



Sen. Toi W. Hutchinson

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1 AMENDMENT TO SENATE BILL 1035

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1035 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Code of Criminal Procedure of 1963 is  
5 amended by adding Section 115-17b as follows:

6 (725 ILCS 5/115-17b new)

7 Sec. 115-17b. Administrative subpoenas.

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

9 "Electronic communication services" and "remote  
10 computing services" have the same meaning as provided in  
11 the Electronic Communications Privacy Act in Chapter 121  
12 (commencing with Section 2701) of Part I of Title 18 of the  
13 United States Code Annotated.

14 "Offense involving the sexual exploitation of  
15 children" means an offense under Section 11-6, 11-6.5,  
16 11-9.1, 11-15.1, 11-17.1, 11-18.1, 11-19.1, 11-19.2,

1       11-20.1, 11-20.3, 11-21, 11-23, 12-13, 12-14, 12-14.1,  
2       12-15, or 12-16 of the Criminal Code of 1961 or any attempt  
3       to commit any of these offenses.

4       (b) Subpoenas duces tecum. In any criminal investigation of  
5       an offense involving the sexual exploitation of children, the  
6       Attorney General, or his or her designee, or a State's  
7       Attorney, or his or her designee, may issue in writing and  
8       cause to be served subpoenas duces tecum to providers of  
9       electronic communication services or remote computing services  
10       requiring the production of records relevant to the  
11       investigation. Any such request for records shall not extend  
12       beyond requiring the provider to disclose the information  
13       specified in 18 U.S.C. 2703(c)(2). Any subpoena duces tecum  
14       issued under this Section shall be made returnable to the Chief  
15       Judge of the Circuit Court for the Circuit in which the State's  
16       Attorney resides, or his or her designee, or for subpoenas  
17       issued by the Attorney General, the subpoena shall be made  
18       returnable to the Chief Judge of the Circuit Court for the  
19       Circuit to which the investigation pertains, or his or her  
20       designee, to determine whether the documents are privileged and  
21       whether the subpoena is unreasonable or oppressive.

22       (c) Contents of subpoena. A subpoena under this Section  
23       shall describe the records or other things required to be  
24       produced and prescribe a return date within a reasonable period  
25       of time within which the objects or records can be assembled  
26       and made available.

1       (c-5) Contemporaneous notice to Chief Judge. Whenever a  
2 subpoena is issued under this Section the Attorney General or  
3 his or her designee or the State's Attorney or his or her  
4 designee shall be required to provide a copy of the subpoena to  
5 the Chief Judge of the county in which the subpoena is  
6 returnable.

7       (d) Modifying or quashing subpoena. At any time before the  
8 return date specified in the subpoena, the person or entity to  
9 whom the subpoena is directed may petition for an order  
10 modifying or quashing the subpoena on the grounds that the  
11 subpoena is oppressive or unreasonable or that the subpoena  
12 seeks privileged documents or records.

13       (e) Ex parte order. An Illinois circuit court for the  
14 circuit in which the subpoena is or will be issued, upon  
15 application of the Attorney General, or his or her designee, or  
16 State's Attorney, or his or her designee, may issue an ex parte  
17 order that no person or entity disclose to any other person or  
18 entity (other than persons necessary to comply with the  
19 subpoena) the existence of such subpoena for a period of up to  
20 90 days.

21       (1) Such order may be issued upon a showing that the  
22 things being sought may be relevant to the investigation  
23 and there is reason to believe that such disclosure may  
24 result in:

25               (A) endangerment to the life or physical safety of  
26 any person;

1           (B) flight to avoid prosecution;

2           (C) destruction of or tampering with evidence;

3           (D) intimidation of potential witnesses; or

4           (E) otherwise seriously jeopardizing an  
5           investigation or unduly delaying a trial.

6           (2) An order under this Section may be renewed for  
7           additional periods of up to 90 days upon a showing that the  
8           circumstances described in paragraph (1) of this  
9           subsection (e) continue to exist.

