JUVENILE LAW UPDATE

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<u>Juvenile Court Act Procedure</u>

The definition of "delinquent minor" changes on January 1, 2010. Delinquent minors will 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 are 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.

The Juvenile Court Act has been amended with respect to detention and shelter care hearings. The forty-hour time period shall be tolled to allow counsel for the minor to prepare for the shelter care hearing upon a motion filed by the attorney and granted by the court. Immediately upon the filing of a petition in the case of a minor held in custody, the court must appoint counsel to represent the minor. No detention or shelter care hearings can be held until the minor has had an adequate opportunity to consult with counsel. 705 ILCS 405/5-415(1)(2). The minor must have an adequate opportunity to consult with counsel prior to the hearing. 705 ILCS 405/5-501. PA 95-846, effective 1/1/09.

The objection period for juvenile expungement has been changed from 90 days to 45 days. 705 ILCS 405/5-915, PA 95-861, effective 1/1/09.

A provision with respect to testimony by a victim who is mentally retarded now applies to persons affected by a developmental disability. 725 ILCS 5/106B-5. PA 95-897, effective 1/1/09.

Numerous offenses have been added to the criminal procedure rule allowing hearsay exceptions for offenses committed against a child under the age of 13 or person who is mentally retarded including kidnapping, unlawful restraint, child abduction, public indecency, assault, aggravated

assault, domestic battery, and aggravated battery among others. 725 ILCS 5/115-10, PA 95-892, effective 1/1/09.

The court could not sentence a minor defendant 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).

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.

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 they 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 might have been different. The defendant had been sentenced to the Department of Juvenile Justice after the revocation hearing.

The failure to give notice of an amended delinquency petition to a minor's father does 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.

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 that "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.

The failure to serve a summons upon a juvenile's custodial parents in a delinquency proceeding did not deprive the court of subject-matter jurisdiction to hear a delinquency action, nor did it affect the court's authority to render sentence; rather, the failure affected only the court's personal jurisdiction over the parents. In re Nathan A.C., 385 Ill.App.3d 1063, 904 N.E.2d 112, 328 Ill.Dec. 350(2008)

The failure to admonish a juvenile regarding the maximum penalty was plain error because it 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)

A juvenile filed an emergency motion to stop his automatic transfer from the juvenile detention center to the county jail on his 17th birthday. The statute, which permits the confinement of a defendant in an adult detention facility, governs what the police can do with a minor from the

time of arrest until the first appearance before the court but doesn't apply to the trial court at the detention hearing. Section 5-410 only applies to the detention of minors while they are in police custody. The Illinois Supreme Court refused to speculate further on this issue because the case was moot. In Re Randall M., 231 Ill.2d 122, 324 Ill.Dec. 523, 896 N.E.2d 309(2008).

The no-contact rule of professional conduct was not violated in People v. Santiago, 324 Ill.Dec. 274, 895 N.E.2d 989(2008). The detectives and the assistant State's attorney did not contact an attorney appointed to represent a 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 consent did not apply under these facts.

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)

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 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

the grandmother agreed to be present during the videotaped statement. Under the totality of the circumstances, the minor voluntarily waived his Miranda rights.

Crimes against children

A court may order that a respondent not attend the public or private elementary, middle, or high school attended by the petitioner in a civil no contact action. The order can include an order that the respondent not attend the same school as the petitioner. When the petitioner and the respondent attend the same public or private elementary, middle, or high school, the court when issuing a civil no contact order and providing relief shall consider, among the other facts of the case, the severity of the act, any continuing physical danger or emotional distress to the petitioner, and the expense, difficulty, and educational disruption that would be caused by transfer of the respondent to another school. 740 ILCS 22/213(b-6), P.A. 96-311, effective 1/1/10.

It is unlawful to send a public conveyance travel ticket to a minor when the person, without the consent of the minor's parent or guardian, knowingly sends, causes to be sent or purchases a public conveyance travel ticket to any location for a person known by the offender to be an unemancipated minor under 17 years of age or the person believes the minor to be under 17 years of age other than for a lawful purpose under Illinois law or knowingly arranges for travel to any location on any public conveyance for a person known by the offender to be an unemancipated minor under 17 years of age or a person he or she believes to be a minor under 17 years of age other than for a lawful purpose under Illinois law. 720 ILCS 5/10-8.1(b) It is a Class A misdemeanor, unless the person is at least five years older than the minor, in which case it is a Class 4 felony.

