (PRB Authority);</b>  <b>P. v. Rinehart, 2010 Ill. App. Lexis 1396 (Trial Court Authority. Note: This case only appears in Lexis and not in any other reporter.).</b>  See 730 ILCS 5/3-14-2.5(a) for procedures required for the Prisoner Review Board to review the MSR period.	
ACS Abuse or Criminal Sexual Abuse with a victim under 18 years of age (Second offense for both offenses, only.) <b>Note: Effective January 1, 2010 Felony Domestic Battery, Aggravated Domestic Battery, Stalking, Aggravated Stalking, and Felony VOOP also have a 4 year MSR term.</b>	<u>4 years MSR</u>
Felony domestic battery, aggravated domestic battery, stalking, aggravated stalking, and a felony violation of an order of protection. Effective January 1, 2010	<u>4 years MSR</u>

## XI. **DOUBLE ENHANCEMENT**

It is generally impermissible to enhance both the charge and the sentence with the same factor. This arises in many cases where we have charged a UUW/Felon or Armed Habitual Criminal and then we attempt to use the same prior conviction or convictions to ask for either an extended term, mandatory Class X or Natural Life sentence, though the double enhancement prohibition rule applies to most other offenses as well.

### A. **DOUBLE ENHANCEMENT OCCURS IN ONE OF TWO SITUATIONS**

1. Where the same factor constitutes an element of the offense and serves as a basis for imposing a harsher sentence than otherwise would have been imposed. P. v. Phelps, 211 Ill. 2d 1, 12-13, 809 N.E.2d 1214, 284 Ill. Dec. 268 (2004);  
OR
2. Where the same factor is used twice to elevate the seriousness of the offense itself. P. v. Phelps; P v. Chaney, 379 Ill. App. 3d 524 (2008).

In other words, it is impermissible to use one factor (or a prior conviction) to elevate a count to a higher class offense and then to use that same factor to increase the sentence.

**Remember, the double enhancement prohibition in paragraph 2 only applies when both the charge and the sentence are enhanced by the same factor within the same count of a particular incident. The same enhancing characteristic can be used to enhance separate counts even if they are part of one particular indictment, information or incident. P. v. Phelps, 809 N.E. 2d 1214 (2004); P. v. Siguenza-Brito, 2009 Ill Lexis 1936 (2009);**

It is also appropriate to use the same factor to enhance two different charges (or sentences) within one incident and then sentence the defendant consecutively pursuant to 730 ILCS 5/5-8-4(a) or (b). As an example, if an offender inflicts great bodily harm on a kidnap victim the kidnapping charge is enhanced to Aggravated Kidnapping. The same “Great Bodily Harm” enhancement may be used to enhance a Battery to Aggravated Battery. Conviction on both charges would require a mandatory consecutive sentence. (Presuming the court found that the injuries were sufficient to satisfy the “Severe Bodily Injury” standard required for mandatory consecutive sentencing). P. v. Phelps 809 N.E. 2d 1214 (2004); P. v. Siguenza-Brito, 235 Ill 2d. 213(2009); P. v. Dycus, 291 Ill. App3d 14 (1997). See also P. v. Watkins, 325 Ill. App 3d 13 (2001) (Same prior misdemeanor conviction can be used to enhance two different misdemeanors to felonies).

## **B. PERMISSIBLE DOUBLE ENHANCEMENT**

A **double enhancement** is not erroneous where the legislature clearly expresses an intent to allow **double enhancement**. Phelps at 15;

One notable exception to the usual prohibition against double enhancements applies to PCSA/ACSA cases where an element of the offense is the victim's age. The Illinois Supreme Court in P. v. Ferguson 132 IL 2d 86 (1989) and Illinois Appellate Court in P. v. Moss, 260 Ill. App 3d 272 (1993) and P. v. Coleman 205 IL Ill App 3d 567 (1990) have all held that it is permissible to enhance the sentence based upon the victim's age pursuant to (730 ILCS 5/5-5-3.2(c)(4) (formerly 730 ILCS 5/5-5-3.2 (c)) even though the victim's age is an element of the offense.

Be aware, Ferguson also held that 730 ILCS 5/5-5-3.2(b)(3)(i) (extended term where the victim is under 12 yo) is not a permissible double enhancement when the victim's age is an element of the offense). See also, P. v. White, 114 Ill. 2d. 61 (1986) (Using the victim's age as aggravation for Aggravated Battery/Child charge even though the victim's age is an element of the offense is improper, but does not automatically require a new sentencing hearing).

See also other permissible double enhancements P. V. Thomas, 171 Ill. 2d. 207 (1996). You can use a defendant's prior Class 2 or greater convictions to obtain a mandatory Class X sentence under this section and then use those same prior convictions to argue that the defendant's sentence should be higher than the minimum Class X sentence.

## **C. MANDATORY NON-PROBATIONABLE SENTENCE IS NOT AN IMPERMISSIBLE DOUBLE ENHANCEMENT**

A mandatory non-probationable sentence is not a sentencing enhancement and is, therefore, not subject to the usual double enhancement prohibition. In other words, a defendant who is non-probationable because of his background (a prior conviction for a Class 2 or greater offense when being sentenced for a Class 2 or greater offense) remains eligible to receive an extended term sentence even if he has only one prior conviction in his background. P. v. Dycus, 291 Ill. App3d 14 (1997); Fitzsimmons v. Norgle, 104 Ill 2d 369 (1984).

## **D. USE OF MULTIPLE PRIOR CONVICTIONS TO ENHANCE CHARGE AND SENTENCE**

If the offender has multiple prior convictions you can use one to enhance the offense and another to enhance the sentence. If the offender has only one prior conviction

you can only enhance the offense or the sentence, but not both. See P. v. Gonzalez 151 Ill. 2d 79 (1992); P. v. Bahena 296 Ill App. 3d 67 (1998).

#### **E. JUVENILE TRANSFER IS NOT A SENTENCING ENHANCEMENT**

Juvenile Transfers (automatic or discretionary) are not enhancements for purposes of the double enhancement prohibition. A conviction resulting after a juvenile was charged as an adult can be used to enhance that juvenile's sentence for subsequent offenses. Fitzsimmons v. Norgle, 104 Ill 2d 369 (1984); P. v. Banks, 212 Ill App3d 105 (1991). P. v. Dycus, 291 Ill. App3d 14 (1997).

### **XII. SENTENCING A JUVENILE IN ADULT COURT**

Juvenile offenders may appear in adult courtrooms through two different means:

1 Automatic transfers in which the juvenile is automatically charged as an adult due to the offense charged and the offender's age and background:

a) Automatic Transfers occur under several circumstances all of which can be located in the "Excluded Jurisdiction" section of the Juvenile Court Act. 705 ILCS 405/5-130. Juveniles are also routinely prosecuted as adults for traffic violations, including Reckless Homicide and Aggravated DUI pursuant to 705 ILCS 405/5-125 (Concurrent Jurisdiction).

*Note: All charges associated with automatically transferred offenses follow the juvenile to adult court pursuant to 705 ILCS 405/5-130(1) (a).*

**Remember!! "Attempt" to commit any offense is never an automatic transfer except pursuant to the "Once an adult-always an adult" section 5-130 (6).**

b) Sentencing a juvenile who is charged with an automatic transfer offense.

