



2019 Sexual Assault Legislative Update

Illinois Coalition Against Sexual Assault
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Legislative Information

- www.ilga.gov
 - Consolidated Statutes
 - Bills: read & track
 - Legislator information
 - Committee schedules
- www.icasa.org
 - Sexual assault related bills
 - Fact sheets
 - Webinars & resource materials

CRIMINAL LAW & VICTIMS' RIGHTS



No Statute of Limitations for
Adult Sexual Assault – HB 2135



Request Waiver of Prompt
Execution of Warrant – HB 92



Sexual Assault Evidence
Tracking System – SB 1411



No Victim Contact by Defendant
in Custody – HB 2308



Female Genital Mutilation of
Child: No Statute of Limitations
& Facilitation Felony – HB 3498

CRIMINAL LAW & VICTIMS' RIGHTS



Attorney General's Address
Confidentiality – HB 2818



SASETA Transfers Amendment –
HB 3038



Prisoner Review Board Victim
Confidentiality – HB 3584



Public Aid for Trafficking Victims
– HB 2118

No Statute of Limitations for Adult Sexual Assault

- Criminal Sexual Assault
- Aggravated Criminal Sexual Assault
- Aggravated Sexual Abuse
- Offense involving “sexual conduct”
- Offense involving “sexual penetration”



Applied Prospectively

- If a charge has already expired under the statute of limitations, no change to statute can revive it. *Stogner v. California*, 539 U.S. 607, 123 S.Ct. 2446 (2003).
- Charge viable on January 1, 2020, should get benefit of the unlimited statute of limitations

Police Must Request Waiver of Immediate Execution of Warrants

- Sexual assault victim with IL court warrant
- Not for “forcible felonies” or “violent crimes”
- Police contact due to requesting or receiving emergency medical assistance or forensic medical services at hospital
- Officer must call prosecutor
- Request waiver of prompt execution of warrant





Prosecutor's Options

- Call the Court to seek a court order and provide a copy of the order to the officer
- Get verbal consent from judge and give verbal permission to the officer, then follow-up with a written order
- Deny the request



Report to Law Enforcement

- Report of Sexual Assault that occurred within last 7 days
- Must inform victim of right to seek free medical attention and evidence collection at hospital
- Must inform victim that if they seek such services, officer must contact prosecutor to request waiver of prompt execution of the warrant

Sexual Assault Evidence Tracking System

- ▶ Illinois State Police
- ▶ Law requires operational by 8/16/2020
ISP Press Release says “end of the year”





Victim Access

- ▶ Victim must be able to enter the system only to access their own info
- ▶ Must allow victims to opt-in for notification when status updates are entered
- ▶ System will record date, time and user ID when a user accesses it



Reporting & Notifications

- ▶ Compliance:
 - ▶ Health care facility
 - ▶ Law enforcement agency
 - ▶ Forensic lab
- ▶ Automatic Notice to Law Enforcement:
 - ▶ Collection of evidence by hospital
 - ▶ Unreleased evidence meets minimum storage period
 - ▶ Timelines required by law not met

No Contact with Victim by Defendant while in Custody

- Amends conditions of bail bond law
- If unable to post bond, court may impose no contact provision to be enforced while in custody



Female Genital Mutilation

- ▶ Unlimited statute of limitations for charging FGM of minors
- ▶ Parents/guardians with custody or control commit Class 1 felony female genital mutilation when they knowingly facilitate or permit FGM of the child

SASETA Adult Transfer Amendment

- Transfer hospitals may transfer 13+ survivors to “treatment hospital with approved pediatric transfer”
- Must be closer than full treatment hospital
- Must not be unduly burdensome on survivor
- Areawide treatment plan with written agreement between hospitals
- Expires Jan. 1, 2022



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Attorney General's Address Confidentiality Program

- Adds sexual assault & stalking
- Allows use of address designated by AG as substitute mailing address
- May be used by state/local agencies to respond to request for public records without disclosing location
- Allows victims to register to vote; make application for absentee ballot using program



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Prisoner Review Board Victim Statement Confidentiality

- Clarifies process for making a victim statement at proceedings after sentencing
- Increases confidentiality of victim statements provided at hearings for parole, executive clemency and to determine conditions of or revocation of mandatory supervised release
- Not subject to FOIA



