Chair’s column
By Catherine Ryan

This year, the members of the Child Law Section Council are emphasizing legal education and awareness of children’s issues.

The Section Council updated a Juvenile Justice Handbook for youth and their parents. The English version is online and the Spanish translation is being reviewed for final form. Eventually the Handbook will be available in some printed copies as well. Special recognition is due to our past chair Carol Casey and to Bridget Schott for moving this project to completion.

The Section Council co-sponsored a CLE on Human Trafficking in October, 2014. The law firm of Baker and McKenzie generously agreed to host this event. CLE coordinators Carol Casey and Mark Simons are facilitating preparation of additional CLE opportunities this year concerning representation, custody, and visitation.

Terra Howard has served as editor of the Section Council Newsletter for many years and has compiled articles by authors on the many aspects of law affecting children and families. This year, David House joins her as co-editor.

Linda Coon and Kim Giovanni are co-chairing our Legislation committee. Together with Tom Carlisle, Nancy Hablutzel, and Mike Raridon, they are working on parallel bills in the Illinois General Assembly.

Juvenile sex offender registration: A trend towards rehabilitation

By Lindsey Lachanski Northern Illinois University Law Student

While courts in Illinois have consistently held that registration of both adult and juvenile sex offenders is constitutional, The Sex Offender Registration Act (SORA) provides juvenile sex offenders with the right to petition to terminate the registration if, after more than five years has passed after the offense of their offense, the petitioner can establish by a preponderance of the evidence that he or she poses no risk to the community. 720 ILCS 150/3 et seq. (West 2010). See In re J.W., 204 Ill.2d 50, 84 (2003). While the right to a termination hearing reflects a rehabilitative approach, the court has remained reluctant to label juvenile offenders as posing no risk to society and has rejected termination of registration in cases that have provided ample evidence that a juvenile has been rehabilitated.

I. The evolution of Illinois’ law regarding the registration of minors under SORA—from In re J.W. to the present

In In re J.W, the Illinois Supreme Court held that it was constitutional to require juveniles convicted of sex offenses to register to the sex offender registry, In re J.W., 204 Ill.2d 50, 84 (2003). In that case a 12-year-old defendant pled guilty to two counts of aggravated criminal sexual assault. At sentencing, the minor’s psychiatrist testified that he met with the minor and the minor’s parents for one hour to evaluate whether the minor...
review and monitor proposed legislation in legal areas impacting children. The ISBA can be a lawyer’s best friend. In the same way, the Child Law Section Council is a lawyer’s best friend when facing matters related to a child.

Is there a question of parentage?
Or are parents arguing over custody?
Is a child the subject of a personal injury action?
Is there a challenge to educational services for a child?

Juvenile sex offender registration: A trend towards rehabilitation

Continued from page 1

nor was a danger to the public. Id. at 56. The psychiatrist recommended that the minor’s treatment include medication, behavioral therapy, and residential treatment. Id. The therapist also testified that the minor was a “danger to the community” to a certain degree.” Id. at 57. The minor was sentenced to five years probation, residential treatment, and was ordered to register on the sex offender registry. Id. at 59. The court held that juvenile sex offenders that are considered sexual predators under the applicable statute must register for their natural life. Id. at 60, 84. The court’s analysis was primarily based on the legislative intent and plain meaning of the statute, which included juvenile sex offenders as individuals addressed by SORA. Id. at 65–66. The court found that including juveniles on the sex offender registry did not violate the minor’s substantive due process rights because registration was rationally related to the legislative goal of protecting children from sex offenders. Id. at 67. The court noted that the state’s interest in protecting children was the same whether the offender was a minor or an adult. Id. at 67–68. The court also noted that, while there were alternatives that could also accomplish the legislature’s goals, it was not necessary that the statute accomplish its goals in the least restrictive means possible. Id. at 70, 72. Further, the court stated that the legislature had the power to decide whether the registration process should be limited to adults. Id. at 72.

