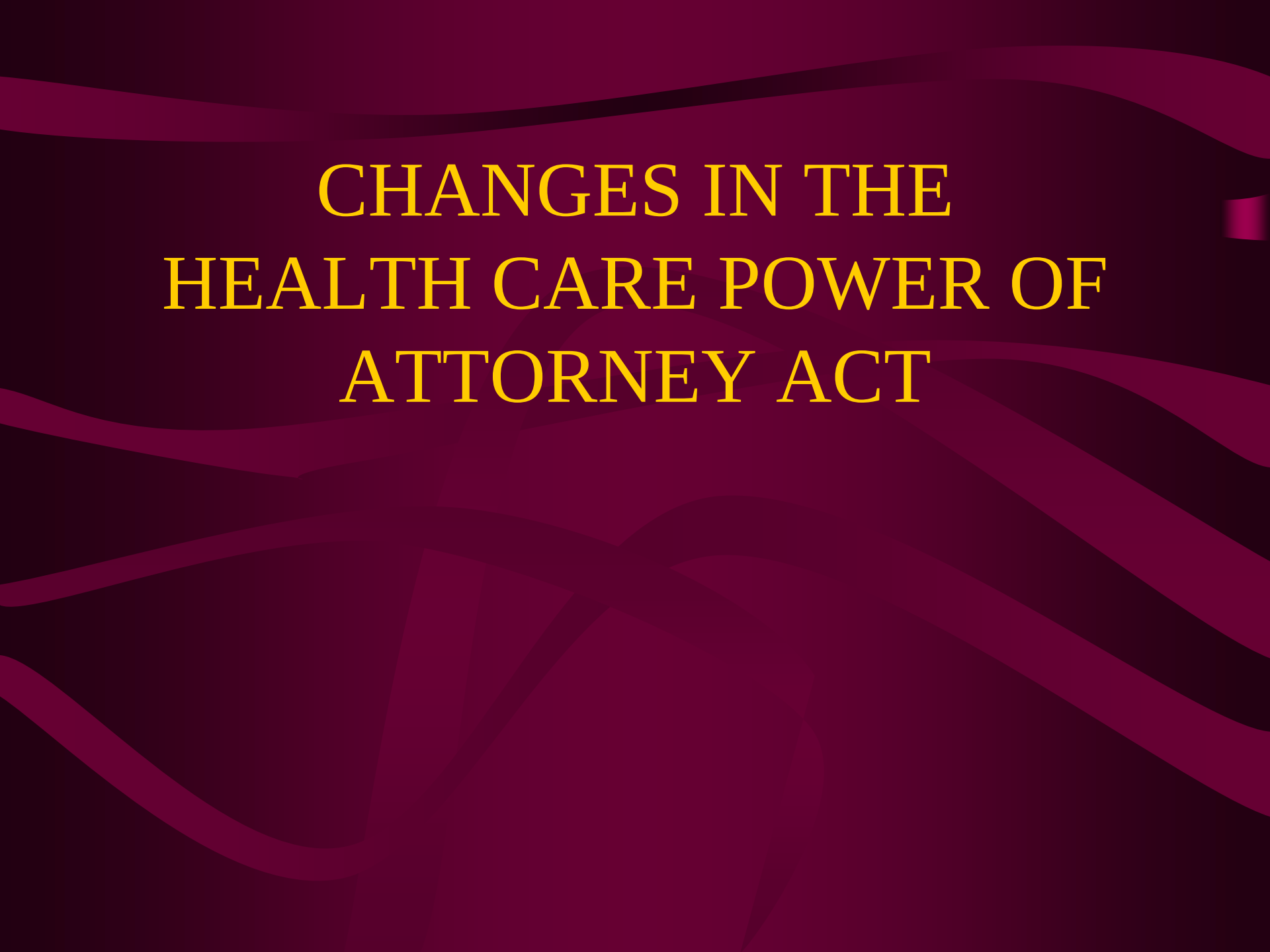


OUR ILLINOIS LEGISLATURE AT WORK: 4 Things You Should Know

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CHANGES IN THE HEALTH CARE POWER OF ATTORNEY ACT

Durable Power of Attorney for Health Care (POA)

- Appoints agent for all health care purposes
 - Unless limited by document
- Physician must comply with agent's decision or transfer care

