ILLINOIS COALITION
AGAINST DOMESTIC VIOLENCE

# SURVIVORS' ACCESS TO SAFETY IS NOT FULLY AVAILABLE

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## SUMMARY

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they must file their protection order in the location of the old family law case not where there is venue on the new protection order case.

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***Plenary Protection Orders.***

A. Survivors in certain parts of the state do not have access to all the remedies provided for in the IDVA.
B. The firearm remedy, 14.5, is rarely granted to survivors in their plenary order as reported across the state. Even if the firearm remedy is granted only the Firearm Identification (FOID) cards are surrendered to the court and the warrant for the seizure of the weapons is not issued by the court.
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## The legal system has not adequately acknowledged the criminal nature of domestic violence and in practice there is still widespread failure to appropriately protect and assist victims (Purpose 3).

A. State's Attorneys are not seeking criminal protective orders.
B. Law enforcement is not arresting the abuser even when there are visible injuries.
C. State's Attorneys wait to pursue criminal charges until after there is a civil protection order.
D. Some areas reported a lack of enforcement and arrest when there are violations of protection orders.
E. Survivors are not provided the Illinois Crime Victims' Bill of Rights.
F. Some areas reported a need for increased training for victim advocates that work directly for the court, State's Attorneys' offices, and Sheriff's departments.

# BACKGROUND

Illinois systems are failing survivors despite the existence of the Illinois Domestic Violence Act (IDVA). Local processes, procedures, and need for training and understanding of the cycle and trauma put survivors at an on-going serious risk of life-threatening harm. The promise of safety and security provided by the IDVA is consistently and uniformly broken across the state.

The Illinois Domestic Violence Act (IDVA) was originally enacted in 1982. Since then it has been amended numerous times based on what we have learned from survivors about their need for safety. This report shows we are not using the IDVA to its fullest extent to reduce domestic violence. As a result of a series of informal meetings and discussions with legal advocates from member organizations and the Illinois Coalition Against Domestic Violence Policy Director, trends across the state emerged concerning domestic violence survivor safety and the IDVA. The regional meetings took place in the Illinois Coalition Against Domestic Violence five regions: North Rural, North Collar, Cook County, Central, and Southern regions. These meetings were held throughout February and March 2019 with the typical meeting taking place for five hours from 10am until 3pm. Not all member organizations had legal advocates present and not all member legal advocates could attend these meetings. These meetings did not include advocates employed by State's Attorneys' Offices, Sheriff's Departments or courts. ICADV Director of Policy and Systems Advocacy hosted the meetings to gather information and for advocates to exchange and share ideas. In addition, information was obtained through ICADV's legal advocacy summits and through technical assistance provided to member organization legal advocates. Member organization legal advocates are supporting survivors with their protection orders and other legal matters doing the best they can in sometimes very adverse circumstances as outlined below. Some regions experienced certain difficulties and not every region experienced every difficulty. There are a few places that reported little or no difficulty, however, this report contains the most commonly reported issues. Advocates are cautious about reporting what they see happening out of fear that they will not be welcome back into courtrooms. All information gathered was with the understanding that reporting will be anonymous. This is a brief overview of certain difficulties that were expressed by member legal advocates across all the meetings. According to the National Network to End Domestic Violence's (NNEDV) Annual Illinois Census 2018, 79% of services provided to 1493 adults constituted legal advocacy on one day in September 2018[1]. This means that on one day in September 2018 over 1,179 adults received domestic violence legal advocacy services.

[1] See https://nnedv.org/mdocs-posts/2018-illinois/

The IDVA is to be liberally construed and applied to promote these underlying purposes[2]:

> (1) Recognize domestic violence as a serious crime against the individual and society which produces family disharmony in thousands of Illinois families, promotes a pattern of escalating violence which frequently culminates in intra-family homicide, and creates an emotional atmosphere that is not conducive to healthy childhood development;
> (2) Recognize domestic violence against high risk adults with disabilities, who are particularly vulnerable due to impairments in ability to seek or obtain protection, as a serious problem which takes on many forms, including physical abuse, sexual abuse, neglect, and exploitation, and facilitate accessibility of remedies under the Act in order to provide immediate and effective assistance and protection.
> (3) Recognize that the legal system has ineffectively dealt with family violence in the past, allowing abusers to escape effective prosecution or financial liability, and has not adequately acknowledged the criminal nature of domestic violence; that, although many laws have changed, in practice there is still widespread failure to appropriately protect and assist victims;
> (4) Support the efforts of victims of domestic violence to avoid further abuse by promptly entering and diligently enforcing court orders which prohibit abuse and, when necessary, reduce the abuser's access to the victim and address any related issues of child custody[3] and economic support, so that victims are not trapped in abusive situations by fear of retaliation, loss of a child, financial dependence, or loss of accessible housing or services;
> (5) Clarify the responsibilities and support the efforts of law enforcement officers to provide immediate, effective assistance and protection for victims of domestic violence, recognizing that law enforcement officers often become the secondary victims of domestic violence, as evidenced by the high rates of police injuries and deaths that occur in response to domestic violence calls; and
> (6) Expand the civil and criminal remedies for victims of domestic violence; including, when necessary, the remedies which effect physical separation of the parties to prevent further abuse.
> P.A. 84-1305, Art. I, § 102, eff. Aug. 21, 1986. Amended by P.A. 86-542, § 1, eff. Jan. 1, 1990; P.A. 87-1186, § 3, eff. Jan. 1, 1993.
> 750 ILCS 60/102

This report is designed to lay out the issue or the problem and then provide the statutory language from the IDVA and other relevant statutes. It is expected that this format will help guide solution making to the issue utilizing the IDVA and other relevant statutes as intended by the legislature. In some sections the issue is based on domestic violence service best practices rather than the IDVA so there will not be an IDVA section.

