2014 Legislative Update

Illinois Coalition Against Sexual Assault

Following is a summary of key sexual-assault related legislation passed by the Illinois General Assembly and approved by the Governor during the 2014 session. The full text of each Public Act is linked below and is available on the General Assembly's Web site at www.ilga.gov.

CRIMINAL LAW AND PROCEDURE

Criminal Lineup Changes

HB 802; P.A. 98-1014
Rep. Drury (D-58); Sen. Raoul (D-13)
Effective Jan. 1, 2015

The law changes how police lineups are conducted. Current law requires only that lineups be photographed and that the other individuals (fillers) in the lineup not look substantially different from the suspect. Police departments should use several methods to reduce the incidence of false identifications. Law enforcements agencies must videotape lineups whenever possible.

They must also, 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.

Law enforcement agencies are encouraged to use:

- computer-generated lineups; and
- independent lineup administrators.

The law also establishes detailed standards for various kinds of lineups.

Those Convicted of Misdemeanor Crimes Can Ask Court to Seal Records

HB 2378; P.A. 98-1009
Rep. Mayfield (D-60); Sen. Hunter (D-3)
Effective Jan. 1, 2015

HB 2378 is an initiative of the Shriver Center on Poverty Law and was supported by the Chicago Alliance Against Sexual Exploitation.

Law-abiding individuals can ask courts to seal older, low level convictions on their records.

The change is intended to allow people to be considered for jobs and housing they could otherwise be denied because of past mistakes.

Many prostituted and trafficked people are forced to engage in criminal activity and the criminal records present barriers to employment and moving on with their lives.

Making more people employable is proven to lower recidivism.

Records of those convicted of or given supervision for domestic battery, unlawful use of a weapon, violating a protective order, or sex offenses cannot be sealed.

The Act does not make any conviction eligible for expungement, and law enforcement can still access the records.

Law enforcement gets to weigh in on all petitions to seal records. ALL law enforcement entities involved in the original case are allowed to object to a petition, both before and after the entry of an order.

The court always has the discretion to seal or not seal old records. Courts weigh the criminal record against the individual's rehabilitation in making the decision to grant or deny a petition to seal.

Amends Predatory Criminal Sexual Assault of a Child

HB 4516; P.A. 98-903
Rep. McAsey (D-85); Sen. Cunningham (D-18)
Effective Aug. 15, 2014

Effective, January 1, 2014, an act of sexual contact was added to the crime of predatory criminal sexual assault of a child. Previously, a predatory criminal sexual assault charge required penetration.

Touching a boy's penis was elevated to the same offense level as a penetration crime for purposes of charging predatory criminal sexual assault.

There was no requirement to prove sexual intent ("intended for the sexual gratification or arousal of the victim or the accused") for penetration crimes, as there is for criminal sexual abuse.

This Act amends the language that was passed last year to add the sexual gratification requirement.

Grooming Expanded

HB 5290; P.A. 98-919
Rep. Franks (D-63); Sen. Althoff (R-32)
Effective Jan. 1, 2015

The offense of grooming is expanded to include knowingly using a computer or electronic device to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice, a child, a child's guardian, or another person believed by the person to be a child or a child's guardian, to distribute photographs depicting the sex organs of the child.

Grooming is a Class 4 felony.

HIV Testing Statute is Amended to Comply with VAWA Certification Requirements

SB 2956; P.A. 98-761
Sen. Syverson (R-35); Rep. Welch (D-7)
Effective July 16, 2014

VAWA requires that states mandate testing of sex offenders for HIV within 48 hours. The prosecutor must seek an order for testing from the court. Illinois law did not clearly state when the 48 hours begins. The legislation clarifies that 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 a defendant charged with a sex offense is unfit to stand trial; or
- at the request of the victim.

Post-Conviction DNA Testing

SB 2995; P.A. 98-948
Sen. Raoul (D-13); Rep. Turner (D-9)
Effective Aug. 15, 2014

Those who have pled guilty to a crime can access DNA testing. Illinois law already granted access to post-conviction DNA testing, but barred those who pled guilty.

The trial court must allow DNA testing when the results would raise a reasonable probability that the defendant would have been acquitted if the DNA results had been available before the guilty plea was entered and a trial had taken place.

