ICASA LEGISLATIVE UPDATE 2019

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The following is a summary of key sexual-assault and anti-oppression related legislation passed by the Illinois General Assembly and signed by the Governor during the 2019 regular legislative session. The full text of each public act is linked below and is available on the General Assembly's website at www.ilga.gov.

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I. Criminal Law & Victims' Rights

A. Unlimited Statute of Limitations for Adults

P.A. 101-0130 (HB 2135), effective Jan. 1, 2020

This amendment to the Criminal Code removes the statute of limitations for criminal sexual assault, aggravated criminal sexual assault, and aggravated sexual abuse. On or after January 1, 2020, prosecution for these crimes may be commenced at any time. Also, any offense involving sexual conduct or sexual penetration, as defined by 720 ILCS 5/11-0.1 may be commenced at any time.

"Sexual conduct" is defined as "any knowing touching or fondling by the victim or the accused, either directly or through clothing, of the sex organs, anus, or breast of the victim or the accused, or any part of the body

of a child under 13 years of age, or any transfer or transmission of semen by the accused upon any part of the clothed or unclothed body of the victim, for the purpose of sexual gratification or arousal of the victim or the accused." 720 ILCS 5/11-0.1

"Sexual penetration" is defined as any contact, however slight, between the sex organ or anus of one person and an object or the sex organ, mouth, or anus of another person, or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sex organ or anus of another person, including, but not limited to, cunnilingus, fellatio, or anal penetration." *Id.*

It has long been established that a modification to the statute of limitations can only extend the viability of a charge that was still viable at the time the new statute of limitations became effective. If a charge has already expired under the statute of limitations, no change to the statute can revive it. *Stogner v. California*, 539 U.S. 607, 123 S.Ct. 2446 (2003). Based on this precedent from the United States Supreme Court, any charge that would have been viable on January 1, 2020, should be granted the benefit of the unlimited statute of limitations, but no potential charges that expired based on the prior statute of limitation are revived by this change in the law.

B. Police Must Request Waiver of Prompt Execution of Warrant P.A. 101-0039 (HB 92), effective June 1, 2020

This new law addresses the problem of police officers arresting sexual assault victims who have arrest warrants issued against them when the victims report sexual assault or seek medical forensic services.

Beginning in June 2020, a police officer who has contact with a person because they are requesting or receiving emergency medical assistance or medical forensic services for sexual assault at a hospital and becomes aware of a warrant for that person's arrest issued by an Illinois circuit court is required to seek waiver of the prompt execution of the warrant. This requirement only applies if the warrant is not for a forcible felony, a violent crime, or an alleged violation or parole or mandatory supervised release.

When the requirement applies, the officer must call the prosecuting authority of the jurisdiction issuing the warrant, or if that prosecutor is not available, the prosecuting authority for the jurisdiction covering the medical facility, to request waiver of the prompt execution of the warrant.

The prosecuting authority receiving this call may secure a court order waiving the immediate execution of the warrant and provide a copy to the peace officer. Some prosecutors may be able to get verbal consent from the judge and follow-up with a written order confirming the judge's verbal order the next day. Prosecutors may also deny the request.

When an officer has contact with a victim because they are reporting being sexually assaulted within the past seven days, the officer must inform the victim of their right to seek free medical attention and evidence collection. The officer must also notify the victim that if they choose to go to a medical facility to seek any of those services, then the officer must contact the prosecuting authority to request waiver of the prompt execution of the warrant.

"Forcible felony" is defined as "treason, first degree murder, second degree murder, predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, robbery, burglary,

residential burglary, aggravated arson, arson, aggravated kidnaping, kidnaping, aggravated battery resulting in great bodily harm or permanent disability or disfigurement and any other felony which involves the use or threat of physical force or violence against any individual.” 720 ILCS 5/2-8.

“Violent crime” includes the offenses listed as such in the Rights of Crime Victims and Witnesses Act: “(1) any felony in which force or threat of force was used against the victim; (2) any offense involving sexual exploitation, sexual conduct, or sexual penetration; (3) a violation of Section 11-20.1, 11-20.1B, 11-20.3, 11-23, or 11-23.5 of the Criminal Code of 1961 or the Criminal Code of 2012; (4) domestic battery or stalking; (5) violation of an order of protection, a civil no contact order, or a stalking no contact order; (6) any misdemeanor which results in death or great bodily harm to the victim; or (7) any violation of Section 9-3 of the Criminal Code of 1961 or the Criminal Code of 2012, or Section 11-501 of the Illinois Vehicle Code, or a similar provision of a local ordinance, if the violation resulted in personal injury or death. ‘Violent crime’ includes any action committed by a juvenile that would be a violent crime if committed by an adult.” 725 ILCS 120/3(c).

"Sexual assault" means an act of sexual conduct or sexual penetration as defined in the Criminal Code of 2012, including without limitation, criminal sexual assault, aggravated criminal sexual assault, predatory sexual assault, criminal sexual abuse, and aggravated sexual abuse. 720 ILCS 5/11-1.20 through 1.60.

"Sexual conduct" is defined as “any knowing touching or fondling by the victim or the accused, either directly or through clothing, of the sex organs, anus, or breast of the victim or the accused, or any part of the body of a child under 13 years of age, or any transfer or transmission of semen

by the accused upon any part of the clothed or unclothed body of the victim, for the purpose of sexual gratification or arousal of the victim or the accused." 720 ILCS 5/11-0.1.

"'Sexual penetration" means any contact, however slight, between the sex organ or anus of one person and an object or the sex organ, mouth, or anus of another person, or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sex organ or anus of another person, including, but not limited to, cunnilingus, fellatio, or anal penetration. Evidence of emission of semen is not required to prove sexual penetration." 720 ILCS 5/11-0.1.

C. Sexual Assault Evidence Tracking System

P.A. 101-0377 (SB 1411), effective August 16, 2019

With this law, the General Assembly intends to implement the recommendations of the Sexual Assault Evidence Tracking and Reporting Commission's report. It primarily amends the Sexual Assault Evidence Submission Act (SAESA) by adding Section 50: "Sexual assault evidence tracking system." 725 ILCS 202/50.

The Illinois Department of State Police is charged with establishing a tracking system that is able to communicate with all stakeholders, including victims, and provide real-time information to the victim or their designee about the status of the evidence.

The system must be operational and begin tracking and reporting sexual assault evidence no later than one year after the effective date, so August 16, 2020. However, an Illinois State Police press release issued on March 24, 2019, set an earlier deadline: "The Illinois State Police Division of Forensic Services (DFS) has been directed to implement an online

sexual assault tracking system by the end of the year. Kelly has directed the current laboratory IT vendor to begin development of the online system immediately using a special exemption under the state's procurement code." http://www.isp.state.il.us/media/pressdetails.cfm?ID=1026

There are a number of system requirements established by the law that will impact victims and victim services. The system must:

- be electronic and web-based;
- have help desk availability at all times;
- make law enforcement agency contact information accessible to the victim or designee through the tracking system for questions;
- allow for the victim to opt in for automatic notifications when status updates are entered in the system, if the system allows; and
- include at each step in the process, a brief explanation of the general purpose of that step and a general indication of how long the step may take to complete.

