

Prosecuting Older Sex Crimes Cases

**Resolving Statute of Limitations, Charging and Sentencing
Issues for Offenses after July 1, 1984**

Sheryl Essenburg, Sangamon County Assistant State's Attorney

and

Illinois Coalition Against Sexual Assault

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I. INTRODUCTION

The laws concerning sexual crimes in Illinois were completely rewritten in the early 1980s, with the new laws taking effect July 1, 1984. Since that time there have been a number of changes and additions to the criminal statutes and there also have been several changes to the statutes of limitations concerning sex crimes.

This Guide addresses changes in the statutes of limitations related specifically to sex crimes and also addresses changes in the most frequently charged sex crimes (criminal sexual assault, aggravated criminal sexual assault, predatory criminal sexual assault, criminal sexual abuse and aggravated criminal sexual abuse). Because of the unlikelihood that any cases occurring prior to July 1, 1984, would still be prosecuted, this Guide addresses only the crimes that were created with the legislation that took effect on July 1, 1984. Crimes occurring before that date would have to be charged as rape, deviant sexual assault, etc. Those crimes are not included in this Guide.

As discussed in detail below, when considering charging a felony crime that occurred more than three years earlier, it is necessary to determine whether the case is barred by the statute of limitations or whether extended limitations unique to sex crimes apply to the case. This Guide also discusses the application of the DNA database exception to the statute of limitations. Exceptions to the statute of limitations that are not unique to sex crimes (*e.g.*, absence of the suspect from Illinois) are not discussed.

If the applicable statute of limitations does allow the prosecution of an old case, it is then necessary to determine what the proper charge will be. Charging a viable case using the wrong statute is reversible error. *People v. Tellez-Valencia* 188 Ill.2d 523, 723 N.E.2d 223, 243 Ill.Dec. 191 (1999). The five major sex offenses are set forth in this document in their 2007 form with changes occurring since 1984 and the effective dates of those changes indicated.

Next, this Guide includes a discussion of the changes in sentencing provisions for the five major sex crimes so that prosecutors can determine what the sentencing options are for each crime.

Finally, since the case law makes it clear that an extended statute of limitation must be pled and proven, examples are given of ways to plead an extended statute of limitations.

II. APPLYING THE STATUTE OF LIMITATIONS

A cursory look at the current statute of limitations could leave the impression that all cases of sexual assault involving minor victims can be prosecuted as long as the victim has not yet reached the age of 38. Similarly, one could get the impression that any sex crime in which DNA was obtained and entered into a database can be prosecuted at any time. In fact, a modification to the statute of limitations can only extend the viability of a charge that was still viable at the time the change became effective. If a charge has already expired under the statute of limitations, no change to the statute can revive it. This has long been established law in Illinois and was the holding of the United States Supreme Court in *Stogner v. California*, 539 U.S. 607, 156 L.Ed.2d 544, 123 S.Ct. 2446 (2003).

For this reason, in every felony sex case that is considered for charging more than three years after its occurrence, it is necessary to determine not only what the current statute of limitations is but also whether the case was still viable when the current statute of limitations became effective. If the case is still prosecutable, it is then necessary to check the “Changes in the Criminal Statutes” section on page 8 to determine what the appropriate charge will be. Charging a crime that was not yet in existence at the time the crime occurred will result in reversal. *People v. Tellez-Valencia* 188 Ill.2d 523, 723 N.E.2d 223, 243 Ill.Dec. 191 (1999).

A. Cases Involving Minor Victims (720 ILCS 5/3-6(j))

In 1986, the Illinois legislature first recognized the necessity of providing for an extension to the normal three-year felony statute of limitations in cases of child victims. In 1986, the statute of limitations was extended for child victims of sex crimes to one year after attaining the age of majority (18). P.A. 84-506 (eff. Jan. 1, 1986). In other words, a case could be charged any time before the victim’s 19th birthday even if, for example, the sexual assault had occurred when the child was six years old. This change first extended only cases in which the victim and offender were family members but was soon modified to include all child victims regardless of whether there was a family relationship. P.A. 84-1280 (eff. Aug. 15, 1986). P.A. 84-1280 also clarified that when the victim is a minor, the statute of limitations will not expire sooner than three years after the commission of the offense.

