DUPAGE JUVENILE OFFICERS' ASSOCIATION

JUVENILE LAW UPDATE 2017

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Juvenile procedure - statutory

A major change has occurred to the **sentencing provisions** of the **Juvenile Court Act**. A minor found to be guilty in a juvenile court case may be committed to the Department of Juvenile Justice under Section 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 the minor was found guilty of a felony offense or first degree murder. 705 ILCS 405/5–710(1)(b). And, in no event shall a guilty minor be committed to the Department of Juvenile Justice for an offense which is a Class 4 felony under Section 19–4 (criminal trespass to a residence), 21–1 (criminal damage to property), 21–1.01 (criminal damage to government supported property), 21–1.3 (criminal defacement of property), 26–1 (disorderly conduct), or 31–4 (obstructing justice), of the Criminal Code of 2012. **705 ILCS 405/5–710 (7.6)**

Every youth committed to the Department of Juvenile Justice under 705 ILCS 405/5–750, except those committed for first degree murder, shall be eligible for aftercare release without regard to the length of time the youth has been confined or whether the youth has served any minimum term imposed, placed on aftercare release on or before his or her 20th birthday or upon completion of the maximum term of confinement ordered by the court under 705 ILCS 405/5–710, whichever is sooner, and/or considered for aftercare release at least 30 days prior to the expiration of the first year of confinement and at least annually thereafter. But, this does not apply to the initial release of youth committed to the Department under 705 ILCS 405/5–815 or 5–820. Those youth must serve their determinate sentence before being released. ????Subsections (d) through (l) of this Section do not apply when a youth is released under paragraph (2) of subsection (a) of this Section or the youth's release is otherwise required by law or ordered by the court. Youth who have been tried as an adult and committed to the Department under 730 ILCS 5/5–8–6 are only eligible for mandatory supervised release as an adult under 730 ILCS 5/3–3–3. **730 ILCS 5/3-2.5-85, PA 99-628, effective 1/1/17**

A minor who was **under 15 years** of age at the time of the commission of an act that if committed by an adult would be a violation of Section 9–1, 9–1.2, 9–2, 9–2.1, 9–3, 9–3.2, 9–3.3, 11–1.20, 11–1.30, 11–1.40, 11–1.50, 11–1.60, 12–13, 12–14, 12–14.1, 12–

15, or 12–16 of the Criminal Code of 1961 or the Criminal Code of 2012 must be represented by counsel throughout the entire **custodial interrogation** of the minor. **705 ILCS 405/5-170(a)** In a county without a full-time public defender, the law enforcement agency conducting the custodial interrogation shall ensure that the minor is able to consult with an attorney who is under contract with the county to provide public defender services. Representation by the public defender shall terminate at the first court appearance if the court determines that the minor is not indigent. **55 ILCS 5/3-4006**

An oral, written, or sign language statement of a minor, who at the time of the commission of the offense was under 18 years of age, is presumed to be inadmissible when the statement is obtained from the minor while the minor is subject to **custodial interrogation** by a law enforcement officer, State's Attorney, juvenile officer, or other public official or employee prior to the officer, State's Attorney, public official, or employee:

(1) continuously reads to the minor, in its entirety and without stopping for purposes of a response from the minor or verifying comprehension, the following statement: "You have the right to remain silent. That means you do not have to say anything. Anything you do say can be used against you in court. You have the right to get help from a lawyer. If you cannot pay for a lawyer, the court will get you one for free. You can ask for a lawyer at any time. You have the right to stop this interview at any time."; and

(2) after reading the required statement, the public official or employee shall ask the minor the following questions and wait for the minor's response to each question:

(A) "Do you want to have a lawyer?"

(B) "Do you want to talk to me?"

705 ILCS 405/5-401.5(a–5) and 725 ILCS 5/103-2.11(a-5)

An oral, written, or sign language statement of a minor who, at the time of the commission of the offense was under the age of 18 years, made as a result of a custodial interrogation conducted at a police station or other place of detention on or after 1/1/17 shall be presumed to be inadmissible as evidence against the minor in any criminal proceeding or juvenile court proceeding, for an act that if committed by an adult would be a misdemeanor offense under Article 11 of the Criminal Code of 2012 or any felony offense unless:

(1) an **electronic recording** is made of the custodial interrogation; and

(2) the recording is substantially accurate and not intentionally altered.

705 ILCS 405/5-401.5(b) and 725 ILCS 5/103-2.1(a–10)

If, during the course of an electronically recorded custodial interrogation conducted under this Section of a minor who, at the time of the commission of the offense was under the age of 18 years, the minor makes a statement that creates a reasonable suspicion to believe the minor has committed an act that if committed by an adult would be an offense other than an offense required to be recorded under subsection (b), the interrogators may, without the minor's consent, continue to record the interrogation as it relates to the other offense notwithstanding any provision of law to the contrary. Any oral, written, or sign language statement of a minor made as a result of an interrogation shall be presumed to be inadmissible as evidence against the minor in any criminal proceeding or juvenile court proceeding, unless the recording is substantially

accurate and not intentionally altered. **705 ILCS 405/5-401.5(b–10)**, **PA 99-882, effective 1/1/17**

For a person to receive a **natural life sentence** for a conviction under the circumstances described in 720 ILCS 5/11–1.20 (b)(1)(B) or 720 ILCS 5/12–13(b)(3), 720 ILCS 5/11–1.30 (d)(2) or 720 ILCS 5/12–14(d)(2), 720 ILCS 5/11–1.40(b)(1.2) or paragraph (1.2) of subsection (b) of Section 12–14.1, subdivision (b)(2) of Section 11–1.40 or 720 ILCS 5/12–14.1(b)(2), the person must have attained the age of 18 at the time of the commission of the offense. **730 ILCS 5/5-8-1(a)(2.5), PA 99-875, effective 1/1/17**

