DU PAGE COUNTY JUVENILE OFFICERS' ASSOCIATION

JUVENILE LAW UPDATE 2016

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Juvenile procedure - statutory

A minor found to be guilty may be **committed** to the Department of Juvenile Justice under 705 ILCS 405/5–750 if the minor is at least 13 years and under 20 years of age, provided that the commitment to the Department of Juvenile Justice shall be made only if a term of imprisonment in the penitentiary system of the Department of Corrections (felonies) is permitted by law for adults found guilty of the offense for which the minor was adjudicated delinquent. The court shall include in the sentencing order any pre-custody credits the minor is entitled. The time during which a minor is in custody before being released upon the request of a parent, guardian or legal custodian shall also be considered as time spent in custody. **705 ILCS 405/5-710(1)(b).** In no event shall a guilty minor be committed to the Department of Juvenile Justice for a period of time in excess of that period for which an adult could be committed for the same act. **705 ILCS 405/5-710(7)** The court shall include in the sentencing order a limitation on the period of confinement not to exceed the maximum period of imprisonment the court could impose under Article V of the Unified Code of Corrections. **705 ILCS 405/5-710(7.5)** In no event shall a guilty minor be committed to the Department of Juvenile Justice or placed in detention when the act for which the minor was adjudicated delinquent would not be illegal if committed by an adult. **705 ILCS 405/5–710(b), PA 99-268, effective 1/1/16**

Minors committed to the Department of Juvenile Justice are subject to periods of **aftercare release**. **705 ILCS 405/5-750(2) and (3.5)** The terms of the aftercare release vary depending on the nature of the offense:

First-degree murder - until the age of 21
Class X felony - one and a half years
Class 1 or 2 felony - one year
Class 3 felony or lesser - six months

If the minor commits a criminal offense during that time that could result in a sentence of imprisonment within the Department of Corrections, the commitment to the Department of Juvenile Justice and all rights and duties created by that commitment are automatically suspended pending final disposition of the criminal charge. If the minor is found guilty of the criminal charge and sentenced to a term of imprisonment in the penitentiary system of the Department of Corrections, the commitment to the Department of Juvenile Justice shall be automatically terminated. If the criminal charge is dismissed, the minor is found not guilty, or the minor completes a criminal sentence other than imprisonment within the Department of Corrections, the previously imposed commitment

to the Department of Juvenile Justice and the full aftercare release term shall be automatically reinstated unless custodianship is sooner terminated.

Nothing shall keep the court from ordering another sentence under 705 ILCS 5/5–710 or from terminating the Department's custodianship while the commitment to the Department is suspended. **705 ILCS 405/5-750, PA 99-268, effective 1/1/16.**

The statutes dealing with **automatic and presumptive transfers** of minors have been amended. No longer must juveniles be charged as adults for committing armed robbery when the armed robbery was committed with a firearm, or aggravated vehicular hijacking when the hijacking was committed with a firearm. **705 ILCS 405/5-130(1)(a)(iv) and (v).**

If the State's Attorney files a petition, at any time prior to commencement of the minor's trial, which alleges that a minor 15 years of age or older committed a forcible felony, and if a motion by the State's Attorney to prosecute the minor as an adult alleges that the minor has previously been adjudicated delinquent or found guilty for commission of an act that constitutes a forcible felony and the act that constitutes the offense was committed in furtherance of criminal activity by an organized gang, and, if the juvenile judge assigned to hear and determine motions to transfer a case for prosecution in the criminal court determines that there is probable cause to believe that the allegations in the petition and motion are true, there is a **rebuttable presumption** that the minor is not a fit and proper subject to be dealt with in Juvenile Court, and that, except as provided in paragraph (b), the case should be transferred to the criminal court.
705 ILCS 405/5–805(2).

After 8/3/15 when a person commits an offense and the person is under 18 years of age at the time of the commission of the offense, the court, at the **sentencing hearing** conducted under Section 5–4–1, shall consider the following additional factors in mitigation in determining the appropriate sentence:

(1) the person's age, impetuosity, and level of maturity at the time of the offense, including the ability to consider risks and consequences of behavior, and the presence of cognitive or developmental disability, or both, if any;

(2) whether the person was subjected to outside pressure, including peer pressure, familial pressure, or negative influences;

(3) the person's family, home environment, educational and social background, including any history of parental neglect, physical abuse, or other childhood trauma;

(4) the person's potential for rehabilitation or evidence of rehabilitation, or both;

(5) the circumstances of the offense;

(6) the person's degree of participation and specific role in the offense, including the level of planning by the defendant before the offense;

(7) whether the person was able to meaningfully participate in his or her defense;

(8) the person's prior juvenile or criminal history; and

(9) any other information the court finds relevant and reliable, including an expression of remorse, if appropriate. However, if the person, on advice of counsel chooses not to make a statement, the court shall not consider a lack of an expression of remorse as an aggravating factor.