The Illinois Supreme Court, P. v. King, 2011 Ill. Lexis 13 (2011) held that all charges arising out of an offense that is an automatic transfer are subject to prosecution (and, therefore, sentencing) pursuant to 705 ILCS 405/5-130(1)(a) and (c)(i). This means that whether an offender is found guilty or pleads guilty to an offense that is not an automatic transfer offense that offender is sentenced as an adult as long as the charge originated as part of the automatic transfer charge/incident. Neither the filing of a petition seeking to have the offender sentenced as an adult nor a sentencing hearing is required. Note: (King also seems

to suggest that the juvenile jurisdiction waiver required by 705 ILCS 405/5-130 does not apply if the defendant pleads guilty to an offense that arose out of a charged automatic transfer incident, even though that offense is not an automatic transfer itself, though this is not specifically addressed in the King opinion. Consider obtaining a waiver of juvenile jurisdiction before a juvenile pleads guilty to one of these offenses, just to be on the safe side.

The offender is sentenced as any adult offender would be on all charges pursuant to 705 ILCS 405/5-130(1)(b)(ii) and (c)(i);(Regular Automatic Transfer); (3)(b)(ii) and (c)(i) (UUW on School grounds); (4)(b) (ii) and (c)(i) (Murder during ACSA, CSA or Agg Kidnapping); (5)(b) (ii) and (c)(i)(Escape [31-6(a)] or VOBB[32-10(a)] when juvenile is charged with Regular Automatic transfer Subsection (1) or a Traffic offense under 5-125); (6) (Once an adult-Always an adult).

- 2 Transfers which occur after a juvenile has a transfer hearing in juvenile court. Juveniles can also be transferred to adult court after a presumptive transfer or discretionary transfer hearing, pursuant to 705 ILCS 405/5-805 (Transfer of Jurisdiction).

Sentencing a juvenile after a presumptive or discretionary transfer: An offender convicted of any offense, after trial or plea, which was discretionarily transferred to adult court is sentenced pursuant to the Criminal Code.

### **XIII. MANDATORY NATURAL LIFE SENTENCES**

In the following instances offenders must be sentenced to a sentence of Natural Life pursuant to 730 ILCS 5/5-8-1(a)(1)(c)

- 1 When an offender is not sentenced to death and is convicted of First Degree Murder when:
  - A. He has previously been convicted of First Degree Murder anywhere in this country or when he is convicted of murdering two or more individuals (i);
  - B. He knowingly murdered a peace officer, fireman, emergency management worker while in the performance of their duties. (iii);
  - C. He has murdered a correctional employee in the performance of his duty. (iv);
  - D. He has murdered a municipal or government, EMT or ambulance personnel while they are in the performance of their duties. (v);
  - E. The Murder was committed during the course of an Aggravated Criminal Sexual Assault Criminal Sexual Assault, or Aggravated Kidnapping where the offender had not attained the age of seventeen and the murder victim was under 12-years of age. (vi);
  - F. He has murdered a Community Policing volunteer. (vii);
  - G. The defendant kills two or more individuals. 720 ILCS 5/5-8-1(c)(ii). (This part of this subsection remains constitutional, unlike the first part of the subsection dealing with an offender who murders a victim under the age of 12).
- 2 An offender must also be sentenced to Natural Life under the following circumstances which do not require a conviction for First degree Murder.
  - A. All Predatory Criminal Sexual Assault, and All Aggravated Criminal Sexual Assault, when the offender has been previously convicted of any Predatory Criminal Sexual Assault, any Aggravated Criminal sexual Assault or any Criminal Sexual Assault. (720 ILCS 5/12-14.1(a) and (b); 720 ILCS 5/12-14(a), (b), (c) and (d). The commission of the subsequent offense must have occurred after conviction on the prior offense;
  - B. All Criminal Sexual Assault cases in which force or the threat of force was used or where the offender knew the victim was unable to understand the nature of the act or give knowing consent when the offender has been previously convicted of any Predatory Criminal Sexual Assault or any Aggravated Criminal Sexual Assault. 720

ILCS 5/12-13(b)(3) The commission of the subsequent offense must have occurred after conviction on the prior offense;

- C. All Predatory Criminal Sexual Assault cases where an offender is charged with committing that offense against two or more different children, whether or not the offenses occurred during the same incident or several incidents. (720 ILCS 5/12-14.1(b)(1.2) P. v. Huddleston, 2004 ILL Lexis 980. 730 ILCS 5/5-8-1(a)(2.5)
- D. Class X cases where the offender has two prior convictions for a Class X offense or a Criminal Sexual Assault and the *Third* offense occurred after February 1, 1978; (B) The second offense occurred after conviction on the first; (C) The third offense occurred after conviction on the second. Be aware that an offender convicted of Armed Habitual Criminal as his third Class X offense will probably not be subject to a mandatory Natural Life sentence pursuant to this section. P. v. Owens, 377 Ill. App. 3d (2007) (which deals with offenders convicted of a Class 2 or greater offense after having previously been convicted of two Class 2 or greater offenses –Mandatory Class X sentencing) held that using prior convictions to enhance the class of the offense and then using those same offenses to seek an enhanced sentence, even though the enhanced sentence is mandatory is still an impermissible double enhancement. In order for an offender to be sentenced to Natural Life under this section (with Armed Habitual Criminal as one of the qualifying Class X offenses), that offender would also have to have been convicted of two prior Class X offense in addition to two different prior felonies that would support charging Armed Habitual Criminal.

*Note: The Third offense must occur within 20 years of JUDGMENT (not conviction) on the first offense, less time spent in custody. Time spent on parole or MSR counts as time spent in custody and tolls the 20-year period. P. v. Abdullah 271 Ill. Dec. 669 (2002). 730 ILCS 5/5 –4.5-95(a) (Formerly 720 ILCS 5/33-B). Judgment is considered entered on the date the offender is sentenced. (730 ILCS 5/5-1-12.)*

- E. Any Aggravated Kidnapping when the offender has been previously convicted of Aggravated Kidnapping and the second offense occurred after convictions on the first the offender *must* be sentenced to natural life. (720 ILCS 5/10-2(b).

#### **XIV. TASC (20 ILCS 301/40-5 et. seq.)**

An offender may elect to be treated as an addict or alcoholic pursuant to this section when charged or convicted of certain offenses. When an offender receives TASC it is a condition of probation and can be for as long as the maximum sentence for the offense for which the offender is being sentenced, but in no event can the period of probation be longer than 5 years. An offender who successfully completes TASC can file a petition within 30 days (or later for good cause) for discharge of probation and have both judgment and conviction vacated. The Court has discretion to grant the petition. This relief is not available for an offender who has any prior felony conviction or who has previously vacated a TASC judgment. TASC is not available for every offense. See P. v. Johnson, 338 Ill. App. 3d 213 (2003) (discusses the relationship between TASC and 730 ILCS 5/5-5-3(c)(2)(F), non-probationable offenses based on prior Class 2 or greater convictions within the past 10 years.)

