

Senate Bill 1300: Articles 2-11, 25 and Miscellaneous Sections of the Criminal Code Re-write

Article 2: Definitions

The CLEAR Commission's recommendation indicated below is not included in the bill but will be considered in the next phase of the drafting work.

Commentary: Article 2 is the general definitions Article that applies to the entire Criminal Code. Three definitions in Article 2 are changed.

2-2: "Act"

"Act" in Section 2-2 is defined as a "bodily movement." Previously, Section 2-2 did not define the word "act," but merely provided that it "includes a failure or omission to take action." The new definition of an "act" is consistent with Illinois case law, and comports with the intent expressed in the 1961 Committee Comments to define "act" as a physical movement. A similar definition is used by at least thirteen other states, including Alabama, Arizona, Arkansas, Colorado, Delaware, Hawaii, Kentucky, Missouri, New York, Oregon, Tennessee, Texas, and Utah.

2-3.3: "Bodily harm"

"Bodily harm" is defined in Section 2-3.3 to mean "any physical pain, injury to the body, illness or impairment of the physical condition of the body, regardless of gravity or duration." This definition codifies current Illinois case law and does not change the substantive law. It is consistent with the definition of "bodily harm or injury" found in the Model Penal Code and in the statutes of other states, including Indiana, Minnesota, New Jersey, New York, Ohio, Texas, Washington, and Wisconsin.

2-7.1: "Firearm" and "firearm ammunition"

Definitions from former Sections 2-7.1 and 2-7.5 for the terms "firearm" and "firearm ammunition" are consolidated and condensed in this section.

Article 3: Rights of Defendant

Section 3-4. Effect of Former Prosecution. Clarifies that a plea of guilty to a lesser-included offense is not an acquittal of the greater offense.

Commentary: Article 3, Rights of Defendant, constrains the State's ability to prosecute defendants based on former prosecutions, the length of time since the crime was committed, and other reasons. The effect of a guilty plea to a lesser-included offense on subsequent prosecutions for the greater offense is clarified. A plea of guilty to a lesser-included offense is not an acquittal of the greater offense.

3-4: Effect of Former Prosecution

Current Illinois case law mandates that pleading guilty to a lesser-included offense is not an acquittal of the greater offense, and therefore does not bar future prosecutions for the greater offense. When a defendant pleads guilty to a lesser-included offense, there is no finding or verdict on the greater offense. Thus, jeopardy attaches only to the offense for which the defendant pled guilty.

This is an extension of the rules set forth in Section 3-4, Effect of Former Prosecution, and is supported by the 1961 Committee Comments. Section 3-4(a) provides that a subsequent prosecution for a greater offense is barred where there is a conviction for the lesser offense. When a defendant is convicted of the lesser offense, “the jury in effect rendered two verdicts: one of acquittal of the greater offense charged and one of conviction of the included offense.” This reasoning does not apply when the defendant pleads guilty to the lesser-included offense because there is no finding of fact on the greater offense.

Article 4: Criminal Act and Mental State

Section 4-5. Knowledge. Added “When the law provides that acting knowingly suffices to establish an element of an offense, that element also is established if a person acts intentionally.”

Commentary: Article 4, Criminal Act and Mental State, defines, in part, the four mental states used throughout the Code: intent, knowledge, recklessness and negligence. A person who acts intentionally is more criminally culpable than a person who acts knowingly. When a person acts intentionally, the person also, by definition, acts knowingly. A substitution statute has been added to the Code to recognize and give effect to this continuum between intent and knowledge.

4.5: Knowledge

A substitution statute added to Section 4-5, Knowledge, represents a minor substantive change in current Illinois law. The substitution statute states that “[w]hen the statute provides that acting knowingly suffices to establish an element of an offense, such element also is established if a person acts intentionally.” A defendant should not be acquitted of an offense that requires him or her knowingly to perform an act where in fact the defendant intentionally performed the act.

This substitution statute is limited to the mental states of intent and knowledge pursuant to concerns noted by the Illinois Supreme Court that recklessness is not a lesser form of knowledge. *See People v. Fornear*, 680 N.E.2d 1383, 1388 (Ill. 1997). Other states, as well as the Model Penal Code, provide broader substitution statutes that allow a finding of knowledge, recklessness or negligence upon proof of a “higher” mental state. For example, pursuant to these broader substitution statutes, the element of recklessness will be satisfied with proof that the defendant acted knowingly. The Illinois Supreme Court does not view the mental states of intent, knowledge, recklessness, and negligence as existing on a strict continuum. The Supreme Court finds a qualitative difference between the concepts behind knowledge and recklessness. *Fornear*, 680 N.E.2d 1383. Therefore, this substitution statute is narrower than those of other states because it addresses only intent and knowledge in order to conform to Illinois law.