In 2000, this one-year limitations period was changed to 10 years, extending cases of criminal sexual assault, aggravated criminal sexual assault, predatory criminal sexual assault of a child, or aggravated criminal sexual abuse until the victim turns 28. P.A. 91-475 (eff. Jan. 1, 2000). There was an additional reporting requirement if the victim was not a family member, which was removed in 2002. P.A. 92-801 (eff. Aug. 16, 2002). In 2003, the law was changed again to 20 years, now allowing prosecution until the victim reaches the age of 38. P.A. 93-356 (eff. July 24, 2003). Since the 10-year and 20-year extensions occurred only three years apart, any case that survived the change to the age of 28 also qualifies for the age 38 extended statute. The challenge is in determining whether the case was still viable when the 2000 change occurred.

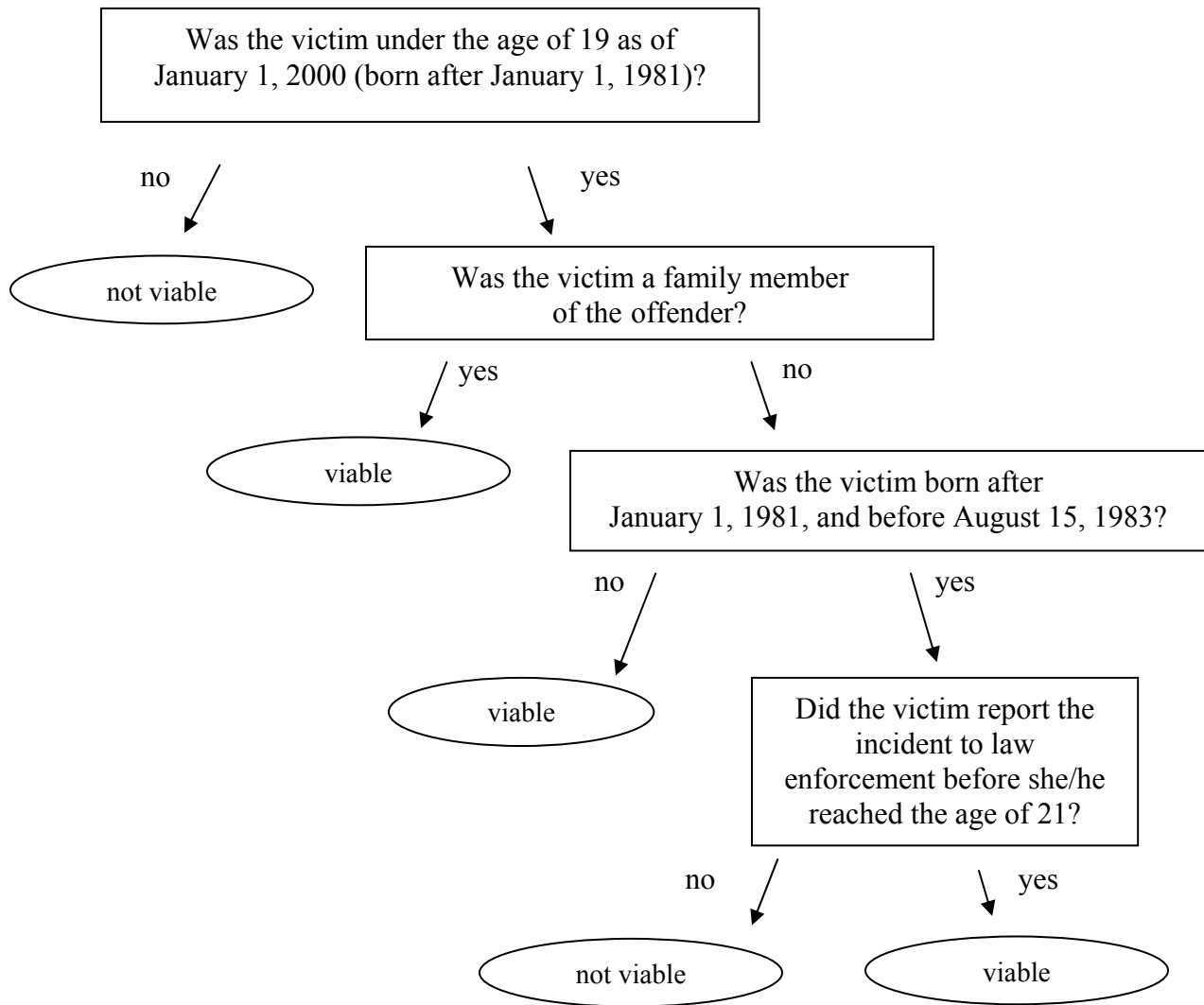
The Formula (Minor Victims Only)

If the sexual crime occurred after July 1, 1984, and the victim was a minor (under 18) when the crime occurred and is currently under the age of 38:

1. Was the victim under the age of 19 as of January 1, 2000 (born after January 1, 1981)?
 - If “no,” the case is not viable.
 - If “yes,” continue.
2. Was the victim a family member to the perpetrator (“family member” being defined by 720 ILCS 5/12-12(c))?
 - If “yes,” the case is viable.
 - If “no,” continue.
3. Was the victim born after January 1, 1981, and before August 15, 1983?¹
 - If “no,” the case is viable.
 - If “yes,” continue.
4. Did the victim report the incident to law enforcement by age 21?
 - If “no,” the case is not viable.
 - If “yes,” the case is viable.

