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NATURE OF THE CASE

The circuit court vacated defendant Gregory Dobbins's conviction for possession of a controlled substance during postjudgment proceedings. He then filed a petition for a certificate of innocence (COI) but died before the court ruled on the petition. Appellant Katrina Crawford, the administrator of defendant's estate, moved to substitute for defendant in the COI proceedings. The circuit court denied the motion and dismissed the petition. The appellate court affirmed, and appellant appeals that judgment. An issue is raised on the sufficiency of the motion to substitute.

ISSUES PRESENTED

1. Whether the circuit court correctly denied appellant's motion to substitute because appellant argued two legal bases for finding that a COI action survives, both precluded by binding precedent.
2. Whether the appellate court correctly affirmed the circuit court's judgment because (a) appellant waived the legal issue of whether a COI action survives under the Survival Act, 755 ILCS 5/27-6; and (b) waiver aside, a COI action does not survive under the Survival Act because it is not an action to recover damages for an injury to the person or property.¹
3. Whether the Court should decline to exercise its supervisory authority to contradict the legislature's determination that a COI action does not survive and allow appellant's substitution in the COI action.

¹ Unless otherwise specified, the statutory citations in this brief are to the January 2023 versions in effect when appellant filed her motion to substitute.

JURISDICTION

The Court allowed leave to appeal on January 29, 2025, and has jurisdiction under Supreme Court Rules 315 and 612(b).

RELEVANT STATUTORY PROVISIONS

735 ILCS 5/2-1008 (Abatement; change of interest or liability; substitution of parties).

(b) Death. If a party to an action dies and the action is one which survives, the proper party or parties may be substituted by order of court upon motion

755 ILCS 5/27-6 (Actions which survive).

In addition to the actions which survive by the common law, the following also survive: actions of replevin, actions to recover damages for an injury to the person (except slander and libel), actions to recover damages for an injury to real or personal property or for the detention or conversion of personal property, actions against officers for misfeasance, malfeasance, nonfeasance of themselves or their deputies, actions for fraud or deceit, and actions provided in Section 6-21 of “An Act relating to alcoholic liquors.”

In addition, portions of the Court of Claims Act, 705 ILCS 505/1, *et seq.*, are reproduced in the appendix to this brief, *see* PA1-19, and the COI statute, 735 ILCS 5/2-702, is reproduced in the appendix to appellant’s brief, *see* A22-24.²

STATEMENT OF FACTS

In 2009, defendant pleaded guilty to possession of a controlled substance and was sentenced to 30 months in prison. C20-21, 52, 219.

² Citations appear as follows: “C__,” “SupC__,” and “R__” refer to the common law record, supplemental common law record, and report of proceedings. “AT Br. __” and “A__” cite to appellant’s brief and appendix. “PA__” refers to this brief’s appendix. “AT App. Br. __” and “AE App. Br. __” cite to the appellant’s opening and People’s briefs filed in the appellate court, which have been filed in this Court pursuant to Rule 318(c).

In 2021, defendant filed in the circuit court a petition for relief from judgment under 735 ILCS 5/2-1401, alleging that his conviction rested on evidence fabricated by disgraced former police Sergeant Ronald Watts and his tactical team and requesting vacatur of his conviction. C60-65; SupC79-80, 113-18; *see generally People v. Wilson*, 2021 IL App (1st) 182360-U, ¶¶ 2, 46, 56-59. On April 22, 2022, the circuit court granted the petition and vacated defendant's conviction. C217.

On May 13, 2022, defendant petitioned for a COI as to the vacated conviction. C218-300. On May 25, 2022, the circuit court entered an order stating, "State not intervening" and continuing the case to June 22. C301. On that date, defendant's attorney, Joshua A. Tepfer of The Exoneration Project, informed the circuit court that defendant had died on June 8, 2022, and suggested that the estate could substitute for defendant in the COI proceeding. R3. Tepfer asked "not to receive a ruling today" and for a continuance of six weeks "to allow for an estate to be set up, and then [he] would eventually file a motion to substitute the estate as a plaintiff." R3-4. The court granted a continuance to August 22, and directed counsel to tender documentation showing that defendant was deceased. R4-5.

On August 2, 2022, Tepfer filed a motion to continue the proceedings "to allow [him] time to substitute [defendant]'s estate as the movant in this

matter.” C304. The court continued the matter to November 3, C306, and later granted Tepfer another continuance to February 1, 2023, C307-09.³

On January 25, 2023, appellant, the personal representative of defendant’s estate, moved to substitute herself as the petitioner in the COI proceeding. C310-23. According to appellant, *Rudy v. People*, 2013 IL App (1st) 113449 — which held that a deceased defendant’s estate is not entitled to a COI because the remedy provided by the COI statute is “personal to the individual who was wrongly convicted rather than to one suing on his or her behalf,” *id.* ¶ 13 — was distinguishable. C312, 314. Appellant further argued that because the “[c]ourt was prepared to rule on [the COI petition’s] merits when [defendant] abruptly died,” the petition was “ripe for judgment on the pleadings on June 22, 2022,” and “abatement would be inappropriate.” C313-14. Relying on *Rudy*, the People opposed substitution. C326-27.

At a hearing on the motion, the parties stipulated that appellant was the proper party to be substituted if the court granted substitution. R8. Appellant argued that *Rudy* was factually distinct and did not apply. R11. She further argued that “[j]ust because a claim does not survive death doesn’t mean you can never substitute[.]” R10-11. In appellant’s view, defendant’s case “was ripe for adjudication when he died” because it had “progressed to a

³ Tepfer sought these continuances on behalf of defendant, C304-09, although the attorney-client relationship between Tepfer and defendant terminated upon defendant’s death, *see generally Robinson v. Orthotic & Prosthetic Lab, Inc.*, 2015 IL App (5th) 140079, ¶ 12. Tepfer’s authority to represent defendant at this stage was not challenged.

point at which the merits of [his] allegations were essentially affirmatively determined [and] there [wa]s no abatement upon [defendant's] death.” *Id.* The People countered that *Rudy* required denial of the motion to substitute even if the court would have granted the COI had defendant lived. R12-13.

The circuit court found that it had no discretion to allow substitution because defendant died before the court ruled on the petition and “[t]here is case law on point” holding that the right to obtain a COI “is a personal right” that does not “survive beyond the life of the actual petitioner.” R18-19. Accordingly, the court denied substitution and dismissed the COI petition. C329; R19.

On appeal, appellant argued, for the first time, that the circuit court should have granted her motion to substitute because the COI action survived defendant’s death under 755 ILCS 5/27-6 (the Survival Act). AT App. Br. 6-10. She added that the circuit court erroneously relied on *Rudy*, which was factually distinguishable, and that defendant’s “case was ripe for judgment on the pleadings on June 22, 2022.” *Id.* at 10-11. The People responded that appellant forfeited the issue of whether substitution is warranted under the Survival Act, AE App. Br. 5-8, and that the COI action did not survive under any of appellant’s theories, *id.* at 8-18.

The appellate court affirmed the circuit court’s judgment. A6-7, ¶¶ 26-28. The court declined to find forfeiture because (1) in its view, appellant was raising a different argument to support her substitution motion, not a

different issue; (2) forfeiture was a limitation on the parties, not the court; and (3) reviewing the issue would not prejudice the People, advantage appellant, or undermine principles of judicial economy. A3-4, ¶¶ 13-16. On the merits, the court held that “[a]n action for a COI is clearly not an ‘action[] to recover damages’ under the Survival Act” and thus does not survive. A7, ¶ 26.

STANDARD OF REVIEW

The issues presented turn on questions of statutory interpretation, which the Court reviews de novo. *In re Marriage of Tronsrue*, 2025 IL 130596, ¶ 29.

SUMMARY OF ARGUMENT

The circuit court correctly denied appellant’s motion to substitute and dismissed the COI petition. A COI action is a statutory creation that is civil in nature. *See People v. Terrell*, 2022 IL App (1st) 192184, ¶ 40. Under civil rules of procedure, the personal representative of a deceased plaintiff’s estate may substitute for the deceased plaintiff in a pending action only if the action survives. 735 ILCS 2-1008(b). A statutory action may survive (1) if the underlying statute itself provides for survival; (2) if the action survives under the Survival Act, 755 ILCS 5/27-6; or (3) under a narrow exception to abatement allowing for survival if the merits of the plaintiff’s allegations were affirmatively determined before the plaintiff’s death.

Appellant claimed to the circuit court that she was entitled to substitute in the COI action under the first and third of these grounds. But

Rudy v. People had already held that the COI statute itself precludes an estate from pursuing a deceased petitioner's COI action. 2013 IL App (1st) 113449, ¶¶ 11, 13. Indeed, appellant does not challenge *Rudy* here. And because the circuit court had not affirmatively determined the merits of defendant's COI claim before he died, the court properly declined to apply the narrow exception to abatement. The circuit court therefore correctly denied appellant's motion to substitute.

The appellate court correctly affirmed the circuit court's judgment. On appeal, appellant claimed, for the first time, that she could substitute under the Survival Act. But appellant waived this new legal issue because she misled the circuit court to believe that the only grounds for substitution were under the COI statute or the narrow exception to abatement. This Court should enforce the waiver because prudential reasons counsel against addressing the underlying statutory question. Waiver aside, the COI action does not survive under the Survival Act because the COI statute does not permit the petitioner to "recover damages" at all, much less damages "for an injury to the person" or "for an injury to . . . personal property." 755 ILCS 5/27-6. And because the narrow exception to abatement does not apply, appellant was not entitled to substitute for defendant in the COI action. Accordingly, the Court should affirm the appellate court's judgment.

Finally, the Court should reject appellant's request that it exercise its supervisory authority to allow appellant to maintain defendant's COI action.

The circuit court never ruled upon defendant's COI petition, so the Court may not direct the court to enter the COI order *nunc pro tunc* to a date before defendant's death. Moreover, the legislature determined that a COI action does not survive the deceased petitioner's death, and this Court does not use its supervisory authority to depart from legislative intent.

ARGUMENT

I. The Circuit Court Correctly Denied Appellant's Motion to Substitute Because Appellant Advanced Only Two Legal Theories for Survival, Both Barred by Precedent.

The circuit court correctly denied appellant's motion to substitute because appellant's two theories for survival of the COI action were meritless and barred by binding precedent.

A cause of action created by statute abates upon a party's death unless the statute itself or some other statute — here the Survival Act — provides for survival. *Creighton v. Pope Cnty.*, 386 Ill. 468, 475-76 (1944); *People ex rel. Peace v. Taylor*, 342 Ill. 88, 95 (1930). It is undisputed that a COI action is purely statutory and that the COI statute itself does not provide for survival. And, in *Rudy v. People*, the appellate court held that the COI statute's plain language established that “the legislature intended the remedies set forth in this s[tatute], allowing a petitioner to obtain a certificate of innocence, should be personal to the individual who was wrongly convicted rather than to one suing on his or her behalf.” 2013 IL App (1st) 113449, ¶ 13; *see generally Selden v. Ill. Trust & Sav. Bank*, 239 Ill. 67, 78 (1909) (“where a right of action is so entirely personal that the party in whom

it exists cannot by contract place it beyond his control it will not survive”).

