

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 who suffers from a permanent physical  
22 or mental impairment resulting from disease, injury,  
23 functional disorder, or congenital condition that  
24 impairs the individual's mental or physical ability to  
25 independently manage his or her property or financial  
26 resources, or both; or

27 (ii) a person diagnosed with a developmental  
28 disability as defined in Section 1-106 of the Mental  
29 Health and Developmental Disabilities Code; or

30 (iii) a person diagnosed with a mental illness as  
31 defined in Section 1-129 of the Mental Health and  
32 Developmental Disabilities Code.

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

34 (i) a developmental disability facility as defined

1 in the Mental Health and Developmental Disabilities  
2 Code; or

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

5 (3) "Community agency" or "agency" means any community  
6 entity or program providing mental health or developmental  
7 disabilities services that is licensed, certified, or  
8 funded by the Department of Human Services and not licensed  
9 or certified by any other human service agency of the State  
10 such as the Departments of Public Health, Healthcare and  
11 Family Services, and Children and Family Services.

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

14 (5) "Employee" means:

15 (i) any person employed by the Illinois Department  
16 of Human Services;

17 (ii) any person employed by a community agency  
18 providing services at the direction of the owner or  
19 operator of the agency on or off site; or

20 (iii) any person who is a contractual employee or  
21 contractual agent of the Department of Human Services  
22 or the community agency. This includes but is not  
23 limited to payroll personnel, contractors,  
24 subcontractors, and volunteers.

25 (6) "Sexual conduct" or "sexual penetration" means any  
26 act of sexual conduct or sexual penetration as defined in  
27 Section 12-12 of this Code.

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

30 (1) he or she is an employee and knowingly engages in  
31 sexual conduct or sexual penetration with a person with a  
32 disability who is under the care and custody of the  
33 Department of Human Services at a State-operated facility;  
34 or

35 (2) he or she is an employee of a community agency  
36 funded by the Department of Human Services and knowingly

1 engages in sexual conduct or sexual penetration with a  
2 person with a disability who is receiving services from the  
3 community agency.

4 (c) For purposes of this Section, the consent of a person  
5 with a disability in custody of the Department of Human  
6 Services residing at a State-operated facility or receiving  
7 services from a community agency shall not be a defense to a  
8 prosecution under this Section. A person is deemed incapable of  
9 consent, for purposes of this Section, when he or she is a  
10 person with a disability and is receiving services at a  
11 State-operated facility or is a person with a disability who is  
12 receiving services from a community agency funded by the  
13 Department of Human Services.

14 (d) This Section does not apply to:

15 (1) any State employee or any community agency employee  
16 who is lawfully married to a person with a disability in  
17 custody of the Department of Human Services or receiving  
18 services from a community agency if the marriage occurred  
19 before the date of custody or the initiation of services at  
20 a community agency; or

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

27 (e) Sentence. Sexual misconduct with a person with a  
28 disability is a Class 3 felony.

29 (f) Any person convicted of violating this Section shall  
30 immediately forfeit his or her employment with the State or the  
31 community agency.

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

34 (730 ILCS 150/2) (from Ch. 38, par. 222)

1           Sec. 2. Definitions.

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

4           (1) charged pursuant to Illinois law, or any  
5 substantially similar federal, Uniform Code of Military  
6 Justice, sister state, or foreign country law, with a sex  
7 offense set forth in subsection (B) of this Section or the  
8 attempt to commit an included sex offense, and:

9           (a) is convicted of such offense or an attempt to  
10 commit such offense; or

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

13           (c) is found not guilty by reason of insanity  
14 pursuant to Section 104-25(c) of the Code of Criminal  
15 Procedure of 1963 of such offense or an attempt to  
16 commit such offense; or

17           (d) is the subject of a finding not resulting in an  
18 acquittal at a hearing conducted pursuant to Section  
19 104-25(a) of the Code of Criminal Procedure of 1963 for  
20 the alleged commission or attempted commission of such  
21 offense; or

22           (e) is found not guilty by reason of insanity  
23 following a hearing conducted pursuant to a federal,  
24 Uniform Code of Military Justice, sister state, or  
25 foreign country law substantially similar to Section  
26 104-25(c) of the Code of Criminal Procedure of 1963 of  
27 such offense or of the attempted commission of such  
28 offense; or

29           (f) is the subject of a finding not resulting in an  
30 acquittal at a hearing conducted pursuant to a federal,  
31 Uniform Code of Military Justice, sister state, or  
32 foreign country law substantially similar to Section  
33 104-25(a) of the Code of Criminal Procedure of 1963 for  
34 the alleged violation or attempted commission of such  
35 offense; or

36           (2) certified as a sexually dangerous person pursuant

1 to the Illinois Sexually Dangerous Persons Act, or any  
2 substantially similar federal, Uniform Code of Military  
3 Justice, sister state, or foreign country law; or

4 (3) subject to the provisions of Section 2 of the  
5 Interstate Agreements on Sexually Dangerous Persons Act;  
6 or

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

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

24 Convictions that result from or are connected with the same  
25 act, or result from offenses committed at the same time, shall  
26 be counted for the purpose of this Article as one conviction.  
27 Any conviction set aside pursuant to law is not a conviction  
28 for purposes of this Article.

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

1 registration of 10 years from the date of conviction.

