

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 3. The Health Care Worker Background Check Act is
5 amended by changing Section 25 as follows:

6 (225 ILCS 46/25)

7 Sec. 25. Persons ineligible to be hired by health care
8 employers and long-term care facilities.

9 (a) After January 1, 1996, ~~or~~ January 1, 1997, or the
10 effective date of this amendatory Act of the 94th General
11 Assembly, as applicable, no health care employer shall
12 knowingly hire, employ, or retain any individual in a position
13 with duties involving direct care for clients, patients, or
14 residents, and no long-term care facility shall knowingly hire,
15 employ, or retain any individual in a position with duties that
16 involve or may involve contact with residents or access to the
17 living quarters or the financial, medical, or personal records
18 of residents, who has been convicted of committing or
19 attempting to commit one or more of the offenses defined in
20 Sections 8-1.1, 8-1.2, 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1,
21 9-3.2, 9-3.3, 10-1, 10-2, 10-3, 10-3.1, 10-4, 10-5, 10-7, 11-6,
22 11-9.1, 11-9.5, 11-19.2, 11-20.1, 12-1, 12-2, 12-3, 12-3.1,
23 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6,
24 12-4.7, 12-7.4, 12-11, 12-13, 12-14, 12-14.1, 12-15, 12-16,
25 12-19, 12-21, 12-21.6, 12-32, 12-33, 16-1, 16-1.3, 16A-3, 17-3,
26 18-1, 18-2, 18-3, 18-4, 18-5, 19-1, 19-3, 19-4, 20-1, 20-1.1,
27 24-1, 24-1.2, 24-1.5, or 33A-2 of the Criminal Code of 1961;
28 those provided in Section 4 of the Wrongs to Children Act;
29 those provided in Section 53 of the Criminal Jurisprudence Act;
30 those defined in Section 5, 5.1, 5.2, 7, or 9 of the Cannabis
31 Control Act; those defined in the Methamphetamine Control and
32 Community Protection Act; or those defined in Sections 401,

1 401.1, 404, 405, 405.1, 407, or 407.1 of the Illinois
2 Controlled Substances Act, unless the applicant or employee
3 obtains a waiver pursuant to Section 40.

4 (a-1) After January 1, 2004, no health care employer shall
5 knowingly hire any individual in a position with duties
6 involving direct care for clients, patients, or residents, and
7 no long-term care facility shall knowingly hire any individual
8 in a position with duties that involve or may involve contact
9 with residents or access to the living quarters or the
10 financial, medical, or personal records of residents, who has
11 (i) been convicted of committing or attempting to commit one or
12 more of the offenses defined in Section 12-3.3, 12-4.2-5, 16-2,
13 16G-15, 16G-20, 18-5, 20-1.2, 24-1.1, 24-1.2-5, 24-1.6,
14 24-3.2, or 24-3.3 of the Criminal Code of 1961; Section 4, 5,
15 6, 8, or 17.02 of the Illinois Credit Card and Debit Card Act;
16 or Section 5.1 of the Wrongs to Children Act; or (ii) violated
17 Section 10-5 of the Nursing and Advanced Practice Nursing Act.

18 A UCIA criminal history record check need not be redone for
19 health care employees who have been continuously employed by a
20 health care employer since January 1, 2004, but nothing in this
21 Section prohibits a health care employer from initiating a
22 criminal history check for these employees.

23 A health care employer is not required to retain an
24 individual in a position with duties involving direct care for
25 clients, patients, or residents, and no long-term care facility
26 is required to retain an individual in a position with duties
27 that involve or may involve contact with residents or access to
28 the living quarters or the financial, medical, or personal
29 records of residents, who has been convicted of committing or
30 attempting to commit one or more of the offenses enumerated in
31 this subsection.

32 (b) A health care employer shall not hire, employ, or
33 retain any individual in a position with duties involving
34 direct care of clients, patients, or residents, and no
35 long-term care facility shall knowingly hire, employ, or retain
36 any individual in a position with duties that involve or may

1 involve contact with residents or access to the living quarters
2 or the financial, medical, or personal records of residents, if
3 the health care employer becomes aware that the individual has
4 been convicted in another state of committing or attempting to
5 commit an offense that has the same or similar elements as an
6 offense listed in subsection (a) or (a-1), as verified by court
7 records, records from a state agency, or an FBI criminal
8 history record check. This shall not be construed to mean that
9 a health care employer has an obligation to conduct a criminal
10 history records check in other states in which an employee has
11 resided.

