

**Legislative Update: June 8, 2009**

**Re:** Bills which passed Houses and impact re-entry, child protection and juvenile justice

**From:** Tom Grippando

**1. REENTRY LEGISLATION**

**House Bill 3961**

**Sponsors: Rep. Constance Howard, Sen. Kimberly Lightford, Sen. Jacqueline Collins**

Rewrite of statute providing for sealing of criminal records:

- Requires State Police to implement court expungement or sealing order within 60 days after entry of the order unless a motion to reconsider has been filed;
- Requires State Police to file annual reports on compliance with court orders;
- Removes provision that order which conflicts with statute is void (State Police used this to justify practice of ignoring court orders).

**Senate Bill 1289**

**Sponsors: Sen. Kwame Raoul, Sen. A. J. Wilhelmi, Sen. Heather Steans, Rep. Will Burns, Rep. Art Turner**

Creates the Illinois Crime Reduction Act of 2009. The Bill calls upon state and local agencies to direct their resources to evidence-based practices which have proven effective in reducing recidivism and reintegrating offenders into society. It also calls for the creation of a statewide risk assessment instrument to be used in all stages of the criminal justice system. The bill provides for an Adult Redeploy Program to be created with an oversight board convened by the Secretary of Human Services and the Director of Corrections. SB1289 does not apply to those convicted of a “crime of violence” as defined in the Crime Victims Compensation Act.

**HB 2474**

**Sponsors: Rep. Constance Howard, Sen. Kwame Raoul**

Creates the Task Force on Inventorying Employment Restrictions Act and provides that the Task Force shall audit the statutes, administrative rules, policies, and practices that restrict employment of persons with criminal history and report its findings and recommendations to the Governor and General Assembly by January 31, 2010. Effective immediately.

**House Bill 762**

**Sponsors: Rep. Constance Howard, Sen. Donnie Trotter**

Repeal of provision which requires applicants for health care worker waivers to demonstrate that all fines have been paid. Applicant must enter into payment plan to pay fine. Applicant is not barred from waiver if he is current on payment plan.

**House Bill 610**

**Sponsors: Rep. Karen A. Yarbrough, Sen. Jacqueline Y. Collins.**

Provides that driver's licenses, state issued identification cards, social security account cards, or other government issued identification documents in possession of a county sheriff at the time a person is committed to the Illinois Department of Corrections shall be forwarded to the Department. Provides that the Department shall retain the government issued identification documents of a committed person at the institution in which the person is incarcerated and shall ensure that the documents are forwarded to any institution to which the person is transferred. Provides that the government issued identification documents of a committed person shall be made available to the person upon discharge from the Department.

**Senate Bill 1050**

**Sponsors: Sen. Kwame Raoul, Rep. Barbara Currie**

1. Bill would permit court to issue a certificate of relief from disabilities. Certificate would lift those legal restrictions, listed in the certificate, which resulted from conviction. Employer, who hired on basis of certificate, would be immune from actions based on negligent hiring, except for willful or wanton acts on part of employer in deciding to hire the employee. Certificates are not available to persons convicted of Class X felony, aggravated driving under the influence of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof, aggravated domestic battery, or a forcible felon. "Forcible felony" means first degree murder, second degree murder, aggravated arson, arson, aggravated kidnapping, kidnapping, aggravated battery that resulted in great bodily harm or permanent disability, and any other felony which involved the use of physical force or violence against any individual that resulted in great bodily harm or permanent disability. A certificate is also not available to one who was convicted of any felony more than twice

2. Bill would also permit a person interested in certain state licensure or certification to obtain a nonbinding evaluation as to whether his or her criminal history would be a bar. This evaluation would be provided prior to time that individual has completed educational requirements

**Senate Bill 231**

**Sponsors: Sen. Kwame Raoul, Rep. Constance Howard**

Medicaid suspension during incarceration - rather than termination. Bill also provides an option for inmates to apply for Medicaid, prior to release date.

**House Bill 897**

**Sponsors: Rep. Greg Harris, Sen. Heather Steans**

Amends the Illinois Identification Card Act to authorize identification cards for homeless persons at no fee.

