

*This pamphlet provides only general information about your rights. Laws frequently change so contact a legal counselor for particular advice regarding your case.*

The Illinois NOW Legal and Education Fund (LEF) is a 501(c) (3) non-profit organization affiliated with the Illinois National Organization for Women. Contributions to Illinois NOW LEF are tax deductible.

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## “Women’s Legal Rights in Illinois”

*Some questions and answers*



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### How do you file for divorce?

Divorce in Illinois is called Dissolution of Marriage. You must live in Illinois for 90 days before an Illinois divorce can become final, however a divorce can be started prior to the 90-day period. A divorce case must be filed in the Illinois County where at least one spouse lives. Issues like child custody and child support can only be decided by an Illinois court when the children have lived in the state for the past 6 months. These issues will be reserved for determination later if the children have not lived in Illinois for 6 months prior to the divorce being final.

There are several grounds available to a spouse when filing for divorce. The two most common grounds are mental cruelty and irreconcilable differences. To establish mental cruelty you must state that your spouse has been guilty of repeated mental cruelty without fault or provocation on your part. One example of mental cruelty is that your spouse committed behavior in front of your family or friends that embarrassed or humiliated you without fault or provocation by you on more than one occasion.

The other common ground in Illinois is irreconcilable differences between the parties, commonly known as “no fault” grounds. The spouses must have lived apart continuously for the past two years. However, if the spouses agree to waive the two-year period by each signing a written statement from both parties, the requirement then becomes a six-month period of living separately prior to completing the divorce. **The period of living separately can occur in the same house, but the parties must lead separate lives, not eating together, traveling together, doing laundry together, etc.**

### What about allocation of parental responsibility & parenting time?

The court allocates parental responsibility on the basis of the best interests of the child, and several relevant factors are to

be considered. One factor is any physical violence or threat of violence directed against the child or committed in the child’s presence. Another factor for the court to consider is which parent has been primarily caring for the child in the past. The court will decide which parent will be allocated more parental responsibility based upon these and other factors, if the parents do not reach an agreement.

The court may enter a joint parental responsibility order if it determines that it would be in the best interests of the child. When the parents agree to joint parental responsibility it means they will be sharing decision-making responsibilities on most of the issues affecting the child, (for example education, health care, religion, etc.) until the child is 18 years old. The parents may also agree to move the child between their residences on a prearranged schedule.

Joint parental responsibility should only be awarded where the parents are willing and able to cooperate effectively and consistently in the raising of the child, usually until 18 years of age, and where the parents have entered into a written agreement. Joint parental responsibility is usually not in the best interest of a child if there has been domestic violence between the parents or involving the child.

A parent is entitled to reasonable parenting time absent a court finding that this would seriously endanger the child’s physical, mental, moral or emotional health. Reasonable parenting time, depending upon the age and circumstances of the child and parent, usually involves a visitation every other weekend, alternate holidays, and a few weeks during the summer. For parents who are unable to agree on arrangements, it is important that parenting time be written for specific weekends, day of the week, time of day, specific holidays, and specific weeks in the summer.

The restriction of parenting rights can be ordered if the court decides after evidence has been given that parenting time with a parent might seriously endanger the child. A common restriction is that visitation should be supervised by a third party supervisor who can be suggested by a parent or the court can appoint a supervisor or order that the problem parent hire one at his/her expense. The supervisor's job is to assure the child's safety during the visitation period. In appropriate cases, the court might restrict parenting time to daytime hours, or order that no alcoholic beverages be consumed by the parent during the visitation period, or order random drug testing of the parent.

#### **How are marital property and debts divided?**

In most cases, property acquired by either spouse from earning or effort after the parties married is called "marital property." This property must be divided between the spouses in a divorce. Frequently, more than half of the marital property is awarded to a spouse with less ability to earn income, or with more parenting time of a child, so that she can support herself and/or the child.

It doesn't matter whose income paid for the property acquired during the marriage. It is still considered "marital," and subject to division by the court in most circumstances.