Article 5: Parties to a Crime

Section 5-2. When accountability exists. Added “When 2 or more persons engage in a common criminal design or agreement, any acts in the furtherance of that common design committed by one party are considered to be the acts of all parties to the common design or agreement and all are equally responsible for the consequences of those further acts. Mere presence at the scene of a crime does not render a person accountable for any offense; a person’s presence at the scene of a crime, however, may be considered with other circumstances by the trier of fact when determining accountability.”

Commentary: In Article 5, Parties to a Crime, the “common design rule” and its major defense, that presence at the scene of a crime alone is not sufficient for criminal liability, had not been stated in the prior criminal code. Courts have consistently interpreted Section 5-2 as encompassing the “common design rule,” which has been applied by the Illinois Supreme Court for over one hundred and fifty years. The rule and its defense are now included in Article 5.

5-2: When Accountability Exists

This codifies the “common design rule” and its accompanying “mere presence” defense.

This language has long been used by Illinois courts. The “common design rule” is used to determine whether a defendant has the requisite intent defined in Section 5-2(c). In *People v. Terry*, the Court emphasized that anyone who shares a common design with an offender is accountable for all criminal conduct in furtherance of the criminal design, even if the defendant did not know that his or her accomplice would escalate the actions (e.g., from an aggravated battery to a murder). 460 N.E.2d 746 (Ill. 1984). This rule has been applied by Illinois courts since at least 1854. *See Brennan v. People*, 15 Ill. 511, 516 (1854).

The “mere presence” defense, which states that a defendant's presence at the scene of a crime, without more, is insufficient to support the finding of a common design, is also codified. The defendant's presence, however, may be considered with the other circumstances to determine whether the defendant is accountable for another's criminal acts.

Article 7: Justifiable Use of Force

Section 7-11. Compulsion. Added “or upon his or her spouse or child”.

Commentary: Article 7 of the Code defines the concepts of the justifiable use of force and exoneration. The compulsion defense is expanded, representing a change in Illinois law.

7-11: Compulsion

The compulsion defense, previously limited to situations when a person reasonably believed that imminent death or great bodily harm would be inflicted upon him, is expanded. The scope of the defense had encompassed threats made solely against a defendant and not to others. This defense is expanded to include imminent threats of death or great bodily harm made to a defendant's “spouse or child.” Illinois was alone among the 50 states to limit the scope of the compulsion defense to threats made solely to a person asserting the defense.

Some states, including New York, allow the defense of duress (compulsion) for threats made to “him or a third person.” The Illinois structure is more akin to Kansas, which limits the scope of the defense to threats against a “spouse, parent, child, or brother or sister,” and in situations when a person reasonably believes imminent death or great bodily harm will be inflicted.

Article 8: Solicitation, Conspiracy and Attempt

Section 8-1. Solicitation. Added “Solicitation of murder. A person commits the offense of solicitation of murder when he or she commits solicitation with the intent that the offense of first degree murder be committed.” In the Sentence (changed from “Penalty”) section, added “Solicitation of murder is a

Class X felony, and a person convicted of solicitation of murder shall be sentenced to a term of imprisonment of not less than 15 years and not more than 30 years, except that a person convicted of solicitation of murder when the person solicited was a person under the age of 17 years shall be sentenced to a term of imprisonment of not less than 20 years and not more than 60 years.”

Section 8-1.2. Solicitation of murder for hire. In the Sentence (changed from “Penalty”) section, added “except that a person convicted of solicitation of murder for hire when the person solicited was a person under the age of 17 years shall be sentenced to a term of imprisonment of not less than 25 years and not more than 60 years.”

Section 8-2. Conspiracy. In the Sentence section, changed the penalties to align the sentences for Conspiracy with other inchoate offenses in the Code, punishing conspiracies to commit at one level below that of the target offense, with the exception of Class 3 and Class 4 felonies, which become Class A misdemeanors. The exceptions remain the same.

Section 8-4. Attempt. In the Sentence section, added “if the defendant proves by a preponderance of the evidence at sentencing that, at the time of the attempted murder, he or she was acting under a sudden and intense passion resulting from serious provocation by the individual whom the defendant endeavored to kill, or another, and, had the individual the defendant endeavored to kill died, the defendant would have negligently or accidentally caused that death, then the sentence for the attempted murder is the sentence for a Class 1 felony”

Commentary: Article 8, Solicitation, Conspiracy and Attempt, details the inchoate offenses used in the Code. Two of the three solicitation offenses are consolidated. A provision is added to Section 8-4, Attempt, allowing a defendant to mitigate a sentence after a finding of guilty for Attempted First Degree Murder.