When a motion to vacate the guilty plea is filed based on the DNA results, the prosecutor may, upon request, reactivate victim services for the victim during the trial proceeding. The court may also consult with the victim and/or victim advocate to determine whether victim services are needed after the court proceedings.

- SB 2995 is an initiative of the Innocence Project.

Revenge Porn

SB 1009
Sen. Raoul (D-13); Rep. Turner (D-9)
Sent to the Governor Dec. 15, 2014

SB 1009 makes "non-consensual dissemination of private sexual images," otherwise known as "revenge porn" a Class 4 felony. It is a crime to knowingly post sexually explicit photos, video, voice recordings, etc. of another person online without the person's consent.

Revenge porn is a growing problem due to increased use of social media and other technology.

Posts are sexual exploitation and often include names, addresses, e-mail addresses and other information that compromises the safety of victims and their families.

The bill includes exceptions for telecommunications and law enforcement and voluntary exposure in public or commercial settings.

The bill does not include intent to cause emotional distress that was in earlier bills.

SB 1009 makes it illegal to post a video, audio recording or pictures of sexual intimate parts, a sexual act or sexual activity.

Sexual activity includes:

- touching or fondling of a sex organ, anus or breast by the victim or another person or animal directly or through clothing for the purpose of sexual gratification;
- transfer of semen upon the victim for the purpose of sexual gratification;
- urination within a sexual context;
- bondage, fetter, or sadism masochism; or
- sadomasochism abuse in any sexual context.

Non-consensual dissemination occurs when the offender intentionally disseminates an image of someone who is at least 18 years old; and:

- the person is identifiable from the image or other information; and
- the person is engaged in a sexual act or whose private parts are fully or partially exposed; and
- the offender knows or should have known images were private and the victim did not consent.

Non-consensual dissemination of private sexual images is punishable by up to 3 years in prison, a $25,000 fine, and forfeiture of property used to disseminate revenge porn or proceeds from disseminating revenge porn.

MINORS' RIGHTS

Unaccompanied Minors Can Consent to Routine Medical Care

HB 4501; P.A. 98-671
Rep. Harris (D-13); Sen. Steans (D-7)
Effective Oct. 1, 2014

A minor between the ages of 14 and 18 who has been identified as an unaccompanied "minor seeking care" (not living with parents or guardians) can consent to primary medical care.

Primary care includes screening, counseling, immunizations, medication, and treatment of illnesses and conditions customarily provided by licensed healthcare professionals in an out-patient setting.

Primary care can be provided when:

- The healthcare professional reasonably believes the minor seeking care understands the benefits and risks of the proposed care or services; and
- The minor has a written note stating that he or she is a minor seeking care from:
  - an adult relative
  - a representative of a homeless service
  - a lawyer
  - a public school homeless liaison or school social worker
  - a social service agency that serves at risk, homeless, or runaway youth; or
  - a representative of a religious organization.

Healthcare worker-patient privilege is not waived when the minor asks for a third party to be present when confidential information is shared, when the minor asks the healthcare worker to share information with a third party, or when the healthcare provider bills the minor's insurance.

A "minor seeking care" is defined as a minor who is at least 14 but less than 18 who does not live with his or her parent or guardian and manages his or her own personal affairs (i.e., homeless teens). The definition does not include minors who are under the protective custody, temporary custody, or guardianship of DCFS.

Section 1.5 is added to the Consent by Minors to Medical Procedures Act. 410 ILCS 210/1.5.

Minors could already consent to emergency healthcare at a hospital at any age, as could minor victims of sex crimes. 410 ILCS 210/3.

Tattoo Removal for Minor Trafficking Victims

HB 5858; P.A. 98-936
Rep. Anthony (R-75); Sen. Connelly (R-21)
Effective Aug. 15, 2014

Minors who are victims of sex trafficking and other forms of 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.

As of January 1, 2014, Crime Victim Compensation will reimburse trafficking victims for the cost of trafficking tattoo removal. Victims must file a Crime Victim Compensation claim within two years of the offense.

Some tattoo artists are offering free removal services, including Chris Baker of Oswego's INK 180 tattoo shop and ministry, who brought the initiative to his representative. For more information, go to www.Ink180.com.

CRIME VICTIMS

Constitutional Amendment for Crime Victims' Rights

HJRCA 1; Adopted in Both Houses and Approved by Voters
Rep. Lang (D-16); Sen. Steans (D-7)
Effective Nov. 4, 2014

The Constitutional Amendment for Crime Victims' Rights ensures that victims in Illinois have comprehensive, meaningful and enforceable rights.

