2024 CASE REPORT

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December 2024

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To the Honorable Members of the General Assembly:

This is the Legislative Reference Bureau's annual review of decisions of the "Federal courts, the Illinois Supreme Court, and the Illinois Appellate Court that affect the interpretation of the Illinois Constitution or statutes," as required by Section 5.05 of the Legislative Reference Bureau Act, 25 ILCS 135/5.05.

The Bureau's attorneys screened all court decisions and prepared the individual case summaries.

Respectfully submitted,

James D. Stivers
Executive Director

INTRODUCTION

This 2024 Case Report contains summaries of recent court decisions and is based on a review, in the summer and fall, of federal court, Illinois Supreme Court, and Illinois Appellate Court decisions published from the summer of 2023 through the summer of 2024.

QUICK GUIDE TO RECENT COURT DECISIONS

BIOMETRIC INFORMATION PRIVACY ACT – HEALTH CARE EMPLOYEES

Health care employees' biometric information that is collected, used, or stored for health care treatment, payment, or operations under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) is excluded from the Biometric Information Privacy Act's protections.

In *Mosby v. Ingalls Memorial Hospital*, 2023 IL 129081, the Illinois Supreme Court was asked to decide the following certified question on interlocutory appeal: does finger-scan information collected by a health care provider from its employees fall within the Biometric Information Privacy Act's exclusion for information collected, used, or stored for healthcare treatment, payment, or operations under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA)? Section 10 of the Biometric Information Privacy Act (740 ILCS 14/10) provides that "[b]iometric identifiers do not include information captured from a patient in a health care setting or information collected, used, or stored for health care treatment, payment, or operations under the federal Health Insurance Portability and Accountability Act of 1996." The plaintiffs, several health care workers whose fingers were scanned to operate machines that dispense medications to patients, argued that the exclusion under Section 10 applied only to patient information. The plaintiffs also argued that, if the General Assembly had intended to exclude health care workers from the Act's protections, it would have done so in a more specific way and would not have "[buried] it in the middle of a definition." Finally, the plaintiffs argued that the General Assembly did not intend to "leave health care employees exposed to a heightened risk of biometric data compromise, with no statutory protection and no avenue for redress when their biometric data is abused." The defendants argued that (i) the General Assembly's use of the disjunctive "or" to separate the provisions concerning patient information from other information collected in a health care setting suggested that the General Assembly intended to create two separate categories of excluded information, (ii) the word "patient" was not used with respect to the second category of information, and (iii) construing the statute as the plaintiff suggested would create a redundancy because the word "information" is deliberately used twice in the exclusion. The court agreed with the defendants, holding that "the nurses' biometric information was collected, used, and stored to access medications and medical supplies for patient health care treatment and was excluded from coverage under the Act because it was information collected, used, or stored for health care treatment, payment, or operations under HIPAA. At the same time, the court also suggested that it was not "construing the language at issue as a broad, categorical exclusion of biometric identifiers taken from health care workers."

BIOMETRIC INFORMATION PRIVACY ACT – POSSESSION AND COLLECTION

A device manufacturer whose products are pre-installed with software that uses facial recognition technology to scan, collect, organize, and store facial geometry data locally onto a user's device does not possess or collect biometric data for purposes of the Act if the manufacturer does not exercise or gain control over the data and if the software technology is not capable of identifying a person.

In *G.T. v. Samsung Electronics America Inc.,* 2024 WL 3520026, the United States District Court was asked to decide whether to dismiss a class action lawsuit alleging that

Samsung's Gallery photo application with facial recognition technology violates subsections (a) and (b) of Section 15 of the Biometric Information Privacy Act (BIPA) (740 ILCS 14/15(a)-(b)). The plaintiffs alleged that Samsung's Gallery photo application collects a user's biometric data by using facial recognition technology to scan pictures and videos stored on the user's Samsung smartphone or tablet to create a "face template" of each pictured face and then groups together photos that have images of persons with similar face templates. The plaintiffs also alleged that Samsung pre-installs the application on all Samsung smartphones and tablets and neither informs consumers of the application's facial recognition features nor permits consumers to disable those features. Subsection (a) of Section 15 of the Act provides that "[a] private entity in possession of biometric identifiers or biometric information must develop a written policy, made available to the public, establishing a retention schedule and guidelines for permantently destroying biometric identifers and biometric information when the initial purpose of collecting or obtaining such identifiers or information has been satisfied or within 3 years of the individual's last interaction with the private entity, whichever comes first." Subsection (b) of Section 15 provides that "[n]o private entity may collect . . . or otherwise obtain a person's or a customer's biometric identifier or biometric information, unless it first [makes certain disclosures and obtains the person's or customer's written consent]." The plaintiffs argued that Samsung's control over the design and installation of the application enables Samsung to possess and collect biometric data in violation of BIPA. Samsung argued that the application does not enable Samsung to "possess" or "collect" biometric data because all data generated from the application is stored locally on the user's electronic device and is never accessed by Samsung. Moreover, Samsung argued that the application does not generate "biometric identifiers" or "biometric information" as provided in BIPA regulations because the data generated is "only capable of recognizing faces" and cannot be used to identify any individual. The court agreed with Samsung, finding that the plaintiffs failed to sufficiently allege that Samsung possesses or collects, via the application, biometric data that is subject to BIPA. The court reasoned that Samsung's control over the design and installation of the application and its facial recognition technology does not automatically give Samsung possession of any data that is generated by the application and stored locally on a user's electronic device. Although the court noted that the term "possession" is not defined under BIPA, the court relied on the term's "popularly understood meaning" and found that, for purposes of subsection (a) of Section 15, "possession occurs when someone exercises any form of control over the [biometric] data or held the data at his [or her] disposal." Accordingly, the court found that "the salient inquiry for determining possession under Section 15(a) is whether the entity exercised control over the Biometrics, not whether it exercised control over the technology generating the Biometrics." Since the plaintiffs did not allege that Samsung received or had access to the data generated by its application, the court held that the plaintiffs' subsection (a) claim lacked merit. The court likewise dismissed the plaintiffs' subsection (b) claim that Samsung collects biometric data. The court found that the plaintiffs were erroneously "conflat[ing] technology with biometrics [when in fact] Section 15(b) is concerned with private entities collecting, capturing, or obtaining Biometrics, not creating technology." Relying on the popularly understood meaning of "collect," the court found that, to bring forth a proper claim under subsection (b) of Section 15, the plaintiffs needed to allege that Samsung "received or took an 'active step' in gaining control over their Biometrics." The court likewise found that the plaintiffs did not sufficiently allege that the data generated from Samsung's application constitutes biometric identifiers or biometric information. Based on BIPA's definitions of those terms, the court found that BIPA covers only those retina or iris scans, fingerprints, voiceprints, or scans of hand or face geometry that are capable of identifying an individual. According to the court, the plaintiffs did not allege that Samsung's photo application is capable of identifying a person's identity.

Rather, the plaintiffs alleged that "the [application] groups unidentified faces together, and it is the device user who [has the option to] add names to the faces." The court concluded that such an allegation was insufficient to support the plaintiffs' BIPA claims.

CODE OF CIVIL PROCEDURE – CERTIFICATES OF INNOCENCE

A petitioner with a juvenile adjudication may not receive a certificate of innocence under the Code.

In *In re T.C., D.E., M.W., and C.J.*, 2024 IL App (1st) 221880, the Illinois Appellate Court was asked to decide whether the circuit court erred in holding that the petitioners could not receive certificates of innocence because juvenile adjudications are not criminal convictions within the meaning of the applicable provisions of the Code of Civil Procedure (735 ILCS 5/1-101 *et seq.*). Section 2-702 of the Code of Civil Procedure (735 ILCS 5/2-702) provides that, to receive a certificate of innocence, petitioners must show that they were "convicted of one or more felonies in Illinois." The petitioner argued that, because juvenile adjudications are considered criminal convictions in certain circumstances, juvenile adjudications should be considered criminal convictions for the purposes of granting a certificate of innocence in order "to further the stated purposes of the Juvenile Court Act [of 1987] and the [Code of Civil Procedure]." The petitioners also argued that excluding juvenile adjudications from the certificate of innocence statute violates the Equal Protection Clauses of the Illinois and United States Constitutions (U.S. CONST. AMEND. XIV; ILL. CONST. art I, §2). The court ruled against the petitioners, holding that juvenile adjudications are not criminal convictions under Section 2-702 of the Code of Civil Procedure because Section 2-702 does not expressly state that juvenile adjudications are criminal convictions. The court also reasoned that, because the Juvenile Court Act of 1987 states that "[a] juvenile adjudication shall never be considered a conviction," a juvenile adjudication may be considered a conviction only when the General Assembly expressly includes juvenile adjudications. The court noted that the General Assembly has explicitly chosen to include juvenile adjudications within the definition of convictions in some statutes but not in others. In the court's view, the lack of such an explicit inclusion in Section 2-702 supports the argument that the General Assembly did not intend for juvenile adjudications to be considered convictions for the purposes of that Section. The court also rejected the petitioners' equal protection argument on the grounds that juveniles are not similarly situated to adult offenders.

