SUPREME COURT OF ILLINOIS

CHAMBERS OF
CHIEF JUSTICE MARY JANE THEIS

160 NORTH LASALLE STREET
CHICAGO, ILLINOIS 60601
(312) 793-5460

January 31, 2024

The Honorable Emanuel C. Welch
Speaker of the House
House of Representatives
Springfield, IL 62706

The Honorable Don Harmon
President of the Senate
State Senate
Springfield, IL 62706

The Honorable Tony McCombie
Minority Leader
House of Representatives
Springfield, IL 62706

The Honorable John Curran
Minority Leader
State Senate
Springfield, IL 62706

Dear Legislative Leaders:

I am pleased to provide the Annual Report of the activities for the 2023 Illinois Judicial Conference as required by Article VI, Section 17, of the Illinois Constitution of 1970. In keeping with this Constitutional mandate, Illinois Supreme Court Rule 41 creates the Illinois Judicial Conference and charges the Conference with considering the work of the courts and suggesting improvements regarding the administration of justice.

As we have reported previously, the Illinois Judicial Conference (IJC) is guided by the Supreme Court's Strategic Agenda, which was developed by the IJC and approved by the Court. The current Agenda spans years 2022-2025 and is titled *Charting the Course: Innovations and Transformations within the Illinois Judicial Branch.*

The Strategic Agenda identifies five strategic goals listed below:

1. Accessible Justice and Equal Protection Under the Law
2. Procedural Fairness, Timeliness, and Operational Efficiency
3. Professionalism and Accountability throughout the Branch
4. Understanding of, and Confidence in, the Judicial Branch
5. Sufficient Funding and Effective Use of Judicial Branch Resources

For 2023, the IJC identified 12 initiatives, each of which was assigned to an existing Supreme Court Commission, Board, and Committee or a newly created Task Force.

This report also includes a summary of several Supreme Court decisions from the past year that are offered for the General Assembly's consideration. In offering these cases, the Court is mindful of the distinct roles of the General Assembly and the Court. While we intend no intrusion upon the prerogatives of the General Assembly in the exercise of its authority, we do respectfully offer these cases for your consideration and look forward to the General Assembly's continued responsiveness and support.

Additionally, this year's report includes a new section which we hope will be of interest to you. As you are aware, the Supreme Court has formed several boards, committees and commissions, as well as worked with the General Assembly to appoint members to joint task forces. In 2023, these bodies have made several recommendations which would require legislative action to fully accomplish. We forward these well considered proposals to you as a part of this report.

On behalf of the Court, I respectfully submit the Supreme Court's Annual Report to the Legislative Leaders of the General Assembly on the 2023 Illinois Judicial Conference. This report is also available to the members of the General Assembly on the Supreme Court's website at https://www.illinoiscourts.gov.

Respectfully,

Mary Jane Theis
Chief Justice
Supreme Court of Illinois

Enclosure

c: Members of the General Assembly

Annual Report to the General Assembly on the 2023 Illinois Judicial Conference

Article VI, Section 17 of the Illinois Constitution mandates that the Illinois Supreme Court convene an annual Judicial Conference to consider the work of the courts and to suggest improvements regarding the administration of justice. Illinois Supreme Court Rule 41 implements this constitutional requirement by defining the duties and the membership of the Illinois Judicial Conference (IJC).

The IJC is responsible for strategically planning for the Illinois Judicial Branch. The 2022-2025 Strategic Agenda sets forth five goals for the Judicial Branch:

Goal 1: Accessible Justice and Equal Protection Under the Law
Goal 2: Fair, Timely, and Efficient Courts
Goal 3: Professionalism and Accountability throughout the Branch
Goal 4: Understanding of, and Confidence in, the Judicial Branch
Goal 5: Funding and Use of Judicial Resources

During the Conference Year 2023, the IJC focused on completing 12 initiatives that were created to further the Strategic Agenda goals. Each initiative was assigned to either an existing Supreme Court Board, Committee, or Commission, or to a newly created Task Force whose sole objective was to complete its assigned initiative. The IJC met three times to receive reports on the initiatives and served as a clearing house for all reports, recommendations, memorandums, policies, or rule changes proposed as a result of work on each initiative.

A summary of the accomplishments under each initiative is detailed below. The first listed initiative, Modernization of Service of Process, recommends legislative changes and is shared with the General Assembly for its consideration.

1. Modernization of Service of Process—Strategic Goal 2

   The focus of this initiative was to study, explore, and recommend ways to modernize service of process in civil cases in Illinois. The IJC adopted two recommendations. The first recommendation, which is shared with the General Assembly for its consideration, is to institute a universal date-certain summons that provides the recipient with a date and time to appear in court as the first step in the court process in all civil case types. Currently, Illinois has two types of summonses: one that requires the recipient to appear in court on a particular date and time (a "date certain" summons), and another that requires the recipient to file a written answer and appearance – a requirement that can be confusing and difficult to accomplish for self-represented litigants. The case type determines which summons applies.

   Adopting a universal date certain summons would eliminate summonses that require a defendant to appear by filing a written appearance and answer by a set date. A universal date certain summons should increase the likelihood of a litigant appearing and reduce the number of default judgments resulting from failure to meet a written answer deadline set in a summons; gives litigants the opportunity to ask questions about next steps and judges the opportunity to give instructions to litigants at a first court date; eliminates confusion about which summons type to use in a case since there will be only one summons type; and ensures that every case for which a summons is issued is brought to a judge's attention in a timely manner via an initial

court date. In reaching this recommendation, the IJC's Modernization of Service of Process Task Force consulted with stakeholders including circuit clerks, judges, private process servers, the creditor bar, the consumer bar, legal aid attorneys, Illinois Court Help Court Guides, case management software vendors, the Chicago Bar Association's Legislative Section, the Chicago Bar Association's Civil Practice Section, and the Illinois Sheriff's Association.

Adoption of a universal date certain summons would require legislative changes. A list of affected statutes and proposed revisions identified by the IJC's Modernization of Service of Process Task Force is attached as Appendix A.

The second recommendation is to require process servers to use Illinois Supreme Court approved software that will record information, including location, about each service attempt and allow the process server to e-file the service return. The Supreme Court has assigned this recommendation to its e-Business Policy Advisory Board for further development.

2. Study of Statewide Criminal Indigent Defense—Strategic Goal 1
This initiative focused on studying and making recommendations for statewide solutions to the right to counsel in criminal cases at the trial level. While the constitutional obligation to provide effective assistance of counsel belongs to the State, Illinois long ago transferred that trial-level obligation to counties without a corresponding transfer of resources. The result has been wide disparities in resources and delivery systems across the state.

   The IJC recommends full State funding of trial-level public defense services; establishing a statewide Administrative Office of Public Defense (AOPD) under judicial branch authority to provide administrative and infrastructure support to local public defender offices; and developing and implementing a rigorous strategy and infrastructure in the AOPD for recruitment and retention of attorneys.

3. Remote Court Proceedings Decorum Training Video/Materials (for court participants)—Strategic Goal 1
This initiative focused on creating materials to help court participants (including lawyers, witnesses, and self-represented litigants) understand appropriate courtroom decorum and what is expected of them during virtual court proceedings. The resulting three-minute video is available in both English and Spanish on the remote proceedings page of the Illinois Courts website.

4. Remote Proceedings and the Pretrial Fairness Act—Strategic Goal 1
This initiative involved review of Supreme Court Rule 45 regarding remote appearance in light of the requirements of the Pretrial Fairness Act and its September 18, 2023 effective date following the Supreme Court's decision in *Rowe v. Raoul.* The Act provides that pretrial detention hearings must occur in-person subject to certain exceptions, while Rule 45 encourages remote appearance in many proceeding types. As a result of this initiative, the Court entered an order finding that there are statewide operational challenges to conducting pretrial detention hearings in-person. The order facilitates the ability of courts to hold these hearings via two-way audio-visual communication systems where necessary, and remains in effect until March 18, 2024.

5. Official Record of Court Proceedings (Rule 46)—Strategic Goal 2
   This initiative focused on studying and proposing amendments to Supreme Court Rule 46 related to the feasibility of using electronic audio recordings as part or all of the official court record on matters on appeal to the courts of review, particularly in light of the expedited nature of appeals stemming from the Pre-Trial Fairness Act. The Task Force proposed and the Supreme Court adopted initial changes to Rule 46 in late 2022. Because implementation of the Pretrial Fairness Act was stayed until September 18, 2023 due to litigation, additional time is required to consider the impact of these changes and the need for further changes. Work on this initiative will continue in 2024.

6. Data Standardization Project—Strategic Goal 2
   This initiative focused on continuing to standardize data collection, analysis, and reporting across Illinois courts and taking initial steps to enable Illinois to report its data nationally. IJC action on data standardization recommendations has been deferred until early 2024 to allow time for alignment and integration with the Administrative Office of Illinois Courts' ongoing work on data standardization.

7. Guidance for Complying with Time Standards—Strategic Goal 3
   The initiative focused on providing guidance and training to courts for complying with the circuit court case closure time standards that were approved in 2022. Trainings were provided to the Illinois Association of Court Clerks and through the Judicial College Committee on Judicial Education and Committee on Trial Court Administration Education.

8. Public Relations Crisis Management/Rapid Response System—Strategic Goal 4
   The IJC's Public Relations Task Force has made substantial progress on a Crisis Management/Rapid Response plan for Illinois courts. Work on this initiative will be completed in 2024.

9. Local Website Tools/Resources—Strategic Goal 4
   The Local Website Task Force conducted an inventory of Illinois local court websites, and developed a Best Practices Guide for local court websites that addresses website design and content, to help improve and create a more consistent experience for local court users across the state. The Best Practices Guide will be shared with local courts.

10. Implement Public Relations Plan—Strategic Goal 4
    The purpose of this ongoing initiative is to raise the profile of the Judicial Branch – share positive stories, educate about the Branch, etc. A comprehensive Public Relations Plan was developed and adopted by the IJC in 2020. In 2023, the Public Relations Task Force continued implementing elements of the PR Plan, including promoting consistent messaging by updating the Strategic Agenda PowerPoint Presentation and training speakers to ultimately increase the number of educational presentations made to stakeholders and the public through partnership with existing organizations.

11. Workload and Weighted Caseload Study—Strategic Goal 5

The purpose of this initiative is to ensure the effective allocation of judicial resources across Illinois for the Circuit Courts based on a weighted caseload study that measures judicial work time, develops average case weights based on average case processing times, and provides recommendations for more effective allocation of judicial resources. In 2022, the National Center for State Courts conducted a judicial worktime assessment study in Illinois' Circuit Courts using state-of-the-art research practices. In 2023, the report was updated to incorporate Cook County data.

12. Communication with the Legislative and Executive Branch Leaders About Judicial Branch Resources and Funding—Strategic Goal 5
    This initiative focused on providing tools to chief judges, trial court administrators, and others to effectively communicate with executive and legislative branches of government about judicial branch resources and funding. The Court Funding Task Force is finalizing a toolkit to support local courts seeking funding at the county government level.

Supreme Court Decisions That the General Assembly May Wish to Consider

Chaudhary v. Department of Human Services, 2023 IL 127712 (January 20, 2023)

In this case the appellee Ayesha Chaudhary challenged a determination by the Department of Human Services (Department) that she had received overpayments in the amount of $21,821 in Supplemental Nutrition Assistance Program (SNAP) benefits. The Department claimed that the appellee had received SNAP benefits on separate cases when she was required to be on a case together with her ex-husband, who was claiming from the same address. The circuit court reversed the Secretary of Human Services' final administrative decision, finding that the evidence did not support the determination of a SNAP overpayment. The Department appealed the decision, and the appellate court affirmed the judgment of the circuit court. The appellate court allowed the defendants' petition for leave to appeal and the Supreme Court affirmed the judgments of the lower courts, finding that the ex-husband did receive mail from the address but did not live there during the overpayment period.

People v. Villareal, 2023 IL 127318 (January 20, 2023)

In this case the appellant Juan Villareal pleaded guilty and was convicted of unlawful possession of a firearm by a gang member. He was sentenced by the circuit court to four years in prison pursuant to the plea agreement. He subsequently filed a petition pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2018)) arguing his sentence was improperly increased because he was required to serve a period of mandatory supervised release. The circuit court dismissed this petition. On appeal, the appellant challenged section 24-1.8(a)(1) as facially unconstitutional under the eighth amendment to the United States Constitution because the statute impermissibly criminalized his status as a gang member and, in a supplemental briefing, argued it violated due process. The appellate court rejected the eighth amendment challenge and declined to address the due process claim, but one dissenting justice found the statute violated substantive due process. On appeal to the Supreme Court the appellant argued that the statue was facially unconstitutional as it violates the 8th and 14th amendments. The Court held that the statute is constitutional and comports with both the 8th and 14th amendments to the U.S. Constitution, and affirmed the judgment of the appellate court, which affirmed petitioner's conviction and sentence.

Tims v. Black Horse Carriers, Inc., 2023 IL 127801 (February 2, 2023)

In this case a class-action lawsuit was filed by an employee against his former employer alleging that they violated (1) section 15(a) of the Biometric Information Privacy Act (Act) (740 ILCS 14/15(a) (West 2018)), providing for the retention and deletion of biometric information, and (2) section 15(b) and 15(d) of the Act, providing for the consensual collection and disclosure of biometric identifiers and biometric information, when it scanned his fingerprints. Black Horse moved to dismiss the complaint as untimely filed pursuant to section 13-201 of the Code of Civil Procedure (Code) (735 ILCS 5/13-201 (West 2018)). The circuit court denied the motion, holding that the plaintiff's complaint was timely filed because the five-year limitations period

codified in section 13-205 of the Code applied to violations of the Act. The circuit court also denied the motion to reconsider but certified the question so an application for leave to appeal could be filed in the appellate court. The appellate court allowed the interlocutory appeal and answered the certified question, holding that the one-year limitations period codified in section 13-201 of the Code governs actions under section 15(c) and 15(d) of the Act and that the five-year limitations period codified in section 13-205 of the Code governs actions under section 15(a), 15(b), and 15(e) of the Act. 2021 IL App (1st) 200563, and remanded the cause to the circuit court. The Supreme Court allowed petition for leave to appeal and found that the five-year limitations period contained in section 13205 of the Code governs claims under the Act, affirming in part and reversing in part the judgment of the appellate court and remanding the cause to the circuit court for further proceedings.

Cothron v. White Castle Sys., Inc., 2023 IL 128004 (February 17, 2023)

At issue in this case is section 15(b) and 15(d) of the Biometric Information Privacy Act (Act) (740 ILCS 14/15(b), (d) (West 2018)) where an employer is alleged to have violated this Act when it repeatedly collected fingerprints from an employee and disclosed that biometric information to a third party without consent. The plaintiff asserted that White Castle did not seek her consent to acquire her fingerprint biometric data until 2018, more than a decade after the Act took effect. Accordingly, plaintiff claimed that White Castle unlawfully collected her biometric data and unlawfully disclosed her data to its third-party vendor in violation of section 15(b) and 15(d), respectively, for several years. White Castle moved for judgment, arguing that plaintiff's action was untimely because her claim accrued in 2008 when White Castle first obtained her biometric data after the Act's effective date. The plaintiff responded that a new claim accrued each time she scanned her fingerprints and White Castle sent her biometric data to its third-party authenticator, rendering her action timely with respect to the unlawful scans and transmissions that occurred within the applicable limitations period. The U.S. Court of Appeals for the 7th Circuit, where the case was sent after initial filing in Cook County Circuit Court, certified the following question of law to the Supreme Court: "Do section 15(b) and 15(d) claims accrue each time a private entity scans a person's biometric identifier and each time a private entity transmits such a scan to a third party, respectively, or only upon the first scan and first transmission?" The Court held that a separate claim accrues under the Act each time a private entity scans or transmits an individual's biometric identifier or information in violation of section 15(b) or 15(d), rejecting White Castle's argument that to limit a claim under section 15 to the first time that a private entity scans or transmits a party's biometric identifier or biometric information.

