

## **INTRODUCTION TO ILLINOIS' SAFE CHILDREN ACT**

**Overview of the Act:** The law makes Illinois the first state in the nation to make all children under the age of 18 immune from prosecution for prostitution, under any circumstances. If a child exploited in prostitution is encountered by law enforcement, she/he may be taken into temporary protective custody, and law enforcement must notify DCFS, which in turn must initiate an investigation into child abuse within 24 hours. The bill also raises penalties and limits the availability of affirmative defenses for those exploiting minors. The bill provides the possibility of additional funding for services to survivors of human trafficking and prostitution, through expanded vehicle impoundment fees. Finally, the bill expands law enforcement's ability to engage in wiretapping during investigations into human trafficking crimes. This bill builds on the progress first made by the ground-breaking New York Safe Harbour for Exploited Children Act of 2008.

**Current Status:** Passed May 26, 2010. Signed by Governor Quinn on August 20, 2010.

**Sponsors:** In the House, Rep. William D. Burns was the chief sponsor with chief co-sponsors Reps. Charles E. Jefferson, Jim Durkin, Patricia Bellock, and Edward Acevedo. In the Senate, Sen. Jacqueline Collins was the chief sponsor and Sens. Pamela J. Althoff, Iris Y. Martinez, Kimberly A. Lightford and Michael Noland were the chief co-sponsors.

**Effective Date:** Effective upon signing.

## **PROTECTING MINOR VICTIMS OF SEX TRAFFICKING**

### **Immunity from Prosecution**

If it is determined, after a reasonable detention\* for investigative purposes, that a person suspected of or charged with a prostitution violation is under the age of 18, that person is immune from prosecution for the prostitution offense. The child may be taken into temporary protective custody.

\* During committee consideration, it was clarified that the definition of "reasonable detention" is neither expanded nor contracted by this law. That is, existing case law and regulatory provisions specifying the maximum length of reasonable detention remain unchanged. For example, within Chicago, the maximum length of reasonable detention is 48 hours. *See Lopez v. City of Chicago*, 464 F.3d 711, 719 (7th Cir. 2006) (following the holding in *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991) that persons arrested without a warrant must receive a judicial determination of probable cause within 48 hours).

### **Investigations into Child Abuse and Neglect**

Children who are victimized by human trafficking crimes or by prostitution now fall within the definition of "abused" under the Abused and Neglected Child Reporting Act and the Juvenile Court Act (for detailed definitions see Definition of Key Terms below). Any law enforcement officer who takes a person under 18 years old into custody for a prostitution offense must immediately report an allegation of human trafficking to the Department of Children and Family Services (DCFS) State

Central Register. Within 24 hours of receiving such a report, DCFS must begin an initial investigation into the abuse.

**Funding for Services to Survivors**

Funding to serve survivors of human trafficking and prostitution will be generated by new vehicle impoundment fees. (See details below.)

**INVESTIGATION, PROSECUTION, & PUNISHMENT OF HUMAN TRAFFICKING**

**Increased Penalties**

<b><u>Crime</u></b>	<b><u>Targeted Offender</u></b>	<b><u>Previous Penalty for First Offense</u></b>	<b><u>New Penalty for First Offense</u></b>	<b><u>New Penalty for Subsequent Offense*</u></b>
Solicitation of a Sexual Act	Johns (buyers of commercial sex)	Class B misdemeanor	Class A misdemeanor	n/a
Solicitation of a Sexual Act from a child under the age of 18	Johns	Class B misdemeanor <i>(previously, this crime was not distinguished from Solicitation of a Sexual Act)</i>	Class 4 felony	n/a
Soliciting for a Prostitute	Pimps (those profiting off of others' commercial sex acts), potentially Johns	Class A misdemeanor	Class 4 felony	Class 3 felony
Soliciting for a Minor Engaged in Prostitution	Pimps, potentially Johns	Class 1 felony	Class 1 felony <i>(no change)</i>	Class X felony
Keeping a Place of Prostitution	Pimps	Class A misdemeanor	Class 4 felony	Class 3 felony
Patronizing a Prostitute	Johns	Class A misdemeanor	Class 4 felony	Class 3 felony
Patronizing a Minor Engaged in Prostitution	Johns	Class 4 felony	Class 3 felony	Class 2 felony
Pimping	Pimps	Class A misdemeanor	Class 4 felony	Class 3 felony

\*These heightened penalties also apply when the crime is committed within 1,000 feet of a school.

