

Spring 2008

The Illinois Criminal Code of 2009: Providing Clarity in the Law, 41 J. Marshall L. Rev. 815 (2008)

Governor James R. Thompson

Justice Gino DiVito

Peter G. Baroni

Kathy Saltmarsh

Daniel Mayerfeld

Follow this and additional works at: <https://repository.law.uic.edu/lawreview>



Part of the [Administrative Law Commons](#), [Courts Commons](#), [Criminal Law Commons](#), [Criminal Procedure Commons](#), [Judges Commons](#), [Jurisprudence Commons](#), [Law and Politics Commons](#), [Legislation Commons](#), [Litigation Commons](#), and the [State and Local Government Law Commons](#)

Recommended Citation

Governor James R. Thompson, Justice Gino DiVito, Peter G. Baroni, Kathy Saltmarsh & Daniel Mayerfeld, The Illinois Criminal Code of 2009: Providing Clarity in the Law, 41 J. Marshall L. Rev. 815 (2008)

<https://repository.law.uic.edu/lawreview/vol41/iss3/10>

This Article is brought to you for free and open access by UIC Law Open Access Repository. It has been accepted for inclusion in UIC Law Review by an authorized administrator of UIC Law Open Access Repository. For more information, please contact repository@jmls.edu.

THE ILLINOIS CRIMINAL CODE OF 2009: PROVIDING CLARITY IN THE LAW

GOVERNOR JAMES R. THOMPSON,¹ JUSTICE GINO DiVITO,² PETER G.
BARONI,³ KATHY SALTMARSH⁴ & DANIEL MAYERFELD⁵

TABLE OF CONTENTS

Article 2: Definitions.....	819
Article 3: Rights of Defendant.....	820
Article 4: Criminal Act and Mental State	821
Article 5: Parties to a Crime.....	823
Article 7: Justifiable Use of Force.....	824
Article 8: Solicitation, Conspiracy and Attempt	825
Article 9: Homicide.....	826
Article 10: Kidnapping and Related Offenses	828
Article 11: Sex Offenses	831
Article 12: Bodily Harm.....	838
Article 13: Terrorism	847
Article 14: Eavesdropping	849
Article 15: Definitions.....	849
Article 16: Theft and Related Offenses.....	850
Article 16J: Theft of Motor Fuel.....	859
Article 17: Deception.....	860
Article 18: Robbery.....	872
Article 19: Burglary	873
Article 20: Arson	874
Article 21: Damage and Trespass to Property	875
Article 22: Armed Offense	878

1. Senior Chairman, Winston & Strawn; Co-Chair, CLEAR Initiative Commission; Governor of Illinois (1977-1991); U.S. Attorney, Northern District of Illinois (1971-1975); Northwestern University JD, 1959.

2. Co-founder, Tabet DiVito & Rothstein LLC; Co-Chair, CLEAR Initiative Commission; Justice of the Illinois Appellate Court (1989 to 1997); Loyola University of Chicago School of Law JD, 1963.

3. Co-founder, Leinenweber & Baroni, Attorneys at Law and Consulting; Co-Director, CLEAR Initiative Commission; Howard University School of Law JD, 1996. Mr. Baroni is also a member of the adjunct faculty at the DePaul University College of Law.

4. Legislative Affairs Director for the Illinois Attorney General; former CLEAR Commission Co-Director (2006-2007); University of Illinois College of Law JD, 1992.

5. Associate, Skadden, Arps, Slate, Meagher & Flom LLP; Staff Attorney, CLEAR Initiative Commission (2004-2007); Chicago-Kent College of Law JD, 2003.

Article 23: Harms to Children and Students	878
Article 24: Deadly Weapons	882
Article 25: Mob Action	889
Article 26: Disorderly Conduct	890
Article 27: Money Laundering	893
Article 28: Gambling and Related Offenses	894
Article 29: Bribery in the Private Sector	894
Article 30: Interference with Penal Institution	895
Article 31: Interference with Public Officers	896
Article 32: Interference with Judicial Procedure	896
Article 33: Official Misconduct	899
Article 34: Public Contracts	900
Article 35: Animals	901
Article 36: Seizure and Forfeiture	904
Article 47: Public Nuisance	906
Article 47.5: Tobacco-Related Offenses	908
Article 47.10: Drug-Related Offenses	909
Article 48: Miscellaneous Article	922
Article 998: Savings Provisions Construction; Continuation of Prior Law	924
Chapter 505: Agriculture	924
Chapter 510: Animals	924
Chapter 525: Conservation	925
Chapter 740: Civil Liabilities	925
Chapter 815: Business Transactions	926
Chapter 730: Unified Code of Corrections	930
Eliminated Acts	930

INTRODUCTION⁶

This article⁷ explores the Criminal Code of 2009 (the "Code"),

6. The Illinois Criminal Code of 2009 is a product of the hard work and dedication of the CLEAR Initiative Commission to revise and modernize Illinois' criminal statutes.

CLEAR Initiative Commission to Revise the Illinois Criminal Code

Co-Chairs

Justice Gino DiVito

Governor James R. Thompson

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
 Appellate Defender Ted Gottfried

State's Attorney Robert Haida
 Attorney General Lisa Madigan
 Terri L. Mascherin
 Michael Metnick
 Representative Robert S. Molaro
 Giacomo "Jack" A. Pecoraro
 Stephen Pugh
 Ted Street
 Judge Michael P. Toomin

Co-Directors

Peter Baroni (2004-present)
 Jean Templeton (2004-2006)

Kathryn Saltmarsh (2006-2007)

Special Advisor

John Decker, Professor Emeritus at DePaul University College of Law

Legal Staff

Jennifer Hulvat (2004-2007)
 Dan Brown (2004-2006)

Daniel Mayerfeld (2004-2007)
 Jennifer Dlugosz (2006-2007)

Legal Interns

Benjamin Householder
 Joy Powers
 Keya Rajput

Emily Roschek
 Brad Schneiderman
 Nicholas Wendland

It is impossible to list and pay special tribute to everyone who has contributed to the preparation of the Code. We extend our special thanks to Chicago Metropolis 2020, and in particular, its Senior Executive, Paula Wolff. We further thank the financial and in-kind support from the Bank One Foundation; the Chicago Bar Foundation; the Field Foundation; David Heller; Illinois Bar Foundation; the JEHT Foundation; the Joyce Foundation; Mayer, Brown LLP; the New Prospect Foundation; The Pew Charitable Trusts; the Rokit Fund; the Steans Family Foundation; Skadden, Arps, Slate, Meagher & Flom LLP, the University of Chicago Law School; the Wieboldt Foundation; Winston & Strawn LLP; and the Woods Fund of Chicago.

7. The Illinois Legislature continues to consider the changes proposed by the CLEAR Initiative Commission. Therefore, all of the matters addressed in this article are not effective law as of the date this article was drafted. This article assumes that all of the CLEAR Initiative Commission's recommendations will be enacted into law, without substantive change. This article is drafted to correspond with the Sections of the Code, in the order in which they will appear once the Illinois legislature enacts into law all of the CLEAR Initiative Commission's recommendations.

which clarifies and eliminates redundancies and inconsistencies prevalent in former Illinois criminal law.⁸ The amendments implemented throughout the Code are the result of efforts by the Criminal Law Edit, Alignment and Reform Commission (“CLEAR Commission”). The CLEAR Commission, an independent commission co-chaired by Former Gov. James R. Thompson and former Illinois Appellate Court Justice Gino L. DiVito, and comprised of twenty-two prominent and diverse experts in the criminal justice system, conducted the first extensive study of the lengthy Illinois Criminal Code in over forty-five years. Through detailed analysis and unanimous decisions, the CLEAR Commission crafted a body of criminal laws that is logically organized, and free from redundancies and archaic and unconstitutional language.

Throughout the approximate half century since the enactment of the Criminal Code of 1961, the Illinois Legislature made countless changes to Illinois’ criminal laws. Although these changes were no doubt well-intended, they were not properly considered against the backdrop of the entire criminal code. The piecemeal changes produced a very lengthy document that was hard to navigate and difficult to understand. These changes resulted in a criminal code that contained numerous statutes that criminalized identical conduct, were inconsistent with one another, used archaic language, and did not reflect the body of well-established and well-reasoned case law in Illinois. The resultant confusion has led to lengthy and expensive disputes, retrials and delays in the criminal justice system.

The new Code is not intended to eradicate the corpus of the Criminal Code of 1961 and start anew, but instead to modernize, streamline and reorganize the criminal laws in Illinois and protect the efforts of the legislators who worked tirelessly to pass them.

This article is intended to highlight and explain the changes made in the Code, similar to the Committee Comments that often accompany a particular body of laws. Because the Code is designed to be understood by all readers without external explanation, it is unnecessary to detail the content of each statute in the Code. This article instead focuses upon the differences between the text of the new Code and the prior laws. As such, the authors of this article recommend to readers that they examine the text of the current laws alongside this article.

8. For a thorough introduction to the changes proposed by the CLEAR Initiative Commission that includes an explanation of the broad goals in crafting the Code, see John Decker, *The Mission of the Criminal Law Edit, Alignment, and Reform Commission (CLEAR): An Introductory Commentary*, 41 J. MARSHALL L. REV. 611 (2008).

ARTICLE 2: DEFINITIONS

Article 2⁹ is the general definitions Article that applies to the entire Criminal Code. Three definitions in Article 2 are changed.

2-2: "Act"

"Act" in Section 2-2 is defined as a "bodily movement."¹⁰ Previously, Section 2-2 did not define the word "act," but merely provided that it "includes a failure or omission to take action." The new definition of an "act" is consistent with Illinois case law,¹¹ and comports with the intent expressed in the 1961 Committee Comments¹² to define "act" as a physical movement.

A similar definition is used by at least thirteen other states, including Alabama, Arizona, Arkansas, Colorado, Delaware, Hawaii, Kentucky, Missouri, New York, Oregon, Tennessee, Texas, and Utah.¹³

2-3.3: "Bodily harm"

"Bodily harm" is defined in Section 2-3.3 to mean "any physical pain, injury to the body, illness or impairment of the physical condition of the body, regardless of gravity or duration." This definition codifies current Illinois case law and does not change the substantive law.¹⁴ It is consistent with the definition of "bodily harm or injury" found in the Model Penal Code and in the statutes of other states, including Indiana, Minnesota, New Jersey, New York, Ohio, Texas, Washington, and Wisconsin.¹⁵

9. Formerly 720 ILL. COMP. STAT. 5/2-5 to 5/2-22 (2006).

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

11. See *People v. Grant*, 71 Ill. 2d 551, 558 (1978) (using "bodily movement" to define an act).

12. 1961 Committee Comments, 161 (Smith-Hurd 1964).

13. ALA. CODE § 13A-2-1(1)(2005); ARIZ. REV. STAT. § 13-105(1)(2006); ARK. CODE ANN. § 5-2-201(1)(2006); COLO. REV. STAT. 18-1-501(1) (2004); DEL. COD. ANN. TIT. 11 § 243 (2007); HAW. REV. STAT. § 702-201 (2003); KY. REV. STAT. ANN. § 501.010(3) (2004); OR. REV. STAT. § 161.085(1) (2003); TENN. CODE ANN. § 39-16-401(1) (2006); TEX. PENAL CODE § 1.07(a)(1) (2004); UTAH CODE ANN. § 76-1-601(1) (1999); MO. REV. STAT. § 562.011(1)(2006); and N.Y. PENAL LAW § 15.00 (1)(2004).

14. *People v. Haywood*, 515 N.E.2d 45 (1987), 118 Ill.2d 263 (1987).

15. See, e.g., TEX. PENAL CODE ANN. § 1.07(a)(8) (2004) ("Bodily injury" means physical pain, illness, or any impairment of physical condition."); OHIO REV. CODE ANN. § 2901.01(A)(3) (2006) ("Physical harm to persons" means any injury, illness, or other physiological impairment, regardless of its gravity or duration"); IND. CODE ANN. § 35-41-1-4; N.Y. PENAL LAW § 10.00(9) (2004); MINN. STAT. § 609.02, Subd. 7; N.J. STAT. ANN. § 2C:3-11(e) (2005); WASH. REV. CODE § 9A.04.110(4) (2006); WIS. STAT. 939.22(4) (2005).

2-7.1: "Firearm" and "firearm ammunition"

Definitions from former Sections 2-7.1¹⁶ and 2-7.5¹⁷ for the terms "firearm" and "firearm ammunition" are consolidated and condensed in this section.

Article 3: Rights of Defendant

Article 3, Rights of Defendant,¹⁸ constrains the State's ability to prosecute defendants based on former prosecutions, the length of time since the crime was committed, and other reasons. The effect of a guilty plea to a lesser-included offense on subsequent prosecutions for the greater offense is clarified. A plea of guilty to a lesser-included offense is not an acquittal of the greater offense.

3-4: *Effect of Former Prosecution*

Current Illinois case law mandates that pleading guilty to a lesser-included offense is not an acquittal of the greater offense, and therefore does not bar future prosecutions for the greater offense.¹⁹ When a defendant pleads guilty to a lesser-included offense, there is no finding or verdict on the greater offense. Thus, jeopardy attaches only to the offense for which the defendant pled guilty.

This is an extension of the rules set forth in Section 3-4, *Effect of Former Prosecution*,²⁰ and is supported by the 1961

16. See former 720 ILL. COMP. STAT. 5/2-7.1 (2006) (providing that "firearm" and "firearm ammunition" have the meanings ascribed to them in Section 1.1 of the Firearm Owners Identification Card Act.).

17. See former 720 ILL. COMP. STAT. 5/2-7.5 (2006) (providing that "[f]irearm" has the meaning ascribed to it in Section 1.1 of the Firearm Owners Identification Card Act.).

18. Formerly 720 ILL. COMP. STAT. 5/3-1 to 3-8 (2006).

19. See *People v. McCutcheon*, 368 N.E.2d 886, 68 Ill.2d 101 (1977) (holding that pleading guilty to a lesser included offense does not amount to the acquittal of the greater offense); see also *Brennan v. People*, 15 Ill. 511 (1854) (holding that a defendant who is tried on all counts, and acquitted on some, is barred from retrial by double jeopardy).

20. See former 720 ILL. COMP. STAT. 5/3-4(a) (2006), which provides:

- (a) A prosecution is barred if the defendant was formerly prosecuted for the same offense, based upon the same facts, if such former prosecution:
- (1) Resulted in either a conviction or an acquittal or in a determination that the evidence was insufficient to warrant a conviction; or
 - (2) Was terminated by a final order or judgment, even if entered before trial, which required a determination inconsistent with any fact or legal proposition necessary to a conviction in the subsequent prosecution; or
 - (3) Was terminated improperly after the jury was impaneled and sworn or, in a trial before a court without a jury, after the first witness was sworn but before findings were rendered by the trier of facts, or after a plea of guilty was accepted by the court.

A conviction of an included offense is an acquittal of the offense charged.

Committee Comments.²¹ Section 3-4(a) provides that a subsequent prosecution for a greater offense is barred where there is a conviction for the lesser offense. When a defendant is convicted of the lesser offense, “the jury in effect rendered two verdicts: one of acquittal of the greater offense charged and one of conviction of the included offense.”²² This reasoning does not apply when the defendant pleads guilty to the lesser-included offense because there is no finding of fact on the greater offense.

Article 4: Criminal Act and Mental State

Article 4, Criminal Act and Mental State, defines, in part, the four mental states used throughout the Code: intent, knowledge, recklessness and negligence.²³ Intent and knowledge lie on a continuum such that intent is a higher form of knowledge.²⁴ A

21. 1961 Committee Comments, 216 (Smith-Hurd 1972).

22. 1961 Committee Comments, 216 (Smith-Hurd 1972).

23. 720 ILL. COMP. STAT. 5/4-4 (2006) defines “intent”:

[a] person intends, or acts intentionally or with intent, to accomplish a result or engage in conduct described by the statute defining the offense, when his conscious objective or purpose is to accomplish that result or engage in that conduct.

720 ILL. COMP. STAT. 5/4-5 (2006) defines “knowledge”:

A person knows, or acts knowingly or with knowledge of:

(a) The nature or attendant circumstances of his conduct, described by the statute defining the offense, when he is consciously aware that his conduct is of such nature or that such circumstances exist. Knowledge of a material fact includes awareness of the substantial probability that such fact exists.

(b) The result of his conduct, described by the statute defining the offense, when he is consciously aware that such result is practically certain to be caused by his conduct.

Conduct performed knowingly or with knowledge is performed willfully, within the meaning of a statute using the latter term, unless the statute clearly requires another meaning.

720 ILL. COMP. STAT. 5/4-6 (2006) defines “recklessness”:

“A person is reckless or acts recklessly, when he consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, described by the statute defining the offense; and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation. An act performed recklessly is performed wantonly, within the meaning of a statute using the latter term, unless the statute clearly requires another meaning.”

720 ILL. COMP. STAT. 5/4-7 (2006) defines “negligence”:

A person is negligent, or acts negligently, when he fails to be aware of a substantial and unjustifiable risk that circumstances exist or a result will follow, described by the statute defining the offense; and such failure constitutes a substantial deviation from the standard of care which a reasonable person would exercise in the situation.

24. See *People v. Fornear*, 680 N.E. 2d 1383, 176 Ill.2d 523 (1997) (holding that recklessness and knowledge are mutually inconsistent culpable mental states); *People v. Spears*, 493 N.E. 2d 1030, 112 Ill.2d 396 (1986) (defining the

person who acts intentionally is more criminally culpable than a person who acts knowingly. When a person acts intentionally, the person also, by definition, acts knowingly. A substitution statute has been added to the Code to recognize and give effect to this continuum between intent and knowledge.

4-5: Knowledge

A substitution statute added to Section 4-5, Knowledge, represents a minor substantive change in current Illinois law. The substitution statute states that “[w]hen the statute provides that acting knowingly suffices to establish an element of an offense, such element also is established if a person acts intentionally.” A defendant should not be acquitted of an offense that requires him or her knowingly to perform an act where in fact the defendant intentionally performed the act.

This substitution statute is limited to the mental states of intent and knowledge pursuant to concerns noted by the Illinois Supreme Court that recklessness is not a lesser form of knowledge.²⁵ Other states, as well as the Model Penal Code, provide broader substitution statutes that allow a finding of knowledge, recklessness or negligence upon proof of a “higher” mental state.²⁶ For example, pursuant to these broader substitution statutes, the element of recklessness will be satisfied with proof that the defendant acted knowingly. The Illinois Supreme Court does not view the mental states of intent, knowledge, recklessness, and negligence as existing on a strict continuum.²⁷ The Supreme Court finds a qualitative difference between the concepts behind knowledge and recklessness.²⁸ Therefore, this substitution statute is narrower than those of other states because it addresses only intent and knowledge in order to conform to Illinois law.

differences between intent, knowledge, and recklessness).

25. Fornear, 680 N.E. 2d at 1388 (clarifying that “knowledge” does not include “recklessness”); *see also* Spears, 493 N.E. 2d at 1033 (finding that a person who acts recklessly cannot act with knowledge).

26. MODEL PENAL CODE § 2.02(5); COLO. REV. STAT. 18-1-503; HAW. REV. STAT. § 702-208; TEX. PENAL CODE ANN. §6.02(d)-(e); MO. REV. STAT. § 562.021(4) (2006); OHIO REV. CODE ANN. § 2901.22(E) (2006); and S.D. CODIFIED LAWS § 22-1-2 (2006).

27. Fornear, 680 N.E. 2d 1383.

28. *Id.*

Article 5: Parties to a Crime

In Article 5, Parties to a Crime, the “common design rule” and its major defense, that presence at the scene of a crime alone is not sufficient for criminal liability, had not been stated in the prior criminal code. Courts have consistently interpreted Section 5-2²⁹ as encompassing the “common design rule,” which has been applied by the Illinois Supreme Court for over one hundred and fifty years. The rule and its defense are now included in Article 5.

5-2: When Accountability Exists

This codifies the “common design rule” and its accompanying “mere presence” defense.³⁰

This language has long been used by Illinois courts.³¹ The “common design rule” is used to determine whether a defendant has the requisite intent defined in Section 5-2(c). In *People v. Terry*, the Court emphasized that anyone who shares a common design with an offender is accountable for all criminal conduct in furtherance of the criminal design, even if the defendant did not know that his or her accomplice would escalate the actions (e.g.,

29. 720 ILL. COMP. STAT. 5/5-2 (2006) formerly provided:

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. 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 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.

30. The “common design rule” is now included in 720 ILL. COMP. STAT. 5/5-2 (2009), and states:

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.

31. *People v. Cooper*, 743 N.E. 2d 32, 194 Ill.2d 419 (2000).

from an aggravated battery to a murder).³² This rule has been applied by Illinois courts since at least 1854.³³

The “mere presence” defense, which states that a defendant’s presence at the scene of a crime, without more, is insufficient to support the finding of a common design, is also codified.³⁴ The defendant’s presence, however, may be considered with the other circumstances to determine whether the defendant is accountable for another’s criminal acts.³⁵

Article 7: Justifiable Use of Force

Article 7 of the Code defines the concepts of the justifiable use of force and exoneration. The compulsion defense is expanded, representing a change in Illinois law.

7-11: Compulsion

The compulsion defense, previously limited to situations when a person reasonably believed that imminent death or great bodily harm would be inflicted upon him, is expanded. The scope of the defense had encompassed threats made solely against a defendant and not to others.³⁶ This defense is expanded to include imminent threats of death or great bodily harm made to a defendant’s “spouse or child.” Illinois was alone among the 50 states to limit the scope of the compulsion defense to threats made solely to a person asserting the defense.

Some states, including New York, allow the defense of duress (compulsion) for threats made to “him or a third person.”³⁷ The Illinois structure is more akin to Kansas, which limits the scope of the defense to threats against a “spouse, parent, child, or brother or sister,” and in situations when a person reasonably believes imminent death or great bodily harm will be inflicted.³⁸

32. *People v. Terry*, 460 N.E.2d 746, 99 Ill. 2d 508 (1984); *see also* *Cooper*, 743 N.E. 2d 32 (upholding the validity of the common design rule); *People v. Kessler*, 315 N.E.2d 29, 57 Ill. 2d 493 (1974) (finding that one who aids another in the planning of commission of an offense is legally accountable for the conduct of the person he aids).

33. *See* *Brennan v. People*, 15 Ill. 511, 516 (1854) (holding that people who aid and abet crimes shall be punished as if they were a principal).

34. *See* *People v. Dennis*, 692 N.E.2d 325, 181 Ill. 2d 87 (1998) (finding that presence at the scene of a crime, without knowledge of the crime occurring, is not enough for accountability).

35. *Id.*

36. *See, e.g.,* *People v. Colone*, 372 N.E.2d 871, 56 Ill. App. 3d 1018, 1021 (1st Dist. 1978) (noting that the compulsion defense is only available to the person directly threatened).

37. N.Y. PENAL LAW § 40.00 (2007).

38. KAN. CRIM. CODE ANN. § 21-3209 (2007).

Article 8: Solicitation, Conspiracy and Attempt

Article 8, Solicitation, Conspiracy and Attempt, details the inchoate offenses used in the Code. Two of the three solicitation offenses are consolidated. A provision is added to Section 8-4, Attempt, allowing a defendant to mitigate a sentence after a finding of guilty for Attempted First Degree Murder.

Former Solicitation³⁹ and Solicitation of Murder⁴⁰ are combined into one statute. This amendment removes redundant language in two statutes and retains the specialized penalties. No change in the law is intended by this combination.

Solicitation of Murder for Hire is not consolidated into the Solicitation statute because the substantive elements of the offense differ from Solicitation and Solicitation of Murder.

8-2: Conspiracy

The former Conspiracy statute, by virtue of decades of amendments, has resulted in a sentencing scheme whereby conspiracies to commit Class 3 through Class X felonies can result in a sentence no greater than a Class 4 felony.⁴¹ The changes are intended to align the sentences for Conspiracy with the other inchoate offenses in the Code, Solicitation and Attempt. With these changes, conspiracies to commit felonies are punished one level below that of the target offense, with the exception of Class 3 and Class 4 felonies, which become Class A misdemeanors. The exceptions to the Conspiracy statute remain the same.

The sentencing provision from the eliminated offenses of Conspiracy to Commit Fraud⁴² and Organizer of an Aggravated Fraud Conspiracy⁴³ are preserved and incorporated into Section 8-2.

New organizer offenses are created relating to conspiracies to commit Treason, First Degree Murder, Aggravated Kidnapping, Aggravated Criminal Sexual Assault, and Predatory Criminal Sexual Assault of a Child. General conspiracies to commit these offenses are Class 1 felonies. Being an organizer of certain financial crimes is a Class X felony. To more appropriately align sentencing provisions in conspiracy offenses, being an organizer of the treason, murder and sex offenses are likewise now Class X felonies.

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

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

41. Formerly 720 ILL. COMP. STAT. 5.8-2(c) (2006).

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

43. Formerly 720 ILL. COMP. STAT. 5/46-4 (2006).

8-4: Attempt

A subsection is added to Attempt that allows a defendant who is found guilty of Attempt First Degree Murder to mitigate his or her sentence. At sentencing, upon proof by a preponderance of the evidence that he or she was acting under a sudden and intense passion resulting from serious provocation, a defendant shall be sentenced for a Class 1 felony.

This amendment is designed to cure the problems that have been identified by Illinois courts and legal commentators for the past twenty years regarding the interplay between the attempt statute and the crime of second-degree murder (previously, Voluntary Manslaughter). As early as 1983 in *People v. Reagan*,⁴⁴ the Illinois Supreme Court has rejected the notion that under the structure of the former Illinois attempt statute, it was logically possible to recognize the offense of Attempted Second Degree Murder (then voluntary manslaughter). The Court reaffirmed its belief that this result was logically impossible following creation of the Second Degree Murder statute.⁴⁵

Under the former construction, a person who attempted to kill another, with or without mitigating circumstances, was sentenced to a mandatory term of imprisonment between six and thirty years for Attempted First Degree Murder. Someone who intended to kill, and succeeded, was subject to a sentencing range of 4 to 20 years with the possibility of probation, if the person established that he or she acted under serious provocation or under the unreasonable belief that he or she was acting in self defense. Identical conduct may result in vastly disparate sentences, depending on whether the victim lives or dies.

Specifically providing for a mitigated form of attempted murder for an individual acting under sudden and intense provocation reconciles both the Court opinions invalidating application of the attempt statute to Second Degree Murder and the sentencing anomaly in Illinois resulting from those opinions.

Article 9: Homicide

Most of the homicide statutes, including the death penalty provisions, are unchanged. Process and procedure in Second Degree Murder cases are clarified. There are clarifications in the offense of Concealment of Homicidal Death, and one provision is relocated within the statute.

44. *People v. Regan*, 457 N.E.2d 1260, 99 Ill. 2d 238 (1983).

45. *People v. Lopez*, 655 N.E.2d 864, 166 Ill. 2d 441 (1995).

9-2: *Second Degree Murder*

Eliminating certain language in former subsection (c) of the statute accomplished two goals: (1) to clarify that the State may charge Second Degree Murder and (2) to alleviate concern that the existing language structures the order of jury deliberations.⁴⁶ Part of the first sentence and the final sentence of subsection (c) are eliminated to accomplish this clarification.

In 1987, the offense of Second Degree Murder was created to replace Voluntary Manslaughter.⁴⁷ The Voluntary Manslaughter statute prior to 1987 applied to unjustified killings where the defendant (1) harbored a sudden and intense passion resulting from a serious provocation, or (2) unreasonably believed that the killing was justified. After 1987, Second Degree Murder was defined as First Degree Murder, plus the same mitigating factors.⁴⁸

It was unclear under the Second Degree Murder statute as originally drafted whether the State could charge Second Degree Murder, or whether the initial charge would have to be First Degree Murder. Illinois courts have held that the State may initially charge Second Degree Murder.⁴⁹ Removing the final sentence in subsection (c) is intended to clarify that the State may initially charge Second Degree Murder.

46. 720 ILL. COMP. STAT. 5/9-2(c) (2006) previously provided:

(c) When a defendant is on trial for first degree murder and evidence of either of the mitigating factors defined in subsection (a) of this section has been presented, the burden of proof is on the defendant to prove either mitigating factor by a preponderance of the evidence before the defendant can be found guilty of second degree murder. However, the burden of proof remains on the State to prove beyond a reasonable doubt each of the elements of first degree murder and, when appropriately raised, the absence of circumstances at the time of the killing that would justify or exonerate the killing under the principles stated in Article 7 of this Code. In a jury trial for first degree murder in which evidence of either of the mitigating factors defined in subsection (a) of this section has been presented and the defendant has requested that the jury be given the option of finding the defendant guilty of second degree murder, the jury must be instructed that it may not consider whether the defendant has met his burden of proof with regard to second degree murder until and unless it has first determined that the State has proven beyond a reasonable doubt each of the elements of first degree murder.

47. See Pub. Act 84-1450 (codified at 720 ILL. COMP. STAT. 5/9-2) reprinted in LAWS OF THE STATE OF ILLINOIS, Eighty-Fourth General Assembly (1986) (providing Public Act record eliminating Voluntary Manslaughter).

48. *Id.*

49. See *People v. Burks*, 545 N.E.2d 782, 189 Ill. App. 3d 782, 785 (3d Dist. 1989) (indicating that the statute does not prohibit the State from initially charging a defendant with second degree murder).

9-3.4: Concealment of Homicidal Death

The terms “conceal” and “homicidal means” are defined in a manner consistent with Illinois Pattern Jury Instructions 7.13 and 7.14. These definitions derive from Illinois case law.⁵⁰

Redundant language in subsection (b), requiring that the sentence for Concealment of Homicidal Death be imposed separately and in addition to the penalty for First Degree Murder, Second Degree Murder or Involuntary Manslaughter, is removed from the statute.⁵¹ In July 2004, Section 5/5-8-4(a) of the Unified Code of Corrections was amended to require, among other things, that consecutive sentencing be imposed where a defendant is convicted of a violation of Section 5/9-3.1, Concealment of Homicidal Death.⁵² Subsection (v) of this section controls any time there is a Concealment conviction.

The offense of Concealment of Homicidal Death⁵³ is relocated within Article 9, Homicide, to allow those offenses that parallel unborn child provisions to appear sequentially in the Code. This offense had been located between Involuntary Manslaughter and Reckless Homicide, Section 9-3, and Involuntary Manslaughter and Reckless Homicide of an Unborn Child, Section 9-3.2. Concealment of Homicidal Death is moved to the end of the Article, so it does not separate parallel offenses.

In the offense of Concealment of Homicidal Death, the sentencing provision follows the newly created definitions subsections. The penalty for the offense follows its substantive definition and the definitions of two of its terms.

The mental state “knowingly” is added.

Article 10: Kidnapping and Related Offenses

Article 10, Kidnapping and Related Offenses, houses Kidnapping and other offenses related to the unwanted restraint

50. See *People v. Stiles*, 360 N.E.2d 1217, 46 Ill. App. 3d 359, 363 (3d Dist. 1977) (defining the elements of “concealing homicidal death.”); *People v. Coslet*, 349 N.E.2d 496, 39 Ill. App. 3d 302, 304 (4th Dist. 1976) (defining “death by homicidal means” as the “act of a human being taking away life of another human being.”).

51. Subsection (b) previously provided:

(b) Nothing in this section prevents the defendant from also being charged with and tried for the first degree murder, second degree murder or involuntary manslaughter of the person whose death is concealed. If a person convicted under this section is also convicted of first degree murder, second degree murder or involuntary manslaughter, the penalty under this section shall be imposed separately and in addition to the penalty for first degree murder, second degree murder or involuntary manslaughter.

720 ILL. COMP. STAT. 5/9-3.1(b) (2006).

52. 730 ILL. COMP. STAT. 5/5-8-4(a)(v) (2006).

53. Formerly 720 ILL. COMP. STAT. 5/9-3.1 (2006).

of another. Added to this Article is the offense formerly housed in Article 10A, Trafficking in Persons and Involuntary Servitude. Trafficking in Persons and Involuntary Servitude,⁵⁴ is also renamed and reorganized. Other changes fill the gaps in Illinois law and harmonize mental states and spelling. In Article 10, Child Abduction and Related Offenses, a mandatory presumption, unconstitutional language and an accountability provision are removed, and a definition is added. No substantive change is intended by the alterations in this section.

10-1: Kidnapping

Kidnapping⁵⁵ now states that a “severely and profoundly mentally retarded person” cannot give consent for his or her confinement. This change derives from Illinois case law and codifies *People v. Castro*.⁵⁶ Intent is substituted for purpose as a mental state with respect to a demand for ransom and is located in subsection 10-1(a)(1) of the new Code. Also, the spelling of “kidnapping” is made consistent throughout.

10-5: Child Abduction

There are four changes in Child Abduction. First, a new paragraph, (a)(4), defines a “putative father” as “a man who has a reasonable belief that he is the father of a child born of a woman who is not his wife.” Whether a defendant is a putative father may determine whether a defendant can be convicted of Child Abduction or Kidnapping.

Second, the mental state of “knowingly” is added to subsections (b)(6) through (b)(9).

Third, a permissive inference replaces the mandatory presumption in Section 10-5(b)(10).⁵⁷ This eliminates a constitutionally suspect provision.⁵⁸ The phrase “the trier of fact may infer,” is substituted for “shall be prima facie evidence of intent” to meet constitutional tests.

54. Formerly 720 ILL. COMP. STAT. 5/10A-5 to A-20. (2006).

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

56. *People v. Castro*, 446 N.E.2d 1267, 113 Ill. App. 3d 265, 270 (1st Dist. 1983).

57. The previous mandatory presumption provided:

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).

58. See *People v. Pomykala*, 784 N.E.2d 784, 203 Ill. 2d 198 (2003) (finding a prohibited mandatory presumption of recklessness in reckless homicide); *People v. Miles*, 800 N.E.2d 122, 344 Ill. App. 3d (2d Dist. 2003) (affirming *Pomykala*).

Finally, a new provision, (b)(11), is added that incorporates certain aspects of former Aiding and Abetting Child Abduction, Section 10-7.⁵⁹ The accountability portions are eliminated as duplicative of the general accountability statute in Section 5-2 of the new Code. The statute contained two obstruction of justice provisions, one dealing with apprehending the offender and one addressing finding the victim. The offense of Obstructing Justice already penalizes efforts to prevent the apprehension of the offender;⁶⁰ therefore, the portion of Section 10-7 dealing with apprehending the offender is unnecessary. The remaining portions of former Section 10-7, addressing efforts to prevent the location of the victim, are placed in the new Section (b)(11).

