

# **Statute of Limitations Guide:** **Prosecuting Older** **Sex Crimes Cases**

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Sheryl Essenburg, Former Sangamon County Assistant State's Attorney

and

Libby Shawgo, Former Legal Assistant,  
Illinois Coalition Against Sexual Assault (ICASA)

With updates in 2021 by Sarah Beuning, ICASA General Counsel,  
and Lori Mitchell, ICASA Legal and Public Relations Specialist

## **Table of Contents**

<b>I. Introduction .....</b>	<b>p. 1</b>
<b>II. Applying the Statute of Limitations .....</b>	<b>p. 2</b>
A. Cases Involving Minor Victims (720 ILCS 5/3-6(j)) .....	p. 3
B. Cases Involving Adult Victims (720 ILCS 5/3-5(a) & 6(i)) .....	p. 6
C. Cases Involving a Fiduciary Relationship (720 ILCS 5/3-6(e)) ....	p. 8
D. Cases Involving Armed Robbery, Home Invasion, Kidnapping, or Aggravated Kidnapping (720 ILCS 5/3-6(i-5)) .....	p. 8
E. Cases Involving DNA (720 ILCS 5/3-5(a)) .....	p. 8
1. Adult Victims .....	p. 9
2. Child Victims .....	p. 9
F. Tolling of Statute of Limitations .....	p. 10
<b>III. Pleading the Extended or Eliminated Statute of Limitations ...</b>	<b>p. 10</b>
A. Aggravated Criminal Sexual Assault (Minor Victim) Committed In 1993 .....	p. 11
B. Criminal Sexual Assault (Adult Victim) Committed in 2009 .....	p. 11
<b>IV. Changes in the Criminal Statutes .....</b>	<b>p. 11</b>
A. Definitions (720 ILCS 5/11-0.1) (was 720 ILCS 5/12-12)) .....	p. 12
B. The Crimes .....	p. 13
1. Criminal Sexual Assault (720 ILCS 5/11-1.20) (was 720 ILCS 5/12-13) .....	p. 13
2. Aggravated Criminal Sexual Assault (720 ILCS 5/11-1.30) (was 720 ILCS 5/12-14) .....	p. 13
3. Predatory Criminal Sexual Assault of a Child (720 ILCS 5/11-1.40) (was 720 ILCS 5/12-14.1) .....	p. 14
4. Criminal Sexual Abuse (720 ILCS 5/11-1.50) (was 720 ILCS 5/12-15) .....	p. 15
5. Aggravated Criminal Sexual Abuse (720 ILCS 5/11-1.60) (was 720 ILCS 5/12-16) .....	p. 15

**V. Sentencing .....p. 17**

- A. Criminal Sexual Assault (720 ILCS 5/11-1.20)  
(was 720 ILCS 5/12-13)..... p. 17
- B. Aggravated Criminal Sexual Assault (720 ILCS 5/11-1.30)  
(was 720 ILCS 5/12-14) ..... p. 19
- C. Predatory Criminal Sexual Assault of a Child (720 ILCS 5/11-1.40)  
(was 720 ILCS 5/12-14.1) ..... p. 20
- D. Criminal Sexual Abuse (720 ILCS 5/11-1.50)  
(was 720 ILCS 5/12-15)..... p. 22
- E. Aggravated Criminal Sexual Abuse 720 ILCS 5/11-1.60  
(was 720 ILCS 5/12-16)..... p. 23

**VI. Conclusion .....p. 24**

## **I. INTRODUCTION**

The laws concerning sex crimes in Illinois were completely rewritten in the early 1980s, with the new laws taking effect July 1, 1984. Since that time there have been a number of changes and additions to the criminal statutes, and there also have been several changes to the statutes of limitations concerning sex crimes.

Public Act 100-80, which was effective August 11, 2017, eliminated the Statute of Limitations for the major felony sex crimes committed against children.

Effective January 1, 2020, the statute of limitations for major felony sex crimes committed against adults was removed by Public Act 101-130. The elimination of the general statute of limitations applies to “any offense involving sexual conduct or sexual penetration” as those terms are defined in the Criminal Code. 720 ILCS 5/3-5(a). The statutory provision regarding extended limitations was also amended to be clear that “a prosecution for criminal sexual assault, aggravated criminal sexual assault, or aggravated criminal sexual abuse may be commenced at any time.” 720 ILCS 5/3-6(i)

However, as explained below, the applicability of these new laws to a case depends on whether the case was still viable as of the date the law took effect: August 11, 2017, for children, and January 1, 2020, for adults.

This Guide addresses changes in the statutes of limitations related specifically to sex crimes and also addresses changes in the most frequently charged sex crimes (criminal sexual assault, aggravated criminal sexual assault, predatory criminal sexual assault, criminal sexual abuse, and aggravated criminal sexual abuse). Because of the unlikelihood that any cases occurring prior to July 1, 1984, would still be prosecuted, this Guide addresses only the crimes that were created with the legislation that took effect on July 1, 1984. Crimes occurring before that date would have to be charged as rape, deviant sexual assault, etc. Those crimes are not included in this Guide.

As discussed in detail below, when considering charging a felony crime that occurred more than three years earlier, it is necessary to determine whether the case is barred by the statute of limitations or whether extended or eliminated limitations unique to sex crimes apply to the case. This Guide

also discusses the application of the DNA database exception to the statute of limitations. Most exceptions to the statute of limitations are not unique to sex crimes, but they should be considered if applicable.