In no event shall a guilty minor be committed to the Department of Juvenile Justice for an offense that is a Class 3 or Class 4 felony violation of the **Illinois Controlled Substances Act** unless the commitment occurs upon a third or subsequent judicial finding of a violation of probation for substantial noncompliance with court ordered treatment or programming. **705 ILCS 405/5-710(7.75)**

The period of probation for a minor who is found guilty of aggravated criminal sexual assault, criminal sexual assault, or aggravated battery with a firearm shall be at least 36 months. The period of probation for a minor who is found to be guilty of any other Class X felony shall be at least 24 months. The period of probation for a Class 1 or Class 2 forcible felony shall be at least 18 months. Regardless of the length of probation ordered by the court, for all offenses listed in this paragraph, the court shall schedule hearings to determine whether it is in the best interest of the minor and public safety to terminate probation after the minimum period of probation has been served. In such a hearing, there shall be a rebuttable presumption that it is in the best interest of the minor and public safety to terminate probation. **705 ILCS 405/5-715(1.5), PA 99-879, effective 1/1/17**

Whenever a person has been arrested, charged, or adjudicated delinquent for an incident occurring before his or her 18th birthday that if committed by an adult would be an offense, the person may petition the court at any time for **expungement** of law enforcement records and juvenile court records relating to the incident and upon termination of all juvenile court proceedings relating to that incident, the court shall order the expungement of all records in the possession of the Department of State Police, the clerk of the circuit court, and law enforcement agencies relating to the incident~~,~~ but only in any of the following circumstances:

1. the minor was arrested and no petition for delinquency was filed with the clerk of the circuit court;
2. the minor was charged with an offense and the petition or petitions were dismissed without a finding of delinquency;
3. the minor was charged with an offense and was found not delinquent of that offense;
4. the minor was placed under supervision pursuant to Section 5–615, and the order of supervision has since been successfully terminated; or
5. the minor was adjudicated for an offense which would be a Class B misdemeanor, Class C misdemeanor, or a petty or business offense if committed by an adult. **705 ILCS 405/5-915(1)**

If a minor is arrested and no petition for delinquency is filed with the clerk of the circuit court as provided in paragraph (a) of subsection (1) at the time the minor is released from custody, the youth officer, if applicable, or other designated person from the arresting agency, shall notify verbally and in writing to the minor or the minor's parents or guardians that the minor has a right to petition to have his or her arrest record expunged when all juvenile court proceedings relating to that minor have been terminated and that unless a petition to expunge is filed, the minor shall have an arrest record and shall provide the minor and the minor's parents or guardians with an expungement information packet, including a petition to expunge juvenile records obtained from the clerk of the circuit court. **705 ILCS 405/5-915(2.5), PA 99-835,**

The statute that allows **hearsay statements** admitted in the case of a victim of a physical or sexual act when the person has a moderate, severe, or profound intellectual disability has changed the terminology to describe such persons to "persons with an intellectual disability, a person with a cognitive impairment, or a person with a developmental disability". "Person with a cognitive impairment" means a person with a significant impairment of cognition or memory that represents a marked deterioration from a previous level of function. Cognitive impairment includes, but is not limited to, dementia, amnesia, delirium, or a traumatic brain injury. "Person with a developmental disability" means a person with a disability that is attributable to (1) an intellectual disability, cerebral palsy, epilepsy, or autism, or (2) any other condition that results in an impairment similar to that caused by an intellectual disability and requires services similar to those required by a person with an intellectual disability. "Person with an intellectual disability" means a person with significantly subaverage general intellectual functioning which exists concurrently with an impairment in adaptive behavior. **725 ILCS 5/115-10(a) and (f), PA 99-752, effective 1/1/17.**

Closed circuit television may now be used for the testimony of a child or person with an intellectual or developmental disability in cases involving aggravated battery or aggravated domestic battery. **725 ILCS 5/106B-5(a), PA 99-630, effective 1/1/17**

Juvenile procedure caselaw

The Supreme Court decision prohibiting **mandatory life sentences** without parole for juvenile offenders is retroactive. **Montgomery v. Louisiana, 136 S.Ct. 718(2016)**

A consecutive mandatory minimum sentence for first degree murder and attempted murder with mandatory firearm enhancements for a juvenile was equivalent to a life sentence without the possibility of parole. Therefore, it violated the **Eighth Amendment.** The defendant was entitled to be resentenced. **People v. Reyes, 2016 IL 119271, 407 Ill.Dec. 452, 63 N.E.3d 884.**

A **sentence** that in the aggregate was for 78 years in prison violated the 8th amendment as applied to a 17 year old juvenile convicted of first degree murder. **People v. Nieto, 2016 IL App (1st) 121604, 402 Ill.Dec. 521, 52 N.E.3d 442(2016)**

A defendant's discretionary **life sentence** for first-degree murder was upheld in **People v. Stafford, 2016 IL App (4th) 140309, 406 Ill.Dec. 790, 61 N.E.3d 1058(2016).** The defendant was 17 years of age at the time of the crime. The court did not consider peer pressure to be a factor or give the sentence for a deterrent effect. The defendant had a history of physical and sexual aggression. Therefore, no improper factors were considered.

A **natural life sentence** for a 17 year old convicted of murder did not violate the 8th Amendment where the court has the discretion to impose a lesser offense, the defendant had prior murder convictions and he lacked remorse. **People v. Holman, 2016 IL App (5th) 100587-B, 405 Ill.Dec. 371, 58 N.E.3d 632(2016)**

The State is required to identify victims in a **charging document**. The defendant was charged with domestic battery but the State refused to amend it to name the minor victim, even by the victim's initials. Therefore, the dismissal of the complaint was upheld. **People v. Espinoza, 2015 IL 118218, 398 Ill.Dec. 83, 43 N.E.3d 993(2015)**

The new sentencing **mitigation statute** for juveniles does not apply retroactively. **People v. Wilson, 2016 IL App (1st) 141500, 407 Ill.Dec. 84, 62 N.E.3d 329(2016) and People v. Jackson, 2016 IL App (1st) 141448, 407 Ill.Dec. 674, 64 N.E.3d 52(2016).** Also, the amended statute expanding the juvenile court's jurisdiction to offenses committed before a juvenile's 18th birthday was not retroactive.