Rudy was the only Illinois decision addressing whether an estate may pursue a COI action on behalf of a deceased defendant, so the circuit court was bound by it. *See People v. Webb*, 2023 IL 128957, ¶ 34 (circuit court bound to follow governing precedent on legal questions); *People v. Lighthart*, 2023 IL 128398, ¶ 75 (until this Court says otherwise, appellate court decisions are binding on circuit court).

Appellant did not offer the circuit court another statutory basis for survival and instead argued that *Rudy* was factually distinguishable. C312-14. But *Rudy* squarely considered “the legal question of whether a deceased defendant’s estate is entitled to a certificate of innocence under [the COI statute],” 2013 IL App (1st) 113449, ¶ 11, and held that an estate is not entitled to maintain a COI action because “the plain language of section 2-702(g) [of the COI statute]” established that “the legislature intended the remedies set forth in th[at] section, allowing a petitioner to obtain a certificate of innocence, should be personal to the individual who was wrongly convicted rather than to one suing on his or her behalf,” *id.* ¶ 13. *Rudy* thus was plainly on point.

Rather than contest *Rudy*’s legal holding, appellant argued to the circuit court that *Rudy* did not apply because the estate’s representative there initiated the COI action, whereas defendant initiated the action at issue here. C312-14. But *Rudy*’s holding applies equally to both factual

circumstances. *Rudy* “review[ed] the plain language of section 2-702(g)” of the COI statute and held that the legislature did not intend for anyone other than the wrongly convicted individual to obtain a COI. 2013 IL App (1st) 113449, ¶ 13. Under this construction of the COI statute, it is irrelevant whether the estate’s representative filed the COI action on behalf of the deceased defendant (as in *Rudy*) or sought to substitute for the deceased defendant (as here); only the wrongly convicted individual may maintain a COI petition. Accordingly, the circuit court correctly applied *Rudy*’s legal holding.

Appellant offered the circuit court only one other basis for substitution, which was not grounded in any statute but on a misapprehension of the narrow exception to abatement announced in *Tunnell v. Edwardsville Intelligencer, Inc.*, 43 Ill. 2d 239 (1969). Appellant argued that even if the COI action did not survive, she could be substituted because the action was “ripe for judgment on the pleadings on June 22, 2022,” *i.e.*, after defendant’s death. C313-14. But *Tunnell* explained that “there is no abatement upon the death of a party if the litigation has progressed to a point at which the merits of plaintiff’s allegations have been affirmatively determined,” meaning that “all factual questions had been resolved before the plaintiff died.” 43 Ill. 2d at 242-43. Thus, “when a plaintiff dies after having received a verdict in his favor but before entry of judgment, his action does not abate and he is entitled to judgment upon that verdict.” *Id.* at 242.

This Court reiterated the importance of a final verdict or its equivalent in *In re Marriage of Davies*. See 95 Ill. 2d 474, 478 (1983) (“there is no abatement upon the prejudgment death of a party to a nonsurviving action if the litigation is ripe for judgment,” and “a case becomes ripe for judgment following the return of a verdict”). Applying *Tunnell*’s exception, *Davies* held that a marriage dissolution proceeding did not abate where the defendant died before the circuit court entered judgment on the property and related questions because, before the defendant’s death, the court had issued an “opinion letter” stating that “all marital property should be equally divided” and directed the plaintiff’s attorney to prepare and present for entry a judgment order conforming with the terms of the letter. *Id.* at 475-76, 479-80. *Davies* reasoned that the “judge’s opinion letter must be given the same effect” as the jury’s verdict in *Tunnell* because the judge issued the opinion letter after fully considering the issues, law, and evidence, and the recorded judgment would differ only in its formal appearance. *Id.* at 479-80. In these circumstances, the litigation was “ripe for judgment” and the action did not abate. *Id.* at 480.

Here, unlike in *Tunnell* and *Davies*, the circuit court never rendered a decision on the COI petition. Nothing in the record suggests that the court had determined that defendant had satisfied the statutory requirements to obtain a COI. To the contrary, after defendant died, Tepfer asked the circuit court *not* to rule on the COI petition, R3-5, and later conceded that the court

had not ruled on the petition, R14. Put simply, the circuit court took no action on the COI petition before defendant's death akin to "the return of a verdict," *Davies*, 95 Ill. 2d at 478-80, so *Tunnell's* exception does not apply.

Appellant's prediction that the circuit court would have ruled in defendant's favor had he lived, AT Br. 8-10, 17-18, does not change the fact that the circuit court did not "affirmatively determine[]" the merits of defendant's COI petition before his death, *Tunnell*, 43 Ill. 2d at 242. *Tunnell's* exception narrowly applies to those circumstances where the decisionmaker expressly decided the claims before a party's death. *Id.* at 242-43; *see also Davies*, 95 Ill. 2d at 475-76, 478-80. Broadening that exception to encompass circumstances where, as here, the decisionmaker had not expressed its decision would unduly subvert the General Assembly's intent that only certain actions survive. *See generally Vincent v. Alden-Park Strathmoor, Inc.*, 241 Ill. 2d 495, 502-07 (2011); *Froud v. Celotex Corp.*, 98 Ill. 2d 324, 334 (1983).

Moreover, it is irrelevant that defendant's claim was plausible and uncontested, as appellant argues, *see* AT Br. 8-10, 13, 17-18, because the circuit court never decided before defendant's death (or even after) that defendant had satisfied the statutory requirements for a COI. The court had an independent obligation to determine whether defendant had met his burden to prove the statutory elements by a preponderance of the evidence and could not grant a COI merely because the People chose not to intervene.

See 735 ILCS 5/2-702(c)-(h); *see also* *People v. Washington*, 2023 IL 127952, ¶¶ 5-22, 37, 50, 54-62 (independently evaluating whether petitioner’s evidence satisfied COI elements where People did not intervene in circuit court); *People v. Hawkins*, 221 Ill. App. 3d 460, 463 (2d Dist. 1991) (“While the party not having the burden of proof may introduce contrary evidence, it is under no compulsion to do so and may submit the issue to the trier of fact on the evidence presented by the burdened party.”) (citing M. Graham, *Cleary & Graham’s Handbook of Illinois Evidence* § 301.4, at 74 (5th ed. 1990)). Because the COI petition was undecided at the time of defendant’s death, the circuit court properly declined to apply *Tunnell*’s narrow exception.

In sum, the circuit court correctly denied appellant’s motion to substitute based on *Rudy*’s holding that a deceased defendant’s estate may not obtain a COI and the fact that defendant’s claim had not been adjudicated before he died.

II. The Appellate Court Correctly Affirmed the Circuit Court’s Judgment Because Appellant’s Contention That a COI Action Survives under the Survival Act Was Both Waived and Meritless.

The appellate court correctly affirmed the circuit court’s judgment. For the first time on appeal, appellant claimed that she could substitute under the Survival Act. Appellant waived her new legal basis for substitution — that a COI action survives under the Survival Act — when she led the circuit court to believe that the only grounds for substitution lay under the COI statute or the *Tunnell* exception. Waiver aside, the COI action does not

survive under the Survival Act because the COI statute does not permit the petitioner to “recover damages,” much less damages “for an injury to the person” or “for an injury to . . . personal property.” 755 ILCS 5/27-6.

A. Appellant waived the issue of whether a COI action survives under the Survival Act.

“It is fundamental to our adversarial process that a party waives h[er] right to complain of an error where to do so is inconsistent with the position taken by the party in an earlier court proceeding.” *McMath v. Katholi*, 191 Ill. 2d 252, 255 (2000) (quoting *Auton v. Logan Landfill, Inc.*, 105 Ill. 2d 537, 543 (1984)). For this reason, where an appellant asks the court for a specific ruling but “misle[a]d[s] the trial court as to the law which govern[s] the situation,” the appellant is barred from seeking reversal on appeal based on different law. *Id.* at 255-56. Appellant waived the issue of whether a COI action survives under the Survival Act when she led the circuit court to believe that the law governing substitution was limited to *Rudy* and the *Tunnell* exception. *See id.*

The appellate court’s finding that appellant merely forfeited an argument, rather than waived an issue, A3-4, ¶¶ 14-15, is incorrect. When an appellant shifts her position or legal theory on appeal, the appellant is impermissibly raising a new issue, not merely offering another argument to support a legal theory that she raised below. *See McMath*, 191 Ill. 2d at 255-56; *Baker v. Collins*, 29 Ill. 2d 410, 415 (1963); *Johnson v. Johnson*, 244 Ill. App. 3d 518, 523 (1st Dist. 1993). Unlike the prevailing party — who may

defend the circuit court’s judgment on any basis appearing in the record, *In re Veronica C.*, 239 Ill. 2d 134, 151 (2010)⁴ — an appellant may not attack a circuit court’s judgment on grounds that were not presented to the circuit court; such theories for relief are “waived” on appeal. *Liceaga v. Baez*, 2019 IL App (1st) 181170, ¶¶ 28-29; *see People v. Keller*, 93 Ill. 2d 432, 437 (1982) (appellant may not force “prevailing party[] to rebut a new theory raised for the first time on appeal”).

Appellant waived the issue of whether the COI action survived under the Survival Act. She affirmatively led the circuit court to believe that the *only issues* before it were whether the COI action survived despite *Rudy*, and, if not, whether *Tunnell’s* exception applied. Thus, appellant waived the issue of whether the Survival Act would permit substitution because that position is contrary to her position in the circuit court that *Rudy* and *Tunnell* governed. *See, e.g., McMath*, 191 Ill. 2d at 256 (appellant “waived the issue of whether Rule 213 would bar [certain] testimony on cause of death, because that position [wa]s contrary to her trial position that Rule 220 applied”).

Indeed, contrary to the appellate court’s holding, appellant’s actions went beyond mere forfeiture. As the moving party with the burden to

⁴ For this reason, the People — as appellee in both the circuit and appellate courts — may defend the judgments below on any basis appearing in the record, including arguing that appellant’s actions in the circuit court amounted to waiver, not mere forfeiture. *See Veronica C.*, 239 Ill. 2d at 151 (“appellee may raise any argument or basis supported by the record to show the correctness of the judgment below, even though [they] had not previously advanced such an argument”). Similarly, this Court “may affirm on any basis supported by the record.” *Id.*

establish that substitution was permitted, she presented the legal issues to the circuit court, and the court considered the issues as she framed them. Like a reviewing court, the circuit court relied on appellant to define the issues with citation to pertinent authority and was “not a repository into which [appellant could] foist the burden of argument and research.” *Smith v. Jones*, 2025 IL App (5th) 231136, ¶ 10. The circuit court had no independent duty to research the law and identify the Survival Act as a potential legal basis for substitution. “In our adversary system, in both civil and criminal cases, in the first instance and on appeal, we follow the principle of party presentation,” which assumes that “parties know what is best for them, and are responsible for advancing the facts and arguments entitling them to relief.” *Jackson v. Bd. of Election Comm’rs of City of Chi.*, 2012 IL 111928, ¶ 34 (internal quotations and citations omitted). “The trial court proceeding [wa]s not a practice round,” *Liceaga*, 2019 IL App (1st) 181170, ¶ 28, and appellant waived the Survival Act issue by leading the circuit court to believe that the only grounds for relief were a factual distinction of *Rudy* (which interpreted the COI statute) and *Tunnell*. *See id.* ¶¶ 28-29 (enforcing waiver where appellant raised ground for relief based on “completely different statutes that he had not cited before and completely different case law that he had not cited before”).

