Providing Legal Representation to Victims of Sexual Assault in Cook County, Illinois

Legal Advocacy in the Criminal System
and
Litigating for Civil No Contact Orders

Prepared by:
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Chicago Alliance Against Sexual Exploitation
July 2013
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Legal Representation Following Sexual Assault in Cook County, Illinois: Legal Advocacy in the Criminal System and Litigating for Civil No Contact Orders

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DISCLAIMER
This manual is intended to introduce attorneys representing survivors of sexual assault to the basic elements of Illinois law related to their rights as crime victims and under the Illinois Civil No Contact Order Act. This manual should not be interpreted as legal advice. The unauthorized rendering of legal advice, including the interpretation of these materials for a victim of sexual assault by individuals not licensed to practice law, should not occur under any circumstances. This manual should not be used by non-attorneys as a substitute for retaining counsel as it was not designed for individuals representing themselves. Individuals representing themselves should contact one of the legal consultation referrals listed on page 24 of this manual for assistance with their potential claims. A civil attorney, preferably one who has previous experience with litigation on behalf of victims of sexual assault, is in the best position to provide sound legal advice. The content of this manual is not exhaustive of the laws and litigation strategies available to such persons. The case law cited is current as of the date of this manual. It is presumed that all attorneys using this manual will Shepardize any case law used. This manual is not to serve as a replacement for independent research of legal claims and strategy tailored to the circumstances of a particular case.

Acknowledgments
This guide would not have been possible without the expertise, advice, and contributions of a committed group of activists and attorneys. Many thanks to Lynne Schollett and Libby Shawgo of the Illinois Coalition Against Sexual Assault; Lynne Johnson, Kristin Claes Mathews, Sheerine Alemzadeh, Veronica Martinez, Rachel Johnson, and Jenna Stupar, of the Chicago Alliance Against Sexual Exploitation; Sarah Layden and Jacqui Scott of Rape Victim Advocates; Jennifer VanderPloeg of the YWCA Metropolitan Chicago; Neusa Gaytan and Maritza Reyes of Mujeres Latinas en Acción; Joy Airudi, Administrative Law Judge.
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Many thanks are also due to the members of CAASE’s Pro Bono Attorney Advisory Council, whose work substantially increases access to justice for victims of sexual assault and exploitation. They are: Caitlin Annatoyn of Greenberg Traurig; Elinor Hart and Rachael Pontikes, both with Duane Morris; Laura Jarrett of Latham & Watkins; Paula Ketcham and Ashley Thompson, both with Schiff Hardin; Laura Kleinman of Robinson Curley & Clayton; Renee Mehl of Bruce Farrel Dorn & Associates; Ross Neihaus, of Kaye Scholer; and Jennifer Genzler Roman, of Winston & Strawn.
March 2014

Dear Counselor:

On behalf of the Chicago Alliance Against Sexual Exploitation (CAASE), we are pleased to share this tool to help you provide legal representation and advocacy to survivors of sexual assault. As you work with victims of sexual assault in the criminal and civil justice systems of Cook County, Illinois, we hope that this information will be helpful to your practice.

As you will learn in these pages, or as many of you already know, our culture’s response to survivors of sexual assault often leaves them feeling shamed, blamed, and disbelieved at a time when they are most in need of help and support. Many survivors of sexual assault are not aware of the legal rights and remedies available to them under Illinois law, and as an attorney you can help them access these resources. We thank you for helping survivors seek justice.

CAASE’s Pro Bono Project seeks to connect private attorneys with local survivors of sexual assault and sex trafficking to ensure that:

• All survivors in Chicago have the quality legal counsel they want and need, particularly as they attempt to exercise their civil rights as survivors of intimate violation;
• Survivors aren’t further victimized when they attempt to engage in the criminal justice system’s efforts against rapists, pimps, and traffickers.

Through this project, CAASE legal staff screen victims for legal needs and eligibility for services, link them with Pro Bono Counsel who have received CAASE training, and provide ongoing support and mentorship to Pro Bono Counsel representing CAASE-referred clients. You are likely receiving this manual as part of one of our trainings. If not, feel free to contact our office for more information about the Pro Bono Project.

We hope that you will find this manual useful and informative, and we look forward to engaging with you further. Together, we can make the Chicagoland area a place in which all those who are subjected to sexual assault find the legal counsel that they deserve and need as they seek to transition from being a victim to being a survivor.

Sincerely,

Kaethe Morris Hoffer  
Executive Director

Christine M. Evans  
Legal Director
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Sexual Assault: Critical Realities

You are likely reading this because, for one reason or another, you believe that providing legal services to individuals who have been sexually assaulted is a worthy undertaking, and you want your legal skills to effectively help survivors of sexual assault. It’s likely that you already appreciate the truth of the following facts: sexual assault is not rare; it is mostly committed by non-strangers; most victims never report being raped to the police; and even when reported, rape is rarely prosecuted. You likely also appreciate how our culture disputes those realities at every turn, not believing or supporting survivors of sexual assault. Whether or not the facts just mentioned are new to you, the following information is provided to ensure that you are better prepared for working with survivors of sexual assault and confronting the common misunderstandings about sexual assault that continue to complicate and interfere with survivors’ efforts to seek justice and heal in the aftermath of a devastating trauma.

Reality #1: Rape is common and goes largely unreported.

Some say that rape\(^1\) happens less often now than it did in the past. This claim is not supported and is usually based on confusion between reporting rates and prevalence rates. Some people think that a decrease in the number of “reported” rapes means that fewer rapes have actually occurred. Fundamentally, research shows that rape remains a significant problem (especially for girls and women) and also one of the least-reported crimes. Based on studies conducted in 1992, 1995-96, and 2006 (on rape prevalence rates) rape is not becoming less common. Sadly, between one in six and one in eight women in the United States experience rape at least once in their lifetime\(^2\).

Reality #2: People who report being raped are telling the truth.

Research makes clear that of the small percentage of rapes that get reported to the police, only between 2% and 10% are legitimately classified as having no basis in fact\(^3\). People who have been sexually assaulted frequently fear that if they tell what was done to them, they will not be believed and will instead be re-victimized by blaming and hostile responses. Survivors also often blame themselves for what they endured. These responses help explain why only a minority of rapes are ever reported to the police\(^4\). While the non-reporting of rape suggests that the most common ‘lie’ about rape is that it didn’t happen at all, many people still, and falsely, claim that

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\(^1\) In this guide we use the terms “sexual assault” and “rape” interchangeably, in recognition of their “lay” meanings, although we acknowledge that law, research, and certain political discussions make these terms both contested and tied to very specific meanings. You can read more about this issue at “Counter-Quo”. Visit counterquo.org


most, or many, rape reports are invented tales of victimization.

**Reality #3: Most rapists know their victims.**

People often think that men who commit sexual assault must look and act a particular way. Many have difficulty believing that men who rape could also be excellent colleagues in the workplaces, generous neighbors in their communities, good friends, or family people. While most men will never engage in rape, those who do commit sexual assault spend most of their time acting appropriately and engaging in social behaviors that are usually associated with trustworthiness and non-violence. For fascinating information on the ways in which men who rape are both like and unlike their non-rape peers, see: David Lisak, *The Undetected Rapist* (University of Massachusetts, Boston) (March, 2002) available at: [www.usfk.mil/usfk/Uploads/SAPR/SAPRMod17_UndetectedRapist.pdf](http://www.usfk.mil/usfk/Uploads/SAPR/SAPRMod17_UndetectedRapist.pdf).

**Reality #4: Rape is mostly accomplished without the kind of violence that causes bodily injury.**

Many people continue to expect that a “real” victim of rape will look like she has been beaten up, even though physical injury is not an element of the crime of rape. Rather, the legal question is whether the sex was accomplished by force or threat of force (rape) or whether the sex was consensual (not rape). While some people respond to forcible or non-consensual sex with efforts to fight that result in them being injured, and while some rapists inflict physical injuries on their victims in addition to raping them, most rapists use only the amount of force that is necessary to ensure their victim’s submission. And most victims of rape communicate their non-consent by means other than physical altercations that leave them—or their rapist—with telltale injuries. Some examples of common ways that victims of rape communicate their non-consent that do not tend to lead to physical injuries are: saying ‘No!’ (once, or repeatedly); saying “stop” (once, or repeatedly); crying; freezing; trying to move away; using hands or feet to try pushing the perpetrator away. For important information about “tonic immobility” and the common “freeze” response to sexual assault, see the transcript and presentation of “The Neurobiology of Sexual Assault,” available at: [www.nsvrc.org/elearning/20044](http://www.nsvrc.org/elearning/20044)

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5 A commonly cited but debunked source of the particular myth that nearly 50% of rape claims are false comes from Purdue University researcher Eugene Kanin. For an excellent explication and repudiation of this, see Rape is Rape by Jody Raphael (2013).

6 National Institute of Justice, [www.nij.gov/topics/crime/rape-sexual-violence/victims-perpetrators.htm](http://www.nij.gov/topics/crime/rape-sexual-violence/victims-perpetrators.htm) (last visited May 1, 2013). Among victims ages 18 to 29, two-thirds had a prior relationship with the offender. The Bureau of Justice Statistics (BJS) reports that 6 in 10 rape or sexual assault victims said that they were assaulted by an intimate partner, relative, friend or acquaintance. A study of sexual victimization of college women showed that 9 out of 10 victims knew the person who sexually victimized them. One research project found that 34 percent of women surveyed were victims of sexual coercion by a husband or intimate partner in their lifetime.
Reality #5: Rape is often inflicted on people who are unconscious or unable to resist because of alcohol or drugs. There is no victim behavior that deserves to be called “asking for it”.

Identifying factors that increase an individual’s vulnerability to victimization should never be confused with evidence that rape didn’t happen. Remember, most men NEVER rape anyone—even in circumstances that our society equates with “asking for it” (like when a girl or woman gets drunk, or does drugs, or dresses in skimpy clothing, or passes out while alone with a man). As the lives of most men demonstrate, being male does not mean having a predatory response to vulnerability. People who won’t take no for an answer, who sexually penetrate someone who is crying, or trying to get away, or throwing up, or is unconscious—those people are rare, and they are criminals. Sexual activity inflicted upon another without their consent is sexual assault.7

Reality #6: Men are also victims of sexual assault.

Sexual assault continues to play a role as both symptom and cause of women’s continued disempowerment relative to men, and research continues to show that gender alone is a risk factor for being raped. The fact that most raped people are girls and women, however, does not mean that boys and men are immune to sexual assault. On the contrary, not only are boys and men (particularly those who do not conform to traditional gender identities) raped, but they also face significant barriers to reporting.8 Societal stereotypes and assumptions about who is, or may be, victimized, can isolate male victims and discourage them from getting the services they need. Fundamentally, the victimization of men and those who don’t conform to traditional gender roles is just as important to take seriously and end as the victimization of girls and women. 9

Reality #7: Anyone can be raped.

There is no age, economic status, appearance, or ethnicity that confers immunity to being raped. But while anyone can be raped, any factor that makes an individual vulnerable in any way also increases vulnerability to sexual assault. People who are members of socially disadvantaged groups, including those who are elderly, mentally ill, undocumented, prostituted, young, or disabled are vulnerable to being targeted with sexual assault than their more privileged counterparts. In addition to facing different and often greater risks for sexual assault, the challenges these populations face in their everyday lives can further complicate their ability to obtain social justice and social service responses that meet their particular needs following a sexual assault.