Trial court failed to show in the record that it considered the **availability of services** for the minor in the Department of Juvenile Justice though there was sufficient evidence to sustain the finding of guilty for aggravated unlawful use of a weapon. **In re Justin F., 2016 IL App (1st) 153257, 404 Ill.Dec. 231, 55 N.E.3d 705(2016)** Trial court failed to satisfy requirement on the record that DJJ was least restrictive alternative available to juvenile committed to an indeterminate period not to exceed his 21st birthday for new charge and probation violations.

A juvenile was not entitled to credit for time served on an indirect contempt of court petition on other contempt actions resulting from violations of his probation. **In re L.W., 2016 IL App (3d) 160092, 405 Ill.Dec. 636, 58 N.E.3d 897(2016)**

The **Violent Offender Against Youth Registration Act** does not deny a juvenile offender equal protection, or due process even though they are treated differently from juvenile sex offenders. The Acts apply to each group in a unique manner. **In Re M.A., 2015 IL 118049, 397 Ill.Dec. 759, 43 N.E.3d 86(2015)**

Juvenile was entitled to hearing on whether counsel was ineffective for failure to investigate and impeach victim with prior felony conviction for aggravated domestic battery. **In re Alonzo O., 2015 IL App (4th) 150308, 397 Ill.Dec. 44, 40 N.E.3d 1228(2015)**

Mandating the completion of a **treatment program** violated the 30-day limitation for detention under the Juvenile Court Act. The defendant had been adjudicated a delinquent for the offense of possession of drug paraphernalia. **In re Austin S., 2015 IL App (4th) 140802, 399 Ill.Dec. 106, 45 N.E.3d 1096(2015)**

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 previous **exclusive jurisdiction** statute that made it mandatory to charge juveniles as adults did not violate the 8th amendment. But, the adult sentencing scheme violated the proportionate penalty provision of the Illinois Constitution where a juvenile received a 40 year sentence for attempted murder of a police officer where he had no prior criminal history and no one was injured. **People v. Aikens, 2016 IL App (1st) 133578, 407 Ill.Dec. 299, 63 N.E.3d 223(2016)** No retroactivity for those offenses no longer automatically tried in adult court. **People v. Hunter, 2016 IL App (1st) 141904, 407 Ill.Dec. 1, 62 N.E.3d 246(2016)**

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.

Sex offenses and offenders - statutes

Beginning 7/22/16 each law enforcement agency must conduct an annual inventory of all **sexual assault cases** in the custody of the law enforcement agency and provide written notice of its annual findings to the State's Attorney's Office having jurisdiction to ensure sexual assault cases are being submitted as provided by law. **725 ILCS 202/20(c), PA 99-617, effective 7/22/16**

Sex offenses and offenders – caselaw

The State is not entitled, in a **recovery proceeding**, to retain an independent psychiatric expert when it disagrees with the DOC evaluators' report in a Sexually Dangerous Person action. **People v. Grant, 2016 IL 119162, 402 Ill.Dec. 387, 52 N.E.3d 308(2016)**

The trial court does not need to find that a **sexually dangerous person** defendant is no longer dangerous in order to discharge him just that he is no longer sexually dangerous. **People v. Guthrie, 2016 IL App (4th) 150617, 404 Ill.Dec. 862, 57 N.E.3d 621(2016)**

There was no **prosecutorial vindictiveness** in a Sexually Dangerous Person action where the State brought suit after learning it could not use defendant's prior offenses as part of criminal sexual assault charge. The criminal speedy trial statute does not apply to Sexually Dangerous Person proceedings and there is no civil **statute of limitations** that applies. **People v. Holmes, 2016 IL App (1st) 132357, 400 Ill.Dec. 236, 48 N.E.3d 185(2016).**

Even though the State failed to file a **reexamination report** within 12 months of a prior report in a sexually violent person action, it did not require that the respondent be discharged. There were no grounds for an immediate release as the respondent remained a SVP. **In re Detention of King, 2016 IL App (1st) 150041, 407 Ill.Dec. 331, 63 N.E.3d 255(2016)**

Filing a **petition for discharge** did not qualify as a post-judgment motion that tolled the time for filing a petition for discharge following a yearly reexamination for a sexually violent person. **In re Commitment of Simons, 2015 IL App (5th) 140566, 399 Ill.Dec. 123, 45 N.E.3d 1113(2015)**

There was no probable cause to warrant an **evidentiary hearing** in a sexually violent person case to determine if he was still an SVP so no independent examiner had to be appointed. **In Re Commitment of Kirst, 2015 IL App (2d) 140532, 397 Ill.Dec. 31, 40 N.E.3d 1215(2015)**

There was sufficient evidence that the respondent was a **sexually violent person**. He had two convictions for rape and experts said he suffered from a paraphillic disorder and antisocial personality. **In re Detention of White, 2016 IL App (1st) 151187, 407 Ill.Dec. 633, 64 N.E.3d 11(2016)**

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)**

Defendant was entitled to an **evidentiary hearing** because he established probable cause to show he might not be a sexually violent person. **In re Commitment of Wilcoxen, 2016 IL App (3d) 140359, 400 Ill.Dec. 328, 48 N.E.3d 277(2016)**

The **Sex Offender Registration Act** and Sex Offender Community Notification Law did not violate due process or the 8th Amendment even assuming the SORA constituted punishment. **People v. Pollard, 2016 IL App (5th) 130514, 403 Ill.Dec. 574, 54 N.E.3d 234(2016) In re A.C., 2016 IL App (1st) 153047, 403 Ill.Dec. 811, 54 N.E.3d 952(2016)**

Nor does it violate the prohibition on **disproportionate penalties. People v. Avila-Briones, 2015 Il App (1st) 132221, 401 Ill.Dec. 40, 49 N.E.3d 428(2015)**

Due process does not require the **Department of Human Services** to formulate a plan to address a sex offender's refusal to undergo sex offender treatment after he was diagnosed with pedophilia. **People v. Olsson, 2016 IL App (2d) 150874, 401 Ill.Dec. 589, 50 N.E.3d 731(2016)**

A defendant was properly convicted of **being present in a school zone** as a child sex offender in **People v. Howard, 2016 IL App (3d) 130959, 400 Ill.Dec. 278, 48 N.E.3d 227(2016).** The defendant was loitering because he drove his friend to a restaurant and then to school to deliver lunches to her grandchildren. He waited in the car outside the school building while his friend went inside.

