**PROTOCOL FOR PROSECUTORS:**

**Responding to Victims with Disabilities who**

**Experience Sexual Assault and Domestic Violence**

Produced by:

Illinois Family Violence Coordinating Council

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**Background**

In March 2010, the Illinois Family violence Coordinating Council (IFVCC) formed a committee to address violence in the lives of people with disabilities. The Responding to Victims with Disabilities Committee includes people with disabilities as well as representatives from Illinois Department of Human Services -Domestic Violence and Sexual Assault Unit, Illinois Department on Aging, the Illinois Attorney General’s Office, the Center for Prevention of Abuse, Blue Tower Training, Community Family Violence Coordinators, and the Illinois Department of Public Health. The purpose of the committee is to identify and develop resources to assist the courts, criminal justice systems, and communities in responding to the needs of victims with disabilities who experience sexual and/or domestic violence. During its brief tenure, the committee has conducted training statewide; selected, purchased and distributed materials statewide; worked with the Illinois Attorney General’s Office to reinforce the Court Disability Coordinators system; sent a collaborative team to a national conference for crime victims with disabilities; presented three workshops at the same national conference; trained all of the Family Violence Coordinators across the state and participated in the development of an Arrest Grant. Because of the successful application to the Office for Violence against Women, the Committee was able to participate in a statewide process to develop a protocol for Law Enforcement Officers in Illinois as well as this protocol for Prosecutors in Illinois.

According to the U. S. Bureau of Justice Statistics, people with disabilities experience violence 1.5 times more often than people without disabilities. Other studies indicate that people with disabilities are three to ten times more likely to experience violence than people without disabilities. The offenders of violence against people with disabilities are usually someone known and trusted by the person, such as a family member or a paid service provider.

In spite of the prevalence of violence in the lives of people with disabilities, there is a glaring lack of reports and a general lack of victim services for the victim. For these reasons, the Responding to Victims with Disabilities Committee determined the need for protocols for prosecutors and for law enforcement.

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| --- |
| “I would talk to someone who would not judge me or treat me different because I have a disability. We are all people.” Illinois citizen |

**An important note about words**

This protocol is written with attention to respectful language. People First Language is used to denote that the person is more important than the diagnosis or label. For example, “a person who uses a wheelchair” or “a woman with cerebral palsy” is preferred over “a wheelchair user” or “the cerebral palsied woman”. It is also important to note the words we use to indicate that a person *has* a disability, rather than the person *is* a disability. For example, “She has an intellectual disability” is preferred over “She is intellectually disabled.”

Words not considered respectful include: handicapped, mentally retarded, crippled, palsied, ‘the disabled’, and any slang terms. In order to show respect and establish rapport with victims who have disabilities, these are important considerations to keep in mind. More information is provided in the attachments on language and sensitivity.

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| --- |
| “I would want to talk with someone who is comfortable with my disability and sees me as strong. I won’t talk to someone who just focuses on my disability or someone who thinks I’m not intelligent because I use a wheelchair.” Illinois citizen |

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“My lawyer (State’s Attorney) believed me and helped me in court. He helped me when I got nervous. The guy that hurt me got sent away.” Survivor Testimonial

**INTRODUCTION**

**Needs Statement**

One of five persons will have a disability in their lifetime. Some people are born with disabilities, some acquire disabilities during their childhood years, and others experience disabilities related to accidents, disease, or aging. For many people, having a disability is a natural part of life. There are many different kinds of disabilities. Some disabilities are easy to see and some disabilities are not visible. Some disabilities affect the body; some affect the ability to learn and reason; some affect emotions and thoughts.

It is a fact that people with disabilities experience domestic and sexual violence more often than people without disabilities. It is also known that victims with disabilities rarely access victim services and most of the time, their offenders are not held accountable in the criminal justice system.

People with disabilities want a compassionate response to their experience, just like other victims. People with disabilities who experience sexual and/or domestic violence deserve justice as much as other victims. Sometimes incorrect assumptions and attitudes are a barrier to equal justice and sometimes lack of information and skills is the barrier. When these barriers are addressed, people with disabilities can have equal access to the criminal justice system and offenders can be held accountable.

Some people with disabilities will need accommodations to participate fully in the criminal justice system. An accommodation can be as simple as using plain language. Accommodations are individualized for the specific person and allow the person to access a facility, service, or activity that is available to others in the general public. There are community resources which can assist investigators and prosecutors in obtaining needed accommodations.

**Purpose of Protocol**

The purpose of this protocol is to effectively guide prosecutors in responding to domestic violence and sexual assault victims with disabilities through model guidelines, pretrial examples, and legal considerations. Implementation of the protocol will allow for successful partnering with law enforcement, advocates, and others in the criminal justice system in the response to victims with disabilities, and also ensure that the response follows legal mandates as well as current best practices.  **Prosecutor response is critical** to assuring that victims with disabilities have equal access to the criminal justice system in a compassionate, proactive, individualized manner.

**Definitions and Criminal Statutes of Crimes**

Our first job is to understand what we are referring to when we say a person with a disability. The World Health Organization defines disabilities this way: “Disabilities are an umbrella term, covering impairments, activity limitations, and participation restrictions. Impairment is a problem in body function or structure; an activity limitation is a difficulty encountered by an individual in executing a task or action; while a participation restriction is a problem experienced by an individual in involvement in life situations. Thus, disability is a complex phenomenon, reflecting an interaction between features of a person’s body and features of the society in which he or she lives.” According to this definition, the environment is a key feature and of critical importance.

The Americans with Disabilities act (ADA) covers over 900 different disabilities and defines a person with a disability as:

*Any person with a physical or mental impairment that substantially limits one or more of an individual’s major life activities, including people with a record of impairment or who are regarded as having an impairment.*

Disabilities covered by the ADA include, but are not limited to:

1. Developmental disabilities (including intellectual disabilities, autism, cerebral palsy, epilepsy)
2. Traumatic brain injury
3. Severe physical disabilities (spinal cord injury, polio, spina bifida, etc.)
4. Psychiatric disabilities
5. Degenerative Brain Disorders
6. Deaf or hard of hearing
7. Blind or low vision

For purposes of this protocol, the following terms as listed by their Illinois Compiled Statutes citations apply to domestic violence and sexual assault of persons with disabilities:

**RELATED CRIMINAL OFFENSES (720 ILCS)**

Just like anyone else, a person who has a disability can be the victim of any crime known to the law. However, certain types of offenses are more likely to target people who have disabilities. Targeting people with disabilities may lead to classification as a hate crime. Set forth below are a number of offenses involving bodily harm, sexual abuse/assault, property damage or theft, and other offenses which may unfortunately be committed more frequently against people with disabilities, or for which the law provides different or enhanced penalties if committed against a person with a disability. Please note that while the quoted statutory sections may not use “People First” language, such language is the preferred manner of communicating with and about people who have disabilities.

**ACT 5. CRIMINAL CODE OF 1961**

ARTICLE 9. HOMICIDE

5/9-1 First Degree Murder

Section 5/9-1(b)(17) sets forth that it is an aggravating factor if “the murdered individual was a disabled person and the defendant knew or should have known that the murdered individual was disabled.” Prior to the repeal of the death penalty in Illinois, this factor in aggravation could result in the imposition of a sentence of death.

5/9-3.3 Drug-Induced Homicide

ARTICLE 10. KIDNAPPING AND RELATED OFFENSES

5/10-1 Kidnapping

Section 10-1(b) provides that “a severely or profoundly intellectually disabled person” is confined against his or her will for purposes of this statute if such confinement is without the consent of such person’s parent or guardian.

5/10-2 Aggravated Kidnapping

Section 10-2(a)(2) elevates a kidnapping offense from a Class 2 Felony under Section 10-1 to a Class X Felony if a person commits the offense of kidnapping and “takes as his or her victim ... a severely or profoundly intellectually disabled person.”

5/10-3 Unlawful Restraint

5/10-5 Child Abduction

ARTICLE 11. SEX OFFENSES

5/11-1.20 Criminal Sexual Assault

Section 11-1.20(a)(2) provides that a person commits the offense of Criminal Sexual Assault if that person “commits an act of sexual penetration and ... knows that the victim is unable to understand the nature of the act or is unable to give knowing consent.”

5/11-1.30 Aggravated Criminal Sexual Assault

The offense of Criminal Sexual Assault is elevated from a Class 1 Felony under Section 11-1.20 to a Class X Felony if, under Section 11-1.30(a)(6) “the victim is a physically handicapped person” **or** under Section 11-1.30(c) “a person commits an act of sexual penetration with a victim who is a severely or profoundly intellectually disabled retarded person.”

5/11-1.40 Predatory Criminal Sexual Assault of a Child

5/11-1.50 Criminal Sexual Abuse

Section 11-1.50(a)(2) provides that a person commits the offense of Criminal Sexual Abuse if that person “commits an act of sexual conduct and knows that the victim is unable to understand the nature of the act or is unable to give knowing consent.”

5/11-1.60 Aggravated Criminal Sexual Abuse

The offense of Criminal Sexual Abuse is elevated from a Class A Misdemeanor or Class 4 Felony under Section 11-1.50 to a Class 2 Felony if, under Section 11-1.60(a)(4) “the victim is a physically handicapped person” **or** under Section 11-1.60(e) “a person commits an act of sexual conduct with a victim who is a severely or profoundly intellectually disabled retarded person.”

5/11-6 Indecent Solicitation of a Child

5/11-9.1 Sexual Exploitation of a Child

5/11-9.1A Permitting Sexual Abuse of a Child

5/11-9.5 Sexual Misconduct with a Person with a Disability

Provides that it is a Class 3 Felony Offense for an employee or contractual agent of the Department of Human Services or a community agency funded by DHS to engage in an act of sexual conduct or sexual penetration with “a person with a disability who is under the care and custody of the Department of Human Services at a State-operated facility; or ...who is in a residential program operated or supervised by a community agency.”

5/11-11 Sexual Relations within Families

5/11-14.4 Promoting Juvenile Prostitution

Provides that it is a Class 1 Felony where a person “advances prostitution as defined in Section 11-0.1, where the minor engaged in prostitution, or any person engaged in prostitution in the place, is under 18 years of age or is severely or profoundly mentally retarded at the time of the offense” (Subsection (a)(1)) or “profits from prostitution by any means where the prostituted person is under 18 years of age or is severely or profoundly mentally retarded at the time of the offense” (Subsection (a)(2)). If the child or “profoundly mentally retarded” person is confined against his/her will by force or by threat, Subsection (a)(4) elevates this offense to a Class X Felony with an extended sentencing range of 6-60 years in the Department of Corrections.

5/11-18.1 Patronizing a Minor Engaged in Juvenile Prostitution

Despite the name of this offense, the provisions of this statute apply equally if the person commits the acts described with a “severely or profoundly mentally retarded person” as if the acts had been committed with a person under the age of 18.

5/11-20.1 Child Pornography

Despite the name of this offense, the provisions of this statute apply equally if the person commits the acts described with a “severely or profoundly mentally retarded person” as if the acts had been committed with a person under the age of 18. Please note that the language regarding “severely or profoundly mentally retarded” persons is **not** included in Section 11-20.1B, pertaining to the offense of Aggravated Child Pornography.

ARTICLE 12. BODILY HARM

5/12-1 Assault

5/12-2 Aggravated Assault

The offense of Assault is elevated from a Class C Misdemeanor under Section 12-1 to a Class A Misdemeanor under Section 12-2(b)(1) if the victim is a physically handicapped person.

5/12-3 Battery

5/12-3.05 Aggravated Battery

The offense of Battery is elevated from a Class A Misdemeanor under Section 12-3 to a Class 3 Felony under Section 12-3.05(b)(2) if the defendant causes “bodily harm or disability or disfigurement” to any “severely or profoundly mentally retarded person.” In cases of “great bodily harm or permanent disability or disfigurement” to such victims, the offense is further elevated by Section 12-3.05(b)(1) to a Class X Felony, with yet further sentencing enhancements if a firearm is used in the commission of the offense.

The offense of Battery is elevated from a Class A Misdemeanor under Section 12-3 to a Class 3 Felony under Section 12-3.05(d)(2) if the victim is pregnant or physically handicapped.

5/12-3.2 Domestic Battery

5/12-3.3 Aggravated Domestic Battery

5/12-3.4 Violation of an Order of Protection

5/12-4.4a Abuse or Criminal Neglect of a Long Term Care Facility Resident; Criminal Abuse or Neglect of an Elderly Person or Person with a Disability

Provides that it is a Class 3 Felony for certain specified types of caregivers (see statute for definitions) to endanger the life or health of a resident of a long-term care facility, elderly person, or person with a disability, or to perform acts causing such person’s pre-existing mental or physical condition to deteriorate, or to fail to perform acts necessary to maintain or preserve the life or health of such person, or abandons such person.

With regard specifically to elderly persons or persons with disabilities, one who “physically abuses, harasses, intimidates, or interferes with the personal liberty of the person” (Subsection (b)(1)(D)) or “exposes the person to willful deprivation” (Subsection (b)(1)(e)) also commits this offense.

If commission of this offense results in the death of the victim, the offense is elevated to a Class 2 Felony, for which a prison sentence of not less than three years nor more than 14 years must be imposed (Subsections (d)(1) and (d)(2)).

5/12-6 Intimidation

5/12-7.1 Hate Crime

This statute elevates a number of specified misdemeanor offenses to Class 4 Felony offenses (or Class 2 Felony for second and subsequent offenses) if the offense is committed “by reason of the actual or perceived race, color, creed, religion, ancestry, gender, sexual orientation, *physical or mental disability*, or national origin of another individual...” (emphasis added).

5/12-7.2 Educational Intimidation

Provides that it is a Class C Misdemeanor for one to interfere with the right of any child who is or is believed to be afflicted with a “chronic infectious disease” to attend or participate in schools by various specified means.

5/12-7.3 Stalking

5/12-7.4 Aggravated Stalking

5/12-7.5 Cyberstalking

5/12-11 Home Invasion

5/12-11.1 Vehicular Invasion

5/12-21.5 Child Abandonment

Section 12-21.5(b)(3) provides that, for purposes of determining “whether the child was left without regard for the mental or physical health, safety, or welfare of that child,” one factor to be considered is the “special needs of the child, including whether the child is physically or mentally handicapped, or otherwise in need of ongoing prescribed medical treatment such as periodic doses of insulin or other medications.”

5/12-21.6 Endangering the Life or Health of a Child

5/12-34.5 Inducement to Commit Suicide

ARTICLE 16. THEFT AND RELATED OFFENSES

5/16-1 Theft

5/16-30 Identity Theft

Subsection 16-30(b)(1) provides that a person who commits the offense of Identity Theft against a person with a disability commits Aggravated Identity Theft. The precise classification of this offense varies based on the amount of financial loss to the victim and the prior record of the offender, but Aggravated Identity Theft is generally one class of offense higher than an Identity Theft with otherwise similar factual circumstances.

ARTICLE 17. DECEPTION AND FRAUD

5/17-56 Financial Exploitation of an Elderly Person or a Person With a Disability

Provides that a person who “stands in a position of trust or confidence” with an elderly person or person with a disability and by deception or intimidation obtains control over his or her property commits a felony offense. The precise classification of the offense varies based on the amount of financial loss to the victim, and, in the case of an elderly person, on the actual age of the victim.

ARTICLE 18. ROBBERY

5/18-1 Robbery

The offense of Robbery is elevated from a Class 2 Felony offense under this Section to a Class 1 Felony offense if the victim is a physically handicapped person.

5/18-2 Armed Robbery

5/18-3 Vehicular Hijacking

5/18-4 Aggravated Vehicular Hijacking

The offense of Vehicular Hijacking is elevated from a Class 1 Felony under Section 18-3 to a Class X Felony under Section 18-4(a)(1) if the person from whose physical presence the motor vehicle is taken is a physically handicapped person.

5/18-5 Aggravated Robbery

ARTICLE 19. BURGLARY

5/19-1 Burglary

5/19-3 Residential Burglary

5/19-4 Criminal Trespass to Residence

ARTICLE 20. ARSON

5/20-1 Arson

5/20-1.2 Residential Arson

ARTICLE 21. DAMAGE AND TRESPASS TO PROPERTY

5/21-1 Criminal Damage to Property

5/21-2 Criminal Trespass to Vehicles

5/21-3 Criminal Trespass to Real Property

ARTICLE 21.2 INTERFERENCE WITH A PUBLIC INSTITUTION OF EDUCATION

5/21.2-2 Interference with Public Institution of Higher Education

ARTICLE 25. MOB ACTION AND RELATED OFFENSES

5/25-1 Mob Action

ARTICLE 26. DISORDERLY CONDUCT

5/26-1 Disorderly Conduct

Section 26-1(a)(8) provides that a person who transmits or causes to be transmitted a false report to the Department of Public Health under the Nursing Home Care Act, the Specialized Mental Health Rehabilitation Act, or the ID/DD Community Care Act commits a Class B Misdemeanor.

5/26-4 Unauthorized Video Recording and Live Video Transmission

**ACT 130. NEGLECTED CHILDREN OFFENSE ACT**

130/2 Contributing to Dependency or Neglect of Child

**ACT 135. HARASSING AND OBSCENE COMMUNICATIONS ACT**

135/1-1 Harassment by Telephone

135/1-2 Harassment by Electronic Communications

**CODE OF CRIMINAL PROCEDURE (725 ILCS)**

Certain provisions of the Code of Criminal Procedure may have a direct effect on the experience of persons with disabilities who are the victims of criminal offenses. For example:

**5/106B-5 Testimony by a Victim Who is a Child or a Moderately, Severely, or Profoundly Intellectually Disabled Person or a Person Affected by a Developmental Disability.**

This section allows a witness who is the victim of an offense of Criminal Sexual Assault, Predatory Criminal Sexual Assault of a Child, Aggravated Criminal Sexual Assault, Criminal Sexual Abuse, or Aggravated Criminal Sexual Abuse, that is a child or is moderately, severely, or profoundly intellectually disabled, in the discretion of the Court, to give testimony from outside of the courtroom by means of closed circuit television (CCTV). In order to do so, this section requires (1) that the testimony in question be taken during the proceeding in which it is admitted, and (2) that the Court determine that forcing such witness to testify from the witness stand would cause such witness “serious emotional distress” such that he or she “cannot reasonably communicate” **or** “severe emotional distress” that is likely to cause him or her “severe adverse effects.”

If the Court allows the witness to testify in this fashion, the statute provides that the defendant is not one of the persons permitted in the room with the testifying witness, although the defendant is to be permitted to communicate with his or her attorney, who is permitted to be in the room. In addition to the judge, prosecutor, defense lawyer, and persons operating the CCTV equipment, the Court may allow any person who “contributes to the well being” of the witness into the room, including “a person who has dealt with the child in a therapeutic setting concerning the abuse.”

**5/115-7.1 Court May Not Order Mental Examination of Sex Victim**

Unsurprisingly, this section provides that the Court may not order the victim of a sex offense to submit to a psychiatric or psychological evaluation.

**5/115-7.2 Prosecution for Illegal Sexual Act Perpetrated Upon a Victim; Admissibility of Evidence; Posttraumatic Stress Syndrome**

This section provides that testimony of a qualified expert pertaining to “any recognized and accepted form of posttraumatic stress syndrome” *shall* be admissible as evidence in the trials of prosecutions of certain sex offenses.

**5/115-7.3 Evidence in Certain Cases**

In cases in which the defendant is accused of committing certain specified sex offenses or violent offenses involving acts of sexual conduct or sexual penetration, this section allows evidence of the defendant’s previous commission of similar offenses into evidence for any purpose for which it is relevant (including propensity). In order to admit such evidence, the Court must weigh the probative value of the evidence against its potential for undue prejudice to the defendant, and in doing so must consider (1) the proximity in time of the prior acts to the charged offense, (2) the degree of factual similarity, and (3) other relevant facts and circumstances.

**5/115-7.4 Evidence in Domestic Violence Cases**

In cases in which the defendant is accused of committing an offense of domestic violence, this section allows evidence of the defendant’s previous commission of similar offenses into evidence for any purpose for which it is relevant (including propensity). In order to admit such evidence, the Court must weigh the probative value of the evidence against its potential for undue prejudice to the defendant, and in doing so must consider (1) the proximity in time of the prior acts to the charged offense, (2) the degree of factual similarity, and (3) other relevant facts and circumstances.