8 Id.
9 Id.
Reality #8: Individual reactions to sexual assault are varied and valid.

Victims of sexual violence exhibit a spectrum of responses to being assaulted, which can include: hysteria, withdrawal, anger, apathy, denial, grief, and shock. Being sexually assaulted is a very traumatic experience. Reactions to the assault and the length of time needed to process the experience vary with each person and can change over time. There is no “right way” to react to being sexually assaulted. Assumptions about a way a victim “should act” can lead to the conclusion that she shouldn’t be believed because her reaction conflicts with these assumptions. In addition, every person’s history will impact the way they respond to physical aggression like rape. A survivor of child abuse may regress instantly to compliant behavior when confronted with aggression in a private setting; someone who was mugged and beaten up in the past might be even more terrified to register non-compliance than someone with no history of victimization. See Rebecca Campbell’s presentation of “The Neurobiology of Sexual Assault” available at: www.nsvrc.org/elearning/20044

Reality #9: Rape is Rape.

Our culture may always promote people who assert nonsensical ideas about how to distinguish sex that is rape from sex that is not rape. Like the Congressman who claimed that women’s bodies emit certain chemicals that prevent pregnancy when they are subjected to “legitimate” rape. Like people who say that it couldn’t have been rape because she was wearing a mini-skirt, or she agreed to go home with him, or he kissed him. The list of victim blaming goes on. The bottom line is this: if the participants to sex are willing and engaging in consensual acts, there is no rape. If sex happens because one party inflicts it on another against their will, then it is rape.
Providing legal services to people who have survived sexual assault can be a rewarding experience for attorneys who want to use their skills and expertise to help others. However, working with survivors presents challenges that deserve to be appreciated. There are tangible steps that attorneys should take in order to develop a positive working relationship with clients, and they are born of the realities faced by people who have endured trauma.

- **Educate yourself about the dynamics of sexual assault.** The more informed you are about the realities of sexual assault and its intersections with domestic violence, sexual exploitation, racism, and poverty, the greater the chances are that a trusting relationship can form between you and your client. It is also critical not to react with surprise, shock, or expressions of horror as your client recounts what happened to her or him—such responses unintentionally reinforce feelings of stigma and shame and can deter open communication.

- **Questions that express disbelief (even unintentionally) can reinforce a client’s feelings of self-blame, and create barriers in the attorney-client relationship.** When working to establish a clear understanding of the events of your client’s victimization, it is important to refrain from why questions, like “Why didn’t you scream/fight back/call 911 right away?” You can better help your client put their experience into words with questions like: “can you describe what you were thinking at that point?” or “tell me about the next thing that happened with your body?” or “were you able to express what you wanted to happen?” These questions are better tools for eliciting what your client did (or did not do) and why.

- **It can be painful to hear descriptions of intimate cruelty.** While attorneys must avoid burdening victims with highly emotional or shocked responses to descriptions of sexual assault, attorneys can and should convey sincere expressions of sympathy. It is always okay to tell a person that what they endured was awful—but if hearing about such things really hurts you, find the resources and support you need to process the information in a way that lets you focus on being the best attorney you can be for your client.

- **Work to enhance trust and honest communication.** Meet your client in quiet, private areas without undue distraction, and set aside the time necessary to develop rapport. Clearly explain who you are, your role and responsibilities in the case, and each step of the representation so the client knows what to expect. Clearly describe the attorney-client relationship and confidentiality. Clients may be feeling anxiety or traumatic symptoms surrounding the litigation and have many questions about the case.

Because survivors are so frequently harmed by the distrust they experience, any attorney who feels unable to believe their client should prioritize finding an appropriate replacement to their representation.
• Be prepared to answer these common questions from survivors:
  o How will you protect my confidentiality?
  o Will other people in your office have access to my information?
  o Will the public have access to my information or about what happened?
  o With whom will you be sharing what I tell you?
  o How much specific information about my experiences do I have to provide?
  o Do I have to disclose the name of the perpetrator?
  o If I discuss my participation in other illegal activities during any part of this process, can I get into trouble?
  o What is the scope of information about me that I need to share, or that might become public? e.g., history of victimization, mental health history.
  o If there are court papers, who will have access to them?
  o Will I have to tell my story to prosecutors or judges or testify in public?
  o If there is ever a trial, who will be in the courtroom for my case?
  o In case of a hearing, can the judge clear the courtroom for my case?
  o What should I do if the perpetrator contacts me?

• Develop relationships with service providers, advocates, and attorneys who work with survivors of violence. These professionals have years of experience working in the field and can offer support, consultation, and advice about the challenges you may face. They can also provide referrals for supportive services throughout this difficult litigation process.

• Don’t be afraid of, but be ready to educate yourself about, the specific complications, barriers and challenges that are involved in providing representation to a victim whose life if complicated by additional vulnerabilities such as mental illness, disability, undocumented legal status, etc.
Sexual Assault and the Criminal Justice System

Only a minority of survivors of sexual assault ever report their victimization to the criminal justice system. Sadly, only a small fraction of rapes that are reported to police result in the initiation of criminal charges against perpetrators. The chart below is a visual representation of what is known about the ‘gap’ between rapes that occur and rapes that are punished.

Victims describe many reasons for not pursuing a criminal justice system response to their rape, including being blamed for their victimization, being disbelieved, being retaliated against by the perpetrator, having their experience viewed as not being “real rape,” being treated badly by police, being retaliated against by allies or friends of the perpetrator, being publicly identified as a rape victim in the press or within their community, or being identified publicly (or within their communities of choice) as someone who ‘falsely’ accused another of sexual assault. Sadly, this list of fears is consistent with the lived experiences of many of those who do report their victimization and seek to support the prosecution of the crime done to them.

NOTE: EACH PERSON IN THIS CHART REPRESENTS ONE RAPE, NOT ONE RAPIST

Cook County Criminal System Flow Chart

Initial Report to Police
Police officer creates report based on victim interview at emergency room, police station, or following 911 call

Detective Investigation
Detectives are assigned cases based on initial report, tasked with contacting victims and conducting all investigations

IF the Detective wants the perpetrator charged with a felony, they must contact the Felony Review unit of the Cook County State’s Attorney’s office.

State’s Attorney Felony Review
Prosecutors from this office interview the victim, the accused, and review all evidence. There are three possible outcomes to this process: “continue investigation” “reject” “approve”

Continue investigation
 Felony Charges rejected
 Felony Charges approved

Criminal Court
(Misdemeanor branch court or felony trial court)

Misdemeanor Prosecutors
Detectives may close the case if they think it is baseless or can’t be proved.

Detectives may file non-felony (misdemeanor) charges against perpetrators without prior prosecutor approval.

Felony Prosecutors

KEY:
= Every time a victim must describe their experience to a new person—with no guarantee the listener will be sympathetic or educated about the realities of rape.
= optional step
= mandatory step
Representing Victims Seeking Prosecution

Many victims of sexual assault who seek legal assistance have already reported their victimization and are experiencing confusion or distress with regard to their interactions with police or prosecutors. Sometimes, however, victims seek legal representation before they report to police. In either situation, an attorney can play a critical role helping the victim navigate through the complicated and often hostile criminal justice system.

Look for this symbol to find practice tips and special notes.

<table>
<thead>
<tr>
<th>CRIME VICTIM RIGHTS</th>
<th>PRELIMINARY MATTERS</th>
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<tbody>
<tr>
<td>As non-party participants in criminal litigation, crime victims have fewer recognized rights (and responsibilities) than law enforcement actors or criminal suspects/defendants. Among the rights they do have, however, are these:</td>
<td></td>
</tr>
<tr>
<td><strong>The right to fairness, dignity, privacy, and information.</strong></td>
<td></td>
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<tr>
<td>• Illinois’ Constitution affords crime victims the right to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process. <strong>Constitutional Rights of Crime Victims: Section 8.1, Illinois Constitution</strong></td>
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<tr>
<td>• Crime victims are entitled to be informed of the status of any investigation between its inception and the time it is closed. <strong>Rights of Crime Victims and Witnesses Act: 725 ILCS 120/4.5</strong></td>
<td></td>
</tr>
<tr>
<td>• Police and prosecutors are specifically prohibited from asking or requiring that any victim alleging a sex assault submit to a polygraph examination. <strong>Sex Offense Victim Polygraph Act. 725 ILCS 200/1.</strong></td>
<td></td>
</tr>
<tr>
<td>• All communications with rape crisis center counselors and employees are specifically protected and privileged in Illinois. <strong>Confidentiality of Statements Made to Rape Crisis Personnel. 735 ILCS 5/8-802.1</strong></td>
<td></td>
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<td><strong>The right to legal counsel:</strong></td>
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<tr>
<td>• The right to hire and consult an attorney is protected by the First Amendment’s guarantee of freedom of speech, association, and petition. <strong>Denius v. Dunlap, 209 F.3d 944, 953-54 (7th Cir. 2000)</strong></td>
<td></td>
</tr>
<tr>
<td>• The office of the state’s attorney is required to inform victims of their right to retain an attorney, at the victim’s own expense, who, upon written notice, is to receive copies of all notices, motions and court orders filed thereafter in the case. <strong>Procedures to Implement the Rights of Crime Victims. 725 ILCS 120/4.5(b)(9)</strong></td>
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</table>
Police and Prosecutors rarely encounter victims’ attorneys, and mostly deal with attorneys whose goals are contrary to theirs (especially criminal defense attorneys, but also tort lawyers seeking to establish civil liability). Because of this, victims’ lawyers must be prepared to explain how their aim is not to interfere with the criminal process, but to assist and protect the rights of the victim as she/he cooperates with and supports the investigation and prosecution.

## STEP ONE: INITIAL REPORTING

Many victims seek medical attention or “rape kit” exams before coming to a decision about whether they want to notify the police or pursue criminal charges. The very act of seeking medical attention, however, triggers police attention. Critical laws and practices to understand include the following:

### LAWS

- Hospitals must contact local law enforcement when any person seeking treatment identifies as a victim of a recent sexual assault. Notification of Treatment of Injury, 20 ILCS 2630/3.2.
- Hospitals must offer “rape kit examinations” to victims of sexual assault. Sexual Assault Survivors Emergency Treatment Act (SASETA), 410 ILCS 70
- Pursuant to SASETA’s implementing regulations, hospitals must offer rape kit exams up to seven days post-assault, and may not release the resultant “Evidence Collection Kit” to law enforcement without written consent. If a victim doesn’t immediately authorize the kit’s release, hospitals must store it for up to two weeks. 77 Ill Admin.Code 545.60.
- Hospitals may not disclose medical records or any victim information (including name) without specific victim consent. Health Insurance Portability and Accountability Act of 1996 (HIPAA) Pub. L. 104-191.
- Illinois law does not require that victims of sexual assault cooperate with or provide any information about their victimization to police.

### TYPICAL HOSPITAL PRACTICES

- Following hospital contact, police are dispatched to the emergency room. Although recent trauma negatively impacts the ability of victims to make decisions or describe events with clarity, police frequently press victims to provide information while in the emergency room.
- Many (not all) Cook County hospitals have arrangements with local rape crisis centers so advocates—in addition to police—come to the emergency room to support victims dealing with rape kit examinations and police interviews. A list of the hospitals in Cook County with networking agreements with rape crisis centers is included in the
Appendix (current as of the printing of this manual). Current lists are maintained by the Chicago Rape Crisis Hotline. 1-888-293-2080

If you encounter a victim within 7 days of being raped who has yet to seek a rape kit exam, urge them to seek one at a hospital that has a pre-existing relationship with a rape crisis center—and make sure they understand that their visit will trigger a police investigation.

<table>
<thead>
<tr>
<th>DIRECT REPORTING TO POLICE</th>
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<tbody>
<tr>
<td>The two most common ways in which survivors report rape directly are via 911 calls and visits to local police precincts. How reports are dealt with depends in large part on the time that has passed since the rape.</td>
</tr>
</tbody>
</table>

When rape is reported immediately or within 72 hours:
- Police often direct the victim to a hospital emergency room for rape kit examination and send officers to the hospital to take an initial report there (see section above).

