



SUPREME COURT OF ILLINOIS

CHAMBERS OF
CHIEF JUSTICE RITA B. GARMAN

3607 NORTH VERMILION STREET
SUITE 1
DANVILLE, ILLINOIS 61832
TELEPHONE: 217/431-8928
FAX: 217/431-8945

January 29, 2016

The Honorable Michael J. Madigan
Speaker of the House
House of Representatives
Springfield, IL 62706

The Honorable John J. Cullerton
President of the Senate
State Senate
Springfield, IL 62706

The Honorable Jim Durkin
Minority Leader
House of Representatives
Springfield, IL 62706

The Honorable Christine Radogno
Minority Leader
State Senate
Springfield, IL 62706

Dear Legislative Leaders:

I am pleased to provide an Annual Report of the activities of the 2015 Illinois Judicial Conference in keeping with Article VI, Section 17, of the Illinois Constitution of 1970. Pursuant to this constitutional provision, Illinois Supreme Court Rule 41 creates the Illinois Judicial Conference and charges the Judicial Conference with considering the work of the courts and suggesting improvements in the administration of justice. The past year has been a very productive one for the Judicial Conference.

The Judicial Conference consists of an Executive Committee and six standing committees that address issues of: (1) alternative dispute resolution, (2) civil justice, (3) criminal justice, (4) judicial education, (5) juvenile justice and (6) strategic planning. The annual meeting of the Judicial Conference was convened on October 22, 2015, with a theme of *Building and Sustaining the 21st Century Judiciary*. The format and agenda of the annual meeting were structured to promote active participation by all attendees in our effort to identify innovative and promising improvements in the administration of justice.

In further compliance with Article VI, Section 17 of the Illinois Constitution of 1970, this report includes a summary of the work performed by each of the committees. Each of the six standing committees of the Judicial Conference provided a written report to the Supreme Court, summarizing initiatives undertaken during Conference Year 2015 and proposing projects for 2016.

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The work of the Judicial Conference supports the Supreme Court's overall commitment to the efficient administration of justice and management of our court system, as well as the prudent stewardship of both human and financial resources. The Supreme Court will continue to set goals and develop plans to assure that the judiciary provides equal justice to all and upholds the rule of law.

This report also includes a summary of several Supreme Court decisions 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.

On behalf of the Court, I respectfully submit the Supreme Court's Annual Report to the Legislative Leaders of the General Assembly on the 2015 Illinois Judicial Conference. This report is also available to the members of the General Assembly on the Supreme Court's website at www.illinoiscourts.gov.

Respectfully,



Rita B. Garman
Chief Justice
Supreme Court of Illinois

Enclosure

c: Members of the General Assembly

Annual Report to the General Assembly on the 2015 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 in 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. The Conference is composed of judges from every level of the judiciary and represents Illinois' five judicial districts. The Chief Justice of the Supreme Court of Illinois presides over the Conference, and the other Justices serve as members.

Pursuant to Illinois Supreme Court Rule 41, an Executive Committee acts on behalf of the Conference when it is not in session. The Executive Committee consists of fourteen judges: six from the First Judicial District (Cook County) and two each from the Second, Third, Fourth, and Fifth Judicial Districts. The Executive Committee previews the written reports of the Conference committees and submits an annual meeting agenda for the Supreme Court's approval.

Six standing committees carry out the work of the Conference throughout the year. These committees are: the Alternative Dispute Resolution Coordinating Committee, the Civil Justice Committee, the Criminal Justice Committee, the Committee on Education, the Juvenile Justice Committee, and the Committee on Strategic Planning. The committees' membership includes appellate, circuit, and associate judges, who also serve as members of the Judicial Conference. Their work is aided by judges, law professors, and attorneys appointed by the Supreme Court as advisors. Senior level staff of the Administrative Office of the Illinois Courts serves as liaisons to support the committees' activities.