CODE OF CIVIL PROCEDURE – SUITS AGAINST DECEASED PERSONS

The Code allows a special representative to be appointed within 2 years after expiration of the original statute of limitations if an estate is not opened for the decedent, regardless of whether the person seeking appointment of the special representative was aware of the decedent's death before filing suit against the decedent.

In *Lichter v. Carroll*, 2023 IL 128468, the Illinois Supreme Court was asked to decide whether the appellate court erred in reversing the circuit court's dismissal of the plaintiff's personal injury claim against a deceased defendant. At the time the action was filed, an estate had not been opened for the defendant, and the plaintiff was unaware that the defendant had died. The plaintiff subsequently filed a motion to appoint a special representative and an amended complaint naming the special representative as a defendant. The defendant filed a motion to dismiss, arguing that the action was time barred and that

the plaintiff never moved to appoint a personal representative under Section 13-209 of the Code of Civil Procedure (735 ILCS 5/13-209). The circuit court granted the defendant's motion to dismiss with prejudice, but the Illinois Appellate Court reversed that dismissal. Subsection (b) of Section 13-209 of the Code of Civil Procedure provides that "[i]f a person against whom an action may be brought dies before the expiration of the time limited for the commencement thereof, and the cause of action survives, and is not otherwise barred: (1) an action may be commenced against his or her personal representative after the expiration of the time limited for the commencement of the action, and within 6 months after the person's death; (2) if no petition has been filed for letters of office for the deceased's estate, the court, upon the motion of a person entitled to bring an action . . . may appoint a special representative for the deceased party for the purposes of defending the action." Subsection (c) of that Section further provides that "[i]f a party commences an action against a deceased person whose death is unknown to the party before the expiration of the time limited for the commencement thereof, and the cause of action survives, and is not otherwise barred, the action may be commenced against the deceased person's personal representative . . . if [certain terms and conditions] are met." Subsection (c) also provides that "[in] no event can a party commence an action under this subsection (c) unless a personal representative is appointed and an amended complaint is filed within 2 years of the time limited for the commencement of the original action." The plaintiff argued that subdivision (b)(2) of Section 13-209 applied to this case, regardless of whether the plaintiff was aware of the defendant's death at the time of the filing, because a personal representative had not been appointed for the decedent's estate. The defendant argued that, because the plaintiff learned of the decedent's death after the statute of limitations expired, subsection (c) of Section 13-209 applied. The court agreed with the plaintiff, holding that there is nothing in the language of subdivision (b)(2) that suggests that subdivision (b)(2) applies only to situations where the plaintiff is aware of the defendant's death at the time the action is filed. The court reasoned that the General Assembly provided for an additional two years to file the amended complaint after learning of the defendant's death because subdivision (c)(4) also provided for an additional two years. The court also reasoned that the purpose of subdivision (b)(2) was to "create a mechanism that allows the plaintiff to streamline the process and avoid the time and costs of opening an estate in the probate court." The dissent reasoned that, because the General Assembly added subdivision (b)(2) to an existing subsection (b), the entire Section must be taken as a whole, meaning that the action to which subdivision (b)(2) refers must be the action that is allowed after expiration of the statute of limitations and within six months of the decedent's death. Therefore, in the dissent's view, subdivision (b)(2) "simply cannot be read as standing separate and apart."

CODE OF CRIMINAL PROCEDURE OF 1963 – ABANDONMENT OF MOTION

A motion for substitution of judge brought in the trial court is subject to the common-law rule of abandonment or waiver.

In *People v. Brusaw*, 2023 IL 128474, the Illinois Supreme Court was asked to determine whether the appellate court erred in determining that a motion for substitution of judge filed *pro se* in the trial court but never ruled upon is not presumed to be abandoned or waived by the movant. Subsection (a) of Section 114-5 of the Code of Criminal Procedure of 1963 (725 ILCS 5/114-5(a)) provides that, "[w]ithin 10 days after a cause involving only one defendant has been placed on the trial call of a judge the defendant may move the court in writing for a substitution of that judge on the ground that such judge is so prejudiced against him that he cannot receive a fair trial. Upon the filing of such a motion the court shall proceed no further in the cause but shall transfer it to another judge not named in the motion." The defendant argued that the common-law rule of abandonment

should not apply to a Section 114-5 motion for substitution of judge because those motions are self-executing. In other words, the trial court's only task is to transfer the case to another judge. The State argued that a Section 114-5 motion for substitution of judge should be subject to the rule of abandonment or waiver because the defendant is aware of his own motions. The State further argued that a motion for substitution of judge is not self-executing because it still requires a trial court to make several judicial determinations under the statute, including whether the motion is timely and whether the motion contains an allegation that the trial judge is prejudiced against the defendant. The court agreed with the State, holding that motions for substitution of judge brought under Section 114-5 are subject to the common-law rule of abandonment or waiver. The court reasoned that a trial court is performing more than a clerical function when it reviews whether a motion for substation of judge complies with the requirements set forth in Section 114-5. Since the motion requires a judicial evaluation and a ruling before it may be granted or denied, it is not a purely self-executing action and, therefore, is not exempt from the common-law rule of abandonment or waiver. The court also reasoned that, if motions for substitution of judge were exempt from the rule of abandonment or waiver, a defendant could deliberately build error into the record by knowingly allowing the motion for substitution to remain unaddressed and raising the absence of a ruling on appeal, potentially resulting in a new trial for the defendant even if the defendant sought a trial before the same judge.

CODE OF CRIMINAL PROCEDURE OF 1963 – ADMONISHMENTS IN ABSENTIA

The Code requires a trial court to admonish the defendant that the defendant's failure to appear may result in a waiver of the defendant's right to confront witnesses.

In *People v. Hietschold*, 2024 IL App (2d) 230047, the Illinois Appellate Court was asked to decide whether the trial court failed to comply with its statutory obligation to orally advise a criminal defendant of the consequences of the defendant's failure to appear in court when the trial court advised the defendant that the trial could proceed in the defendant's absence but did not specifically advise the defendant that failure to appear would result in a waiver of his right to confront witnesses. Subsection (e) of Section 113-4 of the Code of Criminal Procedure of 1963 (725 ILCS 5/113-4(e)) provides that "[i]f a defendant pleads not guilty, the court shall advise him at that time or at any later court date on which he is present that if he escapes from custody or is released on bond and fails to appear in court when required by the court that his failure to appear would constitute a waiver of his right to confront the witnesses against him and trial could proceed in his absence." The defendant argued that the defendant should not have been tried *in absentia* because the defendant had not been arraigned, nor had the defendant pled guilty, and the court's admonishments did not advise the defendant that a failure to appear would constitute a waiver of the defendant's right to confront witnesses. The State argued that substantial compliance with the statute occurred because: (1) *in absentia* admonishments may be given at a time other than at a formal arraignment; (2) an arraignment and plea are formalities absent an adverse effect on a defendant's rights; (3) the adverse effects from the absence of a formal arraignment or plea of not guilty are minimized in this case by the fact that the case was pending for more than a year before the trial commenced; and (4) the defendant did not plead guilty and the case proceeded as if he had pleaded not guilty. The court agreed with the defendant, holding that the statute requires the court to admonish the defendant that: (1) the trial could proceed in his absence if he fails to appear; *and* (2) that failure to appear would constitute a waiver of the defendant's right to confront witnesses. The court reasoned that "the primary purpose of the statute providing defendants who plead not guilty

at their arraignments with the right to be orally admonished regarding the possible consequences of failing to appear in court when required is to prevent bail jumping and to promote speedy judgment." The court further reasoned that, "if we interpret the statute such that a court may substantially comply by informing a defendant only that trial can proceed in his or her absence, the admonishment concerning confrontation of witnesses would be rendered superfluous and irrelevant." The dissent argued that the trial court substantially complied with the statutory provisions by informing the defendant that the trial could proceed in his absence, and that the majority's opinion would require strict compliance, rather than substantial compliance, with Section 113-4. The dissent also argued that the "reversal of [the] defendant's conviction would clearly be an unjust result where he was well aware of his obligation to appear for trial."

CODE OF CRIMINAL PROCEDURE OF 1963 – DRUG TESTING

A trial court may impose drug testing as a condition of pretrial release if it conforms with other statutory requirements.

