

# Loyola University Chicago Law Journal

---

Volume 18

Issue 2 Winter 1986 1985-1986 Illinois Law Survey

Article 5

---

1986

## Criminal Law

Paul Alexander Rogers

*Assist. Public Defender, Kane County, IL*

Lisa Wetzel

Follow this and additional works at: <http://lawcommons.luc.edu/lucj>



Part of the [Criminal Law Commons](#)

---

### Recommended Citation

Paul A. Rogers, & Lisa Wetzel, *Criminal Law*, 18 Loy. U. Chi. L. J. 435 (1986).

Available at: <http://lawcommons.luc.edu/lucj/vol18/iss2/5>

This Article is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Loyola University Chicago Law Journal by an authorized administrator of LAW eCommons. For more information, please contact [law-library@luc.edu](mailto:law-library@luc.edu).

# Criminal Law

*Paul Alexander Rogers\**  
*and Lisa Wetzel\*\**

## TABLE OF CONTENTS

I.	INTRODUCTION .....	436
II.	CASE LAW.....	436
	<i>A. Crimes Against The Person</i> .....	437
	1. Homicide: Legally Inconsistent Verdicts.....	437
	2. Homicide: Jury Instruction Issues .....	439
	3. Sexually Dangerous Persons .....	440
	4. Unlawful Restraint .....	441
	5. Theft versus Robbery: Definition of "Force" .....	442
	<i>B. Crimes Against Property</i> .....	443
	1. Theft .....	443
	2. Residential Burglary .....	445
	3. Aggravated Arson .....	446
	<i>C. Crimes Affecting Public Health, Safety, and         Decency</i> .....	447
	1. Driving Under the Influence .....	447
	2. Drugs .....	449
	3. Gambling.....	451
	<i>D. Sentencing</i> .....	451
III.	LEGISLATION .....	454
	<i>A. Major Revisions</i> .....	455
	1. Murder/Voluntary Manslaughter .....	455
	2. Driving Under the Influence .....	456
	3. Feticide.....	457
	<i>B. Other Amendments to Existing Statutes</i> .....	459
	1. Unlawful Use of Weapons .....	459
	2. Child Abduction and Sexual Abuse .....	459
	3. Aggravated Arson .....	460
	4. Theft .....	460

---

\* Assistant Public Defender, Kane County, Illinois; formerly Illinois State Appellate Defender (1983-86); B.A., 1977, University of Iowa; J.D., 1981, University of Chicago.

\*\* A.B. 1985, University of Michigan; J.D. candidate, 1988, Loyola University of Chicago.

5. Residential Burglary .....	461
6. Bribery .....	461
C. <i>New Offenses</i> .....	462
1. Aggravated Unlawful Restraint .....	462
2. Disarming a Peace Officer .....	462
3. Public Aid Wire Fraud and Public Aid Mail Fraud .....	462
IV. CONCLUSION .....	462

## I. INTRODUCTION

This article will review the major developments in Illinois substantive criminal law since July, 1985. The article does not purport to be an exhaustive study of every court decision or piece of legislation. The discussion of the case law will be limited to Illinois Supreme Court decisions. The survey of legislation will cover new laws enacted since July, 1985.

## II. CASE LAW

The Illinois Supreme Court, during its 1985-86 term, issued several important decisions in the area of substantive criminal law. For example, the court addressed the problem of legally inconsistent verdicts<sup>1</sup> and jury instructions in homicide cases.<sup>2</sup> The court also construed provisions in statutes governing the following crimes: robbery;<sup>3</sup> theft;<sup>4</sup> driving under the influence ("DUI");<sup>5</sup> criminal drug conspiracy;<sup>6</sup> and gambling.<sup>7</sup> In addition, the court examined the Sexually Dangerous Persons Act,<sup>8</sup> and various sentencing statutes.<sup>9</sup> Finally, the court ruled on the constitutionality

---

1. See *infra* notes 14-35 and accompanying text.

2. See *infra* notes 36-53 and accompanying text.

3. ILL. REV. STAT. ch. 38, para. 18-1 (1985). See *infra* notes 70-78 and accompanying text.

4. ILL. REV. STAT. ch. 38, para. 16-1 (1985). See *infra* notes 79-95 and accompanying text.

5. ILL. REV. STAT. ch. 95 1/2, para. 11-501(a) (1985). See *infra* notes 109-28, 204-15 and accompanying text.

6. ILL. REV. STAT. ch. 56 1/2, para. 1405 (1985). See *infra* notes 129-44 and accompanying text.

7. ILL. REV. STAT. ch. 38, para. 28-1.1(d) (1985). See *infra* notes 145-52 and accompanying text.

8. ILL. REV. STAT. ch. 38, para. 105-1.01 (1985). See *infra* notes 54-57 and accompanying text.

9. ILL. REV. STAT. ch. 38, para. 1005 (1985). See *infra* notes 153-83 and accompanying text.

of statutes defining unlawful restraint,<sup>10</sup> residential burglary,<sup>11</sup> aggravated arson,<sup>12</sup> and DUI.<sup>13</sup>

### A. Crimes Against The Person

#### 1. Homicide: Legally Inconsistent Verdicts

In *People v. Spears*,<sup>14</sup> the Illinois Supreme Court addressed the frequently occurring problem of legally inconsistent jury verdicts.<sup>15</sup> The court previously addressed this problem in *People v. Hoffer*.<sup>16</sup> In *Hoffer*, the court held that simultaneous guilty verdicts for murder, voluntary manslaughter, and involuntary manslaughter, based on a single act, were legally inconsistent. Because those offenses involved mutually inconsistent mental states, the *Hoffer* court ordered a new trial.<sup>17</sup> In *Spears*, the court faced the problem of inconsistent verdicts not in the specific context of a homicide case, but rather in the analogous context of an attempt (murder) prosecution.<sup>18</sup>

The defendant in *Spears* had been charged with attempt (murder)<sup>19</sup> and armed violence,<sup>20</sup> based on his firing of two gunshots at his estranged wife and a third shot at his wife and her friend.<sup>21</sup> The three shots had been fired in rapid succession.<sup>22</sup> At the defendant's request, the jury was instructed regarding the lesser included of-

---

10. ILL. REV. STAT. ch. 38, para. 10-3 (1985). See *infra* notes 58-69 and accompanying text.

11. ILL. REV. STAT. ch. 38, para. 19-3(a) (1985). See *infra* notes 96-101, 250-56 and accompanying text.

12. ILL. REV. STAT. ch. 38, para. 20-1.1 (1985). See *infra* notes 102-05, 244-46 and accompanying text.

13. ILL. REV. STAT. ch. 95½, para. 11-501(a) (1985). See *infra* notes 109-25, 204-15 and accompanying text.

14. 112 Ill. 2d 396, 493 N.E.2d 1030 (1986).

15. *Id.* at 403, 493 N.E.2d at 1033. Inconsistent verdicts are mutually repugnant or contradictory. BLACK'S LAW DICTIONARY 689 (5th ed. 1979).

16. 106 Ill. 2d 186, 478 N.E.2d 335, *cert. denied*, 106 S.Ct. 139 (1985).

17. *Id.* at 190-96, 478 N.E.2d at 338-41. The problem of legally inconsistent verdicts in homicide cases arises in large part because of the manner in which the offenses are structured in the Illinois Criminal Code. In essence, the Code treats murder as a lesser included offense of voluntary manslaughter. This anomaly creates not only problems of inconsistent verdicts, but also problems in drafting coherent jury instructions. See Haddad, *Allocation of Burdens in Murder-Voluntary Manslaughter Cases: An Affirmative Defense Approach*, 59 CHI.-KENT L. REV. 23 (1982) for an insightful analysis of these problems. See also *infra* notes 35, 200 and accompanying text.

18. *Spears*, 112 Ill. 2d at 400, 493 N.E.2d at 1031.

19. ILL. REV. STAT. ch. 38, para. 8-4 (1985).

20. *Id.* at para. 33A.

21. *Spears*, 112 Ill. 2d at 401, 493 N.E.2d at 1031-32.

22. *Id.* at 401, 493 N.E.2d at 1032.

fense of reckless conduct in addition to the two charged offenses.<sup>23</sup> The jury returned verdicts of guilty for the three offenses.<sup>24</sup> The trial court entered judgment on the three verdicts, but the appellate court reversed the convictions, finding that the verdicts were legally inconsistent.<sup>25</sup>

On review, the Illinois Supreme Court affirmed the reversal and remanded the case for a new trial.<sup>26</sup> Relying on *Hoffer*, the court held that the guilty verdicts were logically and legally inconsistent. The attempt (murder) and armed violence charges required the jury to find that the defendant acted intentionally or knowingly,<sup>27</sup> while the reckless conduct charge required the jury to find only that he acted with recklessness.<sup>28</sup>

The *Spears* court distinguished *Hoffer* from its intervening decision in *People v. Almo*.<sup>29</sup> In *Almo*, the jury initially had returned guilty verdicts for murder and voluntary manslaughter.<sup>30</sup> The trial court, however, refused to accept those verdicts and reinstructed the jury, whereupon it returned a verdict of guilty on the murder charge.<sup>31</sup> The supreme court in *Almo* held that the trial court acted properly by refusing to accept the verdicts and reinstructing the jury, thereby curing the inconsistent verdict dilemma.<sup>32</sup> Accordingly, the *Almo* court concluded that the case was not controlled by *Hoffer*.<sup>33</sup> The trial court in *Spears* had not followed the procedure utilized in *Almo*. Thus, the supreme court held that

---

23. *Id.* at 399-400, 493 N.E.2d at 1031.

24. *Id.* at 402, 493 N.E.2d at 1032.

25. *Id.* at 400, 493 N.E.2d at 1031.

26. *Id.* at 410, 493 N.E.2d at 1036.

27. *Id.* at 406, 493 N.E.2d at 1034. The armed violence charges in *Spears* were predicated on aggravated battery which requires the mental state of knowledge. ILL. REV. STAT. ch. 38 para. 12-4 (1985).