Except as provided in 730 ILCS 5/5–4.5–105(c), the court may sentence the defendant to any disposition authorized for the class of the offense of which he or she

was found guilty, and may, in its discretion, decline to impose any otherwise applicable sentencing enhancement based upon firearm possession, possession with personal discharge, or possession with personal discharge that proximately causes great bodily harm, permanent disability, permanent disfigurement or death to another person. **730 ILCS 5/5–4.5–105(b)**

Notwithstanding any other provision of law, if the defendant is convicted of first degree murder and would otherwise be subject to sentencing under 730 ILCS 5/5–8–1(c)(iii), (iv), (v), or (vii) based on the category of persons identified therein, the court shall impose a sentence of not less than **40 years of imprisonment**. In addition, the court may, in its discretion, decline to impose the sentencing enhancements based upon the possession or use of a firearm during the commission of the offense included in 730 ILCS 5/5–8–1(d). **730 ILCS 5/5–4.5–105, PA 99-69 and PA 99-258, effective 1/1/16**

When a person under 18 years of age is sentenced as an adult for the offenses of aggravated kidnapping, criminal sexual assault, aggravated criminal sexual assault, predatory criminal sexual assault, ritualized abuse of a child, terrorism, or hindering prosecution of terrorism, the procedure under 730 ILCS 5/5–4.5–105 must be followed. **PA 99-69, effective 1/1/16**

A minor under 13 years of age shall not be admitted, kept, or detained in a **detention facili**ty unless a local youth service provider, including a provider through the Comprehensive Community Based Youth Services network, has been contacted and has not been able to accept the minor. **705 ILCS 405/5–410(2), PA 99-254, effective 1/1/16**

The **statute of limitations** does not include any period in which the sexual assault evidence is collected and submitted to the Department of State Police until the completion of the analysis of the submitted evidence. **720 ILCS 5/3–7(a)(7), PA 99-252, effective 1/1/16**

The amendment to the Illinois Constitution regarding victim's rights has been codified by amending the **Rights of Crime Victims and Witnesses Act**. The law covers the new rights and procedures that victims can use to make sure the law is being followed and can be found at **725 ILCS 120/4, 120/4.5 and 725 ILCS 120/6, PA 99-413, effective 8/20/15.**

The **confidentiality of law enforcement records** provision in the Juvenile Court Act now applies to minors who are investigated in addition to those arrested or taking into custody. **705 ILCS 405/5-905(1), PA 99-298, effective 8/6/15**

The waiting period for the **sealing of criminal records** for persons placed on court supervision has been reduced from 3 years to 2 years and the restrictions regarding prior offenses have been removed from **20 ILCS 2630/5.2(c)(3)(B).** Records that are eligible to be sealed under 20 ILCS 2630/5.2(c)(2)(D), (E) and (F) may be sealed after 3 years instead of 4 after the termination of the petitioner's last sentence. **20 ILCS 2630/5.2(c)(3)(C), PA 99-385, effective 1/1/16**

Records identified as eligible under 20 ILCS 2630/5.2 (c)(2)(C), (c)(2)(D), (c)(2)(E), or (c)(2)(F) may be **sealed** upon termination of the petitioner's last sentence if the petitioner earned a high school diploma, associate's degree, career certificate, vocational technical certification, or bachelor's degree, or passed the high school level Test of General Educational Development, during the period of his or her sentence, aftercare release, or mandatory supervised release. This applies only to a petitioner who has not completed the same educational goal prior to the period of his or her sentence, aftercare release, or mandatory supervised release. If a petition for sealing eligible records filed is denied by the court, the time periods 20 ILCS 2630/5.2 (B) or (C) shall apply to any subsequent petition for sealing filed by the petitioner. **20 ILCS 2630/5.2 (E), PA 99-378, effective 1/1/16**

Juvenile procedure caselaw

A three year old's statement to a preschool teacher was admissible in **Ohio v. Clark, 135 S.Ct. 2173(2015).** The child told his teachers that his mother's boyfriend had caused the red marks on his body. The U.S. Supreme Court found that these statements were not **testimonial in nature** because the individuals who heard the statements were not principally charged with uncovering and prosecuting criminal behavior. The Court said that the test is whether a statement was given with the primary purpose of creating an out of court substitute for trial testimony. Mandatory reporting requirements do not make a statement a "law enforcement mission".

The **exclusive jurisdiction provision** of Juvenile Court Act does not bar the prosecution of defendant who is not charged until he is over 21 years of age. The defendant in **People v. Fiveash, 2015 IL 117669, 396 Ill.Dec. 98(2015)** was 23 years of age when he was charged with aggravated criminal sexual assault for acts committed when he was 14 or 15 against his 6 year old cousin. Therefore, the defendant could be prosecuted in criminal court for those offenses.

