

2013 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 2013 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

No Criminal Statute of Limitations for Felony Sex Crimes Against Children

HB 1063; [P.A. 98-379](#)

Rep. Jefferson (D-67); Sen. Collins (D-16)

Effective Jan. 1, 2014

There is no criminal statute of limitations for felony sex crimes against children when:

- corroborating physical evidence exists; or
- a mandated reporter failed to report the sexual abuse.

Examples of physical evidence include a photograph, letter from the offender, or a hotel receipt.

The extension does not apply to claims that have already expired. The extension does apply to cases that are still valid as of January 1, 2014.

Predatory Criminal Sexual Assault Includes Sexual Contact

HB 804; [P.A. 98-370](#)

Rep. McAsey (D-85); Sen. Silverstein (D-8)

Effective Jan. 1, 2014

An act of sexual contact is added to the crime of predatory criminal sexual assault of a child. Previously, a predatory criminal sexual assault charge required penetration.

Now, sexual contact can be charged as predatory criminal sexual assault. "Sexual contact" is an

"act of contact, however, slight between the sex organ or anus of one person and the part of the body of another and the accused is 17 or older and the victim is under 13."

Predatory Criminal Sexual Assault, cont'd

Touching a boy's penis is elevated to the same offense level as a penetration crime for purposes of charging predatory criminal sexual assault.

There is no requirement to prove sexual intent ("intended for the sexual gratification or arousal of the victim or the accused") for penetration crimes, as there is for criminal sexual abuse.

Charges for Possession of Each Child Porn Item

HB 2647; P.A. 98-437

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

Effective Jan. 1, 2014

Child pornography suspects will be charged for each individual item of child pornography in their possession. Child pornography includes film, videotape, photo, or other visual reproductions or computer depictions. The law does not apply to multiple copies of the same item.

The Illinois Attorney General helped enact a consecutive sentencing model for child porn last year and initiated this legislation. Courts must impose mandatory consecutive sentences for child porn-related offenses.

Use Victims' Initials When Charging Sex Offense

HB 2471; P.A. 98-416

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

Effective Jan. 1, 2014

When a person is charged with a sex offense or trafficking, the victim may be identified in the charging instrument by

- name,
- initials, or
- description.

The law applies to any offense involving an illegal sex act including, but not limited to

- a sex offense,
- trafficking, or
- involuntary servitude.

The charging instrument must still state the name of the accused, if known.

Certain Police Interrogations Must be Recorded

SB 1006; P.A. 98-547

Sen. Raoul (D-13); Rep. Drury (D-58)

Effective Jan. 1, 2014

For certain felony crimes, police interrogations must be recorded to be admitted as evidence at trial. Illinois has required electronic recording in homicide investigations since 2005.

The law applies to juvenile court and criminal court proceedings.

Videotaped interrogations are required for:

- predatory criminal sexual assault of a child and aggravated arson, starting June 1, 2014;
- aggravated kidnapping, aggravated vehicular hijacking and home invasion, starting June 1, 2015; and
- aggravated criminal sexual assault, armed robbery, and aggravated battery with a firearm, starting June 1, 2016.

Mug Shot Removal Websites

SB 115; P.A. 98-555

Sen. Mulroe (D-10); Rep. Martwick (D-19)

Effective Jan. 1, 2014

It is against the law to ask for or accept payment to remove mug shots from a Web site.

The law targets mug shot removal sites that publish mug shots then charge to remove them. Charges can be more than \$300.

The law cannot stop publication of public information, but can stop the practice of charging to remove, correct, or modify criminal record information. The law applies to information regarding arrest, criminal charges, and disposition of criminal charges.

Civil sanctions for violations include fines up to \$50,000.

Concealed Carry

HB 183; P.A. 98-63

Rep. Phelps (D-118); Sen. Forby (D-59)

Effective July 9, 2013

The law allows concealed carry of guns. Applicants must submit a Concealed Carry License application and complete 16 hours of firearms training.

Concealed Carry, cont'd

Applicants must

- be at least 21;
- have a valid FOID card (if an Illinois resident); and
- have not been convicted or found guilty in Illinois or any other state of a misdemeanor involving the use or threat of physical force or violence to any person within the last 5 years.