When rape is reported after 72 hours, it is considered ‘delayed reporting’:
- Police are often reluctant to create a report when a victim indicates significant time has passed since the assault. Therefore, attorneys should always assist victims seeking to report rape after any delay.
- Local police precincts will sometimes refuse to take a police report unless the crime was committed in their precinct, so it is critical to assess the precinct with jurisdiction over the location of the incident.

Best practice for filing a “delayed” report: call 911 (first say there is no emergency) and request that a ‘specially trained’ officer be dispatched to the attorney’s office to take a criminal sexual assault report from a victim. Although it seems odd to call 911 in the absence of an emergency, this method was initially suggested by Chicago police and it has repeatedly been proven to be an effective route to a professional and non-hostile initial police interview.

<table>
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<tr>
<th>STATUTES OF LIMITATION</th>
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<tbody>
<tr>
<td>For sex crimes inflicted on adults, 720 ILCS 5/3-6(i) provides a 10-year statute of limitation as long as the crime was initially reported within 3 years. For sex crimes against children, 720 ILCS 5/3-6(j) provides a 20-year statute of limitations, but the law has limited applicability to victims born prior to 1981.</td>
</tr>
</tbody>
</table>

To ascertain if an older sex crime can be prosecuted, one must identify the laws in place at the time of the offense, and assess whether the victim’s case is viable under any extensions to the criminal statute of limitation since that time. When assessing such an issue, CAASE considers consultation with at least one other attorney to be a best practice. For more on sex crimes laws over the last few decades, consider contacting the Illinois Coalition Against Sexual Assault. www.icasa.org
## Step Two: Detective Investigation

### In a Nutshell: The Detective’s Role

Detectives usually get case assignments from sergeants, after ER visits or 911 calls lead to reports generated by police officers (aka “Beat Cops”).

Once assigned a case, a detective is expected to:
- Conduct an investigation and gather evidence, including physical, testimonial, direct, and circumstantial evidence;
- Evaluate the evidence to determine if it demonstrates a crime;
- Initiate the appropriate process for the filing of criminal charges;
- Cooperate with the office of the state’s attorney, which has responsibility for prosecuting crime.

In Cook County, prosecutions of all misdemeanors and some felonies may be initiated by the police alone, but police may not file felony sexual assault charges without specific approval from the prosecutor’s office.

### Testimonial Evidence Sought by Detectives

Because most rape is committed without the kind of violence that leaves telltale injuries, **testimonial** evidence in sexual assault cases is often the most important, and includes the following:
- The victim’s description of the event;
- The account of the accused;
- Witness descriptions of the appearance or conduct of the victim or the accused either before or after the assault;
- Testimony from medical staff who examined the victim if she/he sought medical care and/or a rape kit examination.

> Work with your client to identify every person who might be a source of testimonial evidence, and make sure the detective has this information.

### “Rape Kit” Evidence

Police must send all rape kits they collect from hospitals to state police labs for analysis. **Sexual Assault Evidence Submission Act. 725 ILCS 202/5.**
- Due to limited resources and a large backlog of rape kits, state police labs can take up to a year to test and analyze rape kits.
- While waiting on rape kit testing, some detectives classify cases as “suspended” and postpone further investigative effort.
- Detectives often have difficulty accessing the form filled out by medical staff during a rape kit examination. This medical record—which often contains critical information—is sealed by hospital staff into the rape kit box along with the materials and specimens that go to the lab for testing. (A blank copy of this form is found in the appendix).
**THE VICTIM-DETECTIVE RELATIONSHIP**

Victims who seek attorneys are usually desperate to facilitate the investigation and prosecution of their perpetrator, and frequently worry about doing (or not doing) something that would lead the detective to de-prioritize their case. While many detectives give their best to every investigation regardless of how they feel about a particular victim, victims’ attorneys should promote a good detective-victim relationship by consistently communicating to the detective how the victim is committed to cooperating with and supporting their efforts.

Consider reaching out to the assigned detective as soon as you have been retained by a victim. Explain that your role is to facilitate, not interfere with, the victim’s cooperation with the police. Let the detective know that you will help the victim better understand the criminal justice system, and explain that your assistance was sought because the victim wants to be as helpful as possible. Explain that you will help the victim respond to any detective requests for information, and invite the detective to tell you what they want or need from the victim.

**DEALING WITH A CONTENTIOUS VICTIM-DETECTIVE RELATIONSHIP**

Many detectives are well educated about sexual assault and bring exceptional talent and compassion to their work, but some demonstrate poor understanding of sexual assault or hostility to victims. As they are rarely reassigned based on victim complaints, victims’ attorneys should do all they can to protect a client from hostile interactions with a detective while still prioritizing victim cooperation with the investigation.

If you encounter a detective who is unwilling to investigate a rape, or is abusive to your client, contact the Chief of the Bureau of Detectives at the Chicago Police Department. (Contact information at [www.chicagopolice.org](http://www.chicagopolice.org)) Additionally, consider filing a complaint with the Independent Police Review Authority.

**COMMUNICATING WITH DETECTIVES**

All communications with detectives may be summarized or duplicated into police records, and thus turned over to defendants in the event of prosecutions.

In oral and/or written communications with detectives, refrain from describing the sexual assault itself: it is the role of the police to gather the account of the rape from witnesses and other evidence. If you witness a miscommunication between your client and the police, address it by privately conferencing with your client, where you can direct him or her how to clarify the information they are providing.
# STEP THREE: PROSECUTOR REVIEW AND CHARGING

## FELONY REVIEW

To charge a perpetrator with a felony sex crime, a detective must seek a “felony review” from the State’s Attorney. This process typically involves the following:

1. The detective brings the victim, the perpetrator, and other witnesses to the police station. If he or she is not already in custody, the perpetrator is generally arrested, pending release if charges are rejected.
2. Once everyone is present, the detective calls the felony review unit of the prosecutor’s office—staffed 24 hours a day, seven days a week.
3. As calls come in, prosecutors are dispatched to the appropriate station.
4. Upon arrival, the detective and prosecutor privately review all of the evidence, including detective summaries of prior victim interviews.
5. Next, the prosecutor conducts an in-depth interview of the victim. Such interviews typically take between one and four hours.
6. After interviewing the victim, the prosecutor interviews other witnesses;
7. Finally, the prosecutor seeks to interview the perpetrator (who may or may not have counsel, and may or may not agree to speak).
8. Ultimately, the prosecutor selects one of the following outcomes:
   - Continue investigation;
   - Reject;
   - Approve.

While the felony review unit generally operates on a ‘first come, first served’ basis, they have the capacity to schedule felony reviews in advance. Further information can be obtained from their office: Cook County State’s Attorney Felony Review Unit. (773) 674-3020.

During a felony review interview, never attempt to explain ‘for your client’ what you believe happened. Do not prompt your client, or interrupt the interview at any time. If you believe that you are witnessing a miscommunication between your client and the state’s attorney, you should address it by conferencing with your client in private and directing her or him to clarify the issue.

## CONTINUING INVESTIGATION

If the prosecutor lacks information critical to a decision, the case is marked “continuing investigation” (“c.i.”) and given back to the Detective. After the requested info is obtained, the detective may call for a second felony review.

In CAASE’s experience, many investigations die from lack of attention after being “c.i.’d” – occasionally because police regard the “c.i.” designation as a sign that the state’s attorney will never charge the case, and occasionally because of the difficulty or impossibility of gathering the information requested.
<table>
<thead>
<tr>
<th><strong>If the felony review prosecutor has good rapport with the victim, request that they maintain responsibility for the case. This is not always possible, but it can save time and protect the victim from having to describe their victimization to yet another stranger at a second felony review.</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Denial</strong></td>
</tr>
<tr>
<td>Denial of felony charges generally ends a case. In police files, such a case is categorized as “cleared closed.”</td>
</tr>
<tr>
<td>The office of the State’s Attorney has the discretion to conduct a second review of any case in which charges were denied. If you believe that a re-review might result in the filing of charges, consider contacting the head of the Sex Crimes Division to make such a request. Contact info at <a href="http://www.statesattorney.org">www.statesattorney.org</a>.</td>
</tr>
<tr>
<td>Many sexual assaults that are rejected by felony review end up prosecuted in misdemeanor court, as police have the authority to initiate misdemeanor cases. While most victims prefer to see rapists charged as felons, misdemeanor prosecutions can meet victim needs, and attorneys should always assess if a detective would initiate a misdemeanor prosecution following felony rejection. (Police may ‘override’ a rejection and charge felonies without approval, but they do so very rarely, as prosecutors can simply dismiss felonies they don’t wish to prosecute.)</td>
</tr>
<tr>
<td>Particularly when the criminal system chooses not to take action, victim attorneys should ensure that their clients understand their rights to seek redress in civil court, as with the Civil No Contact Order Act, the Gender Violence Act, and via common law claims such as for assault and battery.</td>
</tr>
<tr>
<td><strong>Approval</strong></td>
</tr>
<tr>
<td>When a felony review results in an approval of felony charges, the case becomes the primary responsibility of the prosecutor’s office. Following the decision to charge, the state is required to seek an “indictment” which can be obtained either through a preliminary hearing or via a grand jury. Following indictment, the case is assigned to a trial court, located either at the courthouse at 26th and California, or in a suburban branch courthouse.</td>
</tr>
<tr>
<td>When a felony charge is approved, the victim’s attorney should ask whether the state’s attorney will seek an indictment via grand jury or preliminary hearing. In either case, it is likely that the victim will have to provide testimony, but a preliminary hearing exposes victims to cross-examination by defense counsel, and thus an increased number of victim questions and concerns that deserve time to address.</td>
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</table>
## STEP FOUR: PROSECUTION

### WORKING WITH PROSECUTORS

Prosecutors, who rarely encounter victims’ attorneys, have been known to express the following concerns about meeting with victims and their attorneys: the victim attorney could interfere with prosecutorial goals; privilege could be waived; the victim’s attorney might be called by defense lawyers to testify about meetings. The following information can be helpful to address these issues:

- Because the victim’s attorney is working to serve their client’s interest in seeing the perpetrator convicted, the goal of the victim’s attorney is to facilitate, not undermine, the prosecutor’s efforts;
- Nothing a victim says to the state is privileged or protected from disclosure. Prosecutors represent the state—not the victim;
- The presence of a victim’s attorney has no effect on the state’s obligations to disclose information to the defense;
- The privilege protecting communications between a victim and her/his lawyer is not waived by the attorney’s presence during prosecutor-victim conversations (no more than a defense lawyer’s privilege is waived by their presence during prosecutor-defendant conversations);
- If testimony from a victim’s attorney is sought by defense counsel, the victim’s attorney is perfectly positioned to respond independently, either by seeking for subpoenas to be quashed or limited to cover only the non-privileged conversation between the victim and the state witnessed by the victim attorney.

Victim attorneys should identify and address victim questions and concerns, promote effective communication between victim and prosecutor, and serve a victim’s interests in understanding the justice system. This will usually make the prosecutor’s job easier—by making the victim better able and prepared to assist the prosecution.

Victim attorneys should always introduce themselves to prosecuting attorneys as soon as possible, to facilitate open lines of communication, to ensure the prosecutor understands how the victim attorney is serving the victim’s interests, which may be different but are generally complementary to, the goals of the prosecutor.

Victim attorneys should coordinate with and support prosecutor efforts to prepare clients for hearing, both by providing the victim with additional preparation sessions, and by advocating for preparation by the State to be done in advance of the day of trial or hearing.