If the spouses have acquired any debts after they were married that are still outstanding at the time of the divorce, then the court will make the decision who should pay for each debt, absent an agreement between the spouses. The court will divide the marital debts equitably, which does not necessarily mean 50 percent to each party. The court will consider who benefited from the marital debt, but will not decide who will be responsible for the debt based solely upon whose name might be listed on the debt by the creditor. If a former spouse does not pay his assigned debts pursuant to a court order, the

creditor can still seek payment from the other spouse if she signed for the debt or it was for food, clothing, shelter or other necessities for the ex-spouse or the children. That spouse would then be entitled to repayment by the former spouse who was ordered by the court to pay the debt.

#### **Can you get maintenance/alimony?**

Usually both spouses must support themselves after the divorce. Maintenance, formerly known as alimony, can be awarded after the court considers several factors, including duration of the marriage, age and health of the spouses, ability of the party seeking maintenance to find appropriate employment to support herself, or that the spouse is otherwise without sufficient income compared to the standard of living in the marriage. Maintenance will not be awarded unless the court finds the payor is able to pay it. **Unless one parent's gross income is less than 40% of their combined gross incomes, maintenance will not likely be ordered. There is a formula to calculate maintenance, 30% of the larger gross income less 20% of the smaller gross income, with a cap of the recipient not receiving in total more than 40% of the combined gross incomes. There is also a formula for the duration of maintenance based on the length of the marriage, 0-5 years 20% of the marriage length, 5-10 years 40%, 10-15 years 60%, 15-20 years 80%, and 20 or more, 100% or permanent.**

#### **Can you get child support?**

Child support and children's health care expenses until the children are age 18 and finish high school are required to be part of a divorce settlement. The parent with less parenting time must provide the children with health insurance unless the parents agree otherwise. Divorce law guidelines require that the parent with less time pay the parent with more time a dollar amount each pay period based on percentages of the paying parent's net income. Net income is (simplified) gross

income less **maintenance**, taxes, union dues, and health insurance premiums for the children. As of July 2016, the percentages were:

1 child	20%	4 children	40%
2 children	28%	5 children	45%
3 children	32%	6 children	50%

Illinois law requires that child support be withheld from the paying parent's paycheck each pay period and paid to the receiving parent according to an Order of Withholding, unless both parents agree otherwise. The employer is prohibited from firing or otherwise discriminating against the employee because of the Order of Withholding for child support. The Order may require payment directly to the custodial parent or may require payment to the Support Disbursement Unit. The SDU makes a computer record of the payment and then issues its own check to the receiving parent. The computer record is proof of payment (or non-payment) if the parents later disagree about the amounts paid.

The amount of child support can be changed by the court if a "substantial change in circumstances" occurs. Two or more years of pay increases for the paying parent, substantially increased expenses for the children, or a non-voluntary substantial decrease in earnings for the paying parent would each probably be found to be a "substantial change of circumstances."

#### **What are the current abortion laws in Illinois?**

Under Illinois law abortion is legal. However, as of August 2013, minors are required by law to provide parental notice of intent to terminate a pregnancy. Minors may seek a judicial bypass.

For free, confidential assistance: [judicialbypass@aclu-il.org](mailto:judicialbypass@aclu-il.org) or call 1-877-44BYPASS(442-9727) Text: 312-560-6607

Hotline hours: Monday - Friday: 5 - 10 PM

Saturday & Sunday - Noon to 7:30 PM

Married women do not need to notify or obtain the consent of their spouses. Illinois law does not mandate a waiting period. Ask your physician or call your local Planned Parenthood for referral to reputable abortion providers.

#### **What is criminal sexual abuse?**

Criminal sexual abuse is touching or fondling a person's sex organs, anus or breast by force or threat of force or without consent.

#### **What is criminal sexual assault?**

Criminal sexual assault is sexual penetration by force or threat of force or without consent. Penetration includes any contact between the sex organ of one person and the sex organ, mouth or anus of another person, or the intrusion of a body part of a person or animal or any object into the sex organ or anus of another person.

#### **Is it illegal for minors to have sex?**

When sexual activity occurs between people of certain ages, it is illegal, even if both people agreed to the sexual activity. For example, it is illegal for anyone under the age of 17 to engage in sexual activity.