It is unlawful for a person 18 years or more to meet a child if the person, while using a computer, cellular telephone or any other device with the intent to meet a child or one he or she believes to be a child, solicits, entices, induces, or arranges with the child to meet at a location without the knowledge of a child's parent or guardian and the meeting with the child is pre-arranged for a purpose other than a lawful purpose under Illinois law. It is a Class A misdemeanor, unless the solicitor believes he or she is 5 or more years older than the child, in which case it is a Class 4 felony. 730 ILCS 5/11-6.6

Computer technicians are now included under the definition of who is responsible for reporting child pornography under 720 ILCS 5/11-20.2

Child pornography now includes depicting or portraying in any pose, posture or setting involving lewd exhibition of the unclothed or transparently clothed genitals, pubic area, buttocks or, if such person is female, a fully or partially developed breast of the child or other person. Commercial film and photographic film processors must report or cause to be reported such images which are discovered. Computer technicians must make a report to the local law enforcement agency or to the Illinois Child Exploitation tip line. 720 ILCS 5/11-20.2(a)(vii), (b), (c).

The crime of distributing harmful materials to minors may now occur if a person over the age of 18 fails to exercise reasonable care in ascertaining the true age of a minor, knowingly distributes to, or sends, or causes to be sent, or exhibits to or offers to distribute or exhibit any harmful material to a person he believes is a minor, is guilty of a Class A misdemeanor. If that person uses a computer web camera, cellular phone or any other type of device to manufacturer the harmful material, then the offense is a Class 4 felony. 720 ILCS 5/11-21(g)

A person who places, posts, reproduces or maintains an adult obscenity or child pornography Internet site of photographs, videos or digital image of a person under 18 years of age that is not child pornography without the knowledge of consent of the person under 18 years of age is guilty of the offense of posting graphic information on a pornographic Internet site. This

applies even if the person under 18 years of age is fully or properly clothed in the photograph, video or digital image. 720 ILCS 5/11-23(a-5)

A person who places, posts, reproduces or maintains an adult obscenity or child pornography internet website, or possesses, with obscene or child pornographic materials a photograph, a video or digital image of a person under 18 years of age in which the child is posed in a suggestive manner with the focus or concentration of the image on the child's clothed genitals, clothed public area, clothed buttocks area or if the child is female, with breasts exposed to transparent clothing and the photograph, video, or digital image is not child pornography, is guilty of posting graphic information on a pornographic Internet site or possessing graphic information with pornographic material. 720 ILCS 5/11-23(a-10) A violation of (a-5) is a Class 4 felony, a violation of (a-10) is a Class 3 felony.

It is unlawful for a child sex offender to knowingly photograph, videotape, or take a digital image of a child or instruct or direct another person to photograph, videotape or take a video image of a child without the consent of the parent or guardian. A person who violates this section at a playground, park facility, school, forest preserve, daycare center or a facility providing programs or services directed to persons under 17 years of age, is guilty of a Class 1 felony. 720 ILCS 5/11-24(A)(3)(c).

A person who is placed on probation or conditional discharge for a variety of sex offenses may not access or use a computer or any other device with internet capabilities without the prior written approval of the offender's probation officer unless it's in connection with the offender's employment or search for employment with the prior approval of the offender's probation officer. The offender must submit to unannounced examinations of the offender's computer or other device. The offender must admit to the installation on the offender's computer software or hardware to monitor the Internet use and to submit to any other restrictions as imposed by the offender's probation officer. 730 ILCS 5/5-6-3(a)(8.8) It also applies to a person who has committed an offense that would qualify as a sex offense as defined in the Sex Offender Registration Act. 730 ILCS 5/5-6-3(a)(18) These conditions also apply to an offender who is placed on supervision for the offenses of indecent solicitation of a child, sexual exploitation of a child, soliciting for a juvenile prostitute, all pornography, related child pornography, or for materials. PA 95-983, effective 10/3/08.

The offense of grooming occurs when a person uses a computer online service, internet service, local bulletin board service or any other device capable of electronic data storage or transmission to seduce, solicit, lure, or entice or attempt to seduce, solicit, lure, or entice a child, a child's guardian or any or another person believed by the person to be a child or a child's guardian, to commit any sex offense defined by Section 2 of the Sex Offender Registration Act or to otherwise engage in any unlawful sexual conduct with a child or with another person believed by the person to be a child. 720 ILCS 5/11-25 The offense is a Class 4 felony.

A person commits the violation of traveling to meet a minor when he or she travels any distance either within the State, to the State, or from the State by any means, or attempts to do so, or causes another to do so, or attempts to do so for the purpose of engaging in any sexual offense defined by the Sex Offender Registration Act or otherwise engages in any unlawful sexual conduct with a child or with another person believed by the person to be a child after using a computer online service, internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to seduce, solicit, lure or entice, or to attempt to seduce, solicit, lure or entice a child or a child's guardian or another person believed by the person to be a child or a child's guardian, for the such purpose. This offense is a Class 3 felony. 720 ILCS 5/11-26, PA 95-901, effective 1/1/09.