### PROTECTING YOUR CLIENT’S ACCESS TO INFORMATION

Whether a perpetrator is charged with a misdemeanor or a felony, the initiation of prosecution triggers certain victim rights that are designed to promote the ability of the victim to be informed about and understand the process that they are participating in.
### NOTES ON MISDEMEANOR PROSECUTIONS

- Staffing changes are more frequent in misdemeanor courts than in felony courts. It is thus common for a rape victim to have to work with several different state's attorneys as the prosecution advances towards trial.
- Misdemeanor prosecutions move more quickly than felony cases, but it is not uncommon for a case to take more than 6 months to get to trial.

Consider asking that one prosecutor maintain responsibility for the prosecution even if transferred to another courtroom. The ability of a rape victim to be an effective witness can be greatly impacted by the relationship they have with the prosecutor presenting them, a reality that many prosecutors appreciate and are sympathetic to.

### NOTES ON FELONY PROSECUTIONS

- Felony sexual assault prosecutions—which often take more than two years to proceed to trial—are always handled in courtrooms staffed by prosecutors with significant levels of experience.
- Often, although not always, the prosecutors responsible for felony sex crimes are specifically assigned to the Cook County State’s Attorney’s Sex Crimes Division.

While staffing changes occur less frequently in felony cases than in misdemeanor courtrooms, sex crimes specialists are particularly sensitive to victim concerns about having to work with multiple prosecutors. If a staffing change does occur, consider talking with the head of the Sex Crimes Division about ways to minimize the disruption to the victim.
Sexual Assault and Civil Law

Whether or not a survivor seeks to have the crime against them prosecuted, there are two laws in Illinois that specifically allow victims to prove sexual assault in civil court. The Illinois Gender Violence Act, 740 ILCS 82/1 et seq., gives victims seven years to sue for rape and seek financial damages from perpetrators. Under the Illinois Civil No Contact Order Act (CNCO), 740 ILCS 22/101, et seq., victims have five years from the victimization to initiate litigation against any party who subjected them to an act (or acts) of non-consensual sexual conduct or penetration. The enactment of these laws in 2004 followed efforts led by feminist activists to highlight and respond to two things: the continuing non-prosecution of rape and other forms of gender-based violence; and the need to put civil legal tools into the hands of victims who desire—and deserve—methods for holding perpetrators accountable.

Civil No Contact Order (CNCO) Litigation

Since the passage of the above laws in 2004, CNCO litigation has become an increasingly common legal strategy employed by survivors of sexual assault in Illinois.

It’s important to know that while the only remedy available under the CNCO Act is a stay-away order, the law can have other positive effects for victims. In fact, many victims may choose to pursue a CNCO for reasons such as:

- **Accountability:** Many victims report a deep desire to do something to hold the perpetrator accountable.
- **Deterrence:** Victims frequently say they want to deter the perpetrator from raping again.
- **Creating a Record:** Many victims express the hope that their actions will make future rapes by the perpetrator easier to punish.
- **Vindication:** Victims often feel a deep need to vindicate themselves after being labeled a liar—explicitly by perpetrators, and implicitly when the state refuses to prosecute.

It’s important for victims’ attorneys to understand these reasons and talk to the client about her/his motivations in pursuing litigation. Many perpetrators of sexual assault refrain from contact with their victim after the accusation and quickly denounce any future contact. This should not deter a victim’s attorney, as it is the client’s choice whether she/he wants to pursue the CNCO. It’s important to note that, especially in intimate partner violence, the stay away order may be critical to a victim’s safety. However, the accountability created by the CNCO should be seen as a potential path to justice for a client, not just a stay-away order.

Survivors of sexual assault—like virtually all humans subjected to horrible cruelty—ache to have their violation acknowledged and condemned. In the absence of a criminal justice system response to rape, victims will use whatever tools are available to them, even if there is not a perfect match between what they want and what the law provides.
# Representing Victims Seeking Civil No Contact Orders (CNCOs)

## Preliminary Matters

### The Basics

Under the Illinois Civil No Contact Order Act:
- **Any** person (male or female, of any age);
- Subjected to **non-consensual sexual conduct or penetration**;
- Whether or not the crime was ever reported or prosecuted;
- **May** file a Petition for a CNCO;
- **If** the judge (there is no right to a jury) finds sexual conduct or penetration happened without the petitioner’s **freely given agreement**;
- The State **must** issue a civil no contact order against the perpetrator.

CAASE recommends that attorneys read the full CNCO Act carefully (it is not long) and **always** have a copy on hand when in court.

### An Important Note on the Remedy

The only remedy under the CNCO Act is a stay-away order. This leads some to assume that rapists pose a post-assault threat to their victims, and/or to expect victims to show or fear post-rape contact. In reality:

- There is no evidence that men who rape (excluding perpetrators of domestic violence) pose a threat of post-assault harm. On the contrary, once victims label their rapists as such (whether by police report or CNCO petition) perpetrators typically avoid and renounce contact with their victim; also
- **Whether or not a victim wants or feels in need of a stay-away order is not relevant to whether or not a victim is entitled to a CNCO. Under the law, a CNCO must** issue if non-consensual conduct or penetration is proved (regardless of post-assault contact and/or fear of contact).

While victims typically (and understandably) fear contact with their rapist, CAASE recommends that attorneys help victims distinguish between fear of the perpetrator and facts that can justify a court decision to grant injunctive relief against a party prior to notice (the fundamental requirement of an emergency petition).

### Client Motivations and Goals

While victims typically place a high value on winning a court order that prohibits the offender from having any future contact with them, CNCO litigation is frequently motivated by more abstract notions of justice:

- Victims often say their motivation is not the stay-away order itself, but creating “accountability.”
Many survivors identify a desire to protect others. Many want to show the rapist that he can’t avoid consequences for his acts despite criminal justice system unwillingness to prosecute in this case.

Having a clear and shared understanding of the victim’s motivations and goals is critical to any attorney’s ability to provide quality representation and advice.

<table>
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<tr>
<th>BEFORE YOU FILE: Consider Impact on Criminal Justice Process</th>
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<tbody>
<tr>
<td>If the sexual assault has been reported to the police and the victim desires a criminal justice system response, CNCO litigation can have a variety of consequences that are often not immediately evident to victims:</td>
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<tr>
<td>- In civil litigation victims must provide all kinds of information to the defendant through depositions and discovery, while crime victims and witnesses are not obligated to communicate with or be interviewed by defense counsel.</td>
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<td>- A pending criminal investigation or prosecution may lead a respondent in a CNCO case to seek refuge from discovery in the 5th amendment;</td>
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<tr>
<td>- Both police and prosecutors may have legitimate concerns that civil litigation will interfere with or harm their ability to effectively prosecute a sexual assault.</td>
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<tr>
<td>Never initiate civil litigation under the CNCO until you and your client have examined the possible interactions between such litigation and a criminal justice system response to the crime.</td>
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<tr>
<th>BEFORE YOU FILE: Consider an Emergency CNCO</th>
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<tr>
<td>An Emergency CNCO is worth seeking when:</td>
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<tr>
<td>- There is reason to believe the perpetrator will inflict unwanted contact on the victim if there is no order in place when they are served with the Petition initiating the litigation;</td>
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<td>- The assault occurred in the context of a domestic-violence relationship—there is a lot of evidence that victims of domestic violence face a heightened risk of abuse when they seek to escape;</td>
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<tr>
<td>- You can meet the specific requirements for an Emergency CNCO under the Act. See 740 ILCS 22/214(a)(3).</td>
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<tr>
<td>But remember:</td>
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<tr>
<td>- Seeking an Emergency CNCO requires that the victim describe their victimization to an extra judge—a jurist who will only rule on the emergency relief and then assign the case to another judge for hearing.</td>
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<tr>
<td>- The process is stressful for victims, and it produces sworn testimony that can be picked apart by defense lawyers looking to exploit inconsistencies in victim accounts. When a judge declines to issue an emergency order, the victim can be devastated, even though a refusal to grant such relief should not impact the final resolution of the case.</td>
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<tr>
<td>- Emergency CNCOs can only last 21 days, and judges can require victims to appear every three weeks to enable their renewal pending litigation;</td>
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</table>
The similarities between CNCO and Order of Protection litigation for victims of domestic violence have led many to think an Emergency CNCO is a necessary first step in CNCO litigation—this is **incorrect**.

Be sensitive to the fact that victims of sexual assault are often (and understandably) interested in achieving the quick gratification that an emergency CNCO can represent, but the emergency process can be ill suited to their goals and needs.

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<th>BEFORE YOU FILE: Consider the Plenary Petition</th>
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<tr>
<td>Filing a Petition for a <strong>Plenary CNCO</strong> can be preferable if:</td>
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<td>- The victim previously reported the offender to the criminal justice system and he did not subsequently attempt any contact with the victim; or</td>
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<tr>
<td>- Significant time has passed since the assault; or</td>
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<tr>
<td>- The victim's primary goal is not the stay-away order itself, but the vindication of proving the rapist's wrongdoing; or</td>
</tr>
<tr>
<td>- It would be difficult for the victim (or the attorney) to come to court every three weeks; or</td>
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<tr>
<td>- The victim is not afraid of the perpetrator; and/or</td>
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<tr>
<td>- The victim would like to minimize his/her time in the court.</td>
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<tr>
<th>Initiating and Conducting the Litigation</th>
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<td>CNCO litigation may be brought:</td>
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<tr>
<td>- In the county where the victim resides;</td>
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<tr>
<td>- In the county where the perpetrator resides; or</td>
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<tr>
<td>- In the county where the sexual assault occurred.</td>
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<tr>
<th>Jurisdiction</th>
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<tr>
<td>When a victim has a choice of where to file (as with suburban victims who could litigate either at 555 W. Harrison or in their suburban branch court), it is advisable to seek information from local rape and domestic violence advocates. Understanding the levels of education and sympathy for rape victims that are evidenced in various courtrooms can help an attorney provide useful advice about where a case should be filed.</td>
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<tr>
<th>Cook County Forms</th>
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<tr>
<td>Cook County CNCO forms are available at:</td>
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<tr>
<td>- <a href="http://www.cookcountyclerkofcourt.org">www.cookcountyclerkofcourt.org</a></td>
</tr>
<tr>
<td>- Domestic Violence Courthouse: 555 W. Harrison St., Chicago, IL.</td>
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<tr>
<th>What to Alleged</th>
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<tr>
<td>As with all civil litigation, the victim’s attorney must determine how much detail to include in the petition that initiates the CNCO litigation. At a minimum (and arguably at a maximum) the petition must allege:</td>
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<tr>
<td>- The identity of the Respondent; and</td>
</tr>
<tr>
<td>- That the Respondent committed at least one act of non-consensual sexual</td>
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</table>
| Identification of Petitioner | The Petitioner’s address may be omitted from the Petition, pursuant to 740 ILCS 22/203.  
| | If the Petitioner wants to proceed as a Jane Doe or other assumed moniker, a motion can be brought pursuant to 735 ILCS 5/2-401, Designation of parties-Misnomer. |
| Burden of Proof | The burden of proof in CNCO litigation is preponderance of evidence: it is critical to keep this in mind, and be prepared to argue what this means, as many judges express great reluctance to find for a petitioner in a case where the repercussions of doing so mean ‘labeling’ someone a rapist.  
| | See the appendix for J.M. v. Briseno, 949 N.E.2d 779; 350 Ill. Dec. 987 (Ill. App. 1st 2011) the only published opinion on the CNCO Act, which includes a discussion of the standard of review. |
| Process and Discovery Issues | Illinois Rules of Civil Procedure apply and discovery is allowed:  
| | • Petitioners and Respondents are entitled to issue written interrogatories and conduct depositions prior to hearing.  
| | The CNCO Act contains certain victim protections:  
| | • Petitions do not constitute a waiver of victim medical/mental health privileges 740 ILCS 22/204.2  
| | • Victims may seek to provide testimony in chambers 740 ILCS 22/215.5  
| | Prepare your client for the possibility of being deposed. If your client has extreme anxiety about seeing the Respondent, negotiate with opposing counsel for terms to minimize discomfort (for example, allowing your client to have a support person present with them in the deposition room, setting up the table and chairs so that the client's view of the respondent is partially obscured by others, etc.). Consider taking steps to seek to have the Respondent excluded from the deposition room.  
| | DO NOT unintentionally waive your client’s mental and medical health privileges by automatically responding to discovery requests that seek information beyond the scope what your petition has put at issue. |

In addition to the testimony of the survivor, consider seeking evidence from the following:  
- Outcry witnesses: the first person or people to whom the victim reported
### Proving the Sexual Assault

- Medical personnel: the nurses and/or doctors who examined the victim at any rape kit examination.
- Detectives or police officers: even if a criminal prosecution was never initiated, police officers can provide critical evidence based on their investigation, and, particularly if they are sympathetic to the victim, they can make compelling witnesses.
- Any person who saw the victim in the immediate aftermath of the assault: descriptions of the victim exhibiting shock, sadness, anger, confusion, etc., can be very helpful in getting the court to understand what happened.

