DU PAGE JUVENILE OFFICERS' ASSOCIATION AND DU PAGE COUNTY BAR ASSOCIATION JOINT MEETING
JUVENILE LAW UPDATE 2011

By Linda S. Pieczynski, Attorney at Law
630-655-8783 www.codeattorney.com

Juvenile Court Act Procedure

The court shall impose as a condition of court supervision for a minor placed on supervision a **fee of $50** for each month of supervision ordered by the court unless the court determines that the inability to pay exists. **705 ILCS 405/5-615(10) and 5-715(4) The** Court may only **waive probation fees** based on an offender's inability to pay. The probation department may reevaluate an offender's ability to pay every 6 months, and, with the approval of the Director of Court Services or the Chief Probation Officer, adjust the monthly fee amount. **730 ILCS 5/5-6-3(i).** This also applies to individuals placed on court supervision. 730 **ILCS 5/5-6-3.1(i). PA 96-1414, effective 1/1/11.**

A statement, admission**, confession**, or incriminating information made by or obtained from a minor related to the offense in question, as part of any behavioral health screening, assessment, evaluation, or treatment, whether or not court-ordered, is not be admissible as evidence against the minor on the issue of guilt only in the juvenile court proceeding for the offense in question. The provisions of this section are in addition to and do not override any existing statutory and constitutional prohibition on the admission into evidence in delinquency proceedings of information obtained during screening, assessment, or treatment**. 705 ILCS 405/5-401.5(h), PA 96-1251, effective 1/1/11**

A minor placed on court supervision can appeal a court's order regarding restitution even though there was not a final dispositive order on her guilt. **In re Shatavia S., 343 Ill.Dec. 178, 934 N.E.2d 502(2010).**

A defendant's **previous delinquency adjudications** were admissible for impeachment purposes in **People v. Villa, 342 Ill.Dec. 199, 932 N.E.2d 90(2010).** The legislature had the power to modify the rules of evidence about the admission of prior delinquency adjudications for impeachment purposes. The defendant opened the door to the impeachment when he testified that he was overwhelmed and scared during questioning because he had never before encountered such a situation when he was being interrogated regarding an aggravated battery with a firearm and aggravated discharge of a firearm.

The court does not have jurisdiction to hear a **delinquency proceeding** under the Juvenile Court Act against someone who is 21 years of age for an offense committed before he turns 17. **In Re Luis R., 388 Ill.App.3d 730, 330 Ill.Dec. 464, 924 N.E.2d 990(2009).** The court agreed with the respondent that once he reached the age of 21 he was no longer subject to proceedings under the Act.

The one act/one crime rule applies to juvenile delinquency proceedings. **In re Jessica M., 340 Ill.Dec. 512, 928 N.E.2d 511(2010)**. The case involved multiple convictions for aggravated battery.

A juvenile placed on court supervision can **appeal** a condition of the disposition, in this case the order for restitution. **In re Shatavia S., 343 Ill.Dec. 178, 934 N.E.2d 502(2010).** This is an exception to the rule that only a final order can be appealed.

A juvenile may not be sentenced to **life in prison** for a crime which is not a homicide. **Graham v. Florida 130 S.Ct. 2011(2010)**. The United States Supreme Court has declared that a juvenile must be given a meaningful opportunity to obtain release. The defendant had committed an armed burglary when he was 15 years old. He violated his probation and was sentenced to life in prison without parole. The sentence was struck down on the basis of the Eighth Amendment's ban on cruel and unusual punishment.

The Appellate Court ruled in **In re S.D., 334 Ill.Dec. 969, 917 N.E.2d 1044(2009)** that the court had the power to appoint **DCFS** as a child's guardian where the child was charged with aggravated robbery which was a separate fact situation from his adjudication for being abused and neglected.

A juvenile was entitled to a new dispositional hearing in **In re Seth F., 335 Ill.Dec. 118, 9117 N.E.2d 1182(2009)** where the trial judge had personally used the **Juvenile Sex Offender Assessment Protocol-II** and it had not been admitted into evidence to assess whether the juvenile was at risk at reoffending. However, the court's finding that the juvenile had violated the condition of his probation was not against the manifest weight of the evidence where there was ample evidence that he had not successfully completed sex offender treatment and counseling.

A defendant can **attack his sentence** at any time when he is sentenced as an adult for an offense where the criminal court does not have primary jurisdiction. In that situation the State must request within 10 days of plea or trial a hearing for a judge to determine whether the defendant should be sentenced as an adult. When the State fails to do, so it leaves the possibility of that the defendant could attack the sentence at any time. **People v. King, 336 Ill.Dec. 33, 919 N.E.2d 958(2009)**

A defendant may move to withdraw the admission to his **probation violation** on the basis that the admission was involuntary and the court must give him a hearing on the motion. **People v. Harris, 332 Ill.Dec. 209, 912 N.E.2d 696(2009).** A defendant is not required to move to withdraw his admission in order to file an appeal alleging that the admission was involuntary. However, he can use this procedure.

