DU PAGE JUVENILE OFFICERS' ASSOCIATION AND DU PAGE COUNTY BAR ASSOCIATION JOINT MEETING
JUVENILE LAW UPDATE 2010

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Juvenile Court Act Procedure

The definition of "delinquent minor" changed on January 1, 2010. Delinquent minors include those who prior to their 18th birthday violate or attempt to violate, regardless of where the act occurred, any federal, State, county, or municipal law or ordinance classified as a misdemeanor offense. 705 ILCS 405/5-105(3) If a person 17 years of age or older is charged with both felony and misdemeanor offenses, the person is to be tried as an adult. But, if the person is only found guilty of a misdemeanor, the court must proceed under the Juvenile Court Act. 705 ILCS 405/5-120, P.A. 95-1031

Any minor charged with a misdemeanor offense as a first offense, no matter what the disposition was, is eligible for expungement review by the court upon his or her 18th birthday or upon completion of the minor's sentence or disposition of the charge against the minor, whichever is later. Upon motion by counsel filed within 30 days after entry of the judgment of the court, the Court must set a time for an expungement review hearing within a month of the minor's 18th birthday or within a month of completion of the minor's sentence or disposition of the charge against the minor, whichever is later. The only objections that can be filed are that the offense for which the minor was arrested is still under active investigation; that the minor is a potential witness in an upcoming court proceeding and that such arrest record is relevant to that proceeding; that the arrest at issue was for a homicide; an offense involving a deadly weapon; a sex offense as defined in the Sex Offender Registration Act; or aggravated domestic battery. In the absence of an objection, or if the objecting party fails to prove one of the above-listed objections, the court shall enter an order granting expungement. 705 ILCS 405/5-622, P.A. 96-707, effective 1/1/10.

Delinquent minors may now be sentenced to placement in electronic home detention unless the offense is an excluded offense (serious felonies). 405 ILCS 405/5-710(x). In order to implement this provision, there is a new Juvenile Electronic Home Detention Act which sets forth the procedure and program for this disposition. 705 ILCS 405/5-7A-1-1. Before entering an order, the supervising authority must secure the consent of the participant and other persons living in the residence. 705 ILCS 5/405/7A-125, Violating a condition of electronic home detention constitutes an offense for which the minor can be adjudicated a delinquent. 705 ILCS 405/7A-120, P.A. 96-293, effective 1/1/10.

Juvenile court record provisions have been amended to include the ability to disclose findings and exclusions of paternities entered in proceedings under Article 11 of the Juvenile Court Act. This information may be disclosed in a manner approved by the presiding judge of the Juvenile Court to the Department Healthcare and Family Services when necessary to discharge its duties under Article X of the Illinois Public Aid Code. 705 ILCS 405/1-8(A-1), PA 96-213, effective 8/10/09.

If a delinquent minor is in the custody of the Illinois Department of Children and Family Services pursuant to an order entered by the court, the court shall conduct permanency hearings as set out in subsection 1, 2 & 3 of Section 2-28 provisions for neglect and abused minors. 705 ILCS 405/5-745(2), PA 96-178, effective 1/1/10.

The one-act, one-crime rule applies to juvenile delinquency proceedings. In Re Samantha V. , 214 Ill.2d 359, 334 Ill.Dec. 661, 917 N.E.2d 487(2009). The minor was found delinquent for aggravated battery for great bodily harm and aggravated battery on a public way. She could only be sentenced on the more serious offense.

The failure to admonish a juvenile regarding the maximum penalty was plain error because the court did not inform him of the maximum penalty that could be imposed. Therefore, the plea didn't comply with the 705 ILCS 405/5-605. He should have been told he could be committed for a period of time up to his 21st birthday which would be a maximum period of time over 5 years. In re Timothy P., 327 Ill.Dec. 931, 903 N.E.2d 28(2009)

The court could not sentence a minor as an adult in People v. Jardon, 332 Ill.Dec. 576, 913 N.E.2d 171(2009) where he was found guilty of second-degree murder after being charged with first-degree murder. The State failed to comply with the requirement that it file a notice within 10 days in order that a hearing be held to determine whether the minor could be sentenced as an adult on an unenumerated offense under 705 ILCS 405/5-130(1)(c)(ii).

The court should have conducted an *in camera* inspection of school records of juvenile witnesses who attended a therapeutic school. One of the witnesses was placed in a psychiatric institution after the incident and the testimony of the witnesses was the only evidence linking the minor to the offense. The juvenile wanted to see the records to examine the credibility of the witnesses. People v. K.S., 326 Ill.Dec. 1028, 900 N.E.2d 1275(2008).

A juvenile's mandatory five-year probation term had to be vacated because her adjudication of delinquency for aggravated battery was not a forcible felony as a matter of law. In re Angelique E.329 Ill.Dec. 740, 907 N.E.2d 59(2009). The forcible felony statute only applies to an aggravated battery that results in great bodily harm, permanent disability or disfigurement.

