CH. 47
STATUTES

§47-1
Statutory Construction

§47-1(a)
Generally

Illinois Supreme Court

Round v. Lamb, 2017 IL 122271 Procedural commands to government officials are presumed to be directory, and that presumption is overcome only if negative language in the statute prohibits further action in the case of noncompliance or the right which the statute is designed to protect would generally be injured if the statute were read as directory. The court concluded that although Public Act 97-531 amended 730 ILCS 5/5-8-1 to require the trial court to include an MSR term in the written sentencing order, that requirement is directory rather than mandatory.

In re Jordan G., 2015 IL 116834 Whether parts of a statute that have been declared unconstitutional may be severed from the rest of the statute involves questions of statutory interpretation and legislative intent. Where a statute does not contain its own severability provision, the severability section of the Statute on Statutes is utilized. That statute provides that the invalidity of one provision of a statute does not affect other provisions which can be given effect without the invalid provision. (5 ILCS 70/1.31).

People v. Mosley, 2015 IL 115872 The issue of severability involves questions of statutory interpretation and legislative intent. Where a statute does not contain its own severability provision, the severability section of the Statute on Statutes is utilized. That statute provides that the invalidity of one provision of a statute does not affect other provisions which can be given effect without the invalid provision. (5 ILCS 70/1.31).

People v. Tousignant, 2014 IL 115329 The same principles that govern the interpretation of statutes govern the interpretation of Supreme Court rules. The goal is to ascertain and give effect to the intention of the rule's drafters. While the word "or" is generally disjunctive, it will not be given its literal meaning where to do so would frustrate the drafter's intent. In those circumstances, "or" will be considered to mean "and."

The Court found that Supreme Court Rule 604(d) was intended to ensure that all issues concerning a guilty plea be presented to the trial court in a postplea motion. Consistent with that intent, the term "or" should be interpreted as "and."

In re M.I., 2013 IL 113776 Whether a statutory command is mandatory or directory is a question of statutory construction that is reviewed *de novo*. Statutes are mandatory if the intent of the legislature dictates a particular consequence for the failure to comply with the provision. In the absence of such legislative intent, the statute is directory and no specific consequence flows from noncompliance. The use of the word "shall" is not determinative of the mandatory/directory question.

A presumption exists that language issuing a procedural command to a government official indicates that the statute is directory. This presumption is overcome when: (1) there

is negative language prohibiting further action in the case of noncompliance; or (2) the right that the provision is designed to protect would be injured under a directory reading.

The Extended Juvenile Jurisdiction (EJJ) statute provides that a hearing on a State's motion to designate a proceeding as an EJJ proceeding "shall commence . . . within 30 days of the filing of the motion, unless good cause is shown . . . [in which case] the hearing shall be held within 60 days of the filing of the motion." 705 ILCS 405/5-810(2). While use of the word "shall" indicates that the court has an obligation to hold a hearing on the motion, use of that term does not control the mandatory/directory question. The EJJ statute is presumed directory because it issues a procedural command to a government official.

The presumption that the statute is directory is not overcome by either condition. The statute lacks any negative language prohibiting further action if the hearing is not held within 60 days. The right that the statute is designed to protect was not injured under a directory reading. The minor received notice of the motion and a hearing before being subject to an EJJ proceeding and has not shown how he was prejudiced by a hearing conducted outside the 60-day limit. The court rejected the minor's arguments that a mandatory reading would eliminate any "state of uncertainty" for the minor, unnecessary delays, and use of the motion as a litigation tactic.

People v. Jackson & Lee, 2011 IL 110615 The court discussed several rules of statutory construction. The construction of a statute is a question of law, which is reviewed *de novo*. The primary objective of statutory construction is to ascertain and implement the intent of the legislature. The most reliable indication of legislative intent is the plain and ordinary meaning of the statutory language.

A court must view the statute as a whole, construing words and phrases in light of other relevant statutory provisions and not in isolation. Each word, clause, and sentence is to be given a reasonable meaning if possible, and should not be rendered superfluous. The court may also consider the reason for the law, the problem sought to be remedied, the purposes to be achieved, and the consequences of construing the statute one way or another. The court presumes that the legislature did not intend to create absurd, inconvenient, or unjust results.

A subsequent amendment to a statute may be an appropriate source for discerning legislative intent. An amendatory change in statutory language creates a presumption that the legislature intended to change the statute as it previously existed. However, this presumption may be overcome by other considerations; if the circumstances surrounding the amendment indicate that the legislature intended only to interpret the original statute, the presumption is rebutted.

Among the circumstances which may indicate that an amendment was intended merely to clarify the law are whether the enacting body declares that it was clarifying a prior amendment, whether a conflict or ambiguity existed prior to the amendment, and whether the amendment is consistent with a reasonable interpretation of the prior enactment and its legislative history.

Under the rule of "lenity," a court strictly construes ambiguous criminal statutes to afford leniency to the accused. However, the cardinal principle of statutory construction, to which all other rules are subordinate, is that a court must ascertain and give effect to the intent of the legislature. The rule of lenity does not allow a court to construe a statute so rigidly as to defeat the legislature's intent.

People v. Close, 238 Ill.2d 497, 939 N.E.2d 463 (2010) A statutory exception which withdraws specified acts or persons from the operation of a statute is not an element of the

offense, but a matter of defense. By contrast, an exception which is part of the definition of an offense (*i.e.,* "is descriptive of the offense") must be negated by the prosecution in order to prove the offense.

The possible application of a restricted driving permit is not an element of driving with a revoked license, but a matter of defense which the accused may raise.

People v. Ousley, 235 Ill.2d 299, 919 N.E.2d 875 (2009) In construing the meaning of a statute which contains the term "shall", two related but separate inquires may arise. First, the court may be called upon to determine whether the statute is "mandatory" or "permissive." In this context, the term "mandatory" refers to an obligatory duty which a governmental entity is required to perform, as opposed to a permissive power which it may choose whether or not to exercise.

Second, the court may be required to determine whether the statute is "mandatory" or "directory." This inquiry "simply denotes whether the failure to comply with a particular procedural step" has "the effect of invalidating the governmental action to which the procedural requirement relates." In other words, the "mandatory-permissive" issue determines whether the language of the statute has the force of a command or is merely a grant of permission, while the "mandatory-directory" issue concerns the consequences of failing to fulfill an obligation.

When the "mandatory-directory" determination is at issue, use of the word "shall" is not determinative. By contrast, when the issue is whether the statutory language is "mandatory" or "permissive," use of the word "shall" usually indicates a legislative intent to impose a mandatory obligation.

People v. Brown, 225 Ill.2d 188, 866 N.E.2d 1163 (2007) Transfer of a juvenile to adult court was void where it was based on a provision subsequently found to have been unconstitutionally enacted. Upon remand the law in effect prior to enactment of the unconstitutional Act should apply to the transfer hearing.

People v. Jordan, 218 Ill. 2d 255, 843 N.E.2d 870 (2006) Severance is appropriate if, upon removing the unconstitutional provision, the remainder of the statute is complete in itself and capable of being independently executed.

People v. Carney, 196 Ill.2d 518, 752 N.E.2d 1137 (2001) The constitutionality of a statute is subject to de novo review. A statute carries a strong presumption of constitutionality, and the burden of rebutting that presumption is on the party asserting unconstitutionality. Whenever possible, reviewing courts must construe a legislative act in a manner which upholds its constitutionality.

People v. Whitney, 188 Ill.2d 91, 720 N.E.2d 225 (1999) The primary rule of statutory construction is to ascertain and give effect to the legislature's intent. The best means of determining legislative intent is the language chosen by the General Assembly, which is to be given its plain and ordinary meaning. Where statutory language is clear and unambiguous, it is to be given effect without resort to other aids to construction.

In general, penal statutes are strictly construed in favor of criminal defendants. Thus, any ambiguity in a penal statute must be resolved in favor of the defense. The trial court's construction of a statute is reviewed de novo.

People v. Fitzgibbon, 184 Ill.2d 320, 704 N.E.2d 366 (1998) Supreme Court Rules are to be

construed in accordance with standard statutory rules of construction. See also, **People v. Richmond**, 188 Ill.2d 376, 721 N.E.2d 534 (1999) (where the language of a Supreme Court rule is clear and unambiguous, it will be applied as written, without resorting to statutory rules of construction).

People v. Warren, 173 Ill.2d 348, 671 N.E.2d 700 (1996) For portions of a statute to be severable, two requirements must be satisfied. First, provisions are not severable if they are so mutually connected and dependent that they are "essentially and inseparably connected in substance." Second, provisions are severable only if the legislature would have passed the valid portions of the statute without the invalid portions. See also, **Best v. Taylor Machine Works**, 179 Ill.2d 367, 689 N.E.2d 1057 (1997) (express severability clause merely creates rebuttable presumption that legislature intended provisions to be severable).

People v. Haywood, 118 Ill.2d 263, 515 N.E.2d 45 (1987) Although penal statutes are to be strictly construed in favor of the accused, "they must not be so rigidly construed as to defeat the intent of the legislature."

Statutes are presumed to be constitutional, and it is the court's duty to construe statutes so as to affirm their constitutionality if such can reasonably be done. If a statute's construction is doubtful, the doubt will be decided in favor of validity.

People v. Christensen, 102 Ill.2d 321, 465 N.E.2d 93 (1984) A criminal statute is to be strictly construed in favor of the accused. See also, **People v. Chandler**, 129 Ill.2d 233, 543 N.E.2d 1290 (1989).

People v. McCarty, 86 Ill.2d 247, 427 N.E.2d 147 (1981) The legislature's classification of cocaine as a "narcotic drug" is valid. The legislature is not bound to follow previously existing definitions; though cocaine is not medically or pharmacologically a narcotic, legislative definitions may "create a narrower or broader meaning of terms for the purpose of the statute than would other definitions commonly used."

People v. Scheib, 76 Ill.2d 244, 390 N.E.2d 872 (1979) The courts do not favor a construction of a statute that would raise legitimate doubts as to its constitutionality.

A cardinal rule of statutory construction ordains that sections in pari materia should be considered with reference to one another so that both sections may be given harmonious effect.

People v. Lutz, 73 Ill.2d 204, 383 N.E.2d 171 (1978) Where the same words or phrases appear in different parts of the same statute, they will be given a generally accepted and consistent meaning unless the legislative intent is clearly to the contrary.

People v. Isaacs, 37 Ill.2d 205, 226 N.E.2d 38 (1967) Repeal by implication is not favored, and even if there is an apparent inconsistency between two statutes they will be construed, insofar as possible, to preclude an implied repeal of one by the other.

Illinois Appellate Court

People v. Williman, 2021 IL App (2d) 200188 Defendant, an elementary school principal, was convicted of one count of failing to report child abuse under the Abused and Neglected Child Reporting Act (325 ILCS 5/4). Specifically, it was alleged that defendant failed to report

to DCFS an allegation that one of his students was abused by a social worker at the school. The matter proceeded to a bench trial where the State offered evidence that the minor's parents reported to the principal that the school social worker had touched their child inappropriately. Those allegations were eventually reported to DCFS by someone else, not the principal. The defense asserted that the parents' report was neither specific enough nor credible enough to require reporting. The judge disagreed, concluding that once a mandated reporter is made aware of allegations of abuse, the reporter has no discretion whether to make a report to DCFS. Defendant was convicted of failing to report child abuse.

Contrary to what the trial court believed, failure to report child abuse is not a strict liability offense. A mandated reporter is not required to make a report to DCFS anytime there is any allegation of abuse. The statute provides that a mandate reporter, "having reasonable cause to believe a child known to them in their professional or official capacity may be an abused child or a neglected child shall immediately report or cause a report to be made" to DCFS. The reference to "reasonable cause to believe" means the mandated reporter may exercise judgment to determine whether a report of abuse is credible.

Because the trial court decided the case based on a misinterpretation of the statute, the Appellate Court reversed and remanded for a new trial. The appellate court found that a new trial would not violate double jeopardy because, looking at the evidence in the light most favorable to the State, a rational trier of fact could have found the essential elements proved beyond a reasonable doubt.

People v. Rowell, 2020 IL App (4th) 190231 625 ILCS 5/11-501(c)(3) provides that a defendant "is subject to" six months of imprisonment if convicted of committing DUI while an individual under the age of 16 is in the vehicle. The trial court concluded that this was a mandatory provision, requiring a six-month jail sentence, with the sentencing judge noting that he would not have imposed a jail sentence otherwise.

The Appellate Court declined to find the jail term mandatory. The court first looked to the plain language of the statute and concluded that "subject to" could mean mandatory or could merely mean that such a sentence was available. The court acknowledged that the classification of the offense already allowed for a jail term of up to 364 days, but was reluctant to read a mandatory requirement into the statute where it was not specifically expressed.

The court also looked to other sections of the DUI statute, applying the doctrine of *in pari materia*, and concluded that the legislature used the word "mandatory" in other sections, indicating that the legislature knew how to express when something was meant to be mandatory. Absence of that language here weighed against finding that the jail term was required.

While legislative history can be useful in construing legislative intent, the statute in question here has been amended many times since this provision was originally enacted. Thus, the court found the legislative history to be of little value in interpreting the current version of the statute.

And, when considered as a whole, the court found questionable the argument that a six-month jail term was required. The court noted that driving under the influence which causes death or great bodily harm to a child under 16 is aggravated DUI, which is a Class 4 felony, rather than a Class A misdemeanor, but which does not carry a mandatory jail term. The same is true for a second DUI while transporting a child; the class of the offense is increased but imprisonment is not required.

Ultimately, the court concluded that the "subject to" language is ambiguous and applied the rule of lenity. That rule requires that the ambiguity be resolved in favor of the

more lenient punishment. Accordingly, defendant's sentence was vacated and the cause was remanded for resentencing.

People v. Johnson, 2018 IL App (3d) 150352 Defendant's shoplifting of clothing from Wal-Mart could not support a burglary conviction as a matter of law. Burglary requires that a person either enter or remain within a building without authority. Under **People v. Bradford**, 2016 IL 118674, the State cannot charge shoplifting under the "remains within" theory of burglary, because the legislature intended for the retail theft statute to cover shoplifting. The Appellate Court here extended **Bradford** to shoplifting charged as "enters without authority" burglary. Defendant did not exceed his authority to enter Wal-Mart despite his intent to steal, where he entered during business hours and remained in public areas. Criminal statutes should not be interpreted so as to allow a prosecutor unbridled discretion to arbitrarily charge some shoplifting crimes as Class 2 felony burglary and others as Class A misdemeanor retail theft. The retail theft statute "occupies the field" of shoplifting crimes.

People v. Patterson, 2016 IL App (1st) 101573-B Under 5 ILCS 70/4, where the legislature does not provide a specific provision concerning the retroactive or prospective application of amendatory acts, procedural amendments are to be applied retroactively while substantive amendments are applied prospectively. Where the Juvenile Court Act was amended during the respondent's appeal to increase the minimum age for mandatory transfer from 15 to 16, the legislation did not provide whether the provision was to be applied retroactively, and defendant had been 15 at the time of the offense, the court concluded that the change in age for mandatory transfer constituted a procedural change that was to be applied retroactively to cases on direct appeal.

People v. Olsen, 2015 IL App (2d) 140267 Section 30(c) of the State Police Act provides that in-car video recording equipment shall record activities outside a patrol case when an officer (1) is conducting an enforcement stop or (2) reasonably believes a recording may assist the prosecution, enhance safety, or for any other lawful purpose. 20 ILCS 2610/30(c).

Here, for safety reasons, the officer conducted field sobriety tests in front of defendant's car so that none of the tests were capable of being seen on the video recording. Defendant argued that the officer's failure to record the sobriety tests amounted to "spoilation of evidence" by failing to "properly preserve evidence" as required by the statute. As a remedy, defendant requested that the court suppress all of the officer's observations during the tests.

The consequences of failing to comply with a statute's command is determined under the directory/mandatory dichotomy. Statutes are mandatory if the statute dictates a particular consequence for noncompliance. In the absence of a specific consequence, the statute is directory and no particular consequence flow from noncompliance. Statutes are also mandatory if the right the statute is designed to protect would generally be injured under a directory reading.

The Appellate Court held that the statute here was directory. It did not dictate a particular consequence for noncompliance and it did not generally injure a defendant's right to a fair trial. The purpose of recording traffic stops is to assist in the truth-seeking process by providing objective evidence of what occurred. The recordings could be useful to both the State and defendant. Since the recording could help or hinder either party, defendant's right to a fair trial would not be generally injured under a directory reading.

The trial court's order suppressing the evidence was reversed and the cause remanded for further proceedings.

People v. Borys, 2013 IL App (1st) 111629 A statute is presumed to be directory rather than mandatory, and no particular consequence follows from noncompliance, unless (1) there is negative language prohibiting further action in the case of noncompliance, or (2) the right that the provision is designed to protect would generally be injured under a directory reading. Neither condition applies here.

The State Police Act required the Department of State Police to install in-car video camera recording equipment in all patrol vehicles by June 1, 2009, and that any enforcement stop resulting from a suspected violation of the Illinois Vehicle Code shall be video and audio recorded. 20 ILCS 2610/30(b), (e). The Act lacks negative language prohibiting further action if the Department of Police does not comply with the July 2009 deadline. Nor would a directory reading of the statute injure the defendant's right to a fair trial because the legislature envisioned that all traffic stops would not be recorded where the statute provides the Department of State Police with discretion to permit use of vehicles despite recording deficiencies. Therefore, the presumption that the statute is directory has not been overcome.

People v. Henderson, 2013 IL App (1st) 113294 Whether an unconstitutional portion of a statute can be severed from the rest of the statute involves a question of statutory construction, which requires ascertaining and giving effect to the intent of the legislature. Generally, an invalid portion of a statute may be severed if the remaining portions can be given effect in the absence of the invalid provision.

Severability is determined by a two-part inquiry. First, the court must determine whether the valid and invalid portions of the statute are essentially and inseparably connected in substance. Second, the court must determine whether the legislature would have enacted the valid portions without also enacting the invalid portions.

People v. Burk, 2013 IL App (2d) 120063 A court's task in interpreting a statute is to give effect to the legislative intent. If a statute is capable of two interpretations, a court should give it the one that is reasonable and that will not produce an absurd, unjust, unreasonable, or inconvenient result that the legislature could not have intended.

The Illinois Eavesdropping Act exempts "[r]ecordings of utterances made by a person while in the presence of a uniformed peace officer and while an occupant of a police vehicle." 720 ILCS 5/14-3(h-5).

The dictionary definition of "presence" is "in the vicinity of or in the area immediately near." Nothing in the Act indicates a legislative intent to ascribe any meaning to the term "presence" different from its commonly understood meaning. Therefore, "in the presence" of an officer means in the vicinity of or immediately near an officer. Nothing in the statute supports an interpretation requiring that the officer be inside the squad car when the statement is recorded. Had the legislature so intended, it would have used more limiting language. The court refused to read into the statute a limitation that was not expressed.

People v. Chambers, 2013 IL App (1st) 100575 The Appellate Court rejected the State's argument that Illinois Supreme Court Rule 137, which provides that the signature of an attorney or a party constitutes a certificate that he or she believes that the allegation is warranted by existing law or a good faith argument for the extension of existing law and authorizing an appropriate sanction where a document is signed in violation of the rule, authorizes a ban on filing post-conviction petitions until court costs for prior petitions have been paid. The court noted that 735 ILCS 5/22-105, which provides that the inability to pay

court costs does not bar a petitioner from filing a post-conviction petition, is a specific provision addressing frivolous filings by prisoners, while Rule 137 is a general rule governing the filing of all documents. Because a specific statutory provision prevails over a general provision, §22-105 permits the filing of a post-conviction petition even where the petitioner has not paid previous court costs.

People v. Bethel, 2012 IL App (5th) 100330 To determine whether a statutory amendment is retroactive, a court initially determines whether the legislature has expressly stated the temporal reach of amendment. If the legislature has done so, the expression of the legislature must be given effect absent a constitutional prohibition.

If the legislature has not clearly stated the temporal reach of the amendment, a court must next determine whether applying the amendment would have a retroactive impact. To make this determination, a court considers whether the retroactive application of the amendment impairs rights a party possessed while acting, increases a party's liability for past conduct, or imposes new duties with respect to transactions already completed.

The Statute on Statutes provides a clear legislative directive as to the temporal reach of an amendment where none is expressly stated. Statutory amendments that are procedural may be applied retroactively, while amendments that are substantive may not. 5 ILCS 70/4. If retroactive application has inequitable consequences, the court will presume that the statute does not govern the case.

People v. Shultz, 2011 IL App (3d) 100340 Disorderly conduct is defined in relevant part as conduct in which an individual knowingly "[t]ransmits or causes to be transmitted a threat of destruction of a school building or school property, or threat of violence, death, or bodily harm directed against *persons* at a school, school function, or school event, whether or not school is in session. 720 ILCS 5/26-1(a)(13).

The Statute on Statutes provides that "[i]n the construction of statutes, this Act shall be observed, unless such construction would be inconsistent with the manifest intent of the General Assembly or repugnant to the context of the statute." 5 ILCS 70/1. It also provides in relevant part 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." 5 ILCS 70/1.03.

Applying the Statute on Statutes, the court held that the disorderly conduct statute is properly read to include both the singular and plural of the word "persons."

People v. Ebelechukwu, 403 Ill.App.3d 62, 937 N.E.2d 222 (1st Dist. 2010) Whether state law is preempted by federal legislation is a question of law that is reviewed *de novo*. Legislative intent, either express or implied, determines whether federal law preempts state law. Congress may explicitly mandate preemption of state law. Absent an expressed intent, intent to preempt state law may be inferred in two situations. First, field preemption is implied where the scheme of federal legislation is so pervasive as to support a reasonable inference that Congress left no room for the States to supplement it. Second, conflict preemption arises where: 1) compliance with federal and state regulation is a physical impossibility; or 2) state law creates an obstacle or otherwise impedes the accomplishment and execution of the full purposes and objectives of federal law.

People v. Wilson, 404 Ill.App.3d 244, 935 N.E.2d 587 (3d Dist. 2010) Resisting a peace

officer is punishable as a Class 4 felony if defendant's act was "the" proximate cause of an injury to the officer. 720 ILCS 5/31-1(a-7). The resisting instructions submitted to defendant's jury required the jury to find that defendant's act was "a" proximate cause of the injury. Defendant argued that this instruction was plain error because use of the article "a" in the instruction allowed the jury to convict using a lower, more inclusive standard than provided by statute.

The court found no error in the instruction. The court noted that 19 statutes contain the word "proximate cause," ten with the article "a" and nine with the article "the." Two statutes that contain the article "the" included the language "more than 50% of the proximate cause." If use of "the" meant there could be only a single cause of injury, the legislature's addition of the "more than 50%" language was unnecessary. The court also looked at IPI Civil Instruction 15.01, which defines "proximate cause" as "a cause which . . . produced the injury. It need not be the only cause, nor the last nor nearest cause. It is sufficient if it combines with another cause resulting in injury." The court concluded that "a" and "the" are interchangeable and "the" does not indicate that defendant's act must be the sole proximate cause.

People v. Bohannon, 403 Ill.App.3d 1074, 936 N.E.2d 143 (5th Dist. 2010) Specific terms covering the given subject matter prevail over general language of the same or another statute that might otherwise prove controlling.

Defendant was charged with obstructing a peace officer based on his refusal to produce his driver's license and proof of insurance when stopped by the police at a random safety checkpoint. The act that the police officer was authorized to perform and that defendant resisted were the same exact acts that the defendant was required to perform at the request of a law enforcement officer by the Illinois Vehicle Code. Because the acts of resistence and obstruction were subsumed in the provisions of the Illinois Vehicle Code, defendant could not be prosecuted for obstruction of a peace officer.

People v. Hill, 402 Ill.App.3d 903, 934 N.E.2d 43 (1st Dist. 2010) The construction of supreme court rules is governed by the same rules governing the construction of statutes. A court will apply the clear and unambiguous language of a rule as it is written to determine if an obligation imposed by the rule is mandatory or permissive.

If the obligation is mandatory, the dispositive issue is the consequence of the failure to comply with the obligation, the answer to which depends on whether the rule is mandatory or directory. The Appellate Court acknowledged that the Illinois Supreme Court has not yet spoken on the question of whether its rules are mandatory or directory. In construing statutes, a presumption exists that language issuing a procedural command to a government official indicates an intent that the rule is directory. That presumption is overcome by language prohibiting further action in the event of non-compliance, or if the right protected by the statute is injured by a directory reading.

People v. Williams, 376 Ill.App.3d 875, 876 N.E.2d 235 (1st Dist. 2007) Whether a federal statute preempts a state statute is a question of law subject to de novo review. Further, whether a state statute is preempted by federal law is a question of congressional intent.

People v. Purcell, 325 Ill.App.3d 551, 758 N.E.2d 895 (2d Dist. 2001) The unconstitutional portion of a statute may be severed, and the remainder of the statute preserved, where the remainder "is complete in and of itself and is capable of being executed wholly independently of the severed portion." Generally, unconstitutional portions of statutes should be severed

where the General Assembly would have adopted the remainder of the act without the unconstitutional portion.

§47-1(b)
Plain Meaning – Clear and Unambiguous Language

Illinois Supreme Court

People v. Legoo, 2020 IL 124965 Defendant was convicted of being a child sex offender in a park under 720 ILCS 5/11-9.4-1(b). Evidence at trial established that defendant had gone to the park to retrieve his minor son who was there watching a baseball game. Defendant argued that a statutory exception contained in a nearby section of the Criminal Code, Section 11-9.3(a-10) should be read into Section 11-9.4-1(b). The Supreme Court disagreed.

Section 11-9.3(a-10) permits a child sex offender to be present in a public park and communicate with a minor if the offender's own minor child is also present in the park. Section 11-9.4-1(b), on the other hand, acts as a complete prohibition on a child sex offender's presence in a public park.

The Court first looked to its recent decision in **People v. Pepitone**, 2018 IL 122034, where it held that section 11-9.4-1(b) "completely bars sex offenders who have targeted children from public parks" and acts as a "flat ban." This indicates the legislature did not intend any exception to apply.

The Court went on to discuss differences between the two statutory provisions. Both apply to child sex offenders, but 11-9.4-1 excepts "Romeo and Juliet" offenders. Also, they prohibit different conduct, with 11-9.4-1(b) prohibiting entry or presence in a public park, while 11-9.3(a-10) prohibits approaching, contacting, or communicating with a minor in a public park unless the offender's minor child is also present. Finally, different penalties apply, with 11-9.4-1(b) being a misdemeanor for a first offense, while 11-9.3(a-10) is a Class 4 felony because of the greater threat to public safety from an offender actually approaching a minor in a park. The Court reasoned that because of the harsher punishment, the legislature may have concluded it was reasonable to allow an accused offender to provide an innocent explanation for his or her conduct under 11-9.3.

Ultimately, because the plain language of 11-9.4-1(b) did not include a parental exception, the Court declined to find that the legislature intended such an exception to apply.

Further, the Court held that Section 11-9.4-1(b) is not an unconstitutional infringement on defendant's interest in the care, custody, and control of his child. There is no fundamental right for any person to be present in a public park and no authority for the notion that a parent is entitled to take his child to a public park as part of his liberty interest in raising and caring for his child. Without such an interest, there was no constitutional infringement imposed by the statute.

The two dissenting justices reasoned that the legislature could not reasonably have intended to both prevent all child sex offenders (except Romeo and Juliet offenders) from public parks while simultaneously allowing an exclusion from the prohibition against talking to other children in a public park for those child sex offenders who are present in a public park with their own children. The dissent would have incorporated the parental exception.

People v. Witherspoon, 2019 IL 123092 Defendant was charged with domestic violence and released on bond. A condition of bond barred him from entering the complainant's home. Defendant continued a sexual relationship with the complainant, including inside her home. One night, defendant entered her home and beat her. He was charged and convicted with,

inter alia, home invasion. The Appellate Court reversed, finding the State failed to prove defendant entered "without authority." Although a court order prohibited defendant's entry, the complainant had given him permission to enter on other occasions and testified that she did not worry when he left with her car, because he always came back, indicating that authorization continued.

The Supreme Court reversed. It agreed that the complainant did not revoke her authorization to enter, but held that the condition of bond satisfied the "without authority" element. Analyzing the home invasion statute, the court noted that "without authority" was not defined by the legislature, before focusing on the plain language of the statute. The defendant's argument that the authority granted by the homeowner trumped the banishment imposed by the bail bond would require courts to read into the statute a limitation not supported by the plain language, specifically, that the entry must be "without authority *from the homeowner*." Because the statute did not specify what "authority" barred admission, revocation of authorization by the circuit court sufficed. Moreover, while the court rejected the State's argument that defendant need not "knowingly" act without authority, here, defendant knew the conditions of bond and therefore knew he lacked authority from the court to enter regardless of his permission from the complainant.

People v. Casas, 2017 IL 120797 The continuing offense exception to the statute of limitations states, "When an offense is based on a series of acts performed at different times, the period of limitation prescribed by this Article starts at the time when the last such act is committed." 720 ILCS 5/3-8. The plain language of the violation of bail bond statute makes clear that the offense is committed on the thirtieth day after forfeiture of bond, but does not plainly state whether it is a continuing offense. Turning to the "nature of the offense," the court compared it to other crimes whose statutes do not state whether they are continuing offenses, including escape. In **United States v. Bailey**, 444 U.S. 394 (1980), the United States Supreme Court characterized escape as a continuing offense due to the continued threat posed by the escapee, a position adopted by Illinois in **People v. Miller**, 157 IL App. 3d 43 (1st Dist. 1987). Even though those who violate bond have yet to be convicted and pose less of a threat than escapees, the Illinois Supreme Court found sufficient similarities between the offenses such that both must be considered continuing offenses.

The Supreme Court rejected defendant's reliance on **People v Grogan**, 197 Ill. App. 3d 18 (1st Dist. 1990), which held that defendants who violate bail bond do not pose the same continuing threat as escapees and therefore held that violation of bail bond is not continuing. Because bond imposes conditions and duties upon the defendant to return to court until the final order in the case, a violation occurs each time defendant fails to appear, and therefore **Grogan** must be overruled. The Supreme Court further rejected defendant's argument that the legislature signaled its intent by acquiescing in the years following **Grogan**, during which it did not amend the statute to clarify that violation of bail bond is a continuing offense. Legislative intent to treat the offense similar to escape is evident from other sections of the Code of Criminal Procedure, including in multiple provisions treating the two offenses identically for purposes of providing for trials *in absentia*.

In re Michael D., 2015 IL 119178 The same rules of construction apply to both statutes and Supreme Court Rules. When interpreting statutes and rules, the primary goal is to ascertain and give effect to the intent of the drafters. The most reliable indicator of the drafters' intent is the plain and ordinary meaning of the language used.

Where the language of a statute or rule is clear, it must be given effect without resort

to other tools of interpretation. It is improper to depart from the plain language by creating exceptions, limitations, or conditions which conflict with clearly expressed legislative intent.

People v. Johnson, 2013 IL 114639 When statutory terms are not defined, courts presume that the legislature intended the terms to have their popularly understood meaning. If a term has a settled legal meaning, courts will normally infer that the legislature intended to incorporate the established meaning. Questions of statutory construction are reviewed *de novo*.

The Counties Code provides that "State's attorneys shall be entitled to the following fees: * * * For each day actually employed in the hearing of a case of habeas corpus in which the people are interested, $50." 55 ILCS 5/4-2002.1(a).

Because the term "habeas corpus" is not defined in the Counties Code, the court presumed that the legislature intended that the term be given its popularly understood or settled legal meaning. There are numerous types of writs of habeas corpus, but the term "habeas corpus" refers to a writ employed to bring a person before a court, most frequently to ensure that the person's imprisonment or detention is not illegal. The plain and ordinary meaning of the term therefore only applies to various types of habeas corpus proceedings, not generically to all collateral proceedings.

The term first appeared in the statute in a 1907 amendment prior to creation of post-conviction and §2-1401 proceedings. The legislature could have amended the statute to include other collateral proceedings, but has not. The court refused to read words or meanings into the statute when the legislature has chosen not to include them.

People v. Young, 2011 IL 111886 Where terms in a statute have acquired a settled meaning through judicial construction, such meaning is retained in subsequent amendments of the statute unless a contrary intention by the legislature is clearly shown.

Defendant was charged with delivery of a controlled substance within 443 feet of the "High Mountain Church and Preschool," which was not described in the record other than by its name. The Supreme Court reduced the conviction to simple delivery of a controlled substance, finding that the settled meaning of the term "school" is limited to a "public or private elementary or secondary school, community college, or university."

People v. Comage, 241 Ill.2d 139, 946 N.E.2d 313 (2011) 720 ILCS 5/31-4(a) defines the offense of obstructing justice as "[d]estroy[ing], alter[ing], conceal[ing] or disguis[ing] physical evidence, plant[ing] false evidence, [or] furnish[ing] false information" with intent "to prevent the apprehension or obstruct the prosecution or defense of any person." Because §31-4(a) does not define the word "conceal," the court applied a definition contained in Webster's dictionary from 1961, the year §31-4(a) was adopted.

People v. Kitch, 239 Ill.2d 452, 942 N.E.2d 1235 (2011) When construing a statute, a court must give effect to the legislature's intent, considering the subject that the statute addresses, and the legislature's apparent objective in enacting it, and adopting the plain and ordinary meaning of the statutory terms.

People v. Diggins, 235 Ill.2d 48, 919 N.E.2d 327 (2009) The fundamental rule of statutory construction is to ascertain and give effect to the intention of the legislature. The best indication of legislative intent is the language of the statute, which must be given its plain and ordinary meaning. Where statutory language is clear and unambiguous, it will be applied as written without resort to other sources of statutory construction.

People v. Bywater, 223 Ill.2d 477, 861 N.E.2d 989 (2006) The best indication of legislative intent is the language of the statute; when the language is unambiguous, the statute must be applied as written and without resorting to other aids of construction. "A statute must be considered in its entirety, though, keeping in mind the subject it addresses and the legislature's apparent objective in enacting it."

625 ILCS 5/2-118.1(b) provides that a hearing on a petition to rescind a summary suspension of a driver's license must be held "[w]ithin 30 days after receipt of the written request." On July 11, 2002, defendant filed a petition to rescind a summary suspension, and sent a copy of that filing to the State by first class mail. The hearing was held 34 days later.

The plain language of the statute requires a hearing within 30 days after the petition is filed with the circuit clerk. To read in a requirement that the 30-day time period does not begin to run until the State's receipt of service would contravene the statute's plain language. When statutory language is unambiguous it must be applied as written.

People ex rel. Birkett v. Jorgensen, 216 Ill.2d 358, 837 N.E.2d 69 (2005) When interpreting a statute, the primary consideration is to ascertain and give effect to the legislature's intent. The best indication of legislative intent is the plain and ordinary meaning of the statutory language. When such language is clear and unambiguous, further aids to statutory construction are unnecessary.

However, it is presumed that the legislature did not intend an absurd, inconvenient or unjust result. Although penal statutes are construed to afford lenity to the accused, this rule applies only when the statute is ambiguous.

People v. Ramirez, 214 Ill.2d 176, 824 N.E.2d 232 (2005) The fundamental rule of statutory construction is to ascertain and give effect to the legislature's intent. The best indication of legislative intent is the plain and ordinary meaning of the statutory language. Language that is clear and unambiguous must be applied without resort to further aids of statutory construction. A lower court's construction of a statute is reviewed de novo.

People v. Bonutti, 212 Ill.2d 182, 817 N.E.2d 489 (2004) Administrative regulations have the force and effect of law and are to be construed according to the standards that govern statutory construction. The fundamental rule of statutory construction is to ascertain and give effect to the intent of the drafters, and the best indication of the drafters' intent is the plain and ordinary meaning of the statutory language.

People v. Hanna, 207 Ill.2d 486, 800 N.E.2d 1201 (2003) Administrative regulations have the force and effect of law, and are to be construed by standards governing the construction of statutes. The cardinal rule of statutory construction, to which all other rules are subordinate, is to ascertain and give effect to the drafter's intentions.

The most reliable indicator of intent is found in the language of the regulation itself, which is to be given its plain, ordinary and popularly understood meaning. Where a plain or literal reading produces an absurd result, however, the literal reading must yield.

People v. Davis, 199 Ill.2d 130, 766 N.E.2d 641 (2002) Whether a lower court has correctly interpreted the provisions of the statute is a question of law and is reviewed de novo. When construing a statute the court must consider the statute in its entirety, including the subject addressed and the legislature's apparent objective. The most reliable indication of legislative intent is the language of the act, which if plain and unambiguous must be read without

exception, limitation or condition.

In deciding that a pellet/BB gun is not a "dangerous weapon" under the armed violence statute, the court applied two additional doctrines of statutory construction. The doctrine of ejusdem generis provides that when a statutory clause specifically describes several classes of persons or things and then includes "other persons or things," the word "other" is interpreted as meaning "other such like." In addition, the "last antecedent doctrine" provides that "relative or qualifying words or phrases in a statute serve only to modify words or phrases which are immediately preceding," and not those which are more remote.

People v. Whitney, 188 Ill.2d 91, 720 N.E.2d 225 (1999) The primary rule of statutory construction is to ascertain and give effect to the legislature's intent. The best means of determining legislative intent is the language chosen by the General Assembly, which is to be given its plain and ordinary meaning. Where statutory language is clear and unambiguous, it is to be given effect without resort to other aids to construction.

In general, penal statutes are strictly construed in favor of criminal defendants. Thus, any ambiguity in a penal statute must be resolved in favor of the defense. The trial court's construction of a statute is reviewed de novo.

People v. Woodard, 175 Ill.2d 435, 677 N.E.2d 935 (1997) "There is no rule of construction which allows the court to declare that the legislature did not mean what the plain language of the statute imports. Where an enactment is clear and unambiguous, the court is not free to depart from the plain language and meaning of the statute by reading into it exceptions, limitations, or conditions that the legislature did not express, . . . nor is it necessary for the court to search for any subtle or not readily apparent intention of the legislature. . . . Where the language of the statute is clear and unambiguous, it will be given effect without resort to other aides for construction."

Illinois Appellate Court

People v. Redmon, 2022 IL App (3d) 190167 One of defendant's convictions of predatory criminal sexual assault of a child was reversed outright based on speedy trial and compulsory joinder principles. While certain pretrial delays were attributable to defendant on the original charges, those delays did not toll the speedy trial term as to the subsequently-added PCSA charge. The subsequent PCSA charge was based upon the same act as was charged in one of the original counts and thus was subject to compulsory joinder. Because compulsory joinder applied, it could not be assumed that the delays agreed to by defendant before the charge was filed would have been agreed to by defendant had the additional charge been pending at the time of those delays.

Defendant's conviction for permitting the sexual abuse of a child also was reversed outright where the State failed to comply with the charging requirements of the statute. 720 ILCS 5/11-9.1A(f) provides that "[a] person may not be charged with the offense of permitting sexual abuse of a child...until the person who committed the offense is charged with" one of the enumerated sexual offenses. The plain language of the statute requires that the individual who allegedly committed the sexual abuse must be charged in order for the defendant to be charged with permitting the abuse. And, here, the State did not charge the person who committed the alleged abuse at issue.

Finally, defendant's remaining conviction of predatory criminal sexual assault of a child was reversed and remanded for a new trial. The Appellate Court agreed with defendant that she was deprived of a fair trial by the inclusion of the aforementioned charges, both of

which should have been dismissed prior to trial. Certain evidence, including 115-10 statements, would not have been admissible had those charges been dismissed. Without that evidence, the State's case on the remaining charge would have been significantly weakened. Accordingly, due process and fundamental fairness required reversal and remand for a new trial.

People v. Zamora, 2020 IL App (1st) 172011 Police found 10 pit bulls at defendant's home. Three were caged in the yard, and the cages lacked solid floors, making it difficult for the dogs to walk. Four dogs in the basement were confined to boarded-off pens with chains around their necks. Three puppies were in cages. The dogs' urine and feces had not been cleaned. Police also saw items that, in their experience, suggested training for dogfighting, including a spring and treadmill, though defendant stated he used the treadmill to exercise the dogs. The dogs did not appear to be injured or malnourished.

The Appellate Court found sufficient evidence of defendant's failure to provide humane care and treatment for his dogs, in violation of the Humane Care for Animals Act, 510 ILCS 70/3(a)(4). Section 3(a)(4) requires pet owners to provide "humane care and treatment." Because this phrase is undefined, courts use common sense in determining whether an animal was deprived of this entitlement. The fact-finder's assessment that these dogs were not humanely treated was supported by the evidence, including the floorless cages, dirty conditions, and heavy chains. Similarly, these facts supported a conviction under section 3.01 for cruelly treating, tormenting, or abusing the dogs.

The Appellate Court also rejected defendant's claim that section 3(a)(4) is unconstitutionally vague. Defendant could not show that section 3(a)(4)'s requirement of "humane care and treatment" fails to sufficiently enable a person of ordinary intelligence to understand what conduct the statute criminalizes. Nor could defendant show that the statutory language fails to provide police officers and the courts with an explicit standard.

People v. Hopkins, 2020 IL App (1st) 181100 An "intermodal shipping container" is not a "railroad car" for purposes of the burglary statute, even if the container is bolted onto a train platform for purposes of transporting the container by train. By its plain language, railroad cars refer to compartments with wheels, and the State's evidence established that the container in question is simply a large box without wheels that must be attached to a railroad platform or semi truck for transporting. Including such containers in the definition of "railroad car" would also contradict the legislative intent to protect certain types of enclosures; a shipping container is unlike the other types of enclosures protected by the statute - buildings, boats, housetrailers, etc. Finally, the rule of lenity required any ambiguity to be resolved in the defendant's favor.

As a result, the court reversed defendant's burglary conviction and vacated his seven-and-a-half-year sentence.

People v. Rowell, 2020 IL App (4th) 190231 625 ILCS 5/11-501(c)(3) provides that a defendant "is subject to" six months of imprisonment if convicted of committing DUI while an individual under the age of 16 is in the vehicle. The trial court concluded that this was a mandatory provision, requiring a six-month jail sentence, with the sentencing judge noting that he would not have imposed a jail sentence otherwise.

The Appellate Court declined to find the jail term mandatory. The court first looked to the plain language of the statute and concluded that "subject to" could mean mandatory or could merely mean that such a sentence was available. The court acknowledged that the

classification of the offense already allowed for a jail term of up to 364 days, but was reluctant to read a mandatory requirement into the statute where it was not specifically expressed.

The court also looked to other sections of the DUI statute, applying the doctrine of *in pari materia*, and concluded that the legislature used the word "mandatory" in other sections, indicating that the legislature knew how to express when something was meant to be mandatory. Absence of that language here weighed against finding that the jail term was required.

While legislative history can be useful in construing legislative intent, the statute in question here has been amended many times since this provision was originally enacted. Thus, the court found the legislative history to be of little value in interpreting the current version of the statute.

And, when considered as a whole, the court found questionable the argument that a six-month jail term was required. The court noted that driving under the influence which causes death or great bodily harm to a child under 16 is aggravated DUI, which is a Class 4 felony, rather than a Class A misdemeanor, but which does not carry a mandatory jail term. The same is true for a second DUI while transporting a child; the class of the offense is increased but imprisonment is not required.

Ultimately, the court concluded that the "subject to" language is ambiguous and applied the rule of lenity. That rule requires that the ambiguity be resolved in favor of the more lenient punishment. Accordingly, defendant's sentence was vacated and the cause was remanded for resentencing.

People v. Maillet, 2019 IL App (2d) 161114 Defendant was convicted of two unauthorized-video-recording offenses for surreptitiously filming his stepdaughter in the shower. The first offense was for recording "another person in that other person's residence without that person's consent." 720 ILCS 5/26-4(a-5). Defendant argued that "other person's residence" could not apply to a situation where the parties lived together. The Appellate Court rejected the argument, finding the plain language of the statute did not exclude a recording in the complainant's home merely because defendant happened to live in the same home.

The second offense was based on defendant's recording of the complainant "in a restroom, tanning bed, tanning salon, locker room, changing room, or hotel bedroom." 720 ILCS 5/26-4(a). Defendant alleged that in context, "restroom" must refer to public restrooms, as all the locations in this provision are outside of the home. The court again found the plain language clear, noting the legislature could have included the word "public" before "restroom" but chose not to.

The Appellate Court also rejected defendant's constitutional attacks. As for his First Amendment argument, the court found the statutes are content-neutral and thus subject to intermediate scrutiny. While the statutes might incidentally infringe on some innocent or protected conduct, they would not apply to a "substantial amount" of such conduct. Nor do the statutes violate due process, as they have a knowing mental state and, because they prohibit recording only in places with heightened expectations of privacy, are narrowly suited to their purpose of protecting personal privacy.

People v. Skaggs, 2019 IL App (4th) 160335 One of defendant's convictions of criminal sexual assault was vacated as a lesser-included offense of home invasion. The abstract elements test is used to determine whether one offense is a lesser-included of another. To apply the abstract elements test, however, the court must still look to the offense as charged, not to all of the ways the offense could be charged under the statute. In reaching this conclusion, the Appellate Court rejected **People v. Bouchee**, 2011 IL App (2d) 090542, and

People v. Fuller, 2013 IL App (3d) 110391. So, while home invasion may be premised on a variety of different conduct and underlying offenses, here it was premised on defendant's commission of one of the two counts of criminal sexual assault of which he was also convicted. Where one offense serves as the predicate for another, it is a lesser-included offense.

People v. Fiumetto, 2018 IL App (2d) 170230 When determining whether a requirement of a criminal statute is a description of the offense which must be included in the charging instrument, or merely an exception, courts look to whether the language describes the crime or whether it describes persons. If the language designates certain persons not covered by the statute, it is an exception. Here, Section 1(a) of the Syringes Act begins with the phrase "[e]xcept as provided in subsection (b)." 720 ILCS 635/1(a) (2016). In turn, section 1(b) states that any person who is at least 18 years old may possess up to 20 syringes if she has purchased them from a pharmacy. Because this language describes persons, it qualifies as an exception rather than a description of the offense, and need not be alleged in the charging instrument.

People v. Espino-Juarez, 2018 IL App (2d) 150966 "Obstructing identification" under section 31-4.5(a)(3) of the Criminal Code, occurs when one provides a false name to a police officer who has good cause to believe that the person is a witness to a crime. Reviewing the plain language of the statute as an issue of first impression, the Appellate Court held that "good cause" is the equivalent of "probable cause," and that the officer must have probable cause at the time the question is posed. Here, defendant gave a fake name to an officer called to the scene of a traffic accident. At the time defendant gave the false name, the officer did not think a crime had occurred; he admitted on the stand that he wanted to talk to the defendant as a witness because of possible further *civil* litigation. The Appellate Court found the State's evidence insufficient to prove the officer had probable cause to believe defendant witnessed a crime, and reversed defendant's conviction.

People v. Haberkorn, 2018 IL App (3d) 160599 The Appellate Court reversed defendant's conviction of unlawful presence at a facility providing services exclusively directed toward children by a child sex offender [720 ILCS 5/11-9.3(c)]. That statute prohibits a child sex offender from being present at any "facility providing programs or services exclusively directed toward persons under the age of 18."

Defendant was not present at a facility providing services "exclusively" directed toward children when he boarded a bus to accompany his cousin and her three children on a field trip offered as part of an Easter Seals parenting program. The parenting program was directed toward adults and families, and did not provide services exclusively for children.

People v. Wilson, 2016 IL App (1st) 141500 Public Act 99-69 provided that "On or after the effective date" of the Act, when a person under the age of 18 commits an offense and is sentenced as an adult the sentencing court must consider a specified list of additional mitigating factors. Defendant was found guilty of attempted first degree murder and aggravated battery with a firearm which he committed at age 17 but about three years before the effective date of P.A. 99-69. On appeal, he argued that he was entitled to remand for a new sentencing hearing because P.A. 99-69 should be applied retroactively.

The Appellate Court rejected this argument, finding that the plain language of the Act indicated that the legislature intended it to be applied only to offenses which occurred after the effective date. Unambiguous statutory language is to be applied as written, without

resort to other rules of statutory construction.

In re Davontay A. and Donavon A., 2013 IL App (2d) 120347 Where the language of a statute is clear, the statute must be applied as written without resort to any rules of construction. 730 ILCS 5/5-9-1.7(b)(1) provides that in addition to any other penalty, a $200 fine "shall be imposed upon any person who pleads guilty or who is convicted of, or who receives a disposition of court supervision for, a sexual assault or attempt of a sexual assault." Under the plain language of the statute, minors who were adjudicated delinquent after an adjudicatory hearing are not subject to the fine.

The court added that its conclusion would be the same even if §5-9-1.7(b)(1) was determined to be ambiguous. Under the statutory rule of construction known as *expressio unius est exclusio alterius*, when the legislature includes a listing of things to which a statute applies, there is an inference that things which were omitted from the list were intended to be excluded from the statute. Because the legislature did not include persons who were adjudicated delinquent after an adjudicatory hearing in the list of persons subject to the fine, it should be inferred that the such persons were intended to be excluded from the statute.

People v. Kayer, 2013 IL App (4th) 120028 When interpreting a statute, the court's duty is to ascertain and give effect to the intent of the legislature. The most reliable indicator of the intent of the legislature is the language of the statute, which is to be given its plain, ordinary, and popularly understood meaning. Courts should also consider the statute in its entirety, keeping in mind the subject it addresses and the legislature's apparent objective in enacting it.

The Sex Offender Registration Act provides that if a sex offender "changes" his "place of employment," he shall report his "change in employment . . . within the time period specified in Section 3." 730 ILCS 150/6. Section 3 provides that the sex offender shall register in person within three days of "establishing . . . a place of employment." 730 ILCS 150/3(b).

The Appellate Court concluded that the Act does not require a sex offender to report a loss of employment. This interpretation is supported by the legislature's use of the word "change," the plain and ordinary meaning of which is "to replace with another." It is impossible for a sex offender who loses his job to report a change of his "place of employment"within the time period of §3, as that period of time begins to run only after he has established his new place of employment. The Registration Act requires a sex offender who loses his fixed place of residence to report that loss, but contains no comparable language with respect to employment. Not requiring a report of loss of employment is consistent with the purpose of the Act, which is to enable law enforcement to keep track of sex offenders. Loss of employment does not require law enforcement to track an offender at a new location.

People v. Haase, 2012 IL App (2d) 110220 The primary goal in statutory construction is to ascertain and give effect to the intent of the legislature. In doing so, a court must assume that the legislature did not intend an absurd or unjust result. The first step is to examine the language of the statute, which is the most reliable indicator of legislative intent. Words in a statute are given their ordinary and commonly understood meaning if the statute does not provide a definition indicating a contrary legislative intent. Where the language is plain, exemptions, limitations and conditions should not be read into the statute.

The Liquor Control Act forbids the consumption of alcoholic liquor by any person under 21 years of age, but contains a parental-supervision exemption for consumption "under the direct supervision and approval of the parents or parent or those persons standing in loco parentis of such person under 21 years of age in the privacy of the home." 235 ILCS 5/6-20(g).

This exemption does not require that the parent directly supervise the minor until all of the alcohol has been completely metabolized. The language of the statute is plain in requiring the direct supervision of the *consumption* of alcohol. Requiring the parent to supervise until the alcohol has metabolized would require an absurd result as it would require the parent to have the training and equipment to administer a breath test.

People v. Davis, 2012 IL App (2d) 100934 The primary goal in statutory construction is to ascertain and give effect to the intent of the legislature. The first step is to examine the language of the statute, which is the surest and most reliable indicator of legislative intent. Where the language is clear, the statute may not be revised to include exceptions, limitations or conditions that the legislature did not express. If the legislature uses certain language in one part of a statute and different language in another, the assumption is that different meanings were intended.

The criminal code provides that "[a] person commits the offense of criminal trespass to a residence when, without authority, he or she knowingly enters the residence of another and knows or has reason to know that one or more persons is present or he or she knowingly enters the residence of another and remains after he or she knows or has reason to know that one or more persons is present." 720 ILCS 5/19-4(a)(2).

This statute does not require that the State prove that the defendant knew that he lacked authority to enter the residence. By using the word "knowingly" directly before "enters the residence of another," the legislature made apparent its intent to require that the entry be knowing. Similarly, the legislature specified that the State prove that the defendant "knows or has reason to know that one or more persons is present." The legislature did not, however, place any words before or around "without authority." By not specifically requiring that the defendant knew that he lacked authority, when it specifically required defendant's knowledge of two other elements, the legislature made clear its intent that the without-authority element need not be knowing.

Village of Mundelein v. Bogachev, 2011 IL App (2d) 100346 In construing a statute, a court seeks to effectuate the legislature's intent. The best guide to this intent is the statutory language. If the language is unambiguous, a court must apply it directly and not read in additions, exceptions or limitations that the legislature did not express.

The statutory speedy-trial provision contains two subsections. Subsection (a) applies when the defendant is in custody. Subsection (b) applies when the defendant is released on bail or recognizance. 725 ILCS 5/103-5. Subsection (a) requires that the defendant be tried within 120 days of the date that he was taken into custody (with certain exclusions), while subsection (b) and requires that he be tried within 160 days of the date that he demands trial (with the same exclusions).

Subsection (a) contains a provision, not contained in subsection (b), that "[d]elay shall be considered to be agreed to by the defendant unless he or she objects to the delay by making a written demand for trial or an oral demand for trial on the record." This provision cannot be read into subsection (b). To do so would require the court to read an addition, exception, or limitation into subsection (b) that conflicts with the legislature's unambiguous choice of words. The legislature was capable of incorporating a duty to object into subsection (b) and chose not to do so. A statute cannot be amended or modified by judicial fiat.

Because defendant was on bond, subsection (b) applied, and defendant was not required to object when the court on its own motion continued his case to a date after the statutory speedy-trial term had expired. That period of delay could not be charged to defendant based on his failure to object to the continuance.

The court affirmed the order granting defendant's motion to dismiss due to a speedy-trial violation.

People v. Lattimore, 2011 IL App (1st) 093238 A person commits aggravated battery if he "[k]nowingly and without lawful justification and by any means causes bodily harm to a merchant who detains the person for an alleged commission of retail theft. 720 ILCS 5/12-4(b)(15). A "merchant" for purposes of 720 ILCS 5/12/4(b)(15) is defined as "an owner or operator of any retail merchantile establishment or any agent, employee, lessee, consignee, officer, director, franchisee or independent contractor of such owner or operator." 720 ILCS 5/12-4(b)(15); 720 ILCS 5/16A-2.4. Aggravated battery of a merchant is a Class 3 felony. 720 ILCS 5/12-4(e)(1).

Under §12-4(b)(20), a person commits aggravated battery if he "[k]nows the individual harmed to be a private security officer engaged in the performance of any of his or her official duties, or to prevent the private security officer from performing official duties, or in retaliation for the private security officer performing official duties." 720 ILCS 5/12-4(b)(20). A "private security officer" is "a registered employee of a private security contractor agency." 720 ILCS 12-4(b). Aggravated battery of a private security officer is a Class 2 felony. 720 ILCS 12-4(e)(2).

The plain and ordinary meaning of §12-4(b)'s subsections suggests that a defendant's conduct can fall under multiple subsections. Nothing in the language of §12-4(b) precludes the defendant from being charged with aggravated battery under either subsection where a private security guard also qualifies as a merchant. Section 12-4(b) contains no language suggesting that conduct meeting the requirements of one subsection cannot overlap with conduct that meets the requirements of another subsection. Therefore, §12-4(b)'s subsections cannot be read as exclusive and not overlapping. It is within the prosecution's discretion to select on which subsection to proceed.

People v. Kohl, 364 Ill.App.3d 495, 847 N.E.2d 150 (2d Dist. 2006) The primary objective when construing the meaning of a statute is to give effect to the legislature's intent. In doing so, a court must presume that the legislature did not intend unjust, inconvenient, or absurd results. In addition, any ambiguity in a penal statute must be construed in favor of the accused.

Because the term "metal knuckles" is not defined by the statute creating the offense of unlawful use of a weapon by felon, the court examined several dictionary definitions before concluding that the term should be defined as a device which fits across the fingers and which is intended to protect the fingers and increase the power of a punch.

People v. Terry, 342 Ill.App.3d 863, 795 N.E.2d 1028 (1st Dist. 2003) The plain language of 720 ILCS 5/32-4A(a), which creates the offense of harassment of a potential witness, applies only where legal proceedings are pending. While the State presented a valid policy argument for protecting potential witnesses even after a case has ended, the court refused to "expand the scope of this statute by affirmatively altering its language - particularly because we are required to strictly construe this criminal statute in favor of the accused."