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)**

<u>Sex Offenders and Sex Offenses</u>

It is unlawful for the parent or guardian of a minor to **knowingly leave the minor in the custody or control of a child sex offender** or allow the child sex offender unsupervised access to the minor. However, this does not apply to leaving the minor in the custody of a child sex offender if the person is the parent of the minor or if the person was convicted of Section 12-15(c) or the child sex offender is married to and living in the same household with the parent or guardian of the minor. However, these provisions do not allow a child sex offender to knowingly reside within 500 feet of the minor victim of

the sex offense if prohibited by 11-9.4(6-6). A violation of this provision is a Class A misdemeanor. **720 ILCS 5/12-21.6-5.**

If a sex offender is a child sex offender, the sex offender must report to a registering agency whether he or she is living in a household with a child under the age of 18 who is not his or her own child, provided that his or her own child is not the victim of the offense. **730 ILCS 150/3(a)** If a sex offender is a child sex offender, the sex offender must report that information to the registering law enforcement agency within three days after beginning to reside in the household where the child under 18 years of age that is not his or her own child lives provided that his or her own child is not the victim of the sex offense, **730 ILCS 150/6, PA96-1094, effective 1/1/11.**

A sex offender must be given a **copy of the terms and conditions** of parole or release signed by the sex offender by his or her supervising officer and must supply the information when registering. **730 ILCS 150/3 PA 96-1097, effectively 1/1/11.**

A sex offender must also provide the sex offender's or sexual predator's **telephone number** including cellular telephone number. **730 ILCS 150/3**. If this information changes, the offender must provide the new number to the required law enforcement agency within 3 days. **730 ILCS 150/6, PA 96-1104, effective 1/1/11.**

A sex offender or sexual predator who is **temporarily absent from his or her current address** or registration 3 days or more must notify the law enforcement agency, having jurisdiction of his or her current registration, about the itinerary for travel in the manner provided in Section 6 of the Act. **730 ILCS 150/3(a), PA 96-1102, effective 1/1/11.**

The term "**sexual predator**" includes a person convicted of a violation or attempted violation of Section 9-1, (first degree murder, when the victim was a person under 18 years of age and the defendant was at least 17 years of age at the time of the commission of the offense, provided the offense was sexually motivated), Section 11-9.5(sexual misconduct with a person with a disability) when the victim is a person under 18 years of age, the defendant is not a parent of the victim, the offense was sexually motivated and the following offenses were committed on or after January 1, 1996: Section 10-1(A)(kidnapping) Section 10-2(B)(aggravated kidnapping), Section 10-3(C) (unlawful restraint) and Section 10-3.1(aggravated unlawful restraint). A person is also a sexual predator when he violates Section 10-5(b)(10)(child abduction committed by alluring or attempting to allure a child under the age of 16 into a motor vehicle, building, house, trailer or dwelling place without the consent of the parent or lawful custodian of the child for other than a lawful purpose) and the offense was committed on or after January 1, 1998 provided the offense was sexually motivated. **730 ILCS 150/2(E-5), PA 96-1089, effective 1/1/11.**

Action for **damages for personal injury** based on child sex abuse must be commenced within 20 years of the date the limitation period begins to run or within 20 years of the date the person abused discovers or through the use of reasonable diligence should discover that the act of sexual abuse occurred and that the injury was caused by the childhood sexual abuse. This applies to actions commenced on or after the effective date of the mandatory Act if the action would not have been time barred under any statute of limitations or statute of repose prior to the effective date. **735 ILCS 5/13-202-2(b), PA 96-1093, effective 1/1/11.**

A person under 18 years of age can no longer be prosecuted for prostitution. If it is determined after a reasonable detention for investigative purposes that a person suspected of or charged with a violation of the **prostitution** statute is a person under the age of 18, that person shall be immune from prosecution for a prostitution offense under the law and shall be subject to the temporary protective custody provisions of the Juvenile Court Act. A law enforcement officer who takes the person under 18 years of age into custody under this section shall immediately report an allegation of a violation of 720 ILCS 5/10-9,

trafficking in persons, involuntary servitude and related offenses, to the Illinois Department of Children and Family Services State Central Register which shall commence an initial investigation into child abuse and neglect within 24 hours. **720 ILCS 5/11-14(d), PA 96-1464, effective 8/8/10.**

"Solicitation of a sexual act" is now a Class A misdemeanor and solicitation of a sexual act from a person who is under the age of 18 or who is severely or profoundly mentally retarded is a Class 4 felony. It is an affirmative defense to a charge that the person reasonably believed the person was of the age of 18 or older or the person was not a severely or profoundly mentally retarded person. **720 ILCS 5/11-14.1(b) and (b-5)**

"**Soliciting for a prostitute**" sentences have been increased It is a Class 4 felony unless it is a second or subsequent offense in which case it is a Class 3 felony. A person who commits the offense within 1,000 feet of real property comprising a school commits a Class 3 felony. **720 ILCS 5/11-15.**

"**Soliciting for a minor engaged in prostitution**" includes a person soliciting someone who is under the age of 18. The law used to be 17. A second or subsequent offense is a Class X felony as is committing the offense within 1,000 feet of real property comprising a school. **720 ILCS 5/11-15.1**. **Keeping a place of prostitution** is a Class 4 felony. A subsequent offense or committing it within 1,000 feet of real property comprising a school is a Class 3 felony. **720 ILCS 5/11-17.** "**Keeping a place of juvenile prostitution"** includes keeping a place with persons under the age of 18 or with a person who is severely or profoundly mentally retarded. **720 ILCS 5/11-17.1.**

"**Patronizing a prostitute**" is a Class 4 felony. A second or subsequent offense or if it is committed within 1,000 feet of real property comprising a school is a Class 3 felony. **720 ILCS 5/11-18.** "**Patronizing a minor engaged in prostitution**" applies to persons who are being prostituted under 18 years of age or a severely profoundly mentally retarded person. A first time offense is a Class 3 felony and a subsequent offense, or if the crime is committed within 1,000 feet of real property comprising a school, is a Class 2 felony. **720 ILCS 11-18.1**.