¹ This reporting requirement for non-family member offenders was in effect for less than three years and was removed in 2002. See “Cases Involving Minor Victims” on page 2.

Child Victim



B. Cases Involving Adult Victims (720 ILCS 5/3-6(i))

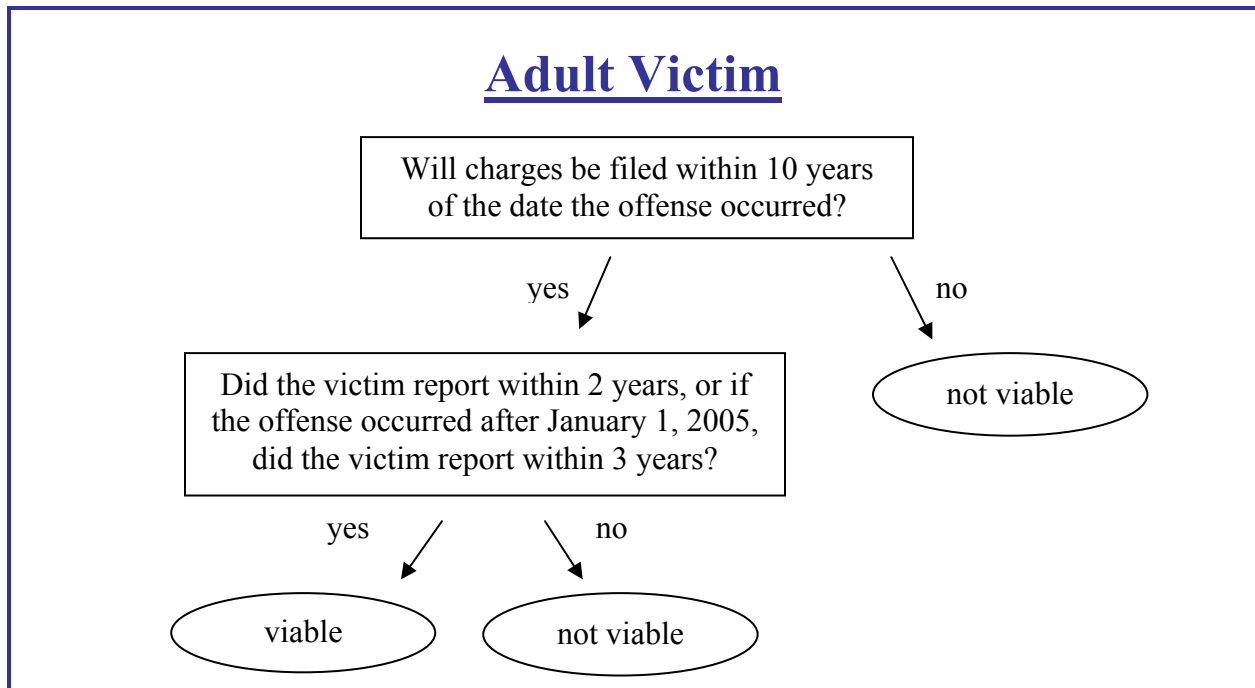
While the legislature was quick to extend the statute of limitations for child victims, and subsequently has created several additional extensions, special extensions for adult victims took longer. The first took effect on January 1, 1996, and extended the usual three years to five *if* the victim reported the offense to law enforcement authorities within six months of the commission of the offense. P.A. 89-354. Four years later, effective January 1, 2000, the five years was extended to 10 and the reporting time was extended from six months to two years. P.A. 91-475. Effective January 1, 2007, the reporting time was extended from two years to three years. P.A. 94-990.

The Formula (Adult Victims Only)

The passage of time has simplified the calculation. At this time there are only two inquiries to be made:

1. Will charges be filed within 10 years of the date the offense occurred?
2. Did the victim report the offense to law enforcement authorities within two years of the offense or, if the offense occurred after January 1, 2005, did the victim report it within three years of the offense?