**5/115-10 Certain Hearsay Exceptions**

This section applies to cases in which the defendant is accused of committing sexual or physical acts upon a child under age 13 or a “person who was a moderately, severely, or profoundly intellectually disabled person” at the time the act was committed. In such cases, this section permits the admission into evidence (1) of testimony by the victim that he or she told another person of the act in question and (2) testimony by another witness regarding the victim’s out-of-court reporting of the act.

In order to admit this evidence, the Court must first find at a hearing held outside the presence of the jury that the time, content, and circumstances of the statement demonstrate its reliability. Although the statute indicates that these statements can be admitted only if the witness testifies or is unavailable as a witness, but there is corroborative evidence, this statute has been successfully challenged on 6th Amendment grounds as to non-testifying witnesses. If such evidence is admitted, the jury must be instructed that it is for them to determine the weight to be given to such evidence, and setting forth the factors to be considered by them in doing so.

**5/115-10.3 Hearsay Exception Regarding Elder Adults**

This section applies to cases in which the defendant is accused of committing a physical act, abuse, neglect, or financial exploitation against an “eligible adult,” as defined in the Elder Abuse and Neglect Act (320 ILCS 20/1 *et seq.*), who has been diagnosed with dementia, a developmental disability, or other mental incapacity **or** any physical infirmity. In such cases, this section permits the admission into evidence (1) of testimony by the victim that he or she told another person of the act in question and (2) testimony by another witness regarding the victim’s out-of-court reporting of the act.

In order to admit this evidence, the Court must first find at a hearing held outside the presence of the jury that the time, content, and circumstances of the statement demonstrate its reliability. If such evidence is admitted, the jury must be instructed that it is for them to determine the weight to be given to such evidence, and setting forth the factors to be considered by them in doing so.

**Code of Corrections/Factors in Aggravation 730 ILCS 5/5-5-3.2**

The Code of Corrections sets forth those factors in aggravation and mitigation that are to be considered by the Court at the time sentence is imposed. Several of the factors in aggravation, set forth in Section 5-5-3.2, are specifically relevant to cases in which the victim of the defendant’s crime is a person with a disability. For example:

**5-5-3.2(a)(9) “**the defendantcommitted the offense against a person who is physically handicapped or such person’s property.”

**5-5-3.2(a)(10)** “by reason of another individual’s actual or perceived race, color, creed, religion, ancestry, gender, sexual orientation, physical or mental disability, or national origin, the defendant committed the offense against (i) the person or property of that individual; (ii) the person or property of a person who has an association with, is married to, or has a friendship with the other individual; or (iii) the person or property of a relative (by blood or marriage) of a person described in clause (i) or (ii). For the purposes of this Section, “sexual orientation” means heterosexuality, homosexuality, or bisexuality.”

**5-5-3.2(a)(23)** “the defendant committed the offense against a person who was elderly, disabled, or infirm by taking advantage of a family or fiduciary relationship with the elderly, disabled, or infirm person.”

In cases where these factors are present, they are to be “accorded weight in favor of imposing a term of imprisonment”or considered as reasons to impose a more severe sentence, and should be emphasized accordingly by the prosecuting attorney. Finally, certain factors in aggravation are to be considered as reasons to impose an extended-term sentence pursuant to Section 5-8-2 of the Code of Corrections. One such factor is pertinent to our discussion:

**5-5-3.2(b)(3)** “When a defendant is convicted of any felony committed against: ... (iii) a person physically handicapped at the time of the offense or such person’s property.”

**PROTOCOL GUIDELINES**

The purpose of these model guidelines is to encourage a uniform approach for effective responses to people with disabilities who experience violent crimes. The guidelines apply to domestic violence and sexually violent offenses committed against a person with a disability in Illinois, per the Americans with Disabilities Act definition (See Attachments). These guidelines demonstrate prosecutor’s commitment to facilitate understanding of and trust with the victim and to pursue a multi-agency approach in reporting, investigating, and prosecuting violent crimes against people with disabilities.

**Policy Statement**

State’s Attorneys Offices shall treat violent crimes against people with disabilities as a high priority and respond both professionally and compassionately to victims with disabilities. In addition, prosecution offices shall ensure that:

1. Reports of domestic violence and sexual assault of people with disabilities be fully charged regardless of the type of disability the victim has and regardless of the relationship between the victim and the suspect(s).
2. Prosecutors shall treat all persons with disabilities with dignity and respect – including person’s right to self-determination. Self-determination is a person’s right to tell their own account and say what they need to say without influence by another person who may want to speak for them.
3. Immediate, effective assistance and protection to victims with disabilities be provided and appropriate action against offenders is taken. Further, the implementation of these solutions should not result in increased risk to the victim and should not exacerbate the situat6ion, regardless of where the victim resides.
4. Prosecutors shall seek to determine needed accommodations/resources for victims with disabilities to ensure the victim has equal access ot the criminal justice system.
5. Prosecutors, in an effort to improve their response to victims with disabilities, participate in coordinated efforts with other appropriate agencies, including criminal justice, victim services, disability service organizations, and abuse/neglect investigative entities.
6. In situations when the victim is unavailable to testify in court, pursue an evidence-based prosecution.
7. If the initial investigation lacks enough collective evidence to file charges, initiate further investigation; i.e., re-interviews and collection of corroborative evidence.
8. Pursue a vertical prosecution when possible (i.e., same prosecutor working with the victim throughout the process). This allows the prosecutor to develop a relationship with the victim which increases comfort, as well as understanding of communication and needed accommodations.
9. Determine if the facts support an Aggravated charge because of the person’s disability.
10. Consider if the facts support filing charges of a hate crime (720 IL CS 5/12-7.1; 730 IL CS 5/4-5-3.2; 20 IL CS 2605/55a (31)).

**Policy Components**

In order to achieve an effective response to violent crime victims with disabilities, prosecutors will use the model response procedures and promote the following goals and responsibilities:

**Interagency Cooperation**

Interagency cooperation is a goal that requires a teamwork approach. Coordination of effort from law enforcement, prosecutors, disability organizations, medical personnel, judicial entities, victim advocacy groups, and probation is necessary for a thorough response to people with disabilities who experience violent crimes.

**Training**

In order to successfully respond to victims of sexual assault and domestic violence who have disabilities, training is needed to assure that criminal justice personnel have the knowledge, skills, and tools needed. Training will include:

* laws impacting the response to victims with disabilities
* myths and facts about people with disabilities
* attitudes about people with disabilities
* language and sensitivity
* the Americans with Disabilities Act
* indicators of violence in the lives of people with disabilities
* offender characteristics
* risk factors
* interviewing techniques
* investigative strategies
* hate crimes
* joint investigation procedures with state entities
* impact of trauma

Like any profession, continuing education is critical for the development of expertise. Prosecutors will participate in ongoing education opportunities.

**Victim Advocacy**

There are a number of reasons that prosecutors would want to include victim's advocates in the prosecution process when working with victim's who have disabilities.  Victim’s advocates may include individuals from non-profit, non-governmental victim services organizations, governmental victim assistants, legal advocates and representatives from community-based organizations. A victim's advocate can assist at a pace that is most appropriate for the victim and assist with rephrasing or reframing questions so that the person is better able to understand.  A victim's advocate can assist with crime victim's compensation, fulfilling crime victim's rights requirements, understanding the criminal justice process, as well as meeting various needs that may arise within the criminal justice process.

**Communicating with the Victim**

Communicating with the victim is a critical component of the criminal justice process. Meeting the victim should occur as early in the process as possible. It is important for the prosecutor to establish rapport with the victim and allow the victim to tell their story of what happened to them. The first meeting is also a time to discuss any accommodations that the victim may need to fully participate in the criminal justice process. The victim should be notified each step along the way so that they know what is happening, (e.g., charges filed, pre-trial, trial, sentencing). The prosecutor should also make sure the victim is aware of their rights under the Victim’s Compensation Act. These rights shall be given in language that is easy for the victim to understand.

**MODEL INVESTIGATIVE PROCEDURES**

**Response Procedures**

In order to have a successful interview, the prosecutor must establish rapport and respectful communication with the victim. A key element of this is approaching the individual with the framework of presumed competence. Presumed competence means presuming that all victims can communicate and participate in the criminal justice process. The prosecutor will want to gather some initial information before interviewing the person:

1. Determine if the victim has any kind of disability. This information should be included in investigative reports, but if not, these questions would be helpful: Did the person attend Special Education classes in school? Does the person participate in services with a disability organization?).
2. Find out how the specific disability *may* effect the interview process; each person is unique so further information will be gathered when you meet the person.
3. Determine if the victim uses any adaptive equipment, such as a hearing aid, crutches or a wheelchair.
4. Determine if the victim has any attention difficulties.
5. Determine how the victim best communicates their wants and needs.
6. Determine what makes it easiest for the victim to understand what others communicate.
7. Assure the setting for the interview is accessible to the victim (includes space, lighting, noise level, communication, etc.).
8. Arrange for a victim advocate to be present to support the victim, if possible.

While reviewing information from the report may assist in preparing or making arrangements for the investigative interview, asking the victim with a disability about how you can best work together is essential. The person with the disability is the expert on their situation.

**General Considerations**

Prosecutors are ethically responsible, in addition to all requirements of attorneys practicing in Illinois, for “doing justice”. Therefore, it is important at the outset to thoroughly examine the additional components necessary to charge, prepare and prosecute sexual assault and domestic violence cases involving victims with disabilities. Clearly, the nature of a victim’s disability can pose significant challenges that must be addressed, but none of these presents an insurmountable difficulty. However, in order to “do justice”, the prosecutor should always consider the potential harm to the victim that any charging or prosecution decision may have.

The defendants who perpetrate crimes against people with disabilities do so in large part because of the victim’s disability. Remember to consider if the act or actions meet the criteria for a hate crime. In sexual assault and domestic violence cases, the victims experience mental and emotional injuries as well as those physically that can be seen upon physical examination. Perpetrators may use the criminal justice system to control and antagonize the victim. Therefore, any education about the criminal justice process may help to decrease the effects of such tactics.

Without fail, the prosecutor must thoroughly understand the components and extent of a victim’s disability. Too often assumptions are made based on common misunderstandings, and victims with disabilities may not receive needed support.

Understanding the context of the offense as viewed through the lens of the victim is crucial for success before either juries or judges, and should be developed during the investigation of a case and proven at trial. It is important to understand that 97% of the time, offenders of people with disabilities are known and trusted by the individual or their family or professionals who serve them. Oftentimes, the offender will ‘groom’ and manipulate the victim to participate in sexual activity. The offender may have power over the victim and manipulate treats, access to activities, and forms of rewards/punishments in exchange for sexual favors. Consent for sexual activity requires voluntariness which would not be present in that example. Another example relates to the culture of compliance that may be present in schools, adult service providers and in some families. In this situation, the person with a disability has been trained (sometimes for their entire life) to do whatever they are told to do or they will be in trouble. The victim may have been denied access to critical information about their rights, healthy relationships, and human sexuality and lack the ‘knowing’ required to give consent to sexual activity. Developing this context can be crucial to the successful prosecution of an offender of a person with disabilities.

To help establish context, prosecutors should develop a list of experts in the field who can assist throughout the process. Educate yourself about disability services and community resources for people with disabilities. An expert witness might be useful when it comes to trial, especially when the context assessment is a critical part of the strategy. It is helpful to have a list of professionals who are possible expert witnesses for trial. The expert witness might be someone with a degree and many years of experience working with people with disabilities. In addition, Medical professionals, family and friends, facilities directors and program coordinators may also provide valuable information and will often be a part of the victim’s support structure.

In all cases where crimes of sexual violence are perpetrated against a person with a disabilities, the prosecutor should approach the case from an evidence-based perspective.

**Charging Crimes of Sexual Violence**

**Initial Considerations**

As in prosecuting any case, when prosecuting a case of sexual assault or sexual abuse, it is important to consider the effect that participating in the criminal justice system will have on the victim of the offense. When the victim of a sexually-based offense is a person with a disability, some special concerns arise, and the manner in which the victim is impacted by participation in the criminal justice system may be significantly different from the experience of a victim that does not have a disability.

Your degree of success in prosecuting cases in which a crime of sexual assault or sexual abuse has been perpetrated on a person with a disability will most likely depend on the participation of the victim in the prosecution of the case. It is critically important to begin to consider the victim’s role in the prosecution of the offense well before the case proceeds to trial.

A successful prosecutor must understand the extent and nature of the victim’s disability. Doing so will enable you to more accurately assess the strengths and weaknesses of your case, file any appropriate pre-trial motions, and secure any necessary accommodations for court proceedings. To this end, it is advisable to meet with the victim as early as possible in the process, preferably with the presence of a victim’s advocate.

An early meeting with the victim allows you to base your decisions regarding the prosecution on your actual knowledge of the victim’s desires and capabilities, instead of merely on assumptions. It will also serve to reduce the victim’s anxiety about his or her participation in the prosecution. Remember that many of the offenders who commit crimes of sexual assault select victims with disabilities because such victims are perceived to be less likely to tell or be believed, so offenders think they can get away with their crimes. However, if you as a prosecutor are sufficiently well-informed regarding the needs of the victim, many of the obstacles to successful prosecution can be overcome through the effective use of preparation, courtroom and other accommodations, and pre-trial motions.

There are a few basic questions for which you should be seeking answers during this initial interview with the victim:

**How has the offense impacted the victim?**

Of course, every case of sexual assault or sexual abuse results in emotional and/or physical trauma to the victim. In cases in which the victim has a disability, it is an unfortunate fact that the offense is often perpetrated by an individual who is, at least in part, responsible for the care of the victim. You should be able to obtain an order prohibiting the offender from having contact with the victim if the offender is released on bond. While this can address the victim’s fears of further abuse and/or retaliation for reporting the offense, the victim may still be left in a situation where he or she needs assistance with day-to-day care and activities. You and your victim’s advocate should familiarize yourselves with disability services and community resources for people with disabilities available in your area. You may find that the victim’s family and friends are also able to assist you in making sure that the victim’s needs are met.

**What are the victim’s expectations about the criminal justice system?**

Just as you would in any other case, it is important to determine that the victim understands his or her rights. It may be the case that, due to the nature of his or her disability, you may need to spend more time explaining his or her rights to the victim. You should allow sufficient time in this initial interview in order to explain the nature of the criminal proceedings to the victim, with an emphasis on his or her role in the proceedings. You may benefit from the assistance of a family member or care-giver if the nature of the victim’s disability is such that he or she has difficulty understanding your explanation.

This is also a good opportunity to find out what the wishes of your victim may be, or what he or she expects will happen to the offender as a result of the criminal prosecution. As you probably know, many non-attorneys have received a great deal of inaccurate information about how the criminal justice system works. It should be your goal at this initial interview to ensure that the victim emerges with a realistic understanding of what will be expected from him or her during the process, as well as what will happen to the offender. As with any other victim, a person with a disability is entitled to accurate information in this respect, and you should refrain from “sugar-coating” this information or promising the desired result.

**What does the victim need from you?**

In order to achieve a successful prosecution, it is important that you are aware of any special preparations or accommodations that will need to be made as soon as possible. Depending on the nature of his or her disability, the necessary accommodations may range from making sure the courtroom in which the victim will testify is wheelchair-accessible, to securing the assistance of an American Sign Language Interpreter, to filing a pre-trial motion permitting the victim to testify with the assistance of a comfort animal. You will also want to keep in mind during this interview the possibility of filing other pre-trial motions that may assist or protect the victim, which will be discussed in detail in subsequent sections of this protocol.

This initial interview is your best opportunity to find out exactly what you can do in order to facilitate the victim’s participation in the prosecution of the offender. Again, you and your victim’s advocate will want to familiarize yourselves with the services available in your community in order to ensure that the necessary accommodations can be made. Additionally, the Sheriff’s Office is an invaluable resource for making sure that witnesses, including the victim, are able to safely access the courts, and you should speak with your Sheriff or other representative of the Sheriff’s Office in advance of court proceedings if their assistance may be helpful to your victim. Finally, each judicial circuit in the State of Illinois has a Court Disability Coordinator (CDC). You can contact the Attorney General’s Office in Springfield at (217) 524-2660, or in Chicago at (312) 814-5684, for information on the CDC in your area.

Of course, each case is different, and the foregoing inquiries may not address every concern that you may want to address in your initial contact with the victim. This list is not meant to be comprehensive, and is merely intended to serve as a guide and to illustrate that the purpose of the initial interview with the victim is to prepare both yourself and the victim for effective prosecution of the offender.

**Identification of the Elements of the Crime(s)**

Sexually-based offenses are set forth in Article 11 of the Criminal Code of 1961 (720

ILCS 5/11-0.1 *et seq.*), and the elements of each offense are set forth in the Section that specifies the given offense. Please see the foregoing *Related Criminal Statutes* section of this protocol for a more comprehensive listing of sexual assault and sexual abuse related offenses.

When charging sexually-based offenses, it is important to be familiar with the statutory definitions of specific terms which are incorporated into the elements of specific offenses. These definitions are set forth at several locations within Article 11. For example, the offenses of Criminal Sexual Assault and Criminal Sexual Abuse involve, as an element of the offense, the commission of an act of “sexual conduct” or “sexual penetration.” These terms are defined in 720 ILCS 5/11-0.1 as follows:

“Sexual conduct” means any knowing touching or fondling by the victim or the accused, either directly or through clothing, of the sex organs, anus, or breast of the victim or the accused, or any part of the body of a child under 13 years of age, or any transfer or transmission of semen by the accused upon any part of the clothed or unclothed body of the victim, for the purpose of the sexual gratification or arousal of the victim or the accused.

“Sexual penetration” means any contact, however slight, between the sex organ or anus of one person and an object or the sex organ, mouth, or anus of another person, or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sex organ or anus of another person, including, but not limited to, cunnilingus, fellatio, or anal penetration. Evidence of emission of semen is not required to prove sexual penetration.

Familiarity with these definitions is essential in identifying the elements of sexually-based crimes. Additionally, the issue of consent is often a defense that is raised in cases of sexual assault or sexual abuse, where the defendant is claiming the victim consented to the charged offense, or where the charging instrument alleges that the offender knew that the victim was unable to consent. The definition of “consent” is found at 720 ILCS 5/11-1.70, which reads, in pertinent part:

“‘Consent’ means a freely given agreement to the act of sexual penetration or sexual conduct in question. Lack of verbal or physical resistance or submission by the victim resulting from the use of force or threat of force by the accused shall not constitute consent. The manner of dress of the victim at the time of the offense shall not constitute consent.”

Depending on the nature of the victim’s disability, he or she may not have the capacity to consent to sexual activity, or may be unable to communicate to the offender his or her refusal to participate in such acts. If these issues are present in your case, you may wish to consult with an expert in the relevant field to determine what relevant evidence of the lack of consent, or lack of ability to consent, may be presented at trial.

Please note that a number of the sexually-based offenses set forth in Article 11 provide that the offense may be charged as a higher class of offense, or may be subject to an enhanced penalty, if the victim has a disability. Please see the foregoing *Related Criminal Statutes* section of this protocol for specific examples.

**Analysis of the Evidence**

Evidence-based prosecution should be a familiar term to those prosecutors who have worked on domestic violence, elder abuse, or homicide cases. The same principles should be utilized in those cases involving victims with disabilities. In homicide cases, victims obviously cannot speak for themselves, so the evidence must speak for them. The same holds true for cases with victims who, for a variety of reasons, are unable or unwilling to speak for themselves.

Therefore, the prosecutor must rely on other evidence to tell the jury or judge what the victim cannot say for himself or herself. Examples of such evidence include photographs, writings, videos, and/or audio recordings. In cases of sexual assault and sexual abuse, there is often extrinsic physical evidence of the offense, such as semen or other fluids that may have been collected from the person of the victim subsequently to the offense. Other types of physical evidence include bruising, scratches, or other evidence of injuries (including injuries that may have been inflicted on the offender by the victim in self-defense).

If the scene of the offense was preserved, Crime Scene Investigation (CSI) may have been able to recover additional physical evidence, such as fingerprints, from the location at which the offense took place. Often, the placement of objects in a room can indicate the method of entry, presence or absence of a struggle, etc. DNA evidence in the form of semen, blood, or other fluids is often located at the location of the commission of sexual assault and sexual abuse offenses, whether on bedding, clothing, carpeting, or elsewhere.