A juvenile could file an action under the **Post-Conviction Hearing Act** after being sentenced as an adult in an EJJ proceeding. However, he was adequately notified that his conditional adult sentence could be imposed if he violated a condition of his probation. His due process rights were carefully observed. **In re E.W., 2015 IL App (5th) 140341, 390 Ill.Dec. 161, 28 N.E.3d 814(2015)**

The **mandatory provisions** of the Juvenile Court Act do not violate the eighth amendment or proportionate penalties clause. Minor was charged as an adult with first degree attempted murder and was sentenced to 25 years in prison with a 25 year sentence enhancement for discharging a firearm that proximally caused great bodily harm. **People v. Brown, 2015 IL App (1st) 130048, 391 Ill.Dec. 660, 31 N.E.3d 336(2015)**

The **automatic transfer provision** of the Juvenile Court Act was upheld in **People v. Banks, 2015 IL App (1st) 130985, 394 Ill.Dec. 499, 36 N.E.3d 432(2015).** The defendant was charged with 1st degree murder but argued that the sentencing

provisions violated his right to be free from cruel and unusual punishment and disproportionate penalties.

An order of supervision after a finding of delinquency is not a final appealable judgment under the juvenile court act. The court can terminate a continuance for supervision when it sees fit. The minor had been adjudicated for theft by deception and placed on court supervision. Therefore the appeal was dismissed. **In re Michael D., 2015 IL App (1st) 143181, 390 Ill.Dec. 870, 29 N.E.3d 1140(2015)**

The violent juvenile offender statute did not violate due process, equal protection, the 8th amendment or the proportionate penalties clause. **In re Deshawn G., 2015 IL App. (1st) 143316, 396 Ill.Dec. 40 N.E.3d 762(2015)**

The laws regarding **habitual juvenile offenders** and violent juvenile offenders do not violate the eighth amendment ban on cruel and unusual punishment. Therefore, a juvenile's sentence to the Department of Juvenile Justice until he turned 21 was upheld. **In re Isaiah D., 2015 IL App (1st) 143507, 393 Ill.Dec. 696, 35 N.E.3d 88(2015)**

The **habitual juvenile offender** provision of the Juvenile Court Act does not violate the eighth amendment of the U.S. Constitution or the proportionate penalties clause of the Illinois Constitution. **In re Shermaine S., 2015 IL App (1st) 142421, 389 Ill.Dec. 78, 25 N.E.3d 723(2015)**

An **adjudication of delinquency** may be treated as a prior conviction under Apprendi for purposes of enhancing a sentence. **People v. Jones, 2015 IL App (3d) 130053, 392 Ill.Dec. 198, 32 N.E.3d 198(2015)** The defendant received an extended term sentence based on his prior adjudications for burglary, trespass and damage to property. The state did not need to put these in the indictment or present them to the jury or prove them beyond a reasonable doubt. The information in the presentence report could be the basis for the sentence enhancement.

A juvenile could not appeal his placement on court supervision because it was not a final appealable judgment. **In re Henry B., 2015 IL App (1st) 142416, 389 Ill.Dec. 479, 26 N.E.3d 569(2015).** In this case there was no finding of guilt or judgment in the court's order. This was not a situation where the minor was appealing a condition of supervision. In that case Supreme Court Rule 604(b) would apply.

An adjudication of delinquency was reversed in **In Re S.M., 2015 Il App (3d) 140687, 389 Ill.Dec. 550, 26 N.E.3d 956(2015)** where there was no evidence that the defendant was less than **18 years** of age. The defendant never admitted he was under 18, and his unsworn answer regarding his age when the court questioned him was not a proper basis for judicial notice.

A minor did not have **standing** to challenge his 45 year mandatory adult first degree murder sentence when he was sentenced under the E JJ statute as both a juvenile and as an adult. His juvenile sentence required him to be imprisoned in the Department of

Juvenile Justice until his 21st birthday. He did not commit a new offense that would trigger the imposition of his adult sentence so he did not have the ability to challenge the adult sentence. **In Re C.C., 2015 IL App (1st) 142306, 388 Ill.Dec. 693, 24 N.E.3d 3d 1266(2015)**

Sex offenses and offenders - statutes

Records requested by persons committed to or detained by the Department of Human Services under the Sexually Violent Persons Commitment Act or committed to the Department of Corrections under the Sexually Dangerous Persons Act are exempt from the **Freedom of Information Act** if those materials: (i) are available in the library of the facility where the individual is confined; (ii) include records from staff members' personnel files, staff rosters, or other staffing assignment information; or (iii) are available through an administrative request to the Department of Human Services or the Department of Corrections. **5 ILCS 140/7(ii)** Information which is or was prohibited from disclosure by the Juvenile Court Act is exempt from inspection and copying under the Freedom of Information Act. **5 ILCS 140/7.5(bb), PA-298, effective 8/6/15**