Former Solicitation and Solicitation of Murder are combined into one statute. This amendment removes redundant language in two statutes and retains the specialized penalties. No change in the law is intended by this combination.

Solicitation of Murder for Hire is not consolidated into the Solicitation statute because the substantive elements of the offense differ from Solicitation and Solicitation of Murder.

8-2: Conspiracy

The former Conspiracy statute, by virtue of decades of amendments, has resulted in a sentencing scheme whereby conspiracies to commit Class 3 through Class X felonies can result in a sentence no greater than a Class 4 felony. The changes are intended to align the sentences for Conspiracy with the other inchoate offenses in the Code, Solicitation and Attempt. With these changes, conspiracies to commit felonies are punished one level below that of the target offense, with the exception of Class 3 and Class 4 felonies, which become Class A misdemeanors. The exceptions to the Conspiracy statute remain the same.

The sentencing provision from the eliminated offenses of Conspiracy to Commit Fraud and Organizer of an Aggravated Fraud Conspiracy are preserved and incorporated into Section 8-2.

New organizer offenses are created relating to conspiracies to commit Treason, First Degree Murder, Aggravated Kidnapping, Aggravated Criminal Sexual Assault, and Predatory Criminal Sexual Assault of a Child. General conspiracies to commit these offenses are Class 1 felonies. Being an organizer of certain financial crimes is a Class X felony. To more appropriately align sentencing provisions in conspiracy offenses, being an organizer of the treason, murder and sex offenses are likewise now Class X felonies.

8-4: Attempt

A subsection is added to Attempt that allows a defendant who is found guilty of Attempt First Degree Murder to mitigate his or her sentence. At sentencing, upon proof by a preponderance of the evidence that he or she was acting under a sudden and intense passion resulting from serious provocation, a defendant shall be sentenced for a Class 1 felony.

This amendment is designed to cure the problems that have been identified by Illinois courts and legal commentators for the past twenty years regarding the interplay between the attempt statute and the crime of second-degree murder (previously, Voluntary Manslaughter). As early as 1983 in *People v. Reagan*, the Illinois Supreme Court has rejected the notion that under the structure of the former Illinois attempt statute, it was logically possible to recognize the offense of Attempted Second Degree Murder (then voluntary manslaughter). 457 N.E.2d 1260 (1983). The Court reaffirmed its belief that this result was logically impossible following creation of the Second Degree Murder statute.

Under the former construction, a person who attempted to kill another, with or without mitigating circumstances, was sentenced to a mandatory term of imprisonment between six and thirty years for Attempted First Degree Murder. Someone who intended to kill, and succeeded, was subject to a sentencing range of 4 to 20 years with the possibility of probation, if the person established that he or she acted under serious provocation or under the unreasonable belief that he or she was acting in self defense. Identical conduct may result in vastly disparate sentences, depending on whether the victim lives or dies.

Specifically providing for a mitigated form of attempted murder for an individual acting under sudden and intense provocation reconciles both the Court opinions invalidating application of the attempt statute to Second Degree Murder and the sentencing anomaly in Illinois resulting from those opinions.

Article 9: Homicide

Section 9-1. First degree Murder – Death penalties – Exceptions – Separate Hearings – Proof – Findings – Appellate procedures – Reversals. Updates one reference to another Section.

Section 9-2. Second degree murder. Clarifies process and procedure in Second Degree Murder by removing the final sentence in subsection (c) to reflect Illinois court decisions that the State may initially charge Second Degree Murder, and that the initial charge does not have to be First Degree Murder.

Section 9-3.4. Concealment of homicidal death. Clarifies the offense of Concealment of Homicidal Death, providing definitions for “conceal” and “homicidal means”. Also added the mental state “knowingly”.

Commentary: Most of the homicide statutes, including the death penalty provisions, are unchanged. Process and procedure in Second Degree Murder cases are clarified. There are clarifications in the offense of Concealment of Homicidal Death, and one provision is relocated within the statute.

9-2: Second Degree Murder

Eliminating certain language in former subsection (c) of the statute accomplished two goals: (1) to clarify that the State may charge Second Degree Murder and (2) to alleviate concern that the existing language structures the order of jury deliberations. Part of the first sentence and the final sentence of subsection (c) are eliminated to accomplish this clarification.