Elimination of the accountability provisions in Section 10-7 partially alters the sentencing structure and the available defenses. A defendant accountable for a second or subsequent violation of subsection 10-5(b)(10) is sentenced to a Class 4 felony under former Section 10-7; it is now a Class 3 felony.

Although the defenses available to a person through the provision captioned "When Accountability Exists"⁶¹ are technically greater than those formerly available in Section 10-7, these defenses are rarely an issue. Former Section 10-7 provided only the defense that the defendant made a proper effort to prevent the commission of the offense. The general Accountability provision in Article 5 allows two additional defenses: that the defendant was a victim and that the offense is defined such that the defendant's conduct is inevitably incident to the commission of the offense.⁶²

10-5.5: Unlawful Visitation Interference

Subsection (h) of Section 10-5.5 is deleted because the Illinois Supreme Court held this provision unconstitutional.⁶³

10-9: Trafficking of Persons and Involuntary Servitude-Related Offenses

Trafficking of Persons and Involuntary Servitude⁶⁴ is renamed and reorganized. The offense is placed in Article 10 of

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

60. 720 ILL. COMP. STAT. 5/31-4 (2006).

61. 720 ILL. COMP. STAT. 5/5-2 (2006).

62. 720 ILL. COMP. STAT. 5/5-2(c)(1),(2) (2006).

63. *People v. Warren*, 671 N.E.2d 700, 173 Ill. 2d 348 (1996). Formerly, subsection 10-5.5(h) provided that,

A person convicted of unlawful visitation interference shall not be subject to a civil contempt citation for the same conduct for violating visitation provisions of a court order issued under the Illinois Marriage and Dissolution of Marriage Act.

720 ILL. COMP. STAT. 5/10-5.5(h) (2006).

64. Formerly 720 ILL. COMP. STAT. 5/10A-5 to A-20 (2006).

the Code, which contains, among others, the offenses of Kidnapping and Unlawful restraint. It is placed in proximity to Kidnapping and Unlawful Restraint because of their shared scope.

The offense is reorganized to conform to other Code offenses. The crimes of Involuntary Servitude, Involuntary Servitude of a Minor, Trafficking of Persons for Forced Labor or Services, and Aggravating Factors⁶⁵ are contained in subsections (b)-(h) of the consolidated statute. The definitions are retained as subsection (a) because the terms are particular to the offenses. A forfeiture provision is relocated to Article 36, Seizure and Forfeitures, because it resembles other forfeiture provisions that appear in the Code. Sentencing factors for courts to consider and directives to the Illinois Attorney General are also consolidated as subsections (i)-(l). No substantive change is intended by this reorganization and relocation.

Article 11: Sex Offenses

Article 11⁶⁶ is reorganized to house the sex offenses, which were previously spread throughout the Code. Many of these statutes were located in Article 12, Bodily Harm. Article 11 begins with the definitions generally applicable to all of the provisions in the Article. These definitions are derived from the individual sections now housed in Article 11. Some definitions applicable to individual offenses are retained in those offenses. The next sections are the indecent solicitation and exploitation offenses, followed by the family-related sex crimes. Article 11 then defines the sexual assault and abuse offenses and related provisions.

The offenses of Bigamy⁶⁷ and Marrying a Bigamist⁶⁸ are consolidated because they address similar subjects in the context of unauthorized marriage. Based upon the Committee Comments to the 1961 Code, the cohabitation clauses in both Bigamy and Marrying a Bigamist are removed to clarify that it is the subsequent marriage, either in Illinois or in another state, that is an element of the offense. The fact of cohabitation is secondary to the remarriage, and is thus immaterial to culpability.

The Prostitution offenses in Article 11 are reorganized, and several are consolidated into two primary statutes, Promoting Prostitution and Promoting Juvenile Prostitution. The forfeiture provisions in the offenses of Keeping a Place of Juvenile Prostitution⁶⁹ and Exploitation of a Child⁷⁰ are transferred and

65. See generally former 720 ILL. COMP. STAT. 5/10A-10 (2006) (listing criminal provisions and sentence enhancements).

66. Formerly 720 ILL. COMP. STAT. 5/11-6 to 5/11-24 (2006).

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

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

69. Formerly 720 ILL. COMP. STAT. 5/11-17.1 (2006).

incorporated into Article 36, Seizure and Forfeitures. The offense of Prostitution⁷¹ remains unchanged with the exception of an added mental state, and provides the basis for the two consolidated offenses. The offenses consolidated include: Soliciting for a Prostitute,⁷² Soliciting for a Juvenile Prostitute,⁷³ Keeping a Place of Prostitution,⁷⁴ Keeping a Place of Juvenile Prostitution,⁷⁵ Pimping,⁷⁶ Juvenile Pimping and Aggravated Juvenile Pimping,⁷⁷ and Exploitation of a Child.⁷⁸

To enhance clarity, two terms, or types of conduct, are defined in the comprehensive Prostitution statutes. The base conduct is then aggravated by the factors formerly included in the several statutes without changing the penalties involved. This configuration streamlines the prostitution-related offenses in the Code and avoids confusion in interpreting the differences among the conduct involved.

The offense of Keeping a Place of Juvenile Prostitution did not include a severely or profoundly mentally retarded person component.⁷⁹ Promoting Juvenile Prostitution includes this element in every instance in which a theory of culpability exists where a prostitute under 16 years of age is a component of the offense. This substantive change affects only the incorporated Keeping a Place of Juvenile Prostitution offense. Because the offense of Aggravated Juvenile Pimping targets extremely young children exclusively, the severely or profound mental retardation language is not added.

The procedural language requiring the pleading of the prior conviction in the charging document is removed from the incorporated offenses of Soliciting for a Prostitute,⁸⁰ Keeping a Place of Prostitution,⁸¹ Patronizing a Prostitute,⁸² and Pimping.⁸³ The Illinois Supreme Court compared this language with a similar provision⁸⁴ in the Code of Criminal Procedure.⁸⁵ The Court concluded that language that has been eliminated in each of the

70. Formerly 720 ILL. COMP. STAT. 5/19.2 (2006).

71. Formerly 720 ILL. COMP. STAT. 5/11-14 (2006).

72. Formerly 720 ILL. COMP. STAT. 5/11-15 (2006).

73. Formerly 720 ILL. COMP. STAT. 5/11-15.1 (2006).

74. Formerly 720 ILL. COMP. STAT. 5/11-17 (2006).

75. Formerly 720 ILL. COMP. STAT. 5/11-17.1 (2006).

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

77. Formerly 720 ILL. COMP. STAT. 5/11-19.1 (2006).

78. Formerly 720 ILL. COMP. STAT. 5/11-19.2 (2006).

79. Formerly 720 ILL. COMP. STAT. 5/11-17.1 (2006).

80. Formerly 720 ILL. COMP. STAT. 5/11-15 (2006).

81. Formerly 720 ILL. COMP. STAT. 5/11-17 (2006).

82. Formerly 720 ILL. COMP. STAT. 5/11-18 (2006).

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

84. 725 ILL. COMP. STAT. 5/111-3(c) (2006).

85. *People v. Jamison*, 642 N.E.2d 1207, 162 Ill. 2d 282, 289-90 (1994).

prostitution offenses is unnecessary in light of this similar language.⁸⁶ The Court determined that the legislature intended Section 111-3(c) to serve as a general “catch-all” notice provision requiring the State to give notice in the charging instrument whenever a defendant is charged with a higher classification offense because of a prior conviction.⁸⁷

Article 11 ends with the obscenity-related offenses. Along with the reorganization, mental states are added where necessary and like provisions are consolidated.

11-0.5: Definitions

“Accused”

This definition is amended to clarify that an “accused” includes a person accused of committing the offense of Predatory Criminal Sexual Assault of a Child. The previous definition included references to Criminal Sexual Assault, Aggravated Criminal Sexual Assault, Criminal Sexual Abuse and Aggravated Criminal Sexual Abuse, but not Predatory Criminal Sexual Assault of a Child.⁸⁸

“Child pornography”

The definition of “child pornography” is taken from the former Child Pornography statute.⁸⁹ This definition is transferred to the beginning of Article 11 and replaces the former definition of “child.”⁹⁰ The Illinois Supreme Court recognized that a serious syntax problem existed in former Section 11-20.1(f)(7) where “child” was defined as prohibiting “pictures and movies of pictures and movies.”⁹¹ The Court read the definition of “child” as the

86. *Id.* at 289.

87. *Id.* at 290.

88. Formerly 720 ILL. COMP. STAT. 5/12-12(a) (2006).

89. Formerly 720 ILL. COMP. STAT. 5/11-20.1(f)(7) (2006).

90. The previous definition of child provided:

(7) “Child” includes a film, videotape, photograph, or other similar visual medium or reproduction or depiction by computer that is, or appears to be, that of a person, either in part, or in total, under the age of 18, regardless of the method by which the film, videotape, photograph, or other similar visual medium or reproduction or depiction by computer is created, adopted, or modified to appear as such. “Child” also includes a film, videotape, photograph, or other similar visual medium or reproduction or depiction by computer that is advertised, promoted, presented, described, or distributed in such a manner that conveys the impression that the film, videotape, photograph, or other similar visual medium or reproduction or depiction by computer is of a person under the age of 18.

720 ILL. COMP. STAT. 5/11-20.1(f)(7) (2006).

91. *People v. Alexander*, 791 N.E.2d 506, 204 Ill. 2d 472, 481 (2003).

definition of “child pornography.”⁹²

“Internet”

This section is derived from former subsection (c) of Posting of Identifying Information on a Pornographic Internet Site.⁹³ Along with transferring the definition to the beginning of the Article, the definition is updated. The statute previously defined the “internet” by stating that it “includes the World Wide Web, electronic mail, a news group posting, or internet file transfer.”⁹⁴ This new definition is updated to reflect the expanding scope of the internet. This more modern definition is derived from former Article 16J, Online Property Offenses, which more recently defined the “internet.”⁹⁵

“Victim”

This definition is amended to clarify that a “victim” includes a person subjected to the offense of Predatory Criminal Sexual Assault of a Child. The previous definition included references to Criminal Sexual Assault, Aggravated Criminal Sexual Assault, Criminal Sexual Abuse and Aggravated Criminal Sexual Abuse, but not Predatory Criminal Sexual Assault of a Child.⁹⁶

11-6.5: Indecent Solicitation of an Adult

The mental state of “knowingly” is added to Section 11-6.5, Indecent Solicitation of an Adult.

11-6.15: Permitting Sexual Abuse of a Child

This offense is transferred from the former offense of Permitting Sexual Abuse of a Child⁹⁷ in the former Wrongs to Children Act.⁹⁸ The definitions from this offense are removed and transferred to the definitions section at the beginning of the

92. *Id.*

93. Formerly 720 ILL. COMP. STAT. 5/ 11-23(c) (2006).

94. Formerly 720 ILL. COMP. STAT. 5/11-23(c)(2) (2006).

95. See 720 ILL. COMP. STAT. 720 5/16J-5, which defines “internet” as:
 “Internet” means an interactive computer service or system or an information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, and includes, but is not limited to, an information service, system, or access software provider that provides access to a network system commonly known as the Internet, or any comparable system or service and also includes, but is not limited to, a World Wide Web page, newsgroup, message board, mailing list, or chat area on any interactive computer service or system or other online service.

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

96. Formerly 720 ILL. COMP. STAT. 5/12-12(g) (2006).

97. Formerly 720 ILL. COMP. STAT. 150 (2006).

98. Formerly 720 ILL. COMP. STAT. 150/0.01 (2006).

Article.

11-6.25: Bigamy and Marrying a Bigamist

The offenses of Bigamy⁹⁹ and Marrying a Bigamist¹⁰⁰ are combined because these statutes prohibit similar conduct in the context of marrying another when already married, or with knowledge that the other person is married. The provisions are reorganized without major substantive change to promote clarity in the Code. The mental state “knowingly” is inserted into Bigamy so that the offenses of Bigamy and Marrying a Bigamist have the same mental state. The cohabitation clauses in both former offenses are removed to clarify that the subsequent marriage, in Illinois or outside the state, is required to occur before liability can attach under the statute.

Bigamy previously contained four defenses that involved the bigamist’s reasonable belief that his or her first marriage was dissolved by decree, death, absence or other reasonable excuse.¹⁰¹ These defenses are extended to those charged with Marrying a Bigamist. The reasonable beliefs of a person who marries a bigamist are as relevant as the reasonable beliefs of the bigamist with regard to the status of the prior marriage.

11-6.35: Criminal Sexual Assault and Aggravated Criminal Sexual Assault

This section is derived from a combination of Criminal Sexual Assault¹⁰² and Aggravated Criminal Sexual Assault.¹⁰³ The names of the offenses are retained in this section and no substantive change is intended by the consolidation.

As part of the consolidation, surplus indictment language is removed from former Criminal Sexual Assault.¹⁰⁴ This language is

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

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

101. The former section provided:

(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 reasonably believed that he was legally eligible to

remarry.

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

102. Formerly 720 ILL. COMP. STAT. 5/12-13 (2006).

103. Formerly 720 ILL. COMP. STAT. 5/12-14 (2006).

104. The removed language is from former Section 12-13(b)(5), which provided:

(5) When a person has any such prior conviction, 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 Class X felony. The fact of such prior conviction is not an element of the offense

unnecessary because it is redundant of 725 Ill. Comp. Stat. 5/111-3(c), which applies to all criminal prosecutions.¹⁰⁵

11-6.45: Criminal Sexual Abuse and Aggravated Criminal Sexual Abuse

This section is a combination of Criminal Sexual Abuse¹⁰⁶ and Aggravated Criminal Sexual Abuse.¹⁰⁷ The names of the offenses are retained, and no substantive change is intended by the consolidation.

11-6.60: General Provisions

Section 11-6.60, General Provisions,¹⁰⁸ is clarified to ensure that it encompasses people accused of committing the offense of Predatory Criminal Sexual Assault of a Child.¹⁰⁹

11-6.70: Prostitution

The mental state “knowingly” is added.

11-6.75: Promoting Prostitution; 11-6.80: Promoting Juvenile Prostitution

The mental state “knowingly” is added to the incorporated offenses of Soliciting for a Prostitute,¹¹⁰ Pandering,¹¹¹ Keeping a Place of Prostitution,¹¹² and Exploitation of a Child.¹¹³ The term “anything of value” is inserted in the definition of “profits from prostitution” to encompass the exchange of money, property,

and may not be disclosed to the jury during trial unless otherwise permitted by issues properly raised during such trial.

720 ILL. COMP. STAT. 5/12-13(b)(5) (2006).

105. See *People v. Jameson*, 642 N.E.2d 1207, 162 Ill. 2d 282, 288-90 (1994) (stating that 725 ILL. COMP. STAT. 5/111-3(c) was a catch-all notice provision for twenty-six offenses, of which none already contained such provisions).

106. Formerly 720 ILL. COMP. STAT. 5/12-15 (2006).

107. Formerly 720 ILL. COMP. STAT. 5/12-16 (2006).

108. Formerly 720 ILL. COMP. STAT. 5/12-18(a) (2006).

109. This subsection stated:

No person accused of violating Sections 12-13, 12-14, 12-15 or 12-16 of this Code shall be presumed to be incapable of committing an offense prohibited by Sections 12-13, 12-14, 12-14.1, 12-15 or 12-16 of this Code because of age, physical condition or relationship to the victim, except as otherwise provided in subsection (c) of this section. Nothing in this section shall be construed to modify or abrogate the affirmative defense of infancy under Section 6-1 of this Code or the provisions of Section 5-805 of the Juvenile Court Act of 1987.

720 ILL. COMP. STAT. 5/12-18(a) (2006).

110. Formerly 720 ILL. COMP. STAT. 5/11-15 (2006).

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

112. Formerly 720 ILL. COMP. STAT. 5/11-17 (2006).

113. Formerly 720 ILL. COMP. STAT. 5/11-19.2 (2006).

token, object, or article or anything of value as contained in former Prostitution provisions that are consolidated. Finally, the compulsion component present in the sentencing provision of the former Pandering statute is removed.¹¹⁴ When originally added to the Code, Pandering contained gradations in sentence based upon the nature of the conduct involved.¹¹⁵ Through the years, those gradations have been eliminated, and Pandering¹¹⁶ is punished as a Class 4 felony regardless of whether the conduct was a result of compulsion.

11-6.85: Patronizing a Prostitute; 11-6.90: Patronizing a Juvenile Prostitute

The mental state “knowingly” is added to the offense of Patronizing a Prostitute.¹¹⁷ The language describing the prohibited sexual conduct is changed to uniformly define prohibited sexual behavior committed by a prostitute or a person patronizing a prostitute. The added language is intended to enhance clarity by consistently defining and criminalizing the same sexual activity between prostitutes and their patrons.

11-6.110: Obscenity

A permissive inference replaces the previous mandatory presumption in Section 11-6.110, Obscenity.¹¹⁸

11-6.115: Child Pornography

The mental state of “knowingly” is added to subsection (a)(7) of this section. This provision is the only offense in Child Pornography that does not include an explicit mental state. The other provisions require the defendant to know the victim’s status or the content of the material at issue. This inserted mental state does not apply to the prohibited act of solicitation because a solicitation, as defined in Section 8-1, requires the intent that an offense be committed.¹¹⁹

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

115. ILL. REV. STAT. ch. 38, § 11-16 (1961).

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

117. Formerly 720 ILL. COMP. STAT. 5/11-18 (2006).

118. The mandatory presumption in the former Obscenity offense provided:

The creation, purchase, procurement or possession of a mold, engraved plate or other embodiment of obscenity specially adapted for reproducing multiple copies, or the possession of more than 3 copies of obscene material shall be prima facie evidence of an intent to disseminate.

720 ILL. COMP. STAT. 5/11-20(e) (2006).

119. Section 8-1, Solicitation, provided, in pertinent part, that “[a] person commits solicitation when, with intent that an offense be committed, other than first degree murder, he commands, encourages or requests another to commit that offense.” 720 ILL. COMP. STAT. 5/8-1(a) (2006).

Along with the added mental state, the former mandatory presumption in subsection (a)(4) of this section is replaced with a permissive inference.¹²⁰

11-6.120: Harmful Material

The archaic mental state of “purpose” is replaced with “intent” in subsection (f) of Section 11-6.120, Harmful Material. Also, the word “that” is replaced with “who,” because the offense refers to people and not to things.

11-6.125: Posting of Identifying Information on a Pornographic Internet Site

The mental state of “knowingly” is added to subsection (a) of Section 11-6.125, Posting of Identifying Information on a Pornographic Internet Site.

Article 12: Bodily Harm

Article 12¹²¹ is consolidated and reorganized. A “Definitions” section is created to centralize and group definitions generally applicable to the offenses in Article 12. The corresponding definitions in the individual statutes are eliminated, except that some definitions applicable to individual offenses are retained in those offenses. The offenses of Aggravated Assault¹²² and Aggravated Battery¹²³ are reorganized and simplified to group offenses according to common categories.

Aggravated Assault¹²⁴ is reorganized to reduce the overall number of aggravating factors and to streamline the provision. Five domestic battery-related offenses are reorganized and consolidated into three offenses, which are placed in proximity to one another for easier reference. Similarly, three stalking-related offenses are consolidated into one offense, and provisions that separately punished abuse of elderly persons and those in nursing homes are combined. Also combined are two offenses that punish “slumlords.” Reckless Conduct, Vehicular Endangerment, and Common Carriers Recklessness are reorganized without

120. The former mandatory presumption provided:

Possession by the defendant of more than one of the same film, videotape or visual reproduction or depiction by computer in which child pornography is depicted shall raise a rebuttable presumption that the defendant possessed such materials with the intent to disseminate them.

720 ILL. COMP. STAT. 5/11-20.1(b)(4) (2006).

121. Formerly 720 ILL. COMP. STAT. 5/12-1 to 12-36 (2006).

122. Formerly 720 ILL. COMP. STAT. 5/12-2 (2006).

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

124. Formerly 720 ILL. COMP. STAT. 5/12-2 (2006).

substantive change. Home Invasion, Vehicular Invasion, Child Endangerment Offenses, Sale of Yo-yo Waterballs, and a provision prohibiting narcotics-related fires are relocated to other parts of the Code and the Illinois Compiled Statutes. Mental states are added to the offenses of Assault, Violation of an Order of Protection, and Common Carriers Recklessness, while superfluous mental states and other language are removed from Aggravated Assault and Aggravated Stalking.

To enhance clarity, offenses defining particularized forms of Aggravated battery are consolidated into the offense of Aggravated Battery. Mental states are added and adjusted where necessary. Finally, offenses related to intimidation have been consolidated and simplified.

The sex-related offenses previously found in Article 12, Bodily Harm, are transferred to Article 11, Sex Offenses, which is intended to now contain all of the sex offenses in the Code. Also, former Tattooing the Body of Minor,¹²⁵ and Piercing the Body of a Minor,¹²⁶ are consolidated into one section, Tattooing or Piercing the Body of a Minor,¹²⁷ and transferred to the Article concerning harms to children and students.

12-1: Definitions

Most definitions from throughout the former Article 12 concerning bodily harm are relocated to a definitions section at the beginning of the Article.

“Sporting Venue”

The “24 hour” language in the entertainment provisions included in Aggravated Battery and Aggravated Assault¹²⁸ is

125. Formerly 720 ILL. COMP. STAT. 5/12-10 (2006).

126. Formerly 720 ILL. COMP. STAT. 5/12-10.1 (2006).

127. 720 ILL. COMP. STAT. 5/12-10 to 12-10.1 (2006)

128. The relevant language in the former offense of Aggravated Assault provided:

(a) A person commits an aggravated assault, when, in committing an assault, he:

...

(9.5) Is, or the individual assaulted is, in or about a publicly or privately owned sports or entertainment arena, stadium, community or convention hall, special event center, amusement facility, or a special event center in a public park during any 24-hour period when a professional sporting event, National Collegiate Athletic Association (NCAA)-sanctioned sporting event, United States Olympic Committee-sanctioned sporting event, or International Olympic Committee-sanctioned sporting event is taking place in this venue.

720 ILL. COMP. STAT. 5/12-2(a)(9.5) (2006).

The relevant language in the former offense of Aggravated Battery provided:

(b) In committing a battery, a person commits aggravated battery if he

clarified and replaced with “12 hours before or after the event” language.

12-101: Assault; 12-102: Aggravated Assault

Former Assault¹²⁹ and Aggravated Assault¹³⁰ are not substantively altered. Like Aggravated Battery, Aggravated Assault is reorganized into three general categories based upon the location of conduct, status of a victim, and conduct of a defendant. Each of the aggravating subsections in the former Aggravated Assault fits into one of these general categories. These subsections are consolidated to provide more structure to this provision. The definitions contained in Aggravated Assault are relocated to a general definitions provision in Article 12 to streamline the statute.

Redundant language relating to the use and discharge of a deadly weapon or firearm is eliminated. The reorganized Section 12-2(b)(4), as well as a reference to the use and discharge of a deadly weapon or firearm in Section 12-2(c)(1), eliminates the need for the complicated language regarding the discharge of a weapon found in the former provision. The mental state “knowingly” is also added to Assault. A small change is also made to the category of Assault protecting those who attend sporting events. The time frame is limited to the 12 hours before or after an event.

12-103: Battery

The “intentional” mental state is eliminated as unnecessary because of the substitution statute.

12-104: Battery of an Unborn Child and Aggravated Battery of an Unborn Child

Former Battery of an Unborn Child¹³¹ and Aggravated Battery of an Unborn Child¹³² are combined in Article 12. A mental state is clarified in Battery of an Unborn Child to include

or she:

...

(8.5) Is, or the person battered is, on a publicly or privately owned sports or entertainment arena, stadium, community or convention hall, special event center, amusement facility, or a special event center in a public park during any 24-hour period when a professional sporting event, National Collegiate Athletic Association (NCAA)-sanctioned sporting event, United States Olympic Committee-sanctioned sporting event, or International Olympic Committee-sanctioned sporting event is taking place in this venue.

720 ILL. COMP. STAT. 5/12-4(b)(8.5) (2006).

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

130. Formerly 720 ILL. COMP. STAT. 5/12-2 (2006).

131. Formerly 720 ILL. COMP. STAT. 5/12-3.1 (2006).

132. Formerly 720 ILL. COMP. STAT. 5/12-4.4 (2006).

only “knowingly.”

12-105: Aggravated Battery

The offense of Aggravated Battery in Section 12-105¹³³ is reorganized and expanded. It is separated into five categories based upon: (1) injury; (2) location of the conduct; (3) status of the victim; (4) conduct of the defendant; and (5) miscellaneous offenses. The sentencing provision is categorized by classification of felony, incorporating all of the sentences for the consolidated offenses. Aggravated battery offenses from outside of former Section 12-4 are consolidated into the main statute. Those offenses include: Heinous Battery,¹³⁴ Aggravated Battery with a Firearm,¹³⁵ Aggravated Battery with a Machine Gun or a Firearm Equipped with Any Device or Attachment Designed or Used for Silencing the Report of a Firearm,¹³⁶ Aggravated Battery of a Child,¹³⁷ Aggravated Battery of a Senior Citizen,¹³⁸ and Drug Induced Infliction of Great Bodily Harm¹³⁹.

Former Aggravated Battery with a Machine Gun or a Firearm Equipped with a Silencing Device did not classify teachers or those employed in a school as special victims.¹⁴⁰ For consistency, that category is added in the consolidation. Also, the term “harmed” is eliminated in the consolidation and replaced with “battered” for uniformity and clarity.

The firearm discharge provisions in the former offenses of Aggravated Battery with a Firearm¹⁴¹ and Aggravated Battery with a Machine Gun or a Firearm Equipped with Any Device or Attachment Designed or Used for Silencing the Report of a Firearm¹⁴² are combined in the new statute because both former statutes punish the knowing or intentional discharge of a firearm that causes injury to another. Each offense is also enhanced if the injury is inflicted upon members of particular groups. Former Aggravated Battery with a Firearm did not enhance the penalty for causing injury to a teacher or employee while on school grounds.¹⁴³ By combining these statutes, that basis of liability is added to the firearm discharge offense described in former Aggravated Battery with a Firearm.¹⁴⁴

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

134. Formerly 720 ILL. COMP. STAT. 5/12-4.1 (2006).

135. Formerly 720 ILL. COMP. STAT. 5/12-4.2 (2006).

136. Formerly 720 ILL. COMP. STAT. 5/12-4.2-5 (2006).

137. Formerly 720 ILL. COMP. STAT. 5/12-4.3 (2006).

138. Formerly 720 ILL. COMP. STAT. 5/12-4.6 (2006).

139. Formerly 720 ILL. COMP. STAT. 5/12-4.7 (2006).

140. Formerly 720 ILL. COMP. STAT. 5/12-4.2-5 (2006).

141. Formerly 720 ILL. COMP. STAT. 5/12-4.2 (2006).

142. Formerly 720 ILL. COMP. STAT. 5/12-4.2-5 (2006).

143. Formerly 720 ILL. COMP. STAT. 5/12-4.2 (2006).

144. Formerly 720 ILL. COMP. STAT. 5/12-4.2 (2006).

12-106: Domestic Battery and Aggravated Domestic Battery

The former offense of Aggravated Domestic Battery¹⁴⁵ is consolidated with Domestic Battery¹⁴⁶ to form one offense. An intentional mental state is eliminated in Domestic Battery and Aggravated Domestic Battery because it is superfluous.

12-107: Interfering with the Reporting of Domestic Violence; Disclosure of Location of Domestic Violence Victim

The offenses of Interfering with the Reporting of Domestic Violence¹⁴⁷ and Disclosure of Location of Domestic Violence Victim¹⁴⁸ are consolidated.

12-108: Violation of an Order of Protection

The offense of Violation of Order of Protection¹⁴⁹ is reorganized and moved into closer proximity to other domestic violence crimes to align related offenses. A “knowingly” mental state is added to the former offense of Violation of an Order of Protection¹⁵⁰ because the Illinois Pattern Jury instructions state that a person who violates an order of protection must have “knowledge” of the contents of the order.¹⁵¹ This addition is also made so that domestic violence offenses are uniform with regard to mental state.

12-109: Abuse or Neglect of a Long Term Care Facility Resident, Elderly Person or Person with a Disability

Criminal Abuse or Neglect of an Elderly Person or Person with a Disability,¹⁵² and Abuse and Neglect of a Long Term Care Facility Resident,¹⁵³ are reorganized, consolidated, and renamed. The offenses and the penalties are placed in separate subsections to mirror other Code provisions. The “intentional” mental state is removed from this provision because, under the substitution statute, knowing conduct includes intentional conduct. Other changes include the removal of a reference to “elderly persons” in lieu of “long term care facility resident,” and the addition of a baseline \$1001 fine for the business offense portion of the offense. No substantive change is intended by the reorganization and renaming of these offenses. Definitions found in the sections are

145. Formerly 720 ILL. COMP. STAT. 5/12-3.3 (2006).

146. Formerly 720 ILL. COMP. STAT. 5/12-3.2 (2006).

147. Formerly 720 ILL. COMP. STAT. 5/12-6.3 (2006).

148. Formerly 720 ILL. COMP. STAT. 5/45-2 (2006).

149. Formerly 720 ILL. COMP. STAT. 5/12-30 (2006).

150. Formerly 720 ILL. COMP. STAT. 5/12-30 (2006).

151. ILLINOIS PATTERN JURY INSTRUCTIONS, CRIMINAL, No. 11.77 (4th ed. 2000).

152. Formerly 720 ILL. COMP. STAT. 5/12-21 (2006).

153. Formerly 720 ILL. COMP. STAT. 5/12-19 (2006).

relocated to a general definitions provision in Article 12.

12-110: Intimidation and Aggravated Intimidation

Former Aggravated Intimidation¹⁵⁴ is consolidated with Intimidation.¹⁵⁵ Language is added to clarify that the “communication to another” component in Intimidation can be accomplished directly or indirectly by any means. The import of the communication is that it be a threat.

The sentencing provision is also clarified to comport with *U.S. ex. rel. Holder v. Circuit Court of 17th Judicial Circuit*.¹⁵⁶ In *Holder*, the U.S. District Court examined former Section 12-6(a)(3), Intimidation,¹⁵⁷ and determined that it was overbroad and in conflict with the First Amendment of the United States Constitution.¹⁵⁸ The court analyzed prior decisions interpreting this provision and concluded that the statute “suffers from the infirmity of proscribing threats of minor infractions, still making it an offense to threaten to commit any crime no matter how minor or insubstantial.”¹⁵⁹ The language “a Felony or Class A misdemeanor” is added to cure the constitutional infirmity.

12-111: Compelling Organization Membership of Persons

The mental state “knowingly” is added.

12-113: Criminal Street Gang Recruitment on School Grounds or Public Property Adjacent to School Grounds

A “knowingly” mental state is added,¹⁶⁰ and the definition in former subsection (c) is relocated to the Definitions provision applicable to Article 12.

12-114: Threatening Public Officials

The archaic mental state of “willful” is eliminated from the statute. The definition contained in former subsection (b) is relocated to the definitions section and is expanded to include

154. Formerly 720 ILL. COMP. STAT. 5/12-6.2 (2006).

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

156. *U.S. ex. rel. Holder v. Circuit Court of 17th Judicial Circuit*, 624 F. Supp. 68, 70-71 (N.D. Ill. 1985).

157. This subsection provided that:

“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: . . . (3) Commit any criminal offense; or. . . .”

720 ILL. COMP. STAT. 5/12-6(a)(3) (2006).

158. *Circuit Court of 17th Judicial Circuit*, 624 F. Supp. at 70-71.

159. *Id.* at 71.

160. Formerly 720 ILL. COMP. STAT. 5/12-6.4 (2006).

threats made to duly appointed Assistant Attorneys General and Appellate Prosecutors.

12-116: Stalking, Aggravated Stalking, and Cyberstalking

The offenses of Stalking,¹⁶¹ Aggravated Stalking,¹⁶² and Cyberstalking¹⁶³ are consolidated into one provision without substantive change. Overlapping and redundant provisions are removed. A new subsection titled, “Exemptions and Inclusions” is added to house portions of Stalking and Aggravated Stalking-related to labor disputes and to those incarcerated. Lastly, a definitions subsection is created for definitions found in each of these provisions. These definitions are not moved to the general definitions section for Article 12 because the terms have a meaning that is particular to Stalking and related offenses.

12-119: Reckless Conduct

Reckless Conduct¹⁶⁴ is reorganized so that the structure of this section mirrors that of other Code provisions. No substantive change is intended by this reorganization.

12-120: Vehicular Endangerment

Vehicular Endangerment¹⁶⁵ is reorganized to enhance clarity. No substantive change is intended by this reorganization.

12-121: Criminal Housing Management and Aggravated Criminal Housing Management

The offenses of Criminal Housing Management,¹⁶⁶ Aggravated Criminal Housing Management,¹⁶⁷ and Injunction¹⁶⁸ are consolidated. Each of these provisions relates to the punishment of “slumlords,” and is combined because of this shared scope. No substantive change is intended by this consolidation. A “reckless” mental state is also added to Aggravated Criminal Housing Management because it contained no explicit mental state.

12-122: Common Carriers Recklessness

Former Common Carrier; Gross Neglect¹⁶⁹ is reorganized and

161. Formerly 720 ILL. COMP. STAT. 5/12-7.3 (2006).

162. Formerly 720 ILL. COMP. STAT. 5/12-7.4 (2006).

163. Formerly 720 ILL. COMP. STAT. 5/12-7.5 (2006).

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

165. Formerly 720 ILL. COMP. STAT. 5/12-2.5 (2006).

166. Formerly 720 ILL. COMP. STAT. 5/12-5.1 (2006).

167. Formerly 720 ILL. COMP. STAT. 5/12-5.15 (2006).

168. Formerly 720 ILL. COMP. STAT. 5/12-5.2 (2006).

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

renamed “Common Carriers Recklessness.” A “reckless” mental state is added to the former offense. The phrase “gross negligence” has been found to mean, “a very great negligence, but it is something less than the willful, wanton and reckless conduct.”¹⁷⁰ “Negligence” is not currently a mental state which can be substituted when a statute contains no mental state in Illinois.¹⁷¹ Regarding “negligence” as a culpable mental state, Professor Decker states, “For good or ill, the Illinois General Assembly has not developed legislation to treat negligent behavior as criminal and the courts, accordingly, refuse to treat those acts that amount to negligence, at best, as illegal.”¹⁷² A reckless mental state is added because of the close relationship between “recklessness” and “gross negligence.” Neither the addition of “recklessness” as a mental state nor the reorganization of the provision is intended to make any substantive change.