**House Bill 436**

**Sponsors: Rep. LaShawn Ford, Sen. Kimberly Lightford**

Creates a loan and grant program for ex-offenders to plan and start their own businesses. Does not apply to those convicted of violent offenses.

## **2. CHILD PROTECTION LEGISLATION**

### **House Bill 529**

#### **Sponsors: Rep. Mary Flowers, Sen. Willie Delgado**

Bill would reform several Juvenile Court proceedings and permit reinstatement of parental rights, after court terminated that relationship

- The bill would empower DCFS to request the court to restore the legal relationship of parent/child, where the child will likely age out of foster care. It would empower Juvenile Court to grant that request, if it finds that reinstatement would be in the child's best interest.
- Creates a new status of continuing foster care where siblings are bonded with one another and adoption or guardianship would result of the separation of the siblings. Continuing foster care what also be justified, where the child's as bonded to his/her current caretakers, and the caretakers, for good reason, will not commit to either adoption or guardianship, would commit long term care of the child
- Judicial review of the service plan to determine what, if any, tasks imposed on the parents are not reasonably related to the problems that prevent the child from returning home.
- Conversion of the dispositional hearing into a permanency hearing.
- Court to explain to the parents what problems prevent the child from returning home, and what outcomes the court would consider to be a resolution of those problems, at each permanency hearing, where the goal is return home,
- Court empowered to order DCFS to provide reunification services contained in the service plan, if the services are available, and they have not been offered to the parents reasonably promptly.

### **House Bill 2405**

#### **Sponsors: Rep. Gary Hannig, Sen. Kwame Raoul**

Permits the birth parent who lost parental rights in Juvenile Court to adopt his/her child, where the child is not in foster care and one of the following situations exist (a) the adoptive parent is disabled and consents or (b) the adoptive parent died. Facilitates the taking of consents for adoption where the consenting parent is incarcerated.

### **House Bill 4054**

#### **Sponsors: Rep. Sara Feigenholtz, Rep. Elaine Nekritz and Sen. Mattie Hunter**

The bill establishes a program for DCFS to reengage with former foster youths, under the age of 21, who encounter significant hardship upon emancipation.

This reengagement can occur with or without court involvement. The bill provides that DCFS is to provide services to achieve sustainable self-sufficiency as independent adults, to former wards 18 to 21 whether or not such reinstatement is sought or allowed, provided that the minor consents to such services and has not yet attained the age of 21.

In addition, a former ward between the ages of 18 and 21 may be placed by the court with the

Department of Children and Family Services if (1) the court has granted a supplemental petition to reinstate wardship of the minor, or (2) the Court has adjudicated the minor a ward of the court, permitted the minor to return home under an order of protection, and subsequently made a finding that it is in the minor's best interest to vacate the order of protection and commit the minor to the Department of Children and Family Services for care and service.

**Senate Bill 807**

**Sponsors: Sen. Mattie Hunter, Rep. Mary Flowers**

Annually, the Illinois Department of Children and Family Services child abuse/neglect hotline receives tens of thousands of reports. Many allege substantial future child endangerment - that is, the child is at risk of future abuse or neglect. A significant number do not indicate that the child is at risk of future abuse or neglect, taking into consideration such issues as child safety, parental cooperation and the need for immediate response.

Bill would permit DCFS to treat reports, which indicate risk of future substantial child endangerment differently from those reports which do not suggest that this risk exists. Under this bill, where the Department receives a report which does indicate substantial risk of future child endangerment, it must initiate an investigation. During the course of that investigation, DCFS is required to gather facts related to the current safety of the child and the risk of subsequent abuse or neglect. The Department must then determine whether a report of suspected child abuse or neglect should be indicated or unfounded and whether child protective services are needed. If the Department determines that, child abuse occurred, the family member responsible for that neglect or abuse will be named in an indicated report. That report is maintained by DCFS in its central registry.

Where DCFS receives a report that the child is not at substantial risk of future endangerment, it is required to initiate a family assessment, rather than an investigation. That assessment includes an evaluation of child safety, risk of subsequent child maltreatment, family strengths, and needs. If, during the course of the family assessment, the Department determines that there is a substantial risk of future child endangerment; it will initiate a child abuse/neglect investigation.