[2] 750 ILCS 60/102

[3] Note that Purpose 4 does refer to custody but the IDVA is current with the Illinois Marriage and Dissolution Act and in the remedies for protection orders the language refers to parental responsibilities and parental decision-making. See 750 ILCS 60/214 (b)(6) and (7).

# DESCRIPTION OF THE ISSUES

## Protection Orders are not promptly and diligently entered and enforced (Purpose 4).

***Emergency Protection Orders***

### A. Emergency Protection Orders are not heard timely.

Description of the issue.

Advocates report that in some places survivors have to wait several hours to several days or even a month to have emergency protection orders heard. This protection order wait time occurs even if a legal advocate calls ahead and schedules a time. Explanations for delays include court security, unavailability of judges, and sometimes no explanation provided. Many jurisdictions limit the times of day or days of the week in which emergency protection orders are heard. In some places, advocates are told that protection orders will only be heard two times a day which include a morning time and an afternoon time. In these jurisdictions advocates report sitting for hours while judges hear other matters despite appearing at the required time. In these situations, if survivors miss the afternoon deadline they must wait until the next morning or the next allotted day of the week and time. Many circuit judges do not make available alternate judges sometimes causing delays as long as a month or only hearing protection orders on certain days and times of the month. As an example, in one jurisdiction the only time a survivor can have an emergency protection order heard is on Thursdays at 1pm. If the abuse happens on Friday, the survivor has to wait until the following Thursday at 1pm to obtain an emergency protection order.

IDVA:

750 ILCS 60/212 provides that an order of protection is to be treated as an expedited proceeding. 750 ILCS 60/217 (C)(1) states that when the court is unavailable at the close of business the petitioner may petition for a 21-day order before any available circuit court judge who may grant relief under the act. The chief judge of the circuit may designate for each county in the circuit at least one judge to be reasonably available to issue orally, by telephone, by facsimile, or otherwise an emergency order of protection, see 750 ILCS(C)(1.5).

**B. Advocates report varying levels of difficulty in obtaining emergency protection orders in every region.**

**a. Advocates are told by the courts that emergency protection orders are unconstitutional.**

Description of the issue.

Advocates in some regions report that judges across the state are refusing to grant emergency protection orders indicating that emergency protection orders are unconstitutional. Due to a lack of resources and the ability to set up the case for appeal, survivors in these situations leave the courtroom without their order and advocates report that they are unlikely to seek assistance in the future.

IDVA:

The IDVA provides for jurisdiction in 750 ILCS 60/207. 750 ILCS 60/217 clearly allows for emergency protection orders. Case law declares that emergency protection orders are constitutional[4]. There is a difference in what the initial order is called between civil protection orders and criminal protective orders. 750 ILCS 60/217 calls the initial civil protection order an "emergency order of protection". The criminal code calls the initial criminal protective order an "ex parte" order, 725 ILCS 5/112A-17.5.

**b. Without explanation emergency orders are denied when there are visible injuries such as bloody faces, broken noses, black eyes, gashes on legs, and evidence of strangulation.**

Description of the issue.

Emergency protection orders are denied across the state for various reasons. Reasons given include that the survivor has requested many petitions in the past and did not follow through or that the survivor should not get an emergency order because there is a divorce or family law case pending. Another reason given was if the survivor is in shelter, according to one judge this does not equate to an emergency. An emergency protection order was denied when the judge noticed an attorney who represents the respondent on another matter in the courtroom present at the same time as the survivor was seeking the emergency order. The judge denied this emergency order request and set for a plenary order hearing at a time when the attorney was available.

[4] *Sanders v. Shephard*, 185 Ill. App. 3d 719, 541 N.E.2d 1150 (1989) and see also *Whitten v. Whitten*, 292 Ill. App. 3d 780, 686 N.E.2d 19 (1997).

In some jurisdictions, advocates are told that emergency orders will not be issued, and that service must be obtained first in order for the survivor to obtain a protection order.

IDVA:

750 ILCS 60/207 provides jurisdiction for judges to hear emergency protection orders. 750 ILCS 60/212 clearly states that an order of protection is an expedited proceeding. The emergency order of protection statute, 750 ILCS 60/217 mandates that an emergency order of protection shall issue if petitioner meets the requirements that there is jurisdiction, that she has been abused (750 ILCS 60/214), and for good cause regardless of service on the respondent at the time of the request.

**c. Emergency orders are not issued as the survivor cannot meet a judicially imposed expectation of what constitutes an emergency.**

Description of the issue.

Across the state, judges do not grant emergency protection orders on the basis that the survivor cannot show an emergency because of the timing of their request. The survivor may have waited a week, two, or more. It is reported across the state that judges are imposing sunset timeframes by which the survivor must meet or not have the emergency protection order available to them. This is occurring even when the survivor shows outward signs of physical injury. These timeframes may not only vary from Circuit to Circuit but vary from judge to judge in the same county. It has been reported in some places that a survivor who does not file their protection order within two days, a week, or two weeks is too long, not an emergency, and the judge denies the emergency order. There have been reported inconsistencies on the appropriate timeframe from the same judge. In addition to time frames, in some areas if the criminal protective order is dismissed sometimes with regards to the civil protection order the judge does not see the situation as an emergency any longer.

