

2014 Sexual Assault Legislative Update

ILLINOIS COALITION AGAINST SEXUAL ASSAULT

DECEMBER 2014

Kelly Griffith, General Counsel

kgriffith@icasa.org

Libby Shawgo, Paralegal

lshawgo@icasa.org

Illinois Coalition Against Sexual Assault

100 North 16th Street

Springfield, IL 62703

217-753-4117

www.icasa.org



Kelly
Griffith



Noelle Dupuis, JD, Director of Policy
dupuis@ilcadv.org

Illinois Coalition Against Domestic Violence

806 South College St.

Springfield, IL 62704

217-789-2830

www.ilcadv.org

LEGISLATIVE INFORMATION

- ▶ www.ilga.gov
 - ▶ Statutes
 - ▶ Bills – read & track
 - ▶ Legislator information

- ▶ www.icasa.org
 - ▶ Sexual assault bills & fact sheets

CRIMINAL LAW



Criminal Lineup Changes

- ▶ Law Enforcement must, whenever practical:
 - ▶ give witnesses instructions designed to reduce the frequency of mistaken identifications;
 - ▶ protect the identity of eyewitnesses and any police officers used in the lineup; and
 - ▶ keep records of how the lineup was conducted.



HB 802

P.A. 98-1014

Those Convicted of Misdemeanor Crimes Can Ask Court to Seal Records

- ▶ Many prostituted and trafficked people are forced to engage in criminal activity.
- ▶ Criminal records present barriers to employment and moving on with their lives.
- ▶ More people will be considered for jobs and housing they could otherwise be denied because of past mistakes.
- ▶ Making more people employable is proven to lower recidivism.

Amends Predatory Criminal Sexual Assault of a Child

- ▶ Last year, touching a boy's penis was elevated to the same offense level as a penetration crime for purposes of charging predatory criminal sexual assault.
- ▶ This year, the requirement to prove sexual intent for penetration crimes, as there is for criminal sexual abuse, is added.

HB 4516

[P.A. 98-903](#)

Grooming Expanded

- ▶ Grooming now includes knowingly using a computer or electronic device to get, or try to get, a child, a child's guardian, or another person the groomer thinks is a child or a child's guardian, to send pictures of the child's sex organs.
- ▶ Class 4 felony.



HB 5290

[P.A. 98-919](#)

HIV Testing – VAWA Compliance

- ▶ Illinois law did not clearly state when the 48 hours begins before VAWA-mandated HIV testing of sex offenders. Prosecutors will ask the court to compel testing within 48 hours after a
 - ▶ preliminary hearing finding that there is probable cause to believe a sex offense was committed;
 - ▶ criminal indictment;
 - ▶ finding that the defendant is unfit to stand trial; or
 - ▶ request of the victim.

Post-Conviction DNA Testing

- ▶ Those who have pled guilty (in addition to those who were convicted during a trial) to a crime can ask for post-conviction DNA testing.
- ▶ The trial court must allow DNA testing when it is reasonable to believe the defendant would have been acquitted had the DNA results been available before the guilty plea was entered.
- ▶ The prosecutor may, upon request, reactivate victim services for the victim during and after the trial proceeding.

Revenge Porn

- ▶ SB 1009 makes it a Class 4 felony to
 - ▶ knowingly post sexually explicit photos, video, voice recording, etc. of another person
 - ▶ online
 - ▶ without the person's consent.

- ▶ Punishable by
 - ▶ up to 3 years in prison
 - ▶ \$25,000 fine
 - ▶ Forfeiture of property.

Questions?



