2006 CASE REPORT

(and cumulative report of Illinois statutes held unconstitutional)

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To the Honorable Members of the General Assembly:

This is the Legislative Reference Bureau's annual review of decisions of the Federal Courts, the Illinois Supreme Court, and the Illinois Appellate Court as required by Section 5.05 of the Legislative Reference Bureau Act, 25 ILCS 135/5.05.

The Bureau's staff attorneys screened all court decisions and prepared the individual case summaries. A cumulative report of statutes held unconstitutional, prepared by the Bureau's staff attorneys, is included. The entire report was edited and compiled by staff attorney Jean McCay.

Respectfully submitted,

Richard C. Edwards
Executive Director

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INTRODUCTION TO PART 1

Part 1 of this 2006 Case Report contains summaries of recent court decisions and is based on a review of court decisions published since the summer of 2005 in advance sheets through the following:

1. Illinois Official Reports advance sheet No. 15 (July 15, 2006).
2. Federal Reporter advance sheet No. 31 (July 31, 2006).
3. Federal Supplement advance sheet No. 31 (July 31, 2006).
4. Supreme Court Reporter advance sheet No. 18 (July 15, 2006).

PART 1
SUMMARIES OF RECENT COURT DECISIONS

ILLINOIS CONSTITUTION - COMMUTATION OF SENTENCE

Commutation of a death sentence to a life term survived a conviction reversal in light of the reason and necessity for the commutations stated in the governor's "blanket" commutation speech.

In *People v. Morris*, 219 Ill. 2d 373 (2006), the defendant's death penalty was commuted to a sentence of life in prison as part of then Governor Ryan's "blanket" commutation of all death sentences under Section 12 of Article V of the Illinois Constitution (ILCON Art. V, Sec. 12). The Illinois Supreme Court reversed the defendant's conviction because of inadequate trial counsel. On remand, the defendant moved to bar the State from seeking the death penalty at the new trial. The court granted his motion because the governor's action, in effect, was a partial pardon that survived the reversal. The court held that the circuit court properly considered the reason and necessity for the "blanket" commutations by reviewing Governor Ryan's commutation speech. The court did not address the defendant's argument that subsection (a) of Section 5-5-4 of the Unified Code of Corrections (730 ILCS 5/5-5-4 (West 2004)) prohibits a new sentence on retrial that is more severe than the prior sentence.

PUBLIC EMPLOYEE DISABILITY ACT - LINE OF DUTY

The Act's "line of duty" injury standard has the same meaning as the "arising out of and in the course of employment" injury standard in the Workers' Compensation Act.

In *Mabie v. Village of Schaumburg*, 364 Ill. App. 3d 756 (1st Dist. 2006), a village firefighter was injured when he fell down the fire station stairs on his way to roll call. He filed a complaint for injunctive relief seeking an order pursuant to Section 1 of the Public Employee Disability Act (5 ILCS 345/1 (West 2000)), directing the village to reinstate sick leave and vacation benefits that he did not receive while he was recovering. The village argued that it was not required to pay the benefits because the injury did not occur "in the line of duty". The plaintiff argued that the village was prohibited from relitigating the issue of causation because his workers' compensation proceeding determined that the injury arose out of his employment. The appellate court agreed with the plaintiff, holding that, although "line of duty" is not defined in the Public Employee Disability Act, there is no meaningful difference between the "line of duty" standard under that Act and the "arising out of and in the course of employment" standard under Section 2 of the Workers' Compensation Act (820 ILCS 305/2 (West 2000)). Because the plaintiff was on his employer's premises and proceeding to work at the direction of his employer at the time of the accident, he was entitled to recover under the Public Employee Disability Act.

ELECTION CODE - JUDICIAL RETENTION

The Code's deadline for filing judicial retention declarations impermissibly conflicts with the longer filing period specified in the Illinois Constitution.

In *O'Brien v. White*, 219 Ill. 2d 86 (2006), the Illinois statutory deadline for filing judicial retention declarations was held unconstitutional because it conflicts with the deadline specified in the State constitution for filing those declarations. Section 7A-1 of the Election Code (10 ILCS 5/7A-1 (West 2004)) provides that Supreme, Appellate, and Circuit Judges seeking retention in office shall file declarations of candidacy to succeed themselves in office with the Secretary of State on or before the first Monday in December before the general election preceding the expiration of their terms of office. Three Circuit Judges, whose attempts to file their declarations within several days after the statutory December 2005 deadline were rebuffed, contended that the filing period is governed by subsection (d) of Section 12 of Article VI of the Illinois Constitution (ILCON Art. VI, Sec. 12), which states that a judge seeking retention may file a declaration not less than 6 months before the general election preceding the expiration of his or her term of office. The constitutional scheme thus affords judges 6 additional months to ponder retention and places the deadline after the March general primary election. The State first argued that the Election Code's deadline was merely directory, not mandatory, but the Illinois Supreme Court dismissed this characterization because the statute sets forth the penalizing consequences of missing the deadline: the judge is certified as not seeking retention and his or her office will be open for the nomination of candidates at the March general primary. The State next posited that the constitutional provision is ambiguous because it may be interpreted as allowing a judge to file his or her retention declaration until 6 months before the relevant general election or as authorizing the General Assembly to establish a different deadline that is no later than 6 months before the relevant general election. The court found the language of the Illinois Constitution clear and unambiguous. It does not permit the General Assembly to enact a different deadline. Section 7A-1 of the Election Code was intended to prevent judges from filing retention declarations after the March general primary, but legislative debate of that Section's 1977 passage, the Governor's message accompanying his veto of the measure, and the General Assembly's override of that veto all indicate an awareness of the conflicting constitutional deadline.

ILLINOIS PENSION CODE - DOWNSTATE POLICE - CERTIFICATION OF DISABILITY

All 3 physicians selected by the downstate police pension board must certify that a disability pension applicant has a disability preventing him or her from performing any assigned duty in the police service.

In *Wade v. City of North Chicago Police Pension Board*, 359 Ill. App. 3d 224 (2nd Dist. 2005), a policemen applied for a disability pension after being examined by 3 physicians selected by the City of North Chicago Police Pension Board, 2 of whom issued certificates of disability. The court, using a plain and ordinary meaning approach, interpreted Section 3-115 of the Illinois Pension Code (40 ILCS 5/3-115 (West 2002)) to require that all 3 physicians must certify that the applicant has a disability preventing him or her from performing any assigned duty in the police service. A dissenting opinion cited *Coyne v. Milan Police Pension Board*, 347 Ill. App. 3d 713 (3rd Dist. 2004), which

required only that the certifications address the applicant's disability status (which could include the lack of a disability).

ILLINOIS PENSION CODE - DOWNSTATE FIREFIGHTERS – CERTIFICATION OF DISABILITY

All 3 physicians selected by the downstate firefighter pension board need not certify that a disability pension applicant has a duty-related disability, or any disability, and the pension board's action on the application requires the vote of only a majority of a quorum of the board.

In *Village of Oak Park v. Village of Oak Park Firefighters Pension Board*, 362 Ill. App. 3d 357 (1st Dist. 2005), the plaintiff challenges the 9-member pension board's 3-2 vote to grant a firefighter's disability pension. Section 4-112 of the Illinois Pension Code (40 ILCS 5/4-112 (West 2002)) requires that a firefighter's disability be "established by the board by examinations of the firefighter at pension fund expense by 3 physicians selected by the board". The court found that "established by the board" is ambiguous and interpreted the provision using the common law rule that a majority of a body constitutes a quorum and that if a quorum is in attendance, a vote of a majority of those present is sufficient for valid action. The court interpreted the provision to require only that 3 physicians examine the firefighter and submit their reports to the pension board, not that the 3 physicians concur that the firefighter is disabled, and the provision does not even require an opinion of one physician, let alone a concurrence of all 3, that the disability is duty-related.

ILLINOIS PENSION CODE - CHICAGO FIREFIGHTERS - GOVERNMENTAL ENTITY

The Chicago firefighter pension fund board is not a governmental entity for purposes of calculating interest on postjudgment awards under the Code of Civil Procedure.

In *Barry v. Retirement Board of the Firemen's Annuity and Benefit Fund of Chicago*, 357 Ill. App. 3d 749 (1st Dist. 2005), the board that administers the firemen's pension fund of the city of Chicago under Article 6 of the Illinois Pension Code (40 ILCS 5/Art. 6) challenged the award of a 9% postjudgment interest rate to the plaintiffs instead of the 6% rate given for governmental entities. Section 2-1303 of the Code of Civil Procedure (735 ILCS 5/2-1303 (West 2000)) provides for a 6% rate of interest on judgment awards for governmental entities and a 9% rate of interest for other persons and entities. The court held that the board is not a governmental entity and was therefore subject to the 9% interest rate. The court reasoned that the fund that the board administers is for the benefit of the firefighters employed by the city of Chicago, rather than for the benefit of the general public.

ILLINOIS PENSION CODE - JUDGES – GOVERNMENTAL ENTITY

The Judges Retirement System of Illinois is not a governmental entity for purposes of calculating interest on postjudgment awards under the Code of Civil Procedure.

In *Shields v. State Employees Retirement System of Illinois*, 363 Ill. App. 3d 999 (1st Dist. 2006), the plaintiff, a former judge who was convicted of a felony and lost his pension benefits from the Judges Retirement System of Illinois (System), after having the court enter a judgment requiring the System to grant the plaintiff a full refund of his contributions to the System, reinstated the case to seek interest on the amount of his contributions. He argued that the System was a governmental entity under Section 2-1303 of the Code of Civil Procedure (735 ILCS 5/2-1303 (West 2002)), which governs interest on judgments. The court held that the System is not a governmental entity under Section 2-1303, but is a creature of the State, because all expenses in connection with the administration and operation of the System are obligations of the State pursuant to Section 16-158 of the Illinois Pension Code (40 ILCS 5/16-158 (West 2002)). As a creature of the State, the Judges Retirement System of Illinois holds sovereign immunity and is not required to remit interest on a judgment entered against it.

ILLINOIS MUNICIPAL CODE - ANNEXATION AGREEMENTS

The statutory grant to a municipality of building code jurisdiction over unincorporated lands that are subject to annexation agreements between landowners and the municipality controls over the conflicting Counties Code grant of jurisdiction to the county over those areas.

In *Village of Chatham v. County of Sangamon,* 216 Ill. 2d. 402 (2005), the Illinois Supreme Court held that the village of Chatham has zoning and building code jurisdiction over unincorporated lands that are subject to annexation agreements between landowners and the village. The court found that Section 11-15.1-2.1 of the Illinois Municipal Code (65 ILCS 5/11-15.1-2.1 (West 2002)), which provides that property that is subject to an annexation agreement is subject to the ordinances, control, and jurisdiction of the annexing municipality, conflicts with Section 5-1063 of the Counties Code (55 ILCS 5/5-1063 (West 2002)), which grants to a county the building code jurisdiction over nonagricultural buildings located outside the territorial limits of a municipality. The court determined that Section 11-15.1-2.1 of the Illinois Municipal Code is controlling because: (1) an amendment to Section 11-15.1-2.1 that was enacted in response to *Village of Lisle v. Action Outdoor Advertising Co.*, 188 Ill. App. 3d 751 (1989), postdates Section 5-1063 of the Counties Code and (2) Section 11-15.1-2.1 of the Illinois Municipal Code is more particular than Section 5-1063 of the Counties Code.

SCHOOL CODE - TEACHER CERTIFICATION

The prohibition against a teacher resigning during the school term, without the concurrence of the school board, in order to accept another teaching assignment applies to both tenured and non-tenured teachers.

In *Board of Education of Park Forest High School District No. 163 v. State Teacher Certification Board*, 363 Ill. App. 3d 433 (1st Dist. 2006), a school board sought the suspension of a probationary teacher's certification when he attempted to resign during the school term in order to accept another teaching assignment. The teacher challenged the application of Section 24-14 of the School Code (105 ILCS 5/24-14 (West 2002)) to non-tenured teachers. The statute contains a prohibition against a teacher

resigning during the school term, without the concurrence of the school board, in order to accept another teaching assignment. The court found Section 24-14 to be ambiguous and, subsequently, examined the legislative history to determine that the prohibition applies to both tenured and non-tenured teachers.

ILLINOIS PUBLIC AID CODE - RECOVERY OF MEDICAL ASSISTANCE

The State's recovery pursuant to the Code of the amount of medical assistance payments made on behalf of an individual from the estate of the individual's surviving spouse is prohibited by the Social Security Act.

In *Hines v. Department of Public Aid*, 221 Ill. 2d 222 (2006), the administrator of the estate of a woman whose husband was a beneficiary of medical assistance payments under the Illinois Public Aid Code disputed the Department of Public Aid's efforts to recover the value of those medical assistance payments. The Department (now the Department of Healthcare and Family Services) argued that Section 5-13 of the Code (305 ILCS 5/5-13 (West 2002)) permits such a recovery from the estate of a surviving spouse. The Illinois Supreme Court, however, held that recovery of the amount of medical assistance payments made on behalf of an individual from the estate of the individual's surviving spouse is prohibited by the Social Security Act provisions governing the operation of state medical assistance programs. The Social Security Act does give states the option of defining the estates of medical assistance recipients more expansively than is done under each state's normal probate law, but Illinois has not chosen this option, except in the case of medical assistance beneficiaries who have long-term care insurance.

ILLINOIS VEHICLE CODE - PRIVATE RIGHT OF ACTION FOR INJUNCTION AGAINST OBSTRUCTION OF RAILROAD CROSSINGS

The Code's Commercial Transportation Law provides a private right of action to enjoin the extended obstruction of railroad crossings.

In *Eagle Marine Industries, Inc. v. Union Pacific Railroad Co.*, 363 Ill. App. 3d 1166 (5th Dist. 2006), several businesses sought an injunction under Section 18c-7402 of the Illinois Vehicle Code (625 ILCS 5/18c-7402 (West 2002)) to prevent a railroad from obstructing the road to their places of business for more than 10 minutes at a time. Subdivision (b)(1) of Section 18c-7402 makes it unlawful for a rail carrier to permit a train to obstruct public travel at a railroad crossing for more than 10 minutes, except if the train is constantly moving or cannot be moved for reasons beyond the railroad's control. While subdivision (b)(2) of Section 18c-7402 imposes fines for a railroad's violation of the prohibition, the Section does not explicitly provide for a private right of action to enjoin such violations. The Illinois Supreme Court held that Section 18c-7402, which is part of the Vehicle Code Chapter known as the Illinois Commercial Transportation Law, created an implied right of action on behalf of the plaintiffs. The Commercial Transportation Law is intended to allow the free flow of commerce for the benefit of a class of persons that includes the plaintiffs, and the fines established under the provision do not provide an adequate remedy for the plaintiffs. In addition, Section

18c-7402 is not preempted by federal law, because the provision does not interfere with a railroad's interstate operations and does not burden interstate commerce.

CRIMINAL CODE OF 1961 - INVOLUNTARY INTOXICATION

The defense of involuntary intoxication is not limited to intoxication involuntarily produced by trick, artifice, or force.

In *People v. Hari*, 218 Ill. 2d 275 (2006), the defendant was charged with first degree murder and attempted first degree murder. Section 6-3 of the Criminal Code of 1961 (720 ILCS 5/6-3 (West 2002)) provides that a person who is in an intoxicated or drugged condition is criminally responsible for conduct unless such condition is involuntarily produced and deprives the person of substantial capacity either to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law. The defendant contended that he was relieved of culpability due to involuntary intoxication from his prescription Zoloft medication, an antidepressant. The trial court denied the defendant's involuntary intoxication jury instruction, finding that Illinois law disallowed such a defense in the absence of evidence that the defendant's intoxication was the result of trick, artifice, or force. The Illinois Supreme Court rejected limiting the interpretation of the plain meaning of "involuntarily produced" to trick, artifice, or force as too narrow. Nothing in the statute dictates that it must be so limited.

CRIMINAL CODE OF 1961 - PROPORTIONATE PENALTIES

The mandatory sentence enhancement for criminal sexual assault while armed with a firearm unconstitutionally results in a penalty disproportionate to the penalty for armed violence predicated on criminal sexual assault with a category I weapon, an offense with identical elements.

In *People v. Hampton*, 363 Ill. App. 3d 293 (1st Dist. 2006), the defendant was convicted of aggravated criminal sexual assault under subsection (a)(8) of Section 12-14 of the Criminal Code of 1961 (720 ILCS 5/12-14 (West 2002)). Aggravated criminal sexual assault under that subsection is criminal sexual assault committed while armed with a firearm. Under subsection (d)(1) of Section 12-14, commission of that form of aggravated criminal sexual assault is a Class X felony that requires a 15-year sentence enhancement, resulting in a sentencing range of 21 to 45 years in prison. The defendant contended that his sentence for aggravated criminal sexual assault violated the proportionate penalties clause of Section 11 of Article I of the Illinois Constitution (ILCON Art. I, Sec. 11). The court compared the penalty for aggravated criminal sexual assault under subsection (a)(8) of Section 12-14 to the penalty for armed violence. Under Sections 33A-2 and 33A-3 of the Criminal Code of 1961 (720 ILCS 5/33A-2 and 5/33A-3 (West 2002)), the identical elements of criminal sexual assault committed while armed with a dangerous weapon, which includes a category I firearm, constitute armed violence, which carries a sentencing range of 15 to 30 years in prison. Thus, commission of criminal sexual assault while armed with a firearm constitutes both aggravated criminal sexual assault and armed violence predicated on criminal sexual assault with a category I weapon. Common sense and sound logic would seemingly dictate that the penalties be identical. The court agreed with the defendant that the 15-year mandatory add-on

provision of subsection (d)(1) of Section 12-14 of the Code violates the proportionate penalties clause because it makes aggravated criminal sexual assault punishable more severely than the identical offense of armed violence predicated on criminal sexual assault with a category 1 weapon.

CRIMINAL CODE OF 1961 - VIOLENT AND SEXUALLY EXPLICIT VIDEO GAMES

The Violent Video Games Law and the Sexually Explicit Video Games Law violate the First Amendment.

In *Entertainment Software Association v. Blagojevich*, 404 F. Supp. 2d 1051 (N.D. Ill. 2005), the plaintiffs, who were associations of entities that create, publish, distribute, sell, and rent video games, sought injunctive relief against enforcement of Public Act 94-315, effective January 1, 2006. Public Act 94-315 created Articles 12A and 12B of the Criminal Code of 1961 (720 ILCS 5/Art. 12A and 5/Art. 12B) as the Violent Video Games Law and the Sexually Explicit Video Games Law, respectively. These Laws establish criminal penalties for (i) selling or renting violent or sexually explicit video games to minors, (ii) allowing such games to be purchased using a self-check-out electronic scanner, and (iii) failing to label such games with a 2-inch by 2-inch number "18". The court held that both Laws are unconstitutional. The definition of a violent video game is unconstitutionally vague; the plaintiffs failed to show that the violent content in video games is directed to inciting or producing imminent lawless action, a requirement for a state to regulate expression under the First Amendment to the United States Constitution (U.S. Const., Amend. I) as decided in *Brandenburg v. Ohio*, 395 U.S. 444 (1969). The Sexually Explicit Video Games Law is unconstitutional because it deviates from the standards established in *Ginsberg v. New York*, 390 U.S. 629 (1968) and *Miller v. California*, 413 U.S. 15 (1973). The Sexually Explicit Video Games Law is a content-based restriction on speech subject to strict scrutiny. That Law does not withstand strict scrutiny because it eliminates the requirement that the material must be considered as a whole and does not consider the serious value of the material. Because the definition of "sexually explicit" is vague and not narrowly tailored, the court held that its sale, rental, and check-out provisions are unconstitutional.

CRIMINAL CODE OF 1961 - AGGRAVATED VEHICULAR HIJACKING

The penalty for aggravated vehicular hijacking while carrying a firearm is unconstitutionally harsher than the penalty for armed violence with a category I weapon predicated upon vehicular hijacking, an offense with identical elements.

In *People v. Andrews*, 364 Ill. App. 3d 253 (2nd Dist. 2006), the defendant, who was convicted of aggravated vehicular hijacking while carrying a firearm in violation of subsection (a)(2) of Section 18-4 of the Criminal Code of 1961 (720 ILCS 5/18-4 (West 2002)), challenged the conviction under the proportionate penalties clause of Section 11 of Article I of the Illinois Constitution (ILCON Art. I, Sec. 11) based on the identical elements test. The defendant asserted that the penalty for aggravated vehicular hijacking while carrying a firearm is harsher than the penalty for armed violence with a category I weapon predicated upon the offense of vehicular hijacking under subsection (a) of

Section 33A-2 of the Code (720 ILCS 5/33A-2 (West 2002)), an offense with identical elements. The court concluded that the commission of vehicular hijacking while carrying a firearm, which has an applicable penalty range of 21 to 45 years' imprisonment, constitutes both aggravated vehicular hijacking while carrying a firearm and armed violence with a category I weapon predicated on the offense of vehicular hijacking, which has an applicable penalty range of 15 to 30 years, and, thus, the proportionate penalties clause is violated because substantively identical offenses are punished with disparate penalties.

CRIMINAL CODE OF 1961 - DEFACING FIREARM IDENTIFICATION MARKS

The provision that possession of a firearm with defaced identification marks is prima facie evidence that the possessor unlawfully defaced the firearm identification marks created a mandatory rebuttable presumption of guilt that is unconstitutional and that was eliminated by subsequent legislation.

In *People v. Quinones*, 362 Ill. App. 3d 385 (1st Dist. 2005), the defendant was found guilty of defacing firearm identification marks in violation of Section 24-5 of the Criminal Code of 1961 (720 ILCS 5/24-5 (West 2002)). The defendant contended that subsection (b) of Section 24-5 contained an unconstitutional mandatory presumption that relieved the State of its burden of proving beyond a reasonable doubt that the defendant knowingly or intentionally defaced the identifying marks on the firearm. Subsection (b) provided that possession of any firearm upon which any identification mark has been changed, altered, removed, or obliterated shall be prima facie evidence that the possessor has changed, altered, removed, or obliterated that mark. The appellate court held that under the statute a prima facie case that a defendant knowingly or intentionally defaced a firearm was established upon the State's showing that a defendant possessed a defaced firearm. When the State rested, the burden shifted to the defendant to show that he or she had not knowingly or intentionally defaced the firearm. The placement of such an evidentiary burden on a defendant is always unconstitutional; it effectively relieves the State of its burden of proving an essential element of the offense beyond a reasonable doubt. Giving the language of the statute its plain and ordinary meaning, the appellate court found that subsection (b) of Section 24-5 created an impermissible mandatory rebuttable presumption and was therefore unconstitutional. Public Act 93-906, effective August 11, 2004, rewrote subsection (b) and eliminated the prima facie evidence language. Subsection (b) of Section 24-5, as amended by Public Act 93-906, provides that a person who possesses any firearm upon which any importer's or manufacturer's serial number has been changed, altered, removed, or obliterated commits a Class 3 felony.

CRIMINAL CODE OF 1961 - ESCAPE

A minor's adjudication of delinquency is not a "conviction" for purposes of the offense of escape.

In *People v. Taylor*, 221 Ill. 2d 157 (2006), the defendant, who was a juvenile who had been adjudicated to be delinquent and incarcerated in a juvenile detention

facility, was convicted of attempted escape. The defendant challenged his conviction because he was not a "person convicted of a felony", as required as an element of the offense under subsection (a) of Section 31-6 of the Criminal Code of 1961 (720 ILCS 5/31-6 (West 1998)). That statute states that "[a] person convicted of a felony who intentionally escaped from any penal institution or from the custody of an employee of that institution commits a Class 2 felony". Agreeing with the defendant, the Illinois Supreme Court overturned the conviction and held that an adjudication of delinquency is not a "conviction" for purposes of the escape statute.

CODE OF CRIMINAL PROCEDURE OF 1963 - DISMISSAL OF POST-CONVICTION PETITION

A judge may summarily dismiss a post-conviction petition when facts ascertainable from the record reveal that the petition's claims have already been decided, waived, or forfeited.

In *People v. Blair*, 215 Ill. 2d 427 (2005), the defendant was convicted of first degree murder for a street shooting and sentenced to 55 years in prison. The defendant filed a notice of appeal. The Cook County public defender was appointed to represent him on appeal. After reviewing the record, the public defender moved to withdraw from the appeal because of the lack of issues warranting argument on appeal; the appellate court granted that motion. After an unsuccessful direct appeal, the defendant filed a post-conviction petition under Article 122 of the Code of Criminal Procedure of 1963 (725 ILCS 5/Art. 122 (West 2000)) in which he blamed his trial counsel for his conviction and faulted his appointed appellate counsel for moving to withdraw. The defendant's post-conviction petition was summarily denied. The appellate court reversed. After noting 3 different views of Article 122 among the appellate court districts, the Illinois Supreme Court held that a court may summarily dismiss a post-conviction petition under Article 122 when the facts that are ascertainable from the record reveal that the petition's claims have already been decided, waived, or forfeited.

CODE OF CRIMINAL PROCEDURE OF 1963 - POST-CONVICTION HEARING

The requirement that an order dismissing a petition for post-conviction relief be served on the defendant within 10 days is directory rather than mandatory.

In *People v. Robinson*, 217 Ill. 2d 43 (2005), a defendant filed a petition for post-conviction relief under Article 122 of the Code of Criminal Procedure of 1963. The trial court entered an order dismissing the petition, and 12 days later the clerk served the order on the defendant by certified mail. Section 122-2.1 of the Code of Criminal Procedure of 1963 (725 ILCS 5/122-2.1 (West 2000)) provides that the clerk shall serve such an order within 10 days of its entry. There was no dispute that the statute's 10-day service requirement imposed a mandatory (rather than permissive) obligation on the clerk, but the question in this case was whether the requirement is mandatory or directory. The court held that the requirement is only directory because it is a procedural command to a government official and (i) its violation is not likely to prejudice a defendant's right to appeal a conviction and (ii) the statute contains no negative words indicating that a

dismissal of a petition will not take effect if it is not served within 10 days. Therefore, the clerk's tardiness did not invalidate the order of dismissal.

SEXUALLY VIOLENT PERSONS COMMITMENT ACT - FILING OF PETITION

The State's deadline for filing a petition alleging a person is sexually violent is counted from the person's "anticipated" date of entry into mandatory supervised release when he or she delays that entry.

In *In re Detention of Powell*, 217 Ill. 2d 123 (2005), the respondent refused to sign his mandatory supervisory release statement of conditions, delaying his entry into mandatory supervised release. Subsection (b-5) of Section 15 of the Sexually Violent Persons Commitment Act (725 ILCS 207/15 (West 2000)) requires the State to file its petition alleging that a person is a sexually violent person within 90 days before discharge or entry into mandatory supervised release from a correctional facility. The court interpreted the provision, in cases where the person delays his or her entry into mandatory supervised release, as requiring the filing of the petition within 90 days before the person's anticipated date of entry into mandatory supervised release rather than the person's actual date of entry into mandatory supervised release.

UNIFIED CODE OF CORRECTIONS - SENTENCING JUDGE

The provision that a defendant's sentence shall be imposed by the judge who presided at the trial or who accepted the guilty plea is directory rather than mandatory.