12-123: Sale of Body Parts; 12-124: Dismembering a Human Body

Former offenses Sale of Body Parts¹⁷³ and Dismembering a Human Body¹⁷⁴ contain exclusions from liability where anatomical gifts are made pursuant to Chapter 755 of the Illinois Compiled Statutes, and for removal and use of a human cornea.¹⁷⁵ The reference to the Anatomical Gift Act is modified to create consistency between the statutes. Language concerning corneal transplants is eliminated from each statute because it is unnecessary in light of a provision in the Uniform Anatomical Gift

170. *Massa v. Dep’t of Registration and Educ.*, 507 N.E.2d 814, 116 Ill. 2d 376,378 (1987).

171. 720 ILL. COMP. STAT. 5/4-3. This section provides:

(a) A person is not guilty of an offense, other than an offense which involves absolute liability, unless, with respect to each element described by the statute defining the offense, he acts while having one of the mental states described in Sections 4-4 through 4-7.

(b) If the statute defining an offense prescribed a particular mental state with respect to the offense as a whole, without distinguishing among the elements thereof, the prescribed mental state applies to each such element. If the statute does not prescribe a particular mental state applicable to an element of an offense (other than an offense which involves absolute liability), any mental state defined in Sections 4-4, 4-5 or 4-6 is applicable.

(c) Knowledge that certain conduct constitutes an offense, or knowledge of the existence, meaning, or application of the statute defining an offense, is not an element of the offense unless the statute clearly defines it as such.

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

172. JOHN DECKER, ILLINOIS CRIMINAL LAW, A SURVEY OF CRIMES AND DEFENSES, § 9.35 (2000).

173. Formerly 720 ILL. COMP. STAT. 5/12-20 (2006).

174. Formerly 720 ILL. COMP. STAT. 5/12-20.5 (2006).

175. Formerly 720 ILL. COMP. STAT. 5/12-20(b)(1), (b)(2) (2006); 720 ILL. COMP. STAT. 5/12-20.5(b)(1), (b)(2) (2006).

Act that governs the procedures for corneal transplants in Illinois.¹⁷⁶

12-125: Inducement to Commit Suicide

The mental state “knowingly” is added to the first condition of Inducement to Commit Suicide, pertaining to coercion.

12-126: Ritual Mutilation; 12-127: Ritualized Abuse of a Child

A “knowingly” mental state is added to these offenses and the sentencing provisions are moved to the end of each offense, without substantive change.

12-128: Female Genital Mutilation

Redundant language is eliminated concerning exemptions from liability where a surgical procedure is performed by a physician licensed to practice medicine in all of its branches.

12-129: Sexual Conduct with an Animal

Surplus language in the offense of Sexual Conduct with an Animal is eliminated to shorten the statute and enhance clarity. There were four ways to commit a violation of the statute, formerly identified as subsections (a) through (d).¹⁷⁷ The proscriptions in former subsections (b), (c), and (d) contain conduct covered by the accountability statute.

Each of the alternate theories exposes the defendant to accomplice liability under Section 5-2.¹⁷⁸ Former subsection (b) parallels the language of the accountability statute. Regardless of where the conduct occurs, a defendant who permits it to happen could be charged under Section 5-2. Finally, former subsection (d) incorporates accountability theories, adding that the conduct must occur for commercial or recreational purposes. Former subsections (b) through (d) are removed from the statute in lieu of the general Accountability provision in Section 5-2 of the Code. There is no

176. 755 ILL. COMP. STAT. 50/5-30 (2006).

177. Former subsections 720 ILL. COMP. STAT. 5/12-35 (a)-(d) provided:

(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.

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

178. 720 ILL. COMP. STAT. 5/5-2 (2006).

effect on sentencing because one convicted based on an accountability theory is sentenced as if he or she committed the underlying offense.¹⁷⁹

The description of prohibited sexual activity with an animal is adjusted to avoid repetition. The former statute does not distinguish between “conduct” or “contact” for purposes of sentencing. The definition of “conduct” in the statute generally encompasses any touching by a person, regardless of what part of the person’s body is used to do the touching. It is modified to incorporate the more limited definition of “contact” included in the former statute.

12-130: Tongue Splitting

A mental state of “knowingly” is added to this section. Also, the definition of “tongue splitting” is transferred from the former offense of Tongue Splitting¹⁸⁰ to the general definitions portion of Article 12.

12-131: Abandonment of Children by School Bus Driver

The former offense of Abandonment of Children by School Bus Driver¹⁸¹ is relocated to Article 12, Bodily Harm. The mental state “knowingly” is added to the offense immediately after the similar offense of Child Abandonment in Article 12.

Article 13: Terrorism

One comprehensive Terrorism Article is created, incorporating the offenses of Causing a Catastrophe¹⁸² and Possession of a Deadly Substance,¹⁸³ as well as the Boarding an Aircraft with Weapon Act.¹⁸⁴ The Article is placed closer to Article 12, which contains “Bodily Harm” offenses. Former Article 29D, Terrorism,¹⁸⁵ is relocated to Article 13 of the Code, which was vacant after the repeal in 1980 of the Violation of Civil Rights provisions.¹⁸⁶

13-6: Material Support for Terrorism

The previous offenses of Soliciting Material Support for

179. *Id.*

180. Formerly 720 ILL. COMP. STAT. 5/12-10.2 (2006).

181. Formerly 720 ILL. COMP. STAT. 150/4.1 (2006).

182. Formerly 720 ILL. COMP. STAT. 5/20.5-5 (2006).

183. Formerly 720 ILL. COMP. STAT. 5/20.5-6(2006).

184. Formerly 720 ILL. COMP. STAT. 545/0.01-7 (2006).

185. Formerly 720 ILL. COMP. STAT. 5/29D-5 to D-70 (2006).

186. See Illinois Human Rights Act, Pub. Act No. 81-1216 (1979) (evidencing the legislature’s repeal of the violation of Civil Rights provision).

Terrorism and Providing Material Support for a Terroristic Act¹⁸⁷ are combined and titled “Material Support for Terrorism.” The similarity in language and proscribed sentence warrants this combination. The chart below compares the language of each Section.

Soliciting Material Support for Terrorism	Providing Material Support for Terrorism
<p>(a) A person is guilty of <i>soliciting</i> material support for terrorism if he or she <i>knowingly</i> raises, solicits, or collects material support or resources <i>knowing that the material support or resources will be used, in whole or in part, to plan, prepare, carry out, or avoid apprehension for committing terrorism as defined in Section 29D-30 [720 ILL. COMP. STAT. 5/29D-30] or causing a catastrophe as defined in Section 20.5-5 (720 ILL. COMP. STAT. 5/20.5-5) of this Code</i>, or who knows and intends that the material support or resources so raised, solicited, or collected will be used in the commission of a terrorist act as defined in Section 29D-10(1) of this Code [720 ILL. COMP. STAT. 5/29D-10] by an organization designated under 8 U.S.C. 1189, as amended.</p>	<p>(b) A person is guilty of <i>providing</i> material support for terrorism if he or she <i>knowingly</i> provides material support or resources to a person <i>knowing that the person will use that support or those resources in whole or in part to plan, prepare, carry out, facilitate, or to avoid apprehension for committing terrorism as defined in Section 29D-30 [720 ILL. COMP. STAT. 5/29D-30] or to cause a catastrophe as defined in Section 20.5-5 (720 ILL. COMP. STAT. 5/20.5-5) of this Code</i>.</p>
<p>Soliciting material support for terrorism is a <i>Class X felony</i> for which the sentence shall be a term of imprisonment of no less than <i>9 years and no more than 40 years</i>.</p>	<p>Providing material support for a terrorist act is a <i>Class X felony</i> for which the sentence shall be a term of imprisonment of no less than <i>9 years and no more than 40 years</i>.</p>

187. Formerly 720 ILL. COMP. STAT. 5/29D-15 (2006).

13-8: Boarding or Attempting to Board an Aircraft with a Weapon

This section represents a compilation of provisions included in the former Boarding Aircraft with Weapon Act.¹⁸⁸ The single substantive offense from the Act is located in subsection (a) of the new offense. The mental state “knowingly” is added to this offense.

Article 14: Eavesdropping

Article 14 of the Code addresses Eavesdropping in its various forms. The former Communications Consumer Privacy Act¹⁸⁹ is relocated to Article 14.

14-10: Communications Company Privacy Violation

The former Communications Consumer Privacy Act¹⁹⁰ is incorporated into Article 14, which prohibits many forms of eavesdropping. The previous Communications Consumer Privacy Act addressed similar unwanted surveillance and reporting on persons in their homes by communications companies. The Communication Consumer Privacy Act is renamed “Communications Company Privacy Violation,” and is consolidated into one provision and transferred into this section. No substantive change is intended by these amendments.

14-11: Unauthorized Video Recording and Live Video Transmission

Unauthorized Video Recording and Live Video Transmission¹⁹¹ is transferred into Article 14. It is more closely related to Eavesdropping than it is to acts of disorderly conduct otherwise prohibited in Article 26, Disorderly Conduct, where the offense was previously situated.

Article 15: Definitions

A number of definitions are added to Article 15, designated the “Definitions” Section for Part C of the Code. The corresponding definitions scattered throughout Part C of the Code are removed. Part C of the Code includes Article 16 through Article 21. A statement is added to Article 15 to clarify that the definitions placed in Article 15 apply to Articles 16 through 21, including subdivisions, unless otherwise stated.

188. Formerly 720 ILL. COMP. STAT. 545/0.01-7 (2006).

189. Formerly 720 ILL. COMP. STAT. 110 (2006).

190. *Id.*

191. Formerly 720 ILL. COMP. STAT. 5/26-4 (2006).

The definition of “intent to defraud” is transferred from several locations within the Code.¹⁹² Definitions from those provisions are harmonized in the proposed definition to make it applicable consistently throughout the Code.

“Deception”

This definition is derived from the definition of “deception” in former Deception,¹⁹³ and Financial Exploitation of an Elderly Person or a Person with a Disability.¹⁹⁴ No substantive change is intended by this consolidation.

“Master Sound Recording”

The definition of “master sound recording” is clarified. This definition originated from the former offense of Unlawful Use of Recorded Sounds or Images.¹⁹⁵ This change is not intended to substantively alter the definition.

“Minor”

Article 15 defines a “minor” for purposes of Retail Theft.¹⁹⁶ Formerly, a “minor” was defined, in part, as a person under the age of 19, and is amended to be a person under 18. The rules allowing a merchant to detain a person suspected of committing Retail Theft vary depending upon whether the suspect is a minor or an adult. This amendment makes the adult/minor distinction akin to other offenses in the Code that define minors to be people under 18.

Article 16: Theft and Related Offenses

Article 16, Theft and Related Offenses, is consolidated and reorganized. The offenses in this Article are comprised of combinations of offenses previously in Article 16, as well as offenses relocated from Article 17, Deception and from Acts outside of Act 5. Like offenses are consolidated to avoid duplication. Transferred offenses predominantly address theft-related situations and are appropriately placed in Article 16. Former Articles 16A through 16J are eliminated, consolidated into Article 16, or moved into other Articles. Mental states are inserted where not explicitly stated and mandatory presumptions and permissive inferences are clarified or amended to avoid constitutional issues.

192. See, e.g., former 720 ILL. COMP. STAT. 250/2.07 (2006); 720 ILL. COMP. STAT. 5/17-1 (2006); 720 ILL. COMP. STAT. 5/17-23 (2006).

193. Formerly 720 ILL. COMP. STAT. 5/15-4 (2006).

194. Formerly 720 ILL. COMP. STAT. 5/16-1.3 (2006).

195. Formerly 720 ILL. COMP. STAT. 5/16-7 (2006).

196. Formerly 720 ILL. COMP. STAT. 5/16A-2.5 (2006).

*Division I: General Theft**16-1: Theft*

The felony threshold dollar amount in Theft is increased from \$300 to \$500, which corresponds to the dollar threshold increase in the offense of Retail Theft.¹⁹⁷ Similarly, the threshold dollar amount in subsection (b)(2), Theft of Lost or Mislaid Property,¹⁹⁸ which is incorporated into Theft, is increased from \$300 to \$500. This is designed to follow the similar increases in Theft and Retail Theft. These increases in threshold amounts for Theft recognize that inflation has occurred since the Code was organized in 1961. The Consumer Price Index Calculator indicates that \$300 in 1961 is worth approximately \$2,035 in today's currency. The \$500 felony threshold in Illinois remains low when compared to states like Michigan (\$1,000),¹⁹⁹ Pennsylvania (\$2,000)²⁰⁰ and Wisconsin (\$2,500).²⁰¹

Former Misappropriation of Financial Institution Property²⁰² is incorporated into Theft as a separate subsection because it represents a different form of Theft. This provision punishes embezzlement, which is traditionally viewed as a form of Theft from a bank rather than a Fraud. The dollar amount that corresponds to the sentence classification is increased from \$300 to \$500 conforming to similar increases in Theft. Excess and redundant language is eliminated, but the temporal aspect of the charge is retained.

16-101: Theft of Labor or Services or Use of Property

Section 16-101 is a combination of offenses relating to the theft of labor, services, or the use of property. The offenses consolidated into this section are the previous provisions of Theft by Lessee; Prima Facie Evidence,²⁰³ Theft of Labor or Services or Use of Property,²⁰⁴ and portions of Protection of Library Materials.²⁰⁵ Two offenses are eliminated: Theft of Advertising Services²⁰⁶ and Delivery Container Crime.²⁰⁷

Both Sections 16-101(a)²⁰⁸ and 16-101(e)²⁰⁹ involve thefts of

197. Formerly 720 ILL. COMP. STAT. 5/16-10 (2006).

198. Formerly 720 ILL. COMP. STAT. 5/16-2 (2006).

199. MICH. COMP. LAWS § 750.356 (2007).

200. 18 PA. CONS. STAT. § 3929 (2007).

201. WIS. STAT. § 943.50 (2007).

202. Formerly 720 ILL. COMP. STAT. 5/16H-15 (2006).

203. Formerly 720 ILL. COMP. STAT. 5/16-1.1 (2006).

204. Formerly 720 ILL. COMP. STAT. 5/16-3 (2006).

205. Formerly 720 ILL. COMP. STAT. 5/16B (2006).

206. Formerly 720 ILL. COMP. STAT. 5/16-17 (2006).

207. Formerly 720 ILL. COMP. STAT. 5/16E-1 to 4 (2006).

208. Formerly 720 ILL. COMP. STAT. 5/16-3 (2006).

labor, services or the use of property. Section 16-101(e) provides an inference used for prosecutions of Section 16-101(a). These provisions do not require separate sections in the Code. The mandatory presumption in Section 16-101(e) is altered to be a permissive inference.

The provisions in Protection of Library Materials²¹⁰ are now explicitly encompassed by this section and other provisions in the Code. Because the theft offenses in former Article 16B are essentially forms of theft of services or the use of property, a separate Article is unnecessary. The theft offenses in former Article 16B also overlap with Section 16-101, Theft, where the defendant has the intent to permanently deprive the owner of the library materials. The damage to property offenses in Protection of Library Materials do not substantively differ from the more general damage to property offenses in Sections 21-1, Criminal damage to property,²¹¹ and 21-4, Criminal Damage to Government Supported Property.²¹² Although eliminating Article 16B in lieu of more general provisions alters the present sentencing scheme, the change is needed to eliminate a duplicative Article in the Code. No other substantive change is intended in this consolidation.

The former offense of Theft of advertising services²¹³ is eliminated as unnecessary. This offense is covered by Section 16-101 because both address theft of services. Eliminating this section does not change the previous sentencing classifications.

Delivery Container Crime²¹⁴ is eliminated as unnecessary. This offense punished a person who used a delivery container without permission, sold another's marked container without permission, or destroyed another's container without permission. Eliminating this Article will not change the protections in the law because its meaning is encompassed within this new consolidated section, as well as Section 21-1, Criminal Damage to Property. This does change the sentencing scheme, however, increasing most violations from Class B misdemeanors to Class A misdemeanors.

The mental state of "knowingly" is inserted into subsection (a) of this section, and the archaic mental state of "willfully" in former Section 16-1.1 is replaced with "knowingly" in subsection (e) of this section.

16-102: Unlawful Use of Recorded Sounds or Images

Section 16-102 is a consolidation of Unlawful Use of Recorded

209. Formerly 720 ILL. COMP. STAT. 5/16-1.1 (2006).

210. Formerly 720 ILL. COMP. STAT. 5/16B-1 to B-5 seq. (2006).

211. Formerly 720 ILL. COMP. STAT. 5/21-1 (2006).

212. Formerly 720 ILL. COMP. STAT. 5/21-4 (2006).

213. Formerly 720 ILL. COMP. STAT. 5/16-17 (2006).

214. Formerly 720 ILL. COMP. STAT. 5/16E-1 to E-4 (2006).

Sounds or Images²¹⁵ and Unlawful Use of Unidentified Sound or Audio Visual Recordings.²¹⁶ Both deal with pirating sounds and images and have the same sentencing structures and similar ancillary provisions. The differences between the two subsections, such as the fact that the former offense of Unlawful Use of Recorded Sounds or Images²¹⁷ punished intent, knowledge or recklessness and Unlawful Use of Unidentified Sound or Audio Visual Recording²¹⁸ punished these and negligence, are preserved in the consolidated section.

Former subsections 16-7(h), Unlawful use of Recorded Sounds or Images,²¹⁹ and 16-8(e), Unlawful Use of Unidentified Sound or Audio Visual Recordings,²²⁰ are consolidated. Both deal with confiscating and destroying evidence from the commission of the offenses. Although both referred to evidence from attempts and solicitations to commit the offenses, only the second subsection referred to evidence from conspiracies to commit the offense. The consolidation ensures that evidence from conspiracies to commit the offenses is properly addressed in relation to both types of recordings.

16-103: Theft from Coin-operated Device or Machine

Section 16-103 is a consolidation of Theft from Coin-operated Machines,²²¹ the Coin Slug Act,²²² and the Telephone Coin Box Tampering Act.²²³ The conduct prohibited in these former provisions is similar to prohibited thefts from, and tampering with, coin-operated machines.

The Telephone Coin Box Tampering Act is eliminated as duplicative with the remaining provisions in this section. This changes the offense by raising the penalty in the former Telephone Coin Box Tampering Act²²⁴ from a Class B misdemeanor to a Class A misdemeanor and applies the recidivism provision from former Theft from Coin-operated Machines²²⁵ to all acts prohibited in the new offense. Also, the attempt, accountability, and conspiracy clauses from the previous provisions are not reproduced in this consolidated offense because they are covered by their more general counterparts in Article 5, Parties to a Crime, and Article 8,

215. Formerly 720 ILL. COMP. STAT. 5/16-7 (2006).

216. Formerly 720 ILL. COMP. STAT. 5/16-8 (2006).

217. Formerly 720 ILL. COMP. STAT. 5/16-7 (2006).

218. Formerly 720 ILL. COMP. STAT. 5/16-8 (2006).

219. Formerly 720 ILL. COMP. STAT. 5/16-7(h) (2006).

220. Formerly 720 ILL. COMP. STAT. 5/16-8(e) (2006).

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

222. Formerly 720 ILL. COMP. STAT. 235/1 to 235/1a (2006).

223. Formerly 720 ILL. COMP. STAT. 370/0.01 to 370/2 (2006).

224. *Id.*

225. Formerly 720 ILL. COMP. STAT. 5/16-2 (2006).

Solicitation, Conspiracy and Attempt. Further, the mental states are clarified to punish the intent to commit a theft, as opposed to the intent to defraud. The language from the former Coin Slug Act²²⁶ and the former Telephone Coin Box Tampering Act²²⁷ relating to the use of slugs, wires, hooks, discs, washers, etc. is replaced with the streamlined phrase “opens, breaks into, tampers with, or damages.” Finally, this consolidation eliminates the unnecessary presumption from the former Telephone Coin Box Tampering Act.²²⁸

16-104: Theft from Utility Services

Section 16-104 combines the former offenses of Unlawful Interference with Public Utility Services,²²⁹ Obstructing Gas, Water, and Electric Current Meters,²³⁰ and Obstructing Service Meters.²³¹ All three former sections prohibited similar acts. This combined offense is located in Article 16 instead of Article 17 because it includes forms of theft rather than acts of deception.

The language is simplified to clarify the offense, eliminating archaic language and repetitive lists of protected items and prohibited acts. Also, as part of the consolidation, the mental state of “knowingly” with the specific intent to commit certain acts or obtain services is applied to the offense, in lieu of the specific intent to injure or defraud in former Obstructing Gas, Water, and Electric Current Meters,²³² and Obstructing Service Meters.²³³ Although a violation of former Section 16-14 is a Class A misdemeanor, a violation of this offense is a Class B misdemeanor, similar to former Obstructing Gas, Water, and Electric Current Meters,²³⁴ and Obstructing Service Meters.²³⁵ This does not alter the sentencing structure, however, because the damage to property provisions in former Section 16-14²³⁶ can still be prosecuted as Class A misdemeanors under Section 21-1, Criminal Damage to Property. The accountability language from former Obstructing Gas, Water, and Electric Current Meters²³⁷ is

226. Formerly 720 ILL. COMP. STAT. 235/1 to 235/1a (2006).

227. Formerly 720 ILL. COMP. STAT. 370/0.01 to 370/2 (2006).

228. This presumption provided that “[p]roof that any of the acts mentioned in Section 1 hereof was done without the lawful authority of the owner of such telephone shall be prima facie proof of the wrongful intent mentioned in Section 1 hereof.” 720 ILL. COMP. STAT. 370/2 (2006).

229. Formerly 720 ILL. COMP. STAT. 5/16-14 (2006).

230. Formerly 720 ILL. COMP. STAT. 5/17-20 (2006).

231. Formerly 720 ILL. COMP. STAT. 5/17-21 (2006).

232. Formerly 720 ILL. COMP. STAT. 5/17-20 (2006).

233. Formerly 720 ILL. COMP. STAT. 5/17-21 (2006).

234. Formerly 720 ILL. COMP. STAT. 5/17-20 (2006).

235. Formerly 720 ILL. COMP. STAT. 5/17-21 (2006).

236. Formerly 720 ILL. COMP. STAT. 5/16-14 (2006).

237. Formerly 720 ILL. COMP. STAT. 5/17-20 (2006).

eliminated as duplicative of Section 5-2, When Accountability Exists.

Subsection (c) specifically excludes telecommunications services. Thefts of telecommunications services are covered by Section 16-105, Tampering with Communication Services.

Finally, the rebuttable presumption in former Section 16-14 is eliminated as unnecessary.²³⁸

16-105: Tampering with Communication Services

Unlawful Communication Devices,²³⁹ Wireless Service Theft,²⁴⁰ the Telephone Line Interference Act,²⁴¹ and the Telephone Charge Fraud Act²⁴² are consolidated. These provisions all deal with stealing or tampering with communication services. This section first punishes acts previously addressed in the former Telephone Line Interference Act²⁴³ and Telephone Charge Fraud Act,²⁴⁴ and then incorporates the offenses from former Section 16-19, Prohibited Acts,²⁴⁵ which involves more complicated forms of theft of communications. The provisions from the former Telephone Charge Fraud Act²⁴⁶ concerning the fraudulent use of a credit card are eliminated as duplicative with the offenses in Division III, Credit and Debit Card Fraud. The provisions from the former Telephone Charge Fraud Act,²⁴⁷ regarding obtaining services by installing, removing or tampering with facilities or equipment, overlap with Section 16-101, Theft of Services. The “accountability” and “conspiracy” language from the former offenses is removed as duplicative of Articles 5 and 8.

To clarify the meaning of the phrase “any similar crime,” from former Section 16-20, Criminal Penalties,²⁴⁸ it is replaced with “any other type of theft, robbery, armed robbery, burglary,

238. The rebuttable presumption provided that:

Any instrument, apparatus, or device used in obtaining utility services without paying the full charge therefore or any meter that has been altered, tampered with, or bypassed so as to cause a lack of measurement or inaccurate measurement of utility services on premises controlled by the customer or by the person using or receiving the direct benefit of utility service at that location shall raise a rebuttable presumption of the commission of the offense described in subparagraph (a) by such person.

720 ILL. COMP. STAT. 5/16-14(c) (2006).

239. Formerly 720 ILL. COMP. STAT. 5/16-19 (2006).

240. Formerly 720 ILL. COMP. STAT. 5/16F-1 to 5/16F-6 (2006).

241. Formerly 720 ILL. COMP. STAT. 360/1 to 360/2(2006).

242. Formerly 720 ILL. COMP. STAT. 365/0.01 to 360/1 (2006).

243. Formerly 720 ILL. COMP. STAT. 360/1 to 360/2(2006).

244. Formerly 720 ILL. COMP. STAT. 365/0.01 to 365/1 (2006).

245. Formerly 720 ILL. COMP. STAT. 5/16-19 (2006).

246. Formerly 720 ILL. COMP. STAT. 365/0.0 to 365/1 (2006).

247. *Id.*

248. Formerly 720 ILL. COMP. STAT. 5/16-20 (2006).

residential burglary, possession of burglary tools, home invasion or fraud, including violations of the Cable Communications Policy Act of 1984.” This phrase is derived from the partial definition of “any similar crime” in former Section 16-20(e)²⁴⁹ as well as the recidivism language, “any type of Theft, Robbery, Armed robbery, Burglary, Residential Burglary, Possession of Burglary Tools or Home Invasion” found throughout Article 16.

Much of former Article 16F, Wireless Service Theft, is eliminated as duplicative of former Section 5/16-19.²⁵⁰ However, the unique sentencing provisions from former Article 16F are retained in this consolidated offense.

The dollar amount that increases the sentence classification is increased from \$300 to \$500 to follow the similar increases in Theft. Finally, every offense in this section now contains an explicit mental state; and archaic mental states from the prior offenses are replaced with mental states defined in Article 4, Criminal Act and Mental State.

No substantive change is intended by this consolidation.

16-106: Theft-related Devices

A new offense, Theft-related Devices, is created and contains the consolidated provisions of Coin Operated Machines; Possession of a Key or Device,²⁵¹ Unlawful Use of Theft Detection Shielding Device²⁵² Unlawful Possession of Theft Detection Shielding Device Remover, and Use of Scanning Device or Reencoder to Defraud.²⁵³ The definitions found in these statutes are relocated to Article 15. The threshold dollar amount of \$300 in the former offense of Coin-operated Machines; Possession of a Key or Device²⁵⁴ is increased to \$500. This comports with the dollar amount increases throughout the Code.

249. Former Section 720 ILL. COMP. STAT. 5/16-20(e) stated:

As provided for in subdivisions (b)(1) and (c)(1) of this Section, in grading an offense under Section 16-19 based upon a prior conviction, the term “any similar crime” shall include, but not be limited to, offenses involving theft of service or fraud, including violations of the Cable Communications Policy Act of 1984 (Public Law 98-549, 98 Stat. 2779).

720 ILL. COMP. STAT. 5/16-20(e) (2006).

250. Formerly 720 ILL. COMP. STAT. 5/16-19 (2006).

251. Formerly 720 ILL. COMP. STAT. 5/16-6 (2006).

252. Formerly 720 ILL. COMP. STAT. 5/16-15 (2006).

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

254. Formerly 720 ILL. COMP. STAT. 5/16-6 (2006).

*Division II: Special Theft Provisions**16-201: Retail Theft*

This section is comprised of the former Retail Theft provisions.²⁵⁵ The separate statutes in former Article 16A, Retail Theft, are consolidated into one section and moved into Article 16. The definitions from former Article 16A are transferred to Article 15.

As part of the consolidation, the sentences are placed in one location to promote clarity. Also, the threshold dollar limit is increased from \$150 to \$300. Raising the amount to \$300, and not \$500, as in Theft, retains the sentencing difference between the two offenses. The offenses of Forgery and Unlawful Use of a Credit Card are added to the list of previous convictions that increase the sentence classification. The other such offenses include any type of theft, robbery, armed robbery, burglary, residential burglary, possession of burglary tools and home invasion. Forgery and Unlawful Use of a Credit Card are similar because they are both forms of theft, and they belong in this list because both often target retail establishments as victims.

Unnecessary provisions, including the Continuation of Prior Law²⁵⁶ and the Legislative Declaration²⁵⁷ are removed. Also, the accountability language from the former Offense of Retail Theft²⁵⁸ is removed as duplicative of the statute, When Accountability Exists.²⁵⁹ The procedural language requiring the pleading of the prior conviction in the charging document is removed from the new, incorporated offense.

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

256. Formerly 720 ILL. COMP. STAT. 5/16A-9 (2006).

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

258. Formerly 720 ILL. COMP. STAT. 5/16A-3(b) (2006).

259. 720 ILL. COMP. STAT. 5/5-5 (2006).

Two new provisions are also added to Retail Theft. In determining the “full retail value” of the items stolen in a Retail Theft, the value of items taken as part of a continuous course of conduct from one or more retail establishments over a period of a year can be aggregated. In these situations, the offense can be prosecuted in any jurisdiction in which one of the Retail Thefts occurred.

Finally, the unconstitutional mandatory presumption from Section 5/16A-4 is changed to a permissive inference.²⁶⁰

16-202: Identity Theft

Former Article 16G, Identity Theft,²⁶¹ is reorganized, renumbered and consolidated into Article 16. The short title and legislative declaration provisions in the former Article are eliminated as unnecessary.²⁶² Redundant language regarding how “knowledge” is to be judged in Identity Theft and Aggravated Identity Theft is also removed.²⁶³ The phrases “to aid and abet,” and “committing any felony theft or other felony violation of State law” are also eliminated from the consolidated provision.²⁶⁴ The former is eliminated because this term penalizes acts identical to accountability theory, and the latter to eliminate redundant language. Definitions formerly found in Identity Theft are relocated to Article 15.²⁶⁵ The provision is consolidated and reorganized to enhance clarity and reduce the overall number of Articles in the Code.

The offense of Facilitating Identity Theft²⁶⁶ and its accompanying definition and sentence, are incorporated without substantive change into this new, consolidated offense.

260. This provision previously stated:

If any person:

(a) conceals upon his or her person or among his or her belongings, unpurchased merchandise displayed, held, stored or offered for sale in a retail mercantile establishment; and

(b) removes that merchandise beyond the last known station for receiving payments for that merchandise in that retail mercantile establishment such person shall be presumed to have possessed, carried away or transferred such merchandise with the intention of retaining it or with the intention of depriving the merchant permanently of the possession, use or benefit of such merchandise without paying the full retail value of such merchandise.

720 ILL. COMP. STAT. 5/16A-4 (2006).

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

262. Formerly 720 ILL. COMP. STAT. 5/16G-1 (2006); 720 ILL. COMP. STAT. 5/16G-10 (2006).

263. Formerly 720 ILL. COMP. STAT. 5/16G-15(b) (2006); 720 ILL. COMP. STAT. 5/16G-20(b) (2006).

264. Formerly 720 ILL. COMP. STAT. 5/16G-15(a)(2),(a)(3),(a)(5) (2006).

265. Formerly 720 ILL. COMP. STAT. 5/16G-10 (2006).

266. Formerly 720 ILL. COMP. STAT. 5/16G-13 (2006).

In an attempt to more appropriately align the penalty levels of Identity Theft and Aggravated Identity Theft, the dollar amounts are changed to correspond with the changes in Theft. The elimination of the Class X level of the identity theft is a result of the restructuring.

16-204: Internet Offenses

Former Article 16J, Online Property Offenses,²⁶⁷ is consolidated, reorganized, and relocated to Article 16. The consolidated provision is re-titled Internet offenses and placed as a provision in Article 16. A definition section²⁶⁸ is relocated to Article 15. The dollar amount that corresponds to the sentence classification is increased from \$150 to \$300, conforming to the similar increases in Theft.²⁶⁹

Article 16J: Theft of Motor Fuel

Former Article 16J, Theft of Motor Fuel,²⁷⁰ is eliminated as duplicative with the offenses of Theft and Retail Theft. Although there are minor differences between Theft of Motor Fuel and the more general theft offenses in Article 16, Theft of Motor Fuel is essentially a specific form of Theft and of Retail Theft, and is therefore unnecessary. The first difference is that Theft of Motor Fuel increases the penalty when the amount taken is worth more than \$150,²⁷¹ where as in Retail Theft, the amount to trigger the sentence increase is \$300,²⁷² and in Theft, it is \$500.²⁷³ The other difference is that unlike Retail Theft, Theft of Motor Fuel requires the intent to permanently deprive the owner of the item.²⁷⁴

Suspension of Driver's License of Person Convicted of Theft of Motor Fuel²⁷⁵ remains in the Vehicle Code. This provision states that a person who commits a theft of motor fuel will have his or her license suspended. Because Article 16J is eliminated, references to this Article in 625 ILL. COMP. STAT. 5/6-205.2 are replaced with references to the prohibited criminal activity.

267. Formerly 720 ILL. COMP. STAT. 5/16J-5 to 5/16J-99 (2006).

268. Formerly 720 ILL. COMP. STAT. 5/16J-5 (2006).

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

270. Formerly 720 ILL. COMP. STAT. 5/16J-5 (2006).

271. Formerly 720 ILL. COMP. STAT. 5/16J-30 (2006).

272. Formerly 720 ILL. COMP. STAT. 5/16-201 (2006).

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

274. Formerly 720 ILL. COMP. STAT. 5/16J-15 (2006).

275. 625 ILL. COMP. STAT. 5/6-205.2 (2006).

Article 17: Deception

Article 17 is reorganized. Fraud offenses from throughout the Code are relocated to Article 17 to clarify and group similar offenses. Categories of similar offenses are grouped under similar headings, such as Fraud on a Governmental Entity, Fraud on a Private Entity, Fraudulent Tampering, and Credit, Debit and Identification Card Fraud.