The **pimping** statute has been amended. Receiving money, property, token, object, or article or anything of value from not only a prostitute, but also a person who patronizes the prostitute is included. This law does not include persons engaged in prostitution who are under 18 years of age. They cannot be convicted of pimping. Pimping is a Class 4 felony and a repeat offense, or, if it is committed within 1,000 feet of real property is a Class 3 felony**. 720 ILCS 5/11-19. Juvenile pimping and aggravated juvenile pimping** statutes now protect prostituted persons under the age of 18. It is a Class X felony if it is a second or subsequent violation. **720 ILCS 5/11-19.1.**

Under the "**exploitation of a child**" statute, providing or administering drugs or an alcohol intoxicant to a child under the age of 13 or severely or profoundly mentally retarded person is deemed "without consent" if the administering is performed by the parents or legal guardian for other than a medical purpose. **720 ILCS 5/11-19.2(B).**

A police officer who arrests a person for violation of a sex offense that involves the **exploitation of children** including trafficking, patronizing a prostitute, pimping, keeping a place of juvenile prostitution among others may tow or impound any vehicle used by the person in the commission of the offense. The person may be charged $1,000 **tow** fee. One-half of the fee goes to the unit of government whose peace officers made the arrest. The remaining $500 goes to the Violent Crime Victims Assistance Fund and is to be used for taking care of young persons involved in juvenile prostitution. **720 ILCS 5/11-19.3.** Felony offenses of involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons for forced labor or services and offenses involving prostitution, soliciting of a sexual act or pandering are offenses which are exempt from the eavesdropping statute as long as the State's Attorney has notification that a listening device may be used by law enforcement. **720 ILCS 5/14-3(g)(g-6). PA 96-1464, effective 8/8/10.**

Public indecency is now a Class 4 felony if committed by a person 18 years of age or older who is on or within 500 feet of an elementary or secondary school grounds when children are present on the grounds**. 720 ILCS 5/11-9(c)** Sexual exploitation of a child is a Class 4 felony if committed by a person 18 years

of age or older who is on or within 500 feet of an elementary or secondary school grounds when children are present on the grounds. **720 ILCS 5/11-9.1(c)(4), PA 96-1098, effective 1/1/11.**

There is a new crime called "**sexual predator and child sex offender, presence or loitering in or near public parks prohibited**." It is unlawful for a sexual predator or a child sex offender to knowingly be present in any public park, building or on real property comprising any public park. It is unlawful for a sexual predator or a child sex offender to knowingly loiter on a public way within 500 feet of a public park building or real property comprising the public park. A person who violates this offense is guilty of a Class A misdemeanor, except a second or subsequent offense is Class 4 felony. **720 ILCS 5/11-9.4-1, PA 96-1099, effective 1/1/11.**

The provision regarding the statute of limitations involving unknown offenders whose **DNA profile** is entered into a DNA database within 10 years has been removed from requirements lifting the running of the statute of limitations on sex crimes. In the past the State would have had to prove that the identity of the offender was unknown after a diligent investigation by law enforcement authorities in order for the statute of limitations not to apply in those cases. This is no longer the case. **720 ILCS 5/3-5, PA 95-899, effective 1/1/09.**

A person commits **sexual exploitation of a child** if the offense committed is in the presence or virtual presence, or both of a child and with intent or knowledge of a child or one whom he or she believes to be a child would view his or her unlawful sexual acts. Virtual presence means an environment that is created with software and presented to the user and or receiver via the Internet in such a way that the user appears in front of the receiver on the computer monitor or screen or hand held portable electronic device usually through a webcamming program. It includes primarily experiencing through sight or sound or both, a video image that can be explored interactively by a personal computer or a hand held communication device or both. **720 ILCS 5/11-9.1(a)(b), PA 96-1090, effective 1/1/11.**

The court can impose an **extended term sentence** upon an offender who has been convicted of a felony violation of Sections 12-13, 12-14, 12-14.1, 12-15 or 12-16 when the victim of the offense is under 18 years of age at the time of the commission of the offense and during the commission of the offense the victim was under the influence of alcohol, regardless of whether or not the alcohol was supplied by the offender and the offender at the time of the commission of the offense knew or should have known the victim had consumed alcohol. **730 ILCS 5/5-5-3.2(e), PA 96-1390, effective 1/1/11.**

Spousal privilege does not protect a husband or wife while under investigation for an offense under Section 12–13, 12–14, 12–14.1, 12–15, or 12–16 of the Criminal Code of 1961 when the victim is a minor under 18 years of age in either spouse's care, custody, or control at the time of the offense, or as to matters in which either has acted as agent of the other. **725 ILCS 5/115-16, PA 96-1242, effective 7/23/10.**

No law enforcement officer, State's Attorney or other official shall ask or require an alleged victim of an offense described in Sections 12–13 through 12–16 of the Criminal Code of 1961, as amended, to submit to a **polygraph examination** or any form of a mechanical or electrical lie detector test. **725 ILCS 200/1, PA 96-1273, effective 1/1/11.**

There was insufficient evidence of failure to report a change of address by a sex offender in **People v. Peterson, 343 Ill.Dec. 895, 935 N.E.2d 1123(2010).** Giving incorrect information by itself was insufficient to show it was done knowingly and willfully where the offender had been declared unfit for trial, had an IQ of 63 and functioned as a seven-and-one-half year old child.

A defendant was properly convicted of **possessing child pornography** in **People v. Josephitis, 333 Ill.Dec. 188,**

914 N.E.2d 607(2009) The court found that the defendant had sought out certain websites, paid to access them, maintained these websites among his "favorites" and viewed a number of photos of child pornography prior to his arrest. The defendant had the ability to copy, print or send images to others and he admitted looking at the pictures that were seized off of his computer.

