

2002 LEGISLATIVE REVIEW

Trends and Issues Forum

Illinois Coalition Against Sexual Assault

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Legislative Information

- www.legis.state.il.us
 - Statutes
 - Bills – read and track
 - Legislator information

Sexual Conduct with an Animal

- Creates new offense
- Prohibits sexual conduct or sexual contact with an animal
- Class 4 or Class 3 felony
- Other sentencing provisions may include prohibition against having pets, giving away animals or donating money to an animal shelter.

Stalking

- Expands the definition of stalking
- Person commits stalking if, after previously having been convicted of stalking, that person:
 - Follows or watches the same person, and
 - Threatens that person with bodily harm, sexual assault, confinement or restraint, and

Stalking (con't.)

- The threat is directed at the same person or a family member of the person

720 ILCS 5/12-7.3

P.A. 92-827

Permitting the Sexual Abuse of a Child

- Prior provision was overturned by Illinois Supreme Court as vague
- This crime is committed when person responsible for a child's welfare has actual knowledge of and permits an act of sexual abuse upon the child or permits the child to engage in prostitution

Permitting the Sexual Abuse of a Child (con't.)

- Person responsible for the welfare of a child = parent, step-parent, guardian, or person with custody
- This provision does not apply to a person who makes a timely report to DCFS, medical personnel, law enforcement or another mandated reporter

Permitting the Sexual Abuse of a Child (cont.)

- Charges for permitting sexual abuse of child can only be brought after primary offender has been charged for underlying crime
- Class 1 felony
- Sentence must include counseling

720 ILCS 150/5.1

P.A. 92-827

Increased Sentence for Aggravated Criminal Sexual Assault

- If the offender displays, threatens to use or uses a dangerous weapon other than a firearm, 10 years will be added to the sentence imposed by the court.

DNA Testing

- Requires all felons to submit DNA samples
- Applies to minors
- Anyone currently incarcerated must submit sample
- ISP may ask for blood, saliva or tissue

DNA Testing (cont.)

- Requires every felon to pay \$200 for test
- If person is declared innocent, sample will be removed from database

730 ILCS 5/5-4-3

P.A. 92-564

Clergy As Mandated Reporters

- Requires clergy to report abuse and neglect
- Defines “member of the clergy” as a “clergyman or practitioner of any religious denomination accredited by the religious body to which he or she belongs.”

Clergy As Mandated Reporters (con't.)

- Provides that the clergy-penitent privilege remains intact
- Does not require clergy to report anything told to them in confession or when acting as a spiritual advisor

Clergy As Mandated Reporters (con't.)

- Adds clergy to those “person[s] responsible for the welfare of the child” (often referred to as “caretakers”) whose abuse must be reported by any mandated reporter

325 ILCS 5/2, 3, 4, 4.02,
7, 7.01, 7.4, & 7.14

P.A. 92-801

No Reporting Requirement for Minors to Extend Statute of Limitations

- Removes the requirement that a minor sexually abused by a non-family member report by the age of 21 to obtain the extension for filing charges until the age of 28

No Statute of Limitations with DNA

- Removes the statute of limitations for prosecutions of sex crimes when
 - DNA is obtained, and
 - The victim reports within 2 years, and
 - The offender is a stranger

720 ILCS 5/3-5

P.A. 92-752

Sex Offender's Presence Near Victim

- Prohibits a sex offender from living within 500 feet of victim, unless the offender owned the property before August 22, 2002

720 ILCS 5/11-9.4

P.A. 92-828

Sex Offenders Convicted by Military Must Register

- Provides that sex offenders convicted under the Uniform Code of Military Justice are required to register

730 ILCS 150/2

P.A. 92-828

Juvenile Sex Offenders Must Register

- Clarifies that person adjudicated a juvenile delinquent as the result of committing or attempting to commit a sex offense must register
- See also, In Re J.W., No. 92116, Ill. S.Ct., February 21, 2003

Sex Offenders to Register at Place of Employment and School

- Registration information includes place of employment and place offender attends school
- Sex offender must register anywhere he lives, works or attends school for 10 days

