

# Criminal Law

## New Law Clarifies Illinois' Sentencing Statutes

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A newly enacted reorganization of the Unified Code of Corrections clarifies the patchwork of provisions accumulated over the years, makes it easier to match a criminal offense with the possible sentence, and codifies case law to bring sentencing up to date in Illinois.

Enacted in April 2009 and effective July 1, 2009, Public Act 95-1052 overhauls criminal sentencing law in Illinois. The new law is designed to clarify various sentencing provisions in the Unified Code of Corrections (the "Code"), eliminate inconsistencies and redundancies, and conform the Code to established case law, with the goal of making the Code more understandable, consistent, and just.<sup>1</sup>

Since enacting the Code in 1962, the General Assembly has amended sentencing provisions at an increasing pace. Some amendments have resulted in inconsistent sentences for similar crimes, unnecessary litigation, and confusion among lawyers and judges alike.

PA 95-1052 was not an attempt to tackle disparate sentencing or address other substantive problems inherent in Illinois' outdated model of punishment. Rather, it was designed to modernize, streamline, and reorganize sentencing provisions in Illinois. The new law also conforms once vague statutes to established judicial interpretations.

In this article, we explore the changes to the sentencing provisions in the Code and provide a roadmap for lawyers, judges, and the public for determining the punishment that is attached to a crime. Our goal is to highlight and explain the changes made in the Illinois sentencing structure, much as committee comments explain a particular body of law.

### Background

The changes to the sentencing laws are in large measure the result of recommendations made by the Criminal Law Edit Align and Reform Initiative Commission (the "CLEAR Commission" or "Commission").

The CLEAR Commission, co-chaired by former Illinois Gov James R. Thompson and former Illinois Appellate Court Justice Gino L. DiVito and comprising 22 prominent and diverse experts in the criminal justice system, began in 2004 as a result of mounting public concern for the ever increasing length and complexity of Illinois' criminal and sentencing codes.<sup>2</sup>

Although it is a nongovernment body, the CLEAR Commission is made up of representatives from Illinois' government agencies with the most interest in these laws. Commissioners include the state's attorneys from Cook, DuPage, and St. Clair Counties, along with representatives from

the judiciary, the legislature, the Governor's office, the Attorney General's office, law enforcement, and the criminal defense bar. The CLEAR Commissioners represent the diverse criminal justice interests throughout the state. You can learn more about the Commission and its work at [www.clearinitiative.org](http://www.clearinitiative.org).

The Commission conducted the first extensive study of the lengthy Code since Illinois' move approximately 30 years ago from indeterminate to determinate sentencing.<sup>3</sup> Commissioners met quarterly to discuss changes recommended by staff and commission members, hear alternatives, and refine draft language.

The Commission brought its collective experience with the Code to its review of the necessity and proper placement of each provision. The goals of the Commission were to create a Code that (1) places the most important statutory provisions in accessible form at the beginning of the statutory scheme, (2) eliminates redundancies, and (3) ensures that the current statutory text reflects well-established court interpretations of the law.<sup>4</sup> Not surprisingly, these are substantially the same goals followed in 1973 when the Code was first created.<sup>5</sup>

Before the reform, someone seeking to determine the range of sentences a court could impose would have to search through multiple Code provisions. This made it difficult to understand the true ramifications of committing an offense.

To make the Code accessible for judges, practitioners, and lay readers alike, the CLEAR Commission proposed a series of standard sentencing provisions. These statutes put the most important components of each criminal offense classification - from the most severe felonies to petty, business, and unclassified offenses - in one place, a new Article 4.5. They also describe all applicable sanctions, including prison terms and the availability of probation.

Where the information was too lengthy to relocate to a particular standard sentencing statute, PA 95-1052 includes a cross-reference directing the reader to the relevant provisions (for a detailed transition table, visit [www.isba.org/ibj/2009/09/sentencingtable.pdf](http://www.isba.org/ibj/2009/09/sentencingtable.pdf)). In addition to making the Code more concise and comprehensible, the CLEAR Commission revised the text of statutes where appropriate to make them conform to well-settled court interpretations law.

This article describes the changes in Illinois sentencing, looking especially at new Article 4.5 of the Illinois Code of Corrections.