Defendant's prior adjudication for an offense that would have been a felony if committed by an adult was not an element of aggravated unlawful use of weapon. Therefore the jury should not have been informed about but it should have been used as an aggravating factor at sentencing. Therefore, the defendant's conviction had to be reversed and remanded. People v. Zimmerman, 333 Ill.Dec. 409, 914 N.E.2d 1221(2009)

Subpoenas

An attorney admitted to practice in the State of Illinois as an officer of the court may issue a subpoena in a pending action. 725 ILCS 5/115-17. PA 96-485, effective 1/1/10.

Impeachment

A defendant opened the door to the use of his juvenile criminal background for impeachment purposes in People v. Harris, 231 Ill.2d 582, 327 Ill.Dec. 39, 901 N.E.2d 367(2008). The defendant had testified, "I don't commit crimes". The court found that since this was an attempt

to mislead the jury, it opened the door to the introduction of his two most recent juvenile adjudications on rebuttal.

Notice

Even though the State failed to serve a minor's natural mother with a notice of a delinquency petition in In Re C.L., 332 Ill.Dec. 479, 913 N.E.2d 74(2009), the court was not deprived of subject matter jurisdiction. The court acquired personal jurisdiction over the minor and his father when they appeared in court and were served with the petitions and the summons in the case.

The failure to serve a summons upon the juvenile's custodial parents in delinquency proceeding did not deprive the court of subject-matter jurisdiction to hear the delinquency action, nor did it affect the court's authority to render a sentence; rather, the failure affected only the court's personal jurisdiction over his parents. In re Nathan A.C., 385 Ill.App.3d 1063(2008)

The failure to give notice of an amended delinquency petition to a minor's father did not deprive the circuit court of subject matter jurisdiction. In re M.W. 232 Ill.2d 408, 328 Ill.Dec. 868, 905 N.E.2d 757(2009). In this case, personal jurisdiction was obtained over the minor's father when he was served with the petition at the detention hearing. The court found that failure to give notice of the amended delinquency petition was not serious enough for it to be a due process violation affecting the fairness of the minor's adjudication or undermining the integrity of the process. Since there was no plain error, the adjudication of delinquency for robbery and aggravated battery was upheld.

Failing to notify a juvenile's parent or former guardian of a petition to revoke his probation was plain error in In re Marcus W., 330 Ill.Dec. 136, 907 N.E.2d 949(2009). The State made no attempt to serve the parties even though it had addresses for them. The court found that if there had been an adult present at the hearing willing to supervise the juvenile, the sentence for the juvenile may have been different. The defendant had been sentenced to the Department of Juvenile Justice after the revocation hearing.

Crimes against children

Criminal street gang recruitment of a minor is a Class 1 felony which is committed when a person threatens the use of physical force to coerce, solicit, recruit, or induce another person to join or remain a member of a criminal street gang, or conspires to do so, whether or not the threat is communicated in person, by means of the internet, or by means of a telecommunications device. 720 ILCS 5/12-6.4(a-5), PA 96-199, effective 1/1/10.

When a student is injured in school with a firearm, the offender may be charged with aggravated battery with a firearm. 720 ILCS 5/12-4.2 When a person commits UUW on any conveyance owned, leased or contracted by a public transportation agency, the sentence is enhanced. 720 ILCS 5/24-1(c)(1), (1.5), (2) It is now a factor in aggravation for a defendant to have committed an offense while the defendant or the victim was in a train, bus or other vehicle used for public transportation. 730 ILCS 5/5-5-5-3.2(a)(25). PA 96-41, effective 1/1/10.

A defendant may be charged with aggravated assault for using an air rifle as defined in the Air Rifle Act. 720 ILCS 5/12-2(a)(1). Likewise an aggravated battery can be committed when an individual uses an air rifle. 720 ILCS 5/12-4(b)(1). PA 96-201, effective 8/10/09.

Unlawful interference with parenting or custody time is now a violation of the unlawful visitation interference statute. 720 ILCS 5/10-5.5, PA 96-675, effective 8/25/09.

Stalking

A person commits stalking or cyberstalking when he or she knowingly engages in a course of conduct directed at a specific person, and he or she knows or should know that this course of conduct would cause a reasonable person to: (1) fear for his or her safety or the safety of a third person; or (2) suffer other emotional distress. 720 ILCS 5/12-7.3A(a) and 720 ILCS 5/12-7.5(a). Aggravated stalking occurs when there is a violation of a stalking no contact order or, a civil no contact order. 720 ILCS 5/12-7.4(a)(3). "Course of conduct" means 2 or more acts, including but not limited to acts in which a defendant directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, engages in other non-consensual contact, or interferes with or damages a person's property or pet. A course of conduct may include contact via electronic communications. 720 ILCS 5/12-7.3A(c)(1), PA 96-686, effective 1/1/10.

There is a new act entitled "Stalking No Contact Order Act " which allows a person to file an action for a stalking no contact order. It is civil in nature and similar to an order of protection. The act can be found at 740 ILCS 21/1 et seq, PA 96-246, effective 1/1/10.

Sex offenses

The statute of limitations has been abolished for child pornography under Section 11-20.1(a)(1) and for aggravated child pornography under Section 11-20.3(a)(1). 720 ILCS 5/3-5(a) PA 96-292, effective 1/1/10.