In a concurrence, Chief Justice McMorrow expressed the concern that a lifetime reporting requirement was too harsh when applied to juvenile sex offenders. Id. at 82. While the Chief Justice agreed with the majority that the Act is constitutional, she found that it ignored the fact that minors under the age of thirteen “have a diminished capacity to form criminal intent.” Id. at 83. She stated: “the public safety concerns which animate the registration and notification laws should be harmonized with our traditional understanding of the need to protect and rehabilitate the young citizens of the state.” Id. at 84.

In a dissenting opinion, Justice Kilbride wrote that lifetime registration of a twelve year-old child who was labeled a sexual predator “offends principles of substantive due process.” Id. at 84. He argued that a juvenile sex offender should be treated differently than an adult sex offender because a child under the age of fourteen who acts sexually inappropriately does so, in part, because of “inadequate adult supervision, immaturity, and inappropriate media exposure, or prior history of emotional abuse” and does not pose the same threat to children as adult sex offenders. Id. at 89.

Until 2007, in re J.W was the seminal case juvenile sex offender registration under SORA. However, in 2007, Public Act 95-658 amended 730 ILCS 150/2(a)(5) by eliminating the provision that required minors to automatically register as adult sex offenders when they turn 17 years of age. In re M.A., 2014 IL App (1st) 132540 (citing 730 ILCS 152/121 (West 2008)). The amended Act provided a right for juvenile sex offenders to petition for a hearing seeking to terminate their registration if the offense had been committed at least five years prior to the petition. Id. The amended Act limited public access to the fact that the offender committed a sexual offense as a juvenile. People ex rel Birkett v. Konetski, 223 Ill.2d 185, 203 (2009).

II. Preponderance of the evidence standard

During the hearing on a petition to terminate registry of a juvenile sex offender, the burden is on the sex offender to show by a preponderance of the evidence that he “poses no risk to the community.” 730 ILCS 150/3-5(d) (West 2010). The determination of whether the sex offender poses a risk to the community will be based on the factors listed in section 3 – 5(e) of SORA: “(1) the risk assessment performed by an approved evaluator; (2) the sex offender history of the respondent; (3) any evidence of the respondent’s rehabilitation; (4) the respondent’s age at the time of the offense; (5) any information related to the respondent’s mental, physical, educational, and social history; (6) any victim impact statement; and (7) any other factors that the court deems relevant.” 730 ILCS 150/3-5(e) (West 2010). This approach allows a court to make an individualized judgment based on the offender rather than simply the offense.

The recent case In re Harold W., 2014 IL...
App (2d) 121235-U, while not to be cited under Supreme Court Rule 23, provides an example of how a trial court might rule on a petition seeking to remove a juvenile sex offender from the sex offender registry. In In re Harold W., a juvenile offender presented evidence that supported that he did not pose a risk to the community, including a clinical social worker who testified that the juvenile was cooperative and invested in counseling. The social worker’s testimony was based on an updated assessment after he interviewed the juvenile, spoke to the juvenile’s former probation officer, reviewed the juvenile’s college transcripts, evaluated correspondence from the juvenile’s current employer, and psychologically tested the juvenile. The social worker testified that the respondent was not interested in children sexually and had built age-appropriate relationships with women. Finally, petitioner’s social worker testified that the petitioner was at the lowest risk category for risk to reoffend. The petitioner also introduced testimony that he had not had any further inappropriate sexual conduct with his sisters, one of which was the victim in the case, or anyone else. However, the state introduced evidence that respondent had “lingering anger issues, particularly with his family.” The court denied the respondent’s petition for termination of his registration because the court found that the respondent’s lingering anger issues were inappropriate “especially as reflected by his sex offenses involving his sister.” The court found that, despite the respondent’s evidence that suggested he was no longer a threat to society, he had failed to meet the preponderance of the evidence standard. Id. The holding in Harold W. shows that attorneys must be careful during registration termination hearings to meet the preponderance of evidence standard, as courts clearly remain reluctant to classify juveniles as posing no risk to society. Thus, attorneys should expect to present evidence that includes testimony that portrays the juvenile in a positive light with regards to his education, family life, personal growth, and behavioral issues. The court in Harold W. found that the juvenile’s continued anger issues were significant enough to demonstrate that the juvenile could be a threat to society in a sexual way. Attorneys should be cognizant that any negative behavioral evidence about the juvenile could be held by the court as showing that the juvenile remains a sexual threat. 