In *People v. Gray*, 363 Ill. App. 3d 897 (4th Dist. 2006), the defendant entered a guilty plea before Judge Ford. Prior to the sentencing date set by Judge Ford, the defendant was sentenced by Judge Difanis for that same crime and separate, additional crimes. On the original sentencing date, Judge Ford determined that Judge Difanis had no jurisdiction to sentence the defendant and vacated the sentence entered by Judge Difanis, citing subsection (b) of Section 5-4-1 of the Unified Code of Corrections (730 ILCS 5/5-4-1 (West 2004)). Subsequently, Judge Ford issued a more severe sentence than that entered by Judge Difanis. Subsection (b) of Section 5-4-1 provides that the judge who presided at the trial or who accepted the plea of guilty "shall" impose the sentence unless he or she is no longer sitting as a judge in that court. Upon review, the appellate court found that, despite the legislature's use of the word "shall" in the subsection, "[t]he primary concern in [S]ection 5-4-1(b) is that the judge issuing the sentence be fully informed . . . of the facts in the case". Furthermore, the appellate court found that if subsection (b) were mandatory, it would conflict directly with "the judiciary's administrative power to assign cases and impose a sentence" and would conflict with Supreme Court Rule 21(b), which gives the courts the power to assign judges. The statute must be directory in order to avoid characterization as an unconstitutional encroachment upon the separate power of the State government's judicial branch.

UNIFIED CODE OF CORRECTIONS - PROPORTIONATE PENALTIES

The punishment for an offense with different elements may no longer be compared when challenging the constitutional proportionality of a penalty.

In *People v. Sharpe*, 216 Ill. 2d 481 (2005), the Illinois Supreme Court altered its method of analyzing a criminal penalty's compliance with the proportionate penalties requirement of Section 11 of Article I of the Illinois Constitution (ILCON Art. I, Sec. 11). The defendant was indicted on 6 counts of first degree murder. One count alleged that the defendant committed the crime while armed with a firearm, which would enhance his sentence by 15 years under subsection (a)(1)(d)(i) of Section 5-8-1 of the Unified Code of Corrections (730 ILCS 5/5-8-1 (West 2000)), and one count alleged that he committed the crime while personally discharging a firearm, which would enhance his sentence by 20 years under subsection (a)(1)(d)(ii) of that Section. The trial court determined that the enhancements violate the proportionate penalties requirement of the Illinois Constitution. The proportionate penalties clause provides that all penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship. The Illinois Supreme Court analyzed the history of proportionality claims and stated that a proportionality challenge contends that the penalty in question was not determined according to the seriousness of the offense. The Illinois Supreme Court had recognized 3 distinct ways in which such a challenge may be asserted (*People v. Moss*, 206 Ill. 2d 503, 522 (2003)). First, a penalty violates the proportionate penalties clause if it is cruel, degrading, or so wholly disproportionate to the offense committed as to shock the moral sense of the community. Second, a penalty violates the clause when similar offenses are compared and conduct that creates a less serious threat to the public health and safety is punished more severely. Finally, the proportionate penalties clause is violated when offenses with identical elements are given different sentences. In *Sharpe*, the Illinois Supreme Court abandoned cross-comparison proportionate penalties analysis and held that a defendant may not challenge a penalty under the proportionate penalties clause by comparing it to the penalty for an offense with different elements. The court retained the other 2 types of proportionate penalties challenges. A defendant may still argue that the penalty for a particular offense is too severe, and such a challenge will be judged under the familiar cruel or degrading standard. A defendant may also still challenge a penalty on the basis that it is harsher than the penalty for a different offense that contains identical elements.

UNIFIED CODE OF CORRECTIONS - CONSECUTIVE SENTENCES

The requirement that multiple sentences for single-course-of-conduct offenses involving a Class X felony must be served consecutively is not applicable to multiple natural-life sentences.

In *People v. Palmer*, 218 Ill. 2d 148 (2006), a defendant who had been convicted of multiple Class X felonies was adjudged an habitual criminal pursuant to Article 33B of the Criminal Code of 1961 (720 ILCS 5/Art. 33B (West 2002)) and sentenced to consecutive natural-life sentences pursuant to Section 5-8-4 of the Unified Code of Corrections (730 ILCS 5/5-8-4 (West 2002)); he challenged the propriety of the consecutive sentences. Article 33B requires the imposition of a natural-life sentence in the case of an habitual criminal, and Section 5-8-4 requires that consecutive sentences be imposed for offenses committed as part of a single course of conduct during which there

was no substantial change in the nature of the criminal objective if one of the offenses was a Class X felony and the defendant inflicted severe bodily injury. The court held that natural-life sentences must be served concurrently. It is impossible to serve consecutive natural-life sentences because, according to natural law, a defendant has only one life; nor does the imposition of consecutive natural-life sentences advance the legislature's goal of permanently removing habitual criminals from society. Three dissenting judges argued that while it might be factually impossible to serve consecutive natural-life sentences, the General Assembly clearly determined that such sentences are legally possible.

UNIFIED CODE OF CORRECTIONS - UNLAWFUL POSESSION OF CONTROLLED SUBSTANCE FEE

Imposition of a fee for spinal injury research upon conviction of unlawful possession of a controlled substance violates the defendant's due process rights.

In *People v. Rodriguez*, 362 Ill. App. 3d 44 (1st Dist. 2005), the court held that subsection (c) of Section 5-9-1.1of the Unified Code of Corrections (730 ILCS 5/5-9-1.1 (West 2004)), which requires a defendant to pay a $5 fee into the Spinal Cord Injury Paralysis Cure Research Trust Fund upon conviction for unlawful possession of a controlled substance, violates the defendant's due process rights because the relationship between possession of a controlled substance and spinal injuries is too attenuated.

SEX OFFENDER REGISTRATION ACT - AGGRAVATED KIDNAPPING

Including aggravated kidnapping among those sex offense convictions that trigger registration as a sex offender is unconstitutional when applied to a defendant without a history of sex offenses whose crime was without sexual motivation or purpose.

In *People v. Johnson*, 363 Ill. App. 3d 356 (1st Dist. 2006), the defendant, who was convicted of aggravated kidnapping, challenged the constitutionality of the requirement that he register under the Sex Offender Registration Act because his offense was not sexually motivated. Subdivision (B)(1.5) of Section 2 of the Sex Offender Registration Act (730 ILCS 150/2 (West 2000)) includes within the definition of "sex offense" a felony conviction for aggravated kidnapping. The appellate court held that, because the defendant had no history of committing sex offenses and his aggravated kidnapping offense was not sexually motivated and had no sexual purpose, the requirement that he register as a sex offender violated the defendant's substantive due process rights and was, therefore, unconstitutional as applied in this case.

Note: Public Act 94-945, effective June 27, 2006, changed the definition of "sex offense" in subdivision (B)(1.5) of Section 2 of the Sex Offender Registration Act to require that the included offenses were sexually motivated as defined in Section 10 of the Sex Offender Management Board Act (20 ILCS 4026/10).

DRUG COURT TREATMENT ACT - DISCHARGE

Although the Act does not specify the procedures for discharge of a defendant who violates the drug court treatment program, its language must be interpreted to preclude summary dismissal.

In *People v. Anderson*, 358 Ill. App. 3d 1108 (4th Dist. 2005), the defendant challenged the portion of the Drug Court Treatment Act (730 ILCS 166/) that governs the violation, termination, and discharge of a defendant from a drug court program as violating his rights to due process by not affording him a hearing prior to being dismissed from the drug court program. While the Act does not specify the procedures to be followed upon an alleged violation of the program, the court found that the language in Section 35 of the Act (730 ILCS 166/35 (West 2002)) indicates that the trial court should consider evidence, presumably presented at a hearing, of the defendant's conduct that could result in a dismissal from the program. The court further found that even though the defendant did not have an expressed right to participate in the drug court program, as a matter of legislative and judicial grace, due process, in the form of a hearing, should circumscribe summary dismissal from the program.

CODE OF CIVIL PROCEDURE - SAVINGS CLAUSE

The provision allowing a defendant's responsive counterclaim that is barred by a statute of limitation prevails over the 2-year statute of limitation for contribution or indemnification actions that preempts other statutes of limitation or repose.

In *Barragan v. Casco Design Corp.*, 216 Ill. 2d 435 (2005), the defendant brought a responsive counterclaim against a co-defendant, after the 2-year limitations period for contribution actions among tortfeasors had run, under the savings provision of Section 13-207 of the Code of Civil Procedure (735 ILCS 5/13-207 (West 2000)). While Section 13-204 of the Code (735 ILCS 5/13-204 (West 2000)) provides a 2-year statute of limitation for any action for contribution among joint tortfeasers and specifically preempts other limitation and repose periods for contribution actions, Section 13-207 allows a defendant to plead a counterclaim barred by a statute of limitation if the cause of the counterclaim was owned by the plaintiff, or by the person under whom the plaintiff claims, before the counterclaim was barred. The court held that Section 13-207 saved the responsive counterclaim by negating the statute of limitation. The court reasoned that nothing in Section 13-204 specifically bars the savings provisions; had the General Assembly intended Section 13-204 to time-bar Section 13-207, the legislature would have specifically listed Section 13-207 in the preemption language of Section 13-204.

JUDICIAL DELIBERATIONS - PRIVILEGE

Certain communications of judges and law clerks with regard to the handling and disposition of pending cases are subject to a privilege of nondisclosure.

In *Thomas v. Page*, 361 Ill. App. 3d 484 (2nd Dist. 2005), a defamation action filed by a judge against a newspaper reporter, the trial court certified to the appellate court the question of whether communications between judges with regard to the handling and disposition of pending cases are subject to a privilege of nondisclosure. In a case of first impression in Illinois, the appellate court held that communications with regard to judicial deliberations are privileged and that the privilege applies to

communications between judges, between judges and their own law clerks, between judges and the clerks of other judges, and between law clerks. The effectiveness of the judicial process would be adversely affected if judges had to worry that their deliberations and communications might be made public at a later date.

JOINT TORTFEASOR CONTRIBUTION ACT - ASSERTION OF CLAIM

A contribution claim in a pending action is "asserted" only if the claim actually proceeds in that pending action.

In *Harshman v. DePhillips*, 218 Ill. 2d 482 (2006), the plaintiff in a federal case petitioned for leave to file a third-party complaint against the defendant. A federal magistrate denied the petition. The plaintiff subsequently filed a separate contribution action against the defendant in the Illinois court, contending that the claim was asserted by its third-party complaint in a pending action within the meaning of Section 5 of the Joint Tortfeasor Contribution Act (740 ILCS 100/5 (West 2000)), despite the fact that the claim in federal court did not actually proceed. That statute requires that if there is a pending action, a contribution claim must be asserted in that action. The plaintiff argued that the language of the statute does not require that the claim actually proceed in the original action. The Illinois Supreme Court disagreed, however, and held that a contribution claim in a pending action is "asserted" only if the claim actually proceeds.

EQUINE ACTIVITY LIABILITY ACT - ENGAGING IN EQUINE ACTIVITY

A passenger in a horse-drawn vehicle is not engaged in an equine activity because that person is not riding "upon an equine".

In *Smith v. Lane*, 358 Ill. App. 3d 1126 (5th Dist. 2005), the plaintiff, who suffered injuries when the horse-drawn carriage in which she was a passenger flipped over, appealed the dismissal of her liability suit against the driver of the carriage and the owner of the horse and carriage under the Equine Activity Liability Act. Section 15 of the Act (745 ILCS 47/15 (West 1996)) provides that a person assumes the risk of any resulting injury if he or she "engages in an equine activity", defined in Section 10 of the Act (745 ILCS 47/10 (West 1996)) to include "being a passenger upon an equine, whether mounted or unmounted". The court held that the defendants were not immune from suit under the Act, because a passenger in a horse-drawn vehicle is not riding "upon an equine".

UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT - INFANT LOCATED IN ANOTHER STATE

The court does not lack subject matter jurisdiction over a child who is less than 6 months old solely because the child was born and received post-natal care in another state.

In re D.S., 217 Ill. 2d 306 (2005), concerns a child born to 2 Illinois residents in an Indiana hospital and a Department of Children and Family Services petition to declare the child a neglected minor and make him a ward of the court. The child's mother argued that because he was born in Indiana, the Illinois court lacked subject matter jurisdiction.

Section 201 of the Uniform Child-Custody Jurisdiction and Enforcement Act (750 ILCS 36/201 (West 2004)) provides that a state has jurisdiction to make an initial child custody determination if it is the "home state of the child". For a child less than 6 months old, the Act defines that term as "the state in which the child lived from birth" with a parent. The court rejected the mother's contentions and held that the temporary hospital stay incident to delivery of the child was insufficient to confer "home state" jurisdiction on Indiana. The court reasoned that under the Act, the meaning of "lived" in the definition of "home state" is the equivalent of "occupied a home". The Illinois court had jurisdiction over the child because 3 statutory requirements were met: Indiana lacked jurisdiction over the child because he and a parent never occupied a home in that state; substantial evidence about the child, his family, and his care existed in Illinois; and the child and his parents each had a significant connection to Illinois.

ADOPTION ACT - PARENTAL UNFITNESS

The mandatory irrebuttable presumption of parental unfitness due to physical abuse of a child is unconstitutional as a denial of equal protection.

In re S.F., 359 Ill. App. 3d 63 (1st Dist. 2005), arose from the termination of the respondent's parental rights as the mother of S.F., a son born in 1994. The respondent was indicted for the 1996 murder of another son, specifically for placing her newborn child in the garbage; in 1999 she pled guilty to and was convicted of the first degree murder of that infant and was sentenced to 20 years in prison. In 2003, the State filed a petition to terminate the respondent's parental rights as to S.F. as an unfit parent. Under subdivision D(f) of Section 1 of the Adoption Act (750 ILCS 50/1 (West 1998)), a person is an unfit parent if he or she has a criminal conviction resulting from the death of any child by physical abuse. The court found that the first degree murder of her infant was a form of the respondent's physical abuse of a child. The court first determined that the respondent was an unfit parent and then determined that termination of her parental rights was in S.F.'s best interests. The respondent was present at the hearings on her fitness and the child's best interests, but she did not testify. Prior to the appeal of this case, the Illinois Supreme Court in *In re D.W.*, 214 Ill. 2d 289 (2005), held subdivision D(q) of Section 1 of the Adoption Act unconstitutional because it required an irrebuttable presumption that a person convicted of aggravated battery, heinous battery, or attempted murder of a child is an unfit parent. Following the reasoning of *In re D.W.*, the appellate court in this case held that subdivision D(f) of Section 1 of the Adoption Act is also unconstitutional because under that subdivision the respondent's murder conviction mandated a finding of parental unfitness without consideration of factors that may rebut the presumptions as to parental unfitness and the child's best interests, such as circumstances of the crime, her efforts at rehabilitation, and the passage of time without other similar incidents.

Note: Public Act 94-939, effective January 1, 2007, amended Section 1 of the Adoption Act. Among other changes, Public Act 94-939 (i) made the presumption of parental unfitness due to physical abuse of a child under subdivision D(f) rebuttable by clear and convincing evidence, (ii) eliminated subdivision D(q) (the presumption of parental unfitness due to conviction of aggravated battery, heinous battery, or attempted murder of a child), and (iii) added a conviction of aggravated battery or heinous battery

of a child to those convictions (which already include attempted first or second degree murder of a child) constituting the presumption of parental unfitness due to depravity under subdivision D(i) that is rebuttable by clear and convincing evidence.

ADOPTION ACT - PARENTAL UNFITNESS

The presumption of parental unfitness based on depravity due to a conviction of aggravated criminal sexual assault was an inadvertent drafting error by the General Assembly, which intended the presumption to apply to the conduct that now constitutes the offense of predatory criminal sexual assault of a child.

In *In re Donald A.G.*, 221 Ill. 2d 234 (2006), a parent who had been found unfit under subdivision D(i) of Section 1 of the Adoption Act (750 ILCS 50/1 (West 2002)) argued that the trial court's unfitness findings were against the manifest weight of the evidence. Subdivision D(i) presumes parental unfitness based on depravity if the parent has been convicted of any of several offenses, including aggravated criminal sexual assault in violation of subsection (b)(1) of Section 12-14 of the Criminal Code of 1961 (720 ILCS 5/12-14) (but not including predatory criminal sexual assault of a child). The respondent had been convicted of predatory criminal sexual assault of a child. The Illinois Supreme Court held that (i) the General Assembly made an inadvertent drafting error in stating that the presumption of depravity applied to the offense of aggravated criminal sexual assault and (ii) the General Assembly intended for the presumption to apply to the conduct that now constitutes the offense of predatory criminal sexual assault of a child. Public Act 94-939, effective January 1, 2007, amended subdivision D(i) of Section 1 of the Adoption Act to replace the reference to "aggravated criminal sexual assault in violation of Section 12-14(b)(1) of the Criminal Code of 1961" with a reference to "predatory criminal sexual assault of a child in violation of Section 12-14.1" of the Code.

ILLINOIS DOMESTIC VIOLENCE ACT OF 1986 - TORT IMMUNITY

The Act's exemption of willful and wanton misconduct from liability immunity controls over the Local Governmental and Governmental Employees Tort Immunity Act's absolute immunity for the failure of local police to assist a domestic violence victim.

In *Moore v. Green*, 219 Ill. 2d 470 (2006), the appellate court ruled that the defendants (2 local police officers and a municipality) were not immune from liability under Section 305 of the Illinois Domestic Violence Act of 1986 (750 ILCS 60/305 (West 2002)) because their failure to assist a victim of domestic violence was willful and wanton misconduct. The defendants claimed absolute immunity under the Local Governmental and Governmental Employees Tort Immunity Act. Sections 4-102 and 4-107 of that Act (745 ILCS 10/4-102 and 10/4-107 (West 2002)) grant immunity to local public entities and public employees from liability for (i) failure to provide adequate police service or protection, (ii) failure to make an arrest, and (iii) release of a person in custody. The Illinois Supreme Court concluded that the General Assembly intended to include local police officers in the limited liability and immunity provision of the Illinois Domestic Violence Act of 1986 rather than the absolute immunity under the Local Governmental and Governmental Employees Tort Immunity Act. The court distinguished

this case from its decision in *Henrich v. Libertyville High School*, 186 Ill. 2d 381 (1999), because it was clear in *Henrich* that the General Assembly wanted to afford more protection to public schools than private schools. Here, the court reasoned that there was no indication that the General Assembly intended to afford more protection to one level of law enforcement than another. This holds true especially with the local police, who are most likely to handle domestic violence incidents. Thus, the immunity and liability provision of the Illinois Domestic Violence Act of 1986 applies to all law enforcement and preempts the absolute immunity granted under the Local Governmental and Governmental Employees Tort Immunity Act.

PROBATE ACT OF 1975 - GUARDIAN OF A MINOR

A trial court has the inherent common-law power to appoint the guardian of a minor and is not bound to proceed within the strictures of a statutory scheme.

In *In re Estate of Green*, 359 Ill. App. 3d 730 (1st Dist. 2005), a petitioner who sought to be appointed the guardian of a minor challenged the trial court's denial of the appointment on the basis of the petitioner's 10-year-old felony conviction. Subsection (a) of Section 11-3 of the Probate Act of 1975 (755 ILCS 5/11-3 (West 2004)) provides: "A person who … has not been convicted of a felony … is qualified to act as guardian". The appellate court held that a trial court's inherent power to appoint the guardian of a minor exists independently of any statute, including the Probate Act of 1975. When there exists a common law counterpart to a legislative enactment of a comprehensive scheme such as the Probate Act of 1975's provisions for the appointment of guardians of the persons and estates of minors, the court is not bound to proceed within the strictures of the statute.

Note: Public Act 94-579, effective August 12, 2005, amended Section 11-3 of the Probate Act of 1975 to permit appointment of a convicted felon as guardian of a minor if the court determines the appointment is in the minor's best interests, including consideration of the felon's offense, date of offense, and rehabilitation. A person convicted of a felony involving harm or threat to a child, including a felony sexual offense, may not be appointed guardian of a minor.

INTEREST ACT - CREDITOR ASSIGNEES

The assignee of a creditor who was exempt from the interest rate limitation may charge the same interest rate that the creditor was permitted to charge.

In *Olvera v. Blitt & Gaines, P.C.*, 431 F. 3d 285 (7th Cir. 2005), debtors appealed a federal district court decision holding that the assignees of creditors who were exempt from the maximum interest rate limitations of Sections 2 and 4 of the Interest Act (815 ILCS 205/2 and 205/4) also could charge higher rates. Section 5 of the Interest Act (815 ILCS 205/5) prohibits a person or corporation from charging a higher interest rate "than is expressly authorized by this Act or other laws of this State". The federal appellate court held that the State's "other laws" include the common law, which provides that an assignee assumes the same rights, as well as the same duties, as the assignor. The court said the debtors' argument that a non-exempt assignee can charge only the rate permitted by the Act would lead to the "senseless result" of providing that the assignee of a creditor

could not charge the same interest rate as that creditor, even though the assignee had assumed the expense necessary to collect the debt.

INTEREST ACT - ASSIGNEES OF DEBT

The assignee of a creditor who was exempt from the interest rate limitation may charge the same interest rate that the creditor was permitted to charge, even though the debt is not collected on behalf of the creditor.

In *PRA III, LLC v. Hund,* 364 Ill. App. 3d 378 (3rd Dist. 2006), the assignee of a bad credit card debt filed a complaint to recover the debt and the interest on the debt. The debtor counterclaimed that the assignee, by charging interest in excess of 9%, had violated the Interest Act because the assignee was not a party to the original contract that allowed for the increased interest. Section 2 of the Interest Act (815 ILCS 205/2 (West 2002)) limits interest charged by creditors to 5% except as outlined in Section 4 of the Act (815 ILCS 205/4 (West 2002)), which allows parties to contract for 9% interest or greater subject to certain restrictions. Section 2 also provides for the collection of the debt by an agent or assignee of the debt on behalf of a creditor. The Illinois Supreme Court dismissed the debtor's counterclaim and held that Section 4 of the Interest Act applies to assignees of a debt who wish to continue to collect the original contracted amount of interest on that debt, even though the debt is not collected on behalf of the original creditor. The court stated that the legislature had specifically recognized the assignability of a creditor's right in Section 2 and that the legislature was aware that an assignment of rights would extinguish the right of the original creditor to the benefits of the loan. The court reasoned that the phrase "on behalf of a creditor" in Section 2 was therefore surplusage.

INTEREST ACT - MORTGAGE NON-INTEREST CHARGES

The provision limiting the non-interest mortgage costs a lender may charge was implicitly repealed by changes in other provisions of the Act and was preempted by the federal Depository Institutions Deregulation and Monetary Control Act of 1980.

In *U.S. Bank National Association v. Clark*, 216 Ill. 2d 334 (2005), mortgage loan borrowers counterclaimed against their lenders, alleging that the mortgage costs charged by the lenders exceeded 3% and thus violated Section 4.1a of the Interest Act (815 ILCS 205/4.1a (West 2004)). While Section 4.1a restricts the non-interest mortgage costs to 3% when the loan interest rate exceeds 8%, Section 4 of the Act (815 ILCS 205/4 (West 2002)) was amended in 1981 to permit lenders to charge unlimited non-interest costs on any mortgage loan. Further, the preempted state statutes that limited purchase money and refinancing mortgage loans unless a state overrode the preemption by one of the specified methods. Before ultimately holding that the federal Depository Institutions Deregulation and Monetary Control Act of 1980 preempted the Interest Act and therefore barred the counterclaim, the court held that the 1981 amendment to Section 4 of the Interest Act implicitly repealed the 3% limit in Section 4.1a. The court stated that subsequent 1992 amendments to Section 4.1a added subparts but did not expressly re-enact the statute. Finally, the court stated that none of the amendments was sufficient to meet the opt-out

provisions set by the Depository Institutions Deregulation and Monetary Control Act of 1980.

CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT - APPLICABILITY TO OUT-OF-STATE TRANSACTIONS

The Act provides a private cause of action only when the circumstances relating to the disputed transaction occurred primarily and substantially in Illinois.

In *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100 (2005), the defendant in a class action suit under the Consumer Fraud and Deceptive Business Practices Act challenged the applicability of the Act to business transactions that occurred outside the State of Illinois. Section 2 of the Act (815 ILCS 505/2 (West 1998)) prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce. Subsection (f) of Section 1 (815 ILCS 505/1) defines "trade" and "commerce" to include "any trade or commerce directly or indirectly affecting the people of this State". Noting that the language of subsection (f) is ambiguous, the court relied on the legislative history of the provision in holding that the General Assembly did not intend the Act to apply to fraudulent transactions that take place outside of Illinois. The court also depended on the "long-standing rule of construction in Illinois" to the effect that a statute has no extraterritorial effect unless the intent to give it such effect appears in the language of the provision itself. The court held that a plaintiff may pursue a private action under the Act only if the circumstances relating to the disputed transaction occurred "primarily and substantially" in Illinois, a determination the court said would have to be made on a case-by-case basis. The Act did not apply to the out-of-State plaintiffs in the present case, the court said, because the "overwhelming majority of the circumstances" relating to the defendant's allegedly fraudulent handling of their insurance claims occurred outside of Illinois.

EMPLOYMENT OF STRIKEBREAKERS ACT - DAY AND TEMPORARY WORKERS

The prohibition against knowingly contracting with a day and temporary labor service agency to provide replacement labor during a lockout or strike is preempted by the National Labor Relations Act.

In *520 Michigan Ave. Associates v. Devine*, 433 F. 3d 961 (7th Cir. 2006), the Congress Plaza Hotel & Convention Center, who had contracted with day or temporary labor service agencies to provide replacement workers for its regular employees during a strike, challenged the provisions of the Employment of Strikebreakers Act that criminalized an employer's execution of such contracts. Section 2 of the Employment of Strikebreakers Act (820 ILCS 30/2) was amended by Public Act 93-375, effective January 1, 2004, to prohibit a business from knowingly contracting with a day and temporary labor service agency to provide replacement labor for an employee whose work had ceased due to a lockout or strike. The court held that Section 2 is preempted by the federal National Labor Relations Act. The court reasoned that under federal law an employer is free to hire temporary or permanent replacement workers in the same way as workers are free to withhold their labor by striking.

ILLINOIS WAGE PAYMENT AND COLLECTION ACT - DEFINITION OF EMPLOYER

In addition to the employer itself, only an officer or agent of the employer who permits the employer to violate the Act may be treated as an employer.

In *Andrews v. Kowa Printing Corp.*, 217 Ill. 2d 101 (2005), employees of a company that went out of business sought severance pay and the monetary equivalent of unpaid vacation time under Section 5 of the Illinois Wage Payment and Collection Act (820 ILCS 115/5 (West 2002)). The appellate court found that the company's sole shareholder and a related corporation in which the same person owned a 97% interest were not also liable, even though they also apparently met the Act's definition of "employer". Although Section 2 of the Act (820 ILCS 115/2 (West 2002)) provides that the definition includes "any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee", the Illinois Supreme Court held that a literal reading of the provision would produce the "absurd" result of making an "employer" out of any person with the slightest degree of authority over another employee. The court also said that a literal reading of Section 2 would render superfluous Section 13 of the Act (820 ILCS 115/13 (West 2002)), which provides that if an officer of a corporation or an agent of an employer permits the employer to violate the Act, that officer or agent shall be deemed an employer of the employees of the corporation. Section 13, rather than Section 2, defines who may be treated as an "employer" under the Act, in addition to the employer itself.