Pornography violations in 720 ILCS 5/11-20.1(1)(2)(3)(4)(5)(7) of subsection (a) now include a child engaged in, solicited for, depicted in or posed in any act of sexual penetration or bound, fettered or subject to sadistic, masochistic, or pseudo masochistic abuse in a sexual context in which case it shall be deemed a crime of violence. 720 ILCS 5/11-20.1(a)(6). It also applies to the crime of aggravated child pornography in 720 ILCS 5/11-20.3(a)(5). These crimes have also been added to the Bill of Rights for Children's Act and the Rights for Crime Victims and Witnesses Act 725 ILCS 115/3(a) and 725 ILCS 120/3(c). Such behavior is also a factor in aggravation under the criminal sentencing provisions in 730 ILCS 5/5-5-3.2(a)(25), PA 96-292 effective 1/1/10.

The statute of limitations has been extended for felony criminal sex abuse when the victim is under 18 years of age at the time of the offense. The case may be commenced within 20 years after the child turns 18 years of age. When the victim is under 18 years of age and the prosecution is for misdemeanor criminal sexual abuse, the offense may be commenced within 10 years after the child reaches the age of 18. 720 ILCS 5/3-6(j) The crime of sexual relations within a family now includes aunts or uncles when the nieces or nephews are 18 years of age or older, great-aunts or great-uncles when the grandnieces or grandnephews are 18 years of age or older or parents or grandparents when the grandchild or step-grandchild is 18 years of age or older when the act was committed. 720 ILCS 5/11-11(2), PA 96-233, effective 1/1/10.

Grooming and traveling to meet a minor are now considered sex offenses under the Sex Offender Registration Act. 730 ILCS 150/2(B)(1), PA 96-301, effective 8/11/09.

The offenses of aggravated child pornography, indecent solicitation of a child, child abduction, luring of a minor, sexual exploitation of a child, predatory criminal sexual assault of a child, aggravated criminal sexual abuse in which the victim of the offense was at the time of the commission of the offense under 18 years of age, criminal sexual abuse by force or a threat of force in which the victim of the offense was at the time of the commission of the offense under 18 years of age or aggravated criminal sexual assault in which the victim of the offense was at the time of the commission of the offense under 18 years of age are exempt from the provisions of the eavesdropping statute when the State's Attorney has given approval to record or listen to any conversation where a law enforcement officer or any person acting at the direction of a law enforcement officer is a party to the conversation and has consented to it being intercepted or recorded in the course of such investigation. 720 ILCS 5/14-3(g-6), PA 96-547, effective 1/1/10.

The harmful materials statute has been amended to include exhibiting to or depicting to a minor under the age of 18 said harmful material. 720 ILCS 5/11-21(B)(1), PA 96-280, effective 1/1/10.

A defendant's conviction was reversed in People v. Ostrowski, 333 Ill.Dec. 139, 914 N.E.2d 558(2009) because there was not enough evidence to show that the defendant's behavior was performed for the purpose of sexual gratification or arousal so as to support a conviction for aggravated criminal sexual abuse. The defendant and his granddaughter were kissing at a public festival while playing on the ground. There was no evidence of tongue kissing or bodily touching. No force was used and the girl had a history of giving family members lip kisses. The behavior was performed in a public place with numerous witnesses and all of them said that defendant was visibly intoxicated. The defendant's conviction for resisting a police officer was upheld because the defendant walked away from the officers and wrestled with them to avoid being handcuffed.

A defendant's conviction for possession of child pornography was upheld in People v. Scolaro, 331 Ill.Dec. 3, 910 N.E.2d 126(2009). The court found that he had dominion and control over his cache in his computer and, therefore, possessed child pornography. The defendant "reached out" for images by subscribing to Web sites that had images of child pornography. The defendant also admitted that he forwarded and received images of naked boys. The police also found a program "Evidence Eliminator" installed on the computer which showed the defendant's knowledge.

There was sufficient evidence to support convictions for predatory criminal sexual assault of a child, even though there was a lack of testimony about the specific dates of the offenses because specific dates were not essential, as the statute of limitations was not at issue, and the defendant did not assert an alibi defense. People v. Letcher, 386 Ill.App.3d 327, 899 N.E.2d 315(2008).

Battery is an included offense of criminal sexual abuse because it constitutes "insulting" behavior but is not a lesser-included offense. People v. Meor, 233 Ill.2d 465, 331 Ill.Dec. 166, 910 N.E.2d 575(2009).

Evidence was sufficient in People v. Hatcher, 331 Ill.Dec. 348, 948 N.E.2d 757(2009) to support the defendant's conviction for indecent solicitation of a minor with intent to commit aggravated criminal sexual abuse. The defendant offered the victim a ride in his car, spoke with him about oral sex and asked him if he knew anyone interested in it.

Sex Offenders

A child sex offender may not knowingly operate a vehicle specifically designed, constructed or modified and equipped to be used for the retail sale of food or beverages, including but not

limited to an ice cream truck, an authorized emergency vehicle or a rescue vehicle as defined in the Illinois Vehicle Code. 720 ILCS 5/11-9.4(c-8), PA-118, effective 8/4/09.

Persons placed on mandatory surpervised release, probation, conditional discharge or court supervision for a sex offense may not knowingly use computer scrub software on any computer that the sex offender uses. 730 ILCS 5/3-3-7(a)(7.11), (7.12), 5-6-3(a)(11) and 5-6-3.1(s), PA 96-362, effective 1/1/10.