In the absence of evidence of substantial future child endangerment, DCFS will not make a determination as to whether past child maltreatment occurred. Therefore there will not be a finding of neglect or abuse. Rather, the Department will make a determination as to the need for services to address the safety of family members and the risk of subsequent maltreatment

**House Bill 520**

**Sponsors: Rep. Esther Golar, Sen. Iris Martinez**

Redefines a "neglected or abused minor" and a "dependent minor to exclude a child who has let in the care of adult relative for any length of time, as long as the adult relative is mentally and physically capable. It also defines what is mentally and physically capable.

### **3. JUVENILE JUSTICE LEGISLATION**

#### **House Bill 761**

**Sponsors: Rep. Connie Howard, Sen. Mattie Hunter**

Permanency hearings for youths placed in DCFS custody as delinquents.

#### **House Bill 3795**

**Sponsors: Rep. Annazette Collins, Sen. Mattie Hunter**

Bill calls for all counties to establish juvenile drug courts.

#### **Senate Bill 1030**

**Sponsors: Sen. William R. Haine, Rep. Art Turner**

This bill facilitates petitions for expungement of Juvenile records. At the time that a minor is adjudicated delinquent in a Juvenile Court proceeding, the minor can request the court to set the matter for an expungement hearing. The hearing will be set for a date which falls in the month that the youth turns 18. The youth must be present or be represented by counsel, on the date set. If not, the court will not consider granting an expungement. The State can contest the expungement only on the basis that:

- the offense for which the minor was arrested is still under active investigation;
- the minor is a potential witness in an upcoming court proceeding and that such arrest record is relevant to that proceeding;
- the adjudication was based on an act, which if committed by an adult, would constitute: (i) homicide, (ii) an offense involving a deadly weapon, (iii) a sex offense as defined in the Sex Offender Registration Act, or (iv) aggravated domestic battery.

The bill bars the State Police from sending juvenile records to FBI, unless youth is charged with a mandatory transfer offense.

The bill also imposes an automatic \$30 fine on adult defendants for each conviction, for each offense. The money is purportedly to be used to pay the costs related expungement of juvenile records. \$10 goes to the State's Attorney, \$10 to the Clerk and \$10 to the State Police

**4. Important Legislation that did not pass during this spring session:**

**House Bill 2298:**

This bill lost on a vote of 66 – 50 in the House. 20 Democrats voted against it, and one voted present. The bill would have empowered juvenile court judges to vacate delinquency findings, after the youth completed probation, where the court determined that an order vacating the finding would be in the interest of society and the minor.

By way of background, several juvenile court judges were engaging in this practice. The advantage of this approach is that the juvenile would not have a delinquency record. The practice is similar to orders of supervision, which the criminal courts use in order to avoid entering an order of conviction.

The Cook County State’s Attorney filed a lawsuit against one of the judges. The action was heard in the Illinois Supreme Court. The court found that the practice was not justified under the juvenile court act. However, three justices join in a concurring opinion. They agreed that the juvenile court act did not permit this practice. However, they found that the practice was consistent with the philosophy of the juvenile court act and urged the Legislature to address this issue.

I have an audio of the debate. It has duration of less than 10 minutes.

**Senate Bill 1687:**

This bill would have prohibited employment discrimination on the basis of criminal charges, which did not result in a conviction. The Human Rights Act prohibits discrimination on the basis of arrests, which did not result in a conviction. Employers now argue that they can discriminate not on the arrest, but on the criminal charges, which flowed from the arrest. That bill was defeated on a vote of 23 to 27 with two senators voting present. I have access to a recording of that debate.

**House Bill 65:**

This bill would have barred applications for state employment from requiring that the applicant to reveal convictions of nonviolent offenses. It contained several exceptions, for example, law enforcement. It explicitly provided that during the interview an inquiry could be made of all the applicant’s criminal records. The bill mandated that a background check be made on any candidate considered for employment. The bill did not require the hiring of individuals with criminal records. The bill did not prohibit discrimination on the basis of criminal convictions. It lost 43 to 68 in the House.