There are additional restrictions for those who have been in treatment for drug or alcohol dependency.

Owners of private property may prohibit concealed firearms on the property. The owner must post a sign unless the property is a private residence. The 4 inch by 6 inch sign is available for download at www.isp.state.il.us/firearms/ccw.

Unauthorized Video Recording Statute of Limitations Extended

SB 1851; P.A. 98-293

Sen. Connelly (R-21); Rep. Reboletti (R-45)

Effective Jan. 1, 2014

The criminal statute of limitations for unauthorized video recording is now one year after the victim discovers the offense.

The time limit was extended because victims may not be aware of the videotaping at the time of the offense or during the general limitations period.

Previously, the general statute of limitations was used — 3 years for a felony offense, or 18 months for a misdemeanor offense.

JUVENILE JUSTICE

Juvenile Court Jurisdiction

HB 2404; P.A. 98-63

Rep. Flynn Currie (D-25); Sen. Steans (D-7);

Effective Jan. 1, 2014

The age of jurisdiction for juvenile court is raised from 16 to 17 for most felony offenses. The law applies to arrests made on or after January 1, 2014.

Juvenile Court Jurisdiction, cont'd

The age of jurisdiction for most misdemeanor offenses was raised from 16 to 17 several years ago.

17-year-olds charged with misdemeanors and nonviolent felonies will be tried and sentenced in juvenile court rather than adult court.

Youth charged with the most serious felonies, including all violent crimes are still subject to transfer to adult court.

The law also extends restrictions on who can see law enforcement and juvenile court records to include records of 17-year-olds.

A 17-year-old tried in juvenile court can petition for expungement of law enforcement and juvenile court records. The law does not apply to transferred cases or felony sex crime adjudications.

17-year-olds must be housed away from confined adults. The housing restriction applies regardless of whether a case is transferred to adult court.

CRIME VICTIMS

State's Attorney Must Inform Victim of Right to Submit Victim Impact Statement

HB 827; [P.A. 98-372](#)

Rep. Moylan (D-55); Sen. Kotowski (D-28);

Effective Jan. 1, 2014

The Office of the State's Attorney must inform the victim of the victim's right and the right of his or her family to

- make a victim impact statement at the sentencing hearing; and
- inform the presentence report preparer of the effect of the offense on the victim and the victim's family.

The right applies to the victim, victim's spouse, guardian, parent, grandparent and other immediate family and household members.

Restriction of Father's/Rapist's Custody Rights

HB 3128; P.A. 98-476

Rep. Williams (D-11); Sen. Harmon (D-39)

Effective Jan. 1, 2014

The Illinois Parentage Act is amended to further prohibit custody or visitation by a sex offender. Previously, the mother could only restrict these rights if the father had been convicted of sexual assault.

Now, a judge can deny custody or visitation to the biological father if there is clear and convincing evidence that the child was conceived through rape.

A petition can be filed by the child's mother or guardian as an affirmative petition in circuit court or as an affirmative defense in any proceeding regarding the child filed by the rapist.

The child's mother or guardian can decline child support from the biological father. The biological father is not entitled to inherit from the child without the consent of the mother/guardian.

The parent, grandparent, great-grandparent, or sibling of the rapist cannot go to court and request custody or visitation with the child without the consent of the child's mother or guardian.

The law applies to any minor child who was conceived through rape, not just those conceived after January 1, 2014.

Internet Dating Safety Act Expanded

HB 2934; P.A. 98-458

Rep. Mussman (D-56); Sen. Bertino-Tarrant (D-49)

Effective Aug. 16, 2013

The Act is now the Internet Dating, Internet Child Care, Internet Senior Care, and Internet Home Care Safety Act.

The Act now covers services that allow access to an Internet database of persons or businesses that seek and provide child care, senior care, or home care for a fee.

These online services that do business in Illinois must

- conduct criminal background checks on all of their members; or
- post warnings online that they do not conduct 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.