The law on presentence reports has been amended to include a provision that in cases in which the offender is being considered for any mandatory prison sentence, the investigation shall not include a sex offender evaluation. An evaluation should be done when there is a felony sex offense in which the offender is being considered for probation only or any felony offense that is sexually motivated in which the offender is being considered for probation only. 730 ILCS 5/5-3-2(b-5) PA 96-322 effective 1/1/10.

A defendant placed on probation, conditional discharge or supervision and who is convicted of a sex offense may be ordered to refrain from accessing or using a social networking website as a condition of said disposition. 730 ILCS 5/5-6-3(a)(8.9) and 730 ILCS 5/6-3.1(s), PA 96-262, effective 1/1/10.

The State's Attorney's petition for a mandamus against a judge was granted in People ex re. Birkett v. Konetski, 233 Ill.2d 185, 330 Ill.Dec. 761, 909 N.E.2d 783(2009). The judge had issued an order exempting the juvenile from registering as a sex offender which was a clear violation of the Sex Offender Registration Act. The Illinois Supreme Court found that registration did not violate the juvenile's procedural due process rights, the proportionate penalty clause, the 8th Amendment or the ex post facto law.

The court must determine whether the crime of unlawful restraint of a minor is sexually motivated in order to determine whether the defendant was required to register as a sex offender or a violent offender against youth. People v. Black, 334 Ill.Dec. 517, 917 N.E.2d 114(2009) The defendant had been convicted and ordered to register as a sex offender but the court did not exercise its discretion to make this determination so the case had to be remanded.

Sexually Violent or Dangerous Persons

Murdering a three-year-old girl qualifies as a sexually violent offense under the Sexually Violent Persons Commitment Act. In re Detention of Welsh, 332 Ill.Dec. 819, 913 N.E.2d 1109. The petition did not contain an allegation that the murder was sexually motivated but that was not sufficient to deny the petition.

In In re Detention of Kish, 334 Ill.Dec. 180, 916 N.E.2d 595(2009) the state filed a petition to revoke the offender's conditional release under the Sexually Dangerous Persons Act. The Appellate Court held that the results of the offender's polygraph examinations were admissible for the purpose of explaining the circumstances surrounding inculpatory statements that the offender gave to his treating psychologists. The court found that records of the offender were part of the Department of Corrections records and therefore the Confidentiality Act did not apply and the records were not barred from being introduced as evidence. Also, the offender's Fifth Amendment rights against self-incrimination did not apply to the civil hearing since it was not criminal in nature.

An amendment to the Sexually Violent Persons Commitment Act that altered the time in which a petition had to be filed was not applied retroactively to the sex offender in the case of In re Commitment of Derry, 332 Ill.Dec. 672, 913 N.E.2d 604(2009). The court found that the statute did not apply retrospectively just because it applied to a case where the conduct had preceded the statute's enactment. The court found that a person is involuntarily committed under the Sexually Violent Persons Commitment Act for his present mental condition, not for past conduct.

The State's appeal of an order for conditional release in a sexually dangerous person's action was properly dismissed because such an order is not final for purposes of review. In Re Commitment of Hernandez, 332 Ill.Dec. 9, 912 N.E.2d 235(2009).

There was sufficient evidence to establish probable cause that a defendant was a sexually violent person in In re Detention of Hardin, 330 Ill.Dec. 101, 907 N.E.2d 914(2009) The defendant would not participate in sexual offender treatment, minimized his behavior by blaming one of the victims, he lied about undergoing treatment and there was a high risk that he would reoffend.

When the State files a Sexually Dangerous Person petition, the 120-day speedy trial term is stayed since the legislature did not intend that both actions go forward simultaneously. People v. Spurlock, 328 Ill.Dec. 214, 903 N.E.2d 874(2009)

In People v. Clendenin, 332 Ill.Dec. 889, 913 N.E.2d 1179(2009) the defendant was convicted of unlawful possession of child pornography. The defendant's neighbor had been taking care of his plants while he was out of town and found pinhole cameras in his residence. Because she had children she became concerned and found some CD's which she looked at on her own computer. After she found child pornography she turned a CD over to the police who then watched the video on the CD. The court found that the police did not exceed the scope of the neighbor's private search of the contents of the defendant's videodisc and so the warrantless search was not unreasonable under the Fourth Amendment. This case is on appeal to the Ill. Supreme Court.

Children's statements

A child's hearsay statements did not violate the confrontation clause in People v. Kitch, 333 Ill.Dec. 508, 915 N.E.2d 29(2009). While the child's testimony was vague some times, she was present for cross-examination and answered the defense counsel's questions. (This case is on appeal to the Illinois Supreme Court).

The statute allowing the hearsay exception in sex abuse cases involving child victims under age 13 did not violate the defendant's right to confrontation in People v. Bryant, 330 Ill.Dec. 678, 909 N.E.2d 391(2009). The trial court's finding was sufficient to allow the child to testify outside the courtroom via closed circuit television because it found that the child would suffer severe emotional distress. The court found she had appeared for cross-examination at the trial as required by the statute, 115-10.1.