The amendment passed both Houses in the spring after six years of hard work by victim advocates. The amendment was passed with overwhelming support from voters in the November 4 election and became effective immediately.

Most importantly, victims now have "standing," the right to speak before the court if their right(s) have been violated.

The victim, prosecuting attorney, or victim's lawyer may assert those rights in front of the court.

The victim can now ask the judge to decide if her right(s) have been violated.

The Office of the State's Attorney must inform the victim of the victim's right and the right of his or her family to

- make a victim impact statement at the sentencing hearing; and
- inform the presentence report preparer of the effect of the offense on the victim and the victim's family.

The right applies to the victim, victim's spouse, guardian, parent, grandparent and other immediate family and household members.

Crime victims have had constitutional rights in Illinois since 1992. However, these rights were passed without an enforcement mechanism which means victims had no remedy through which to enforce their rights.

In part, the amendment ensures that victims will be:

- informed of court proceedings;
- present at trial and at hearings regarding their cases; and
- heard at any court proceeding involving the release, plea or sentencing of the defendant.

The amendment gives all victims of violent crime the ability to go to court and ask that any right that is guaranteed by the Illinois Constitution is enforced before, during and after a criminal trial.

The amendment is agreed language among the Illinois Coalition Against Sexual Assault, Marsy's Law for Illinois, Illinois Coalition Against Domestic Violence, Office of the Illinois Attorney General, Illinois State's Attorneys Association, and the Cook County State's Attorney's Office

Crime Victim Confidentiality

HB 4266; P.A. 98-717
Rep. Moeller (D-43); Sen. Haine (D-56)
Effective Jan. 1, 2015

The Attorney General's office cannot release the

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

of anyone who is registered to receive information through the Automated Victim Notification system (AVN).

The Attorney General's office may grant limited access to the AVN to law enforcement, prosecutors, and other agencies that help victims enroll in or use the AVN system.

The Prisoner Review Board cannot release the name or address of a victim on its victim registry except to the victim, law enforcement, or other victim notification system.

Enforcement of Restitution Orders

HB 5950; P.A. 98-940
Rep. Sullivan (R-51); Sen. Murphy (R-27)
Effective Jan. 1, 2015

If a judge orders restitution to a crime victim as a condition of probation, conditional discharge or supervision, and the restitution is not paid, the victim can petition the court for payment.

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

The victim must file a petition notifying the sentencing court, any other person who is owed restitution, and the state's attorney of the unpaid restitution at least 90 days before the end of the defendant's probation, conditional discharge, or supervision.

The court must hold a review hearing before the defendant's probation, conditional discharge, or supervision ends unless the defendant voluntarily waives the hearing.

Enforcement of Restitution Orders

SB 3074; P.A. 98-953
Sen. Mulroe (D-10); Rep. Drury (D-58)
Effective Jan. 1, 2015

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.

Children's Advocacy Center Act Amendments

HB 5990; P.A. 98-809
Rep. Mussman (D-56); Sen. Martinez (D-20)
Effective Jan. 1, 2015

The Children's Advocacy Center Act is updated to more accurately reflect the work that CACs do.

Changes made to the Act include:

- Creating an accreditation process for CACs.
- Adding a definition of "child maltreatment." The Act previously referred only to child sexual abuse. Many CACs now serve victims of sexual abuse, physical abuse, exploitation and neglect.
- Defining the core functions, responsibilities and standards for CACs when staff respond to reports of child maltreatment and serve children and their families.
- Updating how CAC Advisory Boards should be formed and function to govern the operation of CACs and their multidisciplinary partnerships.
- Adding and defining the responsibilities of Children's Advocacy Centers of Illinois (CACI), the state chapter for CACs in Illinois.
- Establishing mandatory components for every CAC, including
  - A policy on multidisciplinary team collaboration; and
  - A dispute resolution process between involved agencies when a conflict arises on how to proceed on the referral of a particular case.