These types of physical evidence may form the basis for an evidence-based prosecution that may prove the commission of an offense, even where the victim of the offense is unable to fully communicate what happened to him or her. Many perpetrators of sexual assault and sexual abuse offenses select victims with disabilities because they believe that such victims will be unable to report the offense, or will not be believed if they are able to report the offense. Therefore, it is critically important to use evidence-based prosecution to corroborate or supplement the testimony of the victim, so that even where the victim cannot speak for himself or herself, the offender may be brought to justice.

**Prosecutorial Investigation**

When the prosecutor becomes involved in a case, it is often too late to recover certain types of physical evidence. However, as prosecutors, we play a vital role in the investigation of offenses, and can improve the likelihood of obtaining a conviction by providing assistance and direction to law enforcement in the continuing investigation of sexual assault and sexual abuse offenses.

While the investigating officers are certainly trying to do the best job that they can to collect evidence, they may not be thinking in terms of the difficulties that may be presented by the victim’s disability and its effect on his or her ability to communicate. You may find it advisable to obtain the recording(s) of any 911 calls made in connection with the offense, or to direct the officers to canvass the surrounding area and attempt to identify and interview eyewitnesses, including “outcry” witnesses. While such efforts may not be the standard procedure employed by officers investigating sexual assault or sexual abuse offenses, they may yield valuable evidence that, in cases where the victim’s disability hinders his or her ability to fully communicate what happened, may make the difference and allow for successful prosecution of the offender.

Records pertaining to prior court cases, whether they be criminal cases or divorce, guardianship, or order of protection proceedings, may provide valuable information about the prior relationship between the offender and the victim. In sexual assault and sexual abuse cases, it is especially important to determine whether the offender has previously committed similar offenses, as 725 ILCS 5/115-7.3 provides that such evidence may be admissible for any purpose, including to show the propensity of the defendant to commit sex offenses. A pre-trial motion is necessary to admit such evidence, which will be discussed in more detail hereafter. At this point, it is important to note that the admissibility of such evidence of prior sex offenses depends in part on the factual similarity between the prior offense and the current offense. The more detail that can be obtained about the prior offense, the more likely you will be to establish sufficient factual similarity.

Therefore, you will want to go beyond merely obtaining a copy of the pleadings and/or judgment orders relating to the prior offense(s), and obtain the police reports pertaining to the prior offense(s). You will need to make sure that you are able to locate witnesses and determine what, if any, physical evidence of the previous offense may still exist. Bear in mind that evidence of prior sex offenses may be admissible even if the prior offense did not result in a conviction or even the filing of criminal charges, so you may want to ask your contacts with local law enforcement to look into the offender’s arrest record or interview persons that may be familiar with the offender’s past in order to identify prior offenses by the defendant that may never have even made it to court in the past.

One of the most significant ways in which a prosecutor can participate in the investigation of a sexual assault or sexual abuse offense is by assisting law enforcement in obtaining search warrants and/or orders authorizing the use of eavesdropping devices. For example, you may have a case in which the victim can describe the clothing worn by the offender at the time of the offense, and if you can establish the likely location of the clothing and obtain a search warrant, the clothing may yield valuable evidence in the form of semen, blood, or other fluids, or damage consistent with the victim’s account of the offense. Likewise, if the victim indicates that he or she was photographed or videotaped by the offender, a search warrant for the defendant’s phone, camera, or other device could yield invaluable evidence.

In the majority of sexual assault and sexual abuse cases, the offender is a person known to his or her victim. While offenders may be reluctant to admit their crimes to a police officer, you may have some success in obtaining a confession if the victim or another friend or relative is willing to consent to the recording of a phone call. In some cases, the offender will admit to his or her conduct when called by the victim and asked for an explanation or apology. While the offender may attempt to minimize or justify his or her conduct, such statements may serve to corroborate the victim’s statement as to any number of facts pertinent to the investigation, even if the defendant will not admit to the full extent of his or her crimes. Even in circumstances in which the offender maintains an outright denial of the offense, the recording will still lock the offender into one set of facts, which can then be challenged by other evidence.

**PREPARING SEXUAL ASSAULT CASES**

In any prosecution, making sure that you are prepared for trial can mean the difference between obtaining a conviction and watching the defendant walk out the door with an acquittal. The fact that the victim of a sexual assault or sexual abuse may have a disability affects your trial preparation in two major ways. First, there are several pre-trial motions that specifically apply to sex offense cases and to cases in which the victim has a disability. Secondly, you will need to become familiar with the victim’s disability during your preparation, so that you can address any influencing factors on the victim’s ability to present his or her testimony by finding other evidence to fill gaps in the story or by arranging in advance for suitable accommodations to permit the victim to accurately present his or her account of the events.

**Pre-trial Motions**

It is often desirable or even necessary, to obtain a ruling from the court in advance on the admissibility of evidence, or on the procedure to be followed in a given situation. Such pre-trial motions, or motions in limine, are filed as a matter of course in many criminal prosecutions. This section will focus on several pre-trial motions specific to the trial of sexual offenses, and to cases in which a witness has a disability.

**Testimony by Closed-Circuit Television (CCTV)**

725 ILCS 5/106B-5 provides that, when the victim of a criminal sexual assault, predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual abuse, or aggravated criminal sexual abuse is under the age of 18, or is a “moderately, severely, or profoundly intellectually disabled person” or a person affected by a developmental disability, the court can permit the victim to testify by CCTV outside the presence of the defendant.

When you have a case in which the victim has expressed reluctance to testify because he or she is reluctant to confront his or her abuser, this type of pre-trial motion allows you to obtain a reasonable accommodation for the victim and, hopefully, proceed with the prosecution of the offender. In order to allow the victim to testify via CCTV, (1) such testimony would have to take place during the trial or other proceeding, (2) the victim must be a child, or “moderately, severely, or profoundly intellectually disabled person,” or a person affected by a developmental disability, and (3) the court must find that making the victim testify in court would result in the victim suffering “serious emotional distress” such that the victim “cannot reasonably communicate,” **or** that it would cause the victim to suffer “severe emotional distress” that is likely to cause the victim to suffer “severe adverse effects.” If such a motion is allowed, then the victim may testify in a separate room via CCTV, without the presence of the defendant being permitted. In addition to the victim, the prosecutor, the defendant’s attorney, the judge, and the person(s) operating the CCTV equipment, and court security personnel, the court may permit the presence of persons in the room whose presence contributes to the well-being of the qualifying victim, such as a parent or guardian, social worker, or person who has dealt with the victim in a therapeutic setting concerning the abuse. Only the prosecutor, defendant’s attorney, and the judge may ask the victim questions. While the defendant may not be present in the room from which such a victim is testifying, he or she is to be permitted to communicate with the persons in the room “by any appropriate electronic method.” This section does not apply if the defendant is appearing pro se.

**Prior Sexual Activity of Victim (“Rape Shield”)**

725 ILCS 5/115-7, also known as the “Rape Shield” law, prevents the defendant from offering evidence of the victim’s reputation or prior sexual activity. One can well imagine that, prior to the enactment of this statute, many victims of sexual assault and sexual abuse would have been reluctant to report the offenders, for fear of having to have their private lives exposed and scrutinized in court. This statute prevents the defendant from turning the tables and essentially putting the victim on trial.

Under this statute, the only time that the defendant could introduce any evidence of the reputation or prior sexual activity of the victim is upon the issue of whether the victim consented to prior sexual activity with defendant, if evidence of prior sexual offenses against the victim by the defendant are offered pursuant to Section 115-7.3 of the Code of Criminal Procedure, or if such evidence is constitutionally required to be admitted.

If you are prosecuting a sexual assault or sexual abuse case in which you intend to offer, pursuant to Section 115-7.3, evidence of prior sex offenses perpetrated by the defendant against the victim, and the defendant attempts to offer evidence of prior sexual activity offered to impeach the victim’s testimony on the issue of consent to prior sexual activity or denial of prior sexual activity with the defendant, an offer of proof as to any such evidence must be heard in camera. In reviewing such proposed evidence, the court must find that it is “reasonably specific” as to date, time, and place of past sexual activity, or the court shall order defense counsel to refrain from inquiring about prior sexual activity between the victim and defendant.

The provisions of this statute apply equally to other corroborating witnesses called to present testimony regarding prior sexual offenses committed by the defendant pursuant to Section 115-7.3 as they do to the victim in the present case. While the wording of the statute does not expressly require the State to file a motion in limine in order to prevent the defendant from introducing evidence of the victim’s reputation or prior sexual activity, it would certainly be prudent to file such a motion pursuant to this statute in order to avoid surprise or ambiguity.

**No Mental Examination of Sex Victim**

725 ILCS 5/115-7.1 provides that the court may not order the victim of a sexual offense to submit to a psychiatric or psychological examination. One might assume, then, that the defendant would not be permitted to introduce evidence of the victim’s mental health at all. However, that is not necessarily the case. While it is clear that the court may not order a psychiatric or psychological examination on the victim of a sex offense, and the victim’s mental health records would ordinarily be subject to privilege under the Mental Health And Developmental Disabilities Confidentiality Act (740 ILCS 110/10 *et seq.*), courts have held that such privilege is overcome by the Defendant’s 6th and 14th Amendment rights where such information is relevant and impeaches the victim. See, e.g., People v. Bean, 137 Ill.2d 65, 147 Ill.Dec. 891, 560 N.E.2d 258 (2nd Dist. 1990).

Pursuant to Bean and the cases that have followed it, where the defendant seeks to obtain the victim’s mental health records, the court first reviews any such records received pursuant to subpoena in camera before determining which, if any, portions thereof are relevant. The burden is then on the defendant to establish that the evidence is relevant and impeaches the victim.

This is not something that we as prosecutors would generally initiate, but we do need to be prepared to respond when the victim’s mental health treatment records are subpoenaed by the defendant. The mere fact that the victim of an offense may have sought treatment for a mental illness is not relevant to his or her credibility as a witness; see, for example, People v. Printy, 598 N.E.2d 346, 174 Ill.Dec. 149 (2nd Dist. 1992).

As prosecutors, we need to make sure that we hold these defendants to their burden of proving that any issue they seek to raise regarding the victim’s mental health is relevant to the victim’s credibility, such as memory loss, hallucinations, etc., and avoid allowing the defendant to use the fact of mental illness generally as impeachment.

With that said, the following section, 115-7.2, provides that expert testimony relating to “any recognized and accepted form of post-traumatic stress syndrome” suffered by the victim is admissible in the prosecution of sex offenses. Such evidence could be quite helpful in establishing that the victim suffered from a traumatic experience, and may help explain any erratic behavior or other symptoms of post traumatic stress to the judge or jury in the proper context. Again, although Section 115-7.2 does not expressly require that a pre-trial motion be filed in order to present such evidence, you may find that it is prudent to file a motion in limine regarding post-traumatic stress syndrome evidence in order to avoid surprise at trial.

**Evidence of Prior Sex Offenses**

Anyone who has prosecuted for an appreciable period of time can tell you that the rates of recidivism for defendants who commit sex offenses are alarming. Our legislature has recognized that certain individuals are prone to commit sex offenses, and in enacting 725 ILCS 5/115-7.3, has given us a powerful tool to permit us to present evidence of an offender’s prior sexually-based offenses to the judge or jury. While ordinarily, evidence of a defendant’s prior “bad acts” could only be admitted for a limited purpose, such as showing knowledge, intent, absence of mistake, modus operandi, etc., this statute permits the introduction of evidence of the defendant’s commission of prior sex offenses “for its bearing on any matter to which it is relevant,” which includes propensity to commit sex offenses.

**In order to introduce evidence of prior sex offenses at trial, you must first file a pre-trial motion**. This section applies to cases in which the defendant is charged with one or more sex offenses set forth in Section 115-7.3(a)(1), or other offenses which, while not “sex offenses” per se, involved the commission of an act of sexual penetration or sexual conduct, pursuant to Subsection (a)(2). Finally, Subsection (a)(3) applies this statute to the offenses formerly known as rape, deviate sexual assault, indecent liberties with a child, or aggravated indecent liberties with a child.

Prior to the trial of such cases, you may file a motion asking the court to admit evidence of the previous commission by the defendant of any offense set forth in Subsections (a)(1), (a)(2), or (a)(3), for its bearing on any manner to which it is relevant. You are also required to disclose any evidence that you seek to admit under this section to the defense “at a reasonable time in advance of trial,” although the court may excuse pre-trial notice “on good cause shown” (Subsection (d)).

At hearing on the pre-trial motion, the court may consider (1) the proximity in time to the charged or predicate offense, (2) the degree of factual similarity to the charged or predicate offense, and (3) other relevant facts and circumstances. Obviously, the more recent the prior sexual offense committed by the defendant and the greater the degree of factual similarity, the more likely it will be that the court will allow the evidence of the prior offense. This is where your earlier investigative efforts will pay off; if you can introduce detailed evidence of the prior sex offenses committed by the defendant, it will be easier for you to show that the degree of factual similarity between the prior offense and the charged offense weighs in favor of admitting the evidence of the prior offense.

Be advised that introducing evidence of prior sexual offenses committed by the defendant against the same victim as in your current case opens the door to rebuttal evidence that would ordinarily be prohibited by the “rape shield” law. The defendant may introduce evidence that the victim previously consented to sexual activity with the defendant, and may even introduce reputation evidence. Therefore, if you are seeking to introduce evidence of prior acts of sexual abuse or sexual assault committed against the same victim, it is advisable to conduct as thorough of an investigation and pre-trial interview with the victim as possible, so that you can anticipate the defendant’s rebuttal evidence and, hopefully, ensure that the victim is prepared to withstand cross examination.

**Hearsay Exception for “Outcry” Statements by Victim**

725 ILCS 5/115-10 permits the introduction into evidence at trial of evidence of out-of-court statements made by the victimregarding sexual or physical abuse or assault, which would ordinarily be inadmissible hearsay. In order for this hearsay exception to apply, the victim must be (1) a child under 13 years of age, **or** (2) a “moderately, severely, or profoundly intellectually disabled person.” This section applies to prosecutions for any “physical or sexual act” perpetrated upon a qualifying victim, and lists a number of specified offenses, including all sex offenses, as examples of applicable offenses, although the list is not exhaustive.

Out-of-court statements that are admissible under this section are set forth in Section 115-10(a) as:

“(1) testimony by the victim of an out of court statement made by the victim that he or she complained of such act to another; and

(2) testimony of an out of court statement made by the victim describing any complaint of such act or matter or detail pertaining to any act which is an element of an offense which is the subject of a prosecution for a sexual or physical act against that victim.”

The first category of statements is useful to counter a defense tactic of suggesting that a delay in reporting an offense to law enforcement detracts from the victim’s credibility. As we know, there are a number of reasons that a victim may hesitate to report an offense, including fear of retaliation, fear that his or her complaint will be disbelieved, or even simply being unable to effectively communicate what happened to him or her. Often, a defendant will assert that, if the offense really happened, the victim would have come forward sooner. If you can point to an occasion where the victim *did* tell someone what happened to him or her, it can help to counter that tactic.

When the victim has a disability that may cause him or her to experience anxiety during his or her testimony to the extent that it will be difficult for the witness to articulate what happened, the second category of statements set forth in this section can be extremely useful. Often, the victim of an offense will be able to explain what happened to him or her more clearly to a listener outside the courtroom, without the looming threat of cross-examination. In fact, subsection (e) of this statute expressly includes statements about the offenses made in interviews conducted according to protocols adopted by a Child Advocacy Advisory Board, or interviews to which an agent of the State’s Attorney’s Office is a party or a witness. By allowing the State’s Attorney’s Office to participate in this interview, this statute allows you to ensure that any accommodations necessary to assist a witness with a disability can be made. The defendant has no corresponding right to participate in this interview.

In order to be admitted under this statute, the court must find, pursuant to Section 115-10(b)(1), that “the time, content, and circumstances of the statement provide sufficient safeguards of reliability.” This finding must be made at a hearing conducted by the court outside the presence of the jury, and although the statute does not expressly state that the hearing must be held prior to trial, **it is highly advisable to file a motion in limine regarding statements sought to be admitted under this section in advance of trial,** as Subsection (d) requires that the party offering the statement shall give the adverse party “reasonable notice” of the particulars of the statement**.**

The statute also states that, in order for these statements to be admissible at trial, the victim who made the out-of-court statement must either testify at trial or, if the victim

is unavailable, that there must be evidence to corroborate the statement. However, the Illinois Supreme Court has subsequently found that introducing hearsay statements in

cases in which the victim does not testify violated the defendant’s right to confront and cross examine witnesses under the 6th Amendment. See In re Rolandis G., 232 Ill.2d 13, 902 N.E.2d 600 (2008).

In addition to the requirement that there be “sufficient safeguards of reliability” regarding statements admitted pursuant to this section, in cases with a child victim, the statute requires that the out-of-court statement be made either before the victim attains 13 years of age **or** within three months of the commission of the offense, whichever occurs later. This time limit does not pertain to adults with disabilities. In any case in which out-of-court statements are admitted pursuant to Section 115-10, the jury must be instructed pursuant to Section 115-10(c), which provides:

“If a statement is admitted pursuant to this Section, the court shall instruct the jury that it is for the jury to determine the weight and credibility to be given the statement and that, in making the determination, it shall consider the age and maturity of the child, or the intellectual capabilities of the moderately, severely, or profoundly intellectually disabled person, the nature of the statement, the circumstances under which the statement was made, and any other relevant factor.”

This 115-10 instruction to the jury has been addressed by the Jury Instructions Committee, and the pattern instruction that follows this section is set forth in IPI Criminal # 11.66.

**Other Pre-Trial Motions**

The foregoing list of pre-trial motions is by no means intended to cover all possible pre-trial motions that may be advantageous to you in the prosecution of sexual assault and sexual abuse cases in which the victim has a disability. As a general rule, any time that you believe that it would assist you in determining how you intend to proceed to know how the court will rule in advance of trial, you may decide to file a pre-trial motion to obtain a ruling, even where such a motion is not required. For example, Section 115-11 permits the court to exclude persons not having a direct interest in the case (except for the media) from the courtroom while the victim is testifying in case where a child under 18 is the victim of a sex offense. The statute contains no requirement that the State file a motion in advance of trial, but if the victim expresses anxiety about testifying, obtaining an order in advance of trial may set his or her mind at ease, and allow you to focus on your trial preparation to greater advantage. In addition, any accommodations needed for a victim to fully participate in the court process, can be made in a pre-trial motion. This is especially true when the courtroom needs to be changed or modified or the request may be objectionable to the defense.

**Preparing the Victim to Testify**

As prosecutors, we have grown accustomed to spending time in courtrooms, and it is easy for us to forget what an overwhelming and even unpleasant experience it can be for someone who is not used to it. Court appearances can be an especially trying ordeal for the victims of sexual assault and sexual abuse offenses, as they have to cope with confronting the perpetrator who victimized them in addition to the unfamiliarity of the court setting. When the victim of such crimes has a disability, the challenge of appearing in court and giving testimony can seem even more daunting.

However, if you invest some time in preparing the victim for what he or she will face in the courtroom, you can show him or her that the challenges inherent in testifying are not insurmountable. You should schedule a time to meet with the victim when you are not busy, allowing plenty of time to answer any questions that he or she may have, and instruct your staff that you are not to be interrupted.

If you have had an initial meeting with your victim, as discussed in the foregoing section, you should already be familiar with your witness, and should have a basic idea of what may be necessary to accommodate his or her disability. If not, you will be forced to start from scratch. Either way, this is your opportunity to really nail down what will be required to make the trial come off without any avoidable problems.

Many victims have never been inside of a real courtroom, and only know what they have seen on television. You may want to take the victim into a courtroom while court is not in session, and allow him or her to move around, and to sit on the witness stand. Show the victim where you will be when he or she is testifying, and where the judge, jury, and other courtroom personnel will be located. When you show the victim where the offender will be, make sure to point out the location or locations at which security personnel will be stationed.

It is advisable to spend some time explaining the procedure for direct and cross examination to the victim. You will want to make sure that your victim knows to wait for a ruling on an objection before trying to answer a question to which an objection has been interposed. Make sure that you explain to the victim to listen carefully to the question, and to answer the question that was asked, without trying to explain additional information. Your victim should understand that “I don’t know” and “I don’t remember” are acceptable answers when they are true, and that he or she should not try to guess at answers in order to please the questioner. Explain to the victim that it is acceptable to pause for a moment before giving an answer, and that he or she can control the flow of the questioning by doing so. Above all, make sure that the victim understands that he or she is not responsible for the outcome of the case, which is in the hands of the judge or jury, and that his or her only responsibility is to tell the truth.