§47-1(c)
Interpreting Ambiguous Language

§47-1(c)(1)
Legislative History

United States Supreme Court

Gamble v. United States, 139 S. Ct. 1960 (2019) While analyzing the Double Jeopardy Clause, the Supreme Court rejected defendant's assertion that the framers intended to bar successive State and federal prosecutions for the same conduct. Defendant pointed out that the framers considered and rejected a constitutional amendment that would have permitted the federal government from re-prosecuting a defendant initially tried in state court. The court rejected this type of inference as a tool of statutory construction. "The private intent behind a drafter's rejection of one version of a text is shoddy evidence of the public meaning of an altogether different text." But see **Cook v. Gralike**, 531 U. S. 510, 521 (2001) and **INS v. Cardoza-Fonseca**, 480 U. S. 421, 442– 443 (1987) (a "compelling" principle of statutory interpretation is "the proposition that Congress does not intend *sub silentio* to enact statutory language that it has earlier discarded in favor of other language.")

Illinois Supreme Court

People v. Clemons, 2012 IL 107821 While the General Assembly can pass legislation to prospectively change a judicial construction of a statute if it believes that the judicial interpretation is at odds with legislative intent, it cannot effect a change in that construction by a later declaration of what it had originally intended.

After the court in **People v. Hauschild**, 226 Ill. 2d 63, 871 N.E.2d 1 (2007), interpreted the armed violence statute to preclude armed robbery, but not robbery, as a predicate offense to armed violence, the legislature amended the statute to preclude robbery as a predicate offense. This amendment could not be construed as a clarification of the legislature's intent under the preamended statute because it was adopted post-**Hauschild**.

In re S.B., 2012 IL 112204 Noting that it has authority to read into statutes language which the legislature omitted by oversight, the court elected to allow unfit juveniles who are found "not not guilty" in a discharge hearing to seek termination of the sex offender registration requirement under the same conditions as minors adjudicated delinquent for sex offenses. The court also found that the legislature made a similar oversight with respect to the limitations that are contained in the Sex Offender Community Notification Law (730 ILCS 152/121) related to the dissemination of sex offender registration information with respect to adjudicated delinquents. It held that §121 of that Act should be read to include juveniles found "not not guilty" following a discharge hearing.

People v. Villa, 2011 IL 110777 A court's primary objective in construing a statute is to ascertain and give effect to the intent of the legislature. Intent is determined by reading the statute as a whole and considering all relevant parts. Words and phrases should not be considered in isolation. To the extent that parts of a statute appear to be in conflict, a court must, if possible, construe them in harmony. While an amendment to a statute may give rise to a presumption that the legislature intended to change the law, such a presumption is not conclusive. Where statutory language has acquired a settled meaning through judicial construction and that language is retained in a subsequent amendment, such language is to

be understood and interpreted in the same way unless a contrary legislative intent is clearly shown.

People v. Hudson, 228 Ill.2d 181, 886 N.E.2d 964 (2008) Defendant was charged with home invasion under 720 ILCS 5/12-11(a)(2), which defines the offense as: (1) knowingly entering a residence without authority under certain circumstances, and (2) intentionally causing "any injury" to a person with within a dwelling place. On appeal, defendant argued that psychological trauma is not included within the phrase "any injury."

The Supreme Court rejected this argument. In the course of its opinion, the court rejected the argument that the comments of four legislators during legislative debates indicate that psychological harm was not intended to be included in the definition of "any injury":

"[W]e note the pitfalls of relying upon such 'snippet[s] of legislative history.' . . . Defendants do not offer us any insight into the thoughts of the . . . remaining representatives, or the . . . members of the senate, all of whom had a vote to cast when this legislation was passed and enacted into law."

People v. Jones, 214 Ill.2d 187, 824 N.E.2d 239(2005) A statute will not be interpreted to effect a change in settled law unless its terms clearly require such a construction. See also, **In re May 1991 Will County Grand Jury**, 152 Ill.2d 381, 604 N.E.2d 929 (1992).

Williams v. Staples, 208 Ill.2d 480, 804 N.E.2d 489 (2004) Although a material change to a statute is generally presumed to have been intended to change the law, the circumstances surrounding the enactment of an amendment must also be considered. Thus, although the amendment of an unambiguous statute indicates a legislative intent to change the law, such intent is not inferred where the legislature amends an ambiguous statutory provision.

People v. Savory, 197 Ill.2d 203, 756 N.E.2d 804 (2001) Comments by the sponsor of legislation could not be used to justify a more restrictive finding of legislative intent than was suggested by the plain and unambiguous language chosen by the legislature.

In re Pronger, 118 Ill.2d 512, 517 N.E.2d 1076 (1987) In determining the intent of the legislature, the court is not confined to a literal examination of the statutory language. It is proper to consider both the history and course of the legislation and subsequent amendments to the statute. See also, **Kirwan v. Welch**, 133 Ill.2d 163, 549 N.E.2d 348 (1989).

People v. Agnew, 105 Ill.2d 275, 473 N.E.2d 1319 (1985) When the legislature amends a statute, but leaves unchanged portions which have been judicially construed, the unchanged portions will retain the construction given them before the amendment.

People v. Nunn, 77 Ill.2d 243, 396 N.E.2d 27 (1979) An amendatory change in the language of a statute creates a presumption that it was intended to change the law as it theretofore existed. This presumption is not controlling when overcome by other considerations.

Finish Line Express v. Chicago, 72 Ill.2d 131, 379 N.E.2d 640 (1978) Legislative debates may be considered to determine the evil which legislation was intended to remedy.

People v. Bratcher, 63 Ill.2d 534, 349 N.E.2d 31 (1976) In ascertaining the intent of the legislature, courts must consider the entire statute, the evil to be remedied and the object to be attained. Subsequent amendments to a statute are an appropriate source of discerning legislative intent.

People v. Hairston, 46 Ill.2d 348, 263 N.E.2d 840 (1970) Where a statute has been judicially construed and the construction has not evoked an amendment, it will be presumed that the legislature acquiesced in the court's exposition of legislative intent.

Illinois Appellate Court

People v. Rowell, 2020 IL App (4th) 190231 625 ILCS 5/11-501(c)(3) provides that a defendant "is subject to" six months of imprisonment if convicted of committing DUI while an individual under the age of 16 is in the vehicle. The trial court concluded that this was a mandatory provision, requiring a six-month jail sentence, with the sentencing judge noting that he would not have imposed a jail sentence otherwise.

The Appellate Court declined to find the jail term mandatory. The court first looked to the plain language of the statute and concluded that "subject to" could mean mandatory or could merely mean that such a sentence was available. The court acknowledged that the classification of the offense already allowed for a jail term of up to 364 days, but was reluctant to read a mandatory requirement into the statute where it was not specifically expressed.

The court also looked to other sections of the DUI statute, applying the doctrine of *in pari materia*, and concluded that the legislature used the word "mandatory" in other sections, indicating that the legislature knew how to express when something was meant to be mandatory. Absence of that language here weighed against finding that the jail term was required.

While legislative history can be useful in construing legislative intent, the statute in question here has been amended many times since this provision was originally enacted. Thus, the court found the legislative history to be of little value in interpreting the current version of the statute.

And, when considered as a whole, the court found questionable the argument that a six-month jail term was required. The court noted that driving under the influence which causes death or great bodily harm to a child under 16 is aggravated DUI, which is a Class 4 felony, rather than a Class A misdemeanor, but which does not carry a mandatory jail term. The same is true for a second DUI while transporting a child; the class of the offense is increased but imprisonment is not required.

Ultimately, the court concluded that the "subject to" language is ambiguous and applied the rule of lenity. That rule requires that the ambiguity be resolved in favor of the more lenient punishment. Accordingly, defendant's sentence was vacated and the cause was remanded for resentencing.

People v. Horsman, 406 Ill.App.3d 984, 943 N.E.2d 139 (2d Dist. 2011) The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature. When the statutory language is clear and unambiguous, it must be applied without the use of others aids to construction. If the statute is capable of being understood by reasonably informed persons in two or more different ways, the statute will be deemed ambiguous, and the court may consider extrinsic aids of construction to discern legislative intent.

Anyone convicted of a fourth or subsequent violation of driving on a revoked license must serve a minimum of 180 days' imprisonment if the revocation was due to a conviction

for DUI or leaving the scene of an accident involving death or personal injury. 625 ILCS 5/6-303(d-3). The statute does not define "imprisonment," and defendant argued that the term should be construed to include electronic home monitoring.

The dictionary definition of "imprisonment" is the act or state of being put in prison or confined in jail. The Unified Code of Corrections defines imprisonment as incarceration in a correctional institution under a sentence of imprisonment, not including periodic imprisonment. 730 ILCS 5/5-1-10. Supporting the conclusion that electronic home monitoring is a form of imprisonment, the Electronic Home Detention Law allows certain individuals serving terms of imprisonment in a correctional institution to be released on electronic home monitoring under specified conditions and circumstances. 730 ILCS 5/5-8A-3. Courts have also considered persons released on electronic home monitoring to be in DOC custody so as to qualify for sentencing enhancements for offenses committed while imprisoned. Therefore, "imprisonment" as used in §6-303(d-3) is an ambiguous term, and extrinsic aids must be used to determine whether the requirement of imprisonment may be satisfied by electronic home monitoring.

The legislative history of §6-303(d-3) indicates the legislature's belief that those who repeatedly drive on revoked licenses pose such a threat that they need to be "locked up." Courts have also noted the freedoms available to persons on electronic home monitoring as compared to incarcerated persons, and found that persons on monitoring are not being punished, but are on a period of supervised transition to free society. Electronic home monitoring is not the equivalent of incarceration. Therefore, it would be inconsistent with the intent of the legislature to allow a repeat offender such as defendant to have available the relative nonpunishment of electronic home monitoring in lieu of incarceration in a penal institution. The rule of lenity does not require a court to interpret a statute so rigidly as to defeat the intention of the legislature.

People v. Tellez, 295 Ill.App.3d 639, 693 N.E.2d 516 (2d Dist. 1998) Where the criminal neglect of a disabled person statute provided that "criminal neglect of an elderly person is a Class 3 felony," but did not provide a penalty for neglect of a disabled person, the trial court erred by holding that criminal neglect of a disabled person is an unclassified petty or business offense.

The penalty provision "becomes ambiguous when the statute is read as a whole because the two crimes [neglect of the elderly and neglect of the disabled] are treated in exactly the same manner throughout the rest of the statute." The failure to include the words "or disabled" in the penalty section was a legislative oversight; the legislature intended to create a Class 3 offense when the victim is either elderly or disabled. See also, **People v. Smith**, 307 Ill.App.3d 414, 718 N.E.2d 640 (1st Dist. 1999) (a charge of indecent solicitation of a child predicated on predatory criminal sexual assault of a child is not void because the statute defining the offense fails to provide a sentence; the legislature intended the same sentence as where indecent solicitation is predicated on aggravated criminal sexual assault, an offense that is similar to predatory criminal sexual assault of a child).

§47-1(c)(2)
Maxims of Statutory Interpretation

Illinois Supreme Court

People v. Rinehart, 2012 IL 111719 If a statute's language is unclear or ambiguous, or susceptible of more than one reasonable reading, a court must resort to sources other than

the plain language of the statute to ascertain the legislature's intent. Such sources include the maxim of *in pari materia*, under which two statutes, or two parts of one statute, concerning the same subject must be considered together in order to produce a harmonious whole. Words and phrases should be construed not in isolation, but in light of other relevant provisions. The statute must be considered in its entirety, keeping in mind the subject that it addresses and the legislature's apparent purpose in enacting it.

The statute can be read as either requiring the trial court to choose a term within that range or setting the term as the range itself. The court therefore looked to other sources to determine whether the legislature intended a determinate or indeterminate MSR term.

Subsection (d)(4) was part of Public Act 94-165, which created a comprehensive scheme for certain sex offenses. An offender's parole officer must prepare a progress report every 180 days, and the offender may request discharge from MSR upon the recommendation of the officer. 730 ILCS 5/3-14-2.5. The scheme marked a philosophical and procedural change in how parole operates for defendants convicted of sex offenses. The legislature thus abandoned the structure of determinate MSR terms and adopted a structure of indeterminate or extended MSR terms for sex offenders precisely because it viewed sex offenses differently, due to the risk of recidivism.

People v. Giraud, 2012 IL 113116 If statutory language is ambiguous, the statute is to be construed so that no part is rendered meaningless or superfluous. Principles of statutory construction are not rules of law, but are merely aids in determining legislative intent and "must yield to such intent."

People v. Grever, 222 Ill.2d 321, 856 N.E.2d 378 (2006) Generally, when the same words appear in different parts of the same statute, they carry the same meaning absent some contextual indication that the legislature intended otherwise.

In re Ryan B., 212 Ill.2d 226, 817 N.E.2d 495 (2004) "In the absence of a statutory definition indicating legislative intent, an undefined word must be given its ordinary and popularly understood meaning."

People v. Hanna, 207 Ill.2d 486, 800 N.E.2d 1201 (2003) Administrative regulations have the force and effect of law, and are to be construed by standards governing the construction of statutes. The cardinal rule of statutory construction, to which all other rules are subordinate, is to ascertain and give effect to the drafter's intentions.

The most reliable indicator of intent is found in the language of the regulation itself, which is to be given its plain, ordinary and popularly understood meaning. Where a plain or literal reading produces an absurd result, however, the literal reading must yield.

People v. Davis, 199 Ill.2d 130, 766 N.E.2d 641 (2002) Whether a lower court has correctly interpreted the provisions of the statute is a question of law and is reviewed de novo. When construing a statute the court must consider the statute in its entirety, including the subject addressed and the legislature's apparent objective. The most reliable indication of legislative intent is the language of the act, which if plain and unambiguous must be read without exception, limitation or condition.

In deciding that a pellet/BB gun is not a "dangerous weapon" under the armed violence statute, the court applied two additional doctrines of statutory construction. The doctrine of ejusdem generis provides that when a statutory clause specifically describes several classes of persons or things and then includes "other persons or things," the word "other" is

interpreted as meaning "other such like." In addition, the "last antecedent doctrine" provides that "relative or qualifying words or phrases in a statute serve only to modify words or phrases which are immediately preceding," and not those which are more remote.

People v. Woodard, 175 Ill.2d 435, 677 N.E.2d 935 (1997) "There is no rule of construction which allows the court to declare that the legislature did not mean what the plain language of the statute imports. Where an enactment is clear and unambiguous, the court is not free to depart from the plain language and meaning of the statute by reading into it exceptions, limitations, or conditions that the legislature did not express, . . . nor is it necessary for the court to search for any subtle or not readily apparent intention of the legislature. . . . Where the language of the statute is clear and unambiguous, it will be given effect without resort to other aides for construction."

People v. Chandler, 129 Ill.2d 233, 543 N.E.2d 1290 (1989) The prime consideration in construing a statute is to give effect to the intent of the legislature, and courts may insert language into a statute that has been omitted through legislative oversight.

People v. Agnew, 105 Ill.2d 275, 473 N.E.2d 1319 (1985) When the legislature amends a statute, but leaves unchanged portions which have been judicially construed, the unchanged portions will retain the construction given them before the amendment.

People v. Hicks, 101 Ill.2d 366, 462 N.E.2d 473 (1984) Where the terms of a statute are not defined, the courts will assume that they were intended to have their ordinary and popularly understood meanings unless doing so would defeat the perceived legislative intent.

People v. Scheib, 76 Ill.2d 244, 390 N.E.2d 872 (1979) The courts do not favor a construction of a statute that would raise legitimate doubts as to its constitutionality.

A cardinal rule of statutory construction ordains that sections in pari materia should be considered with reference to one another so that both sections may be given harmonious effect.

People v. Lutz, 73 Ill.2d 204, 383 N.E.2d 171 (1978) Where the same words or phrases appear in different parts of the same statute, they will be given a generally accepted and consistent meaning unless the legislative intent is clearly to the contrary.

Andrews v. Foxworthy, 71 Ill.2d 13, 373 N.E.2d 1332 (1978) Use of the words "shall" or "must" in a statute is generally regarded as mandatory. These terms do not have a fixed or inflexible meaning, however, and depending on the intent of the legislature may be construed as directory rather than mandatory. The proper interpretation must be grounded on the nature, objects and consequences from construing the statute one way or the other.

Here, the provision of the Revenue Act in question (that the supervisor of assessments "shall publish" assessments before a certain date) is mandatory and not merely directory. See also, **People v. Armour**, 59 Ill.2d 102, 319 N.E.2d 496 (1974) (provision that juvenile adjudicatory hearing shall be set within 30 days is directory); **People v. Youngbey**, 82 Ill.2d 556, 413 N.E.2d 416 (1980) (provision that defendant shall not be sentenced without a presentence report is mandatory); **People v. Davis**, 93 Ill.2d 155, 442 N.E.2d 855 (1982) (provision that judge state reasons for the sentence is directory).

Illinois Appellate Court

People v. Rowell, 2020 IL App (4th) 190231 625 ILCS 5/11-501(c)(3) provides that a defendant "is subject to" six months of imprisonment if convicted of committing DUI while an individual under the age of 16 is in the vehicle. The trial court concluded that this was a mandatory provision, requiring a six-month jail sentence, with the sentencing judge noting that he would not have imposed a jail sentence otherwise.

The Appellate Court declined to find the jail term mandatory. The court first looked to the plain language of the statute and concluded that "subject to" could mean mandatory or could merely mean that such a sentence was available. The court acknowledged that the classification of the offense already allowed for a jail term of up to 364 days, but was reluctant to read a mandatory requirement into the statute where it was not specifically expressed.

The court also looked to other sections of the DUI statute, applying the doctrine of *in pari materia*, and concluded that the legislature used the word "mandatory" in other sections, indicating that the legislature knew how to express when something was meant to be mandatory. Absence of that language here weighed against finding that the jail term was required.

While legislative history can be useful in construing legislative intent, the statute in question here has been amended many times since this provision was originally enacted. Thus, the court found the legislative history to be of little value in interpreting the current version of the statute.

And, when considered as a whole, the court found questionable the argument that a six-month jail term was required. The court noted that driving under the influence which causes death or great bodily harm to a child under 16 is aggravated DUI, which is a Class 4 felony, rather than a Class A misdemeanor, but which does not carry a mandatory jail term. The same is true for a second DUI while transporting a child; the class of the offense is increased but imprisonment is not required.

Ultimately, the court concluded that the "subject to" language is ambiguous and applied the rule of lenity. That rule requires that the ambiguity be resolved in favor of the more lenient punishment. Accordingly, defendant's sentence was vacated and the cause was remanded for resentencing.

In re Jose A., 2018 IL App (2d) 180170 In a State appeal, the Appellate Court reversed the suppression of a juvenile's statement given to school officials, but upheld the suppression of a second inculpatory statement given to police at the station.

Under Section 5-401.5(a-5) of the Juvenile Court Act, a statement is presumed inadmissible unless the police officer, State's Attorney, juvenile officer, "or other public official or employee" first reads specific *Miranda* warnings and asks specifically if the juvenile (1) wants a lawyer; or (2) wants to talk to the interrogator. Here, the parties agreed that the statements were elicited without the required warnings and questions. But the State contended that the school deans who took the initial statement were not "other public officials or employees." The Appellate Court held that under the unambiguous plain language of the statute, they were. But it held that requiring every public official to comply with the statute would lead to absurd results, such as requiring every government employee, even a bus driver, "to read the statement and questions [set forth in the statute] before questioning" a student suspected of drug dealing. To avoid these "absurd results," the Appellate Court employed the doctrine of *ejusdem generis* and interpreted the terms as applying to only those public employees whose primary duties are "the protection of the public interest and enforcement of the law." The school deans, it held, did not meet this definition.

The Appellate Court then upheld suppression of the second statement because it was not recorded as required by Section 5-401.5(b) of the Juvenile Court Act. The State maintained that the statute did not apply because defendant was not in custody where he was requested to come to the police station and answered questions with his mother in an unlocked interview room. The Appellate Court held that the trial court's finding that defendant would not have felt free to leave the room while in the presence of two armed police officers was not against the manifest weight of the evidence.

People v. Larson, 2015 IL App (2d) 141154 A defendant who commits possession of a firearm without a valid firearm owner's identification (FOID) card is guilty of a Class A misdemeanor if he does not possess a currently valid FOID card "but is otherwise eligible" to obtain one (section 14(b)). He is guilty of a Class 3 felony if he does not possess a currently valid FOID card and "is not otherwise eligible" to obtain one (section 14(c)(3)), or if his FOID card is "revoked" (section 14(c)(1)).

An order of protection was entered against defendant with an expiration date of February 14, 2011. As a result of the order of protection, the Illinois State police revoked defendant's FOID card. On February 14, 2011, officers discovered defendant in possession of firearm. On that date, the order of protection had expired, so defendant was eligible to obtain a new FOID card, but had not yet done so. Defendant was convicted of a Class 3 felony since his FOID card was revoked.

Defendant argued on appeal that because he was eligible to obtain a FOID card at the time the firearm was discovered, he should have been convicted of a Class A misdemeanor. Defendant argued that both sections applied to his case, and thus under the rule of lenity, the more lenient interpretation of the statute should be used.

The Appellate Court rejected defendant's argument. The court held that using the proper tools of statutory construction, it was clear that the "revocation" section applied to defendant, not the "otherwise eligible" section. Since the statute was not ambiguous, the rule of lenity did not apply.

First, each provision of a statute must be interpreted in light of the statute as a whole, and the statute must be construed to avoid rendering specific language superfluous or meaningless. Using these canons of interpretation, the court determined that defendant's argument would improperly render the word "revoked" meaningless.

Section 14(b) provides for situations where a defendant has no FOID card but is eligible to obtain one. Section 14(c)(3) provides for situations where a defendant has no FOID card and is not eligible to obtain one. Under defendant's interpretation, the only salient consideration in determining whether the offense is a misdemeanor or a felony is whether defendant is eligible to obtain a FOID card. But if that were the case, then sections 14(b) and 14(c)(3) would be entirely dispositive of the outcome, and the "revoked" language of section 14(c)(1) would be rendered meaningless. Instead, the statute treats a revoked FOID card more seriously than a non-possessed FOID card and punishes the former more severely.

Second, a statutory provision that is particular and relates to only one subject prevails over a provision that is general and applies to cases generally. Section 14(b) applies to the general category of cases where a defendant does not possess a FOID card. Section 14(c)(1) by contrast applies to the narrower subset of cases where a FOID card has been revoked. Accordingly, section 14(c)(1) is controlling.

People v. Williams, 2014 IL App (3rd) 120824 The court concluded that where sentencing statutes conflict, the most recently enacted statute controls.

People v. Westmoreland, 2013 IL App (2d) 120082 In construing a statute, the purpose is to ascertain and give effect to the intent of the legislature. Courts should consider statutes in their entirety, bearing in mind the subjects addressed and the legislature's apparent objectives. Under the doctrine of *ejusdem generis*, when a statutory clause specifically describes several classes of persons or things and then includes "other" persons or things, the word "other" is interpreted as meaning "other such like." In addition, the last antecedent doctrine provides that relative or qualifying words or phrases in a statute modify only words or phrases which are immediately preceding, and not words or phrases that are more remote.

In re Davontay A. and Donavon A., 2013 IL App (2d) 120347 Where the language of a statute is clear, the statute must be applied as written without resort to any rules of construction. 730 ILCS 5/5-9-1.7(b)(1) provides that in addition to any other penalty, a $200 fine "shall be imposed upon any person who pleads guilty or who is convicted of, or who receives a disposition of court supervision for, a sexual assault or attempt of a sexual assault." Under the plain language of the statute, minors who were adjudicated delinquent after an adjudicatory hearing are not subject to the fine.

The court added that its conclusion would be the same even if §5-9-1.7(b)(1) was determined to be ambiguous. Under the statutory rule of construction known as *expressio unius est exclusio alterius*, when the legislature includes a listing of things to which a statute applies, there is an inference that things which were omitted from the list were intended to be excluded from the statute. Because the legislature did not include persons who were adjudicated delinquent after an adjudicatory hearing in the list of persons subject to the fine, it should be inferred that the such persons were intended to be excluded from the statute.

People v. Isaacson, 409 Ill.App.3d 1079, 950 N.E.2d 1183 (4th Dist. 2011) The last-antecedent doctrine, a long-recognized grammatical canon of statutory construction, provides that "relative or qualifying words, phrases, or clauses are applied to the words or phrases immediately preceding them and are not construed as extending to or including other words, phrases, or clauses more remote, unless the intent of the legislature, as disclosed by the context and reading of the entire statute, requires such extension or inclusion."

The punishment for driving on a suspended license is increased to a Class 4 felony when a person is convicted of a violation of the driving-while-license-suspended statute "during a period of summary suspension imposed pursuant to Section 11-501.1 when the person was eligible for a MDDP [monitoring device driving permit]." 625 ILCS 5/6-303(c-3).

Applying the last-antecedent doctrine, the phrase "when the person was eligible for a MDDP" is closer to "imposed" than "violation," and clearly does not apply to the "pursuant to" phrase. Therefore, subsection c-3 applies to individuals who are convicted of driving on a suspended license when the individual was eligible for an MDDP at the time that the suspension was imposed, rather than at the time of the violation.

Had the legislature intended that the eligibility exist at the time of the violation, it could have included the phrase "at the time of the offense," to indicate that the aggravating factor had to exist at the time of the violation, as it did in describing another aggravating factor in 625 ILCS 5/3-606(c-4).

This interpretation is also consistent with the purpose of MDDPs, which is to provide driving privileges in a manner consistent with public safety. 625 ILCS 5/6-206.1. The statute punishes those who had the opportunity to get an MDDP and drive in a manner consistent with public safety, but drove anyway during the period of suspension without one. It would be absurd to exempt from this punishment those who lost the ability to obtain an MDDP by the time of the violation, allowing them to receive a less severe punishment than

those who did not lose the privilege.

People v. Maldonado, 402 Ill.App.3d 1068, 932 N.E.2d 1038 (2d Dist. 2010) According to the Statute on Statutes (5 ILCS 70/6), if an irreconcilable conflict exists between two Acts related to the same subject matter, the Act that was enacted last controls.

At issue are three Acts that amended the DUI statute. P.A. 94-114 made a sixth or subsequent conviction a Class X offense. P.A. 94-116, effective the same day as 94-114, made a third conviction a Class 2 offense, a fourth conviction a Class 2 offense ineligible for probation or conditional discharge, and a fifth or subsequent conviction a Class 1 offense ineligible for probation or conditional discharge. P.A. 94-963, effective six months later and containing none of the sentencing enhancements of P.A. 94-114 and P.A. 94-116, amended other subsections of the DUI statute related to uses of fines and fees.

The court agreed that P.A. 94-114 and P.A. 94-116 were irreconcilable. P.A. 94-114 made a sixth or subsequent conviction a Class X offense, while P.A. 94-116 made a fifth or subsequent conviction (which would include a sixth or subsequent conviction) a Class 1 offense.

The court rejected the argument that P.A. 94-963 controlled as the last enactment. The court reasoned that P.A. 94-114 and P.A. 94-116 affected a portion of the DUI statute separate and unrelated to the portion affected by P.A. 94-963, and therefore did not repeal those Acts. Applying the rule of lenity, however, the court held that the ambiguity created by P.A. 94-114 and P.A. 94-116 would be resolved in favor of the more lenient provision.

The court reduced defendant's conviction to a Class 1 offense and, as he had received a Class X sentence of 20 years, remanded for resentencing.

People v. Prouty, 385 Ill.App.3d 149, 895 N.E.2d 48 (2d Dist. 2008) The statute on statutes (5 ILCS 70/6) provides that where two or more acts relate to the same subject and are enacted at the same legislative session, they are to be construed to give full effect to each Act, unless there is an irreconcilable conflict. If an irreconcilable conflict exists, the last Act passed by the legislature is controlling to the extent of the conflict. Public acts amending a single section of a statute are in irreconcilable conflict only if inconsistent changes are made.

There was no irreconcilable conflict between Public Act 94-116, which made aggravated DUI a Class 2 felony, and Public Act 94-609, which was passed four days later and which changed a different subparagraph of the statute to limit the trial court's discretion to impose probation for certain DUI's. Although P.A. 94-609 omitted the changes which had been passed four days earlier, the statutes could be construed consistently and the drafters of the second act merely overlooked the just-enacted changes. See also, People v. Maldonado, 386 Ill.App.3d 964, 897 N.E.2d 854 (2d Dist. 2008) (no irreconcilable conflict between P.A. 94-329 and P.A. 94-609 or between 94-329 and 94-963, all of which amended the DUI statute).

§47-1(c)(3)
Rule of Lenity

Illinois Supreme Court

People v. Hartfield, 2022 IL 126729 As defendant fled from the scene of an armed robbery, he turned and fired a gun. At the time, four police officers were pursuing him. The State charged him with armed robbery and four counts of aggravated discharge of a firearm. Although evidence suggested defendant fired multiple rounds, the charging documents

differentiated each count based only on the victim, one charge per officer. The State argued in closing that regardless if defendant fired one round or four, he should still be convicted of four counts of aggravated discharge based on the presence of four officers.

During deliberations, the jury sent the following note to the circuit court: "Does suspect need to know there were 4 cops on the scene in the area where gun was fired to be guilty of all four counts of [aggravated] discharge of firearm?" The court responded "No" and informed the jury that it must determine which officers "may have been in the line of fire" at the time of the discharge. Defendant was convicted of and sentenced on all counts.

The Appellate Court, finding a one-act/one-crime violation, vacated three of the four aggravated discharge convictions and remanded for resentencing. The State appealed, and defendant cross-appealed.

The Supreme Court first discussed defendant's allegations on cross-appeal, including a challenge to the response to the jury note. The defense position below, offered only after the court proposed to answer "no," and not after it decided to further instruct the jury about the "line of fire," was that no answer was needed other than to refer to the given instructions. The Supreme Court disagreed. A jury question evincing confusion over a point of law should be answered substantively by the trial court.

But the Supreme Court also found that the answer here was deficient. Regardless of whether the first answer—"no"—was an accurate statement of law, the second answer—"You must determine based on the evidence which officer or officers, if any, may have been in the line of fire when the firearm was discharged"—is not an accurate statement of law. The offense of aggravated discharge requires the jury to determine whether a peace officer *was* in the direction of discharge; but the second answer instructed the jury to determine whether a peace officer *may* have been in the line of fire. Additionally, it is not clear that "in the line of fire" is an accurate way to describe the statutory element "in the direction of." Thus, the instruction reduced the State's burden of proof by suggesting the State need only prove the officers "may" have been in the line of fire, and, by referring to "line of fire" rather than "in the direction of," the response may have caused the jury to find defendant guilty based on conduct that is not an element of the offense.

Although defendant forfeited this claim by not objecting to the proposed response, substantial jury instruction errors may be reviewed under Rule 451(c), which is co-extensive with the plain error doctrine. The Supreme Court has previously found that a single erroneous instruction might be cured by other instructions or by some other showing of a lack of prejudice. But two directly conflicting instructions on an essential element, one stating the law correctly and the other erroneously, cannot be cured this way because it's impossible to determine which instruction the jury was following. Such an error affects the integrity of the judicial system itself, and must be presumed prejudicial.

Because the issue might arise on retrial, the court went on to decide the question posed in the State's PLA – whether a single discharge in the direction of multiple peace officers can support multiple convictions of aggravated discharge of a firearm. This question was initially raised under the one-act, one-crime rule, but a threshold question to reaching the one-act, one-crime rule is to determine the unit of prosecution of the offense at issue. The unit of prosecution of an offense refers to what act or course of conduct the legislature has prohibited for purposes of a single conviction and sentence. Here, the question is whether the offense of aggravated discharge commands a single conviction per discharge or a single conviction per person in the direction of a discharge.

Determining the unit of prosecution is a question of statutory interpretation. Where legislative intent is not clear, courts should apply the rule of lenity to determine the appropriate unit of prosecution.

The State, citing one-act, one-crime authority, asserted that the unit of prosecution is determined by the number of victims. The Supreme Court disagreed. One-act, one-crime analysis applies when two distinct offenses are carved from a single act, whereas unit-of-prosecution analysis determines how many times the same offense has been committed in a particular course of conduct. While the number of victims may control in a one-act, one-crime analysis, it does not control in a unit of prosecution analysis. Rather, in determining the unit of prosecution, the court looks to the language of the statute to determine what precisely has been prohibited by the legislature and in what unit of time, actions, or instances that crime is committed once.

Here, the aggravated discharge statute is violated when a defendant, *inter alia*, discharges a firearm in the direction of a person he or she knows to be a peace officer. The Supreme Court could discern no legislative intent with regard to the unit of prosecution; it was not clear whether multiple crimes occurred with each discharge or each officer, or both or neither. Noting that the legislature often chooses to define the unit of prosecution, the absence of any such language here resulted in ambiguity and required application of the rule of lenity. Thus, a single discharge in the direction of multiple peace officers constitutes a single offense.

People v. Jackson & Lee, 2011 IL 110615 Under the rule of "lenity," a court strictly construes ambiguous criminal statutes to afford leniency to the accused. However, the cardinal principle of statutory construction, to which all other rules are subordinate, is that a court must ascertain and give effect to the intent of the legislature. The rule of lenity does not allow a court to construe a statute so rigidly as to defeat the legislature's intent.

People v. Gutman, 2011 IL 110338 720 ILCS 5/29B-1(a) defines the offense of money laundering as engaging in certain transactions with "criminally derived property." "Criminally derived property" is defined as "any property constituting or derived from proceeds obtained, directly or indirectly, pursuant" to certain criminal activity. The term "proceeds" is not statutorily defined.

The Supreme Court found that the term "proceeds" could refer to either the gross receipts of a criminal enterprise or merely to the "profits" of that enterprise. The court concluded that the legislature intended the term "proceeds" to include the "gross receipts," rejecting defendant's argument that under the rule of lenity the interpretation most favorable to the defendant should be applied. The court stressed that the rule of lenity "must not be stretched so far or applied so rigidly as to defeat the legislature's intent"; examination of legislative history and application of principles of statutory construction lead to the conclusion that the Illinois legislature intended to include the gross receipts of the criminal activity within the definition of the term "proceeds."

People v. Garcia, 241 Ill.2d 416, 948 N.E.2d 32 (2011) When construing a statute, the reviewing court's fundamental objective is to give effect to the legislature's intent. The best indication of legislative intent is the plain and ordinary meaning of the statutory language. However, a reviewing court may also consider the underlying purpose of the statute, the evil sought to be remedied, and the consequences of construing the statute in one manner versus another. It is always presumed that the legislature did not intend to cause absurd, inconvenient, or unjust results. Furthermore, statutes must be construed in the most beneficial way which their language will permit so as to prevent hardship, injustice, or prejudice to the public interest.

Although the rule of lenity generally requires that a penal statute be strictly construed

in favor of the accused, the rule of lenity does not require a reviewing court to construe a statute so rigidly as to circumvent the legislature's intent. "[T]he primacy of legislative intent is paramount, and all other rules of statutory construction are subordinate to it."

730 ILCS 5/5-5-3.2(b)(1), which authorizes an extended term where the defendant is convicted of a felony after having been previously convicted of the same or greater class felony within the past 10 years, excluding time spent in custody, should be construed to exclude from the 10-year period time lapsed when the defendant avoids trial by fleeing the jurisdiction.

People ex rel. Birkett v. Jorgensen, 216 Ill.2d 358, 837 N.E.2d 69 (2005) When interpreting a statute, the primary consideration is to ascertain and give effect to the legislature's intent. The best indication of legislative intent is the plain and ordinary meaning of the statutory language. When such language is clear and unambiguous, further aids to statutory construction are unnecessary.

However, it is presumed that the legislature did not intend an absurd, inconvenient or unjust result. Although penal statutes are construed to afford lenity to the accused, this rule applies only when the statute is ambiguous.

People v. Whitney, 188 Ill.2d 91, 720 N.E.2d 225 (1999) The primary rule of statutory construction is to ascertain and give effect to the legislature's intent. The best means of determining legislative intent is the language chosen by the General Assembly, which is to be given its plain and ordinary meaning. Where statutory language is clear and unambiguous, it is to be given effect without resort to other aids to construction.

In general, penal statutes are strictly construed in favor of criminal defendants. Thus, any ambiguity in a penal statute must be resolved in favor of the defense. The trial court's construction of a statute is reviewed de novo.

People ex rel. Gibson v. Cannon, 65 Ill.2d 366, 357 N.E.2d 1180 (1976) A criminal or penal statute is to be strictly construed in favor of an accused, and nothing is to be taken by intendment or implication against him beyond the obvious or literal meaning of a statute. If a statute creating or increasing a penalty is capable of two constructions, the interpretation that operates in favor of the accused is to be adopted. Since the statute here is ambiguous on its face, it must be construed in favor of defendant.

Illinois Appellate Court

People v. Hopkins, 2020 IL App (1st) 181100 An "intermodal shipping container" is not a "railroad car" for purposes of the burglary statute, even if the container is bolted onto a train platform for purposes of transporting the container by train. By its plain language, railroad cars refer to compartments with wheels, and the State's evidence established that the container in question is simply a large box without wheels that must be attached to a railroad platform or semi truck for transporting. Including such containers in the definition of "railroad car" would also contradict the legislative intent to protect certain types of enclosures; a shipping container is unlike the other types of enclosures protected by the statute - buildings, boats, housetrailers, etc. Finally, the rule of lenity required any ambiguity to be resolved in the defendant's favor.

As a result, the court reversed defendant's burglary conviction and vacated his seven-and-a-half-year sentence.

People v. Rowell, 2020 IL App (4th) 190231 625 ILCS 5/11-501(c)(3) provides that a defendant "is subject to" six months of imprisonment if convicted of committing DUI while an individual under the age of 16 is in the vehicle. The trial court concluded that this was a mandatory provision, requiring a six-month jail sentence, with the sentencing judge noting that he would not have imposed a jail sentence otherwise.

The Appellate Court declined to find the jail term mandatory. The court first looked to the plain language of the statute and concluded that "subject to" could mean mandatory or could merely mean that such a sentence was available. The court acknowledged that the classification of the offense already allowed for a jail term of up to 364 days, but was reluctant to read a mandatory requirement into the statute where it was not specifically expressed.

The court also looked to other sections of the DUI statute, applying the doctrine of *in pari materia*, and concluded that the legislature used the word "mandatory" in other sections, indicating that the legislature knew how to express when something was meant to be mandatory. Absence of that language here weighed against finding that the jail term was required.

While legislative history can be useful in construing legislative intent, the statute in question here has been amended many times since this provision was originally enacted. Thus, the court found the legislative history to be of little value in interpreting the current version of the statute.

And, when considered as a whole, the court found questionable the argument that a six-month jail term was required. The court noted that driving under the influence which causes death or great bodily harm to a child under 16 is aggravated DUI, which is a Class 4 felony, rather than a Class A misdemeanor, but which does not carry a mandatory jail term. The same is true for a second DUI while transporting a child; the class of the offense is increased but imprisonment is not required.

Ultimately, the court concluded that the "subject to" language is ambiguous and applied the rule of lenity. That rule requires that the ambiguity be resolved in favor of the more lenient punishment. Accordingly, defendant's sentence was vacated and the cause was remanded for resentencing.

People v. Holley, 2019 IL App (1st) 161326 The firearm enhancements do not apply to the offense of attempt murder of a peace officer, 720 ILCS 5/8-4(c)(1)(A), (B), (C), (D). Disagreeing with the decisions in **People v. Tolentino**, 409 Ill. App. 3d 598 (2011), and **People v. Smith**, 2012 IL App (1st) 102354, and choosing instead to follow **People v. Douglas**, 371 Ill. App. 3d 21, 26 (1st Dist. 2007), the Appellate Court held that the five subsections of section 8-4(c)(1) cannot overlap. Rather, attempt murder is a Class X offense with a base sentencing range of 6 to 30 years, and courts may apply one of the five modifications contained in the subsections. Subsection (A) requires a 20 to 80 year sentence for attempt murder of a peace officer, subsections (B), (C) and (D) impose the firearm enhancements, and (E) calls for a Class 1 sentence when certain mitigating facts are proven. When, as here, defendant is sentenced to 25 years under (A) and received another 25 years under (D), the latter must be vacated. Just as subsections (B), (C), and (D) could not all be applied to the same sentence, subsection (D) cannot be imposed on a sentence already enhanced under subsection (A). At best, the legislative intent is ambiguous, and as such it must be construed in favor of defendant.

People v. McDonald, 2018 IL App (3d) 150507 (modified on denial of rehearing 2/14/18)

A defendant who timely files a post-conviction petition while in custody is eligible for post-conviction relief, "regardless of whether he is released from custody in the intervening time." Defendant was in custody when he filed his petition; during the pendency of his post-

conviction appeal, defendant was fully discharged from any sentence.

The plain language of the Post-Conviction Hearing Act is silent on whether a defendant loses standing to pursue post-conviction relief once he is discharged from his sentence. Illinois Supreme Court case law is in conflict, with some cases indicating a defendant must be in custody in order to obtain post-conviction relief [**Dale**, 406 Ill. 2d 238 (1950); **Martin-Trigona**, 111 Ill. 2d 295 (1986); **Carrera**, 239 Ill. 2d 241 (2010)] and another allowing a post-conviction petition to proceed even after a defendant's release [***Davis***, 39 Ill. 2d 325 (1968)]. Applying the rule of lenity, the Appellate Court held that defendant did not lost standing to pursue post-conviction relief when he was discharged.

People v. Lashley, 2016 IL App (1st) 133401 If the defendant was "in the custody of the Department of Corrections" when he committed an offense, the sentence shall be served consecutively to the sentence under which he was "held" in custody. 730 ILCS 5/5-8-4(d).

Defendant was sentenced to Cook County's impact incarceration program, which lasts from 120 to 180 days, followed by a mandatory term of monitored release. 730 ILCS 5/5-8-1.2. When defendant committed the current offense, he was on monitored release from the impact incarceration program. The trial court ordered the sentence for the current offense to run consecutive to the impact incarceration sentence.

The Appellate Court held that the consecutive sentences were improper. The court found that it was ambiguous whether section 5-8-4(d) applied to defendant and thus under the rule of lenity the statute had to be interpreted in defendant's favor. The statute's applicability was ambiguous for two reasons. First, the phrase "in the custody of the Department of Corrections" could reasonably refer only to the Illinois Department of Corrections, not a Cook County impact program. Second, the word "held" could reasonably exclude a defendant on monitored release.

Under the rule of lenity, ambiguous criminal statutes will generally be construed in a defendant's favor. Since section 5-8-4(d) was ambiguous as applied to defendant, the rule of lenity required that the construction of the statute favoring defendant must be applied, making consecutive sentences inapplicable.

People v. Murphy, 2013 IL App (2d) 120068 The rule of lenity provides that ambiguities in a criminal statute must be resolved in the defendant's favor. Here, the court found that the rule of lenity should not be applied so rigidly as to defeat the legislature's intent in enacting a statute. The court concluded that a rule imposing only a single conviction for the simultaneous possession of pornographic images of multiple children would defeat the legislative intent of the aggravated child pornography statute.

People v. Sedelsky, 2013 IL App (2d) 111042 Statutory construction requires a court to ascertain and give effect to the intent of the legislature. The most reliable indicator of legislative intent is the language of the statute, which, if plain and unambiguous, must be read without exception, limitation, or condition. Criminal statutes must be strictly construed in defendant's favor.

The "allowable unit of prosecution" as defined by statute governs whether a particular course of conduct involves one or more distinct offenses under the statute.

Defendant was convicted and sentenced for two counts of possession of child pornography based on his possession of duplicate identical images uploaded at nearly the same time and stored in the same digital medium, but under different file names.

The child pornography statute proscribes possession of "any *** depiction by computer" of a pornographic image of a child. 720 ILCS 5/11-20.1(a)(6)."Any" is not defined

by statute and can mean singular or plural. Because "any" does not indicate whether the possession of duplicate depictions by computer in the same digital medium constitute separate offenses, the statute must be construed in defendant's favor. Therefore, only one conviction of possessing child pornography can be entered for defendant's possession of the same digital image stored in the same digital medium.

People v. McSwain, 2012 IL App (4th) 100619 If a statute permits multiple convictions for simultaneous possession, the one-act, one-crime doctrine applies. When construing whether a statute permits multiple convictions, a court is required to ascertain and give effect to the intent of the legislature. the most reliable indicator of legislative intent is the plain language of the statute, which, if plain and unambiguous, must be read without exception, limitation, or other condition. Criminal statutes must be strictly construed in the defendant's favor.

The child pornography statute provides that a person commits child pornography who "with knowledge of the nature and content thereof, possesses *any* film, videotape, photograph or similar visual reproduction or depiction of any child . . . whom the person knows or reasonably should know to be under the age of 18 . . . engaged in any activity described in subparagraphs (i) through (vii) of paragraph (1) of this subsection." 720 ILCS 5/11-20.1(a)(6) (emphasis added).

The term "any" in the statute could be singular or plural, as it can mean "any one of a kind," "any kind," or "any number." The term "any" thus does not adequately define the allowable unit of prosecution for a child pornography offense. The statute is therefore ambiguous and must be construed in favor of the defendant. Consequently, the simultaneous possession of multiple images cannot support multiple convictions.

While agreeing with the State that each photograph exploits the minor and adds to the market, the court held that it is for the legislature to define what it desires to make an allowable unit of prosecution. By its amendment of other statutes, the legislature has demonstrated that it knows how to authorize multiple convictions for simultaneous violations of a single statute. The legislature can amend the statute if it wants to authorize multiple convictions based on simultaneous possession of different images of child pornography.

As defendant was convicted of five counts of child pornography based on his receipt of an email that displayed five photos within the body of that email, the court vacated convictions on four of those counts.

People v. Horsman, 406 Ill.App.3d 984, 943 N.E.2d 139 (2d Dist. 2011) The rule of lenity does not require a court to interpret a statute so rigidly as to defeat the intention of the legislature.

§47-1(c)(4)
Other

Illinois Supreme Court

People v. Manning, 2018 IL 122081 When the jury is instructed on second degree murder, its inability to unanimously agree on the existence of mitigating factors results in a first degree murder conviction. The second degree murder statute replaced the voluntary manslaughter statute. Under the old statute, the State bore the burden of proving the absence of a mitigating factor. Under the current statute, the defendant bears the burden of persuading "the jury" to find the existence of a mitigating factor. Here, the jury's note

informing the court that it could not agree on the presence of mitigating factors means that the defendant failed to meet his burden to convince "the jury" that a mitigating factor exists. The jurors unanimously agreed that the State proved the elements of first degree murder before even considering the existence of mitigating factors, and that is the only finding on which the jury was unanimous. The legislature would not have intended the "absurd result" of nullifying this unanimous finding based on a disagreement as to mitigating factors.

People v. Geiler, 2016 IL 119095 The mandatory/directory distinction involves the question of whether the failure to comply with a particular procedural step will or will not invalidate a governmental action. Courts presume that procedural commands to government officials are directory. The presumption is overcome and a provision becomes mandatory only if: (1) negative language in the statute or rule prohibits further action where there is noncompliance; or (2) the right the statute or rule protects would generally be injured by a directory reading.

Illinois Supreme Court Rule 552 governs the processing of traffic citations and imposes an obligation on the arresting officer to transmit specific portions of the ticket to the circuit court within 48 hours after the arrest. Rule 552 merely provides that the arresting officer shall transmit the ticket to the circuit court within 48 hours. It does not specify any consequences for the violation or contain any negative language prohibiting prosecution or further action where there has been noncompliance. Thus the negative language exception does not apply.

Rule 552 is designed to ensure judicial efficiency and uniformity in processing tickets. A directory reading of Rule 552 would not generally injure judicial efficiency or uniformity. In this case, there was no evidence that the delay in transmitting the citations impaired the trial court's management of its docket. There was also no indication that the delay would ordinarily prejudice the rights of a defendant. A defendant's first appearance on a traffic citation must be set within 14 and 60 days after arrest. Thus even if the citation is not transmitted within 48 hours, it may still be filed before defendant's first court appearance and he would be unaffected by the delay.

The court therefore concluded that Rule 552 is directory and no specific consequence is triggered by noncompliance. But a defendant may still be entitled to relief if he can demonstrate that he was prejudiced by the violation.

People v. Elliott, 2014 IL 115308 Under 625 ILCS 5/2-118.1(b), a trial court has the authority to "rescind" a statutory summary suspension. The term "rescind" has numerous meanings, both legal and non-legal, and depending on the particular definition and context, can have either prospective or retroactive meaning. Similarly, the Illinois legislature uses the term "rescind" inconsistently, sometimes intending a retroactive meaning while other times a prospective meaning. But for a number of reasons, the legislature intended the term "rescind" to be prospective in the summary suspension statute.

First, a prospective reading best comports with the public policy behind the statutory summary suspension statute. That policy is to remove offending drivers from the road swiftly and certainly, not hopefully or eventually, and a prospective reading accomplishes this far better than a retroactive reading which would make the suspension contingent on future court proceedings.

Second, a prospective reading best comports with other provisions of the Illinois Vehicle Code relating to statutory summary suspensions. For example, some provisions state that a pending petition to rescind shall not stay or delay the summary suspension. Others make it a crime to drive at a time when a license is suspended. The provisions therefore

suggest that the suspension remains in effect until proven to be invalid, supporting a prospective reading.

Third, a prospective reading makes the legislative scheme easy and convenient to enforce since courts only need to determine the status of the driver's license at the time of the arrest. A retrospective reading by contrast introduces uncertainty and inefficiency into the system.

Finally, a prospective reading is consistent with the way prior decisions have characterized the statutory summary suspension scheme by, for example, stating that a defendant must file a petition to determine whether the suspension should be lifted.

For these reasons, in relation to the crime of driving on a suspended license, the recision of a statutory summary suspension is of prospective effect only.

People v. Hawkins, 2011 IL 110792 In construing statutes, the primary objective is to ascertain and give effect to the intent of the legislature. The most reliable indication of the legislature's intent is the plain language of the statute. *W*hen the language of the statute is clear and unambiguous, it must be applied as written without resort to extrinsic aids or tools of interpretation.

If the language of a statute is ambiguous, determination of legislative intent includes consideration of the purpose of the law, the evils it was intended to remedy, and relevant legislative history. Multiple statutes relating to the same subject are presumed to have been intended to be consistent and harmonious.

A statute should be read as a whole and construed so as to give effect to every word, clause, and sentence; a statute must not be read so as to render any part superfluous or meaningless. However, the court is not bound by the literal language of a statute if that language produces absurd or unjust results not contemplated by the legislature.

The court concluded that statutes relating to a prisoner's obligation to reimburse the State for the costs of incarceration were ambiguous concerning what assets are available to satisfy the obligation. Furthermore, a literal interpretation of the statutes would create absurd results because prisoners would be encouraged to work to learn a new trade and to provide money to assist in reintegrating into the community, only to have that money seized as partial payment of the costs of incarceration.

Thus, prison wages in excess of the "portion" which DOC was statutorily authorized to take as payment for incarceration costs could not be seized as payment of such costs. Approximately $11,000 which defendant had been able to save from his wages while he was incarcerated could not be seized by DOC.

People v. Marshall, 242 Ill.2d 285, 950 N.E.2d 688 (2011) The primary objective of statutory interpretation is to ascertain and give effect to the intent of the legislature. Inquiry always begins with the language of the statute, which is the most reliable indicator of legislative intent. A court construes a statute as a whole and affords the language of a statute its plain and ordinary meaning. Where the language is clear and unambiguous, a court must apply the statute without further aids of statutory construction. If the statute is capable of being understood by reasonably-informed persons in two or more different ways, the statute will be deemed ambiguous, and the court may consider extrinsic aid of construction to discern the legislative intent.

The statutory language of 730 ILCS 5/5-4-3, which requires qualifying offenders to submit a DNA sample and pay an analysis fee of $200, is silent on the question of whether offenders are required to submit duplicative samples upon each qualifying event. This silence created an ambiguity in the statute that permits a court to look to extrinsic aids of

construction. Substantial weight and deference must be given to the interpretation of an ambiguous statute by the agency charged with its administration and enforcement. The administrative code that guides agencies in implementing §5-4-3 requires collection of a DNA sample only if "the qualifying offender has not previously had a sample taken." Therefore, in practice, a facility or agency charged with administering the statute would not interpret it to require collection of DNA from an offender who has already submitted a sample.

Accordingly, the statutory language requiring "[a]ny [qualifying] person" to submit a DNA sample only identifies the population whose DNA must be present in the database. 730 ILCS 5/5-4-3(a). Similarly, the $200 analysis fee required by subsection (j) "shall" be paid only when the actual extraction, analysis and filing of the qualified offender's DNA occurs. Therefore, the statute authorizes a judge to order a defendant to submit a sample and pay a fee only where the defendant is not currently registered in the DNA database

The court found support for this interpretation by comparing the language of §5-4-3 to the language of 730 ILCS 5/5-5-3(g), which provides for collection of biological data from certain offenders. The plain language of that statute directs that "[w]henever," i.e., each and every time, an offender commits the enumerated offense, he is subject to the testing requirement.

People v. Perry, 224 Ill.2d 312, 864 N.E.2d 196 (2007) The word "includes" does not limit a definition to the items specifically listed. The court found that the term "includes" indicates an illustrative rather than exclusive list.

People v. McCarty, 223 Ill.2d 109, 858 N.E.2d 15 (2006) 720 ILCS 570/401(a)(6.5)(D), which imposes a sentence of 15 to 60 years for manufacture of more than 900 grams of any substance containing methamphetamine, was intended to include byproducts of the manufacturing process in the weight calculation. Statements of legislative intent have no substantive legal force and do not create ambiguity in an otherwise unambiguous statute.

Client Follow-Up Co. v. Hynes, 75 Ill.2d 208, 390 N.E.2d 847 (1979) In construing the meaning of a constitutional provision, it is appropriate to examine the provision in light of the history and conditions of the times and the particular problem that the convention sought to address. Constitutional debates may be helpful in understanding the provision; in addition, because the true inquiry concerns the understanding of the voters, official and unofficial publications and information disseminated to the voters may be considered.

Illinois Appellate Court

Mitchell v. People, 2016 IL App (1st) 141109 The Torture Inquiry and Relief Commission Act (720 ILCS 40) established a commission to investigate claims of torture. A "claim of torture" is a defendant's claim that he was tortured into confessing to a crime and "there is some credible evidence related to allegations of torture by Commander Jon Burge or any officer under the supervision of Jon Burge." 720 ILCS 40/5(1).

When faced with an ambiguous statute, courts will give substantial weight and deference to the interpretations of the agency charged with administering the statute, even though courts are not bound by such interpretations. Here the committee issued an order concerning its jurisdiction and proposed regulations specifically finding that its jurisdiction included allegations of torture by officers who were previously supervised by Burge.

The court deferred to the committee's clear interpretation of its jurisdiction and reversed the trial court ruling that the claims fell outside the Act's jurisdiction. The cases

were remanded for further proceedings in accordance with the Act.

People v. Higgenbotham, 2012 IL App (1st) 110434 Under the doctrine of *in pari materia*, two statutes must be considered with reference to each other to allow for a harmonious interpretation of the relevant provisions, and words and phrases should be construed with reference to the other relevant provisions and not in isolation.

725 ILCS 5/114-4 provides that a continuance allowed due to the physical incapacity of defendant "shall suspend" the running of a speedy-trial term, "which period of time limitation shall commence anew" when the court determines that the physical incapacity no longer exists. 725 ILCS 5/5-114-4(i). Use of the word "suspend" in §114-4(i) suggests a mere interruption of defendant's speedy-trial demand when defendant becomes physically incapacitated. But inclusion of the phrase "commence anew" suggests that the demand ends.

The intent of the legislature is more clearly revealed by referring back to the speedy-trial statute, 725 ILCS 5/103-5, which also uses the word "suspend" and makes clear that "suspend" means a delay occasioned by defendant that merely tolls the speedy-trial term. The only logical interpretation of these two statutes is that the speedy-trial term tolls when defendant obtains a continuance due to physical incapacity, and then continues from the date at which it was stopped when the physical incapacity is removed.

People v. Gay, 2011 IL App (4th) 100009 The Illinois Administrative Code establishes a scheme for punishing DOC inmates who violate internal disciplinary rules. As an independent penal mechanism, nothing in the Code prevents an inmate from facing disciplinary charges and state criminal charges for a single unlawful act.