For purposes of deciding whether an **extended term sentence** should be imposed, the court can consider whether the defendant committed the offense of criminal sexual assault, aggravated criminal sexual assault, criminal sexual abuse, or aggravated criminal sexual abuse against a victim with an intellectual disability, and the defendant holds a position of trust, authority, or supervision in relation to the victim. **730 ILCS 5/5-5-3.2(a)(29), PA 99-283, effective 1/1/16**

Another factor **t**he court can also consider is whether the defendant committed the offense of promoting juvenile prostitution, patronizing a prostitute, or patronizing a minor engaged in prostitution and at the time of the commission of the offense knew that the prostitute or minor engaged in prostitution was in the custody or guardianship of the Department of Children and Family Services. **730 ILCS 5/5-5-3.2(a)(29), PA 99-347, effective 1/1/16**

It is **an affirmative defense to a charge of prostitution** that the accused engaged in or performed prostitution as a result of being a victim of involuntary servitude or trafficking in persons. **720 ILCS 5/11-14(c–5)** There are also special procedures for raising this defense if raising it in public jeopardizes the defendant's safety. **725 ILCS 5/115-6.1. PA 99-109, effective 7/22/15**

Sex offenses and offenders – caselaw

It was constitutional to charge a **17 year old** as an adult with criminal sexual assault even though the law changed the age for such prosecution to 18 years of age after the defendant committed the offenses. The defendant argued this violated equal protection but the savings clause in the amended law made clear it only applied to crimes committed after the effective date. **People v. Richardson, 2015 IL 118255, 392 Ill.Dec. 358, 32 N.E.3d 666(2015)**

A 17 year old juvenile's adjudication for criminal sexual abuse of a 15-year-old victim did not to violate the **eighth amendment** ban on cruel and unusual punishment. The statute is rationally related to the purpose of protecting 13 to 16-year-olds from premature sexual activity**. In re Maurice D., 2015 IL App (4th) 130323, 393 Ill.Dec. 389, 34 N.E.3d 590(2015)**

A **prior uncharged sexual assault** committed 20 years earlier by the defendant against his sister could be admitted against him as evidence of other crimes even though there were some facts that differed in the separate crimes. **People v. Braddy, 2015 IL App (5th) 130354, 392 Ill.Dec.39, 32 N.E.3d 39(2015)** The defendant in both cases preyed on children with whom he had a family relationship who lived in his household.

Evidence that the defendant had sexually abused his former stepdaughter her cousin was admissible in a prosecution for predatory criminal sexual assault of a child in **People v. Smith, 2015 IL App (4th) 130205, 390 Ill.Dec. 742, 29 N.e.3d 674(2015).** The fact that there were 12 to 18 years between the **prior offenses** and the current charges was not so unduly prejudicial that it outweighed the probative nature of the other crimes evidence.

A defendant's conviction for aggravated criminal sexual assault and **aggravated kidnapping** was upheld in **People v. Johnson, 2015 IL App (1st) 123249, 389 Ill.Dec. 496, 26 N.E.3d 586(2015).** The court found that when the defendant moved the victim from a sidewalk to a vacant lot, and that it was sufficient to sustain the conviction for aggravated kidnapping.

Evidence that a defendant has committed a single sexual offense is not enough to show that the defendant has a propensity to commit sex offenses so as to be found a **sexually dangerous person. People v. Bingham, 2014 IL 115964, 381 Ill.Dec. 472, 10 N.E.3d 881(2014)**

A proceeding to review the adequacy of a **sexually dangerous person's** treatment by the Director of the Department of Corrections must take place in the county where the defendant was committed and not in the county where the person resides. **People v. Kastman, 2015 IL App (2d) 141245, 396 Ill.Dec. 931, 40 N.E.3d 816(2015)**

A court must make an explicit finding that there was a substantial probability that a **sexually dangerous person** would engage in the commission of sex offenses in the future when considering a defendant's petition he has recovered. **People v. Bailey, 2015 IL App (3d) 140497, 396 Ill.Dec. 954, 40 N.E.3d 839(2015)**

A defendant's due process rights were violated in **People v. Grant, 2015 IL App (5th) 130416, 390 Ill.Dec. 413, 28 N.E.3d 1066(2015)** where he was the subject of a **sexually dangerous person** proceeding. The psychiatric expert appointed for the State was the State's choice but the defendant was not given the same option.

A person committed as a sexually violent person did not show that an **independent examination** was crucial to his defense to the state's motion for a finding of no probable cause to warrant an evidentiary hearing. **In re Commitment of Kirst, 2015 IL App (2d) 140532, 397 Ill.Dec. 31, 40 N.E.3d 1218(2015)**

No probable cause existed as to whether a sex offender was still a **sexually violent person** so as to require an evidentiary hearing in **In re Detention of Hayes, 2015 IL App (1st) 142424, 396 Ill.Dec. 721, 40 N.E.3d 374(2015).** One of his mental disorders had changed in name only and he failed to show that there had been a change in scientific knowledge and methods used to evaluate him.