IDVA:

The IDVA does not contain a sunset provision in order for survivor to seek an emergency protection order. The IDVA does not have a time from the incident (a number of days) in which the survivor is to seek an emergency order, or it is to be denied. The IDVA does not include specific circumstances that arise to an emergency. The only requirements to get an emergency order in the IDVA are that there is jurisdiction, there was abuse (750 ILCS 60/214), and for good cause[5]. The purpose provision of the IDVA clearly states that the IDVA is to be liberally construed and not

[5] 750 ILCS 60/217(a)

narrowly drawn. Looking outside the statute to case law, case law does not define what an emergency is or impose a timeframe in which a survivor must file the protection order or be denied because it does not constitute an emergency[6].

**d. The catch-22, when a judge is not available and subsequently the survivor is denied the order as the survivor did not meet the sunset timeframe to get an emergency order.**

Description of the issue.

A survivor may be assigned to a judge or within a circuit that imposes a sunset timeframe on emergency protection orders. However, the same survivor cannot get to a judge for a week, or two, or a month because the judge and or other circuit judges are not available to hear the emergency order. The survivor is then denied the emergency protection order as they did not meet the sunset timeframe to get an emergency order imposed by that court. For example, in jurisdictions that only hear emergency protection orders one afternoon a week, if the abuse happens the day after the time scheduled for emergency protection orders, the following scheduled day a week later may be too long given that court's sunset time for the survivor to seek a protection order.

IDVA:

Please see Section (B)(c) above concerning the IDVA not containing any sunset timeframes to seek an emergency protection order.

**C. Reports are sporadic about the granting of the remedy of possession of personal property remedy in emergency protection orders.**

Description of the issue.

Even if an emergency protection order is granted, it is reported in some parts of the state that the possession of personal property remedy is rarely granted. Survivors and advocates reported that survivors only have the clothes on their back and do not have the ability to obtain any other personal items.

IDVA:

IDVA states that the survivor may obtain the personal property remedy if they advise the court that improper disposition of personal property was to occur if they don't receive the

[6] See Whitten v. Whitten, 292 Ill. App. 3d 780, 686 N.E.2d 19 (1997), *Sanders v. Shephard*, 185 Ill. App. 3d 719, 541 N.E.2d 1150 (1989), and In re Marriage of Los, 229 Ill. App. 3d 357, 593 N.E.2d 126 (1992).

property or if they have a pressing need for the personal property. The remedy of possession of personal property may be granted in accordance with 750 ILCS 60/217(a)(iii).

In some cases, there is a lack of understanding of certain cultures and a lack of cultural competency when it comes to expensive personal property that is the dowry of the survivor. Very rarely are survivors provided their dowry jewelry at the time of the emergency order or plenary order. Typically, this expensive jewelry ends up in the hands of the perpetrator and his family. In jurisdictions in which this is an issue there should be cultural competency training on the meaning of the jewelry dowry, what it is for, and how best to support the survivor.

**D. Continuances are regularly granted extending the time between the emergency protection order and a plenary order hearing leaving the survivor without an order for weeks or even months. This occurs when the emergency order is denied leaving the survivor without an order pending the plenary hearing.**

Description of the issue.

Continuances are regularly granted extending the time between a plenary and emergency protection order. When an emergency order is denied this leaves the survivor without an order for weeks or even months. It can take several weeks or months to obtain service including service by publication[7]. In addition, continuances are regularly granted for months even years so that the protection order case can be consolidated with the family law case. After consolidation, survivors are pressured to terminate the protection order in lieu of a no contact order in the family law case (see Plenary Protection Orders Section D below).

IDVA:

The IDVA is clear that protection orders are expedited proceedings (see 750 ILCS 60/213). The IDVA also discourages continuances by stating that continuances should only be granted for good cause, kept to the minimum reasonable duration, and the reason for the continuance is taken into account, (see 750 ILCS 60/213). The IDVA also mandates that if a continuance is necessary for some but not all of the remedies requested, the hearing on the remedies for which a continuance is not needed is not to be delayed (see 750 ILCS 60/213).

**E. Survivors are being forced to file cases where there is not venue pursuant to the IDVA. Survivors, when there is an existence of an older family law case in another location are told they must file their protection order in the location of the old family law case not where there is venue on the new protection order case.**

[7] For process in protection orders see 750 ILCS 60/210.

Description of the issue.

Survivors may meet the venue provisions of the IDVA in one jurisdiction, but they have an older family law case in another jurisdiction. In these situations, in some places, survivors are told they must file their protection order action in the jurisdiction of the family law case. This is true even when the survivor cannot demonstrate that she meets the IDVA venue provision as she does not live in the community where the old family law case was filed, the respondent does not live there, the abuse did not happen there, nor is the survivor there temporarily to escape the abuse.

IDVA:

Pursuant to the IDVA, 750 ILCS 60/209, venue is were petitioner resides, respondent resides, the alleged abuse occurred, or where the petitioner is temporarily located if they left to avoid further abuse.

**F. A lack of access to qualified and certified court interpreters is reported across the state.**

Description of the issue.

Protection orders are often delayed a significant period of time in order to gain access to a qualified court interpreter. For emergency orders, sometimes individuals have to rely on family and friends. Legal advocates report across the state a lack of qualified interpreters. This may cause issues in both emergency and plenary protection orders later requiring complicated legal clean up when a qualified interpreter is brought into the case.

**G. A lack of understanding electronic based evidence.**

Description of the issue.