III. Juveniles who are adjudicated not not guilty

In In re S.B., the court extended the right to a termination hearing to juveniles who were adjudicated not not guilty. In In re S.B., 2012 IL 112204 ¶144, ¶150. In In re S.B., the juvenile was found to be mildly mentally retarded and unable to assist in his defense. Id. at ¶145. Thus, the juvenile was found unfit to stand trial. Id. The juvenile was required to register as a sex offender and adjudicated not not guilty of aggravated criminal sexual abuse. Id. The doctor who examined the minor testified that he was not likely to reoffend and had committed the acts due to his cognitive limitations. Id. Our supreme court found that while he was required to register as a sex offender, he could petition to terminate his registration under 730 ILCS 150/3-5. Id. at ¶150. The court found that while SORA’s provisions only allowed for minors who were adjudicated delinquent to petition for termination of their registration, the result from not permitting juveniles adjudicated not not guilty would be an unintended absurdity. Id. at ¶149. The court held that the legislature had intended to allow both juveniles who were adjudicated delinquent and juveniles who were adjudicated not not guilty to petition for early termination of their registration. Id. In its analysis, the court noted that the legislature recognized that many minors who commit sexual offenses “do so because of immaturity rather than predatory inclinations.” Id. at ¶150. The court found that the termination provisions in section 3-5 of SORA were passed so that all juveniles registered as sex offenders would have an opportunity to show that they did not pose a legitimate safety risk to the public. Id.

IV. Policy considerations for the future

The policy considerations raised by Chief Justice McMorrows’s concurrence and Justice Kilbrider’s dissent in In re J.W. have continued to be examined in recent years. Research has shown that there are fundamental differencen between juvenile and adult offenders. The Illinois Juvenile Justice Commission recently recommended that Illinois reassess the inclusion of juveniles on the sex offender registry, noting that Illinois was in the minority of states which still require juveniles to register as sex offenders. See “Improving Illinois’ Response to Sexual Offenses Committed by Youth,” Illinois Juvenile Justice Commission,
2014. The Commission reported that the barrier of registration did not promote public safety as intended because it “undermine[s] youth rehabilitation, harm[s] intrafamilial victims of sexual abuse, stigmatize[s] families, and produce[s] poor outcomes for communities.”

V. Conclusion

Despite the progress that Illinois has made in recent years to increase the procedural protections afforded to youth offenders, concerns continue to be raised by organizations such as the Illinois Juvenile Justice Commission that registration of juveniles on a sex offender registry is harmful to the individual without any increased benefit to society. However, until the legislature amends SORA, practitioners should remain aware that courts have been reluctant, even under the preponderance of the evidence burden of proof, to find that a juvenile offender poses no risk to society. In addition to arguing that lifetime registration is harmful to the juvenile for the variety of policy considerations discussed, practitioners must be able to prove that any behavioral problems related to the juvenile, even those that do not necessarily have a sexual component, do not pose a threat to society.

An introduction to K.C.

By Kelvin Kakazu, Northern Illinois University College of Law, Student

New practitioners in child abuse and neglect face a steep learning curve when it comes to negotiating the child protection system in Illinois. To complicate matters, situations often arise where agencies and caseworkers do not or will not provide services that support the best interests of the children in care. There are steps that can be taken to compel an agency to comply, but there are times when seeking their removal is the only option. This article is a short primer on the steps a practitioner can take to move the court to have an agency removed. It will be organized around the First District’s holding in In re: K.C., 325 Ill. App. 3d 771 (1st. Dist. 2001).