### Additional Issues

#### Duration of Remedy

- **Emergency** Orders can only last up to 21 days.
- **Plenary** Orders can initially be entered for a maximum of two years; after a plenary order is granted, it may be extended for any length of time, or indefinitely until vacated or modified. 740 ILCS 22/216.

  Emergency Orders can be extended for longer than 21 days by agreement between the parties.

#### Criminal Enforcement

CNCOs are entered into LEADS (the Illinois Law Enforcement Agencies Data System):

- Violations of CNCOs are prosecutable crimes (first violation = Class A misdemeanor, subsequent violations = Class 4 felony.
- All Illinois police have ready access to the LEADS database.

#### Civil Enforcement

If the criminal system chooses not to prosecute CNCO violations, the petitioner can enforce the order through:

- Civil contempt proceedings; or
- Filing a Petition for a Rule to Show Cause with the court that entered the Order.

#### Dealing with a pro se respondent

If the Respondent is pro se, the victim’s attorney should take steps to explain the separation between civil and criminal processes—particularly if the victim’s attorney is also advocating for the victim in support of criminal justice system responses.

  See the appendix for a sample letter to a pro se respondent.
Legal Consultation Referrals

Chicago Alliance Against Sexual Exploitation: CAASE represents victims of sexual harm and advocates for the prosecution of rapists, pimps, and men who buy sex. Work includes prevention, policy reform, community engagement, and legal services. Through the Sexual Assault Justice Project, CAASE’s attorneys meet confidentially with survivors and provide legal advice, consultation, and representation related to sexual assault and commercial sexual exploitation.

Contact: (773) 244-2230 ext. 4, and visit www.caase.org

LIFE SPAN: Life Span attorneys provide representation for victims of domestic violence, sexual violence, and immigration legal services in Cook County’s Domestic Relations Division.

Contact: (312) 408-1210 and visit www.life-span.org

Legal Assistance Foundation of Metropolitan Chicago (LAF): LAF provides legal assistance to low-income residents of Cook County in civil cases only. LAF helps individuals and families with problems in such areas as domestic violence, housing, immigration, crime victims, and elder law. LAF does not do criminal, traffic, personal injury cases or wills/estates.

Contact: (312) 341-1070 and visit www.lafchicago.org

Legal Aid Society of Metropolitan Family Services (Legal Aid Society): The mission of the Legal Aid Society is to protect and strengthen families by providing equal access to justice for our most vulnerable citizens, including those who are impoverished, the elderly, and victims of domestic violence.

Contact: 312-986-4200 and visit www.metrofamily.org

Supportive Services for Survivors of Sexual Assault in Cook County

Chicago Rape Crisis Hotline: 1-888-293-2080 (available 24 hours per day, 7 days per week)

Between Friends: Between Friends’ comprehensive domestic violence programs and services include a toll-free Crisis Line (800-603-HELP), counseling for victims and their children and court advocacy. Offices are located in Roger’s Park, on Chicago’s North Side.

Contact: (773) 274-5232 and visit www.betweenfriendschicago.org

Heartland Alliance, Violence Recovery Services (VRS): VRS provides a range of community and home-based counseling, case management, legal advocacy, parenting support, and prevention education to children, adults, seniors, and families who have been impacted by domestic violence, sexual assault or abuse, or community violence and trauma.

Contact: (773) 847- 4417 vrs@heartlandalliance.org, or visit www.heartlandalliance.org

Illinois Coalition Against Sexual Assault (ICASA): ICASA is a statewide network of 30 community-based sexual assault crisis centers working together to end sexual violence. Each center provides 24-hour crisis intervention services, counseling and advocacy for victims of sexual assault and their significant others. Centers also serve prostituted and trafficked individuals. Each center presents prevention education programs in Illinois communities.

Contact: (217) 753-4117 and visit www.icasa.org
KAN-WIN (Korean American Women in Need): KAN-WIN offers bilingual and bicultural comprehensive services to women and children affected by domestic violence, including a 24-hour Crisis Hotline: (877) KANWIN-1 or (773) 583-0880. KAN-WIN services include a traditional housing program, a monthly support group for survivors and their children, legal and social service advocacy and job skills training.

Contact: (773) 583-1392 and visit www.kanwin.org

Mujeres Latinas en Acción: Mujeres offers a comprehensive range of services such as counseling, therapy, legal and medical advocacy, community education, and 40-hour sexual assault trainings for their volunteers. Bilingual services are available and all services are free of charge. Main office is located at 2124 W. 21st Place with counseling services available at a Mujeres satellite located in North Riverside.

Contact: (773) 890-7676 and visit www.mujereslatinasenaccion.org

Northwest Center Against Sexual Abuse (Northwest CASA): Northwest CASA provides free services, including a 24-hour hotline (888) 802-8890, to sexual assault survivors and their loved ones within the North and Northwest suburbs of Cook County, with office locations in Arlington Heights and Evanston (via the Evanston/NorthShore YWCA). A range of services is offered: crisis intervention, group and individual counseling (children and adults), legal advocacy, prevention, community education, and training.

Contact: (847) 806-6526 and visit www.nwcasa.org

Pillars: Domestic and sexual violence services offered at eight sites in 36 communities throughout Chicago including a 24-hour hotline (708) 482-9600, and crisis intervention, shelter (Constance Morris House), counseling, and legal advocacy for women and children whose victimization includes child sexual assault, incest, rape, and sex trafficking. Pillars runs a diversion program at the Maywood court house for women charged with prostitution offenses.

Contact: (708) 745-5277 and visit www.pillarscommunity.org

Rape Victim Advocates (RVA): RVA provides victims of sexual assault a wide range of services such as advocacy, counseling, education and training. RVA teams with a number of hospitals, counselors and schools to ensure victims are connected with the resources they needs.

Contact: (312) 443-9603 and visit www.rapevictimadvocates.org

YWCA Metropolitan Chicago: The YWCA provides free medical & legal advocacy, education, and professional trainings, as well as confidential and free individual counseling to sexual assault survivors and their non-offending family members, in a variety of locations in Chicago as well as the South and West Suburbs.

Contact:
(312) 372-6600 (Chicago) and visit www.ywcachicago.org
(630) 790-6600 (West Suburbs)
(708) 754-486 (South Suburbs)
Cook County Rape Crisis Services

Partner Hospitals

<table>
<thead>
<tr>
<th>Mujeres Latinas En Acción</th>
<th>Mercy</th>
<th>St. Anthony</th>
<th>Norwegian American Hospital</th>
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</thead>
<tbody>
<tr>
<td>2525 S. Michigan Ave.</td>
<td>2875 W. 19th St.</td>
<td>Chicago, IL 60616</td>
<td>1044 North Francisco Avenue</td>
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<table>
<thead>
<tr>
<th>Pillars</th>
<th>Gottlieb Memorial</th>
<th>La Grange Memorial</th>
<th>Rush - Oak Park</th>
</tr>
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<tbody>
<tr>
<td>701 W. North Ave.</td>
<td>5101 Willow Springs Rd.</td>
<td>La Grange, IL 60525</td>
<td>112 S. Humphrey Ave.</td>
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<tr>
<td>Melrose Park, IL 60640</td>
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<td>Oak Park, IL 60302</td>
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<tr>
<td>MacNeal</td>
<td>Loyola</td>
<td></td>
<td>Westlake</td>
</tr>
<tr>
<td>3249 S. Oak Park Ave.</td>
<td>2160 S. 1st Ave.</td>
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<td>1225 W. Lake St.</td>
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<tr>
<td>Berwyn, IL 60402</td>
<td>Maywood</td>
<td></td>
<td>Melrose Park, IL 60160</td>
</tr>
<tr>
<td>Metro South Medical Center</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12935 S. Gregory Street</td>
<td></td>
<td></td>
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<tr>
<td>Blue Island, IL 60406</td>
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<table>
<thead>
<tr>
<th>Rape Victim Advocates</th>
<th>(NORTH HOSPITALS)</th>
<th>(SOUTH HOSPITALS)</th>
<th>(WEST HOSPITALS)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Methodist</td>
<td>John H. Stroger of Cook County</td>
<td>1969 W. Ogden</td>
<td>Mount Sinai</td>
</tr>
<tr>
<td>5025 N. Paulina St.</td>
<td>Chicago, IL 60640</td>
<td>Chicago, IL 60612</td>
<td>California Avenue at 15th St.</td>
</tr>
<tr>
<td>Northwestern Memorial</td>
<td>Provident of Cook County</td>
<td>500 E. 51st St.</td>
<td>St. Mary's</td>
</tr>
<tr>
<td>251 E. Huron</td>
<td>Chicago, IL 60611</td>
<td>Chicago, IL 60615</td>
<td>2233 W Division St.</td>
</tr>
<tr>
<td>St. Joseph</td>
<td>Rush University Medical Center</td>
<td>1653 W. Congress Plwy.</td>
<td>Our Lady of Resurrection</td>
</tr>
<tr>
<td>2900 N. Lake Shore Dr.</td>
<td>Chicago, IL 60657</td>
<td>Chicago, IL 60612</td>
<td>5645 W. Addison St.</td>
</tr>
<tr>
<td>Swedish Covenant</td>
<td>University of Illinois (UIC)</td>
<td>1740 W. Taylor</td>
<td>West Suburban Medical Center</td>
</tr>
<tr>
<td>5145 N. California Ave.</td>
<td>Chicago, IL 60625</td>
<td>Chicago, IL 60612</td>
<td>3 Erie Ctr. at Austin</td>
</tr>
<tr>
<td>Theoktist Memorial</td>
<td></td>
<td></td>
<td>Oak Park, IL 60302</td>
</tr>
<tr>
<td>850 W. Irving Park Rd.</td>
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<tr>
<td>Chicago, IL 60613</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Weiss Memorial</td>
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<td></td>
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</tr>
<tr>
<td>4646 N. Marine Dr.</td>
<td></td>
<td></td>
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</tr>
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<td>Chicago, IL 60640</td>
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<table>
<thead>
<tr>
<th>YWCA Metropolitan Chicago Center</th>
<th>Advocate Trinity</th>
<th>South Shore</th>
</tr>
</thead>
<tbody>
<tr>
<td>2320 E. 93rd St.</td>
<td>7906 S. Crandon Ave.</td>
<td>Chicago, IL 60617</td>
</tr>
<tr>
<td>Chicago, IL 60617</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Holy Cross</td>
<td>University of Chicago (U of C)</td>
<td>Chicago, IL 60637</td>
</tr>
<tr>
<td>2701 W. 63rd St.</td>
<td>5841 S. Maryland Ave.</td>
<td></td>
</tr>
<tr>
<td>Chicago, IL 60629</td>
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<table>
<thead>
<tr>
<th>Northwest Center Against Sexual Abuse</th>
<th>Alexian Brothers Medical Center</th>
<th>Glenbrook Hospital</th>
<th>Skokie Hospital</th>
</tr>
</thead>
<tbody>
<tr>
<td>800 Biesterfield Road</td>
<td>2100 Pflinston Road</td>
<td></td>
<td>9600 Gross Point Road</td>
</tr>
<tr>
<td>Elk Grove Village, IL 60007</td>
<td>Glenview, IL 60025</td>
<td></td>
<td>Skokie, IL 60076</td>
</tr>
<tr>
<td>Advocate Lutheran General</td>
<td>Northwest Community Hosp.</td>
<td></td>
<td>St. Alexius Medical Center</td>
</tr>
<tr>
<td>1775 Dempster Street</td>
<td>800 West Central Road</td>
<td></td>
<td>1555 Barrington Road</td>
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<td>Park Ridge, IL 60608</td>
<td>Arlington Heights, IL 60005</td>
<td></td>
<td>Hoffman Estates, IL 60169</td>
</tr>
<tr>
<td>St. Francis</td>
<td>355 Ridge Ave.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Evanston, IL 60202</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Sample Petition for a Civil No Contact Order

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Petitioner name

v.