The court in People v. Sharp, 330 Ill.Dec. 949, 909 N.E.2d 971(2009) found that the witness in a predatory criminal sexual assault case had appeared as required even though she could not respond to questions about what the defendant did to her in private. She answered the questions put to her by defense counsel during cross-examination. The court found that this satisfied any objections under Crawford v. Washington.

A statement made to a child victim advocate during an interview with a child victim of aggravated criminal sexual assault was testimonial in nature but the error was harmless as the

evidence of guilt was overwhelming. The advocate was acting as a police representative. In re Rolandis G., 232 Ill.2d 13, 327 Ill.Dec. 479, 902 N.E.2d 600(2008)

A child witness was "available for cross-examination" even though she could not remember and lacked knowledge about the criminal sexual assault when she testified in court. Therefore, her statement to a social worker was admissible under Crawford. People v. Garcia-Cordova, 332 Ill.Dec. 94, 912 N.E.2d 280(2009)

Crimes by children

It is a Class 4 felony to transmit or cause to be transmitted a threat of destruction of a school building or school property, or a threat of violence, death, or bodily harm directed against persons at a school, school function, or school event, whether or not school is in session. 720 ILCS 5/26-1(a)(13), PA 96-772, effective 1/1/10.

A court shall order any person convicted of disorderly conduct involving a false alarm of a threat that a bomb or explosive device has been placed in a school to reimburse the unit of government that employs the emergency response officer or officers that were dispatched to the school for the cost of the search for a bomb or explosive device. 720 ILCS 5/26-1 (d) For the purposes of this Section, "emergency response" means any incident requiring a response by a police officer, a firefighter, a State Fire Marshal employee, or an ambulance. This provision also applies to the offense of making a terrorist threat in a school (720 ILCS 5/29D-20(d) and falsely making a terrorist threat in a school (720 ILCS 5/29D-25(c). P.A. 96-413, effective 8/13/09.

The court in its discretion and upon recommendation by the States Attorney may order that a minor placed on supervision for a violation of possessing tobacco under the age of 18 and his or her parents or legal guardian attend a smoker's education or youth diversion program that is available where the offender resides. Attendance at the program shall be time credited against any community service time imposed for any first violation of 720 ILCS 675/1(a-7) and the court may in its discretion require that the offender remit a fee for his attendance at the program. If the minor violates that section, the court may also impose a sentence of 15 hours of community service or a fine of $25 for a first violation. For a second violation within the first 12 months of the first violation, the court can punish the offender with a fine of $50 and 25 hours of community service. A third or subsequent violation of the act within the 12 months after the first violation is punishable by a $100 fine and 30 hours of community service. Any second or subsequent violation not within the 12-month period after the first violation is punishable as provided for a first violation. If a minor is found guilty of a violation of possessing tobacco under the age of 18 the court may order the same punishment as a minor placed on supervision. It is not a violation of the act for a person under the age of 18 to engage in a sting operation with law enforcement. In cases where a person who commits the offense but is not subject to the juvenile court, the court may also impose the penalties previously stated. 705 ILCS 405/5-615(11), 705 ILCS 405/5-710(12), 720 ILCS 675/1(e) and 720 ILCS 675/2. PA 96-179 effective 8/10/09.

There is a new offense called "obstructing identification" which makes it a crime to intentionally furnish a false or fictitious name, residence, address or date of birth to an officer who has lawfully arrested the person, lawfully detained the person or requested the information from a person that the peace office has good cause to believe is a witness to a criminal offense. The offense is a Class A misdemeanor. 720 ILCS 5/31-4.5, PA 96-335, effective 1/1/10.

Evidence of a victim's propensity for violence was not admissible in a delinquency proceeding where the court rejected the claim of self-defense. The juvenile was close to the offender but not

the aggressor. Self-defense wasn't proper because of the severity of the victim's beating. The continued attacks were objectively unreasonable and constituted use of excessive force. In re Jessica M., 325 Ill.Dec. 271, 897 N.E.2d 810(2008).

Confessions

There is some disagreement as to what role the juvenile officer plays when a juvenile is taken into custody. One line of cases suggests that the juvenile officer's role is primarily that of a physical guardian-the juvenile officer is to make sure that the minor's parents have been notified about the minor's detention and questioning, to ensure that the minor is given Miranda warnings, and to ensure that the minor is properly treated, fed, allowed the use of the washroom, allowed to rest, and not coerced in any way. The other line of cases appears to require the juvenile officer to assume the role of affirmative advocate-the juvenile officer may not be only a silent presence, but he or she must demonstrate an interest in the minor's welfare and affirmatively protect the minor's rights. The court in In Re Marvin M., decided that there is an inherent conflict between the role of a police officer investigating a crime and that of a juvenile officer, who is tasked with affirmatively protecting a suspect under investigation by the police. The court decided that the physical guardian role should apply and went on to say that:

> "The physical guardian role-notifying a concerned adult, making sure the minor receives Miranda warnings, making sure the minor's physical needs are met, and making sure he or she is well treated-is a clear and readily achievable standard. The affirmative advocate role-affirmatively protecting the minor's rights-seems to require the juvenile officer to intercede at the outset of questioning and terminate the interview in order to serve the minor's best interest. This is too great and unreasonable a burden to place on a juvenile officer, who is, after all, trying to appropriately serve two masters: the State and the minor."