PROTECTIVE ORDERS

Diane's Law – Electronic Monitoring as a Condition of Release

HB 3744; P.A. 98-1012
Rep. Wheeler (R-64); Sen. Althoff (R-32)
Effective Jan. 1, 2015

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 any of the following crimes and their aggravated relations:

- Violation of an order of protection
- Domestic battery
- Kidnapping
- Unlawful restraint
- Stalking
- Cyber-stalking
- Harassment by telephone
- Harassment through electronic communications
- Attempted first degree murder against an intimate partner

DHS Partner Abuse Intervention Programs, pretrial services, and probation or parole agencies should use a "recognized, evidence-based instrument" when making risk assessments.

The court must create a written record as to its reasons for ordering or not ordering electronic surveillance of an offender.

The surveillance and the risk assessment must be paid for "by, or on behalf of" the defendant.

Defines "intimate partner" as a "spouse or a current or former partner in a cohabitation or dating relationship" for the purposes of this section only.

Workplace Violence Prevention Act Amendments

SB 3038; P.A. 98-766
Sen. Raoul (D-13); Rep. Sandack (R-81)
Effective July 16, 2014

The Workplace Violence Protection Act, which went into effect January 1, 2014, is amended to provide some protections for survivors and distinguish and remove the Act from the Domestic Violence Act.

Protections for employees who are victims of domestic violence that prompts the employer's filing for a workplace protection restraining order include:

- Notifying the employee in writing of the employer's intent to seek a workplace protection restraining order.
- Having an in-person conversation with the employee prior to seeking the order to determine whether doing so will put the employee at greater risk of harm or interfere with the employee's own legal actions.
- Waiting four days after the conversation with the employee to file a petition for a workplace protection restraining order if the employee does not fully and voluntarily consent to filing the order and there is no immediate threat of imminent physical harm.
- Providing written notification of the employee's rights under VESSA.
- Prohibiting an employer or a court from ordering an employee to testify, participate in, or appear in court proceedings under the Act.
- Providing for the employee to testify in chambers if the employee voluntarily offers to testify.
- Requiring employers to keep all information related to a workplace protection order confidential, limiting information only to employees who need to know about the order for the safety of the employee who suffered the violence.

VESSA is amended to provide victims protections if they do not cooperate with an employer seeking an order under the Act. She cannot be retaliated against for refusing to cooperate in any way.

The amendments also:

- increase the employee threshold to cover employers with 15 (rather than 5) or more employees;
- add protections for labor actions, such as picketing, and monitoring of compliance with employment laws, such as workplace safety laws;
- provide for non-disclosure of workplace address;
- clarify that a petition for a workplace protection restraining order may only be commenced as an independent civil proceeding and enforced through civil contempt proceedings; and
- limit the scope of the act 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.

The Illinois Coalition Against Domestic Violence worked on amendments to the Act during the spring 2014 legislative session.

Enhanced Penalties for Domestic Battery

HB 4653; P.A. 98-994
Rep. Sosnowsk (R-69); McAsey (D-85); Sen. Stadelman (D-34)
Effective Jan. 1, 2015

Last year, the legislature increased penalties for domestic battery when the offender has prior domestic batteries. Most domestic batteries were misdemeanors before the change and only increased to a Class 4 felony for a second or subsequent conviction.

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

The maximum sentence will be up to 14 years for four or more convictions.

As of January 1, 2015, this change also applies when the offender was convicted of domestic battery, or a substantially similar offense, in another jurisdiction. The change is intended to make the statute consistent so that an abuser's complete criminal history is considered when determining charges.

EMPLOYMENT PROTECTIONS

Reasonable Accommodations for Pregnant Workers

HB 8; P.A. 98-1050
Rep. Flowers (D-31); Hutchinson (D-40)
Effective Jan. 1, 2015

There were already state and federal laws mandating that employers provide reasonable, temporary accommodations for pregnant women, but those laws were not always followed and didn't go far enough.

The new law amends to Illinois Human Rights Act to require employers to make reasonable accommodations for conditions related to pregnancy and childbirth.

The law provides exceptions if the employer can demonstrate that the accommodation would impose an undue hardship on the ordinary operation of the employer's business—just as employers do for limitations caused by other conditions.

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.

This is an initiative of the Shriver Center on Poverty Law. For more information and resources, go to http://www.povertylaw.org/advocacy/women/pubs/hb8.

Protects Unpaid Interns from Sexual Harassment

HB 4157; P.A. 98-1037
Rep. Berrios (D-39); Sen. Martinez (D-20)
Effective Jan. 1, 2015

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.