In *People v. Morales,* 2024 IL App (2d) 230597, the Illinois Appellate Court was asked to determine whether the trial court erred when it ordered the defendant to submit to random drug testing as a condition of pretrial release. Subsection (b) of Section 110-10 of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-10(b)) provides for additional conditions of pretrial release and requires that those conditions "shall include the least restrictive means and be individualized." The defendant argued that the plain language of subsection (b) of Section 110-10 no longer provided trial courts with the authority to impose drug testing as a condition for achieving the goals of pretrial release because language allowing for drug and alcohol testing programs was repealed from the Code of Criminal Procedure of 1963 by Public Act 101-652. The defendant asserted that the General Assembly's decision to repeal this language was based in part on the Illinois Supreme Court's Commission on Pretrial Practices, which cited research that did not support a relationship between drug testing and improving public safety or rates of appearance. The State did not address the lack of express authority in Section 110-10 to impose drug testing, but contended that other factors, including the defendant's criminal history, allowed the trial court to impose drug testing as a condition of release without abusing its discretion. The court agreed with the State, holding that drug testing is permissible as a condition of pretrial release in appropriate cases to achieve the statutory goals of pretrial release. The court reasoned that, while the General Assembly amended Section 110-10 to remove the express authority for a trial court to impose drug testing as a condition of pretrial release, the plain language of the statute continues to allow drug testing, in addition to other reasonable conditions, so long as the other parameters of Section 110-10 are satisfied. The court concluded that, since Section 110-10 lists conditions that cannot be imposed, the court can infer that conditions that are not included in that list are permissible when applied in a manner that conforms with other statutory requirements.

CODE OF CRIMINAL PROCEDURE OF 1963 – PRETRIAL DETENTION

The State's petition for pretrial detention of a defendant who was in custody for failure to meet the conditions of release was untimely under the Code.

In *People v. Watkins-Romaine,* 2024 IL App (1st) 232479, the Illinois Appellate Court was asked to decide whether the circuit court erred in denying the defendant's petition for pretrial release under Section 110-6.1 of the Code of Criminal Procedure of

1963 (725 ILCS 5/110-6.1). The defendant, who was detained prior to the effective date of the General Assembly's amendments to Article 110 of the Code contained in Public Act 101-652, was in custody for failure to meet the conditions of release when the State filed a petition for pretrial detention. The defendant did not object to the State's petition for pretrial detention; however, the Illinois Appellate Court took up the issue of the timeliness of the State's petition on its own under the plain error doctrine. Subsection (c) of Section 110-6.1 concerns the timeliness of the State's petition for pretrial detention and provides that "[a] petition may be filed without prior notice to the defendant at the first appearance before a judge, or within the 21 calendar days . . . after arrest and release of the defendant upon reasonable notice to the defendant; provided that while such petition is pending before the court the defendant if previously released shall not be detained." Subsection (b) of Section 110-7.5 of the Code (725 ILCS 5/110-7.5) provides that, "[o]n or after January 1, 2023, any person who remains in pretrial detention after having been ordered released with pretrial conditions, including the condition of depositing security, shall be entitled to a hearing under subsection (e) of Section 110-5 [of the Code]." Subsection (e) of Section 110-5 provides that "[i]f a person remains in pretrial detention 48 hours after having been ordered released with pretrial conditions, the court shall hold a hearing to determine the reason for continued detention." That subsection also provides that "[t]he inability of the defendant to pay for a condition of release or any other ineligibility for a condition of pretrial release shall not be used as a justification for the pretrial detention of that defendant." The court held that the General Assembly did not intend to allow the State to file a petition for pretrial detention under the circumstances of the defendant's case, and that the State's petition for detention was untimely. The court reasoned that the existence of Section 110-7.5 demonstrates that the General Assembly foresaw the need to account for cases with preexisting bail rulings that were pending when the Code was amended by Public Act 101-652. In the court's view, the prescribed procedure for individuals in defendant's position is a hearing only to determine the reasons for the continued detention. In reaching its conclusion, the court took issue with the ruling in *People v. Whitmore,* 2023 IL App (1st) 231807, which held that the State may file a petition for pretrial detention at the defendant's first court date after the amended Code went into effect. The court also took issue with the ruling in *People v. Jones*, 2023 IL App (4th) 230837, which held that "a petition for detention operates as a motion to increase the pretrial release conditions to the furthest extent."

The Illinois Supreme Court granted leave to appeal on June 18, 2024.

CODE OF CRIMINAL PROCEDURE OF 1963 – PRETRIAL RELEASE

The Act's provisions concerning the revocation of pretrial release apply to a defendant who was released following the defendant's arrest on the condition of the deposit of security in which new felony charges were filed.

In *People v. Pugh*, 2024 IL App (5th) 231128, the Illinois Appellate Court was asked to decide whether the trial court erred by revoking the defendant's pretrial release pursuant to Article 110 of the Code of Criminal Procedure of 1963 (725 ILCS 5/Art.110) when the defendant had been released on bond following an arrest that occurred prior to the effective date of Public Act 101-652 but was charged with additional felonies while on pretrial release. Subsection (a) of Section 110-6 of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-6(a)) provides that, "[w]hen a defendant has previously been granted pretrial release under this Section for a felony or Class A misdemeanor, that pretrial release may be revoked only if the defendant is charged with a felony or Class A misdemeanor that is alleged to have occurred during the defendant's pretrial release after a hearing on the

court's own motion or upon the filing of a verified petition by the State." The defendant argued that subsection (a) of Section 110-6 is not the correct statutory basis for the State's petition because that subsection applies only when the defendant has been granted pretrial release under "this Section," and, in this case, the defendant was not granted pretrial release under that Section. The State argued that the defendant's interpretation of subsection (a) of Section 110-6 was too narrow because it would prohibit the trial court from revoking the pretrial release of a defendant who had been released on monetary bond for any reason. In support of its argument, the State cited the language of paragraph (5) of subsection (c) of Section 110-7.5 of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-7.5), which provides, in part, that "[i]f there is an alleged violation of the conditions of pretrial release in a matter in which the defendant has previously deposited security, the court having jurisdiction shall follow the procedures for revocation of pretrial release or sanctions set forth in Section 110-6." The court agreed with the State, holding that Section 110-6 is applicable to the defendant because the defendant was released following his arrest on the condition of the deposit of security and new felony charges were filed. Although the plain language of subsection (a) of Section 110-6 of the Code provides that it applies when the defendant was previously granted pretrial release under "this Section," the Code also provides, in paragraph (5) of subsection (c) of Section 110-7.5, a reference to Section 110-6 as the means to revoke a defendant's pretrial release. In addition, the Code provides that subsection (a) of Section 110-7.5 "shall not limit the State's Attorney's ability to file . . . a petition for revocation or sanctions under Section 110-6." The court reasoned that, when considering the Act as a whole, it is clear that the General Assembly did not intend to limit the applicability of the changes made by Public Act 101-652 to only those defendants arrested after its effective date. To interpret the Code as the defendant argued would, the court held, frustrate the purpose of the Code as the General Assembly intended.

CODE OF CRIMINAL PROCEDURE OF 1963 – TRUTH-IN-SENTENCING

The Code's truth-in-sentencing provisions do not apply to civil commitments in which a criminal defendant is found unable to stand trial.

In *People v. Martin*, 2023 IL App (1st) 220252, the Illinois Appellate Court was asked to decide whether the circuit court erred when it found that the truth-in-sentencing provisions of the Code of Criminal Procedure of 1963 (730 ILCS 5/3-6-3) do not apply to certain civilly committed defendants. Subsection (g) of Section 104-25 of the Code of Criminal Procedure of 1963 (725 ILCS 5/104-25) sets forth a procedure for civil commitments in cases in which a defendant is found unfit to stand trial but "not not guilty" of the crime. Those provisions provide that the treatment period may not exceed the maximum sentence to which a defendant would have been subject had the defendant been convicted in a criminal proceeding. In 2009, Public Act 95-1052 made changes to Section 104-25 to provide that the maximum sentence shall be determined under Section 5-8-1 of the Unified Code of Corrections (730 ILCS 5/5-8-1) *or* Article 4.5 of Chapter V of the Unified Code of Corrections (730 ILCS 5/Ch. V, Art. 4.5), rather than Section 5-8-1 only. The defendant argued that Article 4.5 specifically provides that the truth-in-sentencing provisions apply when calculating the maximum prison sentence for criminal offenders. He further argued that, by adding a specific reference to Article 4.5, the General Assembly intended for the truth-in-sentencing provisions to apply to civil commitments. The State, however, argued that Public Act 95-1052 was simply a recodification of existing law and did not make any substantive changes. Although the court found that the plain language of the statute was ambiguous, the court ultimately agreed with the State, holding that the truth-in-sentencing provisions apply only to criminal defendants and not to involuntarily civilly

committed patients. The court looked to legislative discussions, and reasoned that Article 4.5 merely replaced Section 5-8-1 of the Unified Code of Corrections in designating which sentence should be applied to each level of felony offense, and the truth-in-sentencing provisions do not apply to civilly committed persons.