Make sure to ask the victim if he or she has any questions about what will happen in court. In sexual assault and sexual abuse cases, it is likely that the victim will have some apprehension about having to face the offender. If this is a concern for your victim, consider whether one of the previously discussed pre-trial motions can address this problem. If not, you can still assure the victim that the defendant will not be able to get to him or her during the trial because of court security personnel, and that he or she does not have to look at the defendant except when making the in-court identification. Direct the witness to keep his or her eyes on you (or, better still, the jury) if that will help to reassure him or her. If you listen to the concerns expressed by the victim, you will often find that he or she simply needs some reassurance and support, but most victims are more than up for the task of testifying in court, despite some initial reluctance.

Of course, when the victim has a disability, that disability can impact the victim’s experience in court, and interpose barriers between the witness and the judge or jury. In Illinois, all witnesses are presumed competent to testify, and the burden of establishing incompetence is on the party raising the challenge. As long as the witness understands the importance of the oath to tell the truth, and is able to communicate, that witness should be found competent to testify. This is true even if the witness is not capable of speech, provided he or she can communicate by other means. See People v. Spencer, 119 Ill.App.3d 971, 75 Ill.Dec.479, 457 N.E.2d 473 (1st Dist. 1983).

This raises the question of what “other means” of communication are acceptable. It is difficult to formulate a straightforward legal rule, in light of the varying nature and extent of the myriad of disabilities that may need to be accommodated. The trial court has great discretion in determining what procedure will be followed. In the case of a witness who is not able to speak, accommodations might include written questions and answers, written statements, hand signals or sign language with the aid of an interpreter, or even gestures in place of actual speech. If the victim is unable to speak and must communicate non-verbally through gestures, the court may even permit the witness to testify with the aid of a “facilitator.” The Supreme Court of Kansas, in State v. Warden, 257 Kan. 94**,** 891 P.2d 1074 (1995), ruled that before allowing a witness to testify with such a facilitator, the court must be satisfied that the testimony transmitted to the court by the facilitator is actually the testimony of the witness, and not influenced by the facilitator.

It is difficult to find precedent in the cases of this State regarding accommodations that can be made for victims with a disability, but one thing is certain: **you will not be able to provide an accommodation for your witness if you do not ask.** Once you have ascertained what your witness will need in order to assist him or her on the stand, you should file a motion requesting an order allowing for the accommodation to be made. Such accommodations, generally speaking, should not be such as might influence the substance of the witness’s testimony, or provide undue advantage to the party seeking the accommodation, and must not violate the defendant’s 6th Amendment right to confront and cross-examine witnesses.

With such guidelines in mind, a wide variety of possibilities are available. For example, a witness who cannot see could be permitted to have a service animal assist him or her to the stand. A witness who suffers from extreme anxiety, but is soothed by the presence of a familiar person or caregiver, may be permitted to have that person present during his or her testimony. Witnesses may be given frequent breaks to rest or use restroom facilities, or to take medication as needed. If you encounter a situation in which you are stumped, and cannot come up with an appropriate accommodation, you can always contact your circuit’s Court Disability Coordinator for assistance.

The possible accommodations are essentially too many to list here, but the basic principle is the same in each case: You must advocate for the victim and request the accommodation that allows him or her to testify in his or her own words, and it is our duty as prosecutors to convince the courts that the public policy of facilitating access to the courts and seeking justice for the victims of crime is important enough to justify some creative and unorthodox solutions to the problems presented by a witness’s disability. Provided that the accommodation does not change the substance of the witness’s testimony, there is no reason why the court should not permit any reasonable accommodation to assist a witness with a disability with having his or her day in court.

**TRIAL OF SEXUAL ASSAULT CASES**

Provided that you have adequately prepared for trial by investigating the offense as thoroughly as possible, addressing any concerns with your victims, and securing any accommodations necessary for your victim to testify, the trial of a sexual assault case will not be much different than it ordinarily would be due to the fact that the victim has a disability. The manner in which a sexual assault, sexual abuse, or any other type of offense should be tried is more appropriately the topic of a general trial advocacy manual, but a few key points that may be affected by the fact of the victim’s disability bear mentioning.

**Jury Selection**

Unfortunately, many disabilities, such as mental illnesses and developmental disorders, carry a certain stigma in our society. As human beings, potential jurors are susceptible to the same prejudices and biases that have permeated our entire society. You will want to carefully question prospective jurors to determine whether the victim’s disability will affect the juror’s assessment of his or her credibility. When possible, you should attempt to phrase your questions in an open-ended manner that invites a broader response than merely “yes” or “no.” This will allow you to form a more complete opinion of a prospective juror’s suitability, while allowing the jury to hear ideas and concepts from one another, instead of hearing you repeat the same phrases over and over again.

The *voire dire* process is also an opportunity to educate prospective jurors about the victim’s disability. By choosing your words and follow-up questions to reflect positive associations, and emphasizing the things that the victim has in common with the venire instead of their differences, you can help the people who will decide the case begin to look past the victim’s disability and see the entire person.

While you may even want to ask potential jurors outright if they or anyone they know has a disability, you should avoid such a direct method of inquiry. Not only do you risk giving offense, but as the agent of a “public entity” as contemplated by Title II of the Americans with Disabilities Act, you may potentially even subject yourself and your office to a claim of discriminatory practices.

You can learn about the way in which the prospective juror perceives individuals with disabilities, and how that perception may affect the weight given to your victim’s testimony by that prospective juror, by utilizing a less direct method of inquiry. For instance, if you start by asking the prospective juror, “What do you think of when you hear the words ‘disability’ or ‘disabled,’” and follow up on his or her response with appropriate questions, you may gain a great deal of insight as to whether the prospective juror is capable of fairly evaluating the testimony of your witness, without risking the alienation that could result from offending the venire through overly blunt inquiries.

**Opening Statement**

The opening statement is your first opportunity to acquaint the jury with the facts of the case. While the fact that the victim of the crime has a disability is a fact that may be significant to the trial, remember that **the case is not about the disability**, but is about the crime that the defendant committed. Depending on the nature of the victim’s disability, you may not even want to bring it up during your opening statement, as you will want to focus on the evidence that supports a conviction. When making reference to the victim’s disability, remember to use “people first” language to remind the jurors that the victim is a person *with* a disability, instead of focusing on the disability itself.

**Case in Chief**

The manner in which you conduct your case in chief obviously depends on the elements of the charged offenses and the available evidence. Your approach to trial advocacy will generally determine the manner in which you try your case, and as this protocol is not intended to serve as a primer for basic trial skills, this section will simply point out a few issues that may arise when the victim of a sexual assault or sexual abuse offense has a disability.

**Direct Examination of Victim**

As previously discussed, it is vital to the success of your case to prepare the victim to give his or her testimony. By the time you put your witness on the stand, you should know exactly what he or she needs from you in order to tell his or her account. If possible, you should position yourself in such a manner that when the victim looks at you, he or she will also be looking in the general direction of the jury.

If the victim requires some kind of obvious accommodation to give his or her testimony, such as testifying via closed circuit television, you may wish to ask a couple of brief questions of the witness to explain the accommodation to the jury. For a less

obtrusive accommodation, such as a child holding a stuffed animal for comfort during his or her testimony, no explanation to the jury is probably necessary. However, if an adult held a stuffed animal, asking brief questions of the witness would be advisable. Jurors are as curious as anyone else, though, and will probably be distracted by something unfamiliar to them unless they understand what it is. In any case, keep any explanation brief, and move on to the facts of the case quickly.

Unless the nature of the victim’s disability makes it impracticable to do so, try to ask your questions in an open-ended manner. This will allow the victim the opportunity to tell his or her account to the jury in his or her own words. If the nature of the victim’s disability limits his or her ability to respond to providing affirmative or negative responses, your ability to elicit information on direct examination will be limited as a consequence, and you will need to rely on evidence-based prosecution to fill in the balance of the narrative.

Make sure to ask your questions in a manner and at a pace with which the victim is comfortable. From your pre-trial interview(s), you should have a basic familiarity with your witness’s vocabulary and patterns of speech. Do not ask questions in quick, rapid-fire succession, as you do not want to rush through the victim’s only chance to speak directly to the jury. Avoid resorting to legalese, but also be careful that you are not speaking to an adult victim as though he or she were a child. Adults who have developmental or cognitive disabilities are often spoken to as though they were children, which they consider patronizing and hurtful and may negatively influence the jury’s perception of the victim.

If your victim has a disability that affects his or her speech, it may be difficult for you to understand his or her answers to your questions. Listeners often pretend to understand the speaker when they do not, but the speaker can usually tell, and may become angry or frustrated, as it is considered impolite and condescending to pretend that you understand what someone has said when you in fact do not. If you cannot understand the answer given by a witness, there is a good chance that the jury also did not understand the answer, so you should ask the victim to repeat his or her answer. Keep a close eye on your jury, and try to read their body language and facial expressions to see if they seem to be having difficulty understanding your witness. If so, do not be afraid to ask the victim to repeat his or her answer. You may also be able to repeat portions of his or her answer when you ask your next question, for example:

Q: What happened that evening?

A: A man came in through my bedroom window.

Q: After he came in through the window, what did he do?

A: He came towards my bed

Q: When he was coming towards your bed, what were you doing?

And so on...

**Evidence-Based Prosecution**

Unfortunately, the reality is that when a person with a disability has been the victim of a sexual assault or sexual abuse, he or she may not be able to recall, understand, or articulate sufficient facts to support the conviction of the offender. While corroborating evidence is, of course, important in any prosecution, in cases where the victim may have a disability that precludes him or her from being able to provide a coherent narrative of the offense, it is even more important to let the other witnesses, physical evidence, and circumstantial evidence “speak” for the victim.

Obviously, the kinds of evidence available in each case will vary. Your preparation for trial should include some kind of “story board” or outline that organizes the narrative of the offense, and plots out which evidence you will be offering to support each fact that you intend to prove. You will then need to ensure that you have the necessary witnesses available to lay the foundation for each of these exhibits.

Do not underestimate the effectiveness of demonstrative exhibits, such as charts and diagrams. While you have the chance to tie all of the facts together during your argument, you do not want to wait until the evidence has been presented to begin to make the connections between your exhibits and the underlying narrative of your case to the jury.

When you are asking the jury to keep track of many details, it will be tremendously useful to visually compile the information for the jury in the form of a flow-chart, power point presentation, or other format. Although it is time-consuming to prepare these kind of exhibits, the ability to streamline the organization of your evidence will be well worth the time that you spend.

**Argument**

The closing argument is your opportunity to advocate for the victim. When prosecuting any criminal case, you need to explain to the jury how the facts of your case fit together to establish that the defendant committed the crime with which he or she is charged. The only difference in a case in which the victim has a disability is that you may have to place greater than ordinary reliance on other evidence to corroborate and supplement the victim’s testimony. In some cases, there may be evidence that supports the inference that the offender selected the victim *because of* his or her disability, whether because he or she perceived the victim as more vulnerable due to his or her disability, or even as a “hate crime” where the victim’s disability itself is the motive for the offense. In such cases, of course, these inferences should be appropriately argued to the jury. Otherwise, there is no reason to make your closing argument in a different manner than you would if the victim of the offense did not have a disability, because after all, the case is not about the victim’s disability, but the crime committed by the defendant.

**DOMESTIC VIOLENCE**

**Initial Considerations**

Any crime of domestic violence has the possibility of a reluctant victim, and few if any other witnesses. The prosecutor must determine if the case is provable and must then attempt to optimize the possibilities of a successful prosecution. The fact that the victim has a disability may exacerbate the already difficult road that the victim has to travel. An individual who has a disability may have more risk factors in terms of being targeted for harm, and may also depend on the abuser for caregiving purposes, monetary support, childcare, transportation, or other resources. The prosecutor needs to understand this dynamic from the perspective of the victim and how this dynamic affects a victim’s willingness to testify. To the victim, the prosecutor is someone in a suit in an office whom the victim meets a couple times at best. The prosecutor cannot do anything to harm the victim if the victim chooses not to testify. The abuser, however, certainly could do something to harm the victim should they choose to testify. The abuser is usually someone close to the victim, someone who has caused harm to the victim in the past, who could certainly do it again, who may be currently threatening harm or death to the victim or the victim’s family members, and who may perform other useful functions in the victim’s life. It is a completely different dynamic for a victim than someone who was perhaps the victim of a random break-in.

With this consideration, the prosecutor should attempt to make conditions as favorable as possible for the victim to come forward and tell what happened to them. Keeping the defendant from influencing the victim’s testimony is paramount. Making the victim as comfortable as possible with the court process is also important.

To keep the defendant from influencing the victim, it is important that there be no contact orders, and that they are enforced. If necessary, the defendant should be kept in custody. Monitor jail calls to ensure he/she is not influencing the victim. Keep in touch with the victim. Meet with the victim to develop rapport and discuss safety planning with the victim. Link the victim with local agencies which could be supportive – domestic violence shelter, etc. Seek out family members/friends of the victim who can help support the victim and understand that the violence is not acceptable. Provide an atmosphere so that the victim feels able to share with the prosecutor. If the victim has not given a written statement, consider if it would be helpful to obtain one. Perhaps the victim’s disability, exacerbated by the effects of trauma, made it difficult for them to give a statement at the time of the incident, but they might be able to give one later when not pressured.

It is also important to present a positive impression on the victim. The prosecutor may have future contact with this victim, whether this prosecution is successful or not. Sometimes it takes several attempts at prosecution before an abuser is held accountable. If a victim has a terrible experience with the judicial system/prosecutor’s office, will they be likely to be cooperative the next time?

**Identification of Elements of the Crime(s)**

Domestic violence offenses range from:

Disorderly Conduct 720 ILCS 5/26-1 (don’t forget you have to prove breach of the peace)

Domestic Battery 720 ILCS 5/12-3.2 – misdemeanor and felony enhanced

Aggravated Domestic Battery 720 ILCS 5/12-3.3

Violation of Order of Protection 720 ILCS 5/12-3.4

Interfering with the Reporting of Domestic Violence 720 ILCS 5/12-3.5

Stalking 720 ILCS 5/12-7.3

Aggravated Stalking 720 ILCS 5/12-7.4

Cyberstalking 720 ILCS 5/12-7.5 9 includes contacting or soliciting someone else to contact a person through electronic communication, like a defendant trying to get someone to contact the victim through social media sites. Class 4 felony.

Phone Harassment 720 ILCS 135/1-1 – can be felony enhanceable depending on what is said

Harassment by Electronic Communication 720 ILCS 135/1-2 also can be felony enhanceable.

There are various domestic-related sentencing enhancements for offenses when the victim has a disability.

**Analysis of the Evidence**

Evidence-based prosecution should be a familiar term to those prosecutors who have worked on domestic violence, elder abuse, or homicide cases. The same principles should be utilized in these cases involving victims with disabilities. In homicides, victims cannot speak for themselves so the evidence must speak for them. The same holds true of cases with victims who for a variety of reasons are unable or choose not to speak fully for themselves. Therefore, the other evidence must be gathered to fill in the gaps where testimony would be.

Any analysis of the evidence must include both looking at what evidence has already been collected, and determining if additional evidence may be available.

**Prosecutorial Investigation**

When evidence on these cases is being collected, law enforcement is not necessarily thinking in terms of “homicide” or “victim unable to speak for self.” They are trying to do their jobs the best they can, which involves investigating all kinds of offenses and circumstances. It is the prosecutor’s job to ensure that all available evidence is preserved in particular kinds of cases where it is likely to be needed. This could include 911 recordings, ambulance and hospital records, interviews with outcry and other witnesses, photographs, physical items which may or may not be amenable to forensic testing, and written statements from victims and witnesses. Note that all of these items could be and are available after the initial contact with law enforcement. The earlier a prosecutor gets his/her hands on a case, the more likely it is that additional evidence can be gathered, if it has not been gathered initially. Another rich resource for information is court documents regarding the perpetrator and the victim. The allegations in prior orders of protection against the defendant are helpful resources to develop knowledge of a pattern of behavior. Similarly, if the victim in the case has had an order of protection before, that is useful to know. Contents of divorce files are often helpful as well. Another source of information is learning who the victim’s friends/cohorts are. If the victim receives services at a disability organization, there may be evidence gathered via staff member interviews and/or record documentation.

There are many reasons why a victim of domestic violence may choose not to participate fully with law enforcement and prosecutors. When a victim has a disability, there may be even more reasons. There may be fear of losing services, children, personal case assistance, and/or benefits. If a victim is reluctant to participate, do what you can to establish trust and rapport with the victim, and proceed with an evidence-based prosecution.

In reviewing evidence for prosecution of a domestic violence case involving a victim with a disability, the prosecutor should focus on putting together the best case possible. In this way, it is no different than the prosecution of any domestic violence case.

**Types of Criminal Offenses**

In addition to the offenses mentioned above, do not forget the additional types of crimes which may come about when a defendant is already charged with a domestic-related crime and is engaging in behavior trying to get the victim to recant or become uncooperative:

Intimidation 720 ILCS 5/12-6 – Threatens someone to do something, or to omit to do something. Class 3, mandatory minimum 2-10 years DOC.

Communication with a Witness 720 ILCS 5/32-4(b) – specifically directed towards someone who has the intent to deter someone from coming forward as a witness and testifying “freely, fully, and truthfully” – whether this is communicated directly or indirectly, by using either a threat or a bribe. Class 3, standard sentencing.

Harassment of a Witness (or juror, or a representative for a child) 720 ILCS 5/32-4a – similar to communication with a witness, but includes communication, direct or indirect, with someone who either actually served as a witness, or who is/was expected to serve as a witness but did not end up testifying, which produces emotional distress or which threatens harm. Class 2 felony.

Violation of Bail Bond 720 ILCS 5/32-10 – If a defendant has been charged with an offense in which the victim is a family or household member, and he violates a condition of bond (like no contact with victim). Class A misdemeanor.

Cyberstalking 720 ILCS 5/12-7.5 9 includes contacting or soliciting someone else to contact a person through electronic communication, like a defendant trying to get someone to contact the victim through social media sites. Class 4 felony.

Multiple Charges

* Charge the highest offense possible.
* Try to get a conviction on at least a misdemeanor domestic battery or violation of order of protection so you can enhance to a felony next time.

**PREPARING DOMESTIC VIOLENCE CASES**

**Pretrial Matters**

Motion in Limine

It is wise to have a library of motions in limine which may be useful in domestic violence cases. There is no reason to reinvent the wheel. If your office does not have these types of motions, consult with other State’s Attorney’s offices, or with state/national organizations for help. Common issues include:

* Prior Acts

Under 725 ILCS 5/115-7.4, evidence of prior acts in domestic violence cases is admissible. You should prepare a motion pursuant to this statute so that the judge can consider the applicable factors, including the proximity in time to the charged offense, the degree of factual similarity to the charged offense, or other relevant facts and circumstances. Note that you must disclose the evidence, including statements of witnesses or a summary of the substance of the testimony, in advance of trial, so the judge can make a decision on whether or not the evidence will be allowed.

* Excited Utterance

A new published opinion on this topic is People v. James Brown, 2013 IL App (2d) 110327. This case relates to Crawford and how excited utterances are allowed under certain circumstances..

* Decisions regarding informing the court about the victim’s disability

This is not to say that there is anything wrong with having a disability or that we are trying to hide it. However, juries do not get a lot of time to receive evidence in a case and deliberate. They are only going to receive a limited amount of information. They won’t know about the victim’s daily life days or weeks before the offense. They often make snap judgments based on preconceived ideas. Is it relevant to the case that the victim has a disability? If not, then perhaps we don’t want to allow information about the disability to cloud the issues for the jurors. One example of this is mental health issues. Defense attorneys have historically tried to paint a terrible and distorted picture of someone who may have a mental health diagnosis. Just because someone has a certain condition, does that mean they automatically are liars? Or that they might just make things up? Or that just because they were the victim of a crime, that they want their condition discussed in open court? There is a temptation for prosecutors to just allow information into the proceeding because it is the truth. Yes, if the information is going to be allowed in, then the prosecutor must be prepared to deal with this information in an honest and open way. This does not mean that the prosecutor should volunteer to let it come in because then the prosecutor must make sure that along with that information coming in, incorrect biases and assumptions come in with it. As a practical matter, the judge is going to be reluctant to allow “bolstering” of the victim’s credibility in the form of positive or even neutral attributes of a person with this diagnosis, because of course the onus is on the prosecution to prove their case. The judge will be less likely to curb a defense attorney from raising the specter of possible negative ramifications of a mental health condition. So the prosecutor should think carefully about what information the jury is allowed to hear, without making sure that the jury will be allowed to access the correct tools to analyze the information.