Colleges to be Notified of Sex Offenders

- In addition to schools and child care facilities, public and private colleges and universities will now be notified of presence of sex offenders who work or attend school at the college or university

730 ILCS 152/120

P.A. 92-828

2003 Legislation to Watch

**HB 563 Gender Violence Act without
Sexual Orientation**

HB 1400 Civil No Contact Order

HB 2215 Civil Statute of Limitations

2003 Legislation to Watch (con't.)

SB 99 Medically Accurate Sexuality
Education

SB 101 Human Rights Bill

SB 406 Consent / “No Means No”

SB 681 Gender Violence Act with
Sexual Orientation

CASES

Available at:

<http://www.state.il.us/court/>

In Re: J.W.

- Minors adjudicated delinquent for sex offenses must register
- Court concluded registration bore a rational relationship to the underlying goal of the statute, which is protection of children

In Re: J.W. (con't.)

- Court acknowledges shift in purpose and policy of Juvenile Court Act
 - Was primarily rehabilitation of minor
 - Now includes protection of public and accountability
- Court concluded that minor was sexual predator required to register for life

In Re: J.W. (con't.)

- Illinois State Police disagree and intend to require minors to register for 10 years
- For registered minors, notification will only go to those whose safety is compromised by the juvenile offender
- Information about juvenile offenders not subject to internet distribution, even after they turn 18

In Re: J.W. (con't.)

- Court acknowledged lower court's power to order juvenile to stay away from certain geographical areas
- But Court found that order requiring juvenile offender to move away from and stay out of his home community for all purposes, indefinitely, to be overbroad

In Re: J.W. (con't.)

- Court remanded this provision for lower court to address possible exceptions

No. 92116, IL.S.Ct., February 21, 2003

In Re: Robert K.

- Requirement that all felons submit DNA does not violate 4th Amendment protection against unreasonable searches and seizures
- Requiring minors to submit DNA is acceptable

No. 2-02-0115, 2nd Dist., February 21, 2003

People v. Santos

- Rape shield statute does not prohibit introduction of victim's prior inconsistent statements in emergency department about sexual conduct with male other than defendant
- Victim initially reported no recent sexual conduct

People v. Santos (con't.)

- Forensic evidence collection found semen and pubic hair
- Victim's credibility now at issue, so evidence of inconsistent statements admissible
- Goal of rape shield statute not to exclude all evidence related to sex

People v. Santos (con't.)

- Goal is to exclude evidence of victim's sexual history and reputation
- Impeachment still permissible

266 Ill. Dec. 367, 333 Ill. App.3d 1, 744 N.E.2d 473,
(2d Dist. 2002)

Illinois v. Deenadayalu

- Evidence of defendant's other crimes is not admissible to show propensity to commit crime
- Evidence of other crimes is admissible to show modus operandi, intent, identity, motive, or absence of mistake

Illinois v. Deenadayalu (con't.)

- Doctor's conduct in multiple cases in which he examined victims alone, locked exam room doors and touched victims in areas unrelated to reported ailment all admissible to show lack of mistake

265 Ill. Dec. 285, 331 Ill. App.3d 442, 772 N.E.2d 323
(2d Dist. 2002)

Illinois v. Ruppenthal

- Defendant properly convicted of indecent solicitation of a child even though
 - Target of solicitation was an adult posing as a child, and
 - Solicitation transmitted from CA to IL over internet

265 Ill. Dec. 43, 331 Ill. App.3d 916,
771 N.E.2d 1002 (1st Dist. 2002)

People v. Boose

- Defendant's touching of victim's thigh while she slept insufficient to show that he broke into house to commit felony/sexual assault
- Therefore, conviction for residential burglary reversed

260 Ill. Dec. 729, 326 Ill. App.3d 867, 761 N.E.2d 1285
(2d Dist. 2002)

Ashcroft v. Free Speech Coalition

- U.S. Supreme Court struck down law prohibiting “virtual” child pornography
- Only pornography that involves an actual child is outlawed

198 F.3d 1083 (2002)