MINORS' RIGHTS



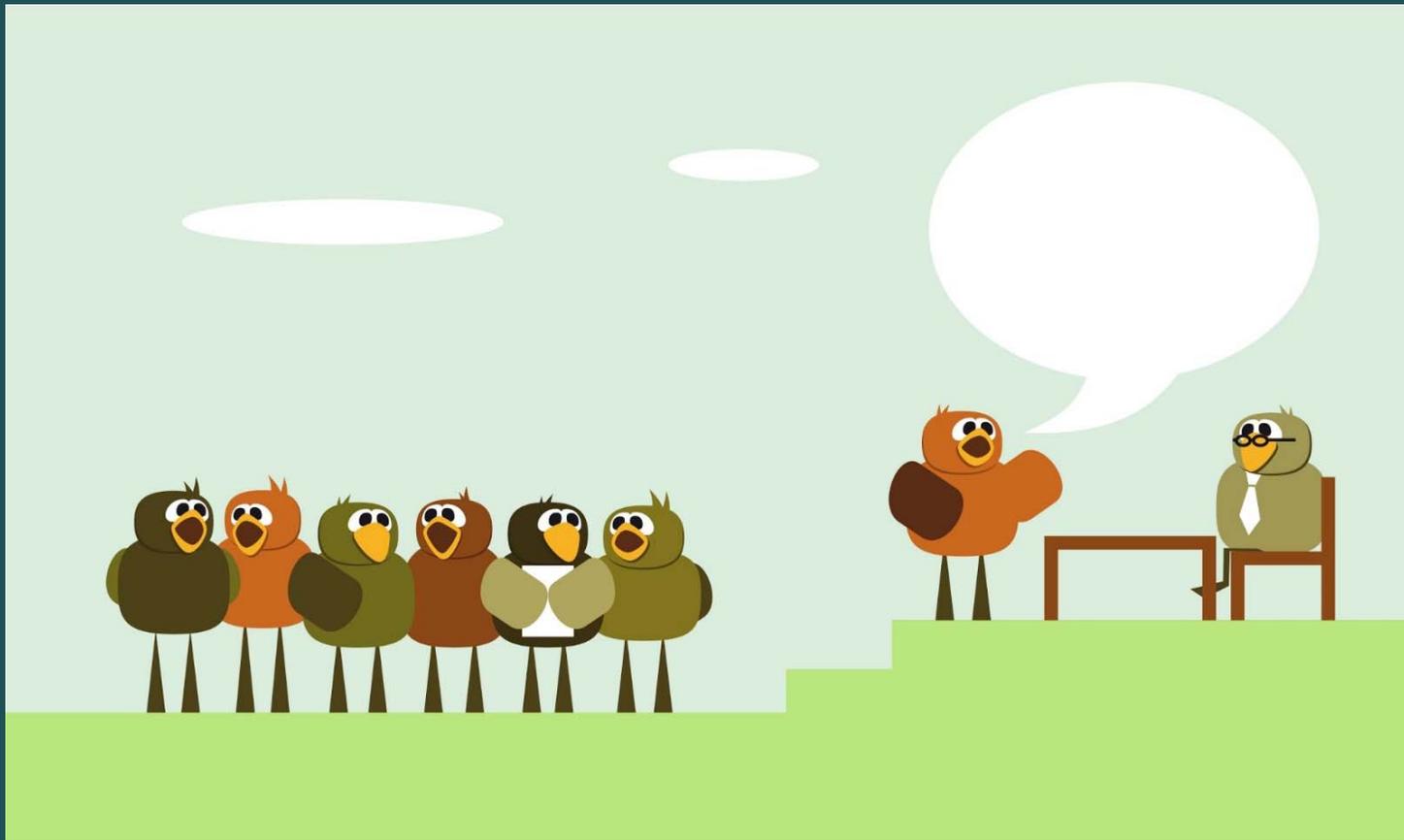
Unaccompanied Minors Can Consent to Primary Care

- ▶ Homeless teens between the ages of 14 and 18 can consent to routine medical care.
- ▶ Routine medical care includes care normally obtained from a primary doctor/pediatrician/family doctor.

Tattoo Removal for Minor Trafficking Victims

- ▶ Minor victims of sex trafficking/human trafficking and minors who are former gang members who have been branded with tattoos can have those tattoos removed.
- ▶ Any licensed tattoo parlor can remove the tattoos without the consent of the minor's parent or guardian.
- ▶ Crime Victim Compensation will reimburse trafficking victims for the cost of trafficking tattoo removal.
- ▶ Some tattoo artists offer free removal services.

Questions?



CRIME VICTIMS



 ILLINOISVICTIMS.ORG



Constitutional Amendment for Crime Victims' Rights

- ▶ Victims in Illinois now have comprehensive, meaningful and enforceable rights!
- ▶ Effective immediately.
- ▶ Victims now have standing.
- ▶ The amendment ensures that victims will be:
 - ▶ informed of court proceedings;
 - ▶ present at trial and at hearings about their cases; and
 - ▶ heard at any court proceeding involving the release, plea or sentencing of the defendant.

