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## The Mission of the Criminal Law Edit, Alignment and Reform Commission (CLEAR): An Introductory Commentary, 41 J. Marshall L. Rev. 611 (2008)

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# THE MISSION OF THE CRIMINAL LAW EDIT, ALIGNMENT, AND REFORM COMMISSION (CLEAR): AN INTRODUCTORY COMMENTARY

JOHN DECKER\*

## I. BACKGROUND

Prior to 1961, Illinois criminal law prohibitions were spread over 148 different chapters of the Illinois Revised Statutes.<sup>1</sup> Illinois had no codified, systematic penal code but instead a host of scattered enactments, rife with inconsistent penalties, overlapping measures, and legislative gaps that failed to address conduct harmful to the social fabric of the State.<sup>2</sup> In 1954, a joint committee of the Illinois State and Chicago Bar Associations embarked on an effort to draft the first comprehensive Illinois Criminal Code, later enacted into law as the “Criminal Code of 1961,” and reflected in Chapter 38 of the Illinois Revised Statutes.<sup>3</sup> Notwithstanding this major legislative effort, a variety of criminal law strictures, including the Cannabis Control Act<sup>4</sup> and the Controlled Substances Act,<sup>5</sup> remained outside of Chapter 38 until the Illinois General Assembly in 1989 directed the Illinois Legislative Reference Bureau to reorganize the entire Illinois statutory code.<sup>6</sup> Effective January 1993, the Illinois Compiled Statutes (ILCS) were enacted.<sup>7</sup> As part of that change, the

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1. *Committee Foreword to the Tentative Final Draft of the Proposed Criminal Code of 1961*. ILL. COMP. STAT. ANN. 38/1-1 to 38/1-8, at xx (West 1989).

2. *Id.*

3. *Id.*

4. ILL. COMP. STAT. 51 ½ / 707-719 (1991).

5. ILL. COMP. STAT. 56 ½ / 1100-1602 (1991).

6. 1989 ILL. LEGIS. SERV. 86-523 (West).

7. *See* 720 ILL. COMP. STAT. Act 5 (2006) (including Criminal Code of 1961).

Criminal Code of 1961 was moved into Act 5 of Chapter 720.<sup>8</sup> Moreover, a wide range of other measures with criminal law features of one sort or another, previously found outside Chapter 38, were collected and transported into Chapter 720 as separate Acts, now numbered Acts 110 through 690.<sup>9</sup> These measures fall under three headings (1) “offenses against persons,”<sup>10</sup> including eight separate Acts reflecting such strictures as the Communications Consumer Privacy Act (Act 110)<sup>11</sup> and the Hazing Act (Act 120);<sup>12</sup> (2) “offenses against property,”<sup>13</sup> which encompasses thirty-three separate Acts reflecting such laws as the Deceptive Sale of Gold and Silver Act (Act 290)<sup>14</sup> and the Wild

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8. See 720 ILL. COMP. STAT. 5/1-1 *et seq.* (including Criminal Code of 1961) (2006).

9. See 720 ILL. COMP. STAT. 110/1 to 690-0.01 (2006).

10. See 720 ILL. COMP. STAT. 210/1 to 400/0.01 (2006) (including “Act 110. Communications Consumer Privacy Act,” “Act 115. Criminal Jurisprudence Act (Cruelty To Children Offense),” “Act 120. Hazing Act,” “Act 125. Hunter Interference Prohibition Act,” “Act 130. Neglected Children Offense Act,” “Act 135. Harassing And Obscene Communications Act,” “Act 140. Taxpreparer Disclosure Of Information Act,” “Act 145 Telecommunication Line Tapping Act,” “Act 150. Wrongs To Children Act”).

11. 720 ILL. COMP. STAT. 110/1 (2006).

12. 720 ILL. COMP. STAT. 120/0.01 (2006).

13. See 720 ILL. COMP. STAT. 210/1 to 400/0.01 (2006) (including “Act 205. Aircraft Crash Parts Act,” “Act 210. Animal Registration Under False Pretenses Act,” “Act 215. Animal Research And Production Facilities Protection Act,” “Act 220. Appliance Tag Act,” “Act 225. Auction Sales Sign Act,” “Act 230. Business Use Of Military Terms Act,” “Act 235. Coin Slug Act,” “Act 240. Conditional Sales Protection Act,” “Act 245. Construction Equipment Identification Defacement Act,” “Act 250. Illinois Credit Card And Debit Card Act,” “Act 255. Criminal Jurisprudence Act (Pawners Society Name),” “Act 260. Criminal Jurisprudence Act (Fraudulent Conveyance),” “Act 265. Criminal Jurisprudence Act (False Corporate Name),” “Act 270. Criminal Jurisprudence Act (Fraudulent Stock),” “Act 275. Criminal Jurisprudence Act (Insurance Law Violation),” “Act 280. Criminal Jurisprudence Act (Fraudulent Inheritance),” “Act 285. Criminal Jurisprudence Act (Utility Meter Tampering),” “Act 290. Deceptive Sale Of Gold And Silver Act,” “Act 295. Deceptive Advertising Act,” “Act 300. Derogatory Statements About Banks Act,” “Act 305. Gasoline Price Advertising Act,” “Act 310. Governmental Uneconomic Practices Act,” “Act 315. Horse Mutilation Act,” “Act 320. Horse Racing False Entries Act,” “Act 325. Insurance Claims For Excessive Charges Act,” “Act 330. Loan Advertising To Bankrupts Act,” “Act 335. Marks And Serial Numbers Act,” “Act 340. Sale Of Maps Act,” “Act 345. Sale Or Pledge Of Goods By Minors Act,” “Act 350. Sale Price Ad Act,” “Act 355. Stallion And Jack Pedigree Act,” “Act 360. Telephone Line Interference Act,” “Act 365. Telephone Charge Fraud Act,” “Act 370. Telephone Coin Box Tampering Act,” “Act 375. Ticket Sale And Resale Act,” “Act 380. Title Page Act,” “Act 385. Uneconomic Practices Act,” “Act 390. Use Of University Stationery Act,” “Act 395. Video Movie Sales And Rentals Act,” “Act 400. Wild Plant Conservation Act”).

14. 720 ILL. COMP. STAT. 290/1a (2006).

Plant Conservation Act (Act 400);<sup>15</sup> and (3) “offenses against the public,”<sup>16</sup> with another forty Acts ranging from the Abandoned Refrigerator Act (Act 505)<sup>17</sup> to the Use of Intoxicating Compounds Act (Act 690).<sup>18</sup> These three categories of offenses stand side by side with the Criminal Code of 1961 (found in Act 5),<sup>19</sup> which also addresses “offenses directed against the person” (Part B, Title III, Act 5),<sup>20</sup> “offenses directed against property” (Part C, Title III, Act 5)<sup>21</sup> and “offenses affecting public health, safety and decency” (Part

15. 720 ILL. COMP. STAT. 400/0.01 (2006).

16. See 720 ILL. COMP. STAT. 505/1–690/1 (2006) (including “Act 505. Abandoned Refrigerator Act,” “Act 510. Illinois Abortion Law Of 1975,” “Act 513. Partial-Birth Abortion Ban Act,” “Act 515. Illinois Abortion Parental Consent Act Of 1977,” “Act 520. Parental Notice Of Abortion Act Of 1983,” “Act 525. Adoption Compensation Prohibition Act,” “Act 530. Aerial Exhibitors Safety Act,” “Act 535. Air Rifle Act,” “Act 540. Bail Bond False Statement Act,” “Act 545. Boarding Aircraft With Weapon Act,” “Act 550. Cannabis Control Act,” “Act 555. Child Curfew Act,” “Act 560. Illinois Clean Public Elevator Air Act,” “Act 565. Container Label Obliteration Act,” “Act 570. Illinois Controlled Substances Act,” “Act 575. Criminal Jurisprudence Act (Diseased Animals At Large),” “Act 580. Criminal Jurisprudence Act (Common Carriers Carelessness),” “Act 585. Illinois Dangerous Animals Act,” “Act 590. Discrimination In Sale Of Real Estate Act,” “Act 595. Draft Card Mutilation Act,” “Act 600. Drug Paraphernalia Control Act,” “Act 602. Ephedra Prohibition Act,” “Act 605. Excavation Fence Act,” “Act 610. Feeding Garbage To Animals Act,” “Act 615. Fire Extinguisher Service Act,” “Act 620. Flag Desecration Act,” “Act 625. Grain Coloring Act,” “Act 630. Guide Dog Access Act,” “Act 635. Hypodermic Syringes And Needles Act,” “Act 640. Improper Supervision Of Children Act,” “Act 645. Legislative Misconduct Act,” “Act 646. Methamphetamine Control And Community Protection Act,” “Act 647. Methamphetamine Precursor Retail Sale Control Act,” “Act 648. Methamphetamine Precursor Control Act,” “Act 650. Nitroglycerin Transportation Act,” “Act 655. Outdoor Lighting Installation Act,” “Act 660. Party Line Emergency Act,” “Act 665. Peephole Installation Act,” “Act 670. Sale Of Immoral Publications To Children Act,” “Act 675. Sale Of Tobacco To Minors Act,” “Act 677. Display Of Tobacco Products Act,” “Act 678. Prevention Of Cigarette Sales To Minors Act,” “Act 680. Smokeless Tobacco Limitation Act,” “Act 685. Tobacco Accessories And Smoking Herbs Control Act,” “Act 690. Use Of Intoxicating Compounds Act”).

17. 720 ILL. COMP. STAT. 505/0.01 (2006).

18. 720 ILL. COMP. STAT. 690/0.01 (2006).

19. 720 ILL. COMP. STAT. 5/1-1 (2006).

20. See 720 ILL. COMP. STAT. 5/9-1 to 5/14-1 (2006) (including “Article 9. Homicide,” “Article 10. Kidnaping and Related Offenses,” “Article 10A. Trafficking of Persons and Involuntary Servitude,” “Article 11. Sex Offenses,” “Article 12. Bodily Harm,” “Article 12A. Violent Video Games,” “Article 12B. Sexually Explicit Video Games,” “Article 13. Violation of Civil Rights,” “Article 14. Eavesdropping”).

21. See 720 ILL. COMP. STAT. 5/15-1 to 5/21.3-5 (2006) (including “Article 15. Definitions,” “Article 16. Theft and Related Offenses,” “Article 16B. Protection of Library Materials,” “Article 16C. Unlawful Sale of Household Appliances,” “Article 16D. Computer Crime,” “Article 16E. Delivery Container Crime,” “Article 16F. Wireless Service Theft,” “Article 16G. Identity Theft Law,”

D, Title III, Act 5).<sup>22</sup> Thus, Chapter 720 reflects no less than eighty-two Articles and Acts, with the principle measures such as homicide, kidnapping, and theft in the Criminal Code of 1961 (Act 5) followed by a plethora of other Acts, many of which are similar to or overlap with offenses in Act 5. For example, the Telephone Coin Box Tampering Act stands alone in Act 370<sup>23</sup> rather than in Article 16 (“Theft”)<sup>24</sup> or Article 17 (“Deception”)<sup>25</sup> of the 1961 Code as part of the “offenses directed against property.”<sup>26</sup> Similarly, the Boarding Aircraft with Weapon Act is found by itself in Act 545<sup>27</sup> rather than in Article 24 (“Deadly Weapons”)<sup>28</sup> or Article 29D (“Terrorism”)<sup>29</sup> of the 1961 Code as part of the “offenses affecting public health, safety and decency.”<sup>30</sup> Another example is the Legislative Misconduct Act located in Act 645,<sup>31</sup> which might instead have been placed in or near Article 33 (“Official Misconduct”)<sup>32</sup> as part of the “offenses affecting governmental functions” in Part E<sup>33</sup> of the Criminal Code of 1961. Moreover, some of these miscellaneous acts outside the 1961 Code are obviously outdated. For instance, it is unclear how the Party Line

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“Article 16H. Illinois Financial Crime Law,” “Article 16J. Online Property Offenses,” “Article 16J. Theft of Motor Fuel,” “Article 17. Deception,” “Article 17A. Disqualification For State Benefits,” “Article 17B. WIC Fraud,” “Article 18. Robbery,” “Article 19. Burglary,” “Article 20. Arson,” “Article 20.5. Causing a Catastrophe; Deadly Substances,” “Article 21. Damage and Trespass to Property,” “Article 21.1. Residential Picketing,” “Article 21.2. Interference with a Public Institution of Higher Learning,” “Article 21.3. Solicitation on School Property”).

22. See 720 ILL. COMP. STAT. 5/22-1 to 5/29D-5 (2006) (including “Article 22. Narcotic Drugs,” “Article 23. Abortion and Related Offenses,” “Article 24. Deadly Weapons,” “Article 24.5. Nitrous Oxide,” “Article 24.6. Laser Pointers,” “Article 25. Mob Action and Related Offenses,” “Article 26. Disorderly Conduct,” “Article 26.1. Solicitation of Alcoholic and Nonalcoholic Beverages,” “Article 27. Criminal Defamation,” “Article 28. Gambling and Related Offenses,” “Article 29. Bribery in Contents,” “Article 29A. Commercial Bribery,” “Article 29B. Money Laundering,” “Article 29C. International Terrorism,” “Article 29D. Terrorism”).

23. 720 ILL. COMP. STAT. 370/0.01 (2006).

24. 720 ILL. COMP. STAT. 5/16-1 to 5/16-22 (2006).

25. 720 ILL. COMP. STAT. 5/17-1 to 5/17-29 (2006).

26. 720 ILL. COMP. STAT. 5/15-1 to 5/21.3-5.

27. 720 ILL. COMP. STAT. 545/0.01 (2006).

28. 720 ILL. COMP. STAT. 5/24-1 to 5/24-10 (2006).

29. 720 ILL. COMP. STAT. 5/29D-5 to 5/29D-99 (2006).

30. 720 ILL. COMP. STAT. 5/22-1 to 5/29D-5 (2006).

31. 720 ILL. COMP. STAT. 645/0.01 (2006).

32. 720 ILL. COMP. STAT. 5/33-1 to 5/33-7 (2006).

33. See 720 ILL. COMP. STAT. 5/30-1 to 5/33-1 (2006) (including “Article 30. Treason and Related Offenses,” “Article 31. Interference with Public Officers,” “Article 31A. Interference with Penal Institution,” “Article 32. Interference with Judicial Procedure,” “Article 33. Official Misconduct”).

Emergency Act (Act 660)<sup>34</sup> could have any utility today.

General organizational issues appear *within* Article 5 of the Criminal Code of 1961 as well. Part F contains “Certain Aggravated Offenses,”<sup>35</sup> which is a collection of essentially unrelated Articles including Armed Violence (Article 33A),<sup>36</sup> Mandatory Life Sentence a Third or Subsequent Forcible Offense (Article 33B),<sup>37</sup> Deception Relating to Certification of Disadvantaged Business Enterprises (Article 33C),<sup>38</sup> Contributing to the Criminal Delinquency of a Minor (Article 33D),<sup>39</sup> Public Contracts (Article 33E),<sup>40</sup> and Unlawful Use of Body Armor (Article 33F).<sup>41</sup> Again, it is unclear why, for example, Deception Relating to Certification of Disadvantaged Business Enterprises<sup>42</sup> was not placed in Article 17 (“Deception”).<sup>43</sup> It appears Unlawful Use of Body Armor<sup>44</sup> would be a logical candidate for inclusion in Article 24 (“Deadly Weapons”).<sup>45</sup> Equally curious is Title V, which reflects so-called “Added Articles.”<sup>46</sup> This Title is yet another grouping of Articles having no apparent common theme. This collection includes such diverse Articles as Criminal Usury (Article 39),<sup>47</sup> Looting (Article 42),<sup>48</sup> and Insurance Fraud, Fraud on the Government, and Related Offenses (Article 46).<sup>49</sup> Like some of the

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34. 720 ILL. COMP. STAT. 660/0.01 (2006).

35. See 720 ILL. COMP. STAT. 5/33A-1 to 5/33F-1 (2006) (including “Article 33A. Armed Violence,” “Article 33B. Mandatory Life Sentence A Third Or Subsequent Forcible Offense,” “Article 33C. Deception Relating To Certification Of Disadvantaged Business Enterprises,” “Article 33D. Contributing To The Criminal Delinquency Of A Juvenile,” “Article 33E. Public Contracts,” “Article 33F. Unlawful Use Of Body Armor”).

36. 720 ILL. COMP. STAT. 5/33A-1 (2006).

37. 720 ILL. COMP. STAT. 5/33B-1 (2006).

38. 720 ILL. COMP. STAT. 5/33C-1 (2006).

39. 720 ILL. COMP. STAT. 5/33D-1 (2006).

40. 720 ILL. COMP. STAT. 5/33E-1 (2006).

41. 720 ILL. COMP. STAT. 5/33F-1 (2006).

42. 720 ILL. COMP. STAT. 5/33C-1 (2006).

43. 720 ILL. COMP. STAT. 5/17-1 to 5/17-29 (2006).

44. 720 ILL. COMP. STAT. 5/33F-1 (2006).

45. 720 ILL. COMP. STAT. 5/24-1 to 5/24-10 (2006).

46. See 720 ILL. COMP. STAT. 5/36-1 to 5/47-5 (2006) (including “Article 36. Seizure and Forfeiture of Vessels, Vehicles and Aircraft,” “Article 37. Property Forfeiture,” “Article 37.5 Animal Fighting; Forfeiture,” “Article 38. Criminally Operated Businesses,” “Article 39. Criminal Usury,” “Article 39A. Juice Racketeering,” “Article 40. Criminal Misrepresentation of Factoring,” “Article 42. Looting,” “Article 43. Sound Recording Piracy-Seizure and Forfeiture,” “Article 44. Telecommunications Devices,” “Article 45. Disclosing Location of Domestic Violence Victim,” “Article 46. Insurance Fraud, Fraud On the Government, and Related Offenses,” “Article 47. Nuisance”).

47. 720 ILL. COMP. STAT. 5/39-1 (2006).

48. 720 ILL. COMP. STAT. 5/42-1 (2006).

49. 720 ILL. COMP. STAT. 5/46-1 (2006).

“Certain Aggravated Offenses”<sup>50</sup> discussed immediately above, the legislation found in, for example, Article 46 (insurance fraud-related crimes)<sup>51</sup> would be a suitable addition to Article 17 (“Deception”),<sup>52</sup> which contains other fraud-related measures. These types of ad hoc, piecemeal additions to the original 1961 Code have given today’s Illinois Criminal Code a disjointed, complicated and confusing face.