Three fraud-related offenses formerly contained in former Article 16H, Illinois Financial Crime Law,²⁷⁶ are relocated to Article 17. They include: Conspiracy to Commit a Financial Crime;²⁷⁷ Continuing Financial Crimes Enterprise;²⁷⁸ and Organizer of a Continuing Financial Crimes Enterprise.²⁷⁹

Division I: General Fraud Provisions

17-1: Deceptive Practices

The primary offense in Article 17, Deceptive Practices, is reorganized; mental states have been added; and a mandatory presumption is converted to a permissive inference. The statute is divided into four categories: (1) general deception; (2) bad checks; (3) bank-related fraud; and (4) sentences. The sentencing provisions were formerly scattered throughout the statute and are now located in one sentencing provision. A consistent labeling scheme is added to the statute to make it easier to navigate.

New Subparts in the Reorganization of Deceptive Practices

Section of the new statute	Title	Current provisions
17-1(A)	General Deception	17-1(B)(a), 17-1(B)(b), 17-1(B)(c)
17-1(B)	Bad Checks	17-1(B)(d) and (e), 17-1a
17-1(C)	Bank-related Fraud	17-1(C)(1) through 17-1(C)(3)

The provision dealing with Possession of Identification Cards has been relocated to the new section within Article 17 containing provisions from the former Credit Card and Debit Card Act.²⁸⁰

276. Formerly 720 ILL. COMP. STAT. 5/16H-1 to H-65 (2006).

277. Formerly 720 ILL. COMP. STAT. 5/16H-45 (2006).

278. Formerly 720 ILL. COMP. STAT. 5/16H-50 (2006).

279. Formerly 720 ILL. COMP. STAT. 5/16H-55 (2006).

280. Formerly 720 ILL. COMP. STAT. 250/1 to 250/24 (2006).

The monetary amounts in the bad check provisions are increased to \$300 to correspond to increases in Theft²⁸¹ and Retail Theft.²⁸² When the Code was enacted, the base threshold for liability under Theft, Section 16-1, was \$150.²⁸³ Since that time, that threshold has been increased to \$300 in Section 16-1. However, the current base threshold for liability in the two bad checks provisions in Deceptive Practices remained at \$150.

Punctuation is added to the offense of Possession of Stolen or Fraudulently Obtained Checks to clarify what behavior is punished by the statute.

17-2: False Personation; Solicitation

Section 17-2 is a consolidation of several false personation offenses from Article 32. The combined offenses are former False Personation of Attorney, Judicial, or Governmental Officials;²⁸⁴ False Personation of a Peace Officer;²⁸⁵ False Personation of a Peace Officer While Carrying a Deadly Weapon;²⁸⁶ Aggravated False Personation of a Peace Officer;²⁸⁷ False Law Enforcement Badges;²⁸⁸ False Personation of a Parent or Legal Guardian;²⁸⁹ False Personation of a Fire Fighter;²⁹⁰ False Personation of a Fire Fighter While Carrying a Deadly Weapon;²⁹¹ Aggravated False Personation of a Fire Fighter;²⁹² False Personation of an Emergency Management Worker;²⁹³ and Aggravated False Personation of an Emergency Management Worker.²⁹⁴ Further, the mental state of “knowingly” is uniformly added to the false personation offenses. No substantive change is intended.

Former Fraudulent Advertisement of Corporate Name²⁹⁵ has also been incorporated into this statute. Like former Section 17-2,²⁹⁶ this provision seeks to prohibit the improper solicitation of business. The mental state of “knowingly” is uniformly applied.

Language from former paragraphs (c-2) through (c-5)²⁹⁷ is

-
281. 720 ILL. COMP. STAT. 5/16-1 (2006).
 282. 720 ILL. COMP. STAT. 5/16-201 (2006).
 283. ILL. REV. STAT. ch. 38, §16-1 (1961).
 284. Formerly 720 ILL. COMP. STAT. 5/32-5 (2006).
 285. Formerly 720 ILL. COMP. STAT. 5/32-5.1 (2006).
 286. Formerly 720 ILL. COMP. STAT. 5/32-5.1-1 (2006).
 287. Formerly 720 ILL. COMP. STAT. 5/32-5.2 (2006).
 288. Formerly 720 ILL. COMP. STAT. 5/32-5.2-5 (2006).
 289. Formerly 720 ILL. COMP. STAT. 5/32-5.3 (2006).
 290. Formerly 720 ILL. COMP. STAT. 5/32-5.4 (2006).
 291. Formerly 720 ILL. COMP. STAT. 5/32-5.4-1 (2006).
 292. Formerly 720 ILL. COMP. STAT. 5/32-5.5 (2006).
 293. Formerly 720 ILL. COMP. STAT. 5/32-5.6 (2006).
 294. Formerly 720 ILL. COMP. STAT. 5/32-5.7 (2006).
 295. Formerly 720 ILL. COMP. STAT. 5/17-12 (2006).
 296. Formerly 720 ILL. COMP. STAT. 5/17-2 (2006).
 297. Formerly 720 ILL. COMP. STAT. 5/17-2 (c-2) to (c-5) (2006).

eliminated because it overlaps with paragraph (c-1). Conduct prohibited in those paragraphs is also prohibited in paragraph (c-1).

The offense of Use of Name Pawner's Society²⁹⁸ is repealed as unnecessary because it prohibits the same conduct as False Personation.²⁹⁹ Both provisions prohibit the unlawful use of a corporate name.

The chart below describes the former location, titles, and sentences for all of the False Personation offenses now incorporated into Section 17-2.

Former Location	Title	Sentence
32-5	False Personation of Attorney, Judicial, or Governmental Officials	Class 4 felony/Class B misdemeanor
32-5.1	False Personation of a Peace Officer	Class 4 felony
32-5.1-1	False Personation of a Peace Officer While Carrying a Deadly Weapon	Class 3 felony
32-5.2	Aggravated False Personation of a Peace Officer	Class 3 felony
32-5.2-5	False Law Enforcement Badges	Class A; Class 3 for second or subsequent offense
32-5.3	False Personation of a Parent or Legal Guardian	Class A misdemeanor
32-5.4	False Personation of a Fire Fighter	Class 4 felony
32-5.4-1	False Personation of a Fire Fighter While Carrying a Deadly Weapon	Class 3 felony
32-5.5	Aggravated False Personation of a Fire Fighter	Class 3 felony
32-5.6	False Personation of an Emergency Management Worker	Class 4 felony
32-5.7	Aggravated False Personation of an Emergency Management Worker	Class 3 felony
17-2(a)	False Personation: veterans' or public safety personnel/	Class C misdemeanor

298. Formerly 720 ILL. COMP. STAT. 5/17-19 (2006).

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

	exhibits any decal, badge or insignia	
17-2(a-5)	False Personation: falsely represents himself or herself to be a veteran seeking employment or public office	Class A misdemeanor
17-2(a-6)	False Personation: recipient of medals	Petty offense
17-2(b)	False Personation: representation of affiliation/badge, decal, insignia	Class C misdemeanor
17-2(b-10)	False Personation: titles in name of state, State agency, public university, or unit of local government	Class C misdemeanor
17-2(c-1)	False Personation: solicitation, etc	Class 4 felony
17-12	Fraudulent Advertisement of Corporate Name	Petty offense
17-19	Use of Name Pawner's Society	Petty offense

17-3: Forgery

Forgery is reorganized to consolidate the offenses of False Academic Degrees, Deceptive Altering or Sale of Coins, and Counterfeit Universal Price Code Label.³⁰⁰ Definitions from these provisions are moved to Article 15.

Division II: Fraudulent Tampering

17-201: Fraud in Transfers of Real and Personal Property

The former offenses of Fraudulent Land Sales,³⁰¹ Acknowledgment of Fraudulent Conveyances,³⁰² and the Conditional Sales Protection Act,³⁰³ are consolidated in this section. These former provisions are combined because they all relate to fraudulent conveyances or transactions involving real estate or personal property. The mental state of “knowingly” is added to former offense of Sale without consent of title holder,³⁰⁴ and replaces the archaic mental state of “willfully” in the former

300. Formerly 720 ILL. COMP. STAT. 5/17-2.5 (2006), 720 ILL. COMP. STAT. 5/17-4 (2006); 720 ILL. COMP. STAT. 5/17-23 (2006).

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

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

303. Formerly 720 ILL. COMP. STAT. 240/0.01 to 240/1 (2006).

304. Formerly 720 ILL. COMP. STAT. 240/1 (2006).

offense of Acknowledgement of fraudulent conveyance.³⁰⁵

17-202: Fraud in Stock Transactions

This section is a combination of Fraudulent Issuance of Stock³⁰⁶ and Fraudulent Stock; Officer Signing.³⁰⁷ Both provisions prohibit the fraudulent issuance of stock, punishing conduct involving the issuance of false or simulated stock certificates, whether committed by a corporate official or anyone else, and punishing an officer or agent for issuing, pledging or transferring stock when that official was not authorized by law to do so.

Also, the archaic mental state “designedly” is eliminated from former Fraudulent Issuance of Stock,³⁰⁸ and the archaic mental states of “willfully and designedly” in former Fraudulent Stock; Officer Signing³⁰⁹ are replaced with “knowingly.”

17-203: Misconduct by a Corporate Official

The archaic mental state of “purpose” is replaced with “intent.”

17-204: Fraudulent Collection Practices

This section is a consolidation of Deceptive Collection Practices³¹⁰ and Unlawful Attempt to Collect Compensated Debt Against a Crime Victim.³¹¹ Both involve improper acts while collecting a debt and do not require separate statutes.

17-205: Financial Institution Fraud and Loan Fraud

Two offenses, Financial Institution Fraud, and Loan Fraud,³¹² are combined and relocated from former Article 16H, Financial Crimes,³¹³ to Article 17. The new offense is titled “Financial Institution and Loan Fraud.” These offenses are combined because each requires “intent to defraud,” and are relocated because other provisions in Article 17 similarly require an “intent to defraud.”

17-206: Fraud on Creditors

Party to fraudulent land conveyances³¹⁴ and Fraud in

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

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

307. Formerly 720 ILL. COMP. STAT. 5/17-18 (2006).

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

309. Formerly 720 ILL. COMP. STAT. 5/17-18 (2006).

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

311. Formerly 720 ILL. COMP. STAT. 5/17-5.5 (2006).

312. Formerly 720 ILL. COMP. STAT. 5/16H-25 (2006); 720 ILL. COMP. STAT. 5/16H-30 (2006).

313. Formerly 720 ILL. COMP. STAT. 5/16H-1 to 5/16H-65 (2006).

314. Formerly 720 ILL. COMP. STAT. 5/17-14 (2006).

insolvency³¹⁵ are consolidated in this section. Both punish the transfer of property to hinder creditors. The former offense of Fraud in insolvency³¹⁶ is more limited because it applies only when a defendant knew that proceedings were about to start or had been started, to give the creditor the property, and it punished acts far more severely than the previous offense of Party to fraudulent land conveyances.³¹⁷ The sentencing differences are preserved in this consolidation. The offense of Party to fraudulent land conveyances³¹⁸ has existed since the late 1800s and used antiquated language that is difficult to understand. That language is replaced and updated, but the substance of the offense is preserved.

The offense of Concealment of Collateral³¹⁹ is incorporated as a subsection of Fraud on Creditors. This offense is relocated to Article 17 because it requires an “intent to defraud.”³²⁰ It is added as a subsection of Fraud on Creditors because of its relationship to other concealment of collateral offenses.

Finally, the archaic mental state of “purpose” in the now consolidated offense of Fraud in Insolvency³²¹ is replaced with “intent.”

17-207: Mail and Wire Fraud

Fraudulent Schemes and Artifices³²² is renamed Mail and Wire Fraud, and reorganized to enhance clarity. The name reflects the common use of these words to describe these offenses. An intentional mental state is placed in Mail fraud, and jurisdiction and sentencing portions of both statutes are reorganized. A definition of “scheme or artifice to defraud”³²³ is removed and added as a definition in Article 15 consistent with the overall redesign of the statutes. The “reasonable foreseeability” language in wire fraud is removed to enhance clarity.

Division III: Credit and Debit Card Fraud

Provisions from the former Illinois Credit Card and Debit Card Act³²⁴ are relocated to Article 17, close to other Fraud-based offenses. To omit redundancies throughout the Credit and Debit

315. Formerly 720 ILL. COMP. STAT. 5/17-27 (2006).

316. *Id.*

317. Formerly 720 ILL. COMP. STAT. 5/17-14 (2006).

318. *Id.*

319. Formerly 720 ILL. COMP. STAT. 5/16H-35 (2006).

320. *Id.*

321. Formerly 720 ILL. COMP. STAT. 5/17-27(a)(1) (2006).

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

323. Formerly 720 ILL. COMP. STAT. 5/17-24(e)(1) (2006).

324. Formerly 720 ILL. COMP. STAT. 250/1 to 250/24 (2006).

Card Fraud Section, the term “item or items of value” is inserted to replace the longer terms that defined it. Several offenses that were previously untitled are given titles. The mental state “knowingly” is added where none existed, and mental states are adjusted to accurately reflect those prescribed in Article 4 of the Code, Criminal Act and Mental State. Previous Sections 10³²⁵ and 11³²⁶ of the former Credit Card and Debit Card Act are repealed because both are punishable as Theft in Section 16-1.

17-302: Possession of Another’s Credit, Debit or Identification Card

Section 17-302 incorporates the offense of Possession of Identification Card from former Deceptive Practices³²⁷ and re-titles the offense.

17-306: Use of Counterfeited, Forged, Expired, Revoked, or Unissued Credit or Debit Card; 17-307: Use of Card with Intent to Defraud; 17-308: Use of Account Number or Code with Intent to Defraud; Possession of Record of Charge Forms; 17-309: Receipt of Goods or Services

The threshold dollar amounts in these offenses are increased from \$300 to \$500. These increases are consistent with the dollar amount increases throughout the Code.

17-311: Altered or Counterfeited Card

Former offenses Alteration of Card³²⁸ and Counterfeiting,³²⁹ from the previous Illinois Credit Card and Debit Card Act³³⁰ are combined into one provision because their elements are similar.

	Former Offense: Altered Cards	Former Offense: Counterfeit Cards
Elements	A person who, with intent to defraud either the purported issuer, or a person providing money, goods, property, services or anything else of value, or any other person, - alters a credit or	A person who, with intent to defraud either a purported issuer, or a person providing money, goods, property, services or anything else of value, or any other person, - counterfeits a

325. Formerly 720 ILL. COMP. STAT. 250-10 (2006).

326. Formerly 720 ILL. COMP. STAT. 250-11 (2006).

327. Formerly 720 ILL. COMP. STAT. 5/17-1(C)(4) (2006).

328. Formerly 270 ILL. COMP. STAT. 250-15 (2006).

329. Formerly 720 ILL. COMP. STAT. 250-16 (2006).

330. Formerly 720 ILL. COMP. STAT. 250 (2006).

	debit card or a purported credit or debit card - with knowledge that the same has been altered	purported credit or debit card - or possesses a purported credit card or debit card with knowledge that the card has been counterfeited
Prima facie provision	Possession of 2 or more altered cards = prima facie evidence of intent to defraud	Possession of 2 or more counterfeit cards = prima facie evidence of intent to defraud
Classification	Class 4 felony	Class 3 felony

Division IV: Fraud on a Private Entity

A new section within Article 17 is created to group offenses dealing with Fraud on a Private Entity. The private entity provisions from the following statutes, Acts, and Articles are included: Insurance Claims for Excessive Charges;³³¹ Insurance Fraud;³³² Health Care Benefits Fraud;³³³ Aggravated Fraud;³³⁴ Conspiracy to Commit Fraud;³³⁵ Organizer of an Aggravated Fraud Conspiracy;³³⁶ Civil Damages for Insurance Fraud;³³⁷ and Actions by State Licensing Agencies.³³⁸ This new section is situated in close proximity to the new comprehensive section concerning Fraud on a Governmental Entity because they proscribe similar conduct.

17-401: Insurance Claims for Excessive Charges

Section 17-401 consolidates provisions in the former Insurance Claims for Excessive Charges Act³³⁹ into one provision and situates it as the first statute in the section of the Code concerning Fraud on a Private Entity. Additionally, a mental state is added to the offense.

17-402: Insurance Fraud

Section 17-402 incorporates various insurance fraud offenses from Article 46, Insurance Fraud, Fraud on the Government, and

331. Formerly 720 ILL. COMP. STAT. 325/1 to 325/10 (2006).

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

333. Formerly 720 ILL. COMP. STAT. 5/17-8 (2006).

334. Formerly 720 ILL. COMP. STAT. 5/46-2 (2006).

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

336. Formerly 720 ILL. COMP. STAT. 5/46-4 (2006).

337. Formerly 720 ILL. COMP. STAT. 5/46-5 (2006).

338. Formerly 720 ILL. COMP. STAT. 5/46-6 (2006).

339. Formerly 720 ILL. COMP. STAT. 325/1 to 325/10 (2006).

Related Offenses,³⁴⁰ and the previous offense of Health Care Benefits Fraud³⁴¹ into one offense. The private entity components from the former offenses of Insurance fraud³⁴² and Aggravated fraud³⁴³ are likewise incorporated into this section. The offense of Conspiracy to Commit Fraud³⁴⁴ is eliminated in lieu of the general Conspiracy provision in Section 8-2 of the Code.³⁴⁵ Amendments are made to the Conspiracy statute to reflect the special sentencing framework for insurance fraud offenses in former Article 46. Organizer of an Aggravated Fraud Conspiracy³⁴⁶ is also incorporated into the general Conspiracy provision in Section 8-2, as well as the civil damages provision in former Section 46-5. The threshold dollar amount is increased from \$300 to \$500. This comports with the dollar amount increases throughout the Code.

Division V: Fraud on a Governmental Entity

A number of individual statutes are located within a new division of the Article titled "Fraud on a Governmental Entity." The statutes and Articles included in this new Section include: State Benefits Fraud;³⁴⁷ Public Aid Wire Fraud;³⁴⁸ Public Aid Mail Fraud;³⁴⁹ Disqualification for State Benefits;³⁵⁰ WIC Fraud;³⁵¹ False Information on an Application for Employment with Certain Public or Private Agencies;³⁵² Fraud on a Governmental Entity;³⁵³ Aggravated Fraud;³⁵⁴ Conspiracy to Commit Fraud;³⁵⁵ Civil Damages for Insurance Fraud or Fraud on a Governmental Entity;³⁵⁶ and Actions by State Licensing Agencies.³⁵⁷ The Organizer of an Aggravated Fraud Conspiracy provision³⁵⁸ is incorporated into Conspiracy.³⁵⁹

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

341. Formerly 720 ILL. COMP. STAT. 5/17-8 (2006).

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

343. Formerly 720 ILL. COMP. STAT. 5/46-2 (2006).

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

345. 720 ILL. COMP. STAT. 5/8-2 (2006).

346. Formerly 720 ILL. COMP. STAT. 5/46-4 (2006).

347. Formerly 720 ILL. COMP. STAT. 5/17-6 (2006).

348. Formerly 720 ILL. COMP. STAT. 5/17-9 (2006).

349. Formerly 720 ILL. COMP. STAT. 5/17-10 (2006).

350. Formerly 720 ILL. COMP. STAT. 5/17A-1 to 5/17A-4 (2006).

351. Formerly 720 ILL. COMP. STAT. 5/17B-.05 to 5/17B-30(2006).

352. Formerly 720 ILL. COMP. STAT. 5/17-22 (2006).

353. Formerly 720 ILL. COMP. STAT. 5/46-1.1 (2006).

354. Formerly 720 ILL. COMP. STAT. 5/46-2 (2006).

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

356. Formerly 720 ILL. COMP. STAT. 5/46-5 (2006).

357. Formerly 720 ILL. COMP. STAT. 5/46-6 (2006).

358. Formerly 720 ILL. COMP. STAT. 5/46-4 (2006).

359. 720 ILL. COMP. STAT. 5/8-2 (2006).

The configuration of this new Section is:

Organization for New Fraud on a Governmental Entity Article

New Section	Statute	Former location
501	State Benefits Fraud	Section 17-6
502	WIC Fraud (condensed)	Article 17B
503	Persons Under Deportation Order; Ineligible for Benefits	Article 17A
504	Public Aid Mail and Wire Fraud (combined)	Sections 17-9 and 17-10
505	False Information on Application	Section 17-22
506	Insurance Fraud on a Governmental Entity	Section 46-1.1

Mental state adjustments are made to various offenses.

17-501: State Benefits Fraud

The former offense of States Benefits Fraud³⁶⁰ is relocated to this new provision. The felony threshold dollar amount is increased from \$300 to \$500. This comports with the dollar amount increases throughout the Code.

17-502: WIC Fraud

Former Article 17B, WIC Fraud,³⁶¹ is consolidated into one provision and included within the Fraud on a governmental entity section. The former Forfeitures³⁶² statute is relocated to Article 36, Seizure and Forfeitures. The new consolidated provision is located immediately after the offense of State Benefits Fraud to group similar offenses. The felony threshold dollar amount is increased from \$150 to \$300. This comports with the dollar amount increases throughout the Code.

17-503: Persons Under Deportation Order; Ineligible for Benefits

Former Article 17A, Disqualification for States Benefits,³⁶³ is consolidated from five provisions into one. No substantive change is intended. The felony threshold dollar amount is increased from \$150 to \$300. This comports with the dollar amount increase throughout the Code.

360. Formerly 720 ILL. COMP. STAT. 5/17-6 (2006).

361. Formerly 720 ILL. COMP. STAT. 5/17B-0.05 (2006).

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

363. Formerly 720 ILL. COMP. STAT. 5/17A-1 to 5/17A-4 (2006).

17-504: Public Aid Wire and Mail Fraud

The previous offenses Public Aid Wire Fraud³⁶⁴ and Public Aid Mail Fraud³⁶⁵ are combined into one provision. The differences inherent in the types of fraudulent communications are preserved in subsections of the new statute.

17-506: Insurance Fraud on a Governmental Entity

The governmental entity components from former Insurance Fraud³⁶⁶ and Aggravated Fraud,³⁶⁷ are consolidated. The offense of Conspiracy to Commit Fraud³⁶⁸ is eliminated in lieu of the general Conspiracy provision in the Code.³⁶⁹ Amendments are made to the Conspiracy statute to reflect the special sentencing framework for insurance fraud offenses in former Article 46. Organizer of an Aggravated Fraud Conspiracy³⁷⁰ is also incorporated into the general Conspiracy provision.³⁷¹ The offense of Organizer of an Aggravated Fraud Conspiracy³⁷² is incorporated into the general Conspiracy provision in Section 8-2 of the Code. No substantive change is intended.

*Division VI: Miscellaneous Special Fraud Practices**17-601: Computer Fraud*

This section is derived from the Computer Fraud Article.³⁷³ This consolidation does not alter the substance of the statutes. Because much of former Article 16D involves acts of fraud and deception, such as using deceptive means to access another's computer, this consolidated statute is moved to Article 17. As part of the consolidation, mental states are added and archaic mental states have been updated. The rebuttable presumption is transformed into a permissive inference.³⁷⁴ The former forfeiture

364. Formerly 720 ILL. COMP. STAT. 5/17-9 (2006).

365. Formerly 720 ILL. COMP. STAT. 5/17-10 (2006).

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

367. Formerly 720 ILL. COMP. STAT. 5/46-2 (2006).

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

369. 720 ILL. COMP. STAT. 5/8-2 (2006).

370. Formerly 720 ILL. COMP. STAT. 5/46-4 (2006).

371. 720 ILL. COMP. STAT. 5/8-2 (2006).

372. Formerly 720 ILL. COMP. STAT. 5/46-4 (2006).

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

374. The previous rebuttable presumption stated:

Sec. 16D-7. Rebuttable Presumption without authority. In the event that a person accesses or causes to be accessed a computer, which access requires a confidential or proprietary code which has not been issued to or authorized for use by that person, a rebuttable presumption exists that the computer was accessed without the authorization of its owner or in excess of the authority granted.

Formerly 720 ILL. COMP. STAT. 5/16D-7 (2006).

provision³⁷⁵ is transferred to Article 36 to group forfeiture provisions in one place in the Code.

17-602: Defrauding Drug and Alcohol Screening Tests

Mental states are added to this section to ensure that acts are punished only when the defendant has the intent to defeat or defraud a drug or alcohol test.³⁷⁶ Also, the former presumption is transformed into a permissive inference.³⁷⁷

17-603: Financial Exploitation of an Elderly Person or a Person with a Disability

This offense is derived from the previous Financial Exploitation of an Elderly Person or a Person with a Disability offense.³⁷⁸ Although this former offense involves the theft of a victim's money, the means prohibited involve acts of fraud and deception. Therefore, this offense is located in Article 17.

17-605: Criminal Usury

Criminal Usury, former Article 39,³⁷⁹ is relocated closer to Theft and other fraud-based offenses in the Code. Article 39 is located among the "Added Articles" in Title V, which were not part of the original Code of 1961. The offense of Criminal Usury³⁸⁰ is combined with the Sentence provision³⁸¹ and Non-Application provision³⁸² to comprise one Usury provision. The *prima facie* provision is replaced with a permissive inference.³⁸³ No

375. Formerly 720 ILL. COMP. STAT. 5/16D-6 (2006).

376. The former offense was entitled Defrauding Drug and Alcohol Screening Tests. Formerly 720 ILL. COMP. STAT. 5/17-28 (2006).

377. The previous rebuttable presumption stated:

(b) For the purpose of determining the intent of the defendant who is charged with a violation of this Section, the trier of fact may take into consideration whether or not a heating element or any other device used to thwart a drug or alcohol screening test accompanies the sale, giving, distribution, or marketing of synthetic or human substances or other products or whether or not instructions that provide a method for thwarting a drug or alcohol screening test accompany the sale, giving, distribution, or marketing of synthetic or human substances or other products.

Formerly 720 ILL. COMP. STAT. 5/17-28(b) (2006).

378. Formerly 720 ILL. COMP. STAT. 5/16-1.3 (2006).

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

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

381. Formerly 720 ILL. COMP. STAT. 5/39-2 (2006).

382. Formerly 720 ILL. COMP. STAT. 5/39-3 (2006).

383. The previous rebuttable presumption stated:

(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.

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

substantive change is intended.

17-606: Conspiracy to Commit a Financial Crime; 17-607: Continuing Financial Crimes Enterprise; 17-608: Organizer of a Continuing Financial Crimes Enterprise

Conspiracy to Commit a Financial Crime,³⁸⁴ Continuing Financial Crimes Enterprise,³⁸⁵ and Organizer of a Continuing Financial Crimes Enterprise,³⁸⁶ are moved to Article 17 with other fraud-related provisions. These offenses are placed in Article 17 because each of these offenses requires that certain fraud-related offenses be committed. These conspiracy and enterprise provisions retain references to Code provisions for those statutes that formerly occupied Article 16H, Illinois Financial Crime Law,³⁸⁷ including Misappropriation of Financial Institution Property,³⁸⁸ Commercial Bribery Involving a Financial Institution,³⁸⁹ Financial Institution Fraud,³⁹⁰ Loan Fraud,³⁹¹ Concealment of Collateral,³⁹² and Financial Institution Robbery.³⁹³ No substantive change is intended.

Article 18: Robbery

In Article 18, Robbery and similar offenses are consolidated, and mental states are inserted. The offense of Vehicular Invasion³⁹⁴ is relocated to Article 18 because it is related to the offenses of Vehicular Hijacking and Aggravated Vehicular Hijacking.³⁹⁵

18-1: Robbery and Aggravated Robbery

Former separate offenses Robbery³⁹⁶ and Aggravated Robbery³⁹⁷ are combined. The former offense references remain in the new statute. “Knowingly” is added as the requisite mental state. Financial Institution Robbery³⁹⁸ is combined with Robbery and Aggravated Robbery as an additional aggravating factor. This

384. Formerly 720 ILL. COMP. STAT. 5/16H-45 (2006).

385. Formerly 720 ILL. COMP. STAT. 5/17H-50 (2006).

386. Formerly 720 ILL. COMP. STAT. 5/16H-55 (2006).

387. Formerly 720 ILL. COMP. STAT. 5/16H (2006).

388. Formerly 720 ILL. COMP. STAT. 5/16H-15 (2006).

389. Formerly 720 ILL. COMP. STAT. 5/16H-20 (2006).

390. Formerly 720 ILL. COMP. STAT. 5/16H-25 (2006).

391. Formerly 720 ILL. COMP. STAT. 5/16H-30 (2006).

392. Formerly 720 ILL. COMP. STAT. 5/16H-35 (2006).

393. Formerly 720 ILL. COMP. STAT. 5/16H-40 (2006).

394. Formerly 720 ILL. COMP. STAT. 5/12-11 (2007).

395. 720 ILL. COMP. STAT. 5/18-3 (2006).

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

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

398. Formerly 720 ILL. COMP. STAT. 5/16H-40 (2006).

offense is moved to Article 18 as a sentence enhancement for robberies that occur in the financial institution context. A definition of “financial institution” is added to this statute.

18-3: Vehicular Hijacking and Aggravated Vehicular Hijacking

Former offenses Vehicular Hijacking³⁹⁹ and Aggravated Vehicular Hijacking,⁴⁰⁰ are consolidated. The mental state of “knowingly” is added.

18-6: Vehicular Invasion

Vehicular Invasion⁴⁰¹ is relocated to Article 18 of the Code so it is in proximity to similar offenses, Vehicular Hijacking and Aggravated Vehicular Hijacking.

Article 19: Burglary

The Article is reorganized to bring like offenses into proximity to one another. Criminal Fortification of a Residence or Building⁴⁰² is moved from Burglary to a Narcotics portion of the Code because it prohibits acts more closely related to the Narcotics trade than to acts associated with Burglary. Two additions clarify language. The offense of Home Invasion⁴⁰³ is moved to Article 19 because it is similar to the offenses of Burglary and Residential Burglary contained in this Article.

When Article 19, Burglary, was drafted in 1961, only two provisions, Burglary, and Possession of Burglary Tools,⁴⁰⁴ were contained in the Article. Subsequently, Residential Burglary,⁴⁰⁵ Criminal Trespass to a Residence,⁴⁰⁶ and Criminal Fortification of a Residence or Building⁴⁰⁷ were added to the Article. These additions placed dissimilar offenses in close proximity to one another, which reduced clarity. Provisions in the Article are reordered. Burglary remains the first offense, followed by Criminal Trespass to Residence, Residential Burglary, and Possession of Burglary Tools.

399. Formerly 720 ILL. COMP. STAT. 5/18-3 (2006).

400. Formerly 720 ILL. COMP. STAT. 5/18-4 (2006).

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

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

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

404. Formerly 720 ILL. COMP. STAT. 5/19-1 (2006); 720 ILL. COMP. STAT. 5/19-2 (2006).

405. Formerly 720 ILL. COMP. STAT. 5/19-3 (2006).

406. Formerly 720 ILL. COMP. STAT. 5/19-4 (2006).

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

19-2: Criminal Trespass to a Residence

The first clarifying change, in paragraph (a)(1), adds qualifying language to the term “housetrailer.” Only a housetrailer “that is the dwelling of another” falls under the scope of “Criminal Trespass to a Residence.” Second, in paragraph (3) of Criminal Trespass to a Residence, the word “only” is moved to clarify the term it is intended to modify.

19-6: Home Invasion

Home Invasion⁴⁰⁸ is relocated to Article 19, Burglary. This offense is relocated so that similar crimes, as they relate to unwanted intrusions into the home, are placed in one Code location.

Article 20: Arson

In Article 20, Arson, provisions are consolidated to reduce the overall number of statutes in the Code. A substantive change is made to the provisions in this Article to alter the amount of money that serves as the threshold for the definition of Arson. The offense of Use of a Dangerous Place for the Commission of a Controlled Substance or Cannabis Offense is renamed and relocated to Article 20 of the Code because it is an offense designed to protect persons from certain types of dangerous fires.

20-1: Arson, Residential Arson, and Place of Worship Arson

Arson is combined with the former Residential Arson⁴⁰⁹ and Place of Worship Arson.⁴¹⁰ The new offense is titled “Arson; Residential and Place of Worship Arson.” Residential Arson and Place of Worship Arson enhance the punishment for simple Arson because of the structure burned.

The monetary threshold for damage to personal property, necessary for a fire to qualify as Arson, is increased. The \$150 threshold had not been increased since the Arson provision was enacted in 1961.⁴¹¹ A \$300 threshold is substituted.

20-3: Creation of a Dangerous or Incendiary Place or Device

Use of a Dangerous Place for the Commission of a Controlled Substance or Cannabis Offense⁴¹² is relocated to Article 20 and

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

409. Formerly 720 ILL. COMP. STAT. 5/20-1.2 (2006).

410. Formerly 720 ILL. COMP. STAT. 5/20-1.3 (2006).

411. 720 ILL. COMP. STAT. 5/20-1(b) (2006).

412. Formerly 720 ILL. COMP. STAT. 5/12-2.6 (2006).

renamed "Creation of a Dangerous or Incendiary Place or Device." Like Arson and Aggravated Arson, this offense criminalizes the conduct of those who endanger others by means of fire, explosion, and toxic materials. The legislative debate for this provision confirms that one of its primary goals was to protect fire fighters from the dangers associated with drug-related blazes. Creation of a dangerous or incendiary place or device criminalizes drug-related fires and is moved to Article 20 in proximity to similar offenses.

Article 21: Damage and Trespass to Property

Article 21 is reorganized, consolidated and renumbered. The topics in Article 21 are reorganized into three general categories: Damage to Property, Trespass to Property, and Miscellaneous Provisions. A number of statutes are combined to reduce the overall number of provisions. Mental states are added to certain provisions in Article 21.

Statutes are organized into three overarching categories: Damage to Property, Trespass to Property, and Miscellaneous. These changes are made to enhance clarity and to serve as a guide for placement of future provisions.