PREVAILING WAGE ACT - SUBCONTRACTOR'S EMPLOYEES

The general contractor of a public building project is not liable for a subcontractor's failure to pay the prevailing rate of wages to the subcontractor's employees.

In *Cement Masons Pension Fund v. William A. Randolph, Inc.*, 358 Ill. App. 3d 638 (1st Dist. 2005), the fringe benefit funds of a subcontractor's employees sued the general contractor of a public building project for the failure of that subcontractor to pay the employees the prevailing rate of wages under the Prevailing Wage Act. Section 11 of the Act (820 ILCS 130/11 (West 1998)) requires the payment of prevailing wages under public construction contracts and authorizes a subcontractor's employee to sue for the difference between wages owed under the contract and any lesser amount of wages actually paid. The court held that Section 11, when read with the rest of the Act, does not impose a duty on a contractor to pay its subcontractor's employees the prevailing rate of wages when its subcontractor does not pay the prevailing rate of wages as required by the Act.

WORKERS' COMPENSATION ACT - INTEREST ON MEDICAL EXPENSES AWARD

The Act authorizes interest on an award of medical expenses.

In *Vulcan Materials Co. v. Industrial Commission*, 362 Ill. App. 3d 1147 (1st Dist. 2005), a claimant was entitled to interest on his medical expenses award that his employer was directed to pay under the Workers' Compensation Act (820 ILCS 305/). The employer contended that medical expenses included in an award are not compensation under the Act and thus not subject to an award of interest under subsection (n) of Section 19 of the Act (820 ILCS 305/19 (West 2002)). The court rejected the employer's argument because subsection (n) of Section 19 addresses interest on arbitration awards in cases where the employer disputes its liability and thus compensates a claimant for a delay in receiving payment of an arbitration award.

INTRODUCTION TO PART 2

Part 2 of this 2006 Case Report contains all the Illinois statutes that LRB research has found that have been held unconstitutional and remain in the Illinois Compiled Statutes without having been changed in response to the holding of unconstitutionality.

PART 2
CUMULATIVE REPORT OF STATUTES HELD UNCONSTITUTIONAL AND NOT AMENDED OR REPEALED IN RESPONSE TO THE HOLDING OF UNCONSTITUTIONALITY

GENERAL PROVISIONS

5 ILCS 315/ (West 1992). **Illinois Public Labor Relations Act.** Application of the Act by the State Labor Relations Board to employees of the Illinois Supreme Court violated the separation of powers doctrine by infringing upon the court's administrative and supervisory powers granted under the Illinois Constitution, Art. VI, Sec. 18. *Administrative Office of the Illinois Courts v. State and Municipal Teamsters, Chauffeurs and Helpers Union, Local 726, International Brotherhood of Teamsters, AFL-CIO*, 167 Ill. 2d 180 (1995).

5 ILCS 350/2 (P.A. 89-688). **State Employee Indemnification Act.** Provision amended by P.A. 89-688 is unconstitutional because P.A. 89-688 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. *People v. Foster*, 316 Ill. App. 3d 855 (4th Dist. 2000), and *People v. Burdunice*, 211 Ill. 2d 264 (2004). (These cases are also reported in this Part 2 of this Case Report under "Criminal Procedure" and "Corrections".)

ELECTIONS

10 ILCS 5/2A-1 and 5/2A-9 (P.A. 89-719). **Election Code.** (See *Cincinnati Insurance Co. v. Chapman*, 181 Ill. 2d 65 (1997), reported in this Part 2 of this Case Report under "Courts", concerning the inseverability of unconstitutional provisions of the Judicial Redistricting Act of 1997 enacted by P.A. 89-719.)

10 ILCS 5/7-10. Election Code. Provision (Ill. Rev. Stat., ch. 46, par. 7-10) that requires candidates for ward committeeman in the city of Chicago to meet higher nomination petition signature requirements than candidates for township committeeman in Cook County violates the equal protection clause by burdening the right of individuals to associate for the advancement of political beliefs and the right of voters to cast their votes effectively by creating a geographical classification substantially injuring the voters and candidates of the city of Chicago despite less burdensome alternatives. *Smith v. Board of Election Commissioners of the City of Chicago*, 587 F. Supp. 1136 (N.D. Ill. 1984) and G*jersten v. Board of Election Commissioners for the City of Chicago*, 791 F. 2d 472 (7th Cir. 1986).

10 ILCS 5/7-10.1 (Ill. Rev. Stat. 1971, ch. 46, par. 7-10.1). **Election Code.** In the Article concerning nominations by political parties, the form for a petition or certificate of nomination contains a loyalty oath. The loyalty oath provision was held unconstitutional as vague and overly broad, violating the U.S. Constitution, Amendments I and XIV. *Communist Party of Illinois v. Ogilvie*, 357 F. Supp. 105 (N.D. Ill. 1972).

10 ILCS 5/7-43 (Ill Rev. Stat., ch. 46, par. 7-43). **Election Code.** Provision prohibiting a person from voting in a political party primary if the person voted in another political party's primary in the preceding 23 months was held to substantially burden that person's right to vote in derogation of Article I, Section 2 of the U.S. Constitution. The court also found the "23 month rule" to be a significant incursion on a person's right of free association and declared the provision null and void. *Kusper v. Pontikes*, 94 S. Ct. 303 (1973).

10 ILCS 5/7A-1 (West 2004). **Election Code**. The statutory deadline for Illinois Supreme, Appellate, and Circuit Judges to file declarations of candidacy to succeed themselves in office (the first Monday in December before the general election preceding the expiration of their terms of office) impermissibly conflicts with the deadline for filing those declarations to seek judicial retention established in Section 12 of Article VI of the Illinois Constitution (ILCON Art. VI, Sec. 12), which is 6 months before the general election preceding the expiration of their terms of office. *O'Brien v. White*, 219 Ill. 2d 86 (2006).

10 ILCS 5/10-2. Election Code. In the Article concerning the making of nominations in certain other cases, a provision (Ill. Rev. Stat. 1941, ch. 46, par. 291) prohibits a political organization or group from being qualified as a political party and assigned a place on the ballot if the organization or group is associated, directly or indirectly, with Communist, Fascist, Nazi, or other un-American principles and engages in activities or propaganda designed to teach subservience to the political principles and ideals of foreign nations or the overthrow by violence of the federal or State constitutional form of government. The provision is unconstitutionally vague, lacking the definiteness required in a statute affecting the rights of a political group to appeal to the electorate. Identical language is used in a similar context in 10 ILCS 5/7-2 and 5/8-2. *Feinglass v. Reinecke*, 48 F. Supp. 438 (N.D. Ill. 1942).

Provision (Ill. Rev. Stat. 1989, ch. 46, par. 10-2) regarding establishment of a new political party is invalid to the extent it requires more signatures to form a new political party in a multidistrict subdivision than it does for a statewide new political party. Violates the U.S. Constitution, Amendments I and XIV. *Norman v. Reed*, 112 S. Ct. 698 (1992).

10 ILCS 5/10-5 (Ill. Rev. Stat. 1989, ch. 46, par. 10-5). **Election Code.** Prohibition against new party candidates in one political subdivision from using the same party name as that of a party in a different subdivision is broader than necessary to protect

the State's interest in prohibiting candidates from adopting the name of a political party with which they are not affiliated. Violates Amendments I and XIV of the U.S. Constitution. *Norman v. Reed,* 112 S. Ct. 698 (1992).

EXECUTIVE BRANCH

20 ILCS 505/5 (Ill. Rev. Stat., ch. 23, par. 5005). **Children and Family Services Act**.

225 ILCS 10/2.05 and 10/2.17 (Ill. Rev. Stat., ch. 23, pars. 2212.05 and 2212.17). **Child Care Act of 1969**.

Provisions of the Children and Family Services Act and the Child Care Act of 1969 that deny AFDC-FC (foster care) payments to foster parents who are related to the foster children they care for conflict with the Social Security Act and are unconstitutional as violating that Act and therefore the supremacy clause of the U.S. Constitution. *Youakim v. Miller,* 431 F. Supp. 40 (N.D. Ill. 1976).

The transition schedule provided by Section 5 of the Children and Family Services Act for discontinuing foster care payments to any foster family homes other than licensed foster family homes violates the due process rights of pre-approved and approved foster family homes guaranteed by the U.S. Constitution, Amend. XIV. *Youakim v. McDonald*, 71 F. 3d 1274 (7th Cir. 1995).

LEGISLATURE

25 ILCS 115/1 (Ill. Rev. Stat. 1991, ch. 63, par. 14). **General Assembly Compensation Act**. Amendatory changes made to this Section by P.A. 86-27 provide for annual, lump sum additional payments to certain legislators in leadership positions. Because P.A. 86-27 further provided that the pay raises were to be effective retroactively, the legislation is unconstitutional to the extent it allowed for a change in a legislator's salary during the term for which he or she was elected. *Rock v. Burris*, 139 Ill. 2d 494 (1990).

25 ILCS 120/5.5 (West 2002). **Compensation Review Act**. Section denying the fiscal year 2003 cost-of-living adjustment to the salaries of State officials (previously recommended by the Compensation Review Board and not disapproved by the General Assembly) is unconstitutional with respect to salaries of State judges because it violates the Illinois Constitution's separation of powers clause (ILCON Art. II, Sec. 1) and prohibition against decreasing a judge's salary during his or her term (ILCON Art. VI, Sec. 14). *Jorgensen v. Blagojevich,* 211 Ill. 2d 286 (2004).

FINANCE

30 ILCS 5/3-1 (West 2000). **Illinois State Auditing Act**. Requirement that the Auditor General perform compliance and management audits of various Chicago airports exceeds the Auditor General's authority under subsection (b) of Section 3 of Article VIII of the Illinois Constitution (ILCON Art. VIII, Sec. 3) to audit public funds of the State,

because the airports' funds are not appropriated by the General Assembly but are derived from user fees and federal grants. *City of Chicago v. Holland*, 206 Ill. 2d 480 (2003).

30 ILCS 105/5.400 (P.A. 88-680). **State Finance Act.** Provision added by P.A. 88-680 is unconstitutional because P.A. 88-680 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. P.A.s 91-54, 91-155, 91-404, 91-690, 91-691, 91-692, 91-693, 91-694, 91-695, and 91-696 re-enacted portions, but not all, of the substance of P.A. 88-680. *People v. Dainty*, 299 Ill. App. 3d 235 (3rd Dist. 1998), *People v. Williams*, 302 Ill. App. 3d 975 (2nd Dist. 1999), *People v. Edwards*, 304 Ill. App. 3d 250 (2nd Dist. 1999), and *People v. Cervantes*, 189 Ill. 2d 80 (1999). (These cases are also reported in this Part 2 of this Case Report under "Courts" and "Corrections" and in Part 3 of this Case Report under "Criminal Offenses".)

30 ILCS 560/ (Ill. Rev. Stat. 1981, ch. 48, par. 269 *et seq.*). **Public Works Preference Act.** Act is completely unconstitutional because it requires that only Illinois laborers may be used for building public works, which violates the privileges and immunities clause of the U.S. Constitution. *People ex rel. Bernardi v. Leary Construction Co., Inc.*, 102 Ill. 2d 295 (1984).

REVENUE

35 ILCS 5/203 (Ill. Rev. Stat. 1979, ch. 120, par. 2-203). **Illinois Income Tax Act.** Department of Revenue's construction of provision that any corporation which is a member of an affiliated group of corporations filing a consolidated federal income tax return, incurring a net operating loss on a separate Illinois income tax return basis, be deemed to have made the election provided in the Internal Revenue Code (that is, to relinquish the entire carryback period and only carry forward the loss) violates the uniformity of taxation clause of Article IX, Section 2 of the Illinois Constitution as to corporate taxpayers of an affiliated group which files a consolidated federal income tax return reflecting a net operating loss, which operating loss the parent company does not elect to carry forward. *Searle Pharmaceuticals, Inc. v. Department of Revenue*, 117 Ill. 2d 454 (1987).

35 ILCS 200/20-180 and 200/20-185. Property Tax Code. Provisions (formerly part of the Uncollectable Tax Act, Ill. Rev. Stat. 1981, ch. 120, pars. 891 and 891.1) that allow a municipality to cancel bonds and use moneys collected for similar projects after revenues that were specified to secure the bonds are deemed uncollectable are an unconstitutional impairment of contractual obligations. *George D. Hardin, Inc. v. Village of Mt. Prospect*, 99 Ill. 2d 96 (1983).

35 ILCS 520/ (Ill. Rev. Stat. 1989, ch. 120, par. 2151 *et seq.*). **Cannabis and Controlled Substances Tax Act.** Statute is invalid and cannot be applied if the defendant

has been convicted of criminal charges involving the same contraband. Violates the double jeopardy provisions of the U.S. and Illinois constitutions. *Department of Revenue of Montana v. Kurth*, 114 S. Ct. 1937 (1994).

35 ILCS 635/20 (West 1998). **Telecommunications Municipal Infrastructure Maintenance Fee Act.** Application of the Act's municipal infrastructure maintenance fee, imposed upon telecommunications providers to compensate a municipality for access to public rights-of-way, equally to wireless telecommunications providers that do not own or operate equipment on public rights-of-way as to landline telecommunications providers that do own or operate equipment on public rights-of-way violates the uniformity clause of Section 2 of Article IX of the Illinois Constitution. *Primeco Personal Communications, L. P. v. Illinois Commerce Commission*, 196 Ill. 2d 70 (2001).

PENSIONS

40 ILCS 5/5-128 and 5/5-167.1 (Ill. Rev. Stat. 1989, ch. 108 1/2, pars. 5-128 and 5-167.1). **Illinois Pension Code.** Amendatory changes in P.A. 86-272, which fix a police officer's pension as of the date of withdrawal from service rather than attainment of age 63, result in a taking of property without due process of law in violation of the Fourteenth Amendment to the United States Constitution when applied to retired police officers whose pensions consequently decreased. *Miller v. Retirement Board of Policemen's Annuity and Benefit Fund of the City of Chicago*, 329 Ill. App. 3d 589 (1st Dist. 2002).

TOWNSHIPS

60 ILCS 1/65-35 (Ill. Rev. Stat. 1967, ch. 53, par. 55.6). **Township Code.** Provision that allows a 2% commission on all moneys collected by a township collector to be deposited into the township treasury and to be used for local, rather than countywide, purposes is an unconstitutional violation of the uniformity of taxation clause of the Illinois Constitution. *Flynn v. Kucharski*, 45 Ill. 2d 211 (1970).

MUNICIPALITIES

65 ILCS 5/10-2.1-6 (Ill. Rev. Stat. 1977, ch. 24, par. 10-2.1-6). **Illinois Municipal Code.** Provision that prohibits appointing a person with a limb amputated to the police or fire department for anything but clerical or radio operator duties violates the Illinois Constitution, which prohibits discrimination against persons with a physical handicap. *Melvin v. City of West Frankfort*, 93 Ill. App. 3d 425 (5th Dist. 1981).

65 ILCS 5/11-13-1 (Ill. Rev. Stat. 1973, ch. 24, par. 11-13-1). **Illinois Municipal Code**. Statute authorizing a municipality to exercise zoning powers extraterritorially (that is, within a 1½-mile area contiguous to the municipality) was amended by P.A. 77-1373 (approved August 31, 1971) to add, as a permitted purpose of zoning regulation, the preservation of historically, architecturally, or aesthetically

important features. P.A. 77-1373 also provided: "This amendatory Act of 1971 does not apply to any municipality which is a home rule unit.". Because a municipality has extraterritorial zoning authority only as granted by the legislature and not under its home rule powers, that added sentence, if valid, creates the incongruous situation of non-home rule municipalities being able to zone extraterritorially while home rule municipalities cannot. The sentence creates an unconstitutional classification and is void. (The court apparently read "this amendatory Act of 1971" to refer to the entire Section rather than to just the statement of purpose added by P.A. 77-1373.) *City of Carbondale v. Van Natta*, 61 Ill. 2d 483 (1975).

SPECIAL DISTRICTS

70 ILCS 705/14.14 (West 1992). **Fire Protection District Act.** Provision permitting disconnection of territory in a non-home rule municipality in a county with a population between 500,000 and 750,000 is unconstitutional as special legislation because the population limit is an arbitrary classification. *In re Petition of Village of Vernon Hills*, 168 Ill. 2d 117 (1995).

70 ILCS 705/19a (Ill. Rev. Stat. 1983 Supp., ch. 127½, par. 38.2a). **Fire Protection District Act.** Provision permitting transfer of territory in counties with a population of more than 600,000 but less than 1,000,000 is special legislation because the population limit is an arbitrary classification. *In re Belmont Fire Protection District*, 111 Ill. 2d 373 (1986).

SCHOOLS

105 ILCS 5/1B-20 (West 1994). **School Code.** Provision that authorizes a State Board of Education-appointed financial oversight panel to remove members of a local school board from office and does not require that the members be given notice of or a hearing on the removal charges is unconstitutional as applied to members who were not given notice or a hearing because that lack of notice or hearing violates the members' procedural due process rights. *East St. Louis Federation of Teachers v. East St. Louis School District*, 178 Ill. 2d 399 (1997).

105 ILCS 5/3-1 (Ill. Rev. Stat., ch. 122, par. 3-1). **School Code**. Provision requiring candidate for office of regional superintendent to have taught at least 2 of previous 4 years in Illinois is unconstitutional as a violation of the equal protection clause because the statute is not rationally related to the State's interest of ensuring that candidates be familiar with the School Code and other Illinois school regulations. *Hammond v. Illinois State Board of Education*, 624 F. Supp. 1151 (S.D. Ill. 1986).

105 ILCS 5/24-2. School Code. This Section provides that Good Friday is a legal school holiday and that teachers and other school employees shall not be required to work

on legal holidays. The Good Friday provision promotes one religion over another and violates the establishment clause of the U.S. Constitution. *Metzl v. Leininger*, 57 F. 3d 618 (7th Cir. 1995).

HIGHER EDUCATION

110 ILCS 310/1 (P.A. 89-5, eff. 1-1-96). **University of Illinois Trustees Act.** A portion of Section 1 removing elected trustees from office midterm in order to create an appointed board violates the right to vote guaranteed by the Illinois Constitution, Art. III, Sec. 18. *Tully v. Edgar*, 171 Ill. 2d 297 (1996).

FINANCIAL REGULATION

205 ILCS 105/1-6 and 105/1-10.10 (Ill. Rev. Stat. 1957, ch. 32, pars. 706 and 710). **Illinois Savings and Loan Act**. Provisions authorizing a savings and loan association to obtain and maintain insurance on its withdrawable capital by the FSLIC or another federal instrumentality or federally chartered corporation violates the Illinois Constitution because it deprives both savings and loan associations and private insurance companies of their freedom to contract and it deprives private insurance companies of property without due process. There is no indication that a federally chartered corporation is more financially sound or better able to insure the accounts than a private corporation authorized to do business in Illinois and under the supervision of the Director of Insurance. (P.A. 86-137 amended the Act to add the FDIC as an eligible insurance corporation; P.A. 93-271 removed the FSLIC; but neither P.A. mentioned private insurers.) *City Savings Association v. International Guaranty and Insurance Co.*, 17 Ill. 2d 609 (1959).

INSURANCE

215 ILCS 5/143.01 (Ill. Rev. Stat. 1985, ch. 73, par. 755.01). **Illinois Insurance Code.** Subsection (b) of Section 143.01 prohibits the invocation of a vehicle insurance policy provision excluding coverage for bodily injury to members of the insured's family when the driver is not a member of the insured's household and further provides that the prohibition shall apply to any action filed on or after the effective date of the subsection (that is, the effective date of P.A. 83-1132, which added Section 143.01 to the Code). Retroactive application of the subsection to insurance policies issued before the effective date of P.A. 83-1132 constitutes an impairment of the obligation of contracts in violation of Section 10 of Article I of the Illinois Constitution. *Prudential Property & Casualty Insurance Co. v. Scott*, 161 Ill. App. 3d 372 (4th Dist. 1987).

UTILITIES

220 ILCS 5/8-402.1. Public Utilities Act. Requirements that Illinois utilities, in complying with federal Clean Air Act amendments, take into account the need to use Illinois coal, preserve the Illinois coal industry, and install pollution control devices in

order to burn Illinois coal are too great a burden on interstate commerce. *Alliance for Clean Coal v. Craig*, 840 F. Supp. 554 (N.D. Ill. 1993).

220 ILCS 5/10-201 (Ill. Rev. Stat. 1985, ch. 111 2/3, par. 10-201). **Public Utilities Act.** Provisions relating to review of decisions by the Illinois Commerce Commission are unconstitutional to the extent that the procedures for direct review conflict with Supreme Court Rule 335 (for instance, subsection (e)(i) gives priority over other cases before the court and is an unwarranted intrusion into the court's power to control its docket *Consumers Gas Co. v. Ill. Commerce Comm.*, 144 Ill. App. 3d 229 (5th Dist. 1986).

PROFESSIONS AND OCCUPATIONS

225 ILCS 10/2.05 and 10/2.17 (Ill. Rev. Stat., ch. 23, pars. 2212.05 and 2212.17). **Child Care Act of 1969**. Provisions that deny AFDC-FC (foster care) payments to foster parents who are related to the foster children they care for conflict with the Social Security Act and are unconstitutional as violating that Act and therefore the supremacy clause of the U. S. Constitution. *Youakim v. Miller*, 431 F. Supp. 40 (N.D. Ill. 1976). (This case is also reported in this Part 2 of this Case Report under "Executive Branch".)

225 ILCS 25/31 (Ill. Rev. Stat. 1987, ch. 111, par. 2332). **Illinois Dental Practice Act.** Provision stating that, during review of a suspension under the Administrative Review Law, the suspension shall remain in full force and effect prohibits courts from exercising their inherent equitable powers to issue stays. To this extent, the Section is unconstitutional. (P.A. 88-184 limits the provision to acts or omissions related to direct patient care and states that as a matter of public policy suspension may not be stayed pending final resolution.) *Ardt v. Ill. Dept. of Professional Regulation*, 154 Ill. 2d 138 (1992).

225 ILCS 60/26 (West Supp. 1999). **Medical Practice Act of 1987.** Ban on a licensee's use of testimonials to entice the public violates the First and Fourteenth Amendments to the U.S. Constitution by disproportionately prohibiting all truthful speech for the State's goal of regulating the medical profession. *Snell v. Department of Professional Regulation*, 318 Ill. App. 3d 972 (4th Dist. 2001).

LIQUOR

235 ILCS 5/6-16 (West 2000). **Liquor Control Act of 1934.** Subsection (c), which makes it a Class A misdemeanor if a person knowingly permits the departure of an intoxicated minor from a gathering at the person's residence of which the person has knowledge and at which the person knows a minor is illegally possessing or consuming liquor, is unconstitutionally vague in violation of the 14th Amendment of the U.S.

Constitution because it fails to provide a person with notice as to how to avoid violating the subsection. *People v. Law*, 202 Ill. 2d 578 (2002).

235 ILCS 5/7-5 and 5/7-9 (Ill. Rev. Stat. 1967, ch. 43, pars. 149 and 153). **Liquor Control Act of 1934**. Provision permitting liquor licensees in a municipality of less than 500,000 inhabitants whose licenses are revoked by the local liquor control commissioner and who appeal the revocations to the Illinois Liquor Control Commission to resume the operation of their businesses pending decisions by the Commission but not affording licensees in municipalities of 500,000 or more inhabitants who appeal revocations of their licenses to the License Appeal Commission a similar privilege is unconstitutional as a violation of the special legislation provision of the 1870 Illinois Constitution. (Article IV, Section 13 of the 1970 Constitution prohibits the General Assembly from passing special legislation when a general law can be made applicable.) There is no rational basis for the different treatment of licensees based upon differences in the population of the municipalities where the licensed premises are located. Absent legislative modification of the offending provision, licensees in all municipalities must be permitted to resume operation during the pendency of an administrative appeal from the order of a local liquor control commissioner. *Johnkol, Inc. v. License Appeal Commission*, 42 Ill. 2d 377 (1969).

235 ILCS 5/8-1 (Ill. Rev. Stat. 1985, ch. 43, par. 158). **Liquor Control Act of 1934.** The Department of Revenue taxed wine coolers and certain low-alcohol drinks at different rates pursuant to its interpretation of the Section 8-1 tax classification system. Because there is no real and substantial difference between wine coolers made by adding wine to fruit juices and the low-alcohol drinks made by adding distilled alcohol, the provision violates the uniformity clause of Section 2 of Article IX of the Illinois Constitution to the extent the provision does not provide for the equal taxation of wine coolers and the low-alcohol drinks. *Federated Distributors, Inc. v. Johnson*, 125 Ill. 2d 1 (1988).

235 ILCS 5/9-2. Liquor Control Act of 1934. Provision (Ill. Ann. Stat. 1990, ch. 43, par. 167) permitting a precinct in a city with a population exceeding 200,000 to vote a single "licensed establishment" dry is an unconstitutional violation of due process because the procedural safeguards inherent in an election to vote the entire precinct dry (also permitted under the statute) are not present. P.A. 88-613 subsequently amended the provision to substitute "street address" for "licensed establishment". *87 So. Rothschild Liquor Mart v. Kozubowski*, 752 F. Supp. 839 (N.D. Ill. 1990).

Provision permitting a precinct in a city with a population exceeding 200,000 to prohibit by referendum the sale of alcoholic beverages at a particular street address is an unconstitutional deprivation of the liquor licensee's property without due process because due process forbids voters passing judgment on an existing business. *Club Misty, Inc. v. Laski*, 208 F. 3d 615 (7th Cir. 2000).

PUBLIC AID

305 ILCS 5/5-13 (West 2002). **Illinois Public Aid Code**. Provision permitting the State to recover the amount of medical assistance payments to an individual from the estate of the individual's surviving spouse violates the supremacy clause of Article VI of the United States Constitution because the federal Social Security Act prohibits such recovery unless a state expands the definition of the individual's estate beyond its probabte law concept, which Illinois has done only with respect to medical assistance recipients who have long term care insurance. *Hines v. Department of Public Aid*, 221 Ill. 2d 222 (2006).

MENTAL HEALTH

405 ILCS 5/3-806 (West Supp. 1995). **Mental Health and Developmental Disabilities Code**. Provisions allowing a civil commitment hearing to take place without the respondent when the respondent has not voluntarily, intelligently, and knowingly waived his or her right to be present violate the due process clause of the U.S. Constitution. *In re Barbara H.*, 288 Ill. App. 3d 360 (2nd Dist. 1997). While affirming in part and reversing in part on other grounds, the Illinois Supreme Court declined to review the provision's constitutionality in *In re Barbara H.*, 183 Ill. 2d 482 (1998).

NUCLEAR SAFETY

420 ILCS 15/ (Ill. Rev. Stat., ch. 111½, par. 230.1 *et seq.*). **Spent Nuclear Fuel Act**. Act is unconstitutional because (i) by banning the storage and shipment for storage of spent nuclear fuel in Illinois merely because the spent fuel or its shipment originated out of State, the Act arbitrarily burdens interstate commerce in violation of the commerce clause (U.S. Constitution, Art. I, Sec. 8) and (ii) the federal Atomic Energy Act preempts state regulation of the storage and shipment for storage of spent nuclear fuel, and Illinois' Spent Nuclear Fuel Act therefore violates the supremacy clause (U.S. Constitution, Art. VI, cl. 2). *People of the State of Illinois v. General Electric Co.*, 683 F. 2d 206 (7th Cir. 1982).