A perusal of those offenses within Act 5 and, thereafter, an examination of those strictures outside Act 5, in some sense appear to be two separate sets of Illinois penal laws. At first glance, it appears Act 5 crimes are the core offenses and those beyond Act 5 an eclectic mix of less significant or superfluous measures. Yet, Acts of major importance – the Illinois Controlled Substances Act (Act 570)<sup>53</sup> and the Illinois Credit Card and Debit Card Act (Act 250)<sup>54</sup> – are parts of this latter grouping which demonstrate those Acts beyond Act 5 are not necessarily subservient junior counterparts to the Criminal Code of 1961. Thus, the Code first lays out Act 5 and its focus on certain injurious conduct, like assault and battery (Article 12);<sup>55</sup> certain misappropriations of property, such as theft by deception (Article 16);<sup>56</sup> and certain potential harmful items, such as dangerous weapons (Article 24);<sup>57</sup> and then in a somewhat duplicitous manner, additional proscriptions following Act 5 address other forms of injurious conduct, such as cruelty to children (Act 115);<sup>58</sup> other forms of theft by deception, such as credit and debit card fraud (Act 250);<sup>59</sup> and other dangerous items, such as methamphetamines (Act 646).<sup>60</sup> This dual penal scheme arrangement was eliminated by the Commission’s joinder of offenses with a common theme into individual Parts, Articles or Sections.

An examination of the general organizational layout of Chapter 720 reveals a complicated patchwork arrangement. Many of the addendum provisions in Act 5, including the Certain Aggravating Offenses (Part F, Title III, Act 5)<sup>61</sup> and Added Articles

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50. 720 ILL. COMP. STAT. 5/33A-1 to 5/33F-1 (2006).

51. 720 ILL. COMP. STAT. 5/46-1 to 5/46-6 (2006).

52. 720 ILL. COMP. STAT. 5/17-1 to 5/17-29 (2006).

53. 720 ILL. COMP. STAT. 5/570-101 (2006).

54. 720 ILL. COMP. STAT. 5/250-1 (2006).

55. 720 ILL. COMP. STAT. 5/12 (2006).

56. 720 ILL. COMP. STAT. 5/16-1 (2006).

57. 720 ILL. COMP. STAT. 5/24-1 (2006).

58. 720 ILL. COMP. STAT. 115/53 (2006).

59. 720 ILL. COMP. STAT. 250/1 (2006).

60. 720 ILL. COMP. STAT. 646/1 (2006).

61. 720 ILL. COMP. STAT. 5/33A-1 to 5/33F-2 (2006).

(Title V, Act 5),<sup>62</sup> which were not part of the original Criminal Code of 1961, do not fit within its scheme. More importantly, the numerous Acts currently *outside* Act 5 that were moved into Chapter 720 during the recompilation effort in the early 1990s are a broad range of measures, some quite antiquated, that do not fit within the organizational framework created by those who drafted the 1961 Criminal Code. These structural inadequacies *standing alone* provide good reason for a reexamination and reorganization of Illinois penal laws.

Furthermore, a more microscopic look at these numerous Articles and Acts reveals another layer of problems and, in turn, reasons for a comprehensive review of the Illinois criminal laws. This multitude of concerns, which will be outlined more thoroughly in the discussion to follow, reveals a host of fundamental deficiencies. These shortcomings include major crimes, such as robbery<sup>63</sup> and assault<sup>64</sup> that reflect no explicit mental state requirement; offenses carrying antiquated or confusing labels, such as “Fraudulent Schemes and Artifices,”<sup>65</sup> which turns out to be simply the offenses of “mail fraud” and “wire fraud”; offenses reflecting nebulous language, such as “barratry,” defined as occurring where one “wickedly and willfully excites and stirs up actions or quarrels,”<sup>66</sup> and enactments which contain unenforceable mandatory presumption language outlawing potentially innocent conduct.<sup>67</sup> These problems suggest a revision of the Illinois penal laws is in order.

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62. 720 ILL. COMP. STAT. 5/36-1 to 5/47-5 (2006).

63. 720 ILL. COMP. STAT. 5/18-1 (2006).

64. 720 ILL. COMP. STAT. 5/12-1 (2006).

65. 720 ILL. COMP. STAT. 5/17-24 (2006).

66. To illustrate, the statute currently defines barratry as:

If a person wickedly and willfully excites and stirs up actions or quarrels between the people of this State with a view to promote strife and contention, he or she is guilty of the petty offense of common barratry; and if he or she is an attorney at law, he or she shall be suspended from the practice of his or her profession, for any time not exceeding 6 months.

720 ILL. COMP. STAT. 5/32-11 (2006).

67. *See, e.g.*, 720 ILL. COMP. STAT. 5/16A-4 (2006) (offering presumption which provides if person in retail merchandise establishment concealed unpurchased merchandise and removed merchandise past last payment station, such person “shall be presumed” to have intended to permanently deprive the owner of the merchandise); *see also* *People v. Flowers*, 134 Ill. App. 3d 324, 326, 480 N.E.2d 198, 200 (Ill. App. Ct. 1985) (finding jury instruction based on virtually identical language contained in 5/16-4A to be unconstitutional mandatory presumption, stating “[I]t is not completely unreasonable to hypothesize a person carrying an item of merchandise past the payment station, without paying for it, due to inadvertence or thoughtlessness . . .”).



## II. THE CLEAR COMMISSION

In 2004, an independent private Commission of prominent and diverse experts in criminal justice began a two-year project to reform the Illinois Criminal Code.<sup>68</sup> This 22-member body, called the Criminal Law Edit, Alignment and Reform (CLEAR) Commission, was co-chaired by former Illinois Governor James R. Thompson, a member of the drafting committee of the 1961 criminal code, and the former Illinois Appellate Court Justice Gino L. DiVito.<sup>69</sup> The Commission includes the Illinois Attorney General, judges, prominent Illinois State's Attorneys, including the Cook and DuPage County State's Attorneys, the Illinois Appellate Defender as well as the Cook County Public Defender, four legislative leaders from the Illinois General Assembly, representing both the Democratic and Republican parties, private defense attorneys, and law enforcement officers.<sup>70</sup> The Commission was served by two co-directors of the staff, a legal staff comprised of three experienced lawyers and several legal interns, as well as a criminal law professor who served as Special Advisor to the group.<sup>71</sup> This balanced group, which represented a broad spectrum of criminal justice interests, successfully pursued its mission of carrying out needed revision with a deliberative process designed to reach consensus on the various issues it explored.

The Commission's goals were to make critical revisions and edits, but with due caution. A key governing principle was to keep revision as *minimal* as possible. "If it works, don't fix it" was the Commission's operational premise. Also, adherence to *neutrality* in substantive law and sanctions was central in its mission. The focus was editing existing nomenclature where, for example, antiquated language appeared, rather than substituting entirely

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68. CLEAR Initiative, <http://www.clearinitiative.org> (last visited Feb. 28, 2008).

69. CLEAR Initiative, <http://www.clearinitiative.org> (last visited Feb. 28, 2008) (Co-Chairs Justice Gino DiVito and Governor James R. Thompson).

70. CLEAR Initiative, <http://www.clearinitiative.org> (last visited Feb. 20, 2008) (listing commissioners: State's Attorney Joseph E. Birkett, Public Defender Edwin A. Burnette, Justice Thomas E. Callum, Vincent Cornelius, Senator John Cullerton, State's Attorney Richard Devine, Senator Kirk Dillard, Representative Jim Durkin, Justice Rodolfo Garcia, State's Attorney Robert Haida, Attorney General Lisa Madigan, Terri L. Mascherin, Michael Metnick, Representative Robert S. Molaro, Senator John J. Millner, Giacomo A. "Jack" Pecoraro, Appellate Defender Michael J. Pelletier, Stephen Pugh, Ted Street, Judge Michael P. Toomin).

71. CLEAR Initiative, <http://www.clearinitiative.org> (last visited Feb. 20, 2008) (listing Co-Director Peter G. Baroni, Co-Director Kathryn Saltmarsh, Staff Attorney Jennifer Dlugosz, Staff Attorney Jennifer Hulvat, Staff Attorney Daniel Mayerfeld, Special Advisor John F. Decker).

new language in a particular measure. Respecting past legislative prerogatives was of paramount concern. Nevertheless, over the 40-year period since the last major rewrite of the Illinois Criminal Code, the Illinois penal laws have changed and dramatically expanded in piecemeal fashion, resulting in a code more complex, confusing and sometimes inconsistent when compared to the original 1961 enactment. The 1961 Code contained a mere thirty-five Articles while today Act 5 alone contains over seventy Articles. Moreover, as stated earlier, more than eighty Acts *outside* the 1961 Code are now part of Chapter 720. The sheer volume of Articles and Acts necessitated one key concern of the Commission, namely, reorganization of this huge conglomeration. It was essential to organize these laws in such a way as to make them more easily accessible and user friendly.

One feature of this organizational complexity concern was the need for alignment, which involved *moving* measures—sometimes a mere subsection while other times entire Acts or Articles—into more logical placements. For example, one possible change of this nature would be transporting the Article 29D Terrorism<sup>72</sup> proscriptions and the Article 20.5 Causing a Catastrophe<sup>73</sup> measures into the now vacant Article 13<sup>74</sup> in order to emphasize the importance of this concern in today's troubled world. Other placement alterations might be less dramatic. For instance, Criminal Usury (Article 39)<sup>75</sup> could be moved to Article 17 ("Deception")<sup>76</sup> where it more logically belongs. All enactments

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72. 720 ILL. COMP. STAT. 5/29D-5 to 5/29D-99 (2006).

73. 720 ILL. COMP. STAT. 5/20.5-5 to 5/20.5-6 (2006).

74. 720 ILL. COMP. STAT. 5/13-1 to 5/13-4 (2006) (Repealed by P.A. 81-1216).

75. To illustrate, Criminal Usury is currently defined as:

§ 39-1. Criminal Usury. (a) Any person commits criminal usury when, in exchange for either a loan of money or other property or forbearance from the collection of such a loan, he knowingly contracts for or receives from an individual, directly or indirectly, interest, discount or other consideration at a rate greater than 20% per annum either before or after the maturity of the loan. (b) When a person has in his personal or constructive possession records, memoranda, or other documentary record of usurious loans it shall be prima facie evidence that he has violated Subsection 39-1(a) hereof. § 39-2. Sentence. Criminal usury is a Class 4 felony. § 39-3. Non-application to licensed persons. This Article does not apply to any loan authorized to be made by any person licensed under the Consumer Installment Loan Act, approved August 30, 1963, as heretofore or hereafter amended, or to any loan permitted by Sections 4, 4.2 and 4a of "An Act in relation to the rate of interest and other charges in connection with sales on credit and the lending of money", approved May 24, 1879, as heretofore or hereafter amended, or by any other law of this State.

720 ILL. COMP. STAT. 5/39-1 to 5/39-3 (2006).

76. To illustrate, Criminal Usury (720 ILL. COMP. STAT. 5/39-1 to 5/39-3 (2007)) would be moved into a new section (720 ILL. COMP. STAT. 5/17-605)

that comprise Part F "Certain Aggravated Offenses,"<sup>77</sup> including Armed Violence (Article 33A),<sup>78</sup> would be moved to more appropriate locations. In fact, the Article 33B "Mandatory Life Sentence for a Third or Subsequent Forcible Offense"<sup>79</sup> could be moved to Chapter 730 (Unified Code of Corrections).<sup>80</sup> The various "Added Articles"<sup>81</sup> offenses would be transferred elsewhere with, for instance, Looting (Article 42)<sup>82</sup> being moved to Article 25 (Mob Action and Related Offenses).<sup>83</sup>

It was thought that certain individual offenses or measures should be transported into more appropriate locations. Promotion of Pyramid Sales Schemes<sup>84</sup> could be relocated to the Illinois Consumer Fraud Act, Ch. 815.<sup>85</sup> Home Invasion<sup>86</sup> and Vehicular Invasion<sup>87</sup> could be moved into Article 19 (Burglary and Related Offenses).<sup>88</sup> Forfeiture provisions scattered through the Code,

within Deception (720 ILL. COMP. STAT. 5/17-1 (2007)) and would be defined as:

Criminal Usury. (a) Any person commits criminal usury when, in exchange for either a loan of money or other property or forbearance from the collection of such a loan, he or she knowingly contracts for or receives from an individual, directly or indirectly, interest, discount or other consideration at a rate greater than 20% per annum either before or after the maturity of the loan. (b) When a person has in his or her personal or constructive possession records, memoranda, or other documentary record of usurious loans, the trier of fact may infer it shall be prima facie evidence that he or she has violated subsection (a) Subsection 39-1(a) hereof. (c) Criminal usury is a Class 4 felony. (d) This Section does not apply to any loan authorized to be made by any person licensed under the Consumer Installment Loan Act or to any loan permitted by Sections 4, 4.2, and 4a of the Interest Act.

S. 0100, 95th Gen. Assem., at 411-12 (Ill. 2007).

77. 720 ILL. COMP. STAT. 5/33A-1 to 5/33F-1 (2006).

78. 720 ILL. COMP. STAT. 5/33A-1 to 5/33A-3 (2006).

79. 720 ILL. COMP. STAT. 5/33B-1 to 5/33B-3 (2006).

80. 730 ILL. COMP. STAT. 5/1-1-1 (2006).

81. 720 ILL. COMP. STAT. 5/36-1 to 5/47-5 (2006).

82. 720 ILL. COMP. STAT. 5/42-1 to 5/42-2 (2006).

83. To illustrate, Article 25 Mob Action and Related Offenses would contain the following offenses: "Mob action (720 ILL. COMP. STAT. 5/25-1(b)), Looting by individuals (720 ILL. COMP. STAT. 5/25-4(c)), Unlawful contact with streetgang members (720 ILL. COMP. STAT. 5/25-5(d)), and Removal of chief of police or sheriff for allowing a person in his or her custody to be lynched (720 ILL. COMP. STAT. 5/25-6(e))." S. 0100, 95th Gen. Assem., at 554-56 (Ill. 2007)

84. 720 ILL. COMP. STAT. 5/17-7 (2006).

85. 815 ILL. COMP. STAT. 505/1 (2006).

86. 720 ILL. COMP. STAT. 5/12-11 (2006).

87. 720 ILL. COMP. STAT. 5/12-11.1 (2006).

88. To illustrate, Article 19 Burglary and Related Offenses would contain the following offenses: "Burglary (720 ILL. COMP. STAT. 5/19-1), Criminal trespass to a residence (720 ILL. COMP. STAT. 5/19-2), Residential burglary (720 ILL. COMP. STAT. 5/19-3), Possession of burglary tools (720 ILL. COMP. STAT. 5/19-4), and Home Invasion (720 ILL. COMP. STAT. 5/19-6)." S. 0100,

such as those in the 16D Computer Crime Article (Forfeiture provision),<sup>89</sup> and Article 17B WIC Fraud<sup>90</sup> could be moved to a new Forfeiture article.<sup>91</sup> A variety of nuisance-type provisions, including such enactments as the Abandoned Refrigerator Act<sup>92</sup> and the Excavation Fence Act<sup>93</sup> would be transferred into the Article 47 Nuisance<sup>94</sup> provisions.

Meanwhile, in some cases, various crimes *within* a particular Article could be moved into comprehensible groupings. For instance, the Article 24 Deadly Weapons<sup>95</sup> offenses could be realigned into three specific overarching categories, specifically, "Use, Possession and Discharge Offenses," "Sale, Transfer and Manufacture Offenses" and "Procedural and Regulatory Offenses."<sup>96</sup> The Article 21 Damage and Trespass to Property<sup>97</sup>

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95th Gen. Assem., at 418-22 (Ill. 2007).

89. 720 ILL. COMP. STAT. 5/16D-1 to 5/16D-7 (2006).

90. 720 ILL. COMP. STAT. 5/17B-0.05 to 5/17B-30 (2006).

91. To illustrate, a new forfeiture article entitled Article 36 General Seizure and Forfeiture would contain offenses such as:

Seizure and forfeiture of vessels vehicles and aircraft (720 ILL. COMP. STAT. 5/36-1), Animal fighting forfeiture (720 ILL. COMP. STAT. 5/36-80), Computer fraud forfeiture (720 ILL. COMP. STAT. 5/36-90), Telecommunications device forfeiture (720 ILL. COMP. STAT. 5/36-95), WIC fraud forfeiture (720 ILL. COMP. STAT. 5/36-100), Terrorism forfeiture (720 ILL. COMP. STAT. 5/36-105), Trafficking of persons and involuntary servitude related offenses forfeiture (720 ILL. COMP. STAT. 5/36-110), Sex offense related forfeitures (720 ILL. COMP. STAT. 5/36-115), Obscenity related forfeitures (720 ILL. COMP. STAT. 5/36-120), and Cannabis, controlled substance, methamphetamine, and paraphernalia forfeiture (720 ILL. COMP. STAT. 5/36-125).

S. 0100, 95th Gen. Assem., at 696-760 (Ill. 2007).

92. 720 ILL. COMP. STAT. 505/1(2006).

93. 720 ILL. COMP. STAT. 605/0.01 (2006).

94. To illustrate, Article 47 Nuisance would contain offenses such as: "Dumping garbage upon real property (720 ILL. COMP. STAT. 5/47-2), Unplugged wells (720 ILL. COMP. STAT. 5/47-3), Excavation Fence (720 ILL. COMP. STAT. 5/47-4), Outdoor lighting installation (720 ILL. COMP. STAT. 5/47-5.5), Peephole installation (720 ILL. COMP. STAT. 5/47-6), Abandoned refrigerators (720 ILL. COMP. STAT. 5/47-7) and Aerial exhibitors (720 ILL. COMP. STAT. 5/47-8)." S. 0100, 95th Gen. Assem., at 774-81 (Ill. 2007).

95. 720 ILL. COMP. STAT. 5/24-1 to 5/24-10 (2006).