CRIMINAL CODE OF 2012 – ARMED HABITUAL CRIMINAL

If a defendant has been previously convicted of two or more offenses that were charged in the same indictment, the State may use the convictions to meet the predicate offense element of the armed habitual criminal provisions of the Code.

In *People v. Harris*, 2024 IL App (3d) 230406, the Illinois Appellate Court was asked to determine whether the trial court erred when it granted the defendant's pretrial motion to dismiss the armed habitual criminal charge against him because the charge failed to sufficiently allege that he had been convicted previously of two or more predicate offenses. The armed habitual criminal statute, Section 24-1.7 of the Criminal Code of 2012 (720 ILCS 5/24-1.7), states that "a person commits the offense of being an armed habitual criminal if he or she receives, sells, possesses, or transfers any firearm after having been convicted a total of [two] or more times of any combination of [specified] offenses." The defendant had previously pled guilty to four separate criminal counts that were charged in a single indictment, although the offenses occurred on separate days. The defendant argued that the previous offenses could not be used as individual predicate offenses in this case because they were all charged in a single case. The State argued that each previous count was a separate conviction and that the armed habitual criminal statute does not contain a "sequential-or-separate case" limitation. The court agreed with the State and found that the armed habitual criminal statute was "clear and unambiguous" and allowed the State to use as predicate offenses two or more offenses that occurred on separate days but were charged in the same indictment. The court reasoned that, even if the statute had been ambiguous, "the legislature knows how to statutorily impose a separate-or-sequential occurrence requirement and did not do so with regard to the predicate offense element of the [armed habitual criminal] statute. Indeed, such a requirement was mandated by the legislature in the recidivist provisions of the Code of Corrections." The crime of being an armed habitual criminal will be renamed by P.A. 103-0822 on Jan. 1, 2025 to "unlawful possession of a firearm by a repeat felony offender."

CRIMINAL CODE OF 2012 – LESSER INCLUDED OFFENSES

Aggravated criminal sexual assault is not a lesser included offense of home invasion if the home invasion is predicated on "simple" criminal sexual assault.

In *People v. Allen*, 2024 IL App (1st) 221681, the Illinois Appellate Court was asked to determine whether the defendant's criminal conviction for aggravated criminal sexual assault under Section 11-1.30 of the Criminal Code of 2012 (720 ILCS 5/11-1.30) should be vacated because it is a lesser included offense of home invasion under Section 19-6 of the Criminal Code of 2012 (720 ILCS 5/19-6) predicated on "simple" criminal sexual assault under Section 11-1.20 of the Criminal Code of 2012 (720 ILCS 5/11-1.20). The State argued that aggravated criminal sexual assault is not a lesser included offense of home invasion predicated on criminal sexual assault because the offense of aggravated sexual assault includes an element of bodily harm, while home invasion predicated on criminal sexual assault does not include that element. The defendant argued that this lesser

included offense analysis creates absurd and unfair consequences because it results in the defendant being subject to a greater penalty simply because the State charged a lesser offense, criminal sexual assault instead of aggravated criminal sexual assault, as a predicate for home invasion. The court agreed with the State, holding that aggravated criminal sexual assault is not a lesser included offense of home invasion under the abstract elements test. The court reasoned that the abstract elements test precludes aggravated criminal sexual assault from being a lesser included offense of home invasion because Section 19-6 provides that a defendant can commit home invasion predicated on criminal sexual assault without committing aggravated criminal sexual assault. The court also noted that "the State has wide discretion in charging defendants and is entitled to charge strategically to avoid merger of convictions under the one-act, one-crime rule." The court further noted that it is up to the General Assembly to amend the statutes to prevent similar results if it wishes to do so.

DAY AND TEMPORARY LABOR SERVICES ACT – ERISA PREEMPTION

The plaintiff staffing agencies demonstrated a likelihood of success on the merits in arguing that the federal Employee Retirement Income Security Act (ERISA) preempts provisions of the Day and Temporary Labor Services Act concerning pay and benefits for workers who are assigned to work at a third-party client for more than 90 calendar days.

In *Staffing Services Association of Illinois v. Flanagan*, 2024 WL 1050160, the District Court was asked to decide whether, for the purpose of granting the plaintiffs' preliminary injunction, the plaintiffs demonstrated a likelihood of success on the merits in alleging that the federal Employee Retirement Income Security Act (ERISA) preempts Section 42 of the Day and Temporary Labor Services Act (820 ILCS 175/42) with respect to pay and benefits of certain employees who are covered under that Act. Section 42 of the Day and Temporary Labor Services Act (DTLSA) provides that "[a] day or temporary laborer who is assigned to work at a third party client for more than 90 calendar days shall be paid not less than the rate of pay and equivalent benefits as the lowest paid directly hired employee of the third party client with the same level of seniority at the company and performing the same or substantially similar work on jobs the performance of which requires substantially similar skill, effort, and responsibility, and that are performed under similar working conditions." That Section also provides that "[a] day and temporary labor service agency may pay the hourly cash equivalent of the actual cost benefits in lieu of benefits." Subsection (a) of Section 1144 of ERISA (29 U.S.C. § 1144(a)) preempts "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." The plaintiffs argued that Section 42 is preempted by ERISA because Section 42 has an impermissible connection with an ERISA plan. The defendant argued that Section 42 provides an alternative that allows temporary staffing agencies to comply with the DTLSA without touching ERISA plans. The court held that the plaintiffs were likely to succeed on the merits of their claim that ERISA preempts Section 42. In doing so, the court reasoned that the purpose of ERISA is to create a uniform body of benefits law and that ERISA preempts laws that "require providers to structure benefit plans in particular ways." In this case, the court found that Section 42 denies staffing agencies the ability to administer ERISA plans uniformly. The court reasoned that Section 42 requires temporary staffing agencies to "determine the value of many different benefit plans and then determine whether to provide the value in cash or the benefits themselves by modifying their plans or adopting new ones." The court also reasoned that "even if a state law provides a route by which ERISA plans can avoid the state law's requirements, taking that route might still be too disruptive of uniform plan administration to avoid preemption under ERISA."

FREEDOM OF INFORMATION ACT – FOID EXEMPTION

Documents related to an applicant's own firearm owners identification card are exempt from disclosure under the Act.

In *Hart v. Illinois State Police*, 2023 IL 128275, the Illinois Supreme Court was asked to determine whether the appellate court erred in finding that requested documents related to an applicant's own firearm owners identification (FOID) card were not exempt from disclosure under the Freedom of Information Act. Subsection (v) of Section 7.5 of the Freedom of Information Act (5 ILCS 140/7.5(v)) exempts from inspection and copying "[n]ames and information of people who have applied for or received Firearm [Owners] Identification Cards under the Firearm Owners Identification Card Act or applied for or received a concealed carry license under the Firearm Concealed Carry Act." The plaintiff argued that the appellate court's judgment should be affirmed because the exemption found in subsection (v) of Section 7.5 uses the plural terms "names" and "people" and, therefore, must not exempt from disclosure an individual's request for his or her own FOID card information. The plaintiff also argued that a person may consent to the disclosure of his or her personal information under subdivision (1)(c) of Section 7 of the Act (5 ILCS 140/7(1)(c)) and that interpreting subsection (v) of Section 7.5 to prohibit the disclosure of the plaintiff's own information to the plaintiff would create an absurd result. The defendant argued that subsection (v) of Section 7.5 is a blanket exemption prohibiting the disclosure of all FOID card information under the Freedom of Information Act and that there is no exception for individuals who are requesting their own information. The court agreed with the defendant, holding that documents related to an applicant's own FOID card were exempt from disclosure under the Freedom of Information Act. The court reasoned that Section 1.03 of the Statute on Statutes (5 ILCS 70/1.03) provides that "[w]ords importing the singular number may extend and be applied to several persons or things, and words importing the plural number may include the singular." Accordingly, the use of the plural terms "names" and "people does not mean that a request for an individual's own information is excluded from the exemption in subsection (v) of Section 7.5. The court also reasoned that, if the General Assembly had intended for information regarding an individual's own records to be subject to disclosure, it would have done so. The court further reasoned that it may not depart from the statute's plain language by reading into it exceptions, limitations, or conditions that the General Assembly did not express. The court also rejected the plaintiff's argument that a person could consent to the disclosure of his or her FOID card information, because that information is not properly characterized as a "public record" within the meaning of Section 7.

ILLINOIS ANTITRUST ACT – SERVICE EXEMPTION

Actions by staffing agencies to fix the wages of their workers are not exempt from the Illinois Antitrust Act.