People v. Tompkins, 2023 IL 127805 (February 17, 2023)

In this case the defendant appealed a conviction for unlawful use or possession of a weapon by a felon 720 ILCS 5/24-1.1(a) (West 2018). The defendant argued that the Cook County circuit court erred in both declining to give the jury a non-Illinois Pattern Jury Instruction (non-IPI) pursuant to section 10-30 of the Law Enforcement Officer-Worn Body Camera Act

(Act) (50 ILCS 706/10-30 (West 2018)) and admitting body camera footage showing marijuana belonging to the defendant's co-arrestee, which he felt could cause an inference in the jury's minds that the marijuana belonged to him. The defendant also argued that one of the officers failed to have his body camera turned on. The request to limit the video was denied by the circuit court. The defendant was found guilty of unlawful possession of a weapon by a felon and was sentenced to 7½ years in the Department of Corrections plus two years mandatory supervised release. On appeal, the appellate court found that the circuit court did not err in refusing to give the proposed non-IPI instruction because it was an inaccurate statement of the law as stated in section 10-30 of the Act. The appellate court also found that while it was error to admit the video evidence depicting the marijuana, the error was harmless. The Court allowed petition for appeal and held that the circuit court did not abuse its discretion and that any instructional error was harmless because it did not affect the outcome of the trial, affirming the decisions of the lower courts and the defendant's conviction.

People v. Ramirez, 2023 IL 128123 (May 18, 2023)

In this case the defendant was convicted of possession of a defaced firearm (720 ILCS 5/24-5(b) (West 2018)). The defendant told police he bought the Benelli shotgun with its serial number scratched off from a coworker for $100 and lunch. The Benelli shotgun recovered by police was not introduced at trial. The parties stipulated, however, that the serial number on the shotgun "had been changed, altered, removed, or obliterated." The State did not present any direct evidence that defendant knew that the shotgun's serial number was defaced, and the trial court stated that "pursuant to People v. Lee, [2019 IL App (1st) 162563], the State does not have to prove that. They only have to prove that he knowingly possessed the firearm and that the firearm had a defaced or obliterated serial number". The defendant was found guilty and sentenced to two years of probation. On appeal the defendant challenged the sufficiency of the evidence on the basis that the State failed to prove beyond a reasonable doubt that he knew the serial number on the firearm was defaced. The appellate court affirmed the trial court, holding that the State was required to prove only that defendant knowingly possessed the defaced firearm and not that he knew the firearm was defaced. The Supreme Court allowed leave for appeal and held that section 24-5(b)'s implied *mens rea* of knowledge must apply to both elements of the offense, possession and defacement. The Court reversed the judgments of the appellate court and the circuit court and remanded the cause to the circuit court for a new trial where the State would have the opportunity to prove defendant knew the firearm was defaced as required by the Court's construction of section 24-5(b).

People v. Hutt, 2023 IL 128170 (May 18, 2023)

At issue in this case is whether a refusal to provide a blood or urine sample is obstruction of justice. Defendant was arrested for DUI and other traffic offenses, but refused to perform field sobriety tests or submit to a breath alcohol test and ultimately Hutt did not provide a blood or urine sample despite a search warrant for them. He was convicted of obstructing justice [720

ILCS 5/31-4(a)(1)] for his failure to submit to the search warrant. On appeal, Hutt argued that the evidence was insufficient to find him guilty because "he took no action to conceal or destroy evidence" in regard to the blood and urine. He also contends that the trial court improperly denied him a jury trial in the DUI case. The appellate court affirmed the defendant's obstructing justice conviction, concluding that blood and urine were in fact physical evidence under the statute and thus the defendant concealed the physical evidence. The Court affirmed the circuit court's judgment convicting the defendant of DUI. But the Court reversed the part of the judgment of the appellate court which affirmed the circuit court's judgment convicting the defendant of obstructing justice and reversed the circuit court's judgment convicting the defendant of obstructing justice, finding that the defendant's actions did not amount to concealment within the meaning of the obstructing justice statute.

Rowe v. Raoul, 2023 IL 129248 (July 18, 2023)

At issue in this case is the constitutionality of Public Acts 101-652 and 102-1104, also known as the Safety Accountability, Fairness and Equity (SAFE-T) Act, which dramatically changed the statutory framework for pretrial release of criminal defendants in Illinois. Among other things, the Act amended statutory provisions governing pretrial release of criminal defendants, such as eliminating the monetary bail system, but allowing the State to seek, and the trial court to order, pretrial detention of criminal defendants in certain specified cases. The circuit court of Kankakee County held that certain provisions of the Act violated the bail clause (Ill. Const. 1970, art. I, § 9), the crime victims' rights clause (id. § 8.1(a)(9)), and the separation of powers clause (id. art. II, § 1) of the Illinois Constitution of 1970. On direct review the Supreme Court reversed the circuit court. The majority opinion began its analysis by reciting bedrock principles for deciding constitutional claims, noting the broad powers of the legislature, limited only by the constitution, and the limited powers of the court to declare a statute unconstitutional, *i.e.,* in rare circumstances when it is impossible to do otherwise. Constitutional provisions, like statutes, are construed by looking at the plain language and when unambiguous, giving that language effect without resort to other aids for construction. In conclusion, the Court majority stated that the Illinois Constitution creates a balance between the individual rights of defendants and the individual rights of crime victims. The Act's pretrial release provisions set forth procedures commensurate with that balance.

People v. Washington, 2023 IL 127952 (July 18, 2023)

At issue in this case is whether the petitioner, Wayne Washington, is entitled to a certificate of innocence after the circuit court denied his petition and the appellate court affirmed the denial. Washington, along with Tyrone Hood, was charged with the armed robbery and murder of Marshall Morgan Jr. in 1993 at age 19 and no criminal record. After being detained for more than a day and a half by subordinates of Chicago police detective Jon Burge and facing alleged abuse, the petitioner signed a prewritten statement and falsely confessed to the murder. He accepted the State's offer of a 25-year sentence in exchange for a guilty plea following

Hood's sentencing to 75 years in prison. After a 2014 investigative article in The New Yorker, Governor Pat Quinn commuted Hood's sentence. The State, on its own motion, moved to vacate petitioner's and Hood's convictions and later dismissed the charges. The trial court, however, denied both petitioner's and Hood's petitions for certificates of innocence. They each appealed and the appellate court reversed Hood's case, ordering the trial court to grant a certificate of innocence. In the petitioner's case the appellate court affirmed the trial court's denial of the petition, noting that a defendant like petitioner who has pled guilty "cause[d] or [brought] about his or her conviction" and is not entitled to a certificate of innocence. They further found the petitioner's evidence that he did not bring about his conviction failed because "his testimony that his confession was the result of police coercion was not credible and was otherwise uncorroborated." The Supreme Court found that both the trial court and the appellate court misconstrued the 735 ILCS 5/2-702(g)(4) (West 2016)) statute and noted that "had the legislature wanted to categorically preclude petitioners who had pleaded guilty from obtaining a certificate of innocence, it would have added that language to the statute". The Court found that the petitioner provided substantial and unrebutted evidence that his confession was coerced and that the coercion animated his decision to plead guilty and concluded that the petitioner is entitled to a certificate of innocence, reversing the judgment of the appellate court and remanded the cause to the circuit court with directions to enter an order granting petitioner a certificate of innocence.

Caulkins v. Pritzker, 2023 IL 129453 (August 11, 2023)

Addressing the General Assembly's recent enactment of a criminal code provision restricting the purchase, sale and possession of assault weapons, the Illinois Supreme Court reversed a Macon County circuit court's order finding the Protect Illinois Communities Act (Act) unconstitutional. The opinion focuses on two relevant exemptions in the Act: A "grandfather" provision for individuals who lawfully possessed assault weapons before the statute's effective date and seven enumerated classes of individuals involved in law enforcement and related professional fields.

People v. Lane, 2023 IL 128269 (October 19, 2023)

At issue in this case is whether section 5-8-1 of the Unified Code of Corrections (Code) (730 ILCS 5/5-8-1(a)(1)(c)(ii) (West 2006)), which applies a mandated a sentence of life in prison for multiple murders, applies to a defendant found guilty of the murder of a woman and the death of her unborn fetus. Following a domestic disturbance in 2007, the defendant's gun discharged and struck and killed his girlfriend Jwonda Thurston and her unborn child. Lane was charged with first degree murder and intentional homicide of an unborn child. 720 ILCS 5/9-1, 9-1.2 (West 2006). The trial court found the defendant guilty of first-degree murder and intentional homicide of an unborn child and held that section 5-8-1(a)(1)(c)(ii) of the Code mandated a sentence of natural life in prison because Lane had murdered more than one victim. Defendant filed a motion to reconsider the sentence, arguing the court found him guilty of only

one murder. The trial court denied the motion. On appeal, Lane challenged only the sentence. The appellate court affirmed the circuit court, holding that the sentencing provision for intentional homicide of an unborn child made it count as murder and the court further held that Lane waived his argument that Thurston's fetus did not meet the statutory definition of "victim." The Supreme Court allowed petition for leave to appeal. The Court reversed the appellate court's judgment, holding that section 9-1.2(d) sets the range of sentences available for intentional homicide of an unborn child but it does not convert the intentional homicide of an unborn child into murder. The Court additionally held that section 5-8-1(a)(1)(c)(ii) mandates life sentences only for defendants found guilty of more than one murder. The Court vacated the sentence and remanded the cause for resentencing. Because their interpretation of sections 91.2(d) and 5-8-1(a)(1)(c)(ii) resolved the case, the Court did not address Lane's argument that the unborn fetus does not count as a "victim" within the meaning of section 58-1(a)(1)(c)(ii).

People v. Lighthart, 2023 IL 128398 (October 19, 2023)

Jessica Lighthart was charged with multiple counts of first degree murder and ultimately pled guilty to one count of murder in exchange for a 35-year sentencing cap and the dismissal of other charges. At the conclusion of a full sentencing hearing, Lighthart was sentenced to 35 years of imprisonment. Through counsel, Lighthart filed a timely motion to reconsider sentence, which was denied. She subsequently filed a *pro se* motion to withdraw her guilty plea, alleging ineffective assistance of counsel. The trial court "allowed" Lighthart to file the motion even though more than 30 days had passed since sentencing and appointed new counsel to represent her on it. After several continuances, that motion was heard and denied. Lighthart appealed, but her appeal was dismissed on jurisdictional grounds because she had not filed a proper, timely post-plea motion in compliance with Supreme Court Rule 604(d). Approximately 10 months later, Lighthart filed a post-conviction petition alleging ineffective assistance of counsel for, among other things, failing to file a timely motion to withdraw guilty plea. That petition was dismissed at the second stage on the ground that it was untimely under 725 ILCS 5/122-1(c). The circuit court concluded that the 6-month limitation period applied to Lighthart's case because she had "filed" a direct appeal, even though that filing resulted in a dismissal for lack of jurisdiction rather than a decision on the merits. Thus, Lighthart's petition was untimely because it was not filed within six months of the date for filing a certiorari petition or, in a case like this one where no petition for leave to appeal was filed and thus no due date for a certiorari petition could be calculated, within six months from the date a PLA would have been due. See *People v. Johnson,* 2017 IL 120310 ("inserting" PLA language into the statute due to legislative oversight). The appellate court agreed. The Illinois Supreme Court granted leave to appeal to consider whether the filing of an ineffective notice of appeal, which results in dismissal for lack of jurisdiction for failing to comply with Supreme Court Rule 604(d), triggers the 6-month limitation period or whether the petitioner has three years from the date of conviction to file such a petition. The Court agreed with the lower courts and concluded that it was the 6-month period which should apply. The Illinois Supreme Court first noted that the statutory language regarding the 3-year limitation period is ambiguous because the phrase, "If a defendant does not file a

direct appeal," could be construed to mean either (1) where no notice of appeal is filed or (2) where a notice of appeal is filed but is ineffective. Looking back at changes to the Post-Conviction Hearing Act over the years, the Court found that the legislative history showed an overall trend of shortening the limitations period and thus concluded that legislative intent was that the 3-year period applied only where no notice of appeal was ever filed. The Court pointed out that this interpretation also has the benefit of providing a bright-line rule rather than petitioners and courts having to differentiate between ineffective and effective notices of appeal. Here, because Lighthart had "filed" a notice of appeal, albeit an ineffective one resulting in dismissal, the 6-month limitation period applied. Accordingly, her petition was untimely. But, the Illinois Supreme Court found that her untimeliness was excused due to a lack of culpable negligence because the version of Section 122-1(c) in effect at the time the petition was filed referenced only the time for filing a certiorari petition and made no reference to the later "inserted" requirement that a petition be filed within six months of the time for filing a PLA where none was filed. Additionally, at the time Lighthart's petition was filed, the only reported opinion on the question was *People v. Ross,* 352 Ill. App. 3d 617 (3d Dist. 2004), which favored her position. Thus, under the unique circumstances of this case, Lighthart was not culpably negligent for the late filing, and the Court remanded the matter for further proceedings on her petition. While not the basis for the Court's decision, it is also worth noting that the Court was critical of the "inexcusable and unconscionable" delay of more than 11 years during second-stage proceedings in the circuit court. Most of that delay was attributable to continuances sought by defense counsel. In its decision, the Court instructed that proceedings on remand be conducted "without further delay."

Lichter v. Carroll, 2023 IL 128468 (October 26, 2023)

In this case the plaintiff Jamie Lichter filed a personal injury complaint against Donald Christopher in January 2018 for injuries she sustained in a February 2016 car accident, only Christopher had passed away in June 2017 and an estate was never opened for him following his death. The plaintiff filed a motion pursuant to section 2-1008(b) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1008(b) (West 2018)) to appoint Kimberly Porter Carroll as the 'special representative' of Christopher's estate for the purpose of defending the lawsuit, which the circuit court granted. The plaintiff subsequently filed an amended complaint, naming Porter Carroll as the special representative of Christopher's estate and the defendant in the case. Eventually, counsel for Christopher's insurer, State Farm, appeared on behalf of the defendant. On March 3, 2020, the defendant, now represented by State Farm, filed a motion to dismiss the plaintiff's complaint pursuant to section 2-619(a) of the Code (735 ILCS 5/2-619(a) (West 2020)), arguing that the action was time barred. The defendant asserted that the plaintiff never moved to appoint a 'personal representative' of Christopher's estate prior to the statute of limitations expiring, as she was required to do pursuant to section 13-209(c) of the Code (735 ILCS 13209(c) (West 2020)). The circuit court granted the defendant's motion and dismissed the case with prejudice. The plaintiff appealed, and the appellate court reversed the circuit court, holding that because an estate was never opened for Christopher and there was no 'personal representative' to defend the

lawsuit, the plaintiff acted properly in moving to appoint a 'special representative' pursuant to section 13-209(b)(2) of the Code (735 ILCS 13-209(b)(2) (West 2018)). The Supreme Court ultimately affirmed the appellate court and reversed the circuit court, finding that the plaintiff was entitled to name a 'special representative' pursuant to subsection (b)(2) because there was no 'personal representative' of Christopher's estate. The Court remanded the case to the trial court to be reinstated and for further proceedings.