In 1987, the offense of Second Degree Murder was created to replace Voluntary Manslaughter. The Voluntary Manslaughter statute prior to 1987 applied to unjustified killings where the defendant (1) harbored a sudden and intense passion resulting from a serious provocation, or (2) unreasonably believed that the killing was justified. After 1987, Second Degree Murder was defined as First Degree Murder, plus the same mitigating factors.

It was unclear under the Second Degree Murder statute as originally drafted whether the State could charge Second Degree Murder, or whether the initial charge would have to be First Degree Murder. Illinois courts have held that the State may initially charge Second Degree Murder. Removing the final sentence in subsection (c) is intended to clarify that the State may initially charge Second Degree Murder.

9-3.4: Concealment of Homicidal Death

The terms “conceal” and “homicidal means” are defined in a manner consistent with [Illinois Pattern Jury Instructions 7.13](#) and [7.14](#). These definitions derive from Illinois case law.

Redundant language in subsection (b), requiring that the sentence for Concealment of Homicidal Death be imposed separately and in addition to the penalty for First Degree Murder, Second Degree Murder or Involuntary Manslaughter, is removed from the statute. In July 2004, Section 5/5-8-4(a) of the Unified Code of Corrections was amended to require, among other things, that consecutive sentencing be imposed where a defendant is convicted of a violation of Section 5/9-3.1, Concealment of Homicidal Death. Subsection (v) of this section controls any time there is a Concealment conviction.

The offense of Concealment of Homicidal Death is relocated within Article 9, Homicide, to allow those offenses that parallel unborn child provisions to appear sequentially in the Code. This offense had been located between Involuntary Manslaughter and Reckless Homicide, Section 9-3, and Involuntary Manslaughter and Reckless Homicide of an Unborn Child, Section 9-3.2. Concealment of Homicidal Death is moved to the end of the Article, so it does not separate parallel offenses.

In the offense of Concealment of Homicidal Death, the sentencing provision follows the newly created definitions subsections. The penalty for the offense follows its substantive definition and the definitions of two of its terms. The mental state “knowingly” is added.

Article 10: Kidnapping

Section 10-1. Kidnapping. Under “Confinement of a child under the age of 13 years” added “or of a severely or profoundly mentally retarded person”.

Section 10-5. Child abduction. Made three changes: (1) added definition: “ ‘Putative father’ means a man who has a reasonable belief that he is the father of a child born of a woman who is not his wife.”; (2) added the mental state “knowingly”; and (3) includes a new provision regarding aiding or abetting, adding “With the intent to obstruct or prevent efforts to locate the child victim of a child abduction, knowingly destroys, alters, conceals, or disguises physical evidence or furnishes false information.”

Section 10-5.5. Unlawful Visitation Interference. Deleted “A person convicted of unlawful visitation interference shall not be subject to a civil contempt citation for the same conduct for violating visitation provisions for a court order issued under the Illinois Marriage and Dissolution of Marriage Act.”

Added Section 10-9. “Trafficking in persons, involuntary servitude, and related offenses.” This was formerly housed in Article 10A.

The CLEAR Commission’s recommendation (in BOLD) to replace the mandatory presumption in Section 10-5(b)(10) with a permissive inference was not included in the bill but will be considered in the next phase of the drafting work.

Commentary: Article 10, Kidnapping and Related Offenses, houses Kidnapping and other offenses related to the unwanted restraint of another. Added to this Article is the offense formerly housed in Article 10A, Trafficking in Persons and Involuntary Servitude. Trafficking in Persons and Involuntary Servitude, is also renamed and reorganized. Other changes fill the gaps in Illinois law and harmonize mental states and spelling. In Article 10, Child Abduction and Related Offenses, a mandatory presumption, unconstitutional language and an accountability provision are removed, and a definition is added. No substantive change is intended by the alterations in this section.

10-1: Kidnapping

Kidnapping now states that a “severely and profoundly mentally retarded person” cannot give consent for his or her confinement. This change derives from Illinois case law and codifies *People v. Castro*. 446 N.E.2d 1267 (Ill. 1983). Intent is substituted for purpose as a mental state with respect to a demand for ransom and is located in subsection 10-1(a)(1) of the new Code. Also, the spelling of “kidnapping” is made consistent throughout.

10-5: Child Abduction

There are four changes in Child Abduction. First, a new paragraph, (a)(4), defines a “putative father” as “a man who has a reasonable belief that he is the father of a child born of a woman who is not his wife.” Whether a defendant is a putative father may determine whether a

defendant can be convicted of Child Abduction or Kidnapping. Second, the mental state of “knowingly” is added to subsections (b)(6) through (b)(9).