The appellate court was also incorrect that appellant’s “distinction of the *Rudy* decision was essentially a survival argument without the statute.”

A4, ¶ 14. Appellant argued that *Rudy* did not apply solely because *Rudy*'s factual posture differed from hers. C312-14; R11. Moreover, on the legal issue, *Rudy* considered only whether the COI statute itself provides for survival. 2013 IL App (1st) 113449, ¶¶ 11, 13. Upon holding that it does not, *Rudy* went no further, *see id.*, presumably because the estate there (like appellant here) waived any alternative theory based on the Survival Act. In short, whether the Survival Act saves COI actions from abatement is a completely different issue, which appellant waived, from whether the COI statute provides for survival. *See McMath*, 91 Ill. 2d at 255-56; *Liceaga*, 2019 IL App (1st) 181170, ¶¶ 28-29.

Finally, although waiver does not limit *this* Court's authority to review the Survival Act issue, *see Jackson*, 2012 IL 111928, ¶¶ 33-34, there is no compelling reason to overlook the procedural bar here. The Court overlooks waiver "to maintain a uniform body of precedent, or where the interests of justice so require," *Texaco-Cities Serv. Pipeline Co. v. McGaw*, 182 Ill. 2d 262, 279 (1998), but neither basis for overlooking appellant's waiver is present here. Whether a COI action survives under the Survival Act is not an issue on which the appellate court is split such that the Court's intervention is necessary to clarify the law. Nor is it an issue likely to arise with frequency such that lower courts need guidance on the statutory interpretation question. And although the Court has received briefing on the issue, that fact alone does not favor resolution of the waived issue where doing so would not

further the administration of justice. Absent a split or confusion in the lower courts, prudential reasons counsel against resolving the waived legal issue. The Court should enforce appellant's waiver and affirm the lower courts' judgments without reaching the Survival Act issue.

B. Waiver aside, a COI action does not survive under the Survival Act.

Waiver aside, the appellate court correctly held that a COI action does not survive under the Survival Act.

The Survival Act “authorize[s] the survival of certain specified claims” that would have abated at common law, *Froud*, 98 Ill. 2d at 334, thereby allowing the deceased's representative to recover for injuries suffered by the deceased before death, *Carter v. SSC Odin Operating Co., LLC*, 2012 IL 113204, ¶ 34.⁵ The “Act shields from abatement *only* those claims which are specifically set forth in it.” *Froud*, 98 Ill. 2d at 334 (emphasis added).

Although the Act is remedial in nature and liberally construed to prevent abatement, *Walter v. Bd. of Educ. of Quincy Sch. Dist. No. 172*, 93 Ill. 2d 101, 108 (1982), “which claims abate and which survive is the result of legislative judgment to which this [C]ourt is not free ‘to annex new provisions or substitute different ones’ or provide exceptions, limitations or conditions

⁵ At common law, actions for breach of contract survived the death of either party, while tort actions did not survive the death of either the tortfeasor or the injured party. *Butterman v. Chamales*, 73 Ill. App. 2d 399, 402 (1st Dist. 1966). Thus, a tort “action died concurrently with the death of the injured party, and there was no right of recovery after the injured person's death.” *Williams v. Manchester*, 228 Ill. 2d 404, 418 (2008).

which are different than the plain meaning of the statute,” *Froud*, 98 Ill. 2d at 334 (quoting *Belfield v. Coop*, 8 Ill. 2d 293, 306-07 (1956)); see *Deere v. Chapman*, 25 Ill. 610 (1861) (remedial statutes are “construed as most effectually to meet the benevolent end in view, without departing, however, from the plain and obvious meaning of the language used in the act”). Nor is this Court “free to read into the Survival Act its own views of the type of claims which should be permitted to survive.” *Froud*, 98 Ill. 2d at 334. Where the General Assembly has amended parts of the Survival Act but left unchanged terms that Illinois courts have construed, the Court presumes that the General Assembly has acquiesced in those interpretations and will not depart from the ascribed meanings. *Id.* at 335-37; see also *Mattyasovszky v. West Towns Bus Co.*, 61 Ill. 2d 31, 33 (1975).

The Survival Act does not authorize survival of a COI action. The Act lists civil actions that survive, including “actions to recover damages for an injury to the person (except slander and libel)” and “actions to recover damages for an injury to . . . personal property”; and one statutory action that survives, an “action[] provided in Section 6-21 of ‘An Act relating to alcoholic liquors.’” 755 ILCS 5/27-6. Actions under the COI statute do not qualify as the latter. Accordingly, for COI actions to survive under the Survival Act, the COI statute must either permit the petitioner “to recover damages for an injury to the person” or “for an injury to . . . personal property.” *Id.*; see *Vincent*, 241 Ill. 2d at 498-99, 502-05, 507 (where action is purely statutory,

underlying statute must expressly authorize claim of the type listed in Survival Act). But the COI statute neither allows the petitioner “to recover damages” nor redresses “an injury to the person” or “an injury to . . . personal property.” 755 ILCS 5/27-6. A COI action therefore abates upon the death of the petitioner.

1. The appellate court correctly held that the COI statute does not permit the petitioner “to recover damages.”

a. The COI statute’s plain language does not authorize recovery of damages.

The plain language of the COI statute establishes that a COI action is not an “action[] to recover damages.” 755 ILCS 5/27-6. Under the COI statute, an unjustly imprisoned person may “file a petition for certificate of innocence in the circuit court of the county in which the person was convicted.” 735 ILCS 5/2-702(b). “The petition shall request a certificate of innocence finding that the petitioner was innocent of all offenses for which he or she was incarcerated.” *Id.* “[T]o obtain a certificate of innocence the petitioner must prove by a preponderance of evidence” specific facts. *Id.* § 2-702(g). “If the court finds that the petitioner is entitled to a judgment,” the court “shall enter” (1) “a certificate of innocence finding that the petitioner was innocent of all offenses for which he or she was incarcerated,” (2) an order expunging the arrest record, (3) an order directing that certain records be sealed, and (4) an order directing that the petitioner’s name be obliterated from certain circuit court records. *Id.* § 2-702(h). The circuit court clerk then

“shall transmit a copy of the certificate of innocence to the clerk of the Court of Claims, together with the claimant’s current address.” *Id.*

Accordingly, by its plain terms, the COI statute allows a petitioner to seek and obtain entry of a COI and other specified orders, but it does not provide for “damages.” Indeed, the COI statute is found in the part of the Code of Civil Procedure entitled, “Action for Declaratory Judgment,” and does not authorize the circuit court to grant any relief other than entry of a COI and the specific orders listed in the statute. *Id.*; *see generally Raintree Homes, Inc. v. Vill. of Long Grove*, 209 Ill. 2d 248, 255-57 (2004) (distinguishing “actions seeking damages remedies” from actions seeking injunctive, declaratory, or restitution relief). The appellate court therefore correctly held that COI actions are not “actions to recover damages.” 755 ILCS 5/27-6; *see* A6-7, ¶¶ 23-26.

Appellant is wrong that the purposes of the COI statute warrant her proposed departure from its plain language. *See* AT Br. 13-14. As *Rudy* correctly observed, the COI statute provides a remedy that is personal to the individual who was unjustly imprisoned. 2013 IL App (1st) 113449, ¶ 13; *see Diamen v. United States*, 604 F.3d 653, 687 (D.C. Cir. 2010) (federal COI statute “contemplates a remedy personal to the individual wrongly convicted rather than one available to his heirs suing on his behalf”). The COI statute provides “legal redress” in the form of “a finding of innocence” to “innocent persons who have been wrongly convicted of crimes in Illinois and

subsequently imprisoned.” 735 ILCS 5/2-702(a). It provides a clear judicial avenue for obtaining that relief, thereby reducing “substantive and technical obstacles in the law” that made it harder for “innocent persons” to “obtain a finding of innocence so that they may obtain relief through a petition in the Court of Claims.” *Id.*; see generally Jessica R. Lonergan, *Protecting the Innocent: A Model for Comprehensive, Individualized Compensation of the Exonerated*, 11 N.Y.U. J. Legis. & Pub. Pol’y 405, 407-13 (2008) (describing obstacles to obtaining compensation for unjust imprisonment, including through private bills to state legislatures, tort litigation, and gubernatorial pardons). The finding of innocence is for the benefit of the unjustly imprisoned person, making the person eligible for not only a monetary award from the State, 705 ILCS 505/8(c), but also job search and placement services, see 20 ILCS 1015/2, free mental health services, see 20 ILCS 1710/1710-125, and educational grants, see 110 ILCS 947/62. In sum, the COI statute serves to provide the unjustly imprisoned person a declaratory judgment, which that person may then use to obtain monetary and other support for the person’s reentry into society. Construing the COI statute consistently with its plain language — which does not authorize recovery of damages — achieves this purpose and does not impose an obstacle to the unjustly imprisoned person obtaining relief, as appellant suggests. See AT Br. 6-10.

b. The Court of Claims Act confirms that the COI statute does not permit a petitioner to recover damages.

This conclusion — that the COI statute’s plain language does not authorize the petitioner to recover damages — is confirmed by the Court of Claims Act and does not change merely because a successful COI petitioner may later obtain money from the State through a separate proceeding in the Court of Claims, as appellant contends. *See* AT Br. 14-16.

An action under the COI statute is materially different from a proceeding under the Court of Claims Act. “The Court of Claims Act creates the Court of Claims as the ‘exclusive’ forum for resolving lawsuits against the state,” which would otherwise be barred by sovereign immunity. *People ex rel. Manning v. Nickerson*, 184 Ill. 2d 245, 248 (1998) (quoting 705 ILCS 505/8). The Court of Claims is “part of the legislative branch,” does not “adjudicate cases,” and “is not a court within the meaning of the judicial article of our state constitution.” *People v. Philip Morris, Inc.*, 198 Ill. 2d 87, 96-97 (2001) (citations omitted).