Respondent name

Case No.

☑ Independent Proceeding

☐ Criminal Proceeding

☐ Delinquency Petition

PETITION FOR CIVIL NO CONTACT ORDER

☐ Emergency

☐ Plenary

(Please list and check boxes as applicable)

Now comes the Petitioner Petitioner name on his/her own behalf or on behalf of

a minor child, or on behalf of

an adult who cannot file a Petition because of age, health, disability or inaccessibility on his/her own behalf pursuant to the Civil No Contact Order Act and moves this Honorable Court to issue a Civil No Contact Order in this cause and in support thereof states as follows:

ALLEGATIONS

PETITIONER INFORMATION

☐ The address listed below is the Petitioner's residence.

☐ Disclosure of the Petitioner's address would risk abuse of the Petitioner or any member of the Petitioner's family; therefore, the address listed below is the Petitioner's alternative address for service of Notice and is not Petitioner's resident address.

NAME ________________________________

ADDRESS

CITY __________________________ STATE ____________ ZIP

RESPONDENT INFORMATION

NAME ________________________________

ADDRESS

CITY __________________________ STATE ____________ ZIP

DOB ______/_____/______ SEX ☐ MALE ☐ FEMALE RACE ________ HEIGHT ________ WEIGHT ________

DISTINGUISHING CHARACTERISTICS

RESPONDENT EMPLOYMENT INFORMATION:

☐ this information is not necessary, but can be helpful to facilitate service.

ADDRESS __________________________ CITY __________ STATE ____________ ZIP

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
PETITIONER ALLEGES AS TO RESPONDENT THAT:

☐ The following individuals are alleged to be persons who need to be protected from abuse by Respondent:

☐ Respondent has committed the following acts, which constitute non-consensual sexual conduct, or non-consensual sexual penetration.

[State details of incident(s) of abuse (including time and place), as well as effects of incident(s) on Petitioner.]

Incident(s):

The description provided here must provide notice to the Respondent of the claim made against them.

Elaborate or detailed descriptions of the event are NOT recommended.

Suggested format:

The Respondent committed an act (or acts) of non-consensual sexual conduct (or penetration) against the Petitioner on ___/___.

The Respondent put his (or her) hands/mouth/penis/etc. on (or into) the vagina/mouth/anus/other body part of the Petitioner.

The Petitioner did not freely or affirmatively consent to this act (or penetration).

Do NOT describe the "effect" of incident on Petitioner. This is not required by statute, and doing so could be argued to waive medical or mental health records protections for the Petitioner.

☐ Police report not made

☐ Police report made

itura report no. There is no statutory need for a police report.

FOR EMERGENCY PetITIONS ONLY: The harm will be likely to occur if the Respondent were given any prior notice, or greater notice than was actually given, of the Petitioner's efforts to obtain judicial relief.

REMEDIES REQUESTED

PETITIONER REQUESTS THAT THE COURT FIND THAT THE FOLLOWING ARE PROTECTED PERSONS:

WHEREFORE, PETITIONER REQUESTS THE ENTRY OF A CIVIL NO CONTACT ORDER SETTING FORTH THE FOLLOWING REMEDIES:

1. ☐ The Respondent is to stay away from the Petitioner. "Stay away" means for the Respondent to refrain from both physical presence and nonphysical contact with the Petitioner whether direct, indirect (including, but not limited to, telephone calls, mail, email, faxes, and written notes), or through third parties who may or may not know about the Order of Protection.

2. ☐ The Respondent is to stay away from any other person protected under a Civil No Contact Order entered in this matter.

3. ☐ The Respondent is prohibited from physical abuse, harassment, intimidation of a dependent, interference with personal liberty, or stalking any person protected under a Civil No Contact Order entered in this matter.

4. ☐ The Respondent is prohibited from entering or remaining present at the school and/or place of employment of any person protected under a Civil No Contact Order entered in this matter.

Signature of Attorney or State's Attorney

Signature of Petitioner

UNDER THE PENALTIES OF PERJURY AND AS PROVIDED BY LAW PURSUANT TO SECTION 1-109 OF THE CODE OF CIVIL PROCEDURE, THE UNDERSIGNED CERTIFIES THAT THE STATEMENTS SET FORTH IN THIS INSTRUMENT ARE TRUE AND CORRECT, EXCEPT AS TO MATTERS STATED TO BE OF INFORMATION AND BELIEF AND AS TO SUCH MATTERS THE UNDERSIGNED BELIEVES THE SAME TO BE TRUE.

Date:

Signature of Petitioner

Atty. No. Pro Se 99500

Attorney (or Pro Se Petitioner) Name:

Address:

State/City/Zip:

Telephone: ____________________________

ANY KNOWING VIOLATION OF A CIVIL NO CONTACT ORDER IS A CLAUS A MISDEMEANOR OR A CIVIL VIOLATION IS A CLAUS A MISEMEY.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

28
Sample “Rape Kit” Documents Signed by Hospital
**MEDICAL/FORENSIC DOCUMENTATION FORM**

**STEP 2: Patient History**

<table>
<thead>
<tr>
<th>Patient Name</th>
<th>DOB</th>
<th>Age</th>
</tr>
</thead>
<tbody>
<tr>
<td>Race</td>
<td>Sex</td>
<td>Arrival Date</td>
</tr>
<tr>
<td>Address</td>
<td>City</td>
<td></td>
</tr>
<tr>
<td>County</td>
<td>State</td>
<td>Zip</td>
</tr>
<tr>
<td>Hospital</td>
<td>E.R.</td>
<td></td>
</tr>
<tr>
<td>For Children: Name of Guardian</td>
<td>Relationship</td>
<td></td>
</tr>
<tr>
<td>Person providing history</td>
<td>Relationship to patient</td>
<td></td>
</tr>
</tbody>
</table>

For children: Avoid multiple interviews. Take time to establish rapport. Avoid leading or leading questions. Use direct quotes. Avoid surplus or negative emotions, while still showing concern and support.

1. Patient's Description of what happened.

2. Date of Assault | Time of Assault | 3. Location & geographical surroundings of assault

4. Patient's Description of Assault(s):

5. Sexual acts described by patient/victim

<table>
<thead>
<tr>
<th>Acts Described</th>
<th>Yes</th>
<th>No</th>
<th>Touched</th>
<th>Unsure</th>
<th>Acts Described</th>
<th>Yes</th>
<th>No</th>
<th>Touched</th>
<th>Unsure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Penetration of female sex organ by:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Measurolation:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>penis</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>of patient by assailant</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>finger</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>of assailant by patient</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>foreign object</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Did ejaculation occur?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>describe object</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>inside body orifice</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Penetration of anus by:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Outside body orifice</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>penis</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>If outside body orifice, describe location</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>finger</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Other sexual acts?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>foreign object</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Yes, describe</td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>describe object</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Did assailant use condom?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

6. Was oral sex performed:

<table>
<thead>
<tr>
<th>Kissing, licking or sucking of breasts or other parts of patient's body?</th>
<th>Yes</th>
<th>No</th>
<th>Describe</th>
</tr>
</thead>
<tbody>
<tr>
<td>if yes, describe</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(White copy to hospital; yellow copy to lab)
MEDICAL/FORENSIC DOCUMENTATION FORM—PAGE 2

6. Post-assault hygiene/activity
   - Showered:  □ Yes □ No
   - Washed genital area:  □ Yes □ No
   - Washed mouth:  □ Yes □ No
   - Washed hands:  □ Yes □ No

7. Pertinent medical history
   a. Date of LMP:  □ Yes □ No
   b. Sexual activity within 72 hrs. of assault? (other than sexual assault)
      - Yes  □ No  □
   c. Contraceptive used at time of assault?  □ Yes □ No
   d. Communicable disease of risk to lab personnel
      - HIV, syphilis, Hepatitis B, etc.:  □ Yes □ No

COMPLETE EVIDENCE COLLECTION STEPS 3, 4, AND 5

(after step 5, obtain appropriate medical specimen from mouth or genital lab testing. Patient may save and bring this additional specimen and evidence for criminal investigation (DO NOT INCLUDE MEDICAL SPECIMENS IN KIT)"

GENERAL EXAM

Trauma should be recorded on the diagrams below which may be used in a criminal proceeding. These include: lacerations, scratches, bruises (detailed size, shape, color), erythema, bites, patterned injury, burns, fractures and stains/foreign materials on body, swelling, tenderness. Be sure to note even the most minor signs of trauma. In children: include anogenital or behavioral symptoms. Note general appearance.

Note abnormalities in diagram and/or text.

TEXT

(While copy to hospital; yellow copy in kit)
GENITAL AND ANAL EXAM

- For children: Take time to establish rapport and proceed slowly. Extent of examination, including physical as well as specimens, must be decided on a case-by-case basis by the attending health professionals. If the examination would be too physically or emotionally traumatic for the child, then specimens may need to be obtained by gently using a moist swab on the external genital and anal areas.
- Note all discharge, stains, and foreign materials. Note any bleeding.
- Draw shape of hymen in diagrams, if trauma is found.
- Use sterile, non-hysteriastic water only for lubrication of speculum.
- Record all acute trauma (lacerations, scratches, bruises [detail size, location and description], erythema, bites, patterned injury, burns, swelling, tenderness) and chronic trauma (scarring, itching, pigmented changes) on diagrams below.

Vulva and Anus
- Position during exam
- Hymen
- Ileocecal
- Pubic symphysis
- Abdomen/massage?
- If yes, outward traction
- Lateral-cloacal reposition

• Circumcised? Yes ☐ No ☐

Fenw/Schartum and Anus

INTERNAL EXAM

- As noted above, most children require only vulvar specimens without speculum or bimanual exams. Please individualize.

Vagina and Cervix
- Note laceration on diagram and text.

(White copy to hospital; yellow copy in kit)
COMPLETE EVIDENCE COLLECTION STEP 6

After Step 5, check signature medical specimen from the registration area or check for clinical lab testing. DO NOT INCLUDE MEDICAL SPECIMEN IN KIT.

ANAL EXAM

- Digital or microscopic exam at discretion of physician.
- Note abnormalities on above diagrams and/or text.