PUBLIC SAFETY

430 ILCS 70/ (Ill. Rev. Stat. 1983, ch. 38, par. 85-1 *et seq.*). **Illinois Public Demonstrations Law.** The entire Act is unconstitutional because the term "principal law enforcement officer", used throughout the Act, is impermissibly vague. *People v. Bossie*, 108 Ill. 2d 236 (1985).

FISH

515 ILCS 5/5-25 (Ill. Rev. Stat. 1989, ch. 56, par. 2.4). **Fish and Aquatic Life Code.** It is a violation of due process to make it a Class 3 felony not to have a license in one's possession, or not to have a tag on a net, which are ordinarily misdemeanor offenses, for commercial fishermen who are otherwise fishing legally and taking over $300 worth of fish. *People v. Hamm*, 149 Ill. 2d 201 (1992). (In *People v. Sharpe*, 216 Ill. 2d 481

(2005), the Illinois Supreme Court overturned cases that held a penalty disproportionate through cross-comparison of the offense to a less harshly punished but more serious offense with different elements; the court maintained the validity of disproportionality determinations based on analysis of differently punished offenses with identical elements or the cruel and excessive nature of a penalty. The effect of *People v. Sharpe* upon penalties for offenses with the "same" elements is unclear.)

VEHICLES

625 ILCS 5/4-102 (West 1996). **Illinois Vehicle Code.** Provisions punishing unauthorized tampering with or damaging, moving, or entry of a vehicle, without requiring a criminal mental state, impose absolute liability for unintended conduct in violation of the due process guarantees of the 14th Amendment to the U.S. Constitution and Art. I, Sec. 2 of the Illinois Constitution. *In re K.C.*, 186 Ill. 2d 542 (1999).

625 ILCS 5/4-103.2 (West 2000). **Illinois Vehicle Code.** Subsection (b)'s inference that a person exercising unexplained possession of a stolen or converted automobile is presumed to know the car is stolen or converted, regardless of the remote date of its theft or conversion, violates the due process guarantee of Section 2 of Article I of the Illinois Constitution as applied to the possessor of special mobile equipment because the same extensive ownership records and procedures that justify the presumption for automobile possession do not exist for special mobile equipment. *People v. Greco*, 204 Ill. 2d 400 (2003).

625 ILCS 5/4-104 (Ill. Rev. Stat. 1987, ch. 95½, par. 4-104). **Illinois Vehicle Code.** Provision that makes it a Class 2 felony for a motor vehicle owner to alter his or her own temporary registration permit is unconstitutional (i) as a violation of due process because it was not a reasonable penalty for the crime and (ii) as a violation of the proportionate penalties requirement because altering one's own registration permit cannot be equated with possession of a stolen motor vehicle, yet both offenses are classified as a Class 2 felony. *People v. Morris*, 136 Ill. 2d 157 (1990). (In *People v. Sharpe*, 216 Ill. 2d 481 (2005), the Illinois Supreme Court overturned cases that held a penalty disproportionate through cross-comparison of the offense to a less harshly punished but more serious offense with different elements; the court maintained the validity of disproportionality determinations based on analysis of differently punished offenses with identical elements or the cruel and excessive nature of a penalty. The effect of *People v. Sharpe* upon penalties for offenses with the "same" elements is unclear.)

625 ILCS 5/4-209 (Ill. Rev. Stat., ch. 95½ , par. 4-209). **Illinois Vehicle Code.** Provision for post-tow notice by U.S. mail to owner of impounded abandoned vehicle more than 7 years old is unconstitutional. Due process requires notice by certified mail, return receipt requested, for all vehicles. *Kohn v. Mucia*, 776 F. Supp. 348 (N.D. Ill. 1991).

625 ILCS 5/6-208.1 (P.A. 89-203). **Illinois Vehicle Code.** Provision amended by P.A. 89-203 is unconstitutional because P.A. 89-203 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. (Although P.A. 89-203 also amended Section 11-501 of the Illinois Vehicle Code (625 ILCS 5/11-501), those changes to Section 11-501 were removed by Public Act 93-800, effective January 1, 2005.) *People v. Wooters*, 188 Ill. 2d 500 (1999). (This case is also reported in this Part 2 of this Case Report under "Criminal Offenses", "Corrections", and "Civil Procedure".)

625 ILCS 5/8-105. Illinois Vehicle Code. Provision of 1923 motor vehicle law that surety bond of owner of motor vehicle used for transportation of passengers becomes a lien on real estate scheduled in the bond, without providing for discharge of the lien, is unconstitutional because arbitrarily discriminatory and unreasonable. The provision is continued in the Illinois Vehicle Code. *Weksler v. Collins*, 317 Ill. 132 (1925).

COURTS

705 ILCS 21/ (West 1996). **Judicial Redistricting Act of 1997.** Entire Act, enacted by P.A. 89-719, is unconstitutional because (i) provisions dividing the First Judicial District into 3 subdistricts for election of Supreme Court judges and splitting judicial circuits between 2 or more judicial districts violate Article VI of the Illinois Constitution and (ii) other provisions, despite inclusion of a severability clause, are inseverable. *Cincinnati Insurance Co. v. Chapman*, 181 Ill. 2d 65 (1997).

705 ILCS 25/1 (P.A. 89-719). **Appellate Court Act.** (See *Cincinnati Insurance Co. v. Chapman*, 181 Ill. 2d 65 (1997), reported in this Part 2 of this Case Report under "Courts", concerning the inseverability of unconstitutional provisions of the Judicial Redistricting Act of 1997 enacted by P.A. 89-719.)

705 ILCS 205/6 (West 1992). **Attorney Act.** Provision that allows a circuit court judge to suspend an attorney from the practice of law is an unconstitutional encroachment on the Supreme Court's exclusive authority to regulate and discipline attorneys in Illinois. *In re General Order of March 15,1993*, 258 Ill. App. 3d 13 (1st Dist. 1993).

705 ILCS 405/1-15 (West 1992). **Juvenile Court Act of 1987.** Provision that requires a lack of notice claim to be presented before the adjudicatory hearing begins is unconstitutional as an infringement of due process and interferes with the powers of reviewing courts guaranteed by the separation of powers clause. *In re C.R.H.*, 163 Ill. 2d 263 (1994).

705 ILCS 405/2-28 (West 1998). **Juvenile Court Act of 1987.** Portion of subsection (3) that grants an automatic appeal of a court order changing a child's permanency goal violates Section 6 of Article VI of the Illinois Constitution, which assigns to the Illinois Supreme Court the power to establish procedures for appealing non-final judgments. *In re Curtis B.*, 203 Ill. 2d 53 (2002), *In re D.D.H.*, 319 Ill. App. 3d 989 (5th Dist. 2001), *In re C.B.*, 322 Ill. App. 3d 1011 (4th Dist. 2001), and *In re T.B.*, 325 Ill. App. 3d 566 (3rd Dist. 2001).

705 ILCS 405/5-4, 405/5-14, 405/5-19, 405/5-23, 405/5-33, and 405/5-34 (P.A. 88-680). **Juvenile Court Act of 1987.** Provisions amended by P.A. 88-680 are unconstitutional because P.A. 88-680 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. P.A.s 91-54, 91-155, 91-404, 91-690, 91-691, 91-692, 91-693, 91-694, 91-695, and 91-696 re-enacted portions, but not all, of the substance of P.A. 88-680. *People v. Dainty*, 299 Ill. App. 3d 235 (3rd Dist. 1998), *People v. Williams*, 302 Ill. App. 3d 975 (2nd Dist. 1999), *People v. Edwards*, 304 Ill. App. 3d 250 (2nd Dist. 1999), and *People v. Cervantes*, 189 Ill. 2d 80 (1999). (These cases are also reported in this Part 2 of this Case Report under "Finance" and "Corrections" and in Part 3 of this Case Report under "Criminal Offenses".)

CRIMINAL OFFENSES

720 ILCS 5/8-4 (West 2000). **Criminal Code of 1961.** Subsection (c)'s enhanced penalties for attempted first degree murder with a handgun violate the proportionate penalty clause of Section 11 of Article I of the Illinois Constitution because a defendant may receive a longer sentence if the victim survives than if the victim dies. *People v. Morgan*, 203 Ill. 2d 470 (2003). (In *People v. Sharpe*, 216 Ill. 2d 481 (2005), the Illinois Supreme Court overturned cases that held a penalty disproportionate through cross-comparison of the offense to a less harshly punished but more serious offense with different elements; the court maintained the validity of disproportionality determinations based on analysis of differently punished offenses with identical elements or the cruel and excessive nature of a penalty. The effect of *People v. Sharpe* upon penalties for offenses with the "same" elements is unclear.)

720 ILCS 5/9-1 (Ill. Rev. Stat. 1987, ch. 38, par. 9-1). **Criminal Code of 1961.** P.A. 84-1450, which amended the homicide statute, provides that "this amendatory Act of 1986 shall only apply to acts occurring on or after January 1, 1987". Because P.A. 84-1450 does not contain an effective date provision, however, it did not take effect until July 1, 1987, and its retroactive application to January 1, 1987 is a violation of the constitutional prohibitions against *ex post facto* laws. P.A. 84-1450 may be applied only prospectively from the date it became effective, July 1, 1987. *People v. Shumpert*, 126 Ill. 2d 344 (1989).

720 ILCS 5/10-2 (West 2000). **Criminal Code of 1961**. Subsection (b), which authorizes a 15-year sentence enhancement for commiting the offense of aggravated kidnapping while armed with a firearm, violates the proportionate penalties clause of Section 11 of Article I of the Illinois Constitution (ILCON Art. I, Sec. 11) because the resulting penalty is harsher than the penalty for armed violence, which contains the same elements. *People v. Baker*, 341 Ill. App. 3d 1083 (4th Dist. 2003), and *People v. Moss*, 206 Ill. 2d 503 (2003). (In *People v. Sharpe*, 216 Ill. 2d 481 (2005), the Illinois Supreme Court overturned cases that held a penalty disproportionate through cross-comparison of the offense to a less harshly punished but more serious offense with different elements; the court maintained the validity of disproportionality determinations based on analysis of differently punished offenses with identical elements or the cruel and excessive nature of a penalty. The effect of *People v. Sharpe* upon penalties for offenses with the "same" elements is unclear.)

720 ILCS 5/10-5 (Ill. Rev. Stat. 1989, ch. 38, par. 10-5). **Criminal Code of 1961.** Child abduction statute is unconstitutional as applied to the natural father of a child. The parents were not married and there was no paternity action, but the parents had lived together 4½ years and the father had supported the child. Applying the statute to the natural father would deprive him of equal protection of the law. *People v. Morrison*, 223 Ill. App. 3rd 176 (3rd Dist. 1991).

720 ILCS 5/10-5.5 (West 1994). **Criminal Code of 1961**. The provision of the unlawful visitation interference statute prohibiting the imposition of civil contempt sanctions under the Illinois Marriage and Dissolution of Marriage Act after a conviction for unlawful visitation interference is an undue infringement on the court's inherent powers under the separation of powers provision of Article II, Section 1 of the Illinois Constitution. *People v. Warren*, 173 Ill. 2d 348 (1996).

720 ILCS 5/11-6, 5/11-6.5, and 5/32-10 (P.A. 89-203). **Criminal Code of 1961.** Provisions amended by P.A. 89-203 are unconstitutional because P.A. 89-203 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. *People v. Wooters*, 188 Ill. 2d 500 (1999). (This case is also reported in this Part 2 of this Case Report under "Vehicles", "Corrections", and "Civil Procedure".)

720 ILCS 5/11-20.1 (West Supp. 2001). **Criminal Code of 1961.** Clause (f)(7) of Section 11-20.1 violates the First Amendment of the U.S. Constitution by including within the definition of "child", for child pornography purposes, computer generated images of children that are not depictions of actual children. *People v. Alexander*, 204 Ill. 2d 472 (2003).

720 ILCS 5/12-6 (Ill. Rev. Stat. 1983, ch. 38, par. 12-6). **Criminal Code of 1961**. Provision of intimidation statute making it an offense to threaten to commit any crime no matter how minor or insubstantial is unconstitutional as being overbroad in violation of the First Amendment to the United States Constitution. *U.S. ex rel. Holder v. Circuit Court of the 17th Judicial Circuit*, 624 F. Supp. 68 (N.D. Ill. 1985).

720 ILCS 5/12-14 (West 2002). **Criminal Code of 1961**. Subsection (d)(1)'s mandatory 15-year sentence enhancement for the commission of criminal sexual assault with a firearm (aggravated criminal sexual assault under subsection (a)(8)) violates the proportionate penalty clause of the Illinois Constitution (ILCON Art. I, Sec. 11) by imposing a penalty more severe than the penalty for armed violence predicated on criminal sexual assault with a category I weapon (including firearms) under Sections 33A-2 and 33A-3 of the Criminal Code of 1961 (720 ILCS 5/33A-2 and 5/33A-3), which consists of the identical elements. *People v. Hampton*, 363 Ill. App. 3d 293 (1st Dist. 2006).

720 ILCS 5/12-21.6 (West 2002). **Criminal Code of 1961**. Subsection (b)'s mandatory rebuttable presumption that leaving a child age 6 years or younger unattended in a motor vehicle for more than 10 minutes endangers the life or health of the child violates the due process clauses of the federal and State constitutions (U.S. Const., Amend. XIV and ILCON Art. I, Sec. 2). *People v. Jordan*, 218 Ill. 2d 255 (2006).

720 ILCS 5/12A-1, 5/12A-5, 5/12A-10, 5/12A-15, 5/12A-20, 5/12A-25, 5/12B-1, 5/12B-5, 5/12B-10, 5/12B-15, 5/12B-20, 5/12B-25, 5/12B-30, and 5/12B-35 (P.A. 94-315). **Criminal Code of 1961**. The Violent Video Games Law and the Sexually Explicit Video Games Law, which establish criminal penalties for (i) selling or renting violent or sexually explicit video games to minors, (ii) allowing such games to be purchased using a self-check-out electronic scanner, and (iii) failing to label such games in a specified manner, violate the First Amendment to the U.S. Constitution (U.S. Const., Amend I) because (1) the definition of a violent video game is vague and there is no showing that the violent content is directed at inciting or producing imminent lawless action and (2) the statutes do not provide for consideration of the whole content of a sexually explicit video or for consideration of the value of that video. *Entertainment Software Association v. Blagojevich*, 404 F. Supp. 2d 1051 (N.D. Ill. 2005).

720 ILCS 5/16A-4 (West 2000). **Criminal Code of 1961**. Retail theft provision that a person who conceals and removes merchandise from a retail store without paying for it "shall be presumed" to do so intentionally creates an unconstitutional mandatory presumption that denies the trier of fact the discretion of determining that an item was removed inadvertently or thoughtlessly. *People v. Taylor*, 344 Ill. App. 3d 929 (1st Dist. 2003), and *People v. Butler*, 354 Ill. App. 3d 57 (1st Dist. 2004).

720 ILCS 5/18-4 (West 2002). **Criminal Code of 1961**. Sentencing range of 21 to 45 years' imprisonment for aggravated vehicular hijacking while carrying a firearm under subsection (a)(2) is harsher than the sentencing range of 15 to 30 years' imprisonment for armed violence with a category I weapon predicated upon vehicular hijacking, an offense with identical elements, and thus violates the proportionate penalties clause of Section 11 of Article I of the Illinois Constitution (ILCON Art. I, Sec. 11). *People v. Andrews*, 364 Ill. App. 3d 253 (2nd Dist. 2006).

720 ILCS 5/25-1 (Ill. Rev. Stat., ch. 38, par. 25-1). **Criminal Code of 1961**. Provision of mob action offense that prohibits the assembly of 2 or more persons to do an unlawful act is unconstitutional for violating due process and the First Amendment because it (i) is too vague to give reasonable notice of the prohibited conduct or adjudicatory standards and (ii) is so overbroad as to allow the arbitrary suppression of non-criminal conduct. *Landry v. Daley*, 280 F. Supp. 938 (N.D. Ill. 1968).

720 ILCS 5/33A-2 and 5/33A-3. Criminal Code of 1961. Penalties for armed violence predicated on certain offenses are unconstitutionally disproportionate to penalties for other offenses.

Armed violence predicated on unlawful restraint. Penalty (a Class X felony) is disproportionate to penalty for aggravated unlawful restraint (a Class 3 felony) under 720 ILCS 5/10-3.1 (West 1992). *People v. Murphy*, 261 Ill. App. 3d 1019 (2nd Dist. 1994).

Armed violence predicated on robbery committed with a category I weapon. Minimum term of imprisonment of 15 years is disproportionate to minimum term of imprisonment (6 years) for robbery committed with a handgun under 720 ILCS 5/18-2 (West 1994). *People v. Lewis*, 175 Ill. 2d 412 (1996).

Armed violence predicated on aggravated vehicular highjacking and armed robbery. Minimum term of imprisonment of 15 years is disproportionate to minimum terms of imprisonment (7 years and 6 years, respectively) for aggravated vehicular highjacking under 720 ILCS 5/18-4 (West 1994) and armed robbery under 720 ILCS 5/18-2 (West 1994). *People v. Beard*, 287 Ill. App. 3d 935 (1st Dist. 1997).

(In *People v. Sharpe*, 216 Ill. 2d 481 (2005), the Illinois Supreme Court overturned cases that held a penalty disproportionate through cross-comparison of the offense to a less harshly punished but more serious offense with different elements; the court maintained the validity of disproportionality determinations based on analysis of differently punished offenses with identical elements or the cruel and excessive nature of a penalty. The effect of *People v. Sharpe* upon penalties for offenses with the same or substantially similar elements is unclear.)

720 ILCS 5/37-4 (Ill. Rev. Stat. 1985, ch. 38, par. 37-4). **Criminal Code of 1961**. Defining as a public nuisance any building used in the sale of obscene material and permitting injunctive relief against use of a building for one year is unconstitutional in its application to adult bookstores that sell sexually explicit materials. These provisions create

a system of prior restraint but do not define the length of the period during which an alleged nuisance can be restrained prior to full judicial review and make no provision for prompt final determination of the matter. *People v. Sequoia Books, Inc.*, 127 Ill. 2d 271 (1989).

720 ILCS 250/16 (West 2002). **Illinois Credit Card and Debit Card Act**. Provision that possession of 2 or more counterfeit credit or debit cards by someone other than the purported card issuer is prima facie evidence of the possessor's intent to defraud or of the possessor's knowledge that the cards are counterfeit creates an unconstitutional mandatory presumption of the intent or knowledge that is an element of a violation of the Act. *People v. Miles*, 344 Ill. App. 3d 315 (2nd Dist. 2003).

720 ILCS 510/2 and 510/11 (Ill. Rev. Stat. 1983, ch. 83, pars. 81-22 and 81-31). **Illinois Abortion Law of 1975**. Provisions making nonprescription sale of abortifacients and prescription or administration of abortifacients without informing the recipient a misdemeanor are unconstitutional because they incorporate a definition of "fetus" in which a fetus is classified as a human being from fertilization until death and thus intrude upon the medical discretion of the attending physician and impose the State's theory of when life begins upon the physician's patient, impermissibly infringing upon a woman's right of private decision-making in matters relating to contraception. *Charles v. Daley*, 749 F. 2d 452 (7th Cir. 1984).

720 ILCS 513/10. Partial-birth Abortion Ban Act. Act's prohibition against the performance of partial-birth abortions unconstitutionally violates the Fourteenth Amendment to the U.S. Constitution because it lacks an exception for preservation of the health of the mother and unduly burdens a woman's right to choose an abortion. *Hope Clinic v. Ryan*, 249 F. 3d 603 (7th Cir. 2001).

720 ILCS 570/315. Illinois Controlled Substances Act. Prohibition against advertising controlled substances to the public by name violates the commercial speech protection of the First Amendment and the commerce clause of Art. I, Sec. 8 of the U.S. Constitution when applied to the federally approved national advertising campaign of the developer of a Schedule IV controlled substance. *Knoll Pharmaceutical Co. v. Sherman*, 57 F. Supp. 2d 615 (N.D. Ill. 1999).

720 ILCS 590/1. Discrimination in Sale of Real Estate Act. Prohibition against person knowingly soliciting an owner of residential property to sell or list the property after the person has been given notice that the owner does not desire to be solicited unconstitutionally restricts a real estate broker's freedom of speech. *Pearson v. Edgar*, 153 F. 3d 397 (7th Cir. 1998).

CRIMINAL PROCEDURE

725 ILCS 5/106D-1 (West 2000). **Code of Criminal Procedure of 1963**. Section authorizing the court to allow a defendant to personally appear at a pre-trial or post-trial proceeding via closed-circuit television violates an accused person's right under Section 8 of Article I of the Illinois Constitution (ILCON Art. I, Sec. 8) to appear at criminal proceedings, as applied to a defendant who appeared at his guilty plea proceeding via closed-circuit television without his written consent. *People v. Stroud*, 208 Ill. 2d 398 (2004).

725 ILCS 5/110-4 (West 2000). **Code of Criminal Procedure of 1963.** Subsection (b), which prohibits bail for a person charged with a capital offense or an offense for which a sentence of life imprisonment may be imposed until the person demonstrates at a hearing that proof of his or her guilt is not evident and presumption of his or her guilt is not great, violates the due process clauses of Section 2 of Article I of the Illinois Constitution by depriving the accused of a presumption of innocence. *People v. Purcell*, 201 Ill. 2d 542 (2002).

725 ILCS 5/110-6.2 (Ill. Rev. Stat. 1989, ch. 38, par. 110-6.2). **Code of Criminal Procedure of 1963.** Bail provision permits a court, after a hearing, to deny bail if the court determines that certain facts exist, such as proof evident or presumption great that the defendant committed the offense, the offense requires imprisonment, or the defendant poses a real threat to others. Provision is unconstitutional as a violation of the separation of powers clause of the Illinois Constitution because it limits the court's authority to set bail and imposes conditions not found in Supreme Court Rule 609 concerning bail. *People v. Williams*, 143 Ill. 2d 477 (1991).

725 ILCS 5/114-9 (Ill. Rev. Stat. 1973, ch. 38, par. 114-9). **Code of Criminal Procedure of 1963**. Subsection (c) of Section 114-9, which provides that the State is not required to include rebuttal witnesses in lists of prosecution witnesses given to the defense, is unconstitutional. Previously, Section 114-14, which required the defense to provide notice of an alibi defense to the prosecution upon request, was held unconstitutional by *People v. Fields*, 59 Ill. 2d 516 (1974). These rulings came after the U.S. Supreme Court, in *Wardius v. Oregon*, 412 U.S. 470 (1973), held that the due process clause of the 14th Amendment to the U.S. Constitution forbids enforcement of alibi disclosure rules unless the defense has reciprocal discovery rights. Subsection (c) of Section 114-9 has not been amended since these decisions. (Section 114-14 was repealed in 1979 by P.A. 81-290.) *People ex rel. Carey v. Strayhorn*, 61 Ill. 2d 85 (1975).

725 ILCS 5/115-10 (West 2000). **Code of Criminal Procedure of 1963**. Provision allowing the hearsay testimony of a non-testifying child under age 13 about sexual assault and abuse violates the defendant's right to confront witnesses under the

Sixth Amendment to the U.S. Constitution, despite the statute's requirement that the court must find the statements reliable. *In re E.H.*, 355 Ill. App. 3d 564 (1st Dist. 2005), and *In re Rolandis G.*, 352 Ill. App. 3d 776 (2nd Dist. 2004).

725 ILCS 5/115-15 (West 1998). **Code of Criminal Procedure of 1963.** Provision granting prima facie evidence status to laboratory tests of controlled substances in certain criminal prosecutions unless the defendant, within 7 days after receiving the test report, demands the testimony of the person who signed the report violates the confrontation clauses of the Sixth Amendment to the U.S. Constitution and Art. I, Sec. 8 of the Illinois Constitution. *People v. McClanahan*, 191 Ill. 2d 127 (2000).

725 ILCS 5/122-8 (Ill. Rev. Stat. 1984 Supp., ch. 38, par. 122-8). **Code of Criminal Procedure of 1963.** Provision requiring that all post-conviction proceedings be conducted by a judge who was not involved in the original proceeding that resulted in conviction violates the separation of powers clause of the Illinois Constitution and also is contrary to a Supreme Court Rule concerning judicial administration and therefore violates Article VI, Section 16 of the Illinois Constitution. *People v. Joseph*, 113 Ill. 2d 36 (1986).

725 ILCS 207/30 (West 1998). **Sexually Violent Persons Commitment Act.** Subsection (c), which prohibits a person who is the subject of a commitment petition under the Act from presenting his or her own expert testimony if the person failed to cooperate with a State-conducted evaluation but which does not prohibit the State from presenting expert testimony based upon an examination of the person's records, violates the due process guarantees of the Fourteenth Amendment to the U.S. Constitution and Section 2 of Article I of the Illinois Constitution as applied to a person against whom the State does present testimony. *In re Detention of Kortte*, 317 Ill. App. 3d 111 (2nd Dist. 2000), and *In re Detention of Trevino*, 317 Ill. App. 3d 324 (2nd Dist. 2000).

725 ILCS 207/65 (West 2000). **Sexually Violent Persons Commitment Act.** Subsection (b)(1), which prohibits a committed person from attending his probable cause hearing, violates the person's due process right under the 14th Amendment of the U.S. Constitution because the State's financial and administrative burdens are not sufficiently compelling in light of the person's liberty interest. *People v. Botruff*, 331 Ill. App. 3d 486 (3rd Dist. 2002).

725 ILCS 240/10 (P.A. 89-688). **Violent Crime Victims Assistance Act.** Provision amended by P.A. 89-688 is unconstitutional because P.A. 89-688 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. *People v. Foster*, 316 Ill. App. 3d 855 (4th Dist. 2000), and *People v. Burdunice*, 211 Ill. 2d 264 (2004). (These cases are also reported in this Part 2 of this Case Report under "General Provisions" and "Corrections".)

CORRECTIONS

730 ILCS 5/3-6-3 (Ill. Rev. Stat. 1991, ch. 38, par. 1003-6-3). **Unified Code of Corrections**. Provisions added by P.A. 88-311 making certain inmates, previously eligible to receive good-conduct credit toward early release increased by a multiplier, ineligible for the credit multiplier because they were convicted of criminal sexual assault, felony criminal sexual abuse, aggravated criminal sexual abuse, or aggravated battery with a firearm, as well as related inchoate offenses, violates the *ex post facto* provisions of Section 10 of Article I of the United States Constitution and Section 16 of Article I of the Illinois Constitution by curtailing the opportunity for an earlier release. *Barger v. Peters*, 163 Ill. 2d 357 (1994).

730 ILCS 5/3-7-2, 5/5-5-3, 5/5-6-3, 5/5-6-3.1, and 5/5-7-1 (P.A. 89-688). **Unified Code of Corrections.** Provisions amended by P.A. 89-688 are unconstitutional because P.A. 89-688 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. (Although Public Act 89-688 also amended Sections 3-2-2, 3-5-1, 3-7-6, and 3-8-7 of the Unified Code of Corrections (730 ILCS 5/3-2-2, 5/3-5-1, 5/3-7-6, and 5/3-8-7), identical changes were made to Sections 3-2-2 and 3-5-1 by Public Act 89-689, effective December 31, 1996, Section 3-7-6 was completely rewritten by Public Act 90-85, effective July 10, 1997, and the changes to Section 3-8-7 were re-enacted by Public Act 93-272, effective July 22, 2003.) *People v. Foster*, 316 Ill. App. 3d 855 (4th Dist. 2000), and *People v. Burdunice*, 211 Ill. 2d 264 (2004). (These cases are also reported in this Part 2 of this Case Report under "General Provisions" and "Criminal Procedure".)