Legal advocates in some regions report the inability of survivors to provide the court with electronic evidence such as text messages, social media harassment, and other types of electronic evidence. Many times, such evidence contains physical threats including murder of the survivor and children, kidnapping of the children, repeated and on-going harassment (150 text messages in one day) and other crimes. In some places this evidence is rarely considered by judges as evidence of the violence experienced by the survivor. It is also reported that in some areas it is difficult to get Assistant State's Attorneys to consider electronic evidence as enough to approve charges.

***Plenary Protection Orders.***

Purpose 4 states:

> when necessary,… address any related issues of child custody[8] and economic support so that victims are not trapped in abusive situations by fear of retaliation, loss of a child, financial dependence, or loss of accessible housing or services. 750 ILCS 60/102(4).

Please also note Purpose 6 states:

> Expand the civil and criminal remedies for victims of domestic violence; including, when necessary, the remedies which effect physical separation of the parties to prevent further abuse.

**A. Survivors in certain parts of the state do not have access to all the remedies provided for in the IDVA.**

Description of the issue.

Survivors in certain parts of the state do not have access to all the remedies provided for in the IDVA and protection order provisions. In some places, survivors and advocates report the ability to only obtain the remedies of protection and none of the other 18 remedies. It is reported in several regions, petitioners are typically able to obtain remedy 1, prohibition of abuse, and remedy 3, stay away order. Sometimes petitioners are able to receive exclusive possession of the residence (remedy 2) and remedy 14 prohibition of entry. Reports are sporadic about whether the other 14 remedies are regularly granted in plenary protection orders. These remedies include remedy 4, counseling, remedy 5, physical care and possession of the minor child, remedy 6, temporary allocation of parental responsibilities and parental decision making, remedy 7, parenting time, remedy 8, removal or concealment of the minor child, remedy 9, order to appear (concealment of the child), remedy 10, possession of personal property, remedy 11, protection of property, remedy 11.5, protection of animals, remedy 12, order of payment of support, remedy 13, order of payment of losses, remedy 14.5 prohibition of firearm possession, remedy 15, prohibition of access to records, remedy 16, order for payment of shelter services, remedy 17, order for injunctive relief, and remedy 18, telephone services. Possession of the minor child is granted to the petitioner more frequently than temporary parental responsibilities and parental decision-making responsibilities is granted to the petitioner[9]. Many locations reported that temporary decision-making responsibility is not granted to the petitioner as it

[8] Note that Purpose 4 does refer to custody but the IDVA is current with the Illinois Marriage and Dissolution Act and in the remedies for protection orders the language refers to parental responsibilities and parental decision-making. See 750 ILCS 60/214 (b)(6) and (7).

[9] See 750 ILCS 60/214(b)(6).

is expected that the petitioner will file a family law case. Infrequently, the financial remedies are granted to survivors including maintenance, payment of losses, and payment of shelter services. It was reported occasionally child support will be granted in cases where possession of the minor child was ordered to the survivor, but it is rare.

IDVA:

Civil protection order remedies are codified in 750 ILCS 60/214.

**B. Firearm remedy 14.5.**

Description of the issue.

It is reported in some regions across the state the firearm remedy is rarely granted to survivors in their plenary order. It is also reported that even when the firearm remedy is granted, only the Firearm Identification (FOID) cards are surrendered to the court and the warrant does not issue for seizure of the weapons.

IDVA:

Remedy 14.5 clearly states:

The court shall issue a warrant for seizure of any firearm in the possession of the respondent, to be kept by the local law enforcement agency for safekeeping, except as provided in subsection (b)[10].

Although mandated by remedy 14.5, it was reported that it is rare that a judge will issue the required warrant for the seizure of the weapons (despite the shall contained in 750 ILCS 214(b)(14.5) and weapons are not seized. It is reported that this is true even if a survivor has reported a threat with a firearm.

**C. Red flag orders commonly known as firearm restraining orders.**

Description of the issue.

It was reported that in a few places, judges were more likely to grant a red flag order pursuant to 430 ILCS 67 *et seq.* in a separate action rather than grant remedy 14.5 within the protection order request.

IDVA and the Red Flag Statue:

Within the IDVA a plenary protection order is valid for up to two years, covers more individuals than the red flag statute, has a lower burden of proof (preponderance vs. clear

[10] 750 ILCS 60/214(b)(14.5)(b) is language that provides instruction if the respondent is a peace officer for the respondent to surrender their official firearm.

and convincing), and can be subject to additional extensions beyond the two-year period[11]. The red flag statute requires clear and convincing evidence and is only good for up to six months. In addition, a respondent of a red flag order may petition for the return of their weapon within the six-month order.

**D. Plenary orders are typically consolidated into a family law case and then dismissed if a family law case is pending or about to be filed.**

Description of the issue.

All regions reported consolidation of protection order cases to varying degrees with family law cases which resulted in the termination of the plenary order long before the expiration of the order. Survivors across the state are pressured to terminate their plenary protection order in family law proceedings in favor of a meaningless no contact order in the family law case[12]. No contact orders are not enforceable by arrest and only enforceable through a contempt action. Advocates report that survivors are advised by the judge at the time they request emergency protection orders or at the plenary hearings that they will have to file a family law case. In some places, the protection order is replaced with a "mutual" stay away or restraining order in the consolidated family law case.

IDVA:

Although section 750 ILCS 60/202(c) allows for consolidation of cases, this section does not override or otherwise invalidate 750 ILCS 60/213 regarding continuances (see Emergency Protection Order Continuances D above). There is nothing in the IDVA that requires a consolidation of cases and termination of the protection order. Purpose 3 clearly states the legal system has ineffectively dealt with family violence in the past, see 750 ILCS 60/102.