### **The new standard sentencing provisions**

The sentencing provisions added to the Code by PA 95-1052 are found in a new article 4.5 ("General Sentencing Provisions") and codified at 730 ILCS 5/5-4.5 ("5-4.5"). Here are the most important differences wrought by new 5-4.5.

**5-4.5-15. Dispositions.** Arguably the most important sections of the Code of Corrections define what criminal penalties courts can impose. This new "dispositions" section of the Code

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outlines the list of dispositions generally available in all felonies and misdemeanors.

Previously, this information was located in various subsections of 730 ILCS 5/5-5-3 (which lists dispositions for violations of all Illinois laws, other than those in the Illinois Vehicle Code), a lengthy and complex statute. This language is now provided in its own section before the other substantive sentencing provisions.

**5-4.5-20. First Degree Murder; Sentence to 5-4.5-45. Class 4 Felonies; Sentence.** The standard sentencing statutes for first-degree murder and for each felony classification provide a succinct list of the most significant penalties for these offenses.

Where the law was concise, the substantive text was removed from its former location and brought directly into the standard sentencing statutes.<sup>6</sup> But where the sentencing question is lengthy, fact specific, and littered with exceptions, cross-references are provided to keep the standard sentencing statutes brief.

For example, the declaration that periodic imprisonment is not available for those convicted of first degree murder is unambiguous and concise.<sup>7</sup> Therefore, it was stricken from its former location within section 730 ILCS 5/5-5-3 and transferred to the relevant standard sentencing provision.<sup>8</sup>

On the other hand, the rules for early release are long and detailed. Thus, the revised Code does not relocate this information but instead includes a cross reference to it.<sup>9</sup> Thus, these standard sentencing statutes contain the law itself or direct readers to where they can find the law.

**5-4.5-50. Sentence Provisions; All Felonies.** Immediately following the standard sentencing provisions for each felony is a statute that provides sentencing information applicable to all felony classifications. For example, this statute includes rules about supervision<sup>10</sup> and about how concurrent sentences are imposed.<sup>11</sup>

**5-4.5-55. Class A Misdemeanors; Sentence to 5-4.5-65. Class C Misdemeanors; Sentence.** The standard sentencing statutes for misdemeanors track the structure of the felony standard sentencing statutes and include the essential sentencing provisions that apply to misdemeanors. The sentencing information in these sections includes the range of possible terms of imprisonment and cross-references directing the reader to information about restitution, the availability of drug court, and the possibility of early release for good conduct.

**5-4.5-70. Sentence Provisions; All Misdemeanors.** Like the standard sentencing statute for all felonies, this section consolidates the most critical information for those convicted of misdemeanors.

**5-4.5-75. Petty Offenses; Sentence and 5-4.5-80. Business Offenses; Sentence.** A petty offense is "any offense for which a sentence of imprisonment is not an authorized disposition,"<sup>12</sup> and a business offense is "a petty offense for which the fine is in excess of \$1,000."<sup>13</sup> The information now consolidated here was split among five different statutes in the previous Code.<sup>14</sup>

**5-4.5-85. *Unclassified Offenses; Sentence.*** The Code does not specify sentences for some types of criminal conduct.<sup>15</sup> This section provides the sentencing rules for these unclassified offenses. These provisions previously were located in the middle of the Code at 730 ILCS 5/5-5-2. They now appear near the standard sentencing statutes for easy reference.

**5-4.5-90. *Other Remedies Not Limited.*** This section expressly states that the Code does not limit the power of courts to order a forfeiture of property, suspend or cancel a license, remove a person from office, or impose civil penalties. The revised Code moves this provision into its own statute; the language formerly appeared in a subsection that was included in the middle of the general disposition statute, 730 ILCS 5/5-5-3(f).

**5-4.5-95. *General Recidivism Provisions.*** Subsection (a), titled "Habitual Criminals," states that a person may be deemed a habitual criminal whenever he or she has been twice convicted in any state or federal court of a Class X felony, criminal sexual assault, aggravated kidnapping, or first degree murder, and is convicted of a Class X felony, criminal sexual assault, or first degree murder, committed after the two prior convictions.<sup>16</sup>

Statutes defining habitual criminals were consolidated because many of these provisions were located outside of Chapter 730 entirely.<sup>17</sup> Because these laws addressing habitual criminals deal with sentences and do not define crimes, they have been moved into the Code.

