

# ROLL CALL NEWS

## IN THIS ISSUE

### PAGE 1

#### NEW LEGISLATION

Cyberstalking

### PAGE 2

#### NEW LEGISLATION

Hate crimes  
DUI sentencing  
Accident reports  
Electric bicycles  
Statute of limitations - child sexual abuse  
Switchblade knives

### PAGE 3

#### SEARCH AND SEIZURE

### PAGE 4

#### SEARCH AND SEIZURE

#### CONFESSIONS

#### DUI DECISIONS

#### RANDOM RULINGS

UUW by a felon

### PAGE 5

#### RANDOM RULINGS

Battery to peace officer  
Meth manufacturing near church  
Identity theft  
Delivery of controlled substance  
Child abduction

## Cyberstalking and Other New Legislation Effective January 1, 2018

The General Assembly has added a new way of committing cyberstalking to the statute. A person commits **cyberstalking** when he or she knowingly, surreptitiously, and without lawful justification, installs or otherwise places electronic monitoring software or spyware on an electronic communication device as a means to harass another person and (1) at any time transmits a threat of immediate or future bodily harm, sexual assault, confinement, or restraint and the threat is directed towards that person or a family member of that person, (2) places that person or a family member of that person in reasonable apprehension of immediate or future bodily harm, sexual assault, confinement, or restraint, or (3) at any time knowingly solicits the commission of an act by any person which would be a violation of the Criminal Code directed towards that person or

a family member of that person.

An installation or placement of a device is not surreptitious if clear notice regarding the use of the specific type of tracking software or spyware is provided by the installer in advance to the owners and primary users of the electronic software, hardware, or computer application, or written or electronic consent of all owners and primary users of the electronic software, hardware, or computer application on which the tracking software or spyware will be installed has been sought and obtained through a mechanism that does not seek to obtain any other approvals or acknowledgement from the owners and primary users. **720 ILCS 5/12-7.5(a-4), PA 100-166, effective 1/1/18**

Intimidation, stalking, cyberstalking, transmission of obscene messages, and

harassment through electronic communications as defined in 12-7.3, 12-7.5, 26.5-1, 12-6(a)(1)(2) and (3) of the Criminal Code are now included with offenses that can be enhanced to a “hate crime”. **720 ILCS 5/12–7.1(a)**

In addition victims may seek a civil penalty against the offender up to \$25,000 per violation plus attorney’s fees and costs. The Attorney General may bring an injunction against the offender as well. **720 ILCS 5/12–7.1(c), PA 100-197, effective 1/1/18**

A person involved in a motor vehicle, snowmobile, all-terrain vehicle, or watercraft accident that resulted in the death of another person, while committing the offense of **aggravated driving under the influence of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination** (625 ILCS 5/11-501(d)(1)(F)) when the DUI was a proximate cause of the death of the victim is subject to the same penalties as a person who commits reckless homicide under the DUI laws. **625 ILCS 5/6-303(a-5), (b-5), (b-6), (c-5)(1)-(2), (d)(2), (d-2)(2), (d-2.5)(1)-(2), (d-3)(2), (d-3.5)(1)-(2), (d-4)(2), (d-5)(2), and (g)(4)**. There is no statute of limitations for this

crime. **720 ILCS 5/3–5(a), PA 100-149, effective 1/1/18**

Any motor vehicle accident data information generated from a **motor vehicle accident report** or supplemental report shall not include a copy of the motor vehicle accident report or supplemental report, personally identifying information or any other information disclosure that is prohibited by law. **625 ILCS 5/1–146.5, PA 100-96, effective 1/1/18**

A person may operate a low-speed electric bicycle upon any highway, street, or roadway authorized for use by bicycles, including, but not limited to, bicycle lanes. A person may operate this type of bicycle upon any bicycle path unless the municipality, county, or local authority with jurisdiction prohibits the use of low-speed electric bicycles or a specific class of low-speed electric bicycles on that path. But, a person may not operate a low-speed bicycle on a sidewalk. A person has to be at least 16 years of age to operate a Class 3 low-speed electric bicycle but someone under that age can ride as a passenger if the bicycle is designed to accommodate passengers. **625 ILCS 5/11–1517(e)-(h), PA 100-209, effective 1/1/18.**

The following changes to the statute of limitations are already in effect:

When a victim is under 18 years of age at the time of the offense, a prosecution for criminal sexual assault, aggravated criminal sexual assault, predatory criminal sexual assault of a child, aggravated criminal sexual abuse, or felony criminal sexual abuse may be commenced at any time. **720 ILCS 5/3-6(d)**

