



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB2509

Introduced 2/15/2008, by Sen. Dan Kotowski

SYNOPSIS AS INTRODUCED:

725 ILCS 5/115-7.3

725 ILCS 5/115-10

from Ch. 38, par. 115-10

Amends the Code of Criminal Procedure of 1963. Provides that if a defendant is accused of child pornography or aggravated child pornography or the defendant is accused of first degree murder or second degree murder when the commission of the offense involves sexual penetration or sexual conduct, evidence of the defendant's commission of another such offense or evidence to rebut that proof or an inference from that proof, may be admissible (if that evidence is otherwise admissible under the rules of evidence) and may be considered for its bearing on any matter to which it is relevant. Provides that (1) testimony by the victim of an out of court statement made by the victim that he or she complained of such act to another; and (2) testimony of an out of court statement made by the victim describing any complaint of such act or matter or detail pertaining to any act which is an element of an offense which is the subject of a prosecution for a sexual or physical act against that victim are admissible as exceptions to the hearsay rule in prosecutions for any sex offense as defined in the Sex Offender Registration Act.

LRB095 17432 RLC 43504 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 Code of Criminal Procedure of 1963 is
5 amended by changing Sections 115-7.3 and 115-10 as follows:

6 (725 ILCS 5/115-7.3)

7 Sec. 115-7.3. Evidence in certain cases.

8 (a) This Section applies to criminal cases in which:

9 (1) the defendant is accused of predatory criminal
10 sexual assault of a child, aggravated criminal sexual
11 assault, criminal sexual assault, aggravated criminal
12 sexual abuse, criminal sexual abuse, child pornography,
13 aggravated child pornography, or criminal transmission of
14 HIV;

15 (2) the defendant is accused of battery, ~~or~~ aggravated
16 battery, first degree murder, or second degree murder when
17 the commission of the offense involves sexual penetration
18 or sexual conduct as defined in Section 12-12 of the
19 Criminal Code of 1961; or

20 (3) the defendant is tried or retried for any of the
21 offenses formerly known as rape, deviate sexual assault,
22 indecent liberties with a child, or aggravated indecent
23 liberties with a child.

1 (b) If the defendant is accused of an offense set forth in
2 paragraph (1) or (2) of subsection (a) or the defendant is
3 tried or retried for any of the offenses set forth in paragraph
4 (3) of subsection (a), evidence of the defendant's commission
5 of another offense or offenses set forth in paragraph (1), (2),
6 or (3) of subsection (a), or evidence to rebut that proof or an
7 inference from that proof, may be admissible (if that evidence
8 is otherwise admissible under the rules of evidence) and may be
9 considered for its bearing on any matter to which it is
10 relevant.

11 (c) In weighing the probative value of the evidence against
12 undue prejudice to the defendant, the court may consider:

13 (1) the proximity in time to the charged or predicate
14 offense;

15 (2) the degree of factual similarity to the charged or
16 predicate offense; or

17 (3) other relevant facts and circumstances.

18 (d) In a criminal case in which the prosecution intends to
19 offer evidence under this Section, it must disclose the
20 evidence, including statements of witnesses or a summary of the
21 substance of any testimony, at a reasonable time in advance of
22 trial, or during trial if the court excuses pretrial notice on
23 good cause shown.

24 (e) In a criminal case in which evidence is offered under
25 this Section, proof may be made by specific instances of
26 conduct, testimony as to reputation, or testimony in the form

1 of an expert opinion, except that the prosecution may offer
2 reputation testimony only after the opposing party has offered
3 that testimony.

4 (f) In prosecutions for a violation of Section 10-2, 12-4,
5 12-13, 12-14, 12-14.1, 12-15, 12-16, or 18-5 of the Criminal
6 Code of 1961, involving the involuntary delivery of a
7 controlled substance to a victim, no inference may be made
8 about the fact that a victim did not consent to a test for the
9 presence of controlled substances.

10 (Source: P.A. 90-132, eff. 1-1-98; 90-735, eff. 8-11-98.)