730 ILCS 5/3-10-11 (P.A. 88-680). **Unified Code of Corrections.** Provision amended by P.A. 88-680 is unconstitutional because P.A. 88-680 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. P.A.s 91-54, 91-155, 91-404, 91-690, 91-691, 91-692, 91-693, 91-694, 91-695, and 91-696 re-enacted portions, but not all, of the substance of P.A. 88-680. *People v. Dainty*, 299 Ill. App. 3d 235 (3rd Dist. 1998), *People v. Williams*, 302 Ill. App. 3d 975 (2nd Dist. 1999), *People v. Edwards*, 304 Ill. App. 3d 250 (2nd Dist. 1999), and *People v. Cervantes*, 189 Ill. 2d 80 (1999). (These cases are also reported in this Part 2 of this Case Report under "Finance" and "Courts" and in Part 3 of this Case Report under "Criminal Offenses".)

730 ILCS 5/5-4-1 and 5/5-8-1 (Ill. Rev. Stat. 1979, ch. 38, pars 1005-4-1 and 1005-8-1). **Unified Code of Corrections.** Two provisions providing that, in imposing a sentence for a felony conviction, a judge "shall" specify reasons for his or her sentencing determination are constitutional, as held here, when "shall" is construed in that context to be permissive rather than mandatory. By contrast, if "shall" is interpreted to reflect a mandatory intent, the provisions would unconstitutionally infringe upon the inherently separate power of the judiciary. *People v. Davis*, 93 Ill. 2d 155 (1982).

730 ILCS 5/5-5-3.2 (West 1998). **Unified Code of Corrections.** Subdivision (b)(4)(i), which authorizes a sentencing court to increase the punishment for a felony based upon the victim's age, violates the Sixth Amendment to the U.S. Constitution to the extent the jury was not specifically charged with finding the victim's age. *People v. Thurow*, 318 Ill. App. 3d 128 (3rd Dist. 2001).

730 ILCS 5/5-5-6, 5/5-6-3.1, and 5/5-8-1 (P.A. 89-203). **Unified Code of Corrections.** Provisions amended by P.A. 89-203 are unconstitutional because P.A. 89-203 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. *People v. Wooters*, 188 Ill. 2d 500 (1999). (This case is also reported in this Part 2 of this Case Report under "Vehicles", "Criminal Offenses", and "Civil Procedure".)

730 ILCS 5/5-5-7 (P.A. 89-7). **Unified Code of Corrections.** (See *Best v. Taylor Machine Works*, 179 Ill. 2d 367 (1997), reported in this Part 2 of this Case Report under "Civil Procedure" and "Civil Liabilities", concerning the inseverability of unconstitutional provisions of the Code of Civil Procedure and the Joint Tortfeasor Contribution Act enacted by P.A. 89-7.)

730 ILCS 5/5-6-3.1 (Ill. Rev. Stat. 1977, ch. 38, par. 1005-6-3.1). **Unified Code of Corrections.** Provision concerning incidents and conditions of supervision that provides that a disposition of supervision is a final order for the purposes of appeal is unconstitutional and void as an attempt to regulate appellate court jurisdiction. *People v. Tarkowski*, 100 Ill. App. 3d 153 (2nd Dist. 1981).

730 ILCS 5/5-8-1 (West 1996) **Unified Code of Corrections.** Subsection (a)(1)(c)(ii), which mandates life imprisonment for multiple murder, violates the proportionate penalty clause of Section 11 of Article I of the Illinois Constitution when applied to a juvenile convicted on a theory of accountability whose only participation was to serve as lookout because the statute does not consider the defendant's age or extent of culpability. *People v. Miller*, 202 Ill. 2d 328 (2002).

730 ILCS 5/5-9-1.1 (West 2004). **Unified Code of Corrections**. Subsection (c), which requires that a person convicted of unlawful possession of a controlled substance pay a $5 fee into the Spinal Cord Injury Paralysis Cure Research Trust Fund, violates the person's due process rights because the relationship between the possession and a spinal cord injury is too attenuated. *People v. Rodriguez*, 362 Ill. App. 3d 44 (1st Dist. 2005).

730 ILCS 140/3 (P.A. 88-680). **Private Correctional Facility Moratorium Act.** Provisions amended by P.A. 88-680 are unconstitutional because P.A. 88-680 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. P.A.s 91-54, 91-155, 91-404, 91-690, 91-691, 91-692, 91-693, 91-694, 91-695, and 91-696 re-enacted portions, but not all, of the substance of P.A. 88-680. *People v. Dainty*, 299 Ill. App. 3d 235 (3rd Dist. 1998), *People v. Williams*, 302 Ill. App. 3d 975 (2nd Dist. 1999), *People v. Edwards*, 304 Ill. App. 3d 250 (2nd Dist. 1999), and *People v. Cervantes*, 189 Ill. 2d 80 (1999). (These cases are also reported in this Part 2 of this Case Report under "Finance" and "Courts" and in Part 3 of this Case Report under "Criminal Offenses".)

730 ILCS 175/ (P.A. 88-680). **Secure Residential Youth Care Facilities Licensing Act.** Provisions enacted by P.A. 88-680 are unconstitutional because P.A. 88-680 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. P.A.s 91-54, 91-155, 91-404, 91-690, 91-691, 91-692, 91-693, 91-694, 91-695, and 91-696 re-enacted portions, but not all, of the substance of P.A. 88-680. *People v. Dainty*, 299 Ill. App. 3d 235 (3rd Dist. 1998), *People v. Williams*, 302 Ill. App. 3d 975 (2nd Dist. 1999), *People v. Edwards*, 304 Ill. App. 3d 250 (2nd Dist. 1999), and *People v. Cervantes*, 189 Ill. 2d 80 (1999). (These cases are also reported in this Part 2 of this Case Report under "Finance" and "Courts" and in Part 3 of this Case Report under "Criminal Offenses".)

CIVIL PROCEDURE

735 ILCS 5/2-402, 5/2-604.1, 5/2-621, 5/2-623, 5/2-624, 5/2-1003, 5/2-1107.1, 5/2-1109, 5/2-1115.05, 5/2-1115.1, 5/2-1115.2, 5/2-1116, 5/2-1117, 5/2-1205.1, 5/2-1702, 5/2-2101, 5/2-2102, 5/2-2103, 5/2-2104, 5/2-2105, 5/2-2106, 5/2-2106.5, 5/2-2107, 5/2-2108, 5/2-2109, 5/8-802, 5/8-2001, 5/8-2003, 5/8-2004, 5/13-213, 5/13-214.3, and 5/13-217 (P.A. 89-7). **Code of Civil Procedure.**

P.A. 89-7, a comprehensive revision of the law relating to personal injury actions, is unconstitutional in its entirety because (i) provisions limiting compensatory damages for noneconomic injuries, changing contribution by joint tortfeasors, abolishing joint and several liability, and mandating unlimited disclosure of a plaintiff's medical records during discovery are arbitrary, are special legislation in violation of Section 13 of Article IV of the Illinois Constitution, or violate the separation of powers doctrine of Section 1 of Article II of the Illinois Constitution and (ii) other provisions, despite inclusion of a severability clause, are inseverable. The provisions of 735 ILCS 5/2-622 and 5/8-2501, amended by Public Act 89-7, were re-enacted and changed by Public Act 94-677, effective August 25, 2005. *Best v. Taylor Machine Works*, 179 Ill. 2d 367 (1997).

735 ILCS 5/2-1003 (West 1996). **Code of Civil Procedure.** Provision waiving a party's privilege of confidentiality with health care providers when he or she alleges a claim for bodily injury or disease is unconstitutional because, by requiring disclosure of all information, it encroaches upon the authority of the judiciary (Supreme Court Rule 201 requires disclosure of only relevant information) and is an unreasonable invasion of privacy. *Kunkel v. Walton*, 179 Ill. 2d 519 (1997).

735 ILCS 5/3-103 (West 1994). **Code of Civil Procedure.** Provision allowing amendment of a complaint for administrative review of a police or firefighter disciplinary decision of a municipality of 500,000 or less population in order to add a police or fire chief as a defendant, while not allowing similar amendment of a similar complaint against a municipality of more than 500,000 population, is special legislation in violation of Section 13 of Article IV of the Illinois Constitution. *Lacny v. Police Board of the City of Chicago*, 291 Ill. App. 3d 397 (1st Dist. 1997).

735 ILCS 5/12-1006 (Ill. Rev. Stat., ch. 110, par. 12-1006). **Code of Civil Procedure.** Enforcement of judgments provisions concerning exemption for retirement plans is completely unconstitutional as preempted by the federal Bankruptcy Code. *In re Kazi, Bkrtcy*, 125 B.R. 981 (S.D. Ill. 1991), and others.

735 ILCS 5/13-202.1 (West 1992). **Code of Civil Procedure.** Limitations provision, added by P.A. 87-941, which purports to revive a damage suit by the murder victim's estate against the murderer after the 2-year statute of limitations had run, violates due process protections afforded to defendants in civil tort cases. *Sepmeyer v. Holman*, 162 Ill. 2d 249 (1994).

735 ILCS 5/15-1508 and 5/15-1701 (P.A. 89-203). **Code of Civil Procedure.** Provisions amended by P.A. 89-203 are unconstitutional because P.A. 89-203 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. *People v. Wooters*, 188 Ill. 2d 500 (1999). (This case is also reported in this Part 2 of this Case Report under "Vehicles", "Criminal Offenses", and "Corrections".)

735 ILCS 5/20-104 (West 1998). **Code of Civil Procedure.** Section authorizing a private citizen to recover damages from someone who has defrauded a governmental unit when the appropriate governmental official has been notified and has declined to act violates Section 1 of Article II of the Illinois Constitution to the extent it purports to confer standing upon a private citizen to initiate action in a case in which the State is the real interested party because neither the legislature nor the judiciary may deprive the Attorney General of his or her inherent power to direct the legal affairs of the State. *Lyons v. Ryan*, 201 Ill 2d 529 (2002).

735 ILCS 5/21-103 (West 1998). **Code of Civil Procedure**. Subsection (b), which requires notice by publication of a petition to change a minor's name, is unconstitutional as applied to a noncustodial parent who was not given actual notice of a petition by the custodial parent to change their child's surname. *In re Petition of Sanjuan-Moeller*, 343 Ill. App. 3d 202 (2nd Dist. 2003).

CIVIL LIABILITIES

740 ILCS 100/3.5, 100/4, and 100/5 (P.A. 89-7). **Joint Tortfeasor Contribution Act.** P.A. 89-7, a comprehensive revision of the law relating to personal injury actions, is unconstitutional in its entirety because (i) provisions limiting compensatory damages for noneconomic injuries, changing contribution by joint tortfeasors, abolishing joint and several liability, and mandating unlimited disclosure of a plaintiff's medical records during discovery are arbitrary, are special legislation in violation of Section 13 of Article IV of the Illinois Constitution, or violate the separation of powers doctrine of Section 1 of Article II of the Illinois Constitution and (ii) other provisions, despite inclusion of a severability clause, are inseverable. *Best v. Taylor Machine Works*, 179 Ill. 2d 367 (1997).

740 ILCS 110/9 and 110/10 (P.A. 89-7). **Mental Health and Developmental Disabilities Confidentiality Act.** (See *Best v. Taylor Machine Works*, 179 Ill. 2d 367 (1997), reported in this Part 2 of this Case Report under "Civil Procedure" and under "Civil Liabilities", concerning the inseverability of unconstitutional provisions of the Code of Civil Procedure and the Joint Tortfeasor Contribution Act enacted by P.A. 89-7.)

740 ILCS 110/10 (Ill. Rev. Stat. 1991, ch. 91½, par. 810). **Mental Health and Developmental Disabilities Confidentiality Act.** Provisions concerning what records of a patient or therapist may be disclosed is unconstitutional to the extent that the Section provides that "any order to disclose or not disclose shall be considered a final order for purposes of appeal and shall be subject to interlocutory appeal". This provision usurps the Supreme Court's rule-making power with respect to appealability of nonfinal judgments. *Almgren v. Rush-Presbyterian-St. Luke's Medical Center*, 162 Ill. 2d 205 (1994).

740 ILCS 130/2 and 130/3 (P.A. 89-7). **Premises Liability Act.** (See *Best v. Taylor Machine Works*, 179 Ill. 2d 367 (1997), reported in this Part 2 of this Case Report under "Civil Procedure" and under "Civil Liabilities", concerning the inseverability of unconstitutional provisions of the Code of Civil Procedure and the Joint Tortfeasor Contribution Act enacted by P.A. 89-7.)

CIVIL IMMUNITIES

745 ILCS 10/6A-101 and 10/6A-105 (P.A. 89-7). **Local Governmental and Governmental Employees Tort Immunity Act.** (See *Best v. Taylor Machine Works*, 179 Ill. 2d 367 (1997), reported in this Part 2 of this Case Report under "Civil Procedure" and under "Civil Liabilities", concerning the inseverability of unconstitutional provisions of the Code of Civil Procedure and the Joint Tortfeasor Contribution Act enacted by P.A. 89-7.)

745 ILCS 25/2, 25/3, and 25/4 (Ill. Rev. Stat. 1967, ch. 122, pars. 822, 823, and 824). **Tort Liability of Schools Act**. Provisions concerning notice of injury and limitation period for commencing action are invalid as to both public and nonprofit private schools. Enactment of the Local Governmental and Governmental Employees Tort Immunity Act eliminated the unconstitutional discrepancy between notice-of-injury provisions applicable to various units of local government (see *Lorton v. Brown County School Dist.*, 35 Ill. 2d 362 (1966), reported in Part 3 of this Case Report under "Civil Immunities"), but because that Act does not apply to private schools, the notice and limitation provisions of the Tort Liability of Schools Act (which groups public schools and nonprofit private schools together in the same classification) could not be fairly applied to nonprofit private schools. *Cleary v. Catholic Diocese of Peoria*, 57 Ill. 2d 384 (1974).

745 ILCS 25/5 (Ill. Rev. Stat. 1959 and 1965, ch. 122, par. 825). **Tort Liability of Schools Act**. Provision of subsection (A) limiting recovery in each separate cause of action against a public school district to $10,000 is unconstitutional because it is arbitrarily formulated. *Treece v. Shawnee Community School District*, 39 Ill. 2d 136 (1968).

Provision of subsection (B) limiting recovery in each separate cause of action against a nonprofit private school to $10,000 is unconstitutional because it is purely arbitrary as compared with the liability of other governmental units and institutions. *Haymes v. Catholic Bishop of Chicago*, 41 Ill. 2d 336 (1968).

FAMILIES

750 ILCS 5/501.1 (West 1992). **Illinois Marriage and Dissolution of Marriage Act.** "Dissolution action stay" provision is an unconstitutional violation of substantive due process because, in providing for a stay on disposing of any property by either party in a divorce, the statute unfairly restrains the disposition of non-marital property as well as marital property. *Messenger v. Edgar*, 157 Ill. 2d 162 (1993).

750 ILCS 5/607 (West 2002). **Illinois Marriage and Dissolution of Marriage Act**. Paragraph (1.5) of subsection (b), which authorizes a court to grant petitions for step-parents' visitation privileges when in the child's best interests or welfare, unconstitutionally places the petitioner on equal footing with the parent in the determination of those interests. *In re Marriage of Engelkens*, 354 Ill. App. 3d 790 (3rd Dist. 2004).

750 ILCS 50/1 (West Supp. 1999). **Adoption Act**. Subsection D(h)'s "other neglect or misconduct" standard for determining a parent's unfitness is unconstitutionally vague. *In re D.F.*, 321 Ill. App. 3d 211 (4th Dist. 2001).

750 ILCS 50/1 (West 1998). **Adoption Act.** Subdivision D(m-1)'s presumption of parental unfitness based on a judicial finding that a child has spent at least 15 of 22 consecutive months in foster care violates due process guarantees of the Fourteenth Amendment to the U.S. Constitution and Section 2 of Article I of the Illinois Constitution by failing to consider periods of foster care unattributable to the parent's inability to care for the child. *In re H.G.*, 197 Ill. 2d 317 (2001).

750 ILCS 50/1 (West 1998). **Adoption Act.** Failure to appoint legal counsel for an indigent person for an adoption proceeding that would terminate his or her parental rights violates the equal protection guarantees of the Fourteenth Amendment to the U.S. Constitution and Section 2 of Article I of the Illinois Constitution when the State had chosen not to seek unfit parent status against an indigent woman but had achieved its goal through an adoption proceeding brought by the parties awarded custody of the child. *In re Adoption of K.L.P.*, 198 Ill. 2d 448 (2002).

PROPERTY

765 ILCS 1025/15 (West 1998). **Uniform Disposition of Unclaimed Property Act**. Provision that the State Treasurer "may" return to the owner of unliquidated stock the dividends earned on that stock while held by the State as abandoned property is a taking without just compensation in violation of the Fifth and Fourteenth Amendments to the U.S. Constitution and Section 15 of Article I of the Illinois Constitution. *Canel v. Topinka*, 212 Ill. 2d 311 (2004).

BUSINESS TRANSACTIONS

815 ILCS 205/4.1a (West 2004). **Interest Act**. Provision that limits a lender's non-interest mortgage charges to 3% when the mortgage's interest rate exceeds 8% is preempted by the federal Depository Institutions Deregulation and Monetary Control Act of 1980 and thus violates the supremacy clause of the United States Constitution (U.S. Const. Art. VI, cl. 2). *U.S. Bank National Association v. Clark*, 216 Ill. 2d 334 (2005).

815 ILCS 505/4 (Ill. Rev. Stat. 1983, ch. 121½, par. 264). **Consumer Fraud and Deceptive Business Practices Act.** Provision authorizing Attorney General to issue subpoenas is unconstitutional as applied to person compelled to travel 350-mile round trip without reimbursement because it is arbitrary and unduly burdensome. *People v. McWhorter*, 113 Ill. 2d 374 (1986).

815 ILCS 505/10a (P.A. 87-1140 and P.A. 89-144). **Consumer Fraud and Deceptive Business Practices Act.** Subsections (a), (f), (g), and (h) constitute special legislation in violation of Section 13 of Article IV of the Illinois Constitution because they limit and restrict consumers' claims with respect only to automobile dealers (penalties for a consumer's failure to settle a claim, limitation on punitive damages, and

notice to a dealer before filing suit). *Allen v. Woodfield Chevrolet, Inc.*, 208 Ill. 2d 12 (2003).

815 ILCS 505/10b (P.A. 89-7). **Consumer Fraud and Deceptive Business Practices Act.** (See *Best v. Taylor Machine Works*, 179 Ill. 2d 367 (1997), reported in this Part 2 of this Case Report under "Civil Procedure" and under "Civil Liabilities", concerning the inseverability of unconstitutional provisions of the Code of Civil Procedure and the Joint Tortfeasor Contribution Act enacted by P.A. 89-7.)

815 ILCS 515/3 (West 1994). **Home Repair Fraud Act.** The statute creates a mandatory rebuttable presumption of intent or knowledge upon the finding of certain predicate facts. The presumption relieves the State of the burden of persuasion on the element of intent or knowledge in violation of due process guarantees of the U.S. and Illinois constitutions. *People v. Watts*, 181 Ill. 2d 133 (1998).

EMPLOYMENT

820 ILCS 10/1 Collective Bargaining Successor Employer Act. Act is preempted by the federal Labor Management Relations Act and the National Labor Relations Act and therefore violates the supremacy clause of the U.S. Constitution. *Commonwealth Edison Co. v. International Brotherhood of Electrical Workers*, 961 F. Supp. 1169 (N.D. Ill. 1997).

820 ILCS 30/. Employment of Strikebreakers Act. Act, which imposes criminal penalties upon an employer who knowingly contracts with a day and temporary labor service agency for the provision of replacement workers in the event of a strike or lockout, is preempted by the federal National Labor Relations Act and thus violates the supremacy clause of the United States Constitution (U.S. Const., Art. VI, cl. 2). *Caterpillar Inc. v. Lyons*, 318 F. Supp. 2d 703 (C.D. Ill. 2004).

820 ILCS 30/2 (P.A. 93-375). **Employment of Strikebreakers Act**. Provision prohibiting an employer from contracting with day and temporary labor service agencies for replacement labor during a strike or lockout is preempted by the National Labor Relations Act, which permits employment of day and temporary workers at such times, and thus violates the supremacy clause of the United States Constitution (U.S. Const. Art. VI, cl. 2). *520 Michigan Ave. Associates v. Devine*, 433 F. 3d 961 (7th Cir. 2006).

820 ILCS 135/2.1 and 135/2.2 (P.A. 87-1174). **Burial Rights Act.** Provisions concerning religiously required interments during labor disputes are preempted by the federal National Labor Relations Act because they infringe on the right of cemetery

workers to strike and authorize injunctions and fines against striking unions. *Cannon v. Edgar*, 33 F. 3d 880 (7th Cir. 1994).

820 ILCS 240/2 (Ill. Rev. Stat. 1953, ch. 48, par. 252). **Industrial Home Work Act.** Provision prohibiting the processing of metal springs by home workers is unconstitutional as an unreasonable restraint on and regulation of business, not being in the interest of the public welfare as required for the proper exercise of the State's police power. *Figura v. Cummins*, 4 Ill. 2d 44 (1954).

820 ILCS 305/5 (P.A. 89-7). **Workers' Compensation Act.** (See *Best v. Taylor Machine Works*, 179 Ill. 2d 367 (1997), reported in this Part 2 of this Case Report under "Civil Procedure" and under "Civil Liabilities", concerning the inseverability of unconstitutional provisions of the Code of Civil Procedure and the Joint Tortfeasor Contribution Act enacted by P.A. 89-7.)

820 ILCS 310/5 (P.A. 89-7). **Workers' Occupational Diseases Act.** (See *Best v. Taylor Machine Works*, 179 Ill. 2d 367 (1997), reported in this Part 2 of this Case Report under "Civil Procedure" and under "Civil Liabilities", concerning the inseverability of unconstitutional provisions of the Code of Civil Procedure and the Joint Tortfeasor Contribution Act enacted by P.A. 89-7.)

820 ILCS 405/602 (Ill. Rev. Stat. 1981, ch. 48, par. 602). **Unemployment Insurance Act.** The "held in abeyance" provision of paragraph B, which postpones payment of unemployment benefits to people in legal custody or on bail for a work-related felony or theft until the charges are resolved, violates the supremacy clause of the United States Constitution because the provision conflicts with sections of the federal Social Security Act that require administrative methods "reasonably calculated" to ensure prompt payment and an opportunity for a fair hearing for individuals whose claims for unemployment compensation are denied. *Jenkins v. Bowling*, 691 F.2d 1225 (7th Cir. 1982).

INTRODUCTION TO PART 3

Part 3 of this 2006 Case Report contains Illinois statutes that are representative of (i) statutes that were held unconstitutional and then changed in response to the holding of unconstitutionality or (ii) statutes that were construed in a particular way in order to avoid a holding of unconstitutionality. Part 3 does not include every such statute. Part 3 includes statutes that (i) currently appear or formerly appeared in the Illinois Compiled Statutes or appeared in an Act that was replaced by an Act that currently appears in the Illinois Compiled Statutes and (ii) may have some instructional value concerning the requirement that statutes not violate the United States Constitution or the Illinois Constitution.

PART 3
EXAMPLES OF
STATUTES HELD UNCONSTITUTIONAL
AND THEN AMENDED OR REPEALED

GENERAL PROVISIONS

5 ILCS 420/4A-106 (Ill. Rev. Stat. 1971 Supp., ch. 127, par. 604A-106). **Illinois Governmental Ethics Act**. Provisions of Act authorizing the Secretary of State to render advisory opinions on questions concerning the Article of the Act relating to the disclosure of economic interests and to hire legal counsel for those purposes were unconstitutional because they encroached upon duties and powers of the Attorney General that are inherent in that office under Article V, Section 15 of the Illinois Constitution. The unconstitutional provisions were subsequently deleted by P.A. 78-255. *Stein v. Howlett*, 52 Ill. 2d 570 (1972).

ELECTIONS

10 ILCS 5/1A-3, 5/1A-5, and 5/1A-7.1 (Ill. Rev. Stat. 1973, ch. 46, pars. 1A-3, 1A-5, and 1A-7.1). **Election Code**. Method used to select members of State Board of Elections, involving appointments by the Governor from nominees designated by the General Assembly, violated Illinois Constitution prohibition against legislative appointment of executive branch officers. Method used to resolve a tie vote of the State Board of Elections, involving disqualification of one Board member whose name was selected by lot, violated due process and the Illinois Constitution prohibition against a political party having a majority of members of the Board. P.A. 80-1178 deleted the provisions concerning legislative nominees for Board membership and repealed the provision concerning resolution of a tie vote. *Walker v. State Board of Elections*, 65 Ill. 2d 543 (1976).

10 ILCS 5/7-5 and 5/7-12 (Ill. Rev. Stat., ch. 46, pars. 7-5 and 7-12). **Election Code**. Provisions directing that no primary election be held if, for each office to be filled by election, the election would be uncontested were unconstitutional because they violated the equal protection clause by preventing electors from voting for write-in candidates. P.A. 84-698 amended the provisions to provide that a primary election shall be held when a person who intends to become a write-in candidate for an uncontested office files a written statement or notice of intent with the proper election official. *Lawlor v. Chicago Board of Election Com'rs*, 395 F. Supp. 692 (N.D. Ill. 1975).

10 ILCS 5/7-10 (Ill. Rev. Stat. 1971, ch. 46, par. 7-10). **Election Code**. Provisions prohibiting a person from signing a nominating petition or being a candidate of a political party for public office if the person had requested a primary ballot of

another political party at a primary election held within 2 years of the date on which the nominating petition must be filed were held to violate the right of free political association under the U.S. Constitution, Amendments I and XIV. Standards governing party changes by candidates may and should be more restrictive than those relating to voters generally, but the restrictions on candidates were not severable from the invalid provisions. P.A. 86-1348 deleted the 2-year restriction on changes of party by persons signing nominating petitions and by candidates. *Sperling v. County Officers Electoral Board*, 57 Ill. 2d 81 (1974).

10 ILCS 5/7-10 (Ill. Rev. Stat., ch. 46, par. 7-10). **Election Code**. (See *People ex rel. Chicago Bar Ass'n v. State Bd. of Elections*, 136 Ill. 2d 513 (1990), reported in this Part 3 of this Case Report under "Courts", concerning legislation subdividing the First Appellate District and the Circuit of Cook County.)

10 ILCS 5/7-42 (Laws 1910 Sp. Sess., p. 50). **Election Code**. Provision of 1910 Act that allowed an employee to leave work for 2 hours without any deduction in salary or wages to vote in a primary election was unconstitutional because it deprived an employer of his or her property without due process. The provision prohibiting a deduction in salary or wages was not continued in the 1927 Act that replaced the 1910 Act, and the current Election Code does not contain such a provision. *McAlpine v. Dimick*, 326 Ill. 240 (1927).