The Commission recommendations for secure electronic access for victims and for safeguarding confidentiality must also be implemented. These include recommendations that the sexual assault evidence tracking system must:

- allow for secure access, controlled by an administering body who can restrict user access and allow different permissions based on the need of that particular user;
- provide for a mechanism for a victim to enter the system and only access their own information;

- enable sexual assault evidence to be tracked and identified through the unique sexual assault evidence kit identification number/barcode that the vendor applies to each sexual assault evidence kit per the Department of State Police's contract;
- have a mechanism to inventory unused kits provided to a health care facility from the vendor;
- provide users the option to either scan the bar code or manually enter the kit number into the tracking program;
- provide a mechanism to create a separate unique identification number for cases in which a sexual evidence kit was not collected, but other evidence was collected;
- provide the ability to record date, time, and user ID whenever any user accesses the system;
- provide for real-time entry and update of data;
- contain report functions including: (A) health care facility compliance with applicable laws; (B) law enforcement agency compliance with applicable laws; (C) law enforcement agency annual inventory of cases to each State's Attorney office; and (D) forensic lab compliance with applicable laws; and
- provide automatic notifications to the law enforcement agency when: (A) a health care facility has collected sexual assault evidence; (B) unreleased sexual assault evidence that is being stored by the law enforcement agency has met the minimum storage requirement by law; and (C) timelines as required by law are not met for a particular case, if not otherwise documented.

The system must also contain minimum fields for tracking and reporting, including these key fields that may be of interest to victims:

- the date sexual assault evidence was collected;
- the date notification was made to the law enforcement agency that the sexual assault evidence was collected;
- the date the law enforcement agency took possession of the sexual assault evidence;
- the law enforcement agency complaint number;
- if the law enforcement agency that takes possession of the sexual assault evidence from a health care facility is not the law enforcement agency with jurisdiction in which the offense occurred, the date when the law enforcement agency notified the law enforcement agency having jurisdiction;
- an indication of whether the victim consented for analysis, and if not, the date on which the law enforcement agency is no longer required to store the evidence;
- If evidence is not submitted to the laboratory for analysis, a mechanism for the law enforcement agency to document why;
- the date the law enforcement agency received the sexual assault evidence results back from the laboratory;
- the date statutory notifications were made to the victim or documentation of why notification was not made;
- the date the law enforcement agency turned over the case information to the State's Attorney office;
- the date the sexual assault evidence is received from the law enforcement agency by the forensic lab for analysis;

- the date the laboratory completes the analysis of the sexual assault evidence;
- the date the State's Attorney's office received the sexual assault evidence results from the laboratory; and
- the disposition or status of the case.

The law empowers the State Police to make rules, including emergency rules, to implement the tracking system. It makes it clear that the tracking system information is exempt from disclosures under the Freedom of Information Act (FOIA). It also amends Sexual Assault Survivor Emergency Treatment Act (SASETA) to require hospitals to comply with the rules relating to collecting and tracking sexual assault evidence established by Section 50 of SAESA.

Under the law, the tracking system "shall be funded by moneys appropriated for that purpose from the State Crime Laboratory Fund and funds provided to the Department through asset forfeiture, together with such other funds as the General Assembly may appropriate." It also amends the Fines section of the Unified Code of Corrections to add that fees deposited into the State Crime Lab Fund may be used for the tracking system.

D. No Contact with Victim while Defendant is in Custody

P.A. 101-0138 (HB 2308), effective January 1, 2020

This law amends the "Conditions of bail bond" section of the Code of Criminal Procedure (725 ILCS 5/110-10) by adding subsection (h). It provides that when a defendant is unable to post bond, the court may impose a no contact provision with the victim or other interested party that shall be enforced while the defendant remains in custody.

E. Female Genital Mutilation of a Child

P. A. 101-0285 (HB 3498), effective January 1, 2020

The statute of limitations for female genital mutilation of a minor is unlimited. When the victim is under 18 years of age at the time of the offense, a prosecution may be commenced at any time.

Parents, guardians, or others having physical custody or control of a child commit female genital mutilation when they knowingly facilitate or permit the circumcision, excision, or infibulation, in whole or in part, of the labia majora, labia minor, or clitoris of the child. The female genital mutilation described above, is a Class 1 felony; whereas, the person who is found guilty of actually circumcising, excising, or infibulating the genitalia would be guilty of a Class X felony.

F. SASETA Transfers Amendment

P.A. 101-0073 (HB 3038), effective July 12, 2019

This law amends SASETA and allows that, until January 1, 2022, transfer hospitals that transfer all sexual assault patients may transfer survivors 13 years of age or older to a nearby hospital with approved pediatric transfer. Such transfers must be made pursuant to an areawide treatment plan, approved by the Department of Public Health, in which the hospital with approved pediatric transfer agrees to accept sexual assault survivors 13 years of age or older from the transfer hospital. Also, the treatment hospital with approved pediatric transfer must be geographically closer to the transfer hospital than a full treatment hospital or another treatment hospital with approved pediatric transfer, and such transfer must not be unduly burdensome on the sexual assault survivor.

If the areawide treatment plan includes a written agreement between a transfer hospital and a treatment hospital with approved pediatric transfer, it must also include a written agreement between the transfer hospital and a treatment hospital stating that the treatment hospital will provide medical forensic services to sexual assault survivors under 13 years of age who are transferred from the transfer hospital.

G. Attorney General's Address Confidentiality Program

P.A. 101-0270 (HB 2818), effective January 1, 2021

The Attorney General's Address Confidentiality Program is extended to include victims of sexual assault and stalking, and that program will be available to survivors starting in 2021.

The Address Confidentiality for Victims of Domestic Violence Act is renamed the Address Confidentiality for Victims of Domestic Violence, Sexual Assault, or Stalking Act: "The purpose of this Act is to enable State and local agencies to respond to requests for public records without disclosing the location of a victim of domestic violence, sexual assault, or stalking, to enable interagency cooperation with the Attorney General in providing address confidentiality for victims of domestic violence, sexual assault, or stalking, and to enable State and local agencies to accept a program participant's use of an address designated by the Attorney General as a substitute mailing address." 750 ILCS 61/5.

An adult, or a parent or guardian acting on behalf of a minor, or a guardian on behalf of a person with a disability, may apply to the Attorney General to have an address designated by the Attorney General serve as the person's address or the address of the minor or person with a disability.

The application must be filed with the office of the Attorney General in the manner and on the form provided by the Attorney General, which must contain the following:

1. a sworn statement by the applicant that they have good reason to believe that they are, or the person on whose behalf the application is made is, a victim of domestic violence, sexual assault, or stalking; and that the applicant fears for the safety of themselves or their children, or the minor or person with a disability on whose behalf the application is made;
2. a designation of the Attorney General as agent for purposes of service of process and receipt of mail;
3. the mailing address where the applicant can be contacted by the Attorney General, and the phone number or numbers where the applicant can be called by the Attorney General;
4. the new address or addresses that the applicant requests not be disclosed because such disclosure will increase the risk of domestic violence, sexual assault, or stalking; and
5. the signature of the applicant and any individual or representative of any office designated in writing this Act who assisted in the preparation of the application, and the date on which the applicant signed the application.

After receiving a completed application, the Attorney General shall certify the applicant as a program participant, and that certification will last for 4 years unless it is withdrawn or invalidated before that date. The Attorney General shall by rule establish a renewal procedure.

A person who attests to and submits a false application, or who knowingly provides false or incorrect information upon making an application, is guilty of a Class 3 felony.

The Attorney General will designate State and local agencies and nonprofit agencies that provide counseling and shelter services to victims of domestic violence, sexual assault, or stalking to assist persons applying to be program participants. Such assistance and counseling from the office of the Attorney General or its designees to applicants shall not be construed as legal advice.

This law also amends the Election Code, so survivors of sexual assault and stalking may make an application for an absentee ballot and register to vote using the Attorney General's Address Confidentiality Program. The ballot will be sent to them without requiring them to provide the address for their current location.

"Sexual assault" is defined for this statute as having the same meaning as sexual conduct or sexual penetration as defined in the Civil No Contact Order Act, and includes threat of sexual assault, regardless of whether the sexual assault or threat has been reported to law enforcement. Also, "Stalking" has the same meaning as in the Stalking No Contact Order Act, and includes threat of stalking, regardless of whether the stalking or threat has been reported to law enforcement.