12 (Source: P.A. 93-224, eff. 7-18-03; 94-556, eff. 9-11-05;
13 94-665, eff. 1-1-06; revised 8-29-05.)

14 Section 5. The Criminal Code of 1961 is amended by adding
15 Section 11-9.5 as follows:

16 (720 ILCS 5/11-9.5 new)

17 Sec. 11-9.5. Sexual misconduct with a person with a
18 disability.

19 (a) Definitions. As used in this Section:

20 (1) "Person with a disability" means:

21 (i) a person diagnosed with a developmental
22 disability as defined in Section 1-106 of the Mental
23 Health and Developmental Disabilities Code; or

24 (ii) a person diagnosed with a mental illness as
25 defined in Section 1-129 of the Mental Health and
26 Developmental Disabilities Code.

27 (2) "State-operated facility" means:

28 (i) a developmental disability facility as defined
29 in the Mental Health and Developmental Disabilities
30 Code; or

31 (ii) a mental health facility as defined in the
32 Mental Health and Developmental Disabilities Code.

33 (3) "Community agency" or "agency" means any community
34 entity or program providing residential mental health or

1 developmental disabilities services that is licensed,
2 certified, or funded by the Department of Human Services
3 and not licensed or certified by any other human service
4 agency of the State such as the Departments of Public
5 Health, Healthcare and Family Services, and Children and
6 Family Services.

7 (4) "Care and custody" means admission to a
8 State-operated facility.

9 (5) "Employee" means:

10 (i) any person employed by the Illinois Department
11 of Human Services;

12 (ii) any person employed by a community agency
13 providing services at the direction of the owner or
14 operator of the agency on or off site; or

15 (iii) any person who is a contractual employee or
16 contractual agent of the Department of Human Services
17 or the community agency. This includes but is not
18 limited to payroll personnel, contractors,
19 subcontractors, and volunteers.

20 (6) "Sexual conduct" or "sexual penetration" means any
21 act of sexual conduct or sexual penetration as defined in
22 Section 12-12 of this Code.

23 (b) A person commits the offense of sexual misconduct with
24 a person with a disability when:

25 (1) he or she is an employee and knowingly engages in
26 sexual conduct or sexual penetration with a person with a
27 disability who is under the care and custody of the
28 Department of Human Services at a State-operated facility;
29 or

30 (2) he or she is an employee of a community agency
31 funded by the Department of Human Services and knowingly
32 engages in sexual conduct or sexual penetration with a
33 person with a disability who is in a residential program
34 operated or supervised by a community agency.

35 (c) For purposes of this Section, the consent of a person
36 with a disability in custody of the Department of Human

1 Services residing at a State-operated facility or receiving
2 services from a community agency shall not be a defense to a
3 prosecution under this Section. A person is deemed incapable of
4 consent, for purposes of this Section, when he or she is a
5 person with a disability and is receiving services at a
6 State-operated facility or is a person with a disability who is
7 in a residential program operated or supervised by a community
8 agency.

9 (d) This Section does not apply to:

10 (1) any State employee or any community agency employee
11 who is lawfully married to a person with a disability in
12 custody of the Department of Human Services or receiving
13 services from a community agency if the marriage occurred
14 before the date of custody or the initiation of services at
15 a community agency; or

16 (2) any State employee or community agency employee who
17 has no knowledge, and would have no reason to believe, that
18 the person with whom he or she engaged in sexual misconduct
19 was a person with a disability in custody of the Department
20 of Human Services or was receiving services from a
21 community agency.

22 (e) Sentence. Sexual misconduct with a person with a
23 disability is a Class 3 felony.

24 (f) Any person convicted of violating this Section shall
25 immediately forfeit his or her employment with the State or the
26 community agency.