A defendant's conviction for **giving a false residential address** on a sex offender registration was overturned in **People v. Manskey, 2016 IL App (4th) 140440, 404 Ill.Dec. 302, 55 N.E.3d 776(2016).** The evidence consisted of a signed statement by the owner of the house which said that the defendant had never lived there. The statute only requires that a defendant stay at a home for 3 days for it to be his "residence".

A defendant, a sex offender, **failed to report** and register his change of address in **People v. Brock, 2015 IL App (1st) 133404, 398 Ill.Dec. 45 N.E.3d 295(2015)** as required by the Sex Offender Registration Act. While he appeared at the police department, he did not have proof of his residence as required. Merely appearing is not enough.

Statements made by a victim to a nurse after a criminal sexual assault were not **testimonial** in nature. Consequently, they were admissible at the trial at which the victim did not testify. **People v. Munoz-Salgado, 2016 Ill.Dec. (2d) 140325, 406 Ill.Dec. 653, 61 N.E.3d 257(2016)**

A **video and audio recording** of a statement made by a 6 year old victim was admissible in a predatory sexual assault case where the child made a statement to a victim's advocate and her mother. **People v. Johnson, 2016 IL App (4th) 150004, 403 Ill.Dec. 845, 55 N.E.3d 32(2016)**

Conviction for **attempted criminal sexual abuse** upheld where child testified she woke up and defendant was rubbing her private area in a circular motion, she saw defendant remove his hand out from under the sheet, and witness sharing bedroom said she heard victim scream and saw defendant at end of the bed. **People v. Mack, 2016 IL App (5th) 130294, 402 Ill.Dec. 851, 52 N.E.3d 772(2016)**

The evidence was insufficient in **People v. Roldan, 2015 IL App (1st) 131962, 397 Ill.Dec. 590, 42 N.E.3d 836(2015)** to prove that a defendant knew that a victim in a **criminal sexual assault** case could not consent. There was no evidence that the victim had a "black out". She went with the defendant to his car and walked home without assistance. The fact that he knew she had consumed alcohol was not enough.

There was sufficient evidence for a conviction for **aggravated criminal sexual abuse** in **People v. Morger, 2016 IL App (4th) 140321, 405 Ill.Dec. 926, 59 N.E.3d 219(2016)** where the victim said the defendant touched her 3 different times when she was between 13 and 15 years of age. The defendant testified that he was about 16 at the time of the first incident which would mean the victim was 11 years of age. He tried to force the victim to touch him and make her touch his penis.

The ten year **statute of limitations** for sexual assaults that were reported within 2 years of the offense was the proper time within which to charge the victim's doctor. **People v. Smith, 2016 Il App (1st) 140039, 403 Ill.Dec. 486, 53 N.E.3d 1123(2016)** The victim reporting the assault within weeks after it occurred.

Evidence of **other sexual crimes** with minors was admissible in predatory criminal sexual assault case to show motive, knowledge, common design, identity and intent. **People v. Wilson, 2015 Il App (4th) 130512, 398 Ill.Dec. 603, 44 N.E.3d 632(2015)**

Drugs and alcohol

Major changes have been enacted by the State of Illinois regarding **cannabis.** They can be found in PA 99-697, and were effective 7/29/16. The full text can be found here: http://www.ilga.gov/legislation/publicacts/99/PDF/099-0697.pdf
If a person possesses not more than 10 grams of any substance containing **cannabis**, it is no longer a misdemeanor but rather, a **civil law** violation punishable by a minimum fine of $100 and a maximum fine of $200. In addition, the amounts possessed constituting a misdemeanor or felony offense have changed. Possession of any substance containing cannabis in the following amounts are as follows - **720 ILCS 550/4:**

>10-30g	Class B
>30-100g	Class A
>30-100g 2nd+ offense	Class 4
>100-500g	Class 4
>100-500g 2nd+ offense	Class 3
>500-2000g	Class 3
>2,000-5000g	Class 2
>5000g	Class 1

Municipal ordinances seem to be exempt from the new cannabis provisions. The law states: "The provisions of any ordinance enacted by any municipality or unit of local government which imposes a fine upon cannabis other than as defined in this Act are not invalidated or affected by this Act." **720 ILCS 550/17.5**

In civil cannabis cases, or in municipal ordinance violations punishable by a fine only, cannabis shall only be admitted into evidence based upon a properly administered field test or opinion testimony of a peace officer based on the officer's training and experience as qualified by the court. **725 ILCS 5/115–23**

The Illinois Supreme Court has adopted rules applicable to this new civil violation. **Rule 586** provides that the officer or clerk of the circuit court shall give the accused a first appearance date 30 to 45 days from the date of the violation whenever

practicable. The accused is to pay $120 per violation on or before the appearance date set by the officer or clerk of the circuit court or to appear in court. It is the policy of this court that the issuing officer is not required to appear on this day. Rule 587 provides that when issuing a Uniform Civil Law Citation, the officer shall also issue a written notice to the accused in substantially the following form:

CONTEST THIS VIOLATION
"If you intend to contest this violation or if you intend to demand a trial, so notify the clerk of the circuit court at least 10 work days before the date set for your appearance. Note that appearing in court may result in additional fines and fees. A new appearance date will be set, and you will be notified of the time and place of your appearance. When you are notified of your new appearance date, you should come to court prepared for trial and bring any witnesses you may have. You will also have the opportunity to demand a trial by jury, which would occur at a later date. If you demand a trial by jury, additional fees may apply."