If both of these questions can be answered in the affirmative, the case is not barred by the statute of limitations. If the answer to either question is “no” the case is barred. NOTE: The extended limitations provisions *never* operate to shorten the period of limitations. Therefore, even before the amendment effective in 2007, the general statute provided that if the crime is charged within the normal three-year statute of limitations, the reporting requirement does not apply. 720 ILCS 5/3-6.



C. Cases Involving a Fiduciary Relationship (720 ILCS 5/3-6(e))

When the perpetrator had a professional or fiduciary relationship with the adult victim, the case may be commenced within one year of the discovery of the offense by the victim. This addition was effective January 1, 1988, so the statute allows prosecution of any sexual crimes occurring after January 1, 1988, providing they were formally charged within a year of discovery. P.A. 85-441. Section 3-6(e) might also allow prosecution of crimes occurring after January 1, 1985, on the theory that the prosecution was still viable under the normal three-year felony statute of limitations when the new statute of limitations took effect on January 1, 1988.

D. Cases Involving DNA (720 ILCS 5/3-5(a))

A significant change was made to the statute of limitations, effective August 2, 2002. P.A. 92-752. For sexual crimes in which a DNA profile of the offender is obtained and entered into a DNA database, there is no statute of limitations if

1. a DNA profile of the offender is obtained and entered into a DNA database within 10 years after the commission of the offense; and
2. the identity of the offender is unknown after a diligent investigation by law enforcement authorities; and
 - a. the victim reported the offense to law enforcement within two years after the offense (unless a longer period is provided by the extended limitations section); *or*
 - b. the victim was murdered during the course of the offense or within two years of the offense (P.A. 93-834 (eff. July 29, 2004)).

1. Adult Victims

While this is a very useful change in cases to which it applies, the reality is that Section 3-5(a) will not apply to most cases. Most cases of sexual assault and sexual abuse are *not* committed by strangers. This is true for adults and even truer for children.

When a prosecutor does encounter an old case in which the conditions of this section are met, this change in the law should allow for prosecution of cases involving adult victims when the offense occurred any time after January 1, 1995. This is based on the fact that only cases occurring after January 1, 1995, would still have been viable on January 1, 2000, when Public Act 91-475 extended the five-year limitation to 10 years. Those same cases would then have been viable (until January 1, 2005) when the DNA provision under P.A. 92-752 took effect on August 2, 2002.

2. Child Victims

Cases of sexual assaults on children by strangers are extremely rare. However, if the requirements of this section could be met, a case occurring as early as 1983 could be prosecuted. In order for this to be possible, the victim would have to have been born no earlier than January 1, 1981 (so that the victim would still be under 19 when P.A. 91-475 took effect on January 1, 2000). What is not clear is what would be required in the way of reporting if the victim was an infant or very young child at the time of the crime. Crimes occurring prior to 1983 would have expired after three years, not qualifying for the “18+1” change that took effect August 15, 1986 (P.A. 84-1280).

NOTE: Crimes occurring prior to July 1, 1984, would have to be charged under the old sex crime statutes (rape, indecent liberties with a child, etc.), which are not included in this publication.

III. PLEADING THE EXTENDED STATUTE OF LIMITATIONS

Illinois law requires that when an extended statute of limitations is applicable, it must be pleaded and proved. *People v. Coleman*, 245 Ill.App.3d 592, 615 N.E.2d 53, 185 Ill.Dec. 758 (5th Dist. 1993). Following are model charges with allegations of an extended limitation:

A. Aggravated Criminal Sexual Assault (Minor Victim) Committed in 1993

NOTE: Because the crime occurred prior to the creation of “Predatory Criminal Sexual Assault,” the crime is charged under the statute as it existed in 1993.

That between June 1 and August 31, 1993, the defendant committed the offense of AGGRAVATED CRIMINAL SEXUAL ASSAULT in violation of Section 12-14 of Act 5 of Chapter 720 of the Illinois Compiled Statutes of said State in that the said defendant, who was 17 years of age or older, committed an act of sexual penetration with A.B., who was under 13 years of age when the act was committed, in that the defendant placed his penis in the mouth of A.B., said offense occurring during the minority of the victim and the victim presently being under the age of 38, thus extending the period of limitations pursuant to 720 ILCS 5/3-6(j).

B. Criminal Sexual Assault (Adult Victim) Committed in 1999

That on or about June 12, 1999, the defendant committed the offense of CRIMINAL SEXUAL ASSAULT in violation of Section 12-13(a)(1) of the Illinois Compiled Statutes of said State, in that the said defendant committed an act of sexual penetration with Jane Brown in that by the use of force said defendant placed his penis in the vagina of Jane Brown, said offense having occurred within the past ten years and having been reported to law enforcement authorities within two years of its occurrence, thus extending the period of limitations pursuant to 720 ILCS 5/3-6(i).