27 Section 10. The Sex Offender Registration Act is amended by
28 changing Section 2 as follows:

29 (730 ILCS 150/2) (from Ch. 38, par. 222)

30 Sec. 2. Definitions.

31 (A) As used in this Article, "sex offender" means any
32 person who is:

33 (1) charged pursuant to Illinois law, or any
34 substantially similar federal, Uniform Code of Military

1 Justice, sister state, or foreign country law, with a sex
2 offense set forth in subsection (B) of this Section or the
3 attempt to commit an included sex offense, and:

4 (a) is convicted of such offense or an attempt to
5 commit such offense; or

6 (b) is found not guilty by reason of insanity of
7 such offense or an attempt to commit such offense; or

8 (c) is found not guilty by reason of insanity
9 pursuant to Section 104-25(c) of the Code of Criminal
10 Procedure of 1963 of such offense or an attempt to
11 commit such offense; or

12 (d) is the subject of a finding not resulting in an
13 acquittal at a hearing conducted pursuant to Section
14 104-25(a) of the Code of Criminal Procedure of 1963 for
15 the alleged commission or attempted commission of such
16 offense; or

17 (e) is found not guilty by reason of insanity
18 following a hearing conducted pursuant to a federal,
19 Uniform Code of Military Justice, sister state, or
20 foreign country law substantially similar to Section
21 104-25(c) of the Code of Criminal Procedure of 1963 of
22 such offense or of the attempted commission of such
23 offense; or

24 (f) is the subject of a finding not resulting in an
25 acquittal at a hearing conducted pursuant to a federal,
26 Uniform Code of Military Justice, sister state, or
27 foreign country law substantially similar to Section
28 104-25(a) of the Code of Criminal Procedure of 1963 for
29 the alleged violation or attempted commission of such
30 offense; or

31 (2) certified as a sexually dangerous person pursuant
32 to the Illinois Sexually Dangerous Persons Act, or any
33 substantially similar federal, Uniform Code of Military
34 Justice, sister state, or foreign country law; or

35 (3) subject to the provisions of Section 2 of the
36 Interstate Agreements on Sexually Dangerous Persons Act;

1 or

2 (4) found to be a sexually violent person pursuant to
3 the Sexually Violent Persons Commitment Act or any
4 substantially similar federal, Uniform Code of Military
5 Justice, sister state, or foreign country law; or

6 (5) adjudicated a juvenile delinquent as the result of
7 committing or attempting to commit an act which, if
8 committed by an adult, would constitute any of the offenses
9 specified in item (B), (C), or (C-5) of this Section or a
10 violation of any substantially similar federal, Uniform
11 Code of Military Justice, sister state, or foreign country
12 law, or found guilty under Article V of the Juvenile Court
13 Act of 1987 of committing or attempting to commit an act
14 which, if committed by an adult, would constitute any of
15 the offenses specified in item (B), (C), or (C-5) of this
16 Section or a violation of any substantially similar
17 federal, Uniform Code of Military Justice, sister state, or
18 foreign country law.

19 Convictions that result from or are connected with the same
20 act, or result from offenses committed at the same time, shall
21 be counted for the purpose of this Article as one conviction.
22 Any conviction set aside pursuant to law is not a conviction
23 for purposes of this Article.

24 For purposes of this Section, "convicted" shall have the
25 same meaning as "adjudicated". For the purposes of this
26 Article, a person who is defined as a sex offender as a result
27 of being adjudicated a juvenile delinquent under paragraph (5)
28 of this subsection (A) upon attaining 17 years of age shall be
29 considered as having committed the sex offense on or after the
30 sex offender's 17th birthday. Registration of juveniles upon
31 attaining 17 years of age shall not extend the original
32 registration of 10 years from the date of conviction.

