**2011 ICASA LEGISLATIVE UPDATE**

Illinois Coalition Against Sexual Assault

Following is a summary of key sexual-assault related legislation passed by the Illinois General Assembly and approved by the Governor during the 2011 session. The full text of each Public Act is available on the General Assembly’s Web site at www.ilga.gov.

**CRIMINAL LAW AND PROCEDURE**

**HB 277 Aggravated Stalking by Sex Offenders**

Rep. Cunningham (D-35); Sen. Mulroe (D-10)

Registered or formerly registered sex offenders are guilty of aggravated stalking when the offender stalks

* the victim of the offense, or
* the victim’s family members.

First offense = Class 3 felony; second or subsequent offense = Class 2 felony.

• P.A. 97-468 Eff. 1/1/12

**HB 2935 Cyberstalking Law Updates**

Rep. McAsey (D-85); Sen. Hutchinson (D-40)

Updates harassment through electronic communication and cyberstalking laws to reflect the use of new technologies, such a smart phones.

Cyberstalking and harassment now can be committed through devices such as a telephone, cell phone, computer, or pager. (Previously limited to “a computer through the Internet to another computer.”)

First offense = Class 4 felony; second or subsequent offense = Class 3 felony.

• 97-303 Eff. 8/11/11

**SB 2267 Directing Another Person to Stalk Someone or Violate an Order of Protection**

Sen. Jones (D-14); Rep. Mayfield (D-60)

* Amends the crimes of stalking, aggravated stalking, cyberstalking and violating an order of protection.
* Directing a third party to commit these crimes = committing the offenses.
* The mental state of the person directed to commit the offense is not relevant.

• P.A. 97-311 Eff. 8/11/11

**HB 3283 Child Pornography Penalties Increased**

Rep. Mathias (R-53); Sen. Dillard (R-24)

Committing child pornography by creating a movie is a felony that is one class higher than producing, possessing or distributing child pornography photographs.

• P.A. 97-157 Eff. 1/1/12

**SB 1035 More Subpoena Powers for Investigating Child Sexual Exploitation**

Sen. Hutchinson (D-40); Rep. McAsey (D-85)

Allows the Illinois Attorney General and States’ Attorneys to issue subpoenas to Internet service providers for records pertaining to criminal investigations of child sexual exploitation.

* Otherwise, before the case is charged the case would have to go to a grand jury before a subpoena could be issued.
* “Child sexual exploitation” includes solicitation, prostitution, and pornography crimes.
* Mandates consecutive prison sentences when one of the convictions is for child pornography or aggravated child pornography.
* Consecutive sentences were already mandatory for other sex crimes.

• P.A. 97-475 Eff. 8/22/11

**SB 1038 Increases Penalty for Child Abduction**

Sen. Collins (D-16); Rep. Flowers (D-31)

* Requires a person convicted of child abduction to undergo a sex offender evaluation.
* Increases the severity of the offense to a Class 2 felony (from a Class 3 felony) if the person has a prior conviction for a sex offense.
* Class 2 felony = 3 – 7 years; Class 3 felony = 2 – 5 years.

• P.A. 97-160 Eff. 1/1/12

**CRIME VICTIMS**

**HB 3300 Amends the Rights of Crime Victims and Witnesses Act**

Rep. McAsey (D-85); Sen. Wilhelmi (D-43)

Victim has the right to make an impact statement when there is a plea agreement.

The victim advocate for each state’s attorney’s office must provide information to victims of violent crime about victim services, including referrals to programs, counselors, and agencies that assist victims in dealing with trauma, loss, and grief.

• P.A. 97-572 Eff. 1/1/12

**SB 1043 Re-Opening of Closed Cases – Notification of Victims**

Sen. Link (D-30); Rep. Mathias (R-53)

Law enforcement must notify the victim when they re-open a closed case unless the state’s attorney determines that doing so will interfere with the investigation.

An increasing number of sexual assault cases are re-opened after a DNA match is found.

• P.A. 97-457 Eff. 1/1/12

**SEX OFFENDER MANAGEMENT**

**HB 263 Andrea’s Law**

Rep. Reboletti (R-46); Sen. Millner (R-28)

* Named for Andrea Will, an Eastern Illinois University student who was strangled by her ex-boyfriend in 1998.
* Anyone convicted of sexually motivated first-degree murder must register on the sex offender registry for life.
* Anyone who commits first-degree murder must
* register on the statewide Murderer and Violent Offender Against Youth Database; and remain on the registry for
* 10 years after release from prison; or
* 10 years after adjudication or conviction if not imprisoned.