The Court of Claims has “exclusive jurisdiction to hear and determine [certain listed] matters” against the State, including “[a]ll claims against the State for time unjustly served in prisons of this State,” if the claimant is pardoned on the basis of innocence or “received a certificate of innocence from the Circuit Court as provided in [the COI statute].” 705 ILCS 505/8(c). For such claims, “[t]he transmission by the Prisoner Review Board or the clerk of the circuit court of the [issuance of the requisite pardon or COI] is conclusive

evidence of the validity of the claim.” *Id.*; *see also id.* § 11(b). For valid claims, the Court of Claims Act directs payment of “an award,” the amount of which is discretionary, but capped. *Id.* § 8(c); *see also id.* §§ 23-24.

Accordingly, COI actions and Court of Claims matters are distinct statutory creations, governed by separate statutes, pursued in different branches of the government, and providing different remedies. An action under the COI statute is filed in the circuit court and results in a judicial judgment that provides relief other than money. *See* 735 ILCS 5/2-702(h). In contrast, a Court of Claims action by an unjustly imprisoned person — a claimant — is filed under the Court of Claims Act, in a legislative “court,” and may result in a monetary “award” funded by the legislature that is generally unreviewable by a judicial court. 705 ILCS 505/8(c), 11(b), 23-24; *see Philip Morris*, 198 Ill. 2d at 96-97; *see also Klopfer v. Court of Claims*, 286 Ill. App. 3d 499, 502-03 (1st Dist. 1997) (Court of Claims decisions not subject to judicial review). As the appellate court correctly observed, “there is no denying that these are separate actions taken before separate tribunals.” A6, ¶ 25; *see, e.g., People v. Simon*, 2017 IL App (1st) 152173, ¶ 30 (distinguishing Court of Claims from judicial court); *Bender v. State*, 26 Ill. Ct. Cl. 383, 388 (1967) (same).

Furthermore, the plain language of the Court of Claims Act reinforces the conclusion that a COI proceeding is not itself an action for damages. For instance, contrary to appellant’s contention, AT Br. 14-15, the language in

the Court of Claims Act providing that a COI “is conclusive evidence of the validity of” an unjustly imprisoned person’s claim for an award, 705 ILCS 505/8(c), underscores that a COI is *evidence* that can be used to support a separate and distinct claim for a monetary award in the Court of Claims. *Id.*; *see also, e.g., Patrick v. City of Chi.*, 974 F.3d 824, 832-33 (7th Cir. 2020) (civil-rights plaintiff’s COI properly admitted as evidence to support malicious prosecution claim against officer). In other words, the cited language demonstrates that a COI action is not an action to recover “damages” but an action to produce “evidence” that the innocent person may then use to obtain relief under other statutes. *See supra*, Part II.B.1.a.

Moreover, appellant’s argument — that only a COI entitles an unjustly imprisoned person to an award under the Court of Claims Act, *see* AT Br. 15 — disregards that, like a COI, the issuance of a pardon based on innocence also provides conclusive evidence of the validity of a claim of unjust imprisonment under the Court of Claims Act. 705 ILCS 505/8(c) & 11(b) (Prisoner Review Board must transmit Governor’s pardon based on innocence to Court of Claims, and transmission of that information “is conclusive evidence of the validity of the claim”). Thus, a petitioner may go to *either* the judiciary *or* the Governor to obtain the finding of innocence that conclusively entitles the person to relief under the Court of Claims Act. But whether in the circuit court or before the Governor, the petitioner is seeking a finding of innocence that then can be used as evidence — not directly seeking damages

from either the circuit court (in the COI action) or the executive (in the case of a pardon).

Appellant is also incorrect that proceedings in the Court of Claims are “*pro forma*” proceedings that entitle the COI petitioner to “damages.” AT Br. 14-16. To start, the plain language of § 8(c) of the Court of Claims Act states that a person is entitled to an “award” “for time unjustly served in prisons of this State,” but it does not use the word “damages.” 705 ILCS 505/8(c).

In contrast, the General Assembly used the word “damages” in § 8(d) of the Court of Claims Act when describing the relief available under that section. Section 8(d) waives sovereign immunity for “[a]ll claims against the State *for damages* in cases sounding in tort” where certain conditions are present. *Id.* § 8(d) (emphasis added). Where a § 8(d) claimant proves entitlement to relief, the Court of Claims may direct payment of “an award *for damages*.” *Id.* (emphasis added); *see id.* § 22-1 (actions “for damages on account of any injury to his person” subject to specific notice and time limitations); *see also id.* § 22-2. Thus, the General Assembly’s use of the word “damages” in § 8(d) but not in § 8(c) demonstrates that it does not view an unjustly imprisoned person’s action under § 8(c) as an “action[] to recover damages,” 755 ILCS 5/27-6, but as an action to recover a specific monetary “award,” 705 ILCS 505/8(c). *See Mostafa v. State of Ill.*, 30 Ill. Ct. Cl. 567, 568 (1975) (describing § 8(c) proceeding as “an action for compensation against the State of Illinois for time unjustly served in prison”); Alexi

Giannoulas, Secretary of State, *Illinois Court of Claims: Statutes and Rules* (2023), at 5 (distinguishing “compensation claims against the State for time unjustly served in Illinois prisons” from “damages claims against the State for torts” and other “damages” claims), *available at*: https://www.ilsos.gov/publications/pdf_publications/cc_pub4.pdf; *see also* *People v. Clark*, 2019 IL 122891, ¶ 23 (collecting cases applying “well settled” rule that when legislature uses particular language in one statutory section but omits it from another, courts presume legislature intended different meanings and results).

This clear distinction in language is consistent with the sections’ different purposes. Section 8(d) is the functional equivalent of a civil tort action, allowing for recovery of damages for civil wrongs committed by the State. *See Currie v. Lao*, 148 Ill. 2d 151, 158-60 (1992). In contrast, § 8(c) provides compensation for the unjust imprisonment of an innocent person, regardless of any wrongdoing by the State. *See Lonergan, supra* at 410 (“compensation statutes provide compensation based on the fact of wrongful conviction rather than some wrongdoing by the state or the political clout of the exoneree or his advocates”); *cf. Simon*, 2017 IL App (1st) 152173, ¶ 28 (“whether the State engaged in any misconduct that resulted in a petitioner’s wrongful conviction has no bearing on petitioner’s request for a [COI]” in circuit court).

Unjust imprisonment of an innocent person may result from myriad circumstances, “sometimes as a result of negligence and other times simply

by accident, mistake or serendipity.” Adele Bernhard, *When Justice Fails: Indemnification for Unjust Conviction*, 6 U. Chi. L. Sch. Roundtable 73, 74 (1999); *see also Simon*, 2017 IL App (1st) 152173, ¶ 29; *Irwin v.*

Commonwealth, 992 N.E.2d 275, 284-85 (Mass. 2013). For example, a person may be innocent due to later precedent declaring the person’s conduct innocent, *see, e.g., People v. Nakhleh*, 2024 IL App (1st) 231199-U, ¶ 9, or be convicted due to a mistaken, but honest, eyewitness identification that is later corrected, Lauren C. Boucher, *Advancing the Argument in Favor of State Compensation for the Erroneously Convicted and Wrongfully Incarcerated*, 56 Cath. U. L. Rev. 1069, 1070-72, 1074-75 (2007). The cause of the unjust imprisonment is irrelevant, as § 8(c) provides reparations to any “unfortunate victims of the errors of justice.” Edwin Borchard, *State Indemnity for Errors of Criminal Justice*, 21 B.U. L. Rev. 201, 206-07 (1941); *see also John H. Wigmore*, Editorial, *The Bill to Make Compensation to Persons Erroneously Convicted of Crime*, 3 J. Crim. L. & Criminology 665, 665-66 (1913). Thus, the award under § 8(c) is tied to the years the person unjustly spent in prison, and not to the specific injuries the person suffered; it serves as a reparation for the unjust loss of liberty, not as compensation for injuries from a tort. 705 ILCS 505/8(c); *see also Shelley Fite*, *Compensation for the Unjustly Imprisoned: A Model for Reform in Wisconsin*, 2005 Wis. L. Rev. 1181, 1185 (2005) (“statutory compensation acts as an equitable remedy for all wrongfully convicted persons, regardless of tort liability”).

Accordingly, the General Assembly's use of "damages" in § 8(d) but not in § 8(c) is consistent with the differing purposes of the two provisions and underscores that a COI petitioner's action is not an "action[] to recover damages." 755 ILCS 5/27-6.

Moreover, appellant is incorrect that calculation of a COI claimant's award is "*pro forma*." AT Br. 16. "*Pro forma*" means "[m]ade or done as a formality and not involving any actual choice or decision." *Black's Law Dictionary* 1466 (12th ed. 2024). The amount of the award for a particular claimant is not a mere formality but rather a discretionary choice within the statutory range. *See* 705 ILCS 505/8(c). Indeed, the court holds a hearing and considers any evidence the parties may present before determining the appropriate amount of the award. *See, e.g., Mostafa*, 30 Ill. Ct. Cl. at 569 (considering evidence of claimant's earnings prior to unjust imprisonment).

Nor is appellant correct that had defendant "died two weeks later, the court of claims would have been required to allow [her] substitution before that court as a matter of right for collection of the authorized compensation." AT Br. 16. The Court of Claims Rules provide, in relevant part, "If the claimant dies pending the suit, the death must be suggested on the record, and the legal representative upon filing a duly certified copy of the record of appointment as executor or administrator, *may* be admitted to prosecute the suit *by special leave of the Court*." 74 Ill. Adm. Code 790.80 (emphasis added). And whether the Court of Claims would have allowed substitution

depends, in turn, on whether it would have found that the § 8(c) action survives under the Survival Act. *See id.* § 790.20 (Civil Practice Law, 735 ILCS 5/2-101 *et seq.*, applies unless otherwise provided); 735 ILCS 5/2-1008(b) (proper party may be substituted by court order upon motion if “action is one which survives”); 755 ILCS 5/27-6 (Survival Act); *see, e.g., In re Application of Goldberg*, 32 Ill. Ct. Cl. 1068, 1069-70 (1979) (Crime Victims Compensation Act claim did not survive claimant’s death under Survival Act). Here, the § 8(c) action does not survive for the same reasons that a COI action does not survive, discussed above and in Part II.B.2, *infra*.

In sum, the appellate court correctly held that an action under the COI statute seeks a judicial judgment declaring the unjustly imprisoned person innocent and is therefore not an “action[] to recover damages” under the Survival Act.

2. The COI statute does not redress “an injury to the person” or “an injury to . . . personal property.”

Even if the COI action could be considered an action to recover damages, it would not survive because it is neither an action to recover damages “for an injury to the person” nor an action to recover damages “for an injury to . . . personal property.” 755 ILCS 5/27-6.

a. Under longstanding precedent, a COI action does not survive as an action to recover damages “for an injury to the person.”