Offense No. 501 of the Code defines "violating state or federal laws" as "committing any act that would constitute a violation of state or federal law," and provides that "[i]f the specific offense is stated elsewhere in this Part, an offender may not be charged with this offense except as otherwise provided in this Section." Under this provision, a prisoner may not be cited for this offense unless either: (1) no other disciplinary offense is implicated by the offender's behavior; or (2) another section in the table of offenses allows citation of both offenses.

Defendant received a citation for offense No. 102, assaulting any person, rather than for offense No. 501, violating state or federal laws. The court rejected the argument that because defendant was not cited for a violation of offense No. 501, he could not be subject to criminal prosecution. The legislature could not have intended the absurd result that disciplinary offenses that constitute crimes may not be charged as offense No. 501, and that disciplinary offenses not charged as offense No. 501 may not be prosecuted as crimes.

People v. Rigsby, 405 Ill.App.3d 916, 940 N.E.2d 113 (1st Dist. 2010) A statute's silence on an issue creates an ambiguity in the statute that permits a court to look beyond the text of the statute to resolve the ambiguity. Here, the Court looked to the Illinois Administrative Code regulations implementing the DNA database statute to determine that a one-time submission into the database is sufficient to satisfy the purpose of the statute.

People v. Freeman, 404 Ill.App.3d 978, 936 N.E.2d 1110 (1st Dist. 2010) When the plain language of one statute conflicts with the plain language of another, courts must look beyond the plain language of the statute to determine legislative intent, which is paramount. The legislature is presumed to know of existing statutes when it enacts new statutes. It cannot be presumed that the legislature would enact a law that completely contradicts an existing law, thereby repealing the existing law by implication. The court must construe the statutes

together, *in pari materia*, where such interpretation is reasonable.

At issue in this case were the rape shield statute, 725 ILCS 115-7 and 725 ILCS 5/115-13, which codified a hearsay exception for the admission of statements of victims of sex offenses to medical personnel. The rape shield statute prohibits admission of evidence of the prior sexual activity or reputation of the victim of a sexual assault with two limited exceptions. The hearsay exception contained in §115-13 allows statements made by sexual assault victims to medical personnel for the purpose of diagnosis or treatment to be admitted as substantive evidence.

The ER physician who treated the alleged victim testified that she told him that she had never had sex before. Based on that information, he expected to find a fully intact hymen when he examined her, but found a one millimeter tear in the hymen, which was consistent with a sexual assault.

To resolve this conflict and determine whether error occurred, the court looked to the purpose of each statute to determine if they could be construed together so as not to offend the purpose of either statute. The court concluded that the admission of the hearsay statements comported with both statutes because the evidence was relevant to whether there was a sexual assault, but did not harass the alleged victim.

§47-2
Effective Date

§47-2(a)
Generally

Illinois Supreme Court

People v. Shumpert, 126 Ill.2d 344, 533 N.E.2d 1106 (1989) A bill that does not contain an express effective date becomes effective according to the following principles:

1. A bill "passed" by the legislature before July 1 becomes effective on the following January 1 or upon its becoming law, whichever is later.
2. A bill "passed" by the legislature after June 30 becomes effective on July 1 of the next year.
3. A bill is "passed" at the time of the final legislative action prior to its presentation to the Governor.
4. If the Governor exercises an amendatory veto, the bill is "passed" when the legislature votes to accept the Governor's recommendations.

Upon a vote of three-fifths of the members of each house, a bill may provide for an earlier effective date (see People ex rel. Klinger v. Howlett, 50 Ill.2d 242, 278 N.E.2d 84 (1972)). However, an effective date provision "must be expressly and clearly made . . . in straightforward and unambiguous language."

People v. J.S., 103 Ill.2d 395, 469 N.E.2d 1090 (1984) Whether a statute should be given prospective or retroactive application, is determined by looking to the intent of the legislature. Generally, a statute will be given prospective application unless there is a clear expression of legislative intent that it is to be retroactively applied.

PA 83-1067, which reclassified certain sex offenses did not apply to a person who committed an offense prior to the Act's effective date — July 1, 1984. The legislature in the Act itself provided that it apply only to "persons who commit [the offenses in the Act] on or after the effective date."

People v. Jackson, 99 Ill.2d 476, 459 N.E.2d 1362 (1984) Defendant was convicted of theft for taking property valued at $251. At the time of the crime, theft of property valued over $150 was a felony. At the time of defendant's trial, theft of property valued over $300 was a felony, and theft of property valued less than $300 was a misdemeanor.

Defendant was entitled to be sentenced for a misdemeanor under the law in effect at the time of trial. When an amendment to a statute applies only to sentencing and not to substantive elements of the offense, defendant is entitled to application of an amended statute that is in effect at the time of sentencing, even where the offense occurred before the effective date of the amendment.

People v. Cross, 77 Ill.2d 396, 396 N.E.2d 12 (1979) Where a sentence of periodic imprisonment was available at the time of the crime but not at the time of sentencing, defendant was entitled to be sentenced under the statute in effect at the time of the crime.

Roth v. Yackley, 77 Ill.2d 423, 396 N.E.2d 520 (1979) Where the legislature amends a statute that has been construed by the Court, that amendment may only be applied prospectively from its effective date. An attempt to apply such an amendment retroactively, to annul or overrule the Court's decision, would violate the separation of powers doctrine.

Springfield v. Allphin, 74 Ill.2d 117, 384 N.E.2d 310 (1978) When a bill is passed by the legislature before July 1 and is amendatorily vetoed by the Governor, but the veto is overridden by the legislature, the bill was "passed" prior to July 1.

Johnson v. People, 173 Ill.131, 50 N.E. 321 (1898) Where the law at the time of the crime required the jury to impose the sentence, defendant was entitled to sentencing by the jury though the statute had been amended before his trial to require sentencing by the judge.

Illinois Appellate Court

People v. Sosani, 2022 IL App (1st) 210027 Defendant filed a 2-1401 petition which was dismissed as untimely. While his appeal from that dismissal was pending, the legislature enacted 735 ILCS 5/2-1401(c-5), which provides that any individual may institute 2-1401 proceedings "at any time" if his or her underlying guilty plea "has potential consequences under federal immigration law." Defendant's 2-1401 petition here had alleged, among other things, that he had not understood that his plea might carry permanent immigration consequences.

On appeal, defendant argued that this new provision should apply to his petition. The Appellate Court found that the amendment did not apply retroactively on appeal, noting that in **People v. Hunter**, 2017 IL 121306, the Supreme Court "clearly expressed the doctrine that the role of a court of review is to determine whether the court below was correct, based on the law before it when it entered its judgment." Because this amendment was not available to the circuit court at the time it dismissed defendant's petition, the Appellate Court declined to consider it. Further, the Appellate Court held that the amendment itself did not express a legislative intent to revive an otherwise time-barred action. Thus, the dismissal of defendant's petition was affirmed.

Defendant also argued that the Appellate Court should consider applying the new statute on appeal because if he simply files a new petition grounded in the same basic facts – which (c-5) would appear to permit based on it's "at any time" language – that petition will

be barred by *res judicata*. The Appellate Court declined to reach that argument because it was "a hypothetical question upon which we decline to opine."

People v. McClain, 343 Ill.App.3d 1122, 799 N.E.2d 322 (1st Dist. 2003) Generally, a statutory amendment will be applied prospectively only. The presumption of non-retroactive application can be rebutted by express statutory language or by implication. Furthermore, an amendment which affects only procedural rights, and which was intended to apply retroactively, can be applied to pending cases.

The "Apprendi-fix" statute (P.A. 91-953) could be applied to offenses which occurred before the statute's effective date.

People v. Hickman, 143 Ill.App.3d 195, 492 N.E.2d 1041 (5th Dist. 1986) Amendment to statute which placed the burden on defendant to prove insanity applies only to offenses committed on or after the effective date (January 1, 1984).

People v. Fisher, 135 Ill.App.3d 502, 481 N.E.2d 1233 (3d Dist. 1985) Defendant was properly convicted of indecent liberties, a Class 1 felony. After the date of the offense, the indecent liberties statute was repealed and replaced by the Class 2 felony of criminal sexual abuse. The latter statute specifically applies only to acts committed after its effective date. **People v. Dalby**, 115 Ill.App.3d 35, 450 N.E.2d 31 (3d Dist. 1983) A defendant who is tried after the effective date of the guilty but mentally ill statute may be properly convicted thereunder, though the offense was committed before the effective date.

People v. Primmer, 111 Ill.App.3d 1046, 444 N.E.2d 829 (4th Dist. 1983) Defendant was properly convicted of armed violence based upon the underlying felony of criminal damage to property (over $150 but less than $300). After the offense but before defendant's trial, an amendment to the criminal damage statute became effective which made criminal damage of less than $300 a misdemeanor.

People v. Dorff, 77 Ill.App.3d 882, 396 N.E.2d 827 (3d Dist. 1979) The "rape shield" statute, which became effective after the date of the offense but before defendant's trial, was applicable at that trial. See also, **People v. Morton**, 188 Ill.App.3d 95, 543 N.E.2d 1366 (4th Dist. 1989) (Amendment to Section 115-10, the hearsay exception regarding complaints by child sex offense victims, applies to trials held on or after its effective date).

People v. DeStefano, 64 Ill.App.3d 389, 212 N.E.2d 357 (1st Dist. 1965) Defendant was properly convicted of illegal voting though the illegal voting statute had been repealed before his trial, but after the date of the offense.

People v. Bedford, 53 Ill.App.3d 1005, 369 N.E.2d 84 (1st Dist. 1977) Defendant has the right to elect to be sentenced under the statute in effect at the time of the offense or that in effect at the time of sentencing, whichever he considers more desirable.

§47-2(b)
Ex Post Facto

United States Supreme Court

Peugh v. U.S., 569 U.S. 530, 133 S.Ct. 2072, 186 L.Ed.2d 84 (2013) The *ex post facto* clause

prohibits the passage of laws which increase the severity of an offense or inflict greater punishment than was authorized when the crime was committed. The *ex post facto* clause applies to laws which criminalize conduct that was innocent when committed, make a crime more serious than it was when committed, inflict greater punishment than attached to the crime when it was committed, or reduce the burden of evidence required to convict below what was required at the time of the offense.

A law may violate the *ex post facto* clause even where it does not affect the maximum sentence for which the defendant is eligible, and even where the sentencing authority retains some sentencing discretion. An *ex post facto* violation is not created by mere speculation or conjecture that a change in the law will retrospectively increase the punishment for the crime. Instead, the touchstone of an *ex post facto* inquiry is whether a given change in the law presents a sufficient risk of increasing the measure of punishment attached to the covered crimes.

The court concluded that the *ex post facto* clause was violated where the trial court applied federal sentencing guidelines which were adopted after the crime was committed.

Although federal sentencing guidelines are advisory only, they represent the starting point of an appropriate sentence. The court concluded that application of the amended guidelines presented a substantial risk that the punishment for the crime would be increased. First, the new guidelines resulted in a sentencing range that was more than double that which would have been suggested by the guidelines in effect at the time of the offense. Second, because the trial court is required to use the guidelines as a starting point in its analysis, the guidelines provide the framework for sentencing even if the trial court ultimately decides to give a sentence outside the guidelines.

Stogner v. California, 539 U.S. 607, 123 S.Ct. 2446, 156 L.Ed.2d 544 (2003) The ex post facto clause applies to laws which: (a) criminalize an act that was innocent when performed; (b) increase the seriousness of a crime after it is committed; (c) increase the punishment for an offense after it is committed; or (d) in order to convict the offender alter the rules of evidence to permit "less, or different, testimony, than the law required" when the offense was committed.

The ex post facto clause was violated by a California law extending the statute of limitations for offenses on which the original statute of limitations had expired before the legislature acted. The legislation deprived defendant of fair warning to preserve exculpatory evidence. However, extension of an unexpired statute of limitations has been held not to create an ex post facto violation.

Rogers v. Tennessee, 532 U.S. 451, 121 S.Ct. 1693, 149 L.Ed.2d 697 (2001) The ex post facto clause, which prohibits retroactive application of legislation adversely affecting a criminal defendant, applies only to actions by the legislative branch. However, due process prohibits retroactive application of a judicial construction adversely affecting a defendant if that construction was "unexpected and indefensible by reference to the law which had been expressed prior" to defendant's acts. See also, Johnson v. Halloran, 194 Ill.2d 493, 742 N.E.2d 741 (2000) (in a concurring opinion, three justices advocated adoption of the United Supreme Court's test for determining whether a new or amended statute will be applied to a case that is pending on appeal).

Carmell v. Texas, 529 U.S. 513, 120 S.CT. 1620, 146 L.Ed.2d 577 (2000) The ex post facto clause applies to four categories of statutes:

1. Laws which criminalize an act that was innocent when performed.
2. Laws which increase the seriousness of a crime after it is committed.
3. Laws which increase the punishment for an offense after it is committed.
4. Laws which, "in order to convict the offender," alter the rules of evidence and require "less, or different, testimony, than the law required when the offense was committed.

Defendant was convicted of 15 sexual offenses against his daughter, and challenged four of the convictions. At the time of the offenses, Texas law provided that a conviction for sexual assault could be based on the testimony of a victim over the age of 14 only if there was corroborating evidence or the victim informed another person of the offense within six months. At trial, the court applied an amended statute which permitted a conviction on uncorroborated testimony if the victim was under 18.

Because the amendment permitted a conviction on less evidence than had been required at the time of the offense, the ex post facto clause was violated.

Garner v. Jones, 529 U.S. 244, 120 S.Ct. 1362, 146 L.Ed.2d 236 (2000) Under **California DOC v. Morales**, 514 U.S. 499 (1995), whether retroactive application of changes in parole procedures violates the ex post facto clause depends on whether the changes create "a sufficient risk of increasing the measure of punishment attached to the covered crimes." In Morales, a California statute increasing the frequency of reconsideration for parole from once a year to up to three years did not create a significant risk that punishment would be increased for previously committed crimes, particularly since the statute provided for more frequent reconsideration where circumstances change.

Here, the ex post facto clause was not violated by retroactive application of amendments increasing the time period between reconsideration of parole from three to eight years for Georgia prisoners serving life sentences. Because the parole board had discretion to set more frequent reconsideration and board policy permitted expedited reviews upon a change of circumstances, there was not "a sufficient risk of increasing the measure of punishment attached to the covered crimes."

Kansas v. Hendricks, 521 U.S. 346, 117 S.Ct. 2072, 138 L.Ed.2d 501 (1997) Where a commitment procedure for sexually violent predators was civil rather than criminal, the ex post facto clause did not apply. ‘

Lynce v. Mathis, 519 U.S. 433, 117 S.Ct. 891, 137 L.Ed.2d 63 (1997) Retroactive revocation of early release credits violated the ex post facto clause.

To establish an ex post facto violation, defendant must show that the law in question was applied to events which occurred before its enactment and disadvantaged him "by altering the definition of criminal conduct or increasing the punishment for the crime." The statute in question was clearly applied to events that occurred before its enactment, since it was used to invalidate previously-issued early release credits. In addition, revocation of the early release credits "unquestionably disadvantaged the petitioner because it resulted in his rearrest and prolonged his imprisonment."

The subjective motivation of the legislature in enacting particular laws is irrelevant to whether an ex post facto violation exists; the sole question is whether a retroactive law has the effect of increasing defendant's punishment.

Collins v. Youngblood, 497 U.S. 37, 110 S.Ct. 2715, 111 L.Ed.2d 30 (1990) "Legislatures may not retroactively alter the definition of crimes or increase the punishment for criminal acts." Labeling a law as "procedural" does not immunize it from scrutiny under the Ex Post

Facto Clause – "[s]ubtle ex post facto violations are no more permissible than overt ones." See also, People v. Nitz, 173 Ill.2d 151, 670 N.E.2d 672 (1996) (legislature cannot effect a change in a judicial construction of a statute by a subsequent declaration of what it originally intended).

The Ex Post Facto Clause does not prohibit application of new evidentiary rules in trials for crimes committed before the changes.

Weaver v. Graham, 450 U.S. 24, 101 S.Ct. 960, 67 L.Ed.2d 17 (1981) State statute enacted after the date of defendant's offense, which allowed him to earn less good time credit on his prison sentence than he would earn under the statute in effect on the date of his crime, constituted an ex post facto law.

Illinois Supreme Court

Walker v. Hill, 241 Ill.2d 479, 948 N.E.2d 601 (2011) The *ex post facto* clauses of the United States and Illinois constitutions prohibit the enactment of laws which retroactively alter the definition of a crime or increase the punishment for a criminal act. *Ex post facto* principles were not violated where the Prisoner Review Board changed its interpretation of 730 ILCS 5/3-3-5(c)(2), which requires that parole be denied if the defendant's release would deprecate the seriousness of the offense, between the time defendant was sentenced and his parole hearing.

By definition, a discretionary parole system is subject to modification based on experience and new insights. Furthermore, this issue does not involve the retroactive application of a change in a rule or a statute, but a change in the way the Prisoner Review Board exercises its discretion through an existing rule. The Board does not violate the *ex post facto* clauses of either the State or federal constitutions because it modifies the manner in which it exercises its discretion.

Similarly, the *ex post facto* clauses were not violated by an amendment to a statute governing the frequency of parole hearings. Under U.S. Supreme Court and Illinois precedent, a decrease in the frequency of parole hearings is *ex post facto* only if there is a sufficient risk that the defendant's punishment for the crimes will be increased. An amendment which creates only a speculative possibility that punishment will be increased is not *ex post facto*.

Here, the amendment to 730 ILCS 5/3-3-5(f), which governs the frequency of parole hearings, did not create a substantial risk that punishment will be increased. When defendant was convicted, §3-3-5(f) provided for a parole hearing every 12 months. In 1996, the statute was amended to allow the Prisoner Review Board to extend the time between hearings up to three years if it is not reasonable to expect that parole will be granted in that period. Because extended periods between parole hearings are permitted only when there is no reasonable likelihood that parole will be granted, the Prisoner Review Board has authority to tailor the frequency of parole hearings to the particular circumstances, and an inmate may seek a parole hearing at any time based upon new facts or extraordinary circumstances, there is no reasonable likelihood that the amendment will result in increased punishment. Thus, no *ex post facto* violation occurred.

The dismissal of defendant's complaint seeking declaratory and *mandamus* relief was affirmed.

People v. Cornelius, 213 Ill.2d 178, 821 N.E.2d 288 (2004) The holding of Malchow was not changed by the subsequent amendment of the Acts to require the Illinois State Police to

maintain a web site with information about photographs of sex offenders. The Internet provision does not violate defendant's right to privacy under the Illinois Constitution, because a person who has been declared a sex offender has no privacy interest in the records concerning his status. Sex offender registration information is a matter of public record, and the Internet provision merely affords citizens an additional means of gaining access to such information.

People v. Harvey, 196 Ill.2d 444, 753 N.E.2d 293 (2001) The ex post facto clause was not violated by imposition of an extended term based upon a 1974 conviction for attempt murder, which was a Class 1 felony at the time of that conviction but which had been subsequently reclassified as a Class X felony that was subject to extended term sentencing. Defendant's ex post facto argument was flawed because it failed to recognize that: (1) the extended term was for defendant's subsequent conviction for armed robbery rather than an additional punishment for the prior attempt murder, and (2) attempt murder and armed robbery maintained the same relative severity before and after the reclassification.

People v. Malchow, 193 Ill.2d 413, 739 N.E.2d 433 (2000) The Sex Offender Registration Act and the Sex Offender and Child Murderer Community Notification Law do not violate: (1) the ex post facto clause; (2) the Eighth Amendment prohibition of cruel, unusual and disproportionate punishment; (3) the Illinois constitutional requirement of proportionate sentencing; (4) the right to privacy under the United States and Illinois Constitutions; (5) double jeopardy; (6) due process; or (7) equal protection.

People v. Ramsey, 192 Ill.2d 154, 735 N.E.2d 533 (2000) Application of statutory amendments to the insanity defense which passed after defendant's criminal acts would violate the ex post facto clause by depriving defendant of an affirmative defense and increasing his burden of proof.

Fletcher v. Williams, 179 Ill.2d 225, 688 N.E.2d 635 (1997) Plaintiffs, inmates of the Department of Corrections, were convicted when statute required annual parole hearings. The statute was subsequently amended to allow the Prisoner Review Board to schedule future parole hearings at intervals up to three years if it found "that it is not reasonable to expect that parole would be granted" at an earlier hearing. Plaintiffs brought a declaratory action seeking a ruling that the ex post facto clause would be violated if the amended statute was applied to persons who had been convicted before its effective date.

A criminal law is ex post facto only where it "alters the definition of criminal conduct or increases the penalty by which a crime is punishable." In California Department of Corrections v. Morales, 514 U.S. 499 (1995), which involved a statutory modification similar to that in this case, the U.S. Supreme Court held that an ex post facto violation existed only if the amendment produced "a sufficient risk of increasing the measure of punishment attached to the covered crimes." The Morales court concluded that in view of several provisions authorizing California parole authorities to tailor the frequency of parole hearings to the circumstances, there was only a "speculative and attenuated possibility" that punishment would be increased. Thus, no ex post facto violation occurred. In light of Morales, the nearly identical amendment here did not create an ex post facto violation.

People v. Granados, 172 Ill.2d 358, 666 N.E.2d 1191 (1996) Though the *ex post facto* clause applies to judicial interpretations of statutory law, the prohibition against *ex post facto* laws applies only where a criminal statute is "enlarged" by subsequent decisions. Here, the

case in question did not "enlarge" the statutory meaning; it merely interpreted the plain meaning of unambiguous statutory language, and reached a result different than that previously reached by the Appellate Court.

Furthermore, the *ex post facto* prohibition applies only where a change in the law is "unforeseeable." Since defendant's acts were covered by the plain statutory language, the case in question was not "unforeseeable" despite the existence of conflicting appellate precedent.

People v. Dunigan, 165 Ill.2d 235, 650 N.E.2d 1026 (1995) The Habitual Criminal Act, which mandates a natural life sentence upon a third conviction for specified offenses, does not impose punishment for the two prior convictions used to establish eligibility. Instead, the Act merely uses defendant's propensity to commit violent crimes to provide enhanced punishment for the third offense. Because the Act punishes defendant solely for the third offense, no ex post facto question arises.

Barger v. Peters, 163 Ill.2d 357, 645 N.E.2d 175 (1994) Effective August 11, 1993, the legislature amended the Unified Code of Corrections to prohibit persons convicted of certain crimes form receiving additional good time credit for participation in prison educational programs. The amendments violated the prohibition against ex post facto laws and could not be applied to persons convicted before the effective date.

The ex post facto clause of the Illinois Constitution was intended to carry the same meaning as Article I, §9 of the Federal Constitution. The ex post facto clause of the Federal Constitution prohibits statutory modifications that inflict "greater punishment" on a defendant than was authorized at the time the crime was committed. For ex post facto purposes, the term "punishment" includes not only the sentence authorized for a particular crime, but also "the actual time that [a defendant] spends in prison." Statutory changes that prevent convicted persons from reducing their prison time to the extent authorized at the time of their convictions increase their "punishment," and therefore violate the prohibition against ex post facto laws.

People v. Coleman, 111 Ill.2d 87, 488 N.E.2d 1009 (1986) Defendant pleaded guilty to DUI and requested supervision. Three years earlier defendant had pleaded guilty to DUI and received supervision. Statute prohibiting supervision to a defendant charged with DUI if he has received supervision for the same offense within the previous five years became effective after defendant's first offense but before his second offense. Statute was not ex post facto; it did not increase the penalty imposed for an offense that occurred before its effective date, but merely created an enhanced penalty for offenses occurring after its effective date. Defendant had adequate notice at the time of his second offense that being convicted of DUI within five years of his prior supervision would subject him to a heightened sanction.

People v. Gonzales, 56 Ill.2d 453, 308 N.E.2d 587 (1974) The trial judge's failure to admonish defendant concerning his right to be sentenced under the statute in effect at the time of the offense did not, under the circumstances of this case, constitute a denial of due process or equal protection. It is merely speculation that defendant would have benefitted under the prior law, and his delay of eight years in filing a post-conviction petition prejudiced the possibility of a trial.

People v. Anderson, 53 Ill.2d 437, 292 N.E.2d 364 (1973) An amendment to the speedy trial statute, effective after the date of the alleged offense, could be properly applied to

defendant. The amendment did not constitute an ex post facto law; it did not alter an "accrued right," make criminal an act that was innocent when done, increase the punishment after the act, alter legal rules of evidence in order to convict defendant, or deprive defendant of any substantive right or defense available at the time of the offense. See also, People v. Dorff, 77 Ill.App.3d 882, 396 N.E.2d 827 (3d Dist. 1979).

People v. Hollins, 51 Ill.2d 68, 280 N.E.2d 710 (1972) A change in the method of sentencing does not violate the prohibition against ex post facto laws. However, a defendant is entitled to be sentenced under either the law in effect when the offense was committed or that in effect at the time of sentencing.

The failure to admonish defendant of his right to elect is a denial of due process. See also, **People v. James**, 46 Ill.2d 71, 263 N.E.2d 5 (1970).

Illinois Appellate Court

People v. Pepitone, 2019 IL App (2d) 151161 Application of the statute prohibiting child sex offenders from being present in a public park was not an *ex post facto* violation as applied to defendant. Although the conviction that triggered defendant's status as a child sex offender occurred prior to enactment of the public park ban in 2011, it was not defendant's status that triggered the statute's application. Instead, it was defendant's conduct of being present in the park in 2015 that subjected him to the statute's reach. While defendant's status as a child sex offender is an element of the offense, the public park ban is not additional punishment for defendant's prior conduct.

People v. Scalise, 2017 IL App (3d) 150299 The United States and Illinois constitutions prohibit *ex post facto* laws that retroactively increase the punishment for a criminal act. U.S. Const., art. I, §§ 9, 10; Ill. Const. 1970, art. I, § 16. The *ex post* fact prohibition only applies to punitive laws.

Defendant pled guilty in 2009 to two counts of predatory sexual assault of a child for acts that occurred in 1998 and 2000. On appeal from the dismissal of his 2-1401 petition, defendant argued that he was entitled to pre-sentence credit against his fines under section 110-14. 725 ILCS 5/110-14(b). Defendant acknowledged the existence of a 2005 amendment to section 110-14 that made pre-sentence credit against fines unavailable to defendants convicted of sexual assault, but argued that the amendment violated the prohibition against *ex post facto* laws.

The Appellate Court, with one justice dissenting, disagreed. It held that the statue was not punitive and thus the *ex post facto* prohibition did not apply to it. The statute as originally enacted held that all defendants were entitled to pre-sentence credit against their fines. In 1977, the statute was amended to state that the credit was available "upon application of the defendant." The amended statute thus made the pre-sentence credit no longer automatic; it only applied if the defendant requested it. Since the credit was not automatic, the 2005 amendment limiting a defendant's ability to request the credit was "not a punishment and has no punitive effect."

People v. Vlahon, 2012 IL App (4th) 110229 Both the United States and Illinois Constitutions prohibit the State from enacting *ex post facto* laws. U.S. Const. Art. I, §10; Ill. Const. 1970, Art. I §16. A criminal law runs afoul of the prohibition against *ex post facto* laws if it is retroactive and disadvantageous to the defendant. A law disadvantages a defendant if it criminalizes an act that was innocent when done, increases the punishment for a previously

committed offense, or alters the rules of evidence by making a conviction more easy to obtain. To establish an *ex post facto* violation based on an increase in punishment, defendant must demonstrate: (1) a legislative change; (2) the change imposed a punishment; and (3) the punishment is greater than the punishment that existed at the time the crime was committed.

At the time of defendant's commission of aggravated domestic battery in 2009, the Code of Corrections provided for an MSR term of two years for a Class 2 felony, including aggravated domestic battery. 730 ILCS 5/5-8-1(d)(2) (2008). In 2010, the legislature added a provision to the Code effective January 1, 2010, providing for a four-year MSR term for aggravated domestic battery. 730 ILCS 5/5-8-1(d)(6) (2010). In 2011, defendant was sentenced to a four-year MSR term for aggravated domestic battery.

Application of the four-year MSR term to defendant was an *ex post facto* violation. The new provision was a legislative change. The legislative change increased defendant's punishment, even though it also protected the public. The change did not merely modify a condition of defendant's sentence. As a result, defendant was sentenced to a longer MSR term than provided for by the statute in effect at the time of the offense, subjecting him to the custody of the IDOC for two years longer than he could have been under the statute in effect at the time of the offense.

People v. Dalton, 406 Ill.App.3d 158, 941 N.E.2d 428 (2d Dist. 2010) Both the Federal and State Constitutions prohibit *ex post facto* laws that disadvantage a defendant by either criminalizing an act that was innocent when done, increase the punishment for a previously-committed offense, or alter the rules of evidence by making a conviction easier to obtain. The prohibition of *ex post facto* laws applies only to punitive laws. It does not apply to fees that are compensatory rather than punitive.

People v. Adams, 404 Ill.App.3d 405, 935 N.E.2d 693 (1st Dist. 2010) The *ex post facto* clause prohibits statutes that increase the punishment for an offense after it is committed. The armed habitual criminal statute does not violate the *ex post facto* prohibition because it punishes the defendant for new and separate crimes committed after the statute was enacted. The prior offenses are merely elements of the offense.

People v. Sprind, 403 Ill.App.3d 772, 933 N.E.2d 1197, 2010 WL 317230 (5th Dist. 2010) Both the federal and state constitutions prohibit *ex post facto* laws that: 1) criminalize an act that was innocent when done; 2) increase punishment for an offense previously committed; and 3) alter rules of evidence to make a conviction easier by making substantive changes in the evidence needed to convict for a given offense. A statute that does nothing more than authorize the admission of evidence of a particular kind that was not admissible under the rules of evidence as enforced at the time the offense was committed is not an *ex post facto* violation.

At the time that defendant was arrested for aggravated DUI and reckless homicide, regulations applicable to the collection of blood and urine evidence provided that a disinfectant that does not contain alcohol shall be used to clean the skin where the sample of blood is to be collected, and that the urine sample shall be collected by the arresting officer, another law enforcement officer or agency employee. Those regulations were thereafter amended to provide that blood samples be drawn using proper medical technique, and to allow hospital nurses to collect urine samples. Because these changes in the regulations were procedural and did not involve substantive rights, they could be applied retroactively.

People v. Leroy, 357 Ill.App.3d 530, 828 N.E.2d 769 (5th Dist. 2005) 720 ILCS 5/11-9.4(b-5), which prohibits persons convicted of sex offenses against children from knowingly residing within 500 feet of a playground or facility providing programs or services exclusively directed towards persons under 18 years of age, but which excepts offenders who owned the property in question before the effective date of the statute, does not violate the ex post facto clause.

People v. O'Quinn, 339 Ill.App.3d 347, 791 N.E.2d 1066 (5th Dist. 2003) Use of a special interrogatory concerning an extended term eligibility factor did not violate the ex post facto clause.

People v. Toia, 333 Ill.App.3d 523, 776 N.E.2d 599 (1st Dist. 2002) Public Act 89-637 (eff. January 1, 1997), which specifically excludes DUI arrests from records which are subject to expungement where supervision is ordered, did not violate the *ex post facto* clauses of the Illinois or Federal Constitutions although it was enacted during the five-year waiting period after which, under the prior law, defendant could have moved for expungement.

The mere fact that an enactment works to a defendant's disadvantage does not necessarily implicate the *ex post facto* clauses; the focus of the inquiry is not whether the change produces some "ambiguous sort of 'disadvantage,' . . . but on whether any such change alters the definition of criminal conduct or increases the penalty by which a crime is punishable." In determining whether an act constitutes "punishment," the court must consider the legislature's intent and also whether the law has a punitive effect despite the legislature's intent. The party challenging a statute has the burden to demonstrate clearly that the effect of the law is so punitive as to negate the legislature's intent.

The legislature had two purposes in enacting P.A. 89-637: (1) to promote public safety, and (2) to deter future DUI violations. Because both purposes are non-punitive, the *ex post facto* clause applies only if the effect of the change was punitive despite the legislature's intent. P.A. 89-637's effect was not so punitive as to defeat the legislature's intent - the expungement provision places no permanent disability or restraint on DUI offenders, but merely removes the ability to have records expunged. The inability to expunge arrest records bears little resemblance to traditional notions of punishment such as imprisonment and fines, and affects only a collateral consequence of an arrest. Denying DUI offenders an opportunity to expunge arrest records is not excessive in relation to the goal of promoting public safety.

People v. Criss, 307 Ill.App.3d 888, 719 N.E.2d 776 (1st Dist. 1999) The trial judge erred by refusing to instruct the jury on the entrapment defense as it existed at the time of the offense. Under the ex post facto clauses of the Illinois and United States constitutions, a criminal law is invalid if it is retrospective (i.e., applies to events that occurred before it was enacted) and falls into one of the traditional categories of prohibited criminal laws (i.e., statutes which punish as a crime an act that was innocent when committed, make the punishment for a crime more burdensome after its commission, or deprive an accused of a defense which was available when the act was committed). The purposes of the ex post facto clause are to insure that legislative enactments give fair warning of their effect and to permit individuals to rely on statutes until they are explicitly changed.

At the time of the offense, to rebut an entrapment defense the State was required to show that defendant was predisposed to commit the offense and originated the "criminal purpose" of the offense. After the offense, the entrapment statute was amended so the State

was no longer required to prove that defendant originated the criminal purpose.

The amendment "dramatically altered" the State's burden of proof in rebutting evidence of entrapment, and therefore constituted a material change in the law. Because the amendment removed a defense that was available at the time of the conduct in question, defendant was entitled to have the jury instructed on the law as it was at the time of the offense.

In re J.R., 302 Ill.App.3d 87, 704 N.E.2d 809 (1st Dist. 1998) Under the ex post facto clauses of the Illinois and U.S. constitutions, a criminal statute is ex post facto if it: (1) applies to events that occurred before its enactment, and (2) falls into one of the traditional categories of prohibited criminal laws, which include: (a) punishing as a crime an act that was not a crime when it was performed, (b) imposing "more burdensome" punishment for a crime after its commission, or (c) depriving a criminal defendant of a defense that was available when the crime was committed. The ex post facto clause applies to both juvenile and adult proceedings.

Application of a statute authorizing transfer of DCFS wards to DOC was not ex post facto though it was passed after the minors' offenses. The length of respondents' sentences was not extended, and their opportunities for early release were not restricted. The amendment merely altered the location of their confinement.

Under current law, "the focus of the ex post facto inquiry is not on whether a legislative change produces some ambiguous sort of 'disadvantage,' . . . but on whether any such change alters the definition of criminal conduct or increases the penalty by which a crime is punishable."

People v. Cortez, 286 Ill.App.3d 478, 676 N.E.2d 195 (1st Dist. 1996) Application of the 1993 version of the stalking statute to defendant's conduct did not violate the ex post facto clause, despite the fact that the conduct occurred before the effective date of the statute. The ex post facto clause is violated only where: (1) the State charges defendant under a statute for conduct which occurred prior to the statute's enactment, and (2) the statute's application further disadvantages defendant. Defendant is "further disadvantaged" where a statute punishes him for conduct that was previously lawful, increases the penalty for particular crime, or removes a defense that was available when the act occurred.

Defendant's conduct was unlawful under both versions of the stalking statute, and defendant did not claim that application of the amended act deprived him of a defense or subjected him to an increased penalty.

People v. Starnes, 273 Ill.App.3d 911, 653 N.E.2d 4 (1st Dist. 1995) The ex post facto clause applies only to criminal conduct; because the Child Sex Offender Registration Act does not involve punishment (see **People v. Adams**, 144 Ill.2d 381, 581 N.E.2d 637 (1991)), the ex post facto clause is inapplicable to amendments to the Act that took effect while defendant's criminal case was pending and which increased the registration requirements.

People v. Johnson, 133 Ill.App.2d 818, 263 N.E.2d 901 (4th Dist. 1970) Statutory amendment that increases punishment after the offense is ex post facto.

§47-2(c)
Retroactivity

Illinois Supreme Court

People v. Hunter & Wilson, 2017 IL 121306 An amendment to the statute changing the requirements for the automatic transfer of juveniles to adult court (705 ILCS 405/5-130), which went into effect after defendant Hunter had been convicted but while his case was pending on direct appeal, was held not to apply retroactively to defendant's case. Section 4 of the Statute on Statutes (5 ILCS 70/4) allows the application of procedural changes in the law to be applied retroactively to ongoing proceedings. It also requires that "the proceedings thereafter" shall conform to the laws in force at the time of the proceedings in question. In defendant's case, the proceedings in the trial court were completed before the transfer statute was amended. Because the proceedings were completed, the amended statute does not apply retroactively to defendant's case.

An amendment allowing a trial court to decline to impose firearm enhancements in sentencing defendants under the age of 18 (730 ILCS 5/5-4.5-105), which went into effect after defendants had been convicted but while their cases were pending on direct appeal, was held not to apply retroactively to defendants' cases. Under section 4 of the Statute on Statutes (5 ILCS 70/4), a punishment mitigated by a new law is applicable only to judgments imposed after the new law takes effect. Since defendants were sentenced before the new law went into effect, the amendment does not apply retroactively to their cases.

People v. Ziobro, 242 Ill.2d 34, 949 N.E.2d 631 (2011) Public Act 96-694, effective 1/1/10 (adding 625 ILCS 5/16-106.3), prohibits the dismissal of DUI charges due to a violation of Supreme Court Rules 504 and 505, which set time limitations on first court appearances in traffic cases. Section 4 of the Statute on Statutes (5 ILCS 70/4) governs where a statute is otherwise silent as to its retroactive effect. Section 4 prohibits retroactive application of substantive provisions and provides that procedural law changes apply to ongoing proceedings. This new provision barring dismissal as a remedy is procedural as it does not affect a vested right. Therefore, courts are bound by the new law on cases remanded to the circuit court by a reviewing court.

People v. Amigon, 239 Ill.2d 71, 940 N.E.2d 63 (2010) In 2003 the legislature enacted a statute providing that any statement made by the accused during custodial interrogation shall be presumed inadmissible unless electronically recorded. 725 ILCS 5/103-2.1. The legislature expressly delayed the effective date of the statute until 2005. The legislative decision to delay implementation of the statute established that it intended that the recording requirement not be applied retroactively to exclude custodial statements made years before the statute's enactment date.

People v. Brown, 225 Ill.2d 188, 866 N.E.2d 1163 (2007) In determining whether a statute can apply retroactively, the threshold inquiry is whether the legislature expressly provided for retroactive or prospective application. If so, that intention is given effect, absent some constitutional prohibition.

Where a statute was enacted in June 1998 with delayed effective dates of January 1, 1999 and January 1, 2000, "it is clear that the law was intended to have only prospective application." Only statutes with an immediate effective date are intended to apply retroactively.

People v. Jones, 219 Ill.2d 1, 845 N.E.2d 598 (2006) At the time of trial, 725 ILCS 5/1-6 required that the State prove venue beyond a reasonable doubt. Although §1-6 was subsequently amended to remove the venue requirement, the amendment made a substantive change in the law and therefore could not be applied retroactively.

People v. Atkins, 217 Ill.2d 66, 838 N.E.2d 943 (2005) Whether a statutory amendment may be applied retroactively generally depends on whether the legislature specifically indicated an intention for retroactive application. If no such intention is stated in the legislation, 5 ILCS 70/4 provides that procedural changes may be applied retroactively. Substantive changes must be applied prospectively only.

People v. Glisson, 202 Ill.2d 499, 782 N.E.2d 251 (2002) Although defendant's conviction was on appeal when the General Assembly repealed the statute which criminalized her conduct, and the legislation did not include a clause providing that convictions obtained while the prohibition was in effect were to be continued, defendant was not entitled to have her conviction overturned. The general savings clause (5 ILCS 70/4) provides that only procedural amendments may be applied retroactively. Because a statute repealing a crime is substantive rather than procedural, the repeal could not be applied to previous conduct.

People v. Digirolamo, 179 Ill.2d 24, 688 N.E.2d 116 (1997) An amendment to 720 ILCS 5/1-6(a) - to eliminate the requirement that the State prove venue - could not be applied to offenses that occurred prior to its effective date (August 11, 1995). The amendment was substantive, rather than procedural, because it purported to modify long-standing Illinois Supreme Court caselaw that venue is an element of the offense and must be proven by the State beyond a reasonable doubt. Because substantive amendments are generally not applied retroactively, the amendment did not relieve the State of its burden to prove venue in this case.

People v. Bates, 124 Ill.2d 81, 529 N.E.2d 227 (1988) Amendment to the Post-Conviction Hearing Act which shortened the time period for filing a petition is to be applied retroactively.

People v. Ruiz, 107 Ill.2d 19, 479 N.E.2d 922 (1985) When a statutory amendment relates to procedural matters it is applicable to proceedings held on or after its effective date. In this case, the amendment to the Post-Conviction Hearing Act which required that a petition be assigned to a judge not involved in the original proceeding was applicable to proceedings on or after its effective date.

People v. Kellick, 102 Ill.2d 162, 464 N.E.2d 1037 (1984) Defendant was convicted of the murder of a 15-year old boy on July 16, 1982. He was found eligible for the death penalty under Ch. 38, ¶9-1(b)(7) (victim under 16 years of age).

Section 9-1(b)(7) became law on October 29, 1981 and was effective July 1, 1982. However, another version of ¶9-1(b)(7) was passed on June 24, 1982 and was signed into law on December 15, 1982. This version permitted death eligibility where the victim was under 12 years of age.

The Supreme Court reviewed the legislative history of both versions of ¶9-1(b)(7), and determined that the latter version was to operate retrospectively to July 1, 1982. Thus, defendant was not eligible for the death penalty.

People v. Anderson, 53 Ill.2d 437, 292 N.E.2d 364 (1973) An amendment to the speedy trial statute, effective after the date of the alleged offense, could be properly applied to defendant. The amendment did not constitute an ex post facto law; it did not alter an "accrued right," make criminal an act that was innocent when done, increase the punishment after the act, alter legal rules of evidence in order to convict defendant, or deprive defendant of any substantive right or defense available at the time of the offense. See also, **People v. Dorff**, 77 Ill.App.3d 882, 396 N.E.2d 827 (3d Dist. 1979).

Illinois Appellate Court

People v. Sosani, 2022 IL App (1st) 210027 Defendant filed a 2-1401 petition which was dismissed as untimely. While his appeal from that dismissal was pending, the legislature enacted 735 ILCS 5/2-1401(c-5), which provides that any individual may institute 2-1401 proceedings "at any time" if his or her underlying guilty plea "has potential consequences under federal immigration law." Defendant's 2-1401 petition here had alleged, among other things, that he had not understood that his plea might carry permanent immigration consequences.

On appeal, defendant argued that this new provision should apply to his petition. The Appellate Court found that the amendment did not apply retroactively on appeal, noting that in **People v. Hunter**, 2017 IL 121306, the Supreme Court "clearly expressed the doctrine that the role of a court of review is to determine whether the court below was correct, based on the law before it when it entered its judgment." Because this amendment was not available to the circuit court at the time it dismissed defendant's petition, the Appellate Court declined to consider it. Further, the Appellate Court held that the amendment itself did not express a legislative intent to revive an otherwise time-barred action. Thus, the dismissal of defendant's petition was affirmed.

Defendant also argued that the Appellate Court should consider applying the new statute on appeal because if he simply files a new petition grounded in the same basic facts – which (c-5) would appear to permit based on it's "at any time" language – that petition will be barred by *res judicata*. The Appellate Court declined to reach that argument because it was "a hypothetical question upon which we decline to opine."

People v. Baxton, 2020 IL App (5th) 150500 The 2016 statutory amendment reclassifying the offense identified in section 4(a) of the Cannabis Control Act from a misdemeanor to a civil law violation was a substantive change. Thus, the amendment does not retroactively apply to the defendant, and he could not rely on the amendment to invalidate his AUUW conviction predicated on possession of cannabis.

People v. Jones, 2019 IL App (3d) 160268 Statutory amendment reducing distance for sentencing enhancement for unlawful delivery of a controlled substance from within 1000 feet of a church to within 500 feet of a church is not retroactive [705 ILCS 570/407(b)(1)]. Defendant's offense was committed in 2011, and he was sentenced in 2016. The statute in question was amended in 2018. Because the proceedings below had concluded before the amendment took effect, retroactive application was precluded.

People v. Williams, 2019 IL App (3d) 160412 Although the new guilty plea admonishments contained in Section 113-4(c) of the Code of Criminal Procedure are procedural, and therefore retroactive, the Appellate Court refused to remand for new admonishments. Following **People v. Hunter**, 2017 IL 121306, the court held that retroactive rules apply only to

ongoing proceedings, and here, there were no ongoing proceedings in the trial court at the time of the amendment, as defendant had already been admonished and pled guilty. When there are no new proceedings to which retroactive new rules can be applied, remand simply for the sake of compliance is unnecessary.

People v. Stefanski, 2019 IL App (3d) 160140 Defendant unsuccessfully sought to withdraw his fully-negotiated guilty plea on the basis that he was not aware of the employment consequences of pleading guilty. While his case was on appeal, 725 ILCS 5/113-4(c) was amended to require that the court admonish a defendant of potential employment consequences before accepting a guilty plea. The Appellate Court determined that the employment-admonishments amendment created a new right for defendants and was therefore substantive and not retroactive. Although a different panel of the Third District found the amendment procedural in **People v. Young**, 2019 IL App (3d) 160528, the majority here declined to follow **Young**. The concurring justice would have followed **Young** and found that the amendment is procedural but that it could not be applied retroactively because defendant's case was pending on appeal, not in the trial court, at the time it was enacted.

People v. Larke, 2018 IL App (3d) 160253 The amendment to section 407 of the Controlled Substances Act, reducing the distances involved in the sentencing enhancements for delivery violations from 1000 feet to 500 feet, is not retroactive. Applying **People v. Hunter**, 2017 IL 121306, defendants are not entitled to mitigating amendments to sentences that take effect after judgment, even if the case is still on direct appeal.

People v. Price, 2018 IL App (1st) 161202 The amendment to the automatic transfer provision raising the age to 16 from 15 for first-degree murder, applied to defendant's case where the amendment passed after trial but before sentencing. Under Section 4 of the Statute of Statutes, the procedural amendment applies retroactively to ongoing proceedings. The 15-year-old murder defendant's case had yet to reach final judgment and therefore was still pending when the amendment passed. Defense counsel's failure to request a transfer hearing under these circumstances rendered him ineffective.

People v. Bethel, 2012 IL App (5th) 100330 To determine whether a statutory amendment is retroactive, a court initially determines whether the legislature has expressly stated the temporal reach of amendment. If the legislature has done so, the expression of the legislature must be given effect absent a constitutional prohibition.

If the legislature has not clearly stated the temporal reach of the amendment, a court must next determine whether applying the amendment would have a retroactive impact. To make this determination, a court considers whether the retroactive application of the amendment impairs rights a party possessed while acting, increases a party's liability for past conduct, or imposes new duties with respect to transactions already completed.

The Statute on Statutes provides a clear legislative directive as to the temporal reach of an amendment where none is expressly stated. Statutory amendments that are procedural may be applied retroactively, while amendments that are substantive may not. 5 ILCS 70/4. If retroactive application has inequitable consequences, the court will presume that the statute does not govern the case.

The Sexually Violent Persons Commitment Act contains an amendment that tolls the running of an MSR term upon the filing of a sexually violent persons petition until the petition is dismissed, or a finding is made that the inmate is not a sexually violent person, or

the inmate is discharged by the court as no longer sexually violent. 725 ILCS 207/15(e). The amendment does not expressly state that it applies retroactively, and there is no legislative directive as to the temporal reach of the amendment. Application of the tolling provision has a definite, immediate, and substantive effect on the length of an inmate's MSR term, and is therefore substantive. Because the tolling provision is substantive, the Appellate Court presumed that it would not apply retroactively to defendant who was admonished when he pleaded guilty that he would be subject to a three-year MSR term upon completion of his sentence.

People v. Boatman, 386 Ill.App.3d 469, 898 N.E.2d 277 (4th Dist. 2008) Public Act 95-688 (eff. October 23, 2007) amended 725 ILCS 5/116-3(a) to provide that a defendant is eligible for post-conviction DNA testing where such testing was not performed at trial or additional testing methods have become available since defendant's trial. Because the hearing on defendant's motion occurred after October 23, 2007, the trial court should have applied the amended version of §116-3(a) although defendant's conviction occurred before the amendment's effective date.

People v. Woodard, 367 Ill.App.3d 304, 854 N.E.2d 674 (1st Dist. 2006) P.A. 94-945, which effective June 27, 2006 amended the definition of "sex offender" to provide that persons convicted of first degree murder of a person under the age of 18 were not subject to sex offender registration requirements unless the offense was sexually motivated, does not apply retroactively. The legislature did not indicate an intent for retroactive application.

People v. McClain, 343 Ill.App.3d 1122, 799 N.E.2d 322 (1st Dist. 2003) Generally, a statutory amendment will be applied prospectively only. The presumption of non-retroactive application can be rebutted by express statutory language or by implication. Furthermore, an amendment which affects only procedural rights, and which was intended to apply retroactively, can be applied to pending cases.

The "Apprendi-fix" statute (P.A. 91-953) could be applied to offenses which occurred before the statute's effective date.

People v. Dalby, 115 Ill.App.3d 35, 450 N.E.2d 31 (3d Dist. 1983) A defendant who is tried after the effective date of the guilty but mentally ill statute may be properly convicted thereunder, though the offense was committed before the effective date.

People v. Dorff, 77 Ill.App.3d 882, 396 N.E.2d 827 (3d Dist. 1979) The "rape shield" statute, which became effective after the date of the offense but before defendant's trial, was applicable at that trial. See also, **People v. Morton**, 188 Ill.App.3d 95, 543 N.E.2d 1366 (4th Dist. 1989) (Amendment to Section 115-10, the hearsay exception regarding complaints by child sex offense victims, applies to trials held on or after its effective date).

People v. Vaughn, 49 Ill.App.3d 37, 363 N.E.2d 879 (5th Dist. 1977) At the time defendant committed a felony, the statute required that prosecution for felonies be commenced by indictment. Shortly thereafter, an amendment became effective which allowed prosecution for felonies by either indictment or information. Because the statutory change was only procedural, defendant could be charged by information.

§47-3
Constitutionality of Statutes

§47-3(a)
Method of Challenge

§47-3(a)(1)
Generally

United States Supreme Court

County Court v. Allen, 442 U.S. 140, 99 S.Ct. 2213, 60 L.Ed.2d 777 (1979) A party has standing to challenge the constitutionality of a statute only insofar as it has an adverse impact on his own rights. If there is no defect in the application of a statute to a litigant, he lacks standing to argue that the statute would be unconstitutional if applied to third parties in hypothetical situations. An exception to this standing rule exists for statutes that broadly prohibit speech protected by the First Amendment.

Illinois Supreme Court

People v. Rizzo, 2016 IL 118599 A party raising a constitutional challenge has a heavy burden to rebut the strong presumption that statutes are constitutional. Courts have a duty to uphold the constitutionality of a statute whenever reasonably possible, resolving any doubts in favor of the statute's validity.

Facial and as-applied challenges are not interchangeable. An as-applied challenge requires a showing that the statute violates the constitution as it applies to the facts and circumstances of the challenging party. It is impossible for a court to make an "as-applied" determination of constitutionality without an evidentiary hearing and findings of fact.

In contrast, a facial challenge requires a showing that the statute is unconstitutional under any set of facts. Thus, the specific facts related to the challenging party are irrelevant.

People v. Klepper, 234 Ill.2d 337, 917 N.E.2d 381 (2009) Supreme Court Rule 18 requires that when finding a statute to be unconstitutional, the trial judge must enter a written or transcribed order clearly identifying the portion of the statute which is unconstitutional, the constitutional provision upon which the finding is based, whether the statute is invalid on its face or as applied, whether the statute can be construed in the manner that could preserve its constitutionality, whether there is an alternative ground for the decision, and whether proper notice of the challenge has been served on the State.

People v. Pomykala, 203 Ill.2d 198, 784 N.E.2d 784 (2003) Provisions which are complete in and of themselves, and capable of being executed independently, may be severed and applied despite the unconstitutionality of a related provision.

People v. Wright, 194 Ill.2d 1, 740 N.E.2d 755 (2000) Due process was violated by 625 ILCS 5/5-401.2(a)(i), which provided that certain persons engaged in auto recycling commit a Class 2 felony if they "knowingly" fail to keep certain records or "knowingly" violate "this Section."

By requiring a system of mandatory licensing and record keeping, §5-401.2 is intended to prevent or reduce the transfer or sale of stolen vehicles and their parts. Section 5-401.2 was not reasonably designed to achieve this purpose, however, because punishing an individual for knowingly failing to keep required records may subject completely innocent

conduct to criminal punishment.

The court declined to cure the defect by imputing a requirement of knowledge plus criminal purpose under **People v. Tolliver**, 147 Ill.2d 397, 589 N.E.2d 527 (1992). Where a statute specifically provides a mental state, as with §5-401.2, courts may not impute a different requirement.

Defendant did not waive the constitutionality of §5-401.2 although he raised the issue for the first time in a petition for rehearing in the Supreme Court. New points are generally improper in a petition for rehearing; however, the constitutionality of a statute may be raised any time.

People v. Bryant, 128 Ill.2d 448, 539 N.E.2d 1221 (1989) A constitutional challenge to a statute may be raised at any time, including for the first time on appeal. See also, **People v. Zeisler**, 125 Ill.2d 42, 531 N.E.2d 24 (1988) (constitutionality of statute raised for the first time in a post-conviction proceeding).

People v. Haywood, 118 Ill.2d 263, 515 N.E.2d 45 (1987) A person to whom a statute may be constitutionally applied does not have standing to challenge that statute as overbroad on the ground that it might be applied unconstitutionally to others in a different context.

People v. Matkovick, 101 Ill.2d 268, 461 N.E.2d 964 (1984) A defendant charged with conduct clearly prohibited by a statute has no standing to challenge the statute on vagueness grounds, based on hypothetical situations, unless the statute has First Amendment implications.

People v. Mayberry, 63 Ill.2d 1, 345 N.E.2d 97 (1976) A party does not have standing to challenge the constitutional validity of a statute that does not directly affect him, unless the unconstitutional feature is so pervasive as to render the entire act invalid.

People v. Zuniga, 31 Ill.2d 429, 202 N.E.2d 31 (1964) A person who would attack a statute as unconstitutional must bring himself within the class as to whom the law is allegedly constitutionally objectionable.

§47-3(a)(2)
As Applied

Illinois Supreme Court

People v. House, 2021 IL 125124 Defendant filed a post-conviction petition, alleging: (1) a constitutional challenge to his natural life sentence, imposed for a crime committed at age 19; and (2) actual innocence. The petition was dismissed at the second stage. After the Appellate Court found the sentence violated the proportionate penalties clause and ordered a new sentencing hearing, the Supreme Court vacated the opinion and ordered reconsideration in light of **People v. Harris**, 2018 IL 121932. After considering **Harris**, the Appellate Court found it distinguishable and again remanded for a new sentencing hearing. The State appealed.

The Supreme Court reversed the Appellate Court but remanded the case for second-stage proceedings. First, the Appellate Court's finding of a proportionate penalties violation ran afoul **Harris**, which held that a finding that a statute is unconstitutional as applied can take place only after an evidentiary hearing. Here, as in **Harris**, defendant's petition did not

contain any evidence in support of his claim that the evolving science on juvenile maturity and brain development applied to him. Thus, the trial court could not make the factual findings necessary to determine whether he, as a 19 year-old, would be entitled to constitutional protections normally reserved for juveniles. The Appellate Court's belief that the **Harris** holding was limited to as-applied claims on direct review ignores the fact that the key to such claims is the factual development, not procedural posture. The court remanded for new second-stage proceedings to allow defendant to develop the record.

Second, with regard to the actual innocence claim, defendant was entitled to new second stage proceedings because the law has changed since dismissal of his petition. The actual innocence claim was supported by a recantation affidavit. The appellate court affirmed the second-stage dismissal in 2015. Since then, the Supreme Court decided **People v. Robinson**, 2020 IL 123849, which clarified the standards for reviewing actual innocence claims, and **People v. Sanders**, 2016 IL 118123, which reviewed an actual innocence claim premised on recantation. In light of these cases, the State conceded, and the Supreme Court agreed, that new second-stage proceedings were required. Although defendant requested remand to the third-stage due to the improper second-stage dismissal, the court disagreed, as defendant had yet to meet the substantial showing standard that would entitle him to an evidentiary hearing.