**E. In some areas law enforcement or service of process officials are not accepting short form notice.**

Description of the issue.

All regions reported a rejection by personal service personnel such as a sheriff, law enforcement officers, special process servers or other personnel not accepting short form notification for service. Short form notice allows the officer to give the respondent the short form and then mandates that the respondent is to report to the circuit court to obtain a copy of the order.

[11] See 750 ILCS 60/214, 750 ILCS 60/219, and 750 ILCS 60/220.

[12] Protection orders through the IDVA carry with them the penalty of mandatory arrest for violations, see 750 ILCS 60/223. The crime of violating a protection order can be found in 720 ILCS 5/12-3.4.

IDVA:

Short form notification is allowed in Section 750 ILCS 60/222.10. This provision also provides that from the time of the receipt of the short form the respondent is subject to arrest for a violation of the protection order.

**F. In some areas, there are efiling waiver and processing time issues.**

Description of the issue.

Many legal advocates reported that clerks' offices are reluctant to accept efiling waivers[13]. Some clerks' offices were better than others. When an efiling waiver is submitted with a protection order, the clerk must separately enter that case into the case management system. Clerks report that this is a burden therefore they want to limit the number of efiling waivers for protection orders. In addition, some advocates report that when the advocate enters a protection order into an efiling system, the clerk indicates that the efiling system adds another business day into the protection order process before the protection order can be heard. This means that advocates enter the required documentation into the efiling system then wait several hours for the case management system to register the information before the protection order can be heard. This process sometimes causes a delay of one day into the next or over the weekend delaying until Monday before the protection order can be heard.

**G. There is a need for training on the IDVA confidentiality statute by all systems including criminal justice and child welfare.**

Description of the issue.

Throughout the first few months of 2019, the Director of Policy and Systems Advocacy received several telephone calls from ICADV members reporting the potential threat of arrest, actual arrest, and court involvement if the member did not reveal confidential information about the survivor to law enforcement or the State's Attorney. Advocates and service providers are constantly filing motions to quash subpoenas from State's Attorneys and the Department of Children and Family Services citing the confidentiality statute within the IDVA. A service provider was arrested several months after she refused to provide any information to a law enforcement officer concerning whether or not a survivor was in shelter. In another situation a service provider had to hire an attorney to defend not only a subpoena but having been made a third party to a protection order when the service provider would not reveal confidential information about the survivor.

[13] See Illinois Supreme Court Certification for Exemption from E-Filing, https://courts.illinois.gov/Forms/approved/efiling_exemption/efiling_waiver_cert.pdf.

Across the country states have confidentiality statutes that protect communications between survivors and domestic violence service provider agencies (and staff). These statutes are necessary to protect the survivor because how the information is used and revealed directly impacts the survivor's safety and access to justice.

IDVA:

Confidentiality between a survivor and domestic violence service provider is contained in 750 ILCS 60/227. This statute protects confidential communication between the domestic violence advocate or counselor and domestic violence program and the domestic violence victim. There are only two exceptions contained within this confidentiality statute: an imminent threat of bodily harm to themselves or others and as a mandated reporter for child abuse or neglect, see 750 ILCS 60/227. Recently, the First Appellate District held that the IDVA confidentiality statute provides absolute privilege to the survivor similar to attorney client privilege (*People v. Sevedo*, 2017 IL App (1st) 15241, 74 N.E. 3d 529). Pursuant to 750 ILCS 60/227, to reveal a communication outside of the two exceptions, is a misdemeanor for the person who revealed the communication.

**H. There is a need for training and understanding of domestic violence and trauma, and trauma informed access to justice in all systems utilized by the survivor.**

Description of the issue.

All regions reported varying levels of the use of victim blaming language across all systems. Advocates reported victim blaming and lack of trauma informed communication from clerks, Assistant State's Attorneys, law enforcement, child welfare caseworkers, and judges. Advocates reported multiple situations in which survivors were so re-traumatized that they did not follow through with their justice request and advocates were convinced that the survivor would not return for services in the future. This puts those survivors in the path of severe harm. This occurred during emergency protection order hearings, with law enforcement, and other contact with different systems.

## The legal system has not adequately acknowledged the criminal nature of domestic violence and in practice there is still widespread failure to appropriately protect and assist victims (Purpose 3)[14].

### A. State's Attorneys are not seeking criminal protective orders.

Description of the issue.

Many counties and regions reported that their local State's Attorneys are not willing to seek criminal protective orders. Instead of requesting criminal protective orders, State's Attorneys are including no contact provisions in bond conditions. Bond conditions do not carry the strength and weight of a protective order. In order to enforce a bond condition, the survivor has to notify the court official responsible for monitoring the offender and it may or may not be scheduled for hearing, and typically there is not enforcement of a violation of a bond condition. Some State's Attorneys expressed to local legal advocates that they are refusing to request criminal protective orders as they believe that protective orders are not constitutional. These reports occurred prior to the 2018 changes to the criminal protective order statute that are currently being reviewed by the Illinois Supreme Court (see below) as many advocates reported that State's Attorneys were not familiar with the 2018 changes.

Relevant Criminal Procedure and Criminal Code statutes:

The Illinois Code of Criminal Procedure, 725 ILCS 5/112A-23 makes violation of a criminal protective order a criminal action and gives it the weight of a new charge and allows for an arrest on a complaint made to law enforcement (given the order is valid) (as opposed to bond conditions which do not carry the weight of a new charge upon a violation). The crime of violating a criminal protective order is contained in the Illinois Criminal Code at 720 ILCS 5/12-3.4.