Durable Power of Attorney for Health Care

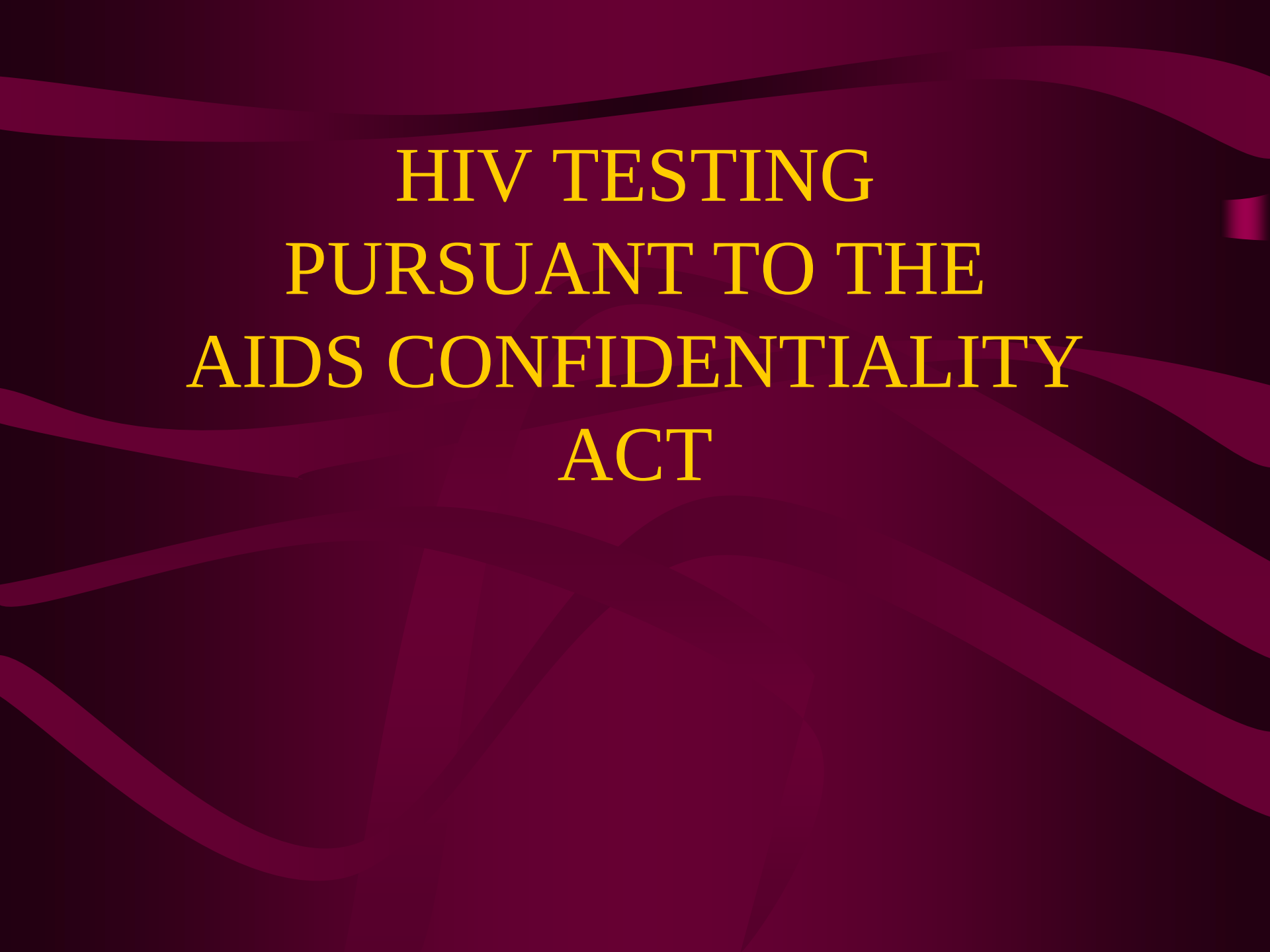
- Revocation
 - Is *still* without regard to patient's mental or physical condition
 - Done by
 - Destroying the document
 - By written revocation by patient or person at patient's direction
 - By orally revoking the document

POA – New Statute

- Still:
 - No co-agents
 - Revoke without regard to capacity
- Now:
 - New POA is not automatic revocation of old POA
 - New restrictions on who can witness

Limitations on Who May Witness a POA

- You cannot witness a POA if you are:
 - The attending physician of the patient
 - A mental health provider of the patient
 - An owner or operator of facility where the principal is a patient or resident
 - A relative of any of the categories above
 - A family member of the patient
 - The named agent or successor agent for health care



HIV TESTING PURSUANT TO THE AIDS CONFIDENTIALITY ACT

Informed Consent

- Voluntary HIV testing may be performed following verbal informed consent. Informed consent is no longer required to be in writing. If verbal informed consent is obtained, the informed consent must be documented by a health care provider in the patient's medical record.