The **cyberstalking** statute, 720 ILCS 5/12-7.5 was upheld as constitutional in **People v. Sucic, 340 Ill.Dec. 634, 928 N.E.2d 1231(2010).** The court determined that it did not criminalize protected free speech and was not overbroad or vague on its face. However, the court also determined that a person could not receive a conviction for both harassment through electronic communication and cyberstalking because that violated the one-act, one-crime rule. The court found that there was enough evidence to show that the defendant placed the victim under surveillance on at least two separate occasions so as to uphold the charge of stalking. The evidence showed that the defendant had sent emails to the victim threatening to commit suicide and to take her with him. He also indicated that he would get even. Other evidence showed that he had entered her apartment building, caressed her door and that he had flattened her tires. On one occasion he had tried to break into her residence and yelled obscenities at her.

Sexually Violent or Dangerous Persons

Petitions for **sexually violent persons** may now be filed at the initiation of the State's Attorney alone or a joint petition may be filed by the Attorney General and the State's Attorney in addition to the Attorney General alone. Petitions may also be filed at the request of the agency with jurisdiction over the person by the Attorney General or the State's Attorney or by them jointly. The State has the right to have the person evaluated by experts chosen by the State. The State has the right to have a person who has been found to be suitable for commitment evaluated by experts chosen by the State, and if the Department examining evaluator previously rendered an opinion that the person did not meet the criteria to be a sexually violent person, then another evaluator shall conduct a predisposition investigation and or supplemental mental examination of the person. If the person is subject to conditional release, the person being supervised shall not reside at the same street address as another sex offender being supervised on conditional release under the act, mandatory supervised release, parole, probation or any other matter of supervision. **725 ILCS 207/40, PA 96-1128, effective 1/1/11.**

The mere existence of conflicting medical expert opinions regarding an offender's propensity to commit sexual violence in the future did not entitle the offender to an evidentiary hearing on his petition for discharge or **conditional release**. **In re Detention of Cain, 341 Ill.Dec. 729, 931 N.E.2d 337(2010)**

There was no abuse of discretion in admitting testimony in a SVP case where a clinical psychologist testified that the defendant worked at a toy store so as to be able to identify future victims against whom he could offend. **In re Commitment of Doherty, 343 Ill.Dec. 266, 934 N.E.2d 590(2010).**

The federal government has the power to keep sexual offenders detained via a **civil commitment** action even after they have completed serving their jail sentences. **U.S. v. Comstock, 130 S.Ct. 1949(2010).** The United States Supreme Court said that the necessary and proper clause gives Congress the power to pass such a law.

The State's Attorney was not precluded from arguing in a **death penalty** case where the defendant's defense was insanity that the defendant had the ability to control his sexual violence even though in a previous action under the Sexually Violent Persons Act the State had argued that the defendant was a compulsive sexual sadist who cannot stop his sadistic acts. **People v. Runge, 234 Ill.2d 68, 234 Ill.Dec. 865, 917 N.E.2d 940(2009)**

The burden of proof in a sexually dangerous person's action is clear and convincing, which satisfies due process. **People v. Craig, 343 Ill.Dec. 333, 934 N.E.2d 657(2010)** The defendant does not have the right to demand the appointment of an independent psychiatric expert at state's expense.

Children's statements

A child's sexual assault victim's **hearsay** statements were admissible in **People v. Major-Flisk, 337 Ill.Dec. 765, 923 N.E.2d 324(2010).** The child did not remember certain conversations or testify in detail but the child did testify that the defendant had touched him. The child was subject to cross-examination and answered all questions.

Videotape of an out-of-court interview with a child victim was admissible in the defendant's prosecution for predatory criminal sexual assault. While there were inconsistencies between the victim's trial testimony and the interview, there was nothing that the interview was unreliable. **People v. Lara, 342 Ill.Dec. 591, 932 N.E.2d 1052(2010).**

A **child witness** in **People v. Learn, 336 Ill.Dec. 117, 919 N.E.2d 1042(2009)** was not available to testify pursuant to 725 ILCS 5/115-10(b)(2)(A). The court found that it took ten pages of questioning prior to the time that the child admitted that the defendant's name existed and that he was married to her aunt and that she didn't like him. The court found that the admission of the out of court statement to her father and police officers about what the defendant did violated the confrontation clause.

Crimes by children

Minors who disseminate indecent visual depictions are subject to a new provision of the Juvenile Court Act, **"Minors Involved in Electronic Dissemination of Indecent Visual Depictions in Need of Supervision". 705 ILCS 405/3-1.** Minors are handled similar to truant minors. They may be ordered to obtain counseling or other supportive services or ordered to perform community service. This law does not prohibit a prosecution for disorderly conduct, public indecency, child pornography, a violation of the Harassing and Obscene Communications Act or any other law. **705 ILCS 405/3-40, PA 96-1087, effective 1/1/11.**

Calling **911** to make a false report to a public safety agency is now a Class 4 felony instead of a Class A misdemeanor. **720 ILCS 5/26-1(b), PA 96-1261, effective 1/1/11.**

1–Pentyl–3–(1–naphthoyl)indole (some trade or other names: JWH–018) aka Spice, and 1–Butyl–3–(1–naphthoyl)indole (some trade or other names: JWH–073) are now Schedule 1 controlled substances. **720 ILCS 570/204(d) (31) and (32), PA 96-1285, effective 1/1/11.**