PRB Requirements

- ▶ Shall not release any information from victim who provided statement without waiver from victim
- ▶ Exception: Inmate or attorney must be informed about the existence of a victim statement and its contents per Board Rules; however, no disclosure if information that might result in risk of threats or harm to a victim or witness

Public Aid for Trafficking Victims

- ▶ Extends through June 30, 2022 public aid program for foreign-born victims of trafficking, torture, or other serious crimes
- ▶ Eligible for cash assistance and SNAP benefits if have filed or are preparing to file application for T-Visa, U-Visa or formal application for asylum and meet any other program eligibility requirements

DISABILITY RIGHTS



Counseling Sessions
for People with
Developmental
Disabilities – HB 2142



Access to Sex Education
– HB 3299

Counseling Sessions for People with Developmental Disabilities

- ▶ An increase to 12 counseling sessions lasting up to 60 minutes
- ▶ Previously 5 sessions lasting 45 minutes



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Access to Sex Education

- Developmental disability facility residents will be assessed on their ability to give consent to sexual activity
- Will have access to developmentally appropriate sex education materials, resources, and treatment planning
- DHS expected to release curriculum choices by Spring/Summer 2020



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PROTECTIVE ORDERS



Immediate Filing of
Emergency Orders of
Protection with Sheriff
– HB 3396



Emergency Petition
and Order Not Public
Until Served – HB
2309

An Immediate Filing of Emergency Orders of Protection with Sheriff

- Emergency SNCO, CNCO, or DVOP granted
- Court immediately files certified copy of order with sheriff or other law enforcement official
- Emergency orders filed same day, regardless of court holiday or time of day



Emergency Petition and Order Not Public Until Served

- ▶ When emergency SNCO, CNCO, or DVOP petition is filed, the petition is not publicly available until served on respondent
- ▶ When emergency SNCO, CNCO, or DVOP is granted, the order will not be available publicly until served on the respondent
- ▶ Plenary CNCO petitions and orders also not public until served

SCHOOLS & YOUTH



Teaching Consent in Grades 6-12
Sex Education – HB 3550



Parent Notification Before Police
Interview at School – HB 2627



Update to ANCRA Mandated
Reports – SB 1778



No Employment by School if
Indicated by DCFS – SB 456



School Notified of Employee Arrest
for Sex Offense – HB 3587

SCHOOLS & YOUTH



Public Schools Teach LGBTQ
Contributions in History – HB 246



Fraudulent Concealment & Child
Sex Abuse Civil SOL – SB 1868



DCFS Must Refer Non-Caretaker
Reports to Police – SB 1239



CAC Interviews Recorded Without
Parent Consent – HB 909

Teaching Consent in Grades 6-12 Sex Education

If teaching sex education, course materials and instruction must include:

- “age-appropriate discussion on the meaning or consent”
- discussion about sexual harassment and sexual assault



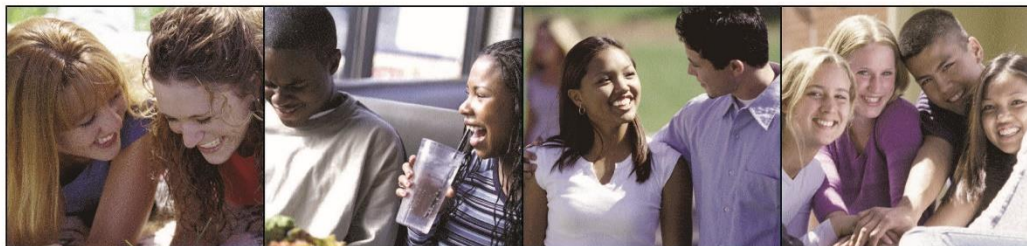
Course Must Recognize

- Consent is freely given agreement to sexual activity
- Consent to one sexual activity is not consent to other types
- Lack of verbal or physical resistance or submission resulting from use or threat of force does not constitute consent
- A person's manner of dress does not constitute consent



Course Must Also Recognize

- ▶ Consent to past sexual activity is not consent to future sexual activity
- ▶ Consent to sexual activity with one person is not consent to engage in sexual activity with another person
- ▶ A person can withdraw consent at any time
- ▶ A person cannot consent if they are unable to understand or give knowing consent because they are incapacitated due to alcohol, drugs or mental disability, they are asleep or unconscious, or they are a minor



CONSENT: WHAT IS IT?