If the applicable statute of limitations allows the prosecution of an old case, it is then necessary to determine what the proper charge will be. Charging a viable case using the wrong statute is reversible error. *People v. Tellez-Valencia*, 188 Ill. 2d 523, 723 N.E.2d 223, 243 Ill. Dec. 191 (1999). The five major sex offenses are set forth in this document with changes occurring since 1984 and the effective dates of those changes indicated.

Next, this Guide includes a discussion of the changes in sentencing provisions for the five major sex crimes so that prosecutors can determine what the sentencing options are for each crime.

Since the case law makes it clear that an extended or eliminated statute of limitation must be pled, examples are given of ways to plead an extended or eliminated statute of limitations.

Effective January 1, 2018, prosecutors are no longer automatically required to prove the facts that support an extension of the statute of limitations. The extension still must be pled properly but need not be proven unless the defense makes an issue of it. In that case the facts supporting the extended statute of limitations must be proven by a preponderance of the evidence. P.A. 100-434.

## **II. APPLYING THE STATUTE OF LIMITATIONS**

A cursory look at the current statute of limitations could leave the impression that all cases of sexual assault can be prosecuted at any time. Similarly, one could get the impression that any sex crime in which DNA was obtained and entered into a database can be prosecuted at any time. In fact, a modification to the statute of limitations can only extend the viability of a charge that was still viable at the time the change became effective. If a charge has already expired under the statute of limitations, no change to the statute can revive it. This has long been established law in Illinois and was the holding of the United States Supreme Court in *Stogner v. California*, 539 U.S. 607, 156 L.Ed.2d 544, 123 S.Ct. 2446 (2003).

For this reason, in every felony sex case that is considered for charging more than three years after its occurrence, it is necessary to determine not only what the current statute of limitations is but also whether the case was still viable when the current statute of limitations became effective.

If the case is still prosecutable, it then is necessary to determine what the appropriate charge is, based on the criminal statute that was in effect at the time the crime was committed. Charging a crime that was not yet in existence at the time the crime occurred will result in reversal. *People v. Tellez-Valencia*, 188 Ill.2d 523, 723 N.E.2d 223, 243 Ill.Dec. 191 (1999).

#### **A. Cases Involving Minor Victims (720 ILCS 5/3-6(j))**

In 1986, the Illinois legislature first recognized the necessity of providing for an extension to the normal three-year felony statute of limitations in cases of child victims. In 1986, the statute of limitations was extended for child victims of sex crimes to one year after attaining the age of majority, which is 18. P.A. 84-506, eff. Jan. 1, 1986. In other words, a case could be charged any time before the victim's 19<sup>th</sup> birthday even if, for example, the sexual assault had occurred when the child was six years old. This change first extended only cases in which the victim and offender were family members.<sup>1</sup>

Less than a year later this extension was modified to include all child victims regardless of whether there was a family relationship. P.A. 84-1280, eff. Aug. 15, 1986. The amendment also clarified that when the victim is a minor, the statute of limitations will not expire sooner than three years after the commission of the offense.

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<sup>1</sup> The definition of "family member" was very limited in 1986. It subsequently was expanded but the definition in place at the time would apply. The Illinois Criminal Sexual Assault Law of 1984 defined "family member" as any parent or stepparent, grandparent, child, step-child, or step-grandparent by blood or adoption, or any accused who has resided in the household with a child under age 18 for at least one year. 720 ILCS 5/12-12(c). On Jan. 1, 2010, P.A. 96-233 added aunt, uncle, great, aunt, or great uncle to the definition of "family member" and lowered the length of time in the home to be considered a household member from at least one year to at least six months.

In 2000, the one-year limitations period was changed to 10 years, extending cases of criminal sexual assault, aggravated criminal sexual assault, predatory criminal sexual assault of a child, or aggravated criminal sexual abuse until the victim turns 28. P.A. 91-475, eff. Jan. 1, 2000. There was an additional reporting requirement if the victim was not a family member, which was removed in 2002. P.A. 92-801, eff. Aug. 16, 2002.

In 2003, the law was changed again to 20 years, now allowing prosecution until the victim reaches the age of 38. P.A. 93-356, eff. July 24, 2003. Since the 10-year and 20-year extensions occurred only three years apart, any case that survived the change to the age of 28 also qualified for the 20-year extended statute.

In 2014, the statute of limitations was removed in cases in which a mandated reporter failed to make a call to the Department of Children and Family Services (DCFS) under the Abused and Neglected Child Reporting Act, or there was corroborating physical evidence. P.A. 98-379, eff. Jan. 1, 2014.

Effective August 11, 2017, P.A. 100-80 removed the two qualifiers for an unlimited statute of limitations. However, the 2017 total elimination of a statute of limitations in child victim cases cannot revive a case whose viability already had ended. For this reason, it remains necessary to determine whether a case was still viable when the 2000 change occurred.

Questions to analyze whether charges could still be filed for felony sex offenses with child victims are on the following page, and there is also a flow chart for the analysis on the Statute of Limitations page of the ICASA website: <https://icasa.org/legal-issues/statutes-of-limitations>.