The **theft** statute has been amended so that property must exceed $500 in order for the crime to be a felony instead of $300. **720 ILCS 5/16-1(b).**

Under the **retail theft statute,** "Full retail value" means the merchant's stated or advertised price of the merchandise. "Full retail value" includes the aggregate value of property obtained from retail thefts committed by the same person as part of a continuing course of conduct from one or more mercantile establishments in a single transaction or in separate transactions over a period of one year. **720 ILCS 5/16A–2.2** "Continuing course of conduct" means a series of acts, and the accompanying mental state necessary for the crime in question, irrespective of whether the series of acts are continuous or intermittent. **720 ILCS 5/16A-2.14** The retail theft of property statute has been amended so that the retail theft must exceed $300 to be considered a felony. **720 ILCS 5/16A-10(3)** Multiple thefts committed by the same person as part of a continuing course of conduct in different jurisdictions that have been

aggregated in one jurisdiction may be prosecuted in any jurisdiction in which one or more of the thefts occurred. **720 ILCS 5/16A–11.**

A **financial crime** must exceed $500 to be a felony. **720 ILCS 5/16H–60, PA 96-1301, effective 1/1/11.**

There was insufficient evidence of a **battery** in **In re Gregory G, 336 Ill.Dec. 506, 920 N.E.2d 1096(2009)**. The defendant was hit by a bottle and the juvenile possessed one but there were many people in the area with bottles so that it could not proved beyond a reasonable doubt that the defendant was the offender.

Crimes Against Children

The definition of **violent offense against youth** now includes the following offenses: 12–3.2 (domestic battery), 12–3.3 (aggravated domestic battery), 12–4 (aggravated battery), 12–4.1 (heinous battery), 12–4.3 (aggravated battery of a child), 12–4.4 (aggravated battery of an unborn child), 12–33 (ritualized abuse of a child) and being a parent of the victim is no longer a defense. **730 ILCS 154/5(b)(1), PA 96-1294, effective 7/26/10.**

A person, other than the parent or legal guardian of a minor, commits the offense of **false representation to a tattoo or body piercing** business as the parent or legal guardian of a minor when he or she falsely represents himself or herself as the parent or legal guardian of the minor to an owner or employee of a tattoo or body piercing business for the purpose of: accompanying the minor to a business that provides tattooing as required under Section 12–10 of this Code (tattooing body of minor); accompanying the minor to a business that provides body piercing as required under Section 12–10.1 of this Code (piercing the body of a minor); or furnishing the written consent required under Section 12–10.1 of this Code (piercing the body of a minor). False representation to a tattoo or body piercing business as the parent or legal guardian of a minor is a Class C misdemeanor. **720 ILCS 5/12–10.3, PA 96-1311, effective 1/1/11.**

Evidence of a defendant's other crimes was not admissible in a case of child abduction where prior convictions for attempted sexual assault merely showed his propensity to commit crimes. The prosecution did not identify sufficient similarities among the crimes. **People v. Harding, 340 Ill.Dec. 946, 929 N.e.2d 597(2010)**

Traffic

Driving 30 miles per hour or more but less than 40 miles per hour in excess of the **speed limit** is a Class B misdemeanor. 625 ILCS 5/11-601.5, A person may not receive court supervision for the offense of speeding 40 or more miles over the speed limit. **730 ILCS 5/5-6-1(p), PA 96-1002, effective 1/1/11.**

A person shall not accompany or provide **instruction,** pursuant to 625 ILCS 5/6–107.1(a), to a driver who is a minor and driving a motor vehicle pursuant to an instruction permit under Section 6–107.1 of this Code, while: the alcohol concentration in the person's blood or breath is 0.08 or more based on the definition of blood and breath units in Section 11–501.2 of this Code; under the influence of alcohol; under the influence of any intoxicating compound or combination of intoxicating compounds to a degree that renders the person incapable of properly supervising or providing instruction to the minor driver; under the influence of any other drug or combination of drugs to a degree that renders the person incapable of properly supervising or providing instruction to the minor driver; under the combined influence of alcohol, other drug or drugs, or intoxicating compound or compounds to a degree that renders the person incapable of properly supervising or providing instruction to the minor driver; or there is any amount of a drug, substance, or compound in the person's breath, blood, or urine resulting from the unlawful use or consumption of cannabis listed in the Cannabis Control Act, a controlled substance listed

in the Illinois Controlled Substances Act, an intoxicating compound listed in the Use of Intoxicating Compounds Act, or methamphetamine as listed in the Methamphetamine Control and Community Protection Act. A person found guilty of violating this Section is guilty of an offense against the regulations governing the movement of vehicles**. 625 ILCS 5/11–507, PA 96-1237, effective 1/1/11**

When **traffic control signals** are not in place or not in operation, or on a school day when children are present and so close thereto that a potential hazard exists because of the close proximity of the motorized vehicle and when traffic control signals are not in place or not in operation, the driver of a vehicle shall stop and yield the right-of-way to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon that half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be endangered. **625 ILCS 5/11-1002(a), 625 ILCS 5/11-1002.5, PA 96-1165, effective 7/22/10.**

A **school bus driver** may use a cellular radio telecommunication device to communicate with school authorities or their designees about anything relating to the operation of the school bus or the welfare or safety of any passenger thereon, but it may not be used for personal use. **625 ILCS 5/12-813.1(c)(2), PA 96-1066, effective 7/16/10.**