Third, a permissive inference replaces the mandatory presumption in Section 10-5(b)(10). This eliminates a constitutionally suspect provision. The phrase “the trier of fact may infer,” is substituted for “shall be prima facie evidence of intent” to meet constitutional tests.

Finally, a new provision, (b)(11), is added that incorporates certain aspects of former Aiding and Abetting Child Abduction, Section 10-7. The accountability portions are eliminated as duplicative of the general accountability statute in Section 5-2 of the new Code. The statute contained two obstruction of justice provisions, one dealing with apprehending the offender and one addressing finding the victim. The offense of Obstructing Justice already penalizes efforts to prevent the apprehension of the offender; therefore, the portion of Section 10-7 dealing with apprehending the offender is unnecessary. The remaining portions of former Section 10-7, addressing efforts to prevent the location of the victim, are placed in the new Section (b)(11).

Elimination of the accountability provisions in Section 10-7 partially alters the sentencing structure and the available defenses. A defendant accountable for a second or subsequent violation of subsection 10-5(b)(10) is sentenced to a Class 4 felony under former Section 10-7; it is now a Class 3 felony.

Although the defenses available to a person through the provision captioned “When Accountability Exists” are technically greater than those formerly available in Section 10-7, these defenses are rarely an issue. Former Section 10-7 provided only the defense that the defendant made a proper effort to prevent the commission of the offense. The general Accountability provision in Article 5 allows two additional defenses: that the defendant was a victim and that the offense is defined such that the defendant's conduct is inevitably incident to the commission of the offense.

10-5.5: Unlawful Visitation Interference

Subsection (h) of Section 10-5.5 is deleted because the Illinois Supreme Court held this provision unconstitutional. *See People v. Warren*, 671 N.E.2d 700 (Ill. 1996).

10-9: Trafficking of Persons and Involuntary Servitude-Related Offenses

Trafficking of Persons and Involuntary Servitude is renamed and reorganized. The offense is placed in Article 10 of the Code, which contains, among others, the offenses of Kidnapping and Unlawful restraint. It is placed in proximity to Kidnapping and Unlawful Restraint because of their shared scope.

The offense is reorganized to conform to other Code offenses. The crimes of Involuntary Servitude, Involuntary Servitude of a Minor, Trafficking of Persons for Forced Labor or Services, and Aggravating Factors are contained in subsections (b)-(h) of the consolidated statute. The definitions are retained as subsection (a) because the terms are particular to the offenses. A forfeiture provision is relocated to Article 36, Seizure and Forfeitures, because it

resembles other forfeiture provisions that appear in the Code. Sentencing factors for courts to consider and directives to the Illinois Attorney General are also consolidated as subsections (i)-(l). No substantive change is intended by this reorganization and relocation.

Article 11: Sex Offenses

Section 11-9.4. Approaching, contacting, residing, or communicating with a child within certain places by child sex offenders prohibited. Updates references to dates. Also changes “aiding and abetting” to “aiding or abetting”. Added definitions “Day care home” and “Group day care home”.

The CLEAR Commission’s recommendation indicated below is not included in the bill but will be considered in the next phase of the drafting work.

Commentary: Article 11 is reorganized to house the sex offenses, which were previously spread throughout the Code. Many of these statutes were located in Article 12, Bodily Harm. Article 11 begins with the definitions generally applicable to all of the provisions in the Article. These definitions are derived from the individual sections now housed in Article 11. Some definitions applicable to individual offenses are retained in those offenses. The next sections are the indecent solicitation and exploitation offenses, followed by the family-related sex crimes. Article 11 then defines the sexual assault and abuse offenses and related provisions.

The offenses of Bigamy and Marrying a Bigamist are consolidated because they address similar subjects in the context of unauthorized marriage. Based upon the Committee Comments to the 1961 Code, the cohabitation clauses in both Bigamy and Marrying a Bigamist are removed to clarify that it is the subsequent marriage, either in Illinois or in another state, that is an element of the offense. The fact of cohabitation is secondary to the remarriage, and is thus immaterial to culpability.

The Prostitution offenses in Article 11 are reorganized, and several are consolidated into two primary statutes, Promoting Prostitution and Promoting Juvenile Prostitution. The forfeiture provisions in the offenses of Keeping a Place of Juvenile Prostitution and Exploitation of a Child are transferred and incorporated into Article 36, Seizure and Forfeitures. The offense of Prostitution remains unchanged with the exception of an added mental state, and provides the basis for the two consolidated offenses. The offenses consolidated include: Soliciting for a Prostitute, Soliciting for a Juvenile Prostitute, Keeping a Place of Prostitution, Keeping a Place of Juvenile Prostitution, Pimping, Juvenile Pimping and Aggravated Juvenile Pimping, and Exploitation of a Child.