Services must provide safety awareness notifications to members, e.g., risk of false information, caution not to share personal information, 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.

PROTECTIVE ORDERS

Workplace Violence Prevention Act

HB 2590; [P.A. 98-430](#)

Rep. Sandack (R-81); Sen. LaHood (R-37)

Effective Jan. 1, 2014

Employers (business or individual) with at least 5 employees can seek an Order of Protection to prevent further violence and threats by an individual if:

- an employee has suffered violence (or a credible threat of violence) by an individual; and
- the unlawful violence has been or can be carried out at the employer's workplace.

The Act is intended to limit access to the workplace by potentially violent employees. A petition for an OP can be filed against customers, clients, or anyone else who commits or threatens to commit violence against an employee. Unlawful acts of violence include violence, harassment or stalking.

“Employee” includes employees (full-time, part-time), volunteers, board members, public officials, contractors, etc.

The standard of proof is the reasonable person standard – violence or a threat of violence causes a reasonable person to fear for her safety or the safety of her immediate family.

The employer must file an affidavit that demonstrates 1) reasonable proof of violence or a threat of violence; and 2) that great or irreparable harm has happened, will happen, or is likely to happen to the employee.

The Illinois Coalition Against Domestic Violence continues to work on amendments to the Act during the spring 2014 legislative session.

Increased Penalties for Domestic Battery

HB 958; [P.A. 98-187](#)

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

Effective Jan. 1, 2014

Most domestic batteries were misdemeanors before the change and only increased to a Class 4 felony for a second or subsequent conviction.

As of January 1, 2014:

- 1 or 2 prior convictions = Class 4 felony
- 3 prior convictions = Class 3 felony
- 4 or more prior convictions = Class 2 felony

The maximum sentence will be up to 14 years for four or more convictions.

CIVIL LAW

No Civil Statute of Limitations for Child Sexual Abuse

SB 1399; [P.A. 98-276](#)

Sen. Link (D-30); Rep. Williams (D-11)

Effective Jan. 1, 2014

There is no longer a civil statute of limitations for sexual abuse against children. The change does not apply to claims that have already expired.

Statutes of limitations for child sexual abuse have been extended several times. The statute of limitations applies that was in effect at the time of the crime. Prior to January 1, the statute of limitations was age 38 or 20 years after discovery.

Right of First Refusal

HB 2992; [P.A. 98-462](#)

Rep. Harms (R-106); Sen. Silverstein (D-8)

Effective Jan. 1, 2014

Judges may award divorcing parents the "right of first refusal." The right applies when one parent needs a babysitter for a "significant period of time." That parent may be ordered to give the other parent the first chance to babysit.

Right of First Refusal, cont'd

Parents may agree to right of first refusal language or a judge can order the right when joint custody or visitation rights are awarded.

The judge or parents determine specifics of when the other parent must be given the right to babysit first (length of time, transportation, kind of childcare needed).

The best interests of the child standard applies. A noncompliant parent can be held in contempt of court. There is an exception for emergencies.

Sex Offender Management

No Child Sex Offenders in Fast Food Playgrounds

HB 3023; P.A. 98-266

Rep. Hurley (D-35); Sen. Cunningham (D-18)

Effective Jan. 1, 2014

Child sex offenders cannot loiter in the playground or recreation area of publicly accessible, but privately owned buildings (i.e., fast food restaurants).

There is no requirement that child sex offenders stay 500 feet from the playground, as there is for schools, parks, etc.

Sexually Dangerous Persons Act Evaluators

SB 1322; P.A. 98-88

Sen. Haine (D-56); Rep. Kay (R-112))

Effective July 15, 2013

After a Sexually Dangerous Person petition is filed, the court must appoint two qualified evaluators to determine whether a person is sexually dangerous.

Before, the evaluation had to be conducted by two psychiatrists. Now, any reputable licensed physician, psychologist, or other licensed professional who specializes in the evaluation of sex offenders can do an evaluation. Evaluators must be licensed under the Sex Offender Evaluation and Treatment Provider Act.

If a person files an application saying he has recovered and courts says otherwise or the application is withdrawn, no new application can be filed for 2 years (was 1 year).