An unpaid intern performs work under the following circumstances:

- The employer is not committed to hiring the intern at the end of the internship.
- The employer and intern agree the intern will not be paid for the work.

- The work performed supplements other training in an educational setting and may make the intern more employable.
- The intern will gain experience from the work.
- The intern does not take the place of regular employees.
- The existing staff carefully supervise the work of the intern.
- The work performed does not provide an immediate advantage to the employer and may occasionally slow down the operations of the employer.

The Illinois Human Rights Act applies to

- any person who employs 15 or more employees within Illinois during 20 or more weeks during the year of or year before the violation; and
- any person who employs one or more employees when a complaint involves sexual harassment or the discrimination is based on the person's physical or mental disability.

Ban the Box

HB 5701; P.A. 98-774
Rep. Mayfield (D-60); Sen. Muñoz (D-1)
Effective Jan. 1, 2015

The Job Opportunities for Qualified Applicants Act prohibits employers with 15 or more employees from requiring a job applicant to disclose criminal convictions on a job application. The 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.

Employers are excluded from the ban the box requirement when:

- State or federal law requires the employer to exclude applicants with certain criminal convictions;
- The businesses employ individuals who are licensed under the Emergency Medical Services (EMS) Systems Act. E.g., paramedics.
- Business insurance against employee fraud (fidelity bond) is required.

Employers may notify qualified applicants in writing of the specific offenses that will disqualify an applicant from employment in a particular position due to federal or state law or the employer's policy.

Civil penalties can be imposed for violations by the Illinois Department of Labor. Fines will be deposited into the new Job Opportunities for Qualified Applicants Enforcement Fund.

- Illinois is the fifth state to join the "ban the box" movement by prohibiting private employers from asking about criminal history on job applications.
- The movement is intended to give people with criminal convictions an opportunity to tell their side of the story to employers before being excluded from the applicant pool.
- Approximately 4 million Illinois residents have some sort of criminal conviction or arrest that would show up on a routine background check.
- People with prior convictions and arrests are known to be at increased risk of recidivism due to lack of job opportunities. African Americans and Latinos are affected at a disproportionate rate.
- Governor Quinn signed an Executive Order in October 2013 that removed the criminal background question from state job applications.

PROSTITUTION/TRAFFICKING

Specialized Services for Survivors of Human Trafficking Fund

SB 3558; P.A. 98-1013
Sen. Hutchinson (D-40); Rep. Williams (D-11)
Effective Jan. 1, 2015

PA 98-1013 creates the Specialized Services for Survivors of Human Trafficking Fund housed at the Illinois Department of Human Services (IDHS), from which grants will be made to support the development of specialized services for prostituted and trafficked people.

New funding streams are created from fines collected against pimps, traffickers, and people who buy sex; forfeiture and impoundment proceedings.

Resource: End Demand Illinois www.enddemandillinois.org

MANDATED REPORTING/DCFS

Short-Term Guardians Are Presumed Fit

HB 5686; P.A. 98-1082
Rep. Flynn Currie (D-25); Sen. Hunter (D-3)
Effective Jan. 1, 2015

In Illinois, a parent who has legal custody of a child can appoint a short-term guardian for up to 365 days by using a simple form.

Beginning January 1, courts will not be able to act on a petition for the appointment of a guardian for a minor if a short-term guardian was appointed before the petition was filed. 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.

- Initiative of Chicago Legal Advocacy for Incarcerated Mothers (CLAIM) and supported by Chicago Coalition for the Homeless.

Custody Relinquishment Prevention Act

HB 5598; P.A. 98-808
Rep. Feigenholtz (D-12); Sen. Morrison (D-29)
Effective Jan. 1, 2015

The Custody Relinquishment Prevention Act allows a parent to obtain services for a minor who has a serious mental illness, emotional disorder or developmental disability without having to relinquish custody of the minor to DCFS.

Previously, many parents were forced to refuse to pick up their children when they were discharged from a psychiatric hospital. The children were considered too stable for continued hospitalization, but their parents considered them a risk to themselves or others at home. DCFS called this a "lock out" or "planned abandonment." Often, this was the only way to obtain long-term care in a psychiatric facility for children with serious mental illness. This was especially common with adopted children.

The Act creates a pathway for a "child or youth at risk of custody relinquishment" to receive short-term crisis stabilization services, including intensive community-based services or a short-term residential placement, as the child's treatment plan is being developed.