33 (B) As used in this Article, "sex offense" means:

34 (1) A violation of any of the following Sections of the
35 Criminal Code of 1961:

36 11-20.1 (child pornography),

- 1 11-6 (indecent solicitation of a child),
- 2 11-9.1 (sexual exploitation of a child),
- 3 11-9.2 (custodial sexual misconduct),
- 4 11-9.5 (sexual misconduct with a person with a
- 5 disability),
- 6 11-15.1 (soliciting for a juvenile prostitute),
- 7 11-18.1 (patronizing a juvenile prostitute),
- 8 11-17.1 (keeping a place of juvenile
- 9 prostitution),
- 10 11-19.1 (juvenile pimping),
- 11 11-19.2 (exploitation of a child),
- 12 12-13 (criminal sexual assault),
- 13 12-14 (aggravated criminal sexual assault),
- 14 12-14.1 (predatory criminal sexual assault of a
- 15 child),
- 16 12-15 (criminal sexual abuse),
- 17 12-16 (aggravated criminal sexual abuse),
- 18 12-33 (ritualized abuse of a child).

An attempt to commit any of these offenses.

(1.5) A violation of any of the following Sections of the Criminal Code of 1961, when the victim is a person under 18 years of age, the defendant is not a parent of the victim, and the offense was committed on or after January 1, 1996:

- 25 10-1 (kidnapping),
- 26 10-2 (aggravated kidnapping),
- 27 10-3 (unlawful restraint),
- 28 10-3.1 (aggravated unlawful restraint).

An attempt to commit any of these offenses.

(1.6) First degree murder under Section 9-1 of the Criminal Code of 1961, when the victim was a person under 18 years of age and the defendant was at least 17 years of age at the time of the commission of the offense.

(1.7) (Blank).

(1.8) A violation or attempted violation of Section 11-11 (sexual relations within families) of the Criminal

1 Code of 1961, and the offense was committed on or after
2 June 1, 1997.

3 (1.9) Child abduction under paragraph (10) of
4 subsection (b) of Section 10-5 of the Criminal Code of 1961
5 committed by luring or attempting to lure a child under the
6 age of 16 into a motor vehicle, building, house trailer, or
7 dwelling place without the consent of the parent or lawful
8 custodian of the child for other than a lawful purpose and
9 the offense was committed on or after January 1, 1998.

10 (1.10) A violation or attempted violation of any of the
11 following Sections of the Criminal Code of 1961 when the
12 offense was committed on or after July 1, 1999:

13 10-4 (forcible detention, if the victim is under 18
14 years of age),

15 11-6.5 (indecent solicitation of an adult),

16 11-15 (soliciting for a prostitute, if the victim
17 is under 18 years of age),

18 11-16 (pandering, if the victim is under 18 years
19 of age),

20 11-18 (patronizing a prostitute, if the victim is
21 under 18 years of age),

22 11-19 (pimping, if the victim is under 18 years of
23 age).

24 (1.11) A violation or attempted violation of any of the
25 following Sections of the Criminal Code of 1961 when the
26 offense was committed on or after August 22, 2002:

27 11-9 (public indecency for a third or subsequent
28 conviction).

29 (1.12) A violation or attempted violation of Section
30 5.1 of the Wrongs to Children Act (permitting sexual abuse)
31 when the offense was committed on or after August 22, 2002.

32 (2) A violation of any former law of this State
33 substantially equivalent to any offense listed in
34 subsection (B) of this Section.

35 (C) A conviction for an offense of federal law, Uniform
36 Code of Military Justice, or the law of another state or a

1 foreign country that is substantially equivalent to any offense
2 listed in subsections (B), (C), and (E) of this Section shall
3 constitute a conviction for the purpose of this Article. A
4 finding or adjudication as a sexually dangerous person or a
5 sexually violent person under any federal law, Uniform Code of
6 Military Justice, or the law of another state or foreign
7 country that is substantially equivalent to the Sexually
8 Dangerous Persons Act or the Sexually Violent Persons
9 Commitment Act shall constitute an adjudication for the
10 purposes of this Article.

11 (C-5) A person at least 17 years of age at the time of the
12 commission of the offense who is convicted of first degree
13 murder under Section 9-1 of the Criminal Code of 1961, against
14 a person under 18 years of age, shall be required to register
15 for natural life. A conviction for an offense of federal,
16 Uniform Code of Military Justice, sister state, or foreign
17 country law that is substantially equivalent to any offense
18 listed in subsection (C-5) of this Section shall constitute a
19 conviction for the purpose of this Article. This subsection
20 (C-5) applies to a person who committed the offense before June
21 1, 1996 only if the person is incarcerated in an Illinois
22 Department of Corrections facility on August 20, 2004 (the
23 effective date of Public Act 93-977).