On October 22, 2015, the Illinois Judicial Conference held its annual meeting in Lombard, Illinois. The meeting was concentrated into one full day to minimize the judges' time away from the bench and to reduce costs.

Chief Justice Rita B. Garman convened the meeting. In her opening remarks, Chief Justice Garman welcomed those in attendance, including the current Justices of the Supreme Court. Chief Justice Garman began her comments by noting the forward-looking theme of this year's conference: Building and Sustaining the Judiciary.

The Chief Justice stated that when she was sworn in as Chief Justice in 2013, one of the initiatives she announced was to increase the use of technology in Illinois' courthouses and courtrooms as a means of making the judicial process more efficient and transparent. Chief Justice Garman advised the conference that progress has been made in the use of technology. She highlighted the expansion of e-filing throughout the state, which has the courts well on the way towards the eventual goal of a paperless system. Nonetheless, she cautioned that challenges remain. For example, digital media, while durable and economical, are not truly permanent because these media may degrade over time. Another challenge is keeping up with rapid advances in technology, which may render records preserved in one medium obsolete. The Chief Justice emphasized that planning and implementation of new technology must recognize these issues and press forward to realize the full benefit of the efficiencies and economies that electronic records will provide and to adopt new technology to modernize our judicial system.

Chief Justice Garman also announced that the reviewing courts are nearing the final stages of designing and implementing a new electronic case management system that will allow tracking the progress of appeals from the case filing to the publication of the opinion. In addition, the record on appeal will be digitized, allowing justices, law clerks, and court staff to have access to electronic records. Chief Justice Garman added that the Court's website continues to expand and to include new content. She also stated that amendments to Supreme Court Rules and the Rules of Professional Conduct were promulgated to address the increasing importance of electronic communication and the challenge of maintaining client confidentiality in the digital age.

The Chief Justice next noted that the Circuit Courts have expanded the use of cameras in the courtrooms, a project that has been well-received by the media and the general public. The Chief Justice was pleased to announce that this innovation has been relatively free of controversy and that circuit court judges have reported no disruption or inconvenience as a result of the expanded media presence.

Chief Justice Garman commented that judges are increasingly being required to adjudicate matters involving highly technical issues, intellectual property disputes involving computer hardware and software, defamation and other suits involving the use of social media, and both civil and criminal cases arising from hacking and other digital privacy concerns. In response, the Chief Justice emphasized that to prepare judges to adjudicate these technological issues, judicial education must keep pace with the way technology is used and abused so that judges have the knowledge necessary to understand the issues in dispute, including the admissibility of digital evidence such as an e-mail, Facebook page, an app, or entirely new forms of digital information that may emerge in the future.

According to the Chief Justice, another area impacted by technology is jury service. She informed the Conference that when technology is used in the courtroom to communicate information to jurors, the jurors have a better understanding of the information presented, and are more attentive, more engaged, and more likely to recall important information during their deliberations. Chief Justice Garman therefore advised that courthouses will need to be equipped to utilize technology to the fullest extent possible. The Chief Justice also commented that technology can impact jury service when jurors use the internet and social media during the trial and deliberation phases to seek information about the case or communicate with a party or counsel. She noted that the civil and criminal pattern jury instructions have been amended to instruct judges to caution jurors about the use of the internet and social media. Judges are also urged to reinforce the message to jurors that an ongoing trial is not a proper subject for a Facebook post or tweet.

In closing, Chief Justice Garman indicated that ultimately technology is a means, and not an end in itself. She stated that the judicial process can be made more efficient and effective by wise adoptions of technologies that improve transparency and performance and that one way to build and sustain a judiciary in the 21st century is to train judges to be innovative and technologically adept. Chief Justice Garman hoped to use the conference, and the committees' meeting time at the conference to help the Court develop strategies for moving the court system forward in a responsible, efficient, and effective way.