10          (f) Enforcement. A witness who is duly subpoenaed who  
11          neglects or refuses to comply with the subpoena shall be  
12          proceeded against and punished for contempt of the court. A  
13          subpoena duces tecum issued under this Section may be enforced  
14          pursuant to the Uniform Act to Secure the Attendance of  
15          Witnesses from Within or Without a State in Criminal  
16          Proceedings.

17          (g) Immunity From civil liability. Notwithstanding any  
18          federal, State, or local law, any person, including officers,  
19          agents, and employees, receiving a subpoena under this Section,  
20          who complies in good faith with the subpoena and thus produces  
21          the materials sought, shall not be liable in any court of  
22          Illinois to any customer or other person for such production or  
23          for nondisclosure of that production to the customer.

24           Section 10. The Unified Code of Corrections is amended by  
25           changing Section 5-8-4 as follows:

1 (730 ILCS 5/5-8-4) (from Ch. 38, par. 1005-8-4)

2 Sec. 5-8-4. Concurrent and consecutive terms of  
3 imprisonment.

4 (a) Concurrent terms; multiple or additional sentences.  
5 When an Illinois court (i) imposes multiple sentences of  
6 imprisonment on a defendant at the same time or (ii) imposes a  
7 sentence of imprisonment on a defendant who is already subject  
8 to a sentence of imprisonment imposed by an Illinois court, a  
9 court of another state, or a federal court, then the sentences  
10 shall run concurrently unless otherwise determined by the  
11 Illinois court under this Section.

12 (b) Concurrent terms; misdemeanor and felony. A defendant  
13 serving a sentence for a misdemeanor who is convicted of a  
14 felony and sentenced to imprisonment shall be transferred to  
15 the Department of Corrections, and the misdemeanor sentence  
16 shall be merged in and run concurrently with the felony  
17 sentence.

18 (c) Consecutive terms; permissive. The court may impose  
19 consecutive sentences in any of the following circumstances:

20 (1) If, having regard to the nature and circumstances  
21 of the offense and the history and character of the  
22 defendant, it is the opinion of the court that consecutive  
23 sentences are required to protect the public from further  
24 criminal conduct by the defendant, the basis for which the  
25 court shall set forth in the record.

1           (2) If one of the offenses for which a defendant was  
2 convicted was a violation of Section 32-5.2 (aggravated  
3 false personation of a peace officer) of the Criminal Code  
4 of 1961 (720 ILCS 5/32-5.2) and the offense was committed  
5 in attempting or committing a forcible felony.

6           (d) Consecutive terms; mandatory. The court shall impose  
7 consecutive sentences in each of the following circumstances:

8           (1) One of the offenses for which the defendant was  
9 convicted was first degree murder or a Class X or Class 1  
10 felony and the defendant inflicted severe bodily injury.

11           (2) The defendant was convicted of a violation of  
12 Section 11-20.1 (child pornography), 11-20.3 (aggravated  
13 child pornography), 12-13 (criminal sexual assault), 12-14  
14 (aggravated criminal sexual assault), or 12-14.1  
15 (predatory criminal sexual assault of a child) of the  
16 Criminal Code of 1961 (720 ILCS 5/11-20.1, 5/11-20.3,  
17 5/12-13, 5/12-14, or 5/12-14.1).

18           (3) The defendant was convicted of armed violence based  
19 upon the predicate offense of any of the following:  
20 solicitation of murder, solicitation of murder for hire,  
21 heinous battery, aggravated battery of a senior citizen,  
22 criminal sexual assault, a violation of subsection (g) of  
23 Section 5 of the Cannabis Control Act (720 ILCS 550/5),  
24 cannabis trafficking, a violation of subsection (a) of  
25 Section 401 of the Illinois Controlled Substances Act (720  
26 ILCS 570/401), controlled substance trafficking involving

1 a Class X felony amount of controlled substance under  
2 Section 401 of the Illinois Controlled Substances Act (720  
3 ILCS 570/401), a violation of the Methamphetamine Control  
4 and Community Protection Act (720 ILCS 646/), calculated  
5 criminal drug conspiracy, or streetgang criminal drug  
6 conspiracy.

