

2012 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 2012 session. The full text of each Public Act is linked below and is available on the General Assembly's Web site at www.ilga.gov.

CRIMINAL LAW AND PROCEDURE

HB 5122 Abuse of a Corpse – New Offense

Rep. Beiser (D-111); Sen. Haine (D-56)

It is a Class 2 felony to engage in sexual conduct with or involving a corpse. Previously, sexual conduct with a corpse was not a criminal offense in Illinois.

It is a Class 4 felony to move or carry away a corpse when not authorized to do so (body-dumping).

- [P.A. 97-1072](#) Eff. 8/24/12

HB 5235 Increases Penalty for Child Pornography Against Children under Age 13

Rep. McAsey (D-85); Sen. Mulroe (D-10)

- Increases penalties for child pornography when the child is under 13 or the defendant has a prior conviction for child pornography or a related offense.
- Offense levels for child pornography range from a Class 2 felony with a \$1,000 fine to a Class X felony and maximum fine of \$100,000.

- [P.A. 97-995](#) Eff. 1/1/13

HB 5265 Redefines Child Abduction by Luring

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

Expands the crime of child abduction to include luring or attempting to lure a

- minor under the age of 17; or
- minor under the age of 18 travelling to school; or
- severely or profoundly intellectually disabled person

into a vehicle or dwelling.

- [P.A. 97-998](#) Eff. 1/1/13

SB 3673 Criminal Transmission of HIV
Sen. Righter (R-55); Rep. Sacia (R-89)

The offense of criminal transmission of HIV is changed to

- require proof that offenders specifically intend to transmit HIV; and
- limit prosecution to more narrowly defined “sexual activity” rather than “intimate contact.”

Sexual activity is limited to vaginal and anal intercourse without a condom.

Allows for broader release and disclosure of an individual’s HIV status to a court.

- [P.A. 97-1046](#) Eff. 8/21/12

CRIME VICTIMS

HB 1645 Live Adult Entertainment Facility Surcharge Act
Sen. Hutchinson (D-40); Rep. Feigenholtz (D-12)

Strip clubs that serve or permit the consumption of alcohol will pay either a \$3-per-patron surcharge or a flat fee based on gross sales based on the following formula:

| <u>All Sales</u> | <u>Annual Fee</u> |
|-------------------------|-------------------|
| > \$2 million | \$25,000 |
| \$500,000 - \$2 million | \$15,000 |
| < \$500,000 | \$5,000 |

The revenue generated will go into a fund administered by the Illinois Department of Human Services for rape crisis services.

- [P.A. 97-1035](#) Eff. 1/1/13

HB 5187 Crime Victim Rights Notification
Rep. Mayfield (D-60); Sen. Link (D-30)

Training for new police officers must include training in effectively communicating with crime victims at the first contact.

Crime victims must receive written explanation of their rights from police within 48 hours of initial contact and sign it.

The Crime Victim Bill of Rights must be posted within three feet of the doors of all courtrooms where criminal cases are heard.

When a defendant is committed to a Department of Humans Services facility, the victim may request to be notified when there is any change in the defendant's confinement (e.g., off grounds pass, conditional release, transfer to another facility, death).

- [P.A. 97-815](#) Eff. 1/1/13

SB 2545 Internet Dating Safety Act

Sen. Silverstein (D-8); Rep. Mussman (D-56)

Internet dating services that do business in Illinois must either

- conduct criminal background checks on all of their members; or
- conspicuously post warnings online stating that the dating service does not conduct criminal background checks.

If a service does conduct checks, they must

- state whether they prohibit people with criminal histories from using the site; and
- indicate the limitations of background checks.

Service must also provide safety awareness notifications to members, e.g.,

- risk of false information;
- caution not to share personal info; and
- safety planning if meeting someone in person.

It is unlawful under the Consumer Fraud and Deceptive Business Practices Act for a business to violate the requirements of the Act.