96. To illustrate, three new divisions would be created:

DIVISION I. USE, POSSESSION, AND DISCHARGE OFFENSES would contain offenses such as: Unlawful use of weapons (720 ILL. COMP. STAT. 5/24-1), Unlawful use or possession of weapons by felons or persons in the custody of the department of corrections facilities (720 ILL. COMP. STAT. 5/24-11), Aggravated unlawful use of a weapon (720 ILL. COMP. STAT. 5/24-12), Unlawful use of firearm projectiles (720 ILL. COMP. STAT. 5/24-14), Unlawful possession of firearms and firearm ammunition (720 ILL. COMP. STAT. 5/24-15), Defacing identification marks of firearms (720 ILL. COMP. STAT. 5/24-16), Reckless discharge of a firearm (720 ILL. COMP. STAT. 5/24-17), Aggravated discharge of a

crimes would be organized into three topics: “Damage to Property,” “Trespass to Property,” and “Miscellaneous Offenses.”<sup>98</sup> The various illicit drug Acts, including the Cannabis Control Act (Act 550),<sup>99</sup> the Controlled Substances Act (Act 570),<sup>100</sup> the Ephedra

firearm and aggravated discharge of a machine gun or a firearm equipped with a device designed or used for silencing the report of a firearm (720 ILL. COMP. STAT. 5/24-18), and Unlawful discharge of firearm projectiles (720 ILL. COMP. STAT. 5/24-19). DIVISION II. SALE, TRANSFER, AND MANUFACTURE OFFENSES would contain offenses such as: Manufacture, sale or transfer of bullets or shells represented to be armor piercing bullets, dragon’s breath shotgun shells, bolo shells, or flechette shells (720 ILL. COMP. STAT. 5/24-21), Unlawful sale of firearms by liquor licensee (720 ILL. COMP. STAT. 5/24-22), Unlawful sale or delivery of firearms on the premises of any school, regardless of the time of day or the time of year, or any conveyance owned, leased or contracted by a school to transport students to or from school or a school related activity, or residential property owned, operated or managed by a public housing agency (720 ILL. COMP. STAT. 5/24-23), Unlawful Sale of Firearms; Gunrunning (720 ILL. COMP. STAT. 5/24-24), Unlawful purchase of a firearm (720 ILL. COMP. STAT. 5/24-25), and Armed habitual criminal (720 ILL. COMP. STAT. 5/24-26). DIVISION III. PROCEDURAL AND REGULATORY OFFENSES would contain offenses such as: Register of sales by dealer (720 ILL. COMP. STAT. 5/24-31), Confiscation and disposition of weapons (720 ILL. COMP. STAT. 5/24-32), Weapons offenses (720 ILL. COMP. STAT. 5/24-33), Firearm tracing (720 ILL. COMP. STAT. 5/24-34), and Firearms and Child Protection (720 ILL. COMP. STAT. 5/24-35).

S. 0100, 95th Gen. Assem., at 487-547 (Ill. 2007).

97. 720 ILL. COMP. STAT. 5/21-1 to 5/21-10 (2006).

98. To illustrate, three new divisions would be created:

DIVISION I. DAMAGE TO PROPERTY would contain offenses such as: Criminal damage to property (720 ILL. COMP. STAT. 5/21-1), Institutional vandalism (720 ILL. COMP. STAT. 5/21-1.2), and Criminal Damage to Government Supported Property (720 ILL. COMP. STAT. 5/21-1.6). DIVISION II. TRESPASS would contain offenses such as: Criminal trespass to vehicles (720 ILL. COMP. STAT. 5/21-2), Criminal trespass to real property (720 ILL. COMP. STAT. 5/21-3), Residential picketing (720 ILL. COMP. STAT. 5/21-3.1), Criminal trespass to state supported land (720 ILL. COMP. STAT. 5/21-5), Interference with a public institution of higher education (720 ILL. COMP. STAT. 5/21-5.1), Criminal trespass to restricted areas and restricted landing areas at airports; aggravated criminal trespass to restricted areas and restricted landing areas at airports (720 ILL. COMP. STAT. 5/21-7), Criminal trespass to a nuclear facility (720 ILL. COMP. STAT. 5/21-8), and Criminal trespass to a place of public amusement (720 ILL. COMP. STAT. 5/21-9). DIVISION III. MISCELLANEOUS PROVISIONS would contain offenses such as: Criminal use of a motion picture exhibition facility (720 ILL. COMP. STAT. 5/21-10), Distributing or delivering written or printed solicitation on school property (720 ILL. COMP. STAT. 5/21-11), and Tampering with a security, fire, or life safety system (720 ILL. COMP. STAT. 5/21-15).

S. 0100, 95th Gen. Assem., at 427-453 (Ill. 2007).

99. 720 ILL. COMP. STAT. 550/1 (2006).

100. 720 ILL. COMP. STAT. 570/100 (2006).

Prohibition Act (Act 602),<sup>101</sup> the Methamphetamine Control and Community Protection Act (Act 646),<sup>102</sup> and the Methamphetamine Precursor Control Act (Act 648)<sup>103</sup> would undergo a major reorganization but nevertheless contemporaneously preserve the substance of all of the offenses within each Act, including their respective sanctions and categorizations by type of drug, weight and size. Specifically, this realignment would collect in one place “definitions,” “schedules,” and “possession, manufacturing and delivery offenses,” which would be further broken down into “possession,”<sup>104</sup> “manufacturing and delivering or possessing with the intent to manufacture or deliver,”<sup>105</sup> “trafficking,”<sup>106</sup> “conspiracy,”<sup>107</sup> “protected parties” (*e.g.*

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101. 720 ILL. COMP. STAT. 602/1 (2006).

102. 720 ILL. COMP. STAT. 646/1 (2006).

103. 720 ILL. COMP. STAT. 648/1 (2006).

104. To illustrate, Methamphetamine possession (720 ILL. COMP. STAT. 5/47.10 305) would be defined as:

Methamphetamine possession. (a) A person commits methamphetamine possession when the person knowingly possesses methamphetamine or a substance containing methamphetamine. (b) A person who violates subsection (a) is subject to the following penalties: (1) A person who possesses less than 5 grams of methamphetamine or a substance containing methamphetamine is guilty of a Class 3 felony. (2) A person who possesses 5 or more grams but less than 15 grams of methamphetamine or a substance containing methamphetamine is guilty of a Class 2 felony. (3) A person who possesses 15 or more grams but less than 100 grams of methamphetamine or a substance containing methamphetamine is guilty of a Class 1 felony. (4) A person who possesses 100 or more grams but less than 400 grams of methamphetamine or a substance containing methamphetamine is guilty of a Class X felony, subject to a term of imprisonment of not less than 6 years and not more than 30 years, and subject to a fine not to exceed \$100,000. (5) A person who possesses 400 or more grams but less than 900 grams of methamphetamine or a substance containing methamphetamine is guilty of a Class X felony, subject to a term of imprisonment of not less than 8 years and not more than 40 years, and subject to a fine not to exceed \$200,000. (6) A person who possesses 900 or more grams of methamphetamine or a substance containing methamphetamine is guilty of a Class X felony, subject to a term of imprisonment of not less than 10 years and not more than 50 years, and subject to a fine not to exceed \$300,000.

S. 0100, 95th Gen. Assem., at 860-61 (Ill. 2006).

105. To illustrate, Manufacture, delivery or possession with intent to deliver cannabis (720 ILL. COMP. STAT. 5/47.10-306) would be defined as:

It is unlawful for any person knowingly to manufacture, deliver or possess with intent to deliver or manufacture, cannabis. Any person who violates this section with respect to: (a) not more than 2.5 grams of any substance containing cannabis is guilty of a Class B misdemeanor; (b) more than 2.5 grams but not more than 10 grams of any substance containing cannabis is guilty of a Class A misdemeanor; (c) more than 10 grams but not more than 30 grams of any substance containing cannabis is guilty of a Class 4 felony; (d) more than 30 grams but not

persons under 18),<sup>108</sup> “protected places” (e.g. on school grounds),<sup>109</sup>

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more than 500 grams of any substance containing cannabis is guilty of a Class 3 felony for which a fine not to exceed \$50,000 may be imposed; (e) more than 500 grams but not more than 2,000 grams of any substance containing cannabis is guilty of a Class 2 felony for which a fine not to exceed \$100,000 may be imposed; (f) more than 2,000 grams but not more than 5,000 grams of any substance containing cannabis is guilty of a Class 1 felony for which a fine not to exceed \$150,000 may be imposed; (g) more than 5,000 grams of any substance containing cannabis is guilty of a Class X felony for which a fine not to exceed \$200,000 may be imposed.

S. 0100, 95th Gen. Assem., at 862-63 (Ill. 2006).

106. To illustrate, Cannabis trafficking (720 ILL. COMP. STAT. 5/47.10-316.) would be defined as:

Cannabis trafficking. (a) Except for purposes authorized by cannabis related offenses, a person commits the offense of Cannabis trafficking when he or she knowingly brings or causes to be brought into this State for the purpose of manufacture or delivery or with the intent to manufacture or deliver 2,500 grams or more of cannabis in this State or any other state or country. (b) A person convicted of Cannabis trafficking shall be sentenced to a term of imprisonment not less than twice the minimum term and fined an amount as authorized by subsection (f) or (g) of Section 5 of this Act, based upon the amount of cannabis brought or caused to be brought into this State, and not more than twice the maximum term of imprisonment and fined twice the amount as authorized by that provision, based upon the amount of cannabis brought or caused to be brought into this State.

S. 0100, 95th Gen. Assem., at 886-87 (Ill. 2006).

107. To illustrate, Calculated criminal cannabis conspiracy (720 ILL. COMP. STAT. 5/47.10-319) would be defined as:

Calculated criminal cannabis conspiracy. (a) A person engages in a calculated criminal cannabis conspiracy when: (1) he possesses, manufactures, delivers, or possess with intent to deliver more than 30 grams but less than 2000 grams of cannabis, or possesses or produces more than 20 cannabis sativa plants and (2) such violation is a part of a conspiracy undertaken or carried on with 2 or more other persons; and (3) he obtains anything of value greater than \$500 from, or organizes, directs or finances such violation or conspiracy. (b) Any person who engages in a calculated criminal cannabis conspiracy is guilty of a Class 3 felony, and fined not more than \$200,000 and shall be subject to the forfeitures; except that, if any person engages in such offense after one or more prior convictions under this Section, or the possession, manufacture, delivery, or possession with intent to deliver more than 30 grams of cannabis or more than 50 cannabis sativa plant or any law of the United States or of any State relating to cannabis, or controlled substances as defined in the Code in addition to the fine and forfeiture, he shall be guilty of a Class 1 felony for which an offender may not be sentenced to death.

S. 0100, 95th Gen. Assem., at 890 (Ill. 2006).

108. To illustrate, Aggravated methamphetamine delivery; protected parties (720 ILL. COMP. STAT. 5/47.10-329) would be defined as:

Aggravated methamphetamine delivery; protected parties. (a) A person commits aggravated methamphetamine delivery; protected parties, when the person knowingly delivers or possesses with intent to deliver

and “miscellaneous” offenses (e.g. Methamphetamine Manufacturing Waste).<sup>110</sup> This arrangement would then reflect a more consistent pattern than currently exists.<sup>111</sup> Finally,

methamphetamine or a substance containing methamphetamine and: (1) the person is at least 18 years of age and knowingly delivers or possesses with intent to deliver the methamphetamine or substance containing methamphetamine to a person under 18 years of age; (2) the person is at least 18 years of age and knowingly uses, engages, employs, or causes another person to use, engage, or employ a person under 18 years of age to deliver the methamphetamine or substance containing methamphetamine; (3) the person delivers or causes another person to deliver the methamphetamine or substance containing methamphetamine to a woman that the person knows to be pregnant.

S. 0100, 95th Gen. Assem., at 902 (Ill. 2006).

109. To illustrate, Aggravated methamphetamine delivery; protected places (720 ILL. COMP. STAT. 5/47.10-334.) would be defined as:

Aggravated methamphetamine delivery; protected places. (a) A person commits aggravated methamphetamine delivery; protected places when the person knowingly delivers or possesses with intent to deliver methamphetamine or a substance containing methamphetamine and: (1) the person knowingly delivers or possesses with intent to deliver the methamphetamine or substance containing methamphetamine in any structure or vehicle protected by one or more firearms, explosive devices, booby traps, alarm systems, surveillance systems, guard dogs, or dangerous animals; (2) the person knowingly delivers or possesses with intent to deliver the methamphetamine or substance containing methamphetamine in any school, on any real property comprising any school, or in any conveyance owned, leased, or contracted by a school to transport students to or from school or a school-related activity[.]

S. 0100, 95th Gen. Assem., at 911 (Ill. 2006).

110. To illustrate, Methamphetamine manufacturing waste (ILL. COMP. STAT. 5/47.10-341) would be defined as:

Methamphetamine manufacturing waste. (a) A person commits this offense when the person knowingly burns, places in a trash receptacle, or disposes of methamphetamine manufacturing waste, knowing that the waste was used in the manufacturing of methamphetamine. (b) A person who violates subsection (a) of this Section is guilty of a Class 2 felony.

S. 0100, 95th Gen. Assem., at 920-21 (Ill. 2006).<sup>720</sup>

111. To illustrate, Article 47.10 Drug Related Offenses would contain three divisions:

Division I Definitions, Division II Schedules, and Division III Possession, Manufacturing and Delivery Offenses. Division III Possession, Manufacturing and Delivery Offenses would include eight subdivisions: Subdivision 1 Possession offenses, Subdivision 2 Manufacturing and delivering or possessing with the intent to manufacture or deliver offenses, Subdivision 3 Trafficking offenses, Subdivision 4 Conspiracy offenses, Subdivision 5 Protected party offenses, Subdivision 6 Protected place offenses, Subdivision 7 Miscellaneous Offenses, and Subdivision 8 Post Disposition Provisions. Moreover, each subdivision would contain groups such as: Group A Cannabis, Group B Controlled Substances, Group C Methamphetamine, or Group D Other Offenses.



“regulatory measures” from each Act would be collected into one large provision.

In the Article 17 (“Deception”)<sup>112</sup> fraud-related measures, the various offenses involving “fraud on a governmental entity” would be combined into one grouping.<sup>113</sup> Similarly, fraudulent schemes that involved illegal property transactions, such as Fraudulent Land Sales<sup>114</sup> and Acknowledgement of Fraudulent Land Sales<sup>115</sup> would be grouped together into a section entitled “Fraud in Transfers of Real and Personal Property.”<sup>116</sup> Meanwhile, the

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S. 0100, 95th Gen. Assem., at 792-936 (Ill. 2006).

112. 720 ILL. COMP. STAT. 5/17-1 to 5/17-29 (2006).

113. To illustrate, Division V. Fraud on Governmental Entity would include: State benefits fraud (720 ILL. COMP. STAT. 5/17-501), WIC fraud (720 ILL. COMP. STAT. 5/17-502), Persons under deportation order; ineligible for benefits (720 ILL. COMP. STAT. 5/17-503), Public aid wire and mail fraud (720 ILL. COMP. STAT. 5/17-504), False information on an application for employment with certain public or private agencies (720 ILL. COMP. STAT. 5/17-505), and Insurance fraud on a governmental entity (720 ILL. COMP. STAT. 5/17-506).

S. 0100, 95th Gen. Assem., at 387-401 (Ill. 2007).

114. 720 ILL. COMP. STAT. 5/17-13 (2006).

115. 720 ILL. COMP. STAT. 5/17-15 (2006).

116. To illustrate, Fraud in transfers of real and personal property (720 ILL. COMP. STAT. 5/17-201) would be defined as:

Fraud in transfers of real and personal property. (a) Conditional sales; sale without the consent of the title holder. No person purchasing personal property under a conditional sales contract shall, during the existence of such conditional sales contract and before the conditions thereof have been fulfilled, knowingly sell, transfer, conceal, or in any manner dispose of such property, or cause or allow the same to be done without the written consent of the holder of title. (b) Acknowledgment of fraudulent conveyance. No officer authorized to take the proof and acknowledgement of a conveyance of real or personal property, or other instrument, shall knowingly certify that the conveyance or other instrument was duly proven or acknowledged by a party to the conveyance or other instrument, when no such acknowledgement or proof was made, or was not made at the time it was certified to have been made, with intent to injure or defraud, or to enable any other person to injure or defraud. (c) Fraudulent land sales. No person, after once selling, bartering, or disposing of a tract or tracts of land or a town lot or lots, or executing a bond or agreement for the sale of lands or a town lot or lots, shall knowingly and with intent to defraud sell, barter, or dispose of the same tract or tracts of land, or town lot or lots, or any part of those tracts of land or town lot or lots, or shall knowingly and with intent to defraud execute a bond or agreement to sell, barter, or dispose of the same land, lot or lots, or any part of that land, lot or lots, to any other person for a valuable consideration. (d) Sentence. A violation of subsection (a) of this Section is a Class A misdemeanor; a violation of subsection (b) of this Section is a Class 4 felony; a violation of subsection (c) of this Section is a Class 3 felony.

S. 0100, 95th Gen. Assem., at 354 (Ill. 2007).

offense of false personation<sup>117</sup> would absorb ten other false personation offenses found in Article 32.<sup>118</sup> In any event, notwithstanding these types of changes, a concerted effort was made to preserve major crime groupings in existing Articles to avoid future practitioner confusion. For example, the overwhelming number of major offense categories would still retain their previous placement: Article 8 Inchoate Offenses,<sup>119</sup> Article 9 Homicide,<sup>120</sup> Article 10 Kidnapping Offenses,<sup>121</sup> Article 11 Sex Offenses<sup>122</sup> and so forth, remain in their familiar locations.

Another theme behind the Commission's work was *consolidation*. For example, it was thought useful to possibly combine most of the many offenses involving aggravation, such as aggravated kidnapping,<sup>123</sup> aggravated unlawful restraint,<sup>124</sup> and

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117. 720 ILL. COMP. STAT. 5/17-2 (2006).

118. To illustrate, the following Article 32 Interference with Judicial Procedure offenses would be absorbed into False personation; solicitation (720 ILL. COMP. STAT. 5/17-2):

False personation of attorney, judicial, or governmental officials (720 ILL. COMP. STAT. 5/32-5 (2006)), False Personation of a Peace Officer (720 ILL. COMP. STAT. 5/32-5.1 (2006)), False personation of a peace officer while carrying a deadly weapon (720 ILL. COMP. STAT. 5/32-5.1-1 (2006)), Aggravated false personation of a peace officer (720 ILL. COMP. STAT. 5/32-5.2 (2006)), False law enforcement badges (720 ILL. COMP. STAT. 5/32-5.2-5 (2006)), False personation of a parent or legal guardian (720 ILL. COMP. STAT. 5/32-5.3 (2006)), False personation of a fire fighter (720 ILL. COMP. STAT. 5/32-5.4 (2006)), False personation of a fire fighter while carrying a deadly weapon (720 ILL. COMP. STAT. 5/32-5.4-1 (2006)), Aggravated false personation of a fire fighter (720 ILL. COMP. STAT. 5/32-5.5 (2006)), False personation of an emergency management worker (720 ILL. COMP. STAT. 5/32-5.6 (2006)), and Aggravated false personation of an emergency management worker (720 ILL. COMP. STAT. 5/32-5.7 (2006)).

