



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB1422

Introduced 2/9/2017, by Sen. Chris Nybo

SYNOPSIS AS INTRODUCED:

720 ILCS 5/3-6	from Ch. 38, par. 3-6
720 ILCS 5/3-7	from Ch. 38, par. 3-7
725 ILCS 5/114-1	from Ch. 38, par. 114-1

Amends the Criminal Code of 2012. Provides that the prosecution shall not be required to prove at trial facts which extend the general limitations or establish periods excluded from the general limitations, when the facts supporting extension of or the exclusion from the period of general limitations are properly pled in the charging document. Provides that any challenge relating to the extension of or exclusion from the general limitations period shall be exclusively conducted under the dismissal of charges provisions of the Code of Criminal Procedure of 1963. Amends the Code of Criminal Procedure of 1963. Provides that when a defendant seeks dismissal of the charge upon the grounds that it is barred by the statute of limitations, the prosecution shall have the burden of proving, by a preponderance of the evidence, that the prosecution of the offense is not barred by the statute of limitations.

LRB100 09590 RLC 19758 b

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Criminal Code of 2012 is amended by changing
5 Sections 3-6 and 3-7 as follows:

6 (720 ILCS 5/3-6) (from Ch. 38, par. 3-6)

7 Sec. 3-6. Extended limitations. The period within which a
8 prosecution must be commenced under the provisions of Section
9 3-5 or other applicable statute is extended under the following
10 conditions:

11 (a) A prosecution for theft involving a breach of a
12 fiduciary obligation to the aggrieved person may be commenced
13 as follows:

14 (1) If the aggrieved person is a minor or a person
15 under legal disability, then during the minority or legal
16 disability or within one year after the termination
17 thereof.

18 (2) In any other instance, within one year after the
19 discovery of the offense by an aggrieved person, or by a
20 person who has legal capacity to represent an aggrieved
21 person or has a legal duty to report the offense, and is
22 not himself or herself a party to the offense; or in the
23 absence of such discovery, within one year after the proper

1 prosecuting officer becomes aware of the offense. However,
2 in no such case is the period of limitation so extended
3 more than 3 years beyond the expiration of the period
4 otherwise applicable.

5 (b) A prosecution for any offense based upon misconduct in
6 office by a public officer or employee may be commenced within
7 one year after discovery of the offense by a person having a
8 legal duty to report such offense, or in the absence of such
9 discovery, within one year after the proper prosecuting officer
10 becomes aware of the offense. However, in no such case is the
11 period of limitation so extended more than 3 years beyond the
12 expiration of the period otherwise applicable.

13 (b-5) When the victim is under 18 years of age at the time
14 of the offense, a prosecution for involuntary servitude,
15 involuntary sexual servitude of a minor, or trafficking in
16 persons and related offenses under Section 10-9 of this Code
17 may be commenced within one year of the victim attaining the
18 age of 18 years. However, in no such case shall the time period
19 for prosecution expire sooner than 3 years after the commission
20 of the offense.

21 (c) (Blank).

22 (d) A prosecution for child pornography, aggravated child
23 pornography, indecent solicitation of a child, soliciting for a
24 juvenile prostitute, juvenile pimping, exploitation of a
25 child, or promoting juvenile prostitution except for keeping a
26 place of juvenile prostitution may be commenced within one year

1 of the victim attaining the age of 18 years. However, in no
2 such case shall the time period for prosecution expire sooner
3 than 3 years after the commission of the offense. When the
4 victim is under 18 years of age, a prosecution for criminal
5 sexual abuse may be commenced within one year of the victim
6 attaining the age of 18 years. However, in no such case shall
7 the time period for prosecution expire sooner than 3 years
8 after the commission of the offense.

9 (e) Except as otherwise provided in subdivision (j), a
10 prosecution for any offense involving sexual conduct or sexual
11 penetration, as defined in Section 11-0.1 of this Code, where
12 the defendant was within a professional or fiduciary
13 relationship or a purported professional or fiduciary
14 relationship with the victim at the time of the commission of
15 the offense may be commenced within one year after the
16 discovery of the offense by the victim.

17 (f) A prosecution for any offense set forth in Section 44
18 of the "Environmental Protection Act", approved June 29, 1970,
19 as amended, may be commenced within 5 years after the discovery
20 of such an offense by a person or agency having the legal duty
21 to report the offense or in the absence of such discovery,
22 within 5 years after the proper prosecuting officer becomes
23 aware of the offense.

24 (f-5) A prosecution for any offense set forth in Section
25 16-30 of this Code may be commenced within 5 years after the
26 discovery of the offense by the victim of that offense.

1 (g) (Blank).

2 (h) (Blank).