H. Prisoner Review Board Victim Statements Confidentiality
P.A. 101-0288 (HB 3584), effective January 1, 2020

This law amends the Rights of Crime Victims and Witnesses Act, the Unified Code of Corrections and the Open Parole Hearings Act. It clarifies the procedures for making a victim statement at proceedings that occur

after sentencing and provides additional confidentiality protections to victim statements made to the Prisoner Review Board.

The victim of the crime for which the prisoner has been sentenced has the right to register with the Prisoner Review Board's victim registry. Victims registered with the Board shall receive written notice at their registered address not less than 30 days prior to a parole hearing, target aftercare release date, or executive clemency hearing date. The Board shall not release the names or addresses of any person on its victim registry to any other person except the victim, a law enforcement agency, or other victim notification system.

The victim has the right to submit a victim statement for consideration by the Prisoner Review Board or the Department of Juvenile Justice at a parole hearing, executive clemency hearing, hearing to determine the conditions of mandatory supervised release, or at a hearing on revocation of mandatory supervised release of a person sentenced to a determinate sentence.

Victim statements may be submitted to the Prisoner Review Board or the Department of Juvenile Justice prior to the hearing in writing, on film, videotape, or other electronic means, or in the form of a recording, or in person at the hearing, or by calling the toll-free number established for victim statements. Victim statements provided to the Board shall be confidential and privileged, except if the statement was an oral statement made by the victim at a hearing open to the public. Victim statements shall not be considered public documents under the Freedom of Information Act.

Regarding executive clemency, the Prisoner Review Board shall confidentially advise the Governor by a written report of its

recommendations, which shall be determined by majority vote. That written report shall also be confidential and privileged.

The Prisoner Review Board shall not release any material that contains any information from a victim who has provided a victim statement, unless provided with a waiver from that victim, except that the inmate or his or her attorney shall be informed of the existence of a victim statement and its contents under provisions of Board rules. The disclosure to the inmate does not permit disclosure of any information which might result in the risk of threats or physical harm to a victim or witness. The inmate is given the opportunity to answer a victim statement, either orally or in writing. All victim statements, except if the statement was an oral statement made by the victim at a hearing open to the public, shall be part of the applicant's, releasee's, or parolee's parole file.

I. Public Aid for Trafficking Victims

P.A. 101-0246 (HB 2118), effective August 9, 2019

This act extends the public aid program for foreign-born victims of trafficking, torture or other serious crimes and their family members through June 30, 2022. So long as they meet any other program eligibility requirements, such victims are eligible for cash assistance or SNAP benefits if they have filed or are preparing to file an application for a T-Visa or a U-Visa or a formal application with the appropriate federal agency for asylum under 8 U.S.C. § 1158.

II. Disability Rights

A. Counseling Sessions for People with Developmental Disabilities

P.A. 101-0059 (HB 2142), effective July 12, 2019

This act amends the Mental Health and Developmental Disabilities Code, 405 ILCS 5/2 – 101.1, to provide an adult under guardianship be allowed 12 sessions, instead of 5 sessions, of counseling lasting not more than 60 minutes, rather than 45 minutes, without a guardian's consent.

B. Access to Sex Education

P.A. 101-0506 (HB 3299), effective January 1, 2020

The Mental Health and Developmental Disabilities Code is amended by adding 405 ILCS 5/4-211 to provide access to sex education for persons admitted to a developmental disability facility. This includes "related resources and treatment planning that supports their rights to sexual health and healthy sexual practices, and to be free from sexual exploitation and abuse." The term "healthy sexual practices" defines the person's total well-being in relationship to sexuality.

Consideration will be given to the person's medical, psychological, and psycho-social evaluations and their decision-making capacity to consent to sexual activity. The appropriate sex education materials and resources will be determined by the individual, professionals who know the individual, and the individual's guardian, if appointed.

The Department of Human Services will approve sex education course material. The course material and instruction must:

1. be appropriate to the developmental disability of the recipient;
2. present identity as a part of mature adulthood;

3. replicate evidence-based programs or substantially incorporate elements of evidence-based programs;
4. place substantial emphasis on the prevention of pregnancy and sexually transmitted infections and diseases and shall stress that abstinence is the ensured method of avoiding unintended pregnancy and sexually transmitted infections and diseases, including HIV/AIDS;
5. include a discussion of the possible emotional and psychological consequences of sexual intercourse and the consequences of unwanted pregnancy;
6. stress that sexually transmitted infections and diseases are serious possible health hazards of unwanted pregnancy;
7. provide information on the use or effectiveness of condoms in preventing pregnancy, HIV/AIDS, and other sexually transmitted infections and diseases;
8. teach recipients to avoid behavior that could be interpreted as unwanted sexual advances, and how to reject unwanted sexual advances; and
9. explain signs of possible dangers from potential predators.

The Department of Human Services “may not withhold approval of materials that otherwise meet the criteria specified… on the basis that they include or refer to a religious or faith based perspective.”

III. Protective Orders

A. Immediate Filing of Emergency Orders with Sheriff
P.A. 101-0508 (HB 3396), effective January 1, 2020

This Act provides that when an emergency Stalking No Contact Order (SNCO), Civil No Contact Order (CNCO), or Domestic Violence Order of Protection (DVOP) is granted on a court holiday or in the evening, the court shall immediately file a certified copy of the order with the sheriff or other law enforcement official charged with maintaining Illinois Department of State Police records, instead of waiting until the next court day.

B. Emergency Petition and Order Not Public Until Served
P.A. 101-0255 (HB 2309), effective January 1, 2020

The law has been amended to provide that when a petition for an emergency SNCO, CNCO, or DVOP or a plenary CNCO is filed, that petition will not be publicly available until it is served on the respondent. The law also provides that when an emergency SNCO or emergency DVOP is granted or when any CNCO is granted, the order will not be publicly available until served on the respondent.

IV. Schools and Youth

A. Teaching Consent in Grades 6-12 Sex Education
P.A. 101-0579 (HB 3550), January 1, 2020

The Sex Education section of the School Code, 105 ILCS 5/27-9.1, is amended to update and add criteria for all classes in grades 6-12 that

teach sex education and discuss sexual intercourse. The primary new requirement added is that such sex education must address consent.

The new law requires that both course materials and instruction for grades 6-12 must include “an age-appropriate discussion on the meaning of consent.” Such discussion must include recognizing all of the following:

1. That consent is a freely given agreement to sexual activity.
2. That consent to one particular sexual activity does not constitute consent to other types of sexual activities.
3. That a person's lack of verbal or physical resistance or submission resulting from the use or threat of force does not constitute consent.
4. That a person's manner of dress does not constitute consent.
5. That a person's consent to past sexual activity does not constitute consent to future sexual activity.
6. That a person's consent to engage in sexual activity with one person does not constitute consent to engage in sexual activity with another person.
7. That a person can withdraw consent at any time.
8. That a person cannot consent to sexual activity if that person is unable to understand the nature of the activity or give knowing consent due to certain circumstances that include, but are not limited to, (i) the person is incapacitated due to the use or influence of alcohol or drugs, (ii) the person is asleep or unconscious, (iii) the person is a minor, or (iv) the person is incapacitated due to a mental disability.

The amendment also impacts the requirement that sex education materials and instruction include a discussion about what may be considered sexual harassment and sexual assault. It removes the previous mandate that such discussion have an emphasis on the workplace environment and life on a college campus.