S. 0100, 95th Gen. Assem., at 342-53 (Ill. 2007).

119. 720 ILL. COMP. STAT. 5/8-1 (2006).

120. 720 ILL. COMP. STAT. 5/9-1 (2006).

121. 720 ILL. COMP. STAT. 5/10-1 (2006).

122. 720 ILL. COMP. STAT. 5/11-1 (2006).

123. To illustrate, Aggravated kidnapping is currently defined as:

Aggravated kidnapping. (a) A kidnaper within the definition of paragraph (a) of Section 10-1 is guilty of the offense of aggravated kidnapping when he: (1) Kidnaps for the purpose of obtaining ransom from the person kidnapped or from any other person, or (2) Takes as his victim a child under the age of 13 years, or a severely or profoundly mentally retarded person, or (3) Inflicts great bodily harm, other than by the discharge of a firearm, or commits another felony upon his victim, or (4) Wears a hood, robe or mask or conceals his identity, or (5) Commits the offense of kidnapping while armed with a dangerous weapon, other than a firearm, as defined in Section 33A-1 of the "Criminal Code of 1961", or (6) Commits the offense of kidnapping while armed with a firearm, or (7) During the commission of the offense of kidnapping, personally discharged a firearm, or (8) During the

aggravated robbery,<sup>125</sup> with the base offense, namely, kidnapping,<sup>126</sup> unlawful restraint,<sup>127</sup> and robbery.<sup>128</sup> The former

commission of the offense of kidnapping, personally discharged a firearm that proximately caused great bodily harm, permanent disability, permanent disfigurement, or death to another person. As used in this Section, "ransom" includes money, benefit or other valuable thing or concession. (b) Sentence. Aggravated kidnapping in violation of paragraph (1), (2), (3), (4), or (5) of subsection (a) is a Class X felony. A violation of subsection (a)(6) is a Class X felony for which 15 years shall be added to the term of imprisonment imposed by the court. A violation of subsection (a)(7) is a Class X felony for which 20 years shall be added to the term of imprisonment imposed by the court. A violation of subsection (a)(8) is a Class X felony for which 25 years or up to a term of natural life shall be added to the term of imprisonment imposed by the court. A person who is convicted of a second or subsequent offense of aggravated kidnapping shall be sentenced to a term of natural life imprisonment; provided, however, that a sentence of natural life imprisonment shall not be imposed under this Section unless the second or subsequent offense was committed after conviction on the first offense.

720 ILL. COMP. STAT. 5/10-2 (2006).

124. To illustrate, Aggravated unlawful restraint is currently defined as:

Aggravated Unlawful Restraint. (a) A person commits the offense of aggravated unlawful restraint when he knowingly without legal authority detains another while using a deadly weapon. (b) Sentence. Aggravated unlawful restraint is a Class 3 felony.

720 ILL. COMP. STAT. 5/10-3.1 (2006).

125. To illustrate, Aggravated robbery is currently defined as:

Aggravated robbery. (a) A person commits aggravated robbery when he or she takes property from the person or presence of another by the use of force or by threatening the imminent use of force while indicating verbally or by his or her actions to the victim that he or she is presently armed with a firearm or other dangerous weapon, including a knife, club, ax, or bludgeon. This offense shall be applicable even though it is later determined that he or she had no firearm or other dangerous weapon, including a knife, club, ax, or bludgeon, in his or her possession when he or she committed the robbery. (a-5) A person commits aggravated robbery when he or she takes property from the person or presence of another by delivering (by injection, inhalation, ingestion, transfer of possession, or any other means) to the victim without his or her consent, or by threat or deception, and for other than medical purposes, any controlled substance. (b) Sentence. Aggravated robbery is a Class 1 felony.

720 ILL. COMP. STAT. 5/18-5 (2006).

126. To illustrate, the Kidnapping (720 ILL. COMP. STAT. 5/10-1 (2006)) and Aggravated Kidnapping (720 ILL. COMP. STAT. 5/10-2 (2006)) provisions would be merged into one statute as (720 ILL. COMP. STAT. 5/10-1):

Kidnaping and aggravated kidnapping.

(a) Kidnaping. A person commits the offense of kidnapping when he or she knowingly: (1) And secretly confines another against his or her will, or (2) By force or threat of imminent force carries another from one place to another with intent secretly to confine him or her against his or her will, or (3) By deceit or enticement induces another to go from one place to another with intent secretly to confine him or her against his or her

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will. (b) Aggravated kidnapping. A person commits the offense of aggravated kidnapping when he or she violates subsection (a) and: (1) Kidnaps with the intent to obtain ransom from the person kidnapped or from any other person, or (2) Takes as his or her victim a child under the age of 13 years, or a severely or profoundly mentally retarded person, or (3) Inflicts great bodily harm, other than by the discharge of a firearm, or commits another felony upon his or her victim, or (4) Wears a hood, robe or mask or conceals his or her identity, or (5) Commits the offense of kidnapping while armed with a dangerous weapon, other than a firearm, as defined in Section 33A-1 of this Code, or (6) Commits the offense of kidnapping while armed with a firearm, or (7) During the commission of the offense of kidnapping, personally discharged a firearm, or (8) During the commission of the offense of kidnapping, personally discharged a firearm that proximately caused great bodily harm, permanent disability, permanent disfigurement, or death to another person. As used in this Section, "ransom" includes money, benefit or other valuable thing or concession. (c) Sentence. Kidnapping in violation of subsection (a) is a Class 2 felony. Aggravated kidnapping in violation of paragraph (1), (2), (3), (4), or (5) of subsection (b) is a Class X felony. A violation of paragraph (b)(6) is a Class X felony for which 15 years shall be added to the term of imprisonment imposed by the court. A violation of paragraph (b)(7) is a Class X felony for which 20 years shall be added to the term of imprisonment imposed by the court. A violation of paragraph (b)(8) is a Class X felony for which 25 years or up to a term of natural life shall be added to the term of imprisonment imposed by the court. A person who is convicted of a second or subsequent offense of aggravated kidnapping in violation of subsection (b) shall be sentenced to a term of natural life imprisonment; provided, however, that a sentence of natural life imprisonment shall not be imposed under this Section unless the second or subsequent offense was committed after conviction on the first offense. (d) Confinement of a child under the age of 13 years, or a severely or profoundly mentally retarded person, is against his or her will within the meaning of this Section if such confinement is without the consent of his or her parent or legal guardian.

S. 0100, 95th Gen. Assem., at 62-65 (Ill. 2007).

127. To illustrate, the Unlawful Restraint (720 ILL. COMP. STAT. 5/10-3 (2006)) and Aggravated Unlawful Restraint (720 ILL. COMP. STAT. 5/10-3.1 (2006)) provisions would be merged into one statute as (720 ILL. COMP. STAT. 5/10-3):

Unlawful Restraint and aggravated unlawful restraint. (a) A person commits the offense of unlawful restraint when he or she knowingly without legal authority detains another. (b) Aggravated Unlawful Restraint. A person commits the offense of aggravated unlawful restraint when he or she violates subsection (a) while using a deadly weapon. (c) Sentence. Unlawful restraint under subsection (a) is a Class 4 felony. Aggravated unlawful restraint under subsection (b) is a Class 3 felony.

S. 0100, 95th Gen. Assem., at 65 (Ill. 2007).

128. To illustrate, the Robbery (720 ILL. COMP. STAT. 5/18-1 (2006)) and Aggravated Robbery (720 ILL. COMP. STAT. 5/18-5 (2006)) provisions would be merged into one statute as (720 ILL. COMP. STAT. 5/18-1):

Robbery and aggravated robbery. (a) Robbery. A person commits the offense of robbery when he or she knowingly takes property, except a

offense reference or name would remain in the new statute for criminal history purposes, while the aggravation features of the former offense would appear as elements of aggravation for sentencing purposes rather than as a separate crime. The sanctions would remain intact but would be combined into one subsection of the base offense.

Consolidation appears in other respects in the Commission's draft. In some instances, numerous Acts and Articles scattered throughout the Code would be combined. For example, a new "Harms to Children and Students" Article<sup>129</sup> would be created.

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motor vehicle covered by Section 18-3, from the person or presence of another by the use of force or by threatening the imminent use of force. (b) Aggravated Robbery. (1) A person commits the offense of aggravated robbery when he or she violates subsection (a) while indicating verbally or by his or her actions to the victim that he or she is presently armed with a firearm or other dangerous weapon, including a knife, club, ax, or bludgeon. This subsection shall be applicable even though it is later determined that he or she had no firearm or other dangerous weapon, including a knife, club, ax, or bludgeon, in his or her possession when he or she committed the robbery. (2) A person commits the offense of aggravated robbery when he or she takes property from the person or presence of another by delivering (by injection, inhalation, ingestion, transfer of possession, or any other means) to the victim without his or her consent, or by threat or deception, and for other than medical purposes, any controlled substance. (c) Sentence. A violation of subsection (a) is a Class 2 felony. A violation of subsection (b) is a Class 1 felony. A violation of subsection (a) is a Class 2 felony, if the victim is 60 years of age or over or is a physically handicapped person or if the robbery is committed in a school or place of worship or in a financial institution. (d) As used in this Section, "financial institution" means any bank, savings bank, savings and loan association, credit union, trust company, or other depository of money, or medium of savings and collective investment and lender of money for compensation, whether direct or indirect, whose loans are or are intended to be secured by real property including but not limited to mortgage underwriters, and originators of loans for such lenders, including but not limited to mortgage brokers.

S. 0100, 95th Gen. Assem., at 415-16 (Ill. 2007).

129. To illustrate, Article 23. Harms To Children And Students would include the following offenses:

Child Abandonment (720 Ill. Comp. Stat. 5/23-1), Endangering the life or health of a child (720 Ill. Comp. Stat. 5/23-2), Child offense probation (720 Ill. Comp. Stat. 5/23-3), Contributing to the delinquency of a minor (720 Ill. Comp. Stat. 5/23-4), Contributing to the dependency or neglect of a minor (720 Ill. Comp. Stat. 5/23-5), Unlawful transfer of communications device to minor (720 Ill. Comp. Stat. 5/23-6), Hazing (720 Ill. Comp. Stat. 5/23-7), Unlawful employment and exhibition, and required employment of single parent (720 Ill. Comp. Stat. 5/23-8), Curfew (720 Ill. Comp. Stat. 5/23-9), Tattooing or piercing the body of a minor (720 Ill. Comp. Stat. 5/23-10), Distribution of a drug to a child athlete (720 Ill. Comp. Stat. 5/23-11), and Adoption compensation prohibition (720

This new Article 23 would encompass a substantial number of Articles and Acts including the Hazing Act (Act 120),<sup>130</sup> Contributing to the Criminal Delinquency of a Juvenile (Article 33D),<sup>131</sup> the Neglected Children Offense Act (Act 130),<sup>132</sup> the Wrongs to Children Act (Act 150),<sup>133</sup> and the Child Curfew Act (Act 555).<sup>134</sup> In the area of theft, beyond the original Theft article (Article 16)<sup>135</sup> contained in the 1961 Code, a maze of theft-related Articles mushroomed, including special concerns: retail theft (16A),<sup>136</sup> library theft (16B),<sup>137</sup> household appliance fraud (16C),<sup>138</sup> computer crime (16D),<sup>139</sup> delivery container theft (16E),<sup>140</sup> wireless service theft (16F),<sup>141</sup> identity theft (16G),<sup>142</sup> financial institution theft and fraud (16H),<sup>143</sup> and online property theft (16J).<sup>144</sup> Likewise, in the areas of fraud and deception, aside from the original Deception article (Article 17),<sup>145</sup> various additional articles surfaced, including WIC fraud (17B)<sup>146</sup> and insurance fraud (Article 46).<sup>147</sup> Moreover, these did not take into account other theft or fraud offenses outside Act 5, such as credit and debit card fraud (Act 250)<sup>148</sup> and securities or stock fraud (Act 270).<sup>149</sup> Here, an effort was made to place all crimes involving theft in Article 16<sup>150</sup> and all offenses based on fraud and deception in Article 17,<sup>151</sup> while *retaining the special categories of offenses and the substance of these offenses* within clearly identifiable sections of these two major Articles. Thus, theft-related offenses, such as Wireless

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### Ill. Comp. Stat. 5/23-12).

S. 0100, 95th Gen. Assem., at 457 (Ill. 2007).

130. 720 ILL. COMP. STAT. 120/0.01 (2006).

131. 720 ILL. COMP. STAT. 5/33D-1 (2006).

132. 720 ILL. COMP. STAT. 130/0.01 (2006).

133. 720 ILL. COMP. STAT. 150/0.01 (2006).

134. 720 ILL. COMP. STAT. 555/0.01 (2006).

135. 720 ILL. COMP. STAT. 5/16-1 to 5/16-22 (2006).

136. 720 ILL. COMP. STAT. 5/16A-1 (2006).

137. 720 ILL. COMP. STAT. 5/16B-1 (2006).

138. 720 ILL. COMP. STAT. 5/16C-1 (2006).

139. 720 ILL. COMP. STAT. 5/16D-1 (2006).

140. 720 ILL. COMP. STAT. 5/16E-1 (2006).

141. 720 ILL. COMP. STAT. 5/16F-1 (2006).

142. 720 ILL. COMP. STAT. 5/16G-1 (2006).

143. 720 ILL. COMP. STAT. 5/16H-1 (2006).

144. 720 ILL. COMP. STAT. 5/16J-1 (2006).

145. 720 ILL. COMP. STAT. 5/17-1 to 5/17-29 (2006).

146. 720 ILL. COMP. STAT. 5/17B-1 (2006).

147. 720 ILL. COMP. STAT. 5/46-1 (2006).

148. 720 ILL. COMP. STAT. 250/1 (2006).

149. 720 ILL. COMP. STAT. 270/119 (2006) (Repealed by P.A. 89-234, Art. 10, § 10-5(1996)).

150. 720 ILL. COMP. STAT. 5/16-1 to 5/16-22 (2006).

151. 720 ILL. COMP. STAT. 5/17-1 to 5/17-29 (2006).

Service Theft (Article 16F)<sup>152</sup> and Identity Theft (Article 16G)<sup>153</sup> would be merged into Article 16,<sup>154</sup> the general theft article.<sup>155</sup> The labyrinth of fraud-related crimes, such as WIC Fraud (Article 17B)<sup>156</sup> and Insurance Fraud<sup>157</sup> would then be found in Article 17 (“Deception”).<sup>158</sup> Again, it should be noted that although any measures with common denominators would be placed beneath a single umbrella Article—Kidnapping (Article 10),<sup>159</sup> Deadly Weapons (Article 24),<sup>160</sup> Disorderly Conduct (Article 26),<sup>161</sup> and Bribery (Article 29)<sup>162</sup> as examples – each individual offense would be clearly identified within the appropriate Article with essentially no change in substance.

In some instances, consolidation and reordering of subsections in a single offense would prove helpful in making the statute more user friendly. For example, Aggravated Battery<sup>163</sup> would be less confusing by the categorization of the multitude of elements of

152. 720 ILL. COMP. STAT. 5/16F-1 (2006).

153. 720 ILL. COMP. STAT. 5/16G-1 (2006).

154. 720 ILL. COMP. STAT. 5/16-1 to 5/16-22 (2006).

155. To illustrate, Article 16 General Theft Provisions would include the following offenses:

Theft (720 ILL. COMP. STAT. 5/16-1), Theft of labor or services or use of property (720 ILL. COMP. STAT. 5/16-101), Unlawful use of recorded sounds or images (720 ILL. COMP. STAT. 5/16-102), Theft from coin-operated device or machine (720 ILL. COMP. STAT. 5/16-103) Theft of utility (720 ILL. COMP. STAT. 5/16-104), Tampering with communication services (720 ILL. COMP. STAT. 5/16-105), Theft-related devices (720 ILL. COMP. STAT. 5/16-106), Retail theft (720 ILL. COMP. STAT. 5/16-201), Identity theft (720 ILL. COMP. STAT. 5/16-202), and Internet offenses (720 ILL. COMP. STAT. 5/16-204).

S. 0100, 95th Gen. Assem., at 294-333 (Ill. 2007).

156. 720 ILL. COMP. STAT. 5/17B-1 (2006).

157. 720 ILL. COMP. STAT. 5/46-1 (2006).

158. To illustrate, Article 17 Deception would contain offenses such as:

Fraud in transfers of real and personal property (720 ILL. COMP. STAT. 5/17-201), Fraud in stock transactions (720 ILL. COMP. STAT. 5/17-202), Fraudulent collection practices (720 ILL. COMP. STAT. 5/17-204), Financial institution fraud and loan fraud (720 ILL. COMP. STAT. 5/17-205), Fraud on creditors (720 ILL. COMP. STAT. 5/17-206), False statement to procure credit or debit card (720 ILL. COMP. STAT. 5/17-301), Possession of another’s credit, debit, or identification card (720 ILL. COMP. STAT. 5/17-302), Fraudulent use of electronic transmission (720 ILL. COMP. STAT. 5/17-314), Insurance fraud (720 ILL. COMP. STAT. 5/17-402), State benefits fraud (720 ILL. COMP. STAT. 5/17-501), WIC fraud (720 ILL. COMP. STAT. 5/17-502), and Computer fraud (720 ILL. COMP. STAT. 5/17-601).

S. 0100, 95th Gen. Assem., at 294-333 (Ill. 2007).

159. 720 ILL. COMP. STAT. 5/10-1 (2006).

160. 720 ILL. COMP. STAT. 5/24-1 (2006).

161. 720 ILL. COMP. STAT. 5/26-1 (2006).

162. 720 ILL. COMP. STAT. 5/29-1 (2006).