IV. CHANGES IN THE CRIMINAL STATUTES

Knowing whether a case is barred or still viable under the statute of limitations is the first step in determining whether an old case can be charged. The next step is determining what crime to charge. Over the years, the Illinois legislature has made additions and modifications to the major sex crimes. Probably the most significant is the renaming of one section of “Aggravated Criminal Sexual Assault” to “Predatory Criminal Sexual Assault.” Using the wrong name for the crime is reversible error. *People v. Tellez-Valencia*¹⁸⁸ Ill.2d 523, 723 N.E.2d 223, 243 Ill.Dec. 191 (1999). Therefore, it is essential in charging older cases to be certain that the correct charge is used.

Following are the definitions and sexual crimes as they exist in 2007 with altered type showing the changes and when they took effect.

A. Definitions (720 ILCS 5/12-12)

“Sexual Conduct” means any intentional or knowing touching or fondling by the victim or the accused, either directly or through clothing, of the sex organs, anus or breast of the victim or the accused, or any part of the body of a child under 13 years of age, *or any transfer or transmission of semen by the accused upon any part of the clothed or unclothed body of the victim,*¹ for the purpose of sexual gratification or arousal of the victim or the accused. 720 ILCS 5/12-12(e).

¹ Italicized section added by P.A. 91-116 (eff. Jan. 1, 2000).

“Sexual Penetration” means any contact, however slight, between the sex organ *or anus*¹ of one person *by an object,*¹ the sex organ, mouth, or anus of another person, or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sex organ or anus of another person, including but not limited to cunnilingus, fellatio or anal penetration. Evidence of emission of semen is not required to prove sexual penetration. 720 ILCS 5/12-12(f).

¹ Italicized sections added by P.A. 88-167 (eff. Jan. 1, 1994).

B. The Crimes

1. Criminal Sexual Assault (720 ILCS 5/12-13)

(a) The accused commits criminal sexual assault if he or she:

(1) commits an act of sexual penetration by the use of force or threat of force; or

(2) commits an act of sexual penetration and the accused knew that the victim was unable to understand the nature of the act or was unable to give knowing consent; or

(3) commits an act of sexual penetration with a victim who was under 18 years of age when the act was committed and the accused was a family member; or

*(4) commits an act of sexual penetration with a victim who was at least 13 years of years of age but under 18 years of age when the act was committed and the accused was 17 years of age or over and held a position of trust, authority or supervision in relation to the victim.*¹ 720 ILCS 5/12-13(a).

¹Italicized section added by P.A. 85-1030 (eff. July 1, 1988).

2. Aggravated Criminal Sexual Assault (720 ILCS 5/12-14)

(a) The accused commits aggravated criminal sexual assault if he or she commits criminal sexual assault and any of the following aggravating circumstances existed during, *or for the purposes of paragraph (7) of this subsection (a) as part of the same course of conduct as, the commission of the offense.*¹

(1) the accused displayed, threatened to use, or used a dangerous weapon, **other than a firearm,**² or any object fashioned or utilized in such a manner as to lead the victim under the circumstances reasonably to believe it to be a dangerous weapon; or

(2) the accused caused bodily harm, **except as provided in subsection (a)(10),**² to the victim; or

(3) the accused acted in such a manner as to threaten or endanger the life of the victim or any other person; or

(4) the criminal sexual assault was perpetrated during the course of the commission or attempted commission of any other felony by the accused; or

(5) the victim was 60 years of age or over when the offense was committed; or

(6) the victim was a physically handicapped person;³ or

*(7) the accused delivered (by injection, inhalation, ingestion, transfer of possession, or any other means) to the victim without his or her consent, or by threat or deception, and for other than medical purposes, any controlled substance*¹; or

(8) the accused was armed with a firearm; or

(9) the accused personally discharged a firearm during the commission of the offense; or

(10) the accused, during the commission of the offense, personally discharged a firearm that proximately caused great bodily harm, permanent disability, permanent disfigurement, or death to another person.²

(b) The accused commits aggravated criminal sexual assault if *(1) the accused was 17 years of age or over and commits an act of sexual penetration with a victim who was under 13 years of age when the act was committed; or*⁴ the accused was under 17 years of age and (i) commits an act of sexual penetration with a victim who was under 9 years of age when the act was committed; or (ii) commits an act of sexual penetration with a victim who was at least 9 years of age but under 13 years of age when the act was committed and the accused used force or threat of force to commit the act.