## Questions to Analyze Case Viability - Minor Victims

If the felony sex crime occurred after July 1, 1984, and the victim was a minor (under 18) when the crime occurred:

1. Was the victim under the age of 19 as of January 1, 2000 (born after January 1, 1981)?
  - If “no,” the case is likely not viable.
  - If “yes,” please continue.
2. Was the victim a family member to the perpetrator (“family member” as defined by 720 ILCS 5/12-12(c))?
  - If “yes,” the case is viable.
  - If “no,” please continue.
3. Was the victim born during the 7½ months between January 1, 1981, and August 15, 1981?<sup>1</sup>
  - If “no,” the case is viable.
  - If “yes,” please continue.
4. Did the victim report the incident to law enforcement by age 21?<sup>2</sup>
  - If “no,” the case is likely not viable.
  - If “yes,” the case is viable.

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<sup>1</sup> For any victim born after August 15, 1981, the duty to report by the age of 21 was eliminated before the victim turned 21.

<sup>2</sup> This reporting requirement for non-family members was removed in 2002. Since it required reporting before the age of 21, and was removed two years later, it only affected those born between January 1, 1981, and August 15, 1981.



## **B. Cases Involving Adult Victims (720 ILCS 5/3-5(a) & 6(i))**

While the legislature was quick to extend the statute of limitations for child victims, and subsequently created several additional extensions, extensions for adult victims took longer. The first took effect on January 1, 1996, and extended the usual three years to five *if* the victim reported the offense to law enforcement authorities within six months of the commission of the offense. P.A. 89-354.

Four years later, effective January 1, 2000, the five years was extended to 10 and the reporting time was extended from six months to two years. P.A. 91-475. Effective January 1, 2007, the reporting time was extended from two years to three years. P.A. 94-990.

Finally, effective January 1, 2020, the Criminal Code was amended to remove the statute of limitations for any offense against an adult that involves sexual conduct or sexual penetration as defined by the Code, specifically including criminal sexual assault, aggravated criminal sexual assault, or aggravated criminal sexual abuse. P.A. 101-130 (amending both 720 ILCS 5/3-5(a) and 720 ILCS 5/3-6(i)).

Questions to analyze whether charges could still be filed for felony sex offenses with adult victims are on the following page, and there is also a flow chart for the analysis on the Statute of Limitations page of the ICASA website: <https://icasa.org/legal-issues/statutes-of-limitations>.

## **Questions to Analyze Case Viability - Adult Victims Only**

If the felony sexual crime occurred after July 1, 1984, and the victim was an adult (18 or older) when the crime occurred:

1. Did the offense occur on or after January 1, 2017?
  - If “yes,” the case is viable.
  - If “no,” please continue.
2. Did the offense occur on or after January 1, 2010, and did the victim report the offense to law enforcement authorities within three years of the offense?
  - If “yes,” the case is viable.
  - If “no,” the case is likely not viable, unless the DNA extension or other tolling of the statute of limitations applies.

If either of these questions can be answered in the affirmative, the case is not barred by the statute of limitations. If the answer to both questions is “no” then the case is likely barred, unless the offender is unknown and DNA evidence was collected, in which case additional questions must be asked.

3. Did the sex offense occur on or after August 2, 2002, and the victim reported to law enforcement within three years of the offense, but the identity of the offender was unknown, and a DNA profile of the offender was entered into a DNA database within 10 years of the offense?
  - If “yes,” and the offender has been identified using the DNA profile, then the case is viable.
  - If “no,” the case is likely not viable.

### **C. Cases Involving a Fiduciary Relationship (720 ILCS 5/3-6(e))**

When the perpetrator had a professional or fiduciary relationship with the adult victim, the case may be commenced within one year of the discovery of the offense by the victim. This addition was effective January 1, 1988, so the statute allows prosecution of any sexual crimes occurring after January 1, 1988, providing they were formally charged within a year of discovery. P.A. 85-441. Section 3-6(e) might also allow prosecution of crimes occurring after January 1, 1985, on the theory that the prosecution was still viable under the normal three-year felony statute of limitations when the new statute of limitations took effect on January 1, 1988.

### **D. Cases Involving Armed Robbery, Home Invasion, Kidnapping, or Aggravated Kidnapping (720 ILCS 5/3-6(i-5))**

Effective August 3, 2015, prosecution for armed robbery, home invasion, kidnapping, or aggravated kidnapping may be commenced within 10 years of the commission of the offense if it arises out of the same course of conduct as criminal sexual assault, aggravated criminal sexual assault, or aggravated criminal sexual abuse. P.A. 99-234; 720 ILCS 5/3–6(i-5).

### **E. Cases Involving DNA (720 ILCS 5/3-5(a))**

A significant change was made to the statute of limitations, effective August 2, 2002, with P.A. 92-752. For sexual crimes in which a DNA profile of the offender is obtained and entered into a DNA database, there is no statute of limitations if:

1. a DNA profile of the offender is obtained and entered into a DNA database within 10 years after the commission of the offense; and
2. the identity of the offender is unknown after a diligent investigation by law enforcement authorities; and
  - a. the victim reported the offense to law enforcement within three years after the offense, unless a longer period is provided by the extended limitations section; *or*

- b. the victim was murdered during the course of the offense or within two years of the offense. P.A. 93-834, eff. July 29, 2004.

## **1. Adult Victims**

While this is a very useful change in cases to which it applies, the reality is that Section 3-5(a) will not apply to most cases. Most cases of sexual assault and sexual abuse are *not* committed by strangers.

When a prosecutor does encounter an old case in which the conditions of this section are met, this change in the law should allow for prosecution of cases involving adult victims when the offense occurred any time after January 1, 1995. This is based on the fact that only cases occurring after January 1, 1995, would still have been viable on January 1, 2000, when P. A. 91-475 extended the five-year limitation to 10 years. Those same cases would then have been viable when the DNA provision under P.A. 92-752 took effect on August 2, 2002.