28. *Spears*, at 403-08, 493 N.E.2d at 1033-35. The court rejected the State's argument that the three shots constituted separable acts which could support inconsistent verdicts. The *Spears* court emphasized that the shots had been fired in rapid succession and that each charge as alleged in the information was based on the defendant's entire course of conduct. *Id.* at 403-06, 493 N.E.2d at 1033-34.

29. 108 Ill. 2d 54, 483 N.E.2d 203 (1985).

30. *Id.* at 61, 483 N.E.2d at 206.

31. *Id.* at 61, 483 N.E.2d at 206.

32. *Id.* at 63-64, 483 N.E.2d at 207.

33. *Id.* at 62-63, 483 N.E.2d at 206-07. The defendant in *Almo* also had argued that the original verdicts were not legally inconsistent, and that the trial court should have entered judgment on the lesser offense of voluntary manslaughter. The basis for this argument was that the jury instruction for murder given in *Almo* had omitted the so-called "fourth proposition," requiring the jury to find that the defendant acted without belief that his use of force was justified. The defendant argued that this omission lead the jury to erroneously conclude that the mental states for murder and voluntary manslaughter were consistent. See Illinois Pattern Jury Instruction (IPI), Criminal No. 27.01

*Hoffer* controlled *Spears*.<sup>34</sup>

Read together, *Spears* and *Almo* clarify and limit *Hoffer*. A new trial shall be required only when the trial court accepts the legally inconsistent verdicts and enters judgment on them. Thus, if the court takes steps to obtain a consistent verdict, as in *Almo*, the ultimate conviction may stand. Although *Spears* and *Almo* provide guidelines for trial courts to use when faced with legally inconsistent verdicts, those cases fail to address the underlying problem of inartfully drafted jury instructions and verdict forms that result in inconsistent verdicts.<sup>35</sup>

## 2. Homicide: Jury Instruction Issues

In *People v. Perez*,<sup>36</sup> the supreme court held that if the defendant could not be found guilty of a lesser offense, then the trial court is not required to give a lesser included offense instruction.<sup>37</sup> The defendant in *Perez*, a prison inmate, was convicted of murder for stabbing a fellow inmate to death.<sup>38</sup> At trial, the defendant sought a jury instruction on the lesser included offense of aggravated battery, arguing that the evidence supported the conclusion that he was not responsible or accountable for the death.<sup>39</sup> The trial court, however, refused to give the instruction.<sup>40</sup>

On review, the supreme court affirmed the conviction.<sup>41</sup> The court held that "an included-offense instruction is required only in cases where the jury could rationally find the defendant guilty of the lesser offense and not guilty of the greater offense."<sup>42</sup> The court then reviewed the evidence at trial and concluded that the evidence of both direct responsibility<sup>43</sup> and accountability<sup>44</sup> for

---

(1968). The *Almo* court, however, rejected this argument. *Almo*, 108 Ill. 2d at 64-65, 483 N.E.2d at 207-08.

34. *Spears*, 112 Ill. 2d at 409-10, 493 N.E.2d at 1036.

35. See generally Haddad, *supra* note 17.

36. 108 Ill. 2d 70, 483 N.E.2d 250, *cert. denied*, 106 S. Ct. 898 (1985).

37. *Id.* at 81, 483 N.E.2d at 255.

38. *Id.* at 77, 483 N.E.2d at 253.

39. *Id.* at 77-81, 483 N.E.2d at 253-255.

40. *Id.* at 80, 483 N.E.2d at 255.

41. *Id.* at 81-84, 483 N.E.2d at 255-56.

42. *Id.* at 81, 483 N.E.2d at 255. In reaching this holding, the court assumed that aggravated battery was a lesser included offense of murder. *Id.*

43. *Id.* at 81-82, 483 N.E.2d at 255. The defendant was "directly responsible" for the death because he admitted to stabbing the victim in the side with a weapon compatible with the fatal wound. *Id.*

44. *Id.* at 83, 483 N.E.2d at 256. "[E]ven though defendant's actions may have been spontaneous, his participation in the stabbing made him legally accountable for the actions of every other member of the group." *Id.*

murder precluded a jury from rationally finding the defendant guilty of only aggravated battery.<sup>45</sup> Accordingly, the *Perez* court held that the trial court was not required to give the lesser included offense instruction.<sup>46</sup>

In *People v. Sloan*,<sup>47</sup> the supreme court again addressed the issue of jury instructions in a homicide case. The defendant in *Sloan* was convicted of murder and home invasion.<sup>48</sup> He requested and was refused self-defense and voluntary manslaughter instructions despite his assertions that he had feared that the victim would attack him because the room was dark and he could not tell whether the victim had anything in his hands.<sup>49</sup> On appeal, the supreme court affirmed the convictions,<sup>50</sup> concluding that the defendant's belief that he was in imminent danger of death or great bodily harm was not reasonable.<sup>51</sup> The court held that the victim was entitled to use force because the defendant had invaded the premises armed with a shotgun, and therefore clearly had provoked any show of force by the victim.<sup>52</sup> Because the defendant's use of force could not have been justified, the supreme court determined that the trial judge correctly had refused the defendant's self-defense and voluntary manslaughter instructions.<sup>53</sup>

### 3. Sexually Dangerous Persons

In *People v. Allen*,<sup>54</sup> the Illinois Supreme Court held that the

---

45. *Id.* at 82-83, 483 N.E.2d at 255-56.

46. *Id.* at 81, 483 N.E.2d at 255.

47. 111 Ill. 2d 517, 490 N.E.2d 1260 (1986).

48. *Id.* at 518, 490 N.E.2d at 1261.

49. *Id.* at 520, 490 N.E.2d at 1262.

50. *Id.* at 521, 490 N.E.2d at 1262.

51. *Id.* In concluding that the defendant's belief was unreasonable, the court relied on ILL. REV. STAT. ch. 38, para. 7-4(c) (1983) which provides in part:

The justification described in the preceding Sections of this Article is not available to a person who:

(a) Is attempting to commit, committing, or escaping after the commission of, a forcible felony; or

. . . .

(c) Otherwise initially provokes the use of force against himself, unless:

(1) Such force is so great that he reasonably believes that he is in imminent danger of death or great bodily harm, and that he has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or great bodily harm to the assailant; or

(2) In good faith, he withdraws from physical contact with the assailant and indicates clearly to the assailant that he desires to withdraw the use of force, but the assailant continues or resumes the use of force.

52. *Sloan*, 111 Ill. 2d at 521, 490 N.E.2d at 1262-63.

53. *Id.* at 520-21, 490 N.E.2d at 1262.

54. 107 Ill. 2d 91, 481 N.E.2d 690 (1985), *aff'd*, 106 S. Ct. 2988 (1986).

State is required to prove only one act of attempt (sexual assault) or sexual molestation for a defendant to be considered a sexually dangerous person under the Sexually Dangerous Persons Act ("the Act").<sup>55</sup> Because the Act is designed to prevent crimes by predicting a defendant's future conduct, the court rejected the defendant's argument that an adjudication of sexual dangerousness should depend on proof of more than one sex crime.<sup>56</sup> In reaching this result, the supreme court found that the plural language in the statute referred to the "defendant's future propensities, not to the demonstrated conduct."<sup>57</sup>

#### 4. Unlawful Restraint

In *People v. Wisslead*,<sup>58</sup> the court analyzed three issues pertaining to the unlawful restraint statute.<sup>59</sup> The first issue involved whether a charging information that mirrored the language of the statute sufficiently apprised the defendant of the nature of the charge.<sup>60</sup> In some cases, an information worded in accordance with the statutory language does not adequately inform the defendant of the nature and elements of the offense charged.<sup>61</sup> The *Wisslead* court, however, concluded that the information was sufficient because the statutory language adequately described the specific charged conduct.<sup>62</sup>

The court also held that the classification of unlawful restraint as

---

55. *Id.* at 104-05, 481 N.E.2d at 696-97. The Act provides:

All persons suffering from a mental disorder, which mental disorder has existed for a period of not less than one year, immediately prior to the filing of the petition hereinafter provided for, coupled with criminal propensities to the commission of sex offenses, and who have demonstrated propensities toward acts of sexual assault or acts of sexual molestation of children, are hereby declared sexually dangerous persons."

ILL. REV. STAT. ch. 38, para. 105-1.01 (1985).

56. *Allen*, 107 Ill. 2d at 105, 481 N.E.2d at 697.

57. *Id.* at 105, 481 N.E.2d at 697.

58. 108 Ill. 2d 389, 484 N.E.2d 1081 (1985).

59. ILL. REV. STAT. ch. 38, para. 10-3 (1985).

60. *Wisslead*, 108 Ill. 2d at 393-94, 484 N.E.2d at 1082. The state and the federal constitutions require that a charging instrument set forth "the nature and elements of the offense charged." *Id.* (citing ILL. REV. STAT. ch. 38, para. 111-3 (a)(3)(1983)). The information in *Wisslead* stated that "a person commits the offense of unlawful restraint when he knowingly without legal authority detains another." *Id.*

61. *See People v. Heard*, 47 Ill. 2d 501, 266 N.E.2d 340 (1970)(charge written in accordance with the statutory language listed possible gambling offenses but failed to specify which of the many possible acts the defendant committed); *People v. Griffin*, 36 Ill. 2d 430, 431, 223 N.E.2d 158, 159 (1967) (complaint alleged that the defendant drove "with a willful and wanton disregard for the safety of persons or property," without specifying the conduct).