#### **Offenses for which TASC is Unavailable**

##### **1. Crimes of Violence (as defined by 20 ILCS 301/1-10)**

Murder, Voluntary Manslaughter, Criminal Sexual Assault, Aggravated Criminal Sexual Assault, Predatory Criminal Sexual Assault, Armed Robbery, Robbery, Arson, Kidnapping, Aggravated Battery, Aggravated Arson or any other felony which involves the use or threat of physical force or violence against another individual. (Be aware Armed Violence does not automatically qualify as a crime of violence. P. v. Robinson, 255 Ill. App. 3d 1067 (1993)).

##### **2. Narcotics:**

- 720 ILCS 570/401 (a), (b), or (c) - All DCS offenses under where the offense is non-probationable or where the offender has been previously convicted of a non-probationable offense;
- 720 ILCS 570/401(d) - Class 2 DCS/PCS with Intent where the offense is non-probationable;

Note: These are all Class 2 DCS/PCS with Intent. They are all probationable except when the defendant has a prior Class 2 or greater conviction within the past 10 years pursuant to 730 ILCS 5/5-5-3(c)(2)(F). This section also contains the language "... except as otherwise provided by Section 40-10 of the Alcoholism and Other Drug Abuse and Dependency Act" (TASC). When reading the TASC statute and 730 ILCS 5/5-5-3(c)(2)(F) together, as you must, the only conclusion is that all defendants charged with a violation of 401(d) who have a prior class 2 or greater within the past 10 years are not eligible for TASC.

- 720 ILCS 570/402(a) - PCS, only Class 1, where the offense is non-probationable;
- 720 ILCS 570/401.1 - Controlled Substance Trafficking
- 720 ILCS 570/405 - All Calculated Criminal Drug Conspiracy;
- 720 ILCS 570/407 - All DCS School grounds, park, church, etc.

3. **Cannabis**

- 720 ILCS 550/4(d), (e), (f) or (g) - Possession of more than 30 grams of cannabis;
- 720 ILCS 550/5(d), (e), (f) or (g) - Delivery of Cannabis of more than 30 grams
- 720 ILCS 550/5.1 - Cannabis Trafficking
- 720 ILCS 550/7 - Delivery of Cannabis to a person under 18
- 720 ILCS 550/9 - Calculated Criminal Cannabis Conspiracy.

4. **Methamphetamine:**

- 720 ILCS 646/15 - All amounts of methamphetamine manufacturing;
- 720 ILCS 646/20 - All amounts of methamphetamine precursor possession or delivery;
- 720 ILCS 646/55 - Delivery of any amount of methamphetamine;
- 720 ILCS 646/60 - Possession of any amount of methamphetamine;
- 720 ILCS 646/65 - Any amount of methamphetamine Conspiracy

6. An offender who has two or more crimes of violence in his background;
7. An offender who is on probation or parole and the appropriate probation or parole authority has not provided its consent;
8. An offender who has had TASC on two prior occasions within any consecutive two year period;
9. An offender who has been convicted of Residential Burglary and any other felony. (An offender who is seeking TASC on a Residential Burglary cannot have any other felony conviction and still meet the eligibility requirements. This section does not require an offender to have a prior Residential Burglary and a second felony in order to be ineligible. P. v. Dean, 363 Ill. App. 3d 454 (2006); P. v. Mobley, 383 Ill. App. 3d 383 (2008). Also, the two convictions [Residential Burglary plus one other felony] can arise out of the same incident and be based upon the same conduct to disqualify an offender from TASC eligibility. P. v. Evans, 203 Ill. App. 3d 582 (1990). See **730 ILCS 5/5-5-3(c)(2)(G)**.)
10. DUI (625 ILCS 5/11-501) or similar local ordinance (Including Aggravated DUI/ Death or GBH);
11. Reckless Homicide or Reckless Homicide of an Unborn Child when the offender is driving a motor vehicle and under the influence of drugs or alcohol.

## XV.

### **BOOT CAMP (Impact Incarceration)**

Illinois law provides two separate and distinct “Boot Camp” dispositions for offenders convicted of felonies. The two types of boot camp are different dispositions with different requirements.

First, IDOC Boot camp is not a sentence, but merely a recommendation the trial court can make to IDOC. The boot camp recommendation is just that -- a recommendation. IDOC may accept or reject that recommendation. If an offender is rejected or is dismissed from the boot camp program he then serves the remainder of his original IDOC sentence just as if boot camp had not been recommended. An offender will serve between 120 and 180 days in the program. That period can be reduced by good time.

Second, Cook County Boot Camp is a sentence imposed by the court, rather than merely a recommendation. If the offender is not accepted into the Cook County Boot Camp program, he is sentenced according to the Class of the offense. If he does not successfully complete the program he is considered in violation and is then sentenced accordingly.

*Cook County Boot Camp is more restrictive than IDOC Boot Camp!!! An offender cannot receive Cook County Boot Camp unless he has previously received probation on an earlier felony!!! (Though of no precedential value see the Rule 23 opinion P. v. Lonnie Henry, docket no. 1-10-0416, March 31, 2011, which held that the Cook County Boot Camp sentence was void because the offender had not been previously convicted of a felony for which he received a sentence of probation).*

**The requirements for participation in each Boot Camp program are similar, but not identical.**

#### **A. IDOC Boot Camp Requirements (730 ILCS 5/5-8-1.1):**

1. The offender must be between 17 and 35 years of age.
2. The offender cannot have previously participated in the IDOC Boot Camp program or served more than one term of imprisonment in an adult correctional facility.
3. The offender is ineligible if convicted (in your current case or in the past) of a Class X offense, First or Second Degree Murder, Armed Violence, Aggravated Kidnapping, Criminal Sexual Assault, Aggravated Criminal Sexual Abuse, a second offense of Criminal Sexual Abuse, Forcible Detention, Residential Arson, Place of Worship Arson, or Arson.

4. The offender is eligible if he was sentenced on your case to a term of 8 years or less.
5. The offender must be physically able to participate in strenuous physical activities or labor.
6. The offender must not have any mental disorder or disability that would prevent participation.

**B. Cook County Boot Camp Requirements (730 ILCS 5/5-8-1.2):**

1. The offender must be between 17 and 35 years of age.
2. The offender cannot have previously participated in the Cook County Boot Camp program or served more than one term of imprisonment in an adult correctional facility.
3. **The offender is ineligible** if convicted (on your current case or in the past) of a Class X offense, First or Second Degree Murder, Armed Violence, Aggravated Kidnapping, Criminal Sexual Assault, Aggravated Criminal Sexual Abuse, a second offense of Criminal Sexual Abuse, Forcible Detention, Residential Arson, Place of Worship Arson, or Arson.
4. **The offender is ineligible** if convicted (on your case or your VOP only, not a past conviction) of any felony included as a violent crime pursuant to 725 ILCS 120/3(c) including any felony in which force or threat of force is used against the victim, any offense involving sexual exploitation, sexual conduct or sexual penetration, Child Pornography, Aggravated Child Pornography, Domestic Battery, VOOP, Stalking, Reckless Homicide or Involuntary Manslaughter, and any DUI in which the violation resulted in personal injury or death.
5. **A first time offender is ineligible.** The offender **must** have previously been sentenced to a period of felony probation. See P. v. Henry, 1-10-0416, March 31, 2011 and 730 ILCS 5/5-8-1.2(c )(4).

6. The offender must be convicted (on your case or on your VOP, other than those offenses included in paragraph 3 or 4 above) of a Class 2, 3, or 4 offense.