You may want to familiarize yourself with the rape shield law and the related case law. There is a large body of case law there which talks about keeping a victim’s sexual history out of the purview of the jury in sexual assault cases and why this is important for public policy reasons. By way of analogy the prosecutor may learn reasons why it might be a good idea to keep information about a disability out of the jury’s eyes as well, and there may be arguments which could be made about why similar information should be kept out in non-sexual assault cases.

**Evidentiary Matters**

Using 911 calls – know your foundation requirements and issues, as well as what witnesses you will need to call. You will need to lay the foundation for the recording itself. For this, the 911 operator may or may not be needed, the person who duplicated the 911 tape is probably needed, the officer who collected the recording may be needed. Be familiar with the “silent witness” rule, and whether or not it applies to 911 recordings or other types of recordings you may wish to utilize. If it does, you need the chain of custody, if it does not, you do not need chain of custody.

You will need to also lay the foundation for the contents of the recording. You will need someone to identify the victim’s voice on the recording if the victim is not going to testify. You will need to prepare a motion in limine regarding how you plan to get the contents of the recording in – is it an excited utterance?

In using photographs, be aware of the evidentiary foundation for introducing photographs.

**Witness preparation**

Victim

How can you make the experience of testifying the most comfortable for the victim? It’s not going to be a picnic, but there are things the prosecutor can do to make it better. Knowledge is power. Try to make the victim as familiar as you can with the courtroom and the procedure. Do not try to rehearse their testimony, however. They need to be able to recount the events in a way that is not rehearsed or coached.

When planning your meetings with the victim, make sure that you leave time for the victim to be comfortable with you and for you to get acquainted with the victim. At the first meeting it is best for the prosecutor to talk to the victim about more general topics, and inform them in general about the court process and the time frame for their case. Learn from the victim about their disability and how it affects them. Discussing the specifics of the offense should be saved for a second and subsequent meetings. Allow the victim to review their statement to the police. Check for understanding. If the victim needs assistance to review and understand the report, provide any needed support. Make sure to tell them that if they remember anything differently from the way the statement is written, that they should discuss that with you now.

Ascertain how the victim’s disability might affect their testimony. Try to iron out all practical considerations ahead of time, such as transportation, physical location in the courtroom, safety issues such as being comfortable with courtroom personnel, the setup of the courtroom, and who might be in the courtroom. Discuss with the victim having a support person present in court. Work closely with the victim witness coordinator, if you have one, to discuss these issues with the victim as well as other surrounding issues such as bathroom locations, etc.

Law enforcement witnesses

Getting over their bias, if any, about domestic violence cases/victims and disabilities would be important. Discuss with them any opinions which may be in their report, which may reflect negatively on your case. You may want to acknowledge that law enforcement typically is frustrated with cases of domestic violence. They are called out over and over again, when they arrive on a scene the parties are in a highly emotional state, and it seems like nothing ever changes. Remind the witnesses that they are here to testify about their observations and not to make judgments.

Experts

What is the purpose of an expert? To assist the trier of fact with information that might be beyond their common understanding. Your best expert is your victim. You can use experts in two ways: to educate yourself before trial, or to educate the jury (and judge) during trial. To educate yourself, talk to the victim. Be curious. Ask them questions so that you can have a little bit of understanding of the situation. Ask them about the relationship with the abuser, good and bad, and also ask them about their disability.

Others

As the prosecutor, it is best to leave your judgmental self at the door. Many prosecutors and law enforcement express frustration at victims for being in the situation or continuing to be in the situation. This is called “victim blaming”. The thing to focus on is the defendant’s behavior. Not the victim’s behavior. It is difficult for many people to follow through with this. We know that we should look at the defendant’s behavior, but we keep sneaking a look back at the victim’s behavior. Why did she …. Stay …. Not call for help earlier …. Why did she pick this guy? Then it devolves into “I would never be in this situation” or “this could never happen to me, I would certainly make better choices”, etc. This kind of thinking will only lead to frustration for the prosecutor, and it is not productive to your prosecution of a case. Instead, consider that the victim’s behavior is simply what that person has done to get by and their attempt to conduct a cost-benefit analysis. Then let it go. Focus only on the defendant. This will allow you to use your energy to successfully address the criminality of the defendant, rather than waste your energy feeling angry at the victim. By modeling these thought patterns in the courtroom, perhaps the jury can pick up on a little bit of your attitude.

**PROSECUTING DOMESTIC VIOLENCE CASES**

**Jury Selection**

Juries have preconceived notions about the “perfect” domestic violence case. In their minds, it involves severe injury, blood, fighting, multiple witnesses, and a victim who is completely cooperative and has never made any bad choices, ever. This describes no actual domestic violence case, at least not one that goes to trial. So in jury selection, it is the prosecutor’s job to try to ensure that potential jurors have truly open minds. It would be important to inquire of them if they know anyone who has been accused of domestic violence, or who has been a victim of domestic violence. If so, how well they know this person. If they experienced domestic violence in their own homes, listen carefully for answers downplaying domestic violence, or that suggest gender bias or extremely strong belief in traditional gender roles. Make sure that you do not raise unrealistic expectations about what jurors will see in the trial. You may want to ask if they expect to see forensic evidence such as DNA or fingerprints, and what they would do if they do not see such evidence.

While you may even want to ask potential jurors outright if they or anyone they know has a disability, you should avoid such a direct method of inquiry. Not only do you risk giving offense, but as the agent of a “public entity” as contemplated by Title II of the Americans with Disabilities Act, you may potentially even subject yourself and your office to a claim of discriminatory practices.

You can learn about the way in which the prospective juror perceives individuals with disabilities, and how that perception may affect the weight given to your victim’s testimony by that prospective juror, by utilizing a less direct method of inquiry. For instance, if you start by asking the prospective juror, “What do you think of when you hear the words ‘disability’ or ‘disabled,’” and follow up on his or her response with appropriate questions, you may gain a great deal of insight as to whether the prospective juror is capable of fairly evaluating the testimony of your witness, without risking the alienation that could result from offending the venire through overly blunt inquiries.

Potential jurors may also have various pre-existing biases about disabilities. It would be important to discuss this also with jurors and make sure that they will not use someone’s disability to make judgments about them.

Ask them what they think makes a good juror. And whether they think they would be a good juror. Try to engage in dialogue with the potential jurors. Listen carefully to their answers. Treat them with respect. And be yourself.

**Offensive Strategy**

**Opening Statement**

Outline the facts of your case. Make sure you don’t over-promise if the facts are not what a juror might imagine a “domestic battery” or whatever would look like. Think carefully about how much you want to discuss the victim’s disability in opening statement.

**Context**

The defendant: generally in a criminal case the prosecutor is precluded from bringing in prior acts of the defendant unless a motion in limine has been filed. It would be generally good practice to file such a motion under 725 ILCS 5/115-7.4 if there are prior acts of domestic violence. It is helpful for the jury to understand that this particular act of domestic violence did not occur in a vacuum. You may or may not end up being able to bring in evidence, depending on the judge’s ruling, but it is good practice to start acclimating your judge to the fact that this is allowed under the law, and that you are going to continue to request that you be able to bring these acts in. The reason that the law allows this is because domestic violence isn’t just one push or shove or slap, it is a whole culture of control and the law is attempting to allow a prosecutor to show that there is more going on here than one act. It is your responsibility as a prosecutor to seek out evidence of other acts. The police may not do that. They are investigating one offense. However, this is a valuable tool that you as the prosecutor have been given to at least attempt to show that there is a lot more going on here. You may not be able to have the victim talk about the entire relationship and how it all started and the gradual decline into violence, but you should take advantage of what you are allowed to show: other acts of violence.

The victim: when the victim has a disability, the context of their experiences of living with a disability is important for the jury to know. When questioning the victim on direct examination, don’t just ask them their name and then jump right to the offense. Ask them to explain as much as you can about their daily life. In this way the jury will be able to put their testimony and how they tell about what happened to them into the context of their abilities. It will also help the jury to understand why a victim may or may not report an incident immediately, the relationship of the perpetrator to them and how that impacts their reporting of the incident. If the person with a disability has been abused by their caregiver, it would be important to know to what extent they rely on that person to care for them. Think about the continuum: if someone randomly runs up to a person on the street and attacks them, there is no downside to reporting this and following through with prosecuting the attacker. However, if the attacker is someone who cares for the victim, who supports them financially, who drives them where they need to go, who is important to their daily functioning, there is a huge downside to reporting this and following through. If the jury doesn’t know this, that there is a downside, they will not understand a victim’s reluctance to comply with the societal expectations for reporting violence, which are based on a model of “no downside”.

**Defensive Strategy**

**Cross-Examination**

Prepare your cross-examination for the defendant and defense witnesses ahead of time. Plan the points that you wish to make. Think about what you want to establish through the defense witnesses. The ability to use leading questions is a great way to get your points across. If nothing else, you could probably get the defendant to agree about many aspects of the victim’s disability and dependence on them, if that is the situation in your case. Do not ask the “one question too many”. If you have gotten the defendant to agree that he was responsible for all aspects of care for the victim, don’t then ask “but you abused her anyway, correct?” because then the defendant is going to deny and explain away. The cross-examination is a place to lay the groundwork. Save the “aha!” points for your closing argument.

**Rebuttal**

Be watchful during the defense case for areas where you may want to present rebuttal testimony. Think about not only witnesses that can rebut the credibility of defense witnesses, but also for witnesses who could rebut their factual allegations about the capacity or credibility of the victim or their disability. Perhaps you might want to call the victim in rebuttal to talk about a specific aspect of their disability and explain it further.

**Sample of Motion in Limine**

STATE OF ILLINOIS

 IN THE CIRCUIT COURT OF THE TH JUDICIAL CIRCUIT

 COUNTY OF

THE PEOPLE OF THE STATE OF ILLINOIS, )

Plaintiff )

) No. CF

Vs. )

) **MOTION IN LIMINE #**

John Doe, Defendant ) **TO BAR INTRODUCTION**

) **OF EVIDENCE OF**

) **VICTIM’S PSYCHOLOGICAL**

) **CONDITION OR MENTAL**

) **HEALTH**

NOW COME the People of the State of Illinois by \_\_\_\_\_\_\_, State’s Attorney, County, Illinois, and \_\_\_\_\_\_\_\_ , Assistant State’s Attorney, and in their Motion in Limine to Bar Introduction of Evidence of Victim’s Psychological Condition or Mental Health state as follows:

1. That the defense may intend to bring the victim’s mental health into the trial as an issue regarding her credibility.

2. That there is no competent evidence of the victim’s mental health in any reports or statements of which the State is aware.

3. That the defense would not be able to bring in evidence which is not competent of the victim’s mental health or psychological condition.

4. Therefore, this issue may not be raised.

5. That if the defense were to somehow procure evidence of the victim’s mental health state, that the victim is asserting her privilege under the Mental Health And Developmental Disabilities Confidentiality Act (740 ILCS 110/10 et seq.).

6. That the burden is on the defense to prove how a victim’s mental health is relevant to the case. “There is nothing about a witness’ mental health generally that renders it relevant to the issue of a witness’ credibility.” People v. Printy, 598 N.E.2d 346, 354, 174 Ill. Dec. 149, 157 (2nd Dist. 1992). The burden is on the defendant to show how the witness’ mental health bears on the question of credibility. Id.

7. That it is not abuse of discretion for a trial court to prohibit a defendant from questioning a victim as to a mental health diagnosis. Id.

8. That among the public policy reasons for not allowing the defense to make issue of a victim’s mental health are:

A. Under the Rape Shield Provisions of the Illinois Statutes, a court may not order mental examination of sex victim, ostensibly to prevent harassment of victims. 725 ILCS 5/115-7.1.

B. To “prevent irrelevant inquiries or inquiries that threaten to distract the jury from the actual issues by unduly emphasizing details of a witness’ life.” Printy at 157.

9. That in this case, there is much evidence to support the victim’s statements, specifically, corroborating physical evidence.

10. That therefore, the case does not rest solely on the testimony of any one witness and any mental health history of the victim is not relevant.

WHEREFORE, the People respectfully request the Court to bar introduction of evidence relating to the victim’s psychological condition or mental health, either through testimony or in argument.

THE PEOPLE OF THE STATE OF ILLINOIS

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Assistant State’s Attorney

**Victim Considerations**

As stated previously, prosecutor response is criticalto assuring that victims with disabilities have equal access to the criminal justice system in a compassionate, proactive, individualized manner. To be successful, prosecutors must be aware of factors which may create barriers or influence working with survivors with disabilities. Consider the following factors:

**Culture of Compliance or “people pleasing”**

Does the victim appear to want to give the right answer and please others? (This is a common pattern in people with disabilities) What strategies can be used to lessen this tendency, i.e. re-asking question, asking general or 3rd person question?

**Guardianship**

Does the victim have a guardian? If yes, in what areas does the guardian have decision-making authority? (financial, medical, etc.) Does the guardian appear to support or honor the victim’s choices in regard to prosecution? Does the guardian appear to influence the victim’s statements or try to talk for her/him? How can the guardian best be utilized during the investigation and prosecution process?

**Health & Wellness**

Does the victim have any medical conditions that may impact her/his ability to participate in the judicial process? Think through potential challenges, i.e. prolonged sitting, intense cross examinations, early morning appearances, etc. What supports can be put in place? For example, more frequent breaks for nutrition, movement, restroom facilities.

**Language**

Does the victim understand his/her choices in the prosecution process? Can she/he articulate or indicate comprehension of the process? Are materials provided to the victim written in simple, plain language? Are explanations provided in such a manner that is easily understood? Has the victim been asked how she/he best communicates?

**Living Situation**

What is the victim’s current living situation, i.e. living alone, group home, living with relatives? Is safety an ongoing concern due to the victim’s current living situation? Does the offender have access to the victim or the victim’s family or friends? If a change in living situation is needed to promote safety, what resources can be leveraged to make this happen?

Transportation - How will the victim get to required court appearances? Is she/he dependent upon others to get places? If yes, is there a required notice period for arranging or revising transportation times? How does transportation impact scheduling meetings or court appearances, i.e. time of day, frequency?

* Victim Support – Are there people who can be present or a part of the process to provide support to the victim such as family, friends, disability agency staff, advocate from rape crisis center or domestic violence program? Does the victim have a favorite comfort item (picture, toy) that can be in her/his possession or nearby during the process? Some individuals with disabilities will find comfort in following a routine. How can this be incorporated into the process?

**CRIMINAL STATUTES**

**Case Law**

**Victim/Witness with a History of Mental Health Treatment**

There are some protections for a victim with mental illness, but the Courts have held that the Defendant's rights under the 6th and 14th Amendments trump the privilege that ordinarily applies to such information **if** the victim's mental health treatment is material and is relevant to the witness's credibility.  The procedure for making this determination is set forth in People v. Bean, 137 Ill.2d 65, 147 Ill.Dec. 891, 560 N.E.2d 258 (Il. 1990).  First, the defendant subpoenas the victim's mental health treatment records, which are received by the court.  The court then reviews those records on its own without first disclosing them to either party.  After this review, the Court decides what, if any, portions of the mental health treatment records are relevant to the victim's credibility as a witness and discloses only those portions to the defendant and the State.  Then, the parties argue about what comes in for impeachment at trial, with the judge having the final say.

This procedure seems to have been followed fairly universally for some time, and it almost seemed as though a defendant had a right to this in camera review of a victim's mental health treatment records.  However, there is a ray of hope out of the 5th District in the form of People v. Graham, 406 Ill.App.3d 1183, 947 N.E.2d 294 (5th Dist. 2011), where the Court determined that a defendant seeking an in camera review of a witness's mental health treatment records must **first** show that there is reason to believe that such records are material and relevant to credibility.  In the Graham case, the trial court apparently declined to conduct an in camera review of a sexual abuse victim's mental health records based on the State's representation that the victim received treatment as a result of her victimization.   The Defendant responded generally that they were looking for mental health treatment unrelated to "post event" trauma, but the trial court declined to subpoena the records, and that decision was upheld.

**Accommodations (Case Law)**

**In re McDonough**, 930 N.E.2d 1279, 457 Mass. 512 (Mass. 2010).

The victim who had difficulty communicating verbally or in writing because of aphasia was allowed to answer “yes” or “no” to questions and point instead of providing a narrative.

Where a witness with a disability requests an accommodation to testify, the Massachusetts Equal Rights Act requires that the court provide a reasonable accommodation. Where there is a dispute regarding such accommodation, the judge should conduct a pretrial hearing, and the witness should be provided with a reasonable accommodation, if available. Where a judge denies an accommodation requested, the party may seek interlocutory review from a full panel of the Appeals Court.

**People v. Tran**, 47 Cal.App.4th 759, 54 Cal.Rptr.2d 905 (Cal. App. 1996).

The victim, involved in a shooting, had quadriplegia and could not speak. He testified at trial by tapping a pencil in response to questions, once for “yes” and twice for “no.”

**Com. v. Barbosa**, 399 Mass. 841, 507 N.E.2d 694 (Mass. 1987).

The deaf victim in criminal trial did not know signed English but was allowed to communicate through “minimal language skills,” a form of sign language which is not formalized and which uses gestures and pantomime.

**State v. Dye**, 170 Wash.App. 340, 283 P.3d 1130 (Wash. App. 2012).

The victim was an adult man with significant disabilities, including an intelligence quotient of approximately 65, cerebral palsy, and a degenerative joint condition. Over the objection of the defendant, the court allowed him to testify with the prosecutor’s office’s “facility” dog next to him on the stand.

**Motto v. City of Union City,** 177 F.R.D. 308 (D.N.J. 1998).

The plaintiff who suffered from attention deficit disorder with developmental delay and auditory processing problems was not entitled, as a reasonable accommodation, to have learning disability specialist assist him during his testimony at trial. However, he could be accommodated by having counsel phrase questions in a manner which rendered them more understandable.

**Burgess v. State,** 256 Ala.5(1951)

A witness, who could not hear or speak, was permitted to testify by having her brother "interpret" for her.  This was apparently not an "official" sign language, but rather, a situation where the brother testified that, having known his sister their entire lives, he was able to communicate with her by gestures, looks, etc. to the point where he could understand her.  Although this case does not have binding authority in Illinois, it's a persuasive precedent to be aware of.

**People v. Spencer**, 119 Ill.App.3d 971, 75 Ill.Dec.479, 457 N.E.2d 473 (1st Dist. 1983)

As long as the witness understands the importance of telling the truth, and is able to communicate, the witness should be found competent to testify. This is true even if the witness is not capable of speech, provided he or she can communicate by other means.

**State v. Warden**, 257 Kan. 94**,** 891 P.2d 1074 (1995)

If a victim is unable to speak and must communicate non-verbally through gestures, the court may permit the witness to testify with the aid of a “facilitator.” The Kansas Supreme Court ruled in this case that before allowing a witness to testify with such a facilitator, the court must be satisfied that the witness’ testimony is not influenced by the facilitator.

**Prior Sexual Activity or Reputation as Evidence (Rape Shield)**

§ 115-7. a. In prosecutions for predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, aggravated criminal sexual abuse, criminal sexual abuse, or criminal transmission of HIV; and in prosecutions for battery and aggravated battery, when the commission of the offense involves sexual penetration or sexual conduct as defined in Section 11-0.1 of the Criminal Code of 1961; [[FN1]](#Document1zzI094AE350B4C611DDB396C25BF2D8) and with the trial or retrial of the offenses formerly known as rape, deviate sexual assault, indecent liberties with a child, and aggravated indecent liberties with a child, the prior sexual activity or the reputation of the alleged victim or corroborating witness under Section 115-7.3 of this Code is inadmissible except (1) as evidence concerning the past sexual conduct of the alleged victim or corroborating witness under Section 115-7.3 of this Code with the accused when this evidence is offered by the accused upon the issue of whether the alleged victim or corroborating witness under Section 115-7.3 of this Code consented to the sexual conduct with respect to which the offense is alleged; or (2) when constitutionally required to be admitted.

b. No evidence admissible under this Section shall be introduced unless ruled admissible by the trial judge after an offer of proof has been made at a hearing to be held in camera in order to determine whether the defense has evidence to impeach the witness in the event that prior sexual activity with the defendant is denied. Such offer of proof shall include reasonably specific information as to the date, time and place of the past sexual conduct between the alleged victim or corroborating witness under Section 115-7.3 of this Code and the defendant. Unless the court finds that reasonably specific information as to date, time or place, or some combination thereof, has been offered as to prior sexual activity with the defendant, counsel for the defendant shall be ordered to refrain from inquiring into prior sexual activity between the alleged victim or corroborating witness under Section 115-7.3 of this Code and the defendant. The court shall not admit evidence under this Section unless it determines at the hearing that the evidence is relevant and the probative value of the evidence outweighs the danger of unfair prejudice. The evidence shall be admissible at trial to the extent an order made by the court specifies the evidence that may be admitted and areas with respect to which the alleged victim or corroborating witness under Section 115-7.3 of this Code may be examined or cross examined.