New Article 21 (and Relocations to Other Articles)	Former Articles 21, 21.1, 21.2, and 21.3
Damage To Property	720 ILL. COMP. STAT. 5/21-1 Criminal Damage to Property
720 ILL. COMP. STAT. 5/21-1 Criminal Damage to Property (now includes former 21-1.1, Criminal Damage to Fire Fighting Apparatus, Hydrants or Equipment, and 21-1.3, Criminal Defacement of Property)	
	720 ILL. COMP. STAT. 5/21-1.1 Criminal Damage to Fire Fighting Apparatus, Hydrants or Equipment
720 ILL. COMP. STAT. 5/21-1.2 Institutional Vandalism	720 ILL. COMP. STAT. 5/21-1.2 Institutional Vandalism
	720 ILL. COMP. STAT. 5/21-1.3 Criminal Defacement of Property
720 ILL. COMP. STAT. 5/21-1.6 Criminal Damage to Government Supported Property	720 ILL. COMP. STAT. 5/21-4 Criminal Damage to Government Supported Property

(To Deadly Weapons) 24-22 Jackrocks	720 ILL. COMP. STAT. 5/21-1.4 Jackrocks
Trespass	720 ILL. COMP. STAT. 5/21-2
720 ILL. COMP. STAT. 5/21-2 Criminal Trespass to Vehicles	Criminal Trespass to Vehicles
720 ILL. COMP. STAT. 5/21-3 Criminal Trespass to Real Property	720 ILL. COMP. STAT. 5/21-3 Criminal Trespass to Real Property
720 ILL. COMP. STAT. 5/21-3.1 Residential Picketing	720 ILL. COMP. STAT. 5/21.1 <i>et. seq.</i> Residential Picketing
720 ILL. COMP. STAT. 5/21-5 Criminal Trespass to State Supported Land	720 ILL. COMP. STAT. 5/21-5 Criminal Trespass to State Supported Land
720 ILL. COMP. STAT. 5/21-5.1 Interference with a Public Institution of Higher Education	720 ILL. COMP. STAT. 5/21.2 <i>et. seq.</i> Interference with a Public Institution of Higher Education
(To Deadly Weapons) 24-23 Unauthorized Possession or Storage of Weapons	720 ILL. COMP. STAT. 5/21-6 Unauthorized Possession or Storage of Weapons
720 ILL. COMP. STAT. 5/21-7 Criminal Trespass to Restricted Areas and Restricted Landing Areas at Airports	720 ILL. COMP. STAT. 5/21-7 Criminal Trespass to Restricted Areas and Restricted Landing Areas at Airports
720 ILL. COMP. STAT. 5/21-8 Criminal Trespass to A Nuclear Facility	720 ILL. COMP. STAT. 5/21-8 Criminal Trespass to a Nuclear Facility
720 ILL. COMP. STAT. 5/21-9 Criminal Trespass to a Place of Public Amusement	720 ILL. COMP. STAT. 5/21-9 Criminal Trespass to a Place of Public Amusement
Miscellaneous Provisions	720 ILL. COMP. STAT. 5/21-10
720 ILL. COMP. STAT. 5/21-10 Criminal Use of Motion Picture Exhibition Facility	Criminal Use of a Motion Picture Exhibition Facility
720 ILL. COMP. STAT. 5/21-11: Distributing or Delivering Written or Printed Solicitation on School Property	720 ILL. COMP. STAT. 5/21.3-5 Distributing or Delivering Written or Printed Solicitation on School Property
720 ILL. COMP. STAT. 5/21-15: Tampering with a Security, Fire, or Life Safety System	720 ILL. COMP. STAT. 5/16-22 Tampering with a security, fire, or life safety system

*Division I: Damage to Property**21-1: Criminal Damage to Property*

Section 21-1 contains provisions related to Criminal Damage to Property. Provisions from former Article 21⁴¹³ are consolidated into this section because each state specific forms of criminal damage to property. Criminal Damage of Fire Fighting Apparatus, Hydrants or Equipment⁴¹⁴ is added to this section. The mental state of “knowingly” is added to this section. Criminal Defacement of Property⁴¹⁵ is combined with Criminal Damage to Property because of the similarity between these provisions. The definition of “defacement” is added to reflect that it is a separate and distinct type of property damage. The sentencing structure of the former Criminal Defacement of Property provision is preserved in the consolidated statute. The threshold dollar amount is increased from \$300 to \$500. This comports with the dollar amount increases throughout the Code.

21-1.6: Criminal Damage to Government Supported Property

Criminal Damage to Government Supported Property⁴¹⁶ is reorganized to improve clarity, placing the penalty provision after the substantive offense. A section is added to Criminal Damage to Government Supported Property stating that the amount of monetary damage caused is a factual element to be charged and proven for both offenses, making this provision parallel to Criminal Damage to Property.⁴¹⁷

*Division III: Miscellaneous Provisions**21-3.1: Residential Picketing; 21-5.1: Interference with Public Institution of Higher Education*

Residential Picketing⁴¹⁸ and Interference with a Public Institution of Higher Education⁴¹⁹ are added to Article 21. In Articles 21.1, Residential Picketing⁴²⁰ and 21.2, Interference with a Public Institution of Higher Education,⁴²¹ the unnecessary “legislative declaration” sections are removed.⁴²² A “willful”

413. Formerly 720 ILL. COMP. STAT. 5/21 (2006).

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

415. Formerly 720 ILL. COMP. STAT. 5/21-1.3 (2006).

416. Formerly 720 ILL. COMP. STAT. 5/21-4 (2006).

417. Formerly 720 ILL. COMP. STAT. 5/21-1 (2006).

418. Formerly 720 ILL. COMP. STAT. 5/21.1-1 to 21.1-3 (2006).

419. Formerly 720 ILL. COMP. STAT. 5/21.2-1 to 21.1-6 (2006).

420. Formerly 720 ILL. COMP. STAT. 5/21.1-1 to 21.1-3 (2006).

421. Formerly 720 ILL. COMP. STAT. 5/21.2-1 to 21.1-6 (2006).

422. These provisions were formerly 720 ILL. COMP. STAT. 5/21.1-2 (2006) and 720 ILL. COMP. STAT. 5/21.2-1 (2006).

mental state is removed from Interference with a Public Institution of Higher Education and replaced with a “knowingly” mental state. Minor language changes are made to clarify the meaning of the statutes.

21-11: Distributing or Delivering Written or Printed Solicitation on School Property

The offense of Distributing or Delivering Written or Printed Solicitation on School Property⁴²³ is relocated to Article 21 because it relates to the other provisions contained in this Article.

21-15: Tampering with a Security, Fire, or Life Safety System

Section 21-15, Tampering with a Security, Fire, or Life Safety System,⁴²⁴ is transferred from Article 16, Theft and Related Offenses.⁴²⁵ This section is better situated in Article 21 because the offense deals primarily with the destruction of security, fire or life safety systems, as opposed to the theft of these items. Although this section is related to thefts in that a person may tamper with security systems to enable a theft, the offense itself punishes only the destruction of property.

Article 22: Armed Offense

Former Article 33A, Armed Violence,⁴²⁶ is relocated to Article 22 of the Code. The former offense of Armed Violence⁴²⁷ is re-titled and amended to eliminate potential proportionate penalties and double enhancement issues. This amendment makes the statute applicable to all felonies other than: (1) those that are premeditated, or (2) those that make the possession or use of a dangerous weapon either an element of the base offense, an aggravated or enhanced version of the offense, or a mandatory sentencing factor that increases the sentencing range. The substantive change accompanying this provision does not affect the sentences applicable to those felonies that may form the predicate for Armed Offense. The remaining provisions in former Article 33A remain unchanged except for their relocation.

Article 23: Harms to Children and Students

A new Article is created to encompass statutes relating to specific harms to children. This Article is intended to gather into one location existing laws designed to protect children. It is not

423. Formerly 720 ILL. COMP. STAT. 5/21.3-5 (2006).

424. Formerly 720 ILL. COMP. STAT. 5/16-22 (2006).

425. Formerly 720 ILL. COMP. STAT. 5/16-22 (2006).

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

427. Formerly 720 ILL. COMP. STAT. 5/33A-2 to A-3 (2006).

intended to change existing Illinois law, except insofar as changes are required to harmonize existing sections of the Code and miscellaneous acts into one coherent statutory scheme.

The Article includes former Code Sections and miscellaneous Acts: Contributing to the Criminal Delinquency of a Juvenile;⁴²⁸ Hazing Act;⁴²⁹ Neglected Children Offense Act;⁴³⁰ Wrongs to Children Act;⁴³¹ Child Curfew Act;⁴³² and Adoption Compensation Prohibition Act.⁴³³

The offense of Abandonment of Children by School Bus Driver⁴³⁴ is relocated to Article 12, Bodily Harm, immediately after the related offense of Child Abandonment. This placement more appropriately situates two offenses with similar purposes. The offense of Permitting Sexual Abuse of a Child⁴³⁵ is relocated to Article 11, Sex Offenses. The conduct contemplated in Permitting Sexual Abuse of a Child is primarily defined and punished in Article 11. The definition of “sexual abuse” provided in the former statute refers directly to the definitions of sexual offenses in various Article 11 offenses.

Three offenses were renamed, reorganized and moved to a newly created Article that addresses Harms to Children and Students. These offenses are now titled, “Child Abandonment,”⁴³⁶ “Endangering the Life or Health of a Child,”⁴³⁷ and “Child Offense Probation.”⁴³⁸ The offenses are grouped together because they seek to protect children from certain types of harm. Obsolete laws are deleted.

23-1: Child Abandonment; 23-2: Endangering the Life or Health of a Child; and 23-3: Child Offense Probation

The offenses of Child Abandonment,⁴³⁹ Endangering the Life or Health of a Child,⁴⁴⁰ and Probation⁴⁴¹ are relocated. The probation provision is re-titled as Child Offense Probation. The offenses relate in scope and purpose to the other offenses located in this new Article. A “willfully” mental state in Endangering the Life or Health of a Child, is changed to a “knowingly” mental state

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

429. Formerly 720 ILL. COMP. STAT. 120/0.01 to 10 (2006).

430. Formerly 720 ILL. COMP. STAT. 130/0.01 to 3 (2006).

431. Formerly 720 ILL. COMP. STAT. 150/0.01 to 5.1 (2006).

432. Formerly 720 ILL. COMP. STAT. 555/0.01 to 2 (2006).

433. Formerly 720 ILL. COMP. STAT. 525/0.01 to 5 (2006).

434. Formerly 720 ILL. COMP. STAT. 150/4.1 (2006).

435. Formerly 720 ILL. COMP. STAT. 150/5.1 (2006).

436. Formerly 720 ILL. COMP. STAT. 5/12-21.5 (2006).

437. Formerly 720 ILL. COMP. STAT. 5/12-21.6 (2006).

438. Formerly 720 ILL. COMP. STAT. 5/12-22 (2006).

439. Formerly 720 ILL. COMP. STAT. 5/12-21.5 (2006).

440. Formerly 720 ILL. COMP. STAT. 5/12-21.6 (2006).

441. Formerly 720 ILL. COMP. STAT. 5/12-22 (2006).

because “willful” conduct is currently defined as “knowing” conduct in the Code.⁴⁴² Additionally, a mandatory presumption is eliminated and made into a permissive inference with respect to the proof required when a child under six years of age is left alone in a car.⁴⁴³

23-4: Contributing to the Delinquency of a Minor

Two related statutes are combined to create Section 23-4 of this new Article. This section punishes people who encourage minors to commit crimes. The offense of Contributing to the Delinquency of a Minor⁴⁴⁴ provides the framework for this new Section. The related offense of Contributing to the Criminal Delinquency of a Juvenile appears as the next subsection, formerly Article 33D.⁴⁴⁵ Subsection (c) of that statute contains the penalties for each of the two substantive offenses incorporated as subsections (a) and (b). Each penalty is preserved in its original form, except that language relating to probation is deleted as unnecessary. The changes involve replacing archaic language and reorganizing the offenses. The eliminated language is unnecessary because the Uniform Code of Corrections already contains an authorized disposition of Supervision.⁴⁴⁶ The terms “juvenile” and “child” have been replaced with the term “minor” throughout the Section to harmonize provisions. The next subsection contains the evidentiary provision outlining when the husband or wife of a defendant is a competent witness to testify under subsections (a) or (b). This provision comes from the former Neglected Children Offense Act.⁴⁴⁷ The final subsection in the statute contains the definition of “Delinquent Minor.”⁴⁴⁸

442. 720 ILL. COMP. STAT. 5/4-5(b) (2006).

443. The mandatory presumption provided that “[t]here is a rebuttable presumption that a person committed the offense if he or she left a child 6 years of age or younger unattended in a motor vehicle for more than 10 minutes.” 720 ILL. COMP. STAT. 5/12-21.6(b) (2006); *see also* *People v. Jordan*, 843 N.E.2d 870, 218 Ill. 2d 255, 258 (2006) (discussing the presumption outlined in the statute).

444. Formerly 720 ILL. COMP. STAT. 130/2a (2006).

445. 720 ILL. COMP. STAT. 5/33D-1 (2006).

446. *See* 730 ILL. COMP. STAT. 5/5-1-21 (2006), which provides:

Supervision means a disposition of conditional and revocable release without probationary supervision, but under such conditions and reporting requirements as are imposed by the court, at the successful conclusion of which disposition the defendant is discharged and a judgment dismissing the charges is entered.

Id.; *see also* 730 ILL. COMP. STAT. 5/5-6-1(c) (2006) (describing the circumstances in which a court can order supervision).

447. Formerly 720 ILL. COMP. STAT. 130/3 (2006).

448. Formerly 720 ILL. COMP. STAT. 130/1a (2006).

23-5: Contributing to the Dependency or Neglect of a Minor

The offense of Contributing to the Dependency or Neglect of a Minor is included as Section 23-5 of the new Article.⁴⁴⁹ The offense remains classified as a Class A misdemeanor, but the language relating to probation is deleted from this section.⁴⁵⁰

23-6: Unlawful Transfer of Communications Device to Minor

This section is derived from the definition and substantive offenses in the former Article, Telecommunication Devices.⁴⁵¹ This offense prohibits people from transferring a telecommunications device to a person under the age of 18 with the intent that the device be used to commit an offense. This is comparable to the other offenses in this Article, which punish people for facilitating the commission of an offense by minors.

The forfeiture provision in former Article 44⁴⁵² is transferred to Article 36, Seizure and Forfeitures.

23-7: Hazing

The offense of Hazing has been combined with its formerly separate penalty provision⁴⁵³ and transferred to this Article.

23-8: Unlawful Employment and Exhibition and Required Employment of Single Parent

This statute contains four provisions derived from the former Wrongs to Children Act.⁴⁵⁴ The former provisions are consolidated and presented as one unified statute. Small substantive revisions are made to coherently define similar offenses. Subsection (a) combines two former offenses that share common terminology and purpose.⁴⁵⁵ Mental states are added to this new, combined offense. The offense of Required Employment of a Single Parent⁴⁵⁶ appears as subsection (b) of this statute, with an added mental state. The final subsection of the statute preserves the penalty provisions applicable to each offense defined above.

23-9: Curfew

This section defines Curfew-related offenses and is derived

449. Formerly 720 ILL. COMP. STAT. 130/2 (2006).

450. Pursuant to Sections 730 ILL. COMP. STAT. 5/5-1-21 (2006) and 730 ILL. COMP. STAT. 5/5-6-1 (2006) of the Uniform Code of Corrections, the disposition of supervision is closely analogous to the type of probation previously described in the statute.

451. Formerly 720 ILL. COMP. STAT. 5/44-1 to 44-3 (2006).

452. Formerly 720 ILL. COMP. STAT. 5/44-3(c) (2006).

453. Formerly 720 ILL. COMP. STAT. 120/0.01 (2006).

454. Formerly 720 ILL. COMP. STAT. 150/0.01 (2006).

455. Formerly 720 ILL. COMP. STAT. 150/1, 2 (2006).

456. Formerly 720 ILL. COMP. STAT. 150/3.1 (2006).

from the former Child Curfew Act.⁴⁵⁷ The provision addressing the exercise of legislative or regulatory authority by county, municipal, and other local boards and bodies is included as the final subsection of Section 4.⁴⁵⁸ It remains unchanged.

23-10: Tattooing or Piercing the Body of a Minor

This section is derived from a combination of Tattooing the Body of a Minor⁴⁵⁹ and Piercing the Body of a Minor.⁴⁶⁰ Because the victims in these offenses are exclusively children, this provision is transferred from Article 12, Bodily Harm. As part of the consolidation, the mental states of “knowingly” and “recklessly” are added to the offense to clarify that criminal liability will attach if an offender actually knows or acts recklessly regarding whether the victim is underage. Redundant provisions are eliminated in the consolidation, including a specific reference to an oral cavity in subsection (c)(1),⁴⁶¹ because it is covered by the more general reference to the body.

23-11: Distribution of a Drug to a Child Athlete

Distribution of a Drug to a Child Athlete is relocated to the Harms to Children and Students Article.⁴⁶² It is removed from Article 12, Bodily Harm, because it contains no requirement that a battery occur, or that great bodily harm, permanent disability or disfigurement actually take place.

23-12: Adoption Compensation Prohibition

The final section in this Article incorporates what was previously known as the Adoption Compensation Prohibition Act.⁴⁶³ A “knowingly” mental state is added to what is now subsection (c) of the statute.

Article 24: Deadly Weapons

Article 24⁴⁶⁴ is significantly reorganized. Reorganized offenses are divided into four categories: (1) use, possession and discharge offenses; (2) sale, transfer and manufacture offenses; (3) procedural and regulatory offenses; and (4) miscellaneous offenses. This reorganization aligns similar offenses and categorizes

457. Formerly 720 ILL. COMP. STAT. 555/0.01 (2006).

458. Formerly 420 ILL. COMP. STAT. 555/2 (2006).

459. Formerly 720 ILL. COMP. STAT. 5/12-10 (2006).

460. Formerly 720 ILL. COMP. STAT. 5/12-10.1 (2006).

461. Formerly 720 ILL. COMP. STAT. 5/12-10.1(a)(1) (2006).

462. This section was formerly 720 ILL. COMP. STAT. 5/12-4.9 (2006).

463. Formerly 720 ILL. COMP. STAT. 525/0.01(2006).

464. 720 ILL. COMP. STAT. 5/24-1 (2006).

offenses so that new laws may be located within the Article more effectively. Offenses closely related to use and possession of deadly and dangerous weapons located outside of Article 24 are relocated into the Article.

Other changes are intended to clarify the scope of the Article and to reduce its length. A new section consolidating repetitive provisions of the existing Code into a definition at the beginning of Article 24 is added. Offenses that are similar in scope and reach are consolidated. References to prima facie evidence are amended to ensure that they are not unconstitutional mandatory presumptions, but are constitutional permissive inferences. Mental states are added in some offenses where no explicit mental state exists. Offenses in statutes outside of Article 24 are relocated to Article 24.

The table below shows the existing Sections of the Code and the reorganization:

New Offense and Location	Former Offense and Location
720 ILL. COMP. STAT. 5/24-0.5 Definitions	---
720 ILL. COMP. STAT. 5/24-1 Unlawful Use of Weapons	720 ILL. COMP. STAT. 5/24-1 Unlawful Use of Weapons 720 ILL. COMP. STAT. 5/24-3.6 Unlawful Use of a Firearm in the Shape of a Wireless Telephone
720 ILL. COMP. STAT. 5/24-11 Unlawful Use or Possession of Weapons by Felons or Persons in the Custody of the Department of Corrections Facilities	720 ILL. COMP. STAT. 5/24-1.1 Unlawful Use or Possession of Weapons by Felons or Persons in the Custody of the Department of Corrections Facilities
720 ILL. COMP. STAT. 5/24-12 Aggravated Unlawful Use of a Weapon	720 ILL. COMP. STAT. 5/24-1.6 Aggravated Unlawful Use of a Weapon
720 ILL. COMP. STAT. 5/24-13 Unlawful Use Exemptions	720 ILL. COMP. STAT. ns
720 ILL. COMP. STAT. 5/24-14 Unlawful Use of Firearm Projectiles	720 ILL. COMP. STAT. 5/24-2.1 Unlawful Use of Firearm Projectiles
720 ILL. COMP. STAT. 5/24-15 Unlawful Possession of Firearms and Firearm Ammunition	720 ILL. COMP. STAT. 5/24-3.1 Unlawful Possession of Firearms and Firearm Ammunition
720 ILL. COMP. STAT. 5/24-16 Defacing Identification Marks	720 ILL. COMP. STAT. 5/24-5 Defacing Identification Marks

of Firearms	of Firearms
720 ILL. COMP. STAT. 5/24-17 Reckless Discharge of a Firearm	720 ILL. COMP. STAT. 5/24-1.5 Reckless Discharge of a Firearm
720 ILL. COMP. STAT. 5/24-18 Aggravated Discharge of a Firearm	720 ILL. COMP. STAT. 5/24-1.2 Aggravated Discharge of a Firearm 720 ILL. COMP. STAT. 5/24-1.2-5 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. 5/24-19 Unlawful Discharge of Firearm Projectiles	720 ILL. COMP. STAT. 5/24-3.2 Unlawful Discharge of Firearm Projectiles
720 ILL. COMP. STAT. 5/24-21 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. 5/24-2.2 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. 5/24-22 Unlawful Sale of Firearms by Liquor Licensee	720 ILL. COMP. STAT. 5/24-3.4 Unlawful Sale of Firearms by Liquor Licensee
720 ILL. COMP. STAT. 5/24-23 Unlawful Sale or Delivery of Firearms on the Premises of Any School	720 ILL. COMP. STAT. 5/24-3.3 Unlawful Sale or Delivery of Firearms on the Premises of Any School
720 ILL. COMP. STAT. 5/24-24 Unlawful Sale of Firearms; Gunrunning	720 ILL. COMP. STAT. 5/24-3 Unlawful Sale of Firearms 720 ILL. COMP. STAT. 5/24-3A Gunrunning
720 ILL. COMP. STAT. 5/24-25 Unlawful Purchase of a Firearm	720 ILL. COMP. STAT. 5/24-3.5 Unlawful Purchase of a Firearm
720 ILL. COMP. STAT. 5/24-26 Armed Habitual Criminal	720 ILL. COMP. STAT. 5/24-1.7 Armed Habitual Criminal
720 ILL. COMP. STAT. 5/24-31 Register of Sales by Dealer	720 ILL. COMP. STAT. 5/24-4 Register of Sales by Dealer
720 ILL. COMP. STAT. 5/24-32 Confiscation and Disposition of Weapons	720 ILL. COMP. STAT. 5/24-6 Confiscation and Disposition of Weapons
720 ILL. COMP. STAT. 5/24-33 Weapons Offenses	720 ILL. COMP. STAT. 5/24-7 Weapons Offenses; Community Service

720 ILL. COMP. STAT. 5/24-34 Firearm Tracing	720 ILL. COMP. STAT. 5/24-8 Firearm Tracing
720 ILL. COMP. STAT. 5/24-35 Firearms and Child Protection	720 ILL. COMP. STAT. 5/24-9 Firearms; Child Protection
720 ILL. COMP. STAT. 5/24-36 Affirmative Defense to a Municipal Ordinance Regulating Firearms	720 ILL. COMP. STAT. 5/24-10 Municipal Ordinance Regulating Firearms; Affirmative Defense to a Violation
720 ILL. COMP. STAT. 5/24-41 Jackrocks	720 ILL. COMP. STAT. 5/21-1.4 Jackrocks
720 ILL. COMP. STAT. 5/24-42 Unauthorized Possession or Storage of Weapons	720 ILL. COMP. STAT. 5/21-6 Unauthorized Possession or Storage of Weapons
720 ILL. COMP. STAT. 5/24-43 Possession of a Stolen Firearm	720 ILL. COMP. STAT. 5/16-16 Possession of a Stolen Firearm
720 ILL. COMP. STAT. 5/24-44 Aggravated Possession of a Stolen Firearm	720 ILL. COMP. STAT. 5/16-16.1 Aggravated Possession of a Stolen Firearm
720 ILL. COMP. STAT. 5/24-45 Unlawful Use of Body Armor	720 ILL. COMP. STAT. 5/33F-1 Definitions 720 ILL. COMP. STAT. 5/33F-2 Unlawful Use of Body Armor 720 ILL. COMP. STAT. 5/33F-3 Sentence

The new definitions section includes material from existing Code sections as well as two new definitions, “medical assistance and first aid provider” and “prohibited place.” These two phrases replace long definitions previously repeated throughout Article 24. The fourteen definitions are divided into four categories: types of ammunition, types of weapons, classes of people, and certain locations or activities. For example, defined types of ammunition include armor piercing bullets and flechette shells, and defined weapons include machine guns and tasers. These phrases were used repeatedly throughout Article 24, and defining them in one location improves clarity. The table below shows the previous location of the definitions:

Term	Location of Former Definition
Machine Gun	720 ILL. COMP. STAT. 5/24-1(a)(7)(i); 720 ILL. COMP. STAT. 5/24-1.2-5(c)
Stun Gun or Taser	720 ILL. COMP. STAT. 5/24-1(a)(10); 720 ILL. COMP. STAT. 5/24-1.6(b)
Explosive Bullet	720 ILL. COMP. STAT. 5/24-1(a)(11); 720 ILL. COMP. STAT. 5/24-3.1(a)(6)

Cartridge	720 ILL. COMP. STAT. 5/24-1(a)(11); 720 ILL. COMP. STAT. 5/24-3.1(a)(6)
Courthouse	720 ILL. COMP. STAT. 5/24-1(c)(2)
School	720 ILL. COMP. STAT. 24-1(c)(4); 720 ILL. COMP. STAT. 5/24-1.2(c); 720 ILL. COMP. STAT. 5/24-3(D); 720 ILL. COMP. STAT. 5/24-3.3
School-related Activity	720 ILL. COMP. STAT. 5/24-1.2(c); 720 ILL. COMP. STAT. 5/24-3(D)
Armor Piercing Bullet	720 ILL. COMP. STAT. 5/24-2.1(a); 720 ILL. COMP. STAT. 5/24-3.2(a)
Dragon's Breath Shotgun Shell	720 ILL. COMP. STAT. 5/24-2.1(a); 720 ILL. COMP. STAT. 5/24-3.2(a)
Bolo Shell	720 ILL. COMP. STAT. 5/24-2.1(a); 720 ILL. COMP. STAT. 5/24-3.2(a)
Flechette Shell	720 ILL. COMP. STAT. 5/24-2.1(a); 720 ILL. COMP. STAT. 5/24-3.2(a)
Firearm	720 ILL. COMP. STAT. 5/24-3(A)(h); 720 ILL. COMP. STAT. 5/24-9(d)
Handgun	720 ILL. COMP. STAT. 5/24-3(h)
Prohibited Place	720 ILL. COMP. STAT. 5/24-1(c)
Medical Assistance or First Aid Provider	720 ILL. COMP. STAT. 5/24-1.2(a)

Division I: Use, Possession, and Discharge Offenses

24-1: Unlawful Use of Weapons

The presumption in subsection 24-1(d) is replaced with a permissive inference to avoid constitutional problems.⁴⁶⁵

Former Unlawful Use of a Firearm in the Shape of a Wireless

465. See *People v. Pomykala*, 784 N.E. 2d 784, 203 Ill. 2d 198 (2003) (finding a prohibited mandatory presumption of recklessness in reckless homicide); *People v. Miles*, 800 N.E.2d 122, 344 Ill. App. 3d 315 (2d Dist. 2003) (affirming *Pomykala*). The former presumption provided:

(d) The presence in an automobile other than a public omnibus of any weapon, instrument or substance referred to in subsection (a)(7) is prima facie evidence that it is in the possession of, and is being carried by, all persons occupying such automobile at the time such weapon, instrument or substance is found, except under the following circumstances: (i) if such weapon, instrument or instrumentality is found upon the person of one of the occupants therein; or (ii) if such weapon, instrument or substance is found in an automobile operated for hire by a duly licensed driver in the due, lawful and proper pursuit of his trade, then such presumption shall not apply to the driver.

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

Telephone,⁴⁶⁶ is incorporated into Section 24-1. Both statutes criminalize the manufacture, selling, purchasing, possessing, or carrying of specific weapons. The unique sentencing classifications contained in the former offense of Unlawful Use of a Firearm in the Shape of a Wireless Telephone⁴⁶⁷ is accounted for in the new statute, and there are two substantive changes. Under the new statute, those who unlawfully use a firearm shaped like a wireless telephone are subject to the sentencing provisions in former Section 24-1. Second, the “transfer” of a firearm in the shape of a wireless telephone is no longer specifically prohibited in the offense. This will not create a gap in the offense because this section generally prohibits a person from selling, manufacturing, purchasing, possessing or carrying these types of weapons.

*24-15: Unlawful Possession of Firearms and Firearm Ammunition;
24-16: Defacing Identification Marks of Firearms*

The mental state of “knowingly” is added to these two Sections.⁴⁶⁸

*24-18: Aggravated Discharge of a 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*

Aggravated Discharge of a Firearm is a combination of former Aggravated Discharge of a Firearm⁴⁶⁹ and Aggravated Discharge of a Machine Gun or a Firearm Equipped with a Device Designed or Used for Silencing the Report of a Firearm.⁴⁷⁰ These two offenses are so closely related in form and substance that it is unnecessary to have them in separate statutes.

*24-19: Unlawful Discharge of Firearm Projectiles;
24-22: Unlawful Sale of Firearms by Liquor Licensee;
24-23: 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*

Unlawful Discharge of Firearm Projectiles,⁴⁷¹ Unlawful Sale

466. Formerly 720 ILL. COMP. STAT. 5/ 24-3.6 (2006).

467. Formerly 720 ILL. COMP. STAT. 5/24-3.6 (2006).

468. Unlawful Possession of Firearms and Firearm Ammunition was formerly 720 ILL. COMP. STAT. 5/24-3.1 (2006) and Defacing identification marks of firearms was formerly 720 ILL. COMP. STAT. 5/24-5 (2006).

469. Formerly 720 ILL. COMP. STAT. 5/24-1.2 (2006).

470. Formerly 720 ILL. COMP. STAT. 5/24-1.2-5 (2006).

471. Formerly 720 ILL. COMP. STAT. 5/24-3.2 (2006).

of Firearms by Liquor Licensee,⁴⁷² and 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 Agency⁴⁷³ now expressly require the defendant to act knowingly.

24-24: Unlawful Sale of Firearms; Gunrunning

Gunrunning⁴⁷⁴ and Unlawful Sale of Firearms⁴⁷⁵ are combined to create this offense. The similarities between these offenses rendered it unnecessary to require two separate provisions.

24-26: Armed Habitual Criminal

A “knowingly” mental state is added to this section.⁴⁷⁶

24-41: Jackrocks;

24-42: Unauthorized Possession or Storage of Weapons

The offenses of Jackrocks⁴⁷⁷ and Unauthorized Possession or Storage of Weapons⁴⁷⁸ are relocated from Article 21, Damage and Trespass to Property, to Article 24. These offenses are more related to “Deadly Weapons” offenses than to “Damage and Trespass to Property.”

472. Formerly 720 ILL. COMP. STAT. 5/24-3.4 (2006).

473. Formerly 720 ILL. COMP. STAT. 5/24-3.3 (2006).

474. Formerly 720 ILL. COMP. STAT. 5/24-3A (2006).

475. Formerly 720 ILL. COMP. STAT. 5/24-3 (2006).

476. Formerly 720 ILL. COMP. STAT. 5/24-1.7 (2006).

477. Formerly 720 ILL. COMP. STAT. 5/21-1.4 (2006).

478. Formerly 720 ILL. COMP. STAT. 5/21-6 (2006).

*24-43: Possession of a Stolen Firearm;**24-44: Aggravated Possession of a Stolen Firearm*

Former Possession of a Stolen Firearm,⁴⁷⁹ and Aggravated Possession of a Stolen Firearm,⁴⁸⁰ are transferred to Article 24, Deadly Weapons. Both of these offenses address the possession of firearms and are placed among similar offenses in Article 24, rather than among the theft-related offenses in Article 16, Theft and Related Offenses.

24-45: Unlawful Use of Body Armor

Former Article 33F, Unlawful Use of Body Armor,⁴⁸¹ is incorporated into Article 24 of the Code. The types of deadly weapons that fire projectiles that body armor is intended to stop are defined in this Article, and the use and possession of those projectiles is likewise penalized here. This relocation situates Unlawful Use of Body Armor in Part D of the Code, Offenses Affecting Public Health, Safety, and Decency.

Article 25: Mob Action

Article 25 is changed to harmonize mental state requirements, to clarify the meaning of an “unlawful act” in Section 25-1, and to appropriately reflect the purpose of Section 25-2 in its title.

Section 25-1: Mob Action

A mental state is added to Section 25-1. Subsection (a)(2) is changed to comply with the Court’s ruling in *Landry v. Daley*.⁴⁸² There, the Federal District Court determined that the term “unlawful act” in former section (a)(2) was vague and overbroad, and thus unconstitutional.⁴⁸³ “With the intent to commit or facilitate the commission of a felony or misdemeanor” is inserted in place of “unlawful act.” The new language is intended to clarify its meaning and to address concerns about the constitutionality of this subsection, but preserve its original purpose defined in the 1961 Code.

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

480. Formerly 720 ILL. COMP. STAT. 5/16-16.1 (2006).

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

482. 280 F. Supp. 938, 951 (N.D. Ill. 1968), *rev'd on other grounds*, 401 U.S. 77 (1971).

483. *Id.* at 960.

Section 25-4: Looting by Individuals

Former Article 42, Looting,⁴⁸⁴ is consolidated into one statute and relocated to this Article. It appears directly after the offense of Mob Action as both Mob Action and Looting punish behavior likely to occur during time of upheaval due to natural or man-made disasters. Mob Action addresses the conduct of two or more individuals, and Looting addresses the act of a single person.

Section 25-6: Removal of Chief of Police or Sheriff for Allowing a Person in Their Custody to Be Lynched

The title of this section is changed from Removal of Chief of Police or Sheriff to make the import and content of this statute clear in its title.⁴⁸⁵

Article 26: Disorderly Conduct

To enhance clarity, provisions are added to and removed from Article 26, Disorderly Conduct,⁴⁸⁶ mental states are added, and separate offenses formerly defined in separate subsections in Section 26-1 are consolidated.

Former Harassing and Obscene Communications Act⁴⁸⁷ is transferred to this Article. A definitions section is added, including a definition of “harassment.” The required mental states are clarified, and a mandatory presumption is changed into a permissive inference.

Former Article 24.6, Laser Pointers,⁴⁸⁸ the previous Air Rifle Act,⁴⁸⁹ and the former Harassing and Obscene Communications Act⁴⁹⁰ are transferred to Article 26 because they are topically related to other Article 26 offenses.