Appellant assumes, in a single sentence without citation to any case involving the Survival Act, that “[t]he COI Statute is indisputably designed

to address damages for ‘an injury to the person,’ namely a wrongful conviction.” AT Br. 13-14. But longstanding Survival Act precedent establishes, to the contrary, that a COI action does not provide relief “for an injury to the person.” 755 ILCS 5/27-6.

For over a century, courts in Illinois have construed the phrase “an injury to the person” in the Survival Act to encompass only direct physical injury. *See Brock v. Univ. of Chi. Med. Ctr.*, 2024 IL App (1st) 230625-U, ¶ 31; *Law Offices of Brendan R. Appel, LLC v. Georgia’s Rest. & Pancake House, Inc.*, 2023 IL App (1st) 220588-U, ¶ 38; *Mattyasovszky v. West Towns Bus Co.*, 21 Ill. App. 3d 46, 54 (2d Dist. 1974), *aff’d*, 61 Ill. 2d 31 (1975); *Shedd v. Patterson*, 230 Ill. App. 553, 556-58 (1st Dist. 1923); *Denslow v. Hutchinson*, 152 Ill. App. 502, 503-04 (1st Dist. 1910); *Strandell v. Jackson Cnty., Ill.*, 648 F. Supp. 126, 135 (S.D. Ill. 1986); *Jarvis v. Stone*, 517 F. Supp. 1173, 1176 (N.D. Ill. 1981). Consistent with this precedent, this Court has construed the same term, “an injury to the person,” in the statute of limitations for personal injury actions, 735 ILCS 5/13-202, to mean only direct physical injury. *Mitchell v. White Motor Co.*, 58 Ill. 2d 159, 161-63 (1974); *see Bassett v. Bassett*, 20 Ill. App. 543, 547-48 (4th Dist. 1886); *see also Doerr v. Villate*, 74 Ill. App. 2d 332, 337-38 (2d Dist. 1966) (collecting cases);

Berghoff v. R.J. Frisby Mfg. Co., a Div. of Western Capital Corp., 720 F. Supp. 649, 652-53 (N.D. Ill. 1989) (collecting additional cases).⁶

The legislature has left the language undisturbed in both statutes despite “innumerable opportunities to amend the relevant statutes to clarify its intent during the decades since those decisions were filed.” *People v. Sroga*, 2022 IL 126978, ¶ 41. Thus, the “legislature has long acquiesced” to the finding that “for an injury to the person” in the Survival Act includes only claims that redress a direct physical injury to the person. *Mitchell*, 58 Ill. 2d at 162; see *Froud*, 98 Ill. 2d at 336-37 (refusing to alter longstanding judicial construction of Survival Act because legislature had acquiesced in that interpretation); see also *Moon v. Rhode*, 2016 IL 119572, ¶¶ 31-33 (same for construction of statute of limitations).

The COI statute does not require the petitioner to prove that he has suffered any direct physical injury. Rather, the petitioner must prove, in summary, that he was convicted and imprisoned, and is nevertheless innocent. See 735 ILCS 5/2-702(g). The statute therefore provides a remedy

⁶ The Court of Claims has similarly construed § 22-1 of the Court of Claims Act — which provides specific notice requirements for § 8(d) claims “for damages on account of any injury to his person,” 705 ILCS 505/22-1 — as applying only to “physical or bodily injury” torts. *Glisson v. Southern Ill. Univ.*, 49 Ill. Ct. Cl. 174, 177-78 (1995). And this Court held in *People v. Anderson* that “injury to his person” in a statute criminalizing hazing meant only “physical or bodily injury.” 148 Ill. 2d 15, 24-26 (1992). Courts in other jurisdictions have also adopted this interpretation of “injury to the person.” See, e.g., *Reed v. Real Detective Publ’g Co.*, 162 P.2d 133, 136-37 (Ariz. 1945); *Clark v. Figge*, 181 N.W.2d 211, 214 (Iowa 1970); *Witcher v. Fairlawn*, 680 N.E.2d 713, 715 (Ohio Ct. App. 1996).

for the petitioner’s “erroneous conviction and the subsequent loss of individual liberty,” Boucher, *supra* at 1102, and not for any direct physical injury the petitioner may have suffered during the wrongful incarceration.

To be sure, an unjustly imprisoned person suffers myriad non-physical injuries, including reputational harm, emotional distress, and lost wages. The Survival Act, however, looks at the substance or character of the action to determine whether it remedies a direct physical injury to the person. *See Shedd*, 230 Ill. App. at 557; *Denslow*, 152 Ill. App. at 504; *cf. Kleinwort Benson North America, Inc. v. Quantum Fin. Serv., Inc.*, 181 Ill. 2d 214, 225 (1998) (distinguishing “torts for personal injuries and actions for other wrongs of a personal nature, such as those that involve the reputation or feelings of the injured party”). For instance, a tort action for malicious prosecution — which remedies “confinement imposed pursuant to legal process” and is therefore considered “the closest analogy” to an unjust imprisonment claim, *Heck v. Humphrey*, 512 U.S. 477, 483 (1994); *see Beaman v. Freesmeyer*, 2021 IL 125617, ¶ 74 (describing tort of malicious prosecution) — does not survive under the Survival Act because it is not an action to recover for direct physical injury to the person. *See Kent v. Muscarello*, 9 Ill. App. 3d 738, 740-41 (2d Dist. 1973) (collecting cases). The same is true of the tort of false imprisonment, *see Brock*, 2024 IL App (1st) 230625-U, ¶¶ 31-35, which primarily remedies the loss of liberty, *see*

generally Wallace v. Kato, 549 U.S. 384, 389 (2007); *Shelton v. Barry*, 328 Ill. App. 497, 506-07 (1st Dist. 1946); 35 C.J.S. *False Imprisonment* §§ 1, 3-4, 81.

These analogous actions do not survive, even though the maliciously prosecuted or falsely imprisoned person may suffer any number of injuries. *See Shelton*, 328 Ill. App. at 506-07; *Restatement (Second) of Torts* §§ 670-71 (Am. L. Inst. 1977 & Oct. 2024 update); 35 C.J.S. *False Imprisonment* §§ 81, 83. And, like these torts, the essence of the COI statute is to remedy the loss of liberty resulting from the unjust imprisonment, not to redress any direct physical injury. *See, e.g., Murray v. State*, No. 78374, 2002 WL 337732, at *3 (Ohio Ct. App. Feb. 21, 2002) (wrongful imprisonment claims do not survive under Ohio survival statute because such claims do not redress “physical injuries” and therefore do “not qualify as ‘injuries to the person’”). Accordingly, because the COI statute does not redress “an injury to the person,” the COI action does not survive.

b. The COI statute does not redress “an injury to . . . personal property.”

Appellant is also incorrect that the COI statute provides relief for “an injury to . . . personal property.” 755 ILCS 5/27-6; *see* AT Br. 16-17.

“Personal property” is anything “that is subject to ownership and not classified as real property.” *Black’s Law Dictionary* 1474 (12th ed. 2024).

“Personal property is made up of two categories, tangible and intangible.” *In re Berman’s Estate*, 39 Ill. App. 2d 175, 179 (2d Dist. 1963).

“Tangible personal property” is “[c]orporeal personal property of any kind;

personal property that can be seen, weighed, measured, felt, touched, or in any other way perceived by the senses, examples being furniture, cooking utensils, and books.” *Black’s Law Dictionary* 1474 (12th ed. 2024).

“Intangible property” is “[p]roperty that lacks a physical existence,” *e.g.*, “stock options and business goodwill.” *Id.* at 1473; *see In re Berman’s Estate*, 39 Ill. App. 2d at 179. As discussed in Part II.B.2.a, *supra*, the COI statute redresses the loss of *liberty* resulting from the unjust imprisonment, not the loss of any property.

Appellant’s contention that the COI action survives because “the COI petition, in and of itself, is an intangible property interest,” AT Br. 16-17, rests on a misapprehension of the Survival Act. To start, the Survival Act saves from abatement actions seeking redress “for an injury to . . . personal property.” 755 ILCS 5/27-6 (emphasis added). Even assuming the COI petition is itself an intangible property interest, the COI statute does not allow a person to recover “for an injury to [the COI petition].” *Id.* Appellant’s argument thus fails under the plain language of the Survival Act.

Moreover, *McDaniel v. Bullard*, 34 Ill. 2d 487 (1966), did not hold, as appellant suggests, that every cause of action that a decedent accrues before death is an intangible property interest. *See* AT Br. 16-17. There, a wrongful death action was initiated on behalf of an infant beneficiary after her parents and sister were killed in a car accident. *McDaniel*, 34 Ill. 2d at 488-89. Approximately nine months later, the beneficiary died from causes unrelated

to the car accident. *Id.* at 488. The question presented was whether the wrongful death action, which sought “recovery for the injury already sustained to [the beneficiary’s] means of support,” survived the beneficiary’s death and could be continued by the beneficiary’s estate. *Id.* at 489. This Court held that “personal property” under the Survival Act includes intangible personal property such as means of support; and because a wrongful death action seeks recovery for injury to the beneficiary’s means of support, it survives just like any other action for injury to personal property. *Id.* at 491-93; *see Carter*, 2012 IL 113204, ¶ 41 (“right to receive wrongful-death benefits is an asset of the estates of the next of kin, should they die; it is not an asset of the estate of the decedent who is the subject of the wrongful-death action”).

In sum, *McDaniel* interpreted “personal property” in the Survival Act to allow for survival of actions that, like wrongful-death actions, seek recovery for injuries to intangible personal property. *Bryant v. Kroger Co.*, 212 Ill. App. 3d 335, 338-42 (3d Dist. 1991). Applying *McDaniel*, the appellate court has concluded that actions for loss of consortium and unlawful discharge from employment survive because they allege injuries to property interests, *i.e.*, consortium and employment. *See id.* at 341-42 (consortium is “type of personal property interest”); *Stonestreet v. Iroquois Cnty. Sheriff’s Merit Comm’n*, 150 Ill. App. 3d 1092, 1095 (3d Dist. 1986)

(employee had “property interest” in employment). But a COI action does not allege injury to any personal property, so it does not survive.

Baksh v. Human Rights Comm’n, 304 Ill. App. 3d 995 (1st Dist. 1999), upon which appellant also relies, AT Br. 16, is neither controlling nor persuasive. There, the appellate court, relying on *McDaniel*, *Bryant*, and *Stonestreet*, concluded that an action for unlawful discrimination under the Human Rights Act, 775 ILCS 5/1-101 *et seq.*, that accrued before the decedent’s death survives because the “cause of action constitutes ‘personal property’ under the Survival Act.” *Baksh*, 304 Ill. App. 3d at 1000-01. But the Survival Act does not ask whether the pending “action constitutes personal property”; it asks — and *McDaniel*, *Bryant*, and *Stonestreet* addressed — whether the pending action constitutes an “action[] to recover damages for an injury to . . . personal property.” 755 ILCS 5/27-6.