62. ILL. REV. STAT. ch. 38, para. 10-3(a) (1985).



a Class 4 felony is not irrational.<sup>63</sup> The defendant argued that unlawful restraint is a less serious offense than aggravated assault<sup>64</sup> which is a Class A misdemeanor.<sup>65</sup> Because the two offenses are clearly distinct, the court concluded that it was not irrational to prescribe greater penalties for unlawful restraint than for aggravated assault.<sup>66</sup>

Finally, the *Wisslead* court held that the unlawful restraint statute is not unconstitutionally vague.<sup>67</sup> The court noted that the statute clearly informs an ordinary citizen what conduct is prohibited.<sup>68</sup> The court observed no vagueness problems in the statute because it clearly defines unlawful restraint as the unlawful restriction of another's freedom.<sup>69</sup>

### 5. Theft versus Robbery: Definition of "Force"

In *People v. Bowel*,<sup>70</sup> the supreme court determined the amount of force required to commit a robbery.<sup>71</sup> The defendant in *Bowel* was charged with robbery based on a purse snatching.<sup>72</sup> The victim was aware that the defendant was approaching; he immobilized her hand by pushing it back, causing the victim to turn slightly.<sup>73</sup> The court held that this was sufficient force to constitute a robbery.<sup>74</sup>

The supreme court distinguished *Bowel* from its earlier decision in *People v. Patton*,<sup>75</sup> thus drawing a narrow distinction between

---

63. *Wisslead*, 108 Ill. 2d at 398-99, 484 N.E.2d at 1085.

64. ILL. REV. STAT. ch. 38, para. 12-2 (b) (1985).

65. *Wisslead*, 108 Ill. 2d at 399-400, 484 N.E.2d at 1085. The only basis for the defendant's argument was that false imprisonment, the forerunner of unlawful restraint, was once a form of aggravated assault. *Id.* See *People v. Cohoon*, 315 Ill. App. 259, 42 N.E.2d 969 (4th Dist. 1942). Under the present law, unlawful restraint is neither a form of aggravated assault nor is it a lesser included offense. *Wisslead*, 108 Ill. 2d at 399-400, 484 N.E.2d at 1085. Aggravated assault is concerned with threatened bodily harm, whereas unlawful restraint is concerned with the actual restriction of another's freedom to move about. *Id.*

66. *Wisslead*, 108 Ill. 2d at 400, 484 N.E.2d at 1085.

67. *Id.* at 397-98, 484 N.E.2d at 1084. The offense of unlawful restraint is committed when one "knowingly without legal authority detains another." *Id.* (citing ILL. REV. STAT. ch. 38, para. 10-3(a) (1983)).

68. *Wisslead*, 108 Ill. 2d at 397-98, 484 N.E.2d at 1084.

69. *Id.*

70. 111 Ill. 2d 58, 488 N.E.2d 995 (1986).

71. *Id.* at 63, 488 N.E.2d at 997. Robbery is committed when one "takes property from the person or presence of another by the use of force or by threatening the imminent use of force." ILL. REV. STAT. ch. 38, para. 18-1 (1985).

72. *Bowel*, 111 Ill. 2d at 64, 488 N.E.2d at 998.

73. *Id.*

74. *Id.* at 63, 488 N.E.2d at 997.

75. 76 Ill. 2d 45, 389 N.E.2d 1174 (1979).

the crime of robbery and theft from the person. In *Patton*, the defendant had "swiftly grabbed" the victim's purse, throwing her arm back a little.<sup>76</sup> The court reasoned that this force was not sufficient to constitute robbery, and therefore, held the defendant guilty merely of theft from the person.<sup>77</sup> Although the use of force in *Patton* differed only slightly from that in *Bowel*, the court distinguished the cases on the ground that the victim in *Bowel* knew that the defendant was approaching, whereas the victim in *Patton* did not realize what was happening until after the defendant had begun his flight.<sup>78</sup> Thus, the victim's apprehension of force distinguishes the two cases.

### B. Crimes Against Property

#### 1. Theft

In *People v. Brenizer*,<sup>79</sup> the supreme court enlarged the scope of felony theft by holding that a series of misdemeanor thefts based on a single design could be aggregated for purposes of charging the defendant with a single count of felony theft.<sup>80</sup> The defendant in *Brenizer*, a restaurant manager, appropriated restaurant goods for his own use on fifty-four occasions over a two and a half year period.<sup>81</sup> On each of the fifty-four occasions, the stolen property did not exceed three hundred dollars in value, rendering each individual act only a Class A misdemeanor.<sup>82</sup> The State, however, aggregated the fifty-four incidents and charged the defendant with one count of theft of property exceeding three hundred dollars, a Class 3 felony.<sup>83</sup> On appeal, the defendant argued that the trial court erred in denying his motion for severance.<sup>84</sup> The defendant alleged

---

76. *Id.* at 47, 389 N.E.2d at 1175.

77. *Id.* at 52, 389 N.E.2d at 1177.

78. *Id.* at 48, 389 N.E.2d at 1175.

79. 111 Ill. 2d 220, 489 N.E.2d 862 (1986).

80. *Id.* at 226, 489 N.E.2d at 865.

81. *Id.* at 222, 489 N.E.2d at 863.

82. ILL. REV. STAT. ch. 38, para. 16-1(e)(1) (1985). The sentence of imprisonment for a Class A misdemeanor is any term less than one year. ILL. REV. STAT. ch. 38, para. 1005-8-3 (a)(1) (1985).

83. ILL. REV. STAT. ch. 38, para. 16-1(e)(3) (1985). The sentence for a term of imprisonment for a Class 3 felony shall not be less than two years or more than five years. ILL. REV. STAT. ch. 38, para. 1005-8-1(a)(6) (1985).

84. ILL. REV. STAT. ch. 38, para. 111-4(c) (1985). Paragraph 111-4(c) provides that two or more thefts can be charged as a single offense if such acts "are in furtherance of a single intention and design," and if the property is taken from the same person. *Brenizer*, 111 Ill. 2d. at 224, 489 N.E.2d at 864 (citing ILL. REV. STAT. ch. 38, para. 111-4(c) (1981)). Both the trial court and the appellate court agreed that the requirements of section 111-4(c) had been met and that the offenses could be joined. *Id.* at 225, 489 N.E.2d

that the offenses charged were separate and distinct, and that the State impermissibly had joined the offenses in an attempt to enhance the combined misdemeanors to a felony.<sup>85</sup> The Illinois Supreme Court, however, held that aggregation of several misdemeanor thefts into one felony theft charge was proper under section 111-4(c) of the Illinois Criminal Code even though the statute does not explicitly mention aggregation.<sup>86</sup> In reaching this conclusion, the court asserted that the "total value of the property taken will determine whether the theft constitutes a misdemeanor or a felony".<sup>87</sup>

In *People v. Davis*,<sup>88</sup> the defendant offered to obtain an early prison release for the victim's boyfriend if she would pay \$4000.<sup>89</sup> The victim notified the Department of Law Enforcement about the defendant's proposal because she considered him to be a "phony."<sup>90</sup> Subsequently, the trial court convicted the defendant of theft by deception<sup>91</sup> and the appellate court affirmed.<sup>92</sup> Holding that the victim must rely on the defendant's misrepresentations to sustain a theft by deception conviction,<sup>93</sup> the supreme court reversed and reduced the conviction to the lesser included offense of attempt (theft by deception).<sup>94</sup> The court determined that the victim's awareness of the deceptive conduct precluded a conviction of theft by deception.<sup>95</sup>

---

at 865. Neither court, however, had aggregated the value of those successive misdemeanor thefts and charged a single offense of felony theft. *Brenizer*, 111 Ill. 2d at 225, 226, 489 N.E.2d at 865.

85. *Brenizer*, 111 Ill. 2d at 222, 223, 489 N.E.2d at 864.

86. *Id.* at 226, 489 N.E.2d at 865. The *Brenizer* decision was based on two appellate court decisions in which aggregation was discussed, but not implemented because other aspects of 111-4(c) were not met. *See* *People v. Giles*, 35 Ill. App. 3d 514, 341 N.E.2d 410 (4th Dist. 1976); *People v. Adams*, 26 Ill. App. 3d 324, 325 N.E.2d 71 (4th Dist. 1975). The *Brenizer* court also relied upon an early Illinois Supreme Court case in which the fraudulent taking of gas over a period of time constituted one taking and the defendant was prosecuted for grand larceny based on the aggregate value of the stolen gas. *Woods v. People*, 222 Ill. 293 (1906). The court in *Brenizer* also reasoned that the purpose of section 111-4(c) would not be served if the merging of several misdemeanors would constitute only one misdemeanor. *Brenizer*, 111 Ill. 2d at 228, 489 N.E.2d at 866.

87. *Brenizer*, 111 Ill. 2d at 229, 489 N.E.2d at 866.

88. 112 Ill. 2d 55, 491 N.E.2d 1153 (1986).

89. *Id.* at 58, 491 N.E.2d at 1154.

90. *Id.*

91. ILL. REV. STAT. ch. 38, para. 16-1(b) (1985). The defendant was also convicted of two counts of bribery in violation of ILL. REV. STAT. ch. 38, para. 33-1 (1985). *Davis*, 112 Ill. 2d at 57, 491 N.E.2d at 1154.

92. *Davis*, 112 Ill. 2d at 57, 491 N.E.2d at 1154.

93. *Id.* at 63, 491 N.E.2d at 1156.

94. *Id.* at 63, 491 N.E.2d at 1157.

95. *Id.*

## 2. Residential Burglary

In *People v. Bales*,<sup>96</sup> the Illinois Supreme Court determined that the residential burglary statute was not vague, ambiguous, or violative of due process.<sup>97</sup> In *Bales*, the trial court had found that there was no difference between residential burglary and burglary, and thus held that the residential burglary statute violated due process.<sup>98</sup> The supreme court reversed, holding that the definition of "dwelling" found in section 2-6 of the Criminal Code cannot be read in conjunction with the residential burglary statute which identifies "dwelling place of another."<sup>99</sup> The supreme court defined "dwelling place of another" as any place of residence where the owners actually reside, or intend to reside within a reasonable period of time.<sup>100</sup> The supreme court reasoned that the phrase "dwelling place of another" was not unconstitutionally vague because a person of ordinary intelligence could understand it. Moreover, the court concluded that the residential burglary statute passed constitutional muster because it did not give "law-enforcement authorities unreasonable and arbitrary discretion over whether to charge a defendant with residential burglary or burglary."<sup>101</sup>

---

96. 108 Ill. 2d 182, 483 N.E.2d 517 (1985).