[HJRCA 1](#)

**Adopted in Both Houses
Approved by Voters Nov. 4, 2014**

Crime Victim Confidentiality

The Attorney General's office cannot release the

- ▶ name,
- ▶ address,
- ▶ phone number;
- ▶ personal identification numbers; or
- ▶ email address

of anyone who is registered with the Automated Victim Notification system (AVN).



Enforcement of Restitution Orders

- ▶ A victim can petition the court for payment when a judge orders restitution as a condition of probation, conditional discharge or supervision, and the restitution is not paid.
- ▶ The judge can then hold a review hearing and
 - ▶ extend or revoke the offender's probation, conditional discharge, or supervision; or
 - ▶ issue a judgment for the unpaid restitution.

Enforcement of Restitution Orders

- ▶ The court can provide extra time to complete an order of restitution by extending a term of probation or conditional discharge that was interrupted by a term of imprisonment.



SB 3074

[P.A. 98-953](#)

Children's Advocacy Center Act Amendments

- ▶ The Children's Advocacy Center Act is updated to more accurately reflect the work that CACs do.
- ▶ There are mandatory components for every CAC, including
 - ▶ a policy on multidisciplinary team collaboration; and
 - ▶ a dispute resolution process between agencies when a conflict arises on how to proceed on the referral of a particular case.



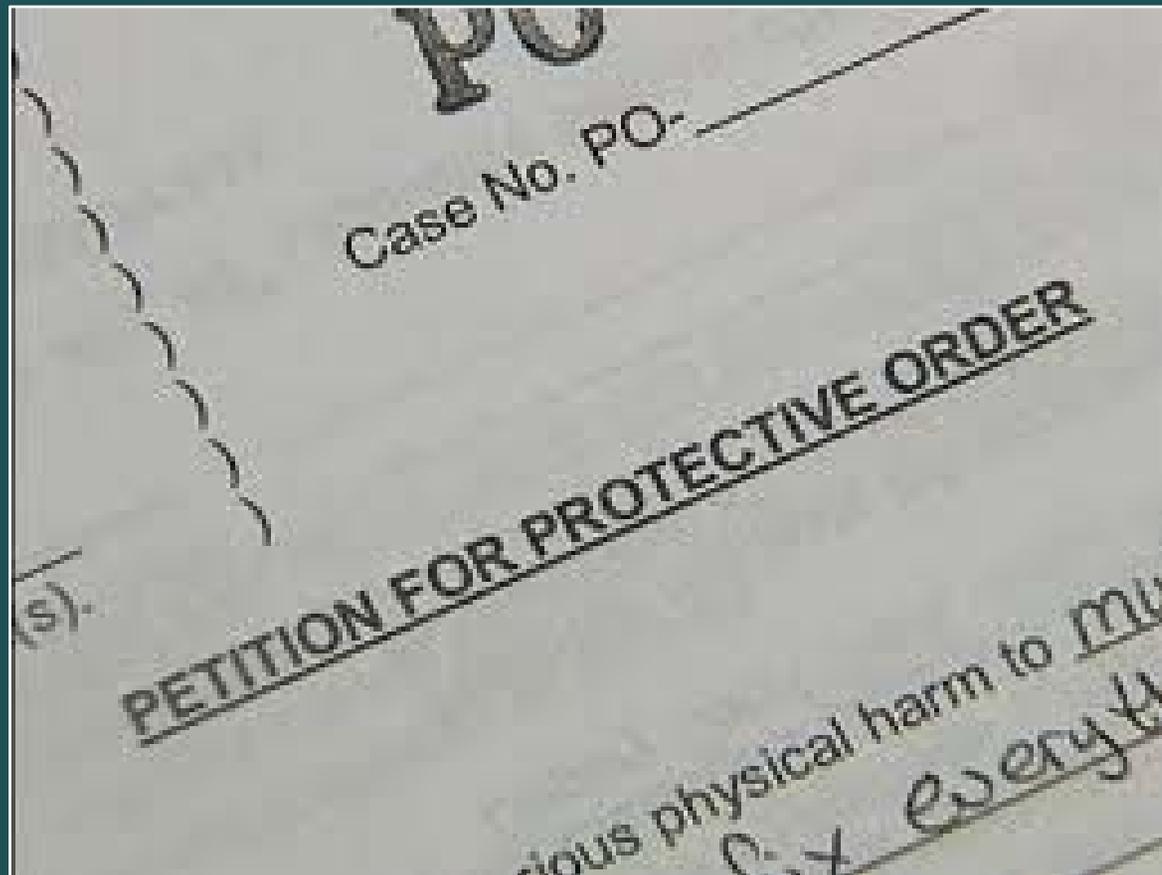
HB 5990

[P.A. 98-809](#)

Questions?