### **Vehicle Impoundment**

Under previous law, persons arrested for violations of Soliciting for a Prostitute were subject to vehicle impoundment and payment of a \$200 fee to recover the vehicle. This bill expands upon the previous provision in three ways:

- The provision would now apply to a broader number of crimes, including human trafficking crimes and the crimes listed in the chart above.
- The fee is raised from \$200 to \$1,000.
- The provision requires that 50% of each fee be paid to the relevant unit of law government, and that, upon conviction, the other 50% of the fee be deposited in the Violent Crime Victims Assistance Fund to be used by the Department of Human Services to provide grants to nongovernmental organizations serving survivors of human trafficking and/or prostitution.

### **Recognition of the Severity of Exploiting Any Child Under the Age of 18**

Under the offenses of Keeping a Place of Juvenile Prostitution, Patronizing a Minor Engaged in Prostitution, Juvenile Pimping and Exploitation of a Child, the age range of victims is raised from “under 17” to “under 18,” thus expanding the criminal liability of those who exploit young people.

Additionally, the term “juvenile prostitute” is eliminated from the criminal code, and replaced with “minors engaged in prostitution,” “prostituted person” or other similar language.

### **Elimination of Affirmative Defenses**

For a person charged with Keeping a Place of Juvenile Prostitution, or Juvenile Pimping, there is no defense that the accused reasonably believed the victim was at least 18 years old, unless the accused did not have a reasonable opportunity to observe the person. This effectively eliminates any “mistake of age” defense for those accused of these crimes, similarly to the federal Trafficking Victims Protection Reauthorization Act of 2008. However, a person accused of the crimes of Patronizing a Minor Engaged in Prostitution or of Solicitation of a Sexual Act from a child under the age of 18 may raise an affirmative defense that the accused reasonably believed the person was at least 18 years old.

### **Expanded Wiretapping Authority**

Recordings and evidence collected through wiretapping in the course of an investigation of a felony offense of involuntary servitude, involuntary sexual servitude of a minor, trafficking in persons, or an offense involving prostitution, solicitation of a sexual act, or pandering is admissible in any civil, criminal, or administrative proceeding.

## DEFINITION OF KEY TERMS USED WITHIN THE ACT

### Abused Child / Abused Minor

- A new category is added to the definition of “abused child” within the Abused and Neglected Child Reporting Act (*325 ILCS 5/3*):
  - any child under the age of 18 whose “parent or immediate family member, or any person responsible for the child’s welfare, or any individual residing in the same home as the child, or a paramour of the child’s parent” commits or allows to be committed against the child one of the following crimes: involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons for forced labor or services.
- A new category is added to the definition of “abused minor” within the Juvenile Court Act (*705 ILCS 405/2-3*):
  - “any minor under 18 years of age whose parent or immediate family member, or any person responsible for the minor’s welfare, or any person who is in the same family or household as the minor, or any individual residing in the same home as the minor, or a paramour of the minor’s parent”:
    - commits or allows to be committed against the minor one of the following crimes: involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons for forced labor or services; or
    - allows, encourages or requires a minor to commit any act of prostitution.

### Temporary Protective Custody

- As described above, a prostituted child may be taken into temporary protective custody, which is defined within the Abused and Neglected Child Reporting Act (*325 ILCS 5/3*) as:
  - custody within a hospital or other medical facility or place previously designated for such custody by the Department of Children and Family Services, subject to review by the Juvenile Court. This may include a licensed foster home, group home or other institution. This may *not* include a jail or place for the detention of criminal or juvenile offenders (emphasis added).