97. *Id.* at 192, 483 N.E.2d at 521. The *Bales* court also held that the legislative classification of residential burglary as a Class 1 felony, when burglary is a Class 2 felony, does not violate equal protection, because there is a greater chance that bodily harm would result. *Id.* at 192-94, 483 N.E.2d at 522. Moreover, the court in *Bales* concluded that the sentencing scheme does not violate the limitation-of-penalties provision of the Illinois Constitution, which states that "all penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." ILL. CONST. art. I, § 11.

98. *Bales*, 108 Ill. 2d at 188, 483 N.E.2d at 519. The residential burglary statute provides:

A person commits residential burglary who knowingly and without authority enters the dwelling place of another with the intent to commit therein a felony or theft.

ILL. REV. STAT. ch. 38, para. 19-3(a) (1985).

The burglary statute provides, in relevant part:

A person commits burglary when without authority he knowingly enters or without authority remains within a building, housetrailer . . . with intent to commit therein a felony or theft . . . This offense shall not include the offense of residential burglary as defined in Section 19-3 hereof.

*Id.* at 19-1(a).

99. *Bales*, 108 Ill. 2d at 189, 483 N.E.2d at 520.

100. *Id.* at 191, 483 N.E.2d at 521. This language was used in amending the definition of dwelling in ILL. REV. STAT. ch. 38, para. 2-6 (1985). See also, Buser, *The Illinois Residential Burglary Statute: When Is An Invaded Structure A 'Dwelling'?* 73 ILL. B.J. 262 (1985).

101. *Bales*, 108 Ill. 2d at 192, 483 N.E.2d at 521. The impact of the *Bales* decision,

### 3. Aggravated Arson

In *People v. Wick*,<sup>102</sup> the Illinois Supreme Court held that section (a)(3) of the aggravated arson statute violated due process.<sup>103</sup> The section at issue provided that a person commits aggravated arson, as opposed to simple arson, if a fireman or policeman is injured in the fire.<sup>104</sup> In *Wick*, the defendant was charged with aggravated arson for setting fire to his tavern. The fire resulted in a fireman being treated as an outpatient for smoke inhalation.<sup>105</sup>

On appeal of the defendant's Class X conviction for aggravated arson, the supreme court held that section (a)(3) of the aggravated arson statute violated due process because it did not satisfy the "reasonable relationship" test.<sup>106</sup> The court stated that the statute, which punished *anyone* who caused a fire injuring a fireman, was not reasonably related to the legislative purpose of severely punish-

---

however, has been limited by a recent legislative enactment which redefines "dwelling" for the purposes of the residential burglary statute. ILL. REV. STAT. ch. 38, para. 2-6 (Supp. 1986). See also *infra*, notes 250-56 and accompanying text. The amendment defines 'dwelling' as a "house, apartment, mobile home, trailer or other living quarter in which at the time of the alleged offense the owners or occupants actually reside or in their absence intend within a reasonable period of time to reside." ILL. REV. STAT. ch. 38, para. 2-6 (Supp. 1986).

102. 107 Ill. 2d 62, 481 N.E.2d 676 (1985).

103. ILL. REV. STAT. ch. 38, para. 20-1.1 (1985). In *People v. Johnson*, 114 Ill. 2d 69, 499 N.E.2d 470 (1986), the Illinois Supreme Court held that subsection (1) of section 20-1.1(a)(1) of the aggravated arson statute was unconstitutional based on the reasoning in *Wick*.

104. ILL. REV. STAT. ch. 38, para. 20-1.1(a)(3) (1985). The provision of the aggravated arson statute at issue in *Wick* provides in relevant part:

A person commits aggravated arson when by means of fire or explosive he knowingly damages, partially or totally, any building or structure, and . . . a fireman or policeman who is present at the scene acting in the line of duty, is injured as a result of the fire or explosion.

*Id.* at para. 20-1.1(a)(3). Aggravated arson is a Class X felony, punishable by not less than six years and not more than 30 years imprisonment. *Id.* at para. 1005-8-1(a)(3) (1985). Simple arson, on the other hand, is a Class 2 felony, punishable by a term of not less than three years and not more than seven years imprisonment. *Id.* at para. 1005-8-1(a)(5) (1985). The simple arson statute provides in relevant part:

A person commits arson when, by means of fire or explosive he knowingly:

- (a) Damages any real property, or any personal property having a value of \$150 or more, of another without his consent; or
- (b) With intent to defraud an insurer, damages any property or any personal property having a value of \$150 or more.

*Id.* at para. 20-1.

105. *Wicks*, 107 Ill. 2d at 63, 481 N.E.2d at 677.

106. *Id.* at 66, 481 N.E.2d at 678. "The question of whether a legislative exercise of the police power meets the constitutional requirement of due process involves identifying the public interest, examining whether the statute 'bears a reasonable relationship' to that interest, and determining whether the method used to protect or further that interest is reasonable." *Id.*

ing arsonists, as opposed to non-arsonists, for injuring firemen.<sup>107</sup> The court determined that the aggravated arson statute was unconstitutional because it imposed a penalty greater than that for simple arson, while the *mens rea* requirement for aggravated arson was less than that for simple arson.<sup>108</sup>

### C. Crimes Affecting Public Health, Safety, and Decency

#### 1. Driving Under the Influence

Most of the recent changes in the law regarding driving under the influence ("DUI") were made by the Illinois General Assembly.<sup>109</sup> The Illinois Supreme Court, however, issued two important opinions in this area of law during the *Survey* year.

In *People v. Coleman*,<sup>110</sup> the supreme court held that increased penalties for repeat DUI offenders did not violate the constitutional prohibition of ex post facto laws.<sup>111</sup> In *Coleman*, the defendant was charged with DUI.<sup>112</sup> Three years earlier, the defendant was arrested for the same offense, and received a sentence of supervision in exchange for a guilty plea.<sup>113</sup> In between the two offenses committed by the defendant, the General Assembly enacted section 5-6-1(d) of the Unified Code of Corrections, which provided that a DUI defendant may not be sentenced to supervision for a second offense committed within five years of the date that he received supervision for the first DUI charge.<sup>114</sup> The defendant

---

107. *Id.* The *Wick* court noted that "[u]nder this statute for example, a farmer who demolishes his deteriorated barn to clear space for a new one is liable for a Class X penalty if a fireman standing by is injured at the scene." *Id.*

108. ILL. REV. STAT. ch. 38, para. 20-1.1 (1985). As with the *Bales* decision regarding residential burglary, the effect of *Wick* has been limited by legislative action. The aggravated arson statute has been amended so that arson is now a lesser included offense of aggravated arson. See *infra* notes 244-46 and accompanying text.

109. See *infra* notes 204-15 and accompanying text.

110. 111 Ill. 2d 87, 488 N.E.2d 1009 (1986).

111. *Id.* An ex post facto law is "a law that changes the punishment or inflicts a greater punishment than the law annexed to the crime when it was committed." BLACK'S LAW DICTIONARY 520 (5th ed. 1979). See U.S. CONST. art. I, § 10; ILL. CONST. art. I, § 10, cl. 1.

112. *Coleman*, 111 Ill. 2d at 91, 488 N.E.2d at 1011 (citing ILL. REV. STAT. ch. 95½, para. 11-501(a) (1985)).

113. *Coleman*, 111 Ill. 2d at 91, 488 N.E.2d at 1011.

114. ILL. REV. STAT. ch. 38, para. 1005-6-1(d) (1985) provides:

The provisions of paragraph (c) shall not apply to a defendant charged with violating Section 11-501 of the Illinois Vehicle Code or a similar provision of a local ordinance if said defendant has previously been convicted or assigned supervision for a violation of Section 11-501 of the Illinois Vehicle Code or a similar provision of a local ordinance within a 5 year period commencing on the date the defendant was previously convicted or assigned supervision.

claimed that because the statute was passed after his first trial, it violated the constitutional proscription against ex post facto laws.<sup>115</sup>

The supreme court, however, disagreed, stating that the purpose of the prohibition against ex post facto laws was to ensure "that persons have a right to fair warning of the conduct which will give rise to criminal penalties."<sup>116</sup> The supreme court reasoned that since section 5-6-1(d) became effective January 1, 1984, and the defendant was arrested for the second offense seven months later, he had adequate notice of the recidivist statute by the time of the second arrest.<sup>117</sup>

The defendant in *Coleman* also argued that section 5-6-1(d) violated equal protection because the previous charges against him for DUI were dismissed after he successfully completed the supervision. The defendant contended that, as a result, there was no reasonable basis for distinguishing him from those who had not been convicted of DUI.<sup>118</sup> Based on the general rule that equal protection principles do not deny the State the power to treat disparate classes of people differently,<sup>119</sup> the court concluded that a reasonable basis existed to treat the defendant differently because he was a member of a class of people who tendered guilty pleas to DUI charges.<sup>120</sup>

In *People v. Murphy*,<sup>121</sup> the Illinois Supreme Court held that the certification requirements for lab technicians who analyze blood alcohol contents are not applicable to cases other than DUI.<sup>122</sup> The defendant in *Murphy* was indicted for reckless homicide after driving into a guardrail, fatally injuring the passenger.<sup>123</sup> At the hospital, a blood sample was taken from the defendant and analyzed for alcohol content.<sup>124</sup> The defendant filed a motion to exclude the results of the chemical analysis on the basis that the laboratory and technicians had not been certified under section 11-

---

*Id.*

115. *Coleman*, 111 Ill. 2d at 91, 488 N.E.2d at 1011.

116. *Id.* at 93, 488 N.E.2d at 1012 (quoting *Marks v. United States*, 430 U.S. 188, 191-92 (1977)).

117. *Coleman*, 111 Ill. 2d at 94, 488 N.E.2d at 1012. A recidivist is a habitual criminal or a criminal repeater. BLACK'S LAW DICTIONARY 1141 (5th ed. 1979). A recidivist statute is one that imposes harsher punishment for a repeating offender. *Id.*

118. *Coleman*, 111 Ill. 2d at 95, 488 N.E.2d at 1013.

119. *Id.*

120. *Id.* at 96, 488 N.E.2d at 1013.

