



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

**HB2434**

Introduced 02/17/05, by Rep. Linda Chapa LaVia

#### SYNOPSIS AS INTRODUCED:

720 ILCS 5/12-3.2	from Ch. 38, par. 12-3.2
720 ILCS 5/12-3.3	
720 ILCS 5/12-30	from Ch. 38, par. 12-30

Amends the Criminal Code of 1961. Increases the penalties for domestic battery and violation of an order of protection from a Class A misdemeanor to a Class 4 felony for a first offense and from a Class 4 felony for a second or subsequent conviction to a Class 3 felony. Increases the penalties for these offenses from a Class 4 felony to a Class 3 felony if the defendant had a prior conviction for certain specified offenses. Increases the penalties for aggravated domestic battery from a Class 2 felony to a Class 1 felony.

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CORRECTIONAL  
BUDGET AND  
IMPACT NOTE ACT  
MAY APPLY

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Criminal Code of 1961 is amended by changing  
5 Sections 12-3.2, 12-3.3, and 12-30 as follows:

6 (720 ILCS 5/12-3.2) (from Ch. 38, par. 12-3.2)

7 Sec. 12-3.2. Domestic Battery.

8 (a) A person commits domestic battery if he intentionally  
9 or knowingly without legal justification by any means:

10 (1) Causes bodily harm to any family or household  
11 member as defined in subsection (3) of Section 112A-3 of  
12 the Code of Criminal Procedure of 1963, as amended;

13 (2) Makes physical contact of an insulting or provoking  
14 nature with any family or household member as defined in  
15 subsection (3) of Section 112A-3 of the Code of Criminal  
16 Procedure of 1963, as amended.

17 (b) Sentence. Domestic battery is a Class 4 felony ~~A~~  
18 ~~misdemeanor~~. Domestic battery is a Class 3 4 felony if the  
19 defendant has any prior conviction under this Code for domestic  
20 battery (Section 12-3.2) or violation of an order of protection  
21 (Section 12-30), or any prior conviction under the law of  
22 another jurisdiction for an offense which is substantially  
23 similar. Domestic battery is a Class 3 4 felony if the  
24 defendant has any prior conviction under this Code for first  
25 degree murder (Section 9-1), attempt to commit first degree  
26 murder (Section 8-4), aggravated domestic battery (Section  
27 12-3.3), aggravated battery (Section 12-4), heinous battery  
28 (Section 12-4.1), aggravated battery with a firearm (Section  
29 12-4.2), aggravated battery of a child (Section 12-4.3),  
30 aggravated battery of an unborn child (Section 12-4.4),  
31 aggravated battery of a senior citizen (Section 12-4.6),  
32 stalking (Section 12-7.3), aggravated stalking (Section

1 12-7.4), criminal sexual assault (Section 12-13), aggravated  
2 criminal sexual assault (12-14), kidnapping (Section 10-1),  
3 aggravated kidnapping (Section 10-2), predatory criminal  
4 sexual assault of a child (Section 12-14.1), aggravated  
5 criminal sexual abuse (Section 12-16), unlawful restraint  
6 (Section 10-3), aggravated unlawful restraint (Section  
7 10-3.1), aggravated arson (Section 20-1.1), or aggravated  
8 discharge of a firearm (Section 24-1.2), or any prior  
9 conviction under the law of another jurisdiction for any  
10 offense that is substantially similar to the offenses listed in  
11 this Section, when any of these offenses have been committed  
12 against a family or household member as defined in Section  
13 112A-3 of the Code of Criminal Procedure of 1963. In addition  
14 to any other sentencing alternatives, for any second or  
15 subsequent conviction of violating this Section, the offender  
16 shall be mandatorily sentenced to a minimum of 72 consecutive  
17 hours of imprisonment. The imprisonment shall not be subject to  
18 suspension, nor shall the person be eligible for probation in  
19 order to reduce the sentence.

20 (c) Domestic battery committed in the presence of a child.  
21 In addition to any other sentencing alternatives, a defendant  
22 who commits, in the presence of a child, a felony domestic  
23 battery (enhanced under subsection (b)), aggravated domestic  
24 battery (Section 12-3.3), aggravated battery (Section 12-4),  
25 unlawful restraint (Section 10-3), or aggravated unlawful  
26 restraint (Section 10-3.1) against a family or household  
27 member, as defined in Section 112A-3 of the Code of Criminal  
28 Procedure of 1963, shall be required to serve a mandatory  
29 minimum imprisonment of 10 days or perform 300 hours of  
30 community service, or both. The defendant shall further be  
31 liable for the cost of any counseling required for the child at  
32 the discretion of the court in accordance with subsection (b)  
33 of Section 5-5-6 of the Unified Code of Corrections. For  
34 purposes of this Section, "child" means a person under 16 years  
35 of age who is the defendant's or victim's child or step-child  
36 or who is a minor child residing within the household of the

1 defendant or victim. For purposes of this Section, "in the  
2 presence of a child" means in the physical presence of a child  
3 or knowing or having reason to know that a child is present and  
4 may see or hear an act constituting one of the offenses listed  
5 in this subsection.

6 (Source: P.A. 92-16, eff. 6-28-01; 92-827, eff. 8-22-02; P.A.  
7 93-336, eff. 1-1-04; 93-809, eff. 1-1-05.)

8 (720 ILCS 5/12-3.3)

9 Sec. 12-3.3. Aggravated domestic battery.

10 (a) A person who, in committing a domestic battery,  
11 intentionally or knowingly causes great bodily harm, or  
12 permanent disability or disfigurement commits aggravated  
13 domestic battery.