10 ILCS 5/7-59 (Ill. Rev. Stat., ch. 46, par. 7-59). **Election Code**. Provision excluding from office a write-in candidate in a primary election who received a majority of the votes cast because he or she did not receive at least as many write-in votes as the number of signatures required on a petition for nomination for that office was an unconstitutional violation of the right to freedom of association as expressed by voting. P.A. 84-658 and P.A. 86-867 changed the statute to bar from office only a write-in candidate in a primary election who receives less votes than any person on the ballot. *Foster v. Kusper*, 587 F. Supp. 1194 (N.D. Ill. 1984).

10 ILCS 5/8-10. Election Code. Provision granting incumbents priority in ballot positions violated the 14th Amendment to U.S. Constitution. A subsequent amendment completely removed the offending provision. *Netsch v. Lewis*, 344 F. Supp. 1280 (N.D. Ill. 1972).

10 ILCS 5/10-3 (Ill. Ann. Stat. 1978 Supp., ch. 46, par. 10-3). **Election Code.** Provision requiring more than 25,000 petition signatures for an independent candidate for less than statewide office, when 25,000 was the number needed for statewide office, was unconstitutional as a violation of the 14th Amendment to the U.S. Constitution. P.A. 81-926

lowered the number of signatures needed. *Socialist Workers Party v. Chicago Board of Election Commissioners*, 99 S. Ct. 983 (1977).

10 ILCS 5/17-15 (Hurd's Statutes 1917, p. 1350). **Election Code**. Provision that required employers to pay employees for the 2 hours employers were required to allow employees to be absent from work to vote on election day was void as an unreasonable abridgment of the right to contract for labor. Although a citizen has a constitutional right to vote, he or she does not have a constitutional right to be paid to exercise the right to vote. The requirement to pay employees during their absence while voting was removed by Laws 1963, p. 2532. *People v. Chicago, Milwaukee and St. Paul Railway Co.*, 306 Ill. 486 (1923).

10 ILCS 5/23-1.4 and 5/23-1.10 (Ill. Rev. Stat. 1981, ch. 46, pars. 23-1.4 and 23-1.10). **Election Code**. Provisions granting a 3-judge panel authority to hear election contests violated the Illinois Constitution because it altered the basic character of the circuit courts by creating a new court. P.A. 86-873 repealed the offending provisions. *In re Contest of Election for Governor*, 93 Ill. 2d 463 (1983).

10 ILCS 5/25-11 (Ill. Rev Stat. 1973, ch. 46, par. 25-11). **Election Code**. Provision added by P.A. 79-118 for filling vacancies on the county board and in other county offices that transferred the authority to fill the vacancies from the county board to the county central committee of the political party of the person creating the vacancy was an unconstitutional delegation of power because the power to appoint was delegated to private citizens not accountable to the public. P.A. 80-940 changed the provision to provide that vacancies shall be filled by appointment by the county board chairman with the advice and consent of the county board. *People ex rel. Rudman v. Rini*, 64 Ill. 2d 321 (1976).

10 ILCS 5/29-14 (Ill. Rev. Stat. 1983, ch. 46, par. 29-14). **Election Code.** Provision that prohibited publication of unattributed political literature was a violation of the First Amendment. P.A. 90-737 repealed Section 29-14 but replaced it with Section 9-9.5 (10 ILCS 5/9-9.5), a similar prohibition against publication and distribution of unattributed political literature. *People v. White*, 116 Ill. 2d 171 (1987).

EXECUTIVE OFFICERS

15 ILCS 335/14B (West 1998)**. Illinois Identification Card Act.** The Class 4 felony penalty for the offense of knowingly possessing a fraudulent identification card, which includes a mandatory minimum fine or community service, was disproportionate to the Class 4 felony penalty for the more serious offense of knowingly possessing a fraudulent identification card with aggravating elements, which did not include mandatory minimums, in violation of the proportionate penalties requirement of Section 11 of Article I

of the Illinois Constitution (ILCON Art. I, Sec. 11). P.A. 94-701, effective June 1, 2006, reclassified the offense of knowingly possessing a fraudulent identification card with aggravating elements as a Class 3 felony. *People v. Pizano*, 347 Ill. App. 3d 128 (1st Dist. 2004).

EXECUTIVE BRANCH

20 ILCS 3505/. Illinois Development Finance Authority Act. Provision of a former Act, the Illinois Industrial Development Authority Act, that required $500,000 to be transferred to a special fund and that the sum should be considered "always appropriated" for the purpose of guaranteeing repayment of bonds violated the constitutional prohibition against pledging the credit of the State and was an unconstitutional continuing appropriation. P.A. 81-454 repealed the Illinois Industrial Development Authority Act and enacted what became the Illinois Development Finance Authority Act without continuing the offending provision in the new Act. *Bowes v. Howlett*, 24 Ill. 2d 545 (1962).

REVENUE

35 ILCS 105/2 (Ill. Rev. Stat. 1985, ch. 120, par. 439.2). **Use Tax Act**.

35 ILCS 120/1 (Ill. Rev. Stat. 1985, ch. 120, par. 440). **Retailers' Occupation Tax Act**. Provisions that persons in the business of repairing items of personal property by adding or incorporating other items of personal property shall be deemed to be in the business of selling personal property at retail and not in a service occupation violated the uniformity of taxation provisions of the Illinois Constitution because they attempted to include within a class persons who in fact were not within the class. Laws 1963, pages 1582 and 1600 deleted the offending provisions. *Central Television Service v. Isaacs*, 27 Ill. 2d 420 (1963).

35 ILCS 105/3-5 (Ill. Rev. Stat. 1985, ch. 120, par. 439.3). **Use Tax Act**.

35 ILCS 120/2-5 (Ill. Rev. Stat. 1985, ch. 120, par. 441). **Retailers' Occupation Tax Act**.

Provisions that exempted from use tax and retailers' occupation tax all money and medallions issued by a foreign government except those issued by South Africa were unconstitutional because the disapproval of foreign political and social policies was not a reasonable basis for a tax classification and the power to conduct foreign affairs belonged exclusively to the federal government. The offending provisions were subsequently removed by P.A. 85-1135. *Springfield Rare Coin Gallery v. Johnson*, 115 Ill. 2d 221 (1986).

Provisions that made proceeds of sales to the State or local governmental units exempt from use tax and retailers' occupation tax violated the uniformity of taxation requirement of the Illinois Constitution because they discriminated against the federal government. Laws 1961, pages 2312 and 2314 deleted the offending provisions. *People ex rel. Holland Coal Co. v. Isaacs*, 22 Ill. 2d 477 (1961).

35 ILCS 105/3-40 (Ill. Rev. Stat. 1985, ch. 120, par. 439.3). **Use Tax Act.** Definition of gasohol, which applied to the Retailers' Occupation Tax Act as well, that provided for a sales tax preference to gasohol containing ethanol distilled in Illinois violated the commerce clause. The preference was deleted by P.A. 85-1135. *Russell Stewart Oil Co. v. State*, 124 Ill. 2d 116 (1988).

35 ILCS 110/2 (Ill. Rev. Stat. 1967, ch. 120, par. 439.32). **Service Use Tax Act**.

35 ILCS 115/2 (Ill. Rev. Stat. 1967, ch. 120, par. 439.102). **Service Occupation Tax Act**.

1967 amendments, which designated 4 limited subclasses of servicemen who were subject to the tax, were an unconstitutional denial of due process and equal protection because there was no reasonable difference between the 4 subclasses of servicemen subject to the tax and those servicemen not subject to the tax. Several Sections in each Act were held unconstitutional because the court found the provisions of the amendatory Acts inseverable. Subsequent amendments corrected the problem. *Fiorito v. Jones*, 39 Ill. 2d 531 (1968).

35 ILCS 120/5a, 120/5b, and 120/5c (Ill. Rev. Stat. 1961, ch. 120, pars. 444a, 444b, and 444c). **Retailers' Occupation Tax Act**. Provisions (i) permitting the Department of Revenue to file with the circuit clerk a final assessment or jeopardy assessment and requiring the clerk to immediately enter judgment for that amount and (ii) affording the taxpayer an opportunity to be heard only after entry of the judgment violated due process and attempted to circumvent the courts in violation of the separation of powers clause of the Illinois Constitution. Subsequent amendments corrected the problem. *People ex rel. Isaacs v. Johnson*, 26 Ill. 2d 268 (1962).

35 ILCS 130/1 (Ill. Rev. Stat. 1947, ch. 120, par. 453.1). **Cigarette Tax Act.** Provision that an individual who in any year brought more than 10 cartons of cigarettes into the State for consumption was a "distributor" of cigarettes was unconstitutional as violative of due process and the commerce clause of the U.S. Constitution. The definition of "distributor" was subsequently changed to remove the unconstitutional text. *Johnson v. Daley*, 403 Ill. 338 (1949).

35 ILCS 200/9-185. Property Tax Code. Provision of prior Act (Ill. Rev. Stat. 1965, ch. 120, par. 508a) that indirectly required the owner of real property taken by eminent domain to pay the real estate taxes for the period after the petition for condemnation was filed until the compensation award was deposited was an unconstitutional taking of property without compensation. The Property Tax Code, which succeeded the repealed Revenue Act of 1939, now provides that real property is exempt from taxation as of the date the condemnation petition is filed. *Board of Jr. College District 504 v. Carey*, 43 Ill. 2d 82 (1969).

35 ILCS 200/15-85. Property Tax Code.

Tax exemption for property used for "mechanical" purposes (Ill. Rev. Stat. 1983, ch. 120, par. 500.10) was unconstitutional because it exceeded the scope of exemptions permitted under Article IX, Section 6 of the Illinois Constitution. P.A. 88-455 repealed the Revenue Act of 1939 and replaced it with the Property Tax Code, and the offending provision was not continued in the Code. *Bd. of Certified Safety Professionals of the Americas, Inc. v. Johnson*, 112 Ill. 2d 542 (1986).

Tax exemption for property used for "philosophical" purposes (Ill. Rev. Stat. 1953, ch. 120, par. 500) was unconstitutional because it exceeded the scope of exemptions permitted under the Illinois Constitution. P.A. 88-455 repealed the Revenue Act of 1939 and replaced it with the Property Tax Code, and the offending provision was not continued in the Code. *International College of Surgeons v. Brenza*, 8 Ill. 2d 141 (1956).

PENSIONS

40 ILCS 5/6-210.1 (Ill. Rev. Stat. 1989, ch. 108 ½, par. 6-210.1). **Illinois Pension Code.** Requiring Chicago fire department paramedics transferred from Chicago municipal pension fund to Chicago firemen's fund to tender refunds from the Chicago municipal fund, plus interest, to Chicago firemen's fund in order to retain service credits diminshed vested pension rights of paramedics unable to produce refund money plus interest and violated the Illinois Constitution's prohibition against diminishing pension rights. P.A. 89-136 amended Section 6-210.1 to permit payment of refunds plus interest through payroll deductions. *Collins v. Board of Trustees of Firemen's Annuity and Benefit Fund of Chicago*, 226 Ill. App. 3d 316 (1st Dist. 1992).

40 ILCS 5/18-125 (Ill. Rev. Stat. 1981, ch. 108½, par. 18-125). **Illinois Pension Code.** Amendment of Judicial Article provision that changed the definition of salary base used to compute retirement benefits from the salary on the last day of service to the average salary over the last year of service unconstitutionally reduced or impaired retirement benefits of judges in service on or before effective date of amendment. P.A. 86-273 rewrote the provision to define "final average salary" according to the date of termination of service. *Felt v. Board of Trustees of Judges Retirement System*, 107 Ill. 2d 158 (1985).

COUNTIES

(See *People ex rel. Rudman v. Rini*, 64 Ill. 2d 321 (1976), reported in this Part 3 of this Case Report under "Elections", in relation to filling vacancies on the county board and in other county offices.)

55 ILCS 5/4-5001. Counties Code. Provision of predecessor Act (Ill. Rev. Stat. 1979, ch. 53, par. 37) in relation to compensation of sheriffs and other county officers

that allowed the sheriff of a first or second class county a percentage commission on all sales of real and personal property made by virtue of a court judgment violated the Illinois Constitution prohibition against basing fees of local governmental officers on funds collected. P.A. 82-204 replaced the percentage commission provisions with a schedule of fees in dollar amounts. *Cardunal Savings & Loan Ass'n v. Kramer*, 99 Ill. 2d 334 (1984).

55 ILCS 5/4-12001. Counties Code. Provision of predecessor Act (Ill. Rev. Stat. 1977, ch. 53, par. 71) in relation to compensation of sheriffs and other county officers that allowed the sheriff of a third class county a percentage commission on all sales of real and personal property made by virtue of an execution or a court judgment violated the Illinois Constitution prohibition against basing fees of local governmental officers on funds collected. P.A. 81-473 replaced the percentage commission provisions with a schedule of fees in dollar amounts. *DeBruyn v. Elrod*, 84 Ill. 2d 128 (1981).

55 ILCS 5/4-12003. Counties Code. Successive amendments to predecessor Act (Ill. Rev. Stat. 1983, ch. 53, par. 73; now Section 4-12003 of the Counties Code), which increased the fee for issuance of a marriage license to $25 from $15 and thereafter to $40 from $25 and which required the county clerk who collected the fee to pay the amount of the increase into the Domestic Violence Shelter and Service Fund for use in funding the administration of domestic violence shelters and service programs, violated the due process guarantees of Article I, Section 2 of the Illinois Constitution because the increased portion of the fee (i) constituted an arbitrary tax on the issuance of marriage licenses that bore no reasonable relation to the public interest in sheltering and serving victims of domestic violence and (ii) imposed a direct impediment to the exercise of the fundamental right to marry without supporting a sufficiently important State interest warranting that intrusion. P.A. 84-180 deleted the unconstitutional provisions from the Section that is now Section 4-12003 of the Counties Code, as well as identical provisions (affecting counties of the first and second class) that formerly were contained in a section of the law that is now Section 4-4001 of the Counties Code. *Boynton v. Kusper*, 112 Ill. 2d 356 (1986).

55 ILCS 5/5-1002. Counties Code. Provision of predecessor Act (Ill. Rev. Stat. 1963, ch. 34, par. 301.1) immunizing counties from liability for personal injuries, property damage, and death caused by the negligence of its agents was a violation of the Illinois Constitution prohibition against special legislation because it made legislative classifications based on the form of a governmental unit instead of making the classifications based on the similarity of functions. The provision was repealed by Laws 1967, p. 3786. *Hutchings v. Kraject*, 34 Ill. 2d 379 (1966).

55 ILCS 5/5-1120 (P.A. 89-203). **Counties Code.** Provision added by P.A. 89-203 was unconstitutional because P.A. 89-203 violated the single-subject rule of Section 8

of Article IV of the Illinois Constitution. Public Act 94-154, effective July 8, 2005, re-enacted the provision of Section 5-1120 added by P.A. 89-203. *People v. Wooters*, 188 Ill. 2d 500 (1999). (This case is also reported in Part 2 of this Case Report under "Vehicles", "Criminal Offenses", "Corrections", and "Civil Procedure".)

MUNICIPALITIES

65 ILCS 5/11-13-3. Illinois Municipal Code. Provision of predecessor Zoning Act authorizing a local zoning board of appeals to vary or modify application of zoning regulations or provisions of zoning ordinances in the case of "practical difficulties" or "unnecessary hardships" was an unconstitutional delegation of legislative authority because the statute offered no guidance to the board in determining what constituted practical difficulties or unnecessary hardships. Laws 1933, p. 288 deleted the offending provision. *Welton v. Hamilton*, 344 Ill. 82 (1931).

65 ILCS 5/11-31-1 (Ill. Rev. Stat. 1971, ch. 24, par. 11-31-1). **Illinois Municipal Code.** Provision that excepted home rule units from the application of a power granted to certain county boards to demolish hazardous buildings was unconstitutional special legislation because the legislative classification did not provide a reasonable basis for differentiating between the types of governmental units that could benefit from the application of the demolition powers. The provision was subsequently removed by P.A. 84-1102. *City of Urbana v. Houser*, 67 Ill.2d 268 (1977).

SPECIAL DISTRICTS

70 ILCS 915/6 (Ill. Rev. Stat. 1981, ch. 111½, par. 5009). **Medical Center District Act.** Provision authorizing the Medical Center Commission to conduct a hearing and make a finding as to whether restrictions on property use had been violated so as to cause property to revert to the Commission was an unconstitutional violation of due process because the Commission had an interest in the outcome of the proceeding. P.A. 83-858 changed the provision to provide that the Commission must file suit for a determination of whether the property should revert to it. *United Church of the Medical Center v. Medical Center Commission*, 689 F. 2d 693 (7th Cir. 1982).

70 ILCS 2205/1, 2205/5, 2205/7, 2205/8, 2205/17, 2205/27b, 2205/27c, 2205/27d, 2205/27e, 2205/27f, and 2205/27g (Ill. Rev. Stat. 1973 Supp., ch. 42, pars. 247, 251, 253, 254, 263, 273b, 273c, 273d, 273e, 273f, and 273g). **Sanitary District Act of 1907.** P.A. 77-2819 (i) added Sections 27b through 27g to the Act to provide that a sanitary district lying in 2 counties and having an equalized assessed valuation of $100,000,000 or more on the effective date of the amendatory Act was divided "for more effective administrative and fiscal control" into 2 separate districts and (ii) made related changes in other Sections of the Act. P.A. 77-2819 was unconstitutional special legislation because there was no reason for not extending the same advantages of "more effective administrative and fiscal control" to those 2-county districts that reached the

minimum valuation level at a time after the effective date of the amendatory Act. Sections 27b through 27g were repealed by P.A. 81-290, and the related provisions added to other Sections of the Act by P.A. 77-2819 were subsequently deleted. *People ex rel. East Side Levee and Sanitary District v. Madison County Levee and Sanitary District*, 54 Ill. 442 (1973).

SCHOOLS

105 ILCS 5/7-7 (Ill. Rev. Stat. 1961, ch. 122, par. 7-7). **School Code.** Provision of the School Code requiring that an appeal from an administrative decision of a county board of school trustees had to be filed within 10 days after the date of service of a copy of the board's decision, while all other administrative review actions under the Code had to be filed within 35 days, violated the Illinois Constitution because there was no reasonable basis for the distinction. The period was changed to 35 days by Laws 1963, p. 3041. *Board of Education of Gardner School District v. County Board of School Trustees of Peoria County*, 28 Ill. 2d 15 (1963).

105 ILCS 5/14-7.02 (Ill. Rev. Stat. 1977, ch. 122, par. 14-7.02). **School Code.** Provision that the school district in which a handicapped child resided must pay the actual cost of tuition charged the child by a non-public school or special education facility to which the child was referred or $2,500, whichever was less, deprived the child of a tuition-free education through the secondary level in violation of Section 1 of Article X of the Illinois Constitution. P.A. 80-1405 amended the statute to increase the dollar limit to $4,500 and to provide for the school district's payment of costs in excess of that amount if approved by the Governor's Purchased Care Review Board. *Elliot v. Board of Education of the City of Chicago*, 64 Ill. App. 3d 229 (1st Dist. 1978).

105 ILCS 5/17-2.11a (P.A. 86-4, amending Ill. Rev. Stat. 1987, ch. 122, par. 17-2.11a). **School Code.** After the appellate court interpreted a provision concerning the maximum allowable interest rate on school bonds, P.A. 86-4 amended that provision to retroactively provide for a maximum rate greater than that construed by the appellate court. The amendment violated the separation of powers principle of the Illinois Constitution. The legislature may prospectively change a judicial construction of a statute if it believes that the judicial interpretation was at odds with the legislative intent, but it may not effect a change in the judicial construction by a later declaration of what it had originally intended. (The legislature also may pass a curative Act to validate bonds that a court has found were issued in a manner not authorized by the legislature.) P.A. 87-984 repealed Section 17-2.11a. *Bates v. Bd. of Education*, 136 Ill. 2d 260 (1990).

105 ILCS 5/Art. 34 (Ill. Rev. Stat. 1989, ch. 122, par. 34-1.01 *et seq.*). **School Code.** 1988 amendments concerning Chicago school reform were unconstitutional because the voting scheme for the election of the local school councils violated equal protection guarantees (one-person-one-vote principles). Subsequent amendments corrected the voting

scheme problem and were upheld in federal court. *Fumarolo v. Chicago Board of Education*, 142 Ill. 2d 54 (1990).

HIGHER EDUCATION

110 ILCS 947/105. Higher Education Student Assistance Act. Provision of predecessor Act (Ill. Rev. Stat. 1987, ch. 122, par. 30-15.12) requiring the Illinois State Scholarship Commission (the predecessor of the Illinois Student Assistance Commission) to file all lawsuits on delinquent and defaulted student loans "in the County of Cook where venue shall be deemed to be proper" was so arbitrary and unreasonable as to deprive defendants of their property or liberty in violation of the due process guarantees of the U.S. and Illinois constitutions. The provision was amended by P.A. 86-1474, which added language authorizing a defendant to request and a court to grant a change of venue to the county of defendant's residence and requiring the Commission to move the court for a change of venue if a defendant, within 30 days of service of summons, files a written request by mail with the Commission to change venue. *Williams v. Ill. State Scholarship Comm'n*, 139 Ill. 2d 24 (1990).

110 ILCS 1015/17 (Ill. Rev. Stat. 1969, ch. 144, par. 1317). **Illinois Educational Facilities Authority Act.** Provision that authorized political subdivisions to loan public money to finance construction for religious educational institutions was unconstitutional because it created too much potential for a subdivision's excessive entanglement with religion. P.A. 78-399 removed the unconstitutional provision. *Cecrle v. Educational Facilities Authority*, 52 Ill. 2d 312 (1972).

FINANCIAL REGULATION

205 ILCS 405/1 (Ill. Rev. Stat. 1955, ch. 16½, par. 31). **Currency Exchange Act.** Provision that exempted American Express Co. money orders from the regulation of the Act was an unconstitutional violation of equal protection guarantees. The provision was deleted by Laws 1957, p. 2332. *Morey v. Doud*, 77 S. Ct. 1344 (1957).

205 ILCS 405/4. Currency Exchange Act. Provision of a predecessor Act required that an application for a license to do business as a community currency exchange contain certain specified information and "such other information as the Auditor [of Public Accounts] may require". The provision was unconstitutionally vague because it did not prescribe the actual qualifications necessary for licensure and left the Auditor without any restraint in interpreting the phrase. The current Act does not contain the offending provision. *McDougall v. Lueder*, 389 Ill. 141 (1945).

205 ILCS 645/3 (Ill. Rev. Stat. 1985, ch. 17, par. 2710). **Foreign Banking Office Act**. Provision that imposed an annual nonreciprocal license fee of $50,000 on foreign banks that did not provide reciprocal licensing authority to Illinois State or

national banks violated the supremacy clause of the U.S. Constitution because it conflicted with the federal International Banking Act and the National Bank Act. P.A. 88-271 deleted the nonreciprocal license fee provision. *National Commercial Banking Corp. of Australia v. Harris,* 125 Ill. 2d 448 (1988).

INSURANCE

215 ILCS 5/. Illinois Insurance Code. Former Section 401a of the Code (Ill. Rev. Stat. 1975, ch. 73, par. 1013a) regulating medical malpractice insurance rates on policies in existence on a certain date but not on policies written after that date was unconstitutional special legislation because it was as important to regulate the initial rate for a new medical malpractice insurance policy as to regulate the rate for an existing policy. P.A. 81-288 repealed the Section. *Wright v. Central DuPage Hospital Ass'n*, 63 Ill. 2d 313 (1976). (This case is also reported in this Part 3 of this Case Report under "Civil Procedure".)

215 ILCS 5/409 (West 1992). **Illinois Insurance Code.** Premium-based tax imposed upon foreign insurance companies for the privilege of doing business in Illinois but not imposed upon similar companies incorporated in Illinois violated the uniformity of taxation clause of Section 2 of Article IX of the Illinois Constitution. P.A. 90-583 imposes the premium-based privilege tax upon all companies doing business in Illinois regardless of where incorporated. *Milwaukee Safeguard Insurance v. Selcke,* 179 Ill. 2d 94 (1997).

215 ILCS 5/Art. XXXV (repealed) (Ill. Rev. Stat. 1971, ch. 73, pars. 1065.150 through 1065.163). **Illinois Insurance Code.** Provisions of former Article XXXV of the Code were unconstitutional. Provision limiting damages recoverable in actions for accidental injuries arising out of use of motor vehicles but requiring that only insurance policies for private passenger automobiles must provide coverage affording benefits to certain injured persons was impermissible special legislation because it resulted in different legislative treatment of persons injured by different vehicles. Provision requiring arbitration of certain cases arising out of auto accidents violated constitutional right to trial by jury. Provision for *de novo* review of arbitration award by the circuit court violated constitutional provision that circuit courts have original jurisdiction of all justiciable matters and the power to review administrative actions as provided by law. Provision requiring losing litigant in compulsory arbitration to pay arbitrator's fees violated constitutional prohibition against fee officers in the judicial system. P.A. 78-1297 repealed Article XXXV. *Grace v. Howlett,* 51 Ill. 2d 478 (1972).

UTILITIES

220 ILCS 10/9 (Ill. Rev. Stat. 1985, ch. 111 2/3, par. 909). **Citizens Utility Board Act.** Provisions requiring a utility to include in its billing statements information provided by the Citizens Utility Board with which the utility disagreed infringed upon the

utility's freedom of speech in violation of the U.S. Constitution, Amendment I. P.A. 85-879 replaced the entire Section with provisions requiring State agencies to include in their mailings information furnished by the Citizens Utility Board. *Central Illinois Light Co. v. Citizens Utility Bd.*, 827 F. 2d 1169 (7th Cir. 1987).

PROFESSIONS AND OCCUPATIONS

225 ILCS 41/. Funeral Directors and Embalmers Licensing Code. Provision of the Funeral Directors and Embalmers Licensing Act of 1935 (Ill. Rev. Stat. 1955, ch. 111 ½, par. 73.4) requiring a funeral director to be a holder of a certificate of registration as a registered embalmer violated the due process clause of the Illinois Constitution because the interest of the public did not justify the partial merger of their activities by requiring that a funeral director have the knowledge, skill, and training of an embalmer before he or she can direct a funeral. The provision was deleted by Laws 1959, p.1518. The 1935 Act was repealed by P.A. 87-966, which created the Funeral Directors and Embalmers Licensing Code. Article 10 of the new Code (225 ILCS 41/Art. 10) creates a combined funeral director and embalmer license. *Gholson v. Engle*, 9 Ill. 2d 454 (1956).

225 ILCS 100/21. Illinois Podiatric Medical Practice Act of 1987. Provision that limited advertising by a podiatric physician to certifications approved by the Council on Podiatric Medical Education violated the First Amendment of the U.S. Constitution as applied to a podiatric physician who advertised that he had been certified by a board other than the Council on Podiatric Medical Education if the physician's statements were not actually or potentially misleading and served the public interest and the certification originated from a bona fide certifying board. P.A. 90-76 changed the provision to limit advertising to certifications approved by the Podiatric Medical Licensing Board in accordance with the rules for the administration of the Act. *Tsatsos v. Zollar*, 943 F. Supp. 945 (N.D. Ill. 1996).