**5-4.5-100. *Calculation of Term of Imprisonment.*** This statute states when a prison term begins and provides the general provisions concerning credit for time served.

**5-4.5-990. *Prior Law; Other Acts; Prior Sentencing.*** This new section explains how the new provisions inserted into the Code by Public Act 95-1052 are meant to interact with existing and prior provisions. In general, this section clarifies that changes to the Code consolidate similar statutes.<sup>18</sup> Section 5-4.5-990 specifies that new Code provisions that are substantially similar to earlier ones be construed the same.<sup>19</sup>

### **Changes to other statutes that affect sentencing**

Along with creating Article 4.5, PA 95-1052 also amends additional portions of the Code of Corrections, with the same goal of clarifying and simplifying Illinois sentencing law. Here are key changes.

**5-5-3. *Disposition.*** Additions to subsection (c)(2)(F) of this section codify case law holding that a person who has a federal conviction or a conviction in another state for a crime that has the same elements as a Class 2 or higher felony in Illinois cannot receive probation or conditional discharge.<sup>20</sup>

The previous version of the statute did not state whether the prior felony conviction had to occur in Illinois.<sup>21</sup> PA 95-1052 makes clear that it does not, resolving the issue in a manner consistent with well-established case law.<sup>22</sup>

**5-5-3.2. Factors in Aggravation.** These factors allow courts to impose significantly longer sentences on those who commit crimes, for example, "by exceptionally brutal or heinous behavior indicative of wanton cruelty."<sup>23</sup>

Previously, extended-term factors that apply to specific crimes were intermixed with those that apply to all felonies.<sup>24</sup> These factors now are separated into two categories: (i) those that apply to all or most felonies, and (ii) those that apply to specific offenses.<sup>25</sup>

Additionally, PA 95-1052 clarifies the language in subsection (c)(4), correcting a troubling gap in the sentencing of offenders convicted of sexually assaulting children. This subsection previously provided that a court could impose extended-term sentences when the defendant was convicted of aggravated criminal sexual assault or predatory criminal sexual assault of a child (as defined in 720 ILCS 5/12-14.1(a)(1)) "where the victim was under 18 years of age at the time of the commission of the offense."<sup>26</sup>

The confusion stemmed from whether the clause "where the victim was under 18 years of age" modified "aggravated criminal sexual assault," "predatory criminal sexual assault of a child," or both.<sup>27</sup> Adding to this confusion was the definition of "predatory criminal sexual assault of a child," which under the Criminal Code is "sexual penetration with a victim who was under 13 years of age."<sup>28</sup>

Based on the definition of "predatory criminal sexual assault," extended-term sentencing could never be imposed on a defendant for committing predatory criminal sexual assault of a child on a victim who was at least 13 but younger than 18<sup>29</sup> (because a "predatory criminal sexual assault of a child" victim by definition must be younger than 13).<sup>30</sup>

Public Act 95-1052 revises subsection (c)(4) to state that a court may impose extended term sentencing, "[i]f the victim was under 18 years of age at the time of the commission of the offense, when a defendant is convicted of aggravated criminal sexual assault or predatory criminal sexual assault of a child."<sup>31</sup>

**5-8-2. Extended Term.** Public Act 95-1052 adds language conforming to well-established case law holding that when a defendant is convicted of multiple offenses, courts may impose extended-term sentences based on the sentence for the most serious offense.<sup>32</sup> The effect of the language "for the class of the most serious offense of which the offender was convicted" in former subsection (a) was ambiguous because it was unclear whether it prohibited extended-term sentences from being imposed on offenses within separate classifications.

In a consolidated appeal, *People v Jordan* resolved this conflict and clarified the meaning of 5-8-2(a).<sup>33</sup> *Jordan* held that an extended term could be imposed for multiple offenses as long as they are in the same classification as the most serious offense.<sup>34</sup> This section codifies the holding in *Jordan*.<sup>35</sup>

**5-8-4. Concurrent and Consecutive Terms of Imprisonment.** The law defining when to impose concurrent or consecutive sentences has caused much confusion and litigation.<sup>36</sup> Public Act 95-

1052 revised this section to clarify when a court may - and should - impose concurrent or consecutive sentences.