There is a new offense called unlawful use of encryption in 720 ILCS 5/16D-5.5, PA 95-942, effective 1/1/09. A person shall not knowingly use or attempt to use encryption, directly or

indirectly to permit, facilitate, further, or promote any criminal offense, aid, assist, or encourage another person to commit any criminal offense, conceal evidence of the commission of any criminal offense, or conceal or protect the identity of a person who has committed any criminal offense. It is a Class A misdemeanor unless the encryption was used or attempted to be used to commit an offense for which a greater penalty is provided by law. If that is the case, the person shall be punished as prescribed by the law for that offense. The violation is separate and distinct from the criminal offense itself.

The fact that a person possessed 100 or more images is considered a factor in aggravation in a prosecution for child pornography. 730 ILCS 5/5-5-3.2(a)(22) PA 95-942, effective 1/1/09.

Aggravated battery to a child may be committed when a person of the age of 18 years and upwards who intentionally or knowingly and without legal justification and by any means causes bodily harm or disability or disfigurement to any child under the age of 13 or to any severely or profoundly mentally retarded person. 720 ILCS 5/12-4.3 (d)(2). PA 95-768, effective 1/1/09.

Cyber stalking may be committed when a person knowingly and without lawful justification creates and maintains an internet website or web page which is accessible to one or more third parties for a period of at least 24 hours and which contains statements harassing another person and which communicates a threat of immediate or future bodily harm, sexual assault, confinement or restraint where the threat is directed toward the person or a family member of the person or which places that person or family member of that person in reasonable apprehension of immediate or future bodily harm, sexual assault, confinement or restraint or which knowingly enlists or solicits the commission of an act by any person which would be a violation if directed toward the person or a family member of that person. 720 ILCS 5/12-7.5(a-5), PA 95-849, effective 1/1/09.

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)

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.

An officer could testify about copies of e-mails he received from a victim's mother during a probation revocation hearing in People v. Varghese, 330 Ill.Dec. 917, 909 N.E.2d 939(2009). The victim's mother also testified she had contacted the defendant's on screen persona. The court found that the evidence was reliable.

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 that showed the defendant's knowledge.

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.

<u>Crimes committed by children</u>

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. 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. 720 ILCS 5/26-1 (d) P.A. 96-413, effective August 13, 2009.

The charge of escape applies to a person charged with or adjudicated delinquent for an act which if committed by an adult would constitute a felony or misdemeanor. This also applies to the defense of aiding an escape. 730 ILCS 5/31-6 and 720 ILCS 5/31-7 also applies to the offense of failure to comply with the conditions of an electronic home monitoring detention program. 730 ILCS 5/5-8A-4.1, PA 95-921, effective 1/1/09.

A minor under the age of 18 years of age may not display or use a false or forged identification card or transfer, alter, or deface an identification card in order to obtain any cigar, cigarette, smokeless tobacco or tobacco in any form. Tobacco products may only be sold through a vending machine if those products are not placed together with any non-tobacco product other than matches in the vending machine. Tobacco products may not be sold in anything but a sealed container, pack or package as provided by the manufacturer. 720 ILCS 675/1(a-6) Tobacco products may only be sold where alcoholic beverages are sold and consumed on the premises and vending machine operations is under the direct supervision of the owner or manager. PA 95-905, effective 1/1/09.

The statute that makes it illegal to deliver alcoholic liquor to a person under the age of 21 also applies to the distribution of alcohol to a minor by a person of any ages. So, if a 17-year-old delivers alcoholic liquor to a person under the age of 21, he or she can be charged with the offense. People v. Christopherson, 231 Ill.2d 449, 899 N.E.2d 257, 326 Ill.Dec. 40(2008).

<u>Sex Offenders</u>

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.

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) 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.

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.

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)

It is now unlawful for a child sex offender to knowingly offer or provide any program or services to persons under 18 years of age in his or her residence or the residence of another or in any facility for the purpose of offering or providing such programs or services whether these programs or services are offered or provided by contract, agreement, arrangement or on a volunteer basis. 720 ILCS 5/11-9.4(c-6) It is also unlawful for a child sex offender to knowingly reside within 500 feet of a daycare home or group daycare home. However, nothing prohibits a person from moving within 500 feet of the home if the property is owned by the child sex offender and was purchased before the effective date of the Act. 720 ILCS 5/11-9.4(b-5), PA 95-821, effective 8/14/08.

It is unlawful for a child sex offender who owns and resides at residential real estate to knowingly rent any residential unit within the same building in which he resides to a person who is a parent or guardian of a child or children under age 18 years of age. This only applies to leases or other rental arrangements entered into after the effective date of the Act. PA 95-820, effective 1/1/09.