163. 720 ILL. COMP. STAT. 5/12-4 (2006).

aggravation and the collection of those aggravators into separate subsections that focus on: (1) location of the conduct (*e.g.* battery in a public place); (2) status of the victim (*e.g.* battery of pregnant or handicapped person); (3) nature of the defendant's conduct (*e.g.* discharging a firearm); or (4) miscellaneous concerns (*e.g.* causing injury to drug user by delivery of controlled substance to user).<sup>164</sup>

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164. To illustrate, Aggravated Battery (720 ILL. COMP. STAT. 5/12-105) would be defined as:

Aggravated battery. (a) Injury. A person commits aggravated battery when, other than by the discharge of a firearm, in committing a battery, he or she: (1) knowingly causes great bodily harm, or permanent disability or disfigurement; or (2) knowingly causes severe and permanent disability, great bodily harm or disfigurement by means of a caustic or flammable substance, a poisonous gas, a deadly biological or chemical contaminant or agent, a radioactive substance, or a bomb or explosive compound. (b) Location of the conduct. A person commits aggravated battery when, in committing a battery, other than by discharge of a firearm, he or she is, or the person battered is, on or about a public way, public property, a public place of accommodation or amusement, a sporting venue, or a domestic violence shelter as defined in this Article. (c) Status of the victim. A person commits aggravated battery when, other than by discharge of a firearm, he or she: (1) commits a battery and knows the individual battered to be: (i) an officer or employee of the State of Illinois, a unit of local government, or a school district, or a teacher or school employee as defined in this Article, engaged in the performance of his or her authorized duties; (ii) an emergency medical technician, emergency management worker, or community policing volunteer, who is engaged in the performance of his or her official duties, who is battered to prevent the technician, worker, or volunteer from performing official duties, or who is battered in retaliation for performing official duties; (iii) a judge whom the person intended to harm as a result of the judge's performance of his or her official duties as a judge; (iv) an individual of 60 years or older; (v) a person who is pregnant or physically handicapped; or (vi) a transit employee or passenger; or (2) without legal justification and by any means causes bodily harm to a merchant who detains the person for an alleged commission of retail theft under Section 16-201 of this Code. (d) Conduct of the defendant. A person commits aggravated battery when he or she: (1) in committing a battery, uses a deadly weapon other than by the discharge of a firearm; or (2) in committing a battery, by means of the discharging of a firearm, causes any injury to: (i) another person; or (ii) a person he or she knows to be a designated victim, a teacher or school employee, an emergency management worker, or an emergency medical technician as defined in this Article 12; or (3) in committing a battery and other than by discharge of a firearm, is hooded, robed or masked, in such manner as to conceal his or her identity; or (4) other than by discharge of a firearm, knowingly and without lawful justification shines or flashes a laser gunsight or other laser device that is attached or affixed to a firearm, or used in concert with a firearm, so that the laser beam strikes upon or against the person of another. (e) Miscellaneous. A person commits aggravated battery when he or she, other than by discharge of a firearm: (1) violates Section 401 of the Illinois Controlled Substances Act by unlawfully delivering a controlled



The pursuit of *clarity* was foremost on the minds of the Commission members as it made modest editorial changes to specific criminal laws. Editing of current law was generally restricted to situations where the meaning of a law was not entirely clear, was somehow confusing, or where clarification was necessitated by judicial interpretation. Some revisions would be designed to modernize the Code to make it meet the standards of accessibility and readability expected in the new millennium. For example, one recurring concern was the absence of an explicit mental state in individual offenses, which means that one examining such a statute would have to consider whether to accept it at face value as being a strict liability measure or, alternatively, identify which mental state was implied. Notwithstanding the Article 4 provision that indicates an offense reflecting no mental state on its face is to be understood as requiring prosecutorial proof of intent, knowledge or recklessness on the part of the accused<sup>165</sup> numerous offenses were found containing no stated mental state,<sup>166</sup> thereby requiring the courts to interpret a statute with no mental state by reading it in conjunction with 5/4-3(b).<sup>167</sup> Simply put, the Commission early on adopted the position that a particular mental state should be reflected in all crimes,<sup>168</sup> thereby avoiding the suggestion the offense in question is an absolute

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substance to another if any user experiences great bodily harm or permanent disability as a result of the injection, inhalation or ingestion of any amount of that controlled substance; (2) knowingly administers to an individual or causes him or her to take, without his or her consent or by threat or deception, and for other than medical purposes, any intoxicating, poisonous, stupefying, narcotic, anesthetic, or controlled substance, or gives to another person any food containing any substance or object intended to cause physical injury if eaten; or (3) knowingly causes or attempts to cause a correctional employee or an employee of the Department of Human Services to come into contact with blood, seminal fluid, urine, or feces, by throwing, tossing, or expelling that fluid or material and the person is an inmate of a penal institution or a sexually dangerous person or a sexually violent person in the custody of the Department of Human Services.

S. 0100, 95th Gen. Assem., at 191-94 (Ill. 2007).

165. 720 ILL. COMP. STAT. 5/4-3(b) (2006).

166. To illustrate, Assault is currently defined as having no mental state requirement: "A person commits an assault when, without lawful authority, he engages in conduct which places another in reasonable apprehension of receiving a battery". 720 ILL. COMP. STAT. 5/12-1 (2006).

167. See, e.g., *People v. Cannes*, 61 Ill. App. 3d 865, 870, 378 N.E.2d 552, 556-57 (2d Dist. 1978) (interpreting assault to implicitly require a mental state of intent, knowledge, or recklessness).

168. S. 0100, 95th Gen. Assem., at 187 (Ill. 2007). To illustrate, Assault (720 ILL. COMP. STAT. 5/12-101.) would require knowledge: "A person commits an assault when, without lawful authority, he or she knowingly engages in conduct which places another in reasonable apprehension of receiving a battery".

liability offense. In this connection, it was also agreed that *generally* the appropriate mental state should be *knowledge*,<sup>169</sup> thereby requiring the State to prove the defendant knowingly engaged in conduct that is criminal, except where the legislative intent indicates proof of acting intentionally is required or, on the other hand, that mere recklessness is sufficient. Finally, a provision would be added to make it clear that if a defendant acted intentionally, by definition it would be assumed he also acted knowingly.

Regarding mental states, although the drafters of the 1961 Code determined that the respective mental element of each of the offenses could be adequately described by using *intentionally*, *knowingly*, *recklessly* and *negligently* with uniform meaning and appropriate qualifying language attached to each term,<sup>170</sup> occasionally certain legislation has used other mental state terms the drafters of the 1961 Code neither intended be used nor defined. For example, Criminal Damage of Firefighting Apparatus, Hydrant or Equipment<sup>171</sup> requires proof that the accused did “willfully or maliciously” damage firefighting equipment of some type. Consequently, the Commission sought to continue the work of the 1961 drafters by eliminating archaic mental states, and modernize it by relying solely on those mental states already carefully defined in the 1961 Code, in order to maintain the consistent application of mental states. For example, in Fraud in Issuance of Stock<sup>172</sup> the archaic mental state of

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169. See, e.g., S. 0100, 95th Gen. Assem., at 61 (Ill. 2007) (quoting 720 ILL. COMP. STAT. 5/9-3.4 (Concealment of homicidal death), “A person commits the offense of Concealment of homicidal death when he or she knowingly conceals the death.”); see also S. 0100, 95th Gen. Assem., at 67-68 (Ill. 2007) (quoting 720 ILL. COMP. STAT. 5/10-5(b)(6) (Child Abduction) “Being a parent of the child, and where the parents of such child are or have been married and there has been no court order of custody, knowingly conceals the child . . .”); S. 0100, 95th Gen. Assem., at 121 (Ill. 2007) (quoting 720 ILL. COMP. STAT. 5/11-6.70 (Prostitution) “[a]ny person who knowingly performs, offers or agrees to perform any act of sexual penetration . . .”).

170. ILL. STAT. ANN. ch. 38, para. 4-3 (West 1989), 1961 Committee Comments, at 198.

171. 720 ILL. COMP. STAT. 5/21-1.1 (2006).

172. To illustrate, Fraud in Issuance of Stock is currently defined as:

Fraudulent issuance of stock. Every president, cashier, treasurer, secretary, or other officer and every agent, attorney, servant, or employee of a bank, railroad, or manufacturing or other corporation, and every other person who, knowingly and designedly, and with intent to defraud a person, bank, railroad, or manufacturing or other corporation, issues, sells, transfers, assigns, or pledges, or causes or procures to be issued, sold, transferred, assigned, or pledged, any false, fraudulent, or simulated certificate or other evidence of ownership of a share or shares of the capital stock of a bank, railroad, or manufacturing or other corporation, is guilty of a Class 3 felony.

“designedly” would be replaced with “knowingly.”<sup>173</sup> Similarly, in *Misapplication of Funds*<sup>174</sup> the mental state of “willfully” would be replaced with “knowingly.”<sup>175</sup> In “*Common Carriers; Gross Neglect*,”<sup>176</sup> the mental state “gross carelessness or neglect” would be replaced by “recklessness.”<sup>177</sup>

720 ILL. COMP. STAT. 5/17-17 (2006).

173. To illustrate, Fraud in stock transactions (720 ILL. COMP. STAT. 5/17-202) would be defined as:

Fraud in stock transactions. (a) No officer, director, or agent of a bank, railroad, or other corporation, nor any other person, shall knowingly and with intent to defraud, issue, sell, transfer, assign, or pledge, or cause or procure to be issued, sold, transferred, assigned, or pledged, any false, fraudulent, or simulated certificate or other evidence of ownership of a share or shares of the capital stock of a bank, railroad, or other corporation. (b) No officer, director, or other agent of a bank, railroad, or other corporation shall knowingly sign, with intent to issue, sell, pledge, or cause to be issued, sold, or pledged, any false, fraudulent, or simulated certificate or other evidence of the ownership or transfer of a share or shares of the capital stock of that corporation, or an instrument purporting to be a certificate or other evidence of the ownership or transfer, the signing, issuing, selling, or pledging of which by the officer, director, or other agent, is not authorized by law. (c) A violation of this Section is a Class 3 felony.

S. 0100, 95th Gen. Assem., at 356 (Ill. 2007).

174. To illustrate, Misapplication of funds is currently defined as:

Misapplication of funds. Whoever, being an officer, director, agent, or employee of, or affiliated in any capacity with any unit of local government or school district, willfully misapplies any of the moneys, funds, or credits of the unit of local government or school district is guilty of a Class 3 felony.

720 ILL. COMP. STAT. 5/33E-16 (2006).

175. To illustrate, Misapplication of funds (720 ILL. COMP. STAT. 5/34-13.) would be defined as:

Misapplication of funds. Whoever, being an officer, director, agent, or employee of, or affiliated in any capacity with any unit of local government or school district, knowingly misapplies any of the moneys, funds, or credits of the unit of local government or school district is guilty of a Class 3 felony.

S. 0100, 95th Gen. Assem., at 356 (Ill. 2007).

176. To illustrate, Common carriers; gross neglect is currently defined as:

Common carriers; gross neglect. Whoever, having personal management or control of or over a steamboat or other public conveyance used for the common carriage of persons, is guilty of gross carelessness or neglect in, or in relation to, the conduct, management, or control of the steamboat or other public conveyance, while being so used for the common carriage of persons, in which the safety of any person is endangered is guilty of a Class 4 felony.

720 ILL. COMP. STAT. 5/12-5.5 (2006).

177. To illustrate, Common carriers recklessness (720 ILL. COMP. STAT. 5/12-122.) would be defined as:

Common carriers recklessness. (a) A person commits the offense of Common carriers recklessness when he or she having personal management or control of or over a public conveyance used for the

Ambiguities and deficiencies in crime labels would also be minimized. Fraudulent Schemes and Artifices would be simply Mail and Wire Fraud.<sup>178</sup> Various prostitution-related crimes, including pimping,<sup>179</sup> pandering,<sup>180</sup> and soliciting for a prostitute<sup>181</sup>

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common carriage of persons, recklessly endangers the safety of others.

(b) Sentence. Common carriers recklessness is a Class 4 felony.

S. 0100, 95th Gen. Assem., at 228 (Ill. 2007).

178. S. 0100, 95th Gen. Assem., at 364-68 (Ill. 2007). Fraudulent schemes and artifices (720 ILL. COMP. STAT. 5/17-24 (2006)) would be renamed to Mail and wire fraud (720 ILL. COMP. STAT. 5/17-207).

179. To illustrate, Pimping is currently defined as:

Pimping. (a) Any person who receives any money, property, token, object, or article or anything of value from a prostitute, not for a lawful consideration, knowing it was earned in whole or in part from the practice of prostitution, commits pimping. (b) Sentence. Pimping is a Class A misdemeanor. A person convicted of a second or subsequent violation of this Section, or of any combination of such number of convictions under this Section and Sections 11-14, 11-15, 11-17, 11-18 and 11-18.1 of this Code is guilty of a Class 4 felony. When a person has one or more prior convictions, the information or indictment charging that person shall state such prior conviction so as to give notice of the State's intention to treat the charge as a felony. The fact of such conviction is not an element of the offense and may not be disclosed to the jury during trial unless otherwise permitted by issues properly raised during such trial. (c) A person who violates this Section within 1,000 feet of real property comprising a school commits a Class 4 felony.

720 ILL. COMP. STAT. 5/11-19 (2006).

180. To illustrate, Pandering is currently defined as:

Pandering. (a) Any person who performs any of the following acts for any money, property, token, object, or article or anything of value commits pandering: (1) Compels a person to become a prostitute; or (2) Arranges or offers to arrange a situation in which a person may practice prostitution. (b) Sentence. Pandering by compulsion is a Class 4 felony. Pandering other than by compulsion is a Class 4 felony. (c) A person who violates this Section within 1,000 feet of real property comprising a school commits a Class 3 felony.

720 ILL. COMP. STAT. 5/11-16 (2006).

181. 720 Ill. Comp. Stat. 5/11-15 (2006). To illustrate, Soliciting for a prostitute is currently defined as:

Soliciting for a prostitute. (a) Any person who performs any of the following acts commits soliciting for a prostitute: (1) Solicits another for the purpose of prostitution; or (2) Arranges or offers to arrange a meeting of persons for the purpose of prostitution; or (3) Directs another to a place knowing such direction is for the purpose of prostitution. (b) Sentence. Soliciting for a prostitute is a Class A misdemeanor. A person convicted of a second or subsequent violation of this Section, or of any combination of such number of convictions under this Section and Sections 11- 14, 11-17, 11-18, 11-18.1 and 11-19 of this Code is guilty of a Class 4 felony. When a person has one or more prior convictions, the information or indictment charging that person shall state such prior conviction so as to give notice of the State's intention to treat the charge as a felony. The fact of such prior conviction is not an element of the offense and may not be disclosed to the jury during trial unless

would be consolidated and called Promoting Prostitution.<sup>182</sup> Bribery in Contests (Article 29)<sup>183</sup> and Commercial Bribery (Article

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otherwise permitted by issues properly raised during such trial. (b-5) A person who violates this Section within 1,000 feet of real property comprising a school commits a Class 4 felony. (c) A peace officer who arrests a person for a violation of this Section may impound any vehicle used by the person in the commission of the offense. The person may recover the vehicle from the impound after a minimum of 2 hours after arrest upon payment of a fee of \$200. The fee shall be distributed to the unit of government whose peace officers made the arrest for a violation of this Section. This \$200 fee includes the costs incurred by the unit of government to tow the vehicle to the impound. Upon the presentation of a signed court order by the defendant whose vehicle was impounded showing that the defendant has been acquitted of the offense of soliciting for a prostitute or that the charges have been dismissed against the defendant for that offense, the municipality shall refund the \$200 fee to the defendant.

182. To illustrate, Promoting prostitution (720 ILL. COMP. STAT. 5/11-6.75.) would be defined as:

Promoting prostitution. (a) A person commits promoting prostitution when he or she knowingly: (1) advances prostitution; (2)(i) profits from prostitution by any means; (ii) profits from prostitution by compelling a person to become a prostitute; or (iii) profits from prostitution by arranging or offering to arrange a situation in which a person may practice prostitution. (b) Sentencing. (1) A violation of subsections (a)(1) is a Class A misdemeanor. A second or subsequent violation of this subsection is a Class 4 felony. A violation of subsection (a)(1) is a Class 4 felony if it is committed within 1,000 feet of a school. (2) A violation of subsection (a)(2)(i) is a Class A misdemeanor. A second or subsequent violation of this subsection is a Class 4 felony. (3) A violation of subsection (a)(2)(i) or (a)(2)(ii) is a Class 4 felony, unless it is committed within 1,000 feet of real property comprising a school, in which case it is a Class 3 felony. (c) For purposes of this Section and Section 11-6.80, Promoting Juvenile Prostitution, "profit from prostitution" occurs when a person, acting other than as a prostitute receiving anything of value for personally rendered prostitution services, receives anything of value from a prostitute, not for lawful consideration, knowing it was earned in whole or in part from the practice of prostitution. (d) For purposes of this Section, a person "advances prostitution" when he or she, acting other than as a prostitute or as a patron thereof,: (1) solicits another for the purpose of prostitution, (2) arranges or offers to arrange a meeting of persons for the purpose of prostitution; or (3) directs another to a place knowing such direction is for the purpose of prostitution; or (4) has or exercises control over the use of any place which could offer seclusion or shelter for the practice of prostitution who performs any of the following acts: (i) knowingly grants or permits the use of such place for the purpose of prostitution; or (ii) grants or permits the use of such place under circumstances from which he could reasonably know that the place is used or is to be used for purposes of prostitution; or (iii) permits the continued use of a place after becoming aware of facts or circumstances from which he should reasonably know that the place is being used for purposes of prostitution.

S. 0100, 95th Gen. Assem., at 121-23 (Ill. 2007).

183. 720 ILL. COMP. STAT. 5/29-1 (2006).

29A)<sup>184</sup> would be consolidated into one Article entitled the more universal Bribery in the Private Sector.

Another effort toward clarity was the introduction of a few new *definitions* of items. For instance, the 1961 Code defined “act” as the “failure or omission to take action,”<sup>185</sup> which reflects a flawed approach to definition involving the use of a term, *i.e.*, “action” to define a term, *i.e.*, “act.” Thus, “bodily movement”<sup>186</sup> would be substituted for “act,” which is consistent with Illinois Law.<sup>187</sup> Meanwhile, there appeared *no* definition of “bodily harm,” an oft-used term in the Code<sup>188</sup> and, consequently, a definition—“any physical pain, injury to the body, illness or impairment of the physical condition, regardless of gravity or duration”<sup>189</sup>—would be extracted from Illinois case law.<sup>190</sup> In the interest of redundancy avoidance, repetitive language within statutory provisions in, for example, the Deadly Weapons (Article 24)<sup>191</sup> crimes, which define a “machine gun,”<sup>192</sup> “stun gun,”<sup>193</sup> and “explosive bullet,”<sup>194</sup> would be moved into the “Definitions” section, which appears at the beginning of the Article.<sup>195</sup> Previously, a definition of medical assistance or first aid providers was repeated no less than sixteen

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184. 720 ILL. COMP. STAT. 5/29A-1 (2006).

185. 720 ILL. COMP. STAT. 5/2-2 (2006).