In *State ex rel. Raoul v. Elite Staffing, Inc.*, 2024 IL 128763, the Illinois Supreme Court was asked to determine, on interlocutory review, whether the Illinois Antitrust Act excludes from its coverage all agreements concerning labor services. Section 4 of the Illinois Antitrust Act (740 ILCS 10/4) defines "service" as "any activity, not covered by the definition of 'commodity,' which is performed in whole or in part for the purpose of financial gain, but shall not be deemed to include labor which is performed by natural persons as employees of others." The defendants argued that the term "service" under the Act excludes temporary staffing agencies because the General Assembly failed to amend the Act after federal courts offered interpretations barring claims for violation of the Illinois

Antitrust Act related to an alleged agreement and an alleged market for labor services. The Illinois Supreme Court disagreed with the defendants, holding that the term "service" under the Act does not exclude all agreements concerning labor services. The court also held that multiemployer agreements concerning wages and hiring each other's employees violate the Act unless those agreements arise as part of the bargaining process and the affected employees, through their collective bargaining representatives, have sought to bargain with the multiemployer unit. The court reasoned, by reference to similar federal law, as permitted by Section 11 of the Act, and by reference to legislative history and related articles and commentary, that the General Assembly intended exceptions for certain union labor agreements, but not for temporary staffing agency agreements. The court further reasoned that the legislative inaction after interpretation by courts does not overcome the contrary inference given the Illinois Antitrust Act's stated purposes, the interpretation of similar federal law, the Act's legislative history, and related bar committee comments and articles.

ILLINOIS INSURANCE CODE – UNDERINSURED MOTORIST COVERAGE

The Code does not require the automatic inclusion of underinsured motorist coverage in a liability policy that provides uninsured motorist coverage at the minimum liability limits mandated under the Illinois Vehicle Code.

In *Scott v. American Alliance Casualty Company,* 2024 IL App (4th) 231305, the Illinois Appellate Court was asked to answer the following certified question on interlocutory appeal: whether Section 143a-2(4) of the Illinois Insurance Code (215 ILCS 5/143a-2(4)) requires auto insurers to automatically include underinsured motorist (UIM) coverage in a liability policy that provides uninsured motorist (UI) coverage at the minimum limits required under Section 7-203 of the Illinois Vehicle Code (625 ILCS 5-7203). Section 143a-2(4) of the Illinois Insurance Code provides that "no [automobile insurance] policy . . . shall be renewed or delivered or issued . . . in this State . . . unless underinsured motorist coverage is included in such policy in an amount equal to the total amount of uninsured motorist coverage provided in that policy where such uninsured motorist coverage exceeds the limits set forth in Section 7-203 of the Illinois Vehicle Code." Section 7-203 of the Illinois Vehicle Code sets the liability limit for motor vehicle crash policies at "not less than $25,000 [for] the bodily injury to or death of any one person and . . . not less than $50,000 [for] the bodily injury to or death of 2 or more persons . . . " The plaintiff, whose $40,000 UIM claims were denied by the defendant following a multiple vehicle crash involving an underinsured motorist, filed suit alleging the defendant violated Section 143a-2(4)'s UIM coverage requirement when it sold the plaintiff auto insurance without UIM coverage. The defendant filed a motion to dismiss, asserting that Section 143a-2(4)'s UIM coverage requirement does not apply to liability policies, such as the plaintiff's, that limit UI coverage to the minimum liability amounts required under Section 7-203 of the Illinois Vehicle Code. The defendant argued that the certified question should be answered in the negative because the plain language of Section 143a-2(4) does not require "the automatic inclusion of [UIM coverage] when a policy's . . . [UI] coverage does not exceed the minimum [liability] limits set forth in . . . the Illinois Vehicle Code." The plaintiff countered that public policy favors the automatic inclusion of UIM coverage in minimum-limit UI policies and that the current statutory limitation on the automatic inclusion of UIM coverage to liability policies with UI coverage in excess of statutory minimum liability amounts was due to a "legislative oversight." Citing Section 143a-2(4)'s legislative history, the plaintiff asserted that "the law has "evolve[d] to recognize" situations where multiple claimants involved in a multiple vehicle crash caused by an underinsured driver are permitted to tap into their own underinsured coverage policies for

additional compensation after first exhausting the tortfeasor's liability coverage. According to the plaintiff, any other interpretation of Section 143a-2(4) that limits recovery to an underinsured tortfeasor's liability coverage would lead to unjust and absurd results because claimants seeking compensation following a multi-vehicle crash would receive a much smaller (and split) recovery amount than what they would have received under their own UI policies had the tortfeasor simply been uninsured. The appellate court ultimately agreed with the defendant and found that Section 143a-2(4) does not require the automatic inclusion of UIM coverage in a liability policy that provides only the minimum UI coverage mandated under the Illinois Vehicle Code. The court reasoned that it "cannot ignore the plain and unambiguous language" of the statute which specifically limits the UIM coverage requirement to liability policies with UI liability coverage in excess of statutory minimum liability amounts. The court ultimately dismissed the plaintiff's legislative oversight argument, noting that it cannot rewrite the statute and "omit [the] clear limitation" on the UIM coverage requirement in order to "correct an apparent legislative oversight" and avoid the potentially harsh and absurd consequences of the limitation. The court noted that "such consequences can only be remedied by a change in the law."

ILLINOIS MUNICIPAL CODE – TAX DISPUTES

The Code allows circuit courts to exercise jurisdiction over tax disputes that are between municipalities and do not require the Department of Revenue's expertise to resolve.

In *Village of Arlington v. City of Rolling Meadows,* 2024 IL App (1st) 221729, the Illinois Appellate Court was asked to determine whether the trial court erred when it relied on the holding in *City of Chicago v. City of Kankakee*, 2019 IL 122878, and determined that the circuit court lacked subject-matter jurisdiction under the Illinois Municipal Code (65 ILCS 5/1 *et seq.*) to adjudicate the Village of Arlington's suit to recover sales tax revenues that were misallocated to the City of Rolling Meadows. Section 8-11-16 of the Code provides that "[t]he Department of Revenue shall submit to each municipality each year a list of those persons within that municipality who are registered with the Department under the Retailers' Occupation Tax Act." Section 8-11-16 also provides that "[w]hen certifying the amount of monthly [sales tax] disbursements to a municipality . . . the Department shall increase or decrease such amount necessary to offset any misallocation of previous disbursements. The offset amount shall be the amount erroneously disbursed within the previous 6 months from the time a misallocation is discovered." In 2020, the Village of Arlington notified the Department of Revenue that one of its local restaurants was erroneously registered by the Department of Revenue as a Rolling Meadows business, which resulted in the misallocation of $1.1 million in sales tax revenue to the City of Rolling Meadows. The Department of Revenue subsequently reimbursed Arlington $109,000 in sales tax revenue, which covered the last 6 months of erroneously disbursed amounts the Department was required to reimburse under Section 8-11-16. After Rolling Meadows refused to pay the remaining misallocated taxes, Arlington filed a 3-count suit that the trial court dismissed after it determined that the Illinois Supreme Court had dispositively held in *City of Chicago* that the Department of Revenue had exclusive jurisdiction over tax disputes between municipalities.

On appeal, Arlington argued that the trial court erred in finding *City of Chicago* dispositive on the question of jurisdiction because that case was "substantially distinguishable on its facts." Arlington argued that the *City of Chicago* case concerned a complex use tax scheme impacting several municipalities, some of whom were not parties to that suit. Arlington urged the appellate court to follow the holding in *Village of Itasca v.*

Village of Lisle, 352 Ill. App. 3d 847, asserting that the facts in that case were more analogous to Arlington's simple sales tax dispute. Rolling Meadows argued that *City of Chicago* controlled on the question of jurisdiction, and that its holding was not limited to use tax disputes but applied to all tax disputes between municipalities. In addition, Rolling Meadows argued that Arlington was not entitled to a recovery of the full amount in misallocated taxes because the General Assembly limited Arlington's remedy to the statutory 6-month offset amount.

The appellate court agreed with Arlington and reversed the trial court's judgment, holding that circuit courts may exercise jurisdiction over sales tax disputes between municipalities. The appellate court reasoned that *City of Chicago* was not dispositive on the question of jurisdiction because the holding was limited to the types of sales tax swap arrangements at issue in that case. The appellate court noted that, under *City of Chicago,* the Illinois Supreme Court determined that the arduous and complicated task of calculating and redistributing 14 years' worth of use taxes was beyond the "conventional competency of the courts" and, therefore, required the Department of Revenue's expertise. Accordingly, the appellate court interpreted *City of Chicago's* holding as limiting the Department of Revenue's exclusive jurisdiction to those use tax disputes that require agency expertise to resolve. The appellate court found support for this interpretation in its holding in *Village of Itasca*, which concerned a sales tax dispute between two municipalities. Under *Village of Itasca,* the appellate court held that "the legislature did not give the [Department of Revenue] exclusive jurisdiction regarding sales tax issues." Therefore, circuit court jurisdiction is appropriate when "the regulations used for determining the proper tax site of sale are straightforward and do not require agency expertise for their interpretation."