Former Unauthorized Video Recording and Live Video Transmission⁴⁹¹ is moved into Article 14, Eavesdropping. Similarly, the former Dog Fighting statute⁴⁹² is moved into a newly created Article titled “Animals.”

The table below shows the previous and new location of offenses that remain in Article 26, offenses that are brought into the Article, and offenses that are transferred out of Article 26.

New Offense and Location	Former Offense and Location
--------------------------	-----------------------------

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

485. Formerly 720 ILL. COMP. STAT. 5/25-2 (2006).

486. 720 ILL. COMP. STAT. 5/26-1 to 26-5 (2006).

487. Formerly 720 ILL. COMP. STAT. 135/1-2 (2006).

488. Formerly 720 ILL. COMP. STAT. 5/24.6 (2006).

489. Formerly 720 ILL. COMP. STAT. 535/1-8 (2006).

490. Formerly 720 ILL. COMP. STAT. 135/1-2 (2006).

491. Formerly 720 ILL. COMP. STAT. 5/26-4 (2006).

492. Formerly 720 ILL. COMP. STAT. 5/26-5 (2006).

720 ILL. COMP. STAT. 5/26-1 Disorderly Conduct	720 ILL. COMP. STAT. 5/26-1 Disorderly Conduct
720 ILL. COMP. STAT. 5/26-2 Interference with Emergency Communication	720 ILL. COMP. STAT. 5/26-2 Interference with Emergency Communication
720 ILL. COMP. STAT. 5/26-3 Use of a Facsimile Machine in Unsolicited Advertising or Fund-Raising	720 ILL. COMP. STAT. 5/26-3 Use of a Facsimile Machine in Unsolicited Advertising or Fund-Raising
720 ILL. COMP. STAT. 5/26-4 Laser Pointers	720 ILL. COMP. STAT. 5/24.6 Aiming a laser pointer at a peace officer
720 ILL. COMP. STAT. 5/26-5 Air Rifles	720 ILL. COMP. STAT. 535 Air Rifle Act
720 ILL. COMP. STAT. 5/26- 6.5 through 720 ILL. COMP. STAT. 5/26-12 Harassing and Obscene Communications	720 ILL. COMP. STAT. 135 Harassing and Obscene Communications Act
720 ILL. COMP. STAT. 5/35-3 Dog Fighting	720 ILL. COMP. STAT. 5/26-5 Dog Fighting
720 ILL. COMP. STAT. 5/14-11 Unauthorized Video Recording and Live Video Transmission	720 ILL. COMP. STAT. 5/26-4 Unauthorized Video Recording and Live Video Transmission

26-1: Disorderly Conduct

Twelve offenses that formerly resided in separate subsections in Section 26-1, Disorderly Conduct, are consolidated and reduced to seven separate subsections, eliminating duplicative language.

Subsection (a)(1), punishing unreasonable acts that disturb others remains unchanged. Sections that dealt with making false reports or requests for emergency assistance, and repeated similar language⁴⁹³ are combined into one subsection, (a)(4). Sections that addressed false reports to public safety agencies and to "911"⁴⁹⁴ are combined into (a)(5). The other provisions are moved within the Section to align similar offenses. Former Looking into Another's Dwelling for a Lewd or Unlawful Purpose,⁴⁹⁵ is now (a)(2). Former subsection (a)(6), which addresses collection agents making telephone calls, is moved to (a)(3). Former (a)(8), False Reports under the Nursing Home Care Act,⁴⁹⁶ is moved to (a)(4.5). Former

493. Formerly 720 ILL. COMP. STAT. 5/26-1 (a)(2), (a)(4), (a)(7) and (a)(9) (2006).

494. Formerly 720 ILL. COMP. STAT. 5/26-1(a)(11)-(12) (2006).

495. Formerly 720 ILL. COMP. STAT. 5/26-1(a)(5) (2006).

496. Formerly 720 ILL. COMP. STAT. 5/26-1(a)(8) (2006).

(a)(3),⁴⁹⁷ which deals with false reports of bombs and deadly substances, is now (a)(6). Finally, former (a)(10)⁴⁹⁸ referred to a statutory provision that was repealed in 2002; as a consequence, this subsection is eliminated.

False Report of Theft and Other Losses⁴⁹⁹ is relocated and incorporated into this section. The offense punishes the false report of theft, destruction, damage or conversion of any property to law enforcement with the intent to defraud an insurer. This conduct is similar in purpose to the false transmission offenses in Disorderly conduct.

26-4: Aiming a Laser Pointer at a Peace Officer

The former Article, Laser Pointers,⁵⁰⁰ is transferred into this Article. The word “operating” is inserted before “laser pointer” to clarify the offense.

26-5: Air Rifle

Former Air Rifle Act⁵⁰¹ is transferred into this Article. Stylistic changes are made to Section 26-5⁵⁰² to clarify that any of the three subsections apply, and all three are not necessary.

26-6.5: Transmission of Obscene Messages

The previous mandatory presumption in this section⁵⁰³ is replaced with a permissive inference to avoid constitutional problems.⁵⁰⁴

26-7: Harassment by Telephone

The mental state, “solely to harass” in this section⁵⁰⁵ is replaced with “solely with the intent to harass.”

497. Formerly 720 ILL. COMP. STAT. 5/26-1(a)(3) (2006).

498. Formerly 720 ILL. COMP. STAT. 5/26-1(a)(10) (2006).

499. Formerly 720 ILL. COMP. STAT. 5/16-3.1 (2006).

500. Formerly 720 ILL. COMP. STAT. 5/24.6 (2006).

501. Formerly 720 ILL. COMP. STAT. 535/1-8 (2006).

502. Formerly 720 ILL. COMP. STAT. 535/5 (2006).

503. Formerly 720 ILL. COMP. STAT. 135/1 (2006).

504. *See* *People v. Pomykala*, 784 N.E.2d 784, 203 Ill. 2d 198 (2003) (holding that the statutory provision of the Reckless homicide statute, stating that being under the influence of alcohol or other drugs at the time of an alleged violation shall be presumed to be evidence of a reckless act, created an unconstitutional mandatory presumption of recklessness); *see also* *People v. Miles*, 800 N.E.2d 122, 344 Ill. App. 3d 315 (2d Dist. 2003) (holding that the statutory provision stating that possession of two or more counterfeit credit cards was prima facie evidence of intent to defraud created an impermissible mandatory presumption of intent). The former presumption stated that “[t]he use of language or terms which are obscene, lewd or immoral is prima facie evidence of the intent to offend.” 720 ILL. COMP. STAT. 135/1 (2006).

505. Formerly 720 ILL. COMP. STAT. 135/1-1(4) (2006).

26-8: *Harassment Through Electronic Communications*

The mental state of “knowingly” is added to this section.⁵⁰⁶

26-9: *Definitions*

The term “harassment” is defined and placed in this new definitions section to clarify the term’s meaning. This definition is derived from Illinois case law and the Illinois Domestic Violence Act of 1986.⁵⁰⁷ No change is intended by the addition of a definition of this term.

Article 27: Money Laundering

The former Money Laundering Article⁵⁰⁸ is reorganized, relocated, and its scope is expanded. Also, the definition of a “financial transaction” is clarified.

27-1: *Money Laundering*

Section 27-1, Money Laundering, is reorganized.⁵⁰⁹ The reorganized offense first defines the relevant terms and phrases, then sets forth the substantive offenses, and ends with the sentencing provisions.

The scope of Money Laundering is expanded in two ways. First, the statute addresses financial proceeds derived from a violation of all felony and misdemeanor offenses in Illinois, including those outside Act 5 and in the controlled substance offenses. Second, Money Laundering is augmented to apply to financial proceeds derived from a violation of another jurisdiction’s laws where the conduct is a felony in that other jurisdiction and where, if performed in Illinois, it would be a felony in Illinois.

Finally, the phrase, “financial transaction,” is replaced with the phrase, “financial activity.” This avoids the problem of defining a term through use of the term itself.⁵¹⁰

506. Formerly 720 ILL. COMP. STAT. 135/1-2(a)(4) (2006).

507. See *People v. Taylor*, 812 N.E.2d 759, 349 Ill. App. 3d 839, 843 (2d Dist. 2004) (finding that the definition of “harass” included the “intent to produce emotional distress akin to that of a threat.”); see also *People v. Klick*, 362 N.E.2d 329, 66 Ill. 2d 269, 274 (1977) (holding that a statute which criminalized the making of any phone call with the intent to annoy was overly broad and therefore unconstitutional as a violation of the First and Fourteenth Amendments).

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

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

510. The former definition of “financial transaction” was located at 720 ILL. COMP. STAT. 5/29B-1(b)(1) (2006).

Article 28: Gambling and Related Offenses

In Article 28, similar provisions are consolidated, and mental states are inserted.

28-1: Gambling

Two subsections in the former Gambling statute⁵¹¹ are combined to reduce the statute's overall length. "Knowingly" is added where mental states were not explicitly stated. Duplicative statements in the sentencing clause⁵¹² are combined to eliminate repetition. Finally, the rule that dictates that circumstantial evidence used in prosecutions under this section is given the same weight and validity as in any other criminal prosecution⁵¹³ is eliminated as unnecessary.

28-1.1: Syndicated Gambling

The mental state of "knowingly" is added to subsection (d), which prohibits bookmaking.

Article 29: Bribery in the Private Sector

The offenses in Article 29, Bribery in Contests,⁵¹⁴ and former Article 29A, Commercial Bribery,⁵¹⁵ are combined into this Article. The three former statutes in Article 29, Offering a Bribe,⁵¹⁶ Accepting a Bribe,⁵¹⁷ and Failure to Report Offer of Bribe⁵¹⁸ are consolidated into one Section, 29-1, Bribery in Contests. Similarly, individual provisions in the former Article are consolidated into one statute, now Section 29-2, Commercial Bribery. The formerly separate offenses retain their individual titles within the consolidated statutes. Section 29-1(a)(1), Offering a Bribe in Contests,⁵¹⁹ and Section 29-1(b), Accepting a Bribe in Contests,⁵²⁰ are amended to clarify who is criminally liable and for what acts. Finally, mental states are added where none previously existed.

511. Formerly 720 ILL. COMP. STAT. 5/28-1(a)(7) and (a)(8) (2006).

512. Formerly 720 ILL. COMP. STAT. 5/28-1(c) (2006).

513. This provision stated that "[i]n prosecutions under subsection (a)(1) through (a)(12) of this section circumstantial evidence shall have the same validity and weight as in any criminal prosecution." 720 ILL. COMP. STAT. 5/28-1(d) (2006).

514. Formerly 720 ILL. COMP. STAT. 5/29-1 to 29-3 (2006).

515. Formerly 720 ILL. COMP. STAT. 5/29A-1 to A-4 (2006).

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

517. Formerly 720 ILL. COMP. STAT. 5/29-2 (2006).

518. Formerly 720 ILL. COMP. STAT. 5/29-3 (2006).

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

520. Formerly 720 ILL. COMP. STAT. 5/19-2 (2006).

29-1: Bribery in Contests

Along with the consolidation, the mental state of “intent to influence the representation or attempted representation” is added to subsection 29-1(a)(3),⁵²¹ and the language is clarified. The mental state of “knowingly” is added to Section 29-1(b)⁵²² to clarify that for criminal liability to attach, a person must knowingly accept a benefit due to an understanding or agreement.

29-4: Commercial Bribery

Along with the consolidation, the mental state of “knowingly” is added to subsection 29-4(b).⁵²³ Commercial Bribery Involving a Financial Institution⁵²⁴ is incorporated into the offense of Commercial Bribery as a sentencing feature in this Article. A definition of “financial institution” is added to this statute. The threshold dollar amount is increased from \$300 to \$500 to comport with the dollar amount increase throughout the Code.

Article 30: Interference with Penal Institution

Former Article 31A, Interference with Penal Institution,⁵²⁵ is renumbered as Article 30 in the Code. Former Article 30, Treason and Related Offenses,⁵²⁶ is relocated to Article 85 towards the end of the Code. A mental state is added to Section 30-1.1,⁵²⁷ and the sentencing provisions are clarified.

30-1.2: 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

The sentencing provisions in Section 30-1.2 are clarified. Section 30-1.2(e)⁵²⁸ previously provided sentence classifications for acts that were not prohibited in this section. Section 30-1.2(a)⁵²⁹ punished an employee of a penal institution who knowingly and without authority brings, or causes or permits another to bring “an item of contraband listed in paragraphs (i) through (iv) of subsection (d)(4)⁵³⁰ into a penal institution.” Similarly, Section 30-1.2(b) punished an employee of a penal institution who knowingly

521. Formerly 720 ILL. COMP. STAT. 5/29-1(c) (2006).

522. Formerly 720 ILL. COMP. STAT. 5/29-2 (2006).

523. Formerly 720 ILL. COMP. STAT. 5/29A-2 (2006).

524. Formerly 720 ILL. COMP. STAT. 5/16H-20 (2006).

525. Formerly 720 ILL. COMP. STAT. 5/31A-1.1 to A-1.2 (2006).

526. Formerly 720 ILL. COMP. STAT. 5/30-1 to 30-3 (2006).

527. Formerly 720 ILL. COMP. STAT. 31A-1.1 (2006).

528. Formerly 720 ILL. COMP. STAT. 5/30-1.2(e) (2006).

529. Formerly 720 ILL. COMP. STAT. 5/30-1.2(a) (2006).

530. Formerly 720 ILL. COMP. STAT. 5/30-1.2(d)(4)(i) through (d)(4)(iv) (2006).

and without authority possesses “contraband listed in paragraphs (i) through (iv) of subsection (d)(4) in a penal institution.”⁵³¹ Although these provisions prohibited bringing or possessing only four types of contraband, the sentencing provision provided sentence classifications for bringing or possessing more than four types of contraband.

The contraband listed in paragraphs (d)(4)(i) through (d)(4)(iv) are liquor, cannabis, controlled substances, methamphetamine, and syringes. The list of contraband in Section 30-1.2, however, includes a weapon, firearm, ammunition, explosive, tool to defeat security mechanisms, a cutting tool and electronic contraband.

Although subsections (a) and (b) apply only to the four types of contraband, there were sentence classifications applicable when subsections (a) and (b) involved items of contraband in subsections (d)(4)(v), (vi), (vii), (viii) and (xi). Use of these items is now specifically addressed in subsections (a) and (b) to match the existing sentencing provisions.

In addition to providing sentence classifications for acts that are not prohibited in Section 30-1.2, there was no penalty provision for violating subsection (c) pertaining to electronic contraband. The sentencing provisions in subsections (e) and (f), (v) and (xi) are repeatedly grouped together for purposes of assigning penalties; therefore, where subsection (f) discusses the penalty for a violation of (v), electronic contraband, (xi) is added.

Article 31: Interference with Public Officers

A mental state is added to Section 31-1a, Disarming a Peace Officer or Correctional Institution Employee.

31-1a: Disarming a Peace Officer or Correctional Institution Employee

The mental state of “knowingly” is added to Section 31-1a.

Article 32: Interference with Judicial Procedure

There are five changes in Article 32, Interference with Judicial Procedure. First, mental states are added or amended where needed. Second, like-provisions are consolidated. Third, the defense against the charge of Perjury is clarified. Fourth, the “false personation” offenses are transferred to Article 17, Deception. Finally, the offenses of Barratry⁵³² and Maintenance⁵³³

531. Formerly 720 ILL. COMP. STAT. 5/30-1.2(b) (2006).

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

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

are eliminated.

32-1: Compounding a Crime

The mental state “knowingly” is added to Section 32-1.

32-2: Perjury

Section 32-2, Perjury, is amended to require that a defendant must know that the statement at issue is false for criminal liability to attach. The former statute punished a person who did not believe the statement to be true. This change has long been recognized as the correct interpretation of the Perjury statute and is substantially similar to the formulation used in the Illinois Pattern Jury Instructions.⁵³⁴ Consistent with this amendment, the mental state of “knowingly” is added to subsection 32-2(b), where the provision outlines the offense for purposes of drafting indictments.

In addition to changes to the mental state requirements in Section 32-2, the term “trial,” as used in Section 32-2(c), Admission of Falsity, is clarified to ensure that this bar to prosecutions applies when the admission of falsity is made not only at trial but also at other formal proceedings.

32-3: Subornation of Perjury

The mental state of “knowingly” is added to Section 32-3, Subornation of Perjury.

32-4b: Excuse of Persons from Jury Duty; Bribes

The mental state of “knowingly” is added to Section 32-4b to modify the acts of requesting, suggesting or accepting financial compensation or any other form of consideration for bribes. The “knowingly” mental state does not modify the act of soliciting because solicitation, as defined in Section 8-1, contains a mental state.

32-4c: Witnesses; Prohibition on Accepting Payments Before Judgment or Verdict

The mental state of “knowingly” is added to Section 32-4c(a).

32-4d: Payment of Jurors by Parties Prohibited

The mental state of “knowingly” is added to both offenses in Section 32-4d.

534. See ILLINOIS PATTERN JURY INSTRUCTIONS, CRIMINAL, Nos. § 22.01-22.02 (4th ed. 2000) (offering suggested jury instructions for perjury cases).

32-7: Simulating Legal Process

Section 32-7, Simulating Legal Process, now punishes the specific intent to deceive. This specific intent is not explicitly stated in the former Section 32-7.

32-8: Tampering with Public Records or Public Notice

Section 32-8 is a combination of the offenses of Tampering with Public Records⁵³⁵ and Tampering with Public Notice.⁵³⁶ Both provisions prohibit forms of tampering and do not require separate statutes.

32-10: Violation of Bail Bond

The archaic mental state of “willingly” is replaced with “knowingly.” Also, the mental state of “knowingly” is added to subsection 32-10(a-5).

32-11: Barratry

Barratry⁵³⁷ is eliminated. This was a petty offense that punished a person for wickedly and willfully stirring up actions or quarrels among people in Illinois, with a view to promote strife and contention. There have been no reported cases regarding criminal prosecutions under Barratry within the last fifty years.

Barratry is covered by rules of professional conduct⁵³⁸ and other offenses within the Code. For example, if a person does any act in an unreasonable manner to alarm or disturb another and to provoke a breach of the peace, then he or she commits the Class C misdemeanor of Disorderly Conduct.⁵³⁹

32-12: Maintenance

Maintenance⁵⁴⁰ is eliminated. This was a petty offense for officiously intermeddling in an action that does not concern the defendant, by maintaining or assisting a party to prosecute or defend a case, with a view to promote litigation. Within the last fifty years, there have been no reported cases regarding criminal prosecutions for Maintenance. One court noted, in dicta, that “we doubt the constitutionality of any statute which could be considered to bar the giving of unsolicited advice by one person to another, without charge, that that person may have a remedy at

535. Formerly 720 ILL. COMP. STAT. 5/32-8 (2006).

536. Formerly 720 ILL. COMP. STAT. 5/32-9 (2006).

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

538. See, e.g., ILL. SUP. CT. R. art. VIII, ILL. RULES OF PROFESSIONAL CONDUCT, Rule 3.8 (limiting the situations where a prosecutor can institute criminal charges).

539. 720 ILL. COMP. STAT. 5/26 (2006).

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

law and should pursue it, where the first person is not . . . attempting to obtain remunerative employment for himself as legal counsel.”⁵⁴¹

Acts of maintenance are also encompassed within the rules of professional conduct⁵⁴² and other offenses within the Code. For example, if a person furnishes false information to obstruct the criminal prosecution or defense of another, he or she commits the offense of Obstruction of Justice,⁵⁴³ a Class 4 felony, instead of the petty offense of Maintenance.

Article 33: Official Misconduct

Article 33, Official Misconduct,⁵⁴⁴ is reorganized. The offenses of Solicitation Misconduct (State Government)⁵⁴⁵ and Solicitation Misconduct (Local Government)⁵⁴⁶ are combined into one offense, titled Solicitation Misconduct. The provisions in the Legislative Misconduct Act⁵⁴⁷ are relocated to this Article. A loss of job provision is added to all offenses in Article 33 where none previously existed. The addition of this provision is intended to promote uniformity in punishment among the offenses in Article 33.

33-1: Bribery

Two non-substantive changes and one substantive change are made to the offense of Bribery. The mental state of “intentionally” is added to subsection (e) to provide uniformity to the mental states in Bribery, and the word “tenders” is defined based on a definition from case law. These two changes clarify the provision and are not substantive alterations. A loss of job provision is added to this statute, which is a substantive change to Illinois law.

33-3.3: Solicitation Misconduct

The offenses of Solicitation Misconduct (State Government)⁵⁴⁸ and Solicitation Misconduct (Local Government)⁵⁴⁹ are combined and reorganized to eliminate redundancies. Definitions common to both provisions are removed and placed in a separate subsection.

541. See *Berlin v. Nathan*, 381 N.E.2d 1367, 64 Ill. App. 3d 940 (1st Dist. 1978) (discussing Maintenance and Barratry in the civil context).

542. ILL. RULES OF PROFESSIONAL CONDUCT, *supra* note 538.

543. 720 ILL. COMP. STAT. 5/31-4 (2006).

544. 720 ILL. COMP. STAT. 5/33 (2006).

545. Formerly 720 ILL. COMP. STAT. 5/33-3.1 (2006).

546. Formerly 720 ILL. COMP. STAT. 5/33-3.2 (2006).

547. Formerly 720 ILL. COMP. STAT. 645/0.01 to 645/2 (2006).

548. Formerly 720 ILL. COMP. STAT. 5/33-3.1 (2006).

549. Formerly 720 ILL. COMP. STAT. 5/33-3.2 (2006).

33-4: Peace Officer or Correctional Officer; Gang-related Activity Prohibited; 33-5: Preservation of Evidence; 33-6: Bribery to Obtain Driving Privileges

A Loss of Job provision is added to these statutes, creating consistency and representing substantive changes to Illinois law.

33-8: Legislative Misconduct

The statutes in the Legislative Misconduct Act⁵⁵⁰ are relocated to this Article. They are reorganized to reflect other comparable statutes in this Article. A “knowingly” mental state is added.

Article 34: Public Contracts

The offenses in former Article 33E, Public Contracts,⁵⁵¹ contain offenses similarly relating to Public Contracts, and are reorganized to group like offenses and to enhance clarity, and are relocated to this Article. Similarly, offenses from former Article 33C, Public Contracts⁵⁵² are transferred into this Article. The offenses in this Article are divided into five categories: (1) Bidding; (2) Acts by Public Officials; (3) False Statements or Entries; (4) Kickbacks and Bribery; and (5) Procedural and Regulatory Provisions. Mental states are added and clarified. The former offense of Businesses Owned by Minorities, Females, and Persons with Disabilities; Fraudulent Contracts with Governmental Units,⁵⁵³ is similar to the offenses in former Article 33C, Deception Relating to Certification of Disadvantaged Business Enterprises, because both punish the fraudulent obtaining or attempting to obtain government contracts based upon “disadvantaged” status. For consistency, the classification of businesses owned by a person with a disability is added to the consolidated provisions from former Article 33C. The consolidated Article 34 also updates antiquated language.

34-6: Definitions

Definitions from former Article 33C, Deception Relating to Certification of Disadvantaged Business Enterprises,⁵⁵⁴ are incorporated into this section. Also, a definition of “council” from Chapter 30, Finance,⁵⁵⁵ is added. Also, the statute is renumbered.

550. Formerly 720 ILL. COMP. STAT. 645/0.01 to 645/2 (2006).

551. Formerly 720 ILL. COMP. STAT. 5/33E-1 to 33E-18 (2006).

552. Formerly 720 ILL. COMP. STAT. 5/33C-1 to C-5 (2006).

553. Formerly 720 ILL. COMP. STAT. 5/17-29 (2006).

554. Formerly 720 ILL. COMP. STAT. 5/33C-1 to C-5 (2006).

555. 30 ILL. COMP. STAT. 5/1-1 to 5/8 (2006).

34-9: Unlawful Stringing of Bids

The mental state of “intent” is added to replace the “for the purpose of” language.

34-13: Misapplication of Funds

“Knowingly” is also added to Section 34-13 to replace the archaic mental state of “willfully.”⁵⁵⁶

34-15: Certification

The mental state of “knowingly” is added to subsection (b) of Section 34-15.

34-16: False Statements on Vendor Applications

The mental state of “intent” is added to replace the “for the purpose of” language.

34-19: Bribery of Inspector Employed by Contractor

To promote clarity, the duty provision formerly embedded in the last provision of the statute is separated and labeled as a new subsection.

34-23: Fraud in Public Minority Contracts

Former Article 33C, Deception Relating to Certification of Disadvantaged Business Enterprises,⁵⁵⁷ is consolidated and relocated in its entirety into this section. The consolidation adds businesses owned by a person with a disability for consistency and updates antiquated language to promote clarity.

Article 35: Animals

This Article relocates animal-related offenses from various places within Chapter 720, Criminal Offenses, into one Article. The provisions included in this Article are former: Dog Fighting;⁵⁵⁸ Animal Fighting;⁵⁵⁹ the Hunter Interference Prohibition Act;⁵⁶⁰ the Animal Registration Under False Pretenses Act;⁵⁶¹ the Animal Research and Production Facilities Protection Act;⁵⁶² the Horse Mutilation Act;⁵⁶³ the Illinois Dangerous Animals

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

557. Formerly 720 ILL. COMP. STAT. 5/33C-1 to C-5 (2006).

558. Formerly 720 ILL. COMP. STAT. 5/ 26-5 (2006).

559. Formerly 720 ILL. COMP. STAT. 5/37.5-5 to 37.5-45 (2006).

560. Formerly 720 ILL. COMP. STAT. 125/0.01 to 125/4 (2006).

561. Formerly 720 ILL. COMP. STAT. 210/0.01 to 210/1 (2006).

562. Formerly 720 ILL. COMP. STAT. 215/1 to 215/9 (2006).

563. Formerly 720 ILL. COMP. STAT. 315/0.01 to 315/1 (2006)

Act;⁵⁶⁴ the Feeding Garbage to Animals Act;⁵⁶⁵ and the Guide Dog Access Act.⁵⁶⁶ Mental states are inserted and clarified where necessary, and language is clarified in the former offenses of Hunter Interference Prohibition⁵⁶⁷ and Guide Dog Access.⁵⁶⁸

I. Animal Research and Production Facilities

35-1.1: Definitions; 35-1.2: Legislative Declaration; 35-1.3: Prohibited Acts

The archaic phrase, “for the purpose of,” is replaced with, “with the intent,” as the requisite mental state. Also, the mental state of “knowingly” is added to the offense of Damaging, Vandalizing or Stealing Property in or on an Animal Facility.⁵⁶⁹

II. Hunter Interference Prohibition

35-2.2: Interference with Lawful Taking of Wild Animals

Archaic mental states are eliminated. “Purpose” is replaced with “intent,” and “willfully” is replaced with “knowingly.” Also, the former offense of Failure to Cease and Desist,⁵⁷⁰ is incorporated as subsection (c). This brings all of the hunter interference offenses into one section.

III. Dog Fighting

35-3: Dog Fighting

The permissive inference in subsection (n) is clarified.⁵⁷¹

IV. Animal Registration Under False Pretenses

35-4: Penalty for Obtaining Certificate of Animal Registration by False Pretenses

The mental state of “knowingly” is added to the former offense of Obtaining a Certificate of Registration by False

564. Formerly 720 ILL. COMP. STAT. 585/0.01 to 585/4 (2006).

565. Formerly 720 ILL. COMP. STAT. 610/0.01 to 610/5 (2006).

566. Formerly 720 ILL. COMP. STAT. 630/0.01 to 630/1 (2006).

567. Formerly 720 ILL. COMP. STAT. 5/35-2.2 (2006).

568. Formerly 720 ILL. COMP. STAT. 630/1 (2006).

569. Formerly 720 ILL. COMP. STAT. 215/4(2) (2006).

570. Formerly 720 ILL. COMP. STAT. 125/3 (2006).

571. See former 720 ILL. COMP. STAT. 5/26-5(n) (2006) (stating that “[a] violation of subsection (a) of this section may be inferred from evidence that the accused possessed any device or equipment described in subsection (d), (e), or (h) of this section, and also possessed any dog.”).

Pretenses.⁵⁷²

V. Horse Mutilation

35-5: Mutilation of Horses' Tails; Punishment

The term, “purpose” is replaced with “intent” as the prohibited mental state, and a “knowingly” mental state is added.

VI. Illinois Dangerous Animals

The former Illinois Dangerous Animals Act⁵⁷³ is consolidated into one statute and relocated to this Article. The provisions formerly comprising the Act include a definitions provision,⁵⁷⁴ a substantive offense statute,⁵⁷⁵ an evidentiary limitation,⁵⁷⁶ and a sentencing provision.⁵⁷⁷ The subject matter of each statute is retained in subsections.

The last sentence of the evidentiary provision provides a definition of “approved facilities.” This sentence is relocated to the definitions subsection of the new statute. The sentencing provision of the Act contains a separate paragraph that assigns the same level of punishment whether the offender is a corporation or partnership or any officer, director, manager or managerial agent of the partnership or corporation. That provision is removed because officers, directors, managers and managerial agents of these entities who participate in a violation are culpable under an accountability theory.⁵⁷⁸

In addition, the definition of “person” is removed from the consolidated statute.⁵⁷⁹ The Article 2 definition of “person,” which generally applies throughout the Code, defines “person” as “an individual, public or private corporation, government, partnership, or unincorporated association.”⁵⁸⁰

35-6: Dangerous Animals

The mental states of “knowingly or recklessly” are added to this offense.

572. Formerly 720 ILL. COMP. STAT. 210/1 (2006).

573. Formerly 720 ILL. COMP. STAT. 585/0.1 to 585/4 (2006).

574. Formerly 720 ILL. COMP. STAT. 585/0.1 (2006).

575. Formerly 720 ILL. COMP. STAT. 585/1 (2006).

576. Formerly 720 ILL. COMP. STAT. 585/2 (2006).

577. Formerly 720 ILL. COMP. STAT. 585/3 (2006).

578. See 720 ILL. COMP. STAT. 5/5-5 (2006) (discussing accountability for conduct of corporation).

579. Formerly 720 ILL. COMP. STAT. 585/0.1 (2006).

580. 720 ILL. COMP. STAT. 5/2-15 (2006).

VII. Feeding Garbage to Animals

35-7.3: Feeding of Garbage Prohibited; Exception

The mental state of “knowingly” is added to this offense.

VIII. Guide Dog Access

35-8: Guide Dog Access

The offense, Guide Dog Permitted,⁵⁸¹ is amended to clarify the elements of the offense without intending substantive change.

IX. Misrepresentation of Pedigree of Stallion or Jack

35-9: Misrepresentation of Pedigree of Stallion or Jack

A statement equating “jack” with “stallion” is added to clarify the term.⁵⁸²

X. Possession of Certain Dogs by Felons Prohibited

35-10: Possession of Certain Dogs by Felons Prohibited

This section is transferred from Article 12, Bodily Harm,⁵⁸³ to the end of this Article because this offense is predicated on the possession of certain animals by felons and not on any actual harm inflicted.

Article 36: Seizure and Forfeiture

Former Articles 36, Seizure and Forfeiture of Vessels, Vehicles and Aircraft⁵⁸⁴; 37, Property Forfeiture⁵⁸⁵; 38, Criminally Operated Businesses,⁵⁸⁶ and other forfeiture provisions are consolidated so that seizure and forfeiture of property are addressed in one location within the Code. The scope and procedures in the former Articles are preserved; however, some names are altered to enhance clarity. References to Non-effective Abortion⁵⁸⁷ and Juice Racketeering⁵⁸⁸ provisions are eliminated, and an “intentional” mental state is substituted for a “purposeful” mental state. This reorganization enhances the clarity of seizure and forfeiture portions of the Code.

581. Formerly 720 ILL. COMP. STAT. 630/1 (2006).

582. Formerly, the Stallion and Jack Pedigree Act was codified at 720 ILL. COMP. STAT. 355/0.01 to 355/1 (2006).

583. Formerly 720 ILL. COMP. STAT. 5/12-36 (2006).

584. Formerly 720 ILL. COMP. STAT. 5/36 (2006).

585. Formerly 720 ILL. COMP. STAT. 5/37 (2006).

586. Formerly 720 ILL. COMP. STAT. 5/38 (2006).

587. Formerly 720 ILL. COMP. STAT. 5/23-1 (repealed 1973).

588. ILL. REV. STAT. ch. 39, § A-2 (1969).

Article 36 is organized into three parts. Part I addresses seizure and forfeiture from the former Articles 36, 37 and 38. Part II sets out seizure and forfeiture in the context of Dog Fighting, Computer Fraud, WIC Fraud, Terrorism, Trafficking in Persons and Involuntary Servitude, certain sex offenses and Obscenity. Part III addresses forfeiture in illegal or controlled substance offenses. These provisions have been streamlined to avoid overlap among seizure and forfeiture provisions.

36-1: Seizure and Forfeiture of Vessels, Vehicles and Aircraft

Articles 36, 37, and 38⁵⁸⁹ are consolidated into Part I of a reorganized Article 36. A number of other offenses that address forfeiture are also placed into Part II of Article 36. The forfeiture provisions in Part II of Article 36 are: Dog Fighting,⁵⁹⁰ Computer Fraud,⁵⁹¹ WIC Fraud,⁵⁹² Terrorism,⁵⁹³ and Trafficking in Persons and Involuntary Servitude.⁵⁹⁴ Part II also contains sex offenses and obscenity forfeiture provisions, which apply to the offenses of Keeping a Place of Juvenile Prostitution,⁵⁹⁵ Exploitation of a Child,⁵⁹⁶ Child Pornography,⁵⁹⁷ and Obscenity.⁵⁹⁸ These provisions added to Part II are relocated to Article 36 so that all forfeiture provisions found in the Code are located in one place for easy reference instead of spread throughout Chapter 720. Most forfeiture provisions relating to Cannabis,⁵⁹⁹ Controlled Substances,⁶⁰⁰ Methamphetamine,⁶⁰¹ and Drug Paraphernalia,⁶⁰² are relocated to Part III of Article 36.