The **Sexually Violent Persons Commitment Act** does not provide for the appointment of an evaluator on behalf of the person who is the subject of the petition until after a probable cause hearing is held and in preparation for trial. **In re Detention of Carpenter, 2015 IL App (1st) 133921, 395 Ill.Dec. 275, 38 N.E.3d 152(2015)**

A person committed under the **Sexually Violent Person's Act** could not argue that he was no longer subject to commitment because the diagnosis that formed the basis of his commitment was no longer valid under the new DSM-5. The person committed was diagnosed with a disorder under DSM-5 that was equivalent with that of DSM-IV-TR. **In Re Commitment of Tittelbach, 2015 IL App (2d) 140392, 389 Ill.Dec. 806, 27 N.E.3d 648(2015)**

Drugs and alcohol

A law enforcement officer may not charge or otherwise take a person into custody based solely on the commission of an offense that involves alcohol and violates 235 ILCS 5/6-20(d) or (e) if the law enforcement officer, after making a reasonable determination and considering the facts and surrounding circumstances, reasonably believes that all of the following apply: the law enforcement officer has contact with the person because that person either requested emergency medical assistance for an individual who reasonably appeared to be in need of medical assistance due to alcohol consumption; or acted in concert with another person who requested emergency medical assistance for an individual who reasonably appeared to be in need of medical assistance due to alcohol consumption; however, this does not apply to more than 3 persons acting in concert for any one occurrence. Other requirements are that the person provided his or her full name and any other relevant information requested by the law enforcement officer, remained at the scene with the individual who reasonably appeared to be in need of medical assistance due to alcohol consumption until emergency medical assistance personnel arrived, and cooperated with emergency medical assistance personnel and law enforcement officers at the scene. A person who meets the criteria is immune from criminal liability for an offense under 235 ILCS 5/6-20(d) or (e). In addition, a person may not initiate an action against a law enforcement officer based on the officer's compliance or failure to comply with this new law except for willful or wanton misconduct. **235 ILCS 5/6-20(i)-(k), PA 99-447, effective 8/24/15.**

Synthetic drugs are now included in the definition of "controlled substance" if the drug is included in Schedules of Article II of the Controlled Substances Act. **720 ILCS 570/102, (f), PA 99-371, effective 1/1/16.**

Search and Seizure

The Public Act, **PA 99-352**, covering all of the following changes became **effective 8/12/15.**

Whenever a law enforcement officer subjects a **pedestrian to detention** in a public place, the officer shall complete a uniform pedestrian stop card, which includes any existing form currently used by law enforcement containing all the information required under the law for motorist stops, that records at least the following:

(1) the gender, and the officer's subjective determination of the race of the person stopped; the person's race shall be selected from the following list: American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, Native Hawaiian or Other Pacific Islander, or White;

(2) all the alleged reasons that led to the stop of the person;

(3) the date and time of the stop;

(4) the location of the stop;

(5) whether or not a protective pat down or frisk was conducted of the person; and, if so, all the alleged reasons that led to the protective pat down or frisk, and whether it was with consent or by other means;

(6) whether or not contraband was found during the protective pat down or frisk; and, if so, the type and amount of contraband seized;

(7) whether or not a search beyond a protective pat down or frisk was conducted of the person or his or her effects; and, if so, all the alleged reasons that led to the search, and whether it was with consent or by other means;

(8) whether or not contraband was found during the search b

(9) the disposition of the stop, such as a warning, a ticket, a summons, or an arrest;

(10) if a summons or ticket was issued, or an arrest made, a record of the violations, offenses, or crimes alleged or charged; and

(11) the name and badge number of the officer who conducted the detention.

"Detention" means all frisks, searches, summons, and arrests. **625 ILCS 5/11-212(b–5).**

This provision does not apply to searches or inspections for compliance authorized under the Fish and Aquatic Life Code, the Wildlife Code, the Herptiles–Herps Act, or searches or inspections during routine security screenings at facilities or events.**625 ILCS 5/11-212(b–5).**

Upon completion of any **temporary questioning without arrest stop** involving a frisk or search, and unless impractical, impossible, or under exigent circumstances, the officer shall provide the person with a **stop receipt** which provides the reason for the stop and contains the officer's name and badge number. This does not apply to searches or inspections for compliance with the Fish and Aquatic Life Code, the Wildlife Code, the Herptiles–Herps Act, or searches or inspections for routine security screenings at facilities or events. **725 ILCS 5/107–14(b)**

Illinois has adopted a number of new laws governing police/citizen interactions

including the **Police and Community Relations Improvement Act, 50 ILCS 727/ 1–1 et seq,** dealing with the investigation of officer-involved deaths which mandate reporting requirements, the **Uniform Crime Reporting Act, 50 ILCS 709/5-1 et seq,** which deals with a variety of reporting obligations for arrest related deaths, non fatal injuries involving the discharge of a firearm by a police officer, as well as other matters, and the **Law Enforcement Officer–Worn Body Camera Act**, 5**0 ILCS 706/10–1 et seq,** that regulates the use of body cameras by police officers.