The previous version of subsection (a) contained an introductory clause, rules specific to the offense of "Aggravated False Personation of a Peace Officer,"<sup>37</sup> and provisions addressing situations in which a convicted person is subsequently convicted for an offense in another jurisdiction.<sup>38</sup> It also included additional, crime-specific rules.<sup>39</sup>

The revised section describes when courts can or must impose consecutive or concurrent sentences.<sup>40</sup> It begins with the baseline presumption that courts should impose concurrent sentences.<sup>41</sup> It follows with a provision in subsection (b) addressing the offender serving a sentence for a misdemeanor who then is convicted of a felony.<sup>42</sup>

Next are the terms that allow, but do not mandate, that a court impose consecutive sentences,<sup>43</sup> followed by a list of the situations where consecutive sentences are mandatory.<sup>44</sup> The remaining subsections further define the use of consecutive sentences.<sup>45</sup>

## Conclusion

The new sentencing provisions take law that has developed piecemeal over time and reorganizes it into a logical structure. This will make the law more fair and, ideally, will reduce the number of appeals and hold down costs for defense and prosecution alike.

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1. The Transition Table at [www.isba.org/ibj/2009/09/sentencingtable.pdf](http://www.isba.org/ibj/2009/09/sentencingtable.pdf) shows the derivation of many provisions amended by Public Act 95-1052. References to the source of the new or revised statutes are to those statutes effective through May 2009.
2. For an in-depth analysis of the Commission and its proposals concerning the Illinois Criminal Code, see *The Mission of the Criminal Law Edit, Alignment, and Reform Commission (CLEAR): An Introductory Commentary*, 41 John Marshall L Rev 611 (2008).
3. Indeterminate sentencing is for a range (e.g., five to 10 years), while determinate sentencing is for a fixed term. This was the first significant CLEAR Commission backed bill to become law, although the CLEAR Commission has proposed, and is in the process of finalizing, many more. In fact, three of its bills, Senate Bills 1300 (revising articles 3-10 of the Illinois Criminal Code, 1320 (creating the Sentencing Policy Advisory Council), and 1325 (consolidating forfeiture

provisions in the Illinois Criminal Code), passed unanimously through both chambers of the Illinois General Assembly in late May 2009, and await the governor's signature. The authors of this article will continue to write about CLEAR Commission led bills as they become law.

4. The CLEAR Commission initially sought to reorganize the entire Code. This involved replacing the administrative statutes now leading the Code with the substantive provisions that most affect those convicted of crimes, and that were scattered through the body of the Code. The CLEAR Commission also endeavored to make substantive changes and codify case law beyond that included in Public Act 95-1052. Commissioners ultimately accepted, however, that their recommendations would be reviewed and revised in the legislative process as our system of democracy requires. As a result, Public Act 95-1052 differs from the reform recommendation CLEAR submitted. Nevertheless, the Act does reflect the majority of the Commission's recommendations and is only the first of many legislative initiatives CLEAR will usher through the general assembly to correct and modernize Illinois criminal and sentencing law.

5. The three goals sought to be achieved in the original drafting of the Code were: (1) "to draw together widely scattered statutory provisions relating to Illinois corrections into one law;" (2) "update[] existing law where present practice or constitutional directives require modification;" and (3) to "offer[] some new provisions for Illinois which are based on the practical experience of other jurisdictions and the suggestions of Illinois law enforcement and correction officials." 1973 Council Commentary, 2 (Smith-Hurd 2007).

6. See, e.g., 730 ILCS 5/5-4.5-20 (a) - (d). To avoid confusion, references to laws existing before Public Act 95-1052 will be cited as "former," and those after the Public Act will be cited without a specific date.

7. See 730 ILCS 5/5-4.5-20(b).

8. Id; see former 730 ILCS 5/5-5-3(c)(2)(A).

9. See, e.g., 730 ILCS 5/5-4.5-20(j).

10. 730 ILCS 5/5-4.5-50(a).

11. 730 ILCS 5/5-4.5-50(e).

12. 730 ILCS 5/5-1-17. Public Act 95-1052 clarifies the definition of a petty offense, which was previously "any offense for which a sentence to a fine only is provided." Former 730 ILCS 5/5-1-17.

13. 730 ILCS 5/5-1-2.