Law enforcement officers must use a Uniform Civil Law Citation (which is going to be created by the Conference of Chief Circuit Court Judges) that must be transmitted to the clerk of the court within 48 hours after it is issued. (Rule 589) If the accused fails to pay the fine, a default judgment is to be issued. (Rule 590)

There is a new crime, **unlawful use of cannabis-based product manufacturing equipment** that occurs when a person knowingly engages in the possession, procurement, transportation, storage, or delivery of any equipment used in the manufacturing of any cannabis-based product using volatile or explosive gas, including, but not limited to, canisters of butane gas, with the intent to manufacture, compound, covert, produce, derive, process, or prepare either directly or indirectly any cannabis-based product. (This does not apply to licensed cannabis cultivation centers.) A violation is a Class 2 felony. **720 ILCS 550/5.3**

The **drug paraphernalia** law has also been amended. If a person possesses not more than 10 grams of cannabis, the penalty for possession of any drug paraphernalia seized during the violation for that offense shall be a civil law violation punishable by a minimum fine of $100 and a maximum fine of $200. **720 ILCS 600/3.5**

The concurrent jurisdiction section of the **Juvenile Court Act** has been amended to take into account the new civil cannabis and drug paraphernalia provisions. The confidentiality of records provisions in the Juvenile Court Act shall apply to any law enforcement and court records relating to prosecution of a minor under 18 years of age for a municipal or county ordinance violation or a violation of 720 ILCS 550/4(a) or 720 ILCS 600/3.5(c) except that these confidentiality provisions shall not apply to or affect any proceeding to adjudicate the violation. **705 ILCS 405/5–125**

The law enforcement agency issuing civil cannabis or drug paraphernalia citations shall automatically **expunge,** on or before January 1 and July 1 of each year, the law enforcement records of a person found to have committed such a civil law violation in the law enforcement agency's possession or control and which contains the final satisfactory disposition which pertain to the person issued a citation for that offense. The law enforcement agency shall provide by rule the process for access, review, and to confirm the automatic expungement by the law enforcement agency issuing the citation. The clerk of the circuit court shall expunge, upon order of the court, or in the absence of a court

order on or before January 1 and July 1 of each year, the court records of a person found in the circuit court to have committed such a civil law violation in the clerk's possession or control and which contains the final satisfactory disposition which pertain to the person issued a citation for any of those offenses. These provisions are not effective until 180 days after July 29, 2016. **20 ILCS 2630/5.2(2.5)**

Persons who previously could not obtain a **medical marijuana** identification card, are now eligible if they were previously disqualified because they had a felony conviction under the Cannabis Control Act and the offense is no longer a felony. **410 ILCS 130/65(b–5)**

In addition to breath, blood, and urine, testing of "other bodily substance" is now included in the DUI laws that govern **implied consent** for crew members of an aircraft (620 ILCS 5/43d and 43e), Secretary of State hearings (625 ILCS 5/2–118), school bus drivers (625 ILCS 5/6–106.1a), persons with a CDL (625 ILCS 5/6–514), motor vehicle accidents involving death or injury (625 ILCS 5/11–401, 625 ILCS 5/11-501.6), DUI offenses (625 ILCS 5/11-501), summary suspension provisions (625 ILCS 5/11-501.1), chemical testing (625 ILCS 5/11-501.2), admissibility of chemical tests (625 ILCS 5/11-501.4), suspension of driver's license of person under age 21 (625 ILCS 5/11-501.8), supervising a minor driver while under the influence (625 ILCS 5/11-507), operating a snowmobile (625 ILCS 40/5-7 et seq), admissibility of tests conducted during routine emergency medical treatment (625 ILCS 40/5-7.4), and operating a watercraft under the influence (625 ILCS 45/5-16 et seq).

The standard for **cannabis consumptio**n involving the above **DUI violations** and summary suspension has been changed. For non-CDL drivers or operators, there must be a tetrahydrocannabinol concentration as defined in 625 ILCS 5/11-501.2(a)(6), or any amount of a drug, substance, or compound in the person's blood, other bodily substance, or urine for those laws to apply. Tetrahydrocannabinol concentration means either 5 nanograms or more of delta–9–tetrahydrocannabinol per milliliter of whole blood or 10 nanograms or more of delta–9–tetrahydrocannabinol per milliliter of other bodily substance. A person who submits to such a test is not eligible for a reinstatement of his or her license until 6 months after the effective date of the statutory summary suspension and one year if he or she is other than a first time offender. **625 ILCS 5/6-208.1**

A person may only be charged with DUI (cannabis) if the person has, within 2 hours of driving or being in actual physical control of a vehicle, a **tetrahydrocannabinol concentration** in the person's whole blood or other bodily substance as defined in paragraph 6 of subsection (a) of Section 11–501.2 of this Code. But, this does not apply to persons who are legally using medical cannabis unless that person is impaired by the use of cannabis. 625 ILCS 5/11-501(a)(7) "Cannabis" has been deleted from 625 ILCS 5/11-501(a)(6).

When a DUI involves a person who is less than 21 years of age, up to 2 additional tests of urine or other bodily substance may be administered even after a blood or breath test or both has been administered. **625 ILCS 5/11-501.8**

A person may not sell or offer for sale any **bath salts** in a retail mercantile establishment. 720 ILCS 542/20 A violation is a Class 3 felony and a fine of up to $150,000 may be imposed. **720 ILCS 542/25, PA 585, effective 1/1/17**

A defendant was convicted of **delivery of a controlled substance** within 1000 feet of a school in **People v. Davis, 2016 IL App (1st) 142414, 404 Ill.Dec. 392, 55 N.E.3d 1246(2016).** But, his conviction for that count was reversed because the State failed to prove that the distance from the actual site of the transaction to the school was 1000 feet or less. A police officer had measured the distance between the school and a gas station but there was no evidence as to where he began his measurements on the gas station property.