**Role of Court Disability Coordinators**

Court Disability Coordinators (CDCs) have been appointed by the Chief Judges in every Judicial Circuit in Illinois to assist anyone who comes in contact with the court system including victims, defendants, attorneys, Judges, jurors, etc. . In most cases, each courthouse has its own CDC. CDCs are trained regarding appropriate terminology, eti­quette, and practices for addressing and interacting with people with disabilities. They are also familiar with the legal requirements governing physical and programmatic access to the judicial system for people with disabilities.

CDCs have access to a vast array of people and agencies that can help the court address issues regarding physical and program accessibility. Specifically, CDCs ensure that the court provides appropriate accommodations and auxiliary aids and services to persons with disabilities. They train judges and other court personnel about proper policies and procedures. CDCs develop and draft ADA policies and ensure that jurors and other court participants with disabilities are aware of their legal rights. They also greet people with disabilities in the courthouse and make any arrangements necessary to ensure that their needs are met. They inform people with disabilities of court procedures in a manner that is understandable to them.

It is important for prosecutors to work with CDCs to ensure that victims and witnesses receive any accommodations necessary to testify or otherwise participate in the judicial process. Victims and witnesses may not be familiar with the court system or they may distrust it because of past unfavorable experiences. Prosecutors should also work with CDCs to ensure that victims and witnesses have complete physical access to the courthouse. In addition, prosecutors may need to collaborate with CDCs and judges when certain accommodations require motion practice or are challenged by the defense.

The Attorney General’s Disability Rights Bureau oversees Illinois’ Court Disability Coordinator program and assists CDCs and prosecutors with any questions they may have about disability laws in the judicial setting. The Bureau provides additional training to CDCs periodically and offers technical as­sistance regarding specific issues. In addition, the Bureau keeps CDCs informed of changes in the law that may impact their responsibilities or be of interest to them. The Disability Rights Bureau may be reached at the following telephone and TTY numbers:

 Chicago: Springfield:

(312) 814-5684 (Voice) (217) 524-2660 (Voice)

(800) 964-3013 (TTY) (877) 844-5461 (TTY)

The training manual for CDCs, which contains useful information for anyone who interacts with people with disabilities, can be obtained at http://www.illinoisattorneygeneral.gov/rights/Manual\_Court\_Disability\_Coordinators.pdf

**ATTACHMENTS**

**Communication Tips**

**Communicating with people with various kinds of disabilities**

Factors that influence communication:

1. Following a trauma, it may be more difficult for a person to follow what is being said and to speak.
2. A person’s ability to communicate what happened to them is not necessarily related to cognitive understanding or truth-telling.
3. It is easier for a victim to communicate what happened to them when speaking with someone they trust.
4. Some people communicate in nontraditional ways or ways that are not easy for us to understand; however, they can still communicate if we take the time to understand.
5. Some people can understand what is said; however, have difficulty expressing what they want to say.
6. We all have different ways of understanding others and expressing ourselves. Attempt to use multiple means of communication to increase the likelihood of being understood.
7. Some disabilities can impact how a person responds under stress. Do not be misled or misinterpret a person’s affect.

**What to do if you can’t understand what someone is saying?**

* Listen closely; you will get better with practice.
* It is okay to ask them to repeat it. You can say, “Can you say that again?” or “I really want to make sure I understand. Tell me that again.”
* You can repeat the words that you do understand in a questioning tone and the person will most likely fill in the blanks.
* If possible, ask them to show you. They may be able to point or take you to what they are talking about.
* If you continue to have trouble understanding, you can ask the person to draw, write or spell.
* Use pictures or other Augmentative Alternative Communication (AAC).
* Don’t pretend you understand when you don’t. This is dishonest. People can tell if you pretend and will feel patronized.
* If necessary, create a yes/no communication.

|  |
| --- |
| “Don’t pretend you understand me. I can tell. Respect me enough to tell me the truth.” Illinois Self-Advocate |

Communication tips that may be helpful in communicating with someone with an **intellectual disability**:

* Create a safe environment with limited distractions.
* Pleasantly introduce yourself. If you are wearing a uniform, tell the person they are not in trouble and that you are there to help them.
* Allow plenty of time for the interview. It may take more time than in typical interviews to gather the information.
* It is okay to say something like this: “Sometimes I use words that are hard for people to understand. If I say something you don’t understand, please tell me.”
* The victim may be eager to please you so do not ask leading questions. Open-ended questions are preferred. Sometimes multiple-choice questions work well but notice if there is a pattern of always restating the last option. If so, another approach will be needed.
* Give the person plenty of time to respond. It may take a few seconds for the person to process what you said and to formulate their reply.
* Use concrete words when possible; such as things that can be seen, touched, or heard.
* If the person tells you something that seems inconsistent with their story, consider the possibility that they may have misinterpreted your question.
* If the person has difficulty with dates and times, ask questions related to their schedule or activities and darkness/light outside.
* If the person has difficulty naming a specific location, see if they can show you the location.
* Questions that begin with who, what and where will be easier for people to answer than how or why questions.
* If the person does not respond well to general questions, ask more specific questions. For example, instead of “What did the car look like?” Ask, “What color was the car?” Or show picture with different colors and have the person point to the correct answer.
* Use plain language and simple sentences.
* Break down key concepts so they are more easily understood.
* If you are unsure if a person understands what you said, you can ask them to repeat it using their own words.
* Ask same question in different ways, but tell the person, “If I ask you the same question, it doesn’t mean you gave the wrong answer. It’s because I want to make sure I understand.”
* Avoid sarcasm, clichés, and words with multiple meanings.
* Use pictures of the person’s home, location of the crime, etc. to aid in communication.
* Ask the person to define what key words mean to them.

Communication tips that may be helpful in communicating with someone who has **autism**:

* Plan a time for the interview when time is not a factor for you or the victim.
* Prepare a quiet location with few distractions. Reduce lights and sounds as possible.
* Do not touch the person. The person may be sensitive to touch. Touch may actually cause the person pain. If you need to guide them to do something, gestures combined with verbal instruction will be more effective.
* Approach the person in a calm manner. Introduce yourself and extend your hand. Do not be concerned if the person does not extend their hand in return.
* Do not approach the person from behind.
* Speak with a calm voice using direct, concrete terms with one response or concept per question or statement.
* Explain your actions before you do anything. For example, “I am going to stand up now.”
* The person may prefer writing back and forth, at least until they feel more comfortable with you. Ask if this would be helpful.
* The person may not respond to verbal questions or requests. Be reassuring. Try again.
* The person may not be able to speak and might even appear to be deaf because of lack of response. Determine their primary mode of communication.
* Allow plenty of time for the person to respond. Be patient.
* Ask a family member, teacher or support person if there is a favorite object that makes the person feel safe.
* Avoid using sarcasm, cliques, acronyms or words with multiple meanings. Many people with autism are very literal. If you ask a person “Can you tell me what happened?” They may answer “Yes”, but not answer your question due to the ‘can you?” being asked.
* The person might repeat what you say or repeat the same word or phrase over and over, or change the subject. This is common and is the person’s sincere attempt to communicate with you; it is not rudeness.
* The person may express themselves with an unusual tone of voice and/or look at you from an odd angle. This is also common and not meant to be disrespectful.
* The person may not understand social norms or the seriousness of the situation. Do not focus on the behavior you feel is unusual; let the person know you want them to be safe. Proceed with the investigation.
* If you have to transport a person with Autism, do not use sirens or lights.
* If the person is displaying repetitive behaviors, it may be to help them calm down. Do not try to stop them or take objects away from them unless there is a danger to self or others.
* Be prepared for sudden outbursts or impulsive behavior. If no one is at risk of harm, wait for the behavior to subside and then calmly continue.
* Some people with Autism do not express physical pain; the victim may need to be checked for injuries.

Communication tips that may be helpful in communicating with someone who has a **mental illness**:

* Do not touch the person or stand too close to the person.
* Do not talk down or raise your voice
* Avoid sudden movements
* Show interest and concern
* Avoid dramatic facial expression
* If a person is confused, speak slowly and in a clam, pleasant tone of voice
* If a person seems agitated, offer them a quiet space away from any confusion or shift the conversation to a safer topic
* Avoid multiple instructions and give one piece of information at a time
* Be empathetic. Let the person know you heard them and are there to help.
* In the person is talking non-stop, interrupt with a simple question.
* Do not argue or try to prove a point. If a person is experiencing delusions or hallucinations, understand that these are very real to the person.
* Do not agree or disagree with delusions; empathize with the person’s feelings.
* If the person is having difficulty with hallucinations or delusions, ask “What has helped you in the past when you felt this way?”
* Avoid whispering, joking and laughing as this may misinterpreted by someone with a mental illness.
* Be honest about what you can and can’t do.
* Do not take the person’s words or actions personally.

Communication tips that may be helpful in communicating with someone who has **low vision or no vision**:

Presume competence. People with little or no vision can still have a lot of information about what happened to them.

* Use your words to describe the important parts of the environment. Describe any other people in the room and have them speak; describe furniture in the room; state whether the door is open or closed, etc.
* If the person has a guide dog, do not touch the dog or attempt to communicate with it in anyway. Guide dogs are working and should not be distracted (just like police dogs).
* If the person needs to be guided somewhere, let the person hold your elbow to lead them. Tell them of any obstacles, change in floor surface, steps, doorways, water fountains, etc.
* Let the person know what you are doing at all times.
* Paperwork and forms should be offered in alternate formats. Ask the person what their preference is.
* Large print documents should be at least 18 font in Arial or Tahoma font. Printed materials need to have contrast between the print and the background for people with low vision.
* Most people with little or no vision can sign their names. Many people use signature guides and some may ask you to show them the area to sign by guiding their hand.
* If the person needs to be contacted after the interview, ask the person the best way to reach them. Many people with little or no vision have programs on their computers which read emails and documents to them.

Communication tips that may be helpful in communicating with someone who is **Deaf or hard of hearing**:

* Determine how the person prefers to communicate.
* Initially, it is okay to use writing to determine what the person needs to communicate best. If the person needs an ASL interpreter, the writing method will be temporary. Some hard of hearing people may prefer written communication.
* People who communicate with American Sign Language (ASL) will write differently than people who speak traditional English. Verify that you understand the written communication correctly.
* If the victim speaks ASL, a certified and licensed ASL Interpreter must be used in criminal investigations.
* Do **not** use friends or family members as ASL Interpreters.
* Keep eye contact with the victim. Eye contact is a sign of respect and is critical in establishing rapport with Deaf victims. If you need to look down or away, tell the person the reason.
* The victim and the interpreter will decide where the interpreter will sit. Communicate with the victim, not the interpreter.
* Use clear facial expressions and gestures when you communicate.
* Good lighting is essential in communicating with someone who is Deaf or hard of hearing.
* Lip reading is not an effective means of communicating. Even the best lip readers may only understand half of what is being said.
* People who use hearing aids may understand everything being said or they may not. Keep questions short and ask only one idea at a time.
* Keep your body and face open so the person can see you clearly at all times.
* A Deaf culture exists for many people who speak ASL. They speak a different language, have their own beliefs and can be isolated from the hearing world.

In working with **ASL interpreters**, here are some things to keep in mind:

* Interpreters must be certified and licensed through the Registry for the Interpreters for the Deaf. In court situations, it is best to use an interpreter who id “Specialist Certificate: Legal”; however, these are difficult to obtain on short notice..
* Interpreters have a code of ethics.
* The interpreter’s job is only to translate communication between the victim and the investigator or other conversations occurring within earshot (not to add anything or say their opinion)
* Interpreters often work in teams of two and rotate every few minutes to avoid fatigue. This would most likely happen for timeframes over an hour or two, and is at the interpreter’s discretion.
* Speak directly to the victim and not the interpreter. Do not say things like, “Ask her if…”
* Observe the victim closely as gestures and facial expressions are important aspects of communication by a deaf person.
* If the suspect also needs an ASL interpreter, it is recommended to always use a different interpreter than was used with the victim.

It is important for law enforcement to be aware of specific services which may be available at hospitals for people who communicate with American Sign Language. Video Remote Interpreting (VRI) and Language Services are two possibilities that law enforcement can explore at the hospitals that they are called to respond to sexual and domestic violence. With VRI, the interpreter is on the screen of a monitor to interpret and translate the communication. VRI can be used in an emergency when an interpreter cannot be located, cannot come to the scene, or could be the offender. VRI is not the preferred method of communicating for people who use ASL, but this access is better than no access. If a hospital has language services, they have someone who can assist with various kinds of translation/interpreting.

Communicating by phone with someone who is Deaf has become easier over the years. There are two main options: TTY and Video Relay Service. To contact someone through the TTY system, dial the TTY number at 1-800-877-8973 or 711. Note that 711 does not work with all cell phones. The relay operator will relay the hearing person’s spoken word by typing them back to the TTY user. For individuals whose primary language is American Sign Language, this service (VRS) is often preferred. It requires that the person have high speed internet and a software program. Video Relay Service allows individuals using ASL to communicate with hearing individuals via an interpreter who signs the hearing person’s communication and also speaks the ASL User’s communication. The interpreter provides instructions at the beginning of the call to the hearing person. It is important to direct your communication to the individual, not the interpreter.

Communication tips that may be helpful in communicating with someone who uses a **service animal**:

 Service animals can provide a variety of services. Guide dogs for people with low vision or blindness are the most well-known, but there are also service animals for people with physical disabilities, seizure disorders or mental illness.

* Service animals are working animals. Do not attempt to pet, feed, whistle, click or communicate with them in anyway unless the owner advises it is okay.
* The owner is responsible for the care and supervision of the animal.
* It is best to choose a location where the animal may go outside for a break.
* Allowing a service animal in a ‘no pets’ area is a reasonable accommodation under the Americans with Disabilities Act.

Communication tips which may be helpful in communicating with someone who has a **physical disability**:

* Make sure the meeting place is physically accessible. This includes parking, sidewalks, entry to the building, hallways, doorways, restrooms, and the meeting room. Sidewalks need to be clear of snow and shrubbery. (for more information see www.ada.org)
* If you normally extend your hand to someone when you meet them, do the same with a victim who has a disability.
* Put yourself at eye level with the person. If the person uses a wheelchair, sit down.
* Do not touch a person’s assistive device without permission from the owner.
* Do not provide assistance unless the person indicates they need help.
* If you typically offer victims a drink, have some straws available for people who need a straw to drink.
* The majority of people with physical disabilities have ‘normal’ or higher intelligence, speak with them as you would any other victim.
* Take time to establish rapport, obtaining and gain comfort and confidence before initiating the interview.

Tips for responding to victims who have a **seizure disorder (epilepsy**):

People with epilepsy may occasionally have seizures that can make them appear to be intoxicated or under the effects of illegal drugs. There are different kinds of seizures and since stress can trigger a seizure. *It is very possible that a victim will have a seizure due to the stress of participating in an interview with law enforcement.*

**What might an epileptic seizure look like?** Seizures have a sudden beginning, lack of responsiveness during the seizure and a gradual recovery. Here are some of the signs that someone may be having a seizure.

* Slurred or very slow speech
* Unsteady gait
* Blank staring
* Chewing
* Fumbling
* Sleepiness
* Confusing or dazed behavior
* Combative response to restraint
* Body stiffens and begins to jerk as muscles contract and relax

**Do I call an ambulance if a person has a seizure?**

* If an individual has a seizure for less than 5 minutes and otherwise does not have injuries, it typically is not considered a medical emergency.
* If the seizure last less than five minutes and the person asks for medical attention, ask if they want an ambulance to be called. The person usually knows if they need medical attention.
* If a seizure lasts longer than five minutes, if another seizure begins shortly after, or if the person having the seizure appears to be injured, diabetic, pregnant or the seizure occurred in water, you are advised to immediately contact emergency medical assistance.

**What else should I do when someone is having a seizure?**

* A person seen shaking and falling followed by a confused or dazed state is likely having a seizure and should be treated accordingly.
* Check how much time has elapsed since the seizure began and call for medical attention if five minutes has elapsed without recovery
* Look for medical ID or alert bracelet
* If the person is convulsing, turn the individual on side to clear airway and reduce hazard of choking
* If the person is banging their head, put something soft under their head for protection, like a blanket, pillow or coat.
* Eliminate nearby hazards and have bystanders clear the area.
* If the individual has stopped having the seizure, help reorient the individual with easy questions such as their name, day or the week or where they are.
* It is essential that you **do not put anything into the individual’s mouth**, hold their tongue, attempt to force their mouth open or restrain the individual while trying to prevent jerking.
* Wait until the individual is clearly conscious before you allow them to take medication or fluids. Allow plenty of recovery time before continuing the interview.

**The Ten Commandments**

**Etiquette for Communicating with People with Disabilities**

\*The Ten Commandments adapted from many sources as a public service by Karen Meyer, ADA National Center for Access Unlimited.

You may not always be aware that a person has a disability and the ten tips above are helpful in communicating with anyone.

1. When talking with a person with a disability, speak directly facing that person rather than through a companion or sign language interpreter who might be present. *Even if you think that a person cannot understand or respond to you, it is rude to talk* ***through*** *someone else.*
2. When introduced to a person with a disability, it is appropriate to offer to shake hands. People with limited hand use, or who wear an artificial limb, can usually shake hands. Using the left hand to shake hands is also an acceptable greeting.
3. When meeting a person with a visual impairment always identify yourself and oth­ers who may be with you. When conversing in a group, remember to identify the person to whom you are speaking as well as yourself.
4. If you offer assistance, wait until the offer is accepted. Then listen or ask for instruc­tions. Do not be offended if the offer is not accepted.
5. Treat adults as adults. Address people who have disabilities by their first name only when extending the same familiarity to all others present. Never patronize people who use wheelchairs by patting them on the head or shoulder.
6. Leaning or hanging on a person's wheelchair is similar to leaning or hanging on a person and is generally considered annoying. The chair is part of the personal body space of the person who uses it.
7. Listen attentively when you are talking with a person who has difficulty speaking. Be patient and wait for the person to finish, rather than correcting or speaking for the person. If necessary, ask short questions that require short answers, a nod or a shake of the head. Never pretend to understand if you are having difficulty doing so. Instead, repeat what you have understood and allow the person to respond. The response will clue you in and guide your understanding.
8. When speaking with a person in a wheelchair or a person who uses crutches, place yourself at eye level in front of the person to facilitate the conversation.
9. To get the attention of a person who is hearing impaired, tap the person on the shoulder or wave your hand. Look directly at the person and speak clearly, slowly and expressively to establish if the person can read your lips. Not all people with a hearing impairment can lip read. For those who do lip read, be sensitive to their needs by placing yourself facing the light source and keeping hands, cigarettes and food away from your mouth while speaking.
10. Relax. Do not be embarrassed if you happen to use accepted, common expres­sions such as, "See you later," or "Did you hear about this?," that seem related to the person's disability

**Accommodations and the Americans with Disabilities Act**

Some people with disabilities will need an accommodation to fully participate in the investigative process. Most accommodations mentioned here are for people who communicate in a non-traditional manner. Some examples of accommodations include:

* American Sign Language Interpreter
* Individualized Communication Device
* Pictures to communicate by pointing
* Plain language by the law enforcement officer
* Answering with only Yes or No
* Large Print materials
* Extended response time to answer questions
* “Showing” instead of “telling”
* Writing words instead of speaking words
* Drawing pictures instead of, or in addition to, speaking words
* Facilitated Communication (a process where a trained facilitator uses touch to support a person in communication, usually typing)
* Braille materials

In order to find out if someone needs an accommodation, an officer can:

* Always ask the victim first
* Ask a family member of the victim
* Ask a friend of the victim
* Ask a staff member at a disability organization

It is imperative to use needed accommodations so victims with disabilities can have justice - but it is also the law. The right to reasonable accommodations for people with disabilities is included in **two** federal laws.