PROSTITUTION/TRAFFICKING

Eliminates Felony Enhancement for Prostitution

SB 1872; P.A. 98-538

Sen. Mulroe (D-10); Rep. Zalewski (D-23))
Effective August 23, 2013

A second or subsequent charge of prostitution will no longer be charged as a felony.

The solicitation offense for customers does not have a felony upgrade for subsequent offenses. The felony sentence created significant barriers to survivors of the sex trade who could not get jobs or become productive members of their communities.

The law also creates a mental health court program option for prostituted women. Judicial circuits that use mental health programs must partner with prostitution and human trafficking advocates, survivors, and service providers in the development of the programs.

Resource: End Demand Illinois www.enddemandillinois.org

Mental Health Court Services for Prostituted People

SB 1007; P.A. 98-621

Sen. Mulroe (D-10); Rep. Zalewski (D-23))
Effective Aug. 23, 2013

The law clarifies that mental health courts may offer defendants facing misdemeanor prostitution charges specialized services related to trauma associated with prostitution.

Crime Victim Compensation for Trafficking Tattoo Removal

HB 2640; P.A. 98-435

Rep. Burke (D-36); Sen. Delgado (D-2)
Effective Jan. 1, 2014

Crime Victim Compensation will reimburse trafficking victims for the cost of trafficking tattoo removal. Victims must file a Crime Victim Compensation claim within two years of the offense.

Some tattoo artists are offering free removal services.

MANDATED REPORTING/DCFS

Failure to Report Sexual Abuse of a Child

HB 804; P.A. 98-370

Rep. McAsey (D-85); Sen. Silverstein (D-8)

Effective Jan. 1, 2014

Any adult (over 18) is required to report sexual abuse to the Department of Children and Family Services if the adult personally observes the sexual abuse of child under 13. 720 ILCS 5/11-9.1B (new).

The law does not apply to a person who

- tries to make a timely and reasonable effort to stop the abuse by reporting to a mandated reporter, law enforcement, or medical authorities.
- reasonably believes that reporting would result in imminent infliction of serious harm to himself or another; or
- assists with the investigation and prosecution of the offender.

The offense can only be charged if and when the offender is charged with a sex crime against child.

- First violation = Class A misdemeanor
- Second or subsequent violation = Class 4 felony

This change is part 2 of HB 804 – the other part, which adds sexual contact to Predatory Criminal Sexual Assault is covered in the criminal law section above.

Mandated Reporter Training for School Personnel

HB 2245; P.A. 98-408

Rep. Chapa LaVia (D-83); Sen. Delgado (D-2)

Effective July 1, 2014

All school personnel who work with students must complete mandated reporter training.

Training may be provided by an individual or agency with expertise in recognizing and reporting child abuse. Rape crisis center staff can provide the training.

Training must be completed within one year of employment and must be renewed at least every 5 years. Completing DCFS online mandated reporter training fulfills the requirement.

Adult Protective Services Act

HB 948; [P.A. 98-49](#)

Rep. Harris (D-13); Sen. Haine (D-56)

Effective July 1, 2013; some parts effective Jan. 1, 2014

The Illinois Department on Aging will investigate abuse and neglect against adults with disabilities living in the community. The Office of the Inspector General used to investigate these cases.

The Department on Aging must establish a registry of abusers who are caregivers by January 1, 2014. Personal assistants who serve clients will be subject to registration.

As of July 1, 2013, there were 300 case workers. Additional case workers are being trained.

Supervisors within agencies have ultimate responsibility for the direction each case takes. Cases are triaged according to the severity of abuse:

- Immediate health and safety concerns = response within 24 hours.
- Financial exploitation = up to 7 days to initiate face-to-face contact.
- The investigator has 30 days to determine whether abuse is indicated.
- Services are put in place immediately if needed.

The investigation is driven by clients' consent. The level of risk is reassessed during the course of the case. Continuous risk will result in follow-up for at least 12 months. Cases can remain open as long as 15 months.