Chief Justice Garman then introduced the Honorable John Broderick, former Chief Justice of the New Hampshire Supreme Court, who addressed the conference on the topic of where the Illinois court system stands in the first fifteen years of this century and where it needs redesign, and the Honorable Carol Pope, Appellate Judge, Fourth Judicial District and Chair of the Strategic Planning Committee, who informed the conference on the results of the 2015 Circuit Courts User Survey.

Each of the six standing committees of the Illinois Judicial Conference provided a written report to the Supreme Court. Their reports are briefly summarized below.

Committee Reports

Alternative Dispute Resolution Coordinating Committee

The Alternative Dispute Resolution Coordinating Committee monitors and assesses court-annexed mandatory arbitration and mediation programs approved by the Supreme Court. Along with the Administrative Office of the Illinois Courts, the Committee tracks arbitration statistics to monitor program efficacy.

During this Conference year, the Committee examined Supreme Court Rule 99 (Mediation Programs) to determine if the rule needed expansion or clarification to standardize the process for requesting approval of a new mediation program and the day-to-day operations of an existing mediation program. To address this charge, the Committee proposed an amendment to Illinois Supreme Court Rule 99(b)(2)(x) that would confer authority upon the Administrative Office of the Illinois Courts to prescribe the manner and method of data collection from all mediation programs approved by the Supreme Court.

The Committee, in consultation with the Administrative Office of the Illinois Courts, assisted in the development of a uniform data collection instrument for use by mortgage foreclosure mediation programs throughout the state. Additionally, work has begun on the development of a uniform data collection instrument for use by other civil mediation programs.

The Committee continued to work to develop standardized forms for use in civil mediation. Analysis of the forms currently in use revealed disparities among the programs in the contents of the forms. This topic requires further discussion by the Committee with eventual recommendations to the Court.

The Committee also discussed whether it was necessary to develop a litigant survey to assess their views and perceptions about mediation. After much debate and analysis, the Committee reached the conclusion that a robust amount of research is already available on the views of litigants, which is available from private entities that regularly collect, analyze, and publish such data.

The Committee also sought to facilitate the improvement and expansion of major civil case mediation programs by collaborating with the Illinois Judicial Conference Committee on Education to educate judges on the best practices of mediation and by meeting with the Conference of Chief Circuit Judges to encourage mediation.

Civil Justice Committee

The Civil Justice Committee was created to review, analyze, and examine emerging issues arising out of legislation and case law that impact any aspect of civil justice and to advise the Illinois Supreme Court on matters affecting civil justice. The Committee members were drawn from throughout the state, from both large and small communities, and possess significant trial experience. This is the Committee's inaugural year.

In Conference Year 2015, the Civil Justice Committee focused on two projects: (1) studying ways to improve the civil jury trial system, and (2) studying the impact of social media on jurors.

With regard to the civil jury system, the Committee considered the three surveys utilized by the United States Court of Appeals for the Seventh Circuit in its American Jury Project. Jurors, attorneys, and judges were asked to participate in the survey at the completion of a civil jury trial. Utilizing these surveys as a model, the Committee made modifications to more effectively elicit information regarding the comprehension, satisfaction, and efficiency of Illinois' civil jury trial system by jurors, attorneys, and judges. These surveys were designed to create a baseline to show how jury trials are experienced by parties engaged in them. If weaknesses are disclosed, the Committee will make recommendations for addressing those issues.

With respect to social media and juror conduct, the Committee first considered whether there are issues or potential issues with misconduct. The Committee researched what measures are being used to address social media use by jurors. The research included review of written materials and input from Illinois judges based on their personal experiences.

Criminal Justice Committee

During Conference Year 2015, the Criminal Justice Committee continued to consider amendments to Supreme Court Rules necessitated by court decisions. With respect to Supreme Court Rule 402(d), the Committee consensus was that a rule amendment would not assist in efforts to reduce claims of ineffective assistance of counsel based on the United States Supreme Court decisions of *Missouri v. Frye*, 132 S. Ct. 1399 (2012), and *Lafler v. Cooper*, 132 S. Ct. 1376 (2012). Additionally, the Committee recommended amending Supreme Court Rule 604(d) to be consistent with the holding in *People v. Tousignant*, 2014 IL 115329, that a plea certification must contain both the plea and sentence.