Three justices partially dissented, and would have affirmed the dismissal of the proportionate penalties claim without remand for new proceedings. In her own special concurrence/partial dissent, C.J. Burke found that defendant's claim is a facial challenge, where it argues that the statutory scheme requiring a mandatory life sentence precluded the consideration of potentially mitigating circumstances. Such a challenge must fail where the legislature appropriately followed the **Miller** line of cases and drew the line at age 18.

J. Burke and J. Overstreet would have affirmed both because defendant had one opportunity to support his as-applied challenge and failed to do so, and because the determination of a sentencing line between juveniles and adults for mandatory life sentencing is best set as a matter of policy by the legislative branch. These justices noted that even after **Miller**, in 2019, the legislature provided parole review for certain crimes committed by those under 21 but excluded parole review for those like defendant who were subject to mandatory life sentences.

People v. Gray, 2017 IL 120958 An as-applied challenge to the constitutionality of a statute is directed against how the statute applies to the facts and circumstances of a defendant's case. A successful as-applied challenge enjoins enforcement of the statute only against the defendant in a specific case.

In re M.I., 2013 IL 113776 To bring a constitutional challenge, a person must be within the class aggrieved by the alleged unconstitutionality, or the unconstitutional feature must be so pervasive as to render the entire statute invalid. A person has no standing to argue that the statute would be unconstitutional if applied to third parties in hypothetical situations.

Under the EJJ statute, the stay of an adult sentence may be revoked when the minor violates the conditions of his sentence, or is alleged to have committed a new offense. 705 ILCS 405/5-810(6). Although contained within the same statutory subsection, these are separate provisions with separate consequences.

A petition to revoke was filed against the minor solely on the basis of his commission of a new offense. Because the minor argued only that the term "conditions" is vague, and made no vagueness challenge to the alleged basis for revocation of the stay in his case, he has

no standing to make a constitutional challenge to the statute.

People v. Haywood, 118 Ill.2d 263, 515 N.E.2d 45 (1987) A person to whom a statute may be constitutionally applied does not have standing to challenge that statute as overbroad on the ground that it might be applied unconstitutionally to others in a different context.

People v. Matkovick, 101 Ill.2d 268, 461 N.E.2d 964 (1984) A defendant charged with conduct clearly prohibited by a statute has no standing to challenge the statute on vagueness grounds, based on hypothetical situations, unless the statute has First Amendment implications.

People v. Mayberry, 63 Ill.2d 1, 345 N.E.2d 97 (1976) A party does not have standing to challenge the constitutional validity of a statute that does not directly affect him, unless the unconstitutional feature is so pervasive as to render the entire act invalid.

People v. Zuniga, 31 Ill.2d 429, 202 N.E.2d 31 (1964) A person who would attack a statute as unconstitutional must bring himself within the class as to whom the law is allegedly constitutionally objectionable.

§47-3(a)(3)
Facial

Illinois Supreme Court

People v. Eubanks, 2019 IL 123525 Section 11-501.1 of the Vehicle Code, which allows police officers to forcibly withdraw defendant's blood or urine when there is probable cause of intoxication in a case involving an auto accident with death or injury to another, violated the Fourth Amendment in this case. Defendant made a facial challenge to the statute. While facial challenges under the Fourth Amendment are permissible, and are not foreclosed merely because the statute would not apply in cases where the officer has a warrant, exigent circumstances, or consent, this statute comports with the "general rule" that exigent circumstances exist when BAC evidence is dissipating, and some other factor, such as a death or injury, creates a pressing concern that takes priority over a warrant application.

After **Schmerber v. California**, 384 U.S. 757 (1966), **Missouri v. McNeely**, 569 U.S. 141 (2013), and **Mitchell v. Wisconsin**, 588 U.S. ___, 139 S. Ct. 2525 (2019), the courts must employ a totality-of-the-circumstances test when analyzing the constitutionality of warrantless blood or urine draws in DUI cases, but this test is guided by the "general rule" that, due to BAC dissipation, exigent circumstances will exist when there is a traffic accident causing personal injury or when the suspect is unconscious. Nevertheless, defendant can rebut application of the general rule by showing that the blood/urine draw was solely for law enforcement purposes, and that the "police could not have reasonably judged that a warrant application would interfere with other needs or duties."

Here, defendant established that no reasonable officer could have believed a warrant application would interfere with the investigation. The defendant was arrested around 9 p.m. and taken to the station where he was not interviewed until 10:30 p.m. The interviewing officer claimed defendant smelled like alcohol, and defendant refused a breath test, but he was not taken to the hospital for blood/urine samples until 3 a.m. The blood draw occurred

at 4:10 a.m., and the urine sample was given at 5:20 a.m. Given that seven hours passed between the arrest and the blood draw, a warrant application would not have increased the delay. Thus, the general rule of exigent circumstances does not exist here, and the statute is unconstitutional as applied to defendant's case.

People v. Burns, 2015 IL 117387 To succeed on a facial challenge, a plaintiff must establish that the law in question is unconstitutional in all applications. When assessing whether a statute meets this standard, a court will consider only scenarios in which the statute actually authorizes or prohibits the conduct at issue. "The proper focus of the constitutional inquiry is the group for whom the law is a restriction, not the group for whom the law is irrelevant." **Planned Parenthood of Southeastern Pa. v. Casey,** 505 U.S. 833 (1992).

In re Derrico G., 2014 IL 114463 For a statute to be facially unconstitutional, there must be no set of circumstances under which the statute would be valid. If a statute is constitutional as applied to a defendant, it usually cannot be challenged on the ground that it might be unconstitutional as applied to others. In other words, if the statute is constitutional as applied to defendant, "his facial challenge necessarily fails."

People v. Davis, 2014 IL 115595 In ***Miller v. Alabama***, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), the United States Supreme Court held that because juveniles "are constitutionally different from adults for purposes of sentencing," it is a violation of the Eighth Amendment's prohibition against cruel and unusual punishments to impose a mandatory sentence of natural life imprisonment on juveniles under 18. Defendant argued that under ***Miller*** the statutory scheme mandating natural life imprisonment was facially unconstitutional.

If a new constitutional rule renders a statute facially unconstitutional, the statute is void ab initio, meaning that the statute was constitutionally infirm and unenforceable from the moment it was enacted. Any sentence imposed under an unconstitutional statute is void and may be attacked at any time. A facial challenge is the hardest to mount since a statute is facially unconstitutional only if there are no set of circumstances in which the statute could be validly applied.

Defendant was sentenced pursuant to section 5-8-1(a)(1)(c) of the Unified Code of Corrections which provides that if a defendant is convicted of murdering more than one individual, the court shall sentence him to natural life imprisonment. The Illinois Supreme Court rejected this argument because section 5-8-1(a)(1)(c) can be validly applied to adults and thus it is not unconstitutional in all of its applications.

Additionally, the transfer statute in effect when defendant was tried provided for a permissive transfer that specifically required the court to consider all relevant circumstances attendant to defendant's age, as required by ***Miller*****,** before transferring the juvenile to adult court. Ill. Rev. Stat. 1989, ch. 37, ¶805-4. Under these circumstances, the sentencing scheme, including the transfer statute, was not facially unconstitutional.

People v. Kitch, 239 Ill.2d 452, 942 N.E.2d 1235 (2011) A statute is unconstitutional on its face only if no set of circumstances exist under which it would be valid.

People v. Taylor, 138 Ill.2d 204, 561 N.E.2d 667 (1990) When a penal statute which does not involve first amendment freedoms is challenged as unconstitutionally vague on its face,

the challenger must demonstrate that the law is impermissibly vague in all of its applications.

People v. White, 116 Ill.2d 171, 506 N.E.2d 1284 (1987) Provision in the Election Code which prohibits distribution of a leaflet soliciting votes for a political candidate in a general election, without including the name and address of the person publishing and distributing it, is "unconstitutional on its face" because it imposes an unlawful restriction on the right to express political views.

Illinois Appellate Court

People v. Daniel, 2022 IL App (1st) 182604 Defendant challenged the admission at his murder trial of an audio recording on the basis that it was obtained in violation of the eavesdropping statute. Defendant argued that he did not consent to the recording, which was made in the privacy of his own home, and the State could not show in the alternative that the decedent had consented to the recording.

On appeal, the parties agreed that the version of the eavesdropping statute in effect at the time the audio recording was made was subsequently declared facially unconstitutional in **People v. Clark**, 2014 IL 115776. Defendant argued that the prior version of the eavesdropping statute should control and that the recording violated that version, as well. The State argued that because the version of the eavesdropping statute in effect at the time of the recording had been declared unconstitutional, it was *void ab initio* and thus there was no statute for the recording to violate. Additionally, the State argued that a subsequent amendment to the eavesdropping statute rendered the recording admissible.

The Appellate Court agreed with the State and held that because the eavesdropping statute in effect at the time was facially unconstitutional, it was unenforceable and thus there could be no violation. Accordingly, it was not error for the court to allow the recording into evidence.

People v. Baker, 2020 IL App (2d) 181048 725 ILCS 5/103-2.1(b-5), which requires recording of statements made during custodial interrogations for enumerated felony offenses, did not violate equal protection where it became effective as to various offenses on different dates over the course of several years. Rational basis review was appropriate because the statute did not affect a fundamental right or involve a suspect class.

Defendant was interrogated regarding a home invasion prior to June 1, 2015, the date on which section 103-2.1(b-5) began to require recording of home invasion interrogations. While the same amendment which added home invasion to the recording statute also added other offenses with earlier effective dates, the legislature had a rational basis for the staggered effective dates. Specifically, the volume of offenses being added to the recording statute warranted implementation over a period of years. Accordingly, the statute was not facially unconstitutional, and the trial court did not err in denying defendant's motion to suppress his unrecorded statement.

People v. Collier, 2020 IL App (1st) 162519 The State charged defendant with animal cruelty under 50 ILCS 70/3.01(a). The statute provides that "[n]o person or owner may beat, cruelly treat, torment, starve, overwork or otherwise abuse any animal." Defendant argued that the State failed to prove him guilty beyond a reasonable doubt because the dogs were kept in a house, fed, and in good health. The court affirmed, finding that by keeping several dogs in a house without heat or running water, filled with urine and feces, keeping one dog chained outside in 15 degree weather, and by failing to properly feed, groom, or provide

medical attention for the dogs, a rational trier of fact could find that defendant abused the animals.

Defendant further argued that the statute is unconstitutionally vague because it fails to provide a mental state and criminalizes innocent conduct. The court disagreed, holding that by limiting criminal liability to "cruel or abusive conduct," the legislature made clear that it was not criminalizing innocent conduct. Such language provides sufficient notice of prohibited conduct so as to prevent arbitrary enforcement. Also, when a statute lacks a specific mental state, a mental state of intent, knowledge, or recklessness is implied, and here the court chose to read a knowledge requirement into the statute. Because defendant's abuse of the animals was clearly done with knowledge, the court upheld the conviction.

People v. Paranto, 2020 IL App (3d) 160719 In assessing defendant's challenge to the constitutionality of the 2014 version of 625 ILCS 5/11-501(a)(6), the Appellate Court was bound to follow **People v. Fate**, 159 Ill. 2d 267 (1994), where the Illinois Supreme Court found the statute facially constitutional. The Appellate Court rejected defendant's argument that advances in scientific testing rendered her challenge a distinct issue from the challenge brought in 1994 in **Fate**.

The Appellate Court also held that even if **Fate** did not control, the record was inadequately developed to consider defendant's facial challenge here. While normally only an as-applied challenge requires that a factually-developed record be made below, the facial challenge here was dependent on evolutions in scientific testing which lacked evidentiary support in the record. On appeal, defendant could not rely on secondary sources as substantive evidence of necessary scientific facts to support her constitutional challenge.

People v. Martin, 2018 IL App (1st) 152249 Armed habitual criminal statute was not unconstitutional as applied to defendant whose two qualifying prior convictions were non-violent and more than 20 years old. Defendant knew he was a twice-convicted felon when he chose to possess a firearm. Defendant did not seek restoration of his right to possess firearm but rather only challenged the constitutionality of the law after he was arrested. Also, the fact that defendant's first felony conviction was for conduct committed when he was 17 years old and would no longer qualify as an adult felony in Illinois was irrelevant.

The State argued against reaching the as-applied challenge because it was not raised in the trial court. The Appellate Court distinguished **People v. Mosley**, 2015 IL 115872, where the record was inadequate for as-applied review, and concluded that the record here contained all relevant facts, including information about defendant's prior felony convictions, his age, lack of other criminal history, and rehabilitation. Plus, the State did not identify any additional facts necessary to the Court's review of the issue.

People v. Gray, 2013 IL App (1st) 112572 A statute that is unconstitutional is not necessarily void. A statute that is unconstitutional on its face – that is, where no set of circumstances exist under which it would be valid – is void *ab initio*. A statute that is merely unconstitutional as applied is not.

Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455 (2012), held that the mandatory imposition of natural-life imprisonment on offenders under age 18 violates the Eighth Amendment. Because **Miller** does not affect the validity of the natural-life-imprisonment statute as to adults, and does not divest a court of the authority to sentence a minor to natural life, a judgment imposing a mandatory natural-life sentence on a minor is merely voidable, not void.

People v. Campbell, 2013 IL App (4th) 120635 A statute which is held facially unconstitutional is rendered void *ab initio*. Any convictions which were obtained under the statute are void and must be vacated.

People v. Dunmore, 2013 IL App (1st) 121170 A statute which is held facially unconstitutional is rendered void *ab initio*. Any convictions which were obtained under the statute are void and must be vacated.

People v. Farmer, 2011 IL App (1st) 083185 Generally, a person to whom a statute may be constitutionally applied is not allowed to challenge the statute solely on the ground that the statute could be applied unconstitutionally to another person in a different context. An exception exists in First Amendment cases where a statute may be challenged as overbroad due to the concern that constitutionally-protected activity may be deterred or chilled.

In re F.G., 318 Ill.App.3d 709, 743 N.E.2d 181 (1st Dist. 2000) Where a statute is deemed unconstitutional in its entirety, it is void "ab initio." Thus, the law that was in effect before the unconstitutional statute was enacted is revived.

§47-3(b)
Basis of Challenge

§47-3(b)(1)
First Amendment

§47-3(b)(1)(a)
Freedom of Speech

§47-3(b)(1)(a)(1)
Harrassment/Stalking/Threats

Illinois Supreme Court

People v. Relerford, 2017 IL 121094 The Illinois Supreme Court held that the stalking and cyberstalking statutes violated the First Amendment and were facially unconstitutional.

A defendant commits stalking when he "knowingly engages in a course of conduct directed at a specific person," and he knows or should know that his conduct would cause a reasonable person to fear for his or her safety or suffer emotional distress. 720 ILCS 5/12-7.3(a)(1), (a)(2). Course of conduct is defined as two or more acts where a defendant "follows, monitors, observes, surveils, threatens, or communicates to or about" a person. 720 ILCS 5/12-7.3(c)(1). Emotional distress is defined as "significant mental suffering, anxiety, or alarm." 720 ILCS 5/12-7.3(c)(3). The cyberstalking statute imposes criminal liability based on similar language. 720 ILCS 5/12-7.5(a).

Content-based laws targeting speech based on its communicative content are presumed to be invalid. Here the proscription against communications "to or about" another person that would cause a reasonable person to suffer emotional distress criminalizes speech based on its content. Additionally, the statutes criminalize a number of commonplace situations where an individual's speech might cause another person to suffer emotional distress. The statutes are thus overbroad on their face and as such violate the First

Amendment.

The Public Act that created the present version of the stalking and cyberstalking statutes specifically stated that the provisions of these statutes are severable. The Court therefore struck the phrase "communicates to or about" from each statute. Since defendant's prosecution relied on the now-stricken language, the Court reversed his convictions.

People v. Bailey, 167 Ill.2d 210, 657 N.E.2d 953 (1995) Exception to stalking statute for picketing during "bona fide labor disputes" does not violate equal protection. There is a rational basis to exempt labor picketing from the stalking statute, because the legislature could reasonably conclude that "stalking-type" conduct was unlikely to occur during labor picketing and that union activities are constitutionally protected.

People v. Wisslead, 108 Ill.2d 389, 484 N.E.2d 1081 (1985) The unlawful restraint statute is not vague or overbroad. The language in the statute (i.e., "detain" and "legal authority") does not "render it impossible for an ordinary citizen to discern what conduct is prohibited." **People v. Bailey**, 167 Ill.2d 210, 657 N.E.2d 953 (1995) Stalking and aggravated stalking statutes (720 ILCS 5/12-7.3 & 5/12-7.4) as they existed in 1992 were upheld. The stalking statute was not unconstitutionally overbroad because it failed to provide that defendant's actions must be "without lawful authority." The legislature intended that the statutes apply only to conduct performed without lawful authority. Thus, the missing phrase is implied, and innocent conduct cannot be prosecuted.

The stalking statute was not facially overbroad because it could apply to speech protected by the First Amendment. The legislature intended to prohibit only conduct which is not constitutionally protected, and the First Amendment does not protect the act of making a threat.

Finally, the stalking statute is not unconstitutionally vague because it fails to define the term "follows" or the phrase "in furtherance of." Both terms have commonly-understood meanings which provide adequate notice of the prohibited conduct and prevent arbitrary enforcement.

People v. Klick, 66 Ill.2d 269, 362 N.E.2d 329 (1977) Disorderly conduct statute prohibiting a person from making a telephone call with the intent to annoy is unconstitutionally overbroad. The statute is not limited to unreasonable conduct, but applies to conduct protected under the First Amendment. Compare, **People v. Parkins**, 77 Ill.2d 253, 396 N.E.2d 22 (1979) (harassment by telephone statute upheld; unlike the statute at issue in **Klick**, this statute requires intent to abuse, threaten or harass).

Illinois Appellate Court

People v. Bona, 2018 IL App (2d) 160581 Defendant was convicted of threatening a public official based on a voice mail message he left for a state representative where he said, "we know where you live," and noted that there was "no longer an assault weapons ban." In that message, defendant also referenced a prior incident involving the posting of a map with Democratic candidates' images in the cross-hairs of a gun.

The threatening-a-public-official statute [720 ILCS 5/12-9] survived defendant's First Amendment challenge. While the First Amendment protects against the abridgement of free speech, "true threats" are a category of speech which is unprotected. Under **Elonis v. United States**, 575 U.S. ___, 135 S. Ct. 2001 (2015), a statute prohibits "true threats" and is constitutional where it requires either that defendant transmit the communication in

question "for the purpose of issuing a threat, or with knowledge that the communication would be viewed as a threat."

Section 12-9 meets the **Elonis** standard that defendant knowingly transmit a true threat where the elements of the offense are that defendant knowingly communicate a threat to a public official, the threat would place the public official in reasonable apprehension of harm, and the threat be related to the public official's duties.

People v. Kucharski, 2013 IL App (2d) 120270 720 ILCS 135/1-2(a)(1) creates the offense of harassment through electronic communications where electronic communications are used to make an "obscene" comment "with an intent to offend." The court rejected the argument that the statute violates the First Amendment because it is a content-based limitation which prohibits only obscene speech which is intended to offend, and not any other obscene speech.

The court found that §1-2(a)(1) is an attempt to regulate conduct which accompanies prohibited speech, and does not seek to regulate speech itself. Although speech may not be constitutionally proscribed because of the ideas it expresses, it may be restricted "because of the manner in which it is communicated or the action it entails." Because §1-2(a)(1) restricts obscene electronic communications due only to the purpose for which the communication is transmitted, and not because of the ideas that are expressed, the statute is constitutional.

§47-3(b)(1)(a)(2)
Abusive Language

United States Supreme Court

R.A.V. v. St. Paul, Minnesota, 505 U.S. 377, 112 U.S. 2538, 120 L.Ed.2d 305 (1992) On First Amendment grounds, the Supreme Court invalidated a city ordinance that prohibited use of symbols or objects, such as burning crosses or Nazi swastikas, which "one knows or has reasonable grounds to know arouse anger, alarm or resentment" based upon "race, color, creed, religion or gender." Although lower courts had limited application of the ordinance to "fighting words," the majority found that even fighting words cannot be restricted solely because they express a message that the government disfavors. Thus, though the city could outlaw all fighting words, it could not prohibit only those which express a message of racial, religious or gender-based hatred.

Lewis v. New Orleans, 415 U.S. 130, 94 S.Ct. 970, 39 L.Ed.2d 214 (1974) Constitution is violated by city ordinance stating that it shall be unlawful for any person to wantonly curse or revile or to use obscene or opprobrious language toward police officer in actual performance of his duties. The ordinance punishes the spoken word, which is constitutionally protected. See also, **Norwell v. Cincinnati**, 414 U.S. 14, 94 S.Ct. 187, 38 L.Ed.2d 170 (1973) (one may not be punished for nonprovocatively voicing objection to what he feels is the highly questionable detention by officer; ordinance operated to punish defendant for constitutionally protected speech).

Plummer v. Columbus, 414 U.S. 2, 94 S.Ct. 17, 38 L.Ed.2d 3 (1973) City Code providing that "no person shall abuse another by using menacing, insulting, slanderous, or profane language" is unconstitutional, because it punishes only spoken words and is not limited in application to unprotected speech. Though the ordinance may be neither vague nor otherwise invalid as applied to defendant, he may raise its vagueness or unconstitutional overbreadth as applied to others. Furthermore, if the law is found deficient it may not be

applied to him until a satisfactory limiting construction is placed on it.

Hess v. Indiana, 414 U.S. 105, 94 S.Ct. 326, 38 L.Ed.2d 303 (1973) Defendant's words "we'll take the fucking street later," spoken while facing a crowd at an antiwar demonstration while sheriff and deputies were attempting to clear the street, were constitutionally protected. Defendant's remarks could not be punished as obscene or "fighting words" or as having "a tendency to lead to violence."

Gooding v. Wilson, 405 U.S. 518, 92 S.Ct. 1103, 31 L.Ed.2d 408 (1972) State statute making it a crime to use opprobrious or abusive language tending to cause breach of the peace was held unconstitutional; the statute had not been narrowed by state courts to apply only to "fighting words" which tend to incite an immediate breach of the peace.

Bradenburg v. Ohio, 395 U.S. 444, 89 S.Ct. 1827, 23 L.Ed.2d 430 (1969) A state may not prohibit speech advocating use of force or violation of law, except where such speech is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.

Illinois Supreme Court

People v. Swenson, 2020 IL 124688 The Supreme Court upheld defendant's disorderly conduct conviction, finding his call to a school administrator asking about safety and school shootings in graphic detail, was not protected speech.

The administrator testified that the caller stated he was interested in sending his son to the school, and asked a battery of questions about shootings: whether the school had bulletproof glass, whether she knew the "success rate" of school shooters, if she "was prepared to have the sacrificial blood of the lambs of our school" on her hands, and what protocols would be in place if he showed up to the school with a gun. He also invoked imagery of peaceful sleeping children being shot in the face. The administrator got the impression the man was on the school campus. During the call, the administrator texted the head of the school, notified him about the call, and asked him to call 911. But, she did not believe defendant made an immediate threat. He never said he had a gun, and never said he was coming to the school.

Defendant testified and agreed that he had asked several questions about the school's defenses against shootings, but denied threatening anyone and explained that he was trying to assess the security of the school before sending his son there. He was acquitted of telephone harassment but convicted of disorderly conduct. Although he did not make a threat, he knowingly made comments a reasonable person would find alarming and disturbing. See 720 ILCS 5/26-1(a)(1). He challenged the conviction on appeal, making an as-applied challenge to the statute based on a violation of free speech.

Defendant's conviction was predicated entirely on speech, so the question was whether that speech was protected. Because the statute places a content-based restriction on speech, the State had the burden of proving it was unprotected, *i.e.* a true threat. True threats do not need to be intentionally threatening, but the speaker must subjectively know the threatening nature of the speech. The effect on the listener is one factor in determining whether the speaker knew the speech was threatening.

The Supreme Court agreed defendant made a true threat. Although he did not explicitly or intentionally threaten the administrator directly, his "graphic hypothetical

scenarios" communicated an intent to commit violence and intimidated her by suggesting the possibility of violence. The statements were objectively threatening, and therefore the administrator acted reasonably in becoming alarmed and disturbed.

Two dissenting justices would have found the speech protected based on the fact that the defendant primarily asked questions, and did not make declarative statements. They also found it dispositive that the administrator did not believe defendant was making a threat. The dissenters would not have found a serious expression of intent to commit violence, and no true threat.

People v. Austin, 2019 IL 123910 Nonconsensual dissemination of private sexual images statute [720 ILCS 5/11-23.5(b)] was upheld against constitutional challenges. The statute criminalizes the intentional dissemination of an image of another who is at least 18 years old, identifiable from the image or accompanying information, engaged in a sexual act or whose intimate parts are exposed, if the disseminator obtained the image under circumstances in which a reasonable person would know or understand that it was to remain private, and knew or should have known that the person in the image had not consented to its distribution.

The Supreme Court upheld the statute against a first amendment challenge. Sexual images do not fall within an established categorical exception to first amendment protection, and the court declined to recognize a new category of speech – that which invades privacy – as falling outside of first amendment protection. Thus, Section 11-23.5(b) implicates freedom of speech and first amendment scrutiny was warranted.

Intermediate scrutiny applies because the statute is a content-neutral restriction that regulates only private matters. While the statute restricts a specific category of speech (sexual images), it is content neutral because it is concerned not with the content of the image, but with whether the disseminator obtained it under circumstances which would lead a reasonable person to conclude that it was intended to remain private and that the person in the image had not consented to its dissemination. And, because the statute involves private images rather than public speech, first amendment protections are less rigorous.

The statute withstands intermediate scrutiny because it protects individual privacy rights and is designed to prevent significant harm to victims. And, the restriction is narrowly tailored to serve the interest in protecting privacy without burdening substantially more speech than necessary. The statute is targeted at private sexual images, and requires that the disseminator act intentionally and have reasonable awareness that the image was intended to remain private. For these same reasons, the statute is not facially overbroad.

Illinois Appellate Court

People v. Swenson, 2019 IL App (2d) 160960 Disorderly conduct conviction upheld where defendant called a private school, made extensive inquiries about safety protocols as related to school shooters, indicated to a school employee that he was familiar with the campus, expressed a detailed knowledge of guns and school shootings, and asked what would happen if he showed up with a gun. Although defendant indicated he was inquiring about safety because he wanted to enroll his son in the school, the nature of his questions clearly exceeded the bounds of reasonableness.

Disorderly conduct is established by proof that an individual knowingly acted unreasonably and knew or should have know that his conduct would alarm or disturb another and cause a breach of the peace, and that standard was met here. The First Amendment provides no protection for words that are so unreasonable as to provoke a breach of the peace.

City of Harvard v. Gaut, 277 Ill.App.3d 1, 660 N.E.2d 259 (2d Dist. 1996) A municipal ordinance prohibiting the wearing of "known gang colors, emblems, or other insignia" or appearing to be "communicating gang-related messages through the use of hand signals or other means of communication" was constitutionally overbroad. First, the ordinance criminalizes a substantial amount of behavior protected by the First Amendment because it prohibits symbolic speech by nongang members using "gang colors" for non-gang purposes (i.e., to show support for athletic teams). In addition, the ordinance fails to define "gang," "gang symbol," or "gang colors," and the record showed that "gang colors" and "symbols" may change at any time based solely on the whims of gang members themselves. Finally, the ordinance interfered with the right to free exercise of religion because the "gang symbol" at issue here -- the Star of David -- is also a recognized religious symbol.

§47-3(b)(1)(a)(3)
Obscenity/Pornography

United States Supreme Court

Ashcroft v. Free Speech Coalition et al., 535 U.S. 234, 122 S.Ct. 1389, 152 L.Ed.2d 403 (2002) Congress may prohibit "virtual child pornography," which portrays sexually explicit images appearing to depict minors but which were in fact produced without using real children, only if the material is "obscene" under **Miller v. California**, 413 U.S. 15 (1973).

Illinois Supreme Court

People v. Hollins, 2012 IL 112754 The Illinois Supreme Court upheld the conviction of defendant for child pornography against due process and equal protection challenges.

The 32-year-old defendant and his 17-year-old girlfriend were college students who engaged in legal consensual sex. Defendant used his cell phone to take extreme closeup photographs of the couple's genitals. At her request, defendant emailed the photos to his girlfriend. While defendant did not violate any law when he had sexual intercourse with his girlfriend, his recording of that act violated the child pornography statute, which sets 18 as the age at which a person may be legally photographed engaging in sexually explicit conduct. 720 ILCS 5/11-20.1(a)(1).

Defendant conceded that his case did not implicate a fundamental right, and therefore the test for determining whether the statute complies with substantive due process is the rational-basis test. A statute will be upheld under this test so long as it bears a rational relationship to a legitimate legislative purpose and is neither arbitrary nor unreasonable.

The court rejected defendant's argument that the application of the child pornography statute to persons old enough to consent to the private sexual activity they have chosen to photograph does not serve the statute's purpose, which is to prevent the sexual abuse and exploitation of children. The State's legitimate interest in protecting the psychological welfare of children is served by having a higher age threshold for appearance in pornography than to consent to sexual activity. The dangers of appearing in pornography are not as readily apparent as the concrete dangers of sexual activity and can be more subtle. Regardless of the intentions of the parties, there is no guarantee that private photographic images will always remain private.

The statute does not criminalize wholly innocent conduct. The conduct underlying the recording was legal but the recording was not.

Even though the Illinois Constitution provides greater privacy protections than the

federal constitution, defendant's claim is not cognizable under the privacy clause of the Illinois Constitution. Ill. Const. 1970, Art. I, §6. Privacy claims in the context of criminal prosecutions have only been recognized where the government or its agents intrude on the privacy of the defendant. The mere fact that the recording of the sex act took place in private, rather than in public, does not implicate the privacy clause.

Because the pornography statute is clear and definite, and defendant's ignorance of the statute is no defense, the court rejected defendant's argument that the anomaly between the pornography statute and the sexual assault statute prevented him from having fair notice that his conduct in photographing the legal sex act was criminal.

When the legislature raised the age limit of the pornography statute to 18, it did not express any concerns about 17-year-olds not being able to appreciate the subtle dangers of memorializing sexual activity. Its motivation was to aid law enforcement in the prosecution of child pornography. A law will be upheld if there is any conceivable basis for finding a rational relationship to a legitimate legislative purpose, even if that purpose did not in fact motivate the legislative action. Moreover, the desire to aid law enforcement is also rationally related to a legitimate legislative purpose.

Defendant's equal protections challenges are rejected for the same reasons as his due process challenges, as those claims are also subject to a rational-basis analysis.

People v. Alexander, 204 Ill.2d 472, 791 N.E.2d 506 (2003) The child pornography statute is unconstitutional because the ban on "virtual" child pornography exceeded the legislature's authority, however, the "virtual" child pornography section is severable from the remainder of the child pornography statute.

Illinois Appellate Court

People v. McKown, 2021 IL App (4th) 190660 Defendant's conviction of child pornography was affirmed where it was based on his possession of self-made "collages" that combined images of actual children cut from parenting magazines with images of adult male genitalia from adult magazines. More specifically, defendant cut slits in the mouths of the images of children and inserted the cutout images of male penises into those slits.

720 ILCS 5/11-20.1(a)(6) prohibits possession of "any film, videotape, photograph or other similar visual reproduction...of any child...engaged in..." sexual activity as expressly detailed in the statute. The Appellate Court concluded that defendant's collages were covered by the child pornography statute because they involved images of real children that were altered to make it appear as though the children were engaged in sexual activity. Defendant's conviction was not a violation of the first amendment where the collages were made with images of actual children.

People v. Barker, 2021 IL App (1st) 192588 The grooming statute, 720 ILCS 5/11-25, does not violate free speech rights under the First Amendment. There are categories of speech which are "of such slight social value" that they are unprotected. The grooming statute involves two of those categories, specifically incitement and speech integral to criminal conduct. The grooming statute criminalizes speech intended to solicit a child to engage in unlawful sexual conduct, thus it is rationally related to the government interest in preventing the sexual abuse of children and is facially constitutional.

The grooming statute was not unconstitutional as applied here, either. Defendant, a school employee, knowingly exchanged sexually explicit text messages with a minor student and in those messages expressed a desire to engage in sexual intercourse with the minor.

This was not innocent behavior and is precisely the type of conduct the grooming statute was meant to criminalize.

People v. Rollins, 2021 IL App (2d) 181040 Statute criminalizing child photography by a sex offender, 720 ILCS 5/11-24, does not violate the first amendment. As charged here, the statute provides that it is unlawful for a child sex offender to photograph a child without the consent of the child's parent.

The court first found that the statute is content-neutral, resulting in the application of intermediate scrutiny. While the statute makes reference to the photographic content – children – it is limited to those photographs taken by sex offenders without parental consent. Thus, it is a restriction on the manner of photographing the child; it is not a ban on all pictures of children.

Applying intermediate scrutiny, the court first found that the government has a substantial interest in protecting children from sex offenders. The statute is substantially related to that interest where it is limited to photographs in which a child is the focus of the image, not every photograph that might incidentally include a child in the background. Further, it applies only to child sex offenders and provides an exception for parental consent. And, the court noted, the statute does not even require that the child sex offender disclose his or her status in obtaining such consent. Accordingly, the statute is not facially overbroad.

People v. Kucharski, 2013 IL App (2d) 120270 720 ILCS 135/1-2(a)(1) creates the offense of harassment through electronic communications where electronic communications are used to make an "obscene" comment "with an intent to offend." The court rejected the argument that a communication is "obscene" under section 1-2(a)(1) only if it satisfies the definition of "obscenity" established in **Miller v. California**, 413 U.S. 15 (1973) and embodied in the Illinois obscenity statute (720 ILCS 5/11-20(b)). The court concluded that **Miller** and §11-20(b) were intended to provide a definition of "obscene" for purposes of controlling the commercial dissemination of obscenity. Because the legislature did not intend to apply the definition of §11-20(b) to the electronic harassment statute, the court concluded that the ordinary dictionary definition of "obscene" should be employed. Thus, for purposes of the electronic harassment statute, the term "obscene" is defined as "disgusting to the senses" or "abhorrent to morality or virtue."

§47-3(b)(1)(b)
News Media Cases

United States Supreme Court

Oklahoma Publishing Co. v. Dist. Court, 480 U.S. 308, 97 S.Ct. 1045, 51 L.Ed.2d 355 (1977) State court order which enjoined newspaper from publishing the name or picture of a minor involved in a pending juvenile proceeding was an unconstitutional infringement upon the freedom of the press. See also, In Re Minor, 127 Ill.2d 247, 537 N.E.2d 292 (1989) (in the absence of a serious and imminent threat of harm to a minor's well-being which cannot be obviated by some less-restrictive means, a newspaper may not be prohibited from reporting the identity of a minor charged in a closed criminal proceeding, where the identity is learned through ordinary reportorial techniques).

Press Enterprise v. Superior Court, 464 U.S. 501, 104 S.Ct. 819, 78 L.Ed.2d 629 (1984) The voir dire proceedings in a criminal trial may not be closed to the press and public without

specific findings that closure is essential to a fair trial and that alternatives are inadequate. **Gannett v. DePasquale**, 443 U.S. 368, 99 S.Ct. 2898, 61 L.Ed.2d 608 (1979) Trial judge properly excluded the press and public from a pretrial proceeding where defendants, the prosecutor and the trial judge agreed to the closure in order to assure a fair trial.

The Sixth Amendment confers the right to a public trial only upon a criminal defendant; the members of the public have no constitutional right, under the Sixth or Fourteenth Amendments, to attend criminal trials. Assuming, but not deciding, that the press and public have the right of access to pretrial hearings under the First and Fourteenth Amendments in some situations, the closure in this case was proper because the spectators failed to object at the time of the closure motion, the trial judge balanced the rights of the press and public against defendants' right to a fair trial, the trial judge found that an open hearing would pose a "reasonable probability of prejudice to these defendants," and the denial of access was only temporary.

Globe Newspapers v. Superior Court, 457 U.S. 596, 102 S.Ct. 2613, 73 L.Ed.2d 248 (1982) The First Amendment was violated by a State statute which required the exclusion of the press and public from the courtroom during the testimony of minor victims in rape and sexual assault cases. Although the right of access to criminal trials is not an absolute, the press and public may be barred only in limited circumstances where the State shows that exclusion "is necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest."

Chandler v. Florida, 449 U.S. 560, 101 S.Ct. 802, 66 L.Ed.2d 740 (1981) The constitution does not prohibit all photographic, radio, and television coverage of criminal trial in state courts.

Richmond Newspaper v. Virginia, 448 U.S. 555, 100 S.Ct. 2814, 65 L.Ed.2d 973 (1980) Prior to the start of defendant's fourth trial for the offense of murder (conviction after the first trial was reversed on appeal and the second and third trials ended in mistrials), defense counsel moved to close the trial to the public and press. The prosecutor stated that he had no objection to the closing, and the trial judge excluded the public and press during trial.

Under the First and Fourteenth Amendments the public and the press have the right to attend criminal trials. The trial judge made no findings to support the closure, made no inquiry concerning alternative solutions, and failed to recognize the constitutional right of the public and press to attend the trial. "Absent an overriding interest articulated in findings, the trial of a criminal case must be open to the public."

Smith v. Daily Mail, 443 U.S. 97, 99 S.Ct. 2667, 61 L.Ed.2d 399 (1979) The First and Fourteenth Amendments were violated by State statute which made it a crime for a newspaper to publish, without the approval of the juvenile court, the name of any youth charged as a juvenile offender.

Houchins v. KQED, 438 U.S. 1, 98 S.Ct. 2588, 57 L.Ed.2d 553 (1978) The news media has no greater constitutional right of access to a county jail over and above, or in different form, than that accorded the public generally.

Zurcher v. Stanford Daily, 436 U.S. 547, 98 S.Ct. 1970, 56 L.Ed.2d 525 (1978) The First Amendment does not prohibit the issuance and execution of search warrants for the seizure of criminal evidence reasonably believed to be on the premises occupied by a newspaper:

"Properly administered, the preconditions for a warrant . . . probable cause, specificity with respect to the place to be searched and the things to be seized, and overall reasonableness . . . should afford sufficient protection against the harms that are assertedly threatened by warrants for searching newspaper offices."

Nixon v. Warner Communications, 435 U.S. 589, 98 S.Ct. 1306, 55 L.Ed.2d 570 (1978) The First Amendment generally grants the press no right to information about a trial superior to that of the general public. Furthermore, the Sixth Amendment right to a public trial does not require that any part of a trial be broadcast live or on tape to the public — the requirement of a public trial is satisfied where members of the public and press have the opportunity to attend the trial and report what they have observed.

Landmark Communications v. Virginia, 435 U.S. 829, 98 S.Ct. 1535, 56 L.Ed.2d 1 (1978) State statute which made it a crime to divulge information regarding proceedings before a judicial review commission, which heard complaints against judges, was unconstitutional. The First Amendment will not permit the criminal punishment of third persons who are strangers to the inquiry (a newspaper in this case) for divulging or publishing truthful information regarding confidential proceedings of a judicial review commission.

Nebraska Press v. Stuart, 427 U.S. 539, 96 S.Ct. 2791, 49 L.Ed.2d 683 (1976) A "gag order" imposed upon the press was invalid. Such orders carry a "heavy burden" to show necessity.

Bigelow v. Virginia, 421 U.S. 809, 95 S.Ct. 2222, 44 L.Ed.2d 600 (1975) Defendant, a Virginia newspaper editor, was convicted for publishing an advertisement concerning placements for abortions in New York. The conviction was based on a Virginia law prohibiting the circulation of any publication to encourage or prompt an abortion.

The Virginia law violated the First Amendment. The state courts erred in assuming that advertising was not entitled to First Amendment protection — speech is not stripped of First Amendment protection merely because it is in the form of a paid commercial advertisement.

Cox Broadcasting Co. v. Cohn, 420 U.S. 469, 95 S.Ct. 1029, 43 L.Ed.2d 328 (1975) State could not constitutionally impose sanctions for the accurate publication of rape victim's name when the television reporter's information was obtained from public court records and based on his notes taken during court proceedings. Once true information is disclosed in public court documents open to public inspection, the press cannot be sanctioned for publishing it. See also, Florida Star v. F., 491 U.S. 524, 109 S.Ct. 2603, 105 L.Ed.2d 443 (1989) (First Amendment was violated by imposition of civil damages on a newspaper for publishing the lawfully-obtained name of a sex offense victim).

Monitor Patriot v. Roy, 401 U.S. 265, 91 S.Ct. 621, 28 L.Ed.2d 35 (1971) Publications concerning candidates for public office are accorded at least as much First Amendment protection as those concerning occupants of public office.

Ocala Star-Banner v. Damron, 401 U.S. 295, 91 S.Ct. 628, 28 L.Ed.2d 57 (1971) A charge of criminal conduct against a public official is always relevant regardless of how remote in time or place; the First Amendment requires a showing of actual malice before recovery of damages is permitted.

Time v. Page, 401 U.S. 279, 91 S.Ct. 633, 28 L.Ed.2d 45 (1971) Magazine did not engage in actual malice by omitting word "alleged" in article concerning police brutality.

Mills v. Alabama, 384 U.S. 214, 86 S.Ct. 1434, 16 L.Ed.2d 484 (1966) State statute making it a crime to solicit votes on election day is unconstitutional as violating freedom of the press; editor's conviction (based on election day editorial) was reversed.

New York Times v. Sullivan, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964) Sets out rules for libel action by public official in light of First Amendment protections — requires proof of actual malice.

§47-3(b)(1)(c)
Right of Assembly

United States Supreme Court

Ward v. Rock, 491 U.S. 781, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989) A city did not violate the First Amendment by requiring the sponsors of musical performances in a park to use sound-amplification equipment and sound technician provided by the city; requirement was a reasonable regulation of the place and manner of expression, as the purpose was to assure that the performances were loud enough for the audience without intruding on nearby residences.

Los Angeles v. Vincent, 466 U.S. 789, 104 S.Ct. 2118, 80 L.Ed.2d 772 (1984) City ordinance prohibiting signs on public property does not violate the First Amendment.

Police Department of Chicago v. Mosley, 408 U.S. 92, 92 S.Ct. 2286, 33 L.Ed.2d 212 (1972) City ordinance prohibiting picketing near a school was invalid because it made an impermissible distinction between peaceful labor picketing and other peaceful picketing.

Gregory v. Chicago, 394 U.S. 111, 89 S.Ct. 946, 22 L.Ed.2d 134 (1969) A protest march, if peaceful and orderly, is protected by the First Amendment regardless of the fact that onlookers become unruly.

Walker v. Birmingham, 388 U.S. 307, 87 S.Ct. 1824, 18 L.Ed.2d 1210 (1967) Protestors had no right to violate injunction restraining them from engaging in mass street parade without a permit, though the injunction was subject to substantial constitutional question. Protesters should not have bypassed orderly judicial review.

Adderley v. Florida, 385 U.S. 39, 87 S.Ct. 242, 17 L.Ed.2d 149 (1966) Rights of freedom of speech, press, assembly, and petition are not violated by conviction for trespass for protest demonstration that blocked traffic in jail driveway which was not normally used by the public. A state may control the use of its property for its own lawful, nondiscriminatory purposes.

Brown v. Louisiana, 383 U.S. 131, 86 S.Ct. 719, 15 L.Ed.2d 637 (1966) Conviction reversed for peacefully remaining in public library, without creating a disturbance, after being asked to leave.

Shuttlesworth v. Birmingham, 382 U.S. 87, 86 S.Ct. 211, 15 L.Ed.2d 176 (1965) Constitution violated by city ordinance that is so broad it could be construed as permitting a person to stand on a public sidewalk only at the whim of a police officer.

Cox v. Louisiana, 379 U.S. 536, 85 S.Ct. 453, 13 L.Ed.2d 471 (1965) There are proper restrictions on the exercise of First Amendment rights — the government has the right to keep streets and public buildings open, and a person may not ignore traffic lights as a means of protest. Communication of ideas by conduct is not afforded the same protection as communication by pure speech.

Cox v. Louisiana, 379 U.S. 559, 85 S.Ct. 476, 13 L.Ed.2d 487 (1965) Picketing or parading near courthouse with the intent to influence the administration of justice may be prohibited. Compare, **U.S. v. Grace**, 461 U.S. 171, 103 S.Ct. 1702, 75 L.Ed.2d 736 (1983) (can't prohibit banners, etc. from public sidewalk adjacent to court).

Wright v. Georgia, 373 U.S. 284, 83 S.Ct. 1240, 10 L.Ed.2d 349 (1963) Convictions reversed where African-Americans played basketball in park after being told by police to leave.

Edwards v. South Carolina, 372 U.S. 229, 83 S.Ct. 680, 9 L.Ed.2d 697 (1963) Peaceful assembly at site of state government is protected by First Amendment.

Illinois Supreme Court

City of Chicago v. Alexander, 2017 IL 120350 Illinois follows the "limited lockstep" doctrine, which states that State constitutional provisions are deemed to have the same meaning as comparable federal constitutional provisions unless the language of the Illinois constitution or records of the Illinois Constitutional Convention indicate that the Illinois constitution was intended to be construed differently than the Federal constitution. Article 1, §5 of the Illinois Constitution provides that citizens "have the right to assemble in a peaceable manner, to consult for the common good, to make known their opinions to their representatives and to apply for redress of grievances." The First Amendment of the United States Constitution, as it applies to the right to assembly, provides that Congress shall make no law abridging the right of the people "peaceably to assemble." The First Amendment applies to the states through the due process clause of the Fourteenth Amendment.

The court concluded that the Illinois constitutional right to peaceably assemble is "virtually identical" to the First Amendment and therefore is to be interpreted in lockstep with federal precedents applying the assembly clause of the First Amendment.

Under the United States Supreme Court's jurisprudence regarding the right of assembly, intermediate scrutiny is applied to content-neutral regulations that affect the time, place, or manner of expression. To satisfy that standard, a regulation which affects the time, place, or manner of expression must be content-neutral, narrowly tailored to serve a significant government interest, and preserve ample alternative channels of communication.

The court declined to resolve whether the First Amendment and the Illinois Constitution's right to peaceably assemble were violated by a Chicago Park District ordinance closing parks for eight hours beginning at 11 p.m. each night. The court found that the issues had not been properly preserved.

The court also declined to decide whether the State constitutional provisions

guaranteeing the rights "to consult for the common good" and "make known their opinions to their representatives" (Art. 1, §5) provide greater protection than the First Amendment. The court found that these questions had not been preserved and in any event were not presented by this case.

§47-3(b)(1)(d)
Government Loyalty and Flag Desecration

United States Supreme Court

U.S. v. Eichman, 496 U.S. 310, 110 S.Ct. 2404, 110 L.Ed.2d 287 (1990) Federal act permitting prosecution of individuals for burning the American flag violated the First Amendment. See also, **Texas v. Johnson**, 491 U.S. 397, 109 S.Ct. 2533, 105 L.Ed.2d 342 (1989) (State statute prohibiting desecration of national flag unconstitutional).

Spence v. Washington, 418 U.S. 405, 94 S.Ct. 2727, 41 L.Ed.2d 842 (1974) State flag misuse statute held unconstitutional as applied to action of a college student who, on private property, displayed U.S. flag upside down with a peace symbol affixed.

Smith v. Goguen, 415 U.S. 566, 94 S.Ct. 1242, 39 L.Ed.2d 605 (1974) Defendant's conviction for flag misuse, based on having U.S. flag sewn on the seat of his trousers, is unconstitutional.

Cole v. Richardson, 405 U.S. 676, 92 S.Ct. 1332, 31 L.Ed.2d 593 (1972) Statute requiring state employees to take oath to uphold and defend constitution and to oppose overthrow of government is constitutional.

Law Students Civil Rights Council v. Wadmond, 401 U.S. 154, 91 S.Ct. 720, 27 L.Ed.2d 749 (1971) New York's character and fitness requirement, such as that applicant furnish proof that he believes in the U.S. form of government, is constitutional.

Baird v. State Bar, 401 U.S. 1, 91 S.Ct. 702, 27 L.Ed.2d 639 (1971) Applicant for state bar was protected by First Amendment from disclosing whether she had been a member of Communist Party. It was error to refuse to process her application merely because she failed to answer that question.

Schacht v. U.S., 398 U.S. 58, 90 S.Ct. 1555, 26 L.Ed.2d 44 (1970) Federal law which prohibits the wearing of a military uniform without authority, but which authorizes actors to wear such uniforms in productions except in portrayals which tend to discredit the Armed Forces, is unconstitutional.

Street v. New York, 394 U.S. 576, 89 S.Ct. 1354, 22 L.Ed.2d 572 (1969) Defendant was convicted of violating a state flag desecration statute. Conviction reversed because it may have been based on the spoken word alone rather than for his deed of burning a flag. (The same result was reached in **Bachellar v. Maryland**, 379 U.S. 564, 90 S.Ct. 1312, 25 L.Ed.2d 570 (1970), where a conviction for disorderly conduct may have resulted from defendant's view on Vietnam war, which did not constitute "fighting words").

Scales v. U.S., 367 U.S. 203, 81 S.Ct. 1469, 6 L.Ed.2d 782 (1961) Portion of Smith Act making it a crime to be a member of any organization which advocates the overthrow of the

government by force is upheld, but the essential element of specific intent to bring about violent overthrow as speedily as circumstances permit must be proved, though not expressly required in the Act.

Illinois Supreme Court

People v. White, 116 Ill.2d 171, 506 N.E.2d 1284 (1987) Provision in the Election Code which prohibits distribution of a leaflet soliciting votes for a political candidate in a general election, without including the name and address of the person publishing and distributing it, is "unconstitutional on its face" because it imposes an unlawful restriction on the right to express political views.

§47-3(b)(1)(e)
Other

United States Supreme Court

Packingham v. North Carolina, 582 U. S. ___, 137 S.Ct. 1730, 198 L.Ed.2d 273 (2017) The North Carolina legislature enacted legislation creating a felony where a registered sex offender accesses a commercial social networking website which is known by the offender to permit minor children to become members or to create or maintain personal web pages. The U.S. Supreme Court found a First Amendment violation because the statute was not drawn narrowly enough to avoid burdening substantially more speech than necessary to further the government's legitimate interests.

A fundamental First Amendment principle is that all persons have access to places where they can speak and listen, and after reflection speak and listen again. In the modern world, cyberspace and social media constitute an important place for communication and the exchange of views. Because this is the first case to address the relationship between the First Amendment and the modern Internet, the court "must exercise extreme caution before suggesting that the First Amendment provides scant protection for access to vast networks in that medium."

The court noted that inventions "heralded as advances in human progress" can be exploited by the criminal mind. However, the mere fact that an invention might be exploited for criminal purposes does not insulate it from First Amendment protection.

A statute which is content-neutral is subject to intermediate scrutiny. To survive such scrutiny, the law must be narrowly tailored to serve a significant governmental interest. In other words, the law may not substantially burden more speech than is necessary to further the government's legitimate interest.

The court concluded that the North Carolina statute failed this test. First, the statute enacts a "prohibition unprecedented in the scope of First Amendment speech it burdens." By prohibiting sex offenders from using websites to which children might also have access, the statute bars the use of what may be principal sources for current events, checking ads for employment, speaking and listening on public issues, and "exploring the vast realms of human thought and knowledge." To completely foreclose access to social media prevents engagement in the legitimate exercise of First Amendment rights. The court also noted that even convicted criminals might receive legitimate benefits from social media, particularly if they seek to reform and pursue lawful and rewarding lives.

The court made two assumptions in resolving the case. First, the court presumed that because of the broad wording of the North Carolina statute, it might bar access not only to commonplace social media such as Facebook and Twitter, but also to websites such as

Amazon.com, Washingtonpost.com, and Webmd.com.

Second, the court stated that its opinion should not be interpreted as barring a state from enacting more specific laws protecting children from convicted sex offenders. Thus, it can be assumed that the First Amendment permits the enactment of specific, narrowly tailored laws prohibiting a sex offender from engaging in conduct such as contacting a minor or using a website to gather information about a minor.

In a concurring opinion, Justices Alito, Roberts, and Thomas agreed that the law was too broad to satisfy the First Amendment. However, the concurring Justices declined to join in the majority's *dicta* equating the Internet with public street and parks.

Virginia v. Black, 538 U.S. 343, 123 S.Ct. 1536, 155 L.Ed.2d 535 (2003) Because First Amendment protections are not absolute, the government may constitutionally regulate certain categories of expression. The First Amendment permits restrictions upon the content of speech which is of "such slight social value . . . that any benefit that may be derived . . . is clearly outweighed by the social interest in order and morality." Thus, the government may constitutionally regulate fighting words and statements intended to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals (i.e., "true threats").

Similarly, a State may ban cross burning performed with the intent to intimidate. Because "burning a cross is a particularly virulent form of intimidation," a state statute outlawing cross burnings performed "with the intent of intimidating any person or group of persons" would not offend the First Amendment.

However, a plurality of the court held that a Virginia statute was unconstitutional on its face by the addition of a provision that the act of burning a cross "shall be prima facie evidence of an intent to intimidate a person or group of persons." Although burning a cross has historically been associated with intimidation and threats of violence, it may also "mean only that the person is engaged in core political speech." The prima facie provision "strips away the very reason why a State may ban cross burning with the intent to intimidate," and results in an unacceptable risk that acts performed without any intent to intimidate could be punished.

Shaw v. Murphy, 523 U.S. 223, 121 S.Ct. 1475, 149 L.Ed.2d 420 (2001) Under **Turner v. Safely**, 482 U.S. 78 (1987), restrictions on the rights of prison inmates are constitutional if reasonably related to legitimate and neutral government objectives. Four factors to be considered in making this determination include: (1) whether there is a valid, rational connection between the regulation and the legitimate and neutral government interest put forward to justify it; (2) whether alternative means of exercising the right are available to inmates; (3) the impact of accommodating the constitutional right on guards and other inmates and on the allocation of prisoner resources; and (4) whether there are alternatives for prison officials to achieve the governmental objectives. If there is no valid, rational connection between the prison regulation and the governmental interest put forward to justify it, the regulation is improper without regard to the other three factors.

Inmates do not have a First Amendment right to give legal advice to other inmates,. The determination under **Turner** is not affected by the fact that the communication between inmates concerned a legal defense to a charge of assaulting a guard. **Turner** depends not on the content of communication in question, but on the relationship between the "asserted penological interest" and the regulation. In addition, prison officials are to be the "primary arbiters" of problems which arise in prison management; affording First Amendment protection to inmate communications regarding legal advice would undermine the ability of

officials to administer prisons.

County Court v. Allen, 442 U.S. 140, 99 S.Ct. 2213, 60 L.Ed.2d 777 (1979) A party has standing to challenge the constitutionality of a statute only insofar as it has an adverse impact on his own rights. If there is no defect in the application of a statute to a litigant, he lacks standing to argue that the statute would be unconstitutional if applied to third parties in hypothetical situations. An exception to this standing rule exists for statutes that broadly prohibit speech protected by the First Amendment.

Cohen v. California, 403 U.S. 15, 91 S.Ct. 1780, 29 L.Ed.2d 284 (1971) First Amendment was violated by disturbing the peace conviction; defendant entered courthouse wearing jacket with slogan "fuck the draft."

Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971) Even where First Amendment rights are involved, the mere existence of a "chilling effect" is not sufficient basis, in and of itself, for prohibiting state action. A statute can be upheld if its effect on free speech is minor in relation to the need for control of the conduct and the lack of alternative means to do so.

Illinois Supreme Court

People v. Ashley, 2020 IL 123989 Stalking under 720 ILCS 5/12-7.3(a), as amended in 2010, requires proof that defendant knowingly engaged in a course of conduct, which defendant knew or should have known would cause a reasonable person (1) to fear for her safety or (2) to suffer emotional distress. A "course of conduct" includes "threats." The Illinois Supreme Court held that, aside from the "should have known" provision, the statute does not violate the First Amendment right to free speech.

Defendant first argued that the statute is overbroad because it prohibits "threats" that cause "emotional distress," noting that some threats, including those to do lawful conduct, are not "true threats." The Supreme Court rejected the argument, holding that the legislature intended that the term "threatens" in subsection (c)(1) refers to "true threats" of unlawful violence such as bodily harm, sexual assault, confinement, and restraint, consistent with other provisions of the statute, subsections (a-3) and (a-5). As such, the term "threatens" falls outside the protection of the first amendment.