*Class 1 offenders are not eligible for Cook County Boot Camp.*

*Offenders convicted of forcible felonies (on your case, including VOP's) are not eligible for Cook County Boot Camp. (This means, offenders convicted of [or on a VOP for] Burglaries (any type) and Robberies, among other forcible felonies, cannot be sentenced to Cook County Boot Camp.)*

7. The offender must be physically able to participate in strenuous physical activities or labor.
8. The offender must not have any mental disorder or disability that would prevent participation.

## XVI.

## TRUTH IN SENTENCING (Effective June 19, 1998, unless otherwise noted)

Apprendi does not apply to truth-in-sentencing.

See P. v. Harris, 2011 Ill. App. Lexis 779 and P. v. Robinson, 383 Ill App3d.1065 (2008).

The Statutory Provisions regarding Truth in Sentencing (730 ILCS 5/3-6-3) provide that offenders shall serve their sentences in the following manner:

A. Offenders must serve 100% of the sentence when convicted of these offenses: (730 ILCS 5/3-6-3(i)):

1. First Degree Murder
2. Terrorism

B. Offenders must serve 85% of the sentence when convicted of these offenses: 730 ILCS 5/3-6-3(a)(2)(ii)(iv); (2.3)

1. Attempted First Degree Murder
2. Solicitation of Murder
3. Solicitation of Murder for Hire
4. Intentional Homicide of an Unborn Child
5. Predatory Criminal Sexual Assault
6. Aggravated Criminal Sexual Assault
7. Criminal Sexual Assault
8. Aggravated Kidnapping
9. Aggravated Battery with a Firearm
10. Heinous Battery
11. Aggravated Battery of a Senior Citizen (GBH or Permanent Disfigurement only, Effective July 1, 2011. Prior to July 1, 2011, all Aggravated Battery of a Senior Citizen with or without GBH or Permanent Disfigurement was 85%). Public Act 96-1551.
12. Aggravated Battery of a Child (GBH or Permanent Disfigurement only, Effective July 1, 2011. Prior to July 1, 2011, all Aggravated Battery of a Child with or without GBH or Permanent Disfigurement was 85%). Public Act 96-1551.
13. Armed Habitual Criminal

14. Reckless Homicide -**effective July 1, 1999 thru July 17, 2003 only** (When Reckless Homicide /under the influence was repealed and AGG DUI /Dead Body was enacted- PA 93 213), and only when offender violates 720 ILCS 5/9-3(e). (Was under the influence of drugs or alcohol);
15. Aggravated DUI / Dead Body
16. Aggravated Battery Machine Gun / Silencer
17. Aggravated Discharge Machine Gun / Silencer
18. Aggravated Arson (effective July 27, 2001)
19. Aggravated Discharge of a Firearm (effective June 23, 2005)
20. Aggravated Domestic Battery (effective July 10, 2010)
21. Luring a Minor (Second offense)

C. Offenders must serve 85% of their sentence only when the court makes a finding that the conduct leading to the conviction of the offender resulted in Great Bodily Harm to any victim in these cases (730 ILCS 5/5-4-1(c-1) Apprendi does not apply to this finding so a judge can make this finding instead of submitting the question to the jury. P. v. Robinson, 383 Ill App3d.1065 (2008):

1. Home Invasion
2. Armed Robbery
3. Aggravated Vehicular Hijacking
4. Armed Violence (Cat I or II Weapon – See 720 ILCS 5/330(c) ; (730 ILCS 5/3-6-3(iii)

D. Offenders must serve 75% of their sentence if convicted of the following offenses; (730 ILCS 5/3-6-3(2)(v):

1. Gunrunning
2. Drug Induced Homicide
3. Aggravated Methamphetamine Child Endangerment
4. DCS/PCS with intent (over 100 grams) as well as 14 other narcotic related offenses.

## CLASSES OF FELONY OFFENSES

First Degree Murder <u>730 ILCS 5/5-4.5-20(a)(1)</u> (730 ILCS 5/5-8-1)	20-60- yrs.
Extended Term <u>730 ILCS 5/5-4.5-20(a)(2)</u> (730 ILCS 5/5-8-2)	<u>100- yrs.</u>
First Degree Murder: <u>730 ILCS 5/5-4.5-20(a)(3)</u> (730 ILCS 5/5-8-1) Offender has prior first degree murder conviction or is charged with murdering two or more individuals.	<u>Life only</u>

<b>First Degree Murder: (Certain victims)</b>	
P.O./Fireman	Life only
Correctional officer	Life only
Paramedic	Life only
Community Police Volunteer	Life only

<b>First Degree Murder:</b> <i>with presence of death-qualifying factor</i> <u>720 ILCS 5/9-1(b)</u>	<u>20-60- yrs.; Life</u>
<b>Felony Murder: Defendant inflicts injuries that cause death or are inflicted at the same time as those that cause death.</b>	<u>20-60- yrs.; Life</u>
<b>First Degree Murder: Brutal and Heinous</b>	<u>20-60- yrs.; Life</u>

NOTE: All first-degree murder sentences are enhanced by an additional 15-20-25 to Life sentence when the murderer possessed (also applies to accountable offenders for possession only), discharged, or discharged a firearm causing death or GBH.

CLASS X <u>730 ILCS 5/5-4.5-25(a)</u> (730 ILCS 5/5-8-1)	6-30- yrs.
Extended term <u>730 ILCS 5/5-4.5-25(a)</u> (730 ILCS 5/5-8-2)	60 yrs.
CLASS 1 <u>730 ILCS 5/5-4.5-30(a)</u> (730 ILCS 5/5-8-1)	4-15 yrs.
Extended term <u>730 ILCS 5/5-4.5-30(a)</u> (730 ILCS 5/5-8-2)	30 yrs.
CLASS 2 <u>730 ILCS 5/5-4.5-35(a)</u> (730 ILCS 5/5-8-1)	3-7 yrs.
Extended term <u>730 ILCS 5/5-4.5-35(a)</u> (730 ILCS 5/5-8-2)	14 yrs
CLASS 3 <u>730 ILCS 5/5-4.5-40(a)</u> (730 ILCS 5/5-8-1)	2-5 yrs.
Extended term <u>730 ILCS 5/5-4.5-40(a)</u> (730 ILCS 5/5-8-2)	10 yrs.
CLASS 4 <u>730 ILCS 5/5-4.5-45(a)</u> (730 ILCS 5/5-8-1)	1-3 yrs.
Extended term <u>730 ILCS 5/5-4.5-45(a)</u> (730 ILCS 5/5-8-2)	6 yrs.