The appellate court rejected an assertion made in a dissenting opinion that the cause of action created under subsection (a) of Section 8-11-21 for prohibited tax rebate agreements effectively limits circuit court jurisdiction to those sales tax disputes that arise under a rebate agreement. The appellate court noted that Section 8-11-21 does not expressly divest circuit courts of jurisdiction over other tax disputes that do not involve a rebate agreement. Consequently, the appellate court found that circuit courts are not "preclud[ed] from exercising jurisdiction" over tax disputes, such as Arlington's, that do not involve a rebate agreement. The appellate court also rejected Rolling Meadows's assertion that Arlington's only remedy was the statutory 6-month offset amount under Section 8-11-16. The appellate court noted that such a limited recovery amount gave a windfall to Rolling Meadows because it had received Arlington's tax revenue over multiple years. After considering the deleterious effects of such a windfall, the appellate court determined that Section 8-11-16 only "places a limit on the recovery [the Department of Revenue] can provide but does not preclude a municipality from also bringing [an equitable] claim in circuit court to recover the remainder owed."

A dissenting opinion argued that the majority gave *Village of Itasca* too much weight on the question of jurisdiction because that case concerned a type of sales tax-rebate agreement that the General Assembly later prohibited and created a cause of action for under Section 8-11-21(a), thereby ensuring that the "jurisdiction issue in *Village of Itasca* would not rise again." More importantly, the dissent argued that it was incorrect for the majority to interpret *City of Chicago* as only applying to use taxes because the Illinois Supreme Court "considered the . . . statutory framework governing *both* sales and use taxes to reach its conclusion" that the General Assembly gave the Department exclusive jurisdiction over all tax disputes between municipalities. (Emphasis original). The dissent also rejected the majority's finding that Arlington had an equitable claim for the return of the remaining taxes, noting that in *City of Chicago* the Illinois Supreme Court determined that claims for the recovery of misallocated tax revenue are strictly statutory. Accordingly, the dissent asserted that the General Assembly, as policy maker, had already weighed the

equites when it determined that a 6-month recovery amount was the only appropriate remedy.

ILLINOIS PENSION CODE – NON-DUTY DISABILITY PENSION

A firefighter is not entitled to receive a non-duty disability pension from a pension fund that was not his last pension fund unless the firefighter's employment with a new employer began as a result of an intergovernmental agreement that resulted in the elimination of the previous employer's fire department.

In *Wessel v. Wilmette Firefighters' Pension Fund*, 2024 IL App (1st) 230565, the Illinois Appellate Court was asked to decide if the circuit court erred when it upheld the decision of the Wilmette Firefighters' Pension Fund Board denying the plaintiff's non-duty disability pension. The plaintiff voluntarily resigned from the Wilmette Fire Department after 9 years of service to accept a position with the Lake Villa Fire Protection District. At the time the plaintiff applied for a non-duty disability pension, he had served with the Lake Villa Fire Protection District for one year. The first sentence of subsection (n) of Section 4-109.3 of the Illinois Pension Code (40 ILCS 5/4-109.3) provides that "[if] a firefighter . . . becomes entitled to a disability pension under Section 4-111 [pertaining to non-duty disability pensions], the last pension fund is responsible to pay that disability pension, provided that the firefighter has at least 7 years of creditable service with the last pension fund." Subsection (n) also describes a situation in which a firefighter began his new employment because of an intergovernmental agreement that resulted in the elimination of his previous employer's fire department. In that case, the last sentence of subsection (n) provides that "[t]he disability pension received pursuant to this Section shall be paid by the previous employer and new employer in proportion to the firefighter's years of service with each employer." The plaintiff argued that the plain language of the last sentence of subsection (n) allows the plaintiff to collect a disability pension from both his current employer and his previous employer. In support of his argument, the plaintiff points out that the use of the word "Section" rather than "circumstance" indicates that the sentence applies to the entire Section, not just the provisions concerning intergovernmental agreements. The defendant argued that the last sentence of the subsection (n) applies only if a firefighter's employment with a new employer began as a result of an intergovernmental agreement that resulted in the elimination of the previous employer's fire department. The court agreed with the defendant, holding that the plain language of subsection (n) requires that the firefighter have 7 years of creditable service with the last pension fund and allows firefighters to combine time only if the firefighter's previous employment ended as a result of the intergovernmental agreement. The court opined that the use of the word "Section" in the last sentence of subsection (n) was "inartful." However, the court reasoned that "[the plaintiff's] suggested interpretation would require us to ignore the two sentences directly preceding the last one, which make it clear that only in one limited circumstance is a firefighter entitled to combine creditable service." The court pointed to the fact that the last sentence of subsection (n) was added at the same time as the 2 sentences preceding it, stating that "[t]he fact that these three sentences were added at the same time supports our reading of them together as creating a limited stacking provision for calculating creditable service under subsection (n)." The court also noted that other subsections of Section 4-109.3 allow for a firefighter to combine years of creditable service regardless of why the firefighter switched departments, which suggests that the General Assembly deliberately chose not to include that language in subsection (n).

ILLINOIS VEHICLE CODE – DIRECT SALES BY MANUFACTURERS

The Illinois Vehicle Code does not prohibit an automotive manufacturer from obtaining a dealer license to conduct direct-to-consumer sales.

In *Illinois Automobile Dealers Association v. Office of the Illinois Secretary of State,* 2024 IL App (1st) 230100, the Illinois Appellate Court was asked to determine whether the trial court erred in dismissing the plaintiffs' amended complaint, which alleged that the Illinois Vehicle Code (625 ILCS 5/1-100 *et seq.*) and the Motor Vehicle Franchise Act (815 ILCS 710/1 *et seq.*) prohibit automobile manufacturers, such as the defendants Rivian and Lucid, from selling vehicles directly to consumers. Paragraph (4) of subsection (b) of Section 5-101 of the Illinois Vehicle Code (625 ILCS 5/5-101(b)(4)) provides that "[an] application for a new vehicle dealer's license shall contain . . . the name of each manufacturer or franchised distributor, if any, of new vehicles with whom the applicant has contracted for the sale of such new vehicles." Paragraph (1) of subsection (d) of Section 5-101 (625 ILCS 5/5-101(d)(1)) further provides that "no person shall be licensed as a new vehicle dealer unless . . . [he] is authorized by contract in writing between himself and the manufacturer or franchised distributor of such make of vehicle to so sell the same in this State." The plaintiff argued that those provisions require a manufacturer to contract with a dealer to sell vehicles to consumers in the State. The plaintiff further argued that, since a manufacturer cannot contract with itself, it cannot conduct direct-to-consumer sales under the Code. The defendant argued that nothing in the plain language of the Illinois Vehicle Code prohibits a manufacturer from obtaining a dealer license to sell directly to consumers, and that no mandatory contract requirement is imposed by the Code. The court agreed with the defendant, holding that the Illinois Vehicle Code does not prohibit a manufacturer from obtaining a dealer license. The court reasoned that the contract requirement of Section 5-101 is simply inapplicable to manufacturers. In doing so, the court looked to Section 5-100-1 of the Illinois Vehicle Code (625 ILCS 5/5-100-1), which states that the purpose of the Illinois Vehicle Code is, in part, "to prevent or reduce the transfer or sale of stolen vehicles or their parts within this State" by establishing a mandatory system of licensing and recordkeeping. The court concluded that, given this purpose, the Code's contract requirement was enacted to ensure that new vehicles were sold with a manufacturer's authorization and consent, not to prevent a manufacturer from obtaining a dealer license.

LOCAL GOVERNMENTAL AND GOVERNMENTAL EMPLOYEES TORT IMMUNITY ACT – PROVISION OF INFORMATION

The Act immunizes a school district for public disclosure of private facts, intentional inflection of emotional distress, and negligent infliction of emotional distress if those claims are founded on the provision of information.

In *Plaintiff 1 v. Board of Education of Lake Forest High School District 115*, 2024 IL App (2d) 230173, the Illinois Appellate Court was asked to decide whether the trial court erred in granting the defendant school district's motion to dismiss the plaintiff's claims for public disclosure of private facts, intentional infliction of emotional distress, and negligent infliction of emotional distress on the grounds that the school district is immune from suit under Section 2-107 of the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/2-107). Section 2-107 provides that "[a] local public entity is not liable for injury caused by any action of its employees that is libelous or slanderous *or for the provision of information* either orally, in writing, by computer or any

other electronic transmission, or in a book or other form of library material." (Emphasis added.) The defendant argued that, based on the plain language of Section 2-107, the defendant is immune from liability because the plaintiff's claims are all based on the provision of information. The plaintiff argued that interpreting the statute to provide such extensive immunity would broaden the scope of the statute in a way that is counter to the General Assembly's intent. The plaintiff further argued that such a reading would permit school districts and other local public entities to freely disseminate all of the highly sensitive and private information that they possess. The court agreed with the defendant, holding that the plain language of Section 2-107 immunized the defendant from the claims raised. The court noted that the language of Section 2-107 suggested that the General Assembly intended the provisions to be deliberately broad. The court also pointed out that even a wrong committed through intentional and malicious defamation is specifically protected under Section 2-107 and suggested that such a wrong is "arguably . . . of even greater magnitude than the wrong alleged here."