- [P.A. 97-1056](#) Eff. 8/24/12

SB 3602 Violent Crime Victim Assistance Act Amendments

Sen. Steans (D-7); Rep. Williams (D-11)

The Violent Crime Victim Assistance Act is amended to establish flat rate fines:

- \$100 for any felony
- \$50 for any vehicle offense (except speeding)
- \$75 for any misdemeanor (except conservation offenses)

Fines are assessed when someone is

- convicted, or
- placed on supervision.

Previously, fines collected were a percentage of overall fines placed on offenders. The goal is to increase the amount of money in the fund and ensure the VCVA fund receives consistent contributions.

- [P.A. 97-816](#) Eff. 7/16/12

SB 3693 Crime Victim Compensation
Sen. Haine (D-56); Rep. Sente (D-59)

Broadens crime victim compensation for victims and their families:

- Allows compensation for spouses.
- Authorizes payments to non-family or non-immediate family members who pay for medical care and other expenses.
- Adds additional violent crimes that are eligible for restitution, including offenses against unborn children and violating a CNCO or SNCO.
- Increases the maximum replacement services award to \$1,250 (from \$1,000) per month.
- Increases the maximum reimbursement for funeral and burial expenses to \$7,500 (from \$5,000).
- Increases restitution for loss of earnings and loss of support to \$1,250 per month (from \$1,000 per month).

Makes certain procedural and technical changes:

- Changes deadline for filing to 2 years after charges are filed.
- Provides for filing a petition for rehearing when a claim is denied.
- Adds payments for restitution under the Sexual Assault Survivors Emergency Treatment Act to the list of benefits the victim must report on an application.

Obtaining a Stalking No Contact Order meets the requirements that a victim 1) report to law enforcement and 2) cooperate with law enforcement for crime victim compensation eligibility purposes.

- [P.A. 97-817](#) Eff. 1/1/13

SB 3823 Loss of Driver's License for Visitation Abuse

Sen. Sullivan (D-47); Rep. Howard (D)

A court can order the suspension of an individual's driver's license for failure to comply with a visitation order.

Visitation abuse occurs when a person

- denies court-ordered visitation; or
- harms the child or child's custodian.

A judge may now also sentence a person found in contempt for failure to follow a visitation order to:

- probation;
- periodic imprisonment for a period of 6 months or less; or
- a fine of up to \$500 for each finding of visitation abuse.

The judge may order reinstatement of driving privileges after the person has been in compliance with the court's order concerning visitation for a sufficient period of time.

The Court may direct the Secretary of State to issue a family responsibility driving permit to allow the person to

- drive to and from work,
- drive a child to or from scheduled visitation, and/or
- receive alcohol or drug treatment or for medical care.

- [P.A. 97-1047](#) Eff. 8/21/12

SEX OFFENDER MANAGEMENT

HB 5280 Amends the Sex Offender Registration Act

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

Amends the Sex Offender Registration Act to add a first offense (formerly second or subsequent" offense) of "luring a minor" to the list of offenses of a sexual predator.

- [P.A. 97-1073](#) Eff. 1/1/13

SB 3258 No Child Sex Offenders on Bike Trails
Sen. Martinez (D-20); Rep. Penny (D-113)

Child sex offenders are no longer allowed to use bikeways and trails, which were added under the definition of “public parks.”

The definition of “child sex offender” is amended to clarify that a victim of a child sex offender is “a person under 18 years of age at the time of the offense.”