**Public Act 96-1551 renumbered sections in the Criminal Code relating to sex offenses, bodily harm offenses and deception/fraud offenses, effective on July 1, 2011. Those renumbered sections are in bold, with the old sections in parenthesis next to the new cite.**

CHARGE	STATUTE	CLASS
Abuse of Long Term Care Resident	<b>720 ILCS 5/12-4.4</b> (12-19)	CLASS 3
Aggravated Animal Cruelty (2 <sup>nd</sup> offense)	510 ILCS 70/3.02	CLASS 4 CLASS 3
Aggravated Arson	720 ILCS 5/20-1.1	CLASS X
Agg. Assault Discharge of firearm or w/firearm at P.O./or Corrections Officer	720 ILCS 5/12-2	CLASS 4
Aggravated Battery	<b>720 ILCS 5/12-3.05</b> (12-4)	
Aggravated Battery of a Child (GBH or Permanent Disfigurement)  (Bodily Harm or Disfigurement)	<b>720 ILCS 5/12-3.05</b> (12-4.3)	CLASS X (plus 15-20-25-Life, firearm used)  CLASS 3 (Eff. January 1, 2009)
Aggravated Battery of P.O./Comm Pol. Vol/Paramedic, Fire/Correctional Off/Public School Teacher	720 ILCS 5/12-4(b)(18)	CLASS 2 (Eff. July 29, 2005 previously CLASS 3)
Aggravated Battery to Police Officer w/Great Bodily Harm	720 ILCS 5/12-4(b)(6)(e)	CLASS 1 (Eff. July 29, 2005- previously CLASS 2)
Aggravated Battery with a firearm	<b>720 ILCS 5/12-3.05</b> (12-4.2)	CLASS X
Aggravated Battery/firearm of P.O./Comm. Pol. Vol./Paramedic / Correctional Off. / Public school Teacher	720 ILCS 5/12-4.2	CLASS X  Enhanced (15-60yrs)
Aggravated Battery/Senior Citizen (GBH)	<b>720 ILCS 5/12-3.05</b> (12-4.6)	CLASS 2
Aggravated Battery/Unborn Child	<b>720 ILCS 5/12-3.1</b> (12-4.4)	CLASS 2
Aggravated Child Pornography	<b>720 ILCS 5/11-20.1B</b> (11-20.3)	CLASS X, 1, 2 depending on violation. Mandatory fines.
Aggravated Computer tampering (Strong probability death/GBH)	<b>720 ILCS 5/17-52</b> (16D-4)	CLASS 2
Aggravated Computer Tampering (Disruption of vital services)	<b>720 ILCS 5/ 17-52</b> (16D-4)	CLASS 3
Aggravated Criminal Sexual Abuse	<b>720 ILCS 5/11-1.60</b> (12-16)	CLASS 2
Aggravated Criminal Sexual Assault	<b>720 ILCS 5/11-1.30</b> (12-14)	CLASS X (Enhanced with firearm 15-20-25-life)  Mandatory Natural Life
2 <sup>nd</sup> Agg. Crim. Sexual Assault		

CHARGE	STATUTE	CLASS
Aggravated Discharge of Firearm  P.O./ Comm. Pol. Vol./Para./Corr. Off./Teacher/within 1000 ft School	720 ILCS 5/24-1.2	CLASS 1  CLASS X
Aggravated Domestic Battery	720 ILCS 5/12-3.3	CLASS 2 – 1 <sup>st</sup> offense requires min. 60 days consec jail time if D receives prob/cond disch. (2nd offense is always non-prob- no “within 10 year” limitation)
Aggravated Drug Related Child Endangerment	720 ILCS 5/12-4.11	CLASS X
Aggravated DUI - DEAD BODY  2 or more dead bodies	625 ILCS 5/11-501(d)(1)(F) and 2(G)	Enhanced CLASS 2; 3-14yrs. mandatory, unless finding of extraordinary circumstances  6-28yrs
Aggravated DUI/GBH	625 ILCS 5/11-501(d)(1) (C)	Enhanced CLASS 4 1-12yrs if sentenced to penitentiary
Aggravated False Impersonation of Peace Officer/Firefighter	<b>720 ILCS 5/17-2</b> (32-5.2)	CLASS 2 (CLASS 3 Until 4/17/06)
Aggravated Fleeing and Eluding	625 ILCS 5/11-204.1	CLASS 4
Aggravated Home Repair Fraud Victim is 60-years-old or older or is Disabled	815 ILCS 515/5	CLASS 2 CLASS 3 ( <i>Class to be determined by the amount, background &amp; subsection</i> )
Aggravated Identity Theft  (<300) (300-10,000) (10,000-100,000) (OVER 100,000) 2 <sup>ND</sup> OFFENSE (ANY CLASS)	<b>720 ILCS 5/16-30</b> (16G-20)	CLASS 3 CLASS 2 CLASS 1 CLASS X CLASS X
Aggravated Intimidation (furtherance of gang)  P.O./Fireman/Comm. Pl.	720 ILCS 5/12-6.2	CLASS 1  Enhanced CLASS 2 (3-14yrs)
Aggravated Kidnapping	720 ILCS 5/10-2	CLASS X (15-20-25- Life if firearm used)
Agg Possession of Stolen Motor Vehicle	625ILCS 5/4-103.2	CLASS 1
Aggravated Possession Stolen Firearm	<b>720 ILCS 5/ 24-3.9</b> (16-16.1)	CLASS 1 CLASS X
Aggravated Robbery	720 ILCS 5/18-5	CLASS 1
Aggravated Stalking 2 <sup>nd</sup> or subsequent offense	720 ILCS 5/12-7.4	CLASS 3 CLASS 2
Aggravated Unlawful Restraint	720 ILCS 5/10-3.1	CLASS 3

CHARGE	STATUTE	CLASS
Aggravated UUW  2 <sup>nd</sup> or subsequent offense/or by a Felon	720 ILCS 5/24-1.6	CLASS 4 Non-probationable if the gun is uncased, loaded, immediately accessible, NO FOID card and is at least 18 yrs. of age. (Eff.1/1/11) All other violations for first time offenders are probationable.  CLASS 2 (Non-Probationable)
Aggravated Vehicular Hijacking	720 ILCS 5/18-4	CLASS X {7-Year Minimum} [Enhanced 15-20-25- life, firearm]
Aiding Child Abduction	720 ILCS 5/10-7	CLASS 4
Aiding Escape (Felon) Armed w/Dangerous Weapon	720 ILCS 5/31-7	CLASS 2 CLASS 3
Animal Cruelty (2 <sup>nd</sup> offense)	510 ILCS 70/3.01	CLASS 4
Armed Habitual Criminal	720 ILCS 5/24-1.7 ( <i>Eff. 8.2.05</i> )	CLASS X
Armed Robbery	720 ILCS 5/18-2	CLASS X (15-20-25-Life if firearm used)
Armed Violence (Possession only) CAT I weapon CAT II weapon CAT III weapon Armed Violence (Personally Discharged ) CAT I or II weapon Armed Violence (Personally Discharged/GBH/Death)	720 ILCS 5/33A-2	CLASS X 15 yrs. Minimum 10 yrs. Minimum CLASS 2 CLASSX ( 20 year min)  CLASS X (25min -40 yrs)
Arson	720 ILCS 5/20-1	CLASS 2
Arson/Place of Worship	720 ILCS 5/20-1.3	CLASS 1 (NON-PROB.)
Attempt	720 ILCS 5/8-4	Class varies; One class less than the completed act except Class 3, which is a class A misd.
Attempt Murder		Class X (plus 15-20-25-Life if firearm)
Attempt. Murder P.O./Corr. Off. /Para.	720 ILCS 5/8-4	CLASS X Enhanced 20-80yrs
Bigamy	<b>720 ILCS 5/11-45 (11-12)</b>	CLASS 4
Bribery	720 ILCS 5/33-1	CLASS 2
Burglary School grounds	720 ILCS 5/19-1	CLASS 2 CLASS 1
Child Abandonment 2 <sup>nd</sup> or subsequent offense	720 ILCS 5/12-21.5	CLASS 4 CLASS 3
Child Abduction	720 ILCS 5/10-5	CLASS 4
Child Pornography Possession only	720 ILCS 5/11-20.1	CLASS 1 CLASS 3