## **2. Child Victims**

Cases of sexual assaults on children by strangers are extremely rare. However, if the requirements of this section could be met, a case occurring as early as 1983 could be prosecuted. In order for this to be possible, the victim must have been born no earlier than January 1, 1981 (so that the victim would still be under 19 when P.A. 91-475 took effect on January 1, 2000). What is not clear is what would be required in the way of reporting if the victim was an infant or very young child at the time of the crime. Crimes occurring prior to 1983 would have expired after three years, not qualifying for the “18+1” change that took effect August 15, 1986. P.A. 84-1280.

Crimes occurring prior to July 1, 1984, would have to be charged under the old sex crime statutes (rape, indecent liberties with a child, etc.), which are not included in this publication.

## F. Tolling of Statute of Limitations

While most of the excluded periods are not specific to sex crimes, when considering prosecution of older sex crimes attention should also be paid to whether events have tolled, or stopped the clock on, the limitations period. Under Illinois law, the statute of limitations period within which a prosecution must be commenced does not include the following periods of time:

1. the time from when sexual assault evidence is collected and submitted to the Department of State Police until the completion of analysis of the submitted evidence;
2. any period when the defendant is not usually and publicly resident in Illinois;
3. when a prosecution is pending against the defendant for the same conduct;
4. any period when a material witness, including the victim, is placed on active military duty or leave.

These are the most relevant periods excluded from limitation, but there are several more, so please check the statute, 720 ILCS 5/3-7, in case any others might apply.

## III. PLEADING THE EXTENDED OR ELIMINATED STATUTE OF LIMITATIONS

Illinois law has long required that when an extended or eliminated statute of limitations is applicable, it must be pleaded and proved. *People v. Coleman*, 245 Ill.App.3d 592, 615 N.E.2d 53, 185 Ill.Dec. 758 (5<sup>th</sup> Dist. 1993). Effective January 1, 2018, prosecutors are no longer automatically required to prove the facts that support an extension of the statute of limitations. The extension still must be pled properly but need not be proven unless the defense makes an issue of it. In that case the facts supporting the extended statute of limitations must be proven by a preponderance of the evidence. P.A. 100-434. The following are model charges with allegations of an extended limitation:

### **A. Aggravated Criminal Sexual Assault (Minor Victim) Committed in 1993**

NOTE: Because the crime occurred prior to the creation of “Predatory Criminal Sexual Assault,” the crime is charged under the statute as it existed in 1993.

That between June 1 and August 31, 1993, the defendant committed the offense of AGGRAVATED CRIMINAL SEXUAL ASSAULT in violation of Section 12-14 of Act 5 of Chapter 720 of the Illinois Compiled Statutes of said State in that the said defendant, who was 17 years of age or older, committed an act of sexual penetration with A.B., who was under 13 years of age when the act was committed, in that the defendant placed his penis in the mouth of A.B., said offense occurring during the minority of the victim thus eliminating the period of limitations pursuant to 720 ILCS 5/3-6(j)(1).

### **B. Criminal Sexual Assault (Adult Victim) Committed in 2009**

That on or about June 12, 2009, the defendant committed the offense of CRIMINAL SEXUAL ASSAULT in violation of Section 12-13(a)(1) of the Illinois Compiled Statutes of said State, in that said defendant committed an act of sexual penetration with Jane Brown in that by the use of force said defendant placed his penis in the vagina of Jane Brown, said offense having occurred within the past ten years and having been reported to law enforcement authorities within three years of its occurrence, thus extending the period of limitations pursuant to 720 ILCS 5/3-6(i).

## **IV. CHANGES IN THE CRIMINAL STATUTES**

Knowing whether a case is barred or still viable under the statute of limitations is the first step in determining whether an old case can be charged. The next step is determining what crime to charge. Over the years, the Illinois legislature has made additions and modifications to the major sex crimes. Probably the most significant is the renaming of one section of “Aggravated Criminal Sexual Assault” to “Predatory Criminal Sexual Assault.” Using the wrong name for the crime is reversible error. *People v. Tellez-Valencia*, 188 Ill.2d 523, 723 N.E.2d 223, 243 Ill.Dec. 191

(1999). Therefore, it is essential in charging older cases to be certain that the correct charge is used.

In order to determine how to charge an older case, you must look at the statute as it existed when the crime occurred.

### **EXAMPLE: How to find prior versions of statutes in Westlaw**

1. Go to the current statute.
2. Click on the History tab at the top of the page.
3. Click on History.
4. Click on Versions under the History tab.
5. Click on the version of the statute that existed at the time of the offense being charged.

Under History, you may also wish to look at Editor's and Revisor's Notes and Legislative History Materials. Depending on the free and paid subscription research tools available, you may need to look at Public Acts online or the Illinois Compiled Statutes for the year of the offense.

There have been many substantive and non-substantive changes to the major sex crimes changes over the years. Perhaps most significantly, P.A. 96-1551, eff. July 1, 2011, renumbered the Criminal Code and made non-substantive changes. Below are **some of the most relevant, substantive changes** to the major sex crimes definitions and offenses.