The following offenses are added under the definition of “child sex offender”:

- forcible detention
 - custodial sexual misconduct
 - sexual misconduct with a person with a disability
 - sexual relations within families
 - promoting prostitution
 - grooming
 - traveling to meet a minor
 - permitting the sexual abuse of a child
- [P.A. 97-698](#) Eff. 1/1/13

SB 3579 No Child Sex Offender Easter Bunnies
Sen. Dillard (R-24); Rep. Pihos (R-42)

Child sex offenders are not allowed to participate in a holiday event involving children under 18, including

- handing out Halloween candy or other items;
 - dressing up as Santa Claus at a department store or otherwise on or before Christmas; or
 - dressing up as the Easter Bunny on or before Easter.
- Child sex offenders can still dress up as Santa or the Easter Bunny for their own kids, as long as no other children are present.
- There is an exception for those convicted of misdemeanor sexual abuse (close-in-age).
- [P.A. 97-699](#) Eff. 1/1/13

SB 3638 Sex Offender Evaluation and Treatment Provider Act (New)

Sen. Raoul (D-13); Rep. Williams (D-11)

Beginning January 1, 2014, sex offender evaluations and treatment must be done by licensed providers.

The new Sex Offender Evaluation and Treatment Licensing and Disciplinary Board within the Department of Financial and Professional Regulation will license:

- sex offender evaluators,
- sex offender treatment providers, and
- associate sex offender providers.

The Act also establishes

- qualifications for licenses for sex offender treatment evaluators and providers;
- duration of licenses;
- revocation of licenses; and
- civil and criminal penalties for violations of the Act.

The Sex Offender Management Board will

- provide training for law enforcement, probation officers and treatment providers regarding sex offender management and treatment; and
- review and modify the standards and guidelines for providing evaluation and treatment services to sex offenders.

- [P.A. 97-1098](#) Eff. 1/1/13, 1/1/14

PROTECTIVE ORDERS

HB 4636 Increased Penalties for Second or Subsequent OP Violations

Rep. McAsey (D-85); Sen. Mulroe (D-10)

Defendant will be charged with a Class 4 felony (rather than a Class A misdemeanor) for violation of an OP if defendant previously has been convicted in another state for an offense that could be charged in Illinois as domestic battery or a violation of an OP.

Directing a third person to violate an Order of Protection is the same as personally committing the violence for purposes of sentencing.

- [P.A. 97-919](#) Eff. 8/10/12

HB 5922 Short Form Service for CNCO, SNCO and OP

Rep. Cunningham (D-35); Sen. Kotowski (D-33)

A single form may be used for short form notification of a Civil No Contact Order, Stalking No Contact Order or Order of Protection.

Short-form notification must include the

- names of the respondent, petitioner, and other protected parties;
- date and county in which the no-contact order was filed;
- hearing date and time;
- docket number; and
- conditions that apply to the respondent.

The notice must also inform the respondent that

- the no-contact order is in effect;
- he must obtain a copy of the order; and
- he is subject to arrest for any violation of the order.

A sheriff or other law enforcement official may detain the respondent for a reasonable time necessary to complete and serve the short-form notification.

- [P.A. 97-1017](#) Eff. 1/1/13

SB 2869 Service of Incarcerated or Paroled Protective Order Respondents

Sen. Noland (D-22); Rep. Reis (R-108)

- Illinois Department of Corrections officials must serve inmates in custody and those on parole or mandatory supervised release with notice of Orders of Protection, Civil No Contact Orders and Stalking No Contact Orders.
- The sheriffs or law enforcement officials who are in charge of maintaining Department of State Police records must notify the Department of Corrections within 48 hours after receiving a copy of an order from the circuit clerk or petitioner.
- The notice of the order must contain the LEADS Record Index Number and the respondent's:
 - name
 - IDOC inmate number
 - date of birth

- [P.A. 97-904](#) Eff. 1/1/13

PROSTITUTION / TRAFFICKING

HB 5278 Improves Anti-Trafficking Laws

Rep. Cassidy (D-14); Sen. J. Collins (D-16)

Expands the definition of “Involuntary Servitude” to include “any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint.”

A new definition of “serious harm” includes non-physical harm.

The term “forced labor or services” has been removed.

Creates a statute of limitations for prosecuting trafficking crimes against minors, which is until the victim turns 19, or three years after the offense; whichever is later.