Pinkston v. City of Chicago, 2023 IL 128575 (November 30, 2023)

In this case the plaintiff Alec Pinkston filed a class-action complaint alleging that the City of Chicago (City) had engaged in the routine practice of improperly issuing central business district tickets for parking meter violations, citing in particular a ticket for an expired parking which he felt he unfairly received while being outside the "central business district" boundary. He further alleged the City had a "routine practice" of issuing central business district tickets to vehicles parked outside the boundaries of that district and were thus subjected to fines for Municipal Code violations they did not commit. The City moved to dismiss, arguing that the plaintiff failed to exhaust his administrative remedies, such as with the Chicago Department of Administrative Hearings (DOAH), and had voluntarily paid his fine. The circuit court granted the City's motion with prejudice, finding that the plaintiff failed to exhaust his administrative remedies and none of the exceptions to the exhaustion doctrine applied. While his appeal was pending, the plaintiff filed an unopposed motion for judicial notice, asking the appellate court to take notice of the outcome of his proceedings before the DOAH. The plaintiff indicated he challenged his ticket before the DOAH but was still found liable. In its response to the motion, the City included a letter dated May 27, 2019, in which plaintiff challenged his ticket, by mail, on the ground the parking meter application he used to pay the meter did not record the correct license plate. A printout of the administrative hearing indicates that the plaintiff did not show any evidence as to why a Minnesota license plate was on the receipt and thus he was found liable. On appeal, the appellate court reversed the circuit court's dismissal of the plaintiff's complaint with prejudice and remanded the cause for further proceedings, finding one exception did apply, i.e., that the DOAH could not have provided him the ultimate relief he sought, including injunctive and monetary relief. In response to the City's argument on the voluntary payment doctrine, the court agreed with the circuit court that questions of fact remained, precluding dismissal on that basis. The Supreme Court reversed the appellate court and affirmed the circuit court, finding that the plaintiff failed to exhaust his administrative remedies and that no exceptions to the exhaustion doctrine applied.

Galarza v. Direct Auto Ins. Co., 2023 IL 129031 (November 30, 2023)

In this insurance coverage dispute, the Illinois Supreme Court addressed whether a bicyclist injured in a hit-and-run accident was covered under the uninsured motorist (UM) provision of his father's automobile insurance policy. The Supreme Court ruled that a provision in the policy limiting UM coverage to insureds occupying an insured automobile violates the

Illinois Insurance Code and the state's public policy. Fredy Guiracocha and his son, Cristopher, conceded the Direct Auto Insurance Company's policy did not provide coverage. The policy limited UM coverage to insureds injured while occupying an "insured automobile," and Cristopher was on a bicycle, not in an automobile, when he was hit. Throughout the litigation, the Guiracochas contended the restriction violated Section 143a of the Illinois Insurance Code, 215 ILCS 5/143a (West 2020), a statute serving the policy goal of securing for policyholders payment for damages incurred in auto accidents. Direct Auto prevailed under the language of the policy in the circuit court. The appellate court, where – according to the Guiracochas – Direct Auto conceded that Cristopher was an insured, reversed the circuit court's decision. The Supreme Court held the Guiracochas met their "heavy burden" of persuading the Court to declare the UM restriction contained in the insurance policy, a private contract, invalid on public policy grounds. The Illinois Supreme Court observed that Section 143a requires motor vehicle insurance policies to provide UM coverage at least equal to the statutory minimum and cited its precedent determining that UM coverage must apply "to all who are insured under the policy's liability provisions." The Court rejected Direct Auto's argument that Cristopher was not an insured absent occupation of a vehicle at the time of the accident. In the Court's view, the proper inquiry is whether the injuries resulted from "the ownership, maintenance or use of a motor vehicle," including an uninsured vehicle alleged to be at fault.

Mosby v. Ingalls Mem'l Hosp., 2023 IL 129081 (November 30, 2023)

In this case, the Illinois Supreme Court explored the boundaries of the Biometric Information Privacy Act in the context of information collected by health care providers from their employees. The case arose out of two lawsuits filed in Cook County by health care workers alleging that their employers violated the Biometric Information Privacy Act when they required employees to use a finger-scan device as part of the hospitals' medication dispensing systems. The purpose of the finger-scan was to authenticate the identity of the user. The lawsuits also named the distributor of the device, Becton, Dickenson and Company. Defendants filed motions to dismiss pursuant to Section 2-619(a)(9), arguing that the information collected was excluded from the Act. The circuit court denied the motions but allowed interlocutory appeals. The certified questions on appeal focused on Section 10 of the Act, which excluded from its protections "information collected, used, or stored for health care treatment, or operations under the federal Health Insurance Portability and Accountability Act of 1996." The Illinois Supreme Court noted that Section 10 of the Act excludes certain information from the "biometric identifier" designation, including "information captured from a patient in a health care setting or information collected, used, or stored for health care treatment, payment, or operations" under HIPAA. The Court then focused its analysis on the use of the word "of." The Court noted that "of" "marks an alternative indicating the various parts of the sentence which it connects are to be taken separately." The Court concluded that the Act excludes from its protections the biometric information of health care workers where that information is collected, used, or stored for health care treatment, payment, or operations, as those functions are defined by HIPAA. The Court cautioned that in reaching this conclusion it was "not construing the language at issue as a broad, categorical exclusion of biometric identifiers taken from health care workers." The Supreme

Court explained that the exception only applies in situations where biometric information was collected, used, and stored to access medications and medical supplies.

People v. Devine, 2023 IL 128438 (December 29, 2023)

This case concerns what constitutes sufficient evidence to convict a defendant of nonconsensual dissemination of sexual images. The trial evidence demonstrated that defendant worked at a Verizon store and sent five photographs of a customer's genitalia to himself when switching said customer's phone service. Defendant was found guilty, and on appeal argued the evidence was insufficient for a conviction. The appellate court reversed, finding that sending the images to himself did not constitute "dissemination" of the images because it did not foster general knowledge or make them more widely known. The appellate court also found that the evidence was insufficient to prove the victim was identifiable from the image itself, given that neither her face or any other identifiable characteristics were present in the photo. Although the Supreme Court disagreed with the appellate court's conclusion that defendant did not disseminate the images when he texted them from J.S.'s phone to his own, the Court did agree with the appellate court's conclusion that J.S. was not identifiable from the images. The appellate court thus correctly concluded that defendant's conviction for nonconsensual dissemination of private sexual images could not stand.

LEGISLATIVE RECOMMENDATIONS FROM SUPREME COURT APPOINTED BODIES

The following pages include recommendations that come from two Illinois Judicial Conference task forces, the Modernization of Service of Process Task Force and the Criminal Indigent Defense Task Force, as well as the Statutory Court Fees Task Force and the newly formed Supreme Court Commission on Elder Law.

Modernization of Service of Process Task Force Legislative Recommendations

The Modernization of Service of Process Task Force conducted a detailed analysis of the use of summons throughout the country and made two particular recommendations for the improvement of this vital function within our system of justice:

A. adopt a Universal summons that provides the recipient with a date and time to appear in court as the first step; and

B. require process servers to use approved software that will record information, including location, of each service attempt and which allows the process server to e-file the service return.

Appendix A includes the specifically identified statutory amendments necessary to effectuate the above recommendations.

Criminal Indigent Defense Task Force Legislative Recommendations

The Criminal Indigent Defense Task Force made recommendations to the Court that in many ways fundamentally change the provision of public defense in Illinois. The task force's work produced the following recommendations:

A. Full funding of trial-level public defense services must be provided by the State.

B. Establish an independent statewide Administrative Office of Public Defense (AOPD) under judicial branch authority to plan for and implement the new statewide system, administer state funding to local public defender offices, provide statewide support services to local public defender offices, and support a one-year planning process at the local level to support implementation of the new system.

C. Develop and implement a rigorous strategy and infrastructure in the AOPD for recruitment and retention of attorneys.

D. After the AOPD is operationalized, create an oversight board of a size and structure carefully established to further operational needs.

Some of the legislation necessary to put these recommendations into effect is outlined specifically Appendix B.

Statutory Court Fees Task Force Legislative Recommendations

As the General Assembly is aware, the work of the Statutory Court Fees Task Force was a joint effort between the Legislative and Judicial Branches of government, with a broad membership of experts and policymakers from across the state. The final report outlined several changes to improve the number, classification, imposition and collection of court fees:

A. Clarification of definitions within the Criminal & Traffic Assessment Act;
B. Clarification of the scope of assessment waivers;
C. Clarification that assessment waivers cannot be a condition of plea bargains;
D. Elimination of annual fee in guardianship proceedings involving minors and disabled adults;
E. Elimination of duplicative collection fees regarding unpaid assessments;
F. Earn-down reduction of assessments and fines for defendants sentenced to the department of corrections; and
G. Recommendations for the continuation of circuit court clerk assessment reports on criminal and civil cases.

Statutory amendments recommended by the task force are found in Appendix C.

Supreme Court Commission on Elder Law Legislative Recommendations

The recently formed Supreme Court Commission on Elder Law has been actively working to analyze the intersection of elderly individuals and the justice system. The Commission is an interdisciplinary group composed of attorneys, judges, medical doctors, public guardians, adult disability advocates and others. Several different policy proposals have been made, including the following recommendations for statutory amendments:

A. Creation of a will depository specifically for testators in Illinois;
B. Adding a training requirement for guardians of the estate to accompany existing training for guardians of the person; and
C. Moving up the statutory timeline for guardian training.

More specific information about these proposed statutory amendments from the Commission on Elder Law can be found under Appendix D.

Conclusion

As you can see, the Judicial Branch has been extraordinarily active in its goal to improve the system of justice in our state. We applaud the work of these and other bodies in their dedication to the Court's strategic plan. As stated in the introductory letter, we hope that these very thorough proposals will be of interest to you.

APPENDIX A

The following is a list of statutes that may be impacted by proposals from the Illinois Judicial Conference's Modernization of Service of Process Task Force. Clean and suggested redlined versions of the statutes listed in bold are included.

Code of Civil Procedure

- **735 ILCS 5/14-102-104 – Summons to Issue (Mandamus)**
- 735 ILCS 5/2-201 Commencement of actions – Forms of process.
- 735 ILCS 5/2-202 Persons authorized to serve process; place of service; failure to make return
- 735 ILCS 5/2-203 Service on individuals
- 735 ILCS 5/2-203.1 Service by special order of court
- 735 ILCS 5/2-203.2 Service on an inmate
- 735 ILCS 5/2-204 Service on private corporations
- 735 ILCS 5/2-205 Service on partnership and partners
- 735 ILCS 5/2-205.1 Service on voluntary unincorporated associations
- 735 ILCS 5/2-206 Service by publication; affidavit; mailing; certificate
- 735 ILCS 5/2-207 Period of publication – Default
- **735 ILCS 5/2-208 Personal service outside state**
- 735 ILCS 5/2-209 (d) & (e) Act submitting to jurisdiction - Process
- 735 ILCS 5/2-210 Aircraft and Watercraft [service on]
- 735 ILCS 5/2-211 Service on public, municipal, governmental and quasi-municipal corporations
- 735 ILCS 5/2-212 Service on Trustee of corporation or receiver
- 735 ILCS 5/2-213 Waiver of Service
- 735 ILCS 5/3-105 - Service of summons (Administrative Review)
- **735 ILCS 5/11-304 – Summons - - Pleadings (Disbursement of Public Moneys)**
- 735 ILCS 5/12-705 – Summons (Garnishment)
- 735 ILCS 5/12-806 - Service and return of (Wage Deductions)
- **735 ILCS 5/18-106. Summons—Appearance (Quo Warranto)**

Civil Liabilities

- **740 ILCS 21/60 – Process (Stalking No Contact Order)**
- **740 ILCS 22/208- Process**

Families

- **750 ILCS 5/411- Commencement of Action (Dissolution and Legal Separation)**
- **750 ILCS 46/606 (Proceeding to Adjudicate Parentage)**
- **750 ILCS 60/210 (Orders of Protection)**

Employment

- **820 ILCS 275/50 – Process (Workplace Violence Prevention Act)**

(740 ILCS 22/208)

Sec. 208. Process.

(a) Any action for a civil no contact order requires that a separate summons be issued and served. The summons shall be in the form prescribed by Supreme Court Rule 101(~~d~~a), except that it may~~shall~~ require the respondent to ~~answer or~~ appear within on a date specified in the summons that is less than 40 days, but not fewer than 7 days, after the issuance of the summons. Attachments to the summons or notice shall include the petition for civil no contact order and supporting affidavits, if any, and any emergency civil no contact order that has been issued.

(b) The summons shall be served by the sheriff or other law enforcement officer at the earliest time and shall take precedence over other summonses except those of a similar emergency nature. Special process servers may be appointed at any time, and their designation shall not affect the responsibilities and authority of the sheriff or other official process servers.

(c) Service of process on a member of the respondent's household or by publication shall be adequate if: (1) the petitioner has made all reasonable efforts to accomplish actual service of process personally upon the respondent, but the respondent cannot be found to effect such service; and (2) the petitioner files an affidavit or presents sworn testimony as to those efforts.

(d) A plenary civil no contact order may be entered by default for the remedy sought in the petition, if the respondent has been served or given notice in accordance with subsection (a) and if the respondent then fails to appear as directed or fails to appear on any subsequent appearance or hearing date agreed to by the parties or set by the court.

(e) If an order is granted under subsection (c) of Section 214, the court shall immediately file a certified copy of the order with the sheriff or other law enforcement official charged with maintaining Department of State Police records.

(Source: P.A. 101-508, eff. 1-1-20.)

(750 ILCS 5/411) (from Ch. 40, par. 411)

Sec. 411. Commencement of Action.

(a) Actions for dissolution of marriage or legal separation shall be commenced as in other civil cases or, at the option of petitioner, by filing a praecipe for summons with the clerk of the court and paying the regular filing fees, in which latter case, a petition shall be filed within 6 months thereafter, or any extension for good cause shown granted by the court.

(b) When a praecipe for summons is filed without the petition, the form and substance of the summons shall be according to the rules and recite that petitioner has commenced suit for dissolution of marriage or legal separation.

Until a petition has been filed, the court, pursuant to subsections (c) and (d) herein, may dismiss the suit, order the filing of a petition, or grant leave to the respondent to file a petition in the nature of a counter petition.

After the filing of the petition, the party filing the same shall, within 2 days, serve a copy thereof upon the other party, in the manner provided by rule of the Supreme Court for service of notices in other civil cases.

(c) Unless a respondent voluntarily files an appearance, a praecipe for summons filed without the petition shall be served on the respondent not later than 30 days after its issuance, and upon failure to obtain service upon the respondent within the 30 day period, or any extension for good cause shown granted by the court, the court shall dismiss the suit.

(d) An action for dissolution of marriage or legal separation commenced by the filing a praecipe for summons without the petition may be dismissed if a petition for dissolution of marriage or legal separation has not been filed within 6 months after the commencement of the action or within the extension granted under subsection (a) of this Section.

(e) The filing of a praecipe for summons under this Section constitutes the commencement of an action that serves as grounds for involuntary dismissal under subdivision (a)(3) of Section 2-619 of the Code of Civil Procedure of a subsequently filed petition for dissolution of marriage or legal separation in another county.

(Source: P.A. 99-90, eff. 1-1-16.)

(750 ILCS 5/411) (from Ch. 40, par. 411)

Sec. 411. Commencement of Action.

(a) Actions for dissolution of marriage or legal separation shall be commenced as in other civil cases or, at the option of petitioner, by filing a praecipe for summons with the clerk of the court and paying the regular filing fees, in which latter case, a petition shall be filed within 6 months thereafter, or any extension for good cause shown granted by the court.

(b) When a praecipe for summons is filed without the petition, the form and substance of the summons shall be according to the rules ~~summons shall~~ and recite that petitioner has commenced suit for dissolution of marriage or legal separation. ~~and shall require the respondent to file his or her appearance not later than 30 days from the day the summons is served and to plead to the petitioner's petition within 30 days from the day the petition is filed.~~

Until a petition has been filed, the court, pursuant to subsections (c) and (d) herein, may dismiss the suit, order the filing of a petition, or grant leave to the respondent to file a petition in the nature of a counter petition.