Teaching Consent in Sexual Education

Parent Notification Before Police Interview at School

- Before questioning student on school grounds who is under 18 and suspected of committing a criminal act, an attempt must be made to notify parent
- Law enforcement, school resource officer or school security personnel must document time and manner of notification or attempt
- If parent not present during questioning, school personnel must be present
- Not limit authority to arrest

Update to ANCRA Mandated Reporting Requirements



- Medical Personnel
- Social Services & Mental Health Personnel
- Crisis Intervention Personnel
- Education Personnel
- Recreation/Athletic Personnel
- Child Care Personnel
- Law Enforcement
- Clergy



Child Known to Them in Their Professional Capacity

- Contact with child in course of employment or profession
- Affiliated with agency directly responsible for the care, supervision, guidance, or training of the child
- A person makes a specific disclosure that an identifiable child is the victim of abuse or neglect and the disclosure happens while the mandated reporter is engaged in their employment or profession



Hearsay Reports

- “Nothing . . . requires a child to come before the mandated reporter in order for the reporter to make a report of suspected child abuse of neglect.”
- “Specific disclosure” & “reasonable cause to believe” an abused child
- Only abuse by parent, immediate family member, person responsible for welfare, individual residing in same home or parent’s paramour



Multiple Reports

- If at same agency and share reasonable cause to believe (same disclosure):
 - One person may be designated to report
 - Must report names & contact info for others
 - Must provide written confirmation of the report to the others within 48 hours
 - If no confirmation, others must also report
- If different agency/workplace or different cause to believe, must report separately



Training Requirements

- ▶ Initial mandated reporter training in first 3 months in position
- ▶ At least every three years
- ▶ In-person or web-based
- ▶ By DCFS or authorized entity
- ▶ Mandated reporters must maintain records of completion of training

School Policies on Sexual Abuse & Indicated Findings by DCFS

- ▶ School districts must review policies and procedures regarding sexual abuse every 2 years
- ▶ Must check Statewide Sex Offender Management Database once for every five years employed
- ▶ Must consider status of applicant, employee or student teacher issued an indicated finding by DCFS
- ▶ May immediately terminate employment for willful or negligent failure to report child abuse per ANCRA



Protections for Students

- ▶ When sexual abuse is investigated by DCFS/law enforcement, school may not interview victim until after CAC interview
- ▶ To avoid multiple interviews, school personnel may view recording of forensic interview with consent of victim and approval of multidisciplinary team
- ▶ In hearing regarding dismissal of teacher, hearing officer must provide alternative procedures to protect student witnesses



Make S.A.F.E. Task Force

- ▶ Review best practices for
 - ▶ preventing sexual abuse of students in school-related settings or by school-related perpetrators
 - ▶ responding to such abuse
 - ▶ proper support for students who have suffered abuse
- ▶ K-12 schools: public, nonpublic, charter
- ▶ Report findings by Sept. 15, 2020

School Notified if Employee Arrested for Sex Offense

- ▶ When school employee is arrested for sex offense, State's Attorney must immediately provide copy of complaint, information or indictment to superintendent of schools or school administration that is the employer
- ▶ Does not diminish collective bargaining rights of the employee

Teaching LGBTQ History

- ▶ In public schools “teaching of history shall include a study of the roles and contributions of lesbian, gay, bisexual, and transgender people”
- ▶ The Textbook Block Grant Program requires that textbooks must be non-discriminatory as to IHRA protected characteristic and must include roles and contributions of all people protected by the Act



Fraudulent Concealment Tolls Civil SOL for Child Sex Abuse

- “Fraudulent concealment” by the abuser or any person acting in the interest of the abuser is added to the list of reasons the civil statute of limitations period for personal injuries based on childhood sexual assault will not run.