- [P.A. 97-897](#) Eff. 1/1/13

MANDATED REPORTING / DCFS

HB 3986 Mandated Reporting — Elder Abuse

Rep. Mussman (D-56), Sen. Holmes (D-42)

The Department on Aging can create a confidential Internet reporting tool to receive mandated reports of elder abuse. Elder abuse includes sexual abuse, neglect, self-neglect and financial exploitation.

- [P.A. 97-860](#) Eff. 7/30/12

HB 3887 Coaches are Mandated Reporters

Rep. Kay (R-112); Sen. McCarter (R-51)

College and university personnel, athletic program personnel and early intervention providers are now mandated reporters under the Abused and Neglected Child Reporting Act.

- [P.A. 97-711](#) Eff. 6/27/12

HB 4028 Amends Abused and Neglected Child Reporting Act

Rep. Feigenholtz (D-12); Sen. Koehler (D-46)

Expands the definition of “person responsible for the child’s welfare” about whom mandated reports of child abuse and neglect must be made under the Abused and Neglected Child Reporting Act to DCFS.

The definition now includes the custodian of a child under age 18 who commits or allows to be committed against the child:

- involuntary servitude;
 - involuntary sexual servitude of a minor; or
 - trafficking in persons for forced labor or services.
- [P.A. 97-1063](#) Eff. 1/1/13

SB 2849 Expands Definition of “Neglected Child”

Sen. Haine (D-56); Rep. Mayfield (D-60)

Expands the definition of “neglected child” about whom mandated reports must be made under the Abused and Neglected Child Reporting Act to DCFS to include a child who lives in an injurious environment that

- creates a likelihood of harm to the child’s health, physical well-being, or welfare; and
- the likely harm to the child is the result of a blatant disregard of parent or caretaker responsibilities.

“Blatant disregard” is now defined as

“an incident where the real, significant, and imminent risk of harm would be so obvious to a reasonable parent or caretaker that it is unlikely that a reasonable parent or caretaker would have exposed the child to the danger without exercising precautionary measures to protect the child from harm.”

- [P.A. 97-803](#) Eff. 7/13/12

SB 3544 Retention of Unfounded DCFS Reports

Sen. Jacobs (D-36); Rep. Mussman (D-56)

When an individual is the subject of a subsequent investigation, DCFS will maintain all prior unfounded reports against that individual until

- the pending investigation is completed, or
- for 12 months, whichever ends later.

Unfounded reports are maintained for 3 years for cases involving death, sexual abuse and serious physical injury. All other unfounded reports are maintained for 12 months after the final finding.

- [P.A. 97-1089](#) Eff. 8/24/12

HEALTHCARE

HB 4453 Sexually Transmissible Disease Testing of Prisoners and Notification

Rep. Davis (D-30); Sen. Lightford (D-4)

The Illinois Department of Public Health (IDPH) and the Illinois Department of Corrections (IDOC) must develop a procedure for confidentially notifying and recommending testing of the public and other prisoners who have had contact with an inmate who has tested positive for an STD.

- [P.A. 97-928](#) Eff. 8/10/12

SB 2840 SASETA Billing Changes

Sen. Steans (D-7); Rep. Feigenholtz (D-12)

All healthcare provided under SASETA (e.g., hospital care, follow-up healthcare, pharmacy, and ambulance) will be reimbursed at the Medicaid, rather than billed rate.

The changes are part of the Save Medicaid Access and Resources Together (SMART) Act.

- [P.A. 97-689](#) Eff. 6/14/12, 7/1/12

SASETA Emergency Rules

The Administrative Rules implementing SASETA have been changed to reflect the changes to SASETA under the SMART Act:

- Hospitals no longer gather bills from other providers (e.g., labs, ambulance, x-rays)
- All bills must be sent to the Sexual Assault Program at the Illinois Department of Healthcare and Family Services within 6 months (previously 12 months)
- [36 Ill.Reg. 10406](#) Eff. 7/1/12