Rules are going to be developed governing the use of **body cameras.** They are not mandatory but certain requirements must be met if they are used. One of the biggest obstacles to using them is the cost of the storage space for the data produced that will be required under the law. There will be grants available but whether they will be sufficient is unknown.

A police officer observed a vehicle veer slowly onto the shoulder of a highway then jerk back onto the road, a violation of Nebraska law. The officer had his canine in his patrol car. He then stopped the vehicle and ran a records check on the driver. After questioning the occupants of the vehicle, the officer began writing a warning ticket for the defendant for driving on the shoulder. Once the officer finished the paperwork, he asked for permission to walk his dog around the vehicle but the driver said no. The officer then instructed the driver to turn off the ignition, exit the vehicle, and stand in front of the patrol car to wait for a second officer. He complied and when the other officer arrived, the first officer retrieved his dog and led him twice around the vehicle. The dog alerted to the presence of drugs. A search found a large bag of methamphetamine. Seven or eight minutes elapsed from the time the officer issued the written warning until the dog indicated the presence of drugs. The question posed in this case is whether police routinely may extend an otherwise-completed traffic stop, absent reasonable suspicion, in order to conduct a **dog sniff.** The U.S. Supreme Court decided that the police may not extend a traffic stop to conduct a dog sniff unless it is independently supported by individualized suspicion. The case was remanded so the lower court could decide whether such suspicion existed in this case. **Rodriguez v. United States, 135 S.Ct. 1609(2015).**

The United States Supreme Court has held that a **reasonable suspicion** for a traffic stop or an investigatory stop can be based on a reasonable mistake of law. In **Heien v. North Carolina, 135 S.Ct. 530(2014)** an officer stopped a vehicle because one of its brake lights was out. However, in North Carolina, one statute required only one working brake light and another said that if a vehicle had multiple rear lamps, all must be working. A consent search turned up cocaine in the vehicle. The Court said that the mistaken understanding of the law was reasonable so the stop was valid. The officer could reasonably think that a faulty brake light was a violation.

The Illinois Supreme Court reached a similar conclusion in **People v. Gaytan, 2015 IL 116223(2015).** In that case, the car in which defendant was riding was stopped by police officers because the car had a ball-type trailer hitch which the officers believed obstructed the car's rear license plate in violation of 625 ILCS 5/3–413(b) of the Illinois Vehicle Code. When the driver of the car rolled down her window, the officers detected an odor of cannabis. A subsequent search of the car revealed a diaper bag containing

cannabis, which the driver indicated belonged to the defendant. He agreed that it was his. The Court held that an objectively **reasonable, though mistaken,** belief as to the meaning of a law may form the basis for a constitutionally valid vehicle stop under the Illinois state constitution.

Monitoring recidivist sex offenders via satellite-based monitoring systems (SBM) is a Fourth Amendment search, the United States Supreme Court decided in **Grady v. North Carolina, 135 S.Ct. 1368(2015).** However, the Court remanded the case as to whether a search is "reasonable" under the Constitution. The program was civil in nature but that did not stop it from being covered by the Fourth Amendment.

Confessions

The Illinois Supreme Court dealt with two statements given by a nine-year-old concerning the death of his 14 month old brother in **In Re D.L.H.Jr., 2015 IL 117341, 392 Ill.Dec. 499, 32 N.E.3d 1075(2015)** During the first interview, the child was questioned at his kitchen table at home with his father present by a detective in plain clothes. The child had **cognitive abilities** at the seven or eight year level and was developmentally immature. Nevertheless, the first statement was voluntary. The second statement taken by the police after was not voluntary even though his father was present where the detective admitted that he had lied and used trick tactics when questioning the child and played upon the child's fear that his family would go to jail or that he would be taken away. The officer kept emphasizing that no consequences would attach to a confession that the child hit the victim and that whatever happened was an accident or a mistake by the child.

The Illinois Supreme Court reversed a decision by the Appellate Court in **People v. Patterson, 2014 IL 115102, 388 Ill.Dec. 834, 25 N.E.3d 526(2014).** A 15 year old was arrested for aggravated criminal sexual assault. Prior to the juvenile being questioned, the police attempted to notify a concerned adult. The defendant lived at a residential facility and the police officer left telephone calls for the director of the facility and the defendant's caseworker. No one contacted the police officer until two days later. A youth officer was present during the defendant's interrogation. The minor had lived at the residential facility for three years so the court found that the director was arguably a person with whom the defendant resided. The Court said that the statute requiring the police to make such a contact does not require that a concerned adult be present during the questioning. The court also found that the presence of the youth officer during the interrogation was not improper because he did not ask any questions during the interview, he made sure that the defendant had anything he needed, he ensured that the minor was treated properly, was read Miranda rights, and understood those rights. Therefore, the juvenile's **confession** was voluntary despite his age, lack of experience with the criminal justice system, and the absence of a concerned adult. The Court also found that the mandatory transfer law was constitutional.