Article 36 is reorganized to become the location for all seizure and forfeiture statutes. Duplicative provisions are removed. For example, two provisions in Part II regarding the scope and procedures for preliminary hearings are the same in all forfeiture provisions, except sex and obscenity. These subsections are placed at the beginning of Part II and deleted from the text of the provisions to reduce repetition. Additionally, forfeiture provisions for the Cannabis Control Act, Controlled Substances Act,

589. Formerly 720 ILL. COMP. STAT. 5/36-1 to -4 (2006), 720 ILL. COMP. STAT. 5/37-1 to 37.5-45 (2006), 720 ILL. COMP. STAT. 5/38-1 to -3 (2006), respectively.

590. Formerly 720 ILL. COMP. STAT. 5/37.5-5 to 37.5-45 (2006).

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

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

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

594. Formerly 720 ILL. COMP. STAT. 5/10A-5 to A-20 (2006).

595. Formerly 720 ILL. COMP. STAT. 5/11-17.1 (2006).

596. Formerly 720 ILL. COMP. STAT. 5/11-19.2 (2006).

597. Formerly 720 ILL. COMP. STAT. 5/11-20.1 (2006).

598. Formerly 720 ILL. COMP. STAT. 5/11-20 (2006).

599. Formerly 720 ILL. COMP. STAT. 550/1 to 550/19 (2006).

600. Formerly 720 ILL. COMP. STAT. 570/100 to 570/103 (2006).

601. Formerly 720 ILL. COMP. STAT. 646/1 to 646/9999 (2006).

602. Formerly 720 ILL. COMP. STAT. 600/1 (2006).

Methamphetamine Control and Community Protection Act, and the Drug Paraphernalia Control Act, are consolidated into one statute in Part III. In the newly consolidated forfeiture provision, provisions that applied only to specific Acts are limited in application to these offenses. No substantive change is intended by the reorganization of Article 36.

Article 47: Public Nuisance

Article 47 is reorganized and renumbered, with miscellaneous Acts relocated into the Article. The relocated Acts include the former: Abandoned Refrigerator Act,⁶⁰³ Aerial Exhibitors Safety Act,⁶⁰⁴ Excavation Fence Act,⁶⁰⁵ Outdoor Lighting Installation Act,⁶⁰⁶ and Peephole Installation Act.⁶⁰⁷ This reorganization is intended to place nuisance-related provisions into one Article to enhance clarity.

47-1: Public Nuisance

Public Nuisance⁶⁰⁸ is reorganized and consolidated to reduce the overall number of nuisance offenses from seventeen to eight, but the scope of the former provisions are retained. The numeric measure of a “rod” is replaced with the more standard unit of “feet.” Stand-alone offenses in Article 47, relating to the dumping of garbage⁶⁰⁹ are consolidated, and nuisance provisions related to dumping are moved into this statute. A nuisance provision that regulated tanning facilities, redundant of another statute, is eliminated.⁶¹⁰ The regulation of wells is moved to a new location within Article 47, and a provision regarding discrimination in the sale of real estate is transferred into the former Sale of Real Estate Act,⁶¹¹ now relocated to the miscellaneous provisions part of the Code.

47-2: Dumping Garbage upon Real Property

Dumping Garbage⁶¹² and Dumping Garbage on Real Property⁶¹³ are consolidated without substantive change. A

603. Formerly 720 ILL. COMP. STAT. 505/0.01 (2006).

604. Formerly 720 ILL. COMP. STAT. 530/0.01 to 530/3 (2006).

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

606. Formerly 720 ILL. COMP. STAT. 530/0.01 (2006).

607. Formerly 720 ILL. COMP. STAT. 665/0.01 to 665/3 (2006).

608. Formerly 720 ILL. COMP. STAT. 5/47-5 (2006).

609. Formerly 720 ILL. COMP. STAT. 5/47-10 (2006), 720 ILL. COMP. STAT. 5/47-15 (2006).

610. See 210 ILL. COMP. STAT. 145/1 to 145/83 (2006) (codifying the Tanning Facility Permit Act, which also covers nuisances and tanning salons).

611. Formerly 720 ILL. COMP. STAT. 590/0.01 (2006).

612. Formerly 720 ILL. COMP. STAT. 5/47-10 (2006).

613. Formerly 720 ILL. COMP. STAT. 5/47-15 (2006).

nuisance provision⁶¹⁴ is added to this offense.

47-3: Unplugged Wells

Former nuisance offenses⁶¹⁵ and Unplugged Wells⁶¹⁶ are consolidated without substantive change. Nuisance provisions⁶¹⁷ are included in this consolidated offense.

47-4: Excavation Fence; 47-5.5: Outdoor Lighting Installation; 47-6: Peephole Installation; 47-7: Abandoned Refrigerators

The Excavation Fence Act,⁶¹⁸ the Outdoor Lighting Installation Act,⁶¹⁹ the Peephole Installation Act,⁶²⁰ and the Abandoned Refrigerator Act,⁶²¹ are transferred into Article 47. The offenses are reorganized and renamed to enhance clarity. The mental state “knowingly” is added to the former Abandoned Refrigerator Act,⁶²² and the mental states of “knowing” and “reckless” are added to the former Outdoor Lighting Installation Act.⁶²³ The phrase “or other airtight or semi-airtight containers” is added to the former Abandoned Refrigerator Act⁶²⁴ to reflect laws of other states that protect children from discarded appliances similar in size, capacity and danger to abandoned refrigerators.

47-8: Aerial Exhibitors

The Aerial Exhibitors Safety Act⁶²⁵ is transferred into this Article. The offense is reorganized and renamed to enhance clarity, and the mental states of “knowing” and “reckless” are added.

614. Formerly 720 ILL. COMP. STAT. 5/47-5(15) (2006).

615. Formerly 720 ILL. COMP. STAT. 5/47-5(10) to (13) (2006).

616. Formerly 720 ILL. COMP. STAT. 5/47-20 (2006).

617. Formerly 720 ILL. COMP. STAT. 5/47-5(10) to (13) (2006).

618. Formerly 720 ILL. COMP. STAT. 605/0.01 to 605/1 (2006).

619. Formerly 720 ILL. COMP. STAT. 655/0.01 to 655/3 (2006).

620. *Id.*

621. Formerly 720 ILL. COMP. STAT. 505/0.01 to 505/1 (2006).

622. Formerly 720 ILL. COMP. STAT. 505/0.01 (2006).

623. Formerly 720 ILL. COMP. STAT. 655/0.01 to 655/3 (2006).

624. Formerly 720 ILL. COMP. STAT. 505/0.01 to 505/1 (2006).

625. Formerly 720 ILL. COMP. STAT. 530/0.01 530/3 (2006).

Article 47.5: Tobacco-Related Offenses

This Article is created from former Acts relating to tobacco, including the Sale of Tobacco to Minors Act;⁶²⁶ the Display of Tobacco Products Act;⁶²⁷ the Prevention of Cigarettes Sales to Minors Act;⁶²⁸ the Smokeless Tobacco Limitation Act;⁶²⁹ and the Tobacco Accessories and Smoking Herbs Control Act.⁶³⁰ These Acts are consolidated, reorganized, and transferred to this Article. Mental states are inserted and certain offenses are clarified. Also, the phrase “tobacco products” replaces the phrase “cigarette(s), cigar(s), smokeless tobacco, or tobacco in any of its forms.”

As part of the consolidation, the former Smokeless Tobacco Limitation Act⁶³¹ is eliminated as duplicative of the provisions in the former Sale of Tobacco to Minors Act.⁶³² Also, the purpose statement from the Tobacco Accessories and Smoking Herbs Control Act⁶³³ is eliminated as unnecessary. No substantive change is intended by this consolidation.

47.5-1: Definitions

The definitions provided in this section are derived from the former Acts that make up the new Article. Although the former Smokeless Tobacco Limitation Act⁶³⁴ is eliminated, the prior definition of “smokeless tobacco”⁶³⁵ is incorporated into the definition in this Section.

47.5-4: Unlawful Shipment or Transportation of Cigarettes

The mental state “knowingly” is inserted in subsections (a), (b) and (c) of this section.⁶³⁶ Also, in subsection (b), the phrase, “reasonably believes” is changed to “knows or reasonably should know.” Finally, the offense in subsection (b), concerning transporting more than 1,000 cigarettes, is clarified. The statement, “A person, other than a common or contract carrier, may not knowingly transport more than 1,000 cigarettes at any one time to any person in this State,” is added to clarify what is prohibited, as opposed to what is allowed.⁶³⁷

626. Formerly 720 ILL. COMP. STAT. 675/0.01 to 675/2 (2006).

627. Formerly 720 ILL. COMP. STAT. 677/1 to 677/999 (2006).

628. Formerly 720 ILL. COMP. STAT. 678/1 to 678/99 (2006).

629. Formerly 720 ILL. COMP. STAT. 680/1 to 680/4 (2006).

630. Formerly 720 ILL. COMP. STAT. 685/1 to 685/5 (2006).

631. Formerly 720 ILL. COMP. STAT. 680/1 to 680/4 (2006).

632. Formerly 720 ILL. COMP. STAT. 675/0.01 to 675/2 (2006).

633. Formerly 720 ILL. COMP. STAT. 685/1 to 685/5 (2006).

634. Formerly 720 ILL. COMP. STAT. 680/1 to 680/4 (2006).

635. Formerly 720 ILL. COMP. STAT. 680/2 (2006).

636. Formerly 720 ILL. COMP. STAT. 678/5(a), (b), (c) (2006).

637. The provision previously provided:

Article 47.10: Drug-Related Offenses

This Part of the Code consolidates the former Cannabis Control Act,⁶³⁸ the Illinois Controlled Substances Act;⁶³⁹ the Methamphetamine Control and Community Protection Act,⁶⁴⁰ the Methamphetamine Precursor Control Act,⁶⁴¹ and the Methamphetamine Manufacturer Registry Act.⁶⁴² Further, other miscellaneous drug Acts and offenses, such as the Hypodermic Syringes and Needles Act⁶⁴³ are included in this new framework.

Placing all of the drug provisions in this Part of the Code simplifies the many complex drug provisions, enhances clarity and centralizes them. Previously, there were multiple drug Acts spread throughout Chapter 720, with no parallel categorization within each Act.

The first Division in this Part of the Code contains the definitions applicable to all of the drug provisions. The second Division houses the drug Schedules. Next are the main drug offenses, and then the more corollary drug provisions.

The offenses are categorized by the types of offenses, such as possession, delivery or trafficking. Within each subdivision, the groups are divided based upon whether they involve cannabis, controlled substances, methamphetamine or other substances. The general organization is as follows:

Division I - Definitions

Division II - Schedules

Division III - Possession, Manufacturing and Delivery Offenses

Subdivision 1 - Possession offenses

A. Cannabis

B. Controlled Substances

C. Methamphetamine

Subdivision 2 - Manufacturing and Delivering or Possessing with the Intent to Manufacture or Deliver Offenses

A. Cannabis

(b) A common or contract carrier may transport cigarettes to any individual person in this State only if the carrier reasonably believes such cigarettes have been received from a person described in paragraph (a)(1). Common or contract carriers may make deliveries of cigarettes to licensed distributors described in paragraph (a)(1) of this section. Nothing in this subsection (b) shall be construed to prohibit a person other than a common or contract carrier from transporting not more than 1,000 cigarettes at any one time to any person in this State.

720 ILL. COMP. STAT. 678/5(b) (2006).

638. Formerly 720 ILL. COMP. STAT. 550/1 to 550/19 (2006).

639. Formerly 720 ILL. COMP. STAT. 570/100 to 570/603 (2006).

640. Formerly 720 ILL. COMP. STAT. 646/1 to 646/999 (2006).

641. Formerly 720 ILL. COMP. STAT. 648/1 to 648/999 (2006).

642. Formerly 730 ILL. COMP. STAT. 180/1 to 180/99 (2006).

643. Formerly 720 ILL. COMP. STAT. 635/0.01 to 635/6 (2006).

- B. Controlled Substances
- C. Methamphetamine
- Subdivision 3 - Trafficking Offenses
 - A. Cannabis
 - B. Controlled Substances
 - C. Methamphetamine
- Subdivision 4 - Conspiracy Offenses
 - A. Cannabis
 - B. Controlled Substances
 - C. Methamphetamine
- Subdivision 5 - Protected Party Offenses
 - A. Cannabis
 - B. Controlled Substances
 - C. Methamphetamine
- Subdivision 6 - Protected Place Offenses
 - A. Cannabis
 - B. Controlled Substances
 - C. Methamphetamine
- Subdivision 7 - Miscellaneous Offenses
 - A. Cannabis
 - B. Controlled Substances
 - C. Methamphetamine
 - D. Other Offenses
- Subdivision 8 - Post Disposition Provisions
 - A. Cannabis
 - B. Controlled Substances
 - C. Methamphetamine
- Subdivision 9 - Regulatory Provisions
 - A. Cannabis
 - B. Controlled Substances
 - C. Methamphetamine

Subdivision 7, Group D of Division III, Other Offenses, contains offenses that do not fit within the new structure of the reconfigured drug offenses. Some of these offenses represent a combination of former Articles and Acts concerning substances not classified as controlled substances, but which may have adverse effects if ingested or introduced into the body.

Regulatory provisions in the drug Acts, not containing offenses, are transferred to Chapter 225, Professions and Occupations.⁶⁴⁴ The sections transferred to Chapter 225 are former sections: Rules; Fees,⁶⁴⁵ Registration Required for Manufacture, Distribution and Dispensing,⁶⁴⁶ Applicant to be

644. 225 ILL. COMP. STAT. 2/1 (2006).

645. Formerly 720 ILL. COMP. STAT. 570/301 (2006).

646. Formerly 720 ILL. COMP. STAT. 570/302 (2006).

Registered Unless Inconsistent with Public Interest; Limitations; Fee,⁶⁴⁷ Mid-level Practitioner Registration,⁶⁴⁸ Checks Not Honored for Insufficient Funds; Fee; Lapse of Registration,⁶⁴⁹ Suspension or Revocation of Registration,⁶⁵⁰ Suspension or Revocation; Notice and Hearing,⁶⁵¹ Records; Inventories; Quarterly Reports,⁶⁵² Distribution to Another Registrant,⁶⁵³ Advisory Committee,⁶⁵⁴ Administrative Procedure Act,⁶⁵⁵ Certification of Record to Court,⁶⁵⁶ and Research on Controlled Substances.⁶⁵⁷ Also, the forfeiture provisions are transferred to Article 36, Seizure and Forfeitures.

Many of the former provisions did not have titles. The new sections are all titled for easy reference.

Six statutes in the Cannabis Control Act are eliminated. These statutes are, Short Title,⁶⁵⁸ Casual Delivery of Cannabis as Possession,⁶⁵⁹ Duty to Enforce Savings Clause,⁶⁶⁰ Application of Penalties,⁶⁶¹ Invalid Provision Application⁶⁶² and Severability.⁶⁶³ Casual Delivery of Cannabis as Possession is removed because it is seldom used. Former Section 550/6⁶⁶⁴ is preserved by placing this exception in the definition of “Casual Delivery.” The statute titled “Duty to Enforce” is stricken because this section reiterates the principle that officers and other officials are bound to enforce the law. If an officer sworn to uphold the law does not do so, his or her actions are criminally sanctioned through the Article 33 offense of Official Misconduct. The elimination of the Duty to Enforce statute, however, does not in any manner imply that officials are absolved from their absolute duty to enforce all cannabis-related criminal offenses. This change is consistent with virtually every other criminal offense in Illinois. Additionally, the former savings and severability statutes are not necessary and are eliminated.

In the Cannabis Control Act, the former Forfeiture of profit

647. Formerly 720 ILL. COMP. STAT. 570/303 (2006).

648. Formerly 720 ILL. COMP. STAT. 570/303.05 (2006).

649. Formerly 720 ILL. COMP. STAT. 570/303.1 (2006).

650. Formerly 720 ILL. COMP. STAT. 570/304 (2006).

651. Formerly 720 ILL. COMP. STAT. 570/305 (2006).

652. Formerly 720 ILL. COMP. STAT. 570/306 (2006).

653. Formerly 720 ILL. COMP. STAT. 570/307 (2006).

654. Formerly 720 ILL. COMP. STAT. 570/320 (2006).

655. Formerly 720 ILL. COMP. STAT. 570/501.1 (2006).

656. Formerly 720 ILL. COMP. STAT. 570/507 (2006).

657. Formerly 720 ILL. COMP. STAT. 570/508 (2006).

658. Formerly 720 ILL. COMP. STAT. 550/1 (2006).

659. Formerly 720 ILL. COMP. STAT. 550/2 (2006).

660. Formerly 720 ILL. COMP. STAT. 550/6 (2006).

661. Formerly 720 ILL. COMP. STAT. 550/17 (2006).

662. Formerly 720 ILL. COMP. STAT. 550/18 (2006).

663. Formerly 720 ILL. COMP. STAT. 550/19 (2006).

664. Formerly 720 ILL. COMP. STAT. 550/6 (2006).

statute⁶⁶⁵ is transferred to Article 36, Seizure and Forfeitures.

Several provisions are eliminated from the former Controlled Substances Act. The first is the previous offense of Advertising Prohibited⁶⁶⁶ because it has been held unconstitutional.⁶⁶⁷ Further, the former Illinois Controlled Substances Act provided no sentence classification for a violation of this section. Also, the former sections Saving Clause,⁶⁶⁸ Severability,⁶⁶⁹ and Repealer,⁶⁷⁰ are eliminated because they were applicable only to former Act 570.

Three Acts concerning methamphetamine and methamphetamine precursors are incorporated into the drug consolidation. They are the prior Methamphetamine Control and Community Protection Act,⁶⁷¹ Methamphetamine Precursor Control Act,⁶⁷² and Methamphetamine Manufacturer Registry Act.⁶⁷³ In several of the substantive offenses from the Methamphetamine Control and Community Protection Act, introductory language is simplified. These modifications are intended to align the terminology both internally among the methamphetamine offenses and also among other statutes within the Code. No substantive change is intended. Like the controlled substances and cannabis offenses, offenses are separated by category, and forfeiture provisions are relocated to Article 36, Seizure and Forfeitures. To maintain consistency among drug-related offenses, new offenses dealing with protected parties and protected places are carved out of the aggravated forms of Participation in Methamphetamine Manufacturing and the methamphetamine delivery statutes. Each new offense contains references to either protected parties or protected places in its title. The former Methamphetamine Precursor Control Act⁶⁷⁴ is consolidated and relocated into the new Article.

665. Formerly 720 ILL. COMP. STAT. 550/12 (2006).

666. Formerly 720 ILL. COMP. STAT. 570/315 (2006).

667. *See* Knoll Pharm. Co. v. Sherman, 57 F. Supp. 2d 615 (N.D. Ill. 1999) (stating that that statute “is an impermissible blanket ban that reaches truthful commercial speech about a lawful product.”).

668. Formerly 720 ILL. COMP. STAT. 570/601 (2006).

669. Formerly 720 ILL. COMP. STAT. 570/602 (2006).

670. Formerly 720 ILL. COMP. STAT. 570/603 (2006).

671. Formerly 720 ILL. COMP. STAT. 646/1 to 646/9999 (2006).

672. Formerly 720 ILL. COMP. STAT. 648/1 to 648/999 (2006).

673. 730 ILL. COMP. STAT. 180/1 to 180/99 (2006).

674. Formerly 720 ILL. COMP. STAT. 648/1 to 648/9999 (2006).

Division I - Definitions

47.10-102: Definitions

The applicable cannabis definitions⁶⁷⁵ are relocated to a new definitions section in Article I of the reorganization. A phrase from a former section,⁶⁷⁶ regarding the treatment of “casual delivery” as Possession of Cannabis, is added. The addition of these words to the definition of casual delivery allows this former section to be eliminated.

A definition of “protected place” replaces the repetition of a laundry list of locations that are specially protected from the illegal trade of controlled substances in Section 47.10-332, Aggravated Delivery of a Controlled Substance in a Protected Place, Delivery to Person under 18; Violations on or Near School or Public Housing Agency Property or Public Park.⁶⁷⁷ The list of protected places is lengthy and does not need to be repeated multiple times in the underlying offense.

Definitions from the former Methamphetamine Control and Community Protection Act,⁶⁷⁸ the Methamphetamine Precursor Control Act,⁶⁷⁹ and the Methamphetamine Manufacturer Registry Act,⁶⁸⁰ are incorporated in Article I.

Division III – Possession, Manufacturing and Delivery Offenses

Subdivision 1 - Possession Offenses

B. Controlled Substances

47.10-303: Possession of Controlled or Counterfeit Substance

This section⁶⁸¹ contained many repetitive and overlapping sentencing provisions. These provisions are consolidated.

The sentences relating to LSD are clarified. Previously, the provisions defined the amounts of LSD by weight when it was in liquid form and by number of segregated parts when it was in carrier form. This created a loophole for a person who possessed an entire sheet of LSD that was not segregated into parts. Although this sheet could contain vast amounts of LSD, the defendant could be prosecuted for possessing only one object. Therefore, the language “number of objects intended to be

675. Formerly 720 ILL. COMP. STAT. 550/3 (2006).

676. Formerly 720 ILL. COMP. STAT. 550/6 (2006).

677. Formerly 720 ILL. COMP. STAT. 570/406 (2006).

678. Formerly 720 ILL. COMP. STAT. 646/1 to 646/999 (2006).

679. Formerly 720 ILL. COMP. STAT. 648/1 to 648/999 (2006).

680. Formerly 730 ILL. COMP. STAT. 180/1 to 180/99 (2006).

681. Formerly 720 ILL. COMP. STAT. 570/402 (2006).

segregated or derived from an object or objects” is included to close this loophole.

The possession offense related to dextromethorphan⁶⁸² is incorporated into this general offense of Possession of Controlled Substances.

*Subdivision 2 – Manufacturing and Delivering or Possessing
with the Intent to Manufacture or Deliver Offenses*

A. Cannabis

47.10-306: Manufacture, Delivery or Possession with Intent to Deliver Cannabis; 47.10-307: Production of Cannabis Sativa Plants

Two offenses are relocated from the Cannabis Control Act to Subdivision 2 of the consolidated statute. These offenses are Manufacture or Delivery of Cannabis⁶⁸³ and Production or Possession of Cannabis Sativa Plants.⁶⁸⁴ Former Section 550/5⁶⁸⁵ is titled so that the commonly used offense of Possession with Intent to Deliver or Manufacture Cannabis is more clearly stated. No substantive change is intended.

B. Controlled Substances

47.10-308: Manufacture of Controlled or Counterfeit Substance or Controlled Substance Analog Prohibited

The repetitive and overlapping sentencing provisions of former Section 570/401⁶⁸⁶ are consolidated. For example, separate provisions dealing with heroin, cocaine and morphine, which involved the same amount of drugs and by the same sentencing scheme, are consolidated. Although heroin, cocaine and morphine are treated the same for purposes of sentencing, heroin and morphine are Schedule I controlled substances, and cocaine is a Schedule II controlled substance.

The sentences relating to LSD are clarified. Previously, the provisions defined the amount of LSD at issue by weight when it was in liquid form and by the number of segregated parts when it was in carrier form. This created a loophole for a person who manufactured an entire sheet of LSD that was not segregated into parts. Although this sheet could contain vast amounts of LSD, the defendant could be prosecuted with manufacturing only one object.

682. Formerly 720 ILL. COMP. STAT. 570/218 (2006).

683. Formerly 720 ILL. COMP. STAT. 550/5 (2006).

684. Formerly 720 ILL. COMP. STAT. 550/8 (2006).

685. Formerly 720 ILL. COMP. STAT. 550/5 (2006).

686. Formerly 720 ILL. COMP. STAT. 570/401 (2006).

Therefore, the language “number of objects intended to be segregated or derived from an object or objects” is included to close this loophole.

This offense includes the manufacturing and delivery provisions in the former offense related to the manufacture and delivery of dextromethorphan.⁶⁸⁷

C. Methamphetamine

47.10-310: Participation in Methamphetamine Manufacturing

Aggravated Participation in Methamphetamine Manufacturing is included without former subsections (b)(1) through (b)(1) (D),⁶⁸⁸ which were relocated to a new Aggravated form of this offense to apply to protected parties and protected places.

47.10-311: Methamphetamine Delivery

The offense of Methamphetamine Delivery no longer contains the offense of Aggravated Methamphetamine Delivery. The aggravated form of the offense is split and relocated to the protected parties and protected places sections of the new Article to enhance clarity.

47.10-312: Methamphetamine Precursor

The prima facie rule of evidence (mandatory presumption) in the methamphetamine precursor provision⁶⁸⁹ is converted to a permissive inference, and the language is simplified.

Subdivision 4 – Conspiracy Offenses

A. Cannabis

47.10-319: Calculated Criminal Cannabis Conspiracy

The offense of Calculated Criminal Cannabis Conspiracy⁶⁹⁰ is

687. Formerly 720 ILL. COMP. STAT. 570/218 (2006).

688. Formerly 720 ILL. COMP. STAT. 646/15(b)(1)(A) to (b)(1)(D) (2006).

689. This presumption stated:

(c) Rule of evidence. The presence of any methamphetamine precursor in a sealed, factory imprinted container, including, but not limited to, a bottle, box, package, or blister pack, at the time of seizure by law enforcement, is prima facie evidence that the methamphetamine precursor located within the container is in fact the material so described and in the amount listed on the container. The factory imprinted container is admissible for a violation of this Act for purposes of proving the contents of the container.

Formerly 720 ILL. COMP. STAT. 646/20(c) (2006).

690. Formerly 720 ILL. COMP. STAT. 550/9 (2006).

relocated to Subdivision 4 of the consolidated provision.

B. Controlled Substances

47.10-322: Streetgang Criminal Drug Conspiracy

The provision in former Section 405.2(a)(2)(i),⁶⁹¹ making reference to the Methamphetamine Control and Community Protection Act, is eliminated. Although the eliminated provision applied the streetgang enhancement for methamphetamine-related conspiracies, no parallel sentence existed in the former statute. To cure this anomaly, an offense and sentence corresponding to the prescriptions in the existing statute is added to Methamphetamine Conspiracy in Section 47.10-323.

C. Methamphetamine

47.10-323: Methamphetamine Conspiracy

A streetgang criminal drug conspiracy component is added to the former offense of Methamphetamine Conspiracy.⁶⁹² A provision existed in the statute making it applicable to any violation of the former Methamphetamine Control and Community Protection Act. However, no corresponding penalty existed in the former statute for a streetgang criminal drug conspiracy involving a methamphetamine-related violation. Penalties were stated only for violations of former Section 401 of the Controlled Substances Act.⁶⁹³

Because the legislative intent appears to make the streetgang provision applicable to methamphetamine-related offenses, a streetgang component is added to the existing methamphetamine conspiracy provision, and the related provision is eliminated from the former offense of Streetgang Criminal Drug Conspiracy.⁶⁹⁴ The sentencing framework reflects the same term of years as currently exists in the parallel controlled substances provision.⁶⁹⁵

The sentence is determined by weight limits that generally reflect the minimum and maximum terms mandated when a manufacturing, delivery, possession with intent or simple possession crime is committed involving methamphetamine or a substance containing methamphetamine.

691. Formerly 720 ILL. COMP. STAT. 570/405.2(a)(2)(i) (2006).

692. Formerly 720 ILL. COMP. STAT. 646/65 (2006). The offense of Streetgang Criminal Drug Conspiracy was formerly defined in Section 720 ILL. COMP. STAT. 570/405.2 (2006).

693. Formerly 720 ILL. COMP. STAT. 570/401 (2006).

694. Formerly 720 ILL. COMP. STAT. 570/405.2 (2006).

695. Formerly 720 ILL. COMP. STAT. 570/405.2 (2006).

*Subdivision 5 – Protected Party Offenses**A. Cannabis**47.10-324: Delivery of Cannabis to a Person Under 18*

The previous offense of Delivery to Person under 18⁶⁹⁶ is relocated to Subdivision 5 of the consolidated provision. Subsection (b) of the former offense⁶⁹⁷ is not consolidated because it addresses the treatment of offenders under 18 as juveniles when these persons possess or deliver cannabis.

*C. Methamphetamine**47.10-328: Aggravated Participation in Methamphetamine Manufacturing; Protected Parties*

This section represents a new offense carved out of the former offense of Aggravated Participation in Methamphetamine Manufacturing.⁶⁹⁸ Two former aggravating factors dealing with protected parties comprise the theories of culpability in this new offense.⁶⁹⁹ The penalty provision is preserved.

For consistency within the offense, a “knowingly” mental state is added to the aggravating factor concerning commission in a structure or vehicle where a pregnant woman resides, is present, or is endangered by the methamphetamine manufacture.

47.10-329: Aggravated Methamphetamine Delivery; Protected Parties

This section represents a new offense carved out of the former offense of Aggravated Methamphetamine Delivery.⁷⁰⁰ Three aggravating factors concerning protected parties taken from the former offense are inserted into this new offense as separate grounds for guilt.⁷⁰¹ The penalty provision is preserved.

*Subdivision 6 – Protected Place Offenses**A. Cannabis**47.10-331: Delivery of Cannabis on School Grounds*

Delivery of Cannabis on School Grounds⁷⁰² is reorganized. An

696. Formerly 720 ILL. COMP. STAT. 550/7 (2006).

697. Formerly 720 ILL. COMP. STAT. 550/7(b) (2006).

698. Formerly 720 ILL. COMP. STAT. 646/15 (2006).

699. Formerly 720 ILL. COMP. STAT. 646/15(b)(1)(B), and (C) (2006).

700. Formerly 720 ILL. COMP. STAT. 646/55 (2006).

701. Formerly 720 ILL. COMP. STAT. 646/55(b)(1) (A), (B), and (E) (2006).

702. Formerly 720 ILL. COMP. STAT. 550/5.2 (2006).

enhancement for deliveries of cannabis within 1000 feet of a school bus is altered because it potentially creates a rolling enhancement based on the mobility of this conveyance and the possibility that a moving empty school bus could serve as an enhancing factor. Part of the enhancement is, however, retained to address the issue of delivering cannabis in close proximity to a school bus occupied by a child or children. Under the revision, the delivery in proximity to a school bus must occur within 100 feet of it and the conveyance must be occupied by a child or children. The remaining portions of the reorganization are not meant to substantively alter this offense, but to eliminate redundant phrasing concerning the scope of the provision and to align more closely its structure to the base offense.

C. Methamphetamine

47.10-333: Aggravated Participation in Methamphetamine Manufacturing; Protected Places

This section is a new offense comprised of aggravating factors from the former offense of Aggravated Participation in Methamphetamine Manufacturing.⁷⁰³ Criminal liability is based on the former offense.⁷⁰⁴ The penalty provision is preserved.

47.10-334: Aggravated Methamphetamine Delivery; Protected Places

This section represents a new offense carved out of the former offense of Aggravated Methamphetamine Delivery.⁷⁰⁵ Three aggravating factors concerning protected places are taken from the former Aggravated Methamphetamine Delivery statute and are inserted into this new offense as separate grounds for guilt.⁷⁰⁶ The penalty provision is preserved.

Subdivision 7 – Miscellaneous Offenses

B. Controlled Substances

47.10-335: Chemical Breakdown of Illicit Controlled Substance

The mental state “knowingly” is inserted in subsection (a) of this section.⁷⁰⁷

703. Formerly 720 ILL. COMP. STAT. 646/15(b) (2006).

704. Formerly 720 ILL. COMP. STAT. 646/15(b)(1)(A), (D) (2006).

705. Formerly 720 ILL. COMP. STAT. 646/55 (2006).

706. Formerly 720 ILL. COMP. STAT. 646/55(b)(1)(C), (D) (2006).

707. Formerly 720 ILL. COMP. STAT. 570/401.5 (2006).

47.10-338: Additional Registration-related Violations

The mental state of “knowingly” is inserted subsections (a)(2), (a)(3), and (a)(4) of this section.⁷⁰⁸

47.10-339: Permitting Unlawful Use of Building

The phrase “controls any building” is defined to mean “having the power or authority to direct, restrict or regulate the use of the building.” This definition is not intended to substantively change the law, but is intended to codify the existing law.⁷⁰⁹

*D. Other Offenses**47.10-343: Unlawful Possession of Nitrous Oxide*

The mental state of “intent” is substituted for the “purpose” language in the first clause of the offense.⁷¹⁰ The title of the offense is also amended to clarify that it applies to nitrous oxide. Superfluous language of purpose is eliminated from the second clause of the statute to enhance clarity.

47.10-345: Ephedrine

The mental state of “knowingly” is inserted in this section.⁷¹¹

47.10-346: Dietary Supplements Containing Ephedrine or Anabolic Steroid Precursors

The mental states of “knowingly or recklessly” are inserted in this section.⁷¹² The “recklessly” mental state is added to impose criminal sanction when an offender does not take steps to ascertain a victim’s age.

47.10-347: Ephedra Prohibition

The former Ephedra Prohibition Act⁷¹³ is consolidated from seven statutes to one, retaining the differences in subject matter with headings for the subsections. This relocation allows for easier use and aligns similar offenses. The definition of “person” is

708. Formerly 720 ILL. COMP. STAT. 570/406 (2006).

709. *See* *People v. Parker*, 660 N.E.2d 1296, 1301, 277 Ill. App. 3d 585 (4th Dist. 1996) (approving of a jury instruction defining “control of a building” to mean “the power or authority to direct, restrict or regulate the use of the building.”); *see also* ILLINOIS PATTERN JURY INSTRUCTIONS, CRIMINAL, No. 4.16 (4th ed. 2000) (defining “actual possession” as having “immediate and exclusive control over a thing,” and “constructive possession” as lacking actual possession, but having “both the power and intention to exercise control over a thing.”).

710. Formerly 720 ILL. COMP. STAT. 5/24.5-5 (2006).

711. Formerly 720 ILL. COMP. STAT. 570/216 (2006).

712. Formerly 720 ILL. COMP. STAT. 570/219 (2006).

713. Formerly 720 ILL. COMP. STAT. 602/1 to 602/99 (2006).

removed from the consolidated statute because the Article 2 definition applies and encompasses the entities formerly included in Section 602/15.⁷¹⁴ The mental state “knowingly” is added to the substantive prohibition.⁷¹⁵

The sentencing provision⁷¹⁶ is clarified. Language describing the maximum amount of imprisonment is eliminated as unnecessary in light of language identifying the offense as a Class A misdemeanor or a Class 3 felony. Fine amounts are retained.