121. 108 Ill. 2d 228, 483 N.E.2d 1288 (1985).

122. *Id.* at 234, 483 N.E.2d at 1290.

123. *Id.* at 230, 483 N.E.2d at 1288.

124. *Id.* at 230, 483 N.E.2d at 1288-89.

501.2 of the Illinois Vehicle Code.<sup>125</sup> The trial court granted the defendant's motion.<sup>126</sup>

On appeal, the supreme court reversed.<sup>127</sup> The court held that because the defendant was indicted for reckless homicide, the certification requirements established in section 11-501.2 did not apply. The court thus concluded that the ordinary standards of admissibility governed the admissibility of chemical analysis results in a reckless homicide case.<sup>128</sup>

## 2. Drugs

In *People v. Harmison*,<sup>129</sup> the court examined the offense of calculated criminal drug conspiracy. This crime occurs whenever a person conspires with two or more persons to manufacture, deliver, or possess a controlled or counterfeit substance with a value over \$500.<sup>130</sup> The precise issue in *Harmison* was whether the evidence was sufficient to prove that the defendant had conspired with at least two other persons.<sup>131</sup>

The conspiracy at issue allegedly involved three persons, including the defendant.<sup>132</sup> Although the evidence showed that the defendant and one other person had agreed, and a third person had participated slightly in the offense, the supreme court held that this evidence was insufficient to establish a calculated criminal drug conspiracy.<sup>133</sup> The supreme court interpreted "conspiracy" as employed in the drug conspiracy statute to have the same meaning as in ordinary conspiracy, which requires actual agreement between the alleged co-conspirators.<sup>134</sup> The *Harmison* court held that without the actual agreement of three or more persons, there cannot be

---

125. ILL. REV. STAT. ch. 95½, para. 11-501.2 (1985). Paragraph 11-501.2 applies to proceedings "arising out of an arrest for an offense as defined in Section 11-501," which addresses the offense of driving while under the influence. *Murphy*, 108 Ill. 2d at 232, 483 N.E.2d at 1289 (citing ILL. REV. STAT. ch. 95½, paras. 11-501, 11-501.2 (1981)).

126. *Murphy*, 108 Ill. 2d at 230, 483 N.E.2d at 1288.

127. *Id.* at 234, 483 N.E.2d at 1290.

128. *Id.* The Illinois Supreme Court recently held that the rule announced in *Murphy* applies even when reckless homicide charges are tried with DUI charges. *People v. Emrich*, 113 Ill. 2d 343, 498 N.E.2d 1140 (1986).

129. 108 Ill. 2d 197, 483 N.E.2d 508 (1985).

130. ILL. REV. STAT. ch. 56½, para. 1405 (1985).

131. *Harmison*, 108 Ill. 2d at 202, 483 N.E.2d at 510.

132. *Id.* at 203, 483 N.E.2d at 511.

133. *Id.*

134. ILL. REV. STAT. ch. 38, para. 8-2 (1985). Paragraph 8-2 states "(a) Elements of the offense. A person commits conspiracy when, with intent that an offense be committed, he agrees with another to the commission of that offense . . . ." *Id.*



a calculated criminal drug conspiracy.<sup>135</sup>

In *People v. Upton*,<sup>136</sup> the supreme court held that the statute proscribing unlawful distribution of a look-alike substance<sup>137</sup> did not violate due process.<sup>138</sup> In *Upton*, the defendant was convicted of unlawful distribution of a look-alike substance.<sup>139</sup> The appellate court reversed the conviction, holding that the statute violated due process. The appellate court held the statute unconstitutional because the fine for delivery of a look-alike substance could be greater than the fine for delivery of an actual controlled substance.<sup>140</sup> The supreme court, however, held that the newly amended statute did not violate due process because the General Assembly justified the look-alike statute by recognizing the "unique threat to public health, safety and welfare posed by look-alike substances."<sup>141</sup>

In *People v. Dale*,<sup>142</sup> the Illinois Supreme Court held that it is constitutional for law enforcement personnel and the defendant to testify as to the amount of drugs seized in order to determine their "street value."<sup>143</sup> The supreme court upheld the statute on the ground that such testimony merely establishes the amount seized,

---

135. *Harmison*, 108 Ill. 2d at 203, 483 N.E.2d at 511. In *People v. Lane*, 133 Ill. App. 3d 215, 478 N.E.2d 1160 (1st Dist. 1985), the court held that even though conspiracy requires that the defendant agree with at least two persons, three convictions are not required under the calculated criminal drug conspiracy statute. *Id.* at 220, 478 N.E.2d at 1164. Applying *Lane*, a defendant may be convicted even when his alleged co-conspirators are acquitted. All that is necessary is proof of the conspiracy at the defendant's trial. *Id.*

136. 114 Ill. 2d 362, — N.E.2d — (1986).

137. ILL. REV. STAT. ch. 56½, para. 1404(b) (1985). Paragraph 1404(b) states "[i]t is unlawful for any person knowingly to manufacture, distribute, advertise, or possess with intent to manufacture a look-alike substance. Any person who violates subsection (b) shall be guilty of a Class 3 felony, the fine for which shall not exceed \$150,000." *Id.*

138. *Upton*, 114 Ill. 2d at 375, — N.E.2d at —.

139. ILL. REV. STAT. ch. 56½, para. 1404 (1985).

140. *Upton*, 114 Ill. 2d at 364-66, — N.E.2d at —.

141. *Id.* at 370-71, — N.E.2d at —. The special dangers cited by the legislature were as follows: 1) look-alike drugs, particular appeal to and widespread marketing among young people promotes acceptance of drug abuse; 2) misrepresentation as to ingredients and effects of look-alike drugs leads to unanticipated reactions and confusion as to the effects and dosage levels of actual controlled substances; 3) the wide availability of constituent ingredients results in great ease in manufacture and generates immense profits for manufacturers and distributors; and 4) the pseudo drugs, actual ingredients, though varied, create additional serious health hazards when the manner of administration or ingestion parallels that usually associated with the substances being imitated. *Upton*, 114 Ill. 2d at 370-71, — N.E.2d at —.

142. 112 Ill. 2d 460, 493 N.E.2d 1060 (1986).

143. *Id.* at 466-67, 493 N.E.2d at 1062-63 (citing ILL. REV. STAT. ch. 38, para. 1005-9-1.1 (1983)). Paragraph 1005-9-1.1 provides that the street value of drugs shall be determined by the court and the amount seized shall be determined by testimony of law enforcement personnel and the defendant. *Id.*

while other testimony, perhaps including testimony concerning the current per unit going-rate for the substance, is required to prove "street value" of the amount seized.<sup>144</sup>

### 3. Gambling

In *People v. Dugan*,<sup>145</sup> the supreme court held the recording of bets is not a necessary element of the offense of bookmaking.<sup>146</sup> Although the defendants in *Dugan* had accepted more than five bets or wagers in excess of \$2,000, they argued that they could not be convicted because the State failed to prove any bet recording method.<sup>147</sup> The defendants contended that keeping a record of the bets or wagers was an essential element of the bookmaking offense.<sup>148</sup> The supreme court, however, rejected this claim, holding that the gravamen of the offense was the acceptance of the requisite number of bets.<sup>149</sup> The court also clarified the use of the word "business" in the syndicated gambling statute<sup>150</sup> by stating that bookmaking need not be the defendant's occupation for him to be guilty of that offense.<sup>151</sup> Rather, the court concluded, all that is needed is proof of at least five bets or wagers totalling more than \$2,000.<sup>152</sup>

### D. Sentencing<sup>153</sup>

The Illinois Supreme Court has issued three significant decisions

---

144. *Dale*, 112 Ill. 2d at 466, 493 N.E.2d at 1062.

145. 109 Ill. 2d 8, 485 N.E.2d 315 (1985).

146. *Id.* at 14-15, 485 N.E.2d at 318. The bookmaking statute provides:

A person engages in bookmaking when he receives or accepts more than five bets or wagers upon the results of any trials or contests of skill, speed or power of endurance or upon any lot, chance, casualty, unknown or contingent event whatsoever, which bets or wagers shall be of such size that the total of the amounts of money paid or promised to be paid to such bookmaker on account thereof shall exceed \$2,000. Bookmaking is the receiving or accepting of such bets or wagers regardless of the form or manner in which the bookmaker records them.

ILL. REV. STAT. ch. 38, para. 28-1.1(d) (1985).

147. *Dugan*, 109 Ill. 2d at 13, 485 N.E.2d at 318.

148. *Id.* at 12, 485 N.E.2d at 317.

149. *Id.* at 13-15, 485 N.E.2d at 317-18. The *Dugan* court also reasoned that although the legislature did not make record keeping an element of the offense, it was assumed that a bookmaker with over \$2,000 in bets would record them. *Id.* at 14, 485 N.E.2d at 318.

150. ILL. REV. STAT. ch. 38, para. 28-1.1(b) (1985).

151. *Dugan*, 109 Ill. 2d at 15, 485 N.E.2d at 318.

152. *Id.*

153. During the *Survey* period, the supreme court issued other significant decisions pertaining to sentencing. Those decisions are discussed in the *Criminal Procedure* article of this *Survey* issue.

in the area of sentencing. In the most recent decision, *People v. Ward*,<sup>154</sup> the court held for the first time that a defendant's continued assertion of innocence after trial could properly be considered as an aggravating factor at sentencing.<sup>155</sup> The court also reaffirmed its prior holdings that a defendant's lack of remorse could be considered as an aggravating factor,<sup>156</sup> and made it clear that a sentencing judge has broad discretion to determine a lack of remorse.<sup>157</sup> The defendant in *Ward* had been convicted of burglary in a bench trial.<sup>158</sup> At sentencing, the defendant maintained his innocence.<sup>159</sup> The trial court found that the defendant's statement reflected "no contrition" and therefore elected to impose a prison term of twice the minimum.<sup>160</sup> On appeal, the defendant argued that the trial court's reliance on his assertion of innocence violated due process by penalizing him for refusing to incriminate himself.<sup>161</sup> The supreme court rejected that argument. The court reasoned that a defendant has no "right to lie," and thus concluded that a sentencing judge could legitimately consider the truthfulness of the defendant's assertion in evaluating the defendant's character and rehabilitative potential.<sup>162</sup> The court repeatedly emphasized the broad discretion vested in the sentencing judge. The court cautioned that an assertion of innocence and lack of remorse "must not be automatically and arbitrarily applied as aggravating factors," but added that a sentencing judge must be free to consider "any relevant information concerning the defendant's character . . . conveyed by his continued protestation of innocence and his lack of remorse," viewed in light of all the circumstances known to the court.<sup>163</sup> The court also indicated that the sentencing judge has discretion to find a lack of remorse based on all the facts in the record, and not simply when the defendant expressly declares an unrepentant attitude.<sup>164</sup> In addition to a continued assertion of innocence, other factors noted by the *Ward* court as potentially

---

154. 113 Ill. 2d 516, 499 N.E.2d 422 (1986).