CHARGE	STATUTE	CLASS
Communicating with Juror or Witness	720 ILCS 5/32-4	CLASS 3 CLASS 4
Compelling Gang Membership	<b>720 ILCS 5/12-6.5</b> (12-6.1)	CLASS 1
Computer Fraud Under \$1,000 \$1,000-\$50,000 Over \$50,000	<b>720 ILCS 5/17-50</b> (16D-5)	CLASS 4 CLASS 3 CLASS 2
Computer Tampering (If 2 <sup>nd</sup> or subsequent offense)	<b>720 ILCS 5/17-51</b> (16D-3)	CLASS 4 CLASS 3
Concealing or Aiding Fugitive	720 ILCS 5/31-5	CLASS 4
Concealing a Homicidal Death	720 ILCS 5/9-3.4	CLASS 3 Mandatory Consecutive 730 ILCS 5/5-8-4(d)(5)
Concealment of Death (Non-Homicide)	720 ILCS 5/9-3-1.5	CLASS 4
Conspiracy	720 ILCS 5/8-2	CLASS 1, 2, 3, or 4 <i>{Depends on underlying offense}</i>
Contraband in a Penal Institutions	720 ILCS 5/31A-1.1	CLASS X, 1,2,OR 3 <i>{depending on type of contraband}</i>
Controlled Substances Manufacture or Delivery	720 ILCS 570/401	CLASS 3,2,1,X (or Enhanced X <i>depending on drug and amount</i> )
Controlled Substance Trafficking	720 ILCS 570/401.1	CLASS depends on amount. Sentence is between twice the minimum and twice the maximum sentence for DCS. (Non-Probationable)
Criminal Abuse/Neglect Elderly Person Resulting in death	<b>720 ILCS 5/ 12-4.4</b> (12-21)	CLASS 3 CLASS 2
Criminal Damage to Government/State Property	720 ILCS 5/21-4	CLASS 4 (Class 1, <i>depending on amount</i> )
Criminal Damage to Property UNDER \$300 \$300-10,000 10,000-100,000 Over \$100,000 School or place of worship	720 ILCS 5/21-1	CLASS A CLASS 4 CLASS 3 CLASS 2 One class higher
Criminal Fortification	720 ILCS 5/19-5	CLASS 3
Criminal Housing Management 2 <sup>nd</sup> or Subsequent Offense	720 ILCS 5/12-5.1	CLASS 4

CHARGE	STATUTE	CLASS
Criminal Sexual Abuse Force, unable to understand act, give knowing consent	<b>720 ILCS 5/11-1.50</b> (12-15)	CLASS A CLASS 4
Criminal Sexual Assault 2 <sup>nd</sup> CSA after conv. On CSA 2 <sup>nd</sup> CSA/After conv. on ACSA or PCSA	<b>720 ILCS 5/11-1.20</b> (12-13)	CLASS 1 (NON-PROB.) Enhanced Class X (30-60 yrs) Man. Nat. Life
Criminal Transmission HIV	720 ILCS 5/12-5.01 (16.2)	CLASS 2
Criminal Trespass to Place of Public Amusement	720 ILCS 5/21-9	CLASS 4
Criminal Trespass to Residence (knows people are home; Otherwise Misdemeanor	720 ILCS 5/19-4	CLASS 4
Custodial Sexual Misconduct	720 ILCS 5/11-9.2	CLASS 3
CyberStalking	720 ILCS 5/12-7.5	CLASS 4
Deceptive Practice Over \$150.00 or 3 or more checks	720 ILCS 5/17-1	CLASS 4
Defacing Firearm Possession Altering	720 ILCS 5/24-5	CLASS 3 CLASS 2
Disarming a Peace Officer	720 ILCS 5/31-1a	CLASS 1 Non- Probationable eff. 8/12/09
Disorderly Conduct - False police or fire report False bomb threat	720 ILCS 5-/26-(a)(2)(4)(7)(9) 720 ILCS 5/26-1(a)(3)	CLASS 4 CLASS 3
Dog Fighting	720 ILCS 5/26-5	CLASS 3 or 4
Domestic Battery/2 <sup>nd</sup> offense	720 ILCS 5/12-3.2	CLASS 4
Driving on a Suspended License (Felony)	625 ILCS 5/6-303	CLASS 4
Drug Induced Homicide	720 ILCS 5/9-3.3	CLASS X
Drug Induced Infliction of Great Bodily Harm	720 ILCS 5/12-4.7	CLASS 1
Drug Related Child Endangerment	720 ILCS 5/12-4.10	CLASS 2
DUI (Felony)	625 ILCS 5/11-501	CLASS X, 1, 2, or 4 <i>Depending on the number of previous convictions</i>
Eavesdropping	720 ILCS 5/14-2	CLASS 4
Endangering Life/Health of Child Death of victim only	720 ILCS 5/12-21.6	CLASS 3 Otherwise Class A Misd.
Escape (If felony offender)	720 ILCS 5/31-6	CLASS 2
Escape from E/M If armed with firearm	730 ILCS 5/5-8A-1	CLASS 3 CLASS 1
Exploitation of a Child	<b>720 ILCS 5/11-14.4</b> (11-19.2)	CLASS X
Failure to Register as a Sex Offender	730 ILCS 150/10	CLASS 3 or CLASS 4
False Impersonation of Peace Officer/Firefighter and False Personation of Peace Officer While Carrying a Deadly Weapon	<b>720 ILCS 5/17-2</b> (32-5.1 and 5.4) <b>720 ILCS 5/17-2</b> (32-5.1-1)	CLASS 4 CLASS 3 (Class 4 until 4/17/06)
False Impersonation While Using Emergency Lights	625 ILCS 5/12-215	CLASS 2 (Class 4 until 4/17/06)