Additionally, the new law updates the requirement that sex education course materials and instruction must advise students about the age of consent, using the new language: “it is unlawful to have sexual relations with an individual who is under the age of 17 and for a person who is in a position of trust, authority, or supervision to have sexual relations with an individual who is under the age of 18.” This new language corrects an outdated provision from an earlier version of the Criminal Code that limited the unlawful behavior to males having sexual relations with female minors to whom they are not married.

B. Parental Notification Before Police Interview at School

P.A. 101-0478 (HB 2627), August 23, 2019

This law establishes a new section of the School Code: Section 22-85 “Parental notification of law enforcement detainment and questioning on school grounds.” The new law sets forth steps that must be taken “before detaining and questioning a student on school grounds who is under 18 years of age *and who is suspected of committing a criminal act*.” (emphasis added). Under those circumstances, all of the following steps must be taken by a law enforcement officer, school resource officer, or other school security personnel:

(1) Notify or attempt to notify the student’s parent or guardian.

(2) Document the time and manner of notification or attempted notification.

(3) Make reasonable efforts to ensure that the student’s parent or guardian is present during questioning, and if not, school personnel (such as a school social worker, a school psychologist, a school nurse, a school

guidance counselor, or any other mental health professional) must be present.

(4) Make reasonable efforts “to ensure that a law enforcement officer trained in promoting safe interactions and communications with youth is present during the questioning.” This includes an officer who has received approved or certified training in youth investigations or who is a juvenile police officer as defined by Section 1-3 of the Juvenile Court Act of 1987.

Because these requirements are limited to cases where students are “suspected of committing a criminal act,” this law should not be used to by schools or law enforcement to require that parents be informed when a student who is a victim of sexual assault wishes to report to law enforcement at school.

Also, this new section does not limit the authority of law enforcement to make an arrest on school grounds, and it “does not apply to circumstances that would cause a reasonable person to believe that urgent and immediate action is necessary to: (1) prevent bodily harm or injury; (2) apprehend an armed or fleeing suspect; (3) prevent destruction of evidence, or (4) address an emergency or dangerous situation.”

"School grounds" is defined as “the real property comprising an active and operational elementary or secondary school during the regular hours in which school is in session and when students are present.”

C. Update to ANCRA Mandated Reporter Requirements

P.A. 101-0564 (SB 1778), January 1, 2020

The Abused and Neglected Child Reporting Act (ANCRA) is amended to create the following categories of mandated reporters:

- Medical Personnel
- Social Services and Mental Health Personnel
- Crisis Intervention Personnel
- Education Personnel
- Recreation or Athletic Program or Facility Personnel
- Child Care Personnel
- Law Enforcement Personnel
- Funeral Home Employees, Coroners and Medical Examiners
- Clergy
- Abortion and Contraception Providers

The mandated reporters in these categories are required to immediately report to the Department of Children and Family Services (DCFS) when they have reasonable cause to believe that a child known to them in their professional or official capacities may be an abused or neglected child. The act defines "a child known to them in their professional or official capacities" as including the following situations:

> (A) the mandated reporter comes into contact with the child in the course of the reporter's employment or practice of a profession, or through a regularly scheduled program, activity, or service;
>
> (B) the mandated reporter is affiliated with an agency, institution, organization, school, school district, regularly established church or religious organization, or other entity that is directly responsible for the care, supervision, guidance, or training of the child; or
>
> (C) a person makes a specific disclosure to the mandated reporter that an identifiable child is the victim of child

> abuse or child neglect, and the disclosure happens while the mandated reporter is engaged in his or her employment or practice of a profession, or in a regularly scheduled program, activity, or service.

The Act does not require the mandated reporter to meet with the child in order to make a report of suspected child abuse or neglect. Also, the act makes it clear that reporting is not limited to mandated reporters, and any person may make a report to DCFS if they have reasonable cause to believe a child may be abused or neglected.

In describing each category of mandated reporter, the law gives examples of which types of professions are included. It states that social services and mental health personnel, includes any: “licensed professional counselor; licensed clinical professional counselor; licensed social worker; licensed clinical social worker; licensed psychologist or assistant working under the direct supervision of a psychologist; associate licensed marriage and family therapist; licensed marriage and family therapist; field personnel of the Departments of Healthcare and Family Services, Public Health, Human Services, Human Rights, or Children and Family Services; supervisor or administrator of the General Assistance program established under Article VI of the Illinois Public Aid Code; social services administrator; or substance abuse treatment personnel.

Crisis intervention personnel includes “crisis line or hotline personnel; or domestic violence program personnel.”

Education personnel seems to be limited to school personnel, employees of a higher education institution, educational advocates

assigned pursuant to the School Code, school board members and truant officers.

This revision to the law also clarifies what happens when more than one mandated reporter at the same workplace are required to report: “When two or more persons who work within the same workplace and are required to report under this Act share a reasonable cause to believe that a child may be an abused or neglected child, one of those reporters may be designated to make a single report.” The report is required to include the names and contact information for any other mandated reporters from the same workplace who share the reasonable cause to believe that a child may be abused or neglected. The designated reporter must give the other mandated reporters written confirmation of the report within 48 hours, and if those mandated reporters do not receive such confirmation, they are each individually responsible for immediately ensuring a report is made.

The new Act also updates the training requirements for mandated reporters. An initial mandated reporter training must be completed within three months of the first time they are employed or volunteering in a mandated reporter position, and then at least every three years after the initial training. The trainings may be in-person or web-based, and must include information on the following topics: “(i) indicators for recognizing child abuse and child neglect, as defined under this Act; (ii) the process for reporting suspected child abuse and child neglect in Illinois as required by this Act and the required documentation; (iii) responding to a child in a trauma-informed manner; and (iv) understanding the response of child protective services and the role of the reporter after a call has been made.

Child-serving organizations are encouraged to provide in-person annual trainings."

The mandated reporter training is provided by DCFS, or an entity authorized to provide continuing education for professionals licensed through the Department of Financial and Professional Regulation, the State Board of Education, the Illinois Law Enforcement Training Standards Board, or the Department of State Police, or through an organization approved by DCFS to provide the training. DCFS is required to make available a free web-based training.

Each mandated reporter must maintain records of completion of the training and report to their employer and, if applicable, to the licensing or certification board, that they received the training. Beginning January 1, 2021, mandated reporters who receive licensure from the Department of Financial and Professional Regulation or the State Board of Education, and has continuing education requirements, the mandated reporter training will count toward meeting the required continuing education hours.

Medical personnel have options in lieu of training every three years. Medical personnel who work with children in their professional or official capacity, must complete mandated reporter training at least every six years. If licensed, the medical personnel must attest at each renewal on their renewal form that "they understand they are a mandated reporter of child abuse and neglect, that they are aware of the process for making a report, that they know how to respond to a child in a trauma-informed manner, and that they are aware of the role of child protective services and the role of a reporter after a call has been made." For medical personnel who do not work with children, instead of repeated mandated reporter

training, they may simply attest each time at licensure renewal on their renewal form those same four items.

The Act's final revision to ANCRA requires that DCFS establish a public awareness program. No later than July 1, 2020, DCFS must "develop culturally sensitive materials on child abuse and child neglect, the statewide toll-free telephone number established under Section 7.6, and the process for reporting any reasonable suspicion of child abuse or child neglect." Also, DCFS must reach out to businesses and organizations to seek assistance in raising awareness about child abuse and child neglect and the DCFS hotline, including posting notices.

DCFS is required to create a model notice, that is at least 8½ x 11 inches, and make it available for download on its website in English, Spanish and the two other languages most widely spoken in Illinois. The notice must include the following statement: "Protecting children is a responsibility we all share. It is important for every person to take child abuse and child neglect seriously, to be able to recognize when it happens, and to know what to do next. If you have reason to believe a child you know is being abused or neglected, call the State's child abuse hotline." It must also list the telephone number for the DCFS hotline and the DCFS website address where more information about child abuse and child neglect is available.