47.10-348: Sale and Possession of Drug Paraphernalia

The provisions in the former Drug Paraphernalia Control Act⁷¹⁷ are consolidated so that nuisance provisions are moved into Article 47, and forfeiture provisions as they relate to drug paraphernalia, are relocated to Article 36. The definitions in former Section 600/2⁷¹⁸ are placed in a definitions section applying to all drug-related offenses. The possession and sale of drug paraphernalia is reorganized so that the offense and its penalties are presented more clearly. The mental state “knowingly” is added to the offense of Sale of Drug Paraphernalia to make this provision parallel with the possession of such items.

47.10-349: Use or Sale of Intoxicating Compounds

The previous Use of Intoxicating Compounds Act⁷¹⁹ is consolidated into one provision. The separate statutes regarding the sale and use of compounds are combined into one provision. Exemptions for doctors, dentists, veterinarians, chiropractors and retail merchants are also combined and placed into the provision as subsection (g). Small wording changes are made to enhance clarity, but no substantive change is intended by these changes.

47.10-350: Possession and Sale of Hypodermic Syringes and Needles

The former Hypodermic Syringes and Needles Act⁷²⁰ is consolidated into one provision. In the Hypodermic Syringes and Needles Act, the sections Short Title,⁷²¹ and Prosecution by Information⁷²² are eliminated as superfluous. Regulatory provisions for the Illinois Department of Public Health and for physicians are moved to Chapter 225 of the Illinois Compiled

714. Formerly 720 ILL. COMP. STAT. 602/15 (2006).

715. Formerly 720 ILL. COMP. STAT. 602/20 (2006).

716. Formerly 720 ILL. COMP. STAT. 602/25 (2006).

717. Formerly 720 ILL. COMP. STAT. 600/1 to 600/7 (2006).

718. Formerly 720 ILL. COMP. STAT. 600/2 (2006).

719. Formerly 720 ILL. COMP. STAT. 690/0.01 to 690/4.5 (2006).

720. Formerly 720 ILL. COMP. STAT. 635/0.01 to 635/6 (2006).

721. Formerly 720 ILL. COMP. STAT. 635/.01 (2006).

722. Formerly 720 ILL. COMP. STAT. 635/6 (2006).

Statutes because these statutes regulate professions and do not contain criminal offenses. The offense is reorganized to enhance clarity, and the mental state “knowingly” is added. No substantive change is intended by the consolidation.

Subdivision 8 – Post Disposition Provisions

A. Cannabis

Subsection (b) of former Section 550/7⁷²³ is relocated to this section because it addresses the situation where an offender is a juvenile for the purposes of cannabis offenses. Former Section 550/13⁷²⁴ is titled in Section 7 of the consolidated provision to enhance clarity. These sections are relocated without substantive change. First offender cannabis probation in former Section 550/10 offenses is altered to allow one who is found guilty of possession of 30 grams to 500 grams of cannabis to be sentenced to first offender probation.⁷²⁵ Currently, this Class 4 felony is not eligible for former Section 10 probation; however the Class 4 felony offense of delivery of 10 grams to 30 grams of Cannabis is an eligible offense. This change seeks to remedy the disparate punishments for these similar cannabis offenses.

Division IV - Regulatory Provisions

A. Cannabis

Former Section 550/15.1,⁷²⁶ which addresses the relationship of Illinois’ cannabis prohibitions with Federal prohibitions, is retained and renamed, Applicability of the Controlled Substances Provisions in Section 47.10-402. The provisions addressing affirmative defenses for a cannabis offense as well as the burden of proof for demonstrating an exemption to a cannabis offense are combined and consolidated to enhance clarity.⁷²⁷ The new provision, Section 47.10-403, is titled, “Burden and Defenses.”

C. Methamphetamine

47.10-424: Methamphetamine Manufacturer Database;

47.10-425: Conviction Information

The former Methamphetamine Manufacturer Registry Act⁷²⁸ is incorporated as two regulatory provisions. Both impose

723. Formerly 720 ILL. COMP. STAT. 550/7(b) (2006).

724. Formerly 720 ILL. COMP. STAT. 550/13 (2006).

725. Formerly 720 ILL. COMP. STAT. 550/10 (2006).

726. Formerly 720 ILL. COMP. STAT. 550/15.1 (2006).

727. Formerly 720 ILL. COMP. STAT. 550/16.1 (2006); 720 ILL. COMP. STAT. 550/16 (2006).

728. Formerly 730 ILL. COMP. STAT. 180/1 to 180/99 (2006).

regulatory guidelines to create and maintain a database to identify methamphetamine manufacturers.

47.10-426 to 47.10-435: Methamphetamine Precursor Provisions

The former Methamphetamine Precursor Control Act⁷²⁹ is incorporated in total into the regulatory portion of the new consolidated Article concerning methamphetamine. No substantive change is intended.

Article 48: Miscellaneous Article

Ticket Sale and Resale

The prior Ticket Sale and Resale Act⁷³⁰ is relocated to a Miscellaneous Article in the Code. Mental states are added, and the term “place of public entertainment or amusement” replaces individually described venues and events to enhance uniformity and clarity among these related provisions.

48-1: Place of Public Entertainment or Amusement

The term “place of public entertainment or amusement” is now defined to include the various venues, sporting events, amusements, and entertainments previously included in the former Ticket Sale and Resale Act.⁷³¹

48-2: Sale of Tickets Other Than at Box Office Prohibited; Exceptions; 48-3: Sale of Tickets at More Than Face Value Prohibited; Exceptions

The mental state “knowingly” is added to both provisions.

Miscellaneous Offenses

48-8: Miscellaneous Offenses; Government Uneconomic Practices

The Government Uneconomic Practices Act,⁷³² is renamed, reorganized and placed in a Miscellaneous Article of the Code.

48-9: Miscellaneous Offenses; Sale of Maps

The Sale of Maps Act⁷³³ is renamed, reorganized and placed in a Miscellaneous Article of the Code.

729. Formerly 720 ILL. COMP. STAT. 648/1 to 648/999 (2006).

730. Formerly 720 ILL. COMP. STAT. 375/0.01 to 375/14 (2006).

731. Formerly 720 ILL. COMP. STAT. 375/0.01 (2006).

732. Formerly 720 ILL. COMP. STAT. 310/0.01 to 310/2 (2006).

733. Formerly 720 ILL. COMP. STAT. 340/0.01 to 340/7 (2006).

48-10: Miscellaneous Offenses; Uneconomic Practices

The Uneconomic Practices Act⁷³⁴ is renamed, reorganized and placed in a Miscellaneous Article of the Code.

48-11: Miscellaneous Offenses; Use of University Stationery

The Use of University Stationery Act⁷³⁵ is renamed, reorganized and placed in a Miscellaneous Article of the Code.

48-12: Miscellaneous Offenses; Video Movie Sales and Rentals

The Video Movie Sales and Rentals Act⁷³⁶ is renamed, reorganized and placed in a Miscellaneous Article of the Code.

48-14: Miscellaneous Offenses; Discrimination in Sale of Real Estate

Discrimination in Sale of Real Estate Act⁷³⁷ is renamed and placed in a Miscellaneous Article of the Code. The former subsection (d)⁷³⁸ is removed because it has been held to be unconstitutional.⁷³⁹ A nuisance provision from Article 47 involving discrimination in the sale of real estate⁷⁴⁰ is placed in subsection (d). An intentional mental state is removed from subsection (c) and replaced with the mental state “knowingly” for uniformity among subsections.

48-15: Miscellaneous Offenses; Flag Desecration

The former Flag Desecration Act⁷⁴¹ is consolidated, reorganized and relocated to the new Miscellaneous Article. The former Act is condensed into one provision from five statutes. To enhance clarity, the definitions provision is placed before the substantive offense, and previously untitled provisions are incorporated into the new statute with identifying titles at the beginning of each subsection. The mental state “knowingly” is added to the substantive offense provision.⁷⁴² Former Section 620/4,⁷⁴³ which directed that all prosecutions under the Act be brought by any person in the name of the People of the State, is eliminated. The provision that authorizes individual citizens to bring criminal prosecutions is eliminated because it encroaches on

734. Formerly 720 ILL. COMP. STAT. 385/0.01 to 385/2 (2006).

735. Formerly 720 ILL. COMP. STAT. 390/0.01 to 390/2 (2006).

736. Formerly 720 ILL. COMP. STAT. 395/1 to 395/4 (2006).

737. Formerly 720 ILL. COMP. STAT. 590/0.01 to 590/3 (2006).

738. Formerly 720 ILL. COMP. STAT. 590.1(d) (2006).

739. *Pearson v. Edgar*, 153 F.3d 397, 405 (7th Cir. 1998).

740. Formerly 720 ILL. COMP. STAT. 5/47-5(14) (2006).

741. Formerly 720 ILL. COMP. STAT. 620/0.01 to 620/15 (2006).

742. Formerly 720 ILL. COMP. STAT. 620/1 (2006).

743. Formerly 720 ILL. COMP. STAT. 620/4 (2006).

the powers traditionally exercised only by elected or appointed prosecutors.⁷⁴⁴ This delegation of this important executive function by the legislature to individual citizens violates the principle of separation of powers between the legislative and executive branches. This delegation of executive functions by the legislature in all likelihood violates Article II, Section 1 of the Illinois Constitution and would likely be found unconstitutional.⁷⁴⁵ Additionally, this provision is eliminated because it takes away from prosecutors the discretion to exercise their prosecutorial mandate.

*Article 998: Savings Provisions Construction;
Continuation of Prior Law*

XX-XX: Intent

An intent provision is added to Article 998, Saving Provisions; Construction; Continuation of Prior Law. This provision clarifies that when a change is made to a statute's descriptive heading, title, citation, or location, the intent is not to affect the meaning, effect, application or construction of the statute. This language is intended to ensure that if the substance of a statute has not been changed, then the application of the law to the statute is the same as existed before the location change, the new citation or the name change.

Chapter 505: Agriculture

XX-XX: Grain Coloring

This section is a consolidation of the former sections in the prior Grain Coloring Act.⁷⁴⁶ The mental state "knowingly" is added to the first offense. The consolidated statute pertaining to the development of grains is transferred to this Chapter, next to 505 ILL. COMP. STAT. 145, which provides rules regarding the development of wheat.

Chapter 510: Animals

50/21: Diseased Animals, Concealment, Sale, Transportation

The offense of Infected Domestic Animals⁷⁴⁷ is relocated to Chapter 510, Animals, and incorporated into this section. Like the

744. See 720 ILL. COMP. STAT. 5/1-5 (2006) (discussing the types of conduct that would fall under state criminal jurisdiction).

745. *People v. Edward*, 422 N.E.2d 1117, 1119, 97 Ill. App. 3d 407, 410 (1st Dist. 1981).

746. Formerly 720 ILL. COMP. STAT. 625/0.01 to 625/3 (2006).

747. Formerly 720 ILL. COMP. STAT. 5/12-4.8 (2006).

former Code provision, this section classifies the violation as a petty offense and punishes the knowing movement of diseased animals from one place to another. This section is slightly modified to include the “run at large” language from the former offense of Infected Domestic Animals⁷⁴⁸ and renames the provision accordingly. The language describing the means of transportation is updated.

Chapter 525: Conservation

XX-XX: Unauthorized Sale of Certain Plants Prohibited

The Wild Plant Conservation Act⁷⁴⁹ is consolidated into one provision and relocated to Chapter 525 of the Illinois Compiled Statutes, Conservation.⁷⁵⁰

The Wild Plant Conservation Act is similar to other Acts in the Chapter because it criminalizes conduct which the General Assembly deems injurious to the environment or to conservation. Although the term “conservation” is not defined in Chapter 525, it appears to apply to subjects that relate to preservation and regulation of land and water use. Relocating the Wild Plant Conservation Act to this Chapter aligns similar provisions and eliminates a miscellaneous Act from Chapter 720.

Chapter 740: Civil Liabilities

XX-XX: Civil Liability

This section⁷⁵¹ is relocated to Chapter 740 of the Illinois Compiled Statutes, Civil Liabilities, to align more clearly like provisions. It is clarified to ensure that it applies to violations of Predatory Criminal Sexual Assault of a Child.⁷⁵² Section XX-XX(a) states that a victim has a cause of action against a person or an entity that manufactures, produces or engages in wholesale distribution of obscene materials if viewing or reading the materials proximately caused the accused to commit certain sex

748. Formerly 720 ILL. COMP. STAT. 5/12-4.8 (2006).

749. Formerly 720 ILL. COMP. STAT. 400/0.01 to 400/2 (2006).

750. Chapter 525 includes the following Articles: The Cave Protection Act, Article 5; The Exotic Weed Act, Article 10; The Illinois Forestry Development Act, Article 15; The Ginseng Harvesting Act, Article 20; The Illinois Lake Management Program Act, Article 25; The Illinois Open Land Trust Act, Article 33; the Open Space Lands Acquisition and Development Act, Article 35; the State Forest Act, Article 40; The Water Use Act of 1983, Article 45; and the Illinois Youth and Young Adult Employment Act of 1986, Article 50. 525 ILL. COMP. STAT. 5-50 (2006).

751. Formerly 720 ILL. COMP. STAT. 5/12-18.1 (2006).

752. 720 ILL. COMP. STAT. 5/11-6.40 (2006).

offenses, including Criminal Sexual Assault, Aggravated Criminal Sexual Assault, Criminal Sexual Abuse, or Aggravated Criminal Sexual Abuse. This arises where the civil defendant knew or had reason to know that the manufacture, production or wholesale distribution “of such material was likely to cause a violation of an offense substantially of the type enumerated.” This section is amended to include situations where the accused committed the offense of Predatory Criminal Sexual Assault of a Child.

Subsection (c) of this section is similarly clarified to ensure that it applies to violations of Predatory criminal sexual assault of a child. Subsection (c) provides a statute of limitations to commence a civil action under this section.

Chapter 815: Business Transactions

XX-XX to XX-XX: Definitions, Defacing or Removing Identification Marks; Unlawful Sale of Household Appliances, and Sentence

These three Sections are derived from the previous offenses of Unlawful Sale of Household Appliances,⁷⁵³ the Appliance Tag Act,⁷⁵⁴ the Construction Equipment Identification Defacement Act,⁷⁵⁵ and the Marks and Serial Numbers Act.⁷⁵⁶ The consolidation adopts common definitions, organizes the substantive offenses from least serious to most serious, and amends the penalty section to reflect the new organization of offenses. The substantive offenses and the penalties have not been changed. The rebuttable presumption is eliminated in lieu of a permissive inference.⁷⁵⁷ This recommendation changes the archaic mental state of “purpose” in former Section 335/1 to “intent.”

All of these provisions criminalize the sale of and related acts

753. Formerly 720 ILL. COMP. STAT. 5/16C—1 to 16C-3 (2006).

754. Formerly 720 ILL. COMP. STAT. 220/0.01 to 220/4 (2006).

755. Formerly 720 ILL. COMP. STAT. 245/0.01 to 245/1 (2006).

756. Formerly 720 ILL. COMP. STAT. 335/1 to 335/2 (2006).

757. The presumption, found in the former Construction Equipment Identification Defacement Act, stated:

(b) Possession of any machine or other equipment or a part of such machine or equipment used in the construction, maintenance or demolition of buildings, structures, bridges, tunnels, sewers, utility pipes or lines, ditches or open cuts, roads, highways, dams, airports or waterways or material handling for such projects upon which any such serial number, product identification number, part number, component identification number, owner-applied identification number or other mark of identification shall have been changed, altered, removed, or obliterated shall raise a rebuttable presumption that the possessor has intentionally or knowingly changed, altered, removed, or obliterated the same.

Formerly 720 ILL. COMP. STAT. 245/1(b) (2006).

regarding appliances, machinery and other equipment that are deceptively altered to remove identifying information, or that fail to bear a tag indicating that the equipment has been reconditioned. They are designed to limit deceptive sales that may damage a consumer by altering identifying marks on equipment that may have been stolen. This section is relocated to Chapter 815 of the Illinois Compiled Statutes, which contains a variety of consumer-related statutes, many of which contain criminal penalties.

XX-XX: Odometer or Hour Meter Fraud

Odometer Fraud⁷⁵⁸ and Hour Meter Fraud⁷⁵⁹ are combined into one statute. Both use similar language, address similar situations and have identical sentencing provisions. Both of these offenses involve misrepresenting the prior use of vehicles and farm implements, odometers and hour meters. Therefore, the offenses are consolidated into one statute.

This offense is situated in the Business Transactions Chapter of the Illinois Compiled Statutes because it addresses issues of consumer fraud. The Business Transaction Chapter contains numerous consumer protection statutes, including crimes with penalties ranging from Class C misdemeanors to Class 4 felonies

XX-XX: Installation of Object in Lieu of Air Bag

This offense⁷⁶⁰ is transferred to Chapter 815 of the Illinois Compiled Statutes because it is a business regulation intended to protect consumers from believing that vehicles have air bags when none exist. Based on the consumer fraud nature of the offense, it is relocated to the Business Transactions Chapter of the Illinois Compiled Statutes, and the language is updated, without substantive change. The Business Transaction Chapter contains numerous consumer protection statutes, including crimes with penalties ranging from a Class C misdemeanor to a Class 4 felony.

XX-XX: Fraudulent Sale of Publications; XX-XX: Fraudulent Repair of Fire Extinguisher or Related Equipment

The former Title Page Act⁷⁶¹ and the former Fire Extinguisher Service Act⁷⁶² are transferred to Chapter 815 of the Illinois Compiled Statutes because both represent business regulations intended to protect consumers from fraudulent

758. Formerly 720 ILL. COMP. STAT. 5/17-11 (2006).

759. Formerly 720 ILL. COMP. STAT. 5/17-11.1 (2006).

760. Formerly 720 ILL. COMP. STAT. 5/17-11.2 (2006).

761. Formerly 720 ILL. COMP. STAT. 380/1(a) (2006).

762. Formerly 720 ILL. COMP. STAT. 615/0.01 to 615/1 (2006).

business practices. The former Title Page Act⁷⁶³ also protects publishers from fraudulent sale of publications. The former Fire Extinguisher Service Act⁷⁶⁴ protects against the false perception that fire extinguishers have been serviced when no such service has occurred. Based on the consumer fraud nature of these offenses, both are relocated to the Business Transactions Chapter of the Illinois Compiled Statutes. The Business Transaction Chapter contains numerous consumer protection statutes, including crimes with penalties ranging from a Class C misdemeanor to a Class 4 felony.

XX-XX: Fraudulent Advertisements

This section is a combination of the prior Deceptive Sale of Gold and Silver Act,⁷⁶⁵ the Deceptive Advertising Act,⁷⁶⁶ the Gasoline Price Advertising Act,⁷⁶⁷ the Loan Advertising to Bankrupts Act,⁷⁶⁸ and the Sale Price Ad Act.⁷⁶⁹ This statute is transferred to Chapter 815, Business Transactions/Consumer Fraud, because it involves business-related deceptive advertising regulations intended to protect owners and consumers from the fraudulent advertising of property and services.

Within the consolidation, the statutes are harmonized and preserved with no substantive changes. Additionally, the Sale Price Ad Act⁷⁷⁰ is repealed entirely because the Deceptive Advertising Act and several offenses in Chapter 815 cover its prohibitions. Further, this recommendation adds the mental state of “knowingly” to sections in the former Deceptive Advertising Act,⁷⁷¹ the former Gasoline Price Advertising Act⁷⁷² and the former Loan Advertising to Bankrupts Act.⁷⁷³ Also, the archaic mental state of “purpose” in the former Deceptive Advertising Act⁷⁷⁴ is replaced with “intent.” Finally, the former offense in the Loan Advertising to Bankrupts Act⁷⁷⁵ is changed from a business offense to a petty offense to avoid any conflict with the required fine amount for business offenses.

763. Formerly 720 ILL. COMP. STAT. 380/1 to 380/2 (2006).

764. Formerly 720 ILL. COMP. STAT. 615/0.01 to 615/1 (2006).

765. Formerly 720 ILL. COMP. STAT. 290/1 to 290/3 (2006).

766. Formerly 720 ILL. COMP. STAT. 295/1 (2006).

767. Formerly 720 ILL. COMP. STAT. 305/0.01 to 305/2 (2006).

768. Formerly 720 ILL. COMP. STAT. 330/0.01 to 330/2 (2006).

769. Formerly 720 ILL. COMP. STAT. 350/0.01 to 350/4 (2006).

770. *Id.*

771. Formerly 720 ILL. COMP. STAT. 295/1(c) (2006).

772. Formerly 720 ILL. COMP. STAT. 305/1 (2006).

773. Formerly 720 ILL. COMP. STAT. 330/1 (2006).

774. Formerly 720 ILL. COMP. STAT. 295/1b (2006).

775. Formerly 720 ILL. COMP. STAT. 330/2 (2006).

XX-XX: Promotion of Pyramid Sales Schemes

Promotion of Pyramid Sales Schemes⁷⁷⁶ is relocated to Chapter 815 of the Illinois Compiled Statutes. The Illinois Consumer Fraud and Deceptive Business Practices Act in Chapter 815 of the Illinois Compiled Statutes prohibits the “use or employment” of any pyramid sales scheme and overlaps with the former offense of Promotion of Pyramid Sales Schemes.⁷⁷⁷ That Act defines “pyramid sales scheme,” which is identical to the definition in the former offense of Promotion of Pyramid Sales Schemes.⁷⁷⁸ The “use or employment” proscribed in the Act embodies the type of conduct described in the criminal counterpart, the former offense of Promotion of Pyramid Sales Schemes.⁷⁷⁹ There are no criminal penalties included in the Consumer Fraud Act. It does, however, prescribe injunctive relief, restitution, and civil penalties.⁷⁸⁰

XX-XX: Taxpreparer Disclosure of Information

The former Taxpreparer Disclosure of Information Act⁷⁸¹ is reorganized and moved to Chapter 815 of the Illinois Compiled Statutes because of its relationship with other consumer protection laws.

XX-XX: Auction Sales Sign

The previous Auction Sales Sign Act⁷⁸² is reorganized and moved to Chapter 815 of the Illinois Compiled Statutes because of its relationship to other consumer protection laws. The mental state is added to this statute.

XX-XX: Sale of Yo-yo Waterballs Prohibited

The offense of Sale of Yo-yo Waterballs⁷⁸³ is relocated from Article 12, Bodily Harm, to a portion of the Illinois Compiled Statutes dedicated to Consumer Protection. This statute is currently placed in Article 12, an Article designed to contain “Bodily Harm” offenses.⁷⁸⁴ Although bodily harm has resulted through the use of yo-yo waterballs, this provision does not punish bodily harm, but prohibits the sale of a dangerous toy. This law

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

777. *Id.*; 815 ILL. COMP. STAT. 505/2A (2006).

778. Formerly 720 ILL. COMP. STAT. 5/17-7 (2006); *see also* 815 ILL. COMP. STAT. 505/1(g) (2006) (describing pyramid sales schemes).

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

780. *See* 815 ILL. COMP. STAT. 505/7 (2006).

781. Formerly 720 ILL. COMP. STAT. 140/0.01 to 140/3 (2006).

782. Formerly 720 ILL. COMP. STAT. 225/0.01 to 225/2 (2006).

783. Formerly 720 ILL. COMP. STAT. 5/12-21.7 (2006).

784. 720 ILL. COMP. STAT. 5/12-1 to 12-35 (2006).

was designed to protect children from strangulation.⁷⁸⁵ Because the purpose of this statute is consumer protection, it is moved to Chapter 815.

Chapter 730: Unified Code of Corrections

2-1-1: State's Attorney's Bad Check Diversion Program

The State's Attorney's Bad Check Diversion Program⁷⁸⁶ is moved out of the Criminal Code into the Uniform Code of Corrections. The State's Attorney's Bad Check Diversion Program allows the State's Attorney to create a diversion program by means of an agreement between an alleged bad check offender and the State's Attorney's office. It is a restitution-based program that allows the offender to avoid criminal prosecution altogether if he or she fulfills the terms and conditions of the program.

This provision pertains solely to the disposition of criminal conduct by an offender. It is placed into Article II of the Code of Corrections, which, prior to this relocation, was reserved and vacant. The Uniform Code of Corrections contains Articles reserved for future use, specifically Articles II and IV. Article V, Authorized Dispositions, covers most sentencing issues. The provision being relocated in this recommendation, however, is not a sentencing provision. For that reason, using Article II for pre-trial diversion programs is appropriate. No substantive change is intended by this relocation.

Eliminated Acts

Former 720 ILL. COMP. STAT. 145: Telecommunication Line Tapping Act

The Telecommunication Line Tapping Act⁷⁸⁷ is eliminated as redundant because Article 14 of the Code encompasses the prohibitions in the Act.

Former 720 ILL. COMP. STAT. 205: Aircraft Crash Parts Act

The Aircraft Crash Parts Act⁷⁸⁸ is eliminated because Title 49 of the United States Code gives the National Transportation Safety Board exclusive jurisdiction over the investigation of

785. 94th Gen. Assem., House of Rep., May 5, 2005, at 55 (statement of Rep. Coulson).

786. Formerly 720 ILL. COMP. STAT. 5/17-1b (2006).

787. Formerly 720 ILL. COMP. STAT. 145/0.01 to 145/1 (2006).

788. Formerly 720 ILL. COMP. STAT. 205/0.01 to 205/1 (2006).

aircraft accidents.⁷⁸⁹ The crime set forth in former Aircraft Crash Parts Act is prohibited by the Federal laws of “Obstruction of Justice” and “Fraud and False Statements.”⁷⁹⁰ Because of Federal preemption in the field of aircraft crash investigations, this former Act is unnecessary.

Former 720 ILL. COMP. STAT. 300: Derogatory Statements About Banks Act

The former Derogatory Statements About Banks Act⁷⁹¹ is repealed in lieu of the Illinois Savings and Loan Act of 1985 in the “Financial Regulation” Chapter.⁷⁹² Section 1-12 of that Act addresses slander in a banking context.⁷⁹³

	Derogatory Statements Against Banks Section 1	Illinois Savings and Loan Act of 1985 Section 1-12
Mental state	Willfully and maliciously; with intent to affect the solvency	Knowingly; with intent to injure
Conduct proscribed	- 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,	- 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,

789. 49 U.S.C § 1132 (2006).

790. 18 U.S.C. § 1501 (2006); 18 U.S.C. § 1001 (2006).

791. Formerly 720 ILL. COMP. STAT. 300/0.01 to 300/1 (2006).

792. See 205 ILL. COMP. STAT. 105 (2006) (addressing the financial regulation).

793. 205 ILL. COMP. STAT. 105/1-12 (2006).

	- or who shall counsel, aid, procure or induce another to start, transmit or circulate any such statement, rumor or suggestion	procures or induces or knowingly permits another to originate, make, utter, transmit or circulate any such statement or rumor, with like intent
Penalty	Class A misdemeanor	Business offense PLUS fine of not more than \$ 2,500.
Defense	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	None

The Derogatory Statements About Banks Act was added to Illinois Law in 1921. There are no reported cases interpreting this provision. This Act became effective before much of the current legislation regulating the banking industry came into existence. The conduct described in the Act 300 offense is substantially subsumed by the Illinois Savings and Loan Act. With respect to sentencing, the criminal offense in the former Act carried a potential jail sentence, where Section 1-12 is a business offense resulting in a fine. The sentence is changed from a Class A misdemeanor to a business offense, and truth as a defense is deleted.

Former 720 ILL. COMP. STAT. 320: Horse Racing False Entries Act

The former Horse Racing False Entries Act⁷⁹⁴ is repealed. With the exception of the short title provision in the Horse Racing False Entries Act, each of the four statutes of that Act is

794. Formerly 720 ILL. COMP. STAT. 320/0.01 to 320/4 (2006).

incorporated, almost verbatim, into the Illinois Horse Racing Act of 1975.⁷⁹⁵ See the table below for the corresponding sections.

Provision	Illinois Horse Racing Act of 1975	Horse Racing False Entries Act
Substantive offense: to knowingly enter or compete with a horse under any name other than its true name or out of its proper class	Section 38(a)	Section 1
Penalty	Section 38(b)	Section 2
True name of horse	Section 38(c)	Section 3
Official records as evidence	Section 38(d)	Section 4

The goals of both Acts are similar because they relate to false entries. The criminal penalty imposed in former Act 320 is also imposed in Section 38 of the Horse Racing Act. Both offenses are Class 4 felonies.

Former 720 ILL. COMP. STAT. 345: Sale or Pledge of Goods by Minors Act

The Sale or Pledge of Goods by Minors Act⁷⁹⁶ is deleted because punishment for this conduct is covered elsewhere.⁷⁹⁷ This Act regulated the business of pawnbrokers and imposed substantial reporting and record-keeping requirements upon those defined in the Act as “pawnbrokers.”⁷⁹⁸

Former 720 ILL. COMP. STAT. 540: Bail Bond False Statement Act

The Bail Bond False Statement Act⁷⁹⁹ is eliminated because a bail bond false statement is not an independent offense. This Act provided for a situation when Perjury⁸⁰⁰ or Subornation of Perjury⁸⁰¹ occurs and no independent punishment existed for this crime. This provision is eliminated in favor of the existing statutes in the Code.

795. 230 ILL. COMP. STAT. 5/1 to 5/19 (2006).

796. Formerly 720 ILL. COMP. STAT. 345/0.01 to 345/2 (2006).

797. See, e.g., 205 ILL. COMP. STAT. 510/01-11 (2006) (dealing with Financial Regulation, which includes the Pawnbroker Regulation Act, imposing criminal penalties for a violation of the Act).

798. See 205 ILL. COMP. STAT. 510/1 (defining pawnbrokers); 510/5 (imposing record requirements); 510/6 (allowing inspection of records); 510/7 (requiring a daily report to county’s sheriff of property received on deposit or purchased); 510/8 (prohibiting pledges by minors).

799. Formerly 720 ILL. COMP. STAT. 540/0.01 to 540/1 (2006).

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

801. Formerly 720 ILL. COMP. STAT. 5/32-3 (2006).

Former 720 ILL. COMP. STAT. 560: Illinois Clean Public Elevator Air Act

The Illinois Clean Public Elevator Air Act is eliminated as redundant because smoking in public elevators is prohibited by the Illinois Clean Air Act.⁸⁰²

Former 720 ILL. COMP. STAT. 640: Improper Supervision of Children Act

The Improper Supervision of Children Act⁸⁰³ is deleted. This former Act punished a person who knowingly permitted a child under the age of 18, and under his or her control, to associate with known thieves, burglars, felons, narcotics addicts, or other people of ill repute, or to visit a place of ill repute or a place of prostitution, or to commit a lewd act or an act tending to break the peace or violate a municipal curfew ordinance.

Conduct prohibited in the former Improper Supervision of Children Act is covered by other statutes. For example, Endangering the Life or Health of a Child states that “[i]t is unlawful for any person to willfully cause or permit the life or health of a child under the age of 18 to be endangered or to willfully cause or permit a child to be placed in circumstances that endanger the child’s life or health.”⁸⁰⁴ This statute is similar to the previous Improper Supervision of Children Act because both prohibit a person from knowingly permitting children to be in a situation where their lives or health will be endangered.

Portions of the new Harms to Children and Students Article also overlap with the former Improper Supervision of Children Act. The offense of Contributing to the Criminal Delinquency of a Juvenile⁸⁰⁵ is designed to protect children by penalizing people who either solicit or allow the children to commit certain wrong acts, or acts that are defined to be delinquent.

Former 720 ILL. COMP. STAT. 650: Nitroglycerin Transportation Act

The Nitroglycerin Transportation Act⁸⁰⁶ is eliminated as redundant because the transportation of nitroglycerin is regulated at the state level by the Illinois Hazardous Materials Transportation Act.⁸⁰⁷ There is also regulation of hazardous substances, including nitroglycerin, at the Federal level.⁸⁰⁸ These

802. Illinois Clean Indoor Air Act, ch. 111 1/2, para. 8204 (to be codified at 410 ILL. COMP. STAT. 80-4).

803. Formerly 720 ILL. COMP. STAT. 640/0.01 to 640/2 (2006).

804. 720 ILL. COMP. STAT. 5/12-21.6 (2006).

805. 720 ILL. COMP. STAT. 5/23-4 (2006).

806. 720 ILL. COMP. STAT. 650/0.01 (2006).

807. 430 ILL. COMP. STAT. 30/1 to 30/16 (2006).

808. 49 U.S.C § 5103 (2006).

state and federal regulations make this Code provision unnecessary.

Former 720 ILL. COMP. STAT. 660: Party Line Emergency Act

The Party Line Emergency Act⁸⁰⁹ is eliminated as redundant. Article 26 of the Code, Disorderly Conduct, penalizes Interference with Emergency Communication⁸¹⁰ and false reports of emergencies.⁸¹¹ These statutes prohibit the same conduct formerly proscribed in the Party Line Emergency Act.

Former 720 ILL. COMP. STAT. 670: Sale of Immoral Publications to Children Act

The Sale of Immoral Publications to Children Act⁸¹² is deleted. The language of this Act is similar to state statutes elsewhere that have been repealed pursuant to U.S. Supreme Court case law.⁸¹³ In *Winters v. New York*, the Court struck down a New York statute punishing the sale and distribution of publications devoted to “bloodshed, lust and crime” as so vague and indefinite that they offered no guidance as to what material was covered by law.⁸¹⁴ The operative language in the New York statute in *Winters* was identical to the language in the Sale of Immoral Publications to Children Act. The protections afforded to children under this Act continue to exist under current obscenity laws, and the former Sale of Immoral Publications to Children Act is unenforceable and unconstitutional.

The states that have repealed statutes containing similar language include Connecticut, Iowa, Kansas, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, North Dakota and Ohio.

809. Formerly 720 ILL. COMP. STAT. 660/0.01 to 660/14 (2006).

810. 720 ILL. COMP. STAT. 5/26-2 (2006).

811. 720 ILL. COMP. STAT. 5/26-1(a)(2) (2006); 720 ILL. COMP. STAT. 5/26-1(a)(12) (2006).

812. Formerly 720 ILL. COMP. STAT. 670/0.01 to 670/3 (2006).

813. See *Winters v. New York*, 333 U.S. 507, 509-10 (1947) (striking down a New York statute punishing publications containing lust and bloodshed on the bases that the statute was unconstitutionally vague).

814. *Id.*