Moreover, under *Baksh*’s application of the Survival Act — which appellant endorses, AT Br. 16 — a pending action for libel or slander that accrued before the decedent’s death would survive because it constitutes personal property, despite the express exclusion of such actions from the Survival Act. *See* 755 ILCS 5/27-6. Indeed, if *Baksh* were correct that a damages action that has accrued to the decedent before death itself constitutes an intangible property interest, then every accrued damages action would survive as an action to recover “for an injury to . . . personal property” and the remaining language in the Survival Act would be a nullity.

“This is impermissible. Construing a statute in a way that renders part of it a nullity offends basic principles of statutory interpretation.” *Nelson v. Artley*, 2015 IL 118058, ¶ 25. *Baksh*’s analysis is not only inconsistent with the Survival Act’s plain language, but it renders the rest of the Act meaningless.

In sum, the COI statute does not establish an action to recover for damages to the person or an action to recover for damages to personal property. Defendant’s COI action therefore does not survive under the Survival Act. Nor does it survive under the COI statute or *Tunnell*’s narrow exception. The Court should therefore affirm the appellate court’s judgment.

III. The Court Should Not Exercise Its Supervisory Authority to Provide Appellant Relief Where the General Assembly Has Precluded It.

The Court should reject appellant’s request to disregard the Survival Act and allow her to pursue the COI action based on this Court’s exercise of its supervisory authority.

This Court has broad supervisory authority over all lower courts in the State. Ill. Const. 1970, art. VI, § 16. “This authority extends to the adjudication and application of law and the procedural administration of the courts. It does not, however, extend to the legislative branch of our state government.” *People v. Whitfield*, 228 Ill. 2d 502, 521-22 (2007) (internal quotation marks and citations omitted). In other words, this Court “ha[s] no legislative powers” and does not use its supervisory authority to “enact or

amend statutes.” *Id.* at 522 (quoting *Henrich v. Libertyville High Sch.*, 186 Ill. 2d 381, 394-95 (1998)).

The General Assembly has determined that a COI action does not survive the unjustly imprisoned person’s death. “[T]his [C]ourt cannot make laws. It is authorized only to interpret them.” *People v. Judd*, 396 Ill. 211, 212 (1947); *see also Henrich*, 186 Ill. 2d at 394-95 (“responsibility for the justice or wisdom of legislation rests upon the legislature” and this Court cannot “rewrite statutes to make them consistent with the [C]ourt’s idea of orderliness and public policy”). Accordingly, this Court should not exercise its supervisory authority to direct the circuit court to allow appellant to maintain the COI action where “that is not sanctioned by our laws or required by our constitution.” *Whitfield*, 228 Ill. 2d at 522.

Moreover, the circuit court never ruled upon the COI petition, so the Court may not “order the lower court to enter the COI order *nunc pro tunc* to a date two weeks earlier, prior to [defendant’s] death,” as appellant requests. *See* AT Br. 8. “*Nunc pro tunc* literally means ‘now for then.’” *Gagliano v. 714 Sheridan Venture*, 144 Ill. App. 3d 854, 856 (1st Dist. 1986); *accord Black’s Law Dictionary* 1283 (12th ed. 2024). “[T]he use of *nunc pro tunc* orders or judgments is limited to incorporating into the record something which was actually previously done by the court but inadvertently omitted by clerical error.” *People v. Melchor*, 226 Ill. 2d 24, 32 (2007). A *nunc pro tunc* order or judgment “may not be used for supplying omitted judicial action, or correcting

judicial errors under the pretense of correcting clerical errors.” *Id.* at 32-33. Because “there is no minute or memorial paper in the records to show that the [COI] order was in fact made” here, *People v. Rosenwald*, 266 Ill. 548, 554 (1915), “there was no order ‘really made’ relative to the [COI claim]” and entry of a *nunc pro tunc* order or judgment would be improper, *Gill v. Gill*, 56 Ill. 2d 139, 141 (1973) (quoting *Rosenwald*, 266 Ill. at 554). Indeed, had there been such an order, the action would have survived under the *Tunnell* exception, and the exercise of supervisory authority would be unnecessary.

Appellant’s remaining arguments merely highlight the inevitable consequences of legislative line-drawing. *See* AT Br. 7-10, 17-18. “It is well established that the legislature may impose reasonable limitations and conditions upon access to the courts,” *Buzz Barton & Assoc., Inc. v. Giannone*, 108 Ill. 2d 373, 383 (1985), including “prescrib[ing] whatever requirements it might choose to impose on the availability of relief under” a particular statute, *Varelis v. Northwestern Mem. Hosp.*, 167 Ill. 2d 449, 454 (1995). The COI statute is a purely legislative creation whose parameters and application are defined, and may be changed, by the legislature. *See Underwood v. City of Chi.*, 2017 IL App (1st) 162356, ¶ 27 (“where the legislature grants a right, it is free to define the parameters and application of that right”). Likewise, the legislature enacted the Survival Act to save from the common-law rule of abatement only those actions that fall within the Act’s plain language. *Froud*, 98 Ill. 2d at 334-35.

Consequently, in deciding that COI actions do not survive, the General Assembly knew that the passage of time would abate certain otherwise meritorious COI claims. *Cf. People v. Bocclair*, 202 Ill. 2d 89, 117 (2002) (Freeman, J., specially concurring) (“by its very nature, a statute of limitations works to defeat all claims regardless of whether they are meritorious”). “This is an exercise in line-drawing classically meant for the legislature.” *Cnty. of Knox ex rel. Masterson v. Highlands, LLC*, 188 Ill. 2d 546, 559 (1999). “[T]he fact [that] the line might have been drawn differently at some points is a matter for legislative, rather than judicial, consideration.” *Cutinello v. Whitley*, 161 Ill. 2d 409, 421 (1994) (internal quotation marks omitted). Indeed, the General Assembly recently amended the Survival Act to allow for survival of certain punitive damages claims, 755 ILCS 5/27-6 (eff. Aug. 11, 2023), which did not survive under the prior version of the Act, *see Vincent*, 241 Ill. 2d at 503-07. Accordingly, as the Court has repeatedly instructed, it “is the responsibility of the legislature and not the courts” to expand the Survival Act and allow the survival of any additional claims. *Kleinwort Benson North America Inc.*, 181 Ill. 2d at 221; *accord Vincent*, 241 Ill. 2d at 508; *Ballweg v. City of Springfield*, 114 Ill. 2d 107, 117-18 (1986). The Court should therefore reject appellant’s request for supervisory relief.

CONCLUSION

This Court should affirm the judgment of the appellate court and decline to issue a supervisory order.

July 25, 2025

Respectfully submitted,

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RULE 341(c) CERTIFICATE OF COMPLIANCE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 42 pages.

/s/ Gopi Kashyap
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Assistant Attorney General

APPENDIX

705 ILCS 505/1	PA1
705 ILCS 505/7	PA2
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705 ILCS 505/11	PA6
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West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 705. Courts (Refs & Annos)
Court of Claims
Act 505. Court of Claims Act (Refs & Annos)

705 ILCS 505/1

Formerly cited as IL ST CH 37 ¶ 439.1

505/1. Creation of Court of Claims; appointment of judges

Currentness

§ 1. The Court of Claims, hereinafter called the court, is created. It shall consist of 7 judges, who are attorneys licensed to practice law in the State of Illinois, to be appointed by the Governor by and with the advice and consent of the Senate, one of whom shall be appointed chief justice. In case of vacancy in such office during the recess of the Senate, the Governor shall make a temporary appointment until the next meeting of the Senate, when he shall nominate some person to fill such office. If the Senate is not in session at the time this Act takes effect, the Governor shall make temporary appointments as in case of vacancy.

Credits

Laws 1945, p. 660, § 1, eff. July 17, 1945. Amended by P.A. 83-832, § 1, eff. Jan. 1, 1984; P.A. 83-865, § 2, eff. Sept. 26, 1983; P.A. 83-1362, Art. II, § 37, eff. Sept. 11, 1984; P.A. 84-1240, Art. II, § 2, eff. Jan. 1, 1987.

Formerly Ill.Rev.Stat.1991, ch. 37, ¶ 439.1.

705 I.L.C.S. 505/1, IL ST CH 705 § 505/1

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West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 705. Courts (Refs & Annos)
Court of Claims
Act 505. Court of Claims Act (Refs & Annos)

705 ILCS 505/7

Formerly cited as IL ST CH 37 ¶ 439.7

505/7. Record of proceedings; clerk and officer of court; facilities and services

Currentness

§ 7. The court shall record its acts and proceedings. The Secretary of State, ex officio, shall be clerk of the court, but may appoint a deputy, who shall be an officer of the court, to act in his stead. The deputy shall take an oath to discharge his duties faithfully and shall be subject to the direction of the court in the performance thereof.

The Secretary of State shall provide the court with suitable court rooms, chambers, office space, and computer services as are necessary and proper for the transaction of its business.

Credits

Laws 1945, p. 660, § 7, eff. July 17, 1945. Amended by P.A. 77-1777, § 1, eff. Jan. 1, 1972; P.A. 83-865, § 2, eff. Sept. 26, 1983.

Formerly Ill.Rev.Stat.1991, ch. 37, ¶ 439.7.

705 I.L.C.S. 505/7, IL ST CH 705 § 505/7

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Chapter 705. Courts (Refs & Annos)
Court of Claims
Act 505. Court of Claims Act (Refs & Annos)

705 ILCS 505/8

Formerly cited as IL ST CH 37 ¶ 439.8

505/8. Court of Claims jurisdiction; deliberation periods

Currentness

§ 8. Court of Claims jurisdiction; deliberation periods. The court shall have exclusive jurisdiction to hear and determine the following matters:

(a) All claims against the State founded upon any law of the State of Illinois or upon any regulation adopted thereunder by an executive or administrative officer or agency; provided, however, the court shall not have jurisdiction (i) to hear or determine claims arising under the Workers' Compensation Act or the Workers' Occupational Diseases Act, or claims for expenses in civil litigation, or (ii) to review administrative decisions for which a statute provides that review shall be in the circuit or appellate court.

(b) All claims against the State founded upon any contract entered into with the State of Illinois.

(c) All claims against the State for time unjustly served in prisons of this State when the person imprisoned received a pardon from the governor stating that such pardon is issued on the ground of innocence of the crime for which he or she was imprisoned or he or she received a certificate of innocence from the Circuit Court as provided in Section 2-702 of the Code of Civil Procedure; provided, the amount of the award is at the discretion of the court; and provided, the court shall make no award in excess of the following amounts: for imprisonment of 5 years or less, not more than \$85,350; for imprisonment of 14 years or less but over 5 years, not more than \$170,000; for imprisonment of over 14 years, not more than \$199,150; and provided further, the court shall fix attorney's fees not to exceed 25% of the award granted. On or after the effective date of this amendatory Act of the 95th General Assembly, the court shall annually adjust the maximum awards authorized by this subsection (c) to reflect the increase, if any, in the Consumer Price Index For All Urban Consumers for the previous calendar year, as determined by the United States Department

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of Labor, except that no annual increment may exceed 5%. For the annual adjustments, if the Consumer Price Index decreases during a calendar year, there shall be no adjustment for that calendar year. The transmission by the Prisoner Review Board or the clerk of the circuit court of the information described in Section 11(b) to the clerk of the Court of Claims is conclusive evidence of the validity of the claim. The changes made by this amendatory Act of the 95th General Assembly apply to all claims pending on or filed on or after the effective date.