The **Child Passenger Protection Act** has been amended. A first offense is punishable by a fine of $75 and a subsequent offense is punishable by a fine of $200. A person charged with a violation of 625 ILCS 25/4 should not be convicted if a person produces in court satisfactory evidence of possession of an approved child restraint system and proof of completion of an instruction course on an installation of a child's restraint system. **625 ILCS 25/6**. A child passenger safety instruction course approved by NHTSA has also been instituted. Certain technicians are certified by NHTSA to instruct the person on the proper use of a child restraint system and will provide proof that he or she has completed the class. **625 ILCS 25/6a, P.A. 96-914, effective 1/1/11.**

The Supreme Court Rules on **bail** have changed as of September 15, 2010. The following changes to the bail amounts now apply:

Minor traffic offenses	$120	Rule 526(a)
Speeding 21-30 11-601	$140	Rule 526(c)
Speeding 31+ 11-601	$160	Rule 526(c)
Use of Seat Belts 12-603.1	$60	Rule 526(c)
Street Racing 11-506	$2,000	Rule 526(c)
Unlawful use of License 6-301	$1,500	Rule 526(f)
DWLS or DWLR (misdemeanor) 6-303 or 6-310	$1,500	Rule 526(f)
Permitting DUI of Alcohol or Drugs 6-304.1	$1,500	Rule 526(f)
Unlicensed Driving (except expired less than 1 year) 6-507	$1,500	Rule 526(f)
Fine only offense where fine does not exceed $1,000	$120	Rule 528(a)
Fine only offense where fine exceeds $1,000	$1,500	Rule 528(b)
Other offenses (non-traffic or conservation)	$120	Rule 528(c)
Class C Misdemeanors	$120	Rule 528(c)

There are also many changes to the bail amounts for conservation offenses, which can be found in Supreme Court Rule 527(a) through (g). The last time the bail amounts were changed was seventeen years ago.

Confessions

The United States Supreme Court established a new rule regarding the right to remain silent in **Berghuis v. Thomkins**, **130 S.Ct. 2250 (2010).** The defendant was read his Miranda warnings, refused to sign the waiver and basically remained silent except for a few limited responses for almost three hours. Eventually, a detective asked him if he prayed to God to forgive him for shooting a boy, the defendant made an incriminating statement. The defendant contended he had not waived his right to remain silent by staying silent so long and that the detective should have obtained a waiver from him. The Court concluded that the prosecution does not need to show that a waiver of Miranda rights was express. An implicit waiver of the right to remain silent is sufficient to admit a suspect's statement into evidence. A waiver of Miranda rights can be implied through the defendant's silence coupled with an understanding of his rights in a course of conduct indicating waiver. The Court basically established a new rule: where the prosecution shows that a Miranda warning was given and that it was understood by the accused, the suspect's uncoerced statement establishes an implied waiver of the right to remain silent. The Court said that if the defendant in this case wanted to remain silent, he could have said nothing in response to questioning or he could have unambiguously invoked his Miranda rights and ended the interrogation. There was no evidence that the defendant was coerced.

The U.S. Supreme Court set a new standard with respect to the right to counsel and *Miranda* warnings in **Maryland v. Shatzer, 130 S.Ct. 1213(2010)**. In this case a police detective wanted to question the defendant while he was in prison on another matter about sexually abusing his child but the defendant invoked his *Miranda* right to counsel and the detective ended the interrogation. The defendant was released back into the general population. Three years later, another detective reopened the investigation and tried to talk to the defendant who was still incarcerated. The defendant waived his *Miranda* rights and made inculpatory statements. The question was whether the break in *Miranda* custody lasting more than two weeks between the first and the second questioning allowed the detective to interview the defendant a second time. The court found that when a suspect is released from custody and goes back to his regular life, there is no reason to believe that he has been coerced when approached the second time. The Court found that the defendant's release back into the general prison population was a break in *Miranda* custody. The Court also found that the time period that police officers must honor the right to attorney under *Miranda* is 14 days from the time that the defendant invokes his *Miranda* right to counsel.

Orders of Protection

There have been amendments to the **order of protection** law. When a complaint is made under a request for an order of protection, that the respondent has threatened or is likely to use firearms illegally against the petitioner, the court shall examine on oath the petitioner, and any witnesses who may be produced. If the court is satisfied that there is any danger of the illegal use of firearms, and the respondent is present in court, it shall issue an order that any firearms and any Firearm Owner's Identification Card in the possession of the respondent, except as provided in subsection (b), be turned over to the local law enforcement agency for safekeeping. If the court is satisfied that there is any danger of the illegal use of firearms, and if the respondent is not present in court, the court shall issue a warrant for seizure of any firearm and Firearm Owner's Identification Card in the possession of the respondent, to be kept by the local law enforcement agency for safekeeping, except as provided in subsection (b). **750 ILCS 60/214(b)(14.5)(a)**

Upon expiration of the period of safekeeping, if the firearms or Firearm Owner's Identification Card cannot be returned to the respondent because the respondent cannot be located, fails to respond to requests to retrieve the firearms, or is not lawfully eligible to possess a firearm, upon petition from the local law enforcement agency, the court may order the local law enforcement agency to destroy the firearms, use the firearms for training purposes, or for any other application as deemed appropriate by the local law enforcement agency; or that the firearms be turned over to a third party who is lawfully eligible

to possess firearms, and who does not reside with the respondent. **750 ILCS 60/214 (c) (14.5), PA 96-1239, effective 1/1/11.**

The State must show that a defendant has actual knowledge of a plenary order of protection if a prosecution for a violation of an order of protection is to be successful. **People v. Hinton, 341 Ill.Dec. 872, 931 N.E.2d 769(2010).** The defendant had been served with an emergency order while in jail but never received notice of the plenary order.