7 (4) The defendant was convicted of the offense of  
8 leaving the scene of a motor vehicle accident involving  
9 death or personal injuries under Section 11-401 of the  
10 Illinois Vehicle Code (625 ILCS 5/11-401) and either: (A)  
11 aggravated driving under the influence of alcohol, other  
12 drug or drugs, or intoxicating compound or compounds, or  
13 any combination thereof under Section 11-501 of the  
14 Illinois Vehicle Code (625 ILCS 5/11-501), (B) reckless  
15 homicide under Section 9-3 of the Criminal Code of 1961  
16 (720 ILCS 5/9-3), or (C) both an offense described in item  
17 (A) and an offense described in item (B).

18 (5) The defendant was convicted of a violation of  
19 Section 9-3.1 (concealment of homicidal death) or Section  
20 12-20.5 (dismembering a human body) of the Criminal Code of  
21 1961 (720 ILCS 5/9-3.1 or 5/12-20.5).

22 (5.5) The defendant was convicted of a violation of  
23 Section 24-3.7 (use of a stolen firearm in the commission  
24 of an offense) of the Criminal Code of 1961.

25 (6) If the defendant was in the custody of the  
26 Department of Corrections at the time of the commission of

1 the offense, the sentence shall be served consecutive to  
2 the sentence under which the defendant is held by the  
3 Department of Corrections. If, however, the defendant is  
4 sentenced to punishment by death, the sentence shall be  
5 executed at such time as the court may fix without regard  
6 to the sentence under which the defendant may be held by  
7 the Department.

8 (7) A sentence under Section 3-6-4 (730 ILCS 5/3-6-4)  
9 for escape or attempted escape shall be served consecutive  
10 to the terms under which the offender is held by the  
11 Department of Corrections.

12 (8) If a person charged with a felony commits a  
13 separate felony while on pretrial release or in pretrial  
14 detention in a county jail facility or county detention  
15 facility, then the sentences imposed upon conviction of  
16 these felonies shall be served consecutively regardless of  
17 the order in which the judgments of conviction are entered.

18 (8.5) If a person commits a battery against a county  
19 correctional officer or sheriff's employee while serving a  
20 sentence or in pretrial detention in a county jail  
21 facility, then the sentence imposed upon conviction of the  
22 battery shall be served consecutively with the sentence  
23 imposed upon conviction of the earlier misdemeanor or  
24 felony, regardless of the order in which the judgments of  
25 conviction are entered.

26 (9) If a person admitted to bail following conviction



1 of a felony commits a separate felony while free on bond or  
2 if a person detained in a county jail facility or county  
3 detention facility following conviction of a felony  
4 commits a separate felony while in detention, then any  
5 sentence following conviction of the separate felony shall  
6 be consecutive to that of the original sentence for which  
7 the defendant was on bond or detained.

8 (10) If a person is found to be in possession of an  
9 item of contraband, as defined in clause (c) (2) of Section  
10 31A-1.1 of the Criminal Code of 1961, while serving a  
11 sentence in a county jail or while in pre-trial detention  
12 in a county jail, the sentence imposed upon conviction for  
13 the offense of possessing contraband in a penal institution  
14 shall be served consecutively to the sentence imposed for  
15 the offense in which the person is serving sentence in the  
16 county jail or serving pretrial detention, regardless of  
17 the order in which the judgments of conviction are entered.

18 (11) If a person is sentenced for a violation of bail  
19 bond under Section 32-10 of the Criminal Code of 1961, any  
20 sentence imposed for that violation shall be served  
21 consecutive to the sentence imposed for the charge for  
22 which bail had been granted and with respect to which the  
23 defendant has been convicted.