Defendant also argued that the "threatens" provision is unconstitutionally overbroad because it does not include the requisite mental state – specific intent – for a "true threat." The Supreme Court disagreed, finding that the State need only prove defendant was consciously aware of the threatening nature of his or her speech, and the awareness requirement can be satisfied by a statutory restriction that requires either an intentional or a knowing mental state. Here, section 12-7.3(a) specifically includes the knowing mental state in defining the offense of stalking.

Defendant next argued that the stalking statute is unconstitutionally overbroad where it allows conviction of a speaker who negligently conveys a message that a reasonable person would understand as threatening. According to defendant, the prohibition of speech that the defendant "should know" a reasonable person would interpret as a threat unconstitutionally chills protected speech. The Supreme Court agreed that application of the negligence standard would permit prosecution for protected speech that does not constitute a true threat. Accordingly, the court held that the "should know" portion of subsection (a) is

overly broad and cannot be constitutionally applied with regard to a course of conduct that "threatens."

Defendant further claimed that subsection (a)(2) is unconstitutionally overbroad because it imposes an objective reasonable-person standard with respect to the impact of the threatening speech on the recipient. The court disagreed, finding the true threat exception is premised on the negative effects suffered by the recipient. Consequently, the assessment of whether speech constitutes a true threat mandates that the court consider the effect on the listener, and that application of the reasonable-person standard as to the harm caused by a true threat is not unconstitutionally overbroad.

Finally, defendant contended that the amended stalking statute violates substantive due process because it criminalizes a vast amount of innocent conduct that is unrelated to the statute's narrow purpose, is vague, and criminalizes speech that results in emotional distress not related to fear for personal safety. The court disagreed, noting it had already determined that the "threatens" provision relates only to intentionally or knowingly conveyed true threats of unlawful violence. Thus, the provision cannot be deemed as encompassing innocent conduct.

People v. Morger, 2019 IL 123643 Section 5-6-3(a)(8.9) of the Code of Corrections, requiring as a condition of probation that any sex offender refrain from accessing or using a social networking website, is overbroad and facially unconstitutional. Although **Packingham v. North Carolina**, 582 U.S. ___, 137 S. Ct. 1730 (2017), is factually distinguishable in that the social media ban in that case lasted throughout the defendant's post-custodial registration period, the Illinois Supreme Court found the principles espoused in **Packingham** more broadly applicable. In particular, the **Packingham** court made clear that social media is fundamental to freedom of speech, likening it to "the modern public square." Thus, even if the ban on social media is part of a probation sentence rather than a condition of registration, it cannot survive the intermediate scrutiny applicable to content-neutral speech restrictions.

To survive intermediate scrutiny, a law must be narrowly tailored to serve a significant governmental interest; it must not burden substantially more speech than is necessary to further the government's legitimate interests. Here, where the social media ban applies to offenders who, like the defendant here, did not use the internet to facilitate the offense, it is not sufficiently narrow. Nor does it serve the government interest of rehabilitation, as a social media ban will make it harder for an offender to reform. The legislature had alternative means to further its interest in protecting the public from offenders who use social media to facilitate their crimes, such as allowing for the ban to be imposed at the judge's discretion or prohibiting offenders from contacting minors using the internet.

People v. Clark, 2014 IL 115776 Generally, a party bringing a facial challenge to the constitutionality of a statute must show that there are no circumstances under which the statute would be valid. However, a statute which affects the First Amendment may be invalid as overbroad if, judged in relation to the statute's plainly legitimate sweep, a substantial number of its applications are unconstitutional. This expansive remedy is justified by the fear that the threat of enforcement of an overbroad law may deter or chill constitutionally protected speech, especially when the statute imposes criminal sanctions.

A "content-neutral" statute regulates speech without discrimination concerning the messenger or the content of the message. A content-neutral regulation satisfies First Amendment concerns if it advances important governmental interests that are unrelated to

the suppression of free speech and does not substantially burden more speech than is necessary to further those interests.

The court concluded that the eavesdropping statute (720 ILCS 5/14–2(a)(1)(A)) advances the important governmental interest of protecting individuals from the surreptitious monitoring of their private conversations by the use of eavesdropping devices, but criminalizes an entire range of wholly innocent conduct because it prohibits the recording of any conversation absent consent from all parties even where it is clear that the parties had no expectation of privacy. Because §14–2(a)(1)(A) substantially burdens more speech than is necessary to serve the legitimate interests of the statute, the statute is unconstitutionally overbroad.

People v. Williams, 235 Ill.2d 178, 920 N.E.2d 446 (2009) Defendant was convicted of two counts of unlawful use of recorded sounds or images in violation of 720 ILCS 5/16-7(a)(2), and two counts of unlawful use of unidentified sound or audiovisual recordings in violation of 720 ILCS 5/16-8. The former statute prohibits the intentional, knowing or reckless transfer of sounds or images without the consent of the copyright owner, while the latter statute prohibits the intentional, knowing or reckless distribution of recorded material if the packaging fails to contain the actual name and address of the manufacturer and the names of the performers.

The court concluded that §16-7(a)(2), which governs the sale of sound or video recordings without the consent of the owner, has been preempted by federal copyright law. Therefore, the convictions under §16-7 were required to be reversed.

Whether a state statute is preempted by federal law is a question of congressional intent. Federal law preempts state law in three situations: (1) where Congress explicitly preempts state action; (2) where Congress has enacted a comprehensive regulatory scheme which impliedly preempts the entire field from State regulation; and (3) where State action conflicts with state law. Federal preemption presents a question of law that is subject to *de novo* review.

Whether a State law which creates a criminal offense for copyright infringement has been preempted is determined by a two-part test: (1) whether the work in question is fixed is tangible form and comes within copyright law, and (2) whether the elements of a federal cause of action for copyright infringement are equivalent to the elements of the state crime. Because federal law provides that all equivalent legal rights concerning copyrights fixed after February 15, 1972 are to be governed by federal rather than state law, and because §16-7(a)(2) does not contain an additional element that would make it a non-equivalent claim, the court concluded that §16-7(a)(2) has been preempted by the federal law.

The court rejected the State's argument that Congress intended to preempt only State civil contempt laws, and not state criminal laws.

The court concluded, however, that defendant's convictions under §16-8, which requires identification of the manufacturer of audio or sound recordings on the external packaging, were proper. First, §16-8 does not violate due process, because it has a rational relationship to the legitimate public interest of protecting consumers from buying pirated recordings.

Second, §16-8 is not unconstitutionally overbroad as a violation of First Amendment rights. Generally, a person to whom a statute may be constitutionally applied is not permitted to challenge the statute solely on the ground that it may be unconstitutional if applied in other contexts. An exception to this rule is made in First Amendment issues, however, due to the concern that constitutionally protected expression may be deterred by an overbroad

statute. Furthermore, conduct which has both speech and "nonspeech" elements may be regulated if the statute furthers a substantial governmental interest that is unrelated to the suppression of free speech, and the incidental restriction of First Amendment concerns is no greater than necessary to further the governmental interest in question.

The court concluded that §16-8 has several factors which significantly narrow its application to the legitimate public interest it is intended to protect. First, the statute requires identification of the manufacturer only if the work is offered in "for profit" transactions. Second, use of a stage or performing name is adequate to comply with the identification requirement of the statute, allowing performers to preserve their anonymity. Under these circumstances, any overbreadth is insignificant in light of the statute's legitimate reach, and any incidental restriction on First Amendment activity is no greater than necessary to further the governmental interest involved.

People v. Woodrum, 223 Ill.2d 286, 860 N.E.2d 259 (2006) To comply with due process, a criminal statute must provide sufficient notice of the prohibited conduct to provide fair notice and prevent arbitrary enforcement. The phrase "other than a lawful purpose," as used in the child abduction statute, implies actions which violate the Criminal Code, and gives adequate notice of the type of conduct that will subject a person to criminal penalties.

The First Amendment prohibits the government from regulating mere thought. However, a criminal statute which regulates thought plus conduct does not implicate the First Amendment. The child abduction statute prosecutes actions - luring children to a secluded place without their parents' consent - and does not prosecute based solely on one's sexual fantasies or thoughts.

Finally, an unconstitutional presumption could be severed from the remainder of the child abduction statute.

People v. Falbe, 189 Ill.2d 635, 727 N.E.2d 200 (2000) 720 ILCS 570/401(c)(2), which enhances possession of cocaine with intent to deliver to a Class X felony where the offense occurs on a public way within 1,000 feet of a church, does not violate the "establishment of religion" clauses of the United States or Illinois Constitutions. Whether the establishment clauses have been violated is determined by the three-part test adopted in **Lemon v. Kurtzman**, 403 U.S. 602 (1971), under which a statute satisfies the establishment clause where its legislative purpose is secular, its primary effect neither advances nor inhibits religion, and it does not foster excessive governmental "entanglement with religion."

The **Lemon** test was satisfied here: (1) the purpose of the enhancement statute was secular (to protect "particularly vulnerable" segments of society from narcotics activity), (2) the primary effect of the statute is to prevent drug trafficking rather than to advance religion, and (3) defendants stipulated they were within 1,000 feet of a church, making it unnecessary to consider whether the definition of a "place of worship" was so uncertain as to create "excessive governmental entanglements between church and state."

People v. Jones, 188 Ill.2d 352, 721 N.E.2d 546 (1999) 625 ILCS 5/12-611, which prohibited operation of a sound system which could be heard more than 75 feet from the vehicle unless an emergency vehicle or a vehicle "engaged in advertising" was involved, violated the First Amendment because it was a content-based restriction of protected speech and was not justified by a compelling State interest.

As part of its interest in regulating noise, a State may impose reasonable restrictions on the time, place or manner of constitutionally protected speech in a public forum. A statute which regulates constitutionally-protected speech, but which is content-neutral, is subjected

to an "intermediate level of scrutiny." Under this type of analysis, the regulation is upheld if it is "narrowly tailored to serve a significant governmental interest" and leaves open "ample alternative channels for communication of the information."

Where a regulation restricts speech based on its content, however, it is subjected to the "most exacting scrutiny." Such a regulation is presumed to be invalid and can be upheld "only if necessary to serve a compelling governmental interest and narrowly drawn to achieve that interest."

Section 12-611 was clearly content-based because it expressly provided that the prohibition on sound amplification systems did not apply to advertising. The "permissible degree of amplification is dependent on the nature of the message being conveyed."

Thus, §12-611 could be upheld only if it served a compelling State interest, an argument which the State declined to make. See also, **People v. Sanders**, 182 Ill.2d 524, 696 N.E.2d 1144 (1998) (First Amendment was violated by 720 ILCS 125/2(c), which prohibited disturbing a person "engaged in the lawful taking of a wild animal . . . with intent to dissuade or otherwise prevent the taking," because government may not prohibit speech based on content unless the prohibition is both justified by a compelling State interest and narrowly tailored to achieve that interest; "[s]ubjecting to criminal liability expression which is made with an intent to dissuade, while failing to threaten punishment for expressions intended to encourage or persuade, constitutes an illegal legislative censure of opinion").

People v. Russell, 158 Ill.2d 22, 630 N.E.2d 794 (1994) Ch. 38, ¶12-16.2(a)(1) (720 ILCS 5/12-16.2(a)(1)), which provides that a carrier of the HIV virus commits a Class 2 felony by knowingly transmitting the virus through intimate contact, neither violates the First Amendment right to free speech and association nor is unconstitutionally vague. The statute has no connection to free speech, the right to free association could not apply to these cases (in which the victim was unaware of defendant's HIV-positive status and the intimate contact was achieved through force), and the statute is sufficiently clear that a person of ordinary intelligence need not guess at its meaning.

People v. Diguida, 152 Ill.2d 104, 604 N.E.2d 336 (1992) Defendant was convicted of criminal trespass to real property after he refused to leave the cart-control area of a grocery store, where he had been soliciting signatures for a political nominating petition. He claimed that the Illinois constitutional rights to free speech (Art. I, §4) and free and equal elections (Art. III, §3) precluded use of the criminal trespass law to prevent the collection of nominating signatures.

Although there is no express reference to State action in the free speech provision of the Illinois Constitution, that provision was intended to restrict only actions taken by the State. Restriction of soliciting on private property is "State action" only if the property has been presented as a forum for free expression. There was no evidence that the grocery store had ever presented its property in such a fashion; defendant was told that he was on private property and would have to leave, and he responded by circling the block to avoid police. Although the store allowed customers to post notices on a bulletin board, grocery store bulletin boards are not normally regarded as forums for the exchange of ideas.

Finally, use of the state's criminal trespass law was not "State action" where the law was used primarily to remove defendant from private property, and any restriction on free speech was purely incidental.

The State constitutional right to free and equal elections protects the gathering of nominating signatures on private property only if the petition circulator would be denied equal access to voters if he remained on public property. Defendant could not make such a

showing in this case, as he could have moved to a public sidewalk located only a few steps away.

Illinois Appellate Court

People v. Galley, 2021 IL App (4th) 180142 730 ILCS 5/3-3-7(a)(7.12), which prohibits sex offenders on MSR from using social media, violates the First Amendment. In **People v. Morger**, 2019 IL 123643, the court struck down identical language in the probation statute. The rationale used by **Morger** applied equally in the MSR context. Probationers and parolees have traditionally been treated similarly for purposes of constitutional protections. As in **Morger**, the statute cannot pass intermediate scrutiny because while it promotes a substantial government interest, it is not narrowly tailored.

People v. Maillet, 2019 IL App (2d) 161114 Defendant was convicted of two unauthorized-video-recording offenses for surreptitiously filming his stepdaughter in the shower. The first offense was for recording "another person in that other person's residence without that person's consent." 720 ILCS 5/26-4(a-5). Defendant argued that "other person's residence" could not apply to a situation where the parties lived together. The Appellate Court rejected the argument, finding the plain language of the statute did not exclude a recording in the complainant's home merely because defendant happened to live in the same home.

The second offense was based on defendant's recording of the complainant "in a restroom, tanning bed, tanning salon, locker room, changing room, or hotel bedroom." 720 ILCS 5/26-4(a). Defendant alleged that in context, "restroom" must refer to public restrooms, as all the locations in this provision are outside of the home. The court again found the plain language clear, noting the legislature could have included the word "public" before "restroom" but chose not to.

The Appellate Court also rejected defendant's constitutional attacks. As for his First Amendment argument, the court found the statutes are content-neutral and thus subject to intermediate scrutiny. While the statutes might incidentally infringe on some innocent or protected conduct, they would not apply to a "substantial amount" of such conduct. Nor do the statutes violate due process, as they have a knowing mental state and, because they prohibit recording only in places with heightened expectations of privacy, are narrowly suited to their purpose of protecting personal privacy.

In re Jawan S., 2018 IL App (1st) 172955 Probation conditions that minor "refrain from all illegal gang, guns, [and] drug activity" and that "none shall be displayed on his social media" were upheld. The Court distinguished **In re Omar F.**, 2017 IL App (1st) 171073, because the condition here was limited to "illegal" activity, as opposed to the broad condition in **Omar F.** which would have included even innocent or incidental contact within its scope. The social media restriction was also proper because its curtailment of First Amendment rights was minimal and was reasonably related to the needs of rehabilitation.

The Court also rejected a challenge to the constitutionality of 705 ILCS 405/5-715(2)(s) which provides that a juvenile court may include a probation condition that a minor refrain from gang contact. The statute is not mandatory, but rather merely authorizes certain probation conditions at the court's discretion. Here, the court properly tailored the no-gang conditions such that they were not overbroad.

In re K.M., 2018 IL App (1st) 172349 Minor challenged probation conditions that he "have no contact with gangs, guns, or drugs" and that he clear his social media of "anything that

looks like gangs, guns, or drugs." The blanket no-contact provision was similar to that found unconstitutional in **In re Omar F.**, 2017 IL App (1st) 171073, and would have included even innocent or incidental contact within its scope. The Court remanded for the juvenile court to issue a revised probation order.

The Court upheld the social media restriction, disagreeing with **Omar F.** The Court concluded that the restriction only minimally curtailed the minor's First Amendment rights and that it was reasonably related to rehabilitation.

The dissenting justice would not have reached the issue because it was not raised below. Instead, the dissent would have required the minor to first seek modification of probation from the juvenile court because the Juvenile Court Act provides for ongoing review. The dissent also would have declined to consider the constitutionality of the condition because the minor did not challenge the authorizing statute [705 ILCS 405/5-715(2)(s)].

People v. Braddock, 348 Ill.App.3d 115, 809 N.E.2d 712 (1st Dist. 2004) 720 ILCS 5/11-14.1(a), which creates the offense of solicitation of sex acts, is not overbroad; it does not violate the First Amendment right to communicate. Generally, speech which is an integral part of unlawful conduct has no constitutional protection. Because the legislature has determined that offering money or items of value in exchange for sexual acts is unlawful, soliciting sexual acts in return for money is not protected by the First Amendment.

People v. Jamesson, 329 Ill.App.3d 446, 768 N.E.2d 817 (2d Dist. 2002) 720 ILCS 5/25-1.1, which defines the offense of "unlawful contact with street gang members" as knowingly having direct or indirect contact with a street gang member after having been sentenced to supervision, probation, or conditional discharge with a condition to refrain from such contact, does not restrict the First Amendment right of association. The constitutional right to freedom of association does not apply to unlawful conduct.

People v. Rokicki, 307 Ill.App.3d 645, 718 N.E.2d 333 (2d Dist. 1999) The Illinois Hate Crime Statute (720 ILCS 5/12-7.1) does not impermissibly chill free speech where the predicate offense is disorderly conduct. The statute does not infringe on an individual's right to hold unpopular beliefs, but merely punishes an offender who allows such beliefs to motivate criminal conduct. The statute is not a content-based classification and does not chill free speech because individuals might be deterred from expressing unpopular views out of fear that their views will later be used in a prosecution.

§47-3(b)(2)
Second Amendment

§47-3(b)(2)(a)
Right to Bear Arms Violated

Illinois Supreme Court

People v. Webb, 2019 IL 122951 Portion of unlawful use of weapons statute banning possession of stun gun or taser under 720 ILCS 5/24-1(a)(4) is facially unconstitutional. Stun guns and tasers are "bearable arms" entitled to Second Amendment protection; the Second Amendment is not limited to only those instruments in existence at the time of the nation's founding. Stun guns and tasers are not exempted from the statute by virtue of the Concealed

Carry Act because the Act only provides licenses for "firearms" and does not cover stun guns and tasers. Section 24-1(a)(4) acts as a categorical ban on carrying those weapons in public in violation of the Second Amendment.

In re N.G., 2018 IL 121939 In a child-custody case involving a father's attempt to vacate a prior conviction for aggravated unlawful use of a weapon ("AUUW") pursuant to **Aguilar**, the Illinois Supreme Court repudiated its analysis in **People v. McFadden**, 2016 IL 117424. In **McFadden**, the court upheld an unlawful use of a weapon by a felon ("UUWF") conviction based on a prior AUUW conviction that was facially unconstitutional and void *ab initio* under **Aguilar**. It reasoned that, although **Aguilar** may provide a basis for vacating defendant's AUUW conviction, it did not automatically overturn that conviction. Thus when defendant committed UUWF he had a valid felony conviction that made it unlawful for him to possess firearms.

The **N.G.** court recognized that **McFadden** improperly followed a line of cases involving procedurally defective prior convictions, and ignored relevant authority, including **Montgomery v. Louisiana**, 577 U.S. __ (2018), involving facially unconstitutional statutes. Under the latter, the prior conviction is not only void, but it cannot be used in any subsequent proceedings, even if the prior conviction was not invalidated until after the subsequent conviction. Courts confronted with extant void convictions have a duty to invalidate the conviction and any findings reliant on that conviction.

People v. Chairez, 2018 IL 121417 The Illinois Supreme Court vacated the circuit court's judgment finding unlawful use of a weapon under Section 24-1(a)(4), (c)(1.5), which prohibits the possession of a firearm within 1000 feet of a public park, school, courthouse, and public transit facility, violates the Second Amendment, but affirmed the judgment finding the public park provision facially unconstitutional. The circuit court's ruling finding the entire subsection unconstitutional violated **People v. Mosley**, 2015 IL 115872, because the State alleged a violation only of the public park provision, not the remaining provisions contained in subsection (c)(1.5). As such, defendant lacked standing to challenge the provision as a whole.

In finding the public park provision unconstitutional, the court first rejected the defendant's argument that the case is controlled by **People v. Burns**, 2015 IL 117387. **Burns** found defendant's aggravated unlawful use of a weapon conviction unconstitutional pursuant to **Aguilar**, despite the fact that defendant's prior felony conviction elevated the class of the offense. Although simple UUW under 24-1(a)(4) is unconstitutional, and violation of the public park provision increases the class of the offense, **Burns** is distinguishable because the public park provision of the UUW statute is not a sentencing enhancement but a separate offense, as evidenced by its placement separate and apart from the sentencing provisions of the UUW statute.

To determine whether restrictions on the use and possession of firearms violate the Second Amendment, courts first determine whether the statute affects protected conduct and, if so, courts analyze the statute using a heightened means-end level of scrutiny. Here, the Supreme Court did not address whether the Second Amendment protected the 1000-foot perimeter of a public park, and instead chose to "assume some level of scrutiny must apply to **Heller**'s 'presumptively lawful' regulations." The court settled on intermediate scrutiny conducted on a sliding scale – severe restrictions require strong governmental justifications, while minor restrictions could be more easily justified. The Supreme Court agreed with defendant that the public park restriction imposed a severe burden (a blanket ban without

exceptions) on a core right of the Second Amendment (right to bear arms in public). The restriction would essentially deprive people living near parks the ability to protect themselves on their property, and the lack of notice as to where the 1000 feet zone begins would result in inadvertent violations. Because the State failed to justify this severe infringement with data, statistics, or other evidence, the statute could not survive the heightened level of scrutiny.

Finally, the court found the public park provision severable from the remainder of subsection (c)(1.5). The UUW statute did not contain a severability provision, and therefore severability is controlled by Section 1.31 of the Statute on Statutes. Under this provision, the question becomes whether the invalidated portion is inseparable, or whether the legislature's intent can be achieved without the severed portion. Here, removal of the public park provision does not diminish the statute's ability to accomplish its aim of protecting the public, and therefore it is severable.

People v. Aguilar, 2013 IL 112116 The Second Amendment protects an individual's right to keep and bear arms for the purpose of self-defense, and is applicable to the states through the due process clause of the Fourteenth Amendment. While the need for self-defense is most acute in the home, the constitutional right to armed self-defense is broader than the right to have a gun in one's home. The Second Amendment guarantees not only the right to "keep" arms, but also the right to "bear" arms, which implies a right to carry a loaded gun outside the home. Because the Class 4 form of the AUUW statute (720 ILCS 5/24-1.6(a)(1), (a)(3)(A), (d)) categorically prohibits the possession and use of an operable weapon for self-defense outside the home, it violates the Second Amendment on its face.

In a footnote, in response to the State's rehearing petition, the court emphasized that its holding was limited to the Class 4 form of the statute, and it was making no finding, express or implied, with respect to the constitutionality of any other section or subsection of the AUUW statute.

The right to keep and bear arms for self-defense is not unlimited and may be subject to reasonable regulation. The United States Supreme Court has not identified the possession of handguns by minors as conduct that may be constitutionally regulated, but laws banning the juvenile possession of firearms have been commonplace for almost 150 years, and comport with longstanding practice of prohibiting classes of persons whose possession poses a particular danger to the public from possessing firearms. While many colonies permitted or even required minors to own and possess firearms for purposes of militia service, no right for minors to own or possess firearms existed at any time in the history of the nation. Therefore, the unlawful possession of firearms statute prohibiting persons under 18 years of age from possessing any firearm of a size that may be concealed on the person (720 ILCS 5/24-3.1(a)(1)) comports with the Second Amendment.

The court reversed defendant's conviction for AUUW and affirmed his conviction for unlawful possession of a firearm.

Garmen, C.J., dissented upon the denial of rehearing. It would be preferable for the court in response to the State's rehearing petition to allow the parties to fully brief and argue the constitutionality of other sections and subsections of the statute.

Theis, J., dissented upon the denial of rehearing. The majority's unexplained modification of its decision upon denial of rehearing adopts an entirely new way of analyzing the constitutional claim by incorporating the sentencing provisions into its analysis. This new holding has the potential to alter the court's constitutional jurisprudence and create a host of practical problems for law enforcement. It is unsupported by any authority. Rehearing should have been granted to allow the parties to address whether the statute is

unconstitutional in all of its applications.

Illinois Appellate Court

People v. Green, 2018 IL App (1st) 143874 The unlawful use of a weapon statute criminalizing possession of a loaded weapon on a public street or in a vehicle within 1000 feet of school is unconstitutional. The restriction infringes on the core of the Second Amendment and therefore the State has the burden of showing a "very strong public-interest justification." As in **People v. Chairez**, 2018 IL 121417, which struck down the 1000-feet-from-a-park ban, the State failed to show that the 1000-feet-from-a-school ban mitigates school violence. Accordingly, the State could not meet its burden of showing a close fit between the restriction on gun possession within 1000 feet of a school and the protection of children. Thus, the statute is facially unconstitutional. (This decision pertains only to the pre-2015 version; the current version exempts those with concealed-carry licenses.)

People v. Stevens, 2018 IL App (4th) 150871 The concealed carry license fee does not render the licensing statute facially unconstitutional. Licensing fees are constitutionally permissible where they are designed to defray the cost of regulating the protected activity and do not exceed administrative costs. The fee here was apportioned to the State Police Firearm Services Fund, the Mental Health Reporting Fund, and the State Crime Laboratory Fund. Each of those funds covered administration of the licensing scheme, aided in enforcement of licensing requirements, or related to the public interest in lawful firearm ownership. Defendant did not establish that the fee was greater than necessary, and thus the fee withstands constitutional scrutiny.

People v. Gamez, 2017 IL App (1st) 151630 In **Moore v. Madigan**, 702 F.3d 933 (7th Cir. 2012), the federal court of appeals held that the version of the unlawful use of a weapon statute that was in effect in 2010 (720 ILCS 5/24-1(a)(4)) was facially unconstitutional under the Second Amendment. In **Aguilar**, 2013 IL 112116, the Illinois Supreme Court held that the version of the aggravated unlawful use of a weapon statute that was in effect in 2008 (720 ILCS 5/24-1.6(a)(1), (a)(3)(A)) was facially unconstitutional.

The Appellate Court held that under **Moore** and **Aguilar**, the version of the unlawful use of a weapon statute that was in effect in 1996 was also facially unconstitutional. The 1996 UUW statute provides that a defendant commits UUW when he knowingly carries or possesses a firearm in a vehicle or on his person, except on his own land, abode, or fixed place of business. 720 ILCS 5/24-1(a)(4). The only differences between the 2006 statute and the other two statutes was that the 2010 statute contains additional exceptions for the transportation of firearms under certain circumstances, and the 2008 statute requires the State to prove that the firearm was uncased, loaded, and immediately accessible. The 1996 statute thus represents an even wider ban on the possession of firearms. If the 2008 and 2010 statutes violated the Second Amendment, it necessarily followed that the 2006 statute also violated the Second Amendment.

§47-3(b)(2)(b)
Right to Bear Arms Not Violated

Illinois Appellate Court

People v Cunningham, 2019 IL App (1st) 160709 Portion of unlawful use of weapon statute criminalizing possession of a firearm by a non-resident on public housing property under 720

ILCS 5/24-1(a)(4), (c)(1.5) is not an unconstitutional infringement on second amendment rights. Individuals can still exercise their self-defense rights by not entering public housing property, so the provision does not operate as a complete ban. And, the State has an interest in protecting the safety of individuals on public housing property, which is a reasonable justification to support the restriction. The statute's limited burden on second-amendment rights survives heightened intermediate scrutiny.

People v. Bell, 2018 IL App (1st) 153373 The unlawful use of a weapon statute prohibiting possession of a firearm in a public park, 720 ILCS 5/24-1(a)(10), (c)(1.5), is constitutional. The Appellate Court rejected the defendant's reliance on **People v. Aguilar**, 2013 IL 112116 and **People v. Burns**, 2015 IL 117387, finding the public park provision is an element of the offense and not a provision which enhances the sentence of the broad firearm ban found unconstitutional in **Aguilar**.

It then undertook the two-part second-amendment analysis, asking whether the statute encroaches on a constitutional right and, if so, whether it passes intermediate scrutiny. As in **People v. Chairez**, 2018 IL 121417, the State failed to provide sufficient evidence that a public park is a "sensitive area" under **Heller**, and therefore the restriction may impact a constitutional right. Moving to step two, the Appellate Court held that, unlike **Chairez**, which found that the 1000-feet-from-a-park restriction failed intermediate scrutiny, the prohibition here survives. The **Chairez** court was primarily concerned with the lack of notice as to the start of the 1000-foot zone, but no such concerns exist here because the statute explicitly defines the prohibited area as the boundaries of the park itself.

A concurring justice would uphold the statute on the grounds that a public park is clearly a "sensitive area" under **Heller** meaning there is no constitutional right to possession of a weapon in a park and the statute need not pass intermediate scrutiny.

People v. Martin, 2018 IL App (1st) 152249 Armed habitual criminal statute was not unconstitutional as applied to defendant whose two qualifying prior convictions were non-violent and more than 20 years old. Defendant knew he was a twice-convicted felon when he chose to possess a firearm. Defendant did not seek restoration of his right to possess firearm but rather only challenged the constitutionality of the law after he was arrested. Also, the fact that defendant's first felony conviction was for conduct committed when he was 17 years old and would no longer qualify as an adult felony in Illinois was irrelevant.

The State argued against reaching the as-applied challenge because it was not raised in the trial court. The Appellate Court distinguished **People v. Mosley**, 2015 IL 115872, where the record was inadequate for as-applied review, and concluded that the record here contained all relevant facts, including information about defendant's prior felony convictions, his age, lack of other criminal history, and rehabilitation. Plus, the State did not identify any additional facts necessary to the Court's review of the issue.

People v. Murray, 2017 IL App (2d) 150599 Defendant was convicted of, among other things, unlawful possession of a firearm by a street gang member in violation of 720 ILCS 5/24-1.8. The court rejected the argument that Section 24-1.8(a)(1) unconstitutionally criminalizes one's status as a street gang member. The statute punishes the illicit act of possessing a firearm without a FOID card and is not a status offense.

People v Rush, 2014 IL App (1st) 123462 The unlawful use of a weapon by a felon (UUWF) statute makes it unlawful for a convicted felon to possess a firearm. 720 ILCS 5/24-1.1(a).

The statute however does not apply to convicted felons who have been granted relief under the Firearm Owners Identification (FOID) Card Act. The FOID Card Act allows any felon, whose conviction is more than 20 years old, to apply to the Director of the Department of State Police or petition the circuit court requesting relief from the prohibitions of the UUWF statute. 430 ILCS 65/10(c)(1).

In deciding whether a statute violates the Second Amendment, courts should first determine whether the challenged law affects conduct within the scope of the Second Amendment. If the challenged law only applies to conduct outside the scope of the Second Amendment, then the regulated conduct is categorically unprotected. On the other hand, if a court finds that the law does apply to conduct within the scope of the Second Amendment, the court must then determine what level of constitutional scrutiny to apply.

The Appellate Court first held that banning the possession of firearms by felons does not impose a burden on conduct within the scope of the Second Amendment. The court relied on the language of **People v. Aguilar**, 2013 IL 112116, where the Illinois Supreme Court specifically found that the right to bear arms is subject to certain restrictions, and reaffirmed the validity of longstanding prohibitions on the possession of weapons by a felon. Restricting the right of convicted felons to possess guns thus does not implicate the Second Amendment.

Even if it did, however, the statute would not be unconstitutional since the appropriate level of scrutiny would be rational basis, not strict or intermediate scrutiny. And under a rational basis test, the UUWF statute bears a rational relationship to the State's legitimate interest in protecting the health, safety, and general welfare of its citizens from the danger posed by convicted felons being in possession of weapons.

The statute as applied also does not violate defendant's right to due process and equal protection. The court rejected defendant's argument that the statutory process to obtain a FOID card is arbitrary because it grants some felons the right but denies it to others. The State's 20-year waiting period is a legitimate exercise of its interest in placing restrictions on the possession of weapons by felons, and there is nothing arbitrary about it.

People v. Taylor, 2012 IL App (1st) 110166 In **People v. Aguilar**, 2013 IL 112116, the Illinois Supreme Court held that the aggravated UUW statute (720 ILCS 5/24-1.6(a)(1), (a)(3)(A)) violated the Second Amendment because it was a flat ban on carrying guns outside the home. But the court also held that the right to possess and use a firearm was not unlimited and is subject to meaningful regulations.

A different subsection of the statute prohibits the possession of firearms by persons who do not obtain a FOID card. 720 ILCS 5/24-1.6(a)(1), (a)(3)(C). This subsection is not a comprehensive ban on possession and carrying firearms. It only affects those who do not possess a FOID card.

Courts have not applied a consistent level of scrutiny to determine whether a restriction placed on the right to keep and bear a firearm is reasonable. The appellate court concluded that it need not determine which approach is correct, as the FOID card restriction is constitutional under any approach.

Under the strict scrutiny approach, the means employed by the legislature must be necessary to achieve a compelling state interest, and the statute must be narrowly tailored to accomplish this goal. The FOID card requirement seeks to protect the public from individuals carrying firearms who should not be permitted to do so. Requiring compliance with the FOID card requirement is the least restrictive way to meet this compelling state interest.

Under the "text, history, and tradition" approach, the court assesses whether a firearm law regulates activity falling outside the scope of the Second Amendment right as it

was understood at the time of the amendment's adoption. A state law restricting an individual's Second Amendment right to bear arms may prevail when guns are forbidden to a class of persons who present a higher than average risk of misusing a gun. The FOID card requirement is such a law. It is the state's method to prevent those who present a higher than average risk of misusing a gun (such as minors, felons, or the mentally ill) from legally carrying one in public places.

Therefore the FOID card requirement is not facially unconstitutional.

People v. Robinson, 2011 IL App (1st) 100078 Generally, constitutional challenges are addressed under either the "rational basis" or "strict scrutiny" test. In determining whether the unlawful use of a weapon by a felon statute (720 ILCS 5/24-1.1(a)) violates the Second Amendment by prohibiting a felon's possession of a weapon in the home, the court utilized the "intermediate scrutiny" standard of review, which requires the court to determine whether the statute in question serves a significant, substantial, or important governmental interest and if so, whether the "fit" between the regulation and the asserted interest is reasonable.

In **McDonald v. City of Chicago**, 561 U.S. 742, 130 S.Ct. 3020, 177 L.Ed.2d 894 (2010) and **District of Columbia v. Heller**, 554 U.S. 570 (2008), the U.S. Supreme Court found that the Second Amendment protects the right to possess weapons within one's home for the purpose of self-defense. In both opinions, however, the court specifically noted that states may prohibit the possession of firearms by felons.

The Appellate Court concluded that the unlawful use of a weapon by a felon statute (720 ILCS 5/24-1.1(a)) is not unconstitutional on its face because it prohibits possession of a weapon by a felon within the felon's home. The court found that the statute constitutes a valid exercise of the government's right to protect the health, safety and general welfare of its citizens, serves a substantial governmental interest, and is proportionate to the interest served.

Furthermore, the court rejected the argument that §5/24-1.1(a) is unconstitutional as applied because the State failed to show that defendant's possession of a handgun in his home was for an unlawful purpose. The court concluded that the legislature acted within its broad power to protect citizens by prohibiting the possession of a weapon by persons convicted of felonies, The court concluded that the legislature acted within its broad power to protect citizens by prohibiting any possession of a weapon by persons convicted of felonies, without limiting the prohibition to felons whose possession of weapons is for an unlawful purpose.

People v. Davis, 408 Ill.App.3d 747, 947 N.E.2d 813 (1st Dist. 2011) The unlawful use of a weapon by a felon (UUWF) and the armed habitual criminal statutes impose a burden on conduct falling within the scope of the Second Amendment right to keep and bear arms. Felons are among the people whose rights the constitution protects. Therefore, those statutes must withstand intermediate scrutiny to be upheld. Under this standard, the State must assert a substantial interest to be achieved by restrictions on the constitutional right, and the regulatory technique must be in proportion to that interest.

Both the UUWF and armed habitual criminal statutes serve to protect the public from the danger posed when convicted felons possess firearms. The State has a legitimate interest in protecting the public from the dangers posed by felons in possession of firearms. The armed habitual criminal statute requires that the State prove that the defendant twice committed specific kinds of felonies peculiarly related to the use of firearms before it can impose the more serious penalties provided by statute. Although neither statute requires a showing of improper purpose for the felon's possession of the firearms, convicted felons

present special dangers when they possess firearms.

The Supreme Court in **District of Columbia v. Heller**, 554 U.S. 570 (2008) stated that nothing in that decision "should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons." Although *dicta*, judicial *dicta* should usually carry dispositive weight in an inferior court.

The court upheld both statutes against a constitutional challenge.

§47-3(b)(3)
Classifications

§47-3(b)(3)(a)
Generally

United States Supreme Court

Bennis v. Michigan, 516 U.S. 442, 116 S.Ct. 994, 134 L.Ed.2d 68 (1996) Neither due process nor the "takings clause" of the Fifth Amendment is violated by a State forfeiture statute that fails to provide an "innocent owner" defense to forfeiture of an instrument used in a crime. Therefore, the constitution was not violated by forfeiture of an innocent spouse's interest in an automobile that had been used by her spouse, without her knowledge, to commit a criminal act with a prostitute.

Michael M. v. Supreme Court, 450 U.S. 464, 101 S.Ct. 1200, 67 L.Ed.2d 437 (1981) A majority of the Supreme Court has never held that gender-based classifications are "inherently suspect" and subject to "strict scrutiny." However, the traditional minimum rationality test takes on a somewhat "sharper focus" when gender-based classifications are challenged.

A state statutory rape law under which only males may be criminally liable was upheld.

Schlesinger v. Ballard, 419 U.S. 498, 95 S.Ct. 572, 42 L.Ed.2d 610 (1975) Statutory scheme which requires mandatory discharge of male naval officers with more than nine years of active service who fail for the second time to be selected for promotion, but requires similar discharge of female officers only after 13 years of service, is not unconstitutional. The different treatment is based on the fact that female officers, because of restrictions on combat and sea duty, lack the same opportunities as male officers. Congress could rationally conclude that a longer period of tenure for women officers is necessary for fair and equitable career advancement.

In re Griffiths, 413 U.S. 717, 93 S.Ct. 2851, 37 L.Ed.2d 910 (1973) A State which adopts a suspect classification bears a heavy burden of showing it permissible.

Stanley v. Illinois, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972) State statute which prevented unwed father from having custody of his children after the death of the mother, unless he applied for adoption, denied due process.

Graham v. Richardson, 403 U.S. 365, 91 S.Ct. 1848, 29 L.Ed.2d 534 (1971) State law which conditioned welfare payments on citizenship and residency requirement denied equal protection. The characterization of governmental benefit as "right" or "privilege" is not

determinative of constitutional rights.

Illinois Supreme Court

People v. R.G., 131 Ill.2d 328, 546 N.E.2d 533 (1989) When a statute limits a fundamental right it may survive only if a compelling State interest exists. A statute that does not affect a fundamental right need only have a rational relation to the purpose the legislature sought to accomplish by enacting the statute.

People v. Eckhardt, 127 Ill.2d 146, 535 N.E.2d 847 (1989) Statute providing that a defendant is not eligible for supervision for DUI if, within five years, he pleaded guilty pursuant to a plea agreement to reckless driving was upheld. A person who plea bargained to a charge of reckless driving is in a different position from a person who entered a blind plea to that charge.

People v. Upton, 114 Ill.2d 362, 500 N.E.2d 943 (1986) Statute which allowed a greater sentence for distribution of "look-alike" or fraudulent controlled substances than for distribution of certain controlled substances was upheld. Some of the rationales of the legislature were "plausible enough to meet the standard of bearing a real or substantial relation to the larger objective of the Controlled Substances Act."

People v. Coleman, 111 Ill.2d 87, 488 N.E.2d 1009 (1986) Statute which prohibited supervision for a DUI offense if defendant had received supervision for the same offense within the previous five years was upheld. There was a rational basis for distinguishing between those who have previously undergone supervision and those who have not.

People v. Bradley, 79 Ill.2d 410, 403 N.E.2d 1029 (1980) Due process was violated by a statute which provided a greater penalty for possession than for delivery of the same controlled substances.

People v. Palkes, 52 Ill.2d 472, 288 N.E.2d 469 (1972) The test of any legislative classification essentially is one of reasonableness. Classifications which are reasonably calculated to promote or serve a proper police power purpose are not forbidden.

People v. McCabe, 49 Ill.2d 338, 275 N.E.2d 407 (1971) Statute which classified the sale of marijuana with the sale of narcotics, rather than with the sale of drugs named in the Drug Abuse Act, is unreasonable. There must be a reasonable basis for distinguishing the class to which a law is applicable from the class to which it is not.

Illinois Appellate Court

People v. Villareal, 2021 IL App (1st) 181817 Defendant was convicted of unlawful possession of a weapon by a street gang member. The Appellate Court majority rejected the defendant's eighth amendment challenge. Although courts have found that the criminalization of status to be unconstitutional, such as the criminalization of narcotics addiction or the targeting of gang members in loitering statutes, the majority found the instant statute distinguishable. The majority reasoned that the criminal act in this case was illegal firearm possession, not just one's status as a gang member. And while the crime is enhanced by status, the definition of "street gang" member is sufficiently detailed to require specific criminal behavior before one qualifies for the enhancement.

The dissent noted that other jurisdictions have found that increases in criminal culpability based solely on status are unconstitutional. And while the definition of street gang is detailed, it casts too wide a wide net by implicating even those members who lack knowledge of the gang's criminal activity.

§47-3(b)(3)(b)
Equal Protection

United States Supreme Court

Kirchberg v. Feenstra, 450 U.S. 455, 101 S.Ct. 1195, 67 L.Ed.2d 428 (1981) Equal protection was violated by State statute which made husband "head and master" of jointly owned property, with the right to dispose of it without wife's consent. This is "the type of express gender-based discrimination that we have found unconstitutional absent a showing that the classification is tailored to further an important governmental interest."

Craig v. Boren, 429 U.S. 190, 97 S.Ct. 451, 50 L.Ed.2d 397 (1976) State statute which prohibited the sale of beer to males under 21 years and to females under 18 years violated equal protection; differential in age did not serve important governmental objection. See also, **Parham v. Hughes**, 441 U.S. 347, 99 S.Ct. 1742, 60 L.Ed.2d 269 (1979) (statute which precluded a father who has not legitimated a child from suing for wrongful death was upheld); **Frontiero v. Richardson**, 411 U.S. 677, 93 S.Ct. 1764, 36 L.Ed.2d 583 (1973) (federal statute that treated spouses of male military personnel different than spouses of female military personnel was invalid).

Stanton v. Stanton, 421 U.S. 7, 95 S.Ct. 1373, 43 L.Ed.2d 688 (1975) Equal protection violated by State law under which, in the context of child support, girls attain majority at 18 years but boys do not attain majority until 21 years. The Court declined to decide whether a father is liable for child support until both his son and daughter reached 21 years or until they both reached 18 years — this is an issue of state law.

Lehnhausen v. Lake Shore Auto, 410 U.S. 356, 93 S.Ct. 1001, 35 L.Ed.2d 351 (1973) Illinois law which allows taxes on personal property of individuals does not violate equal protection.

Gomez v. Perez, 409 U.S. 535, 93 S.Ct. 872, 35 L.Ed.2d 56 (1973) States may not invidiously discriminate against illegitimate children by denying them substantial benefits accorded children generally.

Eisenstadt v. Baird, 405 U.S. 438, 92 S.Ct. 1029, 31 L.Ed.2d 349 (1972) Statute which denied access of unmarried persons to contraceptives violated equal protection; difference in treatment was not rational.

Reed v. Reed, 404 U.S. 71, 92 S.Ct. 251, 30 L.Ed.2d 225 (1971) State law which gives a mandatory preference to males as administrators of estates violates equal protection.

Labine v. Vincent, 401 U.S. 532, 91 S.Ct. 1017, 28 L.Ed.2d 288 (1971) State inheritance statute which favored legitimate over illegitimate children upheld.

Loving v. Virginia, 388 U.S. 1, 87 S.Ct. 1817, 18 L.Ed.2d 1010 (1967) State statute prohibiting interracial marriage is unconstitutional as violative of equal protection and due process.

Illinois Supreme Court

People v. Richardson, 2015 IL 118255 The right to equal protection guarantees that similarly situated individuals will be treated in a similar manner unless the State can demonstrate an appropriate reason to treat them differently. When a legislative classification does not affect a fundamental right or discriminate against a suspect class, courts apply a rational basis scrutiny and consider whether the classification bears a rational relationship to a legitimate governmental purpose.

The State charged defendant, who was 17 years old at the time of the offenses, as an adult with criminal sexual assault and criminal sexual abuse. At the time of the offenses, the Juvenile Court Act only applied to minors under 17 years of age. The Act was subsequently amended to apply to minors under the age of 18. The amendment included a savings clause that made the changes in the statute applicable to offenses that occurred on or after the effective date of the amendment. 705 ILCS 405/5-120.

Defendant argued that the savings clause violated equal protection because he was similarly situated to 17-year-olds who committed offenses on or after the amendment's effective date, and there was no rational basis to treat him differently.

The Court rejected defendant's argument. It held that the legislative classification in the savings clause was rationally related to the legislature's goal of including 17-year-olds within the jurisdiction of the Juvenile Court Act. By limiting the amendment to offenses committed on or after the effective date, both defendants and courts are on notice as to whether the Act will apply. The savings clause also ensures that cases already in progress would not have to restart in juvenile court and defendants could not manipulate or delay proceedings to take advantage of the amendment.

Wilson v. County of Cook, 2012 IL 112026 The Supreme Court reversed the trial court's dismissal of a challenge to the constitutionality of a Cook County ordinance banning assault weapons, and remanded the cause for further proceedings. In the course of its holding, the court rejected the plaintiff's argument that the ordinance is void for vagueness and violates equal protection.

The void for vagueness doctrine has two purposes: to provide persons of ordinary intelligence a reasonable opportunity to understand what conduct is prohibited, and to provide reasonable standards for enforcement in order to prevent arbitrary and discriminatory enforcement. The court concluded that the county ordinance is not unconstitutionally vague, noting that the plaintiff's argument demonstrated that there is little question as to the scope of the ordinance.

The court also rejected the argument that the ordinance violates equal protection, finding that when read in its entirety the ordinance does not arbitrarily differentiate between two owners with similar firearms.

People v. Hollins, 2012 IL 112754 The Illinois Supreme Court upheld the conviction of defendant for child pornography against due process and equal protection challenges.

The 32-year-old defendant and his 17-year-old girlfriend were college students who engaged in legal consensual sex. Defendant used his cell phone to take extreme closeup

photographs of the couple's genitals. At her request, defendant emailed the photos to his girlfriend. While defendant did not violate any law when he had sexual intercourse with his girlfriend, his recording of that act violated the child pornography statute, which sets 18 as the age at which a person may be legally photographed engaging in sexually explicit conduct. 720 ILCS 5/11-20.1(a)(1).

Defendant conceded that his case did not implicate a fundamental right, and therefore the test for determining whether the statute complies with substantive due process is the rational-basis test. A statute will be upheld under this test so long as it bears a rational relationship to a legitimate legislative purpose and is neither arbitrary nor unreasonable.

The court rejected defendant's argument that the application of the child pornography statute to persons old enough to consent to the private sexual activity they have chosen to photograph does not serve the statute's purpose, which is to prevent the sexual abuse and exploitation of children. The State's legitimate interest in protecting the psychological welfare of children is served by having a higher age threshold for appearance in pornography than to consent to sexual activity. The dangers of appearing in pornography are not as readily apparent as the concrete dangers of sexual activity and can be more subtle. Regardless of the intentions of the parties, there is no guarantee that private photographic images will always remain private.

The statute does not criminalize wholly innocent conduct. The conduct underlying the recording was legal but the recording was not.

Even though the Illinois Constitution provides greater privacy protections than the federal constitution, defendant's claim is not cognizable under the privacy clause of the Illinois Constitution. Ill. Const. 1970, Art. I, §6. Privacy claims in the context of criminal prosecutions have only been recognized where the government or its agents intrude on the privacy of the defendant. The mere fact that the recording of the sex act took place in private, rather than in public, does not implicate the privacy clause.

Because the pornography statute is clear and definite, and defendant's ignorance of the statute is no defense, the court rejected defendant's argument that the anomaly between the pornography statute and the sexual assault statute prevented him from having fair notice that his conduct in photographing the legal sex act was criminal.

When the legislature raised the age limit of the pornography statute to 18, it did not express any concerns about 17-year-olds not being able to appreciate the subtle dangers of memorializing sexual activity. Its motivation was to aid law enforcement in the prosecution of child pornography. A law will be upheld if there is any conceivable basis for finding a rational relationship to a legitimate legislative purpose, even if that purpose did not in fact motivate the legislative action. Moreover, the desire to aid law enforcement is also rationally related to a legitimate legislative purpose.

Defendant's equal protections challenges are rejected for the same reasons as his due process challenges, as those claims are also subject to a rational-basis analysis.

People v. Masterson, 2011 IL 110072 The Equal Protection Clause requires that the government treat similarly situated individuals in a similar fashion, unless it can demonstrate an appropriate reason to treat them differently. The level of scrutiny applied to an equal protection challenge is determined by the nature of the right affected. "Strict scrutiny" analysis is applied when the challenge involves a fundamental right or suspect classification based on race or national origin. In such cases, the classification satisfies the equal protection clause if it is narrowly tailored to serve a compelling State interest.

The "rational basis" test is applied where the classification does not involve a fundamental right or suspect classification. Under this standard, the statute survives the

challenge if it bears a rational relationship to a legitimate government purpose.

Finally, "intermediate scrutiny" is applied to classifications based on gender, illegitimacy, and content-neutral incidental burdens to speech. The "intermediate scrutiny" standard requires a showing that the statute is substantially related to an important governmental interest.

As a threshold matter, equal protection analysis applies only where the individual raising the challenge can demonstrate that he is similarly situated to another group.

People v. Whitfield, 228 Ill.2d 502, 888 N.E.2d 1166 (2007) The trial court lacked discretion to grant credit for the eight months defendant spent on a probation term for which he was ineligible. Equal protection does not require that defendants who serve void probation terms receive the same credit as persons who violate probation and are sentenced to prison.

People v. Fisher, 184 Ill.2d 441, 705 N.E.2d 67 (1998) Equal protection is not violated by provisions of the Illinois Vehicle Code which impose a two-year-suspension of a driver's license for a non-first-time offender who refuses to submit to chemical testing after an arrest for DUI, but require only a one-year-suspension for persons who submit to testing and are found to have a blood-alcohol content in excess of the legal limit. Similarly, equal protection was not violated by provisions permitting a non-first-time offender who fails chemical testing to apply for a hardship driving permit after 90 days, while prohibiting the issuance of hardship permits for non-first offenders who refuse to submit to chemical testing. The distinction between drivers who refuse to submit to chemical testing and those who fail such testing is rationally related to the goal of improving highway safety, because it provides an incentive for drivers to comply with implied consent laws and promotes highway safety by permitting authorities to remove impaired drivers from the highways.

Nor was equal protection violated because non-first offenders who refuse chemical testing and who are subject to a two-year license suspension may receive hardship relief if they are under the age of 21. The court refused to assume that non-first offenders under the age of 21 present a greater risk to highway safety than non-first offenders over that age, and declined a request to take judicial notice of that assertion. In the absence of any evidence on that point, defendants failed to carry their burden of showing an equal protection violation.

People v. Bailey, 167 Ill.2d 210, 657 N.E.2d 953 (1995) Exception to stalking statute for picketing during "bona fide labor disputes" does not violate equal protection. There is a rational basis to exempt labor picketing from the stalking statute, because the legislature could reasonably conclude that "stalking-type" conduct was unlikely to occur during labor picketing and that union activities are constitutionally protected.

People v. Kimbrough, 163 Ill.2d 231, 644 N.E.2d 1137 (1994) Defendant was charged with violating provisions of the Controlled Substances Act that base the classification of the offense on either the weight of pure LSD or the number of "objects" or "segregated parts" delivered in dosage form. Under these provisions, delivery of 15 or more but less than 200 "objects" is a Class X felony, while delivery of cocaine in pure form becomes a Class X felony only where more than 15 and less than 100 grams are involved. Defendant was charged with delivering and possessing 94 to 96 "microdots" weighing approximately .4 grams (a Class X felony), and with unlawful possession of .4 grams of pure LSD (a Class 1 felony).

The "object-weight" statutory scheme does not violate equal protection and due process. A statutory classification that neither affects fundamental constitutional rights nor is based on a "suspect classification" satisfies equal protection and due process if there is,

under any reasonable factual situation, a rational relationship between the classification and a legitimate state interest. Because LSD is normally distributed in "carrier" form, the legislature could have concluded that LSD in that form presents a greater danger to the public than does the delivery of pure LSD. Thus, punishing possession or delivery of "objects" more severely than possession or delivery of the same weight of pure LSD is rationally related to the State's interest in deterring the distribution of LSD.

In addition, retaining the provisions of the Act basing criminal penalties on weight was rational; otherwise, major distributors of pure LSD would be treated as having possessed only one "object," no matter how many doses the substance would constitute when distributed.

Further, the legislature intended that delivery or possession of individual doses may be charged only as "objects," while delivery or possession of "pure" LSD can be charged only based on weight. Thus, because prosecutors do not have discretion to charge possession or delivery of the same substance as either "objects" or "pure" LSD, similarly situated defendants cannot be subjected to disparate treatment, and mere possession cannot carry a more severe penalty than delivery.

People v. Shephard, 152 Ill.2d 489, 605 N.E.2d 518 (1992) Statute which enhances possession of certain controlled substances to Class X felonies when committed within 1000 feet of a public housing project, does not violate equal protection.

The provision does not impose more serious punishment on offenders who live in public housing. The statute enhances the offense based on the fact that it occurs within 1000 feet of a public housing project, not on the offender's place of residence.

Statute does not affect any fundamental constitutional right; therefore, the statute is not subject to the "strict scrutiny" test. Because the impact of drug activity in and around public housing has been severe, there is a rational basis for enhancing drug offense penalties in such areas.

People v. Adams, 149 Ill.2d 331, 597 N.E.2d 574 (1992) 730 ILCS 5/5-5-3(g), which requires HIV testing upon conviction of certain sex-related offenses, does not violate equal protection. First, the statute does not create a gender-based clarification, but applies equally to male and female offenders. Second, there is a rational relationship between mandatory testing of persons convicted of certain sex-related offenses and the goal of promoting public health, because those offenses involve behavior carrying a high risk of transmitting HIV.

Further, the statute does not violate the constitutional prohibition against unreasonable search and seizure.

People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461 (1992) Hazing statute did not violate equal protection or constitute special legislation because it applies only to persons in academic institutions. For a classification to be valid under equal protection and special legislation analysis, it need only have a rational relationship to a legitimate state objective. Because most hazing occurs in schools, limiting the statute to schools is rationally related to the legitimate state purpose of preventing physical injury.

People v. Reed, 148 Ill.2d 1, 591 N.E.2d 455 (1992) Defendant was charged with aggravated criminal sexual abuse in violation of section 12-16(d), which enhances an act of sexual penetration with a person between 13 and 17 from a Class A misdemeanor to a Class 2 felony if defendant is more than five years older than the victim.

Section 12-16(d) does not violate equal protection, as there is a rational basis for distinguishing between adults who engage in sexual activities with minors at least five years younger and persons who engage in the same activities but who are within five years of their victim's age. Because only adults can commit sexual acts with minors who are at least five years younger and also at least 13 years old, the purpose of §12-16(d) is to protect children from sexual exploitation by adults. The legislature could logically conclude that an adult who is at least five years older than the minor poses a greater risk of exploitation than an offender who is closer in age to the victim; in the latter case, similar levels of maturity reduce the potential for overreaching or undue influence.

Bernier v. Burris, 113 Ill.2d 219, 497 N.E.2d 763 (1986) Although the guarantee of equal protection and prohibition against special legislation are not identical, they are "generally judged by the same standard." The standard for determining equal protection challenges (where there is no suspect or quasi-suspect classification) is "whether the legislation bears a rational relationship to a legitimate governmental interest."