186. S. 0100, 95th Gen. Assem., at 48 (Ill. 2007). To illustrate, “Act” would be defined in 720 ILL. COMP. STAT. 5/2-2 as a bodily movement, and would include a failure or omission to take action.

187. See ILL. COMP. STAT. ANN. ch. 38, para. 1-4 (Smith-Hurd 1989), 1961 Committee Comments, at 192 (describing “act” as “physical movement” of person and referring to Model Penal Code Section 1.14 usage of “bodily movement”); *People v. Grant*, 71 Ill. 2d 551, 558, 377 N.E.2d 4, 8 (1978) (describing “act” as “bodily movement”).

188. See, *e.g.*, 720 ILL. COMP. STAT. 5/12-3 (battery includes infliction of “bodily harm”).

189. Bodily harm would be defined in 720 ILL. COMP. STAT. 5/2-3.3 as “any physical pain, injury to the body, illness, or impairment of the physical condition of the body, regardless of gravity or duration.” S. 0100, 95th Gen. Assem., at 48 (Ill. 2007).

190. See, *e.g.*, *People v. Haywood*, 118 Ill. 2d 263, 276, 515 N.E.2d 45, 51 (1987) (stating “bodily harm” includes “physical pain or damage to the body . . . whether temporary or permanent”), quoting *People v. Mays*, 91 Ill. 2d 251, 256, 437 N.E.2d 633, 635-36 (1982).

191. 720 ILL. COMP. STAT. 5/24-1 (2006).

192. 720 ILL. COMP. STAT. 5/24-1(a)(7)(i) (2006).

193. 720 ILL. COMP. STAT. 5/24-1(a)(10) (2006).

194. 720 ILL. COMP. STAT. 5/24-1(a)(11) (2006).

195. To illustrate, the Article 24 Definitions section (720 ILL. COMP. STAT. 5/24-0.5) would contain the following definitions: “Armor piercing bullet,” “Bolo shell,” “Cartridge,” “Courthouse,” “Dragon’s breath shotgun shell,” “Explosive bullet,” “Firearm,” “Flechette shell,” “Handgun,” “Machine gun,” “Medical assistance or first aid provider,” “Prohibited place,” “School,” “School related activity,” and “Stun gun or taser.” S. 0100, 95th Gen. Assem., at 483-86 (Ill. 2007).

times throughout 720 ILCS 5/24-1.2 and 5/24-1.2-5 (2007) and, consequently, the substitution of a single definition in this Act would remove this repetition of language. Similarly, terms defined repeatedly within the text of the Article 31A Interference with Penal Institutions<sup>196</sup> strictures, such as “weapon,”<sup>197</sup> “firearm,”<sup>198</sup> “firearm ammunition,”<sup>199</sup> “explosive”<sup>200</sup> and “tool to defeat security mechanism,”<sup>201</sup> would be moved into a single “Definitions” section of the Article.<sup>202</sup> Also, numerous definitions are scattered throughout the various theft-related and fraud-related articles (Articles 16 through 16J, 17 through 17B, 46)<sup>203</sup> of Act 5 while others appear outside Act 5 (e.g. Act 250 – The Illinois Credit Card and Debit Card Act).<sup>204</sup> Where it was deemed appropriate, these definitions would be moved into Article 15. Article 15 (“Definitions” of terms as used in Offenses Directed Against Property),<sup>205</sup> originally contained only eight definitions but would contain over ninety definitions relating to Articles 16 and 17.<sup>206</sup>

196. 720 ILL. COMP. STAT. 5/31A-1.1 (2006).

197. 720 ILL. COMP. STAT. 5/31A-1.1(c)(2)(v) (2006); *see also* 720 ILL. COMP. STAT. 5/31A-1.2(d)(v) (2006).

198. 720 ILL. COMP. STAT. 5/31A-1.1(c)(2)(vi) (2006); *see also* 720 ILL. COMP. STAT. 5/31A-1.2(d)(vi) (2006).

199. 720 ILL. COMP. STAT. 5/31A-1.1(c)(2)(vii) (2006); *see also* 720 ILL. COMP. STAT. 5/31A-1.2(d)(vii) (2006).

200. 720 ILL. COMP. STAT. 5/31A-1.1(c)(2)(viii) (2006); *see also* 720 ILL. COMP. STAT. 5/31A-1.2(d)(viii) (2006).

201. 720 ILL. COMP. STAT. 5/31A-1.1(c)(2)(ix) (2006); *see also* 720 ILL. COMP. STAT. 5/31A-1.2(d)(ix) (2006).

202. To illustrate, the offense of Bringing Contraband into a Penal Institution; Possessing Contraband in a Penal Institution (720 ILL. COMP. STAT. 5/30-1.1) would contain a definitions subsection (720 ILL. COMP. STAT. 5/30-1.1(c)) that defines the following terms: “Penal institution, Item of contraband, Alcoholic liquor, Cannabis, Controlled substance, Methamphetamine, Hypodermic syringe, Weapon, Firearm, Firearm ammunition, Explosive, Tool to defeat security mechanisms, Cutting tool, and Electronic contraband.” S. 0100, 95th Gen. Assem., at 623-26 (Ill. 2007).

203. 720 ILL. COMP. STAT. 5/16-16J to 5/17-17B, 5/46-1 (2006).

204. 720 ILL. COMP. STAT. 250/1 (2006).

205. 720 ILL. COMP. STAT. 5/15-1 to 5/15-10 (2006).

206. For example, the following terms would be moved from their current location to a new definitions section at 720 ILL. COMP. STAT. 5/15-0.5:

“Computer” (720 ILL. COMP. STAT. 5/16D-2(a) (2006)), “Container” (720 ILL. COMP. STAT. 5/16E-2 (2006)), “Manufacture of an unlawful wireless device (720 ILL. COMP. STAT. 5/16F-2 (2006)), “Personal identification document” (720 ILL. COMP. STAT. 5/16G-10(a) (2006)), “Financial crime” (720 ILL. COMP. STAT. 5/16H-10(a) (2006)), “Access” (720 ILL. COMP. STAT. 5/16J-5 (2006)), “Motor fuel” (720 ILL. COMP. STAT. 5/16J-10 (2006)), “False academic degree” (720 ILL. COMP. STAT. 5/17-2.5(d) (2006)), “Pyramid sales scheme” (720 ILL. COMP. STAT. 5/17-7 (2006)), “Universal Price Code Label” (720 ILL. COMP. STAT. 5/17-23(d) (2006)), and “Scheme or artifice to defraud” (720 ILL. COMP. STAT. 5/17-24(e) (2006)).

Finally, beyond developing needed definitions and eliminating redundant definitions, the concern over definitions was part of another larger issue, namely, bringing *consistency in format* to the Code. Interestingly, as was pointed out above, definitions of sine terms were buried in substantive provisions.<sup>207</sup> However, where a general definitions provision appeared within a particular legislative enactment, in some instances a stricture would reflect the following provisional order: substantive crime, sentences, and general definitions.<sup>208</sup> In others, the order was general definitions,

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S. 0100, 95th Gen. Assem., at 264-94 (Ill. 2007).

207. 720 ILL. COMP. STAT. 5/24-1 (2006). (“Unlawful Use of Weapons”).

208. To illustrate, Sexual Conduct or Contact with an Animal is currently defined as:

Sexual conduct or sexual contact with an animal. (a) A person may not knowingly engage in any sexual conduct or sexual contact with an animal. (b) A person may not knowingly cause, aid, or abet another person to engage in any sexual conduct or sexual contact with an animal. (c) A person may not knowingly permit any sexual conduct or sexual contact with an animal to be conducted on any premises under his or her charge or control. (d) A person may not knowingly engage in, promote, aid, or abet any activity involving any sexual conduct or sexual contact with an animal for a commercial or recreational purpose. (e) Sentence. A person who violates this Section is guilty of a Class 4 felony. A person who violates this Section in the presence of a person under 18 years of age or causes the animal serious physical injury or death is guilty of a Class 3 felony. (f) In addition to the penalty imposed in subsection (e), the court may order that the defendant do any of the following: (1) Not harbor animals or reside in any household where animals are present for a reasonable period of time or permanently, if necessary. (2) Relinquish and permanently forfeit all animals residing in the household to a recognized or duly organized animal shelter or humane society. (3) Undergo a psychological evaluation and counseling at defendant’s expense. (4) Reimburse the animal shelter or humane society for any reasonable costs incurred for the care and maintenance of the animal involved in the sexual conduct or sexual contact in addition to any animals relinquished to the animal shelter or humane society. (g) Nothing in this Section shall be construed to prohibit accepted animal husbandry practices or accepted veterinary medical practices by a licensed veterinarian or certified veterinary technician. (h) If the court has reasonable grounds to believe that a violation of this Section has occurred, the court may order the seizure of all animals involved in the alleged violation as a condition of bond of a person charged with a violation of this Section. (i) In this Section: “Animal” means every creature, either alive or dead, other than a human being. “Sexual conduct” means any touching or fondling by a person, either directly or through clothing, of the sex organs or anus of an animal or any transfer or transmission of semen by the person upon any part of the animal, for the purpose of sexual gratification or arousal of the person. “Sexual contact” means any contact, however slight, between the sex organ or anus of a person and the sex organ, mouth, or anus of an animal, or any intrusion, however slight, of any part of the body of the person into the sex organ or anus of an animal, for the purpose of



substantive offense, and sentences.<sup>209</sup> Others listed the substantive offense, then general definitions, and finally the sentence.<sup>210</sup> Thus, specific substantive sections and Articles would now employ the following sequence: (1) general definitions, (2) substantive crime, and (3) sentences.<sup>211</sup>

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sexual gratification or arousal of the person. Evidence of emission of semen is not required to prove sexual contact.

720 ILL. COMP. STAT. 5/12-35 (2006).

209. To illustrate, Use of Scanning Device or Reencoder to Defraud is currently defined as:

In this Section: "Scanning device" means a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card. "Reencoder" means an electronic device that places encoded information from the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different payment card. "Payment card" means a credit card, charge card, debit card, or any other card that is issued to an authorized card user and that allows the user to obtain, purchase, or receive goods, services, money, or anything else of value from a merchant. "Merchant" means an owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchisee, or independent contractor of the owner or operator. "Merchant" also means a person who receives from an authorized user of a payment card, or someone the person believes to be an authorized user, a payment card or information from a payment card, or what the person believes to be a payment card or information from a payment card, as the instrument for obtaining, purchasing or receiving goods, services, money, or anything else of value from the person. (b) It is unlawful for a person to use: (1) a scanning device to access, read, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card without the permission of the authorized user of the payment card and with the intent to defraud the authorized user, the issuer of the authorized user's payment card, or a merchant; or (2) a reencoder to place information encoded on the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different card without the permission of the authorized user of the card from which the information is being reencoded and with the intent to defraud the authorized user, the issuer of the authorized user's payment card, or a merchant. (c) Sentence. A violation of this Section is a Class 4 felony. A second or subsequent violation of this Section is a Class 3 felony.

720 ILL. COMP. STAT. 5/17-25 (2006).

210. To illustrate, Vehicular Hijacking is currently defined as:

(a) A person commits vehicular hijacking when he or she takes a motor vehicle from the person or the immediate presence of another by the use of force or by threatening the imminent use of force. (b) For the purposes of this Article, the term "motor vehicle" shall have the meaning ascribed to it in the Illinois Vehicle Code. (c) Sentence. Vehicular hijacking is a Class 1 felony.

720 ILL. COMP. STAT. 5/18-3 (2006) ("Vehicular Hijacking").

211. To illustrate, Sexual conduct or sexual contact with an animal (720 ILL. COMP. STAT. 5/12-35) would be revised (720 ILL. COMP. STAT. 5/12-129) and would be defined as:

In its quest toward *reform*, the Commission strived to achieve a balanced approach in addressing perceived deficiencies in several statutes that make up the Code. Throughout the Commission endeavor, a paramount concern was addressing, on the one hand, possible gaps in legislative coverage and, on the other, unnecessary language or measures that could be eliminated due to the existence of duplicitous law elsewhere, or because the provision had outlived its usefulness. For example, “Threatening Public Officials”<sup>212</sup> previously failed to include duly appointed Assistant Attorneys General and Appellate Prosecutors<sup>213</sup> and, consequently, that omission would be rectified.<sup>214</sup> In “Unlawful

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(a) A person may not knowingly engage in any sexual conduct with an animal. (e) Sentence. A person who violates this Section is guilty of a Class 4 felony. A person who violates this Section in the presence of a person under 18 years of age or causes the animal serious physical injury or death is guilty of a Class 3 felony. (f) In addition to the penalty imposed in subsection (e), the court may order that the defendant do any of the following: (1) Not harbor animals or reside in any household where animals are present for a reasonable period of time or permanently, if necessary. (2) Relinquish and permanently forfeit all animals residing in the household to a recognized or duly organized animal shelter or humane society. (3) Undergo a psychological evaluation and counseling at defendant’s expense. (4) Reimburse the animal shelter or humane society for any reasonable costs incurred for the care and maintenance of the animal involved in the sexual conduct or sexual contact in addition to any animals relinquished to the animal shelter or humane society. (g) Nothing in this Section shall be construed to prohibit accepted animal husbandry practices or accepted veterinary medical practices by a licensed veterinarian or certified veterinary technician. (h) If the court has reasonable grounds to believe that a violation of this Section has occurred, the court may order the seizure of all animals involved in the alleged violation as a condition of bond of a person charged with a violation of this Section. (i) In this Section: “Animal” means every creature, either alive or dead, other than a human being. “Sexual conduct” means any knowing touching or fondling by a person, either directly or through clothing, of the sex organs, mouth, or anus of an animal or any transfer or transmission of semen by the person upon any part of the animal, for the purpose of sexual gratification or arousal of the person.

S. 0100, 95th Gen. Assem., at 236-38 (Ill. 2007).

212. 720 ILL. COMP. STAT. 5/12-9 (2006).

213. To illustrate, Threatening public officials currently defines a public official as:

(1) “Public official” means a person who is elected to office in accordance with a statute or who is appointed to an office which is established, and the qualifications and duties of which are prescribed, by statute, to discharge a public duty for the State or any of its political subdivisions or in the case of an elective office any person who has filed the required documents for nomination or election to such office. “Public official” includes a duly appointed assistant State’s Attorney.

720 ILL. COMP. STAT. 5/12-9(b)(1) (2006).

214. To illustrate, public official would be defined in the Article 12

Use of Weapons”<sup>215</sup> the weapon restrictions in or within 1000 feet of a “courthouse”<sup>216</sup> failed to include within its coverage “federal courts” and “court of claims” and, thus, would be amended.<sup>217</sup> A close review of the defense of Compulsion revealed this defense was only available where the victim of a threat of imminent infliction of death or great bodily harm suffered such threat to himself or herself, thereby excluding, for example, such threats to one’s spouse or child.<sup>218</sup> Therefore, compulsion would be amended to include a defense where the defendant’s spouse or child faces a threat of death or great bodily harm.<sup>219</sup> Examination of the

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Definitions section (720 ILL. COMP. STAT. 5/12-0.5) as:

“Public official”. For purposes of the offense of threatening public officials, “public official” means a person who is elected to office in accordance with a statute or who is appointed to an office which is established, and the qualifications and duties of which are prescribed, by statute, to discharge a public duty for the State or any of its political subdivisions or in the case of an elective office any person who has filed the required documents for nomination or election to such office. “Public official” includes a duly appointed assistant State’s Attorney, Assistant Attorney General, and Appellate Prosecutor.

S. 0100, 95th Gen. Assem., at 184-85 (Ill. 2007).

215. 720 ILL. COMP. STAT. 5/24-1 (2006).

216. To illustrate, Unlawful Use of Weapons currently defines courthouse as: “Courthouse means any building that is used by the Circuit, Appellate, or Supreme Court of this State for the conduct of official business”. 720 ILL. COMP. STAT. 5/24-1(c)(2) (2006).

217. To illustrate, courthouse would be defined in the Article 24 Definitions section (720 ILL. COMP. STAT. 5/24-0.5) as: “Courthouse means any building that is used by the Court of Claims, or Circuit, Appellate, or Supreme Court of this State or a Federal Court for the conduct of official business” S. 0100, 95th Gen. Assem., at 484 (Ill. 2007).

218. To illustrate, Compulsion is currently defined as:

Compulsion. (a) A person is not guilty of an offense, other than an offense punishable with death, by reason of conduct which he performs under the compulsion of threat or menace of the imminent infliction of death or great bodily harm, if he reasonably believes death or great bodily harm will be inflicted upon him if he does not perform such conduct. (b) A married woman is not entitled, by reason of the presence of her husband, to any presumption of compulsion, or to any defense of compulsion except that stated in Subsection (a).

720 ILL. COMP. STAT. 5/7-11 (2006).

219. To illustrate, Compulsion would be defined as:

(a) A person is not guilty of an offense, other than an offense punishable with death, by reason of conduct which he performs under the compulsion of threat or menace of the imminent infliction of death or great bodily harm, if he reasonably believes death or great bodily harm will be inflicted upon him or upon his or her spouse or child if he does not perform such conduct. (b) A married woman is not entitled, by reason of the presence of her husband, to any presumption of compulsion, or to any defense of compulsion except that stated in Subsection (a).

S. 0100, 95th Gen. Assem., at 53-54 (Ill. 2007).

“Money Laundering stricture”<sup>220</sup> revealed illegal schemes involving financial proceeds derived from violations of laws of other states had not been addressed and, as such, the Commission would fill this substantial loophole.<sup>221</sup> In Perjury<sup>222</sup> the defense of admission of falsity in the same continuous “trial”<sup>223</sup> was thought *not* to permit a witness a defense where a witness were to later admit that an earlier statement made, for instance, during the earlier stages of a single bond hearing or deposition was false because his subsequent recantation was *not* during the same “trial.” Thus, the recantation defense would be amended to include “the same continuous *proceeding*.”<sup>224</sup>(*emphasis added*). Meanwhile, it was

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220. To illustrate, Money laundering currently defines Criminally derived property as:

“Criminally derived property” means: (A) any property, real or personal, constituting or derived from proceeds obtained, directly or indirectly, pursuant to a violation of the Criminal Code of 1961, the Illinois Controlled Substances Act, the Cannabis Control Act, or the Methamphetamine Control and Community Protection Act; or (B) any property represented to be property constituting or derived from proceeds obtained, directly or indirectly, pursuant to a violation of this Code, the Illinois Controlled Substances Act, the Cannabis Control Act, or the Methamphetamine Control and Community Protection Act.