COMPLETE EVIDENCE COLLECTION STEPS 7 - 13

Photographs — may be taken and released for evidentiary purposes with the written consent of the patient if 13 years of age or older or the patient’s parent or guardian if the patient is under 13 years of age. If the patient’s guardian is not immediately available, or refuses release, photographs may be taken and released to the law enforcement agency and state’s attorney by the investigating law enforcement officer under Department of Children and Family Services. Photos should be taken using an adjustable focus camera with flash or other adjustable lighting which will allow both close-up views and longer overall views. Blemishes should be photographed using a scale on the view in order to facilitate accurate measurements during comparisons with known definition of a suspect.

SUMMARY OF FINDINGS:

SIGNATURES

(Examinating Health Professional Signature) (date) (Assisting Health Professional Signature) (date)

(Please print) (Please print)

FINAL INSTRUCTIONS

1. Make sure all information requested on all sample envelopes and bag labels have been filled out completely.
2. Separate all forms (Steps 1, 2, and 14) and follow distribution requirements on the bottom of each form.
3. With the exception of the large sealed and labeled clothing bags and any urine sample collected, return all evidence envelopes/bags to the kit box. Discard unused materials.
4. Initial and affix red evidence tape on box top.
5. Fill out information required on kit box top.
6. Hand the sealed kit and sealed bags to investigating officer.

NOTE: If officer is not present at this time, place sealed kit and sealed bags in secure area at room temperature, and hold for pickup by investigating officer.

COMPLETE EVIDENCE COLLECTION STEP 15

(White copy to hospital; yellow copy in kit)
Dear Pro Se Respondent,

We are sending you this letter because you are not represented by an attorney but are representing yourself, *pro se*. If you hire a lawyer provide this letter to them, and we will communicate directly and only with them.

Please be aware of the following:

- We represent our client in the Civil No Contact Order litigation against you;
- We also represent our client as she/he seeks to have the criminal justice system respond to the acts you engaged in;
  - Although we are assisting our client in interacting with law enforcement, we have no control over the criminal process;
  - We have no authority to speak for police or prosecutors;
- We represent our client’s interests and are not disinterested parties.
- Any information disclosed during civil litigation can be obtained by the criminal justice system, should they initiate any investigation or prosecution.

To discuss the civil case pending against you, you may contact our office at (xxx) xxx-xxxx. Please remember that we are not available to provide you with legal advice. As Petitioner’s counsel, our goals and obligations are dictated by our client’s interests.

Yours truly,

Counsel for Petitioner
Petitioner-appellant J.M. appeals the trial court's denial of her petition for an order of protection under the Civil No Contact Order Act (Act) (740 ILCS 22/101 et seq. (West 2008)) after she was allegedly sexually assaulted by respondent. She contends that: (1) the trial court erred by disproportionally allocating the burden of proof to petitioner, and (2) the court erred in interpreting the Act to require corroborating evidence of sexual penetration, petitioner to testify to her own opinion that she was unable to consent to sexual penetration, and the court to presume petitioner's consent. We reverse.

Petitioner filed for and was granted an emergency petition for a no-contact order under section 214 of the Act (740 ILCS 22/214 (West 2008)) on March 28, 2008. Petitioner then sought a plenary no-contact order under section 215 of the Act (740 ILCS 22/215 (West 2008)).

At the hearing on the plenary order Julian Portillo testified that he was a student at University of Chicago Law School and a friend of petitioner. At 4 p.m. on Friday, February 15, 2008, Portillo and petitioner went to a social event hosted at the law school called "Wine Mess." Portillo had challenged petitioner to a drinking contest. Portillo, petitioner, respondent Mark Briseno, Ben Burry, Derrick Doller and David Cheng drank and played foosball until the Wine Mess finished at 6 p.m. Portillo estimated that he and petitioner each drank about eight bottles of beer during the event. The group left and went to the graduate student pub around 6:20 p.m. Respondent walked with the group to the pub but left and went to the "graduate students' speed drinking." Portillo, petitioner, Burry, Doller and Cheng stayed at the pub and continued drinking until about 10 p.m. Portillo estimated he consumed about 18 drinks throughout the night. When Burry, Cheng, petitioner and Portillo left the pub, petitioner "seemed very drunk" and was acting "erratically." Portillo told Burry he did not think petitioner should be drinking anymore. Petitioner, Cheng and Portillo left the pub and began to walk toward the law school. Burry did not go with the group toward the law school.

On the walk back petitioner fell on the ground twice and cut her hands. Portillo, Cheng and petitioner stopped
at the law school to get coffee. Petitioner went into the women's bathroom and was screaming "that she wanted to go home." Portillo and Cheng said they would take her home, but then petitioner said she did not want to leave. Petitioner was crying and screaming and "looked very frazzled compared to the way she normally looked." Portillo answered a phone call and, when he finished, saw petitioner leaving with respondent. When Portillo left the law school he saw petitioner get into respondent's car.

Portillo testified that he spoke to respondent on the phone the next day and told him not to call petitioner anymore because "he had been calling and bothering her."

David Cheng testified consistently with Portillo. He explained that the drinking game he played with petitioner and Portillo involved drinking three beers in the first hour and two beers each subsequent hour. Cheng told petitioner he would try to "stop her at 10 beers" to make sure she got home safe. He had at least seven 12-ounce beers. He said that Portillo and petitioner "always had the same amount of beers."

After the Wine Mess Cheng said petitioner was "fairly inebriated." A group of people went to the graduate student pub. Cheng had about 9 or 10 more drinks at the pub but stopped because he did not "want to lose complete control." Petitioner and Portillo continued to drink beyond that amount. He thought petitioner had about 12 drinks. Cheng said his memory of the events that happened at the pub was intact and he "could definitely remember everything."

Around 10 p.m. Cheng and Portillo decided to walk petitioner home. Petitioner was acting angry because she did not want to be taken home and "was cursing a lot and just completely like a different person." On the walk home they decided to stop at the law school so petitioner could use the bathroom. Petitioner fell down at least once in the street and there was blood on her palms. At the law school petitioner went into the bathroom and refused to leave. Cheng felt frustrated with petitioner's behavior. She was crying and "just saying stuff that really didn't make sense at all; and she was still drunk." Respondent came in and asked where petitioner was and then went into the bathroom to get her. Petitioner left voluntarily with respondent.

Cheng spoke with petitioner on an online instant messenger system ("G-chat") the next day at 4 p.m. He was frustrated with how she acted the night before, so he initially ignored her. She then called about eight times within an hour, and he finally picked up. Petitioner sounded very distraught and was excessively crying. She said she "couldn't remember anything" and asked Cheng what happened. At the end of the conversation, petitioner said "I think I got raped. No, I know I got raped." Cheng told petitioner she needed to go to the hospital to get tested for sexually transmitted diseases and possibly report the case.

Cheng testified that later that evening, he and their mutual friend Alexandra Levy picked up petitioner and went to the hospital. Petitioner looked confused and distraught. They went to the University of Chicago Hospital and were there "all night."

Levy testified that she called petitioner at 6 p.m. on Saturday, February 16, 2008. Something sounded "off" about petitioner's voice and petitioner told her she was going to the "Rape Crisis Center." Levy called the "Dean on Call" at the University of Chicago and the dean called petitioner and told her to go to the hospital. Levy picked up Cheng, then picked up petitioner and took her to the hospital where the dean met them. The dean then "took over" and petitioner was examined by doctors while Levy was questioned by the police. After petitioner's exam, Levy went in to see how she was doing and saw bruises on her legs. On petitioner's right calf there was a bruise that looked like a handprint.

Petitioner testified that she met respondent in a law school class and they were seated next to each other in two classes. They did not socialize outside of class.

Portillo invited her to go "beer-for-beer" at the February 15, 2008, Wine Mess. Cheng was also invited too, and petitioner trusted him and Portillo. Petitioner said she weighed about 100 pounds during the time in question and had not eaten that day. She met Portillo and Cheng at the Wine Mess around 4:15 p.m. and they started drinking beer and playing foosball. Respondent was "lurking around the table area" but petitioner did not speak to him. Petitioner said she
Petitioner woke up the next morning naked, confused and scared. She noticed that the bed sheets were soaked in urine and that respondent was lying next to her in bed. She told respondent that he "shouldn't be there" and he left. Petitioner lay on the bed for a very long time, curled into a ball and shaking. After a couple of hours she went into [*9] the shower with her clothes on and sat in the bathtub with the water running. She got out of the bathtub and changed. She noticed a handwritten note on her desk. The note reads:

"Hey, I am sorry about last night. I wasn't sure what you thought but I guess I just figured it out this morning. Just so you know, I wasn't trying to make a move or anything like that. I do really like you. I hope things are not weird between us. I don't know what to say, except sorry for making things weird. I probably just took the messages I wanted to receive from you. I hope we can at least still be friends. *** I do like you. I guess that's out and won't make things much weirder. Just so you know. Not in a creepy way but a respectful way and really am sorry if things went past where you were comfortable. [Respondent.]

[***91]  [*783] Petitioner did not call the police because she was in a "state of shock" and did not want "strange people" in her apartment when she was already "just so terrified." She knew she "needed to tell someone [she] was close with." She tried to contact Cheng at 3 p.m. on G-chat and on the phone, but he ignored her. She tried to find a condom wrapper because she remembered "thinking that [respondent] [**10] had put on a condom" and was hoping to find one but could not. She did not see either of the beer bottles from the night before. She kept two condoms in a drawer next to her bed, and both were still there. She looked at the call log on her cell phone and saw she had received a call from respondent at around 11 p.m. the previous day. She noticed that all the text messages in her phone had been deleted and did not know how that had happened.

Eventually Cheng called petitioner back and she told him what happened. Later on Levy called petitioner and
petitioner told Levy she needed to find a rape crisis center. Levy agreed to help. Petitioner also spoke to Bonnie Kanter, the sexual abuse counselor on call at the University of Chicago. Kanter told her to go to the University of Chicago Hospital. Levy said she would pick up petitioner and take her there.

Petitioner then got a text message from Ben Burry, saying he was on his way to pick her up to go to dinner. She had forgotten that they had made plans to go to dinner the night before and told Burry it was ok to pick her up. While they were at dinner she did not tell Burry what had happened with respondent the night before because she did not want "more people being upset." When she tried eating, she felt sick and went into the bathroom to throw up, so Burry took her back to her apartment.

Levy picked petitioner up and took her to the hospital that night. The police came and interviewed Levy, petitioner and Cheng. Petitioner underwent extensive and invasive medical examinations. She was given medication to prevent pregnancy, sexual transmitted diseases and HIV. The medications made her nauseous and she lost about 10 pounds in the weeks after. One of the nurses said that a bruise on her calf looked like a "grab mark." The police officers took pictures of the bruises on petitioner's legs. She told the police she wanted to file criminal charges against respondent.

Around 4 a.m. on Sunday, February 17, 2008, respondent repeatedly called and texted petitioner. The text messages said: "I feel terrible about what happened the other night; I don't want you to hate me" and "I'm sorry for what happened." She texted respondent "please don't contact me again." Petitioner ignored respondent's phone calls.

Petitioner told Kanter she did not want to go to class if she had to sit next to respondent, and respondent's seat was moved in the [**12] class. She was afraid to see respondent in the law school and would call Levy to make sure respondent was not around.

On cross-examination petitioner said she did not remember who she spoke to at the Wine Mess or graduate pub, falling down in the street, why she was upset when she was in the law school bathroom, where the "strange place" was she was brought to and whether or not she told the police she went out to eat with Burry. Petitioner admitted that she did not mention going to eat with Burry at her deposition and that she had told respondent's attorney she did not leave her apartment on Saturday, February 16, 2008, until Levy picked her up to go to the hospital. She said that some of [***92] [*784] the bruises on her legs had been there before the night in question.

