

ICASA Pursues Innovative Legal Remedy for Rape Victims

By Lyn Schollett

After being raped, victims need many things: medical care, support, a safe place to go and counseling are among them. They also need the rapist to stay away from them. Not all victims can get that relief through the legal system.

ICASA is hoping to change that by proposing an order of protection for rape victims.

Current Illinois law provides that a person who is battered, sexually assaulted, or harassed by a family or household member, or by someone s/he is dating, may seek a civil order of protection under the Illinois Domestic Violence Act, 750 ILCS 60/101 *et. seq.* Thus, a woman who is battered by her boyfriend may seek an order of protection. A man who is harassed by his former partner can get such an order. And the woman who is raped by the father of her child can get an order of protection.

However if a rapist doesn't fit these relationship categories, the victim is not eligible for this protection.

In the event of a criminal prosecution for sexual assault, the prosecutor may seek a criminal order of protection for the victim, or may request that the offender stay away from the victim as a condition of his bond. However, as we know in Illinois and around the country, most rape cases are never reported, let alone prosecuted.

So, the victim who has no relationship with the rapist and who is not involved in the criminal justice process remains legally unprotected from future contact with the man who brutalized her body and shattered her life.

Who are these victims?

The young student at a small college raped by a classmate. The woman fondled in the elevator of her apartment building by the man she recognizes who lives upstairs. The man brutally assaulted in the laundry room of his building by the superintendent. Each of these victims deserves to continue living her or his life the same way as before the rape. These victims deserve to live in the same place or attend the same school.

ICASA is proposing that these victims should have the same legal protections as those victims assaulted by someone who meets the relationship categories under the current law.

This is a major, and unprecedented, undertaking. While a few states provide some protection to rape victims, none tailor a statute specifically to the problem we have identified in Illinois.

At this point, ICASA envisions the following elements for the Sexual Assault Order of Protection. It will:

- Be a civil statute independent of the Illinois Domestic Violence Act
- Contain an emergency/short provision as well as a long-term or plenary provision
- Be available to individuals alleging sexual conduct or sexual penetration without their consent (as the terms are defined in the Illinois Criminal Sexual Assault Act)
- Be available to a victim who alleges a single incident of non-consensual sexual conduct or sexual penetration
- Invoke the rape Shield Law or include language creating comparable protections
- Be available to a victim who has no prior relationship with the perpetrator

- Be available *pro se*
- Be available without a filing fee or service costs
- Allow, at a minimum, the remedy of requiring the offender to stay away from the victim and identified protected places
- Not allow damages as a remedy
- Be added to L.E.A.D.S., as would a violation of such an order.

At this point, we are proposing that a violation of such an order would be a misdemeanor; a subsequent violation would be a felony.

In an effort to craft the most effective statute, ICASA has enlisted the input of many professionals who work with sexual assault victims. With the Illinois Family Violence Coordinating Councils, ICASA is in the process of hosting three focus groups around Illinois, bringing together State's Attorneys, judges, law enforcement officers, probation officers, court personnel and domestic violence and rape crisis advocates to share their ideas on this topic. Through these groups ICASA hopes to combine the expertise of many talented professionals to create a tool that works best for victims.

The focus groups are exploring many challenging questions that remain unanswered: Must a victim report the crime to law enforcement to be eligible for a Sexual Assault Order of Protection? Would such an order only be available for a certain time period after an assault? What kind of an impact would such an order have in a subsequent criminal proceeding?

Based on the feedback from the professionals in the focus groups, ICASA plans to draft a legislative proposal creating a sexual assault order of protection. ICASA hopes legislators and our communities will recognize that the law currently does not adequately protect all rape victims in Illinois, and support this proposal. ICASA hopes that for victims, it will bring peace of mind.