In determining whether a sex offender lives within 500 feet of a school building or real estate comprising a school building, the 500 feet distance must be measured from the edge of the property of the school building or the real property comprising the school that is closest to the edge of the property of the child sex offender's residence or where he or she is loitering. 720 ILCS 5/11-9.3(c-5), PA 95-819, effective 1/1/09.

Sex offender information must now be provided by a sheriff to the victim of a sex offense residing in the county where the sex offender is required to be registered or employed who is not otherwise required to be notified under Section 4.5 or the Rights of Crime Victims and Witnesses Act or Section 75 of the Sexually Violent Persons Commitment Act. 730 ILCS 152/120(a)(10)(a-2)(10) The Chicago Police Department also has the same responsibility under (A-3)(10). In order to receive said notice, the victim of a sex offense must notify the appropriate sheriff or the

Chicago Police Department in writing, by fax machine or email that the victim desires to receive such notice. 730 ILCS 152/120(h).

When an offender is scheduled to be released on parole, mandatory supervised release, electronic detention, work release, international transfer exchange or by a custodian of the discharged of any individual who is adjudicated delinquent for a sex offense from State custody and by the sheriff of the appropriate county of any such person's final discharge from county custody, the prisoner review board must notify the victim of the sex offense of that person's eligibility for release and must be made 30 days, when possible before the release of the sex offender. 725 ILCS 120/4.5(d)(8) PA 95-896, effective 1/1/09.

Abuse and neglect

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).

In re P.M.C., 327 Ill.Dec. 442, 902 N.E.2d 197(2009)(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).

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 step-daughter, 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 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 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 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 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 D.D., Jr., 385 Ill.App.3d 1053, 897 N.E.2d 917(2008)(evidence supported finding that active efforts were made to prevent breakup of family in parental rights termination proceeding under Indian Child Welfare Act)

Search and Seizure

The United States Supreme Court drastically changed the procedure followed by law enforcement in conducting searches incident to arrest in traffic 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.

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.

The United States Supreme Court decided a very important case for police officers this 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 that she believed to be consistent with membership in the Crips gang. She also noticed a scanner in his jacket pocket that 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 what 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 she 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 in the 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.

Police officers arrested the defendant in **Herring v. U.S., 2009 WL 77886(2009)** because of a warrant listed in a neighboring county's database. During a search incident to arrest, the police seized drugs and a gun. It turned out that the warrant had been recalled months earlier but the information never was into the database. The defendant was indicted on federal gun and drug possession charges and filed a motion to suppress the evidence on the basis that his initial arrest had been illegal. The United States Supreme Court found that police negligence does not automatically trigger suppression of the evidence. It said that when police mistakes are the result of negligence such as in this case, rather than systemic error or reckless disregard of constitutional requirements, the **exclusionary rule** does not apply because it does not serve the purpose of deterring police misconduct. In this case, the criminal should not "go free because the constable has blundered" and the evidence was deemed admissible.

In **People v. Harris, 228 Ill.2d 222, 319 Ill.Dec.823, 886 N.E.2d 947(2008),** the defendant was a passenger in a vehicle stopped for a traffic violation. The officer asked the defendant for identification. A computer check revealed an outstanding warrant and the defendant was placed under arrest. A search incident to arrest revealed cocaine and drug paraphernalia in his jacket pocket. The Illinois Supreme Court reviewed the case in light of the U.S. Supreme Court's decision in Illinois v. Caballes. The Court found that the warrant check performed at the same time as the driver's status check, did not unreasonably prolong the stop. It also found that an individual has no reasonable expectation of privacy in the fact that a court has entered a written order for his arrest. Therefore, a warrant check on the occupants of a lawfully stopped vehicle does not violate the Fourth Amendment as long as the stop is not unreasonably prolonged for the purpose of conducting the check and the stop is otherwise executed in a reasonable manner.

In addition, the Court held that People v. Gonzales is now overruled. During a lawful seizure, the police may ask questions unrelated to the original detention and are not required to form an independent reasonable suspicion of criminal activity before doing so as long as the stop is not unreasonably prolonged. The court did note that in this case, the request for identification from the passenger was not coercive and the passenger could have declined. If a passenger refuses such a request, the officer may not insist that he or she comply.

Probation officers lacked probable cause in **People v. Thornburg, 324 Ill.Dec. 13, 895 N.E.2d 13(2008)** to search a desk and dresser drawer at a residence where the defendant was living. The probation officers admitted that they had no information that there was criminal activity going on in the home prior to their visit. However, the defendant's consent to computer searches when he signed the computer use agreement was upheld because he had been convicted of indecent solicitation of a child and used the computer and the internet to commit the crime. Therefore, the condition that he not use the internet for sexual purposes in the agreement and the he be subjected to a computer search at any time was not unreasonable given the circumstances.

<u>Civil Liability</u>

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.