Detective George Gallagher testified that he interviewed petitioner, Levy and Cheng at the hospital in the early morning of February 17, 2008. Gallagher found petitioner to be "credible" during his interview with her. He went to petitioner's apartment and an evidence technician took bed sheets and the note respondent had left. A copy of the note was entered into evidence. A rape kit administered at the hospital was processed by the [**13] Illinois State Police and the vaginal swabs came back positive for the presence of semen.

Officer Prazmowski testified that petitioner identified respondent as the person who sexually assaulted her and she had told respondent "I don't want to do this. I go to church now."

Benjamin Burry testified he went to the Wine Mess by himself and met up with several other law students. He saw petitioner with Portillo and Cheng and said they were having a drinking competition. He also saw respondent but did not talk to him. Around 6:30 p.m. Burry left with petitioner, Portillo and Cheng and decided to go to a pub on campus. While they were standing outside the Wine Mess, petitioner, Portillo, Cheng and Burry exchanged phone numbers with respondent, who was going to another event. They all agreed to meet up later.

Burry drove petitioner, Portillo and Cheng to the pub. At the pub he saw petitioner drinking continuously from the time she arrived until she left. He estimated she had about seven or eight beers at the Wine Mess and about three or four more at the pub. Petitioner, Portillo, [**14] Cheng and Burry left the pub around 9:30 p.m. Petitioner looked very intoxicated. Burry did not go with
them to the law school because he had another engagement. He invited them to come with him but Portillo and Cheng said they needed to take petitioner home because they had promised her to do so.

When Burry woke up the next morning, he saw that petitioner had sent him a text message in the early morning between 2 and 4 a.m. The text message communicated that she was "at the bar," did not know where she was and "there was some sort of shady, unscrupulous guy at the bar."

Burry said that he had not made plans to go to dinner with petitioner that night and that it was an "impromptu invitation." When they were at dinner petitioner looked like she had something on her mind and was introverted. She did not seem interested in talking, did not eat any of her food and spent most of the time in the bathroom.

The parties rested and gave closing arguments. Petitioner's attorney said that all that needed to be proven for the civil no-contact order to issue is "that petitioner has been a victim of a single act of nonconsensual sexual conduct or nonconsensual sexual penetration" and that "the penetration [**15] happened without her freely given consent, her freely given agreement." Counsel said that the court could find two bases for issuing the order: (1) petitioner's "account has not been rebutted by any alternative description or explanation of what happened" and/or (2) "that petitioner was rendered incapable of giving freely given agreement to sexual intercourse because of her highly intoxicated state."

Respondent's attorney argued that there was not "enough here to show that there was a lack of consent."

The court denied petitioner's request for a plenary no-contact order. The court [***993] [**16] looked at the pictures of the bruises on petitioner's legs but said: "I don't see a handprint and I don't know how those bruises got there and I didn't have any medical testimony. And I know that there's medical records, and I didn't have any of it." The court criticized Officer Gallagher's testimony on the rape kit because he did not testify to whose semen was recovered, there was no chain of custody, it was hearsay and he was not qualified as an expert. The court found the note left by respondent "very equivocal" and did not "take it as an admission of rape." The court observed that "petitioner didn't call the police" or "leave a voice mail message for her friends." The court said "I know you didn't want this to happen" but found that it was "more likely than not that [petitioner] consented." The court denied the petition for a plenary order and terminated the emergency civil no-contact order.

On appeal, petitioner contends that the circuit court erred by ignoring the statute's standard of proof and erroneously construing the Act. Specifically, petitioner argues that the court's interpretation of the Act was erroneous because: (1) the statute does not require corroborating evidence of penetration; (2) the statute does not require the victim to testify [**17] that she was too drunk to consent to establish legal incapacity; and (3) the statute does not allow the court to presume consent.

We first note that the parties disagree on the standard of review. Petitioner contends we should review the trial court's ruling de novo because this case involves the interpretation of the Act. See Wade v. City of North Chicago Police Pension Board, 226 Ill. 2d 485, 877 N.E.2d 1101, 315 Ill. Dec. 772 (2007). Respondent contends that the trial court's ruling should be reviewed under a manifest weight of the evidence standard because the facts are in dispute. See In re Estate of Savio, 388 Ill. App. 3d 242, 246-47, 902 N.E.2d 1113, 327 Ill. Dec. 727 (2009).

Here the trial court correctly identified that "[t]he issue is whether non-consensual sexual penetration occurred in the early morning hours of February 16th, 2008." The trial court found the evidence showed petitioner consented to the sexual penetration. Contrary to petitioner's argument, the issue before this court does not involve statutory interpretation. Rather, the issue is
whether the trial court correctly found the facts show by a preponderance of the evidence that petitioner was not entitled to a plenary civil no-contact order. Because [*18] this case involves the application of the Act to disputed facts, we agree with respondent that we should review the trial court's finding under a manifest weight of the evidence standard. See In re Estate of Savio, 388 Ill. App. 3d at 246-47. "A finding is against the manifest weight of the evidence when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence." Vancura v. Katris, 238 Ill. 2d 352, 385-86, 939 N.E.2d 328, 345 Ill. Dec. 485 (2010) (citing Eychaner v. Gross, 202 Ill. 2d 228, 252, 779 N.E.2d 1115, 269 Ill. Dec. 80 (2002)).

[***994] [**786] The purpose of the Act is to provide a civil remedy to protect victims of sexual assault from future interactions with the offender. 740 ILCS 22/102 (West 2008). A petition under the Act may be filed "by any person who is a victim of non-consensual sexual conduct or nonconsensual sexual penetration, including a single incident of non-consensual sexual conduct or non-consensual sexual penetration." 740 ILCS 22/201(1) (West 2008). "Sexual penetration' means any contact, however slight, between the sex organ or anus of one person by an object, the sex organ, mouth or anus of another person." 740 ILCS 22/103 (West 2008). Evidence [**19] of the "emission of semen is not required to prove sexual penetration" and the court "may not require physical injury on the person of the victim" in determining whether to issue a civil no-contact order. 740 ILCS 22/103, 213(a) (West 2008). The Act provides that, if "the court finds that the petitioner has been a victim of non-consensual sexual conduct or non-consensual sexual penetration, a civil no[-]contact order shall issue." 740 ILCS 22/213 (West 2008).


Here we find petitioner proved by a preponderance of the evidence that she was the victim of nonconsensual sexual penetration under the Act. On Friday, February 15, 2008, while petitioner was extremely intoxicated in the law school bathroom, respondent arrived, went into the bathroom and left with petitioner. The call log on petitioner's phone showed that petitioner answered a call from respondent around 11 p.m. Petitioner remembers respondent [**20] taking her by the arm and leading her out.

Petitioner was taken to a "strange place" and remembers respondent giving her two beers. Her next memory is being in her bed at her apartment with respondent vaginally penetrating her. Petitioner said she felt "petrified" and told respondent "that this was not something I wanted to do." She testified that she tried to push respondent off of her but was so intoxicated she could not "really move much." When petitioner awoke the next morning to find respondent lying next to her, she immediately told him he "shouldn't be there" and he left. This aspect of petitioner's testimony was unimpeached and unrebutted. See Bazydlo v. Volant, 164 Ill. 2d 207, 215, 647 N.E.2d 273, 207 Ill. Dec. 311 (1995) ("the fact finder may not arbitrarily or capriciously reject unimpeached testimony").

We believe that if petitioner "didn't want [the sexual assault] to happen," told respondent the same and tried to push him off of her, she did not consent to the sexual penetration. See 740 ILCS 22/103 (West 2008) ("[n]on-consensual' means a lack of freely given agreement"); People v. Bowen, 241 Ill. App. 3d 608, 617-18, 609 N.E.2d 346, 182 Ill. Dec. 43 (1993) (where the facts "present circumstances affording [**21] a person of ordinary intelligence a reasonable opportunity to know the victim did not consent to have sexual relations" there is no consent).

The note left by respondent and the text messages he sent her after the incident further corroborate petitioner's testimony and reflect respondent's guilty conscience. In the note, respondent wrote: "Hey, I am sorry about last night," "sorry for making things weird" and "really am sorry if things went past where you were comfortable." In the early morning of Sunday, [***995] [**787] February 17, 2008, respondent texted petitioner: "I feel terrible about what happened the other night; I don't want you to hate me" and "I'm sorry for what happened." While the trial judge found the note "very equivocal," when viewed with the facts in their entirety, we believe
the note and text messages are probative that the sexual penetration was not consensual. We also note that respondent did not testify at trial, and we may assume his testimony would have been unfavorable to his case. See Nasrallah v. Davilla, 326 Ill. App. 3d 1036, 1044, 762 N.E.2d 25, 260 Ill. Dec. 759 (2001) (the trier of fact may draw negative inferences against a party that refuses to testify).

There was no unreasonable delay in petitioner's outcry. Petitioner testified that she did not call the police on the morning in question because she was in a "state of shock" and did not want "strange people" in her apartment when she was already "just so terrified." See People v. Bowen, 241 Ill. App. 3d at 620 ("a delay in reporting incidents of sexual assault may be reasonable where the victim's silence is attributed to fear, shame, guilt and embarrassment"). Petitioner knew she "needed to tell someone [she] was close with" and later called Cheng to tell him "I know I got raped."

The events of that night further support petitioner. At the hospital petitioner underwent an extensive and invasive medical examination. She took medications to prevent pregnancy, sexually transmitted diseases and HIV that made her so nauseous she lost 10 pounds in the weeks after. Detective Gallagher testified he found petitioner to be "credible" and that a rape kit administered at the hospital came back positive for the presence of semen.

While a fair amount of evidence was presented showing petitioner's lack of consent, we find no evidence to suggest petitioner expressly or implicitly consented. See Bazydlo, 164 Ill. 2d at 215. The trial court provided no explanation to justify its finding that "it is more likely than not that [petitioner] consented." There was no requirement for petitioner to provide medical evidence of sexual penetration or physical injury. 740 ILCS 22/103, 213(a) (West 2008) (the court "may not require physical injury on the person of the victim" in determining whether to issue a civil no-contact order). Respondent presented no evidence of a preexisting relationship between petitioner and respondent. See 725 ILCS 5/115-7(a) (West 2008) (in criminal prosecutions for sexual assault, evidence concerning the past sexual conduct of the victim may be admissible when offered by the accused to show the victim consented to the sexual conduct). Respondent also presented no motive for petitioner to falsely accuse him of the assault.

Respondent points to relatively minor contradictions in petitioner's testimony to justify the trial court's ruling that petitioner was not credible, such as petitioner's deposition statement that she stayed in her apartment the entire day on February 16, 2008, before going to the hospital. But, given the weight of the evidence presented, we find such minor contradictions inconsequential as to the central issue of whether nonconsensual sexual penetration occurred. See Bowen, 241 Ill. App. 3d at 620 ("minor inconsistencies in the testimony do not, of themselves, create a reasonable doubt as to defendant's conviction").

Having found the evidence sufficient to prove petitioner was the victim of nonconsensual sexual penetration, we need not address petitioner's contention that she was legally unable to give consent due to intoxication.

[***996] [***88] We find that petitioner met her burden to show by a preponderance of the evidence that she was the victim of nonconsensual sexual penetration under the Act. She is entitled to an order of protection under the Act, and the trial court's findings to the contrary were against the manifest weight of the evidence. We remand this cause to the trial court for the issuance of a plenary civil no-contact order against respondent under sections 213 and 215 of the Act. 740 ILCS 22/213, 215 (West 2008).

Reversed and remanded.
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