CHARGE	STATUTE	CLASS
Fictitious/Fraudulent Driver's License 2 <sup>nd</sup> offense	625 ILCS 5/6-301.1	CLASS 4 CLASS 3
Fictitious/Fraudulent ID Card 2 <sup>nd</sup> offense	15 ILCS 335/14A & 14B	CLASS 4 CLASS 3
Financial Exploitation of Elderly/Disabled \$300 or Less \$300 - 4,999 \$5,000 - 99,999 \$100,000 or More \$15,000 or More (victim over 70) \$5,000 or More (victim over 80)	<b>720 ILCS 5/17-56</b> (16-1.3)	CLASS 4 CLASS 3 CLASS 2 CLASS 1 CLASS 1 CLASS 1
Financial Institution Fraud Under \$300 (2 <sup>nd</sup> offense) \$300-10,000 \$10,000-100,000 Over \$100,000  Continuing financial crimes enterprise.  Organizing a continuing financial crimes ent.	<b>720 ILCS 5/17-10.6</b> (16H-25)	CLASS 4 CLASS 3 CLASS 2 CLASS 1  CLASS 1  CLASS X
Forcible Detention	720 ILCS 5/10-4	CLASS 2
Forged Prescriptions (when controlled substance actually received)	720 ILCS 570/406(b)(3)	CLASS 4
Forgery	720 ILCS 5/17-3	CLASS 3
Gunrunning	720 ILCS 5/24-3A	CLASS 1 (non-prob)
Harassment of Witness/Juror	720 ILCS 5/32-4a	CLASS 2
Hate Crime Within 1000 ft. of Church, Cemetery, School, Park (2 <sup>nd</sup> offense any type)	720 ILCS 5/12-7.1	CLASS 4  CLASS 3
Heinous Battery	<b>720 ILCS 5/12-3.05</b> (12-4.1)	Enhanced CLASS X (6-45 YRS)
Home Invasion	720 ILCS 5/12-11	CLASS X Enhanced firearm 15-20-25-life
Home Repair Fraud  Misrepresent, Material Fact (a)(1) Uses Deception (a)(2), (a) (4) Unconscionable Agreement (a)(3)  Over 1,000 or 2 <sup>nd</sup> offense Under 10,000 Over 10,000	815 ILCS 515/3  720 ILCS 5/16C-2	CLASS A CLASS 3 CLASS 4 <i>Class to be determined by the amount, background &amp; subsection violated</i> CLASS 4 CLASS 4 CLASS 3

CHARGE	STATUTE	CLASS
Household Appliances, Unlawful Sales If value over \$1,000 Value under \$1,000		CLASS 4 CLASS B
Human Trafficking/Involuntary servitude	720 ILCS 5/10-9	CLASS X,1, 2, 3, 4 depending on subsection.
Hypodermic Needles (2 <sup>nd</sup> and Subsequent Offenses)	720 ILCS 635/4	CLASS 4
Identity Theft Under \$300.00 2 <sup>nd</sup> offense \$300-2,000 \$2,000-10,000 \$1,000- \$100,000 OVER \$100,000	<b>720 ILCS 5/16-30</b> (16G-1)	CLASS 4 CLASS 3 CLASS 2 CLASS 1 CLASS X
Indecent Solicitation of a Child	720 ILCS 5/11-6	CLASS 1, 2, 3 (Depending on age solicited)
Indecent Solicitation of an Adult	720 ILCS 5/11-6.5	CLASS X, 1, 2, A
Institutional Vandalism	720 ILCS 5/21-1.2	CLASS 3
Insurance Fraud, Theft, False Reports	<b>720 ILCS 5/26-1.1</b> (16-3.1)	CLASS 4
Intentional homicide/Unborn Child	720 ILCS 5/9-1.2	Same as murder except no death [Enhanced 15-20-25-life, firearm]
Intimidation	720 ILCS 5/12-6	CLASS 3 - (Enhanced)
Involuntary Manslaughter Peace Officer in the performance of duties. Family Member	720 ILCS 5/9-3	CLASS 3 CLASS 2 CLASS 2
Involuntary Manslaughter/Reckless Homicide Unborn/Various child	720 ILCS 5/9-3.2	CLASS 3
Kidnapping	720 ILCS 5/10-1	CLASS 2
Leaving the Scene of Accident/Personal Injury 30-min or less More than 30-min More than 30-min. and dead body	625 ILCS 5/11-401(a) 625 ILCS 5/11-401(b)	CLASS 4 CLASS 2 CLASS 1 (1 class less before 1/1/08)
Libraries, Theft	<b>720 ILCS 5/16-3</b> (16B-2)	CLASS 3
Looting	720 ILCS 5/42-2	CLASS 4
MFG. /DEL. Look Alike Substances	720 ILCS 570/404	CLASS 3
Mob Action	720 ILCS 5/25-1	CLASS 4
Money Laundering	720 ILCS 5/29B-1	CLASS 2
Obstructing Justice	720 ILCS 5/31-4	CLASS 4
Official Misconduct	720 ILCS 5/33-3	CLASS 3
Pandering	<b>720 ILCS 5/11- 14.3</b> (11-16)	CLASS 4
PCS	720 ILCS 570/402	CLASS 4 or 1 or Enhanced, depending on drug or amount
Performance of Unauthorized Acts	720 ILCS 5/32-6	CLASS 4
Perjury	720 ILCS 5/32-2	CLASS 3

CHARGE	STATUTE	CLASS
Possession Controlled Substance	720 ILCS 570/402	CLASS 4 or greater, depending on amount
Possession of Firearm/Ammunition	720 ILCS 5/24-3.1	CLASS 4
Possession of Blank Prescription	720 ILCS 570/406.2(A)(2)	CLASS 4
Possession of Burglary Tools	720 ILCS 5/19-2	CLASS 4
Possession of Credit/Debit Card of Another/ Possession of Lost/Mislaid Credit/Debit card	720 ILCS 5/17-32 or 720 ILCS 5/17-33	CLASS 3 or 4 (with possession of multiple cards)
Possession of Stolen Firearms	<b>720 ILCS 5/24-3.8 (16-16)</b>	CLASS 2
Possession of Stolen Motor Vehicle	625 ILCS 5/4-103	CLASS 2
Possession UUW/Contraband in a Penal Institutions	720 ILCS 5/31A-1.1	CLASS X/1 {Depending on contraband}
Predatory Criminal Sex Assault	<b>720 ILCS 5/11-1.40 (12-14.1)</b>	CLASS X (Enhanced with firearm 15-20-25-life) 50 years minimum
Great Bodily Harm /Permanent Disability or Life Threatening	(a) (2)	
Use of Controlled Substance on Victim	(a) (3)	50-60 years
If 2 <sup>nd</sup> /Multi Acts or Multi Victims		Man. Nat. Life
Presence w/School Zone by Child Sex Offender	720 ILCS 5/11-9.3	CLASS 4
Presence/In Prohibited Places by Child Sex Offender (park, playground, w/in 500 feet of victim)	720 ILCS 5/11-9.4	CLASS 4
Prostitution (2 <sup>nd</sup> offense; or w/in 1000 ft. of a school)	720 ILCS 5/11-14	CLASS 4 (expungeable probation available for first time felons)
Public Indecency (2 <sup>nd</sup> offense)	<b>720 ILCS 11-30 (11-9)</b>	CLASS 4
Reckless Discharge	720 ILCS 5/24-1.5	CLASS 4
Reckless Homicide	720 ILCS 5/9-3	CLASS 3
School crossing guard on duty		CLASS 2 (3-14)
School crossing guard on duty-2 or more vics		CLASS 2 (6-28)
Construction Zone		CLASS 2 (3-14)
Failure to obey police order		CLASS 2 (3-14)
Construction zone or failure to obey 2 or more vics		CLASS 2 (6-28)
Used a ramp or incline i.e. bridge or railroad crossing to become airborne and 2 or more vics		
Failure to move for emergency vehicles (violation of 625 ILCS 5/11-907)		CLASS 2 CLASS 2 (3-14)
Residential Arson	720 ILCS 5/20-1.2	CLASS 1 (NON PROB)
Residential Burglary	720 ILCS 5/19-3	CLASS 1 (NON-PROB.)
Resisting Arrest (bodily harm)	720 ILCS 5/31-1	CLASS 4
Retail Theft/2 <sup>nd</sup> offense	720 ILCS 5/16-25 (16A-3a)	CLASS 4
Over 300.00 Eff. 1/1/11		CLASS 3
Ritual Mutilation	720 ILCS 5/12-32	CLASS 2
Robbery	720 ILCS 5/18-1	CLASS 2
60 yrs +		CLASS 1
Sales, Body Parts	720 ILCS 5/12-20	CLASS 4