155. *Id.* at 529-32, 499 N.E.2d at 427-28.

156. *Id.* at 529, 499 N.E.2d at 427. The *Ward* court reaffirmed its holdings in *People v. Albanese*, 102 Ill. 2d 54, 464 N.E.2d 206 (1984), *reh'g denied*, 469 U.S. 1077 (1985), *People v. LaPointe*, 88 Ill. 2d 482, 431 N.E.2d 344 (1981), *People v. Morgan*, 59 Ill. 2d 276, 319 N.E.2d 764 (1974), and *People v. Gomez*, 29 Ill. 2d 432, 194 N.E.2d 299 (1963).

157. *Ward* at 530-31, 499 N.E.2d at 428.

158. *Id.* at 522, 499 N.E.2d at 423.

159. *Id.*

160. *Id.* at 524-25, 499 N.E.2d at 424-25.

161. *Id.* at 525, 499 N.E.2d at 425.

162. *Id.* at 531, 499 N.E.2d at 428.

163. *Id.* at 529-30, 499 N.E.2d at 427.

164. *Id.* at 530-31, 499 N.E.2d at 427-28.

showing a lack of remorse included "tone of voice, facial expression, and general demeanor," none of which are necessarily revealed by the "cold record."<sup>165</sup> Presumably, the defendant's silence could not be relied upon.

The import of *Ward* is to equate an assertion of innocence with a lack of remorse. The decision therefore likely will silence those convicted defendants who honestly believe they are innocent despite a contrary verdict. The only other safe choice for such defendants would be to make what they consider to be false confessions, which might later be used against them on appeal, retrial, or collateral proceedings. *Ward* also might provide a pretext for a trial court to impose a harsher sentence on a defendant who exercised his right to trial rather than pleading guilty.<sup>166</sup>

In the second sentencing case, *Morrow v. Dixon*,<sup>167</sup> the defendant was convicted of unlawful delivery of ten grams of cocaine, a Class 2 felony,<sup>168</sup> and was sentenced to three years in prison.<sup>169</sup> The State subsequently sought either a supervisory order or a writ of mandamus to compel the trial judge to sentence the defendant to a minimum of six years as a Class X offender under the statute which increases the sentence for a Class 1 or Class 2 felony to Class X felony if the defendant previously has been convicted of at least two Class 2 or greater felonies.<sup>170</sup> Though the State had presented certified copies of the records of defendant's two prior felony convictions,<sup>171</sup> the trial judge refused to sentence the defendant as a Class X offender.<sup>172</sup>

The supreme court noted that the Illinois General Assembly has the authority to set the nature and extent of penalties and that a statutory provision for a minimum sentence is mandatory and must be obeyed.<sup>173</sup> Because the statute clearly mandated the imposition of a Class X sentence, the court held that the trial judge did not have the discretion to sentence the defendant to a term outside

---

165. *Id.*

166. *See Ward* at 533-35, 499 N.E.2d at 429-30 (Simon, J., dissenting).

167. 108 Ill. 2d 223, 483 N.E.2d 876 (1985).

168. ILL. REV. STAT. ch.56½, para. 1401(c) (1985).

169. *Dixon*, 108 Ill. 2d at 225, 483 N.E.2d at 876.

170. *Id.* at 225, 483 N.E.2d at 876 (citing ILL. REV. STAT. ch. 38, para. 1005-5-3(c)(8) (1984)).

171. *Dixon*, 108 Ill. 2d at 225, 226, 483 N.E.2d at 876, 877. The defendant was convicted in 1978 of burglary and robbery committed in 1978. In 1980, the defendant was convicted of a burglary committed in 1980. The offense under consideration in the 1985 *Dixon* case was committed on April 10, 1984. *Id.*

172. *Id.* at 226, 483 N.E.2d at 877.

173. *Id.*

the parameters of the statute.<sup>174</sup> Therefore, the court conditionally awarded a writ of mandamus pending appeal of the conviction.

The third sentencing case was *People v. Harden*,<sup>175</sup> in which the supreme court held that a sentence under the extended term statute<sup>176</sup> could be imposed on the basis of a federal conviction entered in Illinois.<sup>177</sup> The statute authorizes an extended term sentence "[w]hen a defendant is convicted of any felony, after having been previously convicted in Illinois of the same or greater class felony, within 10 years. . . ."<sup>178</sup> The court noted that, while the statute does not mention convictions in Illinois federal courts, it does not explicitly limit its application to convictions in state courts.<sup>179</sup> Relying on the purpose of the statute,<sup>180</sup> public policy concerns,<sup>181</sup> and a prior Illinois appellate court decision,<sup>182</sup> the court held that a sentence for an extended term could be based upon a federal conviction entered in Illinois.<sup>183</sup>

### III. LEGISLATION

Since July 1985, there have been many significant changes in Illinois' substantive criminal law statutes. The General Assembly enacted major revisions in the DUI statute,<sup>184</sup> abolished the feticide statute<sup>185</sup> and replaced it with a variety of offenses,<sup>186</sup> and passed a

---

174. *Id.* at 227, 483 N.E.2d at 877.

175. 113 Ill. 2d 14, 495 N.E.2d 490 (1986).

176. ILL. REV. STAT. ch. 38, para. 1005-8-2(b) (1985).

177. *Harden*, 113 Ill. 2d at 20-21, 495 N.E.2d at 493.

178. ILL. REV. STAT. ch. 38, para. 1005-5-3.2(b)(1)(1985). The defendant in *Harden* was convicted of armed robbery and had a 1975 conviction in federal court for that same offense. *Harden*, 113 Ill. 2d at 17, 495 N.E.2d at 491-92.

179. *Harden*, 113 Ill. 2d at 21, 495 N.E.2d at 494.

180. *Id.* The purpose of the statute is to impose harsher sentences on offenders whose repeated convictions have shown their resistance to correction. *Id.*

181. *Id.* at 22, 495 N.E.2d at 494. The court reasoned that as a matter of public policy, repeat offenders should be treated more harshly than first time offenders. The court noted that this public policy has not been uniformly regarded by a statute which imposes extended term sentences based on state court convictions but not federal court convictions. *Id.*

182. *Id.* (citing *People v. Robinson* 91 Ill. App. 3d 1128, 414 N.E.2d 1335 (1980)). The *Robinson* court stated, "Notably, the phrase 'previously convicted in Illinois' is not necessarily limited to a conviction arising solely in the Illinois State courts, but could reasonably be construed to cover a conviction in Illinois in a Federal court for a Federal offense. . . . [T]he Act provides for extended terms for crimes committed in Illinois, an objective supported by giving equal consideration to similar Federal crimes committed in Illinois." *Robinson*, 91 Ill. App. 3d at 1132, 414 N.E.2d at 1338.

183. *Harden*, 113 Ill. 2d at 20-21, 495 N.E.2d at 494.

184. See *infra* notes 204-15 and accompanying text.

185. See *infra* notes 216-31 and accompanying text.

186. The new offenses include intentional homicide of an unborn child, voluntary

law radically changing the homicide statute.<sup>187</sup> The legislature also amended statutes governing unlawful use of weapons,<sup>188</sup> child abduction and sexual abuse,<sup>189</sup> aggravated arson,<sup>190</sup> theft,<sup>191</sup> residential burglary,<sup>192</sup> and bribery.<sup>193</sup> Finally, the legislature created the new offenses of aggravated unlawful restraint,<sup>194</sup> disarming a peace officer,<sup>195</sup> public aid wire fraud,<sup>196</sup> and mail fraud.<sup>197</sup>

### A. Major Revisions

#### 1. Murder/Voluntary Manslaughter

Public Act 84-1450<sup>198</sup> changes the name of the offense of "murder" to "first degree murder" and changes "voluntary manslaughter" to "second degree murder." As in the previous statute, the less serious offense of second degree murder is defined as first degree murder with mitigating factors. The crucial aspect of the change is that the burden of proving the mitigating factors is shifted from the State to the defendant. Under the old law, the State had to prove the mitigating factors beyond a reasonable doubt in order to convict the defendant of voluntary manslaughter. Under the new law, the defendant must prove the mitigating factors by a preponderance of the evidence, and if the burden is not met, the defendant will be convicted of murder in the first degree.

This new law represents the legislative response to the increasing problem of legally inconsistent jury verdicts in homicide cases.<sup>199</sup> This problem, however, may be less attributable to the current allocation of the burden of proof than to inartfully drafted jury instructions.<sup>200</sup> This law has engendered much controversy. By shifting the burden of proof to the defendant, the new law may

---

manslaughter of an unborn child, involuntary manslaughter of an unborn child, battery of an unborn child and aggravated battery of an unborn child. *See infra* notes 216-31 and accompanying text.

187. *See infra* notes 198-203 and accompanying text.

188. *See infra* notes 232-36 and accompanying text.

189. *See infra* notes 237-43 and accompanying text.

190. *See infra* notes 244-46 and accompanying text.

191. *See infra* notes 247-49 and accompanying text.

192. *See infra* notes 250-56 and accompanying text.

193. *See infra* notes 257-58 and accompanying text.