A confession of a 17 year old minor was upheld in **People v. Macias, 2015 IL App (1st) 132039, 394 Ill.Dec.440, 36 N.E.3d 373(2015)** even though he was not

specifically advised that he had a **right to an attorney** before and during questioning. The court found that as long as the warnings reasonably convey to a suspect his rights, they are sufficient. He also contended that when he asked to let his parents know where he was, he was told he could when he got to lockup. His mother tried to find him at the police station but was told he was in custody and was not permitted to speak with him. The defendant dropped out of school at 16. The court found that he had been permitted to sleep uninterrupted. After viewing the video of the confession, the court agreed that the interrogation was aggressive but not threatening. The use of profanity and yelling did not change the court's finding that the confession was voluntary.

A minor's confession was voluntary in **People v. Edwards, 2015 IL App (3d) 130190, 392 Ill.Dec. 116, 32 N.E.3d 116(2015)** He was 17 years old and had mental health disorders. He had not finished high school and the police did not contact his parents. However, the Court found that **705 ILCS 405/5-405(2)** did not apply to him because he was over 16 years of age (this provision was later amended). He also responded appropriately to questions, there was no deception used, and there were 2 juvenile officers who acted in the youth's best interests (though they did record his confession).

A defendant was in **custody** in **People v. Follis, 2014 Il App (5th) 130288, 381 Ill.Dec. 840, 11 N.E.3d 471(2014)**. Police officers had gone to his home and asked the defendant to go with them to the police department. At the police department he was questioned after receiving Miranda warnings. The defendant had a low IQ and suffered from depression and ADHD. The court found that as a result of his level of intelligence and mental impairments, the defendant did not knowingly, intelligently and voluntarily waive his Miranda rights. The appellate court found that under the totality of the circumstances the defendant was in custody during the interrogation and it could not conclude that the trial court erred when it suppressed the defendant's confession.

A defendant's statement was **voluntary** in **People v. Baker, 2015 IL App (5th) 110492, 390 Ill.Dec. 183, 28 N.E.3d 836(2015).** Police officers gave Miranda warnings to the juvenile and he said he understood them and what was happening. The 15-year-old minor was interviewed in a hospital bed, was sleep deprived and intoxicated, and was taking medication for depression.

A minor's **confession** in **People v. Richardson, 2015 IL App (1st) 113075, 391 Ill. Dec. 66, 30 N.E.3d 336(2015),** was upheld where his waiver of his Miranda rights was knowing and intelligent even though a psychological evaluation showed he was in the upper echelon of mild mental retardation. The defendant had been previously arrested and adjudicated a delinquent minor, he understood his rights and gave responsive answers to questions. His mother was also present during questioning.

Orders of protection and domestic violence

It is a **factor in mitigation** that at the time of the offense, the defendant is or had been the victim of domestic violence and the effects of the domestic violence tended to

excuse or justify the defendant's criminal conduct. **730 ILCS 5/5-5-3.1(a)(15), PA 99-384, effective 1/1/16**

In counties with a population over 3,000,000, a **special process server** may not be appointed to serve an order of protection if the order grants the surrender of a child, the surrender of a firearm or firearm owners identification card, or the exclusive possession of a shared residence. **725 ILCS 5/112A-10 and 750 ILCS 60/210, PA 99-240, effective 1/1/16**

A defendant violated an **order of protection** in **People v. Brzowski, 2015 IL App (3d) 120376, 392 Ill.Dec. 576, 32 N.E.3d 1152(2015)** when he sent his sons mail in that he violated the order to "stay away" from them. The Court found that he was properly notified of the order and its extension.

A court could not issue an order of protection keeping the defendant at least 1000 feet away from the **victim's school** because that exceeded the authority set forth in the Domestic Violence Act. **People v. Gabriel, 2014 IL App (2d) 130507, 389 Ill.Dec. 53, 25 N.E.3d 698(2014)** The order required the defendant to stay at least a thousand feet away from the college the victim was attending even at times when the victim was not there. If there had been evidence that the victim was present during the defendant's presence on the campus or that he intended to be present in the restricted zone when she was there, the outcome might have been different.

Offenses by Minors

The FOID card provision of the **AAUW** statute is severable from the unconstitutional provision. That section of the aggravated unlawful use of weapon statute is constitutional. The age restrictions of the AAUW do not violate the 2nd Amendment. Therefore, a juvenile's adjudications on both charges were upheld. The Illinois Supreme Court also ruled in **People v. Mosley, 2015 IL 115872, 392 Ill.Dec. 588, 33 N.E.3d 137(2015)** that the prohibition on persons under 21 years of age carrying a firearm while outside one's home or on a public way does not violate the right to bear arms provision.