#### **What is an "aggravated" crime?**

Criminal sexual abuse and criminal sexual assault become "aggravated," or more serious, if certain factors are present when the crime is committed, including if the offender caused great bodily harm to the victim, if the victim was elderly or handicapped or if the offender used a weapon.

### **Who can be charged with sex crimes in Illinois?**

Men and women can be victims of sex crimes (sexual assault and sexual abuse) in Illinois. Men and women can be charged with sex crimes as well. Also, a man can be charged with sexually abusing or sexually assaulting his wife (provided that the wife reported the crime to the police within 30 days after it happened).

### **What should I do if I am sexually assaulted?**

1. Call your local rape crisis center. The center can provide information about all of your options regarding obtaining medical care, reporting to police and prosecuting a case. To find your closest rape crisis center, contact the **Illinois Coalition Against Sexual Assault at (217) 753-4117 or visit [www.icasa.org](http://www.icasa.org)**.
2. Go to the emergency room of your nearest hospital. The hospital will collect evidence from your body and provide necessary health care, including trying to prevent sexually transmitted infections and pregnancy as a result of the sexual assault. You have a right to receive emergency contraception or be referred to another clinic to receive it in a timely manner.
3. Contact your local police or sheriff to report the sexual assault or sexual abuse. After you make a report, the police will investigate the crime and the prosecutor will decide whether to file charges against the offender.

### **How long do I have to report a sexual assault or sexual abuse to the police?**

The sooner a crime is reported, the greater opportunity the police will have to collect evidence about the crime. The prosecutor will have a better case if the police have been able to collect a lot of recent evidence.

When a person under 18 is the victim of a sex crime, the

prosecutor can charge the offender with the crime until the victim turns 28. When the victim is an adult, the prosecutor can charge the offender with the crime until 10 years after the crime, provided that the victim reported the crime to police within 2 years after the crime.

### **Can I file a lawsuit against the offender?**

A victim of a sex crime can file a civil lawsuit against a sex offender. This must be done within 2 years of the victim turning 18 if she was a minor when it happened, or 2 years after the sexual assault if she was an adult. The time period may be extended if the victim did not understand until later in life that her injuries were caused by the sexual assault. To file a civil lawsuit, a victim must hire an attorney. By filing a lawsuit, a victim may get damages (money) from the offender, but he will not be sent to prison as a result of a civil lawsuit.

### **What if you are a victim of domestic violence?**

Illinois defines domestic violence as physical abuse, harassment, interference with personal liberty, intimidation of a dependent, willful deprivation of health needs, neglect, exploitation of a disabled adult's assets or stalking. Physical abuse includes sexual abuse and means, physical force, confinement, restraint, sleep deprivation, or conduct which creates an immediate risk of physical harm. A hit, a punch, a kick, a slap, a grab, forced sex, cornering you so that you cannot get away, keeping you awake until late hours so that you cannot sleep, throwing things at you in your home, and driving recklessly so that an accident is likely, are all forms of physical abuse.

The following behaviors are presumed to be harassment, which is a form of illegal domestic violence: creating a disturbance at your workplace or school; repeatedly telephoning your workplace, home or residence; repeatedly following you in

public places; repeatedly keeping you under surveillance by watching your home, school, workplace or vehicle or by peering in your windows; hiding your child from you; repeatedly threatening to take your child from you; making a single threat to take your child after actually attempting to take your child; threatening physical force, confinement, or restraint.

Victims of domestic violence have the right to be protected from further abuse and to press criminal charges against the abuser through the police.

The court can issue an Order of Protection on the victim's behalf which can protect the victim from further abuse; bar the violent party temporarily from the home; order the offender to pay support, medical costs, and legal expenses; award child custody and prohibit child snatching; prohibit destruction of the victim's property; or offer other types of relief as appropriate.

To obtain an Order of Protection you can ask your attorney to file a petition in civil court, contact a shelter if you do not have an attorney or fill out a form at the Circuit Clerk's office. You may request an Order in conjunction with divorce proceedings or during the course of criminal prosecution or at any time.

An order can be requested on your own behalf and/or on behalf of a child or an incapacitated adult.