Expungement

Retail theft ordinance charges may not be **expunged** until 5 years have passed following the satisfactory termination of supervision. **20 ILCS 2630/5.2(b)(2)(B)(i)** This closes a loophole in the expungment statute. The court shall not order the **sealing** of the records of an arrest which results in the petitioner being charged with a felony offense or records of a charge not initiated by arrest or felony offense regardless of the disposition unless the charge is brought on by another charge as a part of one case and the charges resulted in acquittal, dismissal, or conviction, when the conviction was reversed or vacated, and another charge brought in the same case results in a disposition for a misdemeanor offense that is eligible to be sealed pursuant to the expungement law. **20 ILCS 2630/5.2(a)(3)(B)(ii), PA 96-1401, effective 7/29/10.**

Search and Seizure

The defendant was a passenger in a vehicle that was searched in **People v. Johnson, 237 Ill.2d 81, 340 Ill.Dec.168. 927 N.E.2d 1179(2010)**. The court found that the defendant did not have a legitimate expectation of privacy in the vehicle and therefore couldn't challenge the search because he did not have **standing**. The court said that there was no evidence that he any ownership or possessory interest in the vehicle, there was no evidence that he had previously used the vehicle, that he could control other people's use of the vehicle or that he had a subjective expectation of privacy. Officers had testified that they were sent to the scene of a shooting at which time they saw the defendant and another person get into a Ford Explorer. The location of the vehicle was just across an alley from where there had been a shooting. They were following the vehicle for a short period of time. The vehicle stopped and the defendant and the other person got out of the car and began to walk away at which point the officers used a spotlight on the men. The officers then approached them and asked if they knew anything about the shooting. The men were cooperative but seemed nervous. The officer asked them for identification, ran a warrant check which showed no outstanding warrants. The officer asked for consent to search the men which they agreed to. Nothing was found. They asked for consent to search the vehicle and the other person refused but the officers handcuffed the defendant and his companion and put them in the back of the squad car while they searched the vehicle. They found a .22-caliber handgun. The defendant was arrested and he later admitted that they used the gun to shoot the victim. The defendant was eventually found guilty of aggravated unlawful use of a weapon and unlawful possession of a weapon by a felon. The court found that the *Terry* stop of the two individuals was lawful. The court found that evidence that came from the car was not obtained as a result of the defendant's arrest. Therefore, the search was not tainted by any illegality of the arrest. The court also found that any statements that the defendant made after the arrest were sufficiently attenuated so that they were not tainted. The court said that finding a loaded gun under the front seat of the car provided probable cause to arrest the defendant which was an independent factor. The court declined to decide whether the act of handcuffing the defendant and seating him into the back seat of the squad car amounted to an unlawful arrest because of all the other factors that arose during the case. The defendant's Fourth Amendment rights were not violated in this case.

A **warrantless entry** into a defendant's home was reasonable in **Michigan v. Fisher, 130 S.Ct.**

546(2009). The Supreme Court found that the emergency aid exception to the Fourth Amendment applied where the officers arrived at a home in response to a complaint of a disturbance and found a damaged pickup truck, fence posts, windows and blood on the hood of the pickup and clothes inside of it. They could see the defendant inside the home screaming and throwing things and that he had cut his hand.

A police officer lacked **reasonable suspicion** to perform a Terry stop on a vehicle in **People v. Galvez, 341 Ill.Dec. 263, 930 N.E.2d 473(2010).** In this case the arresting officer did a random registration check of the defendant's vehicle. During that check he found out that there were two registered owners, one male and one female. He determined that the male's license was revoked. He then stopped the vehicle without determining whether the driver was male or female. The court ruled that when there are multiple registered owners of the vehicle, the officer must first ascertain whether facts available to the officer provide a reasonable suspicion that a crime is occurring. The officer may not effect a stop merely because the officer had exhausted all means of acquiring additional information. Clearly, in this case had the officer taken the additional time to find out whether it was a male or female driving, there would have been a different outcome.

Schools

If a minor is a victim of aggravated battery, battery, attempted first degree murder, or other non-sexual violent offense, the identity of the victim may be disclosed to appropriate **school officials** for the purpose of preventing foreseeable future violence involving minors by a local law enforcement agency pursuant to an agreement established between the school district and a local law enforcement agency subject to the approval by the presiding judge of the juvenile court. **705 ILCS 405/5-905(2.5), PA 96-1414, effective 1/1/11.**

The crime of **interference with a public institution of education** now applies to schools other than those of higher education. 720 ILCS 5/21.2-1 et al. It is a crime to interfere with a public institution of education when on the campus of a public institution of education or at or in any building or other facility owned, operated, or controlled by the institution without authority from the institution the offender, through force or violence, actually threatened willfully denies to a trustee, school board member, superintendent, principal, employee, student or invitee of the institution, freedom of movement at such place or use of the property or facilities of the institution or the right of ingress and egress to the property or facilities of the institution or willfully impedes obstructs or interferes or disrupts the performance of institutional duties by a trustee, school board member, superintendent, principal or employee of the institution or the pursuit of educational activities, are determined or prescribed by the institution by a trustee, school board member, superintendent, principal, employee, student or invitee of the institution or knowingly occupies or remains in or at any building, property or other facility owned, operated or controlled by the institution after due notice to depart. 720 ILCS 5/21.2-2. The offense is a Class C misdemeanor for the first offense and for a second or subsequent offense a Class B misdemeanor but if the interference is accompanied by a threat of personal injury or property damage, the person commits a Class 3 felony and may be sentenced to a term of imprisonment of not less than 2 no more than 10 years and may be prosecuted for intimidation. PA 96-807, effective 1/1/10.