**Federal Laws**

There are two federal laws which govern discrimination against persons with disabilities: The Americans with Disabilities Act (ADA) of 1990 and the Rehabilitation Act of 1973. These acts provide broad protections for people with disabilities and provide guidelines for access to programs, services, facilities, and activities relevant to criminal investigations.

Title II of the ADA requires that all programs, services, and activities of a public entity, such as a police department, be accessible to individuals with disabilities. 28 C.F.R §35.130.

Under Title II, a public entity must furnish, at no cost to the requester, any auxiliary aids or services necessary to ensure that communications with people with disabilities are as effective as communications with others and to ensure that individuals with disabilities can fully enjoy the entity’s programs, services, and activities. 28 C.F.R. §35.160.

In determining what type of auxiliary aid and service is necessary, a public entity must give primary consideration to the request of the individual. 28 C.F.R. §35.160.

A public entity may only be excused from providing auxiliary aids and services when to do so would impose an undue financial or administrative burden or fundamentally alter the services provided. If an action required to comply with Title II would result in such an alteration or such burdens, a public entity must take some other action that ensures that individuals with disabilities receive the benefits or services provided by the public entity. 28 CFR §35.164.

A public entity such as a police department must make any reasonable modifications in policies, practices, or procedures when the modifications are necessary to ensure that a person with a disability has equal opportunity to participate in the entity’s programs, services, and activities. 28 C.F.R. §35.130.

A public entity must modify its policies upon request unless to do so would fundamentally alter the nature of the service, program, or activity. In such case a public entity must take some other action that ensures equal access to the public entity’s services, programs, or activities. 28 C.F.R. §35.164.

Section 504 of the Rehabilitation Act of 1973 contains identical requirements for public entities receiving federal financial assistance. 29 U.S.C. §794.

Therefore, we need to establish practices that are responsive to people with disabilities and assure effective communication. This is not only the law; it is the right thing to do. All citizens should have equal access to public services that provide them with safety and justice.

The ADA and the Rehabilitation Act are enforced by the Department of Justice. There is case law stating that attorneys general have power to do that on behalf of their citizens and some State Attorney General Offices do enforce ADA compliance. Individuals can file complaints with these entities who will investigate the situation and issue findings. In cases of noncompliance, the enforcement entity will seek voluntary agreement. The Department of Justice or the state attorney general’s office can initiate litigation if voluntary agreement is not reached. It is also possible for a complainant to file a private civil suit.

**General approach regarding accommodations:**

1. Be flexible
2. Do not automatically say ‘no’ to requests
3. Discuss the request with a supervisor or Court Disability Coordinator if you have questions
4. Consider if the request is a “fundamental alternation” of your typical services.
5. Provide the accommodation as requested by the individual within the above guidelines

**Language and Sensitivity - What is ‘People First’?**

|  |  |
| --- | --- |
| `People First' is a mindset. It is a way of looking at other people, not by their disability, race, gender or any other arbitrary characteristic, but rather as *peo­ple* first. |  |

As people we are all more similar than we are different. True, we are all unique and different in our own ways but these differences are minimal in comparison to our similarities. In general, we are all peo­ple first. The same is true of people with disabilities—we are more like people without disabilities than we are different.

|  |  |
| --- | --- |
|  | People with disabilities are not freaks, cripples or re­tards. We are not incapable, weak or disabled. You can­not catch our disabilities. We are not heroes or extraor­dinary. We are people, just like you, living our lives the best we know how. |

This is People First: We are people, just like you and everyone else.

This is not to say that disability is unimportant. It is, of course, a large component of the lives of people with disabilities. Disabilities, and perhaps more importantly peoples' reactions to disabilities, create barriers for people with disabilities through stereotypes, myths, preju­dices, fears and ignorance.

|  |  |
| --- | --- |
| Disability is changing. Our understanding of what a disability is has grown over the years. More and more people are identifying as people with disabilities and it's up to society to change accordingly. We all have the same rights and re­sponsibilities, and we should all be able to enjoy them as what we all are...People First. |  |

Treat people as though they are what they ought to be and you help them become what they are capable of being — Goethe

**People First Language**

Language is important! It matters what you say and how you say it. There are a lot of things that we have all said which can be very offensive in the wrong set­ting. For instance, "lame" has been used for years as slang for boring but it has been used even longer to describe people with certain physical disabilities. The use of this term can be innocent, but still hurtful. Think how you would feel to be called something so derogatory and the choice is easy—watch what you say.

|  |  |
| --- | --- |
| **USE** | **DON'T USE** |
|  |  |

Afflicted with a disability

Birth defect

Cerebral palsied

Crippled, crip

Deaf-mute, dumb

Deformed

Dumb

Slang (i.e., Elephant Man's Disease)

Emotionally disturbed

Epileptic

Disabled, handicapped

Handicapped accessible

Hearing impaired

Hunchbacked

Lame, Gimp

Midget, dwarf

Mongoloid idiot, Downs

Normal, non-disabled, able-bodied

Paraplegic

Arthritic

Wheelchair bound, confined to a chair

Insane, deranged, deviate, crazy

Has a disability

Born with a disability

Has Cerebral Palsy

Walks with the aid of crutches

Deaf

Has a physical disability

Nonverbal

Correct name of disability

Behavior disorder

Has Epilepsy

Disability

Accessible, fully accessible

Deaf or hard of hearing

Has a spinal curvature

Walks with a limp

Short statured

Down syndrome

Person without a disability

Is paralyzed

Has arthritis

Uses a wheelchair

Has an emotional disability

**PEOPLE WITH DISABILITIES ARE PEOPLE FIRST!**

Written by staff at Pace CIL in Champaign-Urbana

**So what do you say when you meet someone with a disability?**

It's ok, we understand that it is a bit of a different experience to meet a person with a disability in any setting—and with some disabilities you might have to adapt some parts of the environment in order to provide the opportunity for equal access.

Remember though, that you do not have to act differently toward someone with a disability. Whatever you're talking about or doing is fine—you don't have to change the topic or stop doing what you're doing. Be respectful and kind, and you're already doing what you should be doing. Treating people with disabilities just like everyone else is half of the battle, besides you have to remember that you may not always be able to "tell" that someone even has a disability!

We have already talked about the changing definition and under­standing of disabilities, and we know that there are a wide array of disabilities and effects of disabilities—but who else are people with disabilities?

**Who are people with disabilities?**

* America's largest minority group.
* A group that cuts across racial, ethnic, religious, economic and social lines.
* Maybe a neighbor, a loved one or even you.
* Are perhaps most seriously impeded by barriers created by myths, prejudices,
stereotypes, fears and ignorance rather than by effects of the disability.
* Disabilities can be visual, aural, physical, communicative or developmental. Some individuals have a combination of disabilities.
* Disabilities affect a wide range of activities—from small to great.
* Birth defects, injury or illness can cause disabilities.
* The affect of a disability is about the impact of the disability on the rest of life.
* Disability is not inability.

**Some Facts**

* Disabilities are not contagious.
* Disabilities are frequently permanent.
* Miracles may sometimes happen, but people with disabilities are not usually waiting for them.
* People with disabilities know they have a disability, and tend to know you know.
* People with disabilities prefer to emphasize what they can do rather than what they cannot.
* Disability is not the sum of an individual's life, any more than having a certain hair color is yours.
* People with disabilities can and do engage in sex.

**Indicators of Domestic Violence/Sexual Assault**

**Indicators of Sexual Abuse/Assault**

* Torn clothing
* Stained clothing
* Clothing on backward
* Stained bed/bedding
* Difficulty walking or sitting
* Vaginal or rectal bleeding
* Painful urination or defecation
* Physical evidence of pornography or prostitution
* Itching or swelling in the genital area
* Pain in the genital area
* Bruising in the genital area
* Bruising of the inner thighs
* Incontinence
* Frequent urinary tract infections
* Pregnancy
* Vaginal infections
* Sexually transmitted infections
* HIV, AIDS
* Extreme changes in behavior
* Sleeping disturbances (nightmares, insomnia, excessive sleeping)
* Changes in eating habits
* Unexplained gagging
* Unexplained abdominal pain
* Depression, anxiety
* Physical or sexual aggression
* Fear reactions to person, place, objects, etc.
* Self-destructive behavior
* Extreme reaction to bathing or other physical caregiving
* Inserting objects in vagina or rectum
* Sexualized language or behavior

**Indicators of Physical Abuse/Domestic Violence**

* Bruises on several different surface areas
* Bilateral bruises (top of shoulders, both sides of face, insides of thighs)
* Bruises in various stages of healing
* Multiple bruises or bruises forming patterns r clusters
* Bruises in shape/size of a familiar object (handprint, belt buckle)
* Bruises repeatedly occur after certain events (home visits, staff visits)
* Burns shaped like an object (e.g., iron, cigarette) especially on soles of feet, palms, back of buttocks
* Scalding burns (skin blistering from hot water or from emersion in hot liquid)
* Abrasions from rape or other restraints
* Wrap around bruises encircle the person’s arms, legs, or torso and indicate physical restraint
* Sprains, dislocations
* Fracture or breaks to ribs, skull, arms and leg bones
* Unexplained internal injuries
* Injuries to mouth (chipped teeth, ulcers, tears/swelling from forced feeding)
* Cuts, lacerations, puncture wounds
* Human bite marks
* Disorientation, stupor or other effects of deliberate overmedication
* Frequent headaches
* Back pain
* Hesitant to talk openly about injuries, indicators
* Implausible explanations for injuries
* Easily frightened, agitated or trembling

**Behavioral indicators of the Suspect**

* May try to conceal victim’s injuries
* Inconsistent explanation for victim’s injuries
* History of making threats
* History of substance abuse or alcohol abuse
* Dependent on victim’s income or assets
* May be charming, caring and nice
* Over protectiveness, dominance, hostility toward others
* Inappropriate sex-role relationship between victim and suspect
* Socially isolates the victim (Controls transportation and access to others)
* Uses restrictive treatment; restricts access to phone, car, people, food, meds, etc.)
* Speaks **for** the victim
* Treats adult victim like a child
* Calls victim names
* Apathy towards victim
* Controls adaptive equipment that victim needs
* Uses the person’s disability against them (for example, says the person is frequently delusional and can’t be believed).

Adapted from the following resources:

PROTECT, REPORT, PRESERVE: Abuse Against Persons with Disabilities: A training on reporting suspected abuse against persons with disabilities, revised January 2009.

Protocol for Law Enforcement: Responding to Victims of Elder Abuse, Neglect and Exploitation - Illinois Department on Aging and IFVCC Revised 2009.

**Interviewing Techniques**

**Preparing for the interview**

* Prepare a space for the interview that respects the victim’s privacy. The space should be out of sight and sound range of the alleged offender and others who may influence the victim, such as the caregiver.
* Scan the space for possible obstacles and distractions and remove any that you identify.
* Assure the space is physically accessible, including the restroom.
* Recognize what the victim’s disability is and any possible accommodations. When available, review the victim’s contact card.
* Schedule extra time for the interview so you do not feel rushed.
* Be aware of the victim’s schedule, so they are not worried about getting to work, an appointment, or needed transportation.
* Prepare to tell family members or support persons that you will need to interview the victim alone.
* It is best if a trained investigator can be assigned to handle this case through its entirety.

**During the interview**

* Explain to the person that you are here to help.
* Ask the person for their consent to be interviewed.
* Provide facts about who you are, what you are going to do, and what happens next.
* Begin the conversation with general chatting to establish rapport and observe communication patterns. All of us are more difficult to understand when we are upset, so beginning with topics not directly related to the assault, allows time for both parties to feel more comfortable. Ask general questions, use active listening, and get to know the person. Offer the victim some choices. For example, see if the person would like a drink. Offer them a choice of what to drink. Let the person decide which chair to sit in, if possible. Offering choices lets the person know you respect their ability to make decisions.
* If the person is an adult, communicate with them like an adult and use a normal tone of voice. Do not speak like you might to a child or raise your voice as if the person is hard of hearing.
* Speak directly to the person and not a support person or interpreter.
* Make eye contact with the person, if possible.
* If the person uses a wheelchair, mobility device or communication tool, ask permission before touching these.
* Except for very brief interactions, get at eye level with the person; squat or sit down to communicate with someone who is sitting.
* It is okay to offer assistance, but let the person decide if and what help is needed.
* Allow time for the person to respond. If you extend your hand for a handshake, give the person time to extend their hand. If you ask a question, allow a few seconds before speaking again.
* Use plain language and words that are easy to understand. Avoid legal jargon, sarcasm, cliques’, and acronyms.
* Let the person know that they are not in trouble and that you believe them.
* Let the person know that they are brave and that they are helping others to be safe.
* Once you know who the suspect is, determine what relationship the suspect has to the victim. If the suspect is the caregiver, friend, or family member, determine what this means to the person in terms of ongoing safety and support. Find out what concerns the victim has. Take steps to assure the victim’s safety and connect with needed agencies.
* Before terminating an interview, thank the victim for helping you and let them know what happens next. This sets the tone for any future interactions.
* Give the victim your contact information.

**Credibility, Consent, and Undue Influence**

In working with victims with disabilities it is important that prosecutors understand the issues of credibility, consent and undue influence. Many people with disabilities are capable of making all of their life decisions and it is important to presume competence when we communicate with people. Some people with disabilities however may not meet the criteria to testify in a court hearing and/or have the capacity to consent to sexual activity. These are two separate concepts and it is possible for someone to be a credible witness but not have the capacity to consent for sexual activity.

**Credible witness issues**

The general criteria includes: understanding the difference between truth and lie; remembering what happened; and being able to communicate what happened. The majority of people with disabilities are credible witnesses. To assess ‘understanding the difference between truth and lie’ in a person with an intellectual disability, it will not work to ask for definitions. It is best to use several concrete questions. For example: “There is an elephant in the room. Is that the truth or a lie?” “My shirt is red (when your shirt is green). Is that truth or lie?” After a few of these questions, ask the person, “Is it better to tell a lie or the truth?” and “What happens if someone tells a lie?” This concrete approach can give you a wealth of information.

For the other portion of the criteria, keep in mind that the person may need some accommodations to be able to explain what happened to them in a way that is easy for us to understand. The following are common examples of accommodations for someone with an intellectual disability: extended time to respond to questions; attorney uses concrete words; person may point to pictures; person may use a communication device or book; person may refer to activates rather than a clock or calendar.

It should be noted that it a victim’s ability to sequence events is not required to be a credible witness. In this situation, it is helpful to establish understanding of the victim’s routine. The victim may be able to reference events surrounding the assault(s) by their activities when they are unable to use a clock or calendar.

**Capacity to consent to sexual activity**

Consent for sexual activity is when someone can voluntarily make a decision whether or not to participate in sexual activity. If a person is not able to make that decision, legal charges can be filed against the person who engages in sexual activity with him/her. Therefore, it is important that prosecutors understand what this diminished capacity means. This capacity is evaluated by a professional (usually a psychologist) who has specific training and understands the professional guidelines for making such determinations. The determination is then decided through adjudication.

Consent for sexual activity has three components: knowledge, reasoning and voluntariness. Knowledge includes facts needed to make a decision and includes risks (such as diseases, pregnancy). Reasoning is the ability to understand and weigh different options in making an informed choice. Voluntariness is the ability to protect oneself against coercion in making sexual decisions.

Based on one study of over 300 psychologists (Kennedy and Niederbuhl, 2001), some of the most important elements of consent include: individual can say or demonstrate “no”; individual knows that having intercourse can result in pregnancy; when given options, the individual can make an informed choice; individual knows that having intercourse or other sexual relations can result in obtaining a disease; individual can differentiate between appropriate and inappropriate times and places to engage in intimate relations; individual can differentiate between males and females; individuals can recognize individuals or situations which might be a threat to him/her; and individual will stop a behavior is another person tells him/her “no”. This list may be helpful to prosecutors in determining if someone needs an evaluation of their capacity to give consent for sexual activity.

Just as someone who is under the influence of alcohol or illegal drugs may lack the capacity to give consent for sexual activity, a person with mental illness who is adjusting to new medications may lack consent for sexual activity.

**Undue Influence**

Some people with disabilities have been trained to be complaint with those in authority. Even as adults, some people live and work in very controlling environments. In these situations, people with disabilities are highly influenced by others and try very hard to please others. Recognizing when the victim is heavily influenced by a family member, caregiver or other person is very important in investigating and prosecuting crimes. It is advisable to observe the victim closely when in the presence of others; looking for indicators that the victim is under the influence of someone else and may not be speaking for themselves. In those situations, it is best to communicate with the victim alone or with a victim advocate. It is also helpful to communicate to the victim that you want them to safe and to say what is important to them.

**Tips for Working with Guardians/People of Influence**

Some adults with disabilities have court-appointed guardians to assist with decision-making. Sometimes this is a family member, or a friend, and sometimes it is a public entity. In either situation, remember that being adjudicated disabled and having a guardian appointed does not mean a person cannot testify in court. The victim and the prosecutor can decide together about the victim giving testimony.

Some adults with disabilities have guardians and/or very involved family members who will want to take an active role in the criminal justice process. It is important to assess early in the process, the role the guardian/family plays in the life of the survivor. The guardian/family may be for or against the victim testifying in a sexual assault or domestic violence situation. It will be important to assess this early in the process. The guardian/family member may be trying to protect the offender or the guardian/family member may want to protect the victim from testifying in court. It is sometimes helpful to ask, “What do you think should happen to the person who hurt your loved one?”

Family members may have strong emotions about what has happened to their loved one. Sometimes there may be feelings of guilt about what happened. It is okay to tell a parent, “I am sorry this happened to your daughter (or son). This happened because the offender broke the law. It is not your fault.” Providing some care, support and concern to an upset family member can help them move to a space of being able to support their lived one. You can also inform family members about victim services which are available to support the family members of victims of violence.

It is best to interview the victim without the guardian/family member present. In this case, the victim is usually free from any undue influence the guardian/family member may have over what the victim says or does. Following that, it is best to then meet with the guardian/family in private to discover their concerns. This practice allows the prosecutor to learn what everyone thinks and feels about the situation. It is important to honor the victim in spite of what the family preference may be. Many people with disabilities have testified in court, done an excellent job and felt stronger for doing so. It can be difficult balancing everyone’s concerns and opinions. Listen to the person, pursue an evidence-based prosecution and support the victim in testifying if that is his/her preference.

**Required Reporting Entities and Definitions**

Illinois Department of Human Services Office of the Inspector General Definitions for Investigating Abuse and Neglect of individuals receiving services funded by IDHS. The Illinois Department of Aging Investigates allegations of abuse and neglect of individuals with disabilities residing in the community with family or others.

**Reporting to Law Enforcement**

For individuals living in the community, not in a licensed setting, the **Adult Protective Services** provider agency’s case worker will consult with the program supervisor, inform the individual that a criminal act may have been committed and immediately report the evidence of crime(s) to law enforcement. The APS provider agency will provide law enforcement agency with case records in the investigation, upon request, with the exception of the reporter’s identity. When an APS provider agency has reason to believe that the death of an individual may be the result of abuse or neglect, the agency must promptly report the matter to both law enforcement and the coroner or medical examiner.

When there is **credible evidence** a criminal act may have been committed in connection with an allegation of abuse, neglect, or death of an individual, the **Office of the Inspector General (OIG)** shall refer the allegations to, or ensure that notification is made to:

* Illinois State Police (State Operated Facilities)
* Local Law Enforcement (Community Agencies)

**Physical Abuse Definition**

* An employee’s non-accidental **and**
* Inappropriate contact with an individual that causes bodily harm.
* Bodily harm is any injury, damage or impairment to an individual’s physical condition, **or**
* Making physical contact of an insulting **or**
* provoking nature with an individual.
* “Offends a reasonable sense of dignity.”

**Physical abuse**

Physical abuse includes actions that cause bodily harm as a result of an employee

directing an individual or person to physically abuse another individual.