DCFS Must Refer Reports Outside Its Jurisdiction to Police

DCFS must immediately refer to local law enforcement reports regarding alleged abuse or neglect of a child by a person who is ***not***:

- the child's parent
- family member
- caregiver responsible for child's welfare
- person residing in the same home
- paramour of the child's parent

CAC Forensic Interview Recorded Without Parental Consent

- ▶ Consent of parents or guardians no longer required for electronic recording
- ▶ “Electronic recording” means “a motion picture, audiotape, videotape, or digital recording”
- ▶ Recordings are confidential: “may only be viewed by a court, attorneys, investigators, or experts for the purpose of judicial or administrative hearings”

SEXUAL
HARASSMENT
&
ILLINOIS
HUMAN
RIGHTS
ACT



Workplace
Transparency Act
– SB75



IHRA Definition
of “Employer”
– HB 252

Workplace Transparency Act

- New IHRA definitions of “Harassment,” “Unlawful Discrimination,” and expanded “Work Environment”
- Prohibits contracts that limit reporting
- Requires employer disclosures
- Requires Sexual Harassment Training



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Reporting of Allegations



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No contract can prohibit or restrict an employee, prospective employee, or former employee from reporting allegations of unlawful conduct to government officials

Contract Provisions - Void

- Unilateral condition of employment
- Prevents employee from making truthful statements about alleged unlawful employment practices
- Waives, arbitrates, or diminishes any claim related to unlawful employment practices



Mutual Contract Provisions Allowed

Otherwise void provisions may be allowed when (1) mutual, (2) in writing, and (3) with actual, knowing, and bargained-for consideration from both parties

Must acknowledge employee's rights to:

- Report good faith allegations
- Participate in proceedings
- Make truthful statements or disclosures required by law
- Request & receive confidential legal advice

Settlement & Termination Agreements

May include confidentiality provisions:

- Mutually beneficial
- Documented preference of employee
- Notified in writing of right to have attorney review agreement
- Valid consideration exists
- No waiver of claims after date of agreement
- 21 days to consider; 7 days to revoke

Employer Required Confidentiality



- Employees who receive complaints or have access to confidential personnel info as part of their job
- Employees participating in an open and ongoing investigation
- Attorney work-product, attorney-client, and other privileged information
- 3rd Party Investigators

Employer Disclosure Requirements

July 1, 2020 and each July 1 thereafter

Must report to IDHR adverse judgements or administrative rulings with findings of sexual harassment or unlawful discrimination:

- Total number of adverse judgements or rulings in the preceding calendar year
- Whether equitable relief was ordered
- How many in each category





Reporting Categories

- Sexual Harassment
- Sex
- Race, color, or national origin
- Religion
- Age
- Disability
- Military status; unfavorable discharge
- Sexual orientation or gender identity
- Any other protected characteristic

Information on Settlements

If IDHR is investigating a Charge, it may request from Employer:

- Total number of settlements in past 5 years related to any alleged act of sexual harassment or unlawful discrimination:
 - (1) that occurred in the workplace, or
 - (2) involved behavior of an employee or executive
- The number of settlements in each category



Sexual Harassment Prevention Training



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- All Illinois employers
- May use IDHR's free, online training
- May develop a training that equals or exceeds the minimum standards
- Supplemental training required for bars and restaurants



Minimum Standards

- Explanation of sexual harassment consistent with IHRA
- Examples of conduct that constitutes unlawful sexual harassment
- Summary of relevant laws concerning sexual harassment, including remedies available to victims
- Summary of responsibility of employers in prevention, investigation, and corrective measures

Civil Penalties: Failure to Report or Train

Fewer Than 4 Employees

- 1st Offense – up to \$500
- 2nd Offense – up to \$1,000
- 3rd Offense – up to \$3,000

Four or More Employees

- 1st Offense – up to \$1,000
- 2nd Offense – up to \$3,000
- 3rd Offense – up to \$5,000

Department will issue notice to show cause giving 30 days to comply. After 30 days, Department will petition Human Rights Commission for order imposing a civil penalty. Commission will consider employer's size, good faith efforts and gravity of the violation in setting amount.

IHRA Definition of “Employer”

- ▶ “any person employing **one** or more employees within Illinois during 20 or more calendar weeks within the calendar year of or preceding the alleged violation”
- ▶ 15 or more

OTHER LAWS TO KNOW ABOUT

- ▶ Reproductive Health Act
- ▶ Human Trafficking Training for Hotels
- ▶ Human Trafficking Training Curriculum for Law Enforcement
- ▶ Keep Illinois Families Together Act
- ▶ Civil Cause of Action for Nonconsensual Dissemination of Private Sexual Images



ANY QUESTIONS?