225 ILCS 446/75 (225 ILCS 445/14 (West 1992)). **Private Detective, Private Alarm, Private Security, and Locksmith Act of 1993**. Provision that required an applicant for a private alarm contracting license to have worked as a full-time supervisor, manager, or administrator at a licensed private alarm contracting agency for 3 years out of the 5 years immediately preceding the application for a license was invalid because it conferred upon the regulated industry monopolistic control over entry into the private alarm contracting trade. P.A. 88-363 recodified the Act and added a provision that 3 years of work experience at an unlicensed entity which satisfies standards of alarm industry competence shall meet the requirements for eligibility for licensing as an alternative to working for 3 years at a licensed private alarm contracting agency. P.A. 89-85 added language giving partial credit toward the 3-year employment requirement to applicants who have met certain educational requirements. *Church v. State of Illinois*, 164 Ill. 2d 153 (1995).

225 ILCS 455/18. Real Estate License Act of 1983. Provision of predecessor Act (Ill. Rev. Stat. 1981, ch. 111, par. 5732), continued in 1983 Act, that prohibited real estate brokers from offering inducements to potential customers was unconstitutional as violating free speech guarantees and because it did not advance the State's interest in consumer protection. P.A. 84-1117 deleted the offending provision. *Coldwell Banker Residential Real Estate Services v. Clayton,* 105 Ill. 2d 389 (1985).

LIQUOR

235 ILCS 5/7-9 (Ill. Rev. Stat. 1991, ch. 43, par. 153). **Liquor Control Act of 1934.** In Section concerning appeals from orders of local liquor commissions, provisions denying *de novo* review by the State Commission in the case of appeals from municipalities with a population between 100,000 and 500,000 but requiring *de novo* review in the case of other municipalities violated the Illinois Constitution's prohibition against special legislation. There was no rational basis for the difference in treatment accorded municipalities with a population between 100,000 and 500,000 (of which there were only 2 in the State) and municipalities with a population less than 100,000. P.A. 77-674 deleted the provision denying *de novo* review in the case of appeals from municipalities with a population between 100,000 and 500,000 and provided instead that in the case of appeals from home rule municipalities with a population under 500,000 (rather than municipalities with a population between 100,000 and 500,000) the appeal was limited to a review of the official record of the local proceedings. *Shepard v. Illinois Liquor Control Comm'n,* 43 Ill. 2d 187 (1969).

WAREHOUSES

240 ILCS 40/. Grain Code. Provisions of former Grain Dealers Act (Ill. Rev. Stat. 1987, ch. 111, par. 306) and former Illinois Grain Insurance Act (Ill. Rev. Stat. 1987, ch. 114, par. 704) requiring federally licensed grain warehousemen located in Illinois to either join the Illinois Grain Insurance Fund or provide financial protection for claimants equal to the protection afforded under the Illinois Grain Insurance Act violated the supremacy clause of the U.S. Constitution because they were in conflict with and preempted by the United States Warehouse Act. Subsequently, P.A. 87-262 removed the unconstitutional language from the Grain Dealers Act. Thereafter, both that Act and the Illinois Grain Insurance Act were repealed by P.A. 89-287 and replaced by the Grain Code (under which participation by federal warehousemen in the Illinois Grain Insurance Fund is made permissive under cooperative agreements that are permitted by federal law). *Demeter, Inc. v. Werries,* 676 F. Supp. 882 (C.D. Ill. 1988).

PUBLIC AID

305 ILCS 5/10-2 (West 1992). **Illinois Public Aid Code.** Provision (i) requiring parents to contribute to the support of a child age 18 through 20 who receives aid and resides with the parents and (ii) exempting parents of a child in the same age group who receives aid but does not live with his or her parents was unconstitutional as a denial of

equal protection. The court, while voiding the parental support provision, upheld the remainder of the Section regarding liability for support between spouses and the responsibility for support by other relatives. P.A. 92-876 replaced the provision with the requirement that parents are severally liable for an unemancipated child under age 18, or an unemancipated child age 18 or over who attends high school, until the child is 19 or graduates from high school, whichever is earlier. *Jacobson v. Department of Public Aid*, 171 Ill. 2d 314 (1996).

305 ILCS 5/11-30. Illinois Public Aid Code. Provision that a public aid applicant who received public aid within the previous 12 months in another state in a lower amount than the aid Illinois would provide was ineligible for public aid in Illinois for the first 12 months of residency beyond the amount received in the former state violated the equal protection guarantee of the Fourteenth Amendment of the U.S. Constitution for an aid applicant who had received a lower amount in her former state of Alabama. P.A. 92-111 repealed the provision. *Hicks v. Peters*, 10 F. Supp. 2d 1003 (N.D. Ill. 1998).

PUBLIC HEALTH

410 ILCS 230/4-100 (Ill.Rev.Stat. 1981, ch. 111½, par. 4604-100). **Problem Pregnancy Health Services and Care Act.** Provision prohibiting the Department of Public Health from making grants to nonprofit entities that provide abortion referral or counseling services was unconstitutional: (i) it violated due process because it disqualified entities that agreed not to use the State funds for those particular services and (ii) it violated the First Amendment by imposing a content-based restriction on the information available for a woman's childbirth decision. P.A. 83-51 amended the statute to enable the entities to receive the grants if they did not use the funds for abortion referral or counseling services. *Planned Parenthood Association v. Kempiners*, 568 F. Supp. 1490 (N.D. Ill. 1983).

ENVIRONMENTAL SAFETY

415 ILCS 5/4 (Ill. Rev. Stat. 1975, ch. 111½, par. 1004). **Environmental Protection Act.** Provision that it was the duty of the EPA to investigate violations of the Act and to prepare and present enforcement actions before the Pollution Control Board violated Article V, Section 15 of the Illinois Constitution, which provides that the Attorney General is "the legal officer of the State" and thus is the only officer empowered to represent the people in any proceeding in which the State is the real party in interest. P.A. 81-219 deleted the offending provision and limited the EPA's duty to investigating violations of the Act and regulations and issuing administrative citations. *People ex rel. Scott v. Briceland*, 65 Ill. 2d 485 (1976).

415 ILCS 5/25 (Ill. Rev. Stat. 1977, ch. 111½, par. 1025). **Environmental Protection Act.** Provision exempting a motor racing event from noise standards if the event was endorsed by one of several designated private organizations was an

unconstitutional delegation of legislative power to a private group. P.A. 82-654 deleted the offending provision. *People v. Pollution Control Board*, 83 Ill. App. 3d 802 (1st Dist. 1980).

415 ILCS 5/33 and 5/42 (Ill. Rev. Stat. 1971, ch. 111½, pars. 1033 and 1042). **Environmental Protection Act.** Provisions allowing the Pollution Control Board to impose money penalties not to exceed $10,000 for a violation of the Act or regulations or an order of the Board were an unconstitutional delegation of legislative power because the provisions failed to provide the Board with any standards to guide it in imposing penalties. The provisions also were an unconstitutional delegation of judicial power because the Board could impose discretionary fines, a distinctly judicial act. P.A. 78-862 amended the statute to allow the Board to impose "civil penalties" instead of "money penalties". *Southern Illinois Asphalt Co. v. Environmental Protection Agency*, 15 Ill. App. 3d 66 (5th Dist. 1973).

PUBLIC SAFETY

430 ILCS 65/2 (West 1994). **Firearm Owners Identification Card Act.** (See *People v. Davis*, 177 Ill. 2d 495 (1997), reported in this Part 3 of this Case Report under "Corrections", concerning the disproportionality of penalties for possession of a firearm in violation of the Firearm Owners Identification Card Act and unlawful use of a firearm by a felon.)

ROADS AND BRIDGES

605 ILCS 5/9-112 (Ill. Rev. Stat. 1965, ch. 121, par. 9-112). **Illinois Highway Code.** Provision authorizing local authorities to permit advertising on public highways with no guidelines was an unlawful delegation of legislative authority. P.A. 76-793 deleted the provision. *City of Chicago v. Pennsylvania R. Co.*, 41 Ill. 2d 245 (1968).

VEHICLES

625 ILCS 5/. Illinois Vehicle Code. Provision in former Uniform Motor Vehicle Anti-theft Act (repealed) providing for an increased registration fee for certain cars purchased in another state was an unconstitutional burden on interstate commerce. Laws 1957, p. 2706 repealed the former Act. *Berger v. Barrett*, 414 Ill. 43 (1953).

625 ILCS 5/4-107 (Ill. Rev. Stat. 1979, ch. 95½, par. 4-107). **Illinois Vehicle Code.** Provision that a vehicle was considered contraband if the vehicle ID number could not be identified was an unconstitutional denial of due process when applied to a buyer who bought a vehicle from a dealer and the title to the vehicle had an ID number that matched the ID number on the dashboard, but the number was false and it was impossible to determine the confidential vehicle ID number. P.A. 83-1473 added an exception for a person who acquires a vehicle without knowledge that the ID number has been removed,

altered, or destroyed. *People v. One 1979 Pontiac Grand Prix Automobile*, 89 Ill. 2d 506 (1982).

625 ILCS 5/5-401.2. Illinois Vehicle Code. Provision (Ill. Rev. Stat. 1981, ch. 95½, par. 5-401) authorizing warrantless administrative searches of records and business premises of auto parts dealers was unconstitutional because it did not provide for the regularity and neutrality required by the 4th Amendment to the U.S. Constitution. P.A. 83-1473 repealed Section 5-401 of the Code and replaced it with new Section 5-401.2, which does not contain the offending provision. *People v. Krull*, 107 Ill. 2d 107 (1985).

625 ILCS 5/5-401.2 (West 1996). **Illinois Vehicle Code.** Provision that made the knowing failure by certain licensees to maintain records of the acquisition and disposition of vehicles a Class 2 felony was an unconstitutional violation of due process because the criminalization of an innocent record-keeping error was not a reasonable means of preventing the trafficking of stolen vehicles and parts. P.A. 92-773 reduced the failure to a Class B misdemeanor and made the failure with intent to conceal the identity or origin of a vehicle or its essential parts or with intent to defraud the public in the transfer or sale of vehicles or their essential parts a Class 2 felony. *People v. Wright*, 194 Ill. 2d 1 (2000).

625 ILCS 5/6-107 (Ill. Rev. Stat. 1969, ch. 95½, par. 6-107). **Illinois Vehicle Code.** Provision requiring parent's or guardian's consent for driver's license for an unmarried emancipated minor under age 21 but not for a married emancipated minor under that age was arbitrary discrimination against unmarried emancipated minors. P.A. 77-2805 reduced the age limit to 18 but kept the distinction. Without expressing an opinion as to the validity of the amended provision, the court noted that there may be justifications for applying such a classification to minors under age 18. *People v. Sherman*, 57 Ill. 2d 1 (1974).

625 ILCS 5/6-205 (Ill. Rev. Stat. 1987, ch. 95½, par. 6-205). **Illinois Vehicle Code.** Provision requiring the Secretary of State to revoke a sex offender's driver's license denied the offender due process because there was no relationship to the public interest when a vehicle was not used in the offense. P.A. 85-1259 deleted the offending provision. *People v. Lindner*, 127 Ill. 2d 174 (1989).

625 ILCS 5/6-301.2 (Ill. Rev. Stat. 1991, ch. 95½, par. 6-301.2). **Illinois Vehicle Code**. Provision that punished distribution of a fraudulent driver's license as a Class B misdemeanor but punished the lesser included offense of possessing a fraudulent driver's license as a Class 4 felony violated the Illinois Constitution's due process and proportionality of penalties clauses. P.A. 89-283, effective January 1, 1996, retained the penalties and changed the offense from distributing fraudulent driver's licenses to

distributing information about the availability of fraudulent driver's licenses. *People v. McGee*, 257 Ill. App. 3d 229 (1st Dist. 1993).

625 ILCS 5/7-205 (Ill. Rev. Stat. 1970 Supp., ch. 95½, par. 7-205). **Illinois Vehicle Code**. Provision of "Safety Responsibility Law" within the Code that permitted the suspension of a driver's license without a pre-suspension hearing violated due process. P.A. 77-1910 replaced the offending provision with a requirement that the Secretary of State cause a hearing to be held to determine whether a driver's license should be suspended. P.A. 83-1081 deleted the requirement that the Secretary of State cause a hearing to be held and instead provided that a driver be given an opportunity to request a hearing before suspension of his or her driver's license. *Pollion v. Lewis*, 332 F. Supp. 777 (N.D. Ill. 1971).

COURTS

705 ILCS 25/1 (Ill. Rev. Stat., ch. 37, par. 25). **Appellate Court Act**.

705 ILCS 35/2 and 35/2e (repealed) (Ill. Rev. Stat., ch. 37, pars. 72.2 and 72.2e (repealed)). **Circuit Courts Act**.

705 ILCS 40/2 (Ill. Rev. Stat., ch. 37, par. 72.42). **Judicial Vacancies Act**.

705 ILCS 45/2 (Ill. Rev. Stat., ch. 37, par. 160.2). **Associate Judges Act**.

P.A. 86-786 amendatory provisions were unconstitutional because (i) the subdividing of the First Appellate District for judicial elections beyond the divisions made by the Illinois Constitution violated the Constitution and (ii) the subdividing of the Circuit of Cook County, while not unconstitutional by itself, was inseverable from the invalid appellate court provisions. P.A. 86-1478 deleted the offending changes made by P.A. 86-786 and restored the law as it existed before P.A. 86-786, stating that its purpose was to conform the law to the Supreme Court's opinion. *People ex rel. Chicago Bar Ass'n v. State Bd. of Elections*, 136 Ill. 2d 513 (1990).

705 ILCS 35/2c (Ill. Rev. Stat. 1987, ch. 37, par. 72.2c). **Circuit Courts Act**. Provision requiring a circuit judge to be a resident of a particular county within a (multiple-county) circuit and yet be elected at large from within that circuit violated subsection (a) of Section 7 and Section 11 of Article VI of the Illinois Constitution by creating a hybrid variety judgeship that was not contemplated by the Constitution's drafters. The Section was amended by P.A. 87-410 to remove the provision in question, as well as a similar provision relating to the election of judges in another circuit. *Thies v. State Board of Elections*, 124 Ill. 2d 317 (1988).

705 ILCS 105/27.1 and 105/27.2 (Ill. Rev. Stat. 1981, ch. 25, par. 27.1 and Ill. Rev. Stat. 1982 Supp., ch. 25, par. 27.2). **Clerks of Courts Act**. Provisions requiring circuit clerks to collect a special $5 filing fee from petitioners for dissolution of marriage to fund shelters and services for domestic violence victims unreasonably interfered with persons' access to the courts, were an arbitrary use of the State's police power, and made

an unreasonable or arbitrary classification for tax purposes by imposing a tax to fund a general welfare program only on members of a designated class. P.A. 83-1539 deleted the offending provision from Section 27.1, and P.A. 83-1375 deleted the offending provision from Section 27.2. *Crocker v. Finley*, 99 Ill. 2d 444 (1984).

705 ILCS 405/5-33 (repealed) (West 1996). **Juvenile Court Act of 1987.** Act's silence as to a jury trial for a minor at least 13 years old adjudicated delinquent for first degree murder and committed to the Department of Corrections until age 21 without parole for 5 years was an unconstitutional denial of equal protection guarantees as applied to a 13-year-old whose jury trial request was denied. P.A. 90-590 repealed the offending Section and added Section 5-810, which allows a jury trial in certain circumstances. *In re G.O.*, 304 Ill. App. 3d 719 (1st Dist. 1999).

CRIMINAL OFFENSES

720 ILCS 5/11-20.1 (P.A. 88-680). **Criminal Code of 1961.** Provisions amended by P.A. 88-680 were unconstitutional because P.A. 88-680 violated the single-subject rule of Section 8 of Article IV of the Illinois Constitution. P.A. 91-54 re-enacted the changes in Section 11-20.1 made by P.A. 88-680. *People v. Dainty*, 299 Ill. App. 3d 235 (3rd Dist. 1998), *People v. Williams*, 302 Ill. App. 3d 975 (2nd Dist. 1999), and *People v. Edwards*, 304 Ill. App. 3d 250 (2nd Dist. 1999). (These cases are also reported in Part 2 of this Case Report under "Finance", "Courts", and "Corrections".)

720 ILCS 5/12-18 (Ill. Rev. Stat. 1981, ch. 38, par. 12-18). **Criminal Code of 1961.** Provision that a person may not be charged by his or her spouse with the offense of criminal sexual abuse or aggravated criminal sexual abuse was an unconstitutional violation of equal protection and due process. P.A. 88-421 deleted the offending provision. *People v. M.D.*, 231 Ill. App. 3d 176 (2nd Dist. 1992).

720 ILCS 5/16-1 (Ill. Rev. Stat. 1989, ch. 38, par. 16-1). **Criminal Code of 1961.** Theft provision that prohibited obtaining control over property in custody of law enforcement agency that was explicitly represented as being stolen was unconstitutional on its face because it did not require a culpable mental state. P.A. 89-377 rearranged the list of elements of the offense to make it clear that the offense requires that a person "knowingly" obtain control over the property. *People v. Zaremba*, 158 Ill. 2d 36 (1994).

720 ILCS 5/17B-1, 5/17B-5, 5/17B-10, 5/17B-15, 5/17B-20, 5/17B-25, and 5/17B-30 (P.A. 88-680). **Criminal Code of 1961.** WIC Fraud Article added by P.A. 88-680 was unconstitutional because P.A. 88-680 violated the single-subject rule of Section 8 of Article IV of the Illinois Constitution. P.A. 91-155 re-enacted the WIC Fraud Article of the Code. *People v. Dainty*, 299 Ill. App. 3d 235 (3rd Dist. 1998), *People v. Williams*, 302 Ill. App. 3d 975 (2nd Dist. 1999), and *People v. Edwards*, 304 Ill. App. 3d 250 (2nd Dist. 1999). (These

cases are also reported in Part 2 of this Case Report under "Finance", "Courts", "Criminal Offenses", and "Corrections".)

720 ILCS 5/20-1.1 (Ill. Rev. Stat. 1983, ch. 38, par. 20-1.1). **Criminal Code of 1961.**

Item (1) of subsection (a) provided that a person committed aggravated arson when the person knowingly damaged a structure by means of fire or explosive and the person knew or reasonably should have known that someone was present in the structure. This provision was unconstitutional because the underlying conduct that was supposed to be enhanced by the aggravated arson statute was not necessarily criminal in nature. *People v. Johnson*, 114 Ill. 2d 69 (1986).

Item (3) of subsection (a) provided that a person committed aggravated arson when the person damaged a structure by means of fire or explosive and a fireman or policeman was injured. This provision was unconstitutional because it failed to require a culpable intent. *People v. Wick*, 107 Ill. 2d 62 (1985).

P.A. 84-1100 amended the statute to add "in the course of committing arson" after "A person commits aggravated arson when", thereby adding the requirement of a criminal purpose or intent.

720 ILCS 5/21.1-2 (Ill. Rev. Stat. 1977, ch. 38, par. 21.1-2). **Criminal Code of 1961**. Provision making peaceful picketing of "a place of employment involved in a labor dispute" exempt from general prohibition against picketing a residence was a denial of equal protection because it accorded preferential treatment to the expression of views on one particular subject: dissemination of information about labor disputes was unrestricted, but discussion of other issues was restricted. P.A. 81-1270 deleted the exception for picketing at "a place of employment involved in a labor dispute". *Carey v. Brown*, 100 S. Ct. 2286 (1980).

720 ILCS 5/24-1.1 (West 1994). **Criminal Code of 1961.** (See *People v. Davis*, 177 Ill. 2d 495 (1997), reported in this Part 3 of this Case Report under "Corrections", concerning the disproportionality of penalties for possession of a firearm in violation of the Firearm Owners Identification Card Act and unlawful use of a firearm by a felon.)

720 ILCS 5/24-5 (West 2002). **Criminal Code of 1961**. Subsection (b), which provided that possession of a firearm with a defaced identification mark was prima facie evidence that the possessor committed the offense of knowingly or intentionally defacing identification marks on a firearm, created an unconstitutional mandatory rebuttable presumption of guilt. P.A. 93-906, effective August 11, 2004, eliminated the language conveying prima facie evidentiary status to possession of a defaced firearm. *People v. Quinones*, 362 Ill. App. 3d 385 (1st Dist. 2005).

720 ILCS 5/26-1 (Ill. Rev. Stat. 1973, ch. 38, par. 26-1). **Criminal Code of 1961.** Provision that a person commits disorderly conduct when he or she makes a telephone call with the intent to annoy another was impermissibly broad because it applied to any call made with the intent to annoy, including those that might not provoke a breach of the peace. P.A. 80-795 deleted the offending provision. *People v. Klick*, 66 Ill. 2d 269 (1977).

720 ILCS 5/31A-1.1 and 5/31A-1.2 (P.A. 89-688). **Criminal Code of 1961.** Provisions amended by P.A. 89-688 were unconstitutional because P.A. 89-688 violated the single-subject rule of Section 8 of Article IV of the Illinois Constitution. (Although Public Act 89-688 also amended Section 8-1.1 of the Criminal Code of 1961 (720 ILCS 5/8-1.1), identical changes were made to that Section by Public Act 89-689, effective December 31, 1996.) P.A. 94-1017, effective July 7, 2006, re-enacted the changes made to Section 31A-1.1 by P.A.s 89-688 and 94-556 and to Section 31A-1.2 by P.A.s 89-688, 90-655, 91-357, and 94-556. *People v. Foster*, 316 Ill. App. 3d 855 (4th Dist. 2000), and *People v. Burdunice*, 211 Ill. 2d 264 (2004). (These cases are also reported in Part 2 of this Case Report under "General Provisions", "Criminal Procedure", and "Corrections".)

720 ILCS 5/33A-1, 5/33A-2, and 5/33A-3 (P.A. 88-680). **Criminal Code of 1961.** Provisions amended by P.A. 88-680 were unconstitutional because P.A. 88-680 violated the single-subject rule of Section 8 of Article IV of the Illinois Constitution. P.A. 91-404 provided that should P.A. 88-680 be declared unconstitutional as violative of the single-subject rule, it was the General Assembly's intent that P.A. 91-404 re-enact the changes made by P.A. 88-680 in Article 33A of the Code. *People v. Dainty*, 299 Ill. App. 3d 235 (3rd Dist. 1998), *People v. Williams*, 302 Ill. App. 3d 975 (2nd Dist. 1999), and *People v. Edwards*, 304 Ill. App. 3d 250 (2nd Dist. 1999). (These cases are also reported in Part 2 of this Case Report under "Finance", "Courts", and "Corrections".)

720 ILCS 5/33A-2 and 5/33A-3 (Ill. Rev. Stat. 1987, ch. 38, pars. 33A-2 and 33A-3). **Criminal Code of 1961.** Penalty for armed violence (a Class X felony) was disproportionate to penalty for aggravated kidnapping other than for ransom under 720 ILCS 5/10-2 (a Class 1 felony) because the elements for both offenses are the same. P.A. 89-707 amended Section 10-2 to provide that aggravated kidnapping, whether or not for ransom, is a Class X felony. *People v. Christy*, 139 Ill. 2d 132 (1990).

720 ILCS 125/2 (West 1996). **Hunter Interference Prohibition Act.** Prohibition against disrupting a person engaged in lawfully taking a wild animal for the purpose of preventing the taking was a content-based regulation of speech in violation of the First Amendment of the United States Constitution. P.A. 90-555 eliminated the offending subsection. *People v. Sanders*, 182 Ill. 2d 524 (1998).

720 ILCS 150/5.1 (West 1992). **Wrongs to Children Act.** Provision creating the offense of permitting the sexual abuse of a child, one element of which was the failure to take reasonable steps to prevent the abuse, violated the due process guarantees of Amends. V and XIV of the U.S. Constitution and Art. I, Sec. 2 of the Illinois Constitution by failing to warn as to what was prohibited and failing to provide clear guidelines for enforcement. P.A.s 89-462 and 91-696 amended the provision to add to the list of persons subject to the statute, to add to the list of acts by which a person commited the offense, and to change the penalty from a Class A misdemeanor to a Class 1 felony. P.A. 92-827 rewrote the entire Section, replacing the offending element with having actual knowledge of and permitting sexual abuse of the child or permitting the child to engage in prostitution. *People v. Maness*, 191 Ill. 2d 478 (2000).

720 ILCS 510/2, 510/3, 510/5, 510/7, 510/8, 510/9, 510/10, and 510/11 (Ill. Rev. Stat. 1976, ch. 38, pars. 81-22, 81-23, 81-25, 81-27, 81-28, 81-29, 81-30, and 81-31). **Illinois Abortion Law of 1975.** Substantial portions of the Act were unconstitutional because they violated the due process clause of the U. S. Constitution. The definition of "criminal abortion" was vague; physicians were not given fair warning of what information they had to provide to pregnant women; spousal and parental consent requirements unduly infringed on a pregnant woman's rights; the requirement for additional physician consultations bore no relationship to the needs of the patient or fetus; there was no provision for notice and an opportunity to contest the termination of parental rights; the ban on saline abortions removed a necessary alternative procedure; and required reports of abortions as fetal deaths failed to preserve a woman's right to confidentiality. P.A. 81-1078 made numerous changes in the Act in response to the findings of unconstitutionality. *Wynn v. Carey*, 599 F. 2d 193 (7th Cir. 1979).

720 ILCS 515/3, 515/4, and 515/5 (repealed) (Ill. Rev. Stat. 1978, ch. 38, pars. 81-53, 81-54, and 81-55). **Illinois Abortion Parental Consent Act of 1977.** Provision defining "abortion" was unconstitutionally vague, and criminal penalty provision based on that definition was therefore also unconstitutional. Provision for a 48-hour waiting period and parental consent were unconstitutional violations of the federal equal protection clause because they were underinclusive in that they excluded married minors and overinclusive in that they included mature, emancipated minors. P.A. 89-18 repealed the Illinois Abortion Parental Consent Act of 1977 (as well as the Parental Notice of Abortion Act of 1983) and replaced them with the Parental Notice of Abortion Act of 1995 (750 ILCS 70/), which excludes married or emancipated minors. Enforcement of the 1995 Act is presently restrained by a federal court. *Wynn v. Carey*, 599 F. 2d 193 (7th Cir. 1979).

720 ILCS 520/4 (repealed) (Ill. Rev. Stat., ch. 38, par. 81-64). **Parental Notice of Abortion Act of 1983**. Requirement of a 24-hour waiting period after notifying parent of minor's decision to have an abortion was unconstitutional as unduly burdening the minor's right to an abortion in the absence of a compelling state interest. P.A. 89-18 repealed the Parental Notice of Abortion Act of 1983 (as well as the Illinois Abortion Parental Consent

Act of 1977) and replaced them with the Parental Notice of Abortion Act of 1995 (750 ILCS 70/), which provides for a 48-hour waiting period. Enforcement of the 1995 Act is presently restrained by a federal court. *Zbaraz v. Hartigan*, 763 F. 2d 1532 (7th Cir. 1985).

720 ILCS 570/201 (Ill. Rev. Stat. 1973, ch. 56½, par. 1201). **Illinois Controlled Substances Act**. Provision authorizing the Director of Law Enforcement to add or delete substances from the schedules of controlled substances by issuing rules having the immediate effect of law failed to provide constitutionally required due notice to persons affected by such a rule. P.A. 79-454 added provisions requiring publication of a determination to add or delete a substance, allowing time for filing objections to such a determination, and requiring a hearing before issuance of a rule. *People v. Avery*, 67 Ill. 2d 182 (1977).