#### **A. Definitions (720 ILCS 5/11-0.1) (was 720 ILCS 5/12-12)**

The definition of “family member” was very limited when the Illinois Criminal Sexual Assault Law went into effect in 1984. It subsequently has been expanded but the definition in place at the time of the offense would apply. The Illinois Criminal Sexual Assault Law of 1984 defined “family member” as any parent or stepparent, grandparent, child, step-child, or step-grandparent by blood or adoption, or any accused who has resided in the household with a child under age 18 for at least one year. 720 ILCS 5/12-12(c). Eff. Jan. 1, 2010, P.A. 96-233 added aunt, uncle, great, aunt, or great uncle to the definition of “family member” and lowered the length of time in the home to be considered a household member from at least one year to at least 6 months.

In the definition of “sexual conduct,” P.A. 91-116, eff. Jan. 1, 2000, added: “*or any transfer or transmission of semen by the accused upon any part of the clothed or unclothed body of the victim.*”

In the definition of “sexual penetration,” P.A. 88-167, eff. Jan. 1, 1994, added the italicized language: “any contact, however slight, between the sex organ *or anus*<sup>1</sup> of one person and *an object*<sup>1</sup> or the sex organ, mouth, or anus of another person.”

P.A. 96-1551, eff. July 1, 2011, rewrote and renumbered this section.

## **B. The Crimes**

### **1. Criminal Sexual Assault (720 ILCS 5/11-1.20) (was 720 ILCS 5/12-13)**

P.A. 85-1030, eff. July 1, 1988, added the offense of criminal sexual assault when the victim is 13 through 17 and the accused held a position of trust, authority or supervision in relation to the victim.

P.A. 96-1551, eff. July 1, 2011, rewrote and renumbered this section.

P.A. 99-0069, eff. January 1, 2016, amended the law to include a person under the age of 18 at the time the offense occurred will be sentenced under Section 5-4.5-105 of the Criminal Code. In addition, a person who was 18 years or older at the time of the offense was defined in this statute.

### **2. Aggravated Criminal Sexual Assault (720 ILCS 5/11-1.30) (was 720 ILCS 5/12-14)**

P.A. 85-691, eff. Jan. 1, 1988, added committing sexual assault against a person with a physical disability (then “physically handicapped”).

P.A. 89-428, eff. Dec. 13, 1995, removed language from the Aggravated Criminal Sexual Assault crime regarding sexual



penetration by an offender who is 17 years of age or older against a victim who is under 13 years of age and created a new “Predatory Criminal Sexual Assault” crime. **However**, this Public Act was declared unconstitutional due to a blatant violation of the single subject rule. The new crime of “Predatory Criminal Sexual Assault” was re-enacted with P.A. 89-462, eff. May 29, 1996. Crimes of penetration involving children under 13 should be charged as Aggravated Criminal Sexual Assault if they occurred prior to May 29, 1996.

P.A. 90-735, eff. Aug. 11, 1998, added committing sexual assault during the same course of conduct as another felony and delivery of a controlled substance as aggravating factors.

P.A. 91-404, eff. Jan. 1, 2000, creates a new subsection, Aggravated Criminal Sexual Assault, which provides for an enhanced sentence when the defendant discharges a firearm in the course of committing an Aggravated Criminal Sexual Assault.

P.A. 97-227, eff. Jan. 1, 2012, and P.A. 97-1109, eff. Jan. 1, 2013, and P.A. 99-143, eff. July 27, 2015, made non-substantive changes to update language referring to people with physical disabilities and people with intellectual disabilities.

### **3. Predatory Criminal Sexual Assault of a Child (720 ILCS 5/11-1.40) (was 720 ILCS 5/12-14.1)**

P.A. 90-735, eff. Aug. 11, 1998, made delivering a controlled substance to a victim under age 13 Predatory Criminal Sexual Assault.

P.A. 91-404, eff. Jan. 1, 2000, creates a new subsection of Predatory Criminal Sexual Assault which provides for an enhanced sentence when the defendant discharges a firearm in the course of committing a Predatory Criminal Sexual Assault.

P.A. 98-370, eff. Jan. 1, 2014, substantially alters the crime of PCSA, which previously only involved crimes of *penetration*. With this change, PCSA can be based on “sexual contact between the sex organ or anus of one person and the part of the body of

another when the victim is under 13 and the accused is 17 or over.” This traditionally would have been sexual abuse, not sexual assault and unlike the definition of sexual abuse, did not even require sexual intent. Caution is advised in using this part of the statute in that it results in charging a Class X felony with the same conduct but without the intent required for a Class 2 felony.

P.A. 98-903, eff. Aug. 15, 2014, corrected this omission by adding an intent requirement with the language, “for the purpose of sexual gratification or arousal of the victim or the accused.” Caution still is advised when using this charge as it makes the exact same conduct both Predatory Criminal Sexual Assault and Aggravated Criminal Sexual Abuse.

#### **4. Criminal Sexual Abuse (720 ILCS 5/11-1.50) (was 720 ILCS 5/12-15)**

P.A. 85-651, eff. Jan. 1, 1988, raised the age of the victim from 16 to 17, and inserted the subsection that made it an act of sexual abuse where an act of sexual penetration or sexual conduct is committed with a victim who was at least 13 but under 17 where the accused was less than 5 years older than the victim. This Act also renumbered the subsections of Criminal Sexual Abuse.

#### **5. Aggravated Criminal Sexual Abuse (720 ILCS 5/11-1.60) (was 720 ILCS 5/12-16)**

P.A. 85-651, eff. Jan 1, 1988, created the offense of aggravated criminal sexual abuse when the victim is 13 to 17 and the accused uses force or threat of force to commit the act. NOTE: Maximum victim age in section (c)(2) is changed from 13 to 17 and in section (d) is changed from 16 to 17.