When the victim is under 18 years of age at the time of the offense, a prosecution for failure of a person who is required to report an alleged or suspected commission of criminal sexual assault, aggravated criminal sexual assault, predatory criminal sexual assault of a child, aggravated criminal sexual abuse, or felony criminal sexual abuse; under the Abused and Neglected Child Reporting Act may be commenced within 20 years after the child victim attains 18 years of age. **720 ILCS 5/3–6(j)(2), PA 100-80, effective 8/11/17**

A person may sell, manufacture, purchase, possess or carry a **switchblade knife** if the person possesses a previously issued, currently valid Firearm Owners’

Identification Card in his or her name. This is an exemption in the U UW statute as is a person or an entity engaged in the business of selling or manufacturing switchblade knives. **720 ILCS 5/24-1(e)(2), PA 100-82, effective 8/11/17**

### Search and seizure cases

A defendant was not seized when an officer requested that the defendant take his hands from his pockets. The initial encounter was consensual. The officer did not block the defendant's path or keep him from going on his way. The officer has a reasonable suspicion that the defendant was armed given that he was alone late at night with the defendant who was coming from the house of a known narcotics trafficker, and the defendant continued to put his hands in his pockets after the officer's repeated requests not to do so. **People v. Evans, 2017 IL App (4<sup>th</sup>) 140672, 411 Ill.Dec. 425, 73 N.E.3d 139(2017)**

An officer's statement, "come here" from a police vehicle to a defendant was a **request** and not a command which would have been a seizure. The defendant dropped drugs on the grounds that were

then recovered by the police. The defendant contended he had been seized from the beginning of the encounter. **People v. Qurash, 2017 IL App (1<sup>st</sup>) 143412, 411 Ill.Dec. 266, 72 N.E.3d 1272(2017)**

There was **no probable cause** to arrest a motorist for DUI in **People v. Gocmen, 2017 IL App (3d) 160025, 414 Ill.Dec. 424, 80 N.E.3d 567(2017)** so his summary suspension had to be rescinded. The officer did not have training or experience in DUI of drugs, did not observe physical symptoms reported by the paramedics and could not tell a diabetic reaction from a reaction to drugs.

Under the **plain view doctrine**, the seizure of uniform product code labels from the defendant's car was justified. **People v. Petty, 2017 IL App (1<sup>st</sup>) 150641, 414 Ill.Dec. 483, 80 N.E.3d 626(2017)** The vehicle had been lawfully stopped, the officers were experienced tactical team members investigating retail theft. They had just interviewed a store manager, viewed surveillance video and recognized the defendant so that when they saw the UPC labels on the car's floorboard, the warrantless seizure was proper.

Evidence obtained with a **search warrant** was admissible because there was sufficient probable cause to search the offender's home. The police listed not only the murder weapon but also a specific article of clothing identified by three witnesses as being worn by the offender at the time of the shooting. **People v. Rodriguez, 2017 IL App (1<sup>st</sup>) 141379, 413 Ill.Dec. 996, 79 N.E.3d 345(2017)**

Where an officer entered the common area of a hallway of an unlocked apartment building with a **canine** that sniffed the front door of the defendant's apartment, this action was a search under the fourth amendment and not allowed. The good faith exception to the exclusionary rule did not apply in this case. **People v. Bonilla, 2017 IL App (3d) 160457, 415 Ill.Dec. 183, 82 N.E.3d 128(2017)**

A police officer was justified in conducting a **patdown search** for weapons during an investigatory stop where the defendant was a passenger in the vehicle, the vehicle matched the description of a vehicle that had been stolen 90 minutes before, and the officer saw the defendant reach toward the center console with one hand

and with his other hand put something into his waistband after the driver was told exit the vehicle and after the defendant was told to keep his hands visible. **People v. Richardson, 2017 IL App (1<sup>st</sup>) 130203-B, 415 Ill.Dec. 312, 82 N.E.3d 516(2017)**

A police officer's seizure of contraband was illegal in **People v. Martin, 2017 IL App (1<sup>st</sup>) 143255, 415 Ill.Dec. 389, 82 N.E.3d 593(2017)** because he reached inside the outer doorway of the house to seize a blue bag that contained a controlled substance. This was a warrantless search and there were no exigent circumstances.