After the filing of the petition, the party filing the same shall, within 2 days, serve a copy thereof upon the other party, in the manner provided by rule of the Supreme Court for service of notices in other civil cases.

(c) Unless a respondent voluntarily files an appearance, a praecipe for summons filed without the petition shall be served on the respondent not later than 30 days after its issuance, and upon failure to obtain service upon the respondent within the 30 day period, or any extension for good cause shown granted by the court, the court shall dismiss the suit.

(d) An action for dissolution of marriage or legal separation commenced by the filing a praecipe for summons without the petition may be dismissed if a petition for dissolution of marriage or legal separation has not been filed within 6 months after the commencement of the action or within the extension granted under subsection (a) of this Section.

(e) The filing of a praecipe for summons under this Section constitutes the commencement of an action that serves as grounds for involuntary dismissal under subdivision (a)(3) of Section 2-619 of the Code of Civil Procedure of a subsequently filed petition for dissolution of marriage or legal separation in another county.

(Source: P.A. 99-90, eff. 1-1-16.)

(750 ILCS 46/606)

Sec. 606. Summons. The form and substance of the summons shall be according to the rules and shall contain the following information, in a prominent place and in conspicuous language, in addition to the information required to be provided under the laws of this State: "If you do not appear as instructed in this summons, you may be required to support the child named in this petition until the child is at least 18 years old. You may also have to pay the pregnancy and delivery costs of the mother."

(Source: P.A. 99-85, eff. 1-1-16.)

(750 ILCS 46/606)

Sec. 606. Summons. The form and substance of the summons shall be according to the rules and~~that is served on a respondent shall include the return date on or by which the respondent must appear~~ and shall contain the following information, in a prominent place and in conspicuous language, in addition to the information required to be provided under the laws of this State: "If you do not appear as instructed in this summons, you may be required to support the child named in this petition until the child is at least 18 years old. You may also have to pay the pregnancy and delivery costs of the mother."~~.~~

(Source: P.A. 99-85, eff. 1-1-16.)

(750 ILCS 60/210) (from Ch. 40, par. 2312-10)

Sec. 210. Process.

(a) Summons. Any action for an order of protection, whether commenced alone or in conjunction with another proceeding, is a distinct cause of action and requires that a separate summons be issued and served, except that in pending cases the following methods may be used:

(1) By delivery of the summons to respondent personally in open court in pending civil or criminal cases.

(2) By notice in accordance with Section 210.1 in civil cases in which the defendant has filed a general appearance.

The summons shall be in the form prescribed by Supreme Court Rule 101(a), except that it may require respondent to appear on a day specified in the summons that is less than 40 days, but not fewer than 7 days, after the issuance of the summons. Attachments to the summons or notice shall include the petition for order of protection and supporting affidavits, if any, and any emergency order of protection that has been issued. The enforcement of an order of protection under Section 223 shall not be affected by the lack of service, delivery, or notice, provided the requirements of subsection (d) of that Section are otherwise met.

(b) Blank.

(c) Expedited service. The summons shall be served by the sheriff or other law enforcement officer at the earliest time and shall take precedence over other summonses except those of a similar emergency nature. Special process servers may be appointed at any time, and their designation shall not affect the responsibilities and authority of the sheriff or other official process servers. In counties with a population over 3,000,000, a special process server may not be appointed if the order of protection grants the surrender of a child, the surrender of a firearm or firearm owners identification card, or the exclusive possession of a shared residence.

(d) Remedies requiring actual notice. The counseling, payment of support, payment of shelter services, and payment of losses remedies provided by paragraphs 4, 12, 13, and 16 of subsection (b) of Section 214 may be granted only if respondent has been personally served with process, has answered or has made a general appearance.

(e) Remedies upon constructive notice. Service of process on a member of respondent's household or by publication shall be adequate for the remedies provided by paragraphs 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 14, 15, and 17 of subsection (b) of Section 214, but only if: (i) petitioner has made all reasonable efforts to accomplish actual service of process personally upon respondent, but respondent cannot be found to effect such service and (ii) petitioner files an affidavit or presents sworn testimony as to those efforts.

(f) Default. A plenary order of protection may be entered by default as follows:

(1) For any of the remedies sought in the petition, if respondent has been served or given notice in accordance with subsection (a) and if respondent then

fails to appear as directed or fails to appear on any subsequent appearance or hearing date agreed to by the parties or set by the court; or

(2) For any of the remedies provided in accordance with subsection (e), if respondent fails to answer or appear in accordance with the date set in the publication notice or the return date indicated on the service of a household member.

(g) Emergency orders. If an order is granted under subsection (c) of Section 217, the court shall immediately file a certified copy of the order with the sheriff or other law enforcement official charged with maintaining Department of State Police records.

(Source: P.A. 101-508, eff. 1-1-20.)

(750 ILCS 60/210) (from Ch. 40, par. 2312-10)

Sec. 210. Process.

(a) Summons. Any action for an order of protection, whether commenced alone or in conjunction with another proceeding, is a distinct cause of action and requires that a separate summons be issued and served, except that in pending cases the following methods may be used:

(1) By delivery of the summons to respondent personally in open court in pending civil or criminal cases.

(2) By notice in accordance with Section 210.1 in civil cases in which the defendant has filed a general appearance.

The summons shall be in the form prescribed by Supreme Court Rule 101(~~d~~a), except that it may~~shall~~ require respondent to ~~answer or~~ appear on a day specified in the summons that is less than 40 days, but not fewer than 7 days, after the issuance of the summons~~within 7 days~~. Attachments to the summons or notice shall include the petition for order of protection and supporting affidavits, if any, and any emergency order of protection that has been issued. The enforcement of an order of protection under Section 223 shall not be affected by the lack of service, delivery, or notice, provided the requirements of subsection (d) of that Section are otherwise met.

(b) Blank.

(c) Expedited service. The summons shall be served by the sheriff or other law enforcement officer at the earliest time and shall take precedence over other summonses except those of a similar emergency nature. Special process servers may be appointed at any time, and their designation shall not affect the responsibilities and authority of the sheriff or other official process servers. In counties with a population over 3,000,000, a special process server may not be appointed if the order of protection grants the surrender of a child, the surrender of a firearm or firearm owners identification card, or the exclusive possession of a shared residence.

(d) Remedies requiring actual notice. The counseling, payment of support, payment of shelter services, and payment of losses remedies provided by paragraphs 4, 12, 13, and 16 of subsection (b) of Section 214 may be granted only if respondent has been personally served with process, has answered or has made a general appearance.

(e) Remedies upon constructive notice. Service of process on a member of respondent's household or by publication shall be adequate for the remedies provided by paragraphs 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 14, 15, and 17 of subsection (b) of Section 214, but only if: (i) petitioner has made all reasonable efforts to accomplish actual service of process personally upon respondent, but respondent cannot be found to effect such service and (ii) petitioner files an affidavit or presents sworn testimony as to those efforts.

(f) Default. A plenary order of protection may be entered by default as follows:

(1) For any of the remedies sought in the petition,

if respondent has been served or given notice in accordance with subsection (a) and if respondent then fails to appear as directed or fails to appear on any subsequent appearance or hearing date agreed to by the parties or set by the court; or

(2) For any of the remedies provided in accordance with subsection (e), if respondent fails to answer or appear in accordance with the date set in the publication notice or the return date indicated on the service of a household member.

(g) Emergency orders. If an order is granted under subsection (c) of Section 217, the court shall immediately file a certified copy of the order with the sheriff or other law enforcement official charged with maintaining Department of State Police records.

(Source: P.A. 101-508, eff. 1-1-20.)

(820 ILCS 275/50)

Sec. 50. Process.

(a) Any action for a workplace protection restraining order requires that a separate summons be issued and served. The summons shall be in the form prescribed by Supreme Court Rule 101(a) and may require the respondent to answer and appear on a day specified in the summons less than 40 days, but not fewer than 7 days after the issuance of the summons. Attachments to the summons or notice shall include the petition for a workplace protection restraining order, supporting affidavits, if any, and any emergency workplace protection restraining order that has been issued.

(b) The summons shall be served by the sheriff or other law enforcement officer at the earliest time possible and shall take precedence over other summonses except those of a similar emergency nature. A special process server may be appointed at any time, and the appointment of a special process server shall not affect the responsibilities and authority of the sheriff or other official process servers.

(c) Service of summons on a member of the respondent's household or by publication is adequate if: (1) the petitioner has made all reasonable efforts to accomplish actual service of process personally upon the respondent, but the respondent cannot be found to effect the service; and (2) the petitioner files an affidavit or presents sworn testimony describing those efforts.

(d) A plenary workplace protection restraining order may be entered by default for the remedy sought in the petition if the respondent has been served in accordance with subsection (a) of this Section or given notice and if the respondent then fails to appear as directed or fails to appear on any subsequent appearance or hearing date agreed to by the parties or set by the court.

(e) An employee who has been a victim of domestic violence by the respondent is not required to and the court may not order the employee to testify, participate in, or appear in this process for any purpose.

(Source: P.A. 98-766, eff. 7-16-14.)

(820 ILCS 275/50)

Sec. 50. Process.

(a) Any action for a workplace protection restraining order requires that a separate summons be issued and served. The summons shall be in the form prescribed by Supreme Court Rule 101(a) and may require the respondent to answer and appear on a day specified in the summons less than 40 days, but not fewer than ~~within~~ 7 days after the issuance of the summons. Attachments to the summons or notice shall include the petition for a workplace protection restraining order, supporting affidavits, if any, and any emergency workplace protection restraining order that has been issued.

(b) The summons shall be served by the sheriff or other law enforcement officer at the earliest time possible and shall take precedence over other summonses except those of a similar emergency nature. A special process server may be appointed at any time, and the appointment of a special process server shall not affect the responsibilities and authority of the sheriff or other official process servers.

(c) Service of summons on a member of the respondent's household or by publication is adequate if: (1) the petitioner has made all reasonable efforts to accomplish actual service of process personally upon the respondent, but the respondent cannot be found to effect the service; and (2) the petitioner files an affidavit or presents sworn testimony describing those efforts.

(d) A plenary workplace protection restraining order may be entered by default for the remedy sought in the petition if the respondent has been served in accordance with subsection (a) of this Section or given notice and if the respondent then fails to appear as directed or fails to appear on any subsequent appearance or hearing date agreed to by the parties or set by the court.

(e) An employee who has been a victim of domestic violence by the respondent is not required to and the court may not order the employee to testify, participate in, or appear in this process for any purpose.

(Source: P.A. 98-766, eff. 7-16-14.)

(735 ILCS 5/14-102) (from Ch. 110, par. 14-102)

Sec. 14-102. Summons to issue. Upon the filing of a complaint for mandamus the clerk of the court shall issue a summons, which shall be in the form prescribed by Supreme Court Rule 101(a)

(Source: P.A. 83-357.)

(735 ILCS 5/14-103) (from Ch. 110, par. 14-103)

Sec. 14-103. Defendant to appear. Every defendant who is served with summons shall appear on the appearance date, unless the time for doing so is extended by the court. If the defendant fails to do so, judgment may be entered against the defendant. No matters not germane to the distinctive purpose of the proceeding shall be introduced by joinder, counterclaim or otherwise.

(Source: P.A. 90-655, eff. 7-30-98.)

(735 ILCS 5/14-104) (from Ch. 110, par. 14-104)

Sec. 14-104. Reply by plaintiff. If defendant files an answer, the plaintiff may reply or otherwise plead to the answer, within 5 days after the last day allowed for the filing of the answer, unless the time for doing so is extended and further pleadings may be had as in other civil cases.

(Source: P.A. 82-280.)

(735 ILCS 5/14-102) (from Ch. 110, par. 14-102)

Sec. 14-102. Summons to issue. Upon the filing of a complaint for mandamus the clerk of the court shall issue a summons, which shall be in the form prescribed by Supreme Court Rule 101(a)~~in like form, as near as may be as summons in other civil cases. The summons shall be made returnable within a time designated by the plaintiff not less than 5 nor more than 30 days after the service of the summons.~~

(Source: P.A. 83-357.)

(735 ILCS 5/14-103) (from Ch. 110, par. 14-103)

Sec. 14-103. Defendant to appear~~plead~~. Every defendant who is served with summons shall appear on the appearance date~~answer or otherwise plead on or before the return day of the summons~~, unless the time for doing so is extended by the court. If the defendant fails to do so~~defaults~~, judgment ~~by default~~ may be entered against the defendant~~by the court~~. No matters not germane to the distinctive purpose of the proceeding shall be introduced by joinder, counterclaim or otherwise.

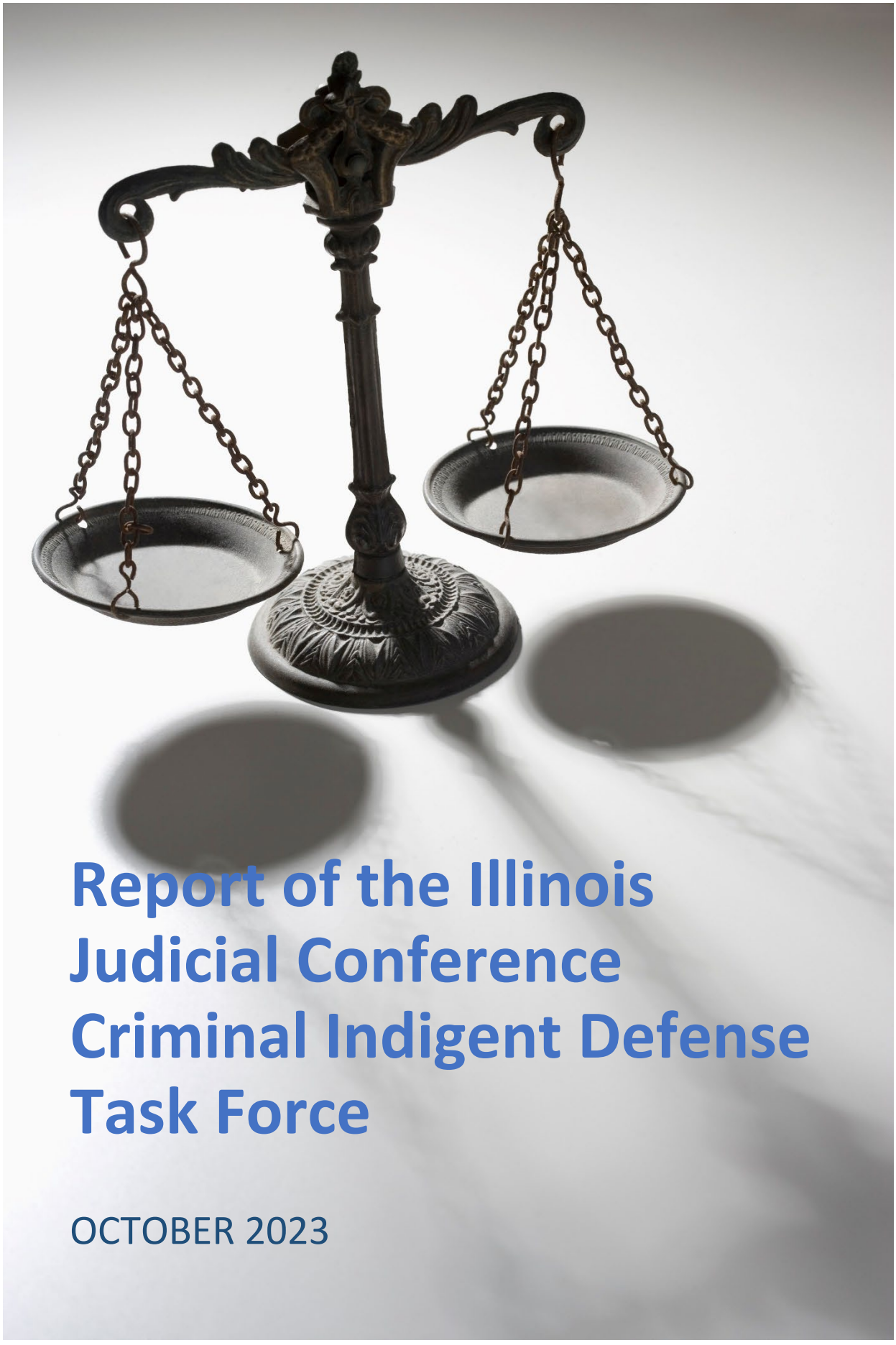
(Source: P.A. 90-655, eff. 7-30-98.)