24 (D) As used in this Article, "law enforcement agency having
25 jurisdiction" means the Chief of Police in each of the
26 municipalities in which the sex offender expects to reside,
27 work, or attend school (1) upon his or her discharge, parole or
28 release or (2) during the service of his or her sentence of
29 probation or conditional discharge, or the Sheriff of the
30 county, in the event no Police Chief exists or if the offender
31 intends to reside, work, or attend school in an unincorporated
32 area. "Law enforcement agency having jurisdiction" includes
33 the location where out-of-state students attend school and
34 where out-of-state employees are employed or are otherwise
35 required to register.

36 (D-1) As used in this Article, "supervising officer" means

1 the assigned Illinois Department of Corrections parole agent or
2 county probation officer.

3 (E) As used in this Article, "sexual predator" means any
4 person who, after July 1, 1999, is:

5 (1) Convicted for an offense of federal, Uniform Code
6 of Military Justice, sister state, or foreign country law
7 that is substantially equivalent to any offense listed in
8 subsection (E) of this Section shall constitute a
9 conviction for the purpose of this Article. Convicted of a
10 violation or attempted violation of any of the following
11 Sections of the Criminal Code of 1961, if the conviction
12 occurred after July 1, 1999:

13 11-17.1 (keeping a place of juvenile
14 prostitution),

15 11-19.1 (juvenile pimping),

16 11-19.2 (exploitation of a child),

17 11-20.1 (child pornography),

18 12-13 (criminal sexual assault),

19 12-14 (aggravated criminal sexual assault),

20 12-14.1 (predatory criminal sexual assault of a
21 child),

22 12-16 (aggravated criminal sexual abuse),

23 12-33 (ritualized abuse of a child); or

24 (2) convicted of first degree murder under Section 9-1
25 of the Criminal Code of 1961, when the victim was a person
26 under 18 years of age and the defendant was at least 17
27 years of age at the time of the commission of the offense;
28 or

29 (3) certified as a sexually dangerous person pursuant
30 to the Sexually Dangerous Persons Act or any substantially
31 similar federal, Uniform Code of Military Justice, sister
32 state, or foreign country law; or

33 (4) found to be a sexually violent person pursuant to
34 the Sexually Violent Persons Commitment Act or any
35 substantially similar federal, Uniform Code of Military
36 Justice, sister state, or foreign country law; or

1 (5) convicted of a second or subsequent offense which
2 requires registration pursuant to this Act. The conviction
3 for the second or subsequent offense must have occurred
4 after July 1, 1999. For purposes of this paragraph (5),
5 "convicted" shall include a conviction under any
6 substantially similar Illinois, federal, Uniform Code of
7 Military Justice, sister state, or foreign country law.

8 (F) As used in this Article, "out-of-state student" means
9 any sex offender, as defined in this Section, or sexual
10 predator who is enrolled in Illinois, on a full-time or
11 part-time basis, in any public or private educational
12 institution, including, but not limited to, any secondary
13 school, trade or professional institution, or institution of
14 higher learning.

15 (G) As used in this Article, "out-of-state employee" means
16 any sex offender, as defined in this Section, or sexual
17 predator who works in Illinois, regardless of whether the
18 individual receives payment for services performed, for a
19 period of time of 10 or more days or for an aggregate period of
20 time of 30 or more days during any calendar year. Persons who
21 operate motor vehicles in the State accrue one day of
22 employment time for any portion of a day spent in Illinois.

23 (H) As used in this Article, "school" means any public or
24 private educational institution, including, but not limited
25 to, any elementary or secondary school, trade or professional
26 institution, or institution of higher education.

27 (I) As used in this Article, "fixed residence" means any
28 and all places that a sex offender resides for an aggregate
29 period of time of 5 or more days in a calendar year.

30 (Source: P.A. 93-977, eff. 8-20-04; 93-979, eff. 8-20-04;
31 94-166, eff. 1-1-06; 94-168, eff. 1-1-06; revised 8-19-05.)

32 Section 99. Effective date. This Act takes effect upon
33 becoming law.