To enhance clarity, two terms, or types of conduct, are defined in the comprehensive Prostitution statutes. The base conduct is then aggravated by the factors formerly included in the several statutes without changing the penalties involved. This configuration streamlines the prostitution-related offenses in the Code and avoids confusion in interpreting the differences among the conduct involved.

The offense of Keeping a Place of Juvenile Prostitution did not include a severely or profoundly mentally retarded person component. Promoting Juvenile Prostitution includes this element in every instance in which a theory of culpability exists where a prostitute under 16 years of age is a component of the offense. This substantive change affects only the

incorporated Keeping a Place of Juvenile Prostitution offense. Because the offense of Aggravated Juvenile Pimping targets extremely young children exclusively, the severely or profound mental retardation language is not added.

The procedural language requiring the pleading of the prior conviction in the charging document is removed from the incorporated offenses of Soliciting for a Prostitute, Keeping a Place of Prostitution, Patronizing a Prostitute, and Pimping. The Illinois Supreme Court compared this language with a similar provision in the Code of Criminal Procedure. The Court concluded that language that has been eliminated in each of the prostitution offenses is unnecessary in light of this similar language. The Court determined that the legislature intended Section 111-3(c) to serve as a general “catch-all” notice provision requiring the State to give notice in the charging instrument whenever a defendant is charged with a higher classification offense because of a prior conviction. *See People v. Jamison*, 642 N.E.2d 1207 (Ill. 1994).

Article 11 ends with the obscenity-related offenses. Along with the reorganization, mental states are added where necessary and like provisions are consolidated.

11-0.5: Definitions

“Accused”

This definition is amended to clarify that an “accused” includes a person accused of committing the offense of Predatory Criminal Sexual Assault of a Child. The previous definition included references to Criminal Sexual Assault, Aggravated Criminal Sexual Assault, Criminal Sexual Abuse and Aggravated Criminal Sexual Abuse, but not Predatory Criminal Sexual Assault of a Child.

“Child pornography”

The definition of “child pornography” is taken from the former Child Pornography statute. This definition is transferred to the beginning of Article 11 and replaces the former definition of “child.” The Illinois Supreme Court recognized that a serious syntax problem existed in former Section 11-20.1(f)(7) where “child” was defined as prohibiting “pictures and movies of pictures and movies.” The Court read the definition of “child” as the definition of “child pornography.”

“Internet”

This section is derived from former subsection (c) of Posting of Identifying Information on a Pornographic Internet Site. Along with transferring the definition to the beginning of the Article, the definition is updated. The statute previously defined the “internet” by stating that it “includes the World Wide Web, electronic mail, a news group posting, or internet file transfer.” This new definition is updated to reflect the expanding scope of the internet. This more modern definition is derived from former Article 16J, Online Property Offenses, which more recently defined the “internet.”

“Victim”

This definition is amended to clarify that a “victim” includes a person subjected to the offense of Predatory Criminal Sexual Assault of a Child. The previous definition included references to Criminal Sexual Assault, Aggravated Criminal Sexual Assault, Criminal Sexual Abuse and Aggravated Criminal Sexual Abuse, but not Predatory Criminal Sexual Assault of a Child.

11-6.5: Indecent Solicitation of an Adult

The mental state of “knowingly” is added to Section 11-6.5, Indecent Solicitation of an Adult.

11-6.15: Permitting Sexual Abuse of a Child

This offense is transferred from the former offense of Permitting Sexual Abuse of a Child in the former Wrongs to Children Act. The definitions from this offense are removed and transferred to the definitions section at the beginning of the Article.

11-6.25: Bigamy and Marrying a Bigamist

The offenses of Bigamy and Marrying a Bigamist are combined because these statutes prohibit similar conduct in the context of marrying another when already married, or with knowledge that the other person is married. The provisions are reorganized without major substantive change to promote clarity in the Code. The mental state “knowingly” is inserted into Bigamy so that the offenses of Bigamy and Marrying a Bigamist have the same mental state. The cohabitation clauses in both former offenses are removed to clarify that the subsequent marriage, in Illinois or outside the state, is required to occur before liability can attach under the statute.

Bigamy previously contained four defenses that involved the bigamist's reasonable belief that his or her first marriage was dissolved by decree, death, absence or other reasonable excuse. These defenses are extended to those charged with Marrying a Bigamist. The reasonable beliefs of a person who marries a bigamist are as relevant as the reasonable beliefs of the bigamist with regard to the status of the prior marriage.