(735 ILCS 5/14-104) (from Ch. 110, par. 14-104)

Sec. 14-104. Reply by plaintiff. If defendant files an answer, t~~T~~he plaintiff may reply or otherwise plead to the answer, within 5 days after the last day allowed for the filing of the answer, unless the time for doing so is extended and further pleadings may be had as in other civil cases.

(Source: P.A. 82-280.)

APPENDIX B



Report of the Illinois Judicial Conference Criminal Indigent Defense Task Force

OCTOBER 2023

Criminal Indigent Defense Task Force Members

Kathy Saltmarsh, *Task Force Chair,* Executive Director, Sentencing Policy Advisory Council (former appellate defender)

Hon. J. Imani Drew, *Task Force Co-Chair,* 21st Judicial Circuit (former assistant public defender)

Hon. P. Scott Neville, Jr., Illinois Supreme Court

Hon. Mary K. Rochford, 1st District Appellate Court

Hon. David Brodsky, Ret., 19th Judicial Circuit (former Lake County Public Defender)

Hon. Melissa Morgan, Chief Judge, 2nd Judicial Circuit

Hon. Randy Rosenbaum, Chief Judge, 6th Judicial Circuit (former Champaign County Public Defender)

Hon. William Thurston, Chief Judge, 1st Judicial Circuit

Hon. Cara LeFevour Smith, Director, Office of Statewide Pretrial Services

Kimberly Foxx, Cook County State's Attorney

Keith Grant, Lake County Public Defender's Office, President of the Illinois Public Defender Association

Justin Hood, Hamilton County State's Attorney

Tom Jakeway, Trial Court Administrator, 17th Judicial Circuit

Christopher MacDonald, Assistant Public Defender, Law Office of the Cook County Public Defender

Sharone R. Mitchell, Jr., Cook County Public Defender

Nathan Rowland, Gallatin & Hamilton County Public Defender, Illinois Council of Chief Defenders

Matt Vaughn, Jefferson County Public Defender

Adam Vaught, Attorney, Kilbride & Vaught

Laura Weiler, Director of Training, Office of the State Appellate Defender

The Task Force gratefully acknowledges the contributions of Sharlyn Grace, Senior Policy Advisor at the Law Office of the Cook County Public Defender.

Task Force Staff:

Nathan Jensen, Director, Court Services Division, Administrative Office of the Illinois Courts

Marisa Wiesman, Deputy Director, Access to Justice and Strategic Planning Division, Administrative Office of the Illinois Courts

I. INTRODUCTION

The 60th anniversary of the United States Supreme Court's decision in *Gideon v. Wainwright* spotlighted the state of public defense in this country, revealing just how far from *Gideon's* promise we are as a country and a state. While the obligation to provide effective assistance of counsel belongs to the State, Illinois long ago transferred that trial-level obligation to counties without a corresponding transfer of resources. The result is the system described in the Sixth Amendment Center's June 2021 report on the adult trial-level public defense system in Illinois, *The Right to Counsel in Illinois: Evaluation of Adult Criminal Trial-Level Indigent Defense Services.*[1] The report detailed wide disparities in resources and delivery systems across the state, a lack of independence from both the judiciary and county boards, and excessive caseloads coupled with insufficient resources to rigorously defend clients.

A survey of public defenders by this Task Force tells a powerful story about public defense in Illinois:

> *"With just shy of 1200 active cases (excluding warrant status), ABA guidelines suggest there should be 6 attorneys in my office, but I'm the only one."*
>
> *"Most county boards do not like to fund the PD offices. We should ask for 90% of the State's Attorney budget and independence from the county boards. I currently have to ask/beg for additional help and have to get approval for any change in staffing in my office. Those decisions should be mine and not the county board's."*
>
> *"One of my full-time investigators could make more at Farm 'n Fleet. Not a joke."*

The Sixth Amendment Center report described assistant public defenders as feeling "overwhelmed," "crushing depression," and alone "on an island" without "adequate support" due to crushing caseloads.[2]

The Illinois Supreme Court recognizes that the public defense system cannot continue this way. In response to this public defense crisis and in furtherance of the Illinois Judicial Branch's 2022-2025 Strategic Agenda[3], the Illinois Judicial Conference (IJC) created the Criminal Indigent Defense Task Force (Task Force) in late 2022. The IJC assigned the Task Force the following deliverables:

- Propose a short-term solution for how counties without a public defender's office can comply with the Pretrial Fairness Act.[4]

---

[1] The full report is available at https://sixthamendment.org/illinois-report/. While the Sixth Amendment Center's report focused only on adult trial-level services, the recommendations in this report can be applied to all trial-level public defense services.

[2] *The Right to Counsel in Illinois: Evaluation of Adult Criminal Trial-Level Indigent Defense Services,* https://sixthamendment.org/illinois-report/, p. vi

[3] The Judicial Branch's 2022-2025 Strategic Agenda is available at https://www.illinoiscourts.gov/report/strategic_agenda_22-25/?page=1.

[4] Public Acts 101-652 and 102-1104, commonly referred to as both the Pretrial Fairness Act and the SAFE-T Act. For ease of reference, this Report will refer to this legislation as the SAFE-T Act. The SAFE-T Act was the subject of litigation challenging its constitutionality, and implementation of its pretrial release provisions was stayed by the Illinois Supreme Court in December 2022. In July 2023, the Illinois Supreme Court entered a decision in *Rowe v. Raoul*, 2023 IL 129248, upholding the pretrial release provisions of the SAFE-T Act and directing courts to conduct hearings consistent with the Act beginning on September 18, 2023. Given the timing of this litigation, the Task Force prioritized its other deliverable.

- Make recommendations to ensure indigent defendants have legal representation if they cannot afford their own attorney. Recommendations for a long-term solution should increase consistency, effectiveness, and accountability across the state.
  This includes:
  - Reviewing data and current practices, and recommending a permanent statewide solution that will ensure legal representation when warranted;
  - Providing cost estimates for a permanent solution and/or the funding needed to implement the solution at the circuit and appellate levels;
  - Recommending changes to legislation for a permanent solution (if applicable); and
  - Prioritizing / suggesting an approach for implementing the permanent solution.

While the Task Force's charge is considerable, Illinois has a record of effectively responding to crises in the criminal legal system. By way of example, the Office of the State Appellate Defender (OSAD) came about at a time when the appellate courts were deciding cases without briefs being filed on behalf of the defendant. When that office was defunded for political reasons, a federal court case found that the State had failed to meet its constitutional obligation to provide counsel to indigent defendants.

Second, when faced with repeated exonerations of people on death row involving ineffective assistance of counsel, all three branches of government responded:

- The Court adopted a rule requiring attorneys to be certified in death penalty litigation and training programs were quickly developed.
- The Governor declared a moratorium on executions and established a blue-ribbon commission to study the death penalty.
- The Legislature established the Capital Litigation Trust Fund and a trial assistance office within OSAD, both of which were well-funded.

Increasing resources to defense counsel immediately impacted the ability of attorneys to provide a rigorous defense.

Most recently and relevantly, the Office of Statewide Pretrial Services (OSPS) was established in response to changing pretrial requirements. In this case the Court was given the authority to develop an operational structure for the delivery of pretrial services statewide. This effort was State funded and counties with the greatest need were prioritized. The groundwork laid by OSPS has been extremely beneficial to understanding the wide range of local jurisdictional dynamics throughout the state. The work done by OSPS has been a significant benefit to the Task Force. It has provided meaningful data and fiscal information as well as an understanding of the importance of local relationships in building trust. We learned from OSPS that the success of our recommendations will depend on assuring that local stakeholders are heard and their knowledge treated as an asset in this process. OSPS' budget has provided a thorough template for understanding the many factors that must be addressed in standing up a new system and served as the model for the draft budget included in this Report. In summary, based on our responses to prior critical circumstances, the Task Force believes that Illinois is more than capable of developing and implementing a successful strategy to respond to this crisis.

In addressing the public defense crisis at the trial level, there are three factors in Illinois that complicate an overall approach. First, are the immediate demands of the SAFE-T Act, which eliminates cash bail. The

Act requires in-person hearings subject to certain exceptions, usually within 48 hours of arrest, to determine whether a defendant will be released with or without conditions or detained, creating immediate capacity demands on public defenders. The Act clarifies existing statutory requirements that counsel be pre-appointed to each defendant, consult with each defendant, and actively participate in every initial appearance, among other hearings. This presents a challenge that can only be effectively met by getting resources to local jurisdictions as quickly as possible. Second, funding for public defense has never come close to the level needed to provide effective assistance of counsel statewide. Third, with the exception of Cook County, the office of public defender is appointed by the judicial branch and funded by the executive branch, creating potential conflicts of interest between the duty to provide effective assistance of counsel and the need to maintain good relationships with the authorities that appoint and fund public defender offices.

The need for independence from political and judicial influence was stressed in the Sixth Amendment Center's report, and also in the American Bar Association's recently updated *Ten Principles of a Public Defense System*.[5] Judges cannot supervise the work of public defenders without undermining their neutrality. Yet the judicial members of the Task Force noted that judges know the local bar and are often in the best position to assess the skills of lawyers in the community who could be appointed to the chief public defender position. The Task Force took a holistic approach to the issue, recognizing that judges have unique knowledge and understanding of their jurisdictions, while public defenders must balance the competing demands of providing a robust defense with potential financial or employment consequences. Both of these viewpoints are reflected in the recommendations set forth below, which are a first step and not an end product. Recognizing that success requires the full support of both judges and defenders, the Task Force struck a balance that builds independence while still involving local actors. As more experience is gained and more information generated, independence will continue to evolve as a key factor in providing effective assistance of counsel.

II. THE WORK OF THE TASK FORCE

The Task Force membership represented a diversity of experiences, geography, and perspectives. It included judges, current and former public defenders, state's attorneys, a private attorney, and a trial court administrator. The Task Force readily understood that the needs of a suburban county are different from the needs of a rural county in southern Illinois and sought out a path that honors the State's constitutional obligation to provide effective assistance of counsel to indigent accused people while respecting and responding to local differences.

The goal of the Task Force's work is a permanent and sustainable statewide response that ensures effective assistance of counsel to every indigent defendant at the trial level across the state. The Task Force adopted this mission statement to guide the development of its deliverables:

> *Study and make recommendations for increasing the availability, consistency, effectiveness, and accountability of indigent defense across the state of Illinois.*

[5] Available at https://www.americanbar.org/groups/legal_aid_indigent_defense/indigent_defense_systems_improvement/standards-and-policies/ten-principles-pub-def/.

The Task Force grouped its meetings as follows: identify issues and adopt procedures, hold "listen and learn" sessions with other states and Illinois-specific presenters, conduct committee meetings, and convene full meetings to adopt recommendations. At the first meeting, members identified the big bucket issues to be addressed: structure of a statewide response, resources necessary to ensure effective assistance of counsel across the state, and developing and supporting a pipeline for recruiting and retaining attorneys. Accordingly, the Task Force created three committees to study and develop recommendations in these priority areas.

The Task Force's review of data and current practices included "listen and learn" presentations from the Sixth Amendment Center and public defense agencies in Michigan, Texas, and Massachusetts. Another meeting was devoted to learning about Illinois' past responses to defense crises and included presentations from the Office of the State Appellate Defender (OSAD), the former Capital Litigation Trial Assistance Office within OSAD, and the Office of Statewide Pretrial Services (OSPS). OSPS offered insight into the challenges of implementing a permanent and sustainable statewide system for pretrial services that significantly implicates the right to counsel in underserved counties.

Several lessons emerged from these presentations:

- Public defenders are responsible for providing effective assistance of counsel. Adequate support staff to perform administrative, investigative, and social work functions must be provided to ensure that lawyers can focus on legal representation.
- Hybrid systems that utilize both full-time public defender offices and part-time and contract counsel can be effective when sufficient standards, oversight, and support are provided.
- Public defense services must be provided with independence from county boards and the judiciary in order to meet constitutional standards.
- Oversight of public defense can be accomplished through a board or commission to oversee the system itself, and through meaningful supervision of case work by qualified attorneys. All of the states that made presentations had standards that define the expectations of effective assistance, such as filing pre- and post-trial motions and client contact. Training and effectiveness standards should be applicable to all attorneys regardless of their status as contract, part-time, or full-time employees.
- Compensation for contract and in-house public defenders, whether full or part-time, and other staff must be adequate to recruit and retain highly qualified staff.

III. RECOMMENDATIONS

The Task Force recommends the following:

1. Full funding of trial-level public defense services must be provided by the State.
2. Establish an independent statewide Administrative Office of Public Defense (AOPD) under judicial branch authority to plan for and implement the new statewide system, administer state funding to local public defender offices, provide statewide support services to local public defender offices, and support a one-year planning process at the local level to support implementation of the new system.
3. Develop and implement a rigorous strategy and infrastructure in the AOPD for recruitment and retention of attorneys.

4. After the AOPD is operationalized, create an oversight board of a size and structure carefully established to further operational needs.

These recommendations are intentionally broad. They are designed to provide direction and guidance to the AOPD as it operationalizes the new system. The primary goal of the new system is to assure that effective assistance of counsel is available in every jurisdiction regardless of the resources available to county governments. This begins with a planning process at the circuit level that builds on the good work that public defenders and judges in every jurisdiction are doing with inadequate financial support outside of the wealthier counties. Their knowledge and expertise are assets that can be leveraged to develop a stronger and more effective public defense system.

These recommendations cannot be realized overnight, and the Task Force recommends that the transition to this new system occur over several years. These recommendations will require statutory changes, legislative action, and increased spending.

RECOMMENDATION 1

The State must fully fund public defense services.

The constitutional obligation to provide effective assistance of counsel to indigent defendants in criminal matters rests with the State. In Illinois, the State has delegated this responsibility, financially and otherwise, to the counties. The unacceptable result of this approach is that funding for public defense services and available resources vary widely across the state and are dependent on judges and the generosity of county boards.

The Task Force recommends that the entirety of public defense funding (salaries, support services, etc.) be borne by the State. Further, the State must fully fund public defense services. In most if not all counties, this means that more money must be spent on public defense. There shall not be a reduction of total public defense funding or resources in any county as a result of the transition to State funding.

The Task Force recognizes that this recommendation represents a significant shift in how public defense services are funded in Illinois. This is intentional. Under this new model, public defense budgets should work as other budgets work, where money is appropriated and managed independently by chief public defenders and public defender offices. The Task Force specifically rejected an approach that would be administratively burdensome, including grant programs and state reimbursement of county expenses.

RECOMMENDATION 2

Establish an independent statewide Administrative Office of Public Defense (AOPD) under judicial branch authority to plan for and implement the new statewide system, administer state funding to local public defender offices, provide statewide support services to local public defender offices, and support a one-year planning process at the local level to support implementation of the new system.

The Task Force recommends the creation of a statewide Administrative Office of Public Defense (AOPD) under the authority of the Judicial Branch.[6] The AOPD will be an administrative office that provides support services and administrative functions to local public defender offices to enhance public defense services and enable local offices to provide high quality, well supervised, effective assistance of counsel. The Task Force recognizes the importance of leveraging the lived experience and expertise of public defenders in developing, leading, and guiding the AOPD. The AOPD will not be responsible for directly supervising the legal work of local public defender offices. In short, the AOPD will allow "lawyers to lawyer." This new system will be a partnership between the AOPD and local public defender offices, which will continue to provide direct representation to indigent clients and case-level supervision.