In Re Marvin M., 383 Ill.App.3d 693, 890 N.E.2d at 1003, 322 Ill.Dec. at 84(2008)(2d Dist).

A juvenile's confession was voluntary in In Re Daniel W., 322 Ill.Dec. 111, 890 N.E.2d 1030(2008). He had been given his *Miranda* rights a number of times and understood them. The police made numerous attempts to reach an adult (grandfather, his mother, asked local police to send a squad car to mother's home and then grandfather's home, spoke with great-grandmother and grandmother). The juvenile officer was present and asked about his well-being. Eventually the minor's grandmother and mother showed up but refused to sit with the minor but eventually grandmother agreed to be present during videotaped statement. Under the totality of the circumstances, he voluntarily waived his Miranda rights.

A 16 year-old's statement in People v. Richardson, 234 Ill.2d 233, 334 Ill.Dec. 675, 917 N.E.2d 01(2009) was voluntary despite injuries sustained in lockup. He identified the lockup keeper as being responsible for his injuries, not the detectives. His mother and a youth officer was present during his taped statement.

A defendant should have been read *Miranda* rights when a police officer engaged in interrogation after the defendant was arrested for DUI. People v. Barnett, 332 Ill.Dec. 931, 913 N.E.2d 1221(2009). The officer asked the defendant whether he was the owner of the vehicle he was driving and asked about the defendant's medical condition when he was driving the defendant back to the police station. The officer had already obtained the name of the owner of the car via a computer check and the court found that any statements made to the defendant could have elicited statements from him that might have been incriminating.

New Traffic Laws

A person may not operate a vehicle on a roadway while using an electronic communication device to compose, send or read an electronic message. This does not apply to law enforcement officers or operators of emergency vehicles while performing their official duties, when a driver is reporting an emergency situation and continued communication is necessary, when a person is using a hands-free or voice activated device in that mode, to a driver of a commercial vehicle reading a message displayed on a permanently installed communication device designed for a commercial motor vehicle with a screen that is not larger than 10x10 inches, to a driver parked on the shoulder of a road or when the vehicle is stopped due to normal traffic being obstructed and the driver has the vehicle in neutral or park. 625 ILCS 5/12-610.2, PA 96-130, effective 1/1/10. A violation of this new law is a moving violation.

A person may not use a wireless telephone at any time while driving in a school speed zone or on a highway in a construction or maintenance speed zone. This does not apply to a person engaged in highway construction at that location, a person using a wireless telephone for emergency purposes, a law enforcement officer or operator of an emergency vehicle or a person who is using the wireless telephone in a voice activated mode. 625 ILCS 5/12-610.1(e), PA 96-131, effective 1/1/10.

A person under the age of 18 may not have a driver's license issued or renewed if he or she has committed an out-of-state offense of driving without a valid license or permit. 625 ILCS 5/6-103(13). A graduated license or permit will not be issued to an applicant under 18 years of age who has committed an out-of-state offense of driving without a valid license or permit or been convicted or adjudicated delinquent of an offense involving the Use of Intoxicating Compounds Act. 625 ILCS 5/6-107(c), The provision in 625 ILCS 5/6-601 which provides for a fine of not more than $25 for a violation of 6-101 making a license invalid under the provisions of 6-110 (curfew restriction on graduated license holders) has been stricken from 625 ILCS 5/6-601. PA 96-607, effective 8/24/09.

The **window tint** law has been completely overhauled. No window treatment or tinting shall be applied to the windows immediately adjacent to each side of the driver, except: (1) on vehicles where none of the windows to the rear of the driver's seat are treated in a manner that allows less than 30% light transmittance, a nonreflective tinted film that allows at least 50% light transmittance, with a 5% variance observed by any law enforcement official metering the light transmittance, may be used on the side windows immediately adjacent to each side of the driver; (2) on vehicles where none of the windows to the rear of the driver's seat are treated in a manner that allows less than 35% light transmittance, a nonreflective tinted film that allows at least 35% light transmittance, with a 5% variance observed by any law enforcement official metering the light transmittance, may be used on the side windows immediately adjacent to each side of the driver; (3) on multipurpose passenger vehicles, as defined by Section 1-148.3b of this Code, a nonreflective tinted film originally applied by the manufacturer, that allows at least 50% light transmittance, with a 5% variance observed by any law enforcement official metering the light transmittance, may be used on the side windows immediately adjacent to each side of the driver. **625 ILCS 5/12-503, 96-815, effective 10/30/09.** To adequately gather evidence, officers will need to use a light meter.

Search and Seizure

The United States Supreme Court drastically changed the procedure followed by law enforcement in conducting searches incident to arrest in traffic cases in **Arizona v. Gant**, **129 S.Ct. 1710, 173**

L.Ed.2d 485, 77 USLW 4285, (2009). The defendant in this case was arrested for driving while license suspended. He was then handcuffed and locked in the back of a squad car. The officers searched his vehicle and found cocaine in a jacket on the back seat. He moved to suppress the evidence and the Arizona Supreme Court agreed with him that Chimel v. California, 395 U.S. 752(1969) and New York v. Belton, 453 U.S. 454(1981) did not apply. In a 5-4 decision, the U.S. Supreme Court agreed with the defendant.