(d) All claims against the State for damages in cases sounding in tort, if a like cause of action would lie against a private person or corporation in a civil suit, and all like claims sounding in tort against the Medical Center Commission, the Board of Trustees of the University of Illinois, the Board of Trustees of Southern Illinois University, the Board of Trustees of Chicago State University, the Board of Trustees of Eastern Illinois University, the Board of Trustees of Governors State University, the Board of Trustees of Illinois State University, the Board of Trustees of Northeastern Illinois University, the Board of Trustees of Northern Illinois University, the Board of Trustees of Western Illinois University, or the Board of Trustees of the Illinois Mathematics and Science Academy; provided, that an award for damages in a case sounding in tort, other than certain cases involving the operation of a State vehicle described in this paragraph, shall not exceed the sum of \$2,000,000 to or for the benefit of any claimant. The \$2,000,000 limit prescribed by this Section does not apply to an award of damages in any case sounding in tort arising out of the operation by a State employee of a vehicle owned, leased or controlled by the State. The defense that the State or the Medical Center Commission or the Board of Trustees of the University of Illinois, the Board of Trustees of Southern Illinois University, the Board of Trustees of Chicago State University, the Board of Trustees of Eastern Illinois University, the Board of Trustees of Governors State University, the Board of Trustees of Illinois State University, the Board of Trustees of Northeastern Illinois University, the Board of Trustees of Northern Illinois University, the Board of Trustees of Western Illinois University, or the Board of Trustees of the Illinois Mathematics and Science Academy is not liable for the negligence of its officers, agents, and employees in the course of their employment is not applicable to the hearing and determination of such claims. The changes to this Section made by this amendatory Act of the 100th General Assembly apply only to claims filed on or after July 1, 2015.

The court shall annually adjust the maximum awards authorized by this subsection to reflect the increase, if any, in the Consumer Price Index For All Urban Consumers for the previous calendar year, as determined by the United States Department of Labor. The Comptroller shall make the new amount resulting from each annual adjustment available to the public via the Comptroller's official website by January 31 of every year.

(e) All claims for recoupment made by the State of Illinois against any claimant.

(f) All claims pursuant to the Line of Duty Compensation Act. A claim under that Act must be heard and determined within one year after the application for that claim is filed with the Court as provided in that Act.

(g) All claims filed pursuant to the Crime Victims Compensation Act.

(h) All claims pursuant to the Illinois National Guardsman's Compensation Act. A claim under that Act must be heard and determined within one year after the application for that claim is filed with the Court as provided in that Act.

(i) All claims authorized by subsection (a) of Section 10-55 of the Illinois Administrative Procedure Act for the expenses incurred by a party in a contested case on the administrative level.

Credits

Laws 1945, p. 660, § 8, eff. July 17, 1945. Amended by Laws 1951, p. 1302, § 1, eff. July 11, 1951; Laws 1951, p. 1554, § 1, eff. July 16, 1951; Laws 1953, p. 1165, § 1, eff. July 13, 1953; Laws 1957, p. 764, § 1, eff. July 1, 1957; Laws 1957, p. 2220, § 1, eff. July 9, 1957; Laws 1957, p. 2564, § 1, eff. July 11, 1957; Laws 1959, p. 592, § 1, eff. July 8, 1959; Laws 1961, p. 2783, § 1, eff. Aug. 4, 1961; Laws 1965, p. 1572, § 1, eff. July 15, 1965; Laws 1967, p. 1047, § 1, eff. July 1, 1967; Laws 1967, p. 3341, § 1, eff. Aug. 26, 1967; Laws 1968, p. 538, § 1, eff. July 1, 1969; P.A. 77-2089, § 1, eff. Oct. 1, 1972; P.A. 77-953, § 1, eff. Aug. 17, 1971; P.A. 77-1777, § 1, eff. Jan. 1, 1972; P.A. 78-255, § 61, eff. Oct. 1, 1973; P.A. 78-360, § 1, eff. Oct. 1, 1973; P.A. 78-410, § 1, eff. Oct. 1, 1973; P.A. 78-1297, § 11, eff. March 4, 1975; P.A. 79-1331, § 5, eff. July 28, 1976; P.A. 80-1097, § 1, eff. Nov. 23, 1977; P.A. 81-992, § 11, eff. Jan. 1, 1980; P.A. 82-670, § 2, eff. Jan. 1, 1982; P.A. 86-109, § 2, eff. July 26, 1989; P.A. 88-45, Art. III, § 3-130, eff. July 6, 1993; P.A. 89-4, Art. 50, § 50-245, eff. Jan. 1, 1996; P.A. 89-689, § 35, eff. Dec. 31, 1996; P.A. 90-492, § 5, eff. Aug. 17, 1997; P.A. 93-1047, § 10, eff. Oct. 18, 2004; P.A. 95-970, § 10, eff. Sept. 22, 2008; P.A. 96-80, § 5, eff. July 27, 2009; P.A. 100-1124, § 5, eff. Nov. 27, 2018.

Formerly Ill.Rev.Stat.1991, ch. 37, ¶ 439.8.

705 I.L.C.S. 505/8, IL ST CH 705 § 505/8

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West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 705. Courts (Refs & Annos)
Court of Claims
Act 505. Court of Claims Act (Refs & Annos)

705 ILCS 505/11
Formerly cited as IL ST CH 37 ¶ 439.11

505/11. Filing claims

Currentness

§ 11. Filing claims.

(a) Except as otherwise provided in subsection (b) of this Section and subsection (4) of Section 24, the claimant shall in all cases set forth fully in his petition the claim, the action thereon, if any, on behalf of the State, what persons are owners thereof or interested therein, when and upon what consideration such persons became so interested; that no assignment or transfer of the claim or any part thereof or interest therein has been made, except as stated in the petition; that the claimant is justly entitled to the amount therein claimed from the State of Illinois, after allowing all just credits; and that claimant believes the facts stated in the petition to be true. The petition shall be verified, as to statements of facts, by the affidavit of the claimant, his agent, or attorney.

(b) Whenever a person has served a term of imprisonment and has received a pardon by the Governor stating that such pardon was issued on the ground of innocence of the crime for which he or she was imprisoned, the Prisoner Review Board shall transmit this information to the clerk of the Court of Claims, together with the claimant's current address. Whenever a person has served a term of imprisonment and has received a certificate of innocence from the Circuit Court as provided in Section 2-702 of the Code of Civil Procedure, the clerk of the issuing Circuit Court shall transmit this information to the clerk of the Court of Claims, together with the claimant's current address. The clerk of the Court of Claims shall immediately docket the case for consideration by the Court of Claims, and shall provide notice to the claimant of such docketing together with all hearing dates and applicable deadlines. The Court of Claims shall hear the case and render a decision within 90 days after its docketing.

Credits

Laws 1945, p. 660, § 11, eff. July 17, 1945. Amended by P.A. 95-970, § 10, eff. Sept. 22, 2008; P.A. 96-328, § 325, eff. Aug. 11, 2009.

Formerly Ill.Rev.Stat.1991, ch. 37, ¶ 439.11.

705 I.L.C.S. 505/11, IL ST CH 705 § 505/11

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705 ILCS 505/22

505/22. Limitations

Currentness

§ 22. Every claim cognizable by the court and not otherwise sooner barred by law shall be forever barred from prosecution therein unless it is filed with the clerk of the court within the time set forth as follows:

(a) All claims arising out of a contract must be filed within 5 years after it first accrues, saving to minors, and persons under legal disability at the time the claim accrues, in which cases the claim must be filed within 5 years from the time the disability ceases.

(b) All claims cognizable against the State by vendors of goods or services under the Illinois Public Aid Code must be filed within one year after the accrual of the cause of action, as provided in Section 11-13 of that Code.

(c) All claims arising under paragraph (c) of Section 8 of this Act must be automatically heard by the court within 120 days after the person asserting such claim is either issued a certificate of innocence from the circuit court as provided in Section 2-702 of the Code of Civil Procedure, or is granted a pardon by the Governor, whichever occurs later, without the person asserting the claim being required to file a petition under Section 11 of this Act, except as otherwise provided by the Crime Victims Compensation Act. Any claims filed by the claimant under paragraph (c) of Section 8 of this Act must be filed within 2 years after the person asserting such claim is either issued a certificate of innocence as provided in Section 2-702 of the Code of Civil Procedure, or is granted a pardon by the Governor, whichever occurs later.

(d) All claims arising under paragraph (f) of Section 8 of this Act must be filed within the time set forth in Section 3 of the Line of Duty Compensation Act.

(e) All claims arising under paragraph (h) of Section 8 of this Act must be filed within one year of the date of the death of the guardsman or militiaman as provided in Section 3 of the Illinois National Guardsman's Compensation Act.

(f) All claims arising under paragraph (g) of Section 8 of this Act must be filed within one year of the crime on which a claim is based as provided in Section 6.1 of the Crime Victims Compensation Act.

(g) All claims arising from the Comptroller's refusal to issue a replacement warrant pursuant to Section 10.10 of the State Comptroller Act must be filed within 5 years after the date of the Comptroller's refusal.

(h) All other claims must be filed within 2 years after it first accrues, saving to minors, and persons under legal disability at the time the claim accrues, in which case the claim must be filed within 2 years from the time the disability ceases.

(i) The changes made by Public Act 86-458 apply to all warrants issued within the 5-year period preceding August 31, 1989 (the effective date of Public Act 86-458). The changes made to this Section by Public Act 100-1124 apply to claims pending on November 27, 2018 (the effective date of Public Act 100-1124) and to claims filed thereafter.

(j) All time limitations established under this Act and the rules promulgated under this Act shall be binding and jurisdictional, except upon extension authorized by law or rule and granted pursuant to a motion timely filed.