194. *See infra* notes 259-60 and accompanying text.

195. *See infra* notes 261-63 and accompanying text.

196. *See infra* notes 264-68 and accompanying text.

197. *Id.*

198. 1986 Ill. Legis. Serv. 84-1450 (West) (to be codified at ILL. REV. STAT. ch. 38, paras. 2-8, 9-1, 9-2).

199. *See supra* notes 14-35 and accompanying text.

200. *See generally* Haddad, *supra* note 17.

pose constitutional problems.<sup>201</sup> Moreover, under the new law, prosecutors would no longer be able to charge the lesser offense, but instead would be required to charge first degree murder even when the evidence did not warrant such a charge.

Another amendment also reforms the homicide law.<sup>202</sup> This amendment authorizes an extended term sentence for persons convicted of voluntary manslaughter, involuntary manslaughter, or reckless homicide, when more than one person was killed.<sup>203</sup> Finally, for persons convicted of voluntary manslaughter, involuntary manslaughter, or reckless homicide, when more than one person was killed. This new law authorizes an extended term sentence.

## 2. Driving Under the Influence

Public Act 84-272 made several changes in the DUI law,<sup>204</sup> the most important being the imposition of a statutory summary suspension of the driver's license.<sup>205</sup> Formerly, there was an automatic license suspension only if the driver refused to take the blood-alcohol test.<sup>206</sup> Under the new law, automatic suspension will occur not only when the driver refuses a request to take the blood-alcohol test, but also when the test is taken and the driver registers above the legal limit.<sup>207</sup> The license suspension does not take effect until the driver receives written notice of the impending suspension and is informed that he may request a hearing.<sup>208</sup>

---

201. In *Martin v. Ohio*, 107 S. Ct. 1098 (1987), the United States Supreme Court recently held that it was not a violation of the due process clause for a state to place the burden of proving self-defense on a defendant charged with murder. See also *Patterson v. New York*, 432 U.S. 197 (1977) (upholding a statute in which the mitigating factor was not an element of the offense but instead an affirmative defense). But see *Mullaney v. Wilbur*, 421 U.S. 684 (1975) (striking down a similar statute on the grounds that due process requires the state to prove every element of an offense).

202. 1986 Ill. Legis. Serv. 84-1441 (West) (to be codified at ILL. REV. STAT. ch. 38, para. 1005-5-3.2).

203. *Id.*

204. 1985 Ill. Laws 84-272. A new paragraph was added to ILL. REV. STAT. ch. 95½ (1985), allowing the Secretary of State to suspend the driving privileges of persons arrested in another state for DUI. *Id.* at para. 6-203.1. The law also was amended to provide that any person convicted of driving on a suspended license for a second time will be guilty of a Class 4 felony if the license was suspended or revoked for DUI, involuntary manslaughter or reckless homicide. *Id.* at para. 6-303. If the suspension or revocation was for other reasons, the crime is a Class A misdemeanor. *Id.*

205. *Id.* at para. 1-203.1.

206. *Id.* at para. 11-501.1(c).

207. *Id.* at para. 1-203.1. The legal limit is 0.10. *Id.*

208. *Id.* at para. 2-118.1.

Therefore, suspension is automatic, but a hearing is not.<sup>209</sup> Any person whose license has been summarily suspended shall not be eligible for restoration of the privilege until: (1) six months from the effective date of the statutory summary suspension ("SSS") if he refused to take the alcohol test; (2) three months from the effective date of the SSS if a chemical test was taken and the defendant registered over the legal limit; or (3) one year for all repeat DUI offenders.<sup>210</sup>

To relieve the burden of the SSS, the new law provides for the establishment of Judicial Driving Permits ("JDP").<sup>211</sup> The permits are given only in special circumstances<sup>212</sup> and are limited to the petitioner's residence and place of employment, and to specific days of the week and hours of the day.

Another important change made by this law was that the sentencing of reckless homicide was increased from a Class 4 felony to a Class 3 felony.<sup>213</sup> Also, in cases involving reckless homicide, driving under the influence of alcohol or any other drug is now *prima facie* evidence of a reckless act.<sup>214</sup> Similarly, Public Act 84-899 provides that a person involved in a motor vehicle accident which results in great bodily harm, permanent disability, or disfigurement to another is guilty of a Class 4 felony if the proximate cause of the injuries is a violation of DUI.<sup>215</sup>

### 3. Feticide

Public Act 84-1414 repealed the feticide statute<sup>216</sup> and created a variety of offenses against unborn children.<sup>217</sup> These offenses in-

---

209. See *Mackey v. Montrym*, 443 U.S. 1 (1979), which addressed the due process ramifications of such a law.

210. ILL. REV. STAT. ch. 95½, para. 6-208.1 (1985).

211. *Id.* at para. 6-206.1. Previously the Secretary of State could issue driving permits, but under this new law, the courts can order the Secretary to do so. These JDP's are only available to first time offenders and can only take effect after a 30 day suspension. Repeat offenders can try to obtain a permit directly from the Secretary of State. *Id.*

212. *Id.* at para. 6-206.1(b). Prior to the issuance of a JDP, the court will consider 1) whether the person is employed and no other means of commuting is available, 2) whether the person must drive to secure alcohol or other medical treatment for himself or a family member, 3) whether the person has been repeatedly convicted of traffic violations or involved in motor vehicle accidents to a degree which indicates disrespect for public safety, 4) whether the person has been in a traffic accident resulting in death within the last 5 years, 5) whether the person is likely to obey the limited provisions of the JDP, and 6) whether the person has any additional traffic violations pending in any court. *Id.*

213. ILL. REV. STAT. ch. 38, para. 9-3 (1985).

214. *Id.*

215. ILL. REV. STAT. ch. 95½, para. 11-501 (e) (1985).

216. ILL. REV. STAT. ch. 38, para. 9-1.1 (1985).

217. ILL. REV. STAT. ch. 38, paras. 9-1.2, 9-2.1, 9-3.2, 12-3.1, 12-4.4 (Supp. 1986).



clude intentional homicide of an unborn child,<sup>218</sup> voluntary manslaughter of an unborn child,<sup>219</sup> involuntary manslaughter of an unborn child,<sup>220</sup> reckless homicide of an unborn child,<sup>221</sup> battery of an unborn child,<sup>222</sup> and aggravated battery of an unborn child.<sup>223</sup>

The old feticide law<sup>224</sup> required the same *mens rea* as found in the murder statute.<sup>225</sup> In addition, the former law dictated that the criminal act be directed against the mother, with the offender knowing that she was carrying the fetus.<sup>226</sup> Under the new law, a criminal offense exists even if the intent is directed toward some other individual.<sup>227</sup> The only offense which requires knowledge of the pregnancy is intentional homicide of an unborn fetus.<sup>228</sup>

The Act also abandons the term "fetus" for the broader term "unborn child." Under the former feticide statute, "fetus" was defined as a fetus that could have sustained life outside the womb.<sup>229</sup> The new law defines "unborn child" as an individual of the human species from fertilization until birth.

Public Act 84-1414 thus expands the application of the former feticide statute. The Act provides a potent tool for the prosecution. For instance, the State will now be able to prosecute anyone who causes the death of an unborn child, regardless of its stage of development, and even when the acts causing the death were performed recklessly; under provocation, or under a belief that force

---

218. *Id.* at para. 9-1.2(d)). The sentence for intentional homicide of an unborn child will be the same as for murder, except that the death penalty may not be imposed. *Id.*

219. *Id.* at para. 9-2.1(c). Voluntary manslaughter of an unborn child is a Class 1 felony. *Id.*

220. *Id.* at para. 9-3.2(b)(1). Involuntary manslaughter of an unborn child is a Class 3 felony. *Id.*

221. *Id.* at para. 9-3.2(b)(2). Reckless homicide of an unborn child is a Class 3 felony. *Id.*

222. *Id.* at para. 12-3.1(c). Battery of an unborn child is a Class A misdemeanor. *Id.*

223. *Id.* at para. 12-4.4(b). Aggravated battery of an unborn child is a Class 2 felony. *Id.*

224. ILL. REV. STAT. ch. 38, para. 9-1.1 (1985). The former feticide statute provided that the offender "[e]ither intended to kill or do great bodily harm to the mother carrying the fetus or knew that such acts would cause death or great bodily harm to the mother . . . or . . . he knew that his acts created a strong probability of death or great bodily harm to the mother." *Id.*

225. *Id.* at para. 9-1 (1985). The murder statute provides that the offender "[e]ither intends to kill or do great bodily harm to that individual or another or knows that such acts will cause death to that individual or another . . . or . . . knows that such acts create a strong probability of death or great bodily harm to that individual or another." *Id.*

226. *Id.* at para. 9-1.1 (1985).

227. ILL. REV. STAT. ch. 38, paras. 9-1.2, 9-2.1, 9-3.2, 12-3.1, 12-4.4 (Supp. 1986).

228. *Id.* at para. 9-1.2.

229. ILL. REV. STAT. ch. 38, para. 9-1.1(b) (1985).

was justified.<sup>230</sup> The new law also makes it possible to prosecute one who causes bodily harm to an unborn child but does not cause the child's death.<sup>231</sup>

## *B. Other Amendments to Existing Statutes*

### 1. Unlawful Use of Weapons

The amendments to the unlawful use of weapons statute<sup>232</sup> ("UW") were undoubtedly in response to the prevalent problem of street gang related crimes.<sup>233</sup> Public Act 84-721 augmented the UW statute by making it an offense to possess weapons on school grounds.<sup>234</sup>

Public Act 84-1074 converted the crime of selling or giving a concealable firearm to a person under eighteen years of age to a Class 4 felony.<sup>235</sup> Previously, this offense had been a Class A misdemeanor. The new law also makes it a Class 4 felony to sell or give a firearm of any size to a person under eighteen years of age.<sup>236</sup>

### 2. Child Abduction and Sexual Abuse

Public Act 84-234 expands the offense of child abduction. Under the new law, it is a crime for a mother to abduct and intentionally conceal her own child whom she had abandoned or of whom she had relinquished custody.<sup>237</sup>

---

230. ILL. REV. STAT. ch. 38, paras. 9-1.2, 9-2.1, 9-3.2, 12-3.1, 12-4.4 (Supp. 1986).

231. *Id.*

232. ILL. REV. STAT. ch. 38, para. 24 (1985).

233. *Id.* at para. 24-1. A minor amendment to the Unlawful Use of Weapons Statute added the "throwing star" to the list of prohibited weapons. *Id.*

234. *Id.* The amendment makes it a crime to carry a weapon on the premises of any elementary or secondary school, community college, or college or university. *Id.*

235. *Id.* at para. 24-3(a).