The role of the AOPD

The AOPD will**:**

a. Administer state funding to local public defender offices. Funding will cover all aspects of public defense services, from salary and benefits to tangible operational necessities such as desks, computers, printers, paper, etc. This will require developing a transition plan to ensure that the shift from county funding to state funding be accomplished without any reduction in pay or benefits or disruption to client services.
b. Provide sufficient support services to allow public defenders to focus on representing their clients. This includes secretaries, paralegals, docket clerks, office administrators, IT administrators, office clerks, social workers, and investigators. Compensation for these positions must be competitive to retain and recruit quality staff. Where appropriate based on office size and workload, these support services may be shared across offices or regions to effectively support every county. State funding provides this level of flexibility across jurisdictions.
c. Establish and provide a program of training and education to all attorneys providing trial-level public defense services. This includes the provision of high-quality Continuing Legal Education programming sufficient to meet the MCLE reporting requirements, through a combination of in-house programming and reimbursement of fees and costs for outside programming.
d. Research and propose caseload guidelines using Illinois data, and seek funding as needed for staffing to support these guidelines. (This is an FY25/26 priority.)
e. Establish rosters of private bar attorneys who meet training and education standards and who are available for court appointment, and establish private bar fee schedules for these attorneys.

[6] The AOPD must necessarily be established under the authority of the Executive, Legislative, or Judicial Branch. The Task Force believes that the Judicial Branch is the most appropriate branch to house the AOPD. The Office of the State Appellate Defender is a Judicial Branch agency and is independent from the judiciary in its day-to-day operations, as is the OSPS.

f. Provide access to experts, mitigation specialists, investigators, etc. to support public defenders. The AOPD may do this through directly hiring staff that will be assigned as needed to specific cases or PD offices, and by developing rosters of experts, social workers, investigators, and support staff that can be retained by defender offices as needed. Public defenders will no longer need to apply to the court for approval to hire; the AOPD will be responsible for managing these resources.
g. In cooperation with circuits and local public defender offices, coordinate recruitment of chief public defenders, assistant public defenders, and private bar attorneys. This function, which is critical to a successful statewide system, is addressed in Recommendation 3.
h. Develop a statewide compensation structure that is adequate to recruit and retain public defenders in Illinois, including full-time public defenders, part-time public defenders, and private contract attorneys. A statewide pay rate structure, with a minimum starting salary and set salary ranges based on the nature of the work performed, years of service, and other appropriate factors will reflect the value of the work provided, regardless of where that work is performed. Such a compensation structure may include signing bonuses and relocation stipends to help attract highly qualified attorneys to underserved areas. This structure shall not result in reduction in either salary or benefits to existing public defenders.
i. Assure access to a digital discovery storage management system, case management software, and a legal research subscription for each public defender office, taking into consideration compatibility with existing county and state-based systems. Ensure that necessary hardware to use these systems and software is acquired, managed, and maintained by the AOPD and exists in every office.
j. Develop a feedback loop of data collection and analysis to support effective assistance of counsel, inform caseload guidelines (as discussed in d above), and help address changing needs.
k. Provide an annual report to the Supreme Court, the Governor, and the General Assembly.

The Task Force intentionally did not address certain specifics of the new statewide system. Members firmly believe that the local circuit planning process can provide critical information and local jurisdiction buy-in that will yield a stronger result if certain details are addressed by the AOPD in partnership with local stakeholders. These details include:

- *Compensation:* Developing compensation schedules for attorneys, other staff, and contract positions such as experts should be one of the first priorities of the AOPD, as this is a critical element of attracting and retaining the people needed to make the system work. Compensation must pay existing staff without reduction and ensure benefits including insurance, healthcare, and retirement are not reduced.
- *Standards:* The creation of standards for the provision of consistent, high quality legal assistance and caseload guidelines requires more information than is currently available. The AOPD will be better able to develop realistic and relevant standards once local jurisdictions are more fully engaged in the planning process.
- *Data collection:* Researchers should be involved at the outset in identifying the datapoints that are needed to assess the efficacy of the system and whether that data is already being collected. Data analysts will be built into the administrative structure to support development of caseload standards based on Illinois specific data. Workload statistics from

other states and national studies are a good point of reference, but in the end this system is a function of Illinois government and Illinois data is necessary to produce reliable analysis.

In keeping with the deliverable for a short-term plan to enable public defenders to comply with the SAFE-T Act, the Task Force recommends that necessary legislative changes and funding be pursued to establish the AOPD as soon as possible. Initial funding for the AOPD should be separate from and in addition to the Public Defender Fund established by 55 ILCS 5/3-4014.

A draft budget for initial AOPD administrative staff is included as Appendix I. In the future it is anticipated that the AOPD budget will include salaries, benefits, and tangible operating costs for all public defender services statewide. The planning process described in more detail below will include planning to transition all jurisdictions from county funding to state funding, which could include temporary hybrid county and state funding for the well-resourced jurisdictions. It is critical to understand that the Task Force did not contemplate, nor does it recommend, that any jurisdiction face a reduction in total funding or resources as a result of the transition to state funding.

The initial work of the AOPD should include:

- Hiring a Director, Deputy Director, Fiscal Officer, Training Director, Recruitment Coordinator, and other key support staff. The AOPD's first Director must understand the nature and importance of public defense, and be able to build bridges and garner local support, understand varying local needs, work with a diverse group of stakeholders, and plan and engage in long-range thinking.
- Beginning the circuit-level planning process, including contracting with qualified facilitators to manage the logistics of the process.
- Securing office space and equipment.

The role of local public defender offices and judges

The Task Force recognizes and appreciates that no two counties or jurisdictions in Illinois are alike. They each have unique needs, assets, and challenges, and the Task Force is committed to retaining local involvement in the provision of public defense services. Under the new state-funded system, the AOPD will convene a planning group in each circuit, which will include each Chief Public Defender (or contract defenders), designees from the local judiciary, and other stakeholders to develop a state-funded defense plan for that circuit. This plan could include, for example, a public defender office for each county, a single public defender office to support the circuit at large, and/or the use of part-time or contract attorneys.[7] For currently well-resourced counties, this plan may propose few changes to how services are provided now. For under-resourced counties, these plans may propose significant changes to the provision of public defense services. The planning group in Cook County must accommodate two unique features of that public defender office: (1) the public defender is appointed by the County Board President rather than the Chief Judge; and (2) the majority of office employees belong to a union and operate under collective bargaining agreements. As a result, the planning group will include the County Board President and the Public Defender.

[7] Indemnification responsibility under 55 ILCS 5/5-1003 may need to be legislatively shifted from counties to the State.

The AOPD will provide logistical and data analysis support for this planning process. This process should include a plan to transition counties to a new system in a way that will not disrupt representation of indigent clients. The Task Force recommends that circuits be given one year to engage in this initial planning process. Until these initial plans are fully implemented, the planning committees shall review their plans not less than annually. Thereafter, circuit plans should be reviewed by the AOPD at least every three years.

Under this new system, the power to appoint the chief public defender will remain with the Circuit Judges for counties with a population under 1,000,000.[8] However, public defenders will be appointed for a term set by statute and may only be removed for cause after notice and hearing. This approach works to initially preserve local input in the selection of the chief defender, while at the same time fostering independence from the judiciary in the day-to-day operations of the local public defender office. Chief defenders will be responsible for selecting assistant public defenders and other local office staff, assigning cases, and case-level supervision. No change is recommended to the appointment process for counties with a population of 1,000,000 or greater.

Implementation of these recommendations should focus first on meeting the immediate needs of the most under-resourced jurisdictions where public defenders currently operate without basics such as office space and support staff. Larger, well-resourced counties such as Cook and the suburban counties will also engage in the planning process described above, but implementation of initial plans should be prioritized based on relative need. All counties will be expected to comply with the standards the AOPD develops.

RECOMMENDATION 3

Develop and implement a rigorous strategy and infrastructure in the AOPD for recruitment and retention of attorneys.

Any statewide response to Illinois' public defense crisis must ensure the availability of a sufficient number of attorneys to meet the constitutional obligation to provide effective assistance of counsel. Currently, many public defender offices in Illinois are unable to fill open positions. This is especially true in small, rural counties where there are few licensed attorneys. These open positions add stress to an already strained system, and this problem is poised to grow. Additional public defenders are needed to comply with the requirements of the SAFE-T Act, and the number of public defender positions in Illinois will increase as a statewide response begins to enhance staffing.

Low salaries, high student loan burdens, a lack of benefits for part-time and contract public defenders, excessive caseloads, insufficient training opportunities, and inadequate support and supervision are barriers to recruiting and retaining public defenders in Illinois. A new, fully funded statewide structure will address many of these issues, including through the development of Illinois-specific caseload guidelines, and will aid in the recruitment and retention of public defenders. However, the AOPD must consider additional steps to support the recruitment and retention of attorneys. The response must

[8] These changes will require amendments to 55 ILCS 5/3-4004. A minority of Task Force members feel that this recommendation does not go far enough in achieving independence, and believe that judges should not be involved in the selection and appointment of chief defenders.

include both short-term and long-term tactics to address these challenges, including changing the narrative about what it means to be a public defender. Law students should learn about public service careers from year one of law school, including through curricula that support choosing that career path.

The Task Force recommends that the AOPD study and consider these tactics:

- *Intentionally recruit law students beginning in their 1L year. This may include:*
  - Expanding internship and externship opportunities in public defender offices. Paid internships should be the rule rather than the exception, through partnerships with law schools, bar associations, and other organizations. Consider eventual centralization of the administration and funding of a law student internship program.
  - Advocating for more criminal defense clinical opportunities and classes in law schools. Encouraging and coordinating regular public defender participation in law school career exploration programs, mentorship programs, etc.

- *Reduce the burden of the bar exam and licensure. This may include:*
  - Offering forgivable bridge loans to law graduates who have accepted jobs as public defenders to defray the costs of licensure, bar exam prep courses, and living expenses during bar study.
  - Providing opportunities for paid positions to law graduates who are retaking the bar exam.
  - Exploring alternative licensure pathways.
  - Waiving ARDC fees.
  - Offering a stipend for bar association dues.

- *Reduce the burden of student loan repayment. This may include:*
  - Increasing loan repayment assistance programs offered by the state, in-state law schools, public defender employers, and organizations such as bar associations. These programs should specifically help with loan payments during the repayment period and are separate from the federal Public Service Loan Forgiveness (PSLF) program. The AOPD should offer education about these programs, facilitate qualification and application, and include information about them in every job posting.
  - Exploring opportunities to lobby for and support current efforts to expand the PSLF program to include part-time and contract public defenders, especially as these models are used in highest need areas.
  - Exploring the potential for law school tuition and fee waivers in exchange for a commitment to work as a public defender in a rural community, modeled on the medical school approach.

- *Facilitate the involvement of out-of-state, retired, and inactive attorneys in public defense. This may include:*
  - Amending Supreme Court Rule 706(e) and (f) to eliminate or significantly reduce the $1500 fee for application for admission on motion under Rule 705 and the application for admission by transferred Uniform Bar Examination Score under Rule 704A for

attorneys who are employed as or have accepted an offer of employment as a public defender.

- Educating local public defender offices and including information in job postings about the ability of out-of-state attorneys to obtain a limited license to perform public defender work under Supreme Court Rule 717 while they are awaiting full admission.
- Educating local public defender offices about Supreme Court Rule 756(k), which allows inactive, retired, and out-of-state attorneys to provide pro bono legal services under the auspices of an approved governmental entity like a public defender office.

RECOMMENDATION 4

After the AOPD is operationalized, create an oversight board.

The Task Force recommends creation of an oversight board after the AOPD is operationalized and the legislature has appropriated funds, as the staff resources that would go into developing the parameters of that board, getting appointments, and convening meetings are initially better spent on delivery of support services needed to effectively represent clients. Equally important is the benefit of allowing the local planning process to inform the creation of an oversight board, with the benefit of having a year or so of experience to draw on. An oversight board would assist the AOPD in establishing guidelines for how discretionary funding, such as special recruitment expenditures (relocation expenses for underserved jurisdictions, etc.), should be allocated. The oversight board would also be invaluable in overseeing the creation of public defender caseload guidelines, reviewing the parameters for triennial circuit plan reviews, and providing policy for an agency whose sole role is administrative in nature.

The board could be constituted pursuant to Supreme Court Rule or legislative action. Like the IJC, it should be a working board, with members who are willing and able to devote some time and attention to building the permanent, sustainable statewide system that is the goal. It is critical that public defenders are directly represented on this board, and that other members bring expertise in the areas necessary to providing effective assistance of counsel. According to the Sixth Amendment Center, best practice dictates that the board should have not more than 13 members, and the board should be insulated from partisan politics. Membership and appointment of board members will be one issue addressed in the planning process. It should be noted that this oversight board will make public defenders the only courtroom actor in our system with a formal oversight body.

IV. CONCLUSION

This is Illinois' opportunity to fulfill *Gideon's* promise. Implementation of these recommendations will result in a fully resourced, permanent, sustainable, statewide response to the trial-level public defense crisis that assures effective assistance of counsel in every county. Providing standards for representation and case-level oversight, supported by quality training, will help attorneys meet their duty consistently. Developing a statewide oversight mechanism that is more than a rubber stamp on staff recommendations requires local input and buy-in. It also requires membership with expertise in critical areas and a willingness of those members to do real work, replicating the success of the IJC.

Illinois has a record of success when responding to other crises in the criminal legal system and it has put resources into those responses. The time has come to do the same for trial-level public defense. Being a

public defender, whether full-time or contract, should be as satisfying as it is challenging. Law students should learn about this from day one of law school so they can decide for themselves to join the defender community rather than being forced into private practice by economic and social considerations. By establishing a fully funded, properly resourced administrative structure and ensuring that practicing defenders are free from outside influence, Illinois can become a leader in the effective provision of criminal public defense services.

The judicial branch is uniquely suited to shepherd the process of creating an independent statewide public defense system. It is the branch of government most directly responsible for the integrity of the system. It is agile and able to respond quickly and effectively in this moment. It is also fully committed to a system that will deliver on the promise of *Gideon.* The work of this Task Force is the first step in what all Task Force members believe will be a transformative process.

Appendix I: Initial AOPD Budget

Draft Administrative Office of Public Defense Initial Annual Budget

These figures are based on the FY24 budget for OSPS

Staff	*Salary (Annual)*						
Executive Director	$ 229,915.00						
Chief of Staff	$ 147,749.00						
Chief Fiscal Officer	$ 147,749.00						
Deputy Director Recruitment & Retention	$ 129,000.00						
Deputy Director Training	$ 129,000.00						
Deputy Director Operations	$ 129,000.00						
Organizational Psychologist	$ 147,749.00	*To facilitate planning meetings*					
Assistant to Org Psychologist	$ 75,000.00						
HR Manager	$ 90,000.00						
Admin Asst 1	$ 60,000.00						
Admin Asst 2	$ 60,000.00						
Admin Asst 3	$ 60,000.00						
Total Salaries	*$ 1,405,162.00*						
Fringe Benefits (11.75%)	$ 165,106.00						
Total Salaries and Benefits	*$ 1,570,268.00*					**Staff**	**$ 1,570,268.00**

These are the staff needed to support the circuit level planning processes that will develop plans for PD services. Future staff may include pool attorneys to handle specific issues, such as pretrial motions, or specific parts of the case such as a pretrial hearing; pool support staff such as docket clerks, secretaries, social workers and investigators. The planning process will flesh out how those services will be handled.