11-6.35: Criminal Sexual Assault and Aggravated Criminal Sexual Assault

This section is derived from a combination of Criminal Sexual Assault and Aggravated Criminal Sexual Assault. The names of the offenses are retained in this section and no substantive change is intended by the consolidation.

As part of the consolidation, surplus indictment language is removed from former Criminal Sexual Assault. This language is unnecessary because it is redundant of [725 Ill. Comp. Stat. 5/111-3\(c\)](#), which applies to all criminal prosecutions.

11-6.45: Criminal Sexual Abuse and Aggravated Criminal Sexual Abuse

This section is a combination of Criminal Sexual Abuse and Aggravated Criminal Sexual Abuse. The names of the offenses are retained, and no substantive change is intended by the consolidation.

11-6.60: General Provisions

Section 11-6.60, General Provisions, is clarified to ensure that it encompasses people accused of committing the offense of Predatory Criminal Sexual Assault of a Child.

11-6.70: Prostitution

The mental state “knowingly” is added.

11-6.75: Promoting Prostitution; 11-6.80: Promoting Juvenile Prostitution

The mental state “knowingly” is added to the incorporated offenses of Soliciting for a Prostitute, Pandering, Keeping a Place of Prostitution, and Exploitation of a Child. The term “anything of value” is inserted in the definition of “profits from prostitution” to encompass the exchange of money, property, token, object, or article or anything of value as contained in former Prostitution provisions that are consolidated. Finally, the compulsion component present in the sentencing provision of the former Pandering statute is removed. When originally added to the Code, Pandering contained gradations in sentence based upon the nature of the conduct involved. Through the years, those gradations have been eliminated, and Pandering is punished as a Class 4 felony regardless of whether the conduct was a result of compulsion.

11-6.85: Patronizing a Prostitute; 11-6.90: Patronizing a Juvenile Prostitute

The mental state “knowingly” is added to the offense of Patronizing a Prostitute. The language describing the prohibited sexual conduct is changed to uniformly define prohibited sexual behavior committed by a prostitute or a person patronizing a prostitute. The added language is intended to enhance clarity by consistently defining and criminalizing the same sexual activity between prostitutes and their patrons.

11-6.110: Obscenity

A permissive inference replaces the previous mandatory presumption in Section 11-6.110, Obscenity.

11-6.115: Child Pornography

The mental state of “knowingly” is added to subsection (a)(7) of this section. This provision is the only offense in Child Pornography that does not include an explicit mental state. The other provisions require the defendant to know the victim's status or the content of the material at issue. This inserted mental state does not apply to the prohibited act of solicitation because a solicitation, as defined in Section 8-1, requires the intent that an offense be committed.

Along with the added mental state, the former mandatory presumption in subsection (a)(4) of this section is replaced with a permissive inference.

11-6.120: Harmful Material

The archaic mental state of “purpose” is replaced with “intent” in subsection (f) of Section 11-6.120, Harmful Material. Also, the word “that” is replaced with “who,” because the offense refers to people and not to things.

11-6.125: Posting of Identifying Information on a Pornographic Internet Site

The mental state of “knowingly” is added to subsection (a) of Section 11-6.125, Posting of Identifying Information on a Pornographic Internet Site.

Article 25: Mob Action

Section 25-1. Mob action. Adds the mental state of “knowing” and clarifies the meaning of “unlawful act”.

Consolidates former Article 42 “Looting” in Section 25.4 “Looting by individuals.”

Section 25-5. (formerly 25-1.1) Unlawful contact with streetgang members.

In Section 25-6. (formerly 25-2) After “Removal of chief of policy or sheriff” added “for allowing a person in his or her custody to be lynched.”

Commentary: Article 25 is changed to harmonize mental state requirements, to clarify the meaning of an “unlawful act” in Section 25-1, and to appropriately reflect the purpose of Section 25-2 in its title.

Section 25-1: Mob Action

A mental state is added to Section 25-1. Subsection (a)(2) is changed to comply with the Court's ruling in *Landry v. Daley*. 280 F. Supp. 938, 951 (N.D. Ill. 1968). There, the Federal District Court determined that the term “unlawful act” in former section (a)(2) was vague and overbroad, and thus unconstitutional. “With the intent to commit or facilitate the commission of a felony or misdemeanor” is inserted in place of “unlawful act.” The new language is intended to clarify its meaning and to address concerns about the constitutionality of this subsection, but preserve its original purpose defined in the 1961 Code.