3 (i) Except as otherwise provided in subdivision (j), a
4 prosecution for criminal sexual assault, aggravated criminal
5 sexual assault, or aggravated criminal sexual abuse may be
6 commenced within 10 years of the commission of the offense if
7 the victim reported the offense to law enforcement authorities
8 within 3 years after the commission of the offense.

9 Nothing in this subdivision (i) shall be construed to
10 shorten a period within which a prosecution must be commenced
11 under any other provision of this Section.

12 (i-5) A prosecution for armed robbery, home invasion,
13 kidnapping, or aggravated kidnaping may be commenced within 10
14 years of the commission of the offense if it arises out of the
15 same course of conduct and meets the criteria under one of the
16 offenses in subsection (i) of this Section.

17 (j) (1) When the victim is under 18 years of age at the
18 time of the offense, a prosecution for criminal sexual assault,
19 aggravated criminal sexual assault, predatory criminal sexual
20 assault of a child, aggravated criminal sexual abuse, or felony
21 criminal sexual abuse may be commenced at any time when
22 corroborating physical evidence is available or an individual
23 who is required to report an alleged or suspected commission of
24 any of these offenses under the Abused and Neglected Child
25 Reporting Act fails to do so.

26 (2) In circumstances other than as described in paragraph

1 (1) of this subsection (j), when the victim is under 18 years
2 of age at the time of the offense, a prosecution for criminal
3 sexual assault, aggravated criminal sexual assault, predatory
4 criminal sexual assault of a child, aggravated criminal sexual
5 abuse, or felony criminal sexual abuse, or a prosecution for
6 failure of a person who is required to report an alleged or
7 suspected commission of any of these offenses under the Abused
8 and Neglected Child Reporting Act may be commenced within 20
9 years after the child victim attains 18 years of age.

10 (3) When the victim is under 18 years of age at the time of
11 the offense, a prosecution for misdemeanor criminal sexual
12 abuse may be commenced within 10 years after the child victim
13 attains 18 years of age.

14 (4) Nothing in this subdivision (j) shall be construed to
15 shorten a period within which a prosecution must be commenced
16 under any other provision of this Section.

17 (j-5) A prosecution for armed robbery, home invasion,
18 kidnapping, or aggravated kidnaping may be commenced at any
19 time if it arises out of the same course of conduct and meets
20 the criteria under one of the offenses in subsection (j) of
21 this Section.

22 (k) (Blank).

23 (l) A prosecution for any offense set forth in Section 26-4
24 of this Code may be commenced within one year after the
25 discovery of the offense by the victim of that offense.

26 (m) The prosecution shall not be required to prove at trial

1 facts which extend the general limitations in Section 3-5 of
2 this Code, when the facts supporting extension of the period of
3 general limitations are properly pled in the charging document.
4 Any challenge relating to the extension of the general
5 limitations period as defined in this Section shall be
6 exclusively conducted under Section 114-1 of the Code of
7 Criminal Procedure of 1963.

8 (Source: P.A. 98-293, eff. 1-1-14; 98-379, eff. 1-1-14; 98-756,
9 eff. 7-16-14; 99-234, eff. 8-3-15; 99-820, eff. 8-15-16.)

10 (720 ILCS 5/3-7) (from Ch. 38, par. 3-7)

11 Sec. 3-7. Periods excluded from limitation.

12 (a) The period within which a prosecution must be commenced
13 does not include any period in which:

14 (1) the defendant is not usually and publicly resident
15 within this State; or

16 (2) the defendant is a public officer and the offense
17 charged is theft of public funds while in public office; or

18 (3) a prosecution is pending against the defendant for
19 the same conduct, even if the indictment or information
20 which commences the prosecution is quashed or the
21 proceedings thereon are set aside, or are reversed on
22 appeal; or

23 (4) a proceeding or an appeal from a proceeding
24 relating to the quashing or enforcement of a Grand Jury
25 subpoena issued in connection with an investigation of a

1 violation of a criminal law of this State is pending.
2 However, the period within which a prosecution must be
3 commenced includes any period in which the State brings a
4 proceeding or an appeal from a proceeding specified in this
5 paragraph (4); or

6 (5) a material witness is placed on active military
7 duty or leave. In this paragraph (5), "material witness"
8 includes, but is not limited to, the arresting officer,
9 occurrence witness, or the alleged victim of the offense;
10 or

11 (6) the victim of unlawful force or threat of imminent
12 bodily harm to obtain information or a confession is
13 incarcerated, and the victim's incarceration, in whole or
14 in part, is a consequence of the unlawful force or threats;
15 or

16 (7) the sexual assault evidence is collected and
17 submitted to the Department of State Police until the
18 completion of the analysis of the submitted evidence.

