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Bill is one more step for code rewrite

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SPRINGFIELD — With the stroke of a pen, decades of litigation sorting out the armed violence sentencing scheme has been brought to an end.

At least that's the hope of the proponents of Public Act 95-688, which Gov. [Rod R. Blagojevich](#) signed into law Tuesday.

It's the first enactment resulting from nearly three years of work by the Criminal Law Edit, Alignment and Reform Initiative.

The rest of CLEAR's work — which would be the first comprehensive overhaul of the Criminal Code since 1960 — is still being put into legislative form.

Lawmakers had hoped to advance the CLEAR legislation earlier this year, but staff attorneys of the General Assembly opted to combine into one piece of legislation the mammoth task of cross-referencing the old statutes with the relatively simpler substantive changes. But even the substantive changes spanned 1,156 pages in an early draft of the legislation, Senate Bill 100.

The new law removes certain offenses from the armed violence statute — second-degree murder, involuntary manslaughter and reckless homicide, among others — offenses that already have separate firearm enhancements. The duplicative statutes have led to what CLEAR co-director [Peter G. Baroni](#) called "literally dozens" of published decisions that nixed sentences on proportionate penalty grounds.

"The new law stops decades of litigation that have focused on the interplay between armed violence and other felonies with weapons-enhancing provisions," Baroni said in a telephone interview Friday.

One set of enhancements that has generated much litigation is known colloquially as 15, 20, 25-to-life and applies to certain crimes in which firearms are used.

The change in the law was already part of CLEAR's recommendations to the General Assembly, but it was rushed into legislation this summer after the Illinois Supreme Court held that disparate sentences for offenses with identical elements — armed robbery and armed violence predicated on robbery — violated the proportionate penalties clause of the Illinois Constitution. *People v. Hauschild*, 226 Ill.2d 63 (2007).

The armed robbery statute in question is a Class X felony punishable by six to 30 years in prison, with an add-on of at least 15 years. 720 ILCS 5/18-2(a)(2). Armed violence predicated on robbery, however, had been a Class X offense punishable by a sentence of 15 to 30 years. 720 ILCS 5/33A-3(a).

The high court remanded the case for resentencing and precluded the lower court from using the armed robbery with enhancement sentencing scheme.

The amended version of the armed violence statute now includes a catchall that excludes its application to "any offense that makes 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."

P.A. 95-688 also enacted two recommendations of the Capital Punishment Reform Study Committee, creating a statewide Capital Crimes Database and mandating the development of standards for recording custodial interrogations in homicide investigations.

Baroni, who in addition to his work for the CLEAR Initiative has also served as special counsel to the Capital Punishment Committee, said the database is intended to make Illinois' death penalty system more "transparent," enabling studies that would be less vulnerable to accusations of selective use of information.

The database would cull information from the state's circuit court clerks, state's attorneys, public defenders and the offices of the attorney general, appellate prosecutor and appellate defender, as well as the Illinois State Police — literally hundreds of government offices — in what would otherwise be a nearly insurmountable task.

The database is subject to appropriation — \$100,000 is needed, according to the minutes of the committee's August 2007 meeting — but this year's protracted state budget battle has made it difficult to predict when or if the money will materialize.

The Capital Punishment Committee itself watched Blagojevich veto its entire \$250,000 appropriation in August. Baroni said he is working to restore funding. The committee members are volunteers, but the budget cut has stalled a statewide survey by a Loyola University Chicago criminal justice professor. David E. Olson's work is supposed to serve as the model for the Capital Crimes Database.

P.A. 95-688 took effect immediately. Legislation may be found on the General Assembly's Web site at www.ilga.gov.