The Court ruled that because the defendant posed no safety hazard to the officers because he was secure in the squad car, the justification for the search did not exist. The Court declared, " . . .we reject this reading of Belton and hold that the Chimel rationale authorizes police to search a vehicle incident to a recent occupant's arrest only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search." It should be noted that in a footnote the Court said, "Because officers have many means of ensuring the safe arrest of vehicle occupants, it will be the rare case in which an officer is unable to freely effectuate an arrest so that a real possibility of access to the arrestee's vehicle remains."

The Court did say that a search incident to arrest in the vehicle context is justified when it is reasonable to believe evidence relevant to the crime might be found in the vehicle. The Court acknowledged that in narrowly applying Belton, it was outlawing a police practice that had become standard over the last 28 years to the extent that it had become a law enforcement entitlement. The Court did say that the doctrine of qualified immunity will shield officers from liability for searches previously conducted in reliance on prior decisions.

The dissenting judges criticized the decision because they foresee all types of problems for officers now that this clear rule has been changed. Note: Officers can still justify vehicle searches on other grounds such as probable cause, consent and inventory search due to a tow of the vehicle.

The United States Supreme Court decided a very important case for police officers this last term in **Arizona v. Johnson, 129 S.Ct. 781(2009).** This case settles the issue as to how far an interaction can go between a police officer and a passenger. In this case, officers involved with an Arizona Gang Task Force were on patrol in Tucson in an area associated with the Crips gang. On the night in question, the officers pulled over an automobile that had a suspended registration for insurance which is a civil infraction under Arizona law. The vehicle had three occupants, the driver, a front passenger and a passenger in the back seat who was the defendant. The officers did not have any reason to expect any type of criminal activity at the time that the vehicle was pulled over. The three officers left their patrol car and approached the vehicle and told the occupants to keep their hands visible. One officer asked whether there were any weapons in the vehicle to which everyone responded no.

While one officer dealt with the front passenger, another officer noticed that the defendant looked at and kept his eyes on the officers. As he got closer she noticed that the defendant was wearing a blue bandana which she believed to be consistent with membership in the Crips gang. She also noticed a scanner in his jacket pocket which she thought was unusual because most people don't carry one around unless they are going to be involved in criminal activity or trying to avoid the police. The defendant answered her questions and gave her his name and date of birth but said he had no identification on him. He said he was from a town that the officer knew was home to a Crips gang. He also told her he had served time in prison for burglary. The officer wanted to speak with the defendant away from the front seat passenger to get gang intelligence. Therefore, she asked him to get out of the car and he complied.

Because of her observations and his answers she believed he might have a weapon on him so she performed a pat-down search for officer safety. At that time she felt the butt of a gun near his waist. He began to struggle and she placed him in handcuffs. The defendant was charged with possession of a weapon by a prohibited possessor and he moved to suppress the evidences as proof of an unlawful search. The trial court denied the motion to suppress which

was reversed by the Arizona Court of Appeals. Eventually the Supreme Court agreed to hear the case.

The Court began its analysis but stating that once a motor vehicle has been detained, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment. This rule applies to passengers as well. During a routine traffic stop an officer may perform a pat-down search of the driver and any passengers if there is a reasonable suspicion that they may be armed and dangerous. The Court further ruled that an officer may inquire into matters unrelated to the justification of the traffic stop as long as the inquiries do not measurably extend the duration of the stop. The Court held that there was nothing that occurred in this case that would have conveyed to the defendant that prior to the frisk the traffic stop had ended or that he was otherwise free to depart without police permission. The Court said that the officer was not constitutionally required to give the defendant a chance to depart the scene after he exited the vehicle without first insuring that in doing so she was not permitting a dangerous person to get behind her. The Court did go on to say that the issue, as to whether the defendant was armed and dangerous, could be reconsidered by the Appellate Court.

It is now clear that an officer during a traffic stop can require a passenger to get out of the car, can speak to the passenger about a **matter unrelated to the stop**, and perform a pat-down search if there is reason to believe that the person is armed and dangerous. Consequently, this case overrules those decisions made in Illinois from 2002 until recently that restricted an officer's ability to ask questions unrelated to the purpose of the traffic stop.

A defendant was not seized in **People v. Cosby, 231 Ill.2d 262, 898 N.E.2d 603(2008)** when an officer, after finishing a traffic stop by returning a defendant's driver's license and insurance card to him and giving defendant a verbal warning, asked the defendant if there was anything illegal in his car and requested consent to search the car. The officer did not tell the defendant that he was free to leave but there were only two officers present, the officer did not display his gun to the defendant although he unholstered his gun when he thought he saw the butt of a gun on the floorboard of defendant's car. No one touched the defendant and there was no suggestion that either officer spoke to the defendant in a way to convey to him that he needed to comply with the officer's request to search the car.

In **People v. Castigilia, 333 Ill.Dec. 738, 915 N.E.2d 809(2009)** was not seized within the meaning of the Fourth Amendment after he walked past the police officer's vehicle and the police officer asked him where he was going, whether he had any identification, whether he had anything illegal on him and whether he would mind being searched even though this encounter took place late at night. The court found that a reasonable person would not have believed that the officer was demanding cooperation.