P.A. 85-691, eff. Jan. 1, 1988, added sexual abuse against a victim who was 60 years of age or older or physically handicapped (now person with a physical disability) as an aggravating circumstance.

P.A. 85-1030, eff. July 1, 1988, added the offense of aggravated criminal sexual abuse when the victim is 13 through 17 and the

accused held a position of trust, authority, or supervision in relation to the victim.

P.A. 85-1392, eff. Jan. 1, 1989, made it a crime to commit an act of sexual conduct with a victim who was an institutionalized severely or profoundly mentally retarded person at the time the act was committed. NOTE: The law now says, “victim who is a person with a severe or profound intellectual disability.”

P.A. 88-99, eff. July 20, 1993, changed the requirement of “great bodily harm” to simple “bodily harm.”

P.A. 89-586, eff. July 31, 1996, added two aggravating circumstances: 1) threatening or endangering the life of the victim or another person; and 2) committing criminal sexual abuse during the course of committing or attempting to commit any other felony.

P.A. 90-735, eff. Aug. 11, 1998, made delivering a controlled substance to a victim in the course of the crime of criminal sexual abuse an aggravating factor, making it Aggravated Criminal Sexual Abuse.

P.A. 92-434, eff. Jan. 1, 2002; P.A. 97-227, eff. Jan. 1, 2012, and P.A. 97-1109, eff. Jan. 1, 2013, and P.A. 99-143, eff. July 27, 2015, made non-substantive changes to update language referring to people with physical disabilities and people with intellectual disabilities.

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## **V. SENTENCING**

As created in 1984, the four (later five) major sex crimes had the same sentences as other crimes of the same class. Criminal Sexual Assault was a Class 1 felony, Aggravated Criminal Sexual Assault was a Class X felony, Criminal Sexual Abuse was a Class A misdemeanor, Aggravated Criminal Sexual Abuse was a Class 2 felony. In 1995 (and again in 1996, to resolve the constitutional problem), when sexual penetration with a child under 13 was removed from Aggravated Criminal Sexual Assault and recreated as Predatory Criminal Sexual Assault, it was a Class X felony.

Before long, the legislature began making additions and exceptions to the sentencing options for sexual crimes. It is important to remember that sentencing options are what the law provided for *at the time the crime occurred*. For example, Predatory Criminal Sexual Assault in which there are two or more victims now requires a sentence of life in prison without parole for offenders who are over the age of 18 at the time of the commission of the offense. 720 ILCS 5/11-1.40 (b)(1.2). However, this is true only if the crimes occurred on or after the effective date of the statute providing for such a sentence. Crimes of Predatory Criminal Sexual Assault occurring prior to January 1, 2000, are not subject to the lifetime sentence.

The following are the substantive changes to the sentencing provisions of the ILCS relating to the originally four, now five major sex crimes and their effective dates. Not included are changes and additions to sex offender registration requirements.

NOTE: P.A. 96-1551, eff. July 1, 2011, renumbered the Criminal Code and made non-substantive changes.

### **A. Criminal Sexual Assault (720 ILCS 5/11-1.20) (was 720 ILCS 5/12-13)**

Consistently a Class 1 felony. The first change with respect to sentencing (now 720 ILCS 5/11-1.20(b)(1)(A)) provides that a second or subsequent offense is a Class X felony. P.A. 85-837, eff. Jan. 1, 1988; P.A. 95-640, eff. Jan. 1, 2008.

The next change added what are now paragraphs (b)(1)(A) and (B) of the sentencing provision. 720 ILCS 5/11-1.20(b)(1)(A), 5/11-1.20(b)(1)(B). These provide for extended sentences under certain circumstances and a life sentence without parole under certain circumstances. P.A. 90-396, eff. Jan. 1, 1998.

P.A. 95-640, eff. June 1, 2008, added the offense of exploitation of a child to the list of previously committed crimes that raise the offense level to a Class X felony. 720 ILCS 5/11-1.20(b)(2).

Not included in the Criminal Sexual Assault statute (720 ILCS 5/11-1.20) but found in the general sentencing statute are two other provisions that relate to sentencing for Criminal Sexual Assault. 730 ILCS 5/5-5-3(c)(2)(H) provides that probation may not be given for Criminal Sexual Assault even though probation normally is available for Class 1 felonies. However, this provision was modified by P.A. 93-419, eff. Jan. 1, 2004. For crimes committed between July 1, 1984, and January 1, 2004, probation is available for Criminal Sexual Assault if the defendant was a family member of the victim.

Additionally, Public Act 93-160, eff. July 10, 2003, provides that for crimes of Criminal Sexual Assault, consecutive prison terms must be imposed for multiple offenses. 730 ILCS 5/5-8-4(d)(2).

P.A. 94-165, eff. July 11, 2005, added that mandatory supervised release is three years to natural life for criminal sexual assault, aggravated criminal sexual assault, and predatory criminal sexual assault *convictions* on or after July 1, 2005. 730 ILCS 5/5-8-1(d)(4). P.A. 94-715 cleaned up the language in P.A. 94-165 so the MSR provision applies to offenses *committed on or after July 11, 2005*.

P.A. 94-165 also created 730 ILCS 5/3-14-2.5 – Extended supervision of sex offenders, which states that the Department of Corrections shall retain custody of all sex offenders placed on MSR under 730 ILCS 5/5-8-1(d)(4).