Search and Seizure

A detective conducted surveillance on a residence based on an anonymous tip about drug activity and decided that the number of people he observed making brief visits to the house over the course of a week made him suspicious that the occupants were dealing drugs. After observing the defendant leave the residence, he detained him at a nearby parking lot, identifying himself and asking the defendant what he was doing at the house. The detective asked for identification and relayed the information to a police dispatcher, who informed him that the defendant had an outstanding arrest warrant for a traffic violation. The detective then arrested the defendant, searched him, and found methamphetamine and drug paraphernalia. The defendant moved to suppress the evidence, arguing that it was derived from an unlawful investigatory stop. In a 5-3 decision, the United States Supreme Court in **Utah v. Strieff , 2016 WL 3369419(2016)** refused to suppress the evidence finding that the detective's discovery of a valid, pre-existing, and untainted arrest warrant **attenuated the connection between the unconstitutional investigatory stop** and the evidence seized incident to a lawful arrest.

The court first considered the time between the initially unlawful stop and the search, and found that it favored suppressing the evidence. However, the Court said that the warrant was valid, it predated the detective's investigation, and it was entirely unconnected with the stop. Once the detective discovered the warrant, he had an obligation to arrest the detective.

The Court then considered the purpose and flagrancy of the official misconduct by the police officer. It said that the officer was at most negligent and that the officer had made two good-faith mistakes in stopping the defendant. First, he had not observed what time the defendant entered the suspected drug house, so he did not know how long the defendant had been there. Therefore, the officer lacked a sufficient basis to conclude that the defendant was a short-term visitor who may have been consummating a drug transaction. Second, because he lacked confirmation that the defendant was a short-term visitor, the officer should have asked the defendant whether he would speak with him, instead of demanding that the defendant do so. Nothing prevented the officer from approaching the defendant simply to ask. But, the Court concluded, these errors in judgment hardly rise to a purposeful or flagrant violation of the defendant's Fourth Amendment rights.

The officer's decision to run the warrant check was a negligibly burdensome precaution for officer safety. Therefore, the search incident to the valid arrest was lawful. The Court did point out that there was no indication that the unlawful stop was part of any systemic or recurrent police misconduct. There was a particularly scathing dissent by Justice Sotomayor who said "Do not be soothed by the opinion's technical language: This

case allows the police to stop you on the street, demand your identification, and check it for outstanding traffic warrants—even if you are doing nothing wrong. If the officer discovers a warrant for a fine you forgot to pay, courts will now excuse his illegal stop and will admit into evidence anything he happens to find by searching you after arresting you on the warrant." This decision will certainly prevent evidence in similar cases from being suppressed but the dissent is warning officers that if this type of conduct becomes widespread and used to justify unlawful stops routinely, the courts could take a closer look at the police misconduct component.

May a state criminalize the refusal to take a **breath test** or to give a **blood sample** as part of a DUI arrest? The United States Supreme Court issued a split decision in **Birchfield v. North Dakota(2016).** The Court found that a state could make it a crime to refuse to give a breath sample but could not enforce a law making it a crime to refuse to give a blood sample in a DUI investigation. North Dakota and Minnesota make it a crime to refuse testing. The Court considered 3 cases from those states in this decision. In the first one the defendant was charged with a misdemeanor for refusing to give a blood sample. In the second case, the defendant was charged with a crime after he refused to give a breath sample. In the third case, the defendant was taken to a hospital and was warned that if he did not submit to a blood test, his license would be suspended. He submitted to the test and then appealed the suspension of his license which was based on the results of the test.

The Court concluded that the Fourth Amendment permits warrantless breath tests incident to arrests for drunk driving but not warrantless blood tests. A breath test does not implicate significant privacy concerns so refusal to submit to the test can be punished by making it a crime to provide a breath sample. The impact of breath tests on privacy is slight, and the need for BAC testing is great.

However, the Court said that blood tests are different because it requires piercing the skin and may provoke anxiety in the person tested. Blood tests are significantly more intrusive, and their reasonableness must be judged in light of the availability of the less invasive alternative of a breath test. Nothing prevents the police from seeking a warrant for a blood test when there is sufficient time to do so in the particular circumstances or from relying on the exigent circumstances exception to the warrant requirement when there is not.

The Court found, therefore, that a breath test, but not a blood test, may be administered as a search incident to a lawful arrest for drunk driving. As in all cases involving reasonable searches incident to arrest, a warrant is not needed in this situation. But, what about implied consent and blood tests? The Court said that its opinions have referred approvingly to the general concept of implied-consent laws that impose civil penalties and evidentiary consequences on motorists who refuse to comply. In this case, "the defendants did not question the constitutionality of those laws, and nothing the Court said in this decision should be read to cast doubt on them. It is another matter, however, for a State not only to insist upon an intrusive blood test, but also to impose criminal penalties on the refusal to submit to such a test. There must be a limit to the consequences to which motorists may be deemed to have consented by virtue of a decision to drive on public roads. we conclude that motorists cannot be deemed to have consented to submit to a blood test on pain of committing a criminal offense."

The Court the first defendant's conviction was reversed because he should not have been prosecuted for failure to submit to a blood test, it upheld the conviction in the second defendant's case because of the refusal of the breath test, and it vacated the suspension of the defendant's license and remanded the case to the state court to reevaluate the defendant's consent given the partial inaccuracy of the officer's warnings to the motorist.

The Illinois legislature will have to amend the DUI statute to comply with the holdings in this decision.