Background

The Cook County trial court, the attorneys, and the children in In re: K.C., 325 Ill. App. 3d 771 (1st. Dist. 2001), were confronted by an agency and case management team that failed repeatedly to provide the services they were ordered to provide. Between October 27, 1997 and January 28, 1998 the case of the minors was repeatedly continued; for failures on the part of the agency and its staff to first prepare a case plan, and then to provide copies of the case plans to the attorneys in a timely manner as required by the Juvenile Court Act. As a result of those failures, the court ordered that not only the caseworker, but the caseworker supervisor appear, and the caseworker supervisor defied the court’s order. Finally on July 13, 1998 both the caseworker and caseworker supervisor appeared, and reported that they had selected a permanency
ful K.C. motions share certain features. First, they are supported by a well-developed and maintained record. The various stakeholders in the case must document, and keep the court apprised of any ongoing failures on the part of the agency. Particularly helpful in generating a record are court appointed special advocates (CASAs). Working as volunteers, CASAs are empowered by statute to insure the proper delivery of child welfare services," and to present[ing] their testimony (to the court).20 In addition to their testimony, CASAs also prepare and submit written reports, which can later be cited in support of a K.C. motion. Second, they are filed as a last resort after having given DCFS notice, and an opportunity to handle the issues as internal matters.21 In addition to contacting DCFS legal, attorneys may also refer their cases for further review by DCFS. For example, according DCFS policy guide 2010.03 an attorney may make a referral for a clinical staffing to address such issues as permanency planning or needed services.22 Third and finally, as was the case in K.C., successful motions should be supported my multiple parties such as the state and the GAL.23

Conclusion
This article, is by no means, meant to disparage DCFS or its agencies. In reality, the majority of child service agencies and their staff work hard at what are thankless jobs. However, it is an unfortunate reality that some caseworkers and agencies seem to operate with impunity in their lack of efforts towards protecting the best interests of the children in their care. Thus, attorneys in the child protection courts—when advocating for the best interests of their clients—have at their disposal a method for removing ineffective agencies. ■
Public Law 98-1082—Guardianship Improvements.  
Effective January 1, 2015

By Linda Coon

Public Law 98-1082 reflects the best thinking of a diverse range of Probate Court practitioners who agree that this new law will help courts act in the best interest of children when their parents are temporarily unable to provide care.

The Illinois Probate Act (755 ILCS 5/11-5) governs private guardianship of minors appointed outside the foster care system by the parents or by court order. The Probate Act allows parents to appoint a short-term guardian for up to one year when they are unable to provide day-to-day care for their children. Court orders for guardianship can be discharged by the court when the parents can show that they are prepared to take over responsibility for the children, or may last until the children turn 18. Illinois needs PL 98-1082 because:

- The Probate Act did not require guardians to get court permission or even to report to the court when they remove children from Illinois, unlike domestic relations or foster care cases. Parents have the right to know the whereabouts and well-being of their children. Parental rights and court authority are at risk when guardians move children out of state with no notice. Constitutionally-protected parental rights are violated when guardians change residences without telling the parents and when courts disregard parents’ appointment of appropriate short-term guardians for their children.

- Some courts improperly treat short-term guardianship forms as consent for court orders. However, short-term guardianship was legislated to be an agency relationship for one year or less. It does not constitute consent for a court order that may last until the child is 18. The Probate Act will now provide clarity and consistency statewide, and clear up the confusion.

- When a parent or guardian appoints a short-term guardian for a child, sometimes an opposing person files in court for guardianship. The Probate Act does not provide any standard for considering these cases. This causes confusion for families attempting to provide temporary guardianship for their children, for relatives and others who may seek court-ordered guardianship, and for the courts. Courts need a clear standard when considering a guardianship petition when a short-term guardian already is in place.

The new law remedies these problems, gives courts the authority to rule whether it is in children’s best interest to allow a guardian to remove a child from the state, and protects the short-term guardianship provisions in the statute. The new law:

- Requires guardians to petition the court prior to removing children from Illinois for 30 days or more, with proper notice to the parents, and to notify parents of the child’s whereabouts if they travel out of state for more than 48 hours.

- Requires guardians to inform the court of children’s current address within 30 days of any change of residence.

- Requires the court to honor short-term guardian appointments made by parents unless the petitioner can show it is not in the child’s best interest to remain with the short-term guardian.