P.A. 96-1390, eff. Jan. 1, 2011, added extended-term sentencing when a minor victim was under the influence of alcohol, regardless of whether the offender supplied the alcohol, if the offender knew or should have known that the victim had consumed alcohol. 730 ILCS 5/5-5-3.2(e).

P.A. 97-531, eff. Jan. 1, 2012, mandates that the terms of parole or MSR be included in writing as part of the sentencing order.

P.A. 99-69, eff. Jan. 1, 2016, added language stating that an offender who is under the age of 18 when the offense is committed must be sentenced under Section 5-4.5-105 of the Unified Code of Corrections — Sentencing of Individuals Under the Age of 18 at the Time of the Commission of an Offense.

## **B. Aggravated Criminal Sexual Assault (720 ILCS 5/11-1.30) (was 720 ILCS 5/12-14)**

Consistently a Class X felony. Public Act 91-404, eff. Jan. 1, 2000, provides for extended terms of 15, 20, or 25 years for the crime of Aggravated Criminal Sexual Assault involving firearms. (One difficulty with P.A. 91-404 is that it remained unclear what class of offense violations of 720 ILCS 5/11-1.30(b) and 5/11-1.30(c) were, though they had been Class X felonies originally. This was cleared up by P.A. 92-502, eff. Dec. 19, 2001. P.A. 92-721, eff. Jan. 1, 2003, added that if the accused displayed, threatened to use, or used a dangerous weapon other than a firearm or an object that looked like a firearm, the offense was a Class X felony for which 10 years could be added to the prison term.

Second or subsequent offenses of Aggravated Criminal Sexual Assault (or offenses following a conviction for Criminal Sexual Assault or Predatory Criminal Sexual Assault of a Child) require a mandatory term of natural life imprisonment if they occurred after the January 1, 1998, effective date of Public Act 90-396. 720 ILCS 5/11-1.30(d)(2).

As with Criminal Sexual Assault, convictions for multiple crimes of Aggravated Criminal Sexual Assault require consecutive prison terms pursuant to 730 ILCS 5/5-8-4(d)(2). This was established by P.A. 93-160, eff. July 10, 2003.

P.A. 94-165, eff. July 11, 2005, added that mandatory supervised release is three years to natural life for criminal sexual assault, aggravated criminal sexual assault, and predatory criminal sexual assault *convictions* on or after July 1, 2005. 730 ILCS 5/5-8-1(d)(4).

P.A. 94-715 cleaned up the language in P.A. 94-165 so the MSR provision applies to offenses *committed on or after July 11, 2005*.

P.A. 94-165 also created 730 ILCS 5/3-14-2.5 – Extended supervision of sex offenders, which states that the Department of Corrections shall retain custody of all sex offenders placed on MSR under 730 ILCS 5/5-8-1(d)(4).

P.A. 96-1390, eff. Jan. 1, 2011, added extended-term sentencing when a minor victim was under the influence of alcohol, regardless of whether the offender supplied the alcohol, if the offender knew or should have known that the victim had consumed alcohol. 730 ILCS 5/5-5-3.2(e).

P.A. 97-531, eff. Jan. 1, 2012, mandates that the terms of parole or MSR be included in writing as part of the sentencing order.

P.A. 99-69, eff. Jan. 1, 2016, added language stating that an offender who is under the age of 18 when the offense is committed must be sentenced under Section 5-4.5-105 of the Unified Code of Corrections — Sentencing of Individuals Under the Age of 18 at the Time of the Commission of an Offense.

### **C. Predatory Criminal Sexual Assault of a Child (720 ILCS 5/11-1.40) (was 720 ILCS 5/12-14.1)**

Predatory Criminal Sexual Assault of a Child was created in 1995 (and re-created in 1996) as a Class X felony. P.A. 89-428, eff. Dec. 13, 1995; P.A. 89-462, eff. May 29, 1996. Special sentencing provisions include the following when the offender is at least 18 years old at the time of the commission of the offense:

1. When the accused was 17 years of age or over and commits an act of sexual penetration with a victim who was under 13 years of age, the offense is a Class X felony with a sentence of 6 to 60 years. P. A. 95-640, eff. June 1, 2008.
2. When the conviction is pursuant to 720 ILCS 5/11-1.40(a)(2)(C) (great bodily harm that results in permanent disability or is life-threatening) 50-years to natural life term of imprisonment is

required. P.A. 89-462, eff. May 29, 1997; 720 ILCS 5/11-1.40(b)(1).

3. A sentence of natural life is required when there are two or more victims, regardless of whether the crimes were part of the same or related or unrelated acts. P.A. 91-238, eff. Jan. 1, 2000; 720 ILCS 5/11-1.40(b)(1.2).
4. A second or subsequent offense requires a sentence of natural life imprisonment. P.A. 90-396, eff. Jan. 1, 1998; 720 ILCS 5/11-1.40(b)(2).
5. When firearms are involved, an additional 15, 20, or 50 years may be added to the sentence of imprisonment. P.A. 91-404, eff. Jan. 1, 2000; 720 ILCS 5/11-1.40(b)(1).

P.A. 90-735, eff. August 11, 1998, made delivering a controlled substance to a victim in the course of a Predatory Criminal Sexual Assault, an enhanced Class X felony.

As with Criminal Sexual Assault and Aggravated Criminal Sexual Assault, convictions on multiple counts of Predatory Criminal Sexual Assault of a Child now require consecutive sentencing. P.A. 93-160, eff. July 10, 2003; 730 ILCS 5/5-8-4(d)(2).