A charge of **obstruction of justice** was proper in **In re Q.P., 2015 IL 118569, 396 Ill.Dec. 356(2015)** The minor was in custody in the back of a squad car and handcuffed. He then gave false information about his identity. Because he gave the police officer a false name and birth date, he intended to avoid "apprehension" on an outstanding arrest warrant, as required to support the adjudication of delinquency on a charge for obstruction of justice.

Offenses against minors

Evidence was sufficient to uphold the **first-degree murder**, involuntary manslaughter and endangering the life or health of a child convictions in **People v.**

Pollard, 2015 IL App (3d) 130467, 393 Ill.Dec. 231, 33 N.E.3d 975(2015) The mother failed to follow the directions for medical care of her prematurely born 2 month old, even turning off his heart monitor.

In **Elonis v. U.S., 135 S.Ct. 2001(2015),** a defendant was charged with the federal offense of making threatening communications after he posted comments on a social networking website. He posted lyrics with graphically violent language regarding his wife, coworkers, a kindergarten class and law enforcement. Many people who saw the lyrics believed them to be threatening. But, the U.S. Supreme Court found that the government was required to prove that the defendant intended to communicate a true threat, not whether a reasonable person would see them as a threat. The Court said that the prosecution must show more than a **mental state** of negligence.

Traffic

Speeding in a school zone has been amended to include the offense of **aggravated special speed limit while passing schools** which occurs when the person travels 26 miles per hour or more but less than 35 miles per hour over the school speed limit (a Class B misdemeanor) or more than 35 miles per hour or more in excess of the applicable school speed limit (a Class A misdemeanor). **625 ILCS 5/11–605(e-5)** A person charged with speeding in a school zone may not receive **court supervision** if he or she has a prior conviction for that offense or has been placed on court supervision for speeding in a school zone. **730 ILCS 5/5–6–1(p).** This is a major change. **PA-212, effective, 1/1/16**

Child abuse and neglect

A rule to show cause issued against DCFS officials was struck down by the appellate court in **In Re M.S., 2015 IL App (4th) 140857, 390 Ill.Dec. 971, 29 N.E.3d 1241(2015)**. The judge had found DCFS in indirect civil contempt of court and DCFS appealed. However, there was no order requiring DCFS to remove dependent children from foster care after a foster parent had positive drug test so the contempt action failed.

DCFS should have expunged an **indicated finding of child neglect** due to inadequate supervision because it was clearly erroneous. DCFS did not show that the mother's use of synthetic marijuana produced a substantial state of stupor such that she put her child in danger. **L.F. v. DCFS, 2015 IL App (2d) 131037, 390 Ill.Dec. 604, 29 N.E.3d 536(2015)**

Trial court committed error when it gave custody of children to DCFS without finding that the mother was **unfit** or that she was unable or unwilling to care for her children. That is was in the children's best interest was not enough. The court had found that they were neglected due to an environment injurious to their welfare. **In re M.M., 2015 IL App(3d) 130856, 396 Ill.Dec. 384, 40 N.E.3d 37(2015)**

A mother's parental rights were properly terminated it **In Re S.W., 2015 IL App (3d) 140981, 393 Ill.Dec. 117, 33 N.E.3d 861(2015)** where the mother had continually

sought **continuances** in order to obtain private counsel. The court denied the final motion for continuance but there was no showing that giving her more time would have enabled her to obtain a private attorney.

In Re Audrey B., 2015 IL App (1st) 142909, 391 Ill.Dec. 917, 31 N.E.3d 892(2015) – physical abuse finding upheld where court did not rely on **constellation of injuries** theory. Fractured clavicle supported medical neglect finding.

In re N.T., 2015 IL App (1st) 142391, 391 Ill.Dec. 578, 31 N.E.3d 254(2015) – termination of mother's parental rights to allow adoption by maternal grandmother in **child's best interests** where child had been living with grandmother all her life.

In Re L.B., 2015 IL App (3d) 150023, 394 Ill.Dec. 327, 36 N.E.3d 260(2015) - termination of mother's parental rights upheld even though father was a fit parent. Mother was unable to provide children's basic needs.

In re Marianna F.M., 2015 IL App (1st) 142897, 392 Ill.Dec. 171, 32 N.E.3d 171(2015) - finding that father was fit was against manifest weight of the evidence. There was no evidence that the father took responsibility for excessive corporal punishment he administered to child.

In re S.R., 2014 IL App (3d) 140565, 388 Ill.Dec. 155, 24 N.E.3d 63(2014) – mother's schizophrenia kept her from performing her normal duties so termination of rights was in best interest of child.

In re Kelvion V., 2014 IL App (1st) 140965, 388 Ill.Dec. 323, 24 N.E.3d 231(2014) – mother violated protective order and judge could remove children from her care.