Child Abuse and Neglect

A person is a "**violent offender against youth**" if he or she commits the crimes of involuntary manslaughter under Section 9-3 of the Criminal Code, where baby shaking was the proximate cause of death of the victim of the offense, and endangering the life or health of a child under Section 12-21.6 that results in the death of the child where baby shaking was the proximate cause of the death of the child. **730 ILCS(b)(4.1) and (4.2) PA 96-1115, effective 1/1/11.**

An "**abused child**" is now a child whose parent or immediate family member or any person responsible for the child's welfare or any individual residing in the same home as the child or a paramour of the child's parents commits or allows to be committed the offense of involuntary servitude, involuntary sexual servitude of a minor or of trafficking in persons for forced labor or services as defined in 720 ILCS 5/10-9 of the Criminal Code against the child. **325 ILCS 5/3(h) and 705 ILCS 405/2-3(2)(vi)** Abused minors also include those whose parents, immediate family members or any person responsible for the minor's welfare or any person who has the same family or houses the minor, or any individual residing in the home with the minor, or a parent or the minor's parents allows, encourages or requires the minor to commit any act of prostitution and includes minors under the age of 18 years of age. **705 ILCS 405/2-3(2)(vii).**

Prima facie evidence of abuse and neglect includes proof that a parent, custodian or guardian of a minor allows, encourages or requires a minor to perform, offer or agree to perform any act of sexual penetration for any money, property, token, object or article or anything of value or any touching or fondling of the sex organs of one person by another person, for any money, property, token, object or article or anything of value or any touching or fondling of the sex organs of one person by another person, for any money, property, token, object or article or anything of value for the person of sexual arousal or gratification or proof that a parent, custodian, guardian or minor commits or allows to be committed the offense of involuntary servitude, involuntary sexual servitude of a minor or trafficking for forced labor or services. **705 ILCS 405/2-18(2)(j) and (k, PA 96-1464, effective 8/8/10.**

Service plans prepared in neglect and abuse cases must include services reasonably related to remedy the conditions that gave rise to removal of the child from the home of his or her parents, guardian, or legal custodian or that the court had found must be remedied prior to returning the child home. Any task the court requires of the parents, guardians or legal custodian or child prior to returning the child home must be reasonably related to remedying a condition or conditions that gave rise to or which could give rise to any finding of child abuse or neglect. **705 ILCS 405-2-28(2)(H), PA 96-1375, effective 7/29/10.**

The **no-contact rule of professional conduct** was not violated in **People v. Santiago, 236 Ill.2d 417, 339 Ill.Dec. 1, 925 N.E.2d 1122(2010).** The detectives and the assistant State's attorney did not contact an attorney appointed to represent the defendant in connection with a dependency case before they questioned her in connection with a criminal aggravated battery of a child matter. The court found that the attorney only represented the defendant in the juvenile proceedings and not in the criminal proceeding. Therefore, the rule prohibiting a lawyer from contacting another party whom the lawyer knew to be represented by counsel unless counsel for that party had provided consented did not apply under these facts.

The court had the power in an abuse and neglect case to order the father to submit to **sex offender assessment** and follow the recommendations of the assessment and to order the parents to apply for employment. **In re D.M., 335 Ill.Dec. 278, 918 N.E.2d 1091(2009)**, the father waited too long for a motion to substitute judge where the judge had already ruled in proceedings that were substantive.

Court should not have transferred a case to a family court judge where father sought custody of his child who had been adjudicated neglected. The appellate court had ordered a consolidation of the neglect and custody cases. **In re G.P., 344 Ill.Dec. 279, 936 N.E.2d 808(2010).**

In re J.C., Jr., 336 Ill.Dec. 695, 920 N.E.2d 1285(2009) court's finding of neglect under anticipatory neglect proper where prior children had been found neglected and taken away from the mother due to her failure to attend to their medical needs and to feed them properly.

In. re R.W., 341 Ill.Dec. 556, 930 N.E.2d 1070(2010) No neglect due to injurious environment where at the time the petition was filed, the child's environment had been corrected (mother was a hoarder).

In Re M.P., 340 Ill.Dec. 690, 928 N.E.2d 1287(2010) Trial court could remove child from grandparents' home and change placement where it did not order specific placement.

Tapes of telephone recordings which were introduced during a **permanency review hearing** should not have been admitted into evidence because the proper foundation was not laid. No one identified the voices on the tapes and there was no testimony that the tapes were altered. **In Re C.H., 339 Ill.Dec. 139, 925 N.E.2d 1260(2010).**

Termination of parental rights

Time spent in prison does not toll the nine-month period for reasonable progress a parent must show for the return of a child. Therefore, the termination of parental rights was upheld in **In Re. J.L., 236 Ill.2d 329, 338 Ill.Dec. 435, 924 N.E.2d 961(2010).**

In re Brandon A., 334 Ill.Dec. 250, 916 N.E.2d 890(2009) Termination of parental rights upheld where a father was repeatedly incarcerated and not due to be released until child was 23 years of age and child had bonded well with the grandmother.

The court properly took judicial notice of various documents in a termination of parental rights based in **In re Jay H., 335 Ill.Dec. 200, 918 N.E.2d 284(2009).** The court found that the formal rules of evidence do not apply at a best interest hearings. The court took judicial notice of various orders, reports, documentaries and results.

The court was not prohibited from finding a father unfit due to the fact that he was 15 years old in **In re L.B., 336 Ill.Dec. 941, 921 N.E.2d 797(2009).** Termination of parental rights of a child was upheld.