People v. Anderson, 112 Ill.2d 39, 490 N.E.2d 1263 (1986) The lack of periodic imprisonment facilities in a county does not violate equal protection under the Illinois Constitution. The equal protection clause is "limited to instances of purposeful or invidious discrimination. Invidious discrimination occurs when government withholds from a person or class of persons a right, benefit or privilege without a reasonable basis for the governmental action."

People v. Bales, 108 Ill.2d 182, 483 N.E.2d 517 (1985) The classification of residential burglary as a Class 1 felony does not violate equal protection. There is a reasonable basis for the classification — "to deter the unlawful entry into dwelling places and thus protect the privacy and sanctity of the home" - and there "is a considerably greater chance of injury and danger to persons in the home context than in the burglary of a place of business." See also, **People v. Harmison**, 108 Ill.2d 197, 483 N.E.2d 508 (1985) (statute mandating fine for drug offenses does not violate equal protection).

People v. Ellis, 57 Ill.2d 127, 311 N.E.2d 98 (1974) A classification based on sex is a "suspect classification" under the Illinois Constitution. Therefore, to be valid it must withstand "strict judicial scrutiny."

The distinctions in the treatment of 17-year-old males and 17-year-old females under the Juvenile Court Act is not based upon a compelling State interest, and is invalid.

Illinois Appellate Court

People v. Baker, 2020 IL App (2d) 181048 725 ILCS 5/103-2.1(b-5), which requires recording of statements made during custodial interrogations for enumerated felony offenses, did not violate equal protection where it became effective as to various offenses on different dates over the course of several years. Rational basis review was appropriate because the statute did not affect a fundamental right or involve a suspect class.

Defendant was interrogated regarding a home invasion prior to June 1, 2015, the date on which section 103-2.1(b-5) began to require recording of home invasion interrogations. While the same amendment which added home invasion to the recording statute also added other offenses with earlier effective dates, the legislature had a rational basis for the staggered effective dates. Specifically, the volume of offenses being added to the recording

statute warranted implementation over a period of years. Accordingly, the statute was not facially unconstitutional, and the trial court did not err in denying defendant's motion to suppress his unrecorded statement.

People v. Lovelace, 2018 IL App (4th) 170401 Following defendant's acquittal, the circuit clerk retained 10% of the $350,000 bond posted on defendant's behalf. 725 ILCS 5/110-7(f) allows the court to keep 10% of the bond. While the statute also allows the court to keep less than 10%, the trial court did not abuse its discretion when it declined to lower defendant's bond cost here.

The Appellate Court also rejected various constitutional challenges to section 110-7(f). The statute's purpose is to reimburse for the cost of administering a bail bond system. The statute does not impose a penalty and thus is not an unconstitutional fine. **Nelson v. Colorado**, 137 S.Ct. 1249 (2017), requiring a court to return assessments exacted as a consequence of a conviction which is later reversed, was distinguished because the bail bond cost is not dependent upon conviction. Section 110-7(f) does not violate equal protection or due process because it bears a rational relationship to the government's interest in administering a bail bond system and applies equally to all individuals who seek the benefit of release on bond. And, the statute does not violate the uniformity clause of the Illinois Constitution, even though it sets a maximum bond fee of $100 for counties with populations greater than 3 million (Cook County), because the legislature believed the bond system could be adequately funded in a much larger county by other sources.

People v. Yoselowitz, 2011 IL App (4th) 100764 Neither the proportionate penalties clause of the Illinois Constitution nor equal protection principles were violated by 720 ILCS 550/5(g), which provides a Class X sentence for the manufacture, delivery, or possession of more than 5000 grams of cannabis with intent to deliver or manufacture.

The court acknowledged recent studies showing that cannabis is neither addictive nor likely to lead to great bodily harm, but found that the legislature imposed the Class X sentencing provision to combat illegal drug use by directing law enforcement efforts to commercial traffickers and large scale purveyors of illegal substances. The court found that such legislative intent constituted a rational basis for the Class X sentencing scheme, and that imposing a Class X sentence on purveyors of large quantities of marijuana was not shocking to the moral sense of the community. The court also noted that defendant's arguments concerning the effects of marijuana use should be addressed to the legislature rather than the courts.

People v. Leroy, 357 Ill.App.3d 530, 828 N.E.2d 769 (5th Dist. 2005) 720 ILCS 5/11-9.4(b-5), which prohibits persons convicted of sex offenses against children from knowingly residing within 500 feet of a playground or facility providing programs or services exclusively directed towards persons under 18 years of age, but which excepts offenders who owned the property in question before the effective date of the statute, does not violate substantive due process, procedural due process, equal protection, the ex post facto clause, the right against self-incrimination, or the Eighth Amendment prohibition of cruel and unusual punishment. Also, the statute is not overly broad.

People v. Downin, 357 Ill.App.3d 193, 828 N.E.2d 341 (3d Dist. 2005) The aggravated criminal sexual abuse statute (720 ILCS 5/12-16(d)) does not violate equal protection although unmarried 16-year-olds are prohibited from engaging in sexual intercourse, even

with parental consent, while 16-year-olds who receive parental consent to marry are permitted to engage in intercourse. The purpose of §12-16(d) is to protect persons under the age of 17 from sexual exploitation by adults, and unmarried and married 16-year-olds are not similarly situated for purposes of equal protection analysis.

People v. Runge, 346 Ill.App.3d 500, 805 N.E.2d 632 (3d Dist. 2004) 720 ILCS 5/31-6(b)(1), which creates the offense of escape by a person committed as a sexually violent person, does not violate equal protection.

People v. McGee, 257 Ill.App.3d 229, 628 N.E.2d 867 (1st Dist. 1993) Statute which provides a higher sentence for possessing a fraudulent license than it does for the greater offense of distributing such a license violates equal protection and due process.

People v. M.D., 231 Ill.App.3d 176, 595 N.E.2d 702 (2d Dist. 1992) The presence or absence of sexual penetration is not a rational basis on which to distinguish between legal and illegal forced sexual exploitation of a spouse. Therefore, the statutory scheme which permits a marital exemption on that basis violates due process and equal protection. Note: The statutory marital exemption has been repealed.

§47-3(b)(3)(c)
Juveniles

Illinois Supreme Court

In re Destiny P., 2017 IL 120796 (No. 120796, 10/19/17) The equal protection clause guarantees that similarly situated individuals will be treated in a similar fashion unless there is an appropriate reason to treat them differently. The equal protection clause does not forbid the legislature from drawing distinctions between different categories of people, but prohibits doing so on the basis of criteria that is wholly unrelated to the legislation's purpose.

Unless fundamental rights are at issue, rational basis scrutiny is applied to equal protection analysis. Under this standard, legislation does not violate the equal protection clause if any set of facts can be rationally conceived to justify the classification.

As a threshold matter in addressing an equal protection claim, the court must ascertain whether the individual is similarly situated to the comparison group. Two classes are similarly situated only if they are alike in all relevant respects. In making this determination, the court must consider the purpose of the particular legislation.

The Supreme Court rejected the argument that first time juvenile offenders charged with first degree murder are denied equal protection because they do not have the right to a jury trial although recidivist juvenile offenders charged as violent juvenile offenders (with two serious violent offenses) and habitual juvenile offenders (three serious offenses) both enjoy the right to jury trials. The court concluded that the classes were not similarly situated.

In re Derrico G., 2014 IL 114463 The equal protection clause requires the government to treat similarly situated individuals in a similar fashion unless it can demonstrate an appropriate reason to treat them differently. But the clause does not forbid the legislature from drawing proper distinctions among different categories of people unless it does so on the basis of criteria wholly unrelated to the legislation's purpose.

Defendant argued that equal protection was violated by the State's right to object to juvenile supervision but not adult supervision. The court rejected this argument on a number

of grounds.

First, defendant could not show that he was similarly situated in all relevant aspects to the adult offenders he compared himself to. Equal protection does not forbid all classifications, only those that apply different treatment to people who are alike in all relevant respects. Here, defendant was not similarly situated to adult offenders charged with a felony, because such adult offenders are not eligible for supervision at all.

Second, defendant entered into a fully negotiated guilty plea. Having received significant consideration in return for his plea, defendant could not repudiate the very sentence he agreed to on the basis that it violated equal protection. The court found that defendant's position violated fundamental principles of fairness in the enforcement of guilty pleas.

Third, minors in delinquency proceedings are not comparable to adult offenders because they are generally not subject to the same deprivation of liberty. Delinquency proceedings are protective and intended to correct and rehabilitate rather than to punish. That difference extends to the role of the State.

In re Jonathan C.B., 2011 IL 107750 The court rejected the argument that because minors accused of sex offenses are subject to more serious sanctions than other delinquent minors, they are entitled to jury trials as a matter of due process and equal protection under the Illinois and federal constitutions. The court acknowledged that minors accused of sex offenses are denied the benefit of confidentiality of court records, but noted that such minors have a diminished expectation of privacy. The court also noted that the lack of confidentiality and collateral consequences such as the requirement to submit DNA samples and ineligibility of expungement are related to rehabilitation because such measures identify persons who are at risk for recidivism.

Furthermore, delinquency adjudications for felony sex offense carry only indeterminate juvenile sentences and not more serious adult sentences. Finally, the court reiterated precedent that sex offender registration is a public safety measure rather than a punishment mandating the right to a jury trial, and found that in any event juvenile offender registration is less onerous than adult registration because the information is available to a smaller group of persons and juveniles may petition to terminate the registration requirement.

In rejecting defendant's argument, the court also found that accepting the minor's argument would offend principles of *stare decisis* by overruling long-standing precedent concerning the nature of juvenile delinquency proceedings. The minor "has failed to provide this court with good cause or compelling reasons to depart from our prior decisions."

The Court rejected the argument that because minors adjudicated delinquent of sex offenses are similarly situated to persons who have the right to a jury trial under extended juvenile jurisdiction and as adult offenders, the absence of the right to a jury trial in sex offense delinquency proceedings violates equal protection. The equal protection clause prohibits disparate treatment of similarly situated individuals. Unless fundamental rights are at issue, equal protection challenges are resolved under the "rational basis" test, which considers whether the challenged classification bears a rational relationship to a legitimate governmental purpose.

Minors adjudicated delinquent for sex offenses cannot meet the threshold requirement of showing that they are similarly situated to either juveniles subjected to extended juvenile jurisdiction prosecutions or to adult sex offenders. Minors found delinquent under extended juvenile jurisdiction and adult sex offenders face severe deprivations of their liberty, including mandatory incarceration and adult sentences. By contrast, a minor adjudicated

delinquent for a sex offense does not face the possibility of an adult criminal sentence, and instead receives a sentence that automatically terminates at age 21.

The court also rejected the argument that equal protection principles are triggered because juvenile sex offenders may face a future loss of liberty under the Sexually Violent Persons Act; commitment under the Act requires a separate, successful action by the State and proof of additional elements that are not common to all sex offenses.

In re Veronica C., 239 Ill.2d 134, 940 N.E.2d 1 (2010) Because a party may raise a constitutional challenge to a statute only if it affects him, the minor respondent lacked standing to argue that the separation of powers doctrine and equal protection are violated by 705 ILCS 405/5-615, which allows the State to block the trial court from granting a continuance under supervision. Because the proceeding had reached the adjudicatory stage, the controlling statute did not authorize supervision even had the State consented.

In re M.T., 221 Ill.2d 517, 852 N.E.2d 792 (2006) The indecent solicitation of an adult statute (720 ILCS 5/11-6.5(a)) is applicable to a juvenile perpetrator. The indecent solicitation of an adult statute, which defines the offense as arranging "for a person 17 years of age or older to commit an act of sexual penetration" or sexual conduct with a person who is under the age of 17, does not violate due process.

First, defendant had standing to challenge the constitutionality of the solicitation of an adult statute. The standing requirement is intended to ensure that only parties with a genuine interest in the outcome of a case will litigate issues, and is determined on the circumstances of the particular case. Although the minor was sentenced as a juvenile, he was within the class of persons affected by the statute because he was challenging the validity of the statute on which his adjudication was based. Therefore, he had standing.

Due process is not violated because solicitation of an adult is a felony while the underlying sexual offense is only a misdemeanor. To survive a due process challenge, a penalty must be reasonably designed to remedy the particular evil that the legislation was intended to target. One goal of the indecent solicitation of a child statute is to protect children by allowing prosecution of persons who endanger children by arranging for adults to engage in sexual conduct with them. Because imposing felony liability for arranging any sex offense with a minor is reasonably related to this goal, and because a person who arranges for sexual offenses against children may cause sexual offenses to be committed against multiple children, due process is not violated by the fact that arranging a misdemeanor offense constitutes a felony.

The indecent solicitation of an adult statute does not violate due process because it lacks a culpable mental state, and might therefore punish persons who arrange completely innocent meetings between adults and minors. The person who makes the solicitation must know that the intent of the meeting is to commit a sexual offense against a child.

Finally, the statute does not violate due process although it has no requirement that defendant know or should have known the ages of the child and the adult who was solicited. Because defendant raised a facial challenge to the statute, he was required to show that the statute would be invalid under any imaginable set of circumstances. Because "it is a simple exercise to imagine a factual scenario where the physical appearances would readily establish the victim's ages as under 17 and the solicited adult's age as over 17," the facial challenge fails.

Illinois Appellate Court

People v. O'Neal, 2021 IL App (4th) 200014 The Appellate Court rejected a juvenile defendant's constitutional attack on the felony murder statute. Defendant alleged that the felony murder statute violated due process as applied to juveniles because it does not reasonably relate to the state's interests of deterring violent crime. Defendant argued a juvenile cannot be deterred from crime because "[a]s a group, juveniles lack the cognitive and neurological development to be deterred by the fear of prosecution for first degree murder." Defendant relied on Eighth Amendment cases such as **Graham**, **Roper**, and **Simmons**.

The Appellate Court held that as in **People v. Pacheco**, 2013 IL App (4th) 110409, it would not adopt Eighth Amendment law as support for defendant's due process challenge. While defendant also cited several secondary sources to support his contention that juveniles do not make the kind of long-term risk considerations that would be required in order for them to be deterred by the felony murder statute, defendant did not present this argument or these sources to the trial court. Even if defendant's sources contain scientific facts, the legislature is in a better position than the judiciary to gather and evaluate data bearing on complex problems.

In re Omar M., 2012 IL App (1st) 100866 To survive a vagueness challenge, a law must provide people of ordinary intelligence with the opportunity to understand what conduct is prohibited, and it must provide a reasonable standard to law enforcement officials and to the judiciary to prevent arbitrary and discriminatory legal enforcement.

The EJJ statute explicitly provides that the minor may be required to serve the adult sentence if he violates the "conditions" of his sentence, and shall be required to serve the adult sentence if he commits a new "offense." Where the court orders provisions such as probation or drug counseling in addition to a juvenile detention term, those provisions are part of the EJJ prosecution "conditions." Where no provisions are imposed other than detention, the term "conditions" refers only to the minor's completion of the sentence and adherence to the Department of Corrections rules and regulations during that time. "Offense" is equally plain and unambiguous, meaning "criminal offense," or "all international, federal, or state offenses that are considered criminal within the State of Illinois." There is no precedent for finding a different vagueness standard for statutes related to juveniles.

Therefore, the EJJ statute is not unconstitutionally vague.

People v. Perea, 347 Ill.App.3d 26, 807 N.E.2d 26 (1st Dist. 2004) 705 ILCS 405/5-805(2)(a), which upon a finding of probable cause authorizes adult prosecution of a minor who is at least 15 and who is charged with a Class X felony, requires adult sentencing if the minor is acquitted of the offense which led to his transfer but convicted of a different Class X felony. Thus, the trial court lacks authority to order juvenile sentencing of such minors.

Due process and equal protection are not violated by the presumptive transfer statute on the basis that persons presumptively transferred to adult court are treated more harshly than juveniles transferred under the automatic transfer statute (705 ILCS 405/5-130(2)) or the extended juvenile jurisdiction statute (705 ILCS 405/5-810)). The presumptive transfer statute is not unconstitutionally vague because it fails to provide sufficient notice that adult sentencing may be required even if the minor is acquitted of the predicate felony for which the transfer was ordered.

§47-3(b)(4)
Due Process

§47-3(b)(4)(a)
Generally

United States Supreme Court

U.S. v. Lopez, 514 U.S. 549, 115 S.Ct. 1624, 131 L.Ed.2d 626 (1995) Congress exceeded its Commerce Clause powers when it enacted statute, which created a federal offense for knowingly possessing a firearm within 1,000 feet of a school. Congress may regulate an activity under the Commerce Clause only where there is a rational basis to believe that the activity substantially affects interstate commerce. Congress made no finding that the possession of firearms near schools has any effect on interstate commerce; if the broad justifications offered by the government were accepted, one would be "hard-pressed to posit any activity by an individual that Congress is without power to regulate."

Goss v. Lopez, 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975) Public school students who face a 10-day or less suspension from school are entitled to due process, which requires at the least oral or written notice, an explanation of the evidence the authorities have (if the charges are denied by the student), and an opportunity to present his side of the story.

Bell v. Burson, 402 U.S. 535, 91 S.Ct. 1586, 29 L.Ed.2d 90 (1971) State law which required suspension of driver's license of uninsured motorist involved in accident unless he posted security of the amount of damages claimed by aggrieved party, regardless of fault and without a hearing, is unconstitutional. Compare, **Jennings v. Mahoney**, 404 U.S. 25, 92 S.Ct. 180, 30 L.Ed.2d 146 (1971).

Wisconsin v. Constantineau, 400 U.S. 433, 91 S.Ct. 507, 27 L.Ed.2d 515 (1971) State statute which allowed various state officials to post, in liquor stores, the names of persons to whom liquor may not be sold because of their prior excessive drinking invalidated. Due process requires that such a person be given notice and opportunity to be heard before such posting; where a person's good name, reputation, honor or integrity is at stake because of what the government is doing, notice and opportunity to be heard are essential.

Schacht v. U.S., 398 U.S. 58, 90 S.Ct. 1555, 26 L.Ed.2d 44 (1970) Federal law which prohibits the wearing of a military uniform without authority, but which authorizes actors to wear such uniforms in productions except in portrayals which tend to discredit the Armed Forces, is unconstitutional.

Powell v. Texas, 392 U.S. 514, 88 S.Ct. 2145, 20 L.Ed.2d 1254 (1968) Conviction under state statute making it a crime to be drunk in a public place upheld. Chronic alcoholism was not a defense.

U.S. v. O'Brien, 391 U.S. 367, 88 S.Ct. 1673, 20 L.Ed.2d 672 (1968) Federal statute creating a crime for knowingly destroying or mutilating a draft card upheld.

Loving v. Virginia, 388 U.S. 1, 87 S.Ct. 1817, 18 L.Ed.2d 1010 (1967) State statute prohibiting interracial marriage is unconstitutional as violative of equal protection and due process.

Robinson v. California, 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962) State statute

which makes it a crime (punishable by up to one year imprisonment) to be addicted to narcotics is unconstitutional as cruel and unusual punishment.

Illinois Supreme Court

People v. Johnson, 225 Ill.2d 573, 870 N.E.2d 415 (2007) Due process was not violated because perpetrators of non-sexually motivated offenses were designated as "sexual offenders" and required to register as such.

In re M.T., 221 Ill.2d 517, 852 N.E.2d 792 (2006) The indecent solicitation of an adult statute (720 ILCS 5/11-6.5(a)) is applicable to a juvenile perpetrator. The indecent solicitation of an adult statute, which defines the offense as arranging "for a person 17 years of age or older to commit an act of sexual penetration" or sexual conduct with a person who is under the age of 17, does not violate due process.

First, defendant had standing to challenge the constitutionality of the solicitation of an adult statute. The standing requirement is intended to ensure that only parties with a genuine interest in the outcome of a case will litigate issues, and is determined on the circumstances of the particular case. Although the minor was sentenced as a juvenile, he was within the class of persons affected by the statute because he was challenging the validity of the statute on which his adjudication was based. Therefore, he had standing.

Due process is not violated because solicitation of an adult is a felony while the underlying sexual offense is only a misdemeanor. To survive a due process challenge, a penalty must be reasonably designed to remedy the particular evil that the legislation was intended to target. One goal of the indecent solicitation of a child statute is to protect children by allowing prosecution of persons who endanger children by arranging for adults to engage in sexual conduct with them. Because imposing felony liability for arranging any sex offense with a minor is reasonably related to this goal, and because a person who arranges for sexual offenses against children may cause sexual offenses to be committed against multiple children, due process is not violated by the fact that arranging a misdemeanor offense constitutes a felony.

The indecent solicitation of an adult statute does not violate due process because it lacks a culpable mental state, and might therefore punish persons who arrange completely innocent meetings between adults and minors. The person who makes the solicitation must know that the intent of the meeting is to commit a sexual offense against a child.

Finally, the statute does not violate due process although it has no requirement that defendant know or should have known the ages of the child and the adult who was solicited. Because defendant raised a facial challenge to the statute, he was required to show that the statute would be invalid under any imaginable set of circumstances. Because "it is a simple exercise to imagine a factual scenario where the physical appearances would readily establish the victim's ages as under 17 and the solicited adult's age as over 17," the facial challenge fails.

People v. Wright, 194 Ill.2d 1, 740 N.E.2d 755 (2000) Due process was violated by 625 ILCS 5/5-401.2(a)(i), which provided that certain persons engaged in auto recycling commit a Class 2 felony if they "knowingly" fail to keep certain records or "knowingly" violate "this Section."

By requiring a system of mandatory licensing and record keeping, §5-401.2 is intended to prevent or reduce the transfer or sale of stolen vehicles and their parts. Section 5-401.2 was not reasonably designed to achieve this purpose, however, because punishing an individual for knowingly failing to keep required records may subject completely innocent

conduct to criminal punishment.

The court declined to cure the defect by imputing a requirement of knowledge plus criminal purpose under **People v. Tolliver**, 147 Ill.2d 397, 589 N.E.2d 527 (1992). Where a statute specifically provides a mental state, as with §5-401.2, courts may not impute a different requirement.

Defendant did not waive the constitutionality of §5-401.2 although he raised the issue for the first time in a petition for rehearing in the Supreme Court. New points are generally improper in a petition for rehearing; however, the constitutionality of a statute may be raised any time.

People v. Fuller, 187 Ill.2d 1, 714 N.E.2d 501 (1999) Class 2 felony penalty for filing a false report of a vehicle theft does not violate due process. The classification of an offense violates due process if it bears no rational relationship to a legitimate State interest. There is a rational relationship between the Class 2 penalty and the State's interest in preventing innocent persons from being falsely accused of auto theft.

Also, due process does not require that a particular defendant's motive in violating a statute be related to the State's interest in enacting the statute; "the defendant's reasons for filing the false report may be relevant to the determination of the particular sentence she might receive for her misconduct, but . . . do not render the classification of her offense unconstitutional as applied to her."

In re K.C., 186 Ill.2d 542, 714 N.E.2d 491 (1999) 625 ILCS 5/4-102, which creates a Class A misdemeanor (Class 4 felony for a subsequent offense) where, without authority, a person damages, removes or tampers with any part of a vehicle, violates due process by punishing what may be wholly innocent conduct without requiring a culpable mental state.

People v. Fisher, 184 Ill.2d 441, 705 N.E.2d 67 (1998) Due process is not violated by provisions of the Illinois Vehicle Code which impose a two-year-suspension of a driver's license for a non-first-time offender who refuses to submit to chemical testing after an arrest for DUI, but require only a one-year-suspension for persons who submit to testing and are found to have a blood-alcohol content in excess of the legal limit, or by provisions permitting a non-first-time offender who fails chemical testing to apply for a hardship driving permit after 90 days while prohibiting the issuance of hardship permits for non-first offenders who refuse to submit to chemical testing. The distinction between drivers who refuse to submit to chemical testing and those who fail such testing is rationally related to the goal of improving highway safety, because it provides an incentive for drivers to comply with implied consent laws and promotes highway safety by permitting authorities to remove impaired drivers from the highways.

Due process is not violated because there may be a delay of up to 14 days between the effective date of a summary suspension of a driver's license and the date of the evidentiary hearing. Although drivers have strong interests in the continued possession of their driver's licenses, and "[a]t some point, a delay in a post-deprivation hearing may . . . become a constitutional violation," a delay of 14 days is justified by the need to manage the "extensive" summary suspension hearings provided by Illinois law.

People v. Lee, 167 Ill.2d 140, 656 N.E.2d 1065 (1995) Aggravated battery with a firearm statute does not violate due process. At the time of defendant's conviction, ¶12-4.2(a) provided that aggravated battery with a firearm occurred when, in the course of a battery, defendant knowingly caused "any injury to another" by "means of the discharging of a

firearm." Aggravated battery with a firearm is a nonprobationable Class X felony punishable by imprisonment for a term of six to 30 years.

A statute violates due process only where the penalty for a crime is not reasonably tailored to its threat to public health, safety and general welfare. A Class X classification for aggravated battery with a firearm is reasonably related to the act of inflicting injury by knowingly discharging a firearm - the threat to society identified by the legislature.

Also, no constitutional violation is created by the fact that a longer sentence can be imposed for aggravated battery with a firearm than for some offenses in which the victim dies; the degree of harm inflicted is but one factor in determining the seriousness of an offense, and the legislature could legitimately believe that a Class X sentence was required to reduce the frequency of injuries, high risk of bodily harm, and "unique threat" presented by the discharge of firearms.

People v. Kimbrough, 163 Ill.2d 231, 644 N.E.2d 1137 (1994) Defendant was charged with violating provisions of the Controlled Substances Act that base the classification of the offense on either the weight of pure LSD or the number of "objects" or "segregated parts" delivered in dosage form. Under these provisions, delivery of 15 or more but less than 200 "objects" is a Class X felony, while delivery of cocaine in pure form becomes a Class X felony only where more than 15 and less than 100 grams are involved. Defendant was charged with delivering and possessing 94 to 96 "microdots" weighing approximately .4 grams (a Class X felony), and with unlawful possession of .4 grams of pure LSD (a Class 1 felony).

The "object-weight" statutory scheme does not violate equal protection and due process. A statutory classification that neither affects fundamental constitutional rights nor is based on a "suspect classification" satisfies equal protection and due process if there is, under any reasonable factual situation, a rational relationship between the classification and a legitimate state interest. Because LSD is normally distributed in "carrier" form, the legislature could have concluded that LSD in that form presents a greater danger to the public than does the delivery of pure LSD. Thus, punishing possession or delivery of "objects" more severely than possession or delivery of the same weight of pure LSD is rationally related to the State's interest in deterring the distribution of LSD.

In addition, retaining the provisions of the Act basing criminal penalties on weight was rational; otherwise, major distributors of pure LSD would be treated as having possessed only one "object," no matter how many doses the substance would constitute when distributed.

Further, the legislature intended that delivery or possession of individual doses may be charged only as "objects," while delivery or possession of "pure" LSD can be charged only based on weight. Thus, because prosecutors do not have discretion to charge possession or delivery of the same substance as either "objects" or "pure" LSD, similarly situated defendants cannot be subjected to disparate treatment, and mere possession cannot carry a more severe penalty than delivery.

People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818 (1991) Absent a clear indication that the legislature intended to create an absolute liability offense, courts should be unwilling to interpret a statute as creating such. The mere absence of language defining an express mental state does not mean that none is required. When a statute does not state a specific mental state, but also does not create an absolute liability offense, the court must determine whether intent, knowledge or recklessness applies. See also, **People v. Tolliver**, 147 Ill.2d 397, 589 N.E.2d 527 (1992).

People v. Morris, 136 Ill.2d 157, 554 N.E.2d 235 (1990) Statute providing for a Class 2 felony of possession of an altered temporary registration permit (Ch. 95½, ¶4-104(a)(3)) was unconstitutional as applied; defendant altered the expiration date of his own temporary registration permit on his own vehicle.

"A Class 2 penalty for a person who alters a temporary registration permit for a vehicle which he or she owns or to which he or she is legally entitled is not reasonably designed to protect automobile owners against theft, nor is it reasonably designed to protect the general public against the commission of crimes involving stolen motor vehicles. Such a penalty is violative of the due process clause of our constitution, and may not stand."

People v. Bradley, 79 Ill.2d 410, 403 N.E.2d 1029 (1980) Due process was violated by a statute which provided a greater penalty for possession than for delivery of the same controlled substances.

Illinois Appellate Court

People v. Rogers, 2022 IL App (3d) 180088-B Defendant, who was convicted of DUI under 625 ILCS 5/11-501(a)(6), based on his having "any amount" of cannabis in his system, challenged the statute as unconstitutional. Specifically, defendant alleged that subsection (a)(6), as it existed at the time of his conduct, violated due process because advances in cannabis metabolite analysis have rendered the zero-tolerance standard an unreasonable method of accomplishing the legislature's objection of protecting the public from drivers impaired by cannabis. Defendant noted that the DUI statute has since been amended to criminalize driving with cannabis in a person's system only if the concentration of cannabis metabolites exceeds a specific threshold.

The Appellate Court rejected defendant's argument. At the time of defendant's conduct, the "any amount" version of (a)(6) was in effect. That statute had been held constitutional in **People v. Fate**, 159 Ill. 2d 267 (1994), and **Fate** remains controlling. Accordingly, the court concluded that at the time of defendant's conduct, (a)(6) bore a rational relationship to the legislative objective of keeping cannabis-impaired drivers off the road. Defendant's conviction of DUI was affirmed.

People v. Maillet, 2019 IL App (2d) 161114 Defendant was convicted of two unauthorized-video-recording offenses for surreptitiously filming his stepdaughter in the shower. The first offense was for recording "another person in that other person's residence without that person's consent." 720 ILCS 5/26-4(a-5). Defendant argued that "other person's residence" could not apply to a situation where the parties lived together. The Appellate Court rejected the argument, finding the plain language of the statute did not exclude a recording in the complainant's home merely because defendant happened to live in the same home.

The second offense was based on defendant's recording of the complainant "in a restroom, tanning bed, tanning salon, locker room, changing room, or hotel bedroom." 720 ILCS 5/26-4(a). Defendant alleged that in context, "restroom" must refer to public restrooms, as all the locations in this provision are outside of the home. The court again found the plain language clear, noting the legislature could have included the word "public" before "restroom" but chose not to.

The Appellate Court also rejected defendant's constitutional attacks. As for his First Amendment argument, the court found the statutes are content-neutral and thus subject to intermediate scrutiny. While the statutes might incidentally infringe on some innocent or protected conduct, they would not apply to a "substantial amount" of such conduct. Nor do

the statutes violate due process, as they have a knowing mental state and, because they prohibit recording only in places with heightened expectations of privacy, are narrowly suited to their purpose of protecting personal privacy.

People v. Owens, 2018 IL App (4th) 170506 The Sex Offender Registration Act (SORA) does not violate double jeopardy principles because a violation of SORA requires a separate criminal act from the underlying offense which subjected the individual to the registration requirements. Likewise, collateral estoppel principles do not apply where a prosecution for a SORA violation does not require relitigating the underlying sex offense. Finally, SORA's requirements that a person "shall" register and that a person who violates the registration requirements "is guilty of" a felony are not improper mandatory presumptions and do not violate due process.

While defendant's due process challenge was not included in his interlocutory notice of appeal, the Appellate Court addressed it under both its (1) supplemental jurisdiction, relying on **People v. Hobbs**, 301 Ill. App. 3d 581 (1998), and (2) original jurisdiction – allowing the court to exercise jurisdiction when necessary to "a complete determination of any case on review" – pursuant to Illinois Supreme Court Rule 604(f).

People v. Vasquez, 2012 IL App (2d) 101132 Due process requires that a statute be sufficiently clear that persons of common intelligence are not required to guess at its meaning or application. A sentencing statute does not satisfy due process if its terms are so ill-defined that the ultimate decision as to its meaning rests on the opinions and whims of the trier of fact rather than objective criteria.

Due process does not require mathematical certainty, however, and will be satisfied if: (1) the statute's prohibitions are sufficiently definite, when measured by common understanding and practices, to give a person of ordinary intelligence fair warning as to what conduct is prohibited; and (2) the statute marks boundaries sufficiently distinct for judges and juries to administer the law fairly in accordance with the intent of the legislature.

The aggravated DUI statute provides that where the offense results in the death of multiple persons, a sentence of imprisonment shall be imposed "unless the court determines that extraordinary circumstances exist and require probation." 625 ILCS 5/11-501(d)(2)(G).

The statute is not unconstitutionally vague. First, the phrase "extraordinary circumstances" is capable of being understood by its plain and ordinary meaning. Black's Law Dictionary defines the term as "a highly unusual set of facts that are not commonly associated with a particular thing or event."

Second, the statute provides sufficient guidance such that reasonable defendants and sentencing judges are not without objective criteria for its application. As used in the statute, "extraordinary circumstances" contemplates those that are mitigating. Guidance as to what constitutes a mitigating circumstance is provided by the statutory definition of mitigating factors. 730 ILCS 5/5-5-3.1.

Third, the legislative objective of the statute sufficiently guides the statute's application. Generally, the Code of Corrections creates a presumption in favor of probation. Under §11-501(d)(2)(G), there is a presumption of incarceration that may be overridden in the court's discretion, but not lightly.

People v. Schmidt, 405 Ill.App.3d 474, 938 N.E.2d 559 (3d Dist. 2010) 720 ILCS 646/35, which prohibits a person from knowingly using or allowing the use of a vehicle, structure, real property or personal property within his control to commit a methamphetamine violation, does not violate due process. Furthermore, §35 is not unconstitutionally overbroad

or vague.

Legislation which does not affect a fundamental constitutional right satisfies due process if: (1) it bears a reasonable relationship to the public interest intended to be served by the statute, and (2) the means adopted are reasonable to accomplish the desired objective. Because defendant was charged with using his personal vehicle to commit a methamphetamine violation, the court found that it need not consider other scenarios which might have presented issues concerning the constitutionality of §35. The court also held that the statute bears a rational relationship to the interest of safeguarding the public from the harm caused by manufacturing and distributing methamphetamine. Furthermore, the statute adopts a reasonable method of protecting the public by prohibiting the use of a vehicle to manufacture or possess methamphetamine.

People v. Diestelhorst, 344 Ill.App.3d 1172, 801 N.E.2d 1146 (5th Dist. 2003) 720 ILCS 5/11-9.4(a), which prohibits a child sex offender from approaching, contacting or communicating with a child under the age of 18 unless the offender is a parent or guardian of the person in question, is neither a violation of substantive due process nor unconstitutionally vague.

People v. Torres, 327 Ill.App.3d 1106, 764 N.E.2d 1206 (5th Dist. 2002) Due process is not violated by the Illinois statutory scheme creating mutually exclusive offenses of burglary and residential burglary. Imposition of a higher penalty for the burglary of home clearly has a "reasonable relationship" to a State interest.

People v. Townsend, 275 Ill.App.3d 413, 654 N.E.2d 1096 (2d Dist. 1995) 720 ILCS 5/24-1.2(a)(2), which creates a Class 1 felony for knowingly or intentionally discharging a firearm "in the direction" of another person or an occupied vehicle, was upheld against vagueness and due process challenges. Defendant lacked standing to raise the vagueness issue because, whether or not the statute might be vague under other circumstances, it clearly prohibited defendant's act of senselessly firing a handgun directly at another person.

Also, there was a rational basis for the legislature to conclude that the act of discharging a firearm is a sufficiently serious offense to justify classification as a Class 1 felony, though aggravated assault is only a Class 4 felony. The elements of the two offenses are not identical, and aggravated discharge of a firearm is not a less serious offense than aggravated assault.

§47-3(b)(4)(b)
Procedural

Illinois Supreme Court

People v. DeLeon, 2020 IL 124744 725 ILCS 5/112A-11.5, which provides for issuance of a civil no-contact order based solely on an individual's having been charged with a crime involving domestic violence or sexual assault, was upheld against a due process challenge.

Pursuant to **Medina v. California**, 505 U.S. 437 (1992), it is within the power of the State to regulate procedures for carrying out the law and a due process violation will not be found unless the procedure in question "offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." Allowing the State to make a *prima facie* case for issuance of the protective order based solely on the indictment, without requiring the complaining witness to testify and be subject to cross examination, was

not a due process violation under that standard. Probable cause determinations for indictment do not require procedural safeguards like confrontation and cross-examination [**Gerstein v. Pugh**, 420 U.S. 103 (1975)], and thus those safeguards are not required for even less-restrictive constraints on liberty like the civil no-contact order here.

The Court also looked at the procedural due process analysis set out in **Mathews v. Eldridge**, 424 U.S. 319 (1976), requiring that a court consider three factors: (1) the government's interest in the procedure, (2) the private interest affect by the governmental action, and (3) the risk of an erroneous deprivation of that private interest. Here, the government has a strong interest in protecting victims of the enumerated offenses from ongoing contact by the accused, and the issuance of a protective order helps to further that interest. The accused also has a fundamental liberty interest to move about unrestricted prior to trial, but the protective order largely paralleled defendant's bond conditions and was not overly broad. And, finally, the absence of a right of confrontation under the statute was not likely to result in an erroneous deprivation of liberty given that issuance of a no-contact order does not require proof beyond a reasonable doubt.

Finally, Section 112A-11.5's requirement that an accused present a meritorious defense to avoid issuance of a protective order does not infringe upon a defendant's privilege against self-incrimination because the statute does not compel a defendant to attempt to rebut the State's *prima facie* case. And, the statute does not conflict with the more general Civil No Contact Order Act because the statutes serve different purposes and are part of the legislature's comprehensive scheme to protect individuals affected by domestic violence, sexual assault, and stalking.

Illinois Appellate Court

People v. Lee, 2018 IL App (1st) 152522 The Appellate Court has jurisdiction to review a due process challenge to SORA on appeal from a conviction for violating SORA. Defendant has standing to challenge the entirety of SORA despite only violating one provision, the registration requirement.

Addressing defendant's facial due process challenge to SORA, the Appellate Court first found that SORA does not affect a fundamental right, and therefore rational basis review applies. Because SORA serves a legitimate state purpose rationally related to its goals, SORA does not violate substantive due process. Nor does it violate procedural due process, because defendants have a procedurally safeguarded opportunity to contest the underlying conviction giving rise to SORA.

People v. Avila-Briones, 2015 IL App (1st) 132221 The Appellate Court rejected the defendant's request that it revisit whether the statutory scheme created by the Sex Offender Registration Act (730 ILCS 150/1 *et seq.*), the Sex Offender Community Notification Act (730 ILCS 152/101 *et seq.*), and statutes restricting the residency, employment, and presence of sex offenders constitute cruel and unusual punishment under the Eighth Amendment or disproportionate punishment under the Illinois Constitution. The court concluded that even if recent amendments to the statutory scheme constituted "punishment," the restrictions were not disproportionate to legitimate penological goals. In addition, the court concluded that the statutory scheme did not violate substantive or procedural due process.

People v. Leroy, 357 Ill.App.3d 530, 828 N.E.2d 769 (5th Dist. 2005) 720 ILCS 5/11-9.4(b-5), which prohibits persons convicted of sex offenses against children from knowingly residing

within 500 feet of a playground or facility providing programs or services exclusively directed towards persons under 18 years of age, but which excepts offenders who owned the property in question before the effective date of the statute, does not violate substantive due process, procedural due process, equal protection, the ex post facto clause, the right against self-incrimination, or the Eighth Amendment prohibition of cruel and unusual punishment. Also, the statute is not overly broad.

People v. Stork, 305 Ill.App.3d 714, 713 N.E.2d 187 (2d Dist. 1999) 720 ILCS 5/11-9.3(a)(b), which prohibits a child sex offender from knowingly being present on school property or loitering on a public way within 500 feet of school property while persons under the age of 18 are present, unless the offender is the parent or guardian of a student on school property or has permission to be present, does not violate procedural or substantive due process.

§47-3(b)(4)(c)
Substantive/Privacy

United States Supreme Court

Lawrence v. Texas, 539 U.S. 558, 123 S.Ct. 2472, 156 L.Ed.2d 508 (2003) Due process was violated by a Texas statute prohibiting sodomy between consenting adults of the same gender.

Osborne v. Ohio, 495 U.S. 103, 110 S.Ct. 1691, 109 L.Ed.2d 98 (1990) A state may constitutionally prohibit the possession and viewing of child pornography.

Webster v. Reproductive Health Services, 492 U.S. 490, 109 S.Ct. 3040, 106 L.Ed.2d 410 (1989) State statute which banned use of public facilities and public employees, within the scope of their employment, to perform an abortion that was not necessary to save the life of the mother was constitutional.

H.L. v. Matheson, 450 U.S. 398, 101 S.Ct. 1164, 67 L.Ed.2d 388 (1981) State statute requiring physicians to notify, "if possible," the parents of a minor who seeks an abortion was upheld. The minor in this case was unemancipated and dependent on her parents. See also, Ohio v. Akron, 497 U.S. 502, 110 S.Ct. 2972, 111 L.Ed.2d 405 (1990) (upholding state statute allowing abortions on minors only after notice to parents or guardians or upon authorization by a court).

Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973) A right of personal privacy, although not explicitly mentioned in the Constitution, does exist under the Constitution. This privacy right has roots in at least the First, Fourth, Fifth, Ninth and Fourteenth Amendments.

The right of privacy encompasses a woman's decision to have an abortion. Thus, during the first trimester of pregnancy the abortion decision must be left to the medical judgment of the woman's physician. After the first trimester, the State may regulate the abortion procedure in ways reasonably related to maternal health, and after viability the State may regulate and proscribe abortion except where necessary to preserve the life or health of the mother.

Eisenstadt v. Baird, 405 U.S. 438, 92 S.Ct. 1029, 31 L.Ed.2d 349 (1972) If the right of

privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision to bear or beget a child.

Stanley v. Georgia, 394 U.S. 557, 89 S.Ct. 1243, 22 L.Ed.2d 542 (1969) Statute prohibiting the private possession of obscene materials in one's home infringed upon the right of privacy.

Griswold v. Connecticut, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965) Statute making it a crime for married couples to use contraceptives is unconstitutional. The statute infringed on the marriage relationship, which is within the zone of privacy created by fundamental constitutional guarantees.

Illinois Supreme Court

People v. Pepitone, 2018 IL 122034 Defendant alleged that section 11-9.4-1(b) of the Criminal Code, which bans child sex offenders from parks, violates substantive due process. He argued that the statute lacks a *mens rea*, penalizes wholly innocent conduct, and, because it considers neither the presence of children nor the individual's potential for recidivism, is not narrowly tailored.

The Illinois Supreme Court upheld the statute. Because the ability to enter a park is not a fundamental right, the court applied the rational basis test, asking whether the statute bears a reasonable relationship to a legitimate state interest. The court held that the legislature could rationally conclude that child sex offenders pose a danger in public parks given the presence of children and sex offenders' high rates of recidivism. Although defendant pointed to numerous studies suggesting low recidivism rates among sex offenders, the court found that such data is better analyzed by the legislature, not the court. As for defendant's "overbreadth" argument, the court acknowledged that it has previously struck down statutes that penalize wholly innocent conduct, but it found those cases inapposite because here the conviction depends on the status of the defendant - a convicted sex offender. Finally, the court held that the rational basis test does not require narrow tailoring, only rationality.

People v. Gray, 2017 IL 120958 Pursuant to the State's police power, the legislature has broad discretion to define offenses and prescribe penalties. This discretion is limited by due process. When a statute does not affect a fundamental right, it is subject to the rational basis test. Under this test, a statute will be upheld if it bears a rational relationship to a legitimate legislative purpose.

Defendant was convicted of aggravated domestic battery, which is defined as committing a battery against "any family or household member." 720 ILCS 5/12-3.3(a) (a-5). Family or household member includes any person who has had a dating relationship, with no time limits on former relationships. 720 ILCS 5/12-0.1. Defendant argued that the statute violated due process as applied to him because he had not dated the victim for 15 years.

The Supreme Court rejected defendant's argument. The court found that the legislature's purpose in enacting the statute was to curb the "serious problem of domestic violence." The legislature could rationally believe that people are more likely to batter a former partner no matter how long ago that relationship ended. Thus, the court held that the absence of a time limit on former dating relationships was reasonable and rationally related to the goal of curbing domestic violence.

Defendant's conviction was affirmed.

People v. Hollins, 2012 IL 112754 The Illinois Supreme Court upheld the conviction of defendant for child pornography against due process and equal protection challenges.

The 32-year-old defendant and his 17-year-old girlfriend were college students who engaged in legal consensual sex. Defendant used his cell phone to take extreme closeup photographs of the couple's genitals. At her request, defendant emailed the photos to his girlfriend. While defendant did not violate any law when he had sexual intercourse with his girlfriend, his recording of that act violated the child pornography statute, which sets 18 as the age at which a person may be legally photographed engaging in sexually explicit conduct. 720 ILCS 5/11-20.1(a)(1).

Defendant conceded that his case did not implicate a fundamental right, and therefore the test for determining whether the statute complies with substantive due process is the rational-basis test. A statute will be upheld under this test so long as it bears a rational relationship to a legitimate legislative purpose and is neither arbitrary nor unreasonable.

The court rejected defendant's argument that the application of the child pornography statute to persons old enough to consent to the private sexual activity they have chosen to photograph does not serve the statute's purpose, which is to prevent the sexual abuse and exploitation of children. The State's legitimate interest in protecting the psychological welfare of children is served by having a higher age threshold for appearance in pornography than to consent to sexual activity. The dangers of appearing in pornography are not as readily apparent as the concrete dangers of sexual activity and can be more subtle. Regardless of the intentions of the parties, there is no guarantee that private photographic images will always remain private.

The statute does not criminalize wholly innocent conduct. The conduct underlying the recording was legal but the recording was not.

Even though the Illinois Constitution provides greater privacy protections than the federal constitution, defendant's claim is not cognizable under the privacy clause of the Illinois Constitution. Ill. Const. 1970, Art. I, §6. Privacy claims in the context of criminal prosecutions have only been recognized where the government or its agents intrude on the privacy of the defendant. The mere fact that the recording of the sex act took place in private, rather than in public, does not implicate the privacy clause.

Because the pornography statute is clear and definite, and defendant's ignorance of the statute is no defense, the court rejected defendant's argument that the anomaly between the pornography statute and the sexual assault statute prevented him from having fair notice that his conduct in photographing the legal sex act was criminal.

When the legislature raised the age limit of the pornography statute to 18, it did not express any concerns about 17-year-olds not being able to appreciate the subtle dangers of memorializing sexual activity. Its motivation was to aid law enforcement in the prosecution of child pornography. A law will be upheld if there is any conceivable basis for finding a rational relationship to a legitimate legislative purpose, even if that purpose did not in fact motivate the legislative action. Moreover, the desire to aid law enforcement is also rationally related to a legitimate legislative purpose.

Defendant's equal protections challenges are rejected for the same reasons as his due process challenges, as those claims are also subject to a rational-basis analysis.

People v. Madrigal, 241 Ill.2d 463, 948 N.E.2d 591 (2011) The legislature has wide discretion to fashion penalties for criminal offenses, but this discretion is limited by the constitutional guarantee of substantive due process. When a statute that is challenged on substantive due process grounds does not affect a fundamental right, the appropriate test for determining its constitutionality is the highly deferential rational basis test. A statute will

be sustained if it bears a reasonable relationship to a public interest to be served, and the means adopted are a reasonable method of accomplishing the desired objective. A statute does not provide a reasonable method of preventing the targeted conduct and fails the rational basis test if it does not contain a culpable mental state and potentially punishes wholly innocent conduct.

The identity theft statute provides that "[a] person commits the offense of identity theft when he or she knowingly . . . uses any personal identification information or personal identification document of another for the purpose of gaining access to any record of the actions taken, communications made or received, or other activities or transactions of that person, without the prior express permission of that person." 720 ILCS 5/16G-15(a)(7). The plain language of this statute and the legislative declaration of 720 ILCS 5/16G-5(b) makes clear that the purpose of this statute is to protect the economy and people of Illinois from the ill effects of identity theft.

Unlike subsections (a)(1) through (a)(5) of the identity theft statute, subsection (a)(7) does not require that the person act with a criminal purpose in addition to the general knowledge that one is committing the actions specified. It criminalizes the use of mere names, or other commonly and publicly available information such as addresses and phone numbers, for the purpose of gaining access to innocent information without any criminal intent, purpose, or knowledge. Because the statute potentially punishes a significant amount of wholly innocent conduct unrelated to the statute's purpose of addressing the problem of identity theft, it is an invalid use of the police power.

The court declined to read a culpable mental state into the statute. Where a statute already contains a mental state of knowledge, a court cannot read a criminal-purpose requirement into the statute.

People v. Dabbs, 239 Ill.2d 277, 940 N.E.2d 1088 (2010) 725 ILCS 5/115-7.4 provides that in prosecutions for domestic violence, evidence that the defendant committed other offenses of domestic violence may be admitted on any matter for which it is relevant. In determining whether to admit such evidence, the trial court must weigh the probative value of the evidence against any undue prejudice, considering such factors as the proximity in time between the offenses, the degree of factual similarity between the offenses, and any other relevant facts and circumstances.

The Supreme Court rejected defendant's argument that §115-7.4 violates due process. In the course of its holding, the court noted that the general exclusion of other crimes evidence to show propensity is a common law rule, and not a rule of constitutional magnitude.

Where a statute does not affect a fundamental constitutional right, the rational basis test is used to determine whether substantive due process is violated. Thus, the statute will be upheld so long as it bears a rational relationship to a legitimate State interest and is not arbitrary or unreasonable.

The court concluded that §115-7.4 serves the legitimate State interest of permitting the prosecution of recidivist domestic violence offenders. The court found that domestic violence frequently involves victims who are vulnerable and reluctant to testify, and that a domestic abuser is frequently "adept at presenting himself as a calm and reasonable person and his victim as hysterical or mentally ill." Because the admission of evidence of prior, similar offenses might persuade a trier of fact that the present victim is worthy of belief because her experience is corroborated, §115-7.4 is rationally related to the interest of allowing the effective prosecution of domestic abuse.

People v. Boeckmann & Maschhoff, 238 Ill.2d 1, 932 N.E.2d 998 (2010) 625 ILCS 5/6-

206(a)(43), which requires the suspension of driving privileges for three months where supervision is ordered for the offense of unlawful consumption of alcohol while under the age of 21, satisfies due process.

A driver's license is a non-fundamental property interest. A statute which does not impact a fundamental constitutional right violates due process only if there is no rational relationship between the statute and a legitimate legislative purpose, or if the statute is arbitrary or discriminatory. In applying the rational basis test, a reviewing court must first identify the public interest the statute is intended to protect. The court must then determine whether the statute bears a rational relationship to that interest, and whether the method chosen by the legislature to further that interest is reasonable. Legislation should be upheld against a due process challenge if there is any conceivable basis for a finding that the statute is rationally related to a legitimate State interest.

The court identified the public interest protected by §6-206(a)(43) as furthering the safe and legal operation and ownership of motor vehicles. The court concluded that suspending the driving privileges of underage persons who receive court supervision for illegal consumption of alcohol is rationally related to this interest because the legislature could have concluded that an underage person who consumes alcohol illegally "may take the additional step of driving after consuming alcohol." Because the legislature could have determined that underage drinkers are likely to drive while unfit to do so, suspending the driving privileges of underage drinkers is a reasonable method of protecting the public interest in promoting the safe and legal operation of motor vehicles.

Additionally, the court rejected the argument that the proportionate penalties clause is violated by suspending driving privileges for the underage consumption of alcohol. The proportionate penalties clause applies only to direct action by the government which inflicts punishment on a citizen. Because the legislative purpose of §6-206(a)(43) is to promote the safe and legal operation and ownership of motor vehicles, the statute does not have a punitive purpose. Therefore, the proportionate penalties clause does not apply.

People v. Greco, 204 Ill.2d 400, 790 N.E.2d 846 (2003) 625 ILCS 5/4-103.2(b), which permits the trier of fact to infer that a person who exercises exclusive, unexplained possession over a stolen vehicle has knowledge that the vehicle is stolen, without regard to whether the theft was recent or remote, violates due process as applied to "special mobile equipment."

Illinois Appellate Court

People v. Conroy, 2019 IL App (2d) 180693 Section 11-14(a), which criminalizes prostitution, is not unconstitutional. The commercial sale of sex does not carry the same privacy interests as private sexual activity between two consenting adults.

People v. Eubanks, 2017 IL App (1st) 142837 Following a deadly accident, the police took defendant, the driver, into custody and forced him to provide urine and blood samples without a warrant or his consent. On appeal, defendant challenged the constitutionality of section 11-501.2(c)(2) of the Illinois Vehicle Code, which allows the police to obtain blood and urine samples without a warrant whenever they have probable cause to believe that a motorist involved in an accident resulting in death or injury to another, is under the influence. The Appellate Court held that the statute is unconstitutional. Although the fact that chemicals dissipate in the human body can create exigency, the United States Supreme Court rejected a *per se* exigency exception for warrantless blood and urine tests in **Missouri v. McNeely**, 569 U.S. 141 (2013). Whether the exigency exception to the warrant requirement exists has always been analyzed on a case-by-case basis. In some situations the police will be able to

obtain a warrant in time, and therefore a *per se* rule would be a considerable over-generalization.

Here, the State did not show exigent circumstances, because the police took defendant into custody immediately after the offense, and kept him in an interview room for the next 4.5 hours without even trying to seek a warrant. Nor did the good faith exception apply where, although the Illinois Supreme Court in **People v. Jones**, 214 Ill. 2d 187 (2005) had previously upheld testing under the warrantless testing statute, that decision made clear that officers could not use physical force to obtain a sample, as was the case here. The results of the test would be inadmissible in defendant's retrial for murder, and his aggravated DUI conviction is reversed outright.

The dissent expressed skepticism of the statute's unconstitutionality, noting that a motorist engages in a privilege, not a right, to drive a car, and thereby subjects himself to the regulation of that privilege by the legislature. Regardless, the court would find that the police clearly could have obtained a warrant in this case, rendering the test results inadmissible. The court noted that suppression of the test results would have no effect on defendant's murder conviction given that whether intoxicated or not, defendant drove a van at a high rate of speed down a residential street and killed and maimed two pedestrians.

People v. Adams, 404 Ill.App.3d 405, 935 N.E.2d 693 (1st Dist. 2010) A statute comports with substantive due process where it bears a reasonable relationship to a public interest to be served and the means adopted are a reasonable method of accomplishing the desired objective.

The purpose of the armed habitual criminal statute, 720 ILCS 5/24-1.7, is to criminalize recidivist offenders who subsequently receive, possess, sell or transfer firearms and whose prior offenses are of a particular class or nature.

The court concluded that the purpose of the statute to deter and punish such offenders is effectively and reasonably achieved by the statute. The statute does not merely criminalize an offender's character or propensity to commit crimes. The statute requires proof of present conduct before the offender's prior offenses become relevant.

People v. Leroy, 357 Ill.App.3d 530, 828 N.E.2d 769 (5th Dist. 2005) 720 ILCS 5/11-9.4(b-5), which prohibits persons convicted of sex offenses against children from knowingly residing within 500 feet of a playground or facility providing programs or services exclusively directed towards persons under 18 years of age, but which excepts offenders who owned the property in question before the effective date of the statute, does not violate substantive due process, procedural due process, equal protection, the ex post facto clause, the right against self-incrimination, or the Eighth Amendment prohibition of cruel and unusual punishment. Also, the statute is not overly broad.

People v. Grant, 339 Ill.App.3d 792, 791 N.E.2d 100 (1st Dist. 2003) Aggravated unlawful use of a weapon statute (720 ILCS 5/24-1.6(a)(1)(3)(A)) does not violate due process because it does not require a culpable mental state, and therefore could result in the criminalization of innocent conduct. Aggravated UUW is committed when defendant knowingly carries in a vehicle an uncased, loaded and immediately accessible firearm. Thus, §24-1.6 expressly provides a mental state of knowledge.

Legislation which does not involve a fundamental constitutional right satisfies substantive due process where it bears a rational relationship to a legitimate state goal. §24-1.6 is rationally related to a legitimate state goal. The purpose of the aggravated UUW statute is to protect police officers and the general public by imposing a more harsh penalty

against persons who do not fall under any specific exemption to the UUW statute and who carry loaded weapons in the passenger compartment of a vehicle. The aggravated UUW statute is reasonably designed to achieve that purpose, and does not permit punishment of innocent conduct.