24 (e) Consecutive terms; subsequent non-Illinois term. If an  
25 Illinois court has imposed a sentence of imprisonment on a  
26 defendant and the defendant is subsequently sentenced to a term

1 of imprisonment by a court of another state or a federal court,  
2 then the Illinois sentence shall run consecutively to the  
3 sentence imposed by the court of the other state or the federal  
4 court. That same Illinois court, however, may order that the  
5 Illinois sentence run concurrently with the sentence imposed by  
6 the court of the other state or the federal court, but only if  
7 the defendant applies to that same Illinois court within 30  
8 days after the sentence imposed by the court of the other state  
9 or the federal court is finalized.

10 (f) Consecutive terms; aggregate maximums and minimums.  
11 The aggregate maximum and aggregate minimum of consecutive  
12 sentences shall be determined as follows:

13 (1) For sentences imposed under law in effect prior to  
14 February 1, 1978, the aggregate maximum of consecutive  
15 sentences shall not exceed the maximum term authorized  
16 under Section 5-8-1 (730 ILCS 5/5-8-1) or Article 4.5 of  
17 Chapter V for the 2 most serious felonies involved. The  
18 aggregate minimum period of consecutive sentences shall  
19 not exceed the highest minimum term authorized under  
20 Section 5-8-1 (730 ILCS 5/5-8-1) or Article 4.5 of Chapter  
21 V for the 2 most serious felonies involved. When sentenced  
22 only for misdemeanors, a defendant shall not be  
23 consecutively sentenced to more than the maximum for one  
24 Class A misdemeanor.

25 (2) For sentences imposed under the law in effect on or  
26 after February 1, 1978, the aggregate of consecutive

1 sentences for offenses that were committed as part of a  
2 single course of conduct during which there was no  
3 substantial change in the nature of the criminal objective  
4 shall not exceed the sum of the maximum terms authorized  
5 under Article 4.5 of Chapter V for the 2 most serious  
6 felonies involved, but no such limitation shall apply for  
7 offenses that were not committed as part of a single course  
8 of conduct during which there was no substantial change in  
9 the nature of the criminal objective. When sentenced only  
10 for misdemeanors, a defendant shall not be consecutively  
11 sentenced to more than the maximum for one Class A  
12 misdemeanor.

13 (g) Consecutive terms; manner served. In determining the  
14 manner in which consecutive sentences of imprisonment, one or  
15 more of which is for a felony, will be served, the Department  
16 of Corrections shall treat the defendant as though he or she  
17 had been committed for a single term subject to each of the  
18 following:

19 (1) The maximum period of a term of imprisonment shall  
20 consist of the aggregate of the maximums of the imposed  
21 indeterminate terms, if any, plus the aggregate of the  
22 imposed determinate sentences for felonies, plus the  
23 aggregate of the imposed determinate sentences for  
24 misdemeanors, subject to subsection (f) of this Section.

25 (2) The parole or mandatory supervised release term  
26 shall be as provided in paragraph (e) of Section 5-4.5-50

1 (730 ILCS 5/5-4.5-50) for the most serious of the offenses  
2 involved.

3 (3) The minimum period of imprisonment shall be the  
4 aggregate of the minimum and determinate periods of  
5 imprisonment imposed by the court, subject to subsection  
6 (f) of this Section.

7 (4) The defendant shall be awarded credit against the  
8 aggregate maximum term and the aggregate minimum term of  
9 imprisonment for all time served in an institution since  
10 the commission of the offense or offenses and as a  
11 consequence thereof at the rate specified in Section 3-6-3  
12 (730 ILCS 5/3-6-3).

13 (Source: P.A. 95-379, eff. 8-23-07; 95-766, eff. 1-1-09;  
14 95-1052, eff. 7-1-09; 96-190, eff. 1-1-10; 96-1000, eff.  
15 7-2-10; 96-1200, eff. 7-22-10.)

16 Section 99. Effective date. This Act takes effect upon  
17 becoming law."