MECHANICS LIEN ACT – ENFORCEMENT AND VALIDITY

The Act does not contain a statutory limitation barring an arbitrator from determining the validity of a mechanic's lien.

In *Portage Park Capital, LLC v. A.L.L. Masonry Construction Company, Inc.*, 2024 IL App (1st) 240344, the Illinois Appellate Court was asked to decide whether the circuit court erred in its determination that the validity of a mechanic's lien can be subject to arbitration under the terms of a contract. Section 9 of the Mechanics Lien Act (770 ILCS 60/9) provides that "[i]f payment shall not be made to the contractor having a lien . . . then such contractor may bring suit to enforce his lien in the circuit court in the county where the improvement is located." The plaintiff argued that Section 9 gives the circuit court exclusive jurisdiction to enforce a mechanic's lien. Therefore, in the plaintiff's view, the circuit court also has exclusive jurisdiction to determine the validity of the lien. The defendant argued that lien validity and lien enforcement are not the same thing and that the statute does not speak to jurisdictional issues concerning lien validity. The court agreed with the defendant, holding that the dispute arose from or was related to the contract, and the circuit court did not have exclusive jurisdiction over the question of lien validity when the parties had agreed to arbitration under the terms of a contract. The court reasoned that "courts view the act of contracting as volitional and the terms within a contract as the thoughtful result of a bargained-for exchange." The court further reasoned that "the legislature did not provide a clear express limitation . . . regarding the validity of a lien."

OPEN MEETINGS ACT – CONVENIENT-MEETINGS REQUIREMENT

The Act's convenient-meetings requirement does not require public bodies to implement hearing protocols that adhere to public health advisories or external health directives.

In *Stop Northpoint, LLC v. City of Joliet,* 2024 IL App (3d) 220517, the Illinois Appellate Court was asked to determine whether the trial court erred when it dismissed the plaintiff's Open Meetings Act claim against the City of Joliet, finding that the City did not violate the Act's convenient-meetings requirement when it conducted two public hearings during the COVID-19 Omicron outbreak without requiring attendees to wear face masks. Section 2.01 of the Open Meetings Act (5 ILCS 120/2.01) provides that "[all] meetings required . . . to be public shall be held at specified times and places which are convenient

and open to the public." In its fourth amended complaint, the plaintiff asserted that the City violated Section 2.01 when it disregarded the Governor's 2021 mask mandate and conducted two public hearings regarding a land annexation agreement without requiring attendees to wear face masks. The trial court dismissed the plaintiff's Section 2.01 claim for failure to state a cause of action, finding that the Governor's face-mask mandate was directed at individuals, not municipalities, and there was no legal basis, in statute or common law, to invalidate an ordinance or annexation agreement passed at a public hearing where face masks were not worn. On appeal, the plaintiff argued that the trial court erroneously dismissed its claim because the convenient-meetings requirement under Section 2.01 prohibits "an open meeting held in an inconvenient place." The plaintiff proceeded to argue that the City's annexation hearings were inconvenient to members of the public who wanted to attend because the City's mask-optional rule forced those persons to consider the health risks of attending the hearings during the ongoing COVID-19 Omicron outbreak. The City did not present an argument on appeal. The appellate court ultimately agreed with and affirmed the trial court's judgment, holding that the plaintiff did not allege facts sufficient to show a Section 2.01 violation. The court reasoned that Section 2.01 only "requires municipalities to hold public hearings at convenient *places* and *times* . . . [It] does not require municipalities to adjust their hearing protocols based on public health advisories or external health directives." (Emphasis original.) Moreover, the court found that the plaintiff could not use the Governor's mask mandate as a basis for its Section 2.01 claim because the mandate "targeted individuals, not municipal governments." The court acknowledged that the City's decision to hold hearings without a mask requirement potentially deterred public participation, which is "contrary to the spirit" of the Open Meetings Act. However, the court noted that "the judiciary may not act as a policymaker in construing the Act's provisions" and found that the City's conduct was "not contrary to the Act's plain language."

PROPERTY TAX CODE – ISSUANCE OF TAX DEED

The Code requires a tax purchaser to obtain leave of court to extend the period of redemption once a petition for tax deed has been filed and requires heirs of pre-tax-sale owners to receive notice of the redemption period even if the will has not been admitted to probate.

In *In re County. Treasurer of Cook County*, 2024 IL App (1st) 220670, the Illinois Appellate Court was asked to decide whether the trial court erred when it denied a tax purchaser's petition for a tax deed in light of the strict compliance objections of the respondent-appellee, who was the child of the deceased pre-tax-sale owner of the property. The trial court denied the petition because (i) the tax purchaser failed to obtain leave of the court to extend the redemption date and (ii) the tax purchaser failed to serve one of the children of the deceased previous owner. Section 21-385 of the Property Tax Code (35 ILCS 200/21-385) provides that, "[if] prior to the expiration of the period of redemption or extended period of redemption a petition for tax deed has been filed . . . upon application of the petitioner, the court shall allow the purchaser or his or her assignee to extend the period of redemption after expiration of the original period or any extended period of redemption, provided that any extension allowed will expire not later than 3 years from the date of sale." The tax purchaser argued that it did not need the court's permission to extend the redemption period because the redemption period had not yet expired. The tax purchaser further argued that, even if leave of the court was necessary, its amended petition cured that defect because it related back to the original petition. The respondent argued that the tax purchaser was required to obtain leave of the court because a petition for tax deed

had already been filed. The court agreed with the respondent, finding that the plain language of the statute required leave of the court once a petition for tax deed is filed. Section 22-10 of the Property Tax Code (35 ILCS 200/22-10) further provides that "[a] purchaser or assignee shall not be entitled to a tax deed to the property sold unless, not less than 3 months nor more than 6 months prior to the expiration of the period of redemption, he or she gives notice of the sale and the date of expiration of the period of redemption to the owners, occupants, and parties interested in the property, including any mortgagee of record." The tax purchaser argued that the son was not an interested party because the decedent's will was never probated, and, as a result, the son did not yet have the right to take title to the property. The respondent argued that the son was an interested person, as he was still an heir under the will. The court agreed with the respondent, holding that the unnamed heir was an interested person under Section 22-10 because the unnamed heir in the notice was still an heir under the will, despite not being able to take the property unless the will was probated. The court reasoned that "[t]here is nothing in that statute to suggest [the General Assembly] sought to limit the scope of 'interested' persons to those that have a current right to own, occupy, or transfer the subject property" It also reasoned that "applying a broader reading is consistent with the primary purpose of the tax sales provisions of the Property Tax Code."

PROPERTY TAX CODE – PTAB PAYMENTS UNDER PROTEST

The Code does not require a taxpayer to pay disputed property taxes before appealing an assessment of taxes to the Property Tax Appeal Board.

In *Shawnee Community Unit School District No. 84 v. Illinois Property Tax Appeal Board*, 2024 IL 128731, the Illinois Supreme Court was asked to decide whether the appellate court erred when it affirmed the Property Tax Appeal Board's (PTAB's) denial of a school district's motion to dismiss the taxpayer's appeal before the Property Tax Appeal Board. Section 16-185 of the Property Tax Code (35 ILCS 200/16-185) provides that "[t]he extension of taxes on any assessment so appealed shall not be delayed by any proceeding before the [PTAB], and, in case the assessment is altered by the [PTAB], any taxes extended upon the unauthorized assessment or part thereof shall be abated, or, if already paid, shall be refunded with interest." The school district argued that the PTAB should have granted its motion to dismiss because the taxpayer failed to pay the delinquent taxes under protest before seeking assessment relief from the PTAB, and the timely payment of property taxes is a condition precedent to pursuing such an appeal. In support of that argument, the school district pointed out that Section 23-5 of the Property Tax Code (35 ILCS 200/23-5) requires payment under protest in cases where a taxpayer files a tax objection complaint. The school district further argued that the circuit court, rather than the PTAB, acquired jurisdiction over the case once the collector made the application for judgment and order of sale, and the PTAB was divested of jurisdiction at that point. The court disagreed with the school district, holding that the payment of disputed property taxes is not required to pursue an appeal before the PTAB. The court reasoned that the inclusion of the phrase "if already paid" in Section 16-185 would be unnecessary if the payment of disputed property taxes were required to pursue an appeal before the PTAB. The court also rejected the school district's argument that Section 23-5 applied to this case, reasoning that Article 23 of the Code pertains to tax objections before the circuit court and does not apply to appeals to the PTAB. The court also rejected the school district's argument that the PTAB was divested of jurisdiction, noting that "none of the statutory provisions in [A]rticle 21 state that the PTAB is divested of its jurisdiction to consider a properly filed, pending appeal once the collector files a subsequent application for judgment and order of sale," and that "[the] legislature knows how to divest the PTAB of jurisdiction."