The Committee also continued to discuss whether Supreme Court Rule 411 should be amended to require discovery prior to a defendant's appearance in bond court. The Committee was advised that in Cook County and other jurisdictions, defense counsel receives the defendant's arrest sheet and other available information prior to the defendant's appearance in bond court, which is best practice. As such, the Committee decided no rule amendment was needed.

At the request of the Supreme Court Rules Committee, the Committee considered a proposal to amend Rule 605 to require the court to advise a defendant of his or her appeal rights after being found unfit to enter a plea, stand trial, or be sentenced. After full discussion, the Committee agreed that the proposed amendments were not appropriate as such a ruling does not

constitute a finding of guilt.

Consistent with its overall charge, the Committee began discussion on the need for and method of implementing sentencing flexibility, similar to that in the federal sentencing system which provides judges with greater discretion. A subcommittee has been formed to examine this issue, gather input from criminal court stakeholders, and report findings and make recommendations to the Court.

Finally, the Committee was also charged with coordinating with the Illinois Judicial Conference Committee on Education to develop training on Evidence-Based Practices (EBP) in sentencing. The training, titled “Evidence-Based Sentencing Practices: Applications & Outcomes,” was presented in October 2015.

Committee on Education

The Illinois Judicial Conference Committee on Education was charged to sustain the design and delivery of critical continuing educational programs for Illinois judges, while also exploring a Judicial College model that would provide for the comprehensive professional development training and continuing education needs of judicial branch officers, employees, and those who aid the court in the administration of justice.

The Committee continues to consider and recommend topics and faculty for judicial education events as well as faculty development workshops and specialized training seminars. In addition, the Committee is responsible for the publication of the Illinois Judicial Benchbook series, a reference resource created for the benefit of Illinois judges.

Thus, in coordination with the Administrative Office of the Illinois Courts and other Supreme Court Committees, the Education Committee completed the 2015 Illinois Judicial Conference Benchbook projects. In addition, the Committee planned, delivered, and evaluated the February 2015 *New Judge Seminar*, the March 2015 *DUI/Traffic Seminar*, four *Faculty Development Workshops* (March, May, September and October), the June 2015 *Advanced Judicial Academy*, the October 2015 *Appellate Law Clerk and Legal Research Staff* training program, the October 2015 seminar on *Evidence-Based Sentencing: Policies, Principles and Practices*, and the December 2015 *New Judge Seminar*.

The Committee also recommended to the Supreme Court a governance model for the Illinois Judicial College that would address the Court’s commitment to improving the administration of justice through comprehensive and multidisciplinary professional development and educational training programs for the entire Judicial Branch and its constituents. In response, the Court adopted an Illinois Judicial College structure and appointed a seven member Board of Trustees, effective January 1, 2016.

Juvenile Justice Committee

The Court requested that the Juvenile Justice Committee explore increasing the maximum age at which DCFS may be appointed guardian of an adjudicated juvenile delinquent due to a lack of options when the minor has no parental involvement. While DCFS did not take a position on increasing the maximum age in 2014, the Department has since experienced

increased budget constraints and lawsuits regarding youths in residential placement. Due to the potential increase in caseload for DCFS and the lack of resources and placement options for this population, the Committee recommended not increasing the maximum age at which DCFS may be appointed guardian of an adjudicated juvenile delinquent.

The Committee was also charged with exploring the development of a web-based clearinghouse for programs created by juvenile judges that would act as a resource for all judges. The Administrative Office JMIS Division developed a section for juvenile programs under the Illinois Courts Judicial Links on the Judicial Portal. A sub-committee will be formed to determine the format, the name of the link, and criteria for including programs, etc. The sub-committee will develop a form that includes all relevant programs and contact information and distribute it to all judges and probation departments.