720 ILL. COMP. STAT. 5/29B-1 (2006).

221. To illustrate, Criminally derived property would be defined in the Money laundering Definitions section (720 ILL. COMP. STAT. 5/27-1) as:

(1) any property, real or personal, constituting or derived from proceeds obtained, directly or indirectly, pursuant to a violation of a felony offense, or conduct which if performed in another jurisdiction would be a felony offense by the laws of that jurisdiction, and which conduct if performed in this State, would be a felony offense under the laws of this State; or (2) any property represented to be property constituting or derived from proceeds obtained, directly or indirectly, pursuant to a violation of a felony offense, or conduct which if performed in another jurisdiction would be a felony offense by the laws of that jurisdiction, and which conduct if performed in this State, would be a felony offense under the laws of this State.

S. 0100, 95th Gen. Assem., at 585-86 (Ill. 2007).

222. 720 ILL. COMP. STAT. 5/32-2 (2006).

223. 720 ILL. COMP. STAT. 5/32-2(c) (2006). To illustrate, under Perjury, Admission of Falsity is currently defined as: “Where the contradictory statements are made in the same continuous trial, an admission by the offender in that same continuous trial of the falsity of a contradictory statement shall bar prosecution therefor under any provisions of this Code.”

224. To illustrate, under Perjury (720 ILL. COMP. STAT. 5/32-2), Admission of Falsity (720 ILL. COMP. STAT. 5/32-2(b)) would be defined as: “Where the contradictory statements are made in the same continuous trial, hearing, deposition, or other formal proceeding, an admission by the offender in that same continuous proceeding of the falsity of a contradictory statement shall bar prosecution therefor under any provisions of this Code”. S. 0100, 95th Gen. Assem., at 636 (Ill. 2007).

thought the offense of “Failure to Report a Bribe”<sup>225</sup> should obligate any “witness” to report a bribe. With the advent of new modes of communication, Intimidation<sup>226</sup> would be amended so that threats need not be communicated “in person, by telephone or by mail” but instead “by any means.”<sup>227</sup> It was found the defenses to Bigamy<sup>228</sup> such as the accused is reasonable belief the prior

225. To illustrate, Failure to report a bribe is currently defined as:

Failure to report a bribe. Any public officer, public employee or juror who fails to report forthwith to the local State’s Attorney, or in the case of a State employee to the Department of State Police, any offer made to him in violation of Section 33-1 commits a Class A misdemeanor. In the case of a State employee, the making of such report to the Department of State Police shall discharge such employee from any further duty under this Section. Upon receiving any such report, the Department of State Police shall forthwith transmit a copy thereof to the appropriate State’s Attorney.

720 ILL. COMP. STAT. 5/33-2 (2006).

226. To illustrate, Intimidation is currently defined as:

A person commits intimidation when, with intent to cause another to perform or to omit the performance of any act, he communicates to another, whether in person, by telephone or by mail, a threat to perform without lawful authority any of the following acts: (1) Inflict physical harm on the person threatened or any other person or on property; or (2) Subject any person to physical confinement or restraint; or (3) Commit any criminal offense; or (4) Accuse any person of an offense; or (5) Expose any person to hatred, contempt or ridicule; or (6) Take action as a public official against anyone or anything, or withhold official action, or cause such action or withholding; or (7) Bring about or continue a strike, boycott or other collective action.

720 ILL. COMP. STAT. 5/12-6 (2006).

227. To illustrate, Intimidation (720 ILL. COMP. STAT. 5/12-110) would be defined as:

A person commits intimidation when, with intent to cause another to perform or to omit the performance of any act, he or she communicates to another, directly or indirectly by any means whether in person, by telephone or by mail, a threat to perform without lawful authority any of the following acts: (1) Inflict physical harm on the person threatened or any other person or on property; or (2) Subject any person to physical confinement or restraint; or (3) Commit a felony or Class A misdemeanor any criminal offense; or (4) Accuse any person of an offense; or (5) Expose any person to hatred, contempt or ridicule; or (6) Take action as a public official against anyone or anything, or withhold official action, or cause such action or withholding; or (7) Bring about or continue a strike, boycott or other collective action.

S. 0100, 95th Gen. Assem., at 209-10 (Ill. 2007).

228. To illustrate, Bigamy is currently defined as:

(a) Any person having a husband or wife who subsequently marries another or cohabits in this State after such marriage commits bigamy.  
 (b) It shall be an affirmative defense to bigamy that: (1) The prior marriage was dissolved or declared invalid; or (2) The accused reasonably believed the prior spouse to be dead; or (3) The prior spouse had been continually absent for a period of 5 years during which time the accused did not know the prior spouse to be alive; or (4) The accused

spouse was dead, were not included in the offense of Marrying a Bigamist<sup>229</sup> and therefore, it was determined one accused of the latter offense should have the benefit of the same defenses as found in Bigamy.<sup>230</sup> Meanwhile, “False Personation”<sup>231</sup> contained a stricture preventing an individual from using the title or name “Chicago Peace Officer” or the like in any organization, magazine or other publication, but did not include reference to use of such titles or names from other police departments and, as such, this omission would be addressed.<sup>232</sup>

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reasonably believed that he was legally eligible to remarry. (c) Sentence. Bigamy is a Class 4 felony.

720 ILL. COMP. STAT. 5/11-12 (2006).

229. To illustrate, Marrying a Bigamist is currently defined as:

Any unmarried person who knowingly marries another under circumstances known to him which would render the other person guilty of bigamy under the laws of this State, or who cohabits in this State after such a marriage, commits the offense of marrying a bigamist. (b) Sentence. Marrying a bigamist is a Class A misdemeanor.

720 ILL. COMP. STAT. 5/11-13 (2006).

230. To illustrate, Bigamy and Marrying a bigamist would be defined as:

(a) Bigamy. A person commits the offense of Bigamy when that person has a husband or wife and subsequently knowingly marries another. (b) Marrying a bigamist. A person commits the offense of Marrying a bigamist when an unmarried person knowingly marries another under circumstances known to him or her which would render the other person guilty of bigamy under the laws of this State. (c) Sentence. Bigamy is a Class 4 felony. Marrying a bigamist is a Class A misdemeanor. (d) It shall be an affirmative defense to Bigamy and Marrying a bigamist that: (1) The prior marriage was dissolved or declared invalid; or (2) The accused reasonably believed the prior spouse to be dead; or (3) The prior spouse had been continually absent for a period of 5 years during which time the accused did not know the prior spouse to be alive; or (4) The accused reasonably believed that he or she, or the person he or she marries, was legally eligible to be married.

S. 0100, 95th Gen. Assem., at 97-98 (Ill. 2007).

231. To illustrate, False personation; use of title; solicitation; certain entities currently states that: “No person shall use the words ‘Chicago Police,’ ‘Chicago Police Department,’ ‘Chicago Patrolman,’ ‘Chicago Sergeant,’ ‘Chicago Lieutenant,’ ‘Chicago Peace Officer’ or any other words to the same effect in the title of any organization, magazine, or other publication without the express approval of the Chicago Police Board.” 720 ILL. COMP. STAT. 5/17-2(b) (2006).

232. To illustrate, False personation; solicitation (720 ILL. COMP. STAT. 5/17-2(3)) would state that:

No person shall knowingly: use the words “Police,” “Police Department,” “Patrolman,” “Sergeant,” “Lieutenant,” “Peace Officer,” “Sheriff’s Police,” “Sheriff,” “Officer,” “Law Enforcement,” “Trooper,” “Deputy,” “State Police,” or any other words to the same effect (i) in the title of any organization, magazine, or other publication without the express approval of the named public safety personnel organization’s governing board or (ii) in combination with the name of any State agency, public university, or unit of local government without the express written

Subject matter already covered by the more universal Article 8 Inchoate Offenses, such as criminal Solicitation,<sup>233</sup> Conspiracy,<sup>234</sup> and Attempt,<sup>235</sup> would be either merged into the general inchoate provision or eliminated. Thus, "Solicitation of Murder"<sup>236</sup> would be merged into the general solicitation stricture, with any solicitation to commit murder being addressed in the sentencing provision of the general statute.<sup>237</sup> Likewise, "Conspiracy to Commit Fraud"<sup>238</sup> would be merged into the 5/8-2 general conspiracy section with the sentence preserved.<sup>239</sup> In some instances, the misplaced inchoate

authorization of that State, State agency, or unit of local government.

S. 0100, 95th Gen. Assem., at 342-43 (Ill. 2007).

233. 720 ILL. COMP. STAT. 5/8-1 (2006).

234. 720 ILL. COMP. STAT. 5/8-2 (2006).

235. 720 ILL. COMP. STAT. 5/8-4 (2006).

236. To illustrate, Solicitation of Murder is currently defined as:

(a) A person commits solicitation of murder when, with the intent that the offense of first degree murder be committed, he commands, encourages or requests another to commit that offense. (b) Penalty. Solicitation of murder is a Class X felony and a person convicted of solicitation of murder shall be sentenced to a term of imprisonment for a period of not less than 15 years and not more than 30 years, except that in cases where the person solicited was a person under the age of 17 years, the person convicted of solicitation of murder shall be sentenced to a term of imprisonment for a period of not less than 20 years and not more than 60 years.

720 ILL. COMP. STAT. 5/8-1.1 (2006).

237. To illustrate, Solicitation and solicitation of murder would be defined as:

(a) A person commits the offense of Solicitation when, with intent that an offense be committed, he commands, encourages or requests another to commit that offense. (b) Penalty. (1) Except as provided in subsection (b)(2) of this Section, a person convicted of solicitation may be fined or imprisoned or both not to exceed the maximum provided for the offense solicited: Provided, however, the penalty shall not exceed the corresponding maximum limit provided by subparagraph (c) of Section 8-4 of this Act, as heretofore and hereafter amended. (2) Solicitation of murder. A person commits the offense of Solicitation of murder when he or she commits Solicitation with the intent that the offense of first degree murder be committed. Solicitation of murder is a Class X felony and a person convicted of such an offense shall be sentenced to a term of imprisonment for a period of not less than 15 years and not more than 30 years, except that in cases where the person solicited was a person under the age of 17 years, the person convicted of solicitation of murder shall be sentenced to a term of imprisonment for a period of not less than 20 years and not more than 60 years.

S. 0100, 95th Gen. Assem., at 54-55 (Ill. 2007).

238. 720 ILL. COMP. STAT. 5/46-3 (2006).

239. To illustrate, Conspiracy (720 ILL. COMP. STAT. 5/8-2) would be defined as:

(a) Elements of the offense. A person commits conspiracy when, with intent that an offense be committed, he or she agrees with another to the commission of that offense. No person may be convicted of

measure was not a separate crime but rather a specific provision or subsection within an offense. To illustrate, a conspiracy subsection appeared in Unauthorized Bringing Contraband into Penal Institution by Employee.<sup>240</sup> These types of conspiracy provisions would also be eliminated.<sup>241</sup>

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conspiracy to commit an offense unless an act in furtherance of such agreement is alleged and proved to have been committed by him or her or by a co-conspirator. (b) Co-conspirators. It shall not be a defense to conspiracy that the person or persons with whom the accused is alleged to have conspired: (1) Has not been prosecuted or convicted, or (2) Has been convicted of a different offense, or (3) Is not amenable to justice, or (4) Has been acquitted, or (5) Lacked the capacity to commit an offense. (c) Sentence. (1) A person convicted of conspiracy to commit a misdemeanor or any offense set forth in Sections 401, 402, or 407 of the Illinois Controlled Substances Act may be fined or imprisoned or both not to exceed the maximum provided for the offense which is the object of the conspiracy. (2) Except as provided in subsection (c)(3) of this Section: (A) the sentence for conspiracy to commit a Class X felony is the sentence for a Class 1 felony; (B) the sentence for conspiracy to commit a Class 1 felony is the sentence for a Class 2 felony; (C) the sentence for conspiracy to commit a Class 2 felony is the sentence for a Class 3 felony; and (D) the sentence for conspiracy to commit a Class 3 or a Class 4 felony is the sentence for a Class A misdemeanor. (3)(A) Conspiracy to commit an offense prohibited by Sections 11-15, 11-16, 11-17, 11-19, 24-1(a)(1), 24-1(a)(7), 28-1, 28-3 and 28-4 of the Criminal Code of 1961, or prohibited by Sections 404 or 406 (b) of the Illinois Controlled Substances Act, or an inchoate offense related to any of the aforesaid principal offenses, is a Class 3 felony; (B) A conspiracy to commit insurance fraud or governmental entity insurance fraud is a Class 2 felony. (C) Conspiracy to commit treason, first degree murder, aggravated kidnapping, aggravated criminal sexual assault, or predatory criminal sexual assault of a child, aggravated insurance fraud, or aggravated governmental entity insurance fraud is a Class 1 felony. (D) Being an organizer of an aggravated insurance fraud conspiracy or being an organizer of an aggravated governmental entity insurance fraud conspiracy is a Class X felony.

S. 0100, 95th Gen. Assem., at 55-57 (Ill. 2007).

240. To illustrate, Unauthorized bringing of contraband into a penal institution by an employee; unauthorized possessing of contraband in a penal institution by an employee; unauthorized delivery of contraband in a penal institution by an employee currently states that:

(c) A person commits the offense of unauthorized delivery of contraband in a penal institution by an employee when a person who is an employee knowingly and without authority of any person designated or authorized to grant such authority: (1) delivers or possesses with intent to deliver an item of contraband to any inmate of a penal institution, or (2) conspires to deliver or solicits the delivery of an item of contraband to any inmate of a penal institution, or (3) causes or permits the delivery of an item of contraband to any inmate of a penal institution, or (4) permits another person to attempt to deliver an item of contraband to any inmate of a penal institution.

720 ILL. COMP. STAT. 5/31A-1.2(c)(2) (2006).

241. To illustrate, unauthorized bringing of contraband into a penal



Likewise, where the general Article 5 Accountability law would apply,<sup>242</sup> redundant provisions would be removed. Thus, the independent offense "Aiding and Abetting Child Abduction"<sup>243</sup> would be eliminated insofar as it was duplicative of the general accountability measure.<sup>244</sup> Statutory language *within* a criminal

institution by an employee; unauthorized possessing of contraband in a penal institution by an employee; unauthorized delivery of contraband in a penal institution by an employee (720 ILL. COMP. STAT. 5/30-1.2) would state that:

(a) A person commits the offense of unauthorized bringing of contraband into a penal institution by an employee when a person who is an employee knowingly and without authority or any person designated or authorized to grant such authority: (1) brings or attempts to bring an item of contraband listed in paragraphs (i) through (viii), and (xi) of subsection (d)(4) into a penal institution, or (2) causes or permits another to bring an item of contraband listed in paragraphs (i) through (viii) and (xi) (iv) of subsection (d)(4) into a penal institution.

S. 0100, 95th Gen. Assem., at 628-29 (Ill. 2007).

242. 720 ILL. COMP. STAT. 5/5-2 (2006).

243. To illustrate, Aiding and Abetting Child Abduction is currently defined as:

(a) A person violates this Section when: (i) Before or during the commission of a child abduction as defined in Section 10-5 and with the intent to promote or facilitate such offense, he or she intentionally aids or abets another in the planning or commission of child abduction, unless before the commission of the offense he or she makes proper effort to prevent the commission of the offense; or (ii) With the intent to prevent the apprehension of a person known to have committed the offense of child abduction, or with the intent to obstruct or prevent efforts to locate the child victim of a child abduction, he or she knowingly destroys, alters, conceals or disguises physical evidence or furnishes false information. (b) Sentence. A person who violates this Section commits a Class 4 felony.

720 ILL. COMP. STAT. 5/10-7 (2006).

244. To illustrate, the general accountability provision (720 ILL. COMP. STAT. 5/5-2) would be defined as:

A person is legally accountable for the conduct of another when: (a) Having a mental state described by the statute defining the offense, he causes another to perform the conduct, and the other person in fact or by reason of legal incapacity lacks such a mental state; or (b) The statute defining the offense makes him so accountable; or (c) Either before or during the commission of an offense, and with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense. Where two or more persons engage in a common criminal design or agreement, any acts in the furtherance thereof committed by one party are considered to be the acts of all parties to the common design and all are equally responsible for the consequences of such further acts. Presence at the scene of a crime does not render a person accountable for an offense; however, a person's presence at the scene of a crime may be considered with other circumstances by the trier of fact when determining accountability. However, a person is not so accountable, unless the statute defining the offense provides otherwise, if: (1) He is a victim of the offense committed; or (2) The offense is so defined that his

stricture that was duplicitous of the general accountability statute would be deleted. For example, the accountability language found in the Telephone Coin Box Tampering Act,<sup>245</sup> an offense which became part of a new Theft Related Devices prohibition in Article 16,<sup>246</sup> would be removed.

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conduct was inevitably incident to its commission; or (3) Before the commission of the offense, he terminates his effort to promote or facilitate such commission, and does one of the following: wholly deprives his prior efforts of effectiveness in such commission, or gives timely warning to the proper law enforcement authorities, or otherwise makes proper effort to prevent the commission of the offense.

S. 0100, 95th Gen. Assem., at 52-53 (Ill. 2007).

245. 720 ILL. COMP. STAT. 370/1 (2006) (stating “or aids . . . any person . . .”).

246. To illustrate, theft-related devices would be defined as:

(a)(1) A person commits the offense of unlawful possession of a key or device for a coin-operated machine when he or she possesses a key or device designed to open, break into, tamper with, or damage a coin-operated machine, with intent to commit a theft from the machine. (2) A person commits the offense of unlawful use of a key or device for a coin-operated machine when he or she with the intent to commit a theft from a coin-operated machine causes damage or loss to the coin-operated machine of more than \$300. (b)(1) A person commits the offense of unlawful use of a theft detection shielding device when he or she knowingly manufactures, sells, offers for sale or distributes any theft detection shielding device. (2) A person commits the offense of unlawful possession of a theft detection shielding device when he or she knowingly possesses a theft detection shielding device with the intent to commit theft or retail theft. (3) A person commits the offense of unlawful possession of a theft detection device remover when he or she knowingly possesses a theft detection device remover with the intent to use such tool to remove any theft detection device from any merchandise without the permission of the merchant or person owning or holding said merchandise. (c) A person commits the offense of using a scanning device or reencoder to defraud when that person uses: (1) a scanning device to access, read, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card without the permission of the authorized user of the payment card and with the intent to defraud the authorized user, the issuer of the authorized user’s payment card, or a merchant; or (2) a reencoder to place information encoded on the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different card without the permission of the authorized user of the card from which the information is being reencoded and with the intent to defraud the authorized user, the issuer of the authorized user’s payment card, or a merchant. (d) Sentence. A violation of paragraph (a)(1), (b)(1), (b)(2), or (b)(3) is a Class A misdemeanor. A second or subsequent violation of paragraph (b)(1), (b)(2), or (b)(3) is a Class 4 felony. A violation of paragraph (a)(2), (c)(1), or (c)(2) is a Class 4 felony. A second or subsequent violation of paragraph (c)(1) or (c)(2) is a Class 3 felony. (e) The owner of a coin-operated machine may maintain a civil action against a person engaged in the activities covered in paragraphs (a)(1) and (a)(2), and may recover treble actual damages, reasonable attorney’s

Meanwhile, certain unnecessary offenses would be repealed. The “Derogatory Statements about the Banks Act” (Act 300)<sup>247</sup> would be repealed, given the Chapter 205 Illinois Savings and Loan Act’s provision addressing Slander in the banking context.<sup>248</sup> The “Horse Racing False Entries Act” (Act 320)<sup>249</sup> would be repealed in light of the statutory coverage of the same conduct in the Chapter 230 Horse Racing Act’s punishment for entering a horse into a race under false pretenses.<sup>250</sup> Certain offenses within

fees, and costs.