19 (a-5) The prosecution shall not be required to prove at
20 trial facts establishing periods excluded from the general
21 limitations in Section 3-5 of this Code, when the facts
22 supporting periods being excluded from the general limitations
23 are properly pled in the charging document. Any challenge
24 relating to periods of exclusion as defined in this Section
25 shall be exclusively conducted under Section 114-1 of the Code
26 of Criminal Procedure of 1963.

1 (b) For the purposes of this Section:

2 "Completion of the analysis of the submitted evidence"
3 means analysis of the collected evidence and conducting of
4 laboratory tests and the comparison of the collected
5 evidence with the genetic marker grouping analysis
6 information maintained by the Department of State Police
7 under Section 5-4-3 of the Unified Code of Corrections and
8 with the information contained in the Federal Bureau of
9 Investigation's National DNA database.

10 "Sexual assault" has the meaning ascribed to it in
11 Section 1a of the Sexual Assault Survivors Emergency
12 Treatment Act.

13 "Sexual assault evidence" has the meaning ascribed to
14 it in Section 5 of the Sexual Assault Evidence Submission
15 Act.

16 (Source: P.A. 99-252, eff. 1-1-16.)

17 Section 10. The Code of Criminal Procedure of 1963 is
18 amended by changing Section 114-1 as follows:

19 (725 ILCS 5/114-1) (from Ch. 38, par. 114-1)
20 Sec. 114-1. Motion to dismiss charge.

21 (a) Upon the written motion of the defendant made prior to
22 trial before or after a plea has been entered the court may
23 dismiss the indictment, information or complaint upon any of
24 the following grounds:

1 (1) The defendant has not been placed on trial in
2 compliance with Section 103-5 of this Code.

3 (2) The prosecution of the offense is barred by
4 Sections 3-3 through 3-8 of the Criminal Code of 2012.

5 (3) The defendant has received immunity from
6 prosecution for the offense charged.

7 (4) The indictment was returned by a Grand Jury which
8 was improperly selected and which results in substantial
9 injustice to the defendant.

10 (5) The indictment was returned by a Grand Jury which
11 acted contrary to Article 112 of this Code and which
12 results in substantial injustice to the defendant.

13 (6) The court in which the charge has been filed does
14 not have jurisdiction.

15 (7) The county is an improper place of trial.

16 (8) The charge does not state an offense.

17 (9) The indictment is based solely upon the testimony
18 of an incompetent witness.

19 (10) The defendant is misnamed in the charge and the
20 misnomer results in substantial injustice to the
21 defendant.

22 (11) The requirements of Section 109-3.1 have not been
23 complied with.

24 (b) The court shall require any motion to dismiss to be
25 filed within a reasonable time after the defendant has been
26 arraigned. Any motion not filed within such time or an

1 extension thereof shall not be considered by the court and the
2 grounds therefor, except as to subsections (a) (6) and (a) (8) of
3 this Section, are waived.

4 (c) If the motion presents only an issue of law the court
5 shall determine it without the necessity of further pleadings.
6 If the motion alleges facts not of record in the case the State
7 shall file an answer admitting or denying each of the factual
8 allegations of the motion.

9 (d) When an issue of fact is presented by a motion to
10 dismiss and the answer of the State the court shall conduct a
11 hearing and determine the issues.

12 (d-5) When a defendant seeks dismissal of the charge upon
13 the ground set forth in subsection (a) (7) of this Section, the
14 defendant shall make a prima facie showing that the county is
15 an improper place of trial. Upon such showing, the State shall
16 have the burden of proving, by a preponderance of the evidence,
17 that the county is the proper place of trial.

18 (d-6) When a defendant seeks dismissal of the charge upon
19 the grounds set forth in subsection (a) (2) of this Section, the
20 prosecution shall have the burden of proving, by a
21 preponderance of the evidence, that the prosecution of the
22 offense is not barred by Sections 3-3 through 3-8 of the
23 Criminal Code of 2012.

24 (e) Dismissal of the charge upon the grounds set forth in
25 subsections (a) (4) through (a) (11) of this Section shall not
26 prevent the return of a new indictment or the filing of a new

1 charge, and upon such dismissal the court may order that the
2 defendant be held in custody or, if the defendant had been
3 previously released on bail, that the bail be continued for a
4 specified time pending the return of a new indictment or the
5 filing of a new charge.

6 (f) If the court determines that the motion to dismiss
7 based upon the grounds set forth in subsections (a)(6) and
8 (a)(7) is well founded it may, instead of dismissal, order the
9 cause transferred to a court of competent jurisdiction or to a
10 proper place of trial.

11 (Source: P.A. 97-1150, eff. 1-25-13.)