P.A. 94-165, eff. July 11, 2005, added that mandatory supervised release is three years to natural life for criminal sexual assault, aggravated criminal sexual assault, and predatory criminal sexual assault *convictions* on or after July 1, 2005. 730 ILCS 5/5-8-1(d)(4). P.A. 94-715 cleaned up the language in P.A. 94-165 so the MSR provision applies to offenses *committed on or after July 11, 2005*.

P.A. 94-165 also created 730 ILCS 5/3-14-2.5 – Extended supervision of sex offenders, which states that the Department of Corrections shall retain custody of all sex offenders placed on MSR under 730 ILCS 5/5-8-1(d)(4).



P.A. 96-1390, eff. Jan. 1, 2011, added extended-term sentencing when a minor victim was under the influence of alcohol, regardless of whether the offender supplied the alcohol, if the offender knew or should have known that the victim had consumed alcohol. 730 ILCS 5/5-5-3.2(e).

P.A. 97-531, eff. Jan. 1, 2012, mandates that the terms of parole or MSR be included in writing as part of the sentencing order.

P.A. 99-69, eff. Jan. 1, 2016, added language stating that an offender who is under the age of 18 when the offense is committed must be sentenced under Section 5-4.5-105 of the Unified Code of Corrections — Sentencing of Individuals Under the Age of 18 at the Time of the Commission of an Offense.

#### **D. Criminal Sexual Abuse (720 ILCS 5/11-1.50) (was 720 ILCS 5/12-15)**

Originally, all acts of Criminal Sexual Abuse were Class A misdemeanors, though a second or subsequent conviction was a Class 2 felony. P.A. 91-389, eff. Jan. 1, 2000, increased acts of Criminal Sexual Abuse under Section 720 ILCS 5/12-15(a) to a Class 4 felony. A violation of 720 ILCS 5/11-1.50(b) or 5/11-1.50(c) remains a Class A misdemeanor.

P.A. 95-1052, eff. July 1, 2009, added 730 ILCS 5/5-4.5-55 regarding sentencing for Class A misdemeanors. A conviction for misdemeanor criminal sexual abuse is punishable by a jail term of less than one year. 730 ILCS 5/5-4.5-55(a). Conditional discharge and probation are available to a length of 2 years. 730 ILCS 5/5-4.5-55(b). The court must specify the conditions of probation or conditional discharge as set forth in 730 ILCS 5/5-6-3(d). 730 ILCS 5/5-4.5-55.

P.A. 96-1390, eff. Jan. 1, 2011, added extended-term sentencing for felony criminal sexual abuse when a minor victim was under the influence of alcohol, regardless of whether the offender supplied the alcohol, if the offender knew or should have known that the victim had consumed alcohol. 730 ILCS 5/5-5-3.2(e).

## **E. Aggravated Criminal Sexual Abuse 720 ILCS 5/11-1.60 (was 720 ILCS 5/12-16)**

Since its creation in 1984, Aggravated Criminal Sexual Abuse has been a Class 2 felony. The sentence for Aggravated Criminal Sexual Abuse is 3 to 7 years. 730 ILCS 5/5-4.5-35(a).

Special sentencing provisions include the following when the offender is at least 18 years old at the time of the commission of the offense:

An extended term of 7 to 14 years may be imposed. 730 ILCS 5/5-4.5-35(a); 730 ILCS 5/5-8-2.

P.A. 90-735, eff. August 11, 1998, made delivering a controlled substance to a victim in the course of an Aggravated Criminal Sexual Assault, an enhanced Class X felony.

P.A. 96-1390, eff. Jan. 1, 2011, added extended-term sentencing when a minor victim was under the influence of alcohol, regardless of whether the offender supplied the alcohol, if the offender knew or should have known that the victim had consumed alcohol. 730 ILCS 5/5-5-3.2(e).

If the defendant holds a position of trust, authority, or supervision in relation to a victim with an intellectual disability, the court may consider that as a factor in sentencing the defendant to prison or imposing an extended sentence. 730 ILCS 5/5-5-3.2(a)(29). MSR is two years. 730 ILCS 5/5-4.5-35(l).

Conditional discharge and probation may not exceed 4 years. 730 ILCS 5/5-4.5-35(d). Periodic imprisonment is allowed from 18-30 months. 730 ILCS 5/5-4.5-35(b). To receive probation, family member offenders must comply with conditions set out in 730 ILCS 5/5-5-3(e).

Probation, conditional discharge or periodic imprisonment are not allowed if the offender has been convicted of a Class 2 or greater felony within 10 years. 730 ILCS 5/5-5-3(c)(2)(F).

Effective Jan. 1, 2018, P.A. 99-938 prohibits a sentence of probation, periodic imprisonment, or conditional discharge for a second or subsequent conviction for a Class 2 or greater felony sex offense or firearm offense if the second or subsequent offense is within 10 years of the first offense. 730 ILCS 5/5-5-3(c)(2)(F-3). Previously, a person convicted of a second or subsequent Class 2 or greater felony offense within 10 years of the first offense was not eligible for probation. P.A. 99-938 raises that threshold to a Class 1 or greater felony offense beginning Jan. 1, 2018. 730 ILCS 5/5-5-3(c)(2)(F).

## **VI. CONCLUSION**

Determining the statute of limitations, charging, and sentencing for older sex crimes can be complex due to numerous amendments to the Criminal Code. This Guide is a tool when determining whether a case is still viable and what are appropriate charges and applicable sentences.