Credits

Laws 1945, p. 660, § 22, eff. July 17, 1945. Amended by Laws 1951, p. 1726, § 1, eff. July 23, 1951; Laws 1955, p. 1961, § 1, eff. July 14, 1955; Laws 1957, p. 764, § 1, eff. July 1, 1957; Laws 1957, p. 2564, § 1, eff. July 11, 1957; Laws 1959, p. 2416, § 1, eff. July 24, 1959; P.A. 76-136, § 1, eff. June 13, 1969; P.A. 78-360, § 1, eff. Oct. 1, 1973; P.A. 78-410, § 1, eff. Oct. 1, 1973; P.A. 78-1297, § 11, eff. March 4, 1975; P.A. 80-1097, § 1, eff. Nov. 23, 1977; P.A. 81-1013, § 3, eff. Sept. 22, 1979; P.A. 81-1509, Art. III, § 11, eff. Sept. 26, 1980; P.A. 83-706, § 23, eff. Sept. 23, 1983; P.A. 86-458, § 2, eff. Aug. 31, 1989; P.A. 95-928, § 10, eff. Aug. 26, 2008; P.A. 95-970, §

10, eff. Sept. 22, 2008; P.A. 96-328, § 325, eff. Aug. 11, 2009; P.A. 100-1124, § 5, eff. Nov. 27, 2018; P.A. 102-558, § 710, eff. Aug. 20, 2021; P.A. 102-813, § 600, eff. May 13, 2022.

Formerly Ill.Rev.Stat.1991, ch. 37, ¶ 439.22.

705 I.L.C.S. 505/22, IL ST CH 705 § 505/22

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705 ILCS 505/22-1

Formerly cited as IL ST CH 37 ¶ 439.22-1

505/22-1. Actions for personal injuries; notice; contents

Currentness

§ 22-1. Within 1 year from the date that such an injury was received or such a cause of action accrued, any person who is about to commence any action in the Court of Claims against the State of Illinois, the Medical Center Commission, the Board of Trustees of the University of Illinois, the Board of Trustees of Southern Illinois University, the Board of Trustees of Chicago State University, the Board of Trustees of Eastern Illinois University, the Board of Trustees of Governors State University, the Board of Trustees of Illinois State University, the Board of Trustees of Northeastern Illinois University, the Board of Trustees of Northern Illinois University, the Board of Trustees of Western Illinois University, or the Board of Trustees of the Illinois Mathematics and Science Academy, for damages on account of any injury to his person shall file in the office of the Attorney General and also in the office of the Clerk of the Court of Claims, either by himself, his agent, or attorney, giving the name of the person to whom the cause of action has accrued, the name and residence of the person injured, the date and about the hour of the accident, the place or location where the accident occurred, a brief description of how the accident occurred, and the name and address of the attending physician, if any, except as otherwise provided by the Crime Victims Compensation Act.¹

In actions for death by wrongful act, neglect or default, the executor of the estate, or in the event there is no will, the administrator or other personal representative of the decedent, shall file within 1 year of the date of death or the date that the executor or administrator is qualified, whichever occurs later, in the office of the Attorney General and also in the office of the Clerk of the Court of Claims, giving the name of the person to whom the cause of action has accrued, the name and last residence of the decedent, the date of the accident causing death, the date of the decedent's demise, the place or location where the accident causing the death occurred, the date and about the hour of the accident, a brief description of how the accident occurred, and the names and addresses of the attending physician and treating hospital if any, except as otherwise provided by the Crime Victims Compensation Act.

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A claimant is not required to file the notice required by this Section if he or she files his or her claim within one year of its accrual.

Credits

Laws 1945, p. 660, § 22-1, added by Laws 1957, p. 2360, § 1, eff. July 10, 1957. Amended by P.A. 77-1777, § 1, eff. Jan. 1, 1972; P.A. 78-360, § 1, eff. Oct. 1, 1973; P.A. 81-1509, Art. II, § 40, eff. Sept. 26, 1980; P.A. 83-865, § 2, eff. Sept. 26, 1983; P.A. 86-109, § 2, eff. July 26, 1989; P.A. 89-4, Art. 50, § 50-245, eff. Jan. 1, 1996; P.A. 90-492, § 5, eff. Aug. 17, 1997.

Formerly Ill.Rev.Stat.1991, ch. 37, ¶ 439.22-1.

Footnotes

1 740 ILCS 45/1 et seq.

705 I.L.C.S. 505/22-1, IL ST CH 705 § 505/22-1

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705 ILCS 505/22-2
Formerly cited as IL ST CH 37 ¶ 439.22-2

505/22-2. Failure to file notice; effect

Currentness

§ 22-2. If the notice provided for by Section 22-1 is not filed as provided in that Section, any such action commenced against the State of Illinois, the Medical Center Commission, the Board of Trustees of the University of Illinois, the Board of Trustees of Southern Illinois University, the Board of Trustees of Chicago State University, the Board of Trustees of Eastern Illinois University, the Board of Trustees of Governors State University, the Board of Trustees of Illinois State University, the Board of Trustees of Northeastern Illinois University, the Board of Trustees of Northern Illinois University, the Board of Trustees of Western Illinois University, or the Board of Trustees of the Illinois Mathematics and Science Academy, shall be dismissed and the person to whom any such cause of action accrued for any personal injury shall be forever barred from further action in the Court of Claims for such personal injury, except as otherwise provided by the Crime Victims Compensation Act.¹

Credits

Laws 1945, p. 660, § 22-2, added by Laws 1957, p. 2360, § 1, eff. July 10, 1957. Amended by P.A. 77-1777, § 1, eff. Jan. 1, 1972; P.A. 78-360, § 1, eff. Oct. 1, 1973; P.A. 81-1509, Art. II, § 40, eff. Sept. 26, 1980. P.A. 86-109, § 2, eff. July 26, 1989; P.A. 89-4, Art. 50, § 50-245, eff. Jan. 1, 1996.

Formerly Ill.Rev.Stat.1991, ch. 37, ¶ 439.22-2.

Footnotes

1 740 ILCS 45/1 et seq.

705 I.L.C.S. 505/22-2, IL ST CH 705 § 505/22-2

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705 ILCS 505/23

Formerly cited as IL ST CH 37 ¶ 439.23

505/23. Award as condition precedent to appropriation

Currentness

§ 23. It is the policy of the General Assembly to make no appropriation to pay any claim against the State, cognizable by the court, unless an award therefor has been made by the court.

Credits

Laws 1945, p. 660, § 23, eff. July 17, 1945.

Formerly Ill.Rev.Stat.1991, ch. 37, ¶ 439.23.

705 I.L.C.S. 505/23, IL ST CH 705 § 505/23

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705 ILCS 505/24

505/24. Payment of awards

Currentness

§ 24. Payment of awards.

(1) From funds appropriated by the General Assembly for the purposes of this Section the Court may direct immediate payment of:

(a) All claims arising solely as a result of the lapsing of an appropriation out of which the obligation could have been paid.

(b) All claims pursuant to the Line of Duty Compensation Act.

(c) All claims pursuant to the “Illinois National Guardsman's and Naval Militiaman's Compensation Act”, approved August 12, 1971, as amended.

(d) All claims pursuant to the “Crime Victims Compensation Act”, approved August 23, 1973, as amended.

(d-5) All claims against the State for unjust imprisonment as provided in subsection (c) of Section 8 of this Act.

(e) All other claims wherein the amount of the award of the Court is less than \$50,000.

(2) The court may, from funds specifically appropriated from the General Revenue Fund for this purpose, direct the payment of awards less than \$50,000 solely as a result of the lapsing of an appropriation originally made from any fund held by the State Treasurer. For any such award paid from the General Revenue Fund, the court shall thereafter seek an appropriation from the fund from which the liability originally accrued in reimbursement of the General Revenue Fund.

(3) In directing payment of a claim pursuant to the Line of Duty Compensation Act, the Court must direct the Comptroller to add an interest penalty if payment of a claim is not made within 6 months after a claim is filed in accordance with Section 3 of the Line of Duty Compensation Act and all information has been submitted as required under Section 4 of the Line of Duty Compensation Act. If payment is not issued within the 6-month period, an interest penalty of 1% of the amount of the award shall be added for each month or fraction thereof after the end of the 6-month period, until final payment is made. This interest penalty shall be added regardless of whether the payment is not issued within the 6-month period because of the appropriation process, the consideration of the matter by the Court, or any other reason.

(3.5) The interest penalty payment provided for in subsection (3) shall be added to all claims for which benefits were not paid as of the effective date of P.A. 95-928. The interest penalty shall be calculated starting from the effective date of P.A. 95-928, provided that the effective date of P.A. 95-928 is at least 6 months after the date on which the claim was filed in accordance with Section 3 of the Line of Duty Compensation Act. In the event that the date 6 months after the date on which the claim was filed is later than the effective date of P.A. 95-928, the Court shall calculate the interest payment penalty starting from the date 6 months after the date on which the claim was filed in accordance with Section 3 of the Line of Duty Compensation Act. This subsection (3.5) of this amendatory Act of the 96th General Assembly is declarative of existing law.

(3.6) In addition to the interest payments provided for in subsections (3) and (3.5), the Court shall direct the Comptroller to add a “catch-up” payment to the claims of eligible claimants. For the purposes of this subsection (3.6), an “eligible claimant” is a claimant whose claim is not paid in the year in which it was filed. For purposes of this subsection (3.6), “catch-up” payment is defined as the difference between the amount paid to claimants whose claims were filed in the year in which the eligible claimant's claim is paid and the amount paid to claimants whose claims were filed in the year in which the eligible claimant filed his or her claim. The “catch-up” payment is payable simultaneously with the claim award.

(4) From funds appropriated by the General Assembly for the purposes of paying claims under paragraph (c) of Section 8, the court must direct payment of each claim and the payment must be received by the claimant within 60 days after the date that the funds are appropriated for that purpose.

Credits

Laws 1945, p. 660, § 24, eff. July 17, 1945. Amended by P.A. 77-1777, § 1, eff. Jan. 1, 1972; P.A. 78-410, § 1, eff. Oct. 1, 1973; P.A. 79-45, § 1, eff. June 18, 1975; P.A. 80-1275, § 3, eff. July 19, 1978; P.A. 83-865, § 2, eff. Sept. 26, 1983; P.A. 90-492, § 5, eff. Aug. 17, 1997; P.A. 92-357, § 5, eff. Aug. 15, 2001; P.A. 95-928, § 10, eff. Aug. 26, 2008; P.A. 95-970, § 10, eff. Sept. 22, 2008; P.A. 96-328, § 325, eff. Aug. 11, 2009; P.A. 96-539, § 5, eff. Jan. 1, 2010; P.A. 100-1124, § 5, eff. Nov. 27, 2018.

Formerly Ill.Rev.Stat.1991, ch. 37, ¶ 439.24.

705 I.L.C.S. 505/24, IL ST CH 705 § 505/24

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705 ILCS 505/29
Formerly cited as IL ST CH 37 ¶ 439.24-9

505/29. Short title

Currentness

§ 29. This Act shall be known and may be cited as the “Court of Claims Act.”

Credits

Laws 1945, p. 660, § 29, added by P.A. 77-1777, § 1, eff. Jan. 1, 1972.

Formerly Ill.Rev.Stat.1991, ch. 37, ¶ 439.24-9.

705 I.L.C.S. 505/29, IL ST CH 705 § 505/29

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CERTIFICATE OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On July 25, 2025, the **Brief and Appendix of Plaintiff-Appellee People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which provided notice to the following registered email addresses:

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