As a final project, the Committee was asked to collaborate with the IJC Committee on Education to create a biennial conference for juvenile court judges. Juvenile court judges deal with unique issues and, thus have the need for continuing education and networking opportunities with other juvenile court judges. The Committee Chair sent a letter to the Chair of the Education Committee requesting consideration of biennial conference for juvenile court judges. A joint workgroup has been formed consisting of members from both Committees to identify specific trends, possible speakers, and overall format of the conference.

Committee on Strategic Planning

During Conference Year 2015, the Committee on Strategic Planning continued its mission to assist the Supreme Court of Illinois in advancing the Court's goal of an impartial, accessible, and efficient justice system. The Committee has undertaken projects designed to provide valuable information to the Supreme Court to assist in determining ways to ensure the Illinois court system is functioning in a just and efficient manner.

In collaboration with the Administrative Office of the Illinois Courts, the work of the Committee for the 2015 Conference Year centered primarily on implementing the court user survey, which was developed in Conference Year 2014. The design of the survey was to ask court users exiting the courthouse to complete a brief questionnaire regarding their experience in court and their opinion of the court system. This included users' views on how well they were treated, how easily they were able to obtain information, whether they felt they were heard in court, and whether they perceived the end result as fair.

Under the leadership of the Supreme Court, the Committee coordinated with the Administrative Office of the Illinois Courts and the Conference of Chief Circuit Judges to implement the survey statewide. With the assistance and cooperation of the circuit courts and the AOIC, the survey was conducted in every county circuit courthouse in Illinois from April 13, 2015, to May 1, 2015. The individuals surveyed included, but were not limited to, litigants and their families and friends, victims and witnesses, attorneys (including assistant state's attorneys and public defenders), law enforcement officers, jurors, individuals doing record searches or having other business at the clerk's office, and individuals conducting any other type of court business. Because the survey was designed to assess the views of the court's users, judges and court staff were excluded from the survey. Over 12,000 completed surveys were collected across the state. Faculty and students at Loyola University Chicago compiled the data from the surveys

and conducted data analyses of the survey results. The statewide results of the court user survey showed that the majority of court users held positive views of the court.

Conclusion

As evidenced by these Committee summaries, the scope of work undertaken by the Judicial Conference in 2015 was broad and included recommendations on improving efficiency and transparency, whether through the use of technology, such as for data collection and information sharing, or through court user surveys providing feedback about the courts. Committee recommendations also included amendments to Supreme Court Rules, updating manuals and benchbooks, and offering suggestions on how to approach overall system improvement. Although many projects and initiatives were completed in the 2015 Conference Year, some will continue on into Conference Year 2016, and additional projects will be assigned in the coming year. Thus, the Judicial Conference will continue to honor its constitutional mandate and remain steadfast in its goal of improving the administration of justice in Illinois.

Supreme Court Decisions That the General Assembly May Wish to Consider

Grand Chapter, Order of the Eastern Star of the State of Illinois v. Judy Baar Topinka et al., 2015 IL 117083 (January 23, 2015).

The issue in this case was whether Section 5E-10 of the Illinois Public Aid Code (305 ILCS 5/5E-10) violated the uniformity clause of the Illinois Constitution (Ill. Const. 1970, art. IX, §2). The plaintiff, a non-profit organization and Illinois-licensed nursing home, does not apply for or accept government funding, including Medicaid. The circuit court held that the sole purpose of the bed fee was to fund Medicaid-related expenditures, and as such the bed fee was unconstitutional as applied to the plaintiff, who received no Medicaid funds.