Last year the General Assembly made the State's Attorneys' burden extremely low in obtaining a criminal protective order. 725 ILCS 5/112A-11.5 states:

> The court shall grant the petition and enter a protective order if the court finds prima facie evidence that a crime involving domestic violence, a sexual offense, or a crime involving stalking has been committed. The following is considered prima facie evidence of the crime:
> 1) an information, complaint, indictment, or delinquency petition, charging a crime of domestic violence, a sexual offense, or stalking or charging an attempt to commit a crime of domestic violence, a sexual offense, or stalking; …

[14] 750 ILCS 60/102(3).

4) the entry of a protective order in a separate civil case brought by the petitioner against the respondent.

Pursuant to 725 ILCS 5/112A-11.5, in order to obtain the order, State's Attorneys can submit the petition of a protective order with a certified copy of the complaint, information, or indictment, and they met their burden to obtain a protection order. The respondent may rebut the evidence by presenting evidence of a meritorious defense. However, the respondent must file written notice alleging a meritorious defense which shall be verified and supported by an affidavit. The notice must also set forth the evidence that will be presented (725 ILCS 5/112A-11.5(a-5). Please note that 725 ILCS 5/112A-11.5 is currently under review in the Illinois Supreme Court as a result of a decision holding the statute unconstitutional in an unreported case, *People v. DeLeon, Cook County Circuit*, No. 18 CR 13629, March 7, 2019.

725 ILCS 5/112A-5.5 allows for a default judgment against the respondent after seven days. A criminal protective order can be valid through the end of the offender's sentence[15].

**B. Law enforcement is not arresting the abuser even when there are visible injuries.**

Description of the issue.

Advocates report no arrests made even when the survivor had visible injuries such as strangulation bruises, bloody noses, black eyes, and other injuries. Advocates report a lack of training and lack of understanding of the dynamics of domestic violence. Upon making reports to law enforcement survivor's motivations are questioned with reports of officers saying things like "how do I know you didn't break your own nose?".

Relevant Criminal Procedure Statutes:

Law enforcement officers are mandated to take action pursuant to the IDVA and relevant criminal procedure statutes. The law enforcement officer is to make an arrest when they have reason to believe that a person has been abused by a family or household member, see 725 ILCS 5/112A-30. Not only is the officer to make an arrest, the law enforcement officer is to seize and take inventory of weapons if it is believed they were used in the incident, accompany the victim to the residence for a reasonable period of time to remove necessary personal belongings and possessions, an offer of immediate and adequate information, referral to an accessible service agency, and transportation for medical care, to a place of shelter or safety, or to the nearest circuit judge or associate judge for an emergency protection order, see Code of Criminal Procedure, 725 ILCS 5/112A-30.

[15] Default order language is contained in 725 ILCS 5/112A-5.5 and Ex Parte Order is found in 725 ILCS 5/112A-17.5, and duration of orders in 725 ILCS 5/112A-20.

Lastly, if a law enforcement officer does not make an arrest, the officer shall make a police report of the investigation, inform the victim of their right to request that criminal proceeding be initiated when appropriate including specific times and places for meeting with a State's Attorney, a warrant officer, or other official, and advise the victim the importance of seeking medical attention, see Code of Criminal Procedure, 725 ILCS 5/112A-30(b).

**C. State's Attorneys wait to pursue criminal charges until after there is civil protection order.**

Description of the issue.

It was reported in some regions that even with a law enforcement report, State's Attorneys are reluctant to bring charges against the perpetrators. Many State's Attorneys advise advocates that the survivor will not show up or they wait and see if they show to obtain the civil protection order before pursing the criminal charges. With the new changes to criminal protective orders the appearance of the survivor may not be necessary if there is a default order (see II A above). It was reported in some regions it could take weeks or months for State's Attorneys to bring domestic violence charges.

**D. Some areas reported a lack of enforcement and arrest when there are violations of protection orders.**

Description of the issue.

Whether protection orders are granted in criminal or civil actions, all advocates reported a lack of enforcement of protection orders. There is a lack of interest in the taking of a protection order violation report by law enforcement, filing charges of protection order violations by State's Attorneys, or otherwise taking action against the respondent on violations. Even when a report is made and a charge is filed, the charge is typically dismissed. In some places service of the plenary order is difficult which then makes enforcement of the order difficult.

Relevant Criminal Procedure and Criminal Code Statutes:

The IDVA and relevant criminal procedure and criminal code statutes are clear that violations of orders are a crime, see Criminal Procedure code 725 ILCS 5/112A-23)(a)(1). The benefit of obtaining a protection order as opposed to other types of restraining orders (whether in a divorce or part of bond conditions) is that it is a crime see, 725 ILCS 5/112A-23(g). The criminal act of violating a protection order is contained in criminal code section, 720 ILCS 5/12-3.4.

**E. Survivors are not provided the Illinois Crime Victims' Bill of Rights.**

Description of the issue.

It was reported across all regions, that survivors are not provided the Illinois Crime Victim's Bill of Rights or being charged $5 by local clerks' offices to obtain the crime victims' bill of rights.

Relevant Criminal Procedure Statutes:

The crime victims' bill of rights is codified in 725 ILCS 120/4. The crime victims' bill of rights is to be provided by statute, 725 ILCS 120/4(b).