(c) The accused commits aggravated criminal sexual assault if he or she commits an act of sexual penetration with a victim who was a(n) institutionalized) severely or profoundly mentally retarded person at the time the act was committed.⁵

¹Italicized section added by P.A. 90-735 (eff. Aug. 11, 1998).

²Bold section added by P.A. 91-404 (eff. Jan. 1, 2000).

³Underlined section added by P.A. 85-691 (eff. Jan. 1, 1988).

⁴Italicized and underlined section was removed from the Aggravated Criminal Sexual Assault section and replaced by a new “Predatory Criminal Sexual Assault” crime by P.A. 89-428 (eff. Dec. 13, 1995). **However**, this Public Act was declared unconstitutional due to a blatant violation of the single subject rule. The new crime of “Predatory Criminal Sexual Assault” was re-enacted with P.A. 89-462 (eff. May 29, 1996). Crimes of penetration involving children under 13 should be charged as Aggravated Criminal Sexual Assault if they occurred prior to May 29, 1996.

⁵Bold and underlined section added by P.A. 85-1392 (eff. Jan. 1, 1989). The word “institutionalized,” shown in parentheses was deleted by P.A. 92-434 (eff. Jan 1, 2002).

3. Predatory Criminal Sexual Assault of a Child (720 ILCS 5/12-14.1)

(a) The accused commits predatory criminal sexual assault of a child if:

(1) the accused was 17 years of age or over and commits an act of sexual penetration with a victim who was under 13 years of age when the act was committed; or

(1.1) the accused was 17 years of age or over and, while armed with a firearm, commits an act of sexual penetration with a victim who was under 13 years of age when the act was committed; or

(1.2) the accused was 17 years of age or over and commits an act of sexual penetration with a victim who was under 13 years of age when the act was committed and, during the commission of the offense, the accused personally discharged a firearm; or¹

(2) the accused was 17 years of age or over and commits an act of sexual penetration with a victim who was under 13 years of age when the act was committed and the accused caused great bodily harm to the victim that:

(A) resulted in permanent disability; or

(B) was life threatening; or

(3) the accused was 17 years of age or over and commits an act of sexual penetration with a victim who was under 13 years of age when the act was committed and the accused delivered (by injection, inhalation, ingestion, transfer of possession, or any other means) to the victim without his or her consent, or by threat or deception, and for other than medical purposes, any controlled substance.²

¹The italicized sections were added by P.A. 91-404 (eff. Jan. 1, 2000).

²The bold sections were added by P.A. 90-735 (eff. Aug. 11, 1998).

4. Criminal Sexual Abuse (720 ILCS 5/12-15)

(a) The accused commits criminal sexual abuse if he or she:

(1) commits an act of sexual conduct by the use of force or threat of force;
or

(2) commits an act of sexual conduct and the accused knew that the victim was unable to understand the nature of the act or was unable to give knowing consent.

(b) The accused commits criminal sexual abuse if the accused was under 17 years of age and commits an act of sexual penetration or sexual conduct with a victim who was at least 9 years of age but under 17 years of age when the act was committed.

*(c) The accused commits criminal sexual abuse if he or she commits an act of sexual penetration or sexual conduct with a victim who was at least 13 years of age but under 17 years of age and the accused was less than 5 years older than the victim.*¹

¹Italicized section added by P.A. 85-651 (eff. Jan. 1, 1988). This Act also renumbered the subsections of Criminal Sexual Abuse.

5. Aggravated Criminal Sexual Abuse (720 ILCS 5/12-16)

(a) The accused commits aggravated criminal sexual abuse if he or she commits criminal sexual abuse as defined in subsection (a) or Section 12-15 of this Code and any of the following aggravating circumstances existed during, *or for the purposes of paragraph (7) of this subsection (a) as part of the same course of conduct as,*¹ the commission of the offense:

(1) the accused displayed, threatened to use or used a dangerous weapon or any object fashioned or utilized in a such a manner as to lead the victim under the circumstances reasonably to believe it to be a dangerous weapon; or

(2) the accused caused “great”² bodily harm to the victim; or

(3) the victim was 60 years of age or over when the offense was committed; or

(4) the victim was a physically handicapped person;³ or

(5) the accused acted in such a manner as to threaten or endanger the life of the victim or any other person; or

(6) the criminal sexual abuse was perpetrated during the course of the commission or attempted commission of any other felony by the accused;⁴
or

*(7) the accused delivered (by injection, inhalation, ingestion, transfer of possession, or any other means) to the victim without his or her consent, or by threat or deception, and for other than medical purposes, any controlled substance.*¹

(b) The accused commits aggravated criminal sexual abuse if he or she commits an act of sexual conduct with a victim who was under 18 years of age when the act was committed and the accused was a family member.