Contractual Services						
Attorneys, investigators, social workers, experts	$5,000,000.00	*Amount assumes the PD Fund continues to be funded; if not, contractual services should be $20 mil*			**Contractual**	**$ 5,000,000.00**

Technology	*Units Needed*	*Per Unit price*	*Total*		
Computers & Accessories	12	$3,000.00	$36,000.00		
Cell Phones & Services	12	$100.00	$1,200.00		
Print/copy/scan machine	3	$1,100.00	$3,300.00		
Server(s)	1	$85,000.00	$85,000.00		
Software: Timekeeping, fiscal, case mgmt		$750,000.00	$750,000.00		
Zoom licenses	TBD (Min 3)	$2,400.00	$7,200.00		
	Total		*$882,700.00*	**Technology**	**$ 882,700.00**

Miscellaneous					
Office Supplies	Commodities	$	15,000.00		
Postage	Commodities	$	2,000.00		
Employee Training	Contractual Services	$	500,000.00		
Lease	Contractual Services	$	36,000.00		
Janitorial Services	Contractual Services	$	12,000.00		
Office Furniture	Equipment	$	100,000.00		
	Total	*$*	*665,000.00*	**Miscellaneous**	**$ 665,000.00**

PD Fund (outside of Cook)					
PD Fund	$ 15,000,000.00				
NOTE: This fund should be maintained while the planning process is ongoing to leverage existing PD offices while establishing financial independence.				**PD Fund**	**$ 15,000,000.00** Allow space costs

Office Space				
Lease for Main Office in Springfield	$ 36,000.00		**Main Office Lease**	**$ 36,000.00**

TOTAL	**$**	**23,153,968.00**

APPENDIX C

ELIMINATION OF THE SUNSET PROVISIONS FROM THE CTAA AND SECTION 27.1B OF THE CLERK OF COURTS ACT

(705 ILCS 105/27.1b)

Sec. 27.1b. Circuit court clerk fees. ...

...

~~(aa) This Section is repealed on January 1, 2024.~~

(705 ILCS 135/20-5)

~~Sec. 20-5. Repeal. This Act is repealed on January 1, 2024.~~

CLARIFICATION OF DEFINITIONS IN THE CTAA

(705 ILCS 135/1-5)

Sec. 1-5. Definitions. In this Act:

* * *

"Case" means all charges and counts arising from the same act or incident filed against a single defendant which are being prosecuted by a single agency ~~as a single proceeding~~ before the court.

* * *

"Conditional assessments" means any costs imposed on a defendant under Section 15-70 of this Act.

"Court-supervised service provider" means any entity, facility, or other person that is directly or contractually supervised by the court and which provides services to the court, parties, or other persons in connection with a case.

"Court-supervised service provider costs" means any charges imposed in a case by a service provider in accordance with a court order.

* * *

"Non-court supervised ~~S~~service provider costs" means costs incurred as a result of services provided by a~~n~~ non-court supervised entity, facility, or other person, including, but not limited to, ~~traffic safety programs, laboratories,~~ ambulance companies~~,~~ and fire departments. ~~"Service provider costs" includes conditional amounts under this Act that are reimbursements for services provided.~~

(705 ILCS 135/5-15)

Sec. 5-15. Non-court supervised service provider costs. Unless otherwise provided in Article 15 of this Act, the defendant shall pay non-court supervised service provider costs to the entity that provided the service. Such costs are not eligible for credit for time served, substitution of community service, or waiver. The circuit court may, through administrative order or local rule, appoint the clerk of the court as the receiver and remitter of certain non-court supervised service provider costs ~~which may include, but are not limited to, probation fees, traffic school fees, or drug or alcohol testing fees~~.

(705 ILCS 135/15-70)

Sec. 15-70. Conditional assessments. In addition to payments under one of the Schedule of Assessments 1 through 13 of this Act, the court shall also order payment of any of the following conditional assessment amounts for each sentenced violation in the case to which a conditional assessment is applicable, which shall be collected and remitted by the Clerk of the Circuit Court as provided in this Section:

* * *

(20) Court-supervised service provider costs imposed in a case.

CLARIFICATION OF SCOPE OF ASSESSMENT WAIVERS

(725 ILCS 5/124A-20)

Sec. 124A-20. Assessment waiver.

(a) As used in this Section:

"Assessments" means any costs imposed on a criminal defendant under Article 15 of the Criminal and Traffic Assessment Act, but does not include violation of the Illinois Vehicle Code assessments except as provided in subsection (a-5); all fees set forth in Section 27.1b of the Clerks of Courts Act; fees for supplementary proceedings; charges for translation services; fees associated with preparation of a record on appeal, including court reporter fees; fees for record or case searches; fees for the reproduction of any document contained in the clerk's files; and all other processes and procedures deemed by the court to be necessary to defend a criminal action. "Assessments" does not include, and assessment waivers under this Section do not cover, non-court supervised service provider costs, as defined in Section 1-5 of the Criminal and Traffic Assessment Act.

* * *

(b) For assessment schedules and conditional assessments imposed on criminal offenses reflected in Schedules 1, 3, 4, 5, 7, and 8 of Article 15 of the Criminal and Traffic Assessment Act, upon the application of any defendant, after the commencement of an action, but no later than 30 days after sentencing:

(735 ILCS 5/5-105) (from Ch. 110, par. 5-105)

Sec. 5-105. Waiver of court fees, costs, and charges.

(a) As used in this Section:

(1) "Fees, costs, and charges" means payments imposed on a party in connection with the prosecution or defense of a civil action, ~~including, but not limited to~~ defined as: all fees set forth in Section 27.1b of the Clerks of Courts Act; fees for service of process and other papers served either within or outside this State, including service by publication pursuant to Section 2-206 of this Code and publication of necessary legal notices; motion fees; charges for participation in, or

attendance at, any mandatory process or procedure including, but not limited to, conciliation, mediation, arbitration, counseling, evaluation, "Children First", "Focus on Children" or similar programs; fees for supplementary proceedings; charges for translation services; guardian ad litem fees; fees associated with preparation of a record on appeal, including court reporter fees; fees for record or case searches; fees for the reproduction of any document contained in the clerk's files; and all other processes and procedures deemed by the court to be necessary to commence, prosecute, defend, or enforce relief in a civil action. "Fees, costs, and charges" does not include, and fee waivers under this Section do not cover, expenses incurred as a result of services provided by a non-court supervised entity, facility, or other person, including, but not limited to, real estate services, healthcare or mental health services, child care, or job placement assistance.

CLARIFICATION THAT ASSESSMENT WAIVERS CANNOT BE A CONDITION OF PLEA BARGAINS

(725 ILCS 5/124A-20)

Sec. 124A-20. Assessment waiver.

* * *

(h) No defendant shall be required to forego or waive his or her right to seek a waiver of assessments as a condition of any plea agreement.

ASSESSMENTS NOT CURRENTLY INCLUDED IN CTAA OR SECTION 27.1B

Statute	Civil Schedules	Criminal Schedules	Notes
55 ILCS 5/5-1101.3	AR, CH, DC, DN, ED, EV, FA, FC, GC, GR, LA, LM, MH, MR, PR, SC, TX	CF, CM, CV, DT, DV, MT, OV, QC, TR	Judicial Facilities Fee CC, CL,OP
55 ILCS 5/5-39001	AR, CH, DC, DN, ED, EV, FA, FC, GC, GR, LA, LM, MH, MR, PR, SC, TX		Law Library Fee OP
55 ILCS 82/15	AR, CH, DC, DN, ED, EV, FA, FC, GC, GR, LA, LM, MH, MR, PR, SC, TX		Custody Exchange Fee OP
65 ILCS 5/7-1-2	GC		Annexation Clerk's Fee (Filing Fee)
65 ILCS 5/11-31-1(b)	MR		Demolition Filing Fee
215 ILCS 5/203	AR, CH, DC, DN, ED, EV, FA, FC, GC, GR, LA, LM, MH, MR, PR, SC, TX (insurance code only)		Insurance Director Fees
430 ILCS 66/70(e)		CF/CM	FOID Card
705 ILCS 105/27.3f	GR/PR (decedent)		Guardianship and Advocacy Operations Fee
705 ILCS 105/27.9(a)	MX	CF	Frivolous Lawsuit Fee

Statute	Civil Schedules	Criminal Schedules	Notes
705 ILCS 130/15	AR, CH, DC, DN, ED, EV, FA, FC, GC, GR, LA, LM, MH, MR, PR, SC, TX		Domestic Relations Fee OP
710 ILCS 20/3	AR, CH, DC, DN, ED, EV, FA, FC, GC, GR, LA, LM, MH, MR, PR, SC, TX		Dispute Resolution Fee OP
720 ILCS 5/11-1.10(e)		CF (sex crimes)	HIV Test Cost
720 ILCS 5/12-5.2(g)	CH (limited)	CF, CM (limited)	Property Improvement Fee
725 ILCS 5/110-7(i)		CF, CM, CV, DT, DV, MT, OV, QC, TR	FTA Warrant Fee (repealed)
725 ILCS 5/110-10(b)(14.1)		CF, CM, DT	Pretrial Home Monitoring
725 ILCS 5/110-10(b)(14.2)		CF, CM, DT	Pretrial Home Monitoring
730 ILCS 5/5-5-3(g) & (h)		CF, CM	STD Cost
730 ILCS 5/5-5-10		CF, CM, DV, DT, DV, MT., OV, QC, TR	Community Service Fee JD
730 ILCS 5/5-6-3(b)(10)(iv) & (v)		CF, CM, DT, DV, MT	Post Conviction Home Monitoring
730 ILCS 5/5-6-3(g)		CF, CM, CV, DT, DV, MT, QC, TR	Drug/Alcohol Testing Monitoring

Statute	Civil Schedules	Criminal Schedules	Notes
730 ILCS 5/5-6-3(h) & (i)		CF, CM, CV, DT, DV, MT, QC, TR	Probation Fee
730 ILCS 5/5-6-3.1(g)		CM, CV, DT, DV, MT, QC, TR	Drug/Alcohol Testing Monitoring
730 ILCS 5/5-6-3.1(i) & (u)		CF, CM, CV, DT, DV, MT, QC, TR	Probation Fee JD
730 ILCS 5/5-7-1(g) & (h)		CF, CM CV, DT, DV, MT	Drug/Alcohol Testing Monitoring
730 ILCS 5/5-9-1.13		CF, CM, DT, DV, MT	Out of state transfer fee
730 ILCS 5/5-9-1.16(c)		CF, CM	DV Equipment Fee
730 ILCS 5/5-9-1.22		CF, DT (DUI)	Roadside Memorial Fee
735 ILCS 5/4-124	AR, CH, DC, DN, ED, EV, FA, FC, GC, GR, LA, LM, MH, MR, PR, SC		Livestock Cost
735 ILCS 5/12-655	AR, CH, DC, DN, Ed, EV, FA, FC, GC, GR, LA, LM, MH, MR, PR, SC, TX		Foreign Judgment Clerk's Fee OP
735 ILCS 5/15-1504.1	FC		Foreclosure Fee Unconstitutional
735 ILCS 5/15-1504.1(a-5)	FC		Foreclosure Tier Fee Unconstitutional
750 ILCS 5/705(6) 750 ILCS 5/711	DC, FA, GR		Public Aid Child Support Fee

Statute	Civil Schedules	Criminal Schedules	Notes
750 ILCS 50/12a	FA		Notice to Putative Father Clerk's Fee
765 ILCS 102/31	MR		County Clerk's Fee (Lost goods)

ELIMINATION OF ANNUAL FEE IN GUARDIANSHIP PROCEEDINGS INVOLVING FOR MINORS AND DISABLED ADULTS

(705 ILCS 105/27.1b)

Sec. 27.1b. Circuit court clerk fees....

* * *

(v) Probate filings.

(1) For each account (other than one final account) filed in the estate of a decedent, ~~or ward,~~ the fee shall not exceed $25. No fee shall be charged for accounts filed for guardianships established for minors pursuant to Article XI of the Probate Act or for disabled adults pursuant to Article XIa of the Probate Act.

* * *

ELIMINATION OF DUPLICATIVE COLLECTION FEES REGARDING UNPAID ASSESSMENTS

(705 ILCS 105/27.1b)

Sec. 27.1b. Circuit court clerk fees....

* * *

~~(y-5) Unpaid fees. Unless a court ordered payment schedule is implemented or the fee requirements of this Section are waived under a court order, the clerk of the circuit court may add to any unpaid fees and costs under this Section a delinquency amount equal to 5% of the unpaid fees that remain unpaid after 30 days, 10% of the unpaid fees that remain unpaid after 60 days, and 15% of the unpaid fees that remain unpaid after 90 days. Notice to those parties may be made by signage posting or publication. The additional delinquency amounts collected under this Section shall be deposited into the Circuit Court Clerk Operations and Administration Fund and used to defray additional administrative costs incurred by the clerk of the circuit court in collecting unpaid fees and costs.~~

(725 ILCS 5/124A-10)

Sec. 124A-10. Lien. The property, real and personal, of a person who is convicted of an offense shall be bound, and a lien is created on the property, both real and personal, of every offender, not exempt from the enforcement of a judgment or attachment, from the time of finding the indictment at least so far as will be sufficient to pay the fine and costs of prosecution. The clerk of the court in which the conviction is had shall upon the expiration of 30 days after judgment is entered issue a certified copy of the judgment for any fine that remains unpaid, and all costs of conviction remaining unpaid. ~~Unless a court ordered payment schedule is implemented, the clerk of the court may add to any judgment a delinquency amount equal to 5% of the unpaid fines, costs, fees, and penalties that remain unpaid after 30 days, 10% of the unpaid fines, costs, fees, and penalties that remain unpaid after 60 days, and 15% of the unpaid fines, costs, fees, and penalties that remain unpaid after 90 days.~~ Notice to those parties affected may be made by

signage posting or publication. The clerk of the court may also after a period of 90 days release to credit reporting agencies, information regarding unpaid amounts. ~~The additional delinquency amounts collected under this Section shall be used to defray additional administrative costs incurred by the clerk of the court in collecting unpaid fines, costs, fees, and penalties.~~ The certified copy of the judgment shall state the day on which the arrest was made or indictment found, as the case may be. Enforcement of the judgment may be directed to the proper officer of any county in this State. The officer to whom the certified copy of the judgment is delivered shall levy the judgment upon all the estate, real and personal, of the defendant (not exempt from enforcement) possessed by him or her on the day of the arrest or finding the indictment, as stated in the certified copy of the judgment and any such property subsequently acquired; and the property so levied upon shall be advertised and sold in the same manner as in civil cases, with the like rights to all parties that may be interested in the property. It is not an objection to the selling of any property under the judgment that the defendant is in custody for the fine or costs, or both.

EARN-DOWN REDUCTION OF ASSESSMENTS AND FINES FOR DEFENDANTS SENTENCED TO THE DEPARTMENT OF CORRECTIONS

Section 124A-25 is added to the Code of Criminal Procedure, 725 ILCS 5/124A-25, to read as follows:

(725 ILCS 5/124A-25)

Sec. 124A-25. Earn-down reduction of assessments imposed on defendants sentenced to the Department of Corrections.

(a) As used in this Section:

(1) "Assessments" means any costs imposed on a criminal defendant under Article 15 of the Criminal and Traffic Assessment Act, including but not limited to assessments relating to violations of the Illinois Vehicle Code, after the application of any income-based waiver under Section 124A-20.

(2) "Prison term" means the longest term of imprisonment to which a defendant is sentenced in a case, either for a single offense or in the aggregate for multiple offenses that run consecutively, and without regard to any credit for time served in custody, home detention, or for any other reason.