The Act also amends the Illinois Police Training Act to require that the curriculum for probationary police officers include a block of instruction addressing the mandatory reporting requirements under ANCRA. Additionally, it adds "reporting child abuse and neglect" to the topics that

must be included in the minimum in-service training requirements that police officers must satisfactorily complete every three years.

D. School Policies on Sexual Abuse; Indicated Findings by DCFS
P.A. 101-0531 (SB 456), effective August 23, 2019

The School Code is amended to address issues related to child abuse and neglect in schools, and restrictions on licensure and employment of those charged and convicted of certain crimes.

Throughout the Code, “licensed and nonlicensed” replaces “certified and noncertified,” and all references to “certified” and “certification” are changed to “licensed” and “license,” respectively.

The amendment requires that every two years each school district must review all of its policies and procedures regarding sexual abuse investigations to ensure compliance with Section 22-85 described below. (Please note that two new Sections 22-85 were enacted this session, and the one referred to here is the one from P.A. 101-0531).

A requirement is added that school districts must check the Statewide Sex Offender Management Database and Murder and Violence Offender against Youth Database once for every five years an employee is employed. Also, the superintendent of the employing school board or the regional superintendent must notify, in writing, the State Superintendent of Education of any license holder who has been convicted of certain crimes, listed in Section 21B-80, including sex offenses, and the State Superintendent of Education may initiate licensure suspension or revocation proceedings.

Also, School Boards must consider the status of an applicant, employee, or student teacher who has been issued an indicated finding of abuse or neglect of a child by DCFS or similar agency in another jurisdiction.

Entities designated as providers of professional development activities for the renewal of Professional Educator Licenses must register annually with the State Board of Education prior to offering any professional development opportunities in the current fiscal year.

The Act adds willful or negligent failure to report suspected child abuse as required by the Abused and Neglected Child Reporting Act (ANCRA) as a reason that a school board may immediately dismiss an employee. It also adds negligent failure to report as a reason for the State Superintendent of Education to initiate license suspension or revocation proceedings. It defines “negligent failure to report” as when a school district employee personally observes an instance of suspected child abuse or neglect and reasonably believes, in his or her professional or official capacity, that the instance constitutes an act of child abuse or neglect under the ANCRA, and he or she, without willful intent, fails to immediately report or cause a report to be made of the suspected abuse or neglect to DCFS.

The act adds protections for student and minor victims and witnesses who testify at a hearing regarding dismissal of a teacher when charges involve sexual abuse or severe physical abuse of a student or a person under the age of 18. In those cases, the hearing officer must provide alternative hearing procedures to protect a witness who is a student or who is under the age of 18 from being intimidated or traumatized. “Alternative

hearing procedures may include, but are not limited to: (i) testimony made via a telecommunication device in a location other than the hearing room and outside the physical presence of the teacher and other hearing participants, (ii) testimony outside the physical presence of the teacher, or (iii) non-public testimony." During the student/child's testimony, each party must be permitted to ask the witness all relevant questions, but the questions must not address the witness's sexual behavior or predisposition, unless such evidence is offered to prove that someone other than the teacher who is the subject of the dismissal hearing engaged in the alleged behavior that is the reason for the hearing.

The act also adds a new section to the School Code regarding Sexual abuse at schools. 105 ILCS 5/22-85. For that new section, the definition of "alleged incident of sexual abuse" includes sexual abuse of a child alleged to have been perpetrated by school personnel, which includes school vendors and volunteers, "that occurred (i) on school grounds or during a school activity or (ii) outside of school grounds or not during a school activity."

The Act also includes updates to mandated reporting requirements and includes a mandate that the State Board of Education make available materials detailing the information necessary to notify DCFS, and each school must ensure that mandated reporters review the State Board of Education's materials and materials developed by the DCFS at least once per year.

For schools in a county with an accredited Children's Advocacy Center (CAC), every alleged incident of sexual abuse that is reported to the DCFS hotline or a law enforcement agency and is subsequently accepted

for investigation must be referred to the local CAC pursuant to that county's multidisciplinary team's protocol. The CAC must, at a minimum, do both of the following: “(1) Coordinate the investigation of the alleged incident, as governed by the local Children's Advocacy Center's existing multidisciplinary team protocol and according to National Children's Alliance accreditation standards. (2) Facilitate communication between the multidisciplinary team investigating the alleged incident of sexual abuse and, if applicable, the referring school's (i) Title IX officer, or his or her designee, (ii) school resource officer, or (iii) personnel leading the school's investigation into the alleged incident of sexual abuse.”

After an alleged incident of sexual abuse is accepted for investigation by DCFS or law enforcement, and while criminal and child abuse investigations are being conducted by the local multidisciplinary team, the school may not interview the alleged victim regarding details of the alleged incident of sexual abuse until after the completion of the CAC forensic interview. If asked by a law enforcement agency or a DCFS investigator, the school must inform those individuals of any evidence the school has gathered pertaining to an alleged incident of sexual abuse, as permissible by federal or state law.

After completion of a forensic interview, the multidisciplinary team must notify the school that it is completed or that it has determined not to conduct such an interview. If a forensic interview has not been conducted within 15 calendar days after opening an investigation, the school may notify the multidisciplinary team that it intends to interview the alleged victim. No later than 10 calendar days after this notification, the multidisciplinary team may conduct the forensic interview and, if the

multidisciplinary team does not conduct the interview, the school may proceed with its interview.

School personnel may view the electronic recordings of a forensic interview of an alleged victim of an incident of sexual abuse. As a means to avoid additional interviews of an alleged victim, school personnel must be granted viewing access to the electronic recording of a forensic interview conducted at an accredited CAC only if the school receives approval from the multidisciplinary team and informed consent by a child over the age of 13 or a younger child's parent or guardian. Whenever possible, the school's viewing of the electronic recording of a forensic interview should be conducted instead of additional interviews. If the school determines that it needs to interview the alleged victim to successfully complete its investigation and the victim is under 18 years of age, a child advocate must be made available to the student and may be present during the school's interview. A child advocate may be a school social worker, a school or equally qualified psychologist, or a person in a position the State Board of Education has identified as an appropriate advocate for the student during a school's investigation into an alleged incident of sexual abuse.

Schools will be notified when DCFS and law enforcement investigations into allegations of sexual abuse at the school are completed or suspended. The notification must include information about the outcome of the investigation.

The Act also establishes the Make Sexual and Severe Physical Abuse Fully Extinct (Make S.A.F.E.) Task Force to address issues concerning the sexual abuse of students in school-related settings. The Task Force will review best practices for preventing sexual abuse of

students in a school-related setting or by school-related perpetrators, including school district employees or other students, how to best address that abuse, and the proper support for students who have suffered from that abuse. The review shall examine the best practices at all pre-K through grade 12 schools regardless of whether they are public schools, nonpublic schools, or charter schools.

The Task Force must report its findings to the Governor and General Assembly by September 15, 2020. The report must include the following topics:

> (1) The best practices for preventing sexual and severe physical abuse in school-related settings or by school-related perpetrators, including, but not limited to, criminal history records checks for school district employees, the employment status of a school employee accused of sexual abuse of a student, and procedural safeguards for personnel who regularly interact with children as part of school or school activities, even if the personnel are not officially employed by a school district.
>
> (2) The best practices for addressing sexual and severe physical abuse in a school-related setting or by school-related perpetrators, including, but not limited to, the nature and amount of forensic interviews and forensic interview information sharing, school cooperation with multidisciplinary teams under the Children's Advocacy Center Act, and model school policies.
>
> (3) The best practices for support for students who have suffered sexual or severe physical abuse in a school-related setting or by a school-related perpetrator, including, but not limited to, emotional, psychological, and academic support.
>
> (4) Any other topic the Task Force deems necessary to advance the safety or well-being of students in relation to

sexual and severe physical abuse stemming from a school-related setting or school-related perpetrator.