The Supreme Court reversed the circuit court's decision, finding that the purpose of the bed fee was not solely to fund Medicaid reimbursement. Rather, the bed fee statute provides that all fees be collected and deposited into the Long-Term Care Provider Fund, which may be used to fund Medicaid reimbursement, administrative expenses of the Department of Public Aid, enforcement of nursing home standards, support of a nursing home ombudsman program, expansion of home and community-based services, and funding of Illinois' General Obligation Bond Retirement and Interest Fund. As such, there was a rational basis for the collection of the bed fee from every nursing home, even those not receiving Medicaid reimbursement. The plaintiff benefitted from operating within a regulated industry subject to uniform standards of quality and care, the enforcement and oversight of which was paid for in part by the Long-Term Care Provider Fund. However, the Court invited the legislature to reexamine the bed fee statute to assess fully whether the inclusion of enterprises such as the plaintiff within the applicable taxing classification is truly necessary and essential as a matter of public policy, in light of the benefits the plaintiff and similar organizations provide to indigent residents and Illinois taxpayers. *Reversed.*

People ex rel Madigan v. J.T. Einoder, Inc. et al., 2015 IL 117193 (March 19, 2015).

In 2000, the Attorney General filed a complaint in the circuit court of Cook County against the operators of a 40-acre landfill that had been in operation between 1995 and 2003. In 2005, the

circuit court found in favor of the State and ordered mandatory injunctive relief in the form of waste-removal and assessed fines against various individual and corporate defendants. The mandatory injunctive relief was allowed under Section 42(e) of the Illinois Environmental Protection Act (415 ILCS 5/42(e)), which had been amended in 2004 to allow courts to order any injunctive relief necessary to address violations of the Act; prior to the 2004 amendment, courts were limited to prohibitory injunctive relief to restrain future violations.

At issue before the Supreme Court was whether the amended Section 42(e) could be applied retroactively to address violations that occurred before it was passed. The Court could find no clear legislative directive as to the temporal reach of the amendment. Thus, it relied on Section 4 of the Statute on Statutes (5 ILCS 74/4), which had been previously determined to mean that legislative amendments that are procedural in nature may be applied retroactively, but those that are substantive may not. The Court held that the amendment at issue was substantive, as it created a new type of liability—a mandatory injunction—which was not available under the prior statute. As such, the Court concluded that mandatory injunctive relief pursuant to a 2004 legislative amendment to the Illinois Environmental Protection Act could not be applied retroactively to conduct which occurred under the prior statute. *Appellate court judgment affirmed in part and reversed in part.*

In re Parentage of Scarlett Z.-D, 2015 IL 117904 (March 19, 2015).

Scarlett Z.-D is the adopted daughter of Maria Z. James R.D. filed a petition seeking a declaration of parentage, custody, visitation, and child support. The circuit court dismissed James' claims brought under common law contract theories and denied his claims brought under functional parent theories. The appellate court affirmed with respect to the common law contract and functional parent theories, but remanded for further fact finding with reference to the doctrine of equitable adoption as recognized in *DeHart v. DeHart*, 2013 IL 114137.

The Supreme Court held that the doctrine of equitable adoption as recognized in *DeHart* does not apply to child custody proceedings. Rather, it is a probate concept to determine inheritance by allowing a person who was accepted and treated as a natural or adopted child, and as to whom adoption typically was promised or contemplated but never performed, to share in the inheritance of the foster or stepparent. The Court recognized that it is a limited remedial doctrine devised by courts using their equitable powers to permit such a child to inherit by intestate succession from the child's putative equitably adopting parent(s). The Court also rejected the applicability of the functional parent doctrine, which Illinois does not recognize, constitutional arguments and contract claims. The Court, however, did note that legal change in this complex area must be the product of a policy debate that is sensitive not only to the evolving reality of "non-traditional" families and their needs, but also to parents' fundamental liberty interest embodied in the superior rights doctrine. *Appellate court judgment affirmed in part and reversed in part. Circuit court judgment affirmed.*

In re Pension Reform Litigation, 2015 IL 118585 (May 8, 2015).

In the fall of 2013, the General Assembly enacted Public Act 98-599, amending the Illinois Pension Code (40 ILCS 5/1-101 *et seq.*) to reduce the retirement annuity benefits of individuals who first became members of several State-funded pension systems prior to January 1, 2011. P.A. 98-599 was challenged in five separate actions that were consolidated in the circuit court of

Sangamon County. That court declared the statute unconstitutional in its entirety as a violation of the pension protection clause of the Illinois Constitution of 1970, and enforcement of the statute was permanently enjoined.