CHARGE	STATUTE	CLASS
School Grounds, Delivery of Cannabis	720 ILCS 550/5.2	CLASS 1 <i>thru</i> 4 or misd, depending on amount
Second Degree Murder	720 ILCS 5/9-2	CLASS 1 (Enhanced 4-20 yrs)
Sex Offender Registration	730 ILCS 150	CLASS 3 (Second offense Class 2)
Sex Offender (Residing, approaching, communicating or contacting child by child sex offenders prohibited)	<b>720 ILCS 5/11-9.3</b> (11-9.4)	CLASS 4
Solicitation for a Prostitute	<b>720 ILCS 5/11-14.3</b>	CLASS 4 (Second offense CLASS 3)
Solicitation Juvenile Prostitute	<b>720 ILCS 5/11-14.4</b> (11-15.1)	CLASS 1
Solicitation of Murder	720 ILCS 5/8-1.1	CLASS X (Enhanced 15-30 yrs most cases)
Solicitation of Murder for Hire	720 ILCS 5/8-1.2	720 ILCS 5/8-1.2 (Enhanced 20-40-yrs.)
Stalking Sureties, Unauthorized	720 ILCS 5/12-7.3	CLASS 4
State Benefits Fraud - Under \$300	720 ILCS 5/17-6	CLASS 3
Syndicated Gambling	720 ILCS 5/28-1.1	CLASS 3
Tampering, Public Records	720 ILCS 5/32-8	CLASS 4
Telephone Harassment 3 or more convictions of telephone harassment (any victim) w/in 10-yrs; 1 prior conviction telephone harassment (same victim or victim's family); threatens to kill victim or family; defendant previously convicted of forcible felony in last 10-yrs.	720 ILCS 135/1-1	CLASS A CLASS 4
Theft Under \$300 (2 <sup>nd</sup> offense)(500.00 after 1/1/11) \$300-10,000 10,000-100,000 Over 100,000 Over 500,000	720 ILCS 5/16-1	CLASS 4 CLASS 3 CLASS 2 CLASS 1 CLASS 1 non-probationable
Theft- On Line	720 ILCS 5/16-40 (16-16J)	CLASS 2 (Under 300) CLASS 2 (Over 300)
Threatening Public Official 2 <sup>nd</sup> or Subsequent offense	720 ILCS 5/12-9	CLASS 3 CLASS 2
Unlawful Purchase of Firearm	720 ILCS 5/24-3.5	CLASS 2 (depends on # of weapons) (Non-Prob. Eff. 1.1.09)
Unlawful Sale/Transfer of a Firearm	720 ILCS 5/24-3	CLASS 3 (depends on # of weapons)
Unlawful Use of Credit/Debit Cards	720 ILCS 5/17-36	CLASS 4 (Under 300) CLASS 3 (Over 300)
Unlawful Use of Firearm/ Firearm Ammo	720 ILCS 5/24-3.1	CLASS 4
Unlawful Use Unidentified Sound/Videotape Recording	<b>720 ILCS 5/16-7</b> (16-8)	CLASS 4

CHARGE	STATUTE	CLASS
Unlawful Use of Weapon Within 1000 Feet <i>School Grounds, Court House, Park or CHA</i>	720 ILCS 5/24 (c) (1.5) 720 ILCS 5/24 (c)(2)	CLASS 3 CLASS 4
Unlawful use of Weapon/Automatic In a vehicle	720 ILCS 5/24-1(a)(7)(1)	CLASS 2 (Non-Probationable) CLASS X
Unlawful Use of Weapon/Explosives	720 ILCS 5/24-1(a)(7)(iii)	CLASS 3
Unlawful use of Weapon/Felon Background	720 ILCS 5/24-1.1	CLASS 3 (Non-prob eff. 1/1/2012) CLASS 2 (Non-Probationable if prior is forcible felony)(All non-prob eff 1/1/2012)
Unlawful Use of Weapon/Sawed-Off	720 ILCS 5/24-1(a)(7)(ii)	CLASS 3
Unlawful Use of Weapon/Silencer	720 ILCS 5/24-1(a)(6)	CLASS 3
UUW /Gang Member	720 ILCS 5/24-1.8	Class 2 (enhanced 3-10) (Non-probationable if gun loaded)
Usury	720 ILCS 5/39-1	CLASS 4
Vehicular Endangerment If death results	<b>720 ILCS 5/12-5.02</b> (12-2.5)	CLASS 2 CLASS 1
Vehicular Hijacking	720 ILCS 5/18-3	CLASS 1 (Non-Probationable)
Vehicular Invasion	720 ILCS 5/12-11.1	CLASS 1
Violation of Bail Bond	720 ILCS 5/32-10	One class less than charged offense
Violation of Bail Bond UUW possession	720 ILCS 5/32-10(a-5)	CLASS 4
Violation of Order of Protection	<b>720 ILCS 5/12-3.4</b> (12-30) 725 ILCS 5/112A-23(a)(1)	CLASS 4 (2 <sup>nd</sup> Offense)
Voluntary manslaughter/Unborn Child	720 ILCS 5/9-2.1	CLASS 1
Work and Day Release, Non-Return	730 ILCS 5/3-6-4	CLASS 3

## INDEX

15-20-25-To-Life Enhancements.....	2	Vobbs .....	19
Aggregate Consecutive Sentencing .....	32	Vops .....	19
Apprendi .....	28		
Armed Violence.....	3		
Automatic Transfers.....	38		
Boot Camp.....	44		
Capital Cases .....	14		
Consecutive Sentencing.....	28		
Consecutive Sentencing On Remand .....	33		
Discretionary Consecutive Sentencing .....	31		
Discretionary No Bond .....	19		
Double Enhancement .....	36		
Excluded Jurisdiction.....	38		
Extendible Sentences.....	21		
Felony Murder .....	14		
Firearm Enhancements .....	2		
Habitual Criminal Statute.....	28		
Juvenile Court Act .....	38		
Juvenile Offenders .....	38		
Juvenile Transfer .....	38		
Mandatory Class X .....	27		
Mandatory Consecutive Sentencing.....	28		
Mandatory Natural Life Sentences .....	40		
Mandatory No Bail .....	14		
Mandatory Supervised Release (Msr).....	35		
Merger (The One Act, One Crime Rule).....	33		
Non-Probationable Cases .....	25		
Non-Probationable Offenses .....	19		
One Act, One Crime Rule .....	33		
Permissible Double Enhancement .....	37		
Protected Individual.....	11		
Public Act 095-0688 (Armed Violence) .....	3		
Sentencing Issues .....	9		
Severe Bodily Injury .....	30		
Stalking.....	19		
Supreme Court Rule 609(B) .....	20		
Tasc .....	42		
Triggering Offenses .....	31		
Triggering Offenses .....	30		
Truth In Sentencing.....	47		