People v. Thoennes, 334 Ill.App.3d 320, 777 N.E.2d 1075 (4th Dist. 2002) 720 ILCS 5/32-5.1, which creates the offense of false impersonation of a peace officer where a person knowingly and falsely represents himself to be a peace officer of any jurisdiction, does not violate due process and is not overbroad.

The legislature has wide discretion to establish penalties for criminal offenses. Legislation which does not affect fundamental constitutional rights complies with substantive due process test if: (1) it bears a reasonable relationship to the public interest to be served, and (2) the means adopted are a reasonable method of accomplishing the desired objective.

Section 32-5.1 is intended to protect the public from being deceived into believing that an individual who falsely represents himself to be a peace officer has authority to act in an official capacity. The State has a legitimate interest in protecting the public in such circumstances, even if the individual has no criminal intent, because a person who knowingly and falsely represents himself to be a peace officer may create situations that endanger the public.

The statute does not allow innocent conduct to be punished. Because the crime requires that the perpetrator knowingly and falsely represent himself to be a peace officer, it does not apply to an actor or Halloween masquerader who has no intent to deceive the public.

People v. Stork, 305 Ill.App.3d 714, 713 N.E.2d 187 (2d Dist. 1999) 720 ILCS 5/11-9.3(a)(b), which prohibits a child sex offender from knowingly being present on school property or loitering on a public way within 500 feet of school property while persons under the age of 18 are present, unless the offender is the parent or guardian of a student on school property or has permission to be present, does not violate procedural or substantive due process.

People v. DePalma, 256 Ill.App.3d 206, 627 N.E.2d 1236 (2d Dist. 1994) 625 ILCS 5/4-103(a)(4) & (b), which prohibit the knowing possession of a vehicle on which the Vehicle Identification Number has been removed or altered, violates due process because it does not require that defendant act with a culpable mental state. Therefore, under **People v. Tolliver**, 147 Ill.2d 397, 589 N.E.2d 527 (1992), and **People v. Gean**, 143 Ill.2d 281, 573 N.E.2d 818 (1991), the statute should be read as requiring that defendant act with "criminal knowledge."

§47-3(b)(5)
Overbreadth/Sweeps in Innocent Conduct

United States Supreme Court

Grayned v. Rockford, 408 U.S. 104, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972) A statute which is clear and precise may be overbroad if it prohibits constitutionally protected conduct.

Cameron v. Johnson, 390 U.S. 611, 88 S.Ct. 1335, 20 L.Ed.2d 182 (1968) State statute making it a crime to picket in such a manner as to obstruct or unreasonably interfere with free ingress or egress to and from any courthouse or other public building is not so broad,

vague or indefinite as to be unconstitutional.

Illinois Supreme Court

People v. Ashley, 2020 IL 123989 Stalking under 720 ILCS 5/12-7.3(a), as amended in 2010, requires proof that defendant knowingly engaged in a course of conduct, which defendant knew or should have known would cause a reasonable person (1) to fear for her safety or (2) to suffer emotional distress. A "course of conduct" includes "threats." The Illinois Supreme Court held that, aside from the "should have known" provision, the statute does not violate the First Amendment right to free speech.

Defendant first argued that the statute is overbroad because it prohibits "threats" that cause "emotional distress," noting that some threats, including those to do lawful conduct, are not "true threats." The Supreme Court rejected the argument, holding that the legislature intended that the term "threatens" in subsection (c)(1) refers to "true threats" of unlawful violence such as bodily harm, sexual assault, confinement, and restraint, consistent with other provisions of the statute, subsections (a-3) and (a-5). As such, the term "threatens" falls outside the protection of the first amendment.

Defendant also argued that the "threatens" provision is unconstitutionally overbroad because it does not include the requisite mental state – specific intent – for a "true threat." The Supreme Court disagreed, finding that the State need only prove defendant was consciously aware of the threatening nature of his or her speech, and the awareness requirement can be satisfied by a statutory restriction that requires either an intentional or a knowing mental state. Here, section 12-7.3(a) specifically includes the knowing mental state in defining the offense of stalking.

Defendant next argued that the stalking statute is unconstitutionally overbroad where it allows conviction of a speaker who negligently conveys a message that a reasonable person would understand as threatening. According to defendant, the prohibition of speech that the defendant "should know" a reasonable person would interpret as a threat unconstitutionally chills protected speech. The Supreme Court agreed that application of the negligence standard would permit prosecution for protected speech that does not constitute a true threat. Accordingly, the court held that the "should know" portion of subsection (a) is overly broad and cannot be constitutionally applied with regard to a course of conduct that "threatens."

Defendant further claimed that subsection (a)(2) is unconstitutionally overbroad because it imposes an objective reasonable-person standard with respect to the impact of the threatening speech on the recipient. The court disagreed, finding the true threat exception is premised on the negative effects suffered by the recipient. Consequently, the assessment of whether speech constitutes a true threat mandates that the court consider the effect on the listener, and that application of the reasonable-person standard as to the harm caused by a true threat is not unconstitutionally overbroad.

Finally, defendant contended that the amended stalking statute violates substantive due process because it criminalizes a vast amount of innocent conduct that is unrelated to the statute's narrow purpose, is vague, and criminalizes speech that results in emotional distress not related to fear for personal safety. The court disagreed, noting it had already determined that the "threatens" provision relates only to intentionally or knowingly conveyed true threats of unlawful violence. Thus, the provision cannot be deemed as encompassing innocent conduct.

People v. Morger, 2019 IL 123643 Section 5-6-3(a)(8.9) of the Code of Corrections, requiring as a condition of probation that any sex offender refrain from accessing or using a social networking website, is overbroad and facially unconstitutional. Although **Packingham v. North Carolina**, 582 U.S. ___, 137 S. Ct. 1730 (2017), is factually distinguishable in that the social media ban in that case lasted throughout the defendant's post-custodial registration period, the Illinois Supreme Court found the principles espoused in **Packingham** more broadly applicable. In particular, the **Packingham** court made clear that social media is fundamental to freedom of speech, likening it to "the modern public square." Thus, even if the ban on social media is part of a probation sentence rather than a condition of registration, it cannot survive the intermediate scrutiny applicable to content-neutral speech restrictions.

To survive intermediate scrutiny, a law must be narrowly tailored to serve a significant governmental interest; it must not burden substantially more speech than is necessary to further the government's legitimate interests. Here, where the social media ban applies to offenders who, like the defendant here, did not use the internet to facilitate the offense, it is not sufficiently narrow. Nor does it serve the government interest of rehabilitation, as a social media ban will make it harder for an offender to reform. The legislature had alternative means to further its interest in protecting the public from offenders who use social media to facilitate their crimes, such as allowing for the ban to be imposed at the judge's discretion or prohibiting offenders from contacting minors using the internet.

People v. Austin, 2019 IL 123910 Nonconsensual dissemination of private sexual images statute [720 ILCS 5/11-23.5(b)] was upheld against constitutional challenges. The statute criminalizes the intentional dissemination of an image of another who is at least 18 years old, identifiable from the image or accompanying information, engaged in a sexual act or whose intimate parts are exposed, if the disseminator obtained the image under circumstances in which a reasonable person would know or understand that it was to remain private, and knew or should have known that the person in the image had not consented to its distribution.

The Supreme Court upheld the statute against a first amendment challenge. Sexual images do not fall within an established categorical exception to first amendment protection, and the court declined to recognize a new category of speech – that which invades privacy – as falling outside of first amendment protection. Thus, Section 11-23.5(b) implicates freedom of speech and first amendment scrutiny was warranted.

Intermediate scrutiny applies because the statute is a content-neutral restriction that regulates only private matters. While the statute restricts a specific category of speech (sexual images), it is content neutral because it is concerned not with the content of the image, but with whether the disseminator obtained it under circumstances which would lead a reasonable person to conclude that it was intended to remain private and that the person in the image had not consented to its dissemination. And, because the statute involves private images rather than public speech, first amendment protections are less rigorous.

The statute withstands intermediate scrutiny because it protects individual privacy rights and is designed to prevent significant harm to victims. And, the restriction is narrowly tailored to serve the interest in protecting privacy without burdening substantially more speech than necessary. The statute is targeted at private sexual images, and requires that the disseminator act intentionally and have reasonable awareness that the image was intended to remain private. For these same reasons, the statute is not facially overbroad.

People v. Clark, 2014 IL 115776 Generally, a party bringing a facial challenge to the constitutionality of a statute must show that there are no circumstances under which the statute would be valid. However, a statute which affects the First Amendment may be invalid as overbroad if, judged in relation to the statute's plainly legitimate sweep, a substantial number of its applications are unconstitutional. This expansive remedy is justified by the fear that the threat of enforcement of an overbroad law may deter or chill constitutionally protected speech, especially when the statute imposes criminal sanctions.

A "content-neutral" statute regulates speech without discrimination concerning the messenger or the content of the message. A content-neutral regulation satisfies First Amendment concerns if it advances important governmental interests that are unrelated to the suppression of free speech and does not substantially burden more speech than is necessary to further those interests.

The court concluded that the eavesdropping statute (720 ILCS 5/14–2(a)(1)(A)) advances the important governmental interest of protecting individuals from the surreptitious monitoring of their private conversations by the use of eavesdropping devices, but criminalizes an entire range of wholly innocent conduct because it prohibits the recording of any conversation absent consent from all parties even where it is clear that the parties had no expectation of privacy. Because §14–2(a)(1)(A) substantially burdens more speech than is necessary to serve the legitimate interests of the statute, the statute is unconstitutionally overbroad.

In re Lakisha M., 227 Ill.2d 259, 882 N.E.2d 570 (2008) 730 ILCS 5/5-4-3, which requires that juveniles who are found guilty of or given supervision for felony conduct are required to submit DNA samples for use in the state DNA database, is constitutional as applied to delinquent minors. The DNA collection statute is not overbroad. The overbreadth doctrine applies only to First Amendment constitutional challenges, not to Fourth Amendment challenges.

People v. Zaremba, 158 Ill.2d 36, 630 N.E.2d 797 (1994) 720 ILCS 5/16-1(a)(5) (theft of property represented by a law enforcement officer to have been stolen) violates due process. Because the statute does not require that defendant act with a culpable mental state, it can be applied to wholly innocent conduct.

People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461 (1992) Defendants, students at Western Illinois University, were charged under the hazing statute, which provides:

"Whoever shall engage in the practice of hazing in this state, whereby any one sustains an injury to his person therefrom, shall be guilty of a Class B misdemeanor. . . . The term "hazing" in this act shall be construed to mean any pastime or amusement, engaged in by students or other people in schools, academies, colleges, universities, or other educational institutions of this state, or by people connected with any of the public institutions of this state, whereby such pastime or amusement is had for the purpose of holding up any student, scholar or individual to ridicule for the pastime of others."

The information alleged that during an initiation ceremony for new members of the lacrosse club, an initiate died of alcohol poisoning.

The hazing statute was not overbroad because it could potentially be applied to speech protected by the First Amendment. Because the statute applies only to conduct which recklessly, knowingly or intentionally results in physical injury, it is not likely to be applied to protected speech.

Statute was not unconstitutionally vague for failing to give fair warning of the conduct

which is prohibited or for containing insufficient guidelines to prevent arbitrary enforcement. Even if there are hypothetical situations in which the statute might fail to give fair warning, it clearly applies to college students participating in initiation activities. There is also no chance that the statute will be arbitrarily enforced; even if a broad interpretation is given to the element that one must hold a person up "to ridicule for the pastime of others," the requirement of a physical injury narrows the range of cases to which the statute could apply.

People v. Heinrich, 104 Ill.2d 137, 470 N.E.2d 966 (1984) Criminal defamation statute upheld. The statute is not overly broad; it "applies only to those words which by their very utterance tend to incite an immediate breach of the peace." Further, "the guarantees of the first and fourteenth amendments have never required that truth be an absolute defense in a prosecution for criminal defamation of a private person."

Talsky v. Dept. of Registration, 68 Ill.2d 579, 370 N.E.2d 173 (1977) Ordinarily, a litigant is permitted to bring First Amendment overbreadth attacks against a statute without demonstrating that his particular conduct is protected. The rationale for this rule is to fully protect permissible speech that might otherwise be inhibited by an overbroad statute.

People v. Klick, 66 Ill.2d 269, 362 N.E.2d 329 (1977) Disorderly conduct statute prohibiting a person from making a telephone call with the intent to annoy is unconstitutionally overbroad. The statute is not limited to unreasonable conduct, but applies to conduct protected under the First Amendment. Compare, **People v. Parkins**, 77 Ill.2d 253, 396 N.E.2d 22 (1979) (harassment by telephone statute upheld; unlike the statute at issue in **Klick**, this statute requires intent to abuse, threaten or harass).

People v. Raby, 40 Ill.2d 392, 240 N.E.2d 595 (1968) The disorderly conduct statute is not vague or overbroad.

Illinois Appellate Court

People v. Barker, 2021 IL App (1st) 192588 The grooming statute, 720 ILCS 5/11-25, does not violate free speech rights under the First Amendment. There are categories of speech which are "of such slight social value" that they are unprotected. The grooming statute involves two of those categories, specifically incitement and speech integral to criminal conduct. The grooming statute criminalizes speech intended to solicit a child to engage in unlawful sexual conduct, thus it is rationally related to the government interest in preventing the sexual abuse of children and is facially constitutional.

The grooming statute was not unconstitutional as applied here, either. Defendant, a school employee, knowingly exchanged sexually explicit text messages with a minor student and in those messages expressed a desire to engage in sexual intercourse with the minor. This was not innocent behavior and is precisely the type of conduct the grooming statute was meant to criminalize.

People v. Galley, 2021 IL App (4th) 180142 730 ILCS 5/3-3-7(a)(7.12), which prohibits sex offenders on MSR from using social media, violates the First Amendment. In **People v. Morger**, 2019 IL 123643, the court struck down identical language in the probation statute. The rationale used by **Morger** applied equally in the MSR context. Probationers and parolees have traditionally been treated similarly for purposes of constitutional protections. As in

Morger, the statute cannot pass intermediate scrutiny because while it promotes a substantial government interest, it is not narrowly tailored.

People v. Paranto, 2020 IL App (3d) 160719 In assessing defendant's challenge to the constitutionality of the 2014 version of 625 ILCS 5/11-501(a)(6), the Appellate Court was bound to follow **People v. Fate**, 159 Ill. 2d 267 (1994), where the Illinois Supreme Court found the statute facially constitutional. The Appellate Court rejected defendant's argument that advances in scientific testing rendered her challenge a distinct issue from the challenge brought in 1994 in **Fate**.

The Appellate Court also held that even if **Fate** did not control, the record was inadequately developed to consider defendant's facial challenge here. While normally only an as-applied challenge requires that a factually-developed record be made below, the facial challenge here was dependent on evolutions in scientific testing which lacked evidentiary support in the record. On appeal, defendant could not rely on secondary sources as substantive evidence of necessary scientific facts to support her constitutional challenge.

People v. Minor, 2019 IL App (3d) 180171 Version of aggravated DUI statute making it illegal to drive with any amount of THC in the driver's blood, breath, or urine was not rendered unconstitutional by subsequent statutory amendments removing cannabis from the "any amount" section of the statute. The flat prohibition reflected the scientific limitations of the time and was reasonably related to the legitimate goal of preventing cannabis-impaired driving. By removing cannabis from the "any amount" section, the legislature signaled its recognition of technical advances and changing societal attitudes, but defendant's conviction under the prior version of the statute could stand.

People v. Farmer, 2011 IL App (1st) 083185 Generally, a person to whom a statute may be constitutionally applied is not allowed to challenge the statute solely on the ground that the statute could be applied unconstitutionally to another person in a different context. An exception exists in First Amendment cases where a statute may be challenged as overbroad due to the concern that constitutionally-protected activity may be deterred or chilled. This constitutional concern must be counterbalanced with the substantial social costs created by the overbreath doctrine when it blocks application of a law to unprotected speech. Thus a statute is overbroad only if it: (1) criminalizes a substantial amount of protected activity, relative to the law's plainly legitimate sweep; and (2) is not susceptible to a limiting construction that avoids constitutional problems.

Content-based speech restrictions are ordinarily subject to strict scrutiny. An exception to this rule is traditional categories of unprotected speech. False statements of fact are often at the heart of the traditional categories of unprotected speech, e.g., perjury. The First Amendment does, however, require that we protect some falsehoods in order to protect speech that matters. The State also has a compelling interest in safeguarding minors. Courts have upheld laws aimed at protecting minors even when they operate in the sensitive area of constitutionally-protected rights, including the right to free speech.

Defendant challenged the false personation of a parent/legal guardian statute as overbroad. False personation is committed when one "falsely represents himself or herself to be the parent, legal guardian, or other relation of a minor child to any public official, public employee, or elementary or secondary school employee or administrator." 720 ILCS 5/32-5.3 (2002). This statute is a content-based regulation of speech. Generally, family relationships are not a matter of public interest and concern. Many false statements of this

sort lack the element of private or public injury that accompanies traditionally unprotected categories of speech, and are innocently made.

Because the false personation statute does not specify a mental state, the court concluded that it could read a culpable mental state into the statute that would place a limiting construction on the statute and eliminate any constitutional concerns. Reading the statute to require that the false statement be made knowingly with the intent to deceive the relevant public official or employee would advance the State's interest in protecting minors while limiting the punishment of speech to cases where a person knowingly deceives a public official or employee to frustrate the operations of government in the protection of minors.

The court concluded that with that limiting construction, the false personation statute is not overbroad.

People v. Schmidt, 405 Ill.App.3d 474, 938 N.E.2d 559 (3d Dist. 2010) 720 ILCS 646/35, which prohibits a person from knowingly using or allowing the use of a vehicle, structure, real property or personal property within his control to commit a methamphetamine violation, does not violate due process. Furthermore, §35 is not unconstitutionally overbroad or vague.

The court rejected the argument that §35 is overbroad because it is impossible to violate the Methamphetamine Control and Community Protection Act without also committing unlawful use of property. Under U.S. Supreme Court precedent, an overbreadth argument rarely will succeed where the law in question does not specifically address speech or conduct necessarily associated with speech (such as picketing or demonstrating). (See **Virginia v. Hicks**, 539 U.S. 113 (2003)).

People v. Braddock, 348 Ill.App.3d 115, 809 N.E.2d 712 (1st Dist. 2004) 720 ILCS 5/11-14.1(a), which creates the offense of solicitation of sex acts, is not overbroad; it does not violate the First Amendment right to communicate. Generally, speech which is an integral part of unlawful conduct has no constitutional protection. Because the legislature has determined that offering money or items of value in exchange for sexual acts is unlawful, soliciting sexual acts in return for money is not protected by the First Amendment.

People v. Jamesson, 329 Ill.App.3d 446, 768 N.E.2d 817 (2d Dist. 2002) 720 ILCS 5/25-1.1, which creates the offense of unlawful contact with street gang members and defines the offense as knowingly having direct or indirect contact with a street gang member after having been sentenced to supervision, probation, or conditional discharge with a condition to refrain from such contact, is neither overbroad nor unconstitutionally vague. The statute is sufficiently definite to inform a person of ordinary intelligence of the prohibited conduct and prevent arbitrary and inconsistent enforcement.

People v. Blackwood, 131 Ill.App.3d 1018, 476 N.E.2d 742 (3d Dist. 1985) Criminal provisions of the Domestic Violence Act upheld. The statutory language is not so vague and overbroad that it chills certain constitutional rights.

§47-3(b)(6)
Vagueness

United States Supreme Court

Kolender v. Lawson, 461 U.S. 352, 103 S.Ct. 1855, 75 L.Ed.2d 903 (1983) State statute

which required persons stopped by police on "reasonable suspicion" to provide "credible and reliable" identification was unconstitutionally vague. It failed to describe with sufficient particularity what a suspect must do to satisfy the statute, thereby vesting "virtually complete discretion in the hands of the police to determine whether the suspect has satisfied the statute and must be permitted to go on his way in absence of probable cause to arrest."

Colautti v. Franklin, 439 U.S. 379, 99 S.Ct. 675, 58 L.Ed.2d 596 (1979) A criminal statute violates due process if it fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden, or if it is so indefinite that it encourages arbitrary arrests and convictions. See also**, Grayned v. Rockford**, 408 U.S. 104, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972) (discussion of the important values offended by vague statutes).

Wainwright v. Stone, 414 U.S. 21, 94 S.Ct. 190, 38 L.Ed.2d 179 (1973) State's felony sodomy statute, which uses "abominable and detestable crime against nature" language, is not unconstitutionally vague. Federal courts must determine vagueness in light of prior State constructions of the statute.

Papachristou v. Jacksonville, 405 U.S. 156, 92 S.Ct. 839, 31 L.Ed.2d 110 (1972) Vagrancy ordinance held unconstitutional for vagueness.

Palmer v. Euclid, 402 U.S. 544, 91 S.Ct. 1563, 29 L.Ed.2d 98 (1971) City "suspicious person" ordinance is unconstitutional as vague and lacking in ascertainable standards of guilt to give fair notice of forbidden conduct.

Coates v. Cincinnati, 402 U.S. 611, 91 S.Ct. 1686, 29 L.Ed.2d 214 (1971) City ordinance prohibiting three or more persons from assembling on sidewalks and conducting themselves in a manner annoying to persons passing by is unconstitutionally vague; ordinance subjects the right of assembly to an unascertainable standard and improperly punishes protected conduct. See also, **City of Chicago v. Morales**, 177 Ill.2d 440, 687 N.E.2d 53 (1997) (Chicago's "Gang Congregation Ordinance" held to be unconstitutionally vague and an arbitrary restriction on personal liberties).

Illinois Supreme Court

People v. Plank, 2018 IL 122202 The Vehicle Code's definition of "low-speed gas bicycle" satisfies due process. Although the definition is technical and it therefore may be difficult to determine whether a given gas bicycle fits the definition, it is in fact possible. An unconstitutionally vague statute has the opposite problem - its definition is not detailed enough to give fair warning that one's act might violate the law.

Wilson v. County of Cook, 2012 IL 112026 The Supreme Court reversed the trial court's dismissal of a challenge to the constitutionality of a Cook County ordinance banning assault weapons, and remanded the cause for further proceedings. In the course of its holding, the court rejected the plaintiff's argument that the ordinance is void for vagueness and violates equal protection.

The void for vagueness doctrine has two purposes: to provide persons of ordinary intelligence a reasonable opportunity to understand what conduct is prohibited, and to provide reasonable standards for enforcement in order to prevent arbitrary and discriminatory enforcement. The court concluded that the county ordinance is not

unconstitutionally vague, noting that the plaintiff's argument demonstrated that there is little question as to the scope of the ordinance.

The court also rejected the argument that the ordinance violates equal protection, finding that when read in its entirety the ordinance does not arbitrarily differentiate between two owners with similar firearms.

People v. Carpenter, 228 Ill.2d 250, 888 N.E.2d 105 (2008) 625 ILCS 5/12-612, which makes it unlawful to own or operate a motor vehicle which is known to contain "a false or secret compartment," violates due process.

People v. Einoder, 209 Ill.2d 443, 808 N.E.2d 517 (2004) A statute may be unconstitutionally vague either on its face or as applied to defendant's actions. Unless a statute implicates First Amendment protections, it may not be challenged on its face except where it is incapable of any valid application.

The trial court erred by finding that 415 ILCS 5/44(b)(1)(A), which creates the offense of criminal disposal of waste, was unconstitutionally vague on its face because the legislature did not sufficiently define certain terms. Because the statute does not affect First Amendment rights and defendants did not allege that it was incapable of any valid application, a facial challenge could not be raised.

A statute which does not involve First Amendment rights satisfies due process if it gives fair notice of the prohibited conduct and provides sufficiently definite standards to avoid arbitrary and capricious enforcement. Because the parties failed to present evidence whether the disputed statutory sections are vague as applied to defendant's alleged conduct, and the trial court did not rule on the validity of the statute as applied, the cause was remanded for an evidentiary hearing.

People v. Law, 202 Ill.2d 578, 782 N.E.2d 247 (2002) 235 ILCS 5/6-16(c), which created a Class A misdemeanor where a resident: (1) knowingly permitted a gathering at his or her residence, and (2) a person under the age of 21 illegally consumed alcohol and was permitted to leave in an intoxicated condition, was unconstitutionally vague on its face.

A statute which imposes an affirmative duty upon an individual to take action is unconstitutionally vague if it fails to give fair warning of the conduct required.

Section 6-16(c) fails to provide adequate notice of the steps to be taken to prevent an intoxicated minor from leaving a gathering. For example, the resident is not informed whether calling police or the minor's parents complies with the statute, or whether the minor must be forcibly detained.

Furthermore, a resident who physically detains an intoxicated minor could be charged with unlawful restraint, a Class 4 felony. If §6-16(c) is to be read as authorizing the commission of a criminal offense, the legislature must provide more explicit guidance.

Section 6-16(c) is unconstitutionally vague on its face, and not merely as applied, because the complete failure to define the actions required to comply with the statute forces "any person of common intelligence to speculate" as to its meaning, and precludes any set of circumstances in which the statute is not impermissibly vague.

People v. Izzo, 195 Ill.2d 109, 745 N.E.2d 548 (2001) 720 ILCS 5/21-6, which prohibits possessing or storing specified weapons "in any building or on land supported in whole or in part with public funds . . . without prior written permission from the chief security officer for such land or building," is not unconstitutionally vague for failing to define the phrase "chief security officer." Because there are circumstances in which citizens would be able to identify

the "chief security officer" of a public building, §21-6 is not unconstitutional on its face and must be considered within the factual context of the instant case.

Although none of the administrators or employees at defendant's school bore the specific title "chief security officer," a person of ordinary intelligence would understand that permission should be sought from "whoever had responsibility for overseeing security issues at the school." Furthermore, someone who was truly confused as to the identity of the chief security officer "could simply have gone into the school office and asked."

People v. Maness, 191 Ill.2d 478, 732 N.E.2d 545 (2000) 720 ILCS 150/5.1, which creates the offense of sexual abuse of a child where a parent or step-parent "knowingly allows or permits an act of criminal sexual abuse or criminal sexual assault . . . upon his or her child and fails to take reasonable steps to prevent its commission or future occurrences of such acts," is unconstitutionally vague. To satisfy constitutional concerns, a criminal statute must: (1) provide a person of ordinary intelligence a reasonable opportunity to distinguish between lawful and unlawful conduct, and (2) define the offense adequately to prevent arbitrary and discriminatory enforcement. Section 5.1 fails to satisfy either requirement. The statute does not specify what "reasonable steps" a parent must take in order to comply. In addition, §5.1 risks arbitrary and discriminatory enforcement; just as the statute does not set forth what "reasonable steps" a parent must take to avoid a criminal offense, it provides no guidelines for authorities to determine whether the statute has been violated.

People v. Falbe, 189 Ill.2d 635, 727 N.E.2d 200 (2000) 720 ILCS 570/401(c)(2), which enhances possession of cocaine with intent to deliver to a Class X felony where the offense occurs on a public way within 1,000 feet of a church, is not void for vagueness. The statute was reasonably designed to prohibit the presence of drug traffickers, and thus decrease the number of drug offenses, in areas where inhabitants are particularly vulnerable to criminal activity and "less able" to protect themselves. The legislature acted rationally by prohibiting all possession and manufacturing within the protected area, because "it follows logically that the presence of drug traffickers and quantities of drugs in these areas is likely to result in an increase of drug transactions with all their attendant evils."

People v. Conlan, 189 Ill.2d 286, 725 N.E.2d 1237 (2000) 625 ILCS 5/15-111, which regulates weights and loads of vehicles operating on Illinois highways, is not unconstitutionally vague because of its volume, number of exceptions, and frequent use of the phrase "provided that." The issue is "whether the statute is comprehensible such that it provides fair notice of what is prohibited." A person of ordinary intelligence would understand that the statute regulates weights and loads on Illinois highways, and the terminology chosen by the legislature is not so inconsistent or lacking in definition as to deny clear understanding.

People v. Hickman, 163 Ill.2d 250, 644 N.E.2d 1147 (1994) 720 ILCS 570/405.1(c), which provides that a person convicted of criminal drug conspiracy "may be fined or imprisoned or both not to exceed the maximum provided for the offense which is the object of the conspiracy," is not unconstitutionally vague because it fails to provide a minimum sentence. Due process requires only that citizens have fair notice of sentencing provisions, and not that every crime necessarily include a minimum sentence.

People v. Russell, 158 Ill.2d 22, 630 N.E.2d 794 (1994) Ch. 38, ¶12-16.2(a)(1) (720 ILCS 5/12-16.2(a)(1)), which provides that a carrier of the HIV virus commits a Class 2 felony by

knowingly transmitting the virus through intimate contact, neither violates the First Amendment right to free speech and association nor is unconstitutionally vague. The statute has no connection to free speech, the right to free association could not apply to these cases (in which the victim was unaware of defendant's HIV-positive status and the intimate contact was achieved through force), and the statute is sufficiently clear that a person of ordinary intelligence need not guess at its meaning.

People v. Fabing, 143 Ill.2d 48, 570 N.E.2d 329 (1991) Defendant was convicted of four counts of unlawful possession of a dangerous animal for possessing an alligator, a boa constrictor, and two pythons. The statute defines a "dangerous animal" as "any poisonous or life-threatening reptile." Defendant argued that the statute was unconstitutionally vague because there is no definition of the term "life-threatening."

The statute is not vague on its face. The term "life-threatening" is commonly understood to mean "that which might possibly attack humans, and which is reasonably capable of killing humans in the event of such an attack."

The statute is not unconstitutionally vague as applied to the pythons and alligator. Expert testimony showed that it is reasonably possible that the animals would attack humans, and they are reasonably capable of killing a human.

However, the statute was unconstitutionally vague as applied to possession of the boa constrictor, because experts disagreed about whether a seven-foot boa can be considered life-threatening. In light of the conflict in expert opinion, a person of common intelligence would be required to guess as to whether the statute applies.

People v. Taylor, 138 Ill.2d 204, 561 N.E.2d 667 (1990) Provision in the Wildlife Code which makes it a criminal offense to be "engaging in the business of taxidermy" without a license was upheld. The term "taxidermy" and the phrase "engaging in the business of taxidermy" are not unconstitutionally vague.

"[A] person should not be subjected to a penalty for certain conduct unless the words of the statute clearly describe the conduct prohibited. The requirement that laws not be vague furthers three important policies. First, laws should give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may fashion his conduct accordingly. Second, laws must provide explicit standards to prevent their arbitrary or discriminatory application by policemen, judges and juries. Finally, where first amendment freedoms of expression are involved, a statute should not be so vague that it chills the free exercise of those protected rights by creating fear that such conduct may fall within the statute's proscription."

A criminal statute need not contain definitions for each element of an offense. Rather, it is sufficient for a statute to "convey a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices."

People v. Jihan, 127 Ill.2d 379, 537 N.E.2d 751 (1989) The provisions of the Illinois Medical Practice Act which prohibit the unlicensed practice of "midwifery" are unconstitutionally vague; statutes do not provide sufficient notice of the conduct prohibited.

People v. Wawczak, 109 Ill.2d 244, 486 N.E.2d 911 (1985) Defendant was charged with a violation of Ch. 95½, ¶11-1003.1, which states:
"Notwithstanding other provisions of this Code or the provisions of any local ordinance, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian, or any person operating a bicycle or other device propelled by human power and shall give warning by

sounding the horn when necessary and shall exercise proper precaution upon observing any child or any obviously confused, incapacitated or intoxicated person."
The statute was not vague.
"When the statute here in question is read with reference to the judicial definition of 'due care' it is clear that the statute is not impermissibly vague. The statute makes it clear that drivers must attempt to avoid colliding with bicyclists and pedestrians, employing that degree of care which a reasonable person would have in the same situation. The fact that judges and juries might differ to some degree as to what care a reasonable person might employ does not make the standard a subjective one. A statute is not vague merely because it requires the trier of fact to determine a question of reasonableness."

People v. Bossie, 108 Ill.2d 236, 483 N.E.2d 1269 (1985) Public Demonstrations Law is unconstitutional because the phrase "principal law enforcement officer" is so vague that "men of common intelligence must necessarily guess at its meaning." Because the term "principal law enforcement officer" is used throughout the substantive provisions of the statute, "the entire statute is contaminated by unconstitutional vagueness."

People v. Carter, 97 Ill.2d 133, 454 N.E.2d 189 (1982) Franchise Disclosure Act, which permits the Attorney General to grant exemptions to the Act "if he finds that the enforcement of this Act is not necessary in the public interest," upheld. The phrase "in the public interest" is not an improper standard for delegation, but is an "intelligible standard which survives constitutional scrutiny." Conviction affirmed.

People v. Schwartz, 64 Ill.2d 275, 356 N.E.2d 8 (1976) A criminal statute violates due process if it fails to adequately give notice of the action or conduct that is proscribed. Impossible standards of specificity are not required.

A statute that is sufficient to withstand a vagueness attack may be impermissibly overbroad if it might reasonably be interpreted to prohibit conduct that is constitutionally protected.

People v. Pembrock, 62 Ill.2d 317, 342 N.E.2d 28 (1976) A statute is unconstitutionally vague if its terms are so ill defined that the ultimate decision as to its meaning rests upon the opinions and whims of the trier of fact, rather than upon any objective criteria or facts.

People v. Dednam, 55 Ill.2d 565, 304 N.E.2d 627 (1973) Due process is violated where a criminal statute fails to give adequate notice as to what action or conduct will subject one to criminal penalties. A statute is unconstitutional where it is so obscure that men of common intelligence must necessarily guess at its meaning and differ as to its applicability. The test is whether language conveys sufficiently definite warnings as to proscribed conduct when measured by common understanding and practices.

People v. Raby, 40 Ill.2d 392, 240 N.E.2d 595 (1968) The disorderly conduct statute is not vague or overbroad.

Illinois Appellate Court

People v. Zamora, 2020 IL App (1st) 172011 Police found 10 pit bulls at defendant's home. Three were caged in the yard, and the cages lacked solid floors, making it difficult for the dogs to walk. Four dogs in the basement were confined to boarded-off pens with chains around

their necks. Three puppies were in cages. The dogs' urine and feces had not been cleaned. Police also saw items that, in their experience, suggested training for dogfighting, including a spring and treadmill, though defendant stated he used the treadmill to exercise the dogs. The dogs did not appear to be injured or malnourished.

The Appellate Court found sufficient evidence of defendant's failure to provide humane care and treatment for his dogs, in violation of the Humane Care for Animals Act, 510 ILCS 70/3(a)(4). Section 3(a)(4) requires pet owners to provide "humane care and treatment." Because this phrase is undefined, courts use common sense in determining whether an animal was deprived of this entitlement. The fact-finder's assessment that these dogs were not humanely treated was supported by the evidence, including the floorless cages, dirty conditions, and heavy chains. Similarly, these facts supported a conviction under section 3.01 for cruelly treating, tormenting, or abusing the dogs.

The Appellate Court also rejected defendant's claim that section 3(a)(4) is unconstitutionally vague. Defendant could not show that section 3(a)(4)'s requirement of "humane care and treatment" fails to sufficiently enable a person of ordinary intelligence to understand what conduct the statute criminalizes. Nor could defendant show that the statutory language fails to provide police officers and the courts with an explicit standard.

People v. Collier, 2020 IL App (1st) 162519 The State charged defendant with animal cruelty under 50 ILCS 70/3.01(a). The statute provides that "[n]o person or owner may beat, cruelly treat, torment, starve, overwork or otherwise abuse any animal." Defendant argued that the State failed to prove him guilty beyond a reasonable doubt because the dogs were kept in a house, fed, and in good health. The court affirmed, finding that by keeping several dogs in a house without heat or running water, filled with urine and feces, keeping one dog chained outside in 15 degree weather, and by failing to properly feed, groom, or provide medical attention for the dogs, a rational trier of fact could find that defendant abused the animals.

Defendant further argued that the statute is unconstitutionally vague because it fails to provide a mental state and criminalizes innocent conduct. The court disagreed, holding that by limiting criminal liability to "cruel or abusive conduct," the legislature made clear that it was not criminalizing innocent conduct. Such language provides sufficient notice of prohibited conduct so as to prevent arbitrary enforcement. Also, when a statute lacks a specific mental state, a mental state of intent, knowledge, or recklessness is implied, and here the court chose to read a knowledge requirement into the statute. Because defendant's abuse of the animals was clearly done with knowledge, the court upheld the conviction.

People v. Felton, 2019 IL App (3d) 150595 The 25-years-to-life firearm enhancement {730 ILCS 5/5-8-4(c)(1)(D)] is not unconstitutionally vague because it allows the sentencing judge wide discretion in determining what length of enhancement to impose. While a specific list of criteria is not included in the statute, courts are implicitly required to consider the unique facts and circumstances of each case because the enhancement's imposition is limited to cases involving great bodily harm, permanent disability, permanent disfigurement, or death. And, consideration of the degree of injury is not an improper double enhancement because the legislature expressly intended that the sentencing court do so by enacting the firearm enhancements. In dissent, Justice McDade found the statute's failure to provide guidance to judges as to where in the range a particular sentence should fall renders the enhancement unconstitutionally vague.

People v. Kucharski, 2013 IL App (2d) 120270 The court rejected the argument that 720

ILCS 135/1-2(a)(2) is unconstitutionally vague and overbroad on its face. Section 1-2(a)(2) creates the offense of harassment through electronic communications for interrupting, "with the intent to harass, . . . the electronic communication service of any person."

A criminal law may be declared unconstitutionally vague because it fails to provide sufficient notice to enable a person of ordinary intelligence to understand what conduct is prohibited, or because it fails to provide sufficient standards to avoid arbitrary enforcement. To prevail on a vagueness challenge to a statute that does not infringe on First Amendment rights, the defendant must establish that the statute is vague as applied to the conduct for which he or she is being prosecuted. A statute that does not impact First Amendment rights will be declared unconstitutionally vague only if it is incapable of any valid application.

The court concluded that the harassment through electronic communication statute prohibits conduct rather than speech, and does not affect First Amendment rights. Therefore, the statute is not unconstitutional on its face. The court also rejected the argument that the statute is vague because the term "interrupt" is undefined, concluding that when the term is given its ordinary dictionary meaning the statute is sufficient to give adequate notice and prevent arbitrary enforcement.

The court also rejected the argument that the electronic harassment statute violates the First Amendment because it restricts speech that is merely "annoying." The court concluded that to come within the scope of the word "harass," the interruption must be made "with the intent to produce emotional distress or discomfort substantially greater than mere annoyance."

People v. Butler, 2013 IL App (1st) 120923 "If during the commission of the offense [of first-degree murder], the person personally discharged a firearm that proximately caused great bodily harm, permanent disability, permanent disfigurement, or death to another person, 25 years or up to a term of natural life shall be added to the term of imprisonment imposed by the court." 730 ILCS 5/5-8-1(a)(1)(d)(3).

A statute is unconstitutionally vague if the terms as so ill defined that the ultimate decision as to its meaning rests on the opinions and whims of the trier of fact rather than any objective criteria or facts. In the context of a vagueness challenge, due process is satisfied if: (1) the statute's prohibitions are sufficiently definite, when measured by common understanding and practices, to give a person of ordinary intelligence fair warning as to what conduct is prohibited; and (2) the statute provides sufficiently definite standards for law enforcement officers and triers of fact that its application does not depend merely on their private conceptions.

The firearm enhancement for first-degree murder provides sufficiently definite standards for its application by triers of fact to withstand a vagueness challenge, even though confusion could be avoided if the legislature provided more explicit guidance. While the enhancement provides for a wide range of sentences, the scope of the sentencing range is clear and definite. The court has no discretion whether to impose the enhancement. The standards for imposing the enhancement are clear. Depending on the injury caused by the firearm, the trial court exercises its discretion to impose a sentence in the 25-years-to-life range, allowing the trial court to engage in fact-based determinations based on the unique circumstances of each case.

The Appellate Court rejected the argument that because all defendants convicted of first-degree murder cause death, the injury standards of great bodily harm, permanent disability, permanent disfigurement, or death provide the court with no guidance. Situations could exist where the firearm would not be the proximate cause of death.

In re Omar M., 2012 IL App (1st) 100866 To survive a vagueness challenge, a law must provide people of ordinary intelligence with the opportunity to understand what conduct is prohibited, and it must provide a reasonable standard to law enforcement officials and to the judiciary to prevent arbitrary and discriminatory legal enforcement.

The EJJ statute explicitly provides that the minor may be required to serve the adult sentence if he violates the "conditions" of his sentence, and shall be required to serve the adult sentence if he commits a new "offense." Where the court orders provisions such as probation or drug counseling in addition to a juvenile detention term, those provisions are part of the EJJ prosecution "conditions." Where no provisions are imposed other than detention, the term "conditions" refers only to the minor's completion of the sentence and adherence to the Department of Corrections rules and regulations during that time. "Offense" is equally plain and unambiguous, meaning "criminal offense," or "all international, federal, or state offenses that are considered criminal within the State of Illinois." There is no precedent for finding a different vagueness standard for statutes related to juveniles.

Therefore, the EJJ statute is not unconstitutionally vague.

People v. Schmidt, 405 Ill.App.3d 474, 938 N.E.2d 559 (3d Dist. 2010) 720 ILCS 646/35, which prohibits a person from knowingly using or allowing the use of a vehicle, structure, real property or personal property within his control to commit a methamphetamine violation, does not violate due process. Furthermore, §35 is not unconstitutionally overbroad or vague.

The court rejected the argument that the statute is void for vagueness, finding that it is sufficiently clear to provide fair notice to a person with ordinary intelligence that using a vehicle to commit a methamphetamine crime constitutes the offense of unlawful use of property. In addition, the statute is not subject to arbitrary or discriminatory enforcement.

People v. Irvine, 379 Ill.App.3d 116, 882 N.E.2d 1124 (1st Dist. 2008) 720 ILCS 5/12-3.2 defines domestic battery as intentionally or knowingly causing bodily harm "to any family or household member," or making physical conduct of an insulting and provoking nature with a "family or household member." 725 ILCS 5/112A-3(3) defines the term "family or household member" as including "persons who have or have had a dating or engagement relationship."

Defendant and the complainant qualified as family members because they had dated for six weeks and continued to have sexual intercourse up until the date of the offense.

Section 12-3.2 is not unconstitutionally vague for failing to offer sufficient guidance as to what constitutes a "dating relationship" sufficient to fall within the purview of the domestic battery statute.

Defendant's vagueness argument previously was rejected by **People v. Wilson**, 214 Ill.2d 394, 827 N.E.2d 416 (2005), which found that the language of the domestic violence statute and definition of "family members" are sufficiently explicit to guide those who must comply with them. Therefore, the statutes are not unconstitutionally vague.

People v. Diestelhorst, 344 Ill.App.3d 1172, 801 N.E.2d 1146 (5th Dist. 2003) 720 ILCS 5/11-9.4(a), which prohibits a child sex offender from approaching, contacting or communicating with a child under the age of 18 unless the offender is a parent or guardian of the person in question, is neither a violation of substantive due process nor unconstitutionally vague.

People v. Nelson, 336 Ill.App.3d 517, 784 N.E.2d 379 (3d Dist. 2003) 720 ILCS 5/16-1(a)(4)(A), which prohibits a person from knowingly obtaining control over stolen property

"under such circumstances as would reasonably induce him to believe that the property was stolen" and with the intent to permanently deprive the owner of the use or benefit of the property, is not unconstitutionally vague.

Here, defendant bought electronic items worth at least $1,250 for $380, the purchase was made on the street at 4 a.m., and the seller refused to provide a receipt. A person of ordinary intelligence presented with the opportunity to purchase items under these circumstances would have reason to believe that the merchandise had been stolen.

People v. Jamesson, 329 Ill.App.3d 446, 768 N.E.2d 817 (2d Dist. 2002) 720 ILCS 5/25-1.1, which creates the offense of unlawful contact with street gang members and defines the offense as knowingly having direct or indirect contact with a street gang member after having been sentenced to supervision, probation, or conditional discharge with a condition to refrain from such contact, is neither overbroad nor unconstitutionally vague. The statute is sufficiently definite to inform a person of ordinary intelligence of the prohibited conduct and prevent arbitrary and inconsistent enforcement.

People v. Stork, 305 Ill.App.3d 714, 713 N.E.2d 187 (2d Dist. 1999) 720 ILCS 5/11-9.3, which prohibits a child sex offender from knowingly being present on school property or loitering on a public way within 500 feet of school property while persons under the age of 18 are present, unless the offender is the parent or guardian of a student on school property or has permission to be present, is not unconstitutionally vague.

People v. Selby, 298 Ill.App.3d 605, 698 N.E.2d 1102 (4th Dist. 1998) 720 ILCS 5/33-3(b)(c), which defines the offense of official misconduct, is not unconstitutionally vague as applied to correctional officers who allegedly engaged in intercourse with DOC inmates in violation of DOC rules prohibiting "socializing" between inmates and officers. Even if consensual sexual relations are protected by the First Amendment and defendants could therefore challenge such rules on their face, the ordinary and popularly understood meaning of the terms "socializing" and "socialize" place DOC employees on notice that they may not develop and engage in "close personal relations with prison inmates" except to the extent necessary to perform job-related functions and where the relationship is approved by the DOC director.

People v. Parker, 277 Ill.App.3d 585, 660 N.E.2d 1296 (4th Dist. 1996) 720 ILCS 570/406.1, (permitting unlawful use of a building), is not unconstitutional. Statute provides that a person commits the offense of permitting unlawful use of a building where he or she knowingly "grants, permits, or makes the building available for use" in unlawfully manufacturing or delivering a controlled substance.

The statute is not vague because it fails to define the term "controlled" or the phrase "grants, permits or makes the building available for use." Furthermore, because the statute requires defendant's actions to be performed "knowingly," it could not be applied to persons who do not have criminal intent.

People v. Townsend, 275 Ill.App.3d 413, 654 N.E.2d 1096 (2d Dist. 1995) 720 ILCS 5/24-1.2(a)(2), which creates a Class 1 felony for knowingly or intentionally discharging a firearm "in the direction" of another person or an occupied vehicle, was upheld against vagueness and due process challenges. Defendant lacked standing to raise the vagueness issue because, whether or not the statute might be vague under other circumstances, it clearly prohibited defendant's act of senselessly firing a handgun directly at another person.

Also, there was a rational basis for the legislature to conclude that the act of

discharging a firearm is a sufficiently serious offense to justify classification as a Class 1 felony, though aggravated assault is only a Class 4 felony. The elements of the two offenses are not identical, and aggravated discharge of a firearm is not a less serious offense than aggravated assault.

People v. Simpson, 268 Ill.App.3d 305, 643 N.E.2d 1262 (1st Dist. 1994) The financial exploitation of a disabled person statute (720 ILCS 5/16-1.3(a)) is not unconstitutionally vague. First, because knowledge of the victim's medical condition is immaterial to whether an offense is committed, the statute does not fail to give adequate notice of the type of conduct that is prohibited.

Furthermore, because the statute does not involve First Amendment rights, defendant could challenge its constitutionality only as it related to his own acts. Whatever notice problems might exist under other circumstances, defendant was clearly aware of the complainant's condition since he knew she had a disability requiring the use of a wheelchair and that her income consisted solely of disability checks, and because he had been her financial advisor for more than five years.

People v. Blackwood, 131 Ill.App.3d 1018, 476 N.E.2d 742 (3d Dist. 1985) Criminal provisions of the Domestic Violence Act upheld. The statutory language is not so vague and overbroad that it chills certain constitutional rights.

§47-3(b)(7)
Illinois Constitution

§47-3(b)(7)(a)
Separation of Powers

Illinois Supreme Court

People v. Peterson, 2017 IL 120331 The separation of powers doctrine of the Illinois Constitution provides that the legislative, executive and judicial branches are separate and that no branch shall exercise powers properly belonging to another. Thus, each branch of government has its own unique sphere of authority. The judicial article of the Illinois Constitution vests the Supreme Court with general administrative and supervisory authority over all courts, empowering it to promulgate procedural rules to facilitate the judiciary in the discharge of its constitutional duties, including authority to regulate the trial of cases and govern the admission of evidence.

The separation of powers doctrine does not require a complete divorce between the branches of government, however. Thus, although the Supreme Court is empowered to promulgate rules governing admission of evidence at trial, the General Assembly may legislate in this area without offending the separation of powers doctrine so long as legislative enactments do not create an irreconcilable conflict with a court rule. Where an irreconcilable conflict exists, the court rule prevails.

The court concluded that 725 ILCS 5/115-10.6 and Rule of Evidence 804(b)(5) contain an irreconcilable conflict, and that the statute must therefore give way to Rule 804(b)(5). The court noted that §115-10.6 contains additional criteria for admission of hearsay which diminish the equitable considerations at the center of the forfeiture by wrongdoing doctrine codified by Illinois Rule of Evidence Rule 804(b)(5).

In re Derrico G., 2014 IL 114463 Under §5-615 of the Juvenile Court Act, the State may object to the entry of an order of continuance under supervision in a juvenile case. 705 ILCS 405/5-615. The circuit court held that this statutory provision was unconstitutional both facially and as applied. The Illinois Supreme Court reversed the circuit court's ruling, holding that the statute was neither facially unconstitutional nor as applied to defendant.

The separation of powers clause of the Illinois Constitution provides that none of the three branches of government "shall exercise powers properly belonging to another." Ill. Const. 1970 art. II, §1. The purpose of this provision is to ensure that the whole power of more than one branch does not reside in the same hands. But the provision was not designed to achieve a complete divorce among the three branches, and it does not divide governmental powers into rigid, mutually exclusive compartments. The three branches are parts of a single operating government and there will be areas where their functions overlap. As such, the separation of powers clause was not designed to effect a complete divorce between the branches.

The defendant argued that the prosecution's discretion to object to supervision infringed on the circuit court's sentencing authority. The Supreme Court rejected this argument, noting that it had previously decided that a statute which allowed prosecutors to decide when a juvenile would be subjected to prosecution as an adult did not violate separation of powers even though the statute gave the prosecution significant discretion to dictate the range of penalties to which a juvenile would be subject. The discretionary authority afforded the prosecution by §5-615 "pales by comparison."

Furthermore, under the version of the statute in effect here, the court may only continue the case under supervision before proceeding to adjudication. Thus, the State's objection must also occur before adjudication. Because defendant had not been adjudicated when the State objected and sentencing was not an issue, the State did not infringe on the court's right to impose sentence.

The dissent would have held that as applied to this case, §5-615 violated the separation of powers clause. The circuit court had already accepted defendant's guilty plea when it continued the case under supervision. Although the circuit court did not enter a finding of guilt, the acceptance of the guilty plea was itself a conviction. Conviction marks the traditional boundary beyond which the State's constitutionally permissible role in decisions affecting sentencing comes to an end. Accordingly, the State's objection to supervision violated the separation of powers doctrine.

People v. Hammond & Alberty, 2011 IL 110044 A probation officer has authority to file a petition charging a violation of a condition of probation. Therefore, no separation of powers violation occurred where the probation officer filed a petition informing the trial court and prosecutor of a probation violation and asking the judge to determine whether probation should be revoked and a different sentence imposed. Although the probation officer has discretion to file a petition concerning a probation violation, the court acknowledged that the authority to proceed with or dismiss the petition rests with the State's Attorney, who has the burden to prove the violation in a contested case.

Under 730 ILCS 5/5-6-1(i), a probation officer may, with the concurrence of his or her supervisor, offer intermediate sanctions for probation violations. In addition, 730 ILCS 5/5-6-1 requires the Chief Judge of each circuit to adopt a system of structured, intermediate sanctions for probation violations. Once intermediate sanctions are completed, probation may not be revoked for the same violation.

The court concluded that §5/5-6-1 does not violate the separation of powers doctrine despite the fact that the State's Attorney does not have veto power over the probation officer's

decision to offer intermediate sanctions. Section 5-6-4 adopts a diversionary procedure intended to avoid revocation and the attendant costs to the criminal justice system. Thus, §5-6-4 represents the legislature's definition, as an exercise of its power to define crimes and sentences, of the circumstances in which revocation can be sought. Such action by the legislature does not implicate powers of the executive branch.

No separation of powers violation occurred although the local court rules in question here required, as a default, that probation officers offer intermediate sanctions for probation violations unless the failure to do so can be justified to the trial judge. Such rules merely structure the probation officer's exercise of discretion, and do not infringe on any power of the executive branch.

People v. Izzo, 195 Ill.2d 109, 745 N.E.2d 548 (2001) 720 ILCS 5/21-6, which prohibits possessing or storing specified weapons "in any building or on land supported in whole or in part with public funds . . . without prior written permission from the chief security officer for such land or building," does not violate the separation of powers doctrine because it authorizes a party other than the State's Attorney to bring, modify, or dismiss criminal charges. Although chief security officers may give permission to store or possess weapons on public property, the ability to prosecute persons for failing to obey the statute rests solely with the State's Attorney.

Further, no separation of powers problem would be created even if §21-6 could be construed as shifting part of the prosecutorial power from the State's Attorney to another set of government officials; the powers and duties of State's Attorneys are defined by statute, and can therefore be revised by statutory amendment, and §21-6 does not purport to transfer prosecutorial power from the executive branch to the judiciary or legislative branches.

People v. Jung, 192 Ill.2d 1, 733 N.E.2d 1256 (2000) The separation of powers doctrine is not violated by 625 ILCS 5/11-501.4-1, which allows medical personnel to release to law enforcement officials the results of physician-ordered blood or urine tests conducted during emergency treatment for injuries resulting from a motor vehicle accident.

Murneigh v. Gainer, 177 Ill.2d 287, 685 N.E.2d 1357 (1997) Statutes which: (1) require courts to enter administrative orders mandating that previously-convicted DOC inmates provide blood samples for the purpose of developing a DNA database, and (2) provide that the deliberate refusal to give a blood sample "shall" be punishable as contempt of court, violate the separation of powers doctrine. The court system may not be required to exercise uniquely executive functions or to fulfill ministerial or administrative duties. Furthermore, because the contempt power is inherent in the judiciary, the legislature may not require judges to exercise the contempt authority under certain circumstances or in a particular manner.

People v. Bailey, 167 Ill.2d 210, 657 N.E.2d 953 (1995) The "no bail" provision for stalking and aggravated stalking violates neither the Illinois Constitution nor the separation of powers doctrine.

People v. Williams, 124 Ill.2d 300, 529 N.E.2d 558 (1988) Statute which gives the State the right to a substitution of judge was upheld. Statute does not conflict with Supreme Court Rules and does not unduly encroach upon the inherent powers of the judiciary. Rather, it only peripherally affects the role of the judiciary and does not violate separation of powers.

People v. Joseph, 113 Ill.2d 36, 495 N.E.2d 501 (1986) Statute requiring that Post-Conviction Hearing Act proceedings be conducted "by a judge who was not involved in the original proceeding which resulted in conviction," is unconstitutional as a violation of the separation of powers provision of the Illinois Constitution. The statute unduly encroaches on the court's administrative and supervisory authority and conflicts with Supreme Court Rule 21(b), which gives the chief judge of each circuit the authority to issue "orders providing for assignment of judges."

Though the separation of powers provision does not contemplate "rigidly separated compartments," if a "power is judicial in character, the legislature is expressly prohibited from exercising it." The administration of the judicial system is "an element of the 'judicial power' exclusively conferred on the courts."

In "an area into which it is arguable that the 'judicial power' extends," however, the legislature is not excluded "from acting in any way which may have a peripheral effect on judicial administration."

O'Connell v. St. Francis, 112 Ill.2d 273, 492 N.E.2d 1322 (1986) Statutes that precluded the trial judge from ruling on motions to dismiss unduly infringed on judicial power.

People v. Flores, 104 Ill.2d 40, 470 N.E.2d 307 (1984) A statute which mandates how long a trial judge must wait before proceeding with a trial in absentia, after defendant willfully absented himself during trial, would improperly infringe upon the judge's authority to control his docket. "Each judge in Illinois is responsible for the efficient and expeditious handling of all matters assigned to him or her." Statute which required a two-day wait before a trial in absentia may proceed was held to be permissive rather than mandatory.

People v. Taylor, 102 Ill.2d 201, 464 N.E.2d 1059 (1984) Statute which requires the imposition of a natural life sentence upon conviction for murdering more than one person does not violate separation of powers. It is within the legislature's power to fix punishments for crimes; thus, the legislature necessarily has power to limit the discretion of courts in imposing sentences. See also, People v. Harmison, 108 Ill.2d 197, 483 N.E.2d 508 (1985) (mandatory "street value" fines in drug cases do not violate separation of powers).