By July 1, 2015, DCFS, the Department of Human Services, and the Department of Public Health will enter into an interagency agreement to

- Prevent children who are not abused or neglected from entering the custody or guardianship of DCFS for the purpose of receiving mental health services.
- Establish an interagency clinical team to review the cases of children who are at a psychiatric hospital and in danger of planned abandonment.
- Establish payment and cost sharing options for parents based on their income and Medicaid eligibility.
- Set criteria for short-term crisis stabilization services.

DCFS will also be required to report outcomes from the measures to the General Assembly annually. Reported outcomes must include the number of children relinquished and intercepted, and the duration of services needed to stabilize children.

Educational Surrogate for Abused, Neglected or Dependent Kids

SB 2782; P.A. 98-868
Sen. Koehler (D-46); Rep. Golar (D-6)
Effective Aug. 8, 2014

If a judge issues an order for temporary custody because a child has been abused or neglected, the judge can appoint a parent or legal guardian as the education surrogate or early intervention program surrogate.

DCFS Safety Plans

SB 2909; P.A. 98-830
Sen. Morrison (D-29); Rep. Feigenholtz (D-12)
Effective Jan. 1, 2015

DCFS' safety plans are put in place when DCFS investigators determine that allegations of abuse or neglect are serious but do not yet warrant custody or foster care. Plans can include moving the child to the home of a relative, requiring one or more members of the household to temporarily leave the home, or requiring another family member to temporarily move in and supervise.

Senator Morrison hosted meetings to discuss shortcoming of the safety plans. The sponsor determined that DCFS sometimes fails to put some plans in writing, never reviews others and fails to provide important information to the adults involved in the plans.

The legislation requires DCFS to

- 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, which must include
    - information on how to obtain medical care

- emergency phone numbers; and
- information on how to notify schools or day care providers of the safety plan.

DCFS May Place Children with "Fictive Kin"

SB 3283; P.A. 98-846
Sen. Trotter (D-17); Rep. Feigenholtz (D-12)
Effective Jan. 1, 2015

The definition of "relative" in the Children and Family Services Act is amended to include "fictive kin." The change is intended to help place children with family friends who have played a major role in caring for the child, even if the person is not a blood relative. "A "fictive kin" is defined as "any individual, unrelated by birth or marriage, who is shown to have close personal or emotional ties with the child or the child's family prior to the child's placement with the individual."

When a child is placed with fictive kin, the person must apply for licensure as a foster family within 6 months; however, DCFS cannot remove the child from the home solely on the basis of licensure.

EDUCATION

Protects Students from Cyberbullying Initiated Away from School

HB 4207; P.A. 98-801
Rep. Fine (D-17); Sen. Silverstein (D-8)
Effective Jan. 1, 2015

The School Code is amended to include protections against cyber-bullying that is initiated away from school using devices not owned or used by the school, e.g., computers, cell phones, and tablets. The School Code already protected against cyber-bullying that was transmitted from school computers or other electronic devices owned or used by the school.

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.

The new definition of "cyber-bullying" is bullying through the use of technology or electronic communication including email, Internet communications and instant messaging. "Cyber-

bullying" includes posting information on social media that meets the definition of bullying and creating a webpage or blog by assuming another person's identity or posing as another person.

School districts' policies on bullying were already required to be filed with the Illinois State Board of Education. Those policies must now include a process to investigate whether a reported act of bullying can be investigated by the school. The school district or the school must now provide the victim with information about counseling, support services and other programs available within the school district and community.

School Counselors

HB 5288; P.A. 98-918
Rep. Chapa LaVia (D-83); Sen. Martinez (D-20)
Effective Aug. 15, 2014

The School Code definition of "school counseling services" is greatly expanded to reflect the work school counselors actually do.

The School Code now includes a list of optional duties and responsibilities for school counselors that includes

- referring students to appropriate community-based services;
- providing resources for undocumented students and students with undocumented parents;
- providing support and interventions for anxiety, depression, cutting, and suicide issues; expanding access to post-secondary education for all students;
- implementing bullying-prevention programs; and
- implementing culturally-sensitive measures of success for student competencies.

Counselors must participate every two years in trainings concerning victims of domestic or sexual violence, expectant and parenting youth, and warning signs of mental illness and suicide.