E. Notify School of Prosecution of Employee for Sex Offense
P. A. 101-0521 (HB 3687), effective August 23, 2019

This law adds a requirement to the Code of Criminal Procedure that when an employee of a school is arrested after commencement of prosecution for a sex offense, the State's Attorney must immediately provide a copy of the complaint, information, or indictment to the superintendent of schools or school administration that is the employer.

This addition to the law is not to be construed to diminish the rights, privileges, or remedies that an employee may have under a collective bargaining agreement or employment contract.

"Employee" means any employee of a school district, a student teacher, an employee of a contractor that provides services to students or in schools, or any other individual subject to the requirements of Section 10-21.9 ("Criminal history records checks and checks of the Statewide Sex Offender Database and Statewide Murderer and Violent Offender Against Youth Database") or 34-18.5 ("Criminal history records checks and checks of the Statewide Sex Offender Database and Statewide Murderer and Violent Offender Against Youth Database") of the School Code.

"Sex Offense" has the same meaning as in the Sex Offender Registration Act, 730 ILCS 150/2(B).

F. Public Schools Must Teach LGBTQ Contributions in History

P.A. 101-0227 (HB 246), July 1, 2020

Two sections of the School Code are amended. Section 2-3.155 regarding the Textbook Block Grant Program is amended to require that textbooks authorized to be purchased are limited to textbooks that are "non-discriminatory as to any of the characteristics under the Illinois Human Rights Act" and "must include the roles and contributions of all people protected under the Illinois Human Rights Act."

Also, Section 27-21 regarding teaching the history of United States is amended to provide that, in public schools "the teaching of history shall include a study of the roles and contributions of lesbian, gay, bisexual, and transgender people in the history of this country and this State."

G. Child Sexual Abuse Civil Statute of Limitations Period Tolled for Fraudulent Concealment

P. A. 101-0435 (SB 1868), effective August 20, 2019

The civil statute of limitations for personal injuries based on childhood sexual assault will not run during a period when the abused person is subject to fraudulent concealment by the abuser or any person acting in the interest of the abuser. This amendment to the Code of Civil Procedure added "fraudulent concealment" to the list of reasons the limitations periods do not run, which already included time periods "when the person abused is subject to threats, intimidation, manipulation, or fraud perpetrated by the abuser or any person acting in the interests of the abuser." 735 ILCS 5/13-202.2(d-1).

H. DCFS Must Refer Reports Outside its Jurisdiction to Police
P.A. 101-0583 (SB 1239), January 1, 2020

The Abused and Neglected Child Reporting Act (ANCRA) is amended to require the Department of Children and Family Services (DCFS) to immediately refer to the appropriate local law enforcement agency any report receive by DCFS that alleges abuse or neglect of a child "by a person who is **not** the child's parent, a member of the child's immediate family, a person responsible for the child's welfare, an individual residing the same home as the child, or a paramour of the child's parent." (emphasis added).

This new law will allow local law enforcement the opportunity to consider criminal investigation in cases that are reported to DCFS but are outside DCFS's investigative jurisdiction. Please note that reports that are not within DCFS's jurisdiction generally will not qualify as "mandated" reports and should not be made by persons covered by privilege. Also, the exception in ANCRA that allows persons covered by privilege to cooperate with DCFS does not extend to law enforcement.

I. CAC Forensic Interviews Recorded Without Consent
P.A. 101-0236 (HB 909), January 1, 2020

The Children's Advocacy Center Act (CAC Act) and Freedom of Information Act (FOIA) are both amended by P.A. 101-0236. A new section, "Forensic interviews; electronic recordings" is added to the CAC Act. It provides that consent is not required for a forensic interview to be electronically recorded, so parents and guardians are no longer required to agree to such recordings. It also makes it clear that failure to electronically record a forensic interview does not render it inadmissible in court.

Forensic interviews, electronic recordings of forensic interviews, and forensic interview transcriptions are deemed confidential and exempt from public inspection and copying. Under the CAC Act, such transcriptions and recordings “may only be viewed by a court, attorneys, investigators, or experts for the purpose of judicial and administrative hearings and shall not be disseminated except pursuant to a court's protective order.”

For purposes of the CAC Act, an “electronic recording” is defined as including “a motion picture, audiotape, videotape, or digital recording,” and a “forensic interview transcription" is defined as “a verbatim transcript of a forensic interview for the purpose of translating the interview into another language.”

FOIA is amended to add a statutory exemption from inspection and copying for recordings made under the CAC Act.

V. Sexual Harassment & Anti-Discrimination

A. Workplace Transparency Act

P.A. 101-0221 (SB 75), various effective dates

This new law will require all Illinois employers to update their training practices, policies, personnel forms, severance agreements and arbitration agreements, primarily to address issues related to sexual harassment.

Employers are restricted in their use of employment policies or agreements intended to prevent an employee from reporting sexual harassment, such as non-disclosure agreements, arbitration clauses, and non-disparagement clauses for cases involving harassment, discrimination and retaliation. No such agreement can prevent an applicant, employee or

former employee from reporting unlawful or criminal conduct to a government agency.

Mandatory arbitration provisions are void if they are a compulsory, unilateral condition of employment or continued employment. Such provisions, which would otherwise be void, may be allowed only when they are mutual, in writing, with actual, knowing, and bargained-for consideration from both parties. The agreement must acknowledge the employee's rights to: (1) report good faith allegations; (2) participate in proceedings; (3) make truthful statements or disclosures required by law; and (4) request and receive confidential legal advice.

Also, mutual confidentiality provisions in settlement or severance agreements are only valid if the provision is expressly preferred by the individual. Also such agreements must (1) expressly allow the individual to have the document reviewed by an attorney of their choosing; (2) provide for valid consideration; (3) not waive claims that arise after the effective date; and (4) provide 21 days for the individual to consider the agreement and 7 days to revoke after execution.

Employers can still require and enforce confidentiality from employees whose duties require it, including employees who receive complaints or have access to confidential personnel information as part of their job, employees participating in an open and ongoing investigation, employees who create or have access to attorney work-product, attorney-client, and other privileged information, and third-party investigators.

The provision of this Act that seems to be getting the most attention is the requirement that all private employers annually train their employees on preventing sexual harassment. The Illinois Department of Human Rights

(IDHR) is required to develop a model sexual harassment training program for employers to provide to their employees, or employers may develop and use their own training that equals or exceeds the minimum standards. Training must include: (1) an explanation of sexual harassment consistent with the Illinois Human Rights Act (IHRA); (2) examples of conduct that constitutes unlawful sexual harassment; (3) a summary of relevant laws concerning sexual harassment, including remedies available to victims; and (4) a summary of the responsibility of employers in prevention, investigation, and taking corrective measures against sexual harassment. This requirement goes into effect on January 1, 2020.

In addition to the general sexual harassment prevention training described above, the Act also requires anti-harassment and discrimination policy distribution to all employees of restaurants and bars, defined broadly, within the first week of starting employment, as well as, anti-harassment training specific to restaurants and bars. This additional training must (1) be provided at least once per year to all employees; (2) include specific conduct, activities, and/or videos related to the restaurant and bar industries; (3) include an explanation of manager liability and responsibility under the law; and (4) be offered in both English and Spanish language options. Again, the IDHR must create a compliant online training or the bar or restaurant may establish its own supplemental training program that equals or exceeds the above requirements. This training may be done separately or at the same time as the general sexual harassment prevention training.