After receiving an anonymous tip that marijuana was being sold from a 3rd floor apartment inside a locked apartment building, an investigation was begun and an officer went at 3:20 a.m. with a **drug sniffing dog** to the 3rd floor where the dog alerted to the presence of narcotic's at the defendant's door. The police obtained a search warrant and the subsequent search revealed marijuana in the apartment. The Illinois Supreme Court found that the area in front of the defendant's apartment was within the **curtilage** of the residence and the use of a drug sniffing dog there was a violation of the Fourth Amendment. The good faith exception to the exclusionary rule did not apply since the officer's reliance on the search warrant was not reasonable given the status of the law. **People v. Burns, 2016 IL 118973, 401 Ill.Dec. 468, 50 N.E.3d 610(2016)**

Confessions

Two **statements** were given by a nine-year-old concerning the death of his 14-month-old brother in **In re D.L.H., JR., 2016 IL App (5th) 130341-B, 400 Ill.Dec. 533, 48 N.E.3d 820(2016).** 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. The first statement was voluntary but the second statement taken by the police was not 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. On remand from the Illinois Supreme Court, the Appellate Court found that the error was not harmless so the case was remanded to the trial court.

Orders of protection and domestic violence

The **domestic battery** statute was unconstitutional as applied to the defendant in **People v. Gray, 2016 IL App (1st) 134012, 403 Ill.Dec. 494, 53 N.E.3d 1131(2016)** because he had not been in a dating relationship with the victim for more than 15 years. Thus, the victim was not a family or household member.

Prior offenses of domestic violence were admissible in **People v. Jenk, 2016 IL App (1st) 143177, 407 Ill.Dec. 167, 62 N.E.3d 1089(2016).** The statute which allows this does not violate equal protection or due process.

A reckless domestic assault qualifies as a "misdemeanor crime of domestic violence" under a federal law that **prohibits possession of firearms** by those convicted of domestic violence ruled the United States Supreme Court. **Voisine v. United States, 136 S.Ct. 2272 (2016)**

Where a defendant shot at a victim's vehicle, that constituted an act of "domestic violence". Therefore, evidence of a **prior domestic violence** incident where the defendant shot the victim was admissible to prove propensity to commit the crime of aggravated discharge of a firearm and being an armed habitual criminal. **People v. Nixon, 2016 IL App (2d) 130514, 403 Ill.Dec. 247, 53 N.E.3d 301(2016)**

A prior domestic battery conviction was not a **forcible felony** that is needed to support a conviction of armed habitual criminal. **People v. White, 2015 IL App (1st) 131111, 399 Ill.Dec. 570, 46 N.E.3d 889(2015)**

Offenses by Minors

The Illinois Supreme Court reversed an appellate decision in **People v. Bradford, 2016 IL 188674, 401 Ill.Dec. 630, 50 N.E.3d 1112(2016).** The defendant had entered a Walmart and stole DVDs which he then returned without a receipt. He also stole a hat and a pair of shoes. He paid for the items with the gift card he had fraudulently obtained. He was charged with burglary for remaining within the store without authority. He was never in an area off-limits to the public. The Illinois Supreme Court found that while he was guilty of retail theft, he was not guilty of **burglary** because he had not been in a place not open to the public.

A delinquent minor's conviction for **vehicular invasion** was reversed in **In re Thomas T., 2016 IL App (1st) 161501, 407 Ill.Dec. 360, 63 N.E.3d 284(2016).** The State did not show the use of force necessary where the minor entered a taxi by opening an unlocked passenger door while the driver was at a stop light. His convictions for burglary and theft were upheld.

A victim's **identification** of a juvenile was sufficient to sustain a conviction for armed robbery in **In re J.J., 2016 IL App (1st) 160379, 407 Ill.Dec. 151, 62 N.E.3d 1073(2016).** There was a video that corroborated the description of the event by the victim and the hat worn by the defendant.
A conviction for aggravated battery on public way and robbery upheld in **In re N.H., 2016 IL App (1st) 152504, 402 Ill.Dec. 475, 52 N.E.3d 396(2016)** where victim was walking outside and felt shove on her upper back causing her to stumble. She saw the juvenile offender grab her wallet.

There was insufficient evidence that juvenile actually possessed a firearm in a prosecution for reckless discharge of a firearm, aggravated UUW and unlawful possession of a weapon in **In re Nasie M., 2015 IL App (1st) 151678, 398 Ill.Dec. 916, 45 N.E.3d 347(2015).** There was no eyewitness who saw possession of the gun, no

forensic evidence connected juvenile to the firearm and no evidence that a revolver found in the bedroom of his girlfriend was fired that night or was connected to the shooting.

Offenses against minors

The First District Appellate Court has found the **cyberstalking statute**, 720 ILCS 5/12–7.5(a)(1), (2) facially unconstitutional under the due process clause of the fourteenth amendment because it lacks a *mens rea* requirement (that the crime was committed knowingly or intentionally). A former intern at the victim's workplace called her on the telephone, sent her e-mails, stood outside of her place of business, entered her place of business and made multiple posts on his Facebook page threatening her coworkers and expressing his desire to engage in sexual acts with her making her fear for her safety. **People v. Relerford, 2016 IL App (1st) 132531(2016)** Because of the recent case in the U.S. Supreme Court, Elonis v. U.S., the court held that this statute had the same problems as the one in the Elonis case, there was insufficient intent language in the statute. This case is being appealed to the Illinois Supreme Court.

There was insufficient evidence that the defendant had directed his wife's minor daughter to run toward an office from which cash and checks were stolen to sustain the charge of contributing to the **criminal delinquency of a minor**. **People v. Gharrett, 2016 IL App (4th) 140315, 403 Ill.Dec. 278, 53 N.E.3d 332(2016)** The video did not have an audio portion showing that the defendant encouraged her to go into the office to steal.