• P.A. 97-154 Eff. 1/1/12

**HB 295 Sex Offenders Must Register with College Campus Security**

Rep. DeLuca (D-80); Sen. Maloney (D-18)

Sex offenders who attend or work at a college or university must register with the campus public safety or security director in addition to other registration requirements.

Applies to offenders who are employed at or attend a college or university for

* 5 or more consecutive days; or
* more than 30 days during the calendar year.

• P.A. 97-155 Eff. 1/1/12

**HB 1253 Retroactive Sex Offender Registration**

Sen. Martinez (D-20); Rep. Mell (D-40)

Requires many convicted sex offenders who commit a felony after July 1, 2011, to register again as a sex offender.

• P.A. 97-578 Eff. 1/1/12

**SB 2151 Juvenile Sex Offender Restrictions**

Sen. Millner (R-28); Rep. Sacia (R-89)

The Juvenile Justice Commission must study and make recommendations on the treatment and supervision of juvenile offenders adjudicated delinquent for sex offenses.

• P.A. 97-163 Eff. 1/1/12

**HB 3005 Limits Sex Offenders’ Contact with Children Conceived through Sexual Abuse**

Rep. Davis (D-30); Sen. Delgado (D-2)

* Strengthens and expands law prohibiting custody or visitation by a biological father when the child was conceived through rape unless the mother/guardian (other than the biological father) consents.
* Prevents the convicted biological father from accessing:
* notice of court proceedings
* the victim
* court appointed counsel; and
* mother and child’s personal information.
* Excludes the biological father from many court proceedings involving the children, including
* abuse and neglect
* guardianship
* permanency; and
* parentage

The law does not change the responsibility of the sex offender to pay child support.

• P.A. 97-568 Eff. 8/25/11

**HB 3238 DNA Collection**

 Rep. Mendoza (D); Sen. Raoul (D-13)

Requires DNA collection after arrest and either a probable cause hearing or indictment for

* first degree murder
* home invasion
* predatory criminal sexual assault of a child
* criminal sexual assault
* aggravated criminal sexual assault

Requires all registered sex offenders to provide a DNA sample regardless of when or where they were convicted.

All sex offenders who have not previously submitted a DNA sample must do so when registering initially or registering again as a sex offender.

When DNA is collected before a conviction, DNA records will be expunged and the DNA sample will be destroyed if the case is dismissed or the defendant is acquitted.

Deliberately avoiding collection of DNA is a Class 4 felony (previously a misdemeanor).

• P.A. 97-383 Eff. 1/1/12

**HEALTHCARE**

**HB 105 Patients' Right to Know Act**

Rep. Flowers (D-31); Sen. Delgado (D-2)

The Illinois Department of Financial and Professional Regulation must make information about Illinois doctors from the past 5 years available to the public, including:

* felony and class A misdemeanor convictions
* final disciplinary actions by licensing boards in Illinois and other states
* a description of revocation or involuntary restriction of hospital privileges
* medical malpractice settlements or awards

The Web site also lists:

* educational and professional background information
* hospital privileges
* Medicaid participation

The information is posted at [www.idfpr.com](http://www.idfpr.com) under “Physician Profile” and is also available in writing upon request.

• P.A. 97-280 Eff. 8/9/11

**HB 1476 Public Notification of Complaints Against Healthcare Workers**

Rep. Flowers (D); Sen. Delgado (R-24)

The Department of Financial and Professional Regulation (IDFPR) will provide information to the public concerning complaints against healthcare workers.

IDFPR must

* disclose the status of a pending complaint against a physician or other medical professional to the complainant upon request;
* notify the person who filed the complaint of the time and date of any hearing in writing at least 14 days prior to the hearing; and
* tell the complainant whether or not she will be able to testify at the hearing.

Currently, certain entities such as healthcare institutions and State’s Attorneys are required to report information to the Medical Disciplinary Board upon learning of a professional rule violation. Members of the public may also make complaints to IDFPR.