**F. Some areas reported a need for increased training for victim advocates that work directly for the court, State's Attorneys' offices, and sheriffs' departments.**

Description of the issue.

In some regions, some ICADV member legal advocates reported that when they interacted with victim advocates who worked directly for the court (protection order writers), State's Attorneys, or Sheriffs' Offices, there was a need for training, an understanding of the domestic violence cycle and power and control, an understanding of confidentiality and the IDVA confidentiality statute, and needed training on empathy and trauma.

# RECOMMENDATIONS

1. **Creation of a statewide task force that is charged with collaborating, having an open dialogue, unpacking the issues raised, forming recommendations for policy, practice, and procedure and an action plan to resolve the issues presented. This task force should be a public and private joint venture convened by the Governor and Chief Justice of the Illinois Supreme Court.**

   Members of the task force should include representatives from the following entities:

   Illinois Administrative Office of the Courts
   Attorney General
   State's Attorneys
   Illinois State Bar Association
   Governor's Office
   Law Enforcement
   Illinois Coalition Against Domestic Violence
   Representatives from Six Domestic Violence Providers with geographic diversity
   Clerks of Courts
   Illinois Criminal Justice Information Authority
   Illinois Family Violence Coordinating Councils
   Illinois Department of Human Services

2. **Create a consistent process across multiple systems for mandatory and continuing domestic violence training so all key stakeholders have the appropriate tools, skills, information of the cycle of domestic violence, power and control in domestic violence relationships, and the IDVA.**

   Local stakeholders who should receive this training are:

   Judges
   State's Attorneys and Assistant State's Attorneys
   Law Enforcement
   Legal Advocates
   Child Welfare Caseworkers
   Child Welfare Investigators and Purchase of Service Investigators
   Clerks of Courts
   Family Law Attorneys
   Guardians ad Litem

   Current training rules for judges and lawyers involved with family law cases are not sufficient as the rules only encompass discretionary training plans that do not require regular ongoing training and are not specific as to the domestic violence curriculum to be delivered. See Illinois Supreme Court Rules 906 and 908 attached.

3. **Identify champions who will act as ambassadors with their peers to create systems change at all levels and promote effective community responses that protect survivors.**

4. **Build upon existing court watch programs and networks to formalize court watch processes and procedures to obtain regular information, feedback, and data about what is happening locally and using that information for systems change. This may include building upon local legal advocacy in places where court watch does not currently exist.**

5. **Develop a statewide domestic violence legal advocacy network based upon the learning collaborative model.**

    a. ICADV will facilitate statewide agreement on how to approach systems change through domestic violence legal advocacy.
    b. ICADV will incorporate into training for legal advocates how they can be change agents in their own communities through their work.
    c. Through ICADV systems change training, the network becomes action oriented and focused on local systems change including formal and informal methods such as networking and informal meetings and conversations with all key stakeholders.
    d. ICADV creates pathways for communication such as list serv and/or regular virtual meetings to share what is happening locally and process through local system change as it is happening.

# LOCAL SYSTEMS CHANGE HAPPENING ALREADY

After meeting with the Circuit Court Chief Judge, a local program was invited to meet with all the circuit court judges during their quarterly judges' meeting. Initially the program was given twenty minutes to discuss their services and operations. The program brought their executive director, two legal advocates, and ICADV. The meeting lasted an hour. The program described the issues they were having with protection orders and had an open engaging discussion concerning the dynamics of domestic violence, the cycle of domestic violence, and how judicial actions impact power and control. As of a few months after this meeting, the program reports that the process to obtain emergency protection orders is easier and few problems of survivors obtaining protection orders in that circuit have surfaced.

# ATTACHMENT

**Rule 906. Attorney Qualifications and Education in Child Custody, Allocation of Parental Responsibilities, ~~and~~ Visitation, and Parenting Time Matters**

(a) **Statement of Purpose.** This rule is promulgated to insure that counsel who are appointed by the court to participate in child custody, allocation of parental responsibilities, ~~and~~ visitation, and parenting time matters, as delineated in Rule 900(b)(2), possess the ability, knowledge, and experience to do so in a competent and professional manner. To this end, each circuit court of this state shall develop a set of qualifications and educational requirements for attorneys appointed by the court to represent children in child custody and allocation of parental responsibilities cases and guardianship cases when custody or visitation is an issue and shall further develop a plan for the procurement of qualified attorneys in accordance with the plan.

(b) **Submission of Qualifications and Plan.** The Chief Judge of a judicial circuit shall be responsible for the creation of the qualifications and Plan and for submitting them to the Conference of Chief Judges for approval. The Chief Judges of two or more contiguous judicial circuits may submit a Plan for the creation of a single set of qualifications and Plan encompassing those judicial circuits or encompassing contiguous counties within the circuits.

(c) **Qualifications and Plan.** The qualifications shall provide that the attorney is licensed and in good standing with the Illinois Supreme Court. Certification requirements may address minimum experience requirements for attorneys appointed by the court to represent minor children. In addition, the qualifications may include one or all of the following which are recommended: (1) Prior to appointment the attorney shall have 10 hours in the two years prior to the date the attorney qualifies for appointment in approved continuing legal education courses in the following areas: child development; roles of guardian *ad litem* and child representative; ethics in child custody and allocation of parental responsibilities cases; relevant substantive state, federal, and case law in custody, allocation of parental responsibilities, ~~and~~ visitation, and parenting time matters; family dynamics, including substance abuse, domestic abuse, and mental health issues. (2) Periodic continuing education in approved child related courses shall be required to maintain qualification as an attorney eligible to be appointed by the court in child custody, allocation of parental responsibilities, ~~and~~ visitation, and parenting time cases. (3) Requirements for initial pro bono representation. (4) Attorneys who work for governmental agencies may meet the requirements of this rule by attending appropriate in-house legal education classes.