14 (b) Sentence. Aggravated domestic battery is a Class 1 ~~2~~  
15 felony. Any order of probation or conditional discharge entered  
16 following a conviction for an offense under this Section must  
17 include, in addition to any other condition of probation or  
18 conditional discharge, a condition that the offender serve a  
19 mandatory term of imprisonment of not less than 60 consecutive  
20 days. A person convicted of a second or subsequent violation of  
21 this Section must be sentenced to a mandatory term of  
22 imprisonment of not less than 3 years and not more than 7 years  
23 or an extended term of imprisonment of not less than 7 years  
24 and not more than 14 years.

25 (Source: P.A. 91-445, eff. 1-1-00.)

26 (720 ILCS 5/12-30) (from Ch. 38, par. 12-30)

27 Sec. 12-30. Violation of an order of protection.

28 (a) A person commits violation of an order of protection  
29 if:

30 (1) He or she commits an act which was prohibited by a  
31 court or fails to commit an act which was ordered by a  
32 court in violation of:

33 (i) a remedy in a valid order of protection  
34 authorized under paragraphs (1), (2), (3), (14), or

1 (14.5) of subsection (b) of Section 214 of the Illinois  
2 Domestic Violence Act of 1986,

3 (ii) a remedy, which is substantially similar to  
4 the remedies authorized under paragraphs (1), (2),  
5 (3), (14) or (14.5) of subsection (b) of Section 214 of  
6 the Illinois Domestic Violence Act of 1986, in a valid  
7 order of protection, which is authorized under the laws  
8 of another state, tribe or United States territory,

9 (iii) any other remedy when the act constitutes a  
10 crime against the protected parties as the term  
11 protected parties is defined in Section 112A-4 of the  
12 Code of Criminal Procedure of 1963; and

13 (2) Such violation occurs after the offender has been  
14 served notice of the contents of the order, pursuant to the  
15 Illinois Domestic Violence Act of 1986 or any substantially  
16 similar statute of another state, tribe or United States  
17 territory, or otherwise has acquired actual knowledge of  
18 the contents of the order.

19 An order of protection issued by a state, tribal or  
20 territorial court related to domestic or family violence shall  
21 be deemed valid if the issuing court had jurisdiction over the  
22 parties and matter under the law of the state, tribe or  
23 territory. There shall be a presumption of validity where an  
24 order is certified and appears authentic on its face.

25 (a-5) Failure to provide reasonable notice and opportunity  
26 to be heard shall be an affirmative defense to any charge or  
27 process filed seeking enforcement of a foreign order of  
28 protection.

29 (b) For purposes of this Section, an "order of protection"  
30 may have been issued in a criminal or civil proceeding.

31 (c) Nothing in this Section shall be construed to diminish  
32 the inherent authority of the courts to enforce their lawful  
33 orders through civil or criminal contempt proceedings.

34 (d) Violation of an order of protection under subsection  
35 (a) of this Section is a Class 4 felony ~~A misdemeanor~~.  
36 Violation of an order of protection under subsection (a) of

1 this Section is a Class 3 ~~4~~ felony if the defendant has any  
2 prior conviction under this Code for domestic battery (Section  
3 12-3.2) or violation of an order of protection (Section 12-30).  
4 Violation of an order of protection is a Class 3 ~~4~~ felony if  
5 the defendant has any prior conviction under this Code for  
6 first degree murder (Section 9-1), attempt to commit first  
7 degree murder (Section 8-4), aggravated domestic battery  
8 (Section 12-3.3), aggravated battery (Section 12-4), heinous  
9 battery (Section 12-4.1), aggravated battery with a firearm  
10 (Section 12-4.2), aggravated battery of a child (Section  
11 12-4.3), aggravated battery of an unborn child (Section  
12 12-4.4), aggravated battery of a senior citizen (Section  
13 12-4.6), stalking (Section 12-7.3), aggravated stalking  
14 (Section 12-7.4), criminal sexual assault (Section 12-13),  
15 aggravated criminal sexual assault (12-14), kidnapping  
16 (Section 10-1), aggravated kidnapping (Section 10-2),  
17 predatory criminal sexual assault of a child (Section 12-14.1),  
18 aggravated criminal sexual abuse (Section 12-16), unlawful  
19 restraint (Section 10-3), aggravated unlawful restraint  
20 (Section 10-3.1), aggravated arson (Section 20-1.1), or  
21 aggravated discharge of a firearm (Section 24-1.2), when any of  
22 these offenses have been committed against a family or  
23 household member as defined in Section 112A-3 of the Code of  
24 Criminal Procedure of 1963. The court shall impose a minimum  
25 penalty of 24 hours imprisonment for defendant's second or  
26 subsequent violation of any order of protection; unless the  
27 court explicitly finds that an increased penalty or such period  
28 of imprisonment would be manifestly unjust. In addition to any  
29 other penalties, the court may order the defendant to pay a  
30 fine as authorized under Section 5-9-1 of the Unified Code of  
31 Corrections or to make restitution to the victim under Section  
32 5-5-6 of the Unified Code of Corrections. In addition to any  
33 other penalties, including those imposed by Section 5-9-1.5 of  
34 the Unified Code of Corrections, the court shall impose an  
35 additional fine of \$20 as authorized by Section 5-9-1.11 of the  
36 Unified Code of Corrections upon any person convicted of or

1 placed on supervision for a violation of this Section. The  
2 additional fine shall be imposed for each violation of this  
3 Section.

4 (e) The limitations placed on law enforcement liability by  
5 Section 305 of the Illinois Domestic Violence Act of 1986 apply  
6 to actions taken under this Section.

7 (Source: P.A. 91-112, eff. 10-1-99; 91-357, eff. 7-29-99;  
8 92-827, eff. 8-22-02.)