11 (725 ILCS 5/115-10) (from Ch. 38, par. 115-10)

12 Sec. 115-10. Certain hearsay exceptions.

13 (a) In a prosecution for a physical or sexual act
14 perpetrated upon or against a child under the age of 13, or a
15 person who was a moderately, severely, or profoundly mentally
16 retarded person as defined in this Code and in Section 2-10.1
17 of the Criminal Code of 1961 at the time the act was committed,
18 including but not limited to prosecutions for violations of
19 Sections 12-13 through 12-16 of the Criminal Code of 1961 and
20 prosecutions for violations of Sections 10-1 (kidnapping),
21 10-2 (aggravated kidnapping), 10-3 (unlawful restraint),
22 10-3.1 (aggravated unlawful restraint), 10-4 (forcible
23 detention), 10-5 (child abduction), 10-6 (harboring a
24 runaway), 10-7 (aiding and abetting child abduction), ~~11-6,~~
25 11-9 (public indecency), 11-11 (sexual relations within

1 families), ~~11-15.1, 11-17.1, 11-18.1, 11-19.1, 11-19.2,~~
2 ~~11-20.1,~~ 11-21 (harmful material), 12-1 (assault), 12-2
3 (aggravated assault), 12-3 (battery), 12-3.2 (domestic
4 battery), 12-4 (aggravated battery), 12-4.1 (heinous battery),
5 12-4.2 (aggravated battery with a firearm), 12-4.3 (aggravated
6 battery of a child), 12-4.7 (drug induced infliction of great
7 bodily harm), 12-5 (reckless conduct), 12-6 (intimidation),
8 12-6.1 (compelling organization membership of persons), 12-7.1
9 (hate crime), 12-7.3 (stalking), 12-7.4 (aggravated stalking),
10 12-10 (tattooing body of minor), 12-11 (home invasion), 12-21.5
11 (child abandonment), 12-21.6 (endangering the life or health of
12 a child) or ~~and~~ 12-32 (ritual mutilation) of the Criminal Code
13 of 1961 or any sex offense as defined in subsection (B) of
14 Section 2 of the Sex Offender Registration Act, the following
15 evidence shall be admitted as an exception to the hearsay rule:

16 (1) testimony by the victim of an out of court
17 statement made by the victim that he or she complained of
18 such act to another; and

19 (2) testimony of an out of court statement made by the
20 victim describing any complaint of such act or matter or
21 detail pertaining to any act which is an element of an
22 offense which is the subject of a prosecution for a sexual
23 or physical act against that victim.

24 (b) Such testimony shall only be admitted if:

25 (1) The court finds in a hearing conducted outside the

1 presence of the jury that the time, content, and
2 circumstances of the statement provide sufficient
3 safeguards of reliability; and

4 (2) The child or moderately, severely, or profoundly
5 mentally retarded person either:

6 (A) testifies at the proceeding; or

7 (B) is unavailable as a witness and there is
8 corroborative evidence of the act which is the subject
9 of the statement; and

10 (3) In a case involving an offense perpetrated against
11 a child under the age of 13, the out of court statement was
12 made before the victim attained 13 years of age or within 3
13 months after the commission of the offense, whichever
14 occurs later, but the statement may be admitted regardless
15 of the age of the victim at the time of the proceeding.

16 (c) If a statement is admitted pursuant to this Section,
17 the court shall instruct the jury that it is for the jury to
18 determine the weight and credibility to be given the statement
19 and that, in making the determination, it shall consider the
20 age and maturity of the child, or the intellectual capabilities
21 of the moderately, severely, or profoundly mentally retarded
22 person, the nature of the statement, the circumstances under
23 which the statement was made, and any other relevant factor.

24 (d) The proponent of the statement shall give the adverse
25 party reasonable notice of his intention to offer the statement
26 and the particulars of the statement.

1 (e) Statements described in paragraphs (1) and (2) of
2 subsection (a) shall not be excluded on the basis that they
3 were obtained as a result of interviews conducted pursuant to a
4 protocol adopted by a Child Advocacy Advisory Board as set
5 forth in subsections (c), (d), and (e) of Section 3 of the
6 Children's Advocacy Center Act or that an interviewer or
7 witness to the interview was or is an employee, agent, or
8 investigator of a State's Attorney's office.

9 (Source: P.A. 91-357, eff. 7-29-99; 92-434, eff. 1-1-02.)