Traffic

Every person riding a **bicycle** upon a highway shall be granted all of the rights, including, but not limited to, rights under Article IX, and shall be subject to all of the duties applicable to the driver of a vehicle by the Vehicle Code, except as to special regulations in Article XV and those provisions of this Code which by their nature can have no application. **625 ILCS 5/11–1502, PA 99-785, effective 1/1/17**

The driver of a vehicle shall stop such vehicle before meeting or overtaking, from either direction, any school bus stopped on a **highway, roadway, private road, parking lot, school property, or at any other location**, including, without limitation, a location that is not a highway or roadway for the purpose of receiving or discharging pupils. **625 ILCS 5/11–1414(a), PA 99-740, effective 1/1/17**

The Supreme Court rule (**Rule 552**) that requires transmission of a traffic citation to the clerk of the circuit court within 48 hours of the time it is issued is not mandatory but directory. Therefore, because the defendant in **People v. Geiler, 2016 IL 119095, 405 Ill.Dec. 123, 57 N.E.3d 1221(2016)** was not prejudiced by the violation, the defendant could be prosecuted for speeding.

A summertime weekday was a "school day" under the **automated speed enforcement law** when there were special needs children and summer school children in the school.

Therefore, the driver had to pay the fine. **Maschek v. City of Chicago, 2015 IL App (1st) 150520, 399 Ill.Dec. 524, 46 N.E.3d 843(2015)Truancy**

A **charter school** shall comply with all applicable absenteeism and truancy policies and requirements applicable to public schools under the laws of the State of Illinois. **105 ILCS 5/27A–5.5, PA 99-596, effective 7/22/16**

Child abuse and neglect

There are new provisions for DCFS when it is the guardian of a youth committed to the **Department of Juvenile Justice** so it is notified when a critical incident happens to in addition to other matters. **705 ILCS 405/5-745, PA 99-664, effective 1/1/17.**

An action to declare the **nonexistence of a parent child relationship** does not provide for the consideration of the best interests of a child. **In re A.A., 2015 IL 118605, 398 Ill.Dec. 37, 43 N.E.3d 947(2015)** DNA testing showed the person who acknowledged paternity was not the biological father of the child.

There was a sufficient **foundation** for admitting a half-sibling's recorded victim sensitive interview in a neglect case in **In Re D.M., 2016 IL App (1st) 152608, 402 Ill.Dec. 114, 51 N.E.3d 866(2016)** She accused her father of sexual abuse but was not named in the petition for neglect due to an injurious environment.

In re Aniylah B., 2016 IL App (1st)153662, 406 Ill.Dec. 612, 61 N.E.3d 216(2016) – anticipatory neglect finding proper where 3 older siblings removed and mother married father who was convicted of aggravated battery to a child who was one of the siblings.

In re Jordyn L., 2016 IL App (1st) 150956, 400 Ill.Dec. 455, 48 N.E.3d 742(2016) – anticipatory neglect applied where mother, who had been abused by her own mother and grandmother, repeatedly left the child with those persons and didn't think there was anything wrong with it, adjudication of neglect upheld.

In re Zion M., 2015 IL App (1st) 151119, 399 Ill.Dec. 747, 47 N.E.3d 252(2015)(State failed to prove **anticipatory neglect** where baby's sibling found a gun in the home and shot another sibling in the head; father had brought in gun but mother was not responsible, father had left the home).

In re J.L., 2016 IL App (1st) 152479, 403 Ill.Dec. 460, 53 N.E.3d 1097(2016) – finding of abuse or neglect upheld where evidence that child was sexually abused by father where child testified father removed her clothes and touched her with his private part while she was sleeping and older sibling testified to similar abuse.

In re Chelsea H., 2016 IL App (1st) 150560, 402 Ill.Dec. 163, 51 N.E.3d 915(2016) – neglect due to injurious environment upheld where parents did not complete recommended services.

In re Harriet L.-B., 2016 IL App (1st) 152034, 401 Ill.Dec. 740, 50 N.E.3d 1222(2016) – neglect upheld where mother had long history of seizures but didn't take medication, was schizophrenic, used marijuana at time of child's birth, mom's boyfriend was aggressive toward child investigator and child was born premature with multiple problems.

In re Adam B., 2016 IL App (1st) 152037, 403 Ill.Dec. 80, 53 N.E.3d 134(2016) – child was abused and neglected where child had mental health issues, mother failed to follow up with mental health services and child's aggression toward siblings increased.

In re Davon H., 2015 IL App (1st) 150926, 398 Ill.Dec. 732, 44 N.E.3d 1144(2015)(mother unable to care for, protect, train or discipline her children where she ignored **physical abuse** and did not get help for them)

In re Phoenix F., 2016 IL App (2d) 150431, 402 Ill.Dec. 238, 51 N.E.3d 1020(2016) – termination of rights upheld where father failed to make progress during 9 month period where father threatened child's caseworkers and a foster parent, lost his job and failed to obtain full time work and failed to obtain court-ordered psychiatric treatment.

In re Nylani M., 2016 Il App (1st) 152262, 402 Ill.Dec. 315, 51 N.E.3d 1067(2016) – termination of rights upheld where mother unfit based on failure to correct conditions where father was registered sex offender but mother allowed access to child.

In re K.L., 2015 IL App (3d) 160010, 404 Ill.Dec. 339, 55 N.E.3d 1193(2016) – mother failed to make reasonable progress towards the return of her child after neglect finding so termination upheld.

In re B'Yata L., 2014 IL App (2d) 130558-B, 397 Ill.Dec. 812, 43 N.E.3d 139(2014)(mother did not show **reasonable degree of interest**, concern or responsibility for daughter's welfare so termination proper where mother pleaded guilty to aggravated battery of one child and failed to comply with service plan)

In re S.K.B., 2015 IL App (1st)151249, 398 Ill.Dec. 548, 44 N.E.3d 577(2015)(**termination** upheld where mother had mental illness and father downplayed impact on child)

In re M.H., 2015 IL App (4th) 150397, 399 Ill.Dec. 117, 45 N.E.3d 1107(2015)(father unfit parent where he was i**ncarcerated** and never had contact with child and his release date was 2 years away)