(c) The accused commits aggravated criminal sexual abuse if:

(1) The accused was 17 years of age or over and (i) commits an act of sexual conduct with a victim who was under 13 years of age when the act was committed; or (ii) commits an act of sexual conduct with a victim who was at least 13 years of age but under 17 years of age when the act was committed and the accused used force or threat of force to commit the act;
or⁵

(2) the accused was under 17 years of age and (i) commits an act of sexual conduct with a victim who was under 9 years of age when the act was committed; or (ii) commits an act of sexual conduct with a victim who was at least 9 years of age but under 17⁵ years of age when the act was committed and the accused used force or threat of force to commit the act.

(d) The accused commits aggravated criminal sexual abuse if he or she commits an act of sexual penetration or sexual conduct with a victim who was at least 13 years of age but under 17 years of age and the accused was at least 5 years older than the victim.⁵

(e) The accused commits aggravated criminal sexual abuse if he or she commits an act of sexual conduct with a victim who was a severely or profoundly mentally retarded person at the time the act was committed.⁶

*(f) The accused commits aggravated criminal sexual abuse if he or she commits an act of sexual conduct with a victim who was at least 13 years of age but under 18 years of age when the act was committed and the accused was 17 years of age or over and held a position of trust, authority or supervision in relation to the victim.*⁷

¹ Italicized section added by P.A. 90-735 (eff. Aug. 11, 1998).

² The requirement of “great bodily harm” is changed to simple “bodily harm” by P.A. 88-99 (eff. July 20, 1993).

³ Bold section added by P.A. 85-691 (eff. Jan. 1, 1988).

⁴ Underlined sections added by P.A. 89-586 (eff. July 31, 1996).

⁵ Italicized and underlined sections added by P.A. 85-651 (eff. Jan 1, 1988).
NOTE: Maximum victim age in section (c)(2) is changed from 13 to 17 and in section (d) is changed from 16 to 17.

⁶ Bold and underlined section added by P.A. 85-1392 (eff. Jan 1, 1989).
NOTE: Prior to P.A. 92-434 (eff. Jan. 1, 2002), the law inserted the word “institutionalized” before the word “severely.”

⁷ Italicized and bold section added by P.A. 85-1030 (eff. July 1, 1988).

V. SENTENCING

As created in 1984, the four (later five) major sex crimes had the same sentences as other crimes of the same class. Criminal Sexual Assault was a Class 1 felony, Aggravated Criminal Sexual Assault was a Class X felony, Criminal Sexual Abuse was a Class A misdemeanor, Aggravated Criminal Sexual Abuse was a Class 2 felony. In 1995 (and again in 1996, to resolve the constitutional problem), when sexual penetration with a child under 13 was removed from Aggravated Criminal Sexual Assault and recreated as Predatory Criminal Sexual Assault, it too was a Class X felony.

Before long, the legislature began making additions and exceptions to the sentencing options for sexual crimes. It is important to remember that sentencing options are what the law provided for *at the time the crime occurred*. For example, Predatory Criminal Sexual Assault in which there are two or more victims now requires a sentence of life in prison without parole. 720 ILCS 5/12-

14.1(b)(1.2). However, this is true only if the crimes occurred on or after the effective date of the statute providing for such a sentence. Crimes of Predatory Criminal Sexual Assault occurring prior to January 1, 2000, are not subject to the lifetime sentence.

Following are the changes to the sentencing provisions of the ILCS relating to the (originally four, now five) major sex crimes and their effective dates.

A. Criminal Sexual Assault (720 ILCS 5/12-13)

Consistently a Class 1 felony. The first change with respect to sentencing (now 720 ILCS 5/12-13(b)(4)) provides that a second or subsequent offense is a Class X felony. P.A. 85-837 (eff. Jan. 1, 1988). The next change added what are now paragraphs 2 and 3 of the sentencing provision. 720 ILCS 5/12-13(b)(2), 5/12-13(b)(3). These provide for extended sentences under certain circumstances and a life sentence without parole under certain circumstances. P.A. 90-396 (eff. Jan. 1, 1998).