The dissent argued that the majority misconstrued the law, because "if PTAB completes its review before the tax falls due, the property owner needs to pay only the tax found due by PTAB . . . [if] PTAB does not complete its review before the tax comes due, the statute provides that "[t]he extension of taxes on any assessment so appealed shall not be delayed by any proceeding." Therefore, in the view of the dissent, the owner must pay the tax under protest, and the PTAB may order a refund of any overpayment.

UNIFIED CODE OF CORRECTIONS – UNBORN CHILD

The intentional homicide of an unborn child is not considered a murder for purposes of sentencing under the Code's multiple murder provision.

In *People v. Lane,* 2023 IL 128269, the Illinois Supreme Court was asked to determine whether the appellate court erred when it upheld the defendant's life sentence under the multiple murder provision of the Unified Code of Corrections after finding that the defendant's conviction for intentional homicide of an unborn child was included as one of the murders. The multiple murder provision, subdivision (a)(1)(c)(ii) of Section 5-8-1 of the Unified Code of Corrections (730 ILCS 5/5-8-1(a)(1)(c)(ii)), provides that "for first degree murder . . . the court shall sentence the defendant to a term of natural life imprisonment if the defendant . . . is found guilty of murdering more than one victim." Subsection (d) of Section 9-1.2 of the Criminal Code of 2012 (720 ILCS 5/9-1.2(d)) provides that, except in specified circumstances that do not apply in this case, "[the] sentence for intentional homicide of an unborn child shall be the same as for first degree murder." The defendant argued that intentional homicide of an unborn child does not qualify as murder within the meaning of the multiple murder provision. The State conceded that the intentional homicide of an unborn child is distinct from and not equivalent to the statutory definition of murder. However, the State argued that the sentencing provisions of subsection (d) of Section 9-1.2 of the Criminal Code of 2012 effectively amend by implication Section 5-8-1 of the Unified Code of Corrections and make a life sentence mandatory for all defendants found guilty of one murder and one intentional homicide of an unborn child. The Illinois Supreme Court ultimately agreed with the defendant, holding that his life sentence was not mandatory under the multiple murder provision because he was convicted of only one murder. The court reasoned that, contrary to the State's assertion, subsection (d) of Section 9-1.2 does not convert intentional homicide of an unborn child into a murder offense for the purposes of sentencing under the multiple murder provision. Instead, the court construed subsection (d) of Section 9-1.2 as merely "establishing the sentencing range for intentional homicide of an unborn child" by authorizing courts to impose any sentence that is available for murder, including a life sentence, on persons found guilty of the offense. The court also reasoned that the General Assembly would have had no need to add to Section 9-1.2 certain mandatory additions for crimes committed with firearms if intentional homicide of an unborn child would be considered murder for all sentencing purposes. The dissent argued that the majority's holding undermines the General Assembly's legislative intent regarding the sentencing mandate for intentional homicide of an unborn child because (i) the plain and unambiguous language set out in subsection (d) of Section 9-1.2 requires sentencing courts to sentence intentional homicide of an unborn child the same as first degree murder and (ii) subsection (d) of Section 9-1.2 does not explicitly exclude a mandatory life sentence under the Unified Code of Corrections' multiple murder provision. As a result, the dissent asserted that the majority opinion erroneously added an exception under subsection (d) of Section 9-1.2 that is in conflict with the plain and unambiguous language of the statute.

WHISTLEBLOWER ACT – RETALIATION

The reassignment of an employee to a less desirable assignment and shift after that employee submits a report of misconduct to her supervisor constitutes a materially adverse employment action.

In *Svec v. City of Chicago,* 2024 IL App (1st) 230893, the Illinois Appellate Court was asked to determine whether the trial court erred in awarding damages under the Whistleblower Act when a police detective was reassigned and given a different shift assignment after the detective submitted a report of police misconduct to her supervisor and the State's Attorney's office. Subsection (b) of Section 15 of the Whistleblower Act (740 ILCS 174/15(b)) provides that "[an] employer may not take retaliatory action against an employee for disclosing or threatening to disclose information to a government or law enforcement agency information related to an activity, policy, or practice of the employer, where the employee has a good faith belief that the activity, policy, or practice of the employer (i) violates a State or federal law, rule, or regulation or (ii) poses a substantial and specific danger to employees, public health, or safety." Section 20.1 of the Whistleblower Act (740 ILCS 174/20.1) further provides that "[any] other act or omission not otherwise specifically set forth in this Act, whether within or without the workplace, also constitutes retaliation by an employer under this Act if the act or omission would be materially adverse to a reasonable employee and is because of the employee disclosing or attempting to disclose public corruption or wrongdoing." The plaintiff argued that, after submitting a report of police misconduct to her supervisor and the State's Attorney's office she was removed from her assignment and reassigned to a less desirable district and moved from the day shift to the night shift. Additionally, the plaintiff argued that being moved from the day shift to the night shift is commonly understood in the police community as a way for supervisors to punish disfavored officers. The plaintiff asserts that these actions were all taken against her despite a history of positive performance evaluations and no complaints from her fellow officers. The defendant argued that retaliation under the Whistleblower Act requires a materially adverse action against the employee, and that the plaintiff's lateral transfer and assignment to a different shift did not constitute a materially adverse action. The court agreed with the plaintiff, holding that the plaintiff's reassignments by her supervisor constituted a materially adverse action against her under the Whistleblower Act. The court reasoned that, although the legislative history of the Whistleblower Act indicates that the General Assembly initially viewed whistleblower retaliation in the same light as a retaliatory discharge, the adoption of Section 20.1 shows the General Assembly's intent to expand the scope of retaliation to include additional materially adverse employment-related acts and omissions. In order to determine whether the defendant's employment actions against the plaintiff were materially adverse, the court looked to analogous law and found that, for purposes of the Illinois Human Rights Act, courts have viewed "adverse employment actions based upon claims of undesirable job assignments and lateral transfers" as supportive of a claim of adverse retaliation in some contexts. The court concluded that the trial court did not err when it concluded that the undesirable reassignments would have dissuaded a reasonable worker in the plaintiff's position from making disclosures of a violation of law.

WORKERS' COMPENSATION ACT – DISABILITY BENEFITS

The Act permits an employee to recover for the loss of two members and for additional non-scheduled losses.

In *American Coal Company v. Illinois Workers' Compensation Committee*, 2024 IL App (5th) 230815WC, the Illinois Appellate Court was asked to decide whether the circuit court erred when it awarded permanent partial disability benefits for non-scheduled body parts and awarded permanent total disability benefits for the loss of use of both eyes. Paragraph (2) of subsection (d) of Section 8 of the Workers' Compensation Act (820 ILCS 305/8(d)(4)) provides that "[i]f, as a result of the accident, the employee sustains serious and permanent injuries . . . he shall have sustained in addition thereto other injuries which injuries do not incapacitate him from pursuing the duties of his employment but which would disable him from pursuing other suitable occupations, or which have otherwise resulted in physical impairment; or if such injuries partially incapacitate him from pursuing the duties of his usual and customary line of employment but do not result in an impairment of earning capacity, or having resulted in an impairment of earning capacity . . . he shall receive in addition to compensation for temporary total disability . . . compensation at the rate provided . . . Compensation awarded . . . shall not take into consideration injuries covered under paragraphs (c) and (e) . . . and the compensation…shall not affect the employee's right to compensation payable under paragraphs (b), (c) and (e) . . . " Paragraph (18) of subsection (e) of Section 8 of the Workers' Compensation Act (820 ILCS 305/8(e)(18)) provides that "[f]or accidental injuries…the employee shall receive compensation for the period of temporary total incapacity for work resulting from such accidental injury…and shall receive in addition thereto compensation for a further period for the specific loss herein mentioned, but shall not receive any compensation under any other provisions of this Act. The specific case of loss of both hands, both arms, or both feet, or both legs, or both eyes, or of any two thereof, or the permanent and complete loss of the use thereof, constitutes total and permanent disability . . . These specific cases of total and permanent disability do not exclude other cases." The employer argued that the Act allows for the recovery of the loss of two members and any additional scheduled losses, not non-scheduled losses. The employer further argued that the General Assembly could have included language allowing for awards of both permanent total disability and non-scheduled permanent partial disability, but that, since the General Assembly did not do so, the General Assembly must have intended to limit additional compensation to scheduled body parts only. The claimant argued that denying compensation for the non-scheduled losses would leave the claimant with no compensation for the claimant's additional injuries that could impact earning capacity. The court agreed with the claimant, holding that the Act permits an employee to recover for the loss of two members as well as for additional non-scheduled losses. The court reasoned the plain reading of the statute provides compensation when the employee sustains serious and permanent injuries in addition to other injuries.

CASES

STATUTES