- Clarifies that a short-term guardian form is not consent for a court order for guardianship.

- Balances the convenience of the guardian with the right of parents to know their children’s whereabouts and to communicate with the guardian, and provides for court oversight of children’s best interests.

Case example: Lillian consented for her Aunt Millie to be the court-appointed guardian of her daughter Jasmine while Lillian was in treatment for drug addiction. In 2010 Millie took Jasmine to Alaska and left her there with her daughter Rita and Rita’s adult daughter Jane. Lillian had regular visits and communication with her daughter in Illinois, but Rita and Jane cut off all contact. Rita and Jane obtained court-ordered guardianship of Jasmine in Alaska, with no notice to the Illinois court or to Lillian, who didn’t even have their address. Jane’s boyfriend sexually assaulted Jasmine. In 2012 Jane took Jasmine to live in California. There, Jane was charged as part of a large identity theft ring after an early morning police raid which further traumatized Jasmine. When Jane was extradited to Alaska in October 2013, Jasmine was sent back to Millie’s home in Illinois. Jasmine, now 14, recently returned to her mother, who has been clean and sober for four years. Jasmine is struggling to deal with the trauma and chaos she went through. Under PL 98-1082, courts will be able to assess the facts and circumstances of guardians’ plans to move children out of state and situations like this can be prevented.

The new law will provide courts with clear guidelines, keep parents informed and ensure that guardians act in the best interest of the children in their care.

SAVE THE DATE—Creatively resolving disputes for special education hearings

The ISBA ADR Section will conduct a program, Creatively Resolving Disputes for Special Education Hearings under the Individuals with Disabilities in Education Act, to be held on March 18, 2015, starting at 8:30 a.m. Attorney Neal Takiff will be a presenter and give an overview of state and federal law. Additionally, Attorney Charlie Fox will give the student/parent perspective and Attorney Nancy Krent will talk about the school district perspective. Impartial Hearing Officers, Ann Breen-Greco and Mary Schwartz, will provide their view on resolving cases without having to go to hearing. The presentations will be followed by a panel discussion on the most successful uses of resolution mechanisms, with specific examples of cases, with interactive participation with attendees. The co-sponsoring Committees of the program will be: Education Law, Disability Law, Family Law, and Child Law.
Public Act 98-084—Makes technical corrections to the definitions in the Adoption Act and the Child Care Act and to expand venue options

By Linda Coon

This legislation is sponsored by Rep. Sara Feigenholtz and Sen. Kwame Raoul.

Specific changes are:

1. To update the definitions section of the Adoption Act and the Child Care Act so that the acts are consistent with civil union and marriage equality legislation, other recent changes to the Adoption Act and current practice.

2. To allow a petition for adoption to be filed in any county.

Why is this legislation necessary and appropriate?

- Recently enacted Adoption Act legislation allowing the use of specific consents, designated surrenders and waivers, as well as the passage of civil union and marriage equality legislation, requires updating of the definitions relating to relatives and parents.

- Attorneys, courts and those involved in the adoption process will have more clarity in terms of who is a related person for purposes of adoption, who constitutes a “parent,” and who must receive notice in an adoption.

- The current venue provision is very broad - it allows an adoption to be filed where the adoptive parents or biological parents reside, where the adoptee resides or was born, or in any county if the adoption is an agency placement or if a guardian for the adoptee has been appointed by a court.

As a result, courts in the largest counties have developed efficient and cost-effective processes for handling adoption cases and handle the vast majority of these cases. The proposed language broadening the venue options affects a small number of cases, but allows all adoptive families to take advantage of these efficiencies. In addition, a litigant can always request a change of venue in a contested proceeding if the forum is inconvenient.

This legislation was drafted by the Chicago Bar Association (CBA) Adoption Law Committee and is sponsored by the CBA.

For more information contact Shelley Ballard at sballard@familybuildinglaw.com, 312-673-5312.
Don’t Miss This Handy Manual
to Post-Conviction Law!

POST-CONVICTION PRACTICE:
A MANUAL FOR ILLINOIS ATTORNEYS

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