Section 25-4: Looting by Individuals

Former Article 42, Looting, is consolidated into one statute and relocated to this Article. It appears directly after the offense of Mob Action as both Mob Action and Looting punish behavior likely to occur during time of upheaval due to natural or man-made disasters. Mob Action addresses the conduct of two or more individuals, and Looting addresses the act of a single person.

Section 25-6: Removal of Chief of Police or Sheriff for Allowing a Person in Their Custody to Be Lynched

The title of this section is changed from Removal of Chief of Police or Sheriff to make the import and content of this statute clear in its title.

Money Laundering

Section 29B-1 about money laundering updates references to other Sections.

The CLEAR Commission’s recommendation indicated below is not included in the bill but will be considered in the next phase of the drafting work.

Commentary: Article 27: Money Laundering. The former Money Laundering Article is reorganized, relocated, and its scope is expanded. Also, the definition of a “financial transaction” is clarified.

27-1: Money Laundering

Section 27-1, Money Laundering, is reorganized. The reorganized offense first defines the relevant terms and phrases, then sets forth the substantive offenses, and ends with the sentencing provisions. The scope of Money Laundering is expanded in two ways. First, the statute addresses financial proceeds derived from a violation of all felony and misdemeanor

offenses in Illinois, including those outside Act 5 and in the controlled substance offenses. Second, Money Laundering is augmented to apply to financial proceeds derived from a violation of another jurisdiction's laws where the conduct is a felony in that other jurisdiction and where, if performed in Illinois, it would be a felony in Illinois.

Finally, the phrase, "financial transaction," is replaced with the phrase, "financial activity." This avoids the problem of defining a term through use of the term itself.

Terrorism

Section 29D-14.9. (formerly 29D-30) Terrorism.

Section 29D-15.1. (formerly 20.5-5) Causing a catastrophe.

Section 29D-15.2. (formerly 20.5-6) Possession of a deadly substance.

Section 29D-25. Falsely making a terrorist threat. Changes references to other Sections.

Section 29D-29.9. (formerly 29D-15) Material support for terrorism. Deleted "A person is guilty of providing material support for terrorism if he or she knowingly provides material support or resources to a person knowing that the person will use that support or those resources in whole or in part to plan, prepare, carry out, facilitate, or to avoid apprehension for committing terrorism as defined in Section 29D.5-5 (720 ILCS 5/20.5-5) of this Code." Also consolidated the sentence section for "soliciting or providing material support for terrorism"

Section 29D-35. Hindering prosecution of terrorism. Updates references to other Sections.

Section 29D-35. Hindering prosecution of terrorism. Updates references to other Sections.

Adds Section 29D-35.1. "Boarding or attempting to board an aircraft with a weapon" as a Class 4 felony.

The CLEAR Commission's recommendation (in BOLD) to move Terrorism to Article 13, closer to Article 12, was not included in the bill but will be considered in the next phase of the drafting work.

Commentary: Article 13: Terrorism. One comprehensive Terrorism Article is created, incorporating the offenses of Causing a Catastrophe and Possession of a Deadly Substance, as well as the Boarding an Aircraft with Weapon Act. **The Article is placed closer to Article 12, which contains "Bodily Harm" offenses. Former Article 29D, Terrorism, is relocated to Article 13 of the Code, which was vacant after the repeal in 1980 of the Violation of Civil Rights provisions.**

13-6: Material Support for Terrorism

The previous offenses of Soliciting Material Support for Terrorism and Providing Material Support for a Terroristic Act are combined and titled "Material Support for Terrorism." The similarity in language and proscribed sentence warrants this combination.

13-8: Boarding or Attempting to Board an Aircraft with a Weapon

This section represents a compilation of provisions included in the former Boarding Aircraft with Weapon Act. The single substantive offense from the Act is located in subsection (a) of the new offense. The mental state “knowingly” is added to this offense.

Section 30. Amends the Criminal Code of 1961 by repealing Sections 8-1.1 (consolidated with 8-1.), 42-1 (moved to 25-4.), and 42-2 (moved to 25-4.) and by repealing Article 10A (changed to Article 10-9.).

Section 35. Repeals the Boarding Aircraft With Weapon Act, which was moved to 29D-35.1.

Section 36-1. Seizure. Changes references to other Sections.

Section 40. Amends Sections 108B-3 and 115-10 of the Code of Corrections as follows:

Section 108B-3. Authorization for the interception of private communication. Updates reference to other Section.

Section 115-10. Certain hearsay exceptions. Updates references to other Sections.