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

3 (1) A violation of any of the following Sections of the  
4 Criminal Code of 1961:

5 11-20.1 (child pornography),

6 11-6 (indecent solicitation of a child),

7 11-9.1 (sexual exploitation of a child),

8 11-9.2 (custodial sexual misconduct),

9 11-9.5 (sexual misconduct with a person with a  
10 disability),

11 11-15.1 (soliciting for a juvenile prostitute),

12 11-18.1 (patronizing a juvenile prostitute),

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 12-13 (criminal sexual assault),

18 12-14 (aggravated criminal sexual assault),

19 12-14.1 (predatory criminal sexual assault of a  
20 child),

21 12-15 (criminal sexual abuse),

22 12-16 (aggravated criminal sexual abuse),

23 12-33 (ritualized abuse of a child).

24 An attempt to commit any of these offenses.

25 (1.5) A violation of any of the following Sections of  
26 the Criminal Code of 1961, when the victim is a person  
27 under 18 years of age, the defendant is not a parent of the  
28 victim, and the offense was committed on or after January  
29 1, 1996:

30 10-1 (kidnapping),

31 10-2 (aggravated kidnapping),

32 10-3 (unlawful restraint),

33 10-3.1 (aggravated unlawful restraint).

34 An attempt to commit any of these offenses.

35 (1.6) First degree murder under Section 9-1 of the  
36 Criminal Code of 1961, when the victim was a person under

1 18 years of age and the defendant was at least 17 years of  
2 age at the time of the commission of the offense.

3 (1.7) (Blank).

4 (1.8) A violation or attempted violation of Section  
5 11-11 (sexual relations within families) of the Criminal  
6 Code of 1961, and the offense was committed on or after  
7 June 1, 1997.

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

15 (1.10) A violation or attempted violation of any of the  
16 following Sections of the Criminal Code of 1961 when the  
17 offense was committed on or after July 1, 1999:

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

20 11-6.5 (indecent solicitation of an adult),

21 11-15 (soliciting for a prostitute, if the victim  
22 is under 18 years of age),

23 11-16 (pandering, if the victim is under 18 years  
24 of age),

25 11-18 (patronizing a prostitute, if the victim is  
26 under 18 years of age),

27 11-19 (pimping, if the victim is under 18 years of  
28 age).

29 (1.11) A violation or attempted violation of any of the  
30 following Sections of the Criminal Code of 1961 when the  
31 offense was committed on or after August 22, 2002:

32 11-9 (public indecency for a third or subsequent  
33 conviction).

34 (1.12) A violation or attempted violation of Section  
35 5.1 of the Wrongs to Children Act (permitting sexual abuse)  
36 when the offense was committed on or after August 22, 2002.

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

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

16          (C-5) A person at least 17 years of age at the time of the  
17          commission of the offense who is convicted of first degree  
18          murder under Section 9-1 of the Criminal Code of 1961, against  
19          a person under 18 years of age, shall be required to register  
20          for natural life. A conviction for an offense of federal,  
21          Uniform Code of Military Justice, sister state, or foreign  
22          country law that is substantially equivalent to any offense  
23          listed in subsection (C-5) of this Section shall constitute a  
24          conviction for the purpose of this Article. This subsection  
25          (C-5) applies to a person who committed the offense before June  
26          1, 1996 only if the person is incarcerated in an Illinois  
27          Department of Corrections facility on August 20, 2004 (the  
28          effective date of Public Act 93-977).

29          (D) As used in this Article, "law enforcement agency having  
30          jurisdiction" means the Chief of Police in each of the  
31          municipalities in which the sex offender expects to reside,  
32          work, or attend school (1) upon his or her discharge, parole or  
33          release or (2) during the service of his or her sentence of  
34          probation or conditional discharge, or the Sheriff of the  
35          county, in the event no Police Chief exists or if the offender  
36          intends to reside, work, or attend school in an unincorporated

1 area. "Law enforcement agency having jurisdiction" includes  
2 the location where out-of-state students attend school and  
3 where out-of-state employees are employed or are otherwise  
4 required to register.

5 (D-1) As used in this Article, "supervising officer" means  
6 the assigned Illinois Department of Corrections parole agent or  
7 county probation officer.

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

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

18 11-17.1 (keeping a place of juvenile  
19 prostitution),  
20 11-19.1 (juvenile pimping),  
21 11-19.2 (exploitation of a child),  
22 11-20.1 (child pornography),  
23 12-13 (criminal sexual assault),  
24 12-14 (aggravated criminal sexual assault),  
25 12-14.1 (predatory criminal sexual assault of a  
26 child),  
27 12-16 (aggravated criminal sexual abuse),  
28 12-33 (ritualized abuse of a child); or

29 (2) convicted of first degree murder under Section 9-1  
30 of the Criminal Code of 1961, when the victim was a person  
31 under 18 years of age and the defendant was at least 17  
32 years of age at the time of the commission of the offense;  
33 or

34 (3) certified as a sexually dangerous person pursuant  
35 to the Sexually Dangerous Persons Act or any substantially  
36 similar federal, Uniform Code of Military Justice, sister

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

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

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

28 (H) As used in this Article, "school" means any public or  
29 private educational institution, including, but not limited  
30 to, any elementary or secondary school, trade or professional  
31 institution, or institution of higher education.

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

35 (Source: P.A. 93-977, eff. 8-20-04; 93-979, eff. 8-20-04;  
36 94-166, eff. 1-1-06; 94-168, eff. 1-1-06; revised 8-19-05.)

1           Section 99. Effective date. This Act takes effect upon  
2    becoming law.