People v Rolfingsmeyer, 101 Ill.2d 437, 461 N.E.2d 410 (1984) Statute which provides that a person's refusal to submit to a breath test shall be admissible at his trial does not violate the separation of powers clause. The legislature "has the power to prescribe new and alter existing rules of evidence or to prescribe methods of proof."

People ex rel. Daley v. Moran, 94 Ill.2d 41, 445 N.E.2d 270 (1983) The State's Attorney is vested with "exclusive discretion in the initiation and management of a criminal prosecution," which includes "the decision whether to prosecute at all, as well as to choose which of several charges shall be brought." A trial judge may not determine which offense shall be charged, may not direct that an information be filed over the State's objection, and may not accept a guilty plea on such an information. See also, **People ex rel. Daley v. Suria**, 112 Ill.2d 26, 490 N.E.2d 1288 (1986) (if judge is not satisfied with factual basis for guilty plea, he may only refuse to accept the plea; he may not enter conviction on a lesser included offense); **People v. Deems**, 81 Ill.2d 384, 410 N.E.2d 8 (1980) (improper for judge to deny State's motion to dismiss charge, call the case to trial, and then enter "acquittal").

People v. Davis, 93 Ill.2d 155, 442 N.E.2d 855 (1982) Statutes which provide for a judge to state the reasons for a sentence on the record are directory rather than mandatory. A statute which places a mandatory requirement on a judge to state reasons for the sentence would be an improper infringement upon an exclusive judicial function.

People v. Van Cleve, 89 Ill.2d 298, 432 N.E.2d 837 (1982) Trial judge has the authority to enter a judgment of acquittal notwithstanding the verdict, though the criminal code does not provide express authorization.

People ex rel. Carey v. Bentivenga, 83 Ill.2d 537, 416 N.E.2d 259 (1981) A judge does not have authority to impose a sentence which is not authorized by statute.

People v. Youngbey, 82 Ill.2d 556, 413 N.E.2d 416 (1980) Statute which requires a presentence report in felony cases does not improperly encroach upon the judicial power.

People v. Cox, 82 Ill.2d 268, 412 N.E.2d 541 (1980) The separation of powers doctrine was violated by statute, which altered the standard for appellate review of sentences to a "rebuttable presumption" (rather than "abuse of discretion") and allowed appellate courts to reduce an imprisonment sentence to probation was held invalid. The provision was "in direct conflict with the decisions of this court which have interpreted the scope of Supreme Court Rule 615(b)(4)."

People v. Flatt, 82 Ill.2d 250, 412 N.E.2d 509 (1980) The Supreme Court has the authority to provide for appeals from other than final orders, and a statute which purports to authorize such appeals (such as an appeal from an order entered during trial) would be invalid.

People ex rel. Carey v. Cousins, 77 Ill.2d 531, 397 N.E.2d 809 (1979) The death penalty statute, which provides that a death penalty hearing shall be held "where requested by the State," does not violate the separation of powers doctrine.

Roth v. Yackley, 77 Ill.2d 423, 396 N.E.2d 520 (1979) Where the legislature amends a statute that has been construed by the Court, that amendment may only be applied prospectively from its effective date. An attempt to apply such an amendment retroactively, to annul or overrule the Court's decision, would violate the separation of powers doctrine.

People v. Jackson, 69 Ill.2d 252, 371 N.E.2d 602 (1977) Statute which gives counsel the right to conduct voir dire examination conflicts with Supreme Court Rule 234 and is void as a legislative infringement on the judicial power.

People v. Lawson, 67 Ill.2d 449, 367 N.E.2d 1244 (1977) Trial judge has the inherent authority to dismiss an indictment where there has been a clear denial of due process. Trial judge has the "inherent authority to insure the defendant a fair trial and may impose sanctions to do so."

People v. Phillips, 66 Ill.2d 412, 362 N.E.2d 1037 (1977) A statute that requires the consent of a probation officer before defendant who is on probation and charged with an offense is eligible for drug abuse treatment "does not infringe upon the court's constitutional right to impose sentence."

People ex rel. Stamos v. Jones, 40 Ill.2d 62, 237 N.E.2d 495 (1968) The separation of powers doctrine was violated by a statute which provided that a person convicted of a forcible felony shall not be admitted to bail on appeal. The constitution "has placed responsibility for rules governing appeal in the Supreme Court, and not in the General Assembly."

Illinois Appellate Court

People v. Mayfield, 2021 IL App (2d) 200603 In the April 2020, the Illinois Supreme Court responded to the Covid-19 pandemic by issuing a series of orders authorizing trial courts to cease operations until safe to do so. The Supreme Court also tolled the Speedy Trial Act for any delays occasioned by its orders. Defendant alleged that the Supreme Court's orders infringed on the legislative branch, by ignoring a statute which had no exceptions or exemptions, and therefore violated the separation of powers doctrine of the Illinois Constitution.

The appellate court disagreed. The scheduling of criminal trials is a matter of procedure within the Supreme Court's primary constitutional authority. **Kunkel v. Walton**, 179 Ill. 2d 519 (1997). When the court takes action under its primary constitutional authority, its orders must prevail over a legislative act.

People v. Bond, 405 Ill.App.3d 499, 942 N.E.2d 585 (4th Dist. 2010) Under **People v. Montgomery**, 47 Ill.2d 510, 268 N.E.2d 695 (1971), juvenile adjudications are inadmissible to impeach the accused in a criminal case. The court concluded that **Montgomery** remains the law in Illinois, and that 705 ILCS 405/5-150(1)(c), which provides that the defendant in criminal cases may be impeached with juvenile adjudications "pursuant to the rules of evidence for criminal trials," is consistent with **Montgomery** because it allows impeachment with juvenile adjudications only when permitted by the rules of evidence, which include the **Montgomery** doctrine.

In the course of its holding, the court stated that a statute which conflicts with a rule of evidence adopted by the Illinois Supreme Court is void under the separation of powers doctrine. "Where our supreme court has specifically directed the trial courts to follow a particular rule, the legislature is not free to direct the trial courts otherwise."

People v. Hammond, Gaither, & Donahue, 397 Ill.App.3d 342, 925 N.E.2d 1185 (4th Dist. 2009) 730 ILCS 5/5-6-4(i), which authorizes a probation officer to offer intermediate sanctions for technical probation violations and precludes the trial court from revoking probation or imposing additional sanctions upon successful completion of the intermediate sanctions, does not violate the separate of powers doctrine.

People v. Gray, 363 Ill.App.3d 897, 845 N.E.2d 113 (4th Dist. 2006) 730 ILCS 5/5-4-1(b), which provides that upon revocation of probation the judge who presided at the trial or accepted the guilty plea shall impose the new sentence unless he or she is no longer sitting as a trial judge, is directory rather than mandatory. A legislative attempt to mandate which judge should sentence a particular defendant conflicts with both "the judiciary's administrative power to assign cases and impose a sentence" and with Supreme Court Rule 21(b), which provides for the assignment of judges. Because §5-4-1(b) would violate the separation-of-powers doctrine if it imposed a mandatory duty, the word "shall" should be construed as directory only.

People v. Sawczenko-Dub, 345 Ill.App.3d 522, 803 N.E.2d 62 (1st Dist. 2003) The 25-year to life enhancement for first degree murder based on the personal discharge of a firearm does not violate the separation of powers doctrine, double jeopardy, or the rule against double enhancement.

§47-3(b)(7)(b)
Proportionate Penalties

Illinois Supreme Court

People v. House, 2021 IL 125124 Defendant filed a post-conviction petition, alleging: (1) a constitutional challenge to his natural life sentence, imposed for a crime committed at age 19; and (2) actual innocence. The petition was dismissed at the second stage. After the Appellate Court found the sentence violated the proportionate penalties clause and ordered a new sentencing hearing, the Supreme Court vacated the opinion and ordered reconsideration in light of **People v. Harris**, 2018 IL 121932. After considering **Harris**, the Appellate Court found it distinguishable and again remanded for a new sentencing hearing. The State appealed.

The Supreme Court reversed the Appellate Court but remanded the case for second-stage proceedings. First, the Appellate Court's finding of a proportionate penalties violation ran afoul **Harris**, which held that a finding that a statute is unconstitutional as applied can take place only after an evidentiary hearing. Here, as in **Harris**, defendant's petition did not contain any evidence in support of his claim that the evolving science on juvenile maturity and brain development applied to him. Thus, the trial court could not make the factual findings necessary to determine whether he, as a 19 year-old, would be entitled to constitutional protections normally reserved for juveniles. The Appellate Court's belief that the **Harris** holding was limited to as-applied claims on direct review ignores the fact that the key to such claims is the factual development, not procedural posture. The court remanded for new second-stage proceedings to allow defendant to develop the record.

Second, with regard to the actual innocence claim, defendant was entitled to new second stage proceedings because the law has changed since dismissal of his petition. The actual innocence claim was supported by a recantation affidavit. The appellate court affirmed the second-stage dismissal in 2015. Since then, the Supreme Court decided **People v. Robinson**, 2020 IL 123849, which clarified the standards for reviewing actual innocence claims, and **People v. Sanders**, 2016 IL 118123, which reviewed an actual innocence claim premised on recantation. In light of these cases, the State conceded, and the Supreme Court agreed, that new second-stage proceedings were required. Although defendant requested remand to the third-stage due to the improper second-stage dismissal, the court disagreed, as defendant had yet to meet the substantial showing standard that would entitle him to an evidentiary hearing.

Three justices partially dissented, and would have affirmed the dismissal of the proportionate penalties claim without remand for new proceedings. In her own special concurrence/partial dissent, C.J. Burke found that defendant's claim is a facial challenge, where it argues that the statutory scheme requiring a mandatory life sentence precluded the consideration of potentially mitigating circumstances. Such a challenge must fail where the legislature appropriately followed the **Miller** line of cases and drew the line at age 18.

J. Burke and J. Overstreet would have affirmed both because defendant had one opportunity to support his as-applied challenge and failed to do so, and because the determination of a sentencing line between juveniles and adults for mandatory life

sentencing is best set as a matter of policy by the legislative branch. These justices noted that even after **Miller**, in 2019, the legislature provided parole review for certain crimes committed by those under 21 but excluded parole review for those like defendant who were subject to mandatory life sentences.

People v. Blair, 2013 IL 114122 When a statute is held facially unconstitutional, *i.e.*, unconstitutional in all its applications, it is said to be void *ab initio*. Such a declaration by a court cannot, within the strictures of the separation of powers clause, repeal or otherwise render the statute nonexistent. Rather, the statute is only considered unconstitutional from the moment of its enactment, and therefore unenforceable, but it remains on the statute books.

Ordinarily, the only way that the legislature may then remedy the statute's infirmity is by amending or reenacting the statute that was held unconstitutional. This is not the only recourse, however, when the infirmity in the statute is that it violates the proportionate penalties clause under the identical elements test. In that case, the proportionality violation arises out of the relationship of two statutes – the challenged statute and the comparison statute. To cure the infirmity, the legislature may amend the challenged statute, the comparison statute, or both.

In **People v. Hauschild**, 226 Ill. 2d 63, 871 N.E.2d 1 (2007), the court held that the sentence for armed robbery while armed with a firearm, which included a 15-year mandatory enhancement, violated the proportionate penalties clause because it was more severe than the penalty for the identical offense of armed violence based on robbery with a category I or II weapon. The legislature's subsequent enactment of P.A. 95-688 (eff. 10/23/07), which amended the armed violence statute to eliminate robbery as a predicate offense, remedied the disproportionality and revived the sentencing enhancement for armed robbery.

People v. Boeckmann & Maschhoff, 238 Ill.2d 1, 932 N.E.2d 998 (2010) 625 ILCS 5/6-206(a)(43), which requires the suspension of driving privileges for three months where supervision is ordered for the offense of unlawful consumption of alcohol while under the age of 21, satisfies due process.

A driver's license is a non-fundamental property interest. A statute which does not impact a fundamental constitutional right violates due process only if there is no rational relationship between the statute and a legitimate legislative purpose, or if the statute is arbitrary or discriminatory. In applying the rational basis test, a reviewing court must first identify the public interest the statute is intended to protect. The court must then determine whether the statute bears a rational relationship to that interest, and whether the method chosen by the legislature to further that interest is reasonable. Legislation should be upheld against a due process challenge if there is any conceivable basis for a finding that the statute is rationally related to a legitimate State interest.

The court identified the public interest protected by §6-206(a)(43) as furthering the safe and legal operation and ownership of motor vehicles. The court concluded that suspending the driving privileges of underage persons who receive court supervision for illegal consumption of alcohol is rationally related to this interest because the legislature could have concluded that an underage person who consumes alcohol illegally "may take the additional step of driving after consuming alcohol." Because the legislature could have determined that underage drinkers are likely to drive while unfit to do so, suspending the driving privileges of underage drinkers is a reasonable method of protecting the public interest in promoting the safe and legal operation of motor vehicles.

Additionally, the court rejected the argument that the proportionate penalties clause is violated by suspending driving privileges for the underage consumption of alcohol. The proportionate penalties clause applies only to direct action by the government which inflicts punishment on a citizen. Because the legislative purpose of §6-206(a)(43) is to promote the safe and legal operation and ownership of motor vehicles, the statute does not have a punitive purpose. Therefore, the proportionate penalties clause does not apply.

People v. Bryant, 128 Ill.2d 448, 539 N.E.2d 1221 (1989) Possession of stolen motor vehicle statute does not violate due process and proportionate penalties because it punishes possession of a stolen motor vehicle as a Class 2 felony while the offense of theft is punished as a Class 3 felony.

Illinois Appellate Court

People v. Lewis, 2016 IL App (4th) 140852 Defendant was convicted under section 120(a) of the Methamphetamine Control and Community Protection Act (MCCPA) which prohibits a person with a prior conviction under the MCCPA from purchasing or possessing a methamphetamine (meth) precursor (such as pseudoephedrine) without a prescription. Defendant argued that the MCCPA (1) violates due process by punishing wholly innocent conduct and (2) violates due process, equal protection, and the proportionate penalties clause because a violation of the MCCPA is a felony, while a violation of the Methamphetamine Precursor Act (MPA) which involves similar or less culpable conduct is only a misdemeanor. The court rejected these arguments and upheld the constitutional validity of the MCCPA.

A statute may violate the proportionate penalties clause (Ill. Const. 1970, art. I, §11), where it contains a penalty greater that the penalty imposed for an offense with identical elements. Violation of the MCCPA is a Class 4 felony, while violation of the MPA is a Class A misdemeanor. But the MCCPA and the MPA do not have identical elements. The MPA prohibits a person with a prior conviction for any meth-related crime from purchasing or acquiring 7500 milligrams of ephedrine or pseudoephedrine within a 30-day period. 720 ILCS 648/20(b), 40(a)(2)(A). The MCCPA merely requires a prescription to purchase or possess a meth precursor.

People v. Avila-Briones, 2015 IL App (1st) 132221 The Appellate Court rejected the defendant's request that it revisit whether the statutory scheme created by the Sex Offender Registration Act (730 ILCS 150/1 *et seq.*), the Sex Offender Community Notification Act (730 ILCS 152/101 *et seq.*), and statutes restricting the residency, employment, and presence of sex offenders constitute cruel and unusual punishment under the Eighth Amendment or disproportionate punishment under the Illinois Constitution. The court concluded that even if recent amendments to the statutory scheme constituted "punishment," the restrictions were not disproportionate to legitimate penological goals. In addition, the court concluded that the statutory scheme did not violate substantive or procedural due process.

People v. Yoselowitz, 2011 IL App (4th) 100764 Neither the proportionate penalties clause of the Illinois Constitution nor equal protection principles were violated by 720 ILCS 550/5(g), which provides a Class X sentence for the manufacture, delivery, or possession of more than 5000 grams of cannabis with intent to deliver or manufacture.

The court acknowledged recent studies showing that cannabis is neither addictive nor likely to lead to great bodily harm, but found that the legislature imposed the Class X sentencing provision to combat illegal drug use by directing law enforcement efforts to

commercial traffickers and large scale purveyors of illegal substances. The court found that such legislative intent constituted a rational basis for the Class X sentencing scheme, and that imposing a Class X sentence on purveyors of large quantities of marijuana was not shocking to the moral sense of the community. The court also noted that defendant's arguments concerning the effects of marijuana use should be addressed to the legislature rather than the courts.

People v. Andrews, 364 Ill.App.3d 253, 845 N.E.2d 974 (2d Dist. 2006) The 15-year enhancement for aggravated vehicular hijacking while carrying a firearm, which was found to be unconstitutional under the proportionate penalties clause, could not be severed from the substantive offense of aggravated vehicular hijacking.

§47-3(b)(7)(c)
Single Subject Rule

Illinois Supreme Court

People v. Olender 222 Ill.2d 123, 854 N.E.2d 593 (2005) P.A. 88-669 violated the single subject rule. Defendants did not lack standing to raise a single subject rule challenge where nine years had passed since the passage of the act. A lapse of time between the effective date of an act and the bringing of a challenge might result in a loss of standing in civil cases, where a challenge may be brought any time after the act was passed. In criminal cases, however, a defendant does not have standing to challenge a statute until he or she is directly affected by it. Thus, although P.A. 88-669 became effective November 29, 1994, defendants could not have raised a single subject rule challenge until they were charged with violating the act.

P.A. 88-669 originally amended three criminal statutes, but by the time of its passage created two new statutes and amended 24 others. Among the provisions were changes to the penalties for certain income tax violations (the provisions which affected defendants) and acts relating to university research parks, creation of a council to study issues relating to "geographic information management technology," and amendments to several financial statutes.

"Governmental regulation" is not a single subject for purposes of the single subject rule. "[I]t is likely that any legislative action could fit within the broad category of government regulation."

Also, "revenue to the State and its subdivisions" is not a "single subject." The State's interpretation of "revenue" was so broad that "almost any statute would have a natural and logical connection to the subject of revenue to the State as long as the statute had any tangential impact on the State's economy."

Interestingly, both the governor and several members of the Senate observed during legislative debates in 1994 that P.A. 88-669 was a "Christmas tree" bill which violated the single subject rule.

People v. Burdunice, 211 Ill.2d 264, 811 N.E.2d 678 (2004) Article IV, §8(d) of the Illinois Constitution provides that legislation (except for appropriation bills and those codifying or rearranging laws) must be confined to one subject. The purpose of the single subject rule is to prevent the passage of legislation that would fail on its own merits, and to facilitate the passage of legislation in an orderly and informed manner. "In sum, the single subject rule ensures that the legislature addresses the difficult decisions it faces directly and subject to public scrutiny, rather than passing unpopular measures on the backs of popular ones."

Determining whether a public act violates the single subject rule requires a two-step analysis. First, the court must determine whether on its face, the act involves a single, legitimate subject. If so, the court must determine whether the various provisions within the Act relate to the single subject. Individual provisions relate to the single subject if they have a "natural and logical" connection to that subject.

Public Act 89-688, which added cellular telephone batteries to the list of contraband prohibited in penal institutions, violated the single subject rule. P.A. 89-688 was labeled "an Act in relation to criminal law," a legitimate single subject. Four of the five sections of the law address criminal law, including the provision adding cellular telephone batteries to the list of items which cannot be brought into a penal institution. Other criminal law provisions of P.A. 89-688 include amendments to the Statewide Grand Jury Act, the Violent Crime Victim's Assistance Act, and the Unified Code of Corrections. However, §0.5 of the Act, which authorizes the Attorney General to file counterclaims on behalf of State employees involved in civil actions, does not have a natural and logical connection to criminal law.

In determining the purpose of a particular section, the reviewing court may examine legislative debates, Senate and House journals, and the legislative digest. However, such materials can not support a finding of legislative purpose which contradicts the plain language of the statute. Here, the plain language of §0.5 deals with the authority of the Attorney General to file counterclaims on behalf of State employees involved in civil suits. Because P.A. 89-688 concerns two subjects, the single subject rule was violated. See also, **People v. Foster**, 316 Ill.App.3d 855, 737 N.E.2d 1125 (4th Dist. 2000) (same).

People v. Boclair, 202 Ill.2d 89, 789 N.E.2d 734 (2002) P.A. 83-942, which authorized trial courts to summarily dismiss post-conviction petitions that are frivolous or patently without merit, did not violate the single subject rule.

People v. Sypien, 198 Ill.2d 334, 763 N.E.2d 264 (2001) The single subject rule was violated by P.A. 90-456 (eff. January 1, 1998), which increased the penalties for certain disorderly conduct offenses, defined making a false 911 call as disorderly conduct, authorized officers executing search warrants to dispense with the "knock and announce" requirement under certain circumstances, and amended the Juvenile Court Act to authorize delay in adjudicatory hearings where necessary to insure a fair hearing.

A two-part inquiry is required to determine whether a public act violates the single subject rule. First, the court must determine whether the act, on its face, involves a legitimate single subject. Second, the court must determine whether all of the provisions of the act relate to that subject.

The purported subject of P.A. 90-456 - criminal law - has previously been found to pass constitutional muster, however not all of the provisions of P.A. 90-456 relate to criminal law. The amendment authorizing delay in the completion of adjudicatory hearings for abused, neglected or dependent children has no connection to criminal law.

Juvenile delinquency proceedings are analogous to criminal proceedings, and an act which both modifies the Criminal Code and amends Juvenile Court Act provisions concerning delinquency proceedings might relate to the single subject of "criminal law." Here, however, the amendments concerned only abuse, neglect and dependency proceedings, which are clearly civil "both in the legal and lay sense of the word." See also, **People v. Vasquez**, 315 Ill.App.3d 1131, 734 N.E.2d 1023 (1st Dist. 2000) (P.A. 86-980, which amended the Juvenile Court Act to authorize the confiscation of weapons in the possession of minors and amended the Criminal Code by creating new offenses, did not violate the single subject rule; each of the provisions involved criminal conduct whether reflected by the Juvenile Court Act or the

Criminal Code).

People v. Malchow, 193 Ill.2d 413, 739 N.E.2d 433 (2000) Public Act 89-8, which amended the Sex Offender Registration Act (730 ILCS 150/1) to expand the class of persons required to register, did not violate the single subject rule.

People v. Ramsey, 192 Ill.2d 154, 735 N.E.2d 533 (2000) At defendant's jury trial for murder, the trial court applied the version of the insanity defense enacted by P.A. 89-404, which eliminated the insanity defense based on a defendant's inability to conform his conduct to the law. After defendant's trial, the Supreme Court held that P.A. 89-404 violated the single subject rule. Because defendant was convicted under an unconstitutional amendment to the insanity defense, he was entitled to a new trial at which the trial court was to apply the version of the insanity defense in effect before P.A. 89-404 was enacted.

People v. Cervantes, 189 Ill.2d 80, 723 N.E.2d 265 (1999) Public Act 88-680, which created the offense of gunrunning, violated the single subject rule of the Illinois Constitution. Although the act originally amended the Criminal Code to require community service by a person convicted of or placed on supervision for certain offenses, by the time of its passage it created the "Safe Neighborhoods Law" and amended 55 existing statutes, created ten new statutes, and repealed one statute.

"[N]o matter how liberally the single-subject requirement is construed," there is "no natural and logical connection between the subject of enhancing neighborhood safety" and amendments to the Women's Infant and Children Vendor Management Act or the Secure Residential Youth Care Facilities Licensing Act. The WIC amendments are not related to a single subject merely because P.A. 88-680 also created the new offense of WIC benefits fraud; the amendments to the Vendor Management Act bear no "natural and logical connection to neighborhood safety."

Also, the Secure Residential Youth Care Facility Licensing Act has no relation to "neighborhood safety." The Act was intended to authorize secure residential youth care facilities owned by private enterprises, so that children who are too young to be placed in the Department of Corrections but "too dangerous to be set free" would remain in Illinois instead of being sent elsewhere. Because the residential youth facility provisions concern only the geographical location in which such youths will be held, "these purely administrative licensing provisions are not germane to the subject of safe neighborhoods."

People v. Tellez-Valencia, 188 Ill.2d 523, 723 N.E.2d 223 (1999) A statute that is held unconstitutional is void ab initio. Where the act creating the offense of which defendant was convicted has been held unconstitutional under the single subject rule, the State may not amend the charge on appeal to change the name of the offense to one which consists of the same elements.

People v. Wooters, 188 Ill.2d 500, 722 N.E.2d 1102 (1999) Public Act 89-203, which enacted a mandatory life imprisonment provision for the murder of a child under 12, violated the single subject rule.

Although defendant raised the single subject rule challenge for the first time on appeal, "the constitutional dimension of the question permits this court to address" the argument.

Public Act 89-203 was entitled "An act in relation to crime," and most of the amendments were related to "crime." However, amendments to the Illinois Mortgage

Foreclosure Law were "distinctly noncriminal in nature" and lacked "even a tenuous connection" to the subject of "crime."

The court rejected the argument that P.A. 89-203 should be upheld because it did not offend the purpose of the single subject clause - to prevent the attachment of unpopular legislation to a popular bill to insure passage of the unpopular provisions. The single subject rule has an equally important second purpose - to promote orderly legislative debate on bills encompassing only one subject. Further, the State's representations concerning the legislative history of P.A. 89-203 were "somewhat misleading;" the provisions of P.A. 89-203 were never considered individually by both chambers of the General Assembly.

Arangold Corp. v. Zehnder, 187 Ill.2d 341, 718 N.E.2d 191 (1999) The test for determining whether the single subject rule has been violated "is whether the matters included within the enactment have a natural and logical connection to a single subject. . . This court has never held that the single subject rule imposes a second and additional requirement that the provisions within an enactment be related to each other."

Although P.A. 89-21 amended a number of acts already in effect, all of the provisions had a "natural and logical connection" to a single subject - implementation of the State budget for the 1996 fiscal year. The "State budget" is not too broad to constitute a single subject. The General Assembly "was not attempting to unite obviously discordant provisions under some broad and vague category," but merely to include within one bill "all the means reasonably necessary to accomplish" the purpose of implementing the State budget.

People v. Reedy, 186 Ill.2d 1, 708 N.E.2d 1114 (1999) Public Act 89-404, which enacted the "truth-in-sentencing" law effective August 1995, violated the "single-subject" rule of the Illinois Constitution. The legislation dealt with "as many as five separate legislative topics involving both civil and criminal matters" and "at least two unrelated subjects: matters relating to the criminal justice system, and matters relating to hospital liens."

The public act could not be upheld on the basis that the provisions all dealt with responsibilities of the State's Attorneys or fit within the subject of "governmental matters," as such sweeping and vague categories would render the single subject clause meaningless.

The State's proposed "waiver by codification" rule, which would preclude a defendant from raising a single subject rule challenge once an act has been codified was rejected. Such a codification rule would conflict with "well-established single-subject clause jurisprudence," which treats such violations with "seriousness." In addition, a codification rule would "drastically diminish the effect and importance of the single-subject clause," and improperly emphasize finality at the expense of enacting legislation via constitutional procedures. Finally, the time between passage of a bill and its codification might be "frequently minute."

The legislature did not cure the single subject rule violation when it enacted P.A. 89-462 (eff. May 29, 1996). Although the Illinois legislature has the power to enact curative legislation, such legislation "must exhibit on its face evidence that it is intended to cure or validate defective legislation." P.A. 89-462 was "entirely devoid of curative language that would validate any actions taken in reliance on P.A. 89-404." Instead, P.A. 89-462 merely amended the truth-in-sentencing statute by making an additional offense subject to truth-in-sentencing.

Finally, the single subject rule violation was not harmless "because each of the sections within Public act 89-404 possessed the necessary support for individual passage." The purpose of the single subject rule is not only to prevent legislators from combining unpopular legislation with popular measures, but also to promote orderly and informed legislative debate by limiting the subject of each bill so that the issues can be more easily

understood and debated. In addition, "when the procedure by which the General Assembly enacts legislation contravenes a constitutional mandate, a harmless error standard is inappropriate."

Johnson v. Edgar, 176 Ill.2d 499, 680 N.E.2d 1372 (1997) P.A. 89-428, which contained several amendments to the sentencing and criminal codes as well as non-criminal provisions, was passed in violation of the "single subject" requirement of the Illinois Constitution.

P.A. 89-428 began as a bill relating to prisoners' reimbursement of the Department of Corrections for the expenses of incarceration, and ended as a 200-page bill including not only that subject but also sex offender registration, an eavesdropping exemption, penalty enhancement for certain criminal offenses, the creation of a new criminal offense, authorization to prosecute some juveniles as adults, changes concerning testimony at parole hearings, new fitness hearing requirements for criminal defendants on psychotropic medication, and amendment of existing law concerning the admissibility of child hearsay statements. In addition, the final bill contained a provision imposing an "environmental impact fee" on the sale of fuel to be used to reimburse the owners of leaking underground fuel storage tanks for the costs of correcting contamination resulting from such tanks.

The purpose of the "single-subject" rule is to prevent the passage of legislation which, standing alone, could not attract sufficient votes for enactment. Although the legislature is given wide latitude to define the meaning of the term "subject," the single subject rule is violated where the provisions of a bill have no "natural and logical connection." The "many discordant provisions in Public Act 89-428 [may not] be considered to possess a natural and logical connection"; therefore, the "single-subject" rule was violated.

The court rejected the argument that the provisions involved only one "subject" because they all concerned "public safety": "Were we to conclude that the many obviously discordant provisions . . . are nonetheless related because of a tortured connection to a vague notion of public safety, we would be essentially eliminating the single subject rule as a meaningful constitutional check on the legislature's actions."

While certain civil provisions of P.A. 89-428 were "validated" by the passage of subsequent legislation, in separate bills, on the same subjects, the Court did not suggest that the "validation" theory could be applied to the criminal provisions of P.A. 89-428.

People v. Dunigan, 165 Ill.2d 235, 650 N.E.2d 1026 (1995) The 1980 amendments to the Habitual Criminal Act were not passed in violation of the "three-readings" and "single-subject" requirements of the Illinois Constitution. (Article IV, §8(d) of the Illinois Constitution requires that a bill "shall be read by title on three different days in each house." Section 8(d) also provides: "Bills, except bills for appropriations and for the codification, revision or rearrangement of laws, shall be confined to one subject.")

The Illinois Constitution adopted the "enrolled-bill" rule, which provides that "when the presiding officers of the two houses sign a bill, their signatures become conclusive proof that all constitutional procedures have been properly followed." The Speaker of the House and President of the Senate certified the 1980 legislation as having been passed according to constitutional procedures; therefore, the Court was precluded from making any inquiry into whether the three-readings requirement was violated.

The "single-subject" requirement of the Constitution is a substantive rather than a procedural requirement; therefore, the "enrolled bill" rule does not preclude judicial review. However, the term "subject" is to be liberally construed, and bills with "broad" subject matter are not prohibited unless the bill combines "incongruous and unrelated matters." Because both the original bill concerning feticide and the provisions concerning the Habitual Criminal

Act involved amendment of the Criminal Code, the requirements of the "single-subject" rule had been satisfied.

Illinois Appellate Court

People v. Crutchfield, 2015 IL App (5th) 120371 A statute that has been declared unconstitutional because it was adopted in violation of the single subject rule is void in its entirety, and the legislature may revive the statute only by reenacting the same provision.

Defendant was sentenced to life imprisonment pursuant to 730 ILCS 5/5-8-1(a)(1)(c)(ii), which mandates a sentence of life imprisonment when a person over the age of 17 murders a person under the age of 12. The Appellate Court vacated defendant's sentence since the public act which enacted this sentencing provision (Public Act 89-203) had been declared unconstitutional in violation of the single subject rule (**People v. Wooters**, 188 Ill. 2d 500 (1999)), and the legislature had never reenacted the sentencing provision.

The Appellate Court specifically rejected the State's argument that the legislature cured the single subject violation by enacting Public Act 89-462 which "recodified" the sentencing provisions in another public act that had also been declared in violation of the single subject rule. The Court stated that it found "no indication that Public Act 89-462 addressed the single subject rule violation in Public Act 89-203." Instead it "merely reenacted the change from discretionary to mandatory natural life sentences for certain offenses," and hence did not cure the infirmity of Public Act 89-203.

The Court remanded defendant's case for resentencing without applying the mandatory life sentence provision of section 5-8-1(a)(1)(c)(ii).

People v. Terry, 329 Ill.App.3d 1104, 769 N.E.2d 559 (4th Dist. 2002) P.A. 90-593 (eff. June 19, 1998), which re-enacted amendments to the insanity defense found unconstitutional in **People v. Reedy**, 186 Ill.2d 1, 708 N.E.2d 1114 (1999), did not violate the single subject rule of the Illinois Constitution. All of the provisions of P.A. 90-593, including amendments to the Drug Asset Forfeiture Procedure Act, were related to the single subject of criminal law.

People v. Fuller, 324 Ill.App.3d 728, 756 N.E.2d 255 (1st Dist. 2001) The single subject rule was not violated by P.A. 89-707, which: (1) made commission of any form of aggravated kidnaping a Class X felony, (2) made numerous changes to the Child Sex Offender and Murderer Community Notification Law (including expanding criminal and civil immunity for the secondary release of information obtained under the Act), (3) added "county correctional officer" as a person who may satisfy the requirement that the sheriff attend court sessions, and (4) amended the Police Training Act to change some definitions, deleted the requirement that minimum standards for court security officers be developed, and added the requirement that persons hired as court security officers must demonstrate compliance with training requirements. All of the provisions hold a "natural and logical" conviction to a single subject - the proper administration of justice.

People v. Lane, 319 Ill.App.3d 162, 743 N.E.2d 1107 (5th Dist. 2001) Public Act 89-689, which amended the Code of Criminal Procedure to provide that a defendant who is taking psychotropic drugs shall not be presumed to be unfit solely by the receipt of those drugs, did not violate the single subject rule of the Illinois Constitution.

People v. Jones, 318 Ill.App.3d 1189, 744 N.E.2d 344 (4th Dist. 2001) Public Act 83-942, which authorized summary dismissal of post-conviction petitions as frivolous or patently

without merit, did not violate the single subject rule of the Illinois Constitution.

§47-3(b)(7)(d)
Privacy Clause

Illinois Supreme Court

People v. Malchow, 193 Ill.2d 413, 739 N.E.2d 433 (2000) The Sex Offender Registration Act (730 ILCS 150/1) and the Sex Offender and Child Murderer Community Notification Law (730 ILCS 152/101) do not violate the right to privacy under the United States and Illinois Constitutions. See also, People v. Cornelius, 213 Ill.2d 178, 821 N.E.2d 288 (2004) (Internet provision does not violate defendant's right to privacy under the Illinois Constitution).

People v. R.G., 131 Ill.2d 328, 546 N.E.2d 533 (1989) Freedom of choice concerning procreation, marriage and family life is a fundamental right; statutes restricting such right "may only survive if a compelling State interest exists."

People v. Kohrig, 113 Ill.2d 384, 498 N.E.2d 1158 (1986) The mandatory seat belt statute does not infringe upon any right of privacy under the federal or state constitution.

Family Life v. Department of Public Aid, 112 Ill.2d 449, 493 N.E.2d 1054 (1986) The State Records Act, which requires the disclosure of the names of providers of abortion services and amounts paid for the services under the Medicaid program, was upheld against the claim that it violated the privacy rights of the providers and recipients.

Chicago v. Wilson, 75 Ill.2d 525, 389 N.E.2d 522 (1978) A city ordinance prohibiting a person from wearing clothing of the opposite sex was unconstitutional as applied to these defendants, whose cross-dressing was part of therapy in preparation for sex reassignment operations. The ordinance was an unconstitutional infringement of defendant's "liberty interests." However, the ordinance was not held invalid on its face.

ISEA v. Walker, 57 Ill.2d 512, 315 N.E.2d 9 (1974) Article I, §6 of the Illinois Constitution of 1970 did not create a right of privacy which restricts government action with respect to the disclosure of economic interests by State officers and employees.

Leopold v. Levin, 45 Ill.2d 434, 259 N.E.2d 250 (1970) Discussion of the right of privacy in Illinois.

Illinois Appellate Court

Illinois NORML v. Scott, 66 Ill.App.3d 633, 383 N.E.2d 1330 (1st Dist. 1978) The private use and possession of cannabis is not protected by the right of privacy.

§47-3(b)(7)(e)
Lockstep Analysis

Illinois Supreme Court

City of Chicago v. Alexander, 2017 IL 120350 Illinois follows the “limited lockstep” doctrine, which states that State constitutional provisions are deemed to have the same meaning as comparable federal constitutional provisions unless the language of the Illinois

constitution or records of the Illinois Constitutional Convention indicate that the Illinois constitution was intended to be construed differently than the Federal constitution. Article 1, §5 of the Illinois Constitution provides that citizens "have the right to assemble in a peaceable manner, to consult for the common good, to make known their opinions to their representatives and to apply for redress of grievances." The First Amendment of the United States Constitution, as it applies to the right to assembly, provides that Congress shall make no law abridging the right of the people "peaceably to assemble." The First Amendment applies to the states through the due process clause of the Fourteenth Amendment.

The court concluded that the Illinois constitutional right to peaceably assemble is "virtually identical" to the First Amendment and therefore is to be interpreted in lockstep with federal precedents applying the assembly clause of the First Amendment.

§47-3(b)(7)(f)
Other

Illinois Appellate Court

People v. Lovelace, 2018 IL App (4th) 170401 Following defendant's acquittal, the circuit clerk retained 10% of the $350,000 bond posted on defendant's behalf. 725 ILCS 5/110-7(f) allows the court to keep 10% of the bond. While the statute also allows the court to keep less than 10%, the trial court did not abuse its discretion when it declined to lower defendant's bond cost here.

The Appellate Court also rejected various constitutional challenges to section 110-7(f). The statute's purpose is to reimburse for the cost of administering a bail bond system. The statute does not impose a penalty and thus is not an unconstitutional fine. **Nelson v. Colorado**, 137 S.Ct. 1249 (2017), requiring a court to return assessments exacted as a consequence of a conviction which is later reversed, was distinguished because the bail bond cost is not dependent upon conviction. Section 110-7(f) does not violate equal protection or due process because it bears a rational relationship to the government's interest in administering a bail bond system and applies equally to all individuals who seek the benefit of release on bond. And, the statute does not violate the uniformity clause of the Illinois Constitution, even though it sets a maximum bond fee of $100 for counties with populations greater than 3 million (Cook County), because the legislature believed the bond system could be adequately funded in a much larger county by other sources.

§47-3(b)(8)
Other

Illinois Supreme Court

People v. Eubanks, 2019 IL 123525 Section 11-501.1 of the Vehicle Code, which allows police officers to forcibly withdraw defendant's blood or urine when there is probable cause of intoxication in a case involving an auto accident with death or injury to another, violated the Fourth Amendment in this case. Defendant made a facial challenge to the statute. While facial challenges under the Fourth Amendment are permissible, and are not foreclosed merely because the statute would not apply in cases where the officer has a warrant, exigent circumstances, or consent, this statute comports with the "general rule" that exigent circumstances exist when BAC evidence is dissipating, and some other factor, such as a death or injury, creates a pressing concern that takes priority over a warrant application.

After **Schmerber v. California**, 384 U.S. 757 (1966), **Missouri v. McNeely**, 569 U.S. 141 (2013), and **Mitchell v. Wisconsin**, 588 U.S. ___, 139 S. Ct. 2525 (2019), the courts must employ a totality-of-the-circumstances test when analyzing the constitutionality of warrantless blood or urine draws in DUI cases, but this test is guided by the "general rule" that, due to BAC dissipation, exigent circumstances will exist when there is a traffic accident causing personal injury or when the suspect is unconscious. Nevertheless, defendant can rebut application of the general rule by showing that the blood/urine draw was solely for law enforcement purposes, and that the "police could not have reasonably judged that a warrant application would interfere with other needs or duties."

Here, defendant established that no reasonable officer could have believed a warrant application would interfere with the investigation. The defendant was arrested around 9 p.m. and taken to the station where he was not interviewed until 10:30 p.m. The interviewing officer claimed defendant smelled like alcohol, and defendant refused a breath test, but he was not taken to the hospital for blood/urine samples until 3 a.m. The blood draw occurred at 4:10 a.m., and the urine sample was given at 5:20 a.m. Given that seven hours passed between the arrest and the blood draw, a warrant application would not have increased the delay. Thus, the general rule of exigent circumstances does not exist here, and the statute is unconstitutional as applied to defendant's case.

Illinois Appellate Court

People v. Solis, 2013 IL App (1st) 102756 The prostitution statute proscribes performing, offering, or agreeing to perform any act of sexual penetration for anything of value. 720 ILCS 5/11-14(a). The Appellate Court rejected the defendant's argument that the prostitution statute is unconstitutional because it combines both inchoate and completed forms of the offense.

Offering or agreeing to perform a sexual act is not the inchoate offense of attempted prostitution. An agreement or an offer to perform an act of sexual penetration for anything of value constitutes the completed offense of prostitution. The legislature has determined that the offer or the agreement to perform a sexual act is as serious a social problem as the act itself.

§47-3(c)
Method of Review

§47-3(c)(1)
Rational Basis

United States Supreme Court

Shaw v. Murphy, 523 U.S. 223, 121 S.Ct. 1475, 149 L.Ed.2d 420 (2001) Under **Turner v. Safely**, 482 U.S. 78 (1987), restrictions on the rights of prison inmates are constitutional if reasonably related to legitimate and neutral government objectives. Four factors to be considered in making this determination include: (1) whether there is a valid, rational connection between the regulation and the legitimate and neutral government interest put forward to justify it; (2) whether alternative means of exercising the right are available to inmates; (3) the impact of accommodating the constitutional right on guards and other inmates and on the allocation of prisoner resources; and (4) whether there are alternatives for prison officials to achieve the governmental objectives. If there is no valid, rational connection between the prison regulation and the governmental interest put forward to

justify it, the regulation is improper without regard to the other three factors.

Inmates do not have a First Amendment right to give legal advice to other inmates,. The determination under **Turner** is not affected by the fact that the communication between inmates concerned a legal defense to a charge of assaulting a guard. **Turner** depends not on the content of communication in question, but on the relationship between the "asserted penological interest" and the regulation. In addition, prison officials are to be the "primary arbiters" of problems which arise in prison management; affording First Amendment protection to inmate communications regarding legal advice would undermine the ability of officials to administer prisons.

Illinois Supreme Court

People v. Madrigal, 241 Ill.2d 463, 948 N.E.2d 591 (2011) The legislature has wide discretion to fashion penalties for criminal offenses, but this discretion is limited by the constitutional guarantee of substantive due process. When a statute that is challenged on substantive due process grounds does not affect a fundamental right, the appropriate test for determining its constitutionality is the highly deferential rational basis test. A statute will be sustained if it bears a reasonable relationship to a public interest to be served, and the means adopted are a reasonable method of accomplishing the desired objective. A statute does not provide a reasonable method of preventing the targeted conduct and fails the rational basis test if it does not contain a culpable mental state and potentially punishes wholly innocent conduct.

People v. Boeckmann & Maschhoff, 238 Ill.2d 1, 932 N.E.2d 998 (2010) 625 ILCS 5/6-206(a)(43), which requires the suspension of driving privileges for three months where supervision is ordered for the offense of unlawful consumption of alcohol while under the age of 21, satisfies due process.

A driver's license is a non-fundamental property interest. A statute which does not impact a fundamental constitutional right violates due process only if there is no rational relationship between the statute and a legitimate legislative purpose, or if the statute is arbitrary or discriminatory. In applying the rational basis test, a reviewing court must first identify the public interest the statute is intended to protect. The court must then determine whether the statute bears a rational relationship to that interest, and whether the method chosen by the legislature to further that interest is reasonable. Legislation should be upheld against a due process challenge if there is any conceivable basis for a finding that the statute is rationally related to a legitimate State interest.

The court identified the public interest protected by §6-206(a)(43) as furthering the safe and legal operation and ownership of motor vehicles. The court concluded that suspending the driving privileges of underage persons who receive court supervision for illegal consumption of alcohol is rationally related to this interest because the legislature could have concluded that an underage person who consumes alcohol illegally "may take the additional step of driving after consuming alcohol." Because the legislature could have determined that underage drinkers are likely to drive while unfit to do so, suspending the driving privileges of underage drinkers is a reasonable method of protecting the public interest in promoting the safe and legal operation of motor vehicles.

Additionally, the court rejected the argument that the proportionate penalties clause is violated by suspending driving privileges for the underage consumption of alcohol. The proportionate penalties clause applies only to direct action by the government which inflicts punishment on a citizen. Because the legislative purpose of §6-206(a)(43) is to promote the

safe and legal operation and ownership of motor vehicles, the statute does not have a punitive purpose. Therefore, the proportionate penalties clause does not apply.

People v. Fuller, 187 Ill.2d 1, 714 N.E.2d 501 (1999) Class 2 felony penalty for filing a false report of a vehicle theft does not violate due process. The classification of an offense violates due process if it bears no rational relationship to a legitimate State interest. There is a rational relationship between the Class 2 penalty and the State's interest in preventing innocent persons from being falsely accused of auto theft.

Also, due process does not require that a particular defendant's motive in violating a statute be related to the State's interest in enacting the statute; "the defendant's reasons for filing the false report may be relevant to the determination of the particular sentence she might receive for her misconduct, but . . . do not render the classification of her offense unconstitutional as applied to her."

People v. Upton, 114 Ill.2d 362, 500 N.E.2d 943 (1986) Statute which allowed a greater sentence for distribution of "look-alike" or fraudulent controlled substances than for distribution of certain controlled substances was upheld. Some of the rationales of the legislature were "plausible enough to meet the standard of bearing a real or substantial relation to the larger objective of the Controlled Substances Act."

People v. Coleman, 111 Ill.2d 87, 488 N.E.2d 1009 (1986) Statute which prohibited supervision for a DUI offense if defendant had received supervision for the same offense within the previous five years was upheld. There was a rational basis for distinguishing between those who have previously undergone supervision and those who have not.

Carbondale v. Brewster, 78 Ill.2d 111, 398 N.E.2d 829 (1979) The legislature may exercise police power to protect the public health, safety, or morals and general welfare or convenience. To be a valid exercise of police power, the legislation must bear a reasonable relationship to the interest sought to be protected, and the means adopted must constitute a reasonable method to accomplish such objective.

People v. McCabe, 49 Ill.2d 338, 275 N.E.2d 407 (1971) Statute which classified the sale of marijuana with the sale of narcotics, rather than with the sale of drugs named in the Drug Abuse Act, is unreasonable. There must be a reasonable basis for distinguishing the class to which a law is applicable from the class to which it is not.

Illinois Appellate Court

People v. Minor, 2019 IL App (3d) 180171 Version of aggravated DUI statute making it illegal to drive with any amount of THC in the driver's blood, breath, or urine was not rendered unconstitutional by subsequent statutory amendments removing cannabis from the "any amount" section of the statute. The flat prohibition reflected the scientific limitations of the time and was reasonably related to the legitimate goal of preventing cannabis-impaired driving. By removing cannabis from the "any amount" section, the legislature signaled its recognition of technical advances and changing societal attitudes, but defendant's conviction under the prior version of the statute could stand.

People v. Lovelace, 2018 IL App (4th) 170401 Following defendant's acquittal, the circuit clerk retained 10% of the $350,000 bond posted on defendant's behalf. 725 ILCS 5/110-7(f) allows the court to keep 10% of the bond. While the statute also allows the court to keep less

than 10%, the trial court did not abuse its discretion when it declined to lower defendant's bond cost here.

The Appellate Court also rejected various constitutional challenges to section 110-7(f). The statute's purpose is to reimburse for the cost of administering a bail bond system. The statute does not impose a penalty and thus is not an unconstitutional fine. **Nelson v. Colorado**, 137 S.Ct. 1249 (2017), requiring a court to return assessments exacted as a consequence of a conviction which is later reversed, was distinguished because the bail bond cost is not dependent upon conviction. Section 110-7(f) does not violate equal protection or due process because it bears a rational relationship to the government's interest in administering a bail bond system and applies equally to all individuals who seek the benefit of release on bond. And, the statute does not violate the uniformity clause of the Illinois Constitution, even though it sets a maximum bond fee of $100 for counties with populations greater than 3 million (Cook County), because the legislature believed the bond system could be adequately funded in a much larger county by other sources.

People v. Lewis, 2016 IL App (4th) 140852 Defendant was convicted under section 120(a) of the Methamphetamine Control and Community Protection Act (MCCPA) which prohibits a person with a prior conviction under the MCCPA from purchasing or possessing a methamphetamine (meth) precursor (such as pseudoephedrine) without a prescription. Defendant argued that the MCCPA (1) violates due process by punishing wholly innocent conduct and (2) violates due process, equal protection, and the proportionate penalties clause because a violation of the MCCPA is a felony, while a violation of the Methamphetamine Precursor Act (MPA) which involves similar or less culpable conduct is only a misdemeanor. The court rejected these arguments and upheld the constitutional validity of the MCCPA.

In deciding whether a statute that does not implicate fundamental rights violates due process (Ill. Const. 1970, art. I, §2; U.S. Const., amend. XIV), the proper inquiry is whether it bears a rational relationship to a legitimate state goal. Such a rational relationship is lacking where a statute punishes wholly innocent conduct. Wholly innocent conduct is conduct unrelated to the legislative purpose and devoid of criminal intent.

The purpose of the MCCPA is to protect the public from the use and distribution of meth. The MCCPA reasonably serves this purpose by regulating the possession of meth precursors by people who have demonstrated a tendency to misuse those substances. Possession of a meth precursor without a prescription by people previously convicted under the MCCPA is not innocent conduct and thus the MCCPA does not violate due process by punishing innocent conduct.

People v. M.D., 231 Ill.App.3d 176, 595 N.E.2d 702 (2d Dist. 1992) The presence or absence of sexual penetration is not a rational basis on which to distinguish between legal and illegal forced sexual exploitation of a spouse. Therefore, the statutory scheme which permits a marital exemption on that basis violates due process and equal protection. Note: The statutory marital exemption has been repealed.

§47-3(c)(2)
Intermediate Scrutiny

United States Supreme Court

City of Chicago v. Alexander, 2017 IL 120350 Under the United States Supreme Court's jurisprudence regarding the right of assembly, intermediate scrutiny is applied to content-

neutral regulations that affect the time, place, or manner of expression. To satisfy that standard, a regulation which affects the time, place, or manner of expression must be content-neutral, narrowly tailored to serve a significant government interest, and preserve ample alternative channels of communication.

The court declined to resolve whether the First Amendment and the Illinois Constitution's right to peaceably assemble were violated by a Chicago Park District ordinance closing parks for eight hours beginning at 11 p.m. each night. The court found that the issues had not been properly preserved.

Michael M. v. Supreme Court, 450 U.S. 464, 101 S.Ct. 1200, 67 L.Ed.2d 437 (1981) A majority of the Supreme Court has never held that gender-based classifications are "inherently suspect" and subject to "strict scrutiny." However, the traditional minimum rationality test takes on a somewhat "sharper focus" when gender-based classifications are challenged.

A state statutory rape law under which only males may be criminally liable was upheld.

Illinois Supreme Court

People v. Morger, 2019 IL 123643 Section 5-6-3(a)(8.9) of the Code of Corrections, requiring as a condition of probation that any sex offender refrain from accessing or using a social networking website, is overbroad and facially unconstitutional. Although **Packingham v. North Carolina**, 582 U.S. ___, 137 S. Ct. 1730 (2017), is factually distinguishable in that the social media ban in that case lasted throughout the defendant's post-custodial registration period, the Illinois Supreme Court found the principles espoused in **Packingham** more broadly applicable. In particular, the **Packingham** court made clear that social media is fundamental to freedom of speech, likening it to "the modern public square." Thus, even if the ban on social media is part of a probation sentence rather than a condition of registration, it cannot survive the intermediate scrutiny applicable to content-neutral speech restrictions.

To survive intermediate scrutiny, a law must be narrowly tailored to serve a significant governmental interest; it must not burden substantially more speech than is necessary to further the government's legitimate interests. Here, where the social media ban applies to offenders who, like the defendant here, did not use the internet to facilitate the offense, it is not sufficiently narrow. Nor does it serve the government interest of rehabilitation, as a social media ban will make it harder for an offender to reform. The legislature had alternative means to further its interest in protecting the public from offenders who use social media to facilitate their crimes, such as allowing for the ban to be imposed at the judge's discretion or prohibiting offenders from contacting minors using the internet.

People v. Chairez, 2018 IL 121417 To determine whether restrictions on the use and possession of firearms violate the Second Amendment, courts first determine whether the statute affects protected conduct and, if so, courts analyze the statute using a heightened means-end level of scrutiny. Here, the Supreme Court did not address whether the Second Amendment protected the 1000-foot perimeter of a public park, and instead chose to "assume some level of scrutiny must apply to **Heller**'s 'presumptively lawful' regulations." The court settled on intermediate scrutiny conducted on a sliding scale – severe restrictions require strong governmental justifications, while minor restrictions could be more easily justified. The Supreme Court agreed with defendant that the public park restriction imposed a severe

burden (a blanket ban without exceptions) on a core right of the Second Amendment (right to bear arms in public). The restriction would essentially deprive people living near parks the ability to protect themselves on their property, and the lack of notice as to where the 1000 feet zone begins would result in inadvertent violations. Because the State failed to justify this severe infringement with data, statistics, or other evidence, the statute could not survive the heightened level of scrutiny.

City of Chicago v. Alexander, 2017 IL 120350 Under the United States Supreme Court's jurisprudence regarding the right of assembly, intermediate scrutiny is applied to content-neutral regulations that affect the time, place, or manner of expression. To satisfy that standard, a regulation which affects the time, place, or manner of expression must be content-neutral, narrowly tailored to serve a significant government interest, and preserve ample alternative channels of communication.

Illinois Appellate Court

People v. Galley, 2021 IL App (4th) 180142 730 ILCS 5/3-3-7(a)(7.12), which prohibits sex offenders on MSR from using social media, violates the First Amendment. In **People v. Morger**, 2019 IL 123643, the court struck down identical language in the probation statute. The rationale used by **Morger** applied equally in the MSR context. Probationers and parolees have traditionally been treated similarly for purposes of constitutional protections. As in **Morger**, the statute cannot pass intermediate scrutiny because while it promotes a substantial government interest, it is not narrowly tailored.

§47-3(c)(3)
Strict Scrutiny

Illinois Supreme Court

People v. Jones, 188 Ill.2d 352, 721 N.E.2d 546 (1999) 625 ILCS 5/12-611, which prohibited operation of a sound system which could be heard more than 75 feet from the vehicle unless an emergency vehicle or a vehicle "engaged in advertising" was involved, violated the First Amendment because it was a content-based restriction of protected speech and was not justified by a compelling State interest.

As part of its interest in regulating noise, a State may impose reasonable restrictions on the time, place or manner of constitutionally protected speech in a public forum. A statute which regulates constitutionally-protected speech, but which is content-neutral, is subjected to an "intermediate level of scrutiny." Under this type of analysis, the regulation is upheld if it is "narrowly tailored to serve a significant governmental interest" and leaves open "ample alternative channels for communication of the information."

Where a regulation restricts speech based on its content, however, it is subjected to the "most exacting scrutiny." Such a regulation is presumed to be invalid and can be upheld "only if necessary to serve a compelling governmental interest and narrowly drawn to achieve that interest."

Section 12-611 was clearly content-based because it expressly provided that the prohibition on sound amplification systems did not apply to advertising. The "permissible degree of amplification is dependent on the nature of the message being conveyed."

Thus, §12-611 could be upheld only if it served a compelling State interest, an argument which the State declined to make. See also, **People v. Sanders**, 182 Ill.2d 524,

696 N.E.2d 1144 (1998) (First Amendment was violated by 720 ILCS 125/2(c), which prohibited disturbing a person "engaged in the lawful taking of a wild animal . . . with intent to dissuade or otherwise prevent the taking," because government may not prohibit speech based on content unless the prohibition is both justified by a compelling State interest and narrowly tailored to achieve that interest; "[s]ubjecting to criminal liability expression which is made with an intent to dissuade, while failing to threaten punishment for expressions intended to encourage or persuade, constitutes an illegal legislative censure of opinion").

People v. Ellis, 57 Ill.2d 127, 311 N.E.2d 98 (1974) A classification based on sex is a "suspect classification" under the Illinois Constitution. Therefore, to be valid it must withstand "strict judicial scrutiny."

The distinctions in the treatment of 17-year-old males and 17-year-old females under the Juvenile Court Act is not based upon a compelling State interest, and is invalid.

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