PROTECTIVE ORDERS



Diane's Law – Electronic Monitoring

- ▶ Amends the Code of Criminal Procedure, 725 ILCS 5/110-5 (Determining the amount of bail and conditions of release), AKA the Bischoff Law
- ▶ Allows the court to order electronic monitoring as a condition of release when a person is charged with certain domestic violence-related crimes.
- ▶ DHS Partner Abuse Intervention Programs, pretrial services, and probation or parole agencies should use a “recognized, evidence-based instrument” when making risk assessments.

Workplace Violence Prevention Act Amendments

- ▶ The Workplace Violence Protection Act now provides some protections for survivors.
- ▶ The Act is distinguished and removed from the Domestic Violence Act.
- ▶ VESSA is amended to provide protection for victims who do not cooperate with an employer seeking an order.
- ▶ The scope of the act is limited to a “credible threat of violence” that causes a reasonable person to fear for his or safety, or the safety of others, at the workplace.

Enhanced Penalties for Domestic Battery

As of January 1, 2014:

- ▶ 1 or 2 prior convictions = Class 4 felony
- ▶ 3 prior convictions = Class 3 felony
- ▶ 4 or more prior convictions = Class 2 felony

As of January 1, 2015:

- ▶ Enhanced penalties also apply when the offender was convicted of domestic battery, or a substantially similar offense, in another jurisdiction.



Questions?



EMPLOYMENT PROTECTIONS



Reasonable Accommodations for Pregnant Workers

- ▶ Employers must make reasonable accommodations for conditions related to pregnancy and childbirth under the Illinois Human Rights Act.
- ▶ The rights of pregnant women must be posted and included in any employee handbook.
- ▶ If the Department of Human Rights finds that a pregnant woman's rights were denied and the employer does not correct the violation, the employer can be charged with a civil rights violation.
- ▶ Resource: www.povertylaw.org

Unpaid Interns are Protected from Sexual Harassment

- ▶ Unpaid interns are protected from workplace sexual harassment under the Illinois Human Rights Act.
- ▶ Previously, the law only covered paid employees, apprentices, and applicants for apprenticeships.
- ▶ Outlines who qualifies as an unpaid intern.

Ban the Box

- ▶ An employer may only ask about an applicant's criminal history after determining that the person is qualified for the job and selecting the applicant for an interview.
- ▶ If there is no interview process, the employer must first extend a conditional offer of employment before asking about the applicant's criminal history.
- ▶ Intent is to give people with criminal convictions an opportunity to tell their side of the story to employers before being excluded from the applicant pool.

Questions?



PROSTITUTION/TRAFFICKING



Specialized Services for Survivors of Human Trafficking Fund

- ▶ Money will come from forfeited property and fines against pimps and johns.
- ▶ Grants will be made to support the development of specialized services for prostituted and trafficked people.
- ▶ Resource: www.enddemandillinois.org



SB 3558

[P.A. 98-1013](#)

Questions?



MANDATED REPORTING/DCFS



Short-Term Guardians Are Presumed Fit

- ▶ Courts cannot act on a petition for the appointment of a guardian when there is already a short-term guardian.
- ▶ The court will assume it is in the best interests of the child to remain with the short-term guardian unless a petitioner for guardianship proves otherwise.

Custody Relinquishment Prevention Act

- ▶ Intended to prevent “lock outs” or “planned abandonment” of kids with serious mental illness.
- ▶ Parents and adoptive parents were forced to give up custody of kids in order to get services through state agencies.
- ▶ Parents were then indicated for neglect by DCFS and had to jump through hoops to regain custody.