Attorney-Client Privilege Not Affected by Mandated Reporting

HB 2771; [P.A. 98-67](#)

Rep. Kay (R-112); Sen. Haine (D-56)

Effective July 15, 2013

Attorneys are not mandated to report contents of privileged communications with clients to the Department of Children and Family Services. Attorneys can reveal otherwise confidential information to "prevent reasonably certain death or substantial bodily harm."

Review of Unfounded Department of Children and Family Services Reports

HB 2787; [P.A. 98-453](#)

Rep. Bellock (R-47); Sen. Dillard (R-24)

Effective Aug. 16, 2013

When a child abuse report is unfounded, the child's guardian ad litem (GAL) or attorney appointed under the Juvenile Court Act may ask for a review of the investigation.

Review of Unfounded DCFS Reports, cont'd

DCFS has 45 days after a case is unfounded to transmit a copy of the report to the GAL or attorney. The GAL or attorney has 10 days after notification of the final finding and receipt of the report to request a review.

The Act also creates a new section in the Abused and Neglected Child Reporting Act for review of unfounded reports. DCFS will promulgate rules for reviews by January 1, 2014.

The review must be conducted by a DCFS employee outside the supervisory chain of the assigned investigator. The review must occur before the report is classified and a final finding is entered in the central register. The GAL is allowed to be heard and participate in the appeal process to amend the report if it involves their client.

EDUCATION

Medically Accurate, Age Appropriate Sex Education

HB 2675; P.A. 98-441

Rep. Lilly (D-78); Sen. Steans (D-7)

Effective Jan. 1, 2014

Schools can no longer teach abstinence-only sex education without teaching kids about birth control and prevention of STDs.

Public schools that teach sex education in grades 6 through 12 must teach medically accurate, age-appropriate sex education.

Resource: www.plannedparenthood.org/Illinois

Teen Dating Violence

HB 3379; P.A. 98-190

Rep. Tabares (D-21); Sen. Martinez (D-20)

Effective Aug. 6, 2013

Each public school board must

- adopt a teen dating violence policy;
- identify school officials who are responsible for receiving reports of teen dating violence;
- notify students and parents of the policy; and

- educate 7th – 12th grade students and staff who take reports about teen dating violence.

The teen dating violence policy must include:

- a statement that teen dating violence is unacceptable and is prohibited;
- a statement that each student has the right to a safe learning environment; and
- procedures for responding to teen dating violence that happens at school, at school activities, or on buses.

Schools can incorporate age-appropriate education into new or existing training programs.

“Teen dating violence” is a pattern of behavior in which a boyfriend/girlfriend uses or threatens to use physical, mental, or emotional abuse to control a boyfriend/girlfriend when one or both persons is 13 to 19 years old.

Teen dating violence also occurs when a person uses or threatens to use sexual violence against a teen dating partner. (Definition is the same as above except use of violence to control is not necessary.)

HEALTHCARE

Alternative Address for Explanation of Benefits (EOB) Statements

HB 3300; P.A. 98-189

Rep. Kifowit (D-84); Sen. Biss (D-9)

Effective Jan. 1, 2014

Individuals may receive insurance claim-related information at an alternative address. The individual must clearly state the disclosure of claim-related information could put the individual or another person in danger.

The change is intended to protect domestic violence victims who are covered by their abusers’ insurance policies.

A child’s parent or guardian must request the use of an alternative address on behalf of a child who is covered by the parent’s insurance policy.

The change does not solve the problem of teens and college students who are concerned about a parent or guardian receiving an EOB for sexual assault-related medical care.

Medical Marijuana

HB 1; [P.A. 98-122](#)

Rep. Lang (D-16); Sen. Haine (D-56)

Effective Jan. 1, 2014

The Compassionate Use of Medical Cannabis Pilot Program Act allows patients with a prescription to buy up to 2.5 ounces of marijuana every 2 weeks.

A prescription can be obtained to treat dozens of eligible medical conditions including HIV, cancer, Alzheimer's, and multiple sclerosis.

There will be up to 60 licensed dispensaries and 22 cultivation sites – 1 for each police district.

Rape crisis centers may need to update employee policies regarding use of controlled substances.