720 ILCS 600/2 and 600/3 (Ill. Rev. Stat. 1985, ch. 56½, pars. 2102 and 2103). **Drug Paraphernalia Control Act.** Provisions were unconstitutionally vague because they required scienter on the part of a retailer in the definition Section but allowed for constructive knowledge on the part of the retailer in the penalty Section. P.A. 86-271 amended the penalty Section to delete the constructive knowledge provision. *People v. Monroe*, 118 Ill. 2d 298 (1987).

CRIMINAL PROCEDURE

725 ILCS 5/108-8 (West 1994). **Code of Criminal Procedure of 1963.** Subsection authorizing a "no-knock" search warrant based on the mere existence of firearms on the premises resulted in an unreasonable search and seizure in violation of the United States and Illinois constitutions. P.A. 90-456 amended the Code to base issuance of "no-knock" warrants on the reasonable belief that weapons may be used or evidence may be destroyed if entry is announced. *People v. Wright*, 183 Ill. 2d 16 (1998).

725 ILCS 5/109-3 (Ill. Rev. Stat. 1967, ch. 38, par. 109-3). **Code of Criminal Procedure of 1963**. Provision that an order of suppression of evidence entered at a preliminary hearing was not an appealable order violated provision of Illinois Constitution granting the Supreme Court the power to provide by rule for appeals. P.A. 79-1360 deleted the offending provision. *People v. Taylor*, 50 Ill. 2d 136 (1971).

725 ILCS 5/110-7 (Ill. Rev. Stat. 1971, ch. 38, par. 110-7). **Code of Criminal Procedure of 1963.** Provision that required the cost of appointed legal counsel to be reimbursed from a defendant's bail deposit violated the due process and equal protection clauses of the U.S. and Illinois constitutions because other defendants who did not post bail were not required to reimburse the costs of their appointed counsel. P.A. 83-336 removed the provision. *People v. Cook*, 81 Ill. 2d 176 (1980).

725 ILCS 5/115-10 (P.A. 89-428). **Code of Criminal Procedure of 1963.** P.A. 89-428 included a provision amending the Code of Criminal Procedure of 1963 permitting, in a prosecution for a physical or sexual act perpetrated on a child under age 13, the admission of certain out-of-court statements by the child victim. The entire Public Act was unconstitutional because it violated the single-subject requirement of the Illinois Constitution. P.A. 90-786 amended Section 115-10 to allow such statements provided they are made before the victim attains age 13 or within 3 months after commission of the offense, whichever occurs later. *Johnson v. Edgar*, 176 Ill. 2d 499 (1997).

725 ILCS 150/9 (Ill. Rev. Stat. 1991, ch. 56½, par. 1679). **Drug Asset Forfeiture Procedure Act.** Provision depriving a claimant in a forfeiture proceeding of a jury trial was unconstitutional. P.A. 89-404 deleted the language that required forfeiture hearings to be heard by the court without a jury. *People ex rel. O'Malley v. 6323 North LaCrosse Ave.*, 158 Ill. 2d 453 (1994).

CORRECTIONS

730 ILCS 5/. Unified Code of Corrections. Former provision of Code (Ill. Rev. Stat. 1973, ch. 38, par. 1005-2-1) requiring a criminal defendant to bear the burden of proof that he or she was unfit to stand trial was a denial of due process in violation of the Illinois Constitution. P.A. 81-1217 repealed the offending provision. *People v. McCullum*, 66 Ill. 2d 306 (1977).

730 ILCS 5/3-6-3 (P.A. 89-404). **Unified Code of Corrections.** P.A. 89-404, including amendments to the Code's "truth-in-sentencing" provisions, violated the single-subject rule of Section 8 of Article IV of the Illinois Constitution. P.A.'s 89-462, 90-592, and 90-593 re-enacted the Code's "truth-in-sentencing" provisions. *People v. Reedy*, 186 Ill. 2d 1 (1999).

730 ILCS 5/5-4-1 and 5/5-8-1 (Ill. Rev. Stat. 1979, ch. 38, pars. 1005-4-1 and 1005-8-1). **Unified Code of Corrections.** Provisions requiring that in felony cases a trial or sentencing judge "shall specify on the record" or "shall set forth" the reasons for imposing or that led to imposition of the sentence must be construed as permissive or directory and subject to waiver by a defendant who fails to request a statement of reasons for a particular sentence or to object at the sentencing hearing to the omission of such a statement. Were those provisions construed to be mandatory, they would dictate the actual content of a judge's pronouncement of sentence in violation of Article VI, Section 1 and Article II, Section 1 of the Illinois Constitution. *People v. Davis*, 93 Ill. 2d 155 (1982).

730 ILCS 5/5-4-3 (West 1994). **Unified Code of Corrections.** Requirement that an incarcerated sex offender, ordered by the court to provide a blood specimen, must be punished with contempt when the prisoner is deliberately uncooperative violated the separation of powers doctrine of Section 1 of Article II of the Illinois Constitution. P.A. 90-793 punishes the deliberate actions as a Class A misdemeanor. *Murneigh v. Gainer*, 177 Ill. 2d 287 (1997).

730 ILCS 5/5-5-3 (West Supp. 1995). **Unified Code of Corrections.** Designation of possession of a firearm in violation of the Firearm Owners Identification Card Act as a nonprobationable Class 3 felony, as compared to the designation of unlawful use of a firearm by a felon as a probationable Class 3 felony, violated the prohibition against disproportionate penalties in Section 11 of Article I of the Illinois Constitution. Public Act 94-72, effective January 1, 2006, amended Section 5-5-3 of the Unified Code of Corrections to designate unlawful use of a firearm by a felon as a nonprobationable Class 3 felony. *People v. Davis*, 177 Ill. 2d 495 (1997).

730 ILCS 5/5-5-4.1 (Ill. Rev. Stat. 1979, ch. 38, par. 1005-5-4.1). **Unified Code of Corrections**. The statute purported to alter the standard of review of a sentence imposed by a trial judge and authorized a court of review to enter any sentence that the trial judge could have entered. This conflicted with Supreme Court Rule 615(b)(4). The statute was invalid because it constituted an undue infringement by the legislature on the powers of the judiciary. Although the legislature may enact laws governing judicial practice that do not unduly infringe on inherent judicial powers, if a Supreme Court Rule conflicts with a statute, the Rule prevails. Subsequently, P.A. 83-344 removed the offending language. *People v. Cox*, 82 Ill. 2d 268 (1980).

730 ILCS 150/2 (West 2000). **Sex Offender Registration Act**. Including a conviction of aggravated kidnapping among the sex offenses that trigger registration as a sex offender unconstitutionally violated the substantive due process rights of an offender when applied to a defendant without a history of sex offenses whose crime was without sexual motivation or purpose. P.A. 94-945, effective June 27, 2006, added the requirement that the offense was sexually motivated. *People v. Johnson*, 363 Ill. App. 3d 356 (1st Dist. 2006).

CIVIL PROCEDURE

735 ILCS 5/. Code of Civil Procedure. Provision of "An Act to revise the law in relation to medical practice" (P.A. 79-960; Ill. Rev. Stat. 1975, ch. 70, par. 101) that limited recovery in cases involving injuries arising from medical, hospital, or other healing art malpractice to $500,000 permitted or denied recovery on an arbitrary basis, thus granting a special privilege in violation of Article IV, Section 13 of the Illinois Constitution. P.A. 81-288 repealed the offending provision.

Provision of predecessor Act (Ill. Rev. Stat. 1975, ch. 110, pars. 58.2 through 58.10) establishing medical review panels to hear malpractice claims unconstitutionally delegated judicial functions to non-judicial personnel. Provision establishing malpractice claim review procedure as a condition to a jury trial violated the constitutional right to a trial by jury. P.A. 81-288 repealed the offending provisions. *Wright v. Central DuPage Hospital Ass'n*, 63 Ill. 2d 313 (1976). (This case is also reported in this Part 3 of this Case Report under "Insurance".)

735 ILCS 5/. Code of Civil Procedure. Former provisions of Code (Ill. Rev. Stat. 1985, ch. 110, pars. 2-1012 through 2-1020) requiring, as a prerequisite to trial in a healing art malpractice case, that a panel composed of a circuit judge, a practicing attorney, and a health-care professional convene and make a determination regarding liability and, if liability is found, damages violated the Illinois Constitution's grant of judicial power solely to the courts because the statute was an attempt by the legislature to create new courts. The offending provisions were repealed by P.A. 86-1028. *Bernier v. Burris*, 113 Ill. 2d 219 (1986).

735 ILCS 5/2-622 and 5/8-2501. (P.A. 89-7). **Code of Civil Procedure**. Provisions concerning physician affidavits and expert witnesses in healing arts malpractice actions were unconstitutional due to their inseverability, despite inclusion of a severability clause, from P.A. 89-7, which is unconstitutional in its entirety. P.A. 90-579, effective May 1, 1998, in amending 735 ILCS 5/2-622, included language added by P.A. 89-7 without specifying an intentional re-enactment, which was deemed a valid resurrection of P.A. 89-7 in *Cargill v. Czelatdko*, 353 Ill. App. 3d 654 (4th Dist. 2004). P.A. 94-677, effective August 25, 2005, specifically re-enacted and changed 735 ILCS 5/2-622 and 5/8-2501. *Best v. Taylor Machine Works*, 179 Ill. 2d 367 (1997).

735 ILCS 5/12-701 (Ill. Rev. Stat. 1991, ch. 110, par. 12-701). **Code of Civil Procedure**. The statute required the court clerk to issue a summons to a person commanding the person to appear in court as a nonwage garnishee after a judgment creditor filed an affidavit. The statute violated due process because it did not require a judgment debtor to be given notice and an opportunity to be heard. P.A. 87-1252 added the requirement that a garnishment notice be provided to the judgment debtor and gave a judgment debtor the right to request a hearing. *E.J. McKernan Co. v. Gregory*, 268 Ill. App. 3d 383 (2nd Dist. 1994); *Jacobson v. Johnson*, 798 F. Supp. 500 (C.D. Ill. 1991).

735 ILCS 5/13-208. Code of Civil Procedure. Pre-Code limitations provision (Ill. Rev. Stat. 1975, ch. 83, par. 19) concerning the effect an absence from the State had on personal actions was an unconstitutional violation of equal protection guarantees because the statute applied only to Illinois residents. The unconstitutional provision was not continued in the Code of Civil Procedure in 1982. *Haughton v. Haughton*, 76 Ill. 2d 439 (1979).

CIVIL LIABILITIES

740 ILCS 10/. Illinois Antitrust Act. The 1893 antitrust Act was unconstitutional because of a discrimination in favor of agricultural products or livestock in the hands of the producer or raiser exempting them from the prohibition against recovery of the price of articles sold by any trust or combination in restraint of trade or competition in violation of the Act. In 1965, the 1893 Act was repealed by the Illinois Antitrust Act, which did not contain a provision such as that which had been held unconstitutional. *Connolly v. Union Server Pipe Co.*, 22 S. Ct. 431 (1902).

740 ILCS 180/1 and 180/2 (P.A. 89-7). **Wrongful Death Act.** Provisions amended by P.A. 89-7, a comprehensive revision of the law relating to personal injury actions that was unconstitutional in its entirety, despite inclusion of a severability clause, were inseverable. P.A. 91-380 re-enacted the changes made in the Wrongful Death Act by P.A. 89-7. *Best v. Taylor Machine Works*, 179 Ill. 2d 367 (1997). (This case is also reported in Part 2 pf this Case Report under "Civil Procedure" and "Civil Liabilities", concerning the inseverability of unconstitutional provisions of the Code of Civil Procedure and the Joint Tortfeasor Contribution Act enacted by P.A. 89-7.)

CIVIL IMMUNITIES

745 ILCS 25/3 and 25/4 (Ill. Rev. Stat. 1963, ch. 122, pars. 823 and 824). **Tort Liability of Schools Act**. Provisions requiring that written notice of injury be filed with the proper school authority within 6 months after the date of the injury and requiring dismissal of an action for failure to file the notice were unconstitutional special legislation. There was no reason why a failure to file such a notice in relation to an injury on school property should bar a recovery while a failure to file such a notice in relation to an injury on property of another governmental unit would not bar a recovery. Enactment of the Local Governmental and Governmental Employees Tort Immunity Act eliminated the discrepancy between notice-of-injury provisions applicable to various units of local government. *Lorton v. Brown County School Dist.*, 35 Ill. 2d 362 (1966). (See also *Cleary v. Catholic Diocese of Peoria*, 57 Ill. 2d 384 (1974), reported in Part 2 of this Case Report under "Civil Immunities".)

FAMILIES

750 ILCS 5/203 and 5/208 (Ill. Rev. Stat. 1973, ch. 89, pars. 3, 3.1, and 6). **Illinois Marriage and Dissolution of Marriage Act**. The statute allowed males to marry without parental consent at age 21 and females at age 18. The age requirement for males and females was also different for marriage with parental consent and marriage by court order. This was held to be a violation of Section 18 of Article 1 of the Illinois Constitution prohibiting discrimination on the basis of sex. Subsequently, the statute was amended by P.A. 78-1297 to make the ages the same for males and females. *Phelps v. Bing*, 58 Ill. 2d 32 (1974).

750 ILCS 5/401 (Ill. Rev. Stat. 1977, ch. 40, par. 401). **Illinois Marriage and Dissolution of Marriage Act.** Amendatory language in P.A. 82-197 that retroactively validated all judgments for dissolution of marriage reserving questions of child custody or support, maintenance, or disposition of property, regardless of whether appropriate circumstances existed for the reservation of those questions, violated the separation of powers clause of the Illinois Constitution. The legislature was attempting to retroactively alter or overrule the appellate court's interpretation of the statute (that is, that appropriate circumstances must exist before a trial court may reserve those questions). The legislature may alter only for future cases the appellate court's interpretation of statutes. P.A. 83-247 deleted the offending provisions and provided that a trial court may enter a judgment for dissolution of marriage reserving certain issues upon agreement of the parties or upon the motion of either party and a finding by the court that appropriate circumstances exist. *In re Marriage of Cohn*, 93 Ill. 2d 190 (1982).

750 ILCS 5/607 (West 1998). **Illinois Marriage and Dissolution of Marriage Act.** Authorization to grant grandparent visitation when that visitation is in the best interest of the child was unconstitutional as applied to a child both of whose parents objected to grandparent visitation. P.A. 93-911, effective January 1, 2005, amended the provision to condition the visitation petition upon the parent's unreasonable denial of visitation and to establish a rebuttable presumption that a fit parent's visitation decisions are not harmful to the child's mental, physical, or emotional health. *Lulay v. Lulay*, 193 Ill. 2d 455 (2000).

750 ILCS 5/607 (West 2000). **Illinois Marriage and Dissolution of Marriage Act.** Paragraphs (1) and (3) of subsection (b), which authorized reasonable visitation to a minor child's grandparents, great-grandparents, or siblings when it is in the child's best interest and (i) the child's parents do not permanently or indefinitely co-habit or (ii) one of the child's parents is dead, violated the Fourteenth Amendment to the United States Constitution by interfering with a parent's fundamental right to determine the care, custody, and control of his or her child. P.A. 93-911, effective January 1, 2005, removed the offending paragraphs and added language to condition the visitation petition upon the parent's unreasonable denial of visitation (and the existence of other factors such as one parent being deceased or parental non-co-habitation) and to establish a rebuttable presumption that a fit parent's visitation decisions are not harmful to the child's mental, physical, or emotional health. *Wickham v. Byrne*, 199 Ill. 2d 309 (2002).

750 ILCS 45/8. Illinois Parentage Act of 1984. Provision of predecessor Paternity Act (Ill. Rev. Stat. 1981, ch. 40, par. 1354) that, with certain exceptions, no action could be brought under the Act later than 2 years after the birth of the child violated the equal protection clause of the 14th Amendment because it did not afford illegitimate children a reasonable opportunity to bring an action and secure child support. P.A. 83-1372 repealed the Paternity Act and replaced it with the Illinois Parentage Act of

1984, which provides that an action under the Act must be brought within 2 years after the child reaches the age of majority. *Jude v. Morrissey*, 117 Ill. App. 3d 782 (1st Dist. 1983).

750 ILCS 45/11. Illinois Parentage Act of 1984. Provisions of predecessor Act on Blood Tests to Determine Paternity and Paternity Act (Ill. Rev. Stat. 1981, ch. 106¾ , pars. 1, 55, and 56) that contemplated that the decision to submit to a blood test was within a defendant's discretion were an invalid exercise of the legislative power because they conflicted with a court's power under Supreme Court Rules to order discovery and to compel compliance with discovery orders. P.A. 83-1372 repealed the Paternity Act and replaced it with the Illinois Parentage Act of 1984, which provides that if a party refuses to submit to ordered blood tests, the court may resolve the question of paternity against that party or otherwise enforce its order. *People ex rel. Coleman v. Ely*, 71 Ill. App. 3d 701 (1st Dist. 1979).

750 ILCS 45/. Illinois Parentage Act of 1984.

750 ILCS 50/8 (Ill. Rev. Stat. 1969, ch. 4, par. 9.1-8). **Adoption Act.**

Provision of predecessor to Illinois Parentage Act of 1984 (Paternity Act; Ill. Rev. Stat. 1969, ch. 106¾, par. 62) and provision of Adoption Act that (i) denied the putative father of an illegitimate child the custody of his child absent his attempt to legally adopt the child and (ii) allowed an adoption to be finalized without the consent of the father of an illegitimate child were unconstitutional. P.A. 78-854 deleted the offending provision of the Adoption Act, and P.A. 81-290 repealed the offending provision of the Paternity Act. *People ex rel. Slawek v. Covenant Children's Home*, 52 Ill. 2d 20 (1972).

750 ILCS 50/1 (West 1998). **Adoption Act**. Subdivision D(f)'s mandatory irrebuttable presumption of parental unfitness due to a criminal conviction resulting from the death of a child due to physical abuse, while allowing the State to present evidence as to the best interests of the child in question, unconstitutionally denied equal protection of the law to a mother in an action to terminate her parental rights because of her first degree murder of her other child. P.A. 94-939, effective January 1, 2007, made the presumption rebuttable by clear and convincing evidence. *In re S.F.*, 359 Ill. App. 3d 63 (1st Dist. 2005).

750 ILCS 50/1 (West 2002). **Adoption Act**. Subsection (D)(q)'s irrebuttable presumption of the unfitness of a parent convicted of aggravated battery, heinous battery, or attempted murder of any child:

(1) Violated State and federal constitutional equal protection guarantees (U.S. Const., Amend. XIV and ILCON Art. I, Sec. 2) because subsection (D)(i) of the same Section created only a rebuttable presumption of the unfitness of a parent who commits first or second degree murder of any person, which are no less serious offenses. *In re D.W.*, 214 Ill. 2d 289 (2005).

(2) Violated State and federal constitutional equal protection and due process guarantees (U.S. Const., Amend. XIV and ILCON Art. I, Sec. 2) because it too broadly affected parents who, due to the time or circumstances of their offense or their rehabilitation, may not threaten the State's interest in the safety and welfare of children. *In re Amanda D.*, 349 Ill. App. 3d 941 (2nd Dist. 2004).

P.A. 94-939, effective January 1, 2007, amended Section 1 of the Adoption Act by removing subsection (D)(q) and by changing subsection (D)(i) to include predatory sexual assault of a child, heinous battery of a child, and aggravated battery of a child among a parent's crimes that create a rebuttable presumption of his or her parental unfitness.

750 ILCS 65/1 (Ill. Rev. Stat. 1980, ch. 40, par. 1001). **Rights of Married Persons Act**. Provision prohibiting a husband or wife from suing the other for a tort to the person committed during the marriage denied equal protection in violation of the 14th Amendment to the U.S. Constitution because it was not rationally related to the purpose of maintaining marital harmony. P.A.'s 82-569, 82-621, 82-783, and 84-1305 amended the offending provision by adding an exception for intentional torts. P.A. 85-625 deleted the exception and provided instead that a husband or wife may sue the other for a tort committed during the marriage. *Moran v. Beyer*, 734 F. 2d 1245 (7th Cir. 1984).

ESTATES

755 ILCS 5/2-2 (West 1994). **Probate Act of 1975**. Provision permitting mothers but not fathers to inherit by intestate succession from their illegitimate children unlawfully discriminated on basis of gender in violation of equal rights clause of Illinois Constitution. P.A. 90-803 changed Section 2-2 to permit eligible parents to inherit by intestate succession from their illegitimate children; an eligible parent is one who, during the child's lifetime, acknowledged the child, established a parental relationship with the child, and supported the child. *In re Estate of Hicks*, 174 Ill. 2d 433 (1996).

PROPERTY

765 ILCS 705/1. Lessor's Liability Act. Provision in predecessor Act (Ill. Rev. Stat. 1967, ch. 80, par. 15) that prohibited the enforcement of a lease provision that exempted a non-governmental landlord from liability for the landlord's negligence as a violation of public policy was held unconstitutional as special legislation because of the exclusion of governmental landlords. The Act was subsequently replaced with the Lessor's Liability Act, which contained similar provisions but without the governmental exemption. *Sweney Gasoline & Oil Co. v. Toledo P. & W. R. Co.*, 42 Ill. 2d 265 (1969).

765 ILCS 1025/14 and 1025/25 (Ill. Rev. Stat. 1961, ch. 141, pars. 114 and 125). **Uniform Disposition of Unclaimed Property Act.** Provision that required an insurance company to pay to State of Illinois unclaimed amounts payable under insurance policies to persons whose last known address was in Illinois failed to protect the company from multiple payments to other states and denied the company its property without due process.

The Act was amended in 1963 to add provisions concerning proceedings in another state with respect to unclaimed property that has been paid or delivered to the State of Illinois. *Metropolitan Life Ins. Co. v. Knight*, 210 F. Supp. 78 (S.D. Ill. 1962).

HUMAN RIGHTS

775 ILCS 5/. Illinois Human Rights Act. Provision of predecessor Act creating a Commission on Human Relations (Ill. Rev. Stat. 1969, ch. 127, par. 214.4-1) required the Commission to cause lists of homeowners in an "area" who did not wish to sell their homes to be mailed to realtors "known or believed" to be soliciting homeowners in that "area". The provision was an unconstitutional delegation of arbitrary powers to an administrative agency because (i) "area" was not defined and no standards were given for the agency to follow in designating "areas" and (ii) no standards were given for establishing a basis on which a "belief" concerning a realtor's solicitation activities may be formed. P.A. 81-1216 repealed the Act creating a Commission on Human Relations and replaced it with the Illinois Human Rights Act without continuing the offending provision in the new Act. (P.A. 80-920 had previously deleted related provisions, concerning notice from the Human Relations Commission, from what is now the Discrimination in Sale of Real Estate Act, 720 ILCS 590/.) *People v. Tibbitts*, 56 Ill. 2d 56 (1973).

775 ILCS 5/9-102 (Ill. Rev. Stat. 1980 Supp., ch. 68, par. 9-102). **Illinois Human Rights Act**. Provision creating new cause of action for a charge of an unfair employment practice that was properly filed with the Fair Employment Practices Commission prior to March 30, 1978 and that was barred by lapse of time, and not similarly favoring those whose claims were filed after March 30, 1978, violated the special legislation provision of Article IV, Section 13 of the Illinois Constitution and the due process and equal protection clauses of Article I, Section 2 of the Illinois Constitution. P.A. 84-1084 repealed this provision. *Wilson v. All-Steel, Inc.*, 87 Ill. 2d 28 (1981).

BUSINESS ORGANIZATIONS

805 ILCS 5/15.65. Business Corporation Act of 1983. Provision of predecessor Act (Ill. Rev. Stat. 1955, ch. 32, par. 157.138) allowing imposition of franchise tax on foreign corporation authorized to do business in Illinois that was engaged exclusively in interstate business within Illinois violated the commerce clause of the U.S. Constitution. The provision was amended by Laws 1959, p. 25 and Laws 1959, p. 2123 to provide that the franchise tax shall be imposed on a business for the privilege of exercising its authority to transact business in Illinois rather than for simply being authorized to transact business in this State. *Sinclair Pipeline Co. v. Carpentier*, 10 Ill. 2d 295 (1957).

BUSINESS TRANSACTIONS

815 ILCS 350/. Fraudulent Sales Act. Provision of predecessor Act (Smith's Stat. 1931, p. 2602) authorizing municipal clerk to issue a license to hold a sale covered by the Act if the clerk was satisfied from the license application that the proposed sale was of the character the applicant desired to conduct and advertise was an unconstitutional delegation of legislative power to an administrative official. It did not define or describe the different types of sales designated as requiring a license and gave the clerk unwarranted discretion in determining whether the facts set out in a license application brought the proposed sale within the terms of the statute. The Act was subsequently repealed. The Fraudulent Sales Act specifies the information that must be contained in an application for a license to conduct a sale covered by the Act and provides that the clerk shall issue a license "upon receipt of an application giving fully and completely the [required] information". *People v. Yonker*, 351 Ill. 139 (1932).

815 ILCS 710/4 and 710/12 (West 1992). **Motor Vehicle Franchise Act.** Provision allowing a court to be the initial arbiter of the propriety of establishing an additional or relocated franchise violated the separation of powers clause of the Illinois Constitution because it delegated to the courts matters that are for legislative or administrative determination. P.A. 89-145 deleted the offending provision. *Fields Jeep-Eagle v. Chrysler Corp.*, 163 Ill. 2d 462 (1994).

EMPLOYMENT

820 ILCS 40/ (Ill. Rev. Stat. 1984 Supp., ch. 48, par. 2001 *et seq.*). **Personnel Record Review Act**. The Act was held unconstitutionally vague because it was not clear with reasonable certainty which records were exempt from inspection by an employee and which records were subject to inspection. The Section concerning records exempt from inspection was subsequently amended by P.A. 85-1393 and P.A. 85-1424 to specify certain employee-related materials. The Attorney General issued an opinion (Ill. Atty. Gen. Op. No. 92-005) that the Act is now constitutional. *Spinelli v. Immanuel Lutheran Evangelical Congregation*, 118 Ill. 2d 389 (1987).

820 ILCS 130/2 and 130/10a (Ill. Rev. Stat. 1961, ch. 48, pars. 39s-2 and 39s-10a). **Prevailing Wage Act.** Provision prohibiting allocation of motor fuel tax funds to public bodies if a certificate of compliance with the Act is not filed by the public body requesting approval of a public works project violated the Illinois Constitution's prohibition against amending a Section of a law (in this case, certain Sections of the Motor Fuel Tax Act and the Illinois Highway Code) without inserting the full text of the Section amended. The Section of the Act containing that provision was subsequently repealed by Laws 1965, p. 3508. Another Section of the Act extending application of the Act to employees of public bodies when engaged in new construction (as opposed to maintenance work) violated the equal protection clauses of the federal and Illinois constitutions. That and other Sections of the Act were thereafter substantially rewritten to correct the problem. *City of Monmouth v. Lorenz*, 30 Ill. 2d 60 (1963).

820 ILCS 130/2 (Ill. Rev. Stat. 1951, ch. 48, par. 39s-2). **Prevailing Wage Act**. Provision defining the "prevailing rate of wages" in a locality as the wages under a collective bargaining agreement in effect in the locality and covering wages for work of a similar character was an unconstitutional delegation of legislative power to private parties. Laws 1957, p. 2662 deleted the offending provision. *Bradley v. Casey*, 415 Ill. 564 (1953).

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