Not included in the Criminal Sexual Assault statute (720 ILCS 5/12-13) but found in the general sentencing statute are two other provisions that relate to sentencing for Criminal Sexual Assault. 730 ILCS 5/5-5-3(c)(2)(H) provides that probation may not be given for Criminal Sexual Assault even though probation normally is available for Class 1 felonies. However, this provision was modified by P.A. 93-419 (eff. Jan. 1, 2004). For crimes committed between July 1, 1984, and January 1, 2004, probation is available for Criminal Sexual Assault if the defendant was a family member of the victim.

Additionally, Public Act 93-160 (eff. July 10, 2003), provides that for crimes of Criminal Sexual Assault, consecutive prison terms must be imposed for multiple offenses. 730 ILCS 5/5-8-4(a)(ii).

B. Aggravated Criminal Sexual Assault (720 ILCS 5/12-14)

Consistently a Class X felony. Public Act 91-404 (eff. Jan. 1, 2000), provides for extended terms of 15, 20, or 25 years for the crime of Aggravated Criminal Sexual Assault involving firearms. (One difficulty with P.A. 91-404 is that it remained unclear what class of offense violations of 720 ILCS 5/12-14(b) and 5/12-14(c) were, though they had been Class X felonies originally. This was cleared up by P.A. 92-502 (eff. Dec. 19, 2001)).

Second or subsequent offenses of Aggravated Criminal Sexual Assault (or offenses following a conviction for Criminal Sexual Assault or Predatory Criminal Sexual Assault of a Child) require a mandatory term of natural life imprisonment if they occurred after the January 1, 1998, effective date of Public Act 90-396. 720 ILCS 5/12-14(d).

As with Criminal Sexual Assault, convictions for multiple crimes of Aggravated Criminal Sexual Assault require consecutive prison terms pursuant to 730 ILCS 5/5-8-4(a)(ii). This was established by P.A. 93-160 (eff. July 10, 2003).

C. Predatory Criminal Sexual Assault of a Child (720 ILCS 5/12-14.1)

Predatory Criminal Sexual Assault of a Child was created in 1995 (and re-created in 1996) as a Class X felony. P.A. 89-428 (eff. Dec. 13, 1995); P.A. 89-462 (eff. May 29, 1996). Special sentencing provisions include the following:

1. When the conviction is pursuant to 720 ILCS 5/12-14.1(a)(2) (great bodily harm that results in permanent disability or is life-threatening) 50-year to natural life term of imprisonment is required. P.A. 89-462 (eff. May 29, 1997); 720 ILCS 5/12-14.1(b)(1).
2. When a controlled substance is delivered to the victim by threat or deception or without the victim's consent, a term of 50 – 60 years in prison is required. P.A. 90-735 (eff. Aug 11, 1998); 720 ILCS 5/12-14.1(b)(1.1).
3. A second or subsequent offense requires a sentence of natural life imprisonment. P.A. 90-396 (eff. Jan. 1, 1998); 720 ILCS 5/12-14.1(b)(2).
4. When firearms are involved, an additional 15, 20, or 50 years may be added to the sentence of imprisonment. P.A. 91-404 (eff. Jan. 1, 2000); 720 ILCS 5/12-14.1(b)(1).
5. A sentence of natural life is required when there are two or more victims, regardless of whether the crimes were part of the same or related or unrelated acts. P.A. 91-238 (eff. Jan. 1, 2000); 720 ILCS 5/12-14.1(b)(2).

As with Criminal Sexual Assault and Aggravated Criminal Sexual Assault, convictions on multiple counts of Predatory Criminal Sexual Assault of a Child now require consecutive sentencing. P.A. 93-160 (eff. July 10, 2003); 730 ILCS 5/5-8-4(a)(ii).

D. Criminal Sexual Abuse (720 ILCS 5/12-15)

Originally, all acts of Criminal Sexual Abuse were Class A misdemeanors, though a second or subsequent conviction was a Class 2 felony. Public Act 91-389 (eff. Jan. 1, 2000) increased acts of Criminal Sexual Abuse under Section 720 ILCS 5/12-15(a) to a Class 4 felony. A violation of 720 ILCS 5/12-15(b) or 5/12-15(c) remains a Class A misdemeanor.

E. Aggravated Criminal Sexual Abuse (720 ILCS 5/12-16)

Since its creation in 1984, Aggravated Criminal Sexual Abuse has been a Class 2 felony. No special sentencing provisions have been enacted for Aggravated Criminal Sexual Abuse. 720 ILCS 5/12-16(g).

VI. CONCLUSION

Determining the statute of limitations, charging and sentencing for older sex crimes can be complex due to numerous amendments to the Criminal Code. However, this Guide should be a valuable tool when determining whether a case is still viable and what are the appropriate charges and applicable sentences.