DCFS Safety Plans

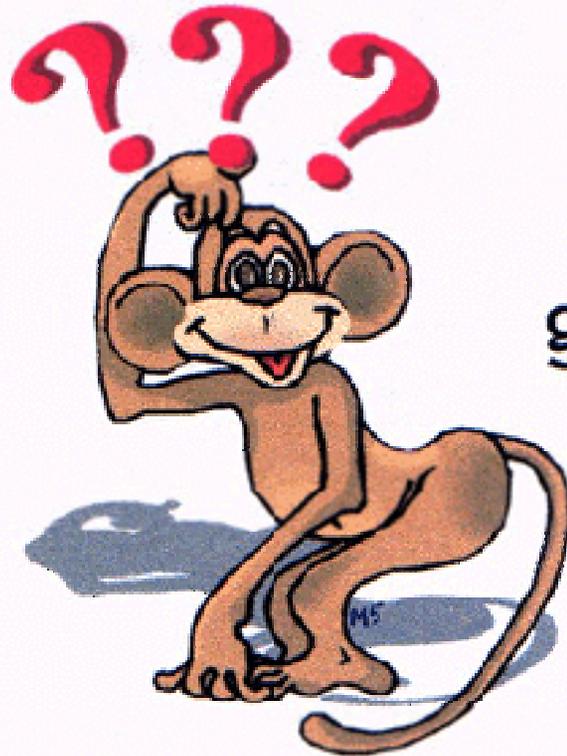
DCFS must

- ▶ provide written copies of each safety plan to the adult caregivers named in the plan;
- ▶ ensure the caregivers and the child protection supervisor sign each plan;
- ▶ keep the signed safety plans on file at DCFS; and
- ▶ supply each caregiver with a list of rights and responsibilities under the plan.

DCFS May Place Children with “Fictive Kin”

- ▶ A family friend who has played a major role in caring for a child can serve as a foster parent for that child.
- ▶ The friend must apply for a license as a foster family.
- ▶ The child cannot be removed from the home solely because the friend did not obtain a foster care license.

Questions?



Questions
are
guaranteed in
life;
Answers
aren't.

EDUCATION



Cyberbullying Initiated Away from School

- ▶ The School Code now includes protections against cyberbullying that is initiated away from school using devices not owned or used by the school.
- ▶ Cyberbullying using school computers and electronic devices was already covered.

The cyberbullying must

- ▶ be reported to a school administrator or teacher; and
- ▶ cause a substantial disruption to the educational process or orderly operation of a school.

School Bullying Policy Guidance

Each school district and school must have a “Policy on Bullying” that includes:

- ▶ the definition of bullying;
- ▶ a statement that bullying is against the law and is prohibited in school;
- ▶ procedures for reporting bullying;
- ▶ procedures for promptly informing parents or guardians involved; and
- ▶ procedures for promptly investigating and addressing reports of bullying.

School Counselors

The School Code definition of “school counseling services” now reflects the work school counselors actually do:

- ▶ referring students to community-based services;
- ▶ helping undocumented students;
- ▶ providing support and interventions for kids with mental illness;
- ▶ helping with bullying-prevention programs; and
- ▶ implementing culturally-sensitive measures of success.

Counselors must participate in training every 2 years that includes domestic violence and sexual violence.

Questions?



Healthcare



Health Care Worker Registry

- ▶ The Department of Human Services Inspector General must report substantiated allegations of financial exploitation to the Department of Public Health's Health Care Worker Registry.
- ▶ Individuals who commit financial exploitation cannot work at state funded, licensed, and certified programs.

Home Care Consumer Bill of Rights

- ▶ People who are age 60 or older and people with disabilities who are age 18 through 59 who receive home care services have legal rights.
- ▶ The Home Care Consumer Bill of Rights outlines those rights.
- ▶ A list of those rights is included in a new brochure created by the Illinois Department on Aging.
- ▶ The Department of Human Services and the Department on Aging must develop a plan for enforcing the Bill of Rights

HB 5852

[P.A. 98-935](#)

Prescriptive Authority for Psychologists

Psychologists in Illinois can write prescriptions for psychiatric medications if they meet stringent educational, supervised training, and licensing requirements.

Prescribing psychologists must:

- ▶ meet all requirements can apply for a prescribing psychologist license;
- ▶ have a written collaborative agreement; and
- ▶ will only be able to prescribe psychiatric medication to healthy adults under the age of 65.

SB 2187

[P.A. 98-668](#)

Physician Disclosure of Confidential Health Information

- ▶ The Public Act amends the physician-patient privilege to clarify that prosecutors can obtain medical records through a grand jury subpoena when they are needed as evidence.
- ▶ The State's Attorney must petition the court for a protective order when the
 - ▶ charge is domestic battery, aggravated domestic battery, or a sex offense;
 - ▶ patient is a minor; or
 - ▶ patient requests a protective order.