• P.A. 97-449 Eff. 1/1/12

**HB 220 Healthcare Workers Convicted of Sex Crimes**

Rep. Franks (D-63); Sen. Dillard (R-24)

• P.A. 97-484 Eff. 9/22/11

**HB 1271 Healthcare Workers Convicted of Sex Crimes**

Rep. Burns (D); Sen. Dillard (R-24)

• P.A. 97-156 Eff. 8/20/11

* The license of a healthcare worker who is convicted of a sex offense will be immediately and permanently revoked.
* While criminal case is pending, licensed healthcare worker
* must practice with a chaperone who is also a licensed healthcare worker.
* provide patients with a written notice that the healthcare worker has been charged with a sex crime. The patients must sign the notice.

**EMPLOYMENT**

**SB 1122 More Employment Protection for Pregnant Workers**

Sen. Link (D-30); Rep. Franks (D-63)

Violations of Illinois Human Rights Act against pregnant or new mothers include:

* refusing to hire, promote, or train the person; and
* treating the person differently for employment-related purposes (e.g., privileges, terms, or conditions of employment)

The Act already covered pregnancy as part of sex discrimination, but the language of this amendment explicitly states that any medical conditions associated with pregnancy are also covered.

• P.A. 97-596 Eff. 8/26/11

**PEOPLE WITH DISABILITIES**

**HB 785 Short-Term Counseling for Adults with Guardians**

Rep. Williams (D-11); Sen. Mulroe (D-10)

* Allows an adult with a guardian of her/his person to consent to up to five 45-minute sessions of counseling.
* Currently, adults with guardians cannot consent to counseling.
* Illinois Imagines Public Policy Committee initiative.
* The Guardianship and Advocacy Commission was the primary proponent.

• P.A. 97-165 Eff. 1/1/12

**SB 86 Expands Definition of “Sexual Abuse” of Adult with Disabilities**

Sen. Collins (D-16); Rep. Lang (D-16)

* Amends the Abuse of Adults with Disabilities Intervention Act.
* Governs how DHS-funded agencies interact with people with disabilities they are serving and determines how DHS investigates and responds to abuse.
* “Physical abuse” includes directing another person to physically abuse a person with disabilities.
* “Sexual abuse” includes acts of sexual exploitation, e.g., prostituting an adult with disabilities.

• P.A. 97-354 Eff. 8/12/11

**HB 653 Paul’s Law**

Rep. Harris (D-13), Sen. Althoff (R-32)

The Illinois Department of Human Services (DHS) has broader authority to investigate and monitor community integrated living arrangements (group homes) for persons with mental illnesses or development disabilities.

The new law is in response to the beating death of a group home resident, Paul McCann, in Charleston. Paul’s was the second death at the facility.

* Requires all developmental service agencies to conduct annual registry checks on all current and future employees and terminate employees who have a disqualifying conviction or a substantiated case of abuse or neglect.
* Facilities must provide documents listing contact information for reporting abuse, neglect, or exploitation to both residents and their guardians.
* Allows residents who do not have legal guardians to designate other adults to serve as their representatives.

• P.A. 97-441 Eff. 8/19/11

**SB 1833 Removes Disrespectful Language from Illinois Statutes**

Sen. Murphy (R-27); Rep. McAsey (D-85)

Follows the example of Rosa’s Law, which removed offensive words from federal statutes.

* Changes all occurrences of
* "mental retardation" to "intellectual disability"
* "mentally retarded person" to "intellectually disabled person"
* "crippled" to "physically disabled"
* "crippling" to "physical disability" or "physically disabling"

• P.A. 97-227 Eff. 1/1/12

**PROTECTIVE ORDERS**

**HB 192 School Remedy for CNCO, SNCO and OP**

Rep. Eddy (R-109); Sen. Righter (R-55)

Amends the Civil No Contact Order Act, SNCO Act, and the Domestic Violence Act.

Requires the court to balance the rights of the petitioner against the rights of the respondent when determining whether a respondent can be ordered not to attend the same school as the petitioner. The judge must consider:

* the severity of the act
* any continuing physical danger or emotional distress to the petitioner
* the education rights of the petitioner and respondent
* whether the respondent can be transferred to another school
* whether the respondent’s placement or program can be changed
* any expense, difficulty, and educational disruption that would be caused by transferring the respondent to another school

• P.A. 97-294 Eff. 1/1/12

**SB 1828 Expands Short Form Notice for OPs**

Sen. Kotowski (D-33); Rep. Sacia (R-89)

* Allows Illinois Department of Corrections officials to serve inmates on parole or mandatory supervised release with short form notice of orders of protection.
* Requires a person on parole or MSR to
* immediately report to the Department of Corrections that he has been served with notice of an order of protection, a civil no contact order, or a stalking no contact order; and
* comply with the terms and conditions of the OP, CNCO or SNCO.