(d) **Conference of Chief Judges Review and Approval.** The Conference of Chief Judges shall review and approve the Plan or may request that the Chief Judge modify the submitted list of qualifications and Plan. Upon approval, the Chief Judge of each circuit shall be responsible for administering the program and insuring compliance. An attorney approved to be appointed by the Court to participate in child custody, allocation of parental responsibilities, ~~and~~ visitation, and parenting time matters under a Plan approved in one county or judicial circuit shall have reciprocity to participate in child custody, allocation of parental responsibilities, ~~and~~ visitation, and parenting time matters in other counties and judicial circuits in Illinois.

Adopted February 10, 2006, effective July 1, 2006; amended Mar. 8, 2016, eff. immediately.

Committee Comments

**(Revised March 8, 2016)**

Special Supreme Court Committee on Child Custody Issues

Paragraph (a) requires each judicial circuit to establish qualifications and educational requirements for attorneys who are appointed by a court to represent children in child custody and allocation of parental responsibilities proceedings. The circuits would also be required to establish a plan for procuring the services of qualified attorneys for child custody and allocation of parental responsibilities cases.

Paragraph (b) requires that attorney qualification and procurement plans be submitted to the Conference of Chief Circuit Judges for approval. It also provides that attorney qualification and procurement plans may be drafted to apply to contiguous circuits or to contiguous counties within two or more circuits.

Paragraph (c) specifies that attorneys appointed to represent children must be licensed and in good standing as attorneys. It also provides that the qualifications and standards must include a minimum experience requirement, and may include criteria concerning initial and continuing legal education requirements and requirements for initial *pro bono* representation. Attorneys approved under a circuit plan would be eligible for appointment in cases in other areas of the state on the basis of reciprocity.

In writing Rule 906, the Special Committee considered Rule 714, Capital Litigation Trial Bar, which imposes minimum requirements upon trial counsel in order to insure that counsel who participate in capital cases possess the ability, knowledge and experience to do so in a competent and professional manner. The Special Committee believes that cases involving child custody, allocation of parental responsibilities, ~~and~~ visitation and parenting time issues demand the same high standards of advocacy as do capital cases.

The Special Committee is mindful that many judicial circuits will find it very difficult to find funds to pay for the plans under which counsel are appointed. Ideally, the State would provide sufficient funding to reimburse the private attorneys who are appointed by the court. In the absence of such funding, the individual judicial circuits will need to be innovative in meeting the financial requirements of the plans. In addition to requiring the parties to pay for the appointed lawyer's services, the local rules could provide for the targeting of court filing fees. Voluntary *pro bono* service is also strongly encouraged.

**Rule 908. Judicial Training on Child Custody and Allocation of Parental Responsibilities Issues**

**(a)** Meeting the challenge of deciding child custody and allocation of parental responsibilities cases fairly and expeditiously requires experience or training in a broad range of matters including, but not limited to: (1) child development, child psychology and family dynamics; (2) domestic violence issues; (3) alternative dispute resolution strategies; (4) child sexual abuse issues; (5) financial issues in ~~custody~~ these matters; (6) addiction and treatment issues; (7) statutory time limitations; and (8) cultural and diversity issues.

**(b)** Judges should have experience or training in the matters described in paragraph (a) of this rule before hearing ~~child custody~~ these cases. Before a judge is assigned to hear child custody cases or allocation of parental responsibilities cases, the Chief Judge of the judicial circuit should consider the judge's judicial and legal experience, any prior training the judge has completed and any training that may be available to the judge before he or she will begin hearing ~~child custody~~ these cases.

**(c)** Judges who, by specific assignment or otherwise, may be called upon to hear child custody or allocation of parental responsibilities cases should participate in judicial education opportunities available on these topics, such as attending those sessions or portions of the Education Conference, presented bi-annually at the direction of the Supreme Court, which address the topics described in paragraph (a) of this rule. Judges may also elect to participate in any other Judicial Conference Judicial Education Seminars addressing these topics, participate in other judicial education programs approved for the award of continuing judicial education credit by the Supreme Court, complete individual training through the Internet, computer training programs, video presentations, or other relevant programs. The Chief Judges of the judicial circuits should make reasonable efforts to ensure that judges have the opportunity to attend programs approved for the award of continuing judicial education credit by the Supreme Court which address the topics and issues described in paragraph (a) of this rule.

Adopted February 10, 2006, effective July 1, 2006; amended May 19, 2006, effective July 1, 2006; amended Mar. 8, 2016, eff. immediately.

Committee Comments

**(Revised March 8, 2016)**

Special Supreme Court Committee on Child Custody Issues

Proposed Rule 908 recognizes the complexity of child custody and allocation of parental responsibilities cases and the broad range of experience and training that would be helpful to judges hearing these cases.

Paragraph (b) requires that chief judges consider a judge's experience and training before the judge is assigned to hear ~~child custody~~ such cases. This provision does not establish a mandatory prerequisite to such an assignment.

Paragraph (c) requires that trial judges who will hear child custody and allocation of parental responsibilities cases should participate in Judicial Education opportunities on these type of matters attend a seminar on child custody matters at least once every two years. The proposed rule encourages personal attendance at seminars, but emphasizes that other forms of training may be used.