14. See former 730 ILCS 5/5-5-3; 730 ILCS 5/5-6-1; 730 ILCS 5/5-6-2; 730 ILCS 5/5-6-3.1; 730 ILCS 5/5-9-1.

15. See, e.g., *In re F. M.*, 344 Ill App 3d 524, 530-32, 801 NE2d 135, 139-42 (1st D 2003) (recognizing that until recently, certain forms of Aggravated Criminal Sexual Assault were unclassified).

16. 730 ILCS 5/5-4.5-95(a).

17. See former 720 ILCS 5/33B-1; 720 ILCS 5/33B-2; 720 ILCS 5/33B-3.

18. See 730 ILCS 5/5-4.5-990(a).

19. See 730 ILCS 5/5-4.5-990.

20. See *People v Daniels*, 194 Ill App 3d 648, 651-52, 551 NE2d 297, 299-300 (1st D 1990) (holding that absence of any reference to Illinois offenses in section 5-5-3(c)(2)(F) indicated a legislative intent to include defendants who had been previously convicted of felonies in other jurisdictions in the denial of probation); *People v Goble*, 125 Ill App 3d 289, 290-91, 465 NE2d 1371, 1372-73 (4th D 1984).

21. See former 730 ILCS 5/5-5-3(c)(2)(F).



22. See cases cited in note 20.
23. 730 ILCS 5/5-5-3.2(b)(2).
24. See former 730 ILCS 5/5-5-3.2(b) - (e).
25. 730 ILCS 5/5-5-3.2(b), (c).
26. Former 730 ILCS 5/5-5-3.2(c).
27. See former 730 ILCS 5/5-5-3.2(c).
28. See 720 ILCS 5/12-14.1(a).
29. Id; former 730 ILCS 5/5-5-3.2(c).
30. 720 ILCS 5/12-14.1(a).
31. 730 ILCS 5/5-5-3.2(c)(4); Public Act 95-1052 also replaces language stating that an extended term sentence is imposed when a person "committed" certain acts with language providing that the defendant must be "convicted" of the offense.
32. See 730 ILCS 5/5-8-2(a); *People v Jordan*, 103 Ill 2d 192, 203-07, 469 NE2d 569, 574-76 (1984).
33. Id.
34. Id at 206-07, 469 NE2d at 575-76.
35. See 730 ILCS 5/5-8-2(a); *Jordan* at 203-07, 469 NE2d at 574-76.
36. See, e.g., *People v Curry*, 178 Ill 2d 509, 524-25, 687 NE2d 877, 885-86 (1997) (discussing the confusion caused by this former section).
37. 720 ILCS 5/32-5.2.
38. See former 730 ILCS 5/5-8-4(a).
39. See former 730 ILCS 5/5-8-4(a)(i) - (a)(v).
40. 730 ILCS 5/5-8-4(a) - (e).
41. See 730 ILCS 5/5-8-4(a).
42. 730 ILCS 5/5-8-4(b).
43. 730 ILCS 5/5-8-4(c).
44. 730 ILCS 5/5-8-4(d).
45. 730 ILCS 5/5-8-4(e) - (g).

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### Find out more


- The new sentencing law is just one facet of the work of the Criminal Law Edit Align and Reform - or "CLEAR" - Commission. The following quote is from the Commission's Web site at [www.clearinitiative.org](http://www.clearinitiative.org), where you'll find more about the sentencing law and other CLEAR initiatives:

"Since the Illinois Criminal Code was last overhauled by the General Assembly more than 45 years ago, thousands of well-intentioned changes have riddled the Criminal Code with redundancies, inconsistencies and confusing language. A Code that once made clear distinctions between right and wrong and concisely explained the penalties for each transgression now



confounds even experienced lawyers and judges.

"The CLEAR Commission has been meeting since early 2005 in an intensive process to review and reform the Illinois Criminal Code and Code of Corrections to make them more readable, understandable, consistent and just. The Commission has completed its recommendations and they are currently being drafted. The new Criminal Code is less complex, easier to comprehend and includes the same crimes and punishments enacted by past legislatures."

- A table cross-referencing the provisions found at new 730 ILCS 5/5-4.5 with their location in earlier versions of the ILCS is on the Web at [www.isba.org/ibj/2009/09/sentencingtable.pdf](http://www.isba.org/ibj/2009/09/sentencingtable.pdf) .