A recording of a drug transaction was admissible even though it did not have judicial authorization where it was approved by the state's attorney and qualified as an exemption from the criminal offense of **eavesdropping** for the prosecution of unlawful delivery of a controlled substance within 1000 feet of real property used for religious worship. **People v. Brindley, 2017 IL App (5<sup>th</sup>) 160189, 415 Ill.Dec. 652, 82 N.E.3d 856(2017)**

### Confession caselaw

A defendant was not in **custody** when officers went to

his home to investigate a fatal fire and the defendant went with the police officers to the police station to answer questions. Furthermore, after he invoked his right to counsel, he subsequently reinitiated a discussion and made statements that were admissible. Statements made during a smoking break that occurred in a video blind spot did not violate the requirement that the interrogation be recorded in a murder case. **People v. Mandoline, 2017 IL App (2d) 150511, 411 Ill.Dec. 359, 73 N.E.3d 73(2017)**

The defendant's statements could not be used against him in **People v. Hernandez, 2017 IL App (1<sup>st</sup>) 150575, 414 Ill.Dec. 275, 80 N.E.3d 8(2017)** because his **arrest** was illegal and the statements were not attenuated from that the taint of the illegal arrest. The duration between the illegal arrest and the statements was short and didn't give time for independent reflection.

### DUI decisions

The testimony by a trooper that the defendant was driving during the offense of **aggravated DUI** was relevant and admissible. **People v. Martin, 2017 IL App (4<sup>th</sup>) 150021, 414 Ill.Dec. 361, 80**

**N.E.3d 94(2017)** The trooper arrived at the scene of an accident and interviewed the defendant and the passenger. The defendant's story made no sense and the passenger said the defendant was the driver.

Where a defendant intentionally drove his vehicle across a median at twice the speed limit and rammed his vehicle into the victim's vehicle, there was sufficient evidence that the defendant was aware of his actions in a prosecution for first-degree murder and **aggravated DUI** (cannabis). The defendant suffered from schizophrenia and said he was testing his immortality. **People v. Oelerich, 2017 IL App (2d) 141281, 413 Ill.Dec. 716, 78 N.E.3d 992(2017)**

### Random rulings

A defendant's conviction for **unlawful use of a weapon by a felon** was upheld even though the predicate offense (AUUW) had been declared unconstitutional. The defendant had not taken any steps to clear his felon status before getting the firearm. **People v. Spivey, 2017 IL App (1<sup>st</sup>) 123563, 415 Ill.Dec. 338, 82 N.E.3d 542(2017)**

A defendant’s convictions for **battery and resisting a peace officer** were reversed in **People v. Jackson, 2017 IL App (1<sup>st</sup>) 142879, 415 Ill.Dec. 249, 82 N.E.3d 194(2017)**. Paramedics testified that the defendant was agitated and nervous, possibly suffering from a psychological issue so he would have lacked the mental state required for a conviction.

A defendant’s conviction for **aggravated participation in methamphetamine manufacturing within 1,000 feet of a place of worship** was reduced to simple participation in methamphetamine manufacturing because there was no direct testimony that the building was functioning primarily as a place of worship on the date of the offense. The witness just used the term “church”. **People v. Fickes, 2017 IL App (5<sup>th</sup>) 140300, 413 Ill.Dec. 985, 79 N.E.3d 334(2017)**

There was insufficient evidence that the defendant committed the offense of **identity theft** in **People v. Bensen, 2017 IL App (2d) 150085, 415 Ill.Dec. 91, 81 N.E.3d 613(2017)**. The defendant worked for a company and had been given a credit card account in her name

that she used for personal items and expenses. She used the credit card in an unauthorized manner but because her name was on it, the evidence did not support a conviction for identity theft.

There was sufficient evidence to prove the crime of **unlawful delivery of a controlled substance** in **People v. Hernandez, 2017 IL App (2d) 150731, 413 Ill.Dec. 708, 78 N.E.3d 984(2017)**. The defendant had conducted a “heat run” to counteract law-enforcement surveillance. A heat run occurs when a defendant takes out-of-the-way routes to actual destinations to see if he is being followed. This showed that he knowingly participated in the transaction.

A defendant’s conviction for **child abduction** by a noncustodial parent was reversed in **People v. Cole, 2017 IL App (2d) 160334, 414 Ill.Dec. 871, 81 N.E.3d 137(2017)**. The evidence didn’t show that the mother did not consent to the defendant’s taking the child in the early morning. The mother never objected and said she gave consent to take the child to breakfast.

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