There are also requirements for harassment and discrimination prevention trainings for state employees and clarifies reporting and

investigative processes under the Governmental Ethics Act and the State Officials and Employees Ethics Act.

Additionally, the new law creates the Hotel and Casino Employee Safety Act which will require all hotels and casinos to adopt anti-sexual harassment policies and make safety devices (panic buttons) available to certain employees by July 1, 2020. The anti-sexual harassment policies must have specific language and provisions that include language that the complaining employee is permitted to cease work and leave the immediate area if they perceive danger until hotel or casino personnel or the police arrive to provide assistance, as well as, provisions that give the employee paid time off to file a police report or criminal complaint against the offending guest and/or testify as a witness against the offending guest.

The new act makes harassment and discrimination against "nonemployees" illegal under the IHRA, where "'nonemployee' means a person who is not otherwise an employee of the employer and is directly performing services for the employer pursuant to a contract with that employer," including contractors and consultants.

It also clarifies that it is illegal to discriminate against an employee if they are perceived to be part of a protected class (i.e. gender, sexual orientation, ethnicity), even if they are actually not a member of that class. In IHRA "Unlawful Discrimination" is now defined as "discrimination against a person because of his or her actual or perceived: race, color, religion, national origin, ancestry, age, sex, marital status, order of protection status, disability, military status, sexual orientation, pregnancy, or unfavorable discharge from military service"

A definition of “harassment,” distinct from sexual harassment, is added to the IHRA, and means “any unwelcome conduct on the basis of an individual's actual or perceived race, color, religion, national origin, ancestry, age, sex, marital status, order of protection status, disability, military status, sexual orientation, pregnancy, unfavorable discharge from military service, or citizenship status that has the purpose or effect of substantially interfering with the individual's work performance or creating an intimidating, hostile, or offensive working environment.”

For purposes of the definitions of harassment and sexual harassment, the law clarifies that “the phrase ‘working environment’ is not limited to a physical location an employee is assigned to perform his or her duties.”

The Act also expands the Victims Economic Security & Safety Act (VESSA) to allow victims of gender violence to take unpaid leave from work to seek medical help, legal assistance, counseling, safety planning and other assistance. “Gender Violence” is defined as “(A) one or more acts of violence or aggression satisfying the elements of any criminal offense under the laws of this State that are committed, at least in part, on the basis of a person's actual or perceived sex or gender, regardless of whether the acts resulted in criminal charges, prosecution, or conviction; (B) a physical intrusion or physical invasion of a sexual nature under coercive conditions satisfying the elements of any criminal offense under the laws of this State, regardless of whether the intrusion or invasion resulted in criminal charges, prosecution, or conviction; or (C) a threat of an act described in item (A) or (B) causing a realistic apprehension that the originator of the threat will commit the act.”

Starting July 1, 2020 and continuing each July 1 thereafter, all employers, labor organizations, and units of local government must report to IDHR the number of final, non-appealable, adverse judgements or administrative rulings with findings of sexual harassment or unlawful discrimination and disclose: (1) the total number of such adverse judgements and rulings in the preceding calendar year, (2) whether equitable relief was ordered, and (3) how many for each reporting category. The reporting categories are:

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

Also, if IDHR is investigating a Charge, it may request from that employer the total number of settlements it has entered into in the past five years related to any alleged act of sexual harassment or unlawful discrimination that occurred in the workplace or involved behavior of an employee or executive, as well as the number of settlements in each category listed above.

The Act also establishes penalties for failure to report or train employees as required by the law. There are penalty levels set for companies with fewer than four employees (1st Offense – up to $500; 2nd Offense – up to $1,000; 3rd Offense – up to $3,000) and for those with four or more employees (1st Offense – up to $1,000; 2nd Offense – up to

$3,000; 3rd Offense – up to $5,000). When a violation is discovered, IDHR will issue a notice to show cause giving the employer 30 days to comply. After 30 days, IDHR will petition the Human Rights Commission for an order imposing a civil penalty. The Commission will consider the employer's size, good faith efforts and gravity of the violation in setting amount.

Finally, the Act prohibits dual representation of union members in any proceeding in which a victim who is a union member has accused a perpetrator who is a member of the same union of sexual harassment. The union must designate separate union representatives to represent the victim and the accused in the proceeding.

B. IHRA Definition of Employer
P.A. 101-0430 (HB 252), effective July 1, 2020

This Act amends the scope of the anti-discrimination provisions of the Illinois Human Right Act. It expands the definition of employer from "any person employing ***15*** or more employees within Illinois during 20 or more calendar weeks within the calendar year of or preceding the alleged violation" to "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" (emphasis added)

The act also excludes "place of worship" from the definition of employer, but only with respect to requiring the employment of individuals of a particular religion to perform work connected with place of worship's activities. The law had already excluded any "religious corporation, association, educational institution, society, or non-profit nursing institution conducted by and for those who reply upon treatment by prayer through

spiritual means in accordance with the tenets of a recognized church or religious denomination" from the definition of employer.

VI. Other New Laws

A. Reproductive Health Act

P.A. 101-0013 (SB 25), effective June 12, 2019

The Reproductive Health Act (RHA) establishes an individual's right to make decisions about reproductive healthcare including contraception, abortion, and maternity care. This new law affirms that individuals are allowed to make decisions about their reproductive health, their use of birth control, the decision to have or refuse an abortion, and the decision to carry a pregnancy to term.

The RHA repeals the Partial Birth Abortion Ban Act and the Illinois Abortion Act of 1975. With the repeal of these laws, abortion regulation is removed from the criminal code and abortion care is considered health care.

The amended law defines the term "health care professional" as physicians, advanced practice registered nurses, and physician assistants. The Act will allow advanced practice registered nurses and physician assistants to assist in surgery.

The law amends the Illinois Insurance Code to require private health insurance companies extend medical coverage to include abortion services. Insurance companies that provide for pregnancy-related benefits must provide coverage for abortion care in the same manner covered by the policy.

The RHA includes new language for the definition of “ambulatory surgical treatment center” and omits facilities “in which the performance of abortion procedures, including procedures to terminate a pregnancy or to manage pregnancy loss, is limited to those performed without general, epidural, or spinal anesthesia, and which is not otherwise required to be an ambulatory surgical treatment center.” (210 ILCS 5/3). This law repeals restrictions on abortions performed in locations other than ambulatory surgical treatment centers.

This act amends the language in the criminal code regarding offenses against an unborn child to define the term “unborn child” as “any individual of the human species from the implantation of an embryo until birth.” (720 ILCS 5/9-1.2) The prior language referenced “fertilization.”

The RHA also repeals the provision that specifies no spouse may be liable for expenses incurred by the other spouse for an abortion. It also repeals that limited parental liability for expenses incurred by their minor child when an abortion is performed without prior consent of both parents if they share custody, or the custodial parent, or the legal guardian of the child.

B. Human Trafficking Training for Hotels
P.A. 101-0499 (HB 3101), effective August 23, 2019

Beginning June 1, 2020, this new law requires hotels and motels to train employees to recognize human trafficking and how to report observed human trafficking to the appropriate authority. Employees must complete this training within 6 months of starting their employment and repeat the training every two years.

The training program can be a curriculum developed by the lodging establishment or from a third party, but the program must include all of the following to comply:

1. a definition of human trafficking and commercial exploitation of children;
2. guidance on how to identify individuals who are most at risk for human trafficking;
3. the difference between human trafficking for purposes of labor and for purposes of sex as the trafficking relates to lodging establishments; and
4. guidance on the role of lodging establishment employees in reporting and responding to instances of human trafficking.