• P.A. 97-50 Eff. 6/28/11

**PROSTITUTION / TRAFFICKING**

**SB 1037 Convictions for Prostitution May be Vacated for Sex Trafficking Victims**

Sen. Hutchinson (D-40); Rep. Yarbrough (D-7)

Allows convictions for prostitution to be vacated for sex trafficking victims.

To qualify, the defendant must

* be found guilty of misdemeanor prostitution or first-time felony prostitution;
* have participated in prostitution as a result of being a trafficking victim; and
* either no longer be a victim of trafficking or have recently sought services for victims of trafficking.

Acceptable evidence of trafficking includes:

* court records demonstrating the defendant was a victim of a trafficker who was charged with a trafficking offense;
* records from federal immigration proceedings available to trafficking victims; and
* a sworn statement from a victim service organization, attorney, clergy member, or a medical or other professional from whom the defendant sought services related to the trafficking.
* Initiative of Chicago Alliance Against Sexual Exploitation.

• P.A. 97-263 Eff. 1/1/12

**MANDATED REPORTING / DCFS**

**HB 275 Sexually Dangerous Persons Can No Longer Work at DCFS**

Rep. Reboletti (R-46); Sen. Wilhelmi (D-43)

No one who has been declared a sexually dangerous person or convicted of committing or attempting to commit various felony offenses (like murder and sexual assault) can work at DCFS.

* 20 ILCS 505/11.1 (new)

• P.A. 97-103 Eff. 7/14/11

**HB 2093 Mandated Reporting — Reproductive Health Providers**

Rep. Reis (R-108), Sen. Haine (D-56)

Adds medical professionals working in a clinic or location providing abortions, abortion referrals or contraceptives to list of mandated reporters of child abuse.

“Medical professionals” include physicians, physician's assistants, nurses, medical technicians, social workers and licensed professional counselors.

Non-medical personnel will be given written training materials regarding child abuse and neglect.

Volunteers and non-medical staff will be trained and instructed to notify a facility's mandated reporter if a child is suspected of being abused.

• P.A. 97-254 Eff. 1/1/12

**SB 106 Increases Information Sharing During DCFS Investigations**

Sen. Kotowski (D-33); Rep. Senger (R-96)

Counselors, doctors, and professionals who have privileged communication with clients must provide information to DCFS during ongoing abuse or neglect investigations.

Law previously was unclear whether mandated reporter who did not make a mandated report under investigation had to provide follow-up information.

Mandated reporters must provide information to DCFS even if they did not make a mandated report.

Upon request, DCFS must provide the informant with a letter confirming the information was used in the course of a child abuse or neglect investigation.

• P.A. 97-387 Eff. 8/15/11

**SB 1950 Increases Offense Level for Making False Report to DCFS**

Sen. Delgado (D-2); Rep. Soto (D-4)

Increases the offense level for knowingly making a false report of child abuse or neglect to DCFS (disorderly conduct) to a Class 4 felony.

• P.A. 97-189 Eff. 7/22/11

**EDUCATION / CHILD PROTECTION**

**HB 1204 Expands Violence Prevention Education**

Rep. Howard (D-34); Sen. Jones (D-14)

School districts were already required to provide violence prevention and conflict resolution education for students in 4th through 12th grades. This law expands that mandate to kindergarten through 12th grades and clarifies that schools will not be reimbursed by the state for providing violence prevention education.

Violence prevention education includes:

* The consequences of violent behavior.
* The causes of violent reactions to conflict.
* Nonviolent conflict resolution techniques.
* The relationship between drugs, alcohol and violence.

• P.A. 97-87 Eff. 7/8/11

**HB 1240 Criminal Background Checks**

Rep. Franks (D-27); Sen. Garrett (D-15)

School districts must share criminal background information that has been obtained by the school district within the last year with any other public or private school or community college or school district that requests the information.

• P.A. 97-248 Eff. 1/1/12

**HB 3289 Online Child Safety Act**

Rep. Mathias (R-53); Sen. Holmes (D-42)

Internet access providers are required to offer parental controls at or near the time of subscription.

The parental controls must

* enable parents to block a child’s access to specific websites, or categories of websites; or
* allow the parent or subscriber to approve websites, or a category of websites, that the child can access.

The Internet provider may charge for parental controls.

• P.A. 97-341 Eff. 8/12/11

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