If you need help call your local Women's Shelter listed in your telephone book. Most of the shelters have 24-hour crisis lines. If there is no shelter listed or you have more questions, contact:

**Illinois Coalition Against Domestic Violence**  
**801 South 11<sup>th</sup> Street**  
**Springfield, IL 62703**  
**(217) 789-2830**

### **What should you do if you have been discriminated against at work or in housing?**

It is unlawful to discriminate on the basis of age, sex, race, color, handicap/disability, religion, national origin, or citizenship status in hiring or firing; wages; fringe benefits; classifying; referring, assigning, or promoting employees; extending or assigning facilities; training; retraining; apprenticeships; or any other terms of employment. Sexual harassment is also prohibited. Retaliation for objecting to discrimination is additionally prohibited. Several federal laws, principally Title VII of the Civil Rights Act of 1964, protect workers from the above types of discrimination. To file a claim under federal law, contact before 300 days from the incident of discrimination:

**Equal Employment Opportunity Commission**  
**500 West Madison St., Suite 2800**  
**Chicago, IL 60611-2511**  
**312/353-2713 or 2714**  
**312/353-2421 (TDD)**

The Illinois Human Rights Act prohibits discrimination on the same basis as federal law, plus ancestry, marital status, sexual orientation, gender identity and unfavorable discharge from military service. To file a claim under state law, contact before 180 days from the incident of discrimination.

**Illinois Department of Human Rights**  
**100 W. Randolph, Suite 10-100**  
**Chicago, IL 60601**  
**(312) 814-6245** or  
**222 S. College, Room 101A**  
**Springfield, IL 62704**  
**(217) 785-5100**

Under state law, housing discrimination is prohibited on the basis of sex, marital status, and sexual orientation. A landlord of a multi-unit building cannot refuse to rent to you because you have children or because of the number of children in your family. It is unlawful to offer different rental terms to applicants or current tenants on the basis of their sex, marital status or familial status. Contact the Illinois Department of Human Rights at one of the above addresses or your local Human Relations offices if you have a problem.

#### **What are my rights in obtaining birth control?**

Under Illinois law (1995), all pharmacies that dispense birth control must fill all prescriptions for birth control (including emergency contraception) without delay or lecture. If your prescription for birth control is refused, you can ask questions or file a complaint with the IL Department of Financial and Professional Regulation at (800)280-4149 or visit [www.contraceptives.illinois.gov](http://www.contraceptives.illinois.gov). Currently, emergency contraception is available over the counter. In Illinois, insurance companies will be required to cover all forms of contraception approved by the US Food & Drug Administration.

#### **What about sex equity in school?**

Section 18, Article 1 of the Illinois Constitution states that equal protection under the law shall not be denied or abridged on account of sex by the state or its units of local government and school districts. This law applies to elementary and secondary schools.

Title IX of the Federal Education Amendments of 1972 prohibits sex discrimination in any educational program or activities receiving federal financial assistance. This means that where a sport is not offered for girls, girls must be allowed to play on the boys' teams. Courts have been divided over whether girls' sports at an institution must be funded to a similar overall level

as boys' and whether the number of male and female athletes at an institution must be proportional to the male and female student population at the institution. However schools are clearly required under Title IX to stop sexual harassment of students by adults and also other students.

Based on rules adopted by the Illinois State Board of Education on Oct. 3, 1986, each school system shall have a written policy on sex equity that prohibits discrimination on the basis of sex in programs, activities, services or benefits. The policy should guarantee both sexes equal access to educational and extra-curricular programs, activities or any rights, privileges, advantages or opportunities.

Each educational system shall have a written grievance procedure available or anyone with complaints against the system to read and follow. Petitions with 50 or more signatures of local residents alleging that a school district has discriminated against a student or students on the basis of sex may be brought independently to the State Board of Education or hearing under the provisions of Section 22-19 of the School Code of Illinois.

Pregnant teens have a right to continue their schooling and participate in school activities. In some cases, day care is provided for the teen's child. For further information call the Illinois Caucus on Adolescent Health at (312) 427-4460.

#### **For more information contact:**

**Educational Equity Services, Illinois State Board of Education  
100 North First Street  
Springfield, Illinois 62777  
(217) 782-9560**