School Bullying Policy Guidance

HB 5707; P.A. 98-669
Rep. Cassidy (D-14); Sen. Steans (D-7)
Effective June 26, 2014

Illinois law already required that school districts have bullying prevention policies in place but did not provide guidance as to what the policies should include or how reports of bullying should be investigated.

The 2010 Illinois School Bullying Prevention Task Force determined that reports of bullying were falling through the cracks because some school districts did not have a clear process for responding to them.

Each school district and school, including charter schools, must have a "Policy on Bullying" that includes:

- the bullying definition in the statute;
- a statement that bullying is against the law and is prohibited in school;
- procedures for reporting bullying, including a procedure for anonymous reporting;
- procedures for promptly informing parents or guardians involved and discussing available resources, interventions and restorative measures;
- procedures for promptly investigating and addressing reports of bullying, which are outlined in the law.

Interventions that can be taken to address bullying include:

- school social work services;
- restorative measures;
- social-emotional skill building;
- counseling;
- school psychological services; and
- community-based services.

The policy must also include a statement prohibiting retaliation against anyone who reports bullying.

Procedures for posting, distributing, and updating bullying prevention policies are outlined.

The law does not require a specific curriculum, programs or activities.

The law also includes a process for data collection to provide the Illinois State Board of Education with data about school climate and the prevalence of bullying.

HEALTHCARE

Health Care Worker Registry

HB 3830; P.A. 98-711
Rep. Golar (D-6); Sen. Hunter (D-3)
Effective Jan. 1, 2015

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.

Currently, the OIG must investigate suspected financial exploitation in facilities either licensed or funded by DHS. However, prior to the change only substantiated cases of physical or sexual abuse and egregious neglect were reported.

The change prevents individuals who commit financial exploitation from working at state funded, licensed, and certified programs.

Home Care Consumer Bill of Rights

HB 5852; P.A. 98-935
Rep. Bellock (R-47); Sen. Connelly (R-21)
Effective Aug. 15, 2014

The Home Care Consumer Bill of Rights was created for people who are age 60 or older and people with disabilities who are age 18 through 59 who receive home care services. Home Care Consumers' rights are outlined in the statute and in a new brochure created by the Illinois Department on Aging.

Some of the rights included in the new statute are the right to:

- have help to understand their rights;
- be free from physical, sexual, verbal or mental abuse, neglect and exploitation;
- be treated with dignity and respect;
- receive care from properly trained staff;
- be protected from discrimination;
- fully participate in treatment decisions; and
- complain about services or treatment to a person of their choice without being punished or threatened.

The Department of Human Services and the Department on Aging must develop a plan for enforcing the Bill of Rights, taking best practices for enforcing the rights into consideration. The

plan must also include a description of how agencies that provide services to home care consumers will coordinate activities to enforce the Bill of Rights.

20 ILCS 2405/17.1 new

Prescriptive Authority for Psychologists

SB 2187; P.A. 98-668
Sen. Harmon (D-39); Rep. Bradley (D-117)
Effective June 25, 2014

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

- PhD in psychology;
- license to practice psychology in Illinois;
- master's degree in psychopharmacology from an accredited institution;
- 80 hours of supervised training in clinical assessment and pathophysiology; and
- an additional supervised practicum of at least 400 hours treating no fewer than 100 patients with mental illness.

A portion of this supervised clinical experience must take place in one or more of the following settings:

- correctional facilities;
- Federally Qualified Health Clinics (FQHCs);
- community agencies that serve the seriously mentally ill; and
- all state and federal institutions that serve the seriously mentally ill.

Psychologists who meet all requirements of the Act can apply for a prescribing psychologist license from the Illinois Department of Professional and Financial Regulation.

Prescribing psychologists must have a written collaborative agreement with a physician who normally prescribes psychiatric medications as part of his or her practice.

Prescribing psychologists will only be able to prescribe psychiatric medication to healthy adults under the age of 65 who do not have developmental or intellectual disabilities.

Physician Disclosure of Confidential Health Information

SB 3110; P.A. 98-954
Sen. Hastings (D-19); Rep. Cassidy (D-14)
Effective Jan. 1, 2015

Currently, prosecutors have to subpoena medical records that are needed for grand jury or preliminary hearings. Some physicians would not release the records, citing physician-patient privilege. The Public Act amends the physician-patient privilege to clarify that prosecutors can obtain the records through a grand jury subpoena.

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.