On review, the Supreme Court agreed with the circuit court. The pension protection clause states that “[m]embership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired” (Ill. Const. 1970 art. XIII, §5). If allowed to take effect, P.A. 98-599 would have directly reduced the value of retirement annuities, which is clearly a diminishment. The Court therefore held that P.A. 98-599, which amended the Illinois Pension Code to reduce retirement annuity benefits for members of five State-funded pension systems, was unconstitutional as it violated the pension protection clause of the Illinois Constitution of 1970.

Nonetheless, the State argued that, even though P.A. 98-599 was a diminishment, it was justified as an exercise of police power as a matter of reserved state sovereignty in light of the current financial emergencies of the State of Illinois. The Court rejected that argument, noting that the State’s financial problems were also a concern when the Constitution of 1970 was enacted and, in fact, drove the inclusion of the pension protection clause at that time. Further, it could not be said that there were no other alternative remedies available to address the State’s financial difficulties that did not violate the Illinois Constitution. For example, a temporary increase in the rate of income tax, allowing for additional revenue, had been recently allowed to lapse. No effort was made to distribute the financial burden evenly among Illinoisans. Instead, the General Assembly’s actions would have unfairly forced retirees, alone, to bear public burdens in contravention of the Constitution, which, in all fairness and justice, should be borne by the public as a whole. *Affirmed.*

People v. Gaytan, 2015 IL 116223 (May 21, 2015).

The defendant was a passenger in a vehicle containing a ball-type trailer hitch mounted on the back bumper. Two Chenoa policemen in a patrol car stopped the vehicle because the hitch partially obscured the vehicle’s license plate, and subsequently found cannabis. The defendant was charged with unlawful possession of cannabis with intent to deliver.

The defendant moved to suppress the cannabis evidence, claiming that the police had no reasonable, articulable suspicion that a crime was being committed when they initiated the traffic stop. At the time of the events in question, the Section 3-413(b) of the Illinois Vehicle Code (625 ILCS 5/3-413(b)) required registration plates to be clearly visible and maintained in a condition to be clearly legible and free from any materials that would obstruct the visibility of the plate. At issue was whether the purpose of Section 3-413(b) was to prohibit all objects that obstruct any view of the plate (as the State argued) or if it was intended to prohibit only items attached to the plate itself.

The Supreme Court found that the statute was ambiguous and that no clear legislative intent could be discerned from the statutory language. As such, the Court invoked the rule of lenity and construed the statute to prohibit only those objects that obstruct the visibility of the plate which are physically connected or attached to it. The Court then encouraged the legislature to revisit the statute to clarify to what extent, if any, equipment and accessories which are attached to a vehicle

are prohibited. *Appellate court judgment reversed. Circuit court judgment affirmed.*

People v. Fiveash, 2015 IL 117669 (September 24, 2015).

In 2012, the defendant, then 23 years old, was indicted in the circuit court of Cook County for two counts of aggravated criminal sexual assault and two counts of criminal sexual assault occurring between January 1, 2003, and January 1, 2004, when he was 14 or 15 years old.

The circuit court dismissed the charges, holding that, because of his age, the defendant was beyond the jurisdiction of the Juvenile Court Act (705 ILCS 405/1-1 *et seq.*), and that the Act's exclusive jurisdiction provision barred his prosecution in criminal court. The appellate court reversed, finding that the circuit court did have jurisdiction to prosecute him in criminal court once he became 21 years of age.