S. 0100, 95th Gen. Assem., at 316-18 (Ill. 2007).

247. To illustrate, the Derogatory Statements About Banks Act defines Statements derogatory to banking institutions as:

Any person who shall willfully and maliciously make, circulate, or transmit to another or others, any statements, rumor or suggestion, written, printed or by word of mouth, which is directly or by inference derogatory to the financial condition, with intent to affect the solvency or financial standing of any corporation doing a banking or trust business in this State, or any building and loan association or federal savings and loan association doing business in this State, or who shall counsel, aid, procure or induce another to start, transmit or circulate any such statement, rumor or suggestion, shall be guilty of a Class A misdemeanor: However, the truth of said statement, established by the maker thereof, shall be a complete defense in any prosecution under the provisions of this Act.

720 ILL. COMP. STAT. 300/1 (2006).

248. To illustrate, the Illinois Savings and Loan Act of 1985 defines Slander as:

Slander. Any person who knowingly makes, utters, circulates or transmits to another or others or knowingly causes to be made, uttered, circulated or transmitted to another or others any statement untrue in fact, derogatory to the financial condition of any association subject to this Act or any Federal association in this State, with intent to injure any such financial institution, or who counsels, aids, procures or induces or knowingly permits another to originate, make, utter, transmit or circulate any such statement or rumor, with like intent, is guilty of a business offense and upon conviction shall be punished by a fine of not more than \$2,500.

205 ILL. COMP. STAT. 105/1-12 (2006).

249. To illustrate, the Horse Racing False Entries Act defines Prohibits false entries in races as:

That in order to encourage the breeding of and improvement in trotting, running and pacing horses in the State of Illinois, it is hereby made unlawful for any person or persons knowingly to enter or cause to be entered for competition, or knowingly to compete with any horse, mare, gelding, colt or filly under any other than its true name or out of its proper class for any purse, prize, premium, stake or sweepstakes offered or given by any agricultural or other society, association, person or persons in the State of Illinois where such prize, purse, premium, stake or sweepstakes is to be decided by a contest of speed.

720 ILL. COMP. STAT. 320/1 (2006).

250. To illustrate, the Illinois Horse Racing Act of 1975 defines Entering horse under another name; penalty as:

Act 5 would also be repealed. The antiquated “Barratry”<sup>251</sup> and “Maintenance”<sup>252</sup> strictures would be eliminated due to their ambiguity, nonuse, or coverage by other crimes.

Another concern which required the Commission’s attention was presumptions and inferences. Since the passage of the original Criminal Code of 1961, the law surrounding presumptions – a legal concept which either requires or, in other cases, allows a fact finder to presume the existence of a fact from a proven fact<sup>253</sup> – has undergone considerable transformation. Essentially, presumptions and inferences fall into three different categories and today only one of the three forms is considered valid. First, there are *mandatory conclusive* presumptions, which require a fact finder to accept as true a fact, the presumed fact, from proof of

(a) It is unlawful for any person knowingly to enter or cause to be entered any horse - mare, stallion, gelding, colt or filly for competition or knowingly to compete with any horse - mare, stallion, gelding, colt or filly - entered for competition under any name other than its true name or out of its proper class for any purse, prize, premium, stake or sweepstakes offered or given by any agricultural or other society, association or persons in the State where such prize, purse, premium, stake or sweepstakes is to be decided by a contest of speed. (b) Any person who violates this Section is guilty of a Class 4 felony. The Board shall suspend or revoke the violator’s license. (c) The true name of any horse - mare, stallion, gelding, colt or filly - for the purpose of entry for competition or performance in any contest of speed shall be the name under which the horse has publicly performed and shall not be changed after having once so performed or contested for a prize, purse, premium, stake or sweepstakes, except as provided by the code of printed rules of the society or association under which the contest is advertised to be conducted. (d) It is further provided that the official records shall be received in all courts as evidence upon the trial of any person under this Section.

230 ILL. COMP. STAT. 5/38 (2006).

251. To illustrate, Barratry is currently defined as:

If a person wickedly and willfully excites and stirs up actions or quarrels between the people of this State with a view to promote strife and contention, he or she is guilty of the petty offense of common barratry; and if he or she is an attorney at law, he or she shall be suspended from the practice of his or her profession, for any time not exceeding 6 months.

720 ILL. COMP. STAT. 5/32-11 (2006).

252. To illustrate, Maintenance is currently defined as:

If a person officiously intermeddles in an action that in no way belongs to or concerns that person, by maintaining or assisting either party, with money or otherwise, to prosecute or defend the action, with a view to promote litigation, he or she is guilty of maintenance and upon conviction shall be fined and punished as in cases of common barratry. It is not maintenance for a person to maintain the action of his or her relative or servant, or a poor person out of charity.

720 ILL. COMP. STAT. 5/32-12 (2006).

253. *People v. Watts*, 181 Ill. 2d 133, 141, 692 N.E.2d 315, 320 (1998).

another fact.<sup>254</sup> (e.g. If the State establishes contraband was in an automobile [the proven fact], a jury *shall* conclude all occupants in the automobile *knew* the contraband was in the automobile [the presumed fact]). Mandatory conclusive presumptions are considered totally unacceptable in a criminal case.<sup>255</sup> Next, there are *mandatory rebuttable* presumptions, which required a fact finder to accept as true a presumed fact from a proven fact *unless* the presumed fact is rebutted.<sup>256</sup> (e.g., If the State proves contraband was found in an automobile, a jury *shall* conclude a passenger had *knowledge* that the contraband was in the automobile *unless* the passenger offers evidence which rebuts the conclusion he or she had such knowledge). Mandatory rebuttable presumptions are also no longer acceptable in criminal cases.<sup>257</sup> Finally, there are *permissive inferences*, a concept in which the fact finder *may*, but need not, find the existence of the presumed fact upon proof of the basic fact.<sup>258</sup> (e.g., If the State proves contraband was found in an automobile, a jury *may* infer a passenger in the automobile knew of the presence of the contraband in the automobile). Permissive inferences are accepted in criminal cases.<sup>259</sup>

Specifically, in a series of judicial opinions, conclusive presumptions<sup>260</sup> and rebuttable presumptions, which either shift the burden of persuasion<sup>261</sup> or shift the burden of production to the accused,<sup>262</sup> are considered to be contrary to Fourteenth Amendment due process requirement that the State prove every element of a criminal offense beyond a reasonable doubt.<sup>263</sup>

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254. *Id.*

255. *Sandstrom v. Montana*, 442 U.S. 510, 521-23 (1979).

256. *Id.* at 517.

257. *Watts*, 692 N.E.2d at 322.

258. *People v. Greco*, 790 N.E.2d 846, 852 (Ill. 2003).

259. *Id.* at 852 ("Under this standard, the permissive presumption will satisfy due process concerns if the presumed fact is more likely than not to flow from the predicate fact.").

260. *See Carella v. California*, 491 U.S. 263, 265-68 (1989) (holding that jury instruction that defendant "shall be presumed to have embezzled" a vehicle within five days after expiration of a rental agreement was an unconstitutional mandatory conclusive presumption).

261. *See Sandstrom*, 442 U.S. 510, 520-24 (1979) (holding that jury instruction which stated the "law presumes that a person intends the ordinary consequences of his acts" was either an unconstitutional conclusive presumption or a presumption that unconstitutionally shifted the burden of persuasion to the defendant).

262. *See Watts*, 692 N.E.2d at 323-25 (finding a provision within offense criminalizing home repair fraud, which contained a mandatory presumption that a home repair contractor would be presumed to have *no* intent to perform his obligations based upon State's proof of certain predicate acts involving non-completion of repairs, was unconstitutional burden shifting presumption).

263. *See id.* at 323 (holding that such presumptions violate the due process

Consequently, those statutes that contain presumption language which states, for example, certain proven facts “shall be presumed to be evidence of a [presumed fact] unless disproved by evidence to the contrary,”<sup>264</sup> reflect language open to constitutional challenge. Similarly, if the criminal statute states proof of fact A gives rise to a “rebuttable presumption” of fact B<sup>265</sup> or that proof of fact X “shall be prima facie evidence” of fact Y<sup>266</sup> this enactment is likely unenforceable.

Meanwhile, permissive inferences which state a jury *may*, rather than *shall* presume a fact from proof of a proven fact without requiring the accused to rebut the presumed fact have been deemed to be valid.<sup>267</sup>

In order to conform presumption language within Illinois criminal measures that might be open to invalidation, the Commission would convert those presumptions that might be considered either conclusive or mandatory rebuttables into permissible inferences. Thus, a rebuttable presumption contained in the Child Abduction offense<sup>268</sup> would be removed and replaced by a permissive inference, *i.e.*, “may infer that the luring or attempted luring of a child... was for other than a lawful

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clause of the Constitution because the burdens “may never be shifted to defendant.”).

264. *See, e.g.*, *People v. Pomykala*, 203 Ill. 2d 198, 208, 784 N.E.2d 784, 787 (Ill. 2003) (finding such “shall be presumed . . . unless disproved” language in reckless homicide statute, 720 ILL. COMP. STAT. 5/9-3, violative of due process).

265. *See, e.g.*, *People v. Jordan*, 354 Ill. App. 3d 294, 299, 820 N.E.2d 1083, 1088 (Ill. App. Ct. 2004) (finding such “rebuttable presumption” language in child endangerment statute, 720 ILL. COMP. STAT. 5/12-21.6 (2002), violative of due process).

266. *See, e.g.*, *People v. Woodrum*, 354 Ill. App. 3d 629, 637-39, 821 N.E.2d 787, 795-97 (Ill. App. Ct. 2004) (finding “prima facie evidence” language in child abduction statute, 720 ILL. COMP. STAT. 5/10-5 (2000), to be a mandatory rebuttable presumption provision, which is violative of due process).

267. *See, e.g.*, *County Court of Ulster County v. Allen*, 442 U.S. 140, 164 (1979) (upholding permissive inference that persons within automobile where handgun was located “were fully aware of the presence of the guns and had both the ability and the intent to exercise dominion and control over the weapons.”).

268. To illustrate, the Child Abduction offense currently states:

(b) A person commits child abduction when he or she: (10) Intentionally lures or attempts to lure a child under the age of 16 into a motor vehicle, building, housetrailer, or dwelling place without the consent of the parent or lawful custodian of the child for other than a lawful purpose. For the purposes of this subsection (b), paragraph (10), the luring or attempted luring of a child under the age of 16 into a motor vehicle, building, housetrailer, or dwelling place without the consent of the parent or lawful custodian of the child shall be prima facie evidence of other than a lawful purpose[.]

720 ILL. COMP. STAT. 5/10-5(b)(10) (2006).

purpose.”<sup>269</sup> Similarly, within a section entitled *prima facie* evidence of intent that person obtains by deception control over property<sup>270</sup> found within Article 16 (Theft), “*prima facie* evidence of intent” language would be replaced by the more acceptable “may infer” nomenclature.<sup>271</sup>

Finally, stylistic, grammatical and other changes designed to

269. To illustrate, the Child Abduction offense (720 ILL. COMP. STAT. 5/10-5) would state:

(b) A person commits Child abduction when he or she: (10) Intentionally lures or attempts to lure a child under the age of 16 into a motor vehicle, building, housetrailer, or dwelling place without the consent of the parent or lawful custodian of the child for other than a lawful purpose. For the purposes of subsection (b)(10) of this Section, the trier of fact may infer that the luring or attempted luring of a child under the age of 16 into a motor vehicle, building, housetrailer, or dwelling place without the consent of the parent or lawful custodian of the child was for other than a lawful purpose.

S. 0100, 95th Gen. Assem., at 68-69 (Ill. 2007).

270. To illustrate, within the Article 16 Theft and Related Offenses provision (720 ILL. COMP. STAT. 5/16 et seq.), *Prima facie* evidence of intent is currently defined as:

It shall be *prima facie* evidence of intent that a person “knowingly obtains by deception control over property of the owner” when he fails to return, within 45 days after written demand from the owner, the downpayment and any additional payments accepted under a promise, oral or in writing, to perform services for the owner for consideration of \$3,000 or more, and the promisor willfully without good cause failed to substantially perform pursuant to the agreement after taking a downpayment of 10% or more of the agreed upon consideration. This provision shall not apply where the owner initiated the suspension of performance under the agreement, or where the promisor responds to the notice within the 45 day notice period. A notice in writing, addressed and mailed, by registered mail, to the promisor at the last known address of the promisor, shall constitute proper demand.

720 ILL. COMP. STAT. 5/16-1.2 (2006).

271. To illustrate, within the Article 16 Theft provision, *Permissive inference* evidence of intent that a person obtains by deception control over property would be defined as:

(d) *Permissive inference* evidence of intent that a person obtains by deception control over property. The trier of fact may infer that a person knowingly obtains by deception control over property of the owner when he or she fails to return, within 45 days after written demand from the owner, the downpayment and any additional payments accepted under a promise, oral or in writing, to perform services for the owner for consideration of \$3,000 or more, and the promisor knowingly without good cause failed to substantially perform pursuant to the agreement after taking a downpayment of 10% or more of the agreed upon consideration. This provision shall not apply where the owner initiated the suspension of performance under the agreement, or where the promisor responds to the notice within the 45-day notice period. A notice in writing, addressed and mailed, by registered mail, to the promisor at the last known address of the promisor, shall constitute proper demand.

S. 0100, 95th Gen. Assem., at 299 (Ill. 2007).

modernize Illinois penal law were other Commission goals. Gender neutralizing pronouns would be introduced. Language common in yesteryear, such as where the word “rods” was used as a measurement reference,<sup>272</sup> would be replaced by contemporary nomenclature, *i.e.* “feet.”<sup>273</sup> Capitalizing only the first word of a criminal offense was not consistently followed in some measures.<sup>274</sup> Consistent use of subsection numbers and letters would be sought.<sup>275</sup>

Forty-five years have passed since the last major revision of the Illinois criminal code. An essential feature of a criminal code is the Principle of Legality,<sup>276</sup> which requires that penal law should give *notice* to the citizenry as to what conduct is proscribed<sup>277</sup> as well as provide an *ascertainable standard of guilt*

272. 720 ILL. COMP. STAT. 5/47-5(6) (2006). To illustrate, the Public Nuisance provision (720 ILL. COMP. STAT. 5/47-1) currently states that: “To carry on the business of manufacturing gunpowder, nitroglycerine, or other highly explosive substances, or mixing or grinding the materials for those substances, in a building within 20 rods of a valuable building erected at the time the business is commenced.”

273. To illustrate, the Public Nuisance (720 ILL. COMP. STAT. 5/47-1) provision would state:

To manufacture carry on the business of manufacturing gunpowder, nitroglycerine, or other highly explosive substances, or mixing or grinding the materials for those substances, in a building within 330 feet 20 rods of a valuable building erected at the time the business is commenced, or to establish powder magazines near incorporated towns, at a point different from that appointed according to law by the corporate authorities of the town, or within 825 feet of an occupied dwelling house.

S. 0100, 95th Gen. Assem., at 770-71 (Ill. 2007).

274. *See, e.g.*, 720 ILL. COMP. STAT. 5/31A-1.1 (2006) (“Bringing Contraband into a Penal Institution”) and 720 ILL. COMP. STAT. 5/31A-1.2 (2006) (“Unauthorized bringing contraband into a penal institution by employee”).

275. *See, e.g.*, 720 ILL. COMP. STAT. 5/47-5(1) (2006) (showing inconsistent subsection numbers that lays out the offense of animal carcass as nuisance with 720 ILL. COMP. STAT. 5/47-15(a) (2006) dumping garbage on real property as nuisance).

276. John F. Decker, *Addressing Vagueness, Ambiguity, and Other Uncertainty in American Criminal Laws*, 80 DENV. U. L. REV. 241, 244-47 (2002) (explaining the principle of legality in detail).

277. *See* Colautti v. Franklin, 439 U.S. 379, 390 (1979) (finding a Pennsylvania abortion law unconstitutionally vague); *See also* Connally v. Gen. Constr. Co., 269 U.S. 385, 393 (1926) (“The crime, and the elements constituting it, must be so clearly expressed that the ordinary person can intelligently choose, in advance, what course it is lawful for him to pursue.”):

[T]he kind of notice required is entirely formal. Publication of a statute’s text always suffices; the government need make no further effort to apprise the people of the content of the law. . . In short, the fair warning requirement of the vagueness doctrine is not structured to achieve actual notice of the content of the penal law.

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to those who have enforcement responsibilities, such as police, prosecutors, judges and juries.<sup>278</sup> Various problems with the existing Chapter 720 were identified by the CLEAR Initiative. This revision of the Illinois criminal laws should result in a more useful, accessible and comprehensible codification of penal law, not only for criminal justice practitioners and law enforcement personnel who may use the code on a daily basis, but also for members of the general public who have the right to understand the scope of Illinois criminal law.

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*Statutes*, 71 VA. L. REV. 189, 207 (1985).

278. See *Palmer v. City of Euclid*, 402 U.S. 544, 545 (1971) (per curiam) (finding that no man should be held criminally liable for conduct which he could not reasonably understand to be proscribed); See also *Kramer v. Price*, 712 F.2d 174, 176 (5th Cir. 1983) (holding that "[t]he absence of a determinate standard in a given legal proscription gives police officers, prosecutors, and the triers of fact unfettered discretion to apply the law, and thus there is a danger of arbitrary and discriminatory enforcement of such a law.").