The Department of Human Services (DHS) will be responsible for developing a curriculum for an approved human trafficking training recognition program which can be used by hotels and motels that do not have their own program. DHS is required to develop this training program by July 1, 2020, and it will include the same four topics listed above.

C. Human Trafficking Curriculum and Training
Public Act 101-0018 (SB 1890), effective June 20, 2019

This Act also includes the substance of P.A. 101-0449, as described above. In addition, it amends the Department of State Police Law in the Civil Administrative Code to require the Director of the Illinois State Police to conduct or approve a training program regarding the detection and investigation of all forms of human trafficking, including “involuntary servitude,” “involuntary sexual servitude by a minor,” and “trafficking in persons.”

The in-service programs will be available to all Illinois State Police officers and cadets beginning July 1, 2020. (20 ILCS 2605/2605-99). In addition, the in-service training programs will be made available to all Illinois law enforcement, correctional, and court security officers. (50 ILCS 705/10.23).

New language added to the Criminal Code states that when the victim is 18 years of age or over at the time of the offense, a prosecution for “involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons and related offenses may be commenced within 25 years after the commission of the offense.” (720 ILCS 5/3-6).

This law also amends the definition of "company" in the offense of “Trafficking in Persons” to mean “any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability limited partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of those entities or business associations, that exist for the purpose of making profit.” (720 ILCS 5/10-9).

The amended law states that a company commits trafficking when it financially benefits by knowingly participating in “a venture that has engaged in an act of involuntary servitude or involuntary sexual servitude of a minor.” The sentence for a company for a violation of this kind is considered a business offense and a $100,000 fine may be imposed. A violation by a person is a Class 1 felony. (720 ILCS 5/10-9).

D. Keep Illinois Families Together Act
P.A. 101-0019 (HB 1637), effective June 21, 2019

This act prohibits law enforcement agencies or officials from entering into or remaining in an agreement with U.S. Immigration and Customs Enforcement under a federal delegated authority program.

According to this act, a “law enforcement agency” is defined as an Illinois agency who is charged with enforcing state, county or municipal laws. These agencies include municipal police departments, sheriff’s departments, campus police departments, state police, and the Department of Juvenile Justice.

A “law enforcement official” is defined as “any officer or other agent of a State or local law enforcement agency” who is authorized to enforce the following:

- criminal laws;
- rules, regulations, or local ordinances; or
- operate jails, correctional facilities, or juvenile detention facilities; or
- to maintain custody of individuals in jails, correctional facilities, or juvenile detention facilities; or
- any school resource officer or other police or security officer assigned to any public school, including any public pre-school and other early learning program, public elementary and secondary school, or public institution of higher education.

This law does not prevent a law enforcement official from otherwise executing that official's duties in ensuring public safety.

E. Nonconsensual Dissemination of Private Sexual Images
P.A. 101-0556 (SB 1507), effective January 1, 2020

This act provides civil remedies for a person who suffers harm from the intentional dissemination or threatened dissemination of private sexual images by a person over the age of 18 without the depicted individual's consent.

The definitions used in this act include the following:

- "Child" means an unemancipated individual who is less than 18 years of age.
- "Consent" means affirmative, conscious, and voluntary authorization by an individual with legal capacity to give authorization.
- "Depicted individual" means an individual whose body is shown, in whole or in part, in a private sexual image.
- "Dissemination" or "disseminate" means publication or distribution to another person with intent to disclose.
- "Harm" means physical harm, economic harm, or emotional distress whether or not accompanied by physical or economic harm.
- "Identifiable" means recognizable by a person other than the depicted individual: (A) from a private sexual image itself; or (B) from a private sexual image and identifying characteristic displayed in connection with the image.
- "Identifying characteristic" means information that may be used to identify a depicted individual.
- "Individual" means a human being.
- "Parent" means an individual recognized as a parent under laws of this State.

- "Private" means: (A) created or obtained under circumstances in which a depicted individual had a reasonable expectation of privacy; or (B) made accessible through theft, bribery, extortion, fraud, voyeurism, or exceeding authorized access to an account, message, file, device, resource, or property.

- "Person" means an individual, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or other legal entity.

- "Sexual conduct" includes: (A) masturbation; (B) genital sex, anal sex, oral sex, or sexual activity; or (C) sexual penetration of or with an object.

- "Sexual activity" means any: (A) knowing touching or fondling by the depicted individual or another person, either directly or through clothing, of the sex organs, anus, or breast of the depicted individual or another person for the purpose of gratification or arousal; (B) transfer or transmission of semen upon any part of the clothed or unclothed body of the depicted individual, for the purpose of sexual gratification or arousal of the depicted individual or another person; (C) act of urination within a sexual context; (D) bondage, fetish, sadism, or masochism; (E) sadomasochistic abuse in any sexual context; or (F) animal-related sexual activity.

- "Sexual image" means a photograph, film, videotape, digital recording, or other similar medium that shows: (A) the fully unclothed, partially unclothed, or transparently clothed genitals, pubic area, anus, or female post-pubescent nipple, partially or fully exposed, of a depicted individual; or (B) a depicted individual engaging in or being subjected to sexual conduct or activity.

The individual depicted in the images has a cause of action against the person if the person knew:

1. the depicted individual did not consent to the dissemination;
2. the image was a private sexual image; and
3. the depicted individual was identifiable.

Consent to creation of the image or previous consensual disclosure of the image by a depicted individual does not establish, on its own, that the individual consented to the dissemination of a private sexual image or that the individual lacked a reasonable expectation of privacy.

This new law specifically declines to impose liability on an interactive computer service for content provided by another person. Additional exceptions to liability under the law include if the person proves that the dissemination of or the threat to disseminate a private sexual image was:

(1) made in good faith:

(A) by law enforcement;

(B) in a legal proceeding; or

(C) for medical education or treatment;

(2) made in good faith in the reporting or investigation of:

(A) unlawful conduct; or

(B) unsolicited and unwelcome conduct; or

(3) related to a matter of public concern.

The act clarifies that dissemination of or a threat to disseminate a private sexual image is not a matter of public concern solely because the depicted individual is a public figure.

Also, a defendant who is a parent, legal guardian, or individual with legal custody of a child is not liable for a dissemination or threatened dissemination of an intimate private sexual image of the child, unless the plaintiff proves the disclosure was prohibited by another law or was made for the purpose of sexual arousal, sexual gratification, humiliation, degradation, or monetary or commercial gain.

The statute of limitations for nonconsensual dissemination is two years from the date the dissemination was discovered or should have been

discovered with reasonable diligence. The statute of limitations for a threat to disseminate is two years from the date of the threat. These time limits are tolled for minors and will not begin to run until the plaintiff has turned 18 years old.

Also, the plaintiff may proceed using a pseudonym in place of their true name and the court may exclude or redact identifying characteristics of the plaintiff. Defendant may also file a motion seeking privacy protections.

A prevailing plaintiff under this act may recover “the greater of: (1) economic and noneconomic damages proximately caused by the defendant's dissemination or threatened dissemination, including damages for emotional distress whether or not accompanied by other damages; or (2) statutory damages, not to exceed $10,000, against each defendant found liable under this Act for all disseminations and threatened disseminations by the defendant of which the plaintiff knew or reasonably should have known when filing the action or that became known during the pendency of the action.”

When the court determines the amount of statutory damages it shall consider the following: “the age of the parties at the time of the disseminations or threatened disseminations, the number of disseminations or threatened disseminations made by the defendant, the breadth of distribution of the image by the defendant, and other exacerbating or mitigating factors”

The plaintiff may also be awarded an amount equal to any monetary gain the defendant received from dissemination of the private sexual image, punitive damages, reasonable attorney's fees and costs. Additional remedies may include injunctive relief.