In **People v. McDonough, 334 Ill.Dec. 764, 917 N.E.2d 590(2009)** a trooper activated his emergency lights when he pulled behind a vehicle stopped on a busy 4 lane highway. He decided to ask the driver and passenger if they needed assistance. The driver was eventually arrested for DUI. The court found that the exclusionary rule did not apply because there was no police misconduct. Turning on his lights was a safety measure.

Abuse and Neglect

A minor may not be considered neglected if the parents have left the minor in the care of an adult relative for a period of time who the parent or parents or other person responsible for the child's welfare know is both a mentally capable adult and physically capable adult relative. A mentally capable adult relative means a person 21 years of age or older who is not suffering from a mental illness that prevents that person from taking care of the minor and a physical capable adult

relative means a person 21 years of age or older who does not have a severe physical disability or medical condition, or is not suffering from alcoholism or drug addiction, that prevents the person from caring for the child left with him or her. 705 ILCS 405/1-3(9.1), (12.1). 705 ILCS 405/2-3(1). The same rule also applies to minors who would otherwise be considered dependent. 705 ILCS 405/2-4(2), PA 96-168, effective 8/10/09.

Parental unfitness based on father's refusal to admit to sexual abuse was not proper. The Fifth Amendment bars a juvenile court from compelling a parent to admit to a crime that could be used against him in a subsequent criminal proceeding. The court found that the trial court can order a service plan that requires that the parent engage in an effective counseling or therapy but cannot compel counsel counseling or therapy that requires the parent to admit to committing a crime. In re P.M.C., 327 Ill.Dec. 442, 902 N.E.2d 197(2009)

The requirement that a dispositional hearing be held within six months of the removal of a child from a home is tolled when the parent agrees to the extension. In re John C.M., 328 Ill.Dec. 288, 904 N.E.2d 50 (2008).

In re D.W., 325 Ill.Dec. 139, 897 N.E.2d 387(2008) Finding of sexual abuse was upheld where the court showed that the father had sexually abused his stepdaughter, mother knew of the abuse and did nothing to prevent it.

In re M.W., 325 Ill.Dec. 161, 897 N.E.2d 409(2008) Evidence was insufficient for finding that mother was able to care for and protect her infant son. Mother's unresolved psychological issues at the time of the hearing raised concerns about her judgment in relationship to her abilities to protect her baby.

In re A.W., Jr., 231 Ill.2d 241, 325 Ill.Dec. 194, 897 N.E.2d 733(2008) Evidence of father's anger, angry behavior that occurred outside the presence of the children was admissible in a child neglect case where the parental anger was the basis for the finding of injurious environment.

In re D.D., Jr., 325 Ill.Dec. 378, 897 N.E.2d 917(2008) Indian Child Welfare Act was satisfied in that minimum standards were met before removing Indian child from his family. The parents were unwilling to acknowledge past physical and verbal abuse and minor would be at risk of further harm.

In re B.H., 329 Ill.Dec. 55, 905 N.E.2d 893(2008) Evidence supported finding that adoptive mother used excessive corporal punishment on juvenile where she was barred from monthly family dinner and mother bit juvenile on the chest and scratched her face and neck.

Termination of parental rights

In re B.B., 386 Ill.App.3d 686, 899 N.E.2d 469(2008) Termination of mother's parental rights was not in children's best interest where mother maintained frequent contact with children, bonding assessment showed that both children shared a healthy parent-child bond, and the original foster placement was flawed and unstable.

In re E.B., 231 Ill.2d 459, 899 N.E.2d 218(2008) Where minors are adjudicated dependent under section 2-4(1)(c) of the Juvenile Court Act because they lacked remedial or other care necessary for their well-being through no fault, neglect, or lack of concern by their parents, parental rights may not be terminated.

In re M.R., 332 Ill.Dec. 151, 912 N.E.2d 337(2009) Termination of parental rights based on finding of unfitness due to failure to make reasonable progress upheld.

In re Konstantinos H., 326 Ill.Dec. 332, 899 N.E.2d 549(2008) Evidence sufficient to support termination of parental rights where mother failed to maintain a reasonable degree of interest as to the child's welfare. She failed to submit urine samples, attend meetings, have psychological assessment and complete parenting classes and visits with the child but failed to do so.

In re Aaron R., 327 Ill.Dec. 416, 902 N.E.2d 171(2009) Trial court could not use nunc pro tunc order to retroactively terminate wardship and DCFS guardianship of child in neglect case. Evidence was also insufficient to support termination of wardship and guardianship because the child improved outside of parental care.

Civil Liability

A mother brought a lawsuit against the city alleging that her daughter was killed by a vehicle after the police arrested her for underage consumption of alcohol and then allowed her to leave the station still intoxicated. Keener v. The City of Herrin, 324 Ill.Dec. 426, 895 N.E.2d 1141(2008) The mother's complaint had initially been dismissed by the court citing a Tort Immunity Act. However, the Appellate Court reversed that decision with respect to the counts wherein the mother alleged that the action was willful and wanton and decided that that had to be decided by a jury.