(b) The court shall, without application, reduce the total amount of assessments imposed on a defendant who is sentenced to a term of imprisonment in that case, as follows:

(1) 20% for a prison term of at least one year but less than two years;

(2) 40% for a prison term of at least two years but less than three years;

(3) 60% for a prison term of at least three years but less than four years;

(4) 80% for a prison term of at least four years but less than five years; and

(5) 100% for a prison term of five or more years.

(c) The State's Attorney may file a motion to eliminate any reduction in assessments, pursuant to subsection (b), in the sentence of a defendant whom the State's Attorney believes is reasonably capable of paying the full amount of the assessments. The decision whether to deny the motion or to require the defendant to provide information bearing on their ability to pay the assessments is committed to the sound discretion of the court. If the court requires the defendant to provide such information:

(1) Unless the defendant has already done so, the court shall order the defendant to complete the "Application for Waiver of Criminal Court Assessments" approved by the Illinois Supreme Court;

(2) The motion shall be denied if the defendant provides a current benefits statement or other documentary proof of their receipt of assistance under one or more of the means-based governmental public benefits programs listed in 725 ILCS 5/124A-20(c)(1). Such a defendant shall not be required to provide any additional information about their income, assets, debts, or expenses.

(3) A defendant who is not receiving a means-based governmental public benefit shall provide financial information and supporting documentation relating to the factors listed in 725 ILCS 5/124A-20(c)(1)(2-6), including their most recent pay stubs from all employers, 1099s, and W-2s.

(4) The court may decline to reduce, pursuant to subsection (b), the amount of assessments imposed on the defendant if the court enters a written finding that there is clear and convincing evidence that the defendant can afford to pay the full amount of the

assessments, after considering the defendant's current income, anticipated income while incarcerated (if any), current assets and liabilities, and the anticipated cost, while the defendant is incarcerated, of supporting persons who will remain dependent on the defendant for support.

Section 5-9-1 of the Unified Code of Corrections, 730 ILCS 5/5-9-1, is revised to read as follows:

(730 ILCS 5/5-9-1)

Sec. 5-9-1. Authorized Fines.

(a) An offender may be sentenced to pay a fine as provided in Article 4.5 of Chapter V, subject to subsection (f) of this section.

* * *

(f) The court shall, without application, reduce the total amount of fines imposed on an offender who is sentenced to a term of imprisonment as follows:

(1) 20% for a prison term of at least one year but less than two years;

(2) 40% for a prison term of at least two years but less than three years;

(3) 60% for a prison term of at least three years but less than four years;

(4) 80% for a prison term of at least four years but less than five years; and

(5) 100% for a prison term of five or more years.

(g) For purposes of paragraph (f), "prison term" means the longest term of imprisonment to which an offender is sentenced in a case, either for a single offense or in the aggregate for multiple offenses that run consecutively, and without regard to any credit for time served in custody, home detention, or for any other reason.

(h) The State's Attorney may file a motion to eliminate any reduction in fines, pursuant to subsection (f), in the sentence of an offender whom the State's Attorney believes is reasonably capable of paying the full amount of the fines. The decision whether to deny the motion or to require the offender to provide information bearing on their ability to pay the fines is committed to the sound discretion of the court. If the court requires the offender to provide such information:

(1) Unless the offender has already done so, the court shall order the offender to complete the "Application for Waiver of Criminal Court Assessments" approved by the Illinois Supreme Court;

(2) The motion shall be denied if the offender provides a current benefits statement or other documentary proof of their receipt of assistance under one or more of the means-based governmental public benefits programs listed in 725 ILCS 5/124A-20(c)(1). Such an offender shall not be required to provide any additional information about their income, assets, debts, or expenses.

(3) An offender who is not receiving a means-based governmental public benefit shall provide financial information and supporting documentation relating to the factors listed in 725 ILCS 5/124A-20(c)(1)(2-6), including their most recent pay stubs from all employers, 1099s, and W-2s.

(4) The court may decline to reduce, pursuant to subsection (f), the total amount of fines imposed on the offender if the court enters a written finding determining that there is clear and convincing evidence that the offender can afford to pay the full amount of the fines, after considering the offender's current income, anticipated income while incarcerated (if any), current assets and liabilities, and the anticipated cost, while the offender is incarcerated, of supporting persons who will remain dependent on the offender for support.

CIRCUIT COURT CLERK ASSESSMENT REPORTS FOR CRIMINAL CASES

(705 ILCS 135/1-10)

~~(Section scheduled to be repealed on January 1, 2024)~~

Sec. 1-10. Assessment reports.

(a) Not later than ~~February 29, 2020,~~March 1 of each year, the clerk of the circuit court shall file with the Administrative Office of the Illinois Courts, in the form and manner directed by the Supreme Court, a report for the previous calendar year containing, in accordance with the Supreme Court's General Administrative Order on Recordkeeping in the Circuit Courts:

(1) ~~a report for the period July 1, 2019 through December 31, 2019 containing~~ the total number of cases filed in the following categories: total felony cases; felony driving under the influence of alcohol, drugs, or a combination thereof; cases that contain at least one count of driving under the influence of alcohol, drugs, or a combination thereof; felony cases that contain at least one count of a drug offense; felony cases that contain at least one count of a sex offense; total misdemeanor cases; misdemeanor driving under the influence of alcohol, drugs, or a combination thereof cases; misdemeanor cases that contain at least one count of a drug offense; misdemeanor cases that contain at least one count of a sex offense; total traffic offense counts; traffic offense counts of a misdemeanor offense under the Illinois Vehicle Code; traffic offense counts of an overweight offense under the Illinois Vehicle Code; traffic offense counts that are satisfied under Supreme Court Rule 529; conservation cases; and ordinance cases that do not contain an offense under the Illinois Vehicle Code;

(2) ~~a report for the period July 1, 2019 through December 31, 2019 containing~~ the following for each schedule referenced in Sections 15-5 through 15-70 of this Act: the number of offenses for which assessments were imposed; the amount of any fines imposed in addition to assessments; the number and amount of conditional assessments ordered pursuant to Section 15-70; the total number of assessment waiver applications filed under Section 124A-20 of the Code of Criminal Procedure; and the number of applications for 25%, 50%, 75%, and 100% waivers, respectively, that were approved, the number of offenses for which waivers were granted, and the associated amount of assessments that were waived; and

(3) ~~a report for the period July 1, 2019 through December 31, 2019 containing,~~ with respect to each schedule referenced in Sections 15-5 through 15-70 of this Act~~,~~: the number of offenses for which assessments were collected; the number of offenses for which fines were collected and the amount collected; and how much was disbursed to each fund under the disbursement requirements for each schedule defined in Section 15-5.

(b) The Administrative Office of the Illinois Courts shall publish the reports submitted under this Section on its website.

(c) A list of offenses that qualify as drug offenses for Schedules 3 and 7 and a list of offenses that qualify as sex offenses for Schedules 4 and 8 shall be distributed to clerks of the circuit court by the Administrative Office of the Illinois Courts.

CIRCUIT COURT CLERK ASSESSMENT REPORTS FOR CIVIL CASES

(705 ILCS 105/27.1c)

Sec. 27.1c. Assessment reports.

(a) Not later than ~~March 1, 2022, and~~ March 1 of ~~every~~ each year ~~thereafter~~, the clerk of the circuit court shall submit to the Administrative Office of the Illinois Courts an annual report, in the form and manner directed by the Supreme Court, for the period January 1 through December 31 of the previous year. The report shall contain, with respect to each of the 4 categories of civil cases established by the Supreme Court pursuant to Section 27.1b of this Act, and in accordance with the Supreme Court's General Administrative Order on Recordkeeping in the Circuit Courts:

(1) the total number of cases that were filed;

(2) the amount of filing fees that were collected pursuant to subsection (a) of Section 27.1b;

(3) the amount of appearance fees that were collected pursuant to subsection (b) of Section 27.1b;

(4) the amount of fees collected pursuant to subsection (b-5) of Section 27.1b;

(5) the amount of filing fees collected for counterclaims or third party complaints pursuant to subsection (c) of Section 27.1b;

(6) the nature and amount of any fees collected pursuant to subsection (y) of Section 27.1b; ~~and~~

(7) the total number of applications, pursuant to Section 5-105 of the Code of Civil Procedure, for waiver of court fees, costs, and charges; and

(~~7~~8) the number of ~~cases for which~~ applications, pursuant to Section 5-105 of the Code of Civil Procedure, ~~there were waivers~~ for waiver of fees, costs, and charges of 25%, 50%, 75%, or 100%, respectively, that were approved, and the associated amount of fees, costs, and charges that were waived.

(b) The Administrative Office of the Illinois Courts shall publish the reports submitted under this Section on its website.

~~(c) (Blank).~~

APPENDIX D

KERRY R. PECK*
TIMOTHY J. RITCHEY
BRANDON E. PECK
JESSE A. FOOTLIK
KYLE T. FAHEY
PETER M. BRADY

PETER S. COORLAS
DANIEL J. LYNCH
BRITTANY A. RYGIEL
M. CRISTINA PULEO
THOMAS C. WEDGWOOD

OF COUNSEL

HON. SUSAN M. COLEMAN (RET.)
THEODORE RODES, JR.
LEONARD J. BRENNER
MICHAEL J. CORNFIELD
STEPHEN J. SCHLEGEL
RICK LAW
ZACH HESSELBAUM
JOSEPH PECK, Deceased

PECK RITCHEY, LLC

ATTORNEYS AT LAW

321 South Plymouth Court • 6th Floor
Chicago, Illinois 60604

CHICAGO OFFICE:
TEL: 312 201-0900
FAX: 312 201-0803

OFFICES IN:
NORTHBROOK
OAK BROOK

*ALSO ADMITTED
IN FLORIDA

WWW.PECKRITCHEY.COM

July 12, 2023

Justice Joy V. Cunningham
Supreme Court Building
200 E Capitol Ave.
Springfield, IL 62701
jcunningham@illinoiscourts.gov

Justice Joy V. Cunningham
Michael A. Bilandic Building
160 N. LaSalle Street
Chicago, IL 60601

Re: Report and Recommendations from the Commission on Elder Law

Dear Justice Cunningham:

Over the past year, the Elder Law Commission has conducted numerous Commission meetings, multiple Committee meetings and engaged in two listening tours at Northwestern Memorial Hospital in April, 2023, and at the Kane County Courthouse in June, 2023. As a result of these meetings and tours, the Commission now brings to the Court three recommendations at this time to improve the legal system for seniors in Illinois.

History and Authority

In April, 2022, former Chief Justice Anne Burke established the Supreme Court Commission on Elder Law. In an order dated April 12, 2022, some of the Commission's charges were as follows:

1. Collect experiential information regarding attempts to defraud seniors in Illinois, and make recommendations for Judicial Bench policies, procedures and Supreme Court Rules to aid in reducing such attempts and mitigating their effects;
2. Examine adult guardianship proceedings in the state and make recommendations for the revisions of policies, procedures and Supreme Court Rules to ensure due process, accurate and timely reporting (including financial reporting), and the improvement of outcomes for wards; and
3. Study the programs of other states in their respective Judicial Branch approach to tackling Elder Law issues.

Recommendations

1. Establish Will Depositories for Testators in Illinois

If an original will cannot be found after the decedent's death, the law presumes the decedent revoked the will before death. This often means the person's wishes will not be honored if the will was stolen or destroyed by bad actors, misplaced, or lost due to fire or flood.

On January 25, 2023, the Commission on Elder Law hosted a panel discussion at the Chicago Bar Association attended by about 150 attorneys and judges from across the state. The purpose was to consider whether a testator should be allowed to deposit an original will in a will depository during their lifetime to reduce fraud and frivolous lawsuits over estate planning.

Chief Judge Timothy Evans appeared as a panelist and made a proposal that Illinois should create will depositories to prevent the disappearance of wills and to give testators the right to distribute their property as desired. He noted the preamble to the U.S. Constitution speaks to this right in promising "to secure the blessings of liberty for ourselves and our posterity."

Presiding Judge of the Cook County Probate Division Daniel Malone also appeared as a panelist in support of Judge Evans' proposal. Judge Malone stated that the goal for probate lawyers and judges should be to honor the testator's intent. Having the option to file their original will in a safe, secure, and convenient location would ensure the testator's final wishes are carried out. This proposal is not new. Our initial research found at least nine other states have statutes for will depositories. In fact, Illinois previously established a will depository system for only attorneys at a single location: the Secretary of State's Office in Springfield (15 ILCS 305/5.15).

Our current proposal would expand the use of will depositories and give testators the option to bring their original will and trust to a Secretary of State Office or the Circuit Court in the county where they reside.

Since February 2023, several members of the Commission have attended meetings and presented the proposal for will depositories to attorneys from city and state bar associations. The poll results from lawyers has been generally favorable. For example, 82% of the 81 CBA Probate Committee members voted in favor of the proposal.

In short, the members of the Elder Law Commission recommend and request the Supreme Court to allow and assist us to model a statute for testators after the depositories that exist in Illinois and other states. We believe that such depositories will facilitate the probate process and reduce attempts to defraud seniors and other testators in Illinois.

2. Require the Guardian of the Estate to Complete a Training Program

Since September, 2022, the Guardianship Committee of the Elder Law Commission has held bi-monthly meetings to discuss various adult guardianship proceedings in the state and one of the topics considered was expansion of the training requirement to include guardians of the estate. Currently, the training program under 755 ILCS 5/11a-12(e) only applies to guardians of the person. The members of the Guardianship Committee recognize the estate guardian's responsibilities differ from those of personal guardians. The estate guardian should be trained to manage the ward's estate frugally and apply the income and principal so far as necessary for the comfort and suitable support and education of the ward, or for any other purpose which the Court deems to be in the best interests of the ward. See 755 ILCS 5/11a-18(a).

Also, the estate guardian should be trained to present accurate financial reporting with an inventory and accounting. Most of these representatives have never served as guardians before and without training, many are unable to perform their duties and maintain separate accounts, a budget and receipts for each expenditure.

In sum, a well-trained estate guardian will improve the outcome for the ward by managing the ward's financial affairs properly. We recommend and request the Supreme Court to allow and assist us with a minor amendment to 755 ILCS 5/11a-12(e) adding "or guardian of the estate". This would also require amending 20 ILCS 3955/33.5 to include curriculum specific to guardians of the estate. Charles Golbert and the Office of the Cook County Public Guardian have agreed to draft curriculum with the new guardian of the estate training requirement and Nate Jensen will work with AOIC resources to identify best practices in modernizing the presentation of the training.

3. Advance the Timeline for Training Guardians

Currently, guardians of the person are required to submit a certificate of completion to the appointing court within one year of the appointment. The members of the guardianship committee acknowledge that frequently, the same person serves as guardian of the person and guardian of the estate. The guardian of the estate is obligated to prepare and present an inventory within 60 days of his or her appointment.

In order to ensure accurate and timely financial reporting, it is imperative that the representative receive appropriate training before they present an inventory listing all of the money, other property or cause of action in which the ward may have an interest and prepare a proper budget/care plan.

Accordingly, the Commission recommends amending 755 ILCS 5/11a-12(e) to read "and file with the court a Certificate of completion ~~one year~~ sixty days from the date ~~issuance of letters of guardianship~~ of appointment, provided that the Court may grant an extension of time in which to file the certificate for good cause shown". Ancillary to this recommendation is that training requirement for corporate guardians be advanced as an important part of strengthening the guardianship training statute.

Conclusion

The Commissioners believe that establishing will depositories for testators in Illinois will reduce attempts by bad actors to defraud seniors and other testators in Illinois.

Additionally, requiring training for guardians of the estate and moving up the date for completion from one year to 60 days will ensure accurate and timely reporting and result in the improvement of personal and financial outcomes for wards.

For all these reasons, the Commission requests the Supreme Court assist us to identify the best ways to advance these recommendations with the General Assembly. Thank you for your attention and consideration.

Very truly yours,

Kerry Peck
Chairman
Elder Law Commission