Any sexual behavior, sexual contact **or** intimate physical contact between an employee

and an individual, including;

An employee’s coercion **or** encouragement of an individual to engage in sexual activity; That results in sexual contact, intimate physical contact, sexual behavior **or** intimate physical behavior. (Intimate Behavior: personal, private, close, sexual in nature)

This is also reportable if an employee directs someone else to sexually abuse another individual.

**Inappropriate sexual contact**

Inappropriate sexual contact between an employee and an individual involving either an employee's genital area, anus, buttocks or breasts or an individual's genital area, anus, buttocks or breasts.

Sexual contact also includes sexual contact between individuals that is coerced or encouraged by an employee.

**Mental Abuse**

The use of demeaning, intimidating **or** threatening words, signs, gestures **or** other actions by an employee about an individual and in the presence of an individual **or** individuals that results in emotional distress **or** maladaptive behavior **or** could have resulted in emotional distress **or** maladaptive behavior.

**Financial Exploitation**

Taking unjust advantage of an individual’s assets, property, **or** financial resources through deception, intimidation, **or** conversion for the employee’s, facility’s **or** agency’s own advantage or benefit.

**Neglect**

An employee’s, agency’s or facility’s failure to provide adequate medical care, personal care or maintenance and as a consequence:

 Causes an individual pain, injury **or** emotional distress,

 Results in either an individual’s maladaptive behavior **or**

 The deterioration of an individual’s physical or mental condition **or**

 Places an individual’s health or safety at a substantial risk.

**Egregious Neglect**

Egregious neglect is a finding of neglect as determined by the Inspector General that represents a gross failure to adequately provide for, or a callous indifference to, the health, safety, or medical needs of an individual, and results in an individual’s death or serious deterioration or an individual’s physical or mental condition.

**Hate Crimes**

There are state and federal laws related to the commission of hate crimes. A hate crime is an illegal act based on a victims race, color, creed, sexual orientation, ethnicity, or disability. In Illinois, hate crimes are a Class 4 felony for the first offense. If a person is targeted for domestic violence and/or sexual assault because of their disability, the possibility of a hate crime exists.



**Crime Victim Bill of Rights**

The Illinois Constitution\* and Illinois law\*\* give crime victims certain rights. You have the right to:

* Be treated with fairness and respect.
* Be notified of all court hearings and any changes in your case.
* Talk to the prosecutor.
* Make a statement at sentencing.
* Be notified if the offender is convicted, sentenced, imprisoned and released.
* Have the case decided as soon as possible after the offender is arrested.
* Be protected from the offender before, during, and after the trial.
* Be at court hearings unless a judge decides you should not be in the courtroom while a witness is testifying.
* Have an advocate with you in the courtroom.
* Be paid for loss or injury by the offender if the offender is found guilty.

\*Illinois Constitution Article I, §8.1; \*\* 725 ILCS 120/4

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**Centers for Independent Living**

**By County**

Adams – West Central IL CIL

Alexander – Southern IL CIL

Bond - Impact

Boone - RAMP

Brown – West Central Il CIL

Bureau – Illinois Valley CIL

Calhoun - Impact

Carroll – Northwestern Illinois CIL

Cass – Jacksonville Area Center for Independent Living

Champaign - PACE

Christian – Springfield CIL

Clark – SAIL

Clay – Opportunities for Access CIL

Clinton – Opportunities for Access CIL

Coles - SAIL

Cook- Access Living of Metropolitan Chicago, Prgress CIL (Suburban)

Crawford – Opportunities for Access CIL

Cumberland \_SAIL

De Witt – LIFE center for Independent Living

Dekalb - RAMP

Douglas - PACE

DuPage – AIM Center for Independent Living

Edgar - PACE

Edwards – Opportunities for Access CIL

Effingham – Opportunities for Access CIL

Fayette – Opportunities for Access CIL

Ford – LIFE Center for Independent Living

Franklin – Southern IL CIL

Fulton – Advocates for Access

Gallatin – Southern IL CIL

Greene - Impact

Grundy – Will-Grundy CIL

Hamilton – Opportunities for Access CIL

Hancock – West Central Illinois Cil

Hardin – Southern IL CIL

Henderson – Stone- Hayes Center for Independent Living

Henry – Illinois/Iowa ILC

Iroquois – Options center for Independent Living

Jackson – Southern IL CIL

Jasper – Opportunities for Access CIL

Jefferson – Opportunities for Access CIL

Jersey - Impact

Jo Daviess – Northwestern Illinois CIL

Johnson – Southern IL CIL

Kane – AIM Center for Independent Living

Kankakee – Options Center for Independent Living

Kendall – AIM Center for Independent Living

Knox – Stone-Hayes Center for Independent Living

Lake – Lake County CIL

LaSalle – Illinois Valley CIL

Lawrence – Opportunities for Access CIL

Lee – Northwestern Illinois CIL

Livingston – LIFE Center for Independent Living

Logan – Springfield CIL

Macon - SAIL

Macoupin – Impact

Madison - Impact

Marion – Opportunities for Access CIL

Marshall – Illinois Valley CIL

Mason – Jacksonville Area Center for Independent Living

Massac – Southern IL CIL

McDonough – West Central Illinois CIL

McHenry – Lake County CIL

McLean – LIFE Center for Independent Living

Menard – Springfield CIL

Mercer – Illinois/Iowa ILC

Monroe – LINC Inc.

Montgomery – Springfield CIL

Morgan – Jacksonville Area Center for Independent Living

Moultrie - SAIL

Ogle – Northwestern Illinois CIL

Peoria – Advocates for Access

Perry – Southern IL CIL

Piatt - PACE

Pike – West Central Illinois CIL

Pope – Southern IL CIL

Pulaski – Southern IL CIL

Putnam – Illinois Valley CIL

Randolph – LINC, Inc

Richland – Opportunities for Access CIL

Rock Island – Illinois/Iowa ILC

Saline – Southern IL CIL

Sangamon – Springfield CIL

Schuyler – West Central Illinois CIL

Scott – Jacksonville Area Center for Independent Living

Shelby - SAIL

St. Clair – LINC, Inc.

Stark – Illinois Valley CIL

Stephenson - RAMP

Tazewell – Advocates for Access

Union – Southern IL CIL

Vermilion - PACE

Wabash – Opportunities for Access CIL

Warren – Stone-Hayes Center for Independent Living

Washington – Opportunities for Access CIL

Wayne – Opportunities for Access CIL

White – Opportunities for Access CIL

Whiteside – Northwestern Illinois CIL

Will – Will-Grundy CIL

Williamson – Southern Il CIL

Winnebago - RAMP

Woodford – Advocates for Access

**Centers for Independent Living**

**Contact Information**

**Access Living of Metropolitan Chicago** (V) 312-640-2100

115 W. Chicago Avenue (T/VR) 312-640-2102

 Chicago, IL 60654 Toll Free 800-613-8549 (F) 312-640-2101

Daisy Feidt Director of Programs dfeidt@accessliving.org

Serving the City of Chicago

**Advocates for Access** (V) 309-682-3500

 4450 N. Prospect Rd., Suite C8 (TTY) 309 682-3567

 Peoria Heights, IL 61616 (F) 309-682-3989

Jodi Alwan, Interim Director (VR) 309-863-5847

 jalwan@advocatesforaccess.com

 [www.Advocatesforaccess.com](http://www.Advocatesforaccess.com)

Serving Fulton, Peoria, Tazwell and Woodford Counties

9th Judicial Circuit – Fulton

10th Judicial Circuit – Peoria, Tazwell

11th Judicial Circuit - Woodford

**AIM Center for Independent Living** (V) 630-469-2300

2 Locations: (TTY) 630-469-2492

739 Roosevelt Rd. Building 8, #109 (F) 630-469-2606

 Glen Ellyn, IL 60137 No VR phone

Serving DuPage County

12th Judicial Circuit – DuPage

 1710 N. Farnsworth Avenue

 Aurora, IL 60505

Serving Kane and Kendall Counties

16th Judicial Circuit – Kane, Kendall

Leigh Ann Stephens, Executive Director ed\_dupagecil@sbcglobal.net

**Illinois/Iowa ILC (IIILC)** (V/T) 309-793-0090

3708 11th St. (F) 309-793-5198

P.O. Box 6156 (VR) 309-948-6676

 Rock Island, IL 61201 execdirector@iicil.com

Liz Sherwin, Executive Director www.iicil.com

Serving Henry, Mercer and Rock Island Counties in IL

Clinton, Muscatine and Scott in IA

14th Judicial Circuit

**Illinois Valley CIL** (V/T) 815-224-3126

 18 Gunia Drive (F) 815-224-3576

 LaSalle, IL 61301 Toll Free 800-822-3246

Donna Joerger, ExecutiveDirector (VR) 815-410-9015

ed@ivcil.com [www.ivcil.com](http://www.ivcil.com)

Serving Bureau, LaSalle, Marshall, Putnam and Stark Counties

10th Judicial Circuit – Marshall, Putnam, Stark

13th Judicial Circuit – Bureau, La Salle

**IMPACT**  (V) 618-462-1411

 2735 East Broadway (T) 618-474-5333

 Alton, IL 62002 (F) 618-474-5309

Cathy Contarino, Executive Director (VR) 618-208-1146

contarino@impactcil.org

Serving Bond, Calhoun, Greene, Jersey, Macoupin and Madison Counties

3rd Judicial Circuit – Bond, Madison

7th Judicial Circuit – Greene, Jersey, Macoupin

8th Judicial Circuit – Calhoun

**Jacksonville Area Center for Independent Living**

15 Permac Road(V/TTY) 217-245-8371

Jacksonville, IL 62650 (T) 217-245-1991

Becky McGinnis, Executive Director (F) 217-245-1872

 Toll Free (V/T) 888-317-3287

 becky@jacil.org

www.jacil.org

Serving Cass, Mason, Morgan, and Scott Counties

7th Judicial Circuit – Morgan, Scott

8th Judicial Circuit – Cass, Mason

**Lake County CIL** (V) 847-949-4440

 377 N. Seymour Ave. TTY 847-949-0641

 Mundelein, IL 60060 (F) 847-949-4445 Kelli Brooks, Executive Director (VR) 866-929-9567

kelli@lccil.org

Serving Lake and McHenry Counties

19th Judicial Circuit – Lake

22nd Judicial Circuit - McHenry

**LIFE Center for Independent Living** (V) 309-663-5433

 2201 Eastland Drive, Suite #1 (T) 309-663-0054

 Bloomington, IL 61704 (F) 309-663-7024

Gail Kear, Executive Director Toll Free 888-543-3245

 VRS outgoing calls only

 [www.lifecil.org](http://www.lifecil.org/)

 gail@lifecil.org

Serving Dewitt, Ford, Livingston and McLean Counties

6th Judicial Circuit – DeWitt

11th Judicial Circuit – Ford, Livingston, McLean

**LINC, Inc.** (V/TTY) 618-235-9988

# 1 Emerald Terrace, Suite 200 (F) 618-233-3729

 Swansea, IL 62226 (VR) 618-310-0054

Lynn Jarman, Executive Director www.lincinc.org

 ljarman@lincinc.org

Serving Monroe, Randolph, and St. Clair Counties

20th Judicial Circuit

**Northwestern Illinois CIL (NICIL)** (V) 815-625-7860

 412 Locust Street (T) 815-625-7863

 Sterling, IL 61081 (F) 815-625-787

Kathy Fischer, Executive Director No VR phone

kathy@nicil.org

 [www.nicil.org](http://www.nicil.org)

Serving Carroll, Jo Daviess, Lee, Ogle, and Whiteside Counties

14th Judicial Circuit - Whiteside

15th Judicial Circuit – Carroll, Jo Daviess, Lee, Ogle

**Opportunities for Access CIL** (V) 618-244-9212

4206 Williamson Place, Suite 3 (TTY) 618-244-9575

 Mt. Vernon, IL 62864 (F) 618-244-9310

Mike Egbert, Executive Director No VR phone

spud@ofacil.org

Serving Clay, Clinton, Crawford, Edwards, Effingham, Fayette, Hamilton, Jasper, Jefferson, Lawrence, Marion, Richland, Wabash, Washington, Wayne, and White Counties

2nd Judicial Circuit – Crawford, Edwards, Hamilton, Jefferson, Lawrence, Richland, Wabash, Wayne, White

4th Judicial Circuit – Clay, Clinton, Effingham, Fayette, Jasper, Marion

20th Judicial Circuit – Washington

**Options Center for Independent Living** (V) 815-936-0100

22 Heritage Drive, Suite 107 (T) 815-936-0132

Bourbonnais, IL 60914 (F) 815-936-0117

Kathy Petersen, Executive Director (VR) 217-689-0289

 Kathy.Petersen@Optionscil.com

Serving Iroquois and Kankakee Counties

21st Judicial Circuit

**Persons Assuming Control of their Environment (PACE)**

1317 E. Florida(V) 217-344-5433

Urbana, IL 61801 (T) 217-344-5024

Nancy McClellan-Hickey, Executive Director (F) 217-344-2414

 (VR) 217-689-0289

 nmch@pacecil.org

Serving Champaign, Douglas, Edgar, Piatt, and Vermilion Counties

5th Judicial Circuit – Edgar, Vermilion

6th Judicial Circuit – Champaign, Douglas, Piatt

**Progress CIL** (V) 708-209-1500

 7521 Madison Street (T) 708-209-1826

 Forest Park, IL 60130 (F) 708-209-1735

Horacio Esparza, Executive Director VR outgoing calls only

hesparza@progresscil.org

Serving Suburban Cook County

**Regional Access & Mobilization Project (RAMP)** (V/T) 815-968-7467

 202 Market Street (T) 815-968-2401

 Rockford, IL 61107 (F) 815-968-7612

Julie Bosma, Executive Director (VR) 815-977-7172

 (VR) 866-291-1284

 jbosma@rampcil.org

Serving Boone, De Kalb, Stephenson and Winnebago Counties

15th Judicial Circuit - Stephenson

16th Judicial Circuit - DeKalb

17th Judicial Circuit –Boone & Winnebago

**Southern Illinois CIL** (V/T) 618-457-3318

 P.O. Box 627, 2135 W. Ramada Lane (F) 618-549-0132

 Carbondale, IL 62901 No VR phone

 Bonnie Vaughn, Executive Director bvaughnsicil@sicil1.org

Serving Alexander, Franklin, Gallatin, Hardin, Jackson, Johnson, Massac, Perry, Pope, Pulaski, Saline, Union and Williamson Counties

1st Judicial Circuit – Alexander, Jackson, Johnson, Massac, Pope, Pulaski, Saline, Union, Williamson

2nd Judicial Circuit – Franklin, Gallatin, Hardin

20th Judicial Circuit – Perry

**Soyland Access to Independent Living (SAIL)** (V) 217-876-8888

 2449 Federal Drive (F) 217-876-7245

 Decatur, IL 62526 Toll Free (V/T) 1-800-358-8080

Jeri Wooters, Executive Director No VR phone

jwooters@decatursail.com

Serving Clark, Coles, Cumberland, Macon, Moultrie, and Shelby Counties

4th Judicial Circuit - Shelby

5th Judicial Circuit – Clark, Coles, Cumberland

6th Judicial Circuit – Macon, Moultrie

**Springfield CIL** (V/T) 217-523-2587

 330 S. Grand Avenue W. (T) 217-523-6304

 Springfield, IL 62704 ERP 1-800-447-4221

Pete Roberts, Executive Director (F) 217-523-0427

No VR phone

 scil@scil.org

Serving Christian, Logan, Menard, Montgomery and Sangamon Counties

4th Judicial Circuit – Christian, Montgomery

7th Judicial Circuit – Sangamon

8th Judicial Circuit – Logan, Menard

**Stone-Hayes Center for Independent Living** (V/T) 309-344-1306

39 North Prairie Street (F) 309-344-1305

Galesburg, IL 61401 (T) 309-344-1306

Dale Parsons, Executive Director Toll Free (V/T) 888-347-4245

(VR) 3098635862 dalep@stone-hayes.org

Serving Henderson, Knox, and Warren Counties

9th Judicial Circuit

**West Central Illinois CIL**  (V) 217-223-0400

300 Maine St., Ste 146 (T) 217-223-0475

PO Box 1065 (F) 217-223-0479

 Quincy, IL 62301 1-800-225-0407

Glenda Farkas, Executive Director No VR phone

 ciledqcy@adams.net

 wcicil@adams.net

Serving Adams, Brown, Hancock, McDonough, Pike and Schuyler Counties

8th Judicial Circuit – Adams, Brown, Pike, Schuyler

9th Judicial Circuit – Hancock, McDonough

**Will-Grundy CIL** (V) 815-729-0162

 2415 A West Jefferson Street (T) 815-729-2085

 Joliet, IL 60435 (F) 815-729-3697

Pam Heavens, Executive Director (VR) 815-768-2582

pamwgcil@sbcglobal.net

Serving Grundy and Will Counties

12th Judicial Circuit - Will

13th Judicial Circuit - Grundy

**Illinois Network of Centers for Independent Living**1 West Old State Capitol Plaza Suite 501 (V/T) 217-525-1308
Springfield, IL 62701 1-800-587-1227

Ann Ford, Executive Director (F) 217-525-1312

 annford@incil.org

**RESOURCE DIRECTORY**

Davis, Leigh Ann (October 2006). The Arc’s Justice Advocacy Guide: An Advocate’s Guide on Assisting Victims and Suspects/Defendants with Intellectual Disabilities. Washington, D.C.: The Arc of the United States.

First Response to Victims of a Crime Who Have a Disability (2002). Washington, D. C.: U. S. Department of Justice, Office of Justice Programs, Office for Victims of Crime. OVC Resource Center. NCJ 195500.

OPENING THE BENCH AND BAR TO PEOPLE WITH DISABILITIES: Manual for Court Disability Coordinators. Office of the Illinois Attorney General. Lisa, Madigan, Attorney General. 2011.

SERVING CRIME VICTIMS WITH DISABILITIES: The Time Is Now <http://www.ovc.gov/library/videoclips.html#dis>

SERVING CRIME VICTIMS WITH DISABILITIES: Meet Us Where We Are <http://www.ovc.gov/library/videoclips.html#dis>

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Victims with Disabilities: Collaborative, Multidisciplinary First Response. 2009. Publication number NCJ 223940. [www.ncjrs.gov](http://www.ncjrs.gov)

Victims of Crimes with Disabilities Resource Guide. Wyoming Institute on Disabilities <http://wind.uwyo.edu/resourceguide>

Your Day in Court: An Educational Introduction for Persons Who are Deaf or hard of hearing. Produced by the Midwest Center on Law and the Deaf. Chicago, Il. [www.mcld.org](http://www.mcld.org)

*The Ten Commandments for Communicating with People with Disabilities.* Ward and Associated, 1994. <http://www.diversityshop.com/store/10comvid.html>

**Web-Based Resources**

[www.austin-safeplace.org](http://www.austin-safeplace.org) SafePlace

[www.accessingsafety.org](http://www.accessingsafety.org) Vera Institute of Justice

[www.rid.org](http://www.rid.org) Registry of Interpreters for the Deaf

[www.nad.org](http://www.nad.org) National Association of the Deaf

[www.deaf-hope.org](http://www.deaf-hope.org) DeafHope

[www.nfb.org](http://www.nfb.org) National Federation of the Blind

[www.NCIL.org](http://www.NCIL.org) National Centers for Independent Living

[www.NAMI.org](http://www.NAMI.org) National Alliance for the Mentally Ill

[www.guidestar.org](http://www.guidestar.org) Social Service Organizations

[www.LDonline.org](http://www.LDonline.org) Learning Disabilities Resource

[www.thearc.org](http://www.thearc.org) National Organization for people with intellectual and

 developmental disabilities

[www.nod.org](http://www.nod.org) National Organization on Disability

[www.epilepsyfoundation.org](http://www.epilepsyfoundation.org) Epilepsy Foundation

[www.ada.gov](http://www.ada.gov) Americans with Disabilities Act

[www.abanet.org/disabiity](http://www.abanet.org/disabiity) American Bar Association Commission on Mental and

 Physical Disability Law

[www.autism-society.org](http://www.autism-society.org) Autism Society of America

<http://www.acf.hhs.gov/programs/add> Administration on Developmental Disabilities

[www.napsa.org](http://www.napsa.org) National Adult Protective Services Association

<http://www.icjia.state.il.us/public/pdf/tiupdate/hate.pdf>Hate Crimes article

**Research /Studies**

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