236. *Id.* This new law only applies to a person under 18 who does not possess a valid Firearm Owner's Identification Card. *Id.*

237. *Id.* at para. 10-5. Other additions to the child abduction statute provide that a person commits child abduction when he or she:

[1] Intentionally conceals or removes the child from a parent after being served with process in an action affecting marriage or paternity but prior to the issuance of a temporary or final order determining custody; or [2] At the expiration of visitation rights outside the State, intentionally fails or refuses to return or impedes the return of the child to the lawful custodian in Illinois; or [3] Being a parent of the child, and where the parents of such child are or have been married and there has been no court order of custody, conceals the child for 15 days, and fails to make reasonable attempts within the 15 day period to notify the other parent as to the whereabouts of the child or to arrange reasonable visitation or contact with the child. It is not a violation of this Section for a person fleeing domestic violence to take the child with him or her to services provided by a domestic violence program; or [4] Being a parent of the child, and

Public Act 84-160 also expands the child abduction statute by making it a crime to intentionally lure a child under the age of sixteen into a motor vehicle without the consent of the parent.<sup>238</sup> In addition, Public Act 84-1281 provides that attempting to lure a child is as serious a crime as actually luring.<sup>239</sup>

The Habitual Child Sex Offender Registration Act was passed by the Illinois General Assembly as a preventative measure in the area of child abuse.<sup>240</sup> This act requires a person who has been convicted two or more times for certain sex offenses to register with the local chief of police.<sup>241</sup> The person will be informed of his duty to register upon release from a prison or hospital.<sup>242</sup> Any person who violates the registration requirement will be guilty of a Class A Misdemeanor.<sup>243</sup>

### 3. Aggravated Arson<sup>244</sup>

Public Act 84-1100 changes arson into a lesser included offense of aggravated arson by deleting the words from the latter statute "by means of fire or explosive" and adding "in the course of committing arson."<sup>245</sup> This change is in accord with the Illinois Supreme Court's recent opinion in *People v. Wick*.<sup>246</sup>

### 4. Theft<sup>247</sup>

An amendment to the theft statute increases the classification of "theft of property, other than a firearm, not from the person and

---

where the parents of the child are or have been married and there has been no court order of custody, conceals, detains, or removes the child with physical force or threat of physical force; or [5] Conceals, detains, or removes the child for payment or promise of payment at the instruction of a person who has no legal right to custody; or [6] Retains in this State for 30 days a child removed from another state without the consent of the lawful custodian or in violation of a valid court order of custody.

*Id.*

238. *Id.* at para. 10-5(b)(4). This new law changes the age requirement of the victim from thirteen to sixteen. *Id.*

239. ILL. REV. STAT. ch. 38, para. 10-5(b)(10) (Supp. 1986). Both luring and attempting to lure are Class 4 felonies. *Id.* at para. 10-5(d).

240. *Id.* at paras. 221-230.

241. *Id.*

242. *Id.*

243. *Id.*

244. ILL. REV. STAT. ch. 38, para. 20-1.1 (1985). See *supra* notes 102-08 and accompanying text.

245. ILL. REV. STAT. ch. 38, para. 20-1.1 (1985).

246. 107 Ill. 2d 62, 481 N.E.2d 676 (1985). See *supra* notes 102-08 and accompanying text.

247. ILL. REV. STAT. ch. 38, par. 16-1(e)(1) (1985).

not exceeding \$300 in value" from a misdemeanor to a Class 4 felony.<sup>248</sup> The new amendment will apply only if the offender previously has been convicted of robbery, armed robbery, burglary, residential burglary, or home invasion.<sup>249</sup>

### 5. Residential Burglary<sup>250</sup>

In response to *People v. Bales*,<sup>251</sup> the General Assembly redefined "dwelling" for purposes of the residential burglary statute. Even though the former statute's definition of "dwelling" applied to burglary,<sup>252</sup> the Illinois Supreme Court in *Bales*<sup>253</sup> declined to apply that definition of "dwelling" to residential burglary.<sup>254</sup> The new law defines dwelling, for the purposes of the residential burglary statute, emphasizing the possibility of people being present in their homes.<sup>255</sup> This amendment thus highlights the residential burglary statute's purpose of ensuring the safety of people in their homes.<sup>256</sup>

### 6. Bribery<sup>257</sup>

The legislature also expanded the scope of the bribery statute. Previously, the act of attempting to influence the function of any public officer, public employee, or juror was not included in the definition of bribery.<sup>258</sup> The statute, however, now encompasses the act of attempting to influence.

---

248. *Id.*

249. *Id.* Under former paragraph 16-1(e)(1), the offense was enhanced only when the defendant had a previous conviction for theft, other than theft of a firearm. ILL. REV. STAT. ch. 38, para. 16-1(e)(1) (1985). Both the former and amended theft statutes are codified in ILL. REV. STAT. (1985).

250. ILL. REV. STAT. ch. 38, para. 2-6 (Supp. 1986).

251. 108 Ill. 2d 182, 483 N.E.2d 517 (1985). *See supra* notes 96-101 and accompanying text.

252. ILL. REV. STAT. ch. 38, para. 2-6 (1985). Former paragraph 2-6 and new paragraph 2-6(a) define dwelling as "a building or portion thereof, a tent, a vehicle, or other enclosed space which is used or intended for use as a human habitation, home or residence." ILL. REV. STAT. ch. 38, para. 2-6(a) (Supp. 1986); ILL. REV. STAT. ch. 38, para. 2-6 (1985).

253. 108 Ill. 2d 182, 483 N.E.2d 517 (1985). *See supra* notes 96-101 and accompanying text.

254. *See supra* notes 96-101 and accompanying text.

255. ILL. REV. STAT. ch. 38, para. 2-6(b) (Supp. 1986). Paragraph 2-6(b) provides, "[f]or the purposes of Section 19-3 of this Code [residential burglary], 'dwelling' means a house, apartment, mobile home, trailer, or other living quarters in which at the time of the alleged offense the owners or occupants actually reside or in their absence intend within a reasonable period of time to reside."

256. *See supra* notes 96-101 and accompanying text.

257. ILL. REV. STAT. ch. 38, para. 33-1(e) (1985).

258. *Id.*

### C. *New Offenses*

#### 1. Aggravated Unlawful Restraint<sup>259</sup>

The newly enacted aggravated unlawful restraint statute makes it a Class 3 felony to commit unlawful restraint while armed with a deadly weapon.<sup>260</sup>

#### 2. Disarming a Peace Officer<sup>261</sup>

Disarming a peace officer occurs whenever one knowingly disarms a peace officer while the officer is engaged in his official duties.<sup>262</sup> The statute also requires that the offense occurs without the officer's consent.<sup>263</sup>

#### 3. Public Aid Wire Fraud<sup>264</sup> and Public Aid Mail Fraud<sup>265</sup>

Two offenses concerning public aid fraud were created to prevent people from unlawfully obtaining state public aid payments. Public aid wire fraud occurs when the offender utilizes a telephone, wire, radio or television in furtherance of a plan to defraud a state public aid program.<sup>266</sup> Public aid mail fraud occurs when a person utilizes the postal service to further an unlawful scheme to defraud a state public aid program.<sup>267</sup> Both offenses are Class 4 felonies.<sup>268</sup>

### IV. CONCLUSION

The judicial decisions and new legislation discussed in this article represent the major developments in Illinois substantive criminal law since July, 1985. During that time, both the Illinois Supreme Court and the Illinois General Assembly made significant contributions to that body of law. Although the court and the legislature were independently active in a number of areas, there were

---

259. *Id.* at para. 10-3.1. A person commits the offense of aggravated unlawful restraint when he knowingly, without legal authority, detains another while using a deadly weapon. Aggravated unlawful restraint is a Class 3 felony. *Id.*

260. *Id.* at para. 10-3. The unlawful restraint statute provides, "A person commits the offense of unlawful restraint when he knowingly, without legal authority, detains another". *Id.* Unlawful restraint is a Class 4 felony. *Id.*

261. *Id.* at para. 31-1(a).

262. *Id.*

263. *Id.*

264. ILL. REV. STAT. ch. 38, para. 17-9 (Supp. 1986).

265. *Id.*

266. *Id.*

267. *Id.*

268. *See supra* notes 266-67.

also important areas of common concern. Both the court and the legislature took actions to curb the problem of DUI and assist the prosecution of such cases.<sup>269</sup> The court and the legislature also undertook to address the vexing problem of legally inconsistent verdicts in homicide cases.<sup>270</sup> In two areas, residential burglary and aggravated arson, the court first ruled upon the constitutionality of the particular statute, and the legislature responded with amendments to reflect the court's decisions and adopted a construction deemed by the court as necessary to make the statute constitutional.<sup>271</sup> Thus, the recent developments in this area have in many respects been the product of a dialogue between the judiciary and the legislature. With the enactment of sweeping new reforms in the areas of DUI,<sup>272</sup> feticide,<sup>273</sup> and homicide,<sup>274</sup> and the litigation such developments are likely to spawn, the dialogue between the court and the legislature promises to continue.

---

269. *See supra* notes 109-28, 204-15 and accompanying text.

270. *See supra* notes 14-35, 198-203 and accompanying text.

271. *See supra* notes 96-108, 244-46, 250-56 and accompanying text.

272. *See supra* notes 204-15 and accompanying text.

273. *See supra* notes 216-31 and accompanying text.

274. *See supra* notes 198-203 and accompanying text.