The Supreme Court agreed with the appellate court that the intent of the legislature was clear and unambiguous. Although juvenile court jurisdiction is exclusive pursuant to Section 5-120 of the Act (705 ILCS 405/5-120), this does not mean that an offender who ages out of the juvenile system can no longer be charged. Here, the charges were brought well within the applicable limitation period, thus the criminal charges against the defendant were allowed. However, in recognizing the inherent tension and potential for perceived unfairness between juvenile dispositions and the comparatively harsh punishments defendants may face in criminal court for offenses allegedly committed as juveniles, the Court encouraged the legislature to reevaluate Section 5-120 in light of this decision. *Appellate court judgment affirmed. Cause remanded.*

McElwain v. The Office of the Illinois Secretary of State, 2015 IL 117170 (September 24, 2015).

The plaintiff was involved in a serious vehicle accident that resulted in a fatality. He was not ticketed or tested for impairment at the scene, but further investigation of his vehicle revealed evidence of cannabis. Two days later, he was issued a ticket for failure to yield and asked to take a chemical test for impairment, which he refused. His license to drive was then suspended by the Secretary of State pursuant to Section 11-501.6 of the Illinois Vehicle Code (625 ILCS 5/11-501.6), which provides that a driver who is arrested for a traffic violation related to a fatality or serious personal injury automatically consents to having his blood, breath or urine tested for the presence of alcohol or drugs. Refusal to submit results in automatic suspension of that person's driver's license. The statute contains no timeframe for when the test must be administered.

The circuit court held Section 11-501.6 unconstitutional as applied to the plaintiff as an unreasonable search in violation of the fourth amendment. The Illinois Supreme Court agreed. It agreed with the Secretary of State that law enforcement has a special need to determine whether drivers are chemically impaired and to suspend those drivers' licenses. In addition, a driver has a diminished expectation of privacy while at the scene of a serious accident, which lessens the intrusiveness of an automatic chemical impairment test. However, in this case, the police sought the test two days after the accident. At that time, the intrusiveness of the search was no longer lessened and test was no longer probative of whether the plaintiff was actually impaired at the time of the accident. Thus, the search was unreasonable.

The Supreme Court declined to establish a bright line as to how soon after an accident a chemical impairment test must be done under Section 11-501.6. That responsibility belongs to the

legislature. Should the legislature choose to amend the statute to provide a timeframe, it will then be the Court's responsibility to determine if the line drawn by the legislature is constitutional. *Affirmed.*

In re M.A., 2015 IL 118049 (November 4, 2015).

Respondent was adjudicated delinquent of several offenses, and was ordered to register under the Murderer and Violent Offender Against Youth Registration Act (Violent Offender Act) (730 ILCS 154/1 *et seq.*). The appellate court rejected respondent's claim that the statute violated her right to substantive due process; however, it agreed that the registration provisions are unconstitutional because the provisions violate procedural due process and equal protection.

The Supreme Court held that the Violent Offender Act does not violate equal protection and procedural due process. The Court reasoned that the Violent Offender Act and the Sex Offender Registration Act (730 ILCS 150/1 *et seq.*) address qualitatively different types of offenders and qualitatively different types of offenses. Here, respondent was not similarly situated to a juvenile adjudicated delinquent under the Sex Offender Registration Act (Registration Act). As such, it is of no consequence that the registration provisions for juveniles adjudicated delinquent under the Registration Act differ from the registration provisions for juveniles adjudicated delinquent under the Violent Offender Act. With respect to procedural due process, the Court reasoned that the Violent Offender Act requires registration solely based upon the fact of conviction or adjudication, a fact that respondent had a procedurally safeguarded opportunity to contest during her juvenile adjudication proceedings. The Court further determined that the Violent Offender Act does not violate substantive due process given that there is a rational relationship between respondent registering and the protection of the public. Therefore, it found that the trial court properly required respondent to register under the Violent Offender Act. Four members of the Court specially concurred and invited the legislature to reexamine the Violent Offender Act, commenting that it is illogical to allow juveniles adjudicated delinquent of violent sexual offenses to petition for removal from sex offender registry while disallowing the same procedure for juveniles adjudicated delinquent of violent offenses which do not involve a sexual component. *Appellate court affirmed in part and reversed in part. Circuit court affirmed.*