What needs to be documented:

- Pre-test information which can be delivered in writing, verbally, by video, electronic, or other means
 - Meaning of test results including purpose, potential uses, limitations, and procedures
 - Voluntary nature of test and right to withdraw consent
 - Right to anonymous testing and confidentiality
 - If appropriate, availability of additional testing and referrals for further information or counseling

“Opt-out” HIV Testing

- The law allows doctors to perform opt-out testing so long as:
 - The patient is informed that testing will occur unless declined
 - Pre-testing information is provided
 - The patient is given a chance to ask questions and decline testing

Exceptions to Consent and Pre-Test Information Requirements

- In the judgment of the treating physician, testing is medically indicated and there is general consent to treatment
- If a physician determines that exposure is likely to transmit HIV in individual involved in blood or bodily fluid exposure with a health care worker, law enforcement officer, or paramedic
- Individuals charged with certain criminal sexual offenses

Delivery of Test Results

- Consistent with CDC recommendations, but not previously required by Illinois law, health care providers must make a good faith effort to tell patients about positive test results through personal contact
- The health care provider must make a good faith effort to refer individual who tested HIV-positive to counseling and appropriate medical facility for treatment of HIV

Confidentiality and Disclosure of Test Results

- No person may disclose the identity of any person upon whom a test is performed or the results of the test, except to:
 - The subject of the test or legal representative
 - A physician may notify a spouse or legal partner, provided the patient had been given the opportunity to notify the spouse or partner himself

- A person designated in a legally effective release
- An authorized agent of a health care facility or provider authorized to obtain test results, if the agent has a need to know such information
- The Department and local authorities serving a population of over 1,000,000 residents in accordance with rule of reporting provided by State law
- Health care providers or law enforcement officers who may have come in direct skin contact which is of the nature that may transmit HIV

Penalties for Violating the AIDS Confidentiality Act

- A negligent violation of the patient protections of the Act carries a minimum civil damage award of \$2,000
- A intentional or reckless violation of the patient protections of the Act carries a minimum civil damage award of \$10,000
- Reasonable attorney fees

CIVIL UNION STATUTE

- Two persons of the same or opposite gender and at least 18 years of age, may elect to enter into a civil union rather than marriage
- The parties to a civil union are entitled to all of the recognitions and benefits available under Illinois law to spouses, including divorce

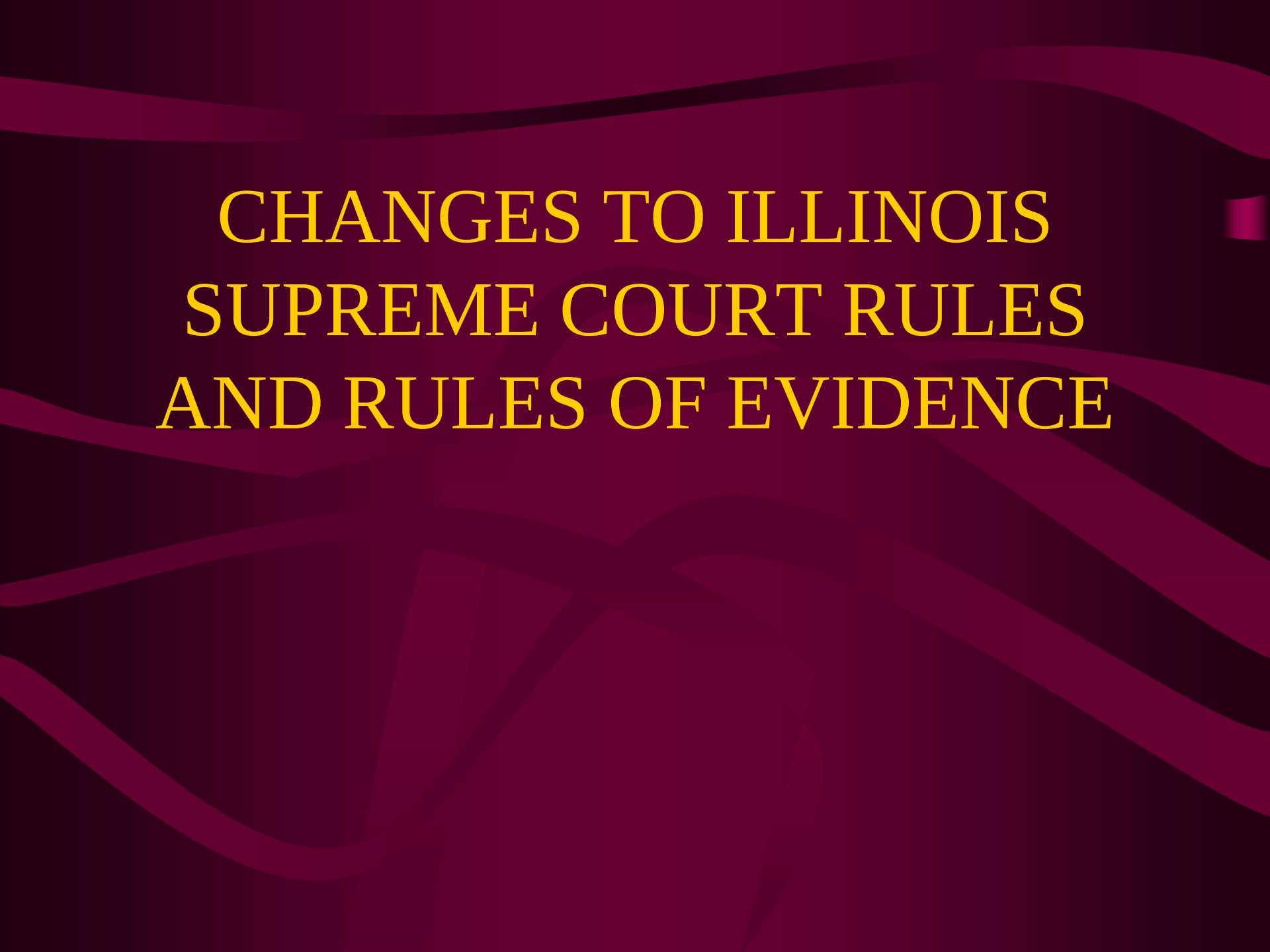
How the Civil Union Statute Applies to Other Acts or Statutes

- Enables parties to a civil union to claim a right or interest wherever the word “spouse” appears in Illinois law, including the right of access to and to make decisions on behalf of the other spouse in a medical context

- AIDS Confidentiality Act
 - A physician may disclose HIV-positive test results to the legal partner of patient who has been given the chance to notify the partner himself and failed to do so.
 - A physician is not required to notify the partner of an HIV-positive patient

- Health Care Surrogate Act
 - Allows for a surrogate decision maker when a patient does not have a health care power of attorney and the patient lacks decisional capacity
 - Hierarchy of decision makers
 - Patient's guardian
 - Patient's spouse which now includes legal partners of a civil union

- Anatomical Gift Act
 - Any person of sound mind and 18 years of age may give all or any part of his body for therapy, transplant, or research
 - If no intended gift has been made prior to death, the following persons may make such a gift in order of priority
 - Decedent's agent under a health care POA
 - Decedent's surrogate in accordance with the Health Care Surrogate Act
 - Guardian of the decedent at the time of death
 - The decedent's spouse which now includes legal partners of a civil union



CHANGES TO ILLINOIS SUPREME COURT RULES AND RULES OF EVIDENCE

Supreme Court Rules 11 and 12

Electronic Service

- Rule 11 – Manner of Serving
 - Parties may consent to e-mail service
 - The use of e-mail service is mandatory if a local circuit adopts mandatory e-filing pursuant to Illinois Supreme Court Electronic Standards.
- Rule 12 – Effective Date of Service
 - Service by e-mail is complete on the first court day following transmission.

Supreme Court Rule 201

General Discovery Provisions

- Asserting Privilege or Work Product Following Disclosure
 - Information inadvertently produced in discovery can be recovered by producing party.
 - Party making claim must notify parties in receipt of information and basis for claim.
 - Each party must return, sequester, or destroy the information.
 - Parties may present information to court under seal for determination of claim.

Supreme Court Rule 604

Appeals from Certain Judgments and Orders

- Appeal From an Order Granting a Motion to Disqualify Defense Counsel
 - Rule now outlines the procedure to be followed when bringing an interlocutory appeal from an order granting a motion to disqualify defense counsel based on a conflict of interest.
 - Procedure set forth in Supreme Court Rule 306(c).

Rule of Evidence 502 - Adopted

Attorney-Client Privilege and Work Product; Limitations on Waiver

- Disclosure made in Illinois Proceeding or to an Illinois office or agency; scope of waiver
 - If the disclosure waives the attorney-client privilege or work-product protection, the waiver extends to undisclosed information only if:
 - waiver is intentional;
 - the disclosed and undisclosed information concerns the same subject matter; and
 - they ought in fairness be considered together.

- Inadvertent disclosure
 - When made in an Illinois proceeding or to an Illinois office or agency, the disclosure does not operate as a waiver in any proceeding if:
 - the disclosure is inadvertent;
 - the holder of the privilege or protection took reasonable steps to prevent; and
 - the holder promptly took reasonable steps to rectify the error.
- Controlling effect of a court order
 - An Illinois court may order that the privilege or protection is not waived by